

dial, we have talked to each other so often. And I have every confidence the Chairman will conduct a fair and thorough hearing.

Less than a quarter of those of us currently serving in the Senate have exercised the Senate's advice and consent responsibility in connection with a nomination to be Chief Justice of the United States. I think only 23 Senators have actually been involved in that. We are fortunate that a veteran of these proceedings is chairing this.

We are at a time of great stress in our Nation because of what has happened in New Orleans and throughout much of the Gulf Coast regions. I think the hearts and prayers of certainly my State of Vermont but all Americans are for those people, and I would hope that they understand that while we were having these hearings, they are first and foremost in our thoughts and prayers. I am sure they are with you, Judge.

This is the only time we are going to find out what he is, and so it is all the more important that we have a good hearing. Again, Mr. Chairman, I appreciate our meetings on this. I appreciate the meeting earlier this morning with you and Judge Roberts. I think that you have set exactly the perfect tone for a hearing of this nature.

**OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S.
SENATOR FROM THE STATE OF PENNSYLVANIA**

Chairman SPECTER. Thank you very much, Senator Leahy. And now we will begin the opening statements, as I have said, of 10 minutes' duration.

This hearing, Judge Roberts, is being held in the Senate Caucus Room, which has been the site of many historic hearings, going back to 1912 with the sinking of the Titanic; 1923, Teapot Dome; 1954, Army-McCarthy; 1973, Watergate; 1987, Iran-contra; and this chamber still reverberates with the testimony of Judge Bork in 1987, and it still reverberates with the testimony of Justice Clarence Thomas and Professor Anita Hill in 1991.

This is a very unique hearing—the first one in 11 years in the Senate for a Supreme Court Justice, and the first one in 19 years for a Chief Justice. And you would be, if confirmed, the 17th Chief Justice in the history of the country and the second youngest since Chief Justice Marshall was sworn in, in 1800.

Your prospective stewardship of the Court, which could last until the year 2040, or longer—the senior Justice now is Justice Stevens, who is 85, and projecting ahead 35 years, that would take us to the year 2040 and would present a very unique opportunity for a new Chief Justice to rebuild the image of the Court away from what many believe it has become, a super-legislature, and to bring consensus to the Court with the hallmark of the Court being 5–4 decisions—a 5–4 decision this year allowing Texas to display the Ten Commandments, and a 5–4 decision turning Kentucky down from displaying the Ten Commandments; a 5–4 decision 4 years ago striking down a section of the Americans With Disabilities Act; and last year, a 5–4 decision upholding the Americans With Disabilities Act on the same Congressional record.

Beyond your potential voice for change and consensus, your vote will be critical on many, many key issues, such as Congressional

power, Presidential authority, civil rights, including voting rights and affirmative action, defendants' rights, prayer, many decisions for the future, and perhaps institutional changes in the Court, looking for the day when the Court may be televised.

This hearing comes at a time of turbulent partisanship in the United States Senate. Turbulent partisanship. Earlier this year, the Senate faced the possibility of a virtual meltdown, with filibusters on one side of the aisle and on the other side of the aisle the threat of the constitutional or nuclear confrontation. This Committee, with the leadership of Senator Leahy, has moved to a bipartisan approach. We had a prompt confirmation of the Attorney General. We reported out bills which have become legislation, after being stalled for many years, on bankruptcy reform and class action. We have confirmed contentious circuit court nominees. We have reported out unanimously the PATRIOT Act and, after very deliberate and complex hearings, reported out asbestos reform. So it has been quite a period for this Committee.

And now we face the biggest challenge of the year, perhaps the biggest challenge of the decade, in this confirmation proceeding. I have reserved my own judgment on your nomination until the hearings are concluded, and it is my firm view that there ought not to be a political tilt to the confirmation of a Supreme Court Justice, thought to be Republican or Democratic. We all have a responsibility to ask probing questions to determine qualification beyond academic and professional standing.

These hearings, in my judgment, ought to be in substantive fact and in perception for all Americans, that all Americans can feel confident that the Committee and the full Senate has done its job.

There are no firmly established rules for questions and answers. I have expressed my personal view that it is not appropriate to ask a question about how the nominee would vote on a specific case, and I take that position because of the key importance of independence, that there ought not to be commitments or promises made by a nominee to secure confirmation. But Senators have the right to ask whatever questions they choose, and you, Judge Roberts, have the prerogative to answer the questions as you see fit or not to answer them as you see fit.

It has been my judgment, after participating in nine—this will be the tenth for me personally—that nominees answer about as many questions as they think they have to in order to be confirmed. It is a subtle minuet, and it will be always a matter of great interest as to how we proceed.

I do not intend to ask you whether you will overrule *Roe v. Wade*. I will ask you whether you think the Constitution has a right of privacy, and I will ask questions about precedents as they bear on *Roe v. Wade*. I am very much concerned about what I conceive to be an imbalance in the separation of powers between the Congress and the Court. I am concerned about what I bluntly say is the denigration by the Court of Congressional authority. When the Supreme Court of the United States struck down a portion of the legislation to protect women against violence, the Court did so because of our "method of reasoning." And the dissent noted that that had carried the implication of judicial competence, and the inverse of that is Congressional incompetence. And after 25 years in this

body, on fact finding—and there was an extensive record made in the case, in the legislation to protect women against violence, the Court simply disregarded it.

And then the issue of States' rights, the Supreme Court of the United States has elevated States' rights, but in a context that it is impossible to figure out what the law is. The Americans With Disabilities Act had a very extensive record, but when the case came up in 2001, Garrett, a woman who had breast cancer, the Supreme Court said that the section of the Act was unconstitutional. Four years later, in *Lane v. Tennessee*, you had a paraplegic crawling up the steps access to a courtroom. The Court said that that was constitutional, again 5–4, on what really turned out to be inexplicable decisions.

You have a very extensive paper trail, and there will obviously be questions on that subject, and we will be concerned about what your views are today contrasted with what your views may have been in the past. Phyllis Schlafly, the president of the Eagles Forum, said that they were smart-alecky comments by a bachelor who did not have a whole lot of experience. So she is putting on an understandable gloss on that subject. But I know that will be a matter of considerable interest.

In one of your earlier memoranda, you came forward with an intriguing thought, one of many in those early memoranda, as your conceptualization power was evident, that Justices ought to be limited to a 15-year term. And with that idea in play, if time permits, it is something I would like to explore, voluntary action on the part of a Justice or perhaps the President could make that a condition.

Between now and the year 2040, or in the intervening years, technology will present many, many novel issues, and there, again, if time permits, I would like to explore that.

I am down to 10 seconds, and I intend to stop precisely on time, and this Committee has a record for maintaining that time. That is it.

[Laughter.]

Judge ROBERTS. Thank you, Mr. Chairman.

Chairman SPECTER. I now yield to my distinguished colleague, Senator Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman. Thank you for the way you have conducted the whole run-up to this hearing.

A few days ago, William Rehnquist passed away. He had 33 years of service on the Supreme Court. Last week, many of us paid our respects for his service at the monumental building across the street in which he devoted himself to protecting the independence of the Federal judiciary. I know, Judge Roberts, that was a particularly difficult time for you because of your close relationship with him. But I think of the facade of that Court with its marble from Vermont, and I think of how much our State served as a refuge for the Chief Justice, especially in the summer months.

Today, the devastation and despair facing millions of our fellow Americans in the Gulf region is a tragic reminder of why we have a Federal Government and why it is critical that our Government