

Judge Roberts, causes come and go, but cases do not. In years or decades, one cause may fade, another will merge. But judges will remain deciding cases and interpreting our Constitution. Our next Chief Justice is not merely for today. He is a Chief Justice for the future, a future that will present constitutional issues that are now simply unknown.

The career of Chief Justice Rehnquist certainly proves this point. When he joined the Court in 1972, there was no Internet, no need to protect our children from the proliferation of online pornography; and at the time, there was no war on terror, no presidential order to detain terrorists as enemy combatants, and no terrorist prison at Guantanamo Bay. But yet, Chief Justice Rehnquist dealt with all of these issues while on the Court.

When faced with new and unexpected issues, a Justice is left only with the tools that every good judge must use: the facts of the case, the language of the Constitution, and the weight of precedent. This is a simple, unlimited approach to deciding cases, the kind of approach that Justice White would have understood and, I believe, that our Founders would have admired.

While preparing for this hearing, I came across a statement from a sitting Federal judge that I think neatly sums up this philosophy. "Deciding cases," this judge said—and I quote—"requires an essential humility grounded in the properly limited role of an undemocratic judiciary in a democratic republic, a humility reflected in doctrines of deference to legislative policy judgments and embodied in the often misunderstood term 'judicial restraint.'"

Judge Roberts, as you know, those words are yours. And in my opinion, they are very wise words indeed. You, sir, have the talent, experience, and humility to be an outstanding member of the United States Supreme Court. And I expect that these hearings will show that you have the appropriate philosophy to lead our Nation into the future as the 17th Chief Justice of the United States.

I thank the chair.

[The prepared statement of Senator DeWine appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Senator DeWine. Senator Feinstein?

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Good afternoon, Judge Roberts and Mrs. Roberts and the Roberts family. This must be a moment of enormous pride for you. I hope that, despite the toughness of this hearing, you really realize that this family member of yours is taking over not just the position of an Associate Justice, but the Chief Justice of the United States, at a time of unique division and polarization in this country. And so many of us are going to be pressing him to see if he has what we think it takes to do this.

And Fred Thompson, welcome back. I hope you miss us just a little bit from time to time. Somehow I am not quite sure that is the case.

[Laughter.]

Senator FEINSTEIN. Judge Roberts, thank you very much. We spent a very interesting hour together. I came away from it feeling that you are certainly brilliant, talented, and well-qualified. I do not think there is a question about that. But as we take a look at you, 50 years old, to be Chief Justice of the United States, I think it is really essential for us to try to determine whether you can be the kind of leader that can generate consensus, find compromise, and, above all, really embody the mainstream of American legal thinking. For me, the most important thing is to see that the Chief Justice really cares about the fact that justice is provided to all Americans. It has been said here before, but it is really important—young and old, rich and poor, powerful and weak, all races, creeds, colors, et cetera.

This is going to be a big session. The Court is going to consider some very critical cases among many others: The standard of review for abortion cases, the health of the mother; the constitutionality of an Oregon law which permits physician-assisted suicide for terminally ill but legally competent individuals; and whether two oil industry leaders and competitors can be allowed to work together to fix the price of gas once they have entered into a joint venture. In addition, the rights of enemy combatants, the so-called partial-birth abortion law, whether Congress has the authority to protect our Nation's environment through legislation. The Endangered Species Act is winding its way through the appellate courts. It looks like they differ, and if the courts keep going the way they are going, many of us feel that they will take away from the Congress the grounds on which we base legislation in the environment. This is an enormous macro-question that you are going to be right in the middle of as a pivotal force.

Chief Justice Rehnquist, I believe, will be remembered not only for his distinguished tenure, which it certainly was, but also for applying a much more restrictive interpretation of the Constitution, which has limited the role of Congress. In recent years, the Court has adopted a politically conservative States'-rights view of several constitutional provisions. As a result, congressional authority to enact important legislation has been significantly curtailed. This has occurred through its restrictive interpretation of the Spending Clause, the Commerce Clause, the 14th Amendment, the 11th Amendment, all of which Congress uses to enact certain laws.

Based on these federalism grounds, the Court has wiped out all, or key parts, of legislation addressing issues such as gun-free schools—should schools be allowed to prohibit guns within 1,000 feet; religious freedom; overtime protections; age discrimination; violence against women; and discrimination against people with disabilities. In fact, over the past decade, the Rehnquist Court has weakened or invalidated more than three dozen Federal statutes. Almost a third of these decisions were based on the Commerce Clause and the 14th Amendment. If you, Judge Roberts, subscribe to the Rehnquist Court's restrictive interpretation of Congress's ability to legislate, the impact could be enormous. It would severely restrict the ability of a Congress to tackle nationwide issues that the American people have actually elected us to address.

Now, as the only woman on this Committee, I believe I have an additional role in evaluating nominees for the Supreme Court, and

that is to see if the hard-earned autonomy of women is protected. Like any population, women enjoy diverse opinions, beliefs, political affiliations, priorities, and values. And we share a history of having to fight for many of the rights and opportunities that young American women now take so much for granted. I think they do not really recall that during the early years of the United States, women actually had very few rights and privileges. In most States, women were not allowed to enter into contracts, to act as executor of an estate; they had limited inheritance and child-custody rights. It actually was not until 1839 that a woman could own property separate from her husband, when Mississippi passed the Married Woman's Property Act.

It was not until the 19th century that women began working outside their homes in large numbers. Most often, women were employed as teachers or nurses and in textile mills and garment shops. As women entered into the workforce, we had to fight our way into nontraditional fields—medicine, law, business, and yes, even politics.

The American Medical Association was founded in 1846, but it barred women for 69 years from membership, until 1915. The American Bar Association was founded in 1876, but it barred women and did not admit them until 1918. That is 42 years later. And it was not until 1920 when, after a very hard fight, women won the right to vote—not even 100 years ago.

By virtue of our accomplishments and our history, women have a perspective, I think, that has been recognized as unique and valuable. With the retirement of Justice Sandra Day O'Connor, the Court loses the important perspective she brought as a woman and the deciding vote in a number of critical cases.

For me—and I said this to you privately, and I will say more about it in my time on questions—one of the most important issues that needs to be addressed by you is the constitutional right to privacy. I am concerned by a trend on the Court to limit this right and thereby to curtail the autonomy that we have fought for and achieved—in this case, over just simply controlling our own reproductive system, rather than having some politicians do it for us. It would be very difficult—and I said this to you privately and I have said it publicly—for me to vote to confirm someone who I knew would overturn *Roe v. Wade* because I remember—and many of the young women here do not—what it was like when abortion was illegal in America.

As a college student at Stanford, I watched the passing of the plate to collect money so a young woman could go to Tijuana for a back-alley abortion. I knew a young woman who killed herself because she was pregnant. And in the 1960s, then, as a member of the California Women's Board of Terms and Parole, when California had what was called the Indeterminate Sentencing Law, I actually sentenced women who committed abortions to prison terms. I saw the morbidity, I saw the injuries they caused. And I do not want to go back to those days.

How the Court decides future cases could determine whether both the beginning-of-life and the end-of-life decisions remain private or whether individuals could be subject to Government intrusion or perhaps the risk of prison.

And I will be looking to understand your views on the constitutional provision for providing for the separation of church and state. Once again, history. For centuries, individuals have been persecuted for their religious beliefs. During the Roman Empire, the Middle Ages, the Reformation, and even today, millions of innocent people have been killed or tortured because of their religion.

A week ago, I was walking up the Danube River in Budapest when I saw on the shore 60 pair of shoes covered in copper—women's shoes, men's shoes, small, tiny children's shoes. They lined the bank of the river.

My time is already up? May I just finish this one paragraph?

Chairman SPECTER. Yes.

Senator FEINSTEIN. During World War II, it turned out that Hungarian Fascists and Nazi soldiers forced thousands of Jews, including men, women, and children, to remove their shoes before shooting them and letting their bodies float down the Danube. These shoes represent a powerful symbol of how religion has been used in catastrophic ways historically.

The rest of my comments we will have to wait for.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Feinstein appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Senator Feinstein. Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. And Judge Roberts, recalling the words of former Senator Alan Simpson when Justice Scalia was here, welcome to the pit.

[Laughter.]

Senator SESSIONS. Congratulations on your nomination to be our Nation's 17th Chief Justice. You are one of our Nation's premier lawyers. Some have called you the finest appellate lawyer of your generation. You have won the respect of your colleagues, adversaries, and judges for your integrity, professionalism, and legal skill. And I salute President Bush for choosing you for this important position.

But as you have already seen, our confirmation process is not a pretty sight. Time and again you will have your legal positions, your predecisional memoranda, even as a young lawyer, distorted or taken out of context. These attacks are driven most often by outside groups. They will dig through the many complex cases you have dealt with in an effort to criticize your record. They will produce on cue the most dire warnings that civil liberties in America will be lost forever if you are confirmed as a Federal judge. It is really a form attack sheet. All they have to do is place your name in the blank space. These tactics, I think, are unfair and sometimes have been dishonest.

My advice to you is this: Keep your famous good humor, take your time, and explain the procedural posture of the cases and exactly how you ruled as a judge or the position you took as a lawyer. Americans know these matters are complex and they will appreciate your answers.