

statement. At this time we will adjourn and we will reconvene at 2:10.

Pardon me. We are going to proceed with you, Senator Feingold.
[Laughter.]

Senator FEINGOLD. Thank you, Mr. Chairman, I think.

Senator LEAHY. This is called the potted plant routine, Russ.

[Laughter.]

Chairman SPECTER. I am so anxious for the recess, I jumped the gun a little.

[Laughter.]

**STATEMENT OF SENATOR RUSSELL D. FEINGOLD, A U.S.
SENATOR FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Mr. Chairman, I too want to welcome our nominee and thank him in advance for the long hours that he will put in this week.

Judge, I do greatly admire your legal qualifications, and of course, your record of public service, and I wish you well here. And as with the hearing and the nomination of Chief Justice Roberts, I approach this proceeding with an open mind.

Judge Alito, I know that as a long-time student of the law in the Supreme Court, you appreciate the importance of the process that we begin today. A position on the Supreme Court is one of the highest honors and greatest responsibilities in our country. The Constitution requires the Senate to offer its advice and decide whether to grant its consent to your nomination, and the Senate has duly delegated to the Judiciary Committee the task of examining your record and hearing your testimony and responses to questions about your views.

So it is our job in these hearings to try to get a sense for ourselves, for our colleagues who are not on the Committee, and for the American people, of whether you should be given the enormous responsibility of protecting our citizens' constitutional freedoms on the Supreme Court. So you will, obviously, face tough questions here, Judge.

No one is entitled to a seat on the Supreme Court simply because he has been nominated by the President. I think the burden is actually on the nominee to demonstrate that he should be confirmed.

We begin these hearings today at an important time. Less than a month ago we learned that this administration has for years been spying on American citizens without a court order and without following the laws passed by Congress. Americans are understandably asking each other whether our Government believes it is subject to the rule of law. Now more than ever we need a strong and independent judicial branch. We need judges who will stand up and tell the executive branch it is wrong when it ignores or distorts the laws passed by Congress. We need judges who see themselves as custodians of the rights and freedoms that the Constitution guarantees even when the President of the United States is telling the country that he should be able to decide unilaterally, unilaterally, how far these freedoms go.

To win my support, Judge Alito will have to show that he is up to the challenge. His instincts sometimes seem to be to defer to the executive branch to minimize the ability of the courts to question

the Executive in national security cases, to grant prosecutors whatever powers they seek, and to deny relief to those accused of crimes who assert that their constitutional rights were violated. So it will be up to Judge Alito to satisfy the Senate that he can be fair and objective in these kind of cases.

We need judges on the bench who will ensure that the judicial branch of Government is the independent check on Executive power that the Constitution requires and that the American people expect.

In these days of corruption investigations and indictments in Washington, we also need judges who are beyond ethical reproach. In 1990, when the judge appeared before this Committee in connection with this nomination to the Court of Appeals, Judge Alito promised to recuse himself from cases involving a mutual fund company with which he had substantial investments, Vanguard. He kept those investments throughout his service on the Court of Appeals and still has them today. But in 2002 he sat on a panel in a case involving Vanguard. Since his nomination to the Supreme Court, we have now heard different explanations from the nominee and his supporters about why he failed to recuse himself. Needless to say, the shifting explanations and justifications are somewhat troubling. I hope that we will get the full and final story in these hearings.

Before we grant lifetime tenure to Federal judges, and particularly Justices of the Supreme Court, we must make sure that they have the highest ethical standards. The stakes for this nomination could hardly be higher. Justice O'Connor, as many have said, was the swing vote in many important decisions in the past decade. Her successor could well be the deciding vote in a number of cases that have already been argued this term, that may have to be reargued after a new Justice is confirmed. The outcome of these cases could shape our society for generations to come.

Now, we do not have the right to know how a nominee would rule on those cases. Indeed, we should all hope that the nominee does not know either, but we do have a right to know what and how a nominee thinks about the important legal issues that have come to the Court in recent years. Commenting on past Supreme Court decisions, in my view, would no more disqualify a nominee from hearing a future case on a similar topic than would a current Justice participating in those past decisions. Mr. Chairman, it simply cannot be that the only person in America who cannot express an opinion on a case where Justice O'Connor cast the deciding vote, is the person who has been nominated to replace her on the Court.

So I look forward to questioning you, Judge Alito, about Executive power, the death penalty, employment discrimination, criminal procedure and other important topics, and I look forward to your candid answers. I will have to say that I was rather pleased that the judge was actually less guarded in our private meeting, than were the other two Supreme Court nominees who I had had the privilege to meet. I hope he is even more forthcoming in this hearing.

Given his long judicial record and the memos we have seen that express his personal views on legal issues, I expect complete answers, and I think my colleagues do too. If a nominee expresses a

personal view on a legal issue in a memo written over a decade ago, I think we and the American people have the right to know if he still holds that view today.

Mr. Chairman, if confirmed to the Supreme Court, Judge Alito is likely to have a profound impact on the lives of Americans for decades to come. That is a fact. It is clear, Mr. Chairman, from how you have planned these hearings, that you recognize that.

Thank you for your efforts to ensure a full and fair evaluation of this nominee, and I not only look forward to the questioning, but I want to note that I have caused the recess to occur 3 minutes and 40 seconds earlier than it normally would have.

[Laughter.]

Chairman SPECTER. Thank you, Senator Feingold, for your brevity.

We will now take a 15-minute recess until 2:15.

[Recess from 2 p.m. to 2:15 p.m.]

Chairman SPECTER. It is 2:15. We will resume these hearings. Next up on opening statement is Senator Graham.

Senator GRAHAM. Shall I wait or go ahead, Mr. Chairman?

[Pause.]

Chairman SPECTER. Senator Graham, you may begin.

**STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman, and welcome back, Judge. I would hate for you to miss my opening statement, a loss for the ages.

Welcome to the Committee. Welcome to one of the most important events in your life. You have got the people that mean the most here with you today, your family, and I know they are proud of you, and I am certainly proud of what you have been able to accomplish.

To say the least, you come to the Senate in interesting political times. There is going to be a lot of talk by the Senators of this Committee about concepts that are important to Americans, but what I worry the most about is your time, believe it or not, will come and go. You will not be here forever. It may seem that way, but I think you are going to be just fine.

I don't know what kind of vote you are going to get, but you will make it through. It is possible you could talk me out of voting for you, but I doubt it. So I won't even try to challenge you along those lines. I feel very comfortable with you being on the Supreme Court based on what I know, and the hearings will be helpful to all of us to find out some issues that are important to us.

We had a talk recently about Executive power. That is very important to me. In time of war, I want the executive branch to have the tools to protect me, my family and my country. But also I believe even during a time of war, the rule of law applies.

I have got some problems with using a force resolution to the point that future Presidents may not be able to get a force resolution from Congress if you interpret it too broadly. And we will talk about those things and we will talk more about it.

I am going to talk a little bit about some of the points my colleagues have been making. Everybody knows you are a conserv-