

The CHAIRMAN. Thank you, Senator.

The Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

I am pleased to welcome Judge Kennedy and his family to the Judiciary Committee this morning in this historic room.

Today, the committee is gathering for the second time in less than 3 months to undertake one of our most important tasks: to hear the testimony of the President's nominee to the U.S. Supreme Court.

Our work here over the next few days actually is going to reflect the performance of three important duties.

First, we have a duty to the Senate to develop a complete and detailed record on all issues pertaining to the fitness of Judge Kennedy to serve on the Supreme Court, and to recommend to the Senate, based on that record, whether it should give its consent to this nomination.

Second, we have a duty to the Constitution, that magnificent charter whose 200th anniversary we celebrated this year. The men who wrote the Constitution recognized that the appointment of a Justice of the Supreme Court is too important a decision just to leave to one branch of government alone. They gave the President the power to nominate, but they entrusted the Senate with the power to withhold or give its consent. The fulfillment of this second duty also requires that we examine this nomination with extraordinary care.

Finally, of course, we have a duty to the American people. The decisions of the Supreme Court touch the lives of every citizen of our republic. We depend upon the Supreme Court as the ultimate guardian of our liberties. Whoever succeeds Justice Powell on the Supreme Court is going to play a pivotal role in defining the shape of those liberties, not only for us, but for our children; in your case, well into the next century. So our duty to the American people also requires us to act on the basis of a complete record that discloses, as well as it can be disclosed, what this nomination might mean for the future of those freedoms.

We have already begun to fulfill these three duties—to the Senate, to the Constitution, and to the American people—by studying Judge Kennedy's distinguished record as an attorney, as a professor of constitutional law, and, for the past 12 years, as a circuit court judge. The hearings that begin today are the next important step.

Three months ago—and we have had a lot of discussion about this today—this committee convened to carry out these same duties with respect to another nomination to the Supreme Court. The hearings on the nomination of Judge Robert Bork established three precedents that should guide our work in the days ahead.

First, the Bork hearings were wide-ranging, they were thorough, they were intensive. The hearings starting here today will share those features. I hope that every relevant aspect of the nominee's record is going to be thoroughly explored. Too much is at stake for the committee to falter in its obligation to develop a complete record, a complete record, on which to base its recommendation to the Senate.

Second, the Bork hearings focused on the judicial philosophy of the nominee: his approach to the Constitution, and to the role of the Supreme Court in discerning and enforcing its commands. The hearings today should have the same focus. No issue is more central to a decision on the appointment of a Justice of the Supreme Court; after all, it is the Court which under our system has the last word on what the Constitution means.

Now, one Senator today said, Judge, you are not to be badgered into answering improper questions. Well, those improper questions are not going to occur. But if they did, I do not think anybody on this panel thinks you could be badgered into anything.

Now, I met with you, and I know from our conversation, our private conversation, I think I know how you will answer. My advice is the same as I gave you then: Just answer honestly and candidly. Ignore any other advice of how you should or should not answer. Just be yourself. Be honest and be candid. Nobody is going to badger you; and even if they did, you are able to take care of yourself. As I said before, I cannot believe you could be badgered into anything. And you should not be able to be.

You are going to be asked about many aspects of your judicial philosophy, as reflected in your previous record. You will also be asked about many topics on which you have not previously spoken in public. Your responsiveness to these questions and your candor and your completeness, they are going to be important factors in the committee's ultimate recommendation.

Finally, these hearings, like the Bork hearings, will be fair. Judge Kennedy is going to be given every opportunity to explain his judicial philosophy, to put his record in context, and to respond to any criticisms that may be leveled. That is going to give this committee and the Senate and the American people the chance to see the whole picture before a decision is made on this nomination.

The hearings on Judge Bork's nomination set a precedent in another way as well. Never before in our history have the American people been so engaged and so involved in the debate not over one nomination but over the future of the Supreme Court. The public debate that accompanied the Bork nomination had its excesses and, as Senator DeConcini mentioned earlier, its low points, like every public debate in a democratic society. But on the whole, it was a positive example of our democratic system in government. It certainly was a positive example of the checks and balances.

Now, the decision on Justice Powell's successor remains the most important decision in the field of constitutional rights and responsibilities of this decade. It has been, and it must continue to be, a public decision, made on the basis of a public record and with the input of a concerned public. I hope that the high level of public interest continues. Debate on a nomination to the Supreme Court is in the best traditions of American citizenship.

I look forward, over the next few days, to learning more about Judge Kennedy's judicial philosophy and about his qualifications to serve on the Supreme Court.

Most importantly, these hearings carry out our duty to the U.S. Senate, to the Constitution and to the American people. We fulfill that duty if we are fair and thorough, and we fail our fellow Amer-

icans, the Constitution and the Senate if we are not. So I look forward to that challenge.

Finally, the most important witness, Judge Kennedy, is going to be yourself. Your testimony and really no one else's—either for or against you—will determine whether you become a Supreme Court Justice. Only you could stop eventual confirmation. I rather suspect you will not.

Mr. Chairman, I am going to have to leave for a few minutes for the reconciliation conference, and I will be back in time to hear the nominee. I thank you for your courtesy.

[The statement of Senator Leahy follows:]