

Senator FRIST, our leader, deserves praise as he returned briefly to his earlier career as Dr. FRIST. I truly admire his courageous efforts to provide medical care in the early days at the makeshift hospital at the New Orleans airport.

Friday was not a one-time visit; it was just one day, but it will be a day I will not forget. We will not simply move on to a new issue tomorrow. This wound in our Nation runs deep, and our response must be equal to the task. The hurricane destroyed communities, but it did not and could not destroy their spirit. They will rebuild, and we will help them to the very best of our ability, because in the end, we are one Nation, one people, one family. It is in this way that we can best tap the true wealth of Nation. We must get it right.

Mr. KENNEDY. Mr. President, I ask unanimous consent to be able to proceed for 4 more minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### SANDY FELDMAN

Mr. KENNEDY. Mr. President, I am sad to inform the Senate of the passing of a true giant in the world of education, Sandy Feldman, who headed the American Federation of Teachers. Sandy was a fighter for schoolchildren every day of her very productive life. She was determined to make a difference, especially to the millions of disadvantaged children in our schools—and she did. She inspired some many young people to become teachers. She helped them understand that teaching was not just a job, but it was a calling.

Sandy, you leave a proud and rich legacy. You will be an inspiration to students and teachers for many years to come.

We love you, and you will be missed but never, ever forgotten.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### NOMINATION OF JUDGE JOHN G. ROBERTS, JR.

Mr. SPECTER. Mr. President, I have sought recognition to speak about the confirmation of Judge John G. Roberts, Jr., to be Chief Justice of the United States.

Mr. President, no vote cast by a Senator in this body is more important than a vote cast on the confirmation of a Supreme Court Justice, with the exception of a declaration of war, or a resolution authorizing the use of force.

The confirmation process for Chief Justice is obviously somewhat more important than that for Associate Jus-

tice. It is even more important in the context of Judge Roberts who is 50 years old and has the potential to serve for decades in that very key position, as the second youngest Chief Justice in the history of the country and the 17th Chief Justice in our Nation's history.

Judge Roberts comes to this position with an extraordinary academic record—3-year graduate of Harvard College *summa cum laude*, *magna cum laude* in the Harvard Law School, and an illustrious career in private practice and government service. He argued some 39 cases before the Supreme Court of the United States.

We have examined some 76,000 documents. We have looked at his participation in some 327 cases in the Court of Appeals for the District of Columbia Circuit, where he was confirmed by the Senate 2 years ago by unanimous consent. We have seen his briefs in the Solicitor General's Office, and we have heard some 31 witnesses regarding his nomination. These included a witness from the American Bar Association, which rated him unanimously well qualified, the highest recommendation possible. The remaining thirty witnesses, who were chosen equally by the Democrats and the Republicans, testified at length about Judge Roberts' career. We know a great deal about Judge Roberts.

Based on all of these proceedings, including 17 hours of testimony before the committee, it is my judgment he is well qualified to be Chief Justice of the United States. I intend to vote aye when his nomination is called before the Senate.

He has taken a position that a judge should be modest and should look for stability in the law. On a number of occasions in his testimony before the committee, he emphasized the point that judges are not politicians and that judges ought not inject their own personal views into the law.

He commented about the flexibility of the law, saying that principles such as equal protection and due process were meant to last through the ages and have a flexible quality. He said, "They [referring to the framers] were crafting a document that they intended to apply in a meaningful way down through the ages."

While he would not accept the specific language of Justice John Marshall Harlan II that the Constitution is a living thing, he did testify that the language of liberty and due process has broad meaning as applied to evolving societal conditions.

He talked very directly when questioned about the right of privacy. He said that *Griswold v. Connecticut*, which established the right of privacy, was correctly decided. That case overturned the state law prohibiting the use of contraceptives for married people. He also said the holding of *Griswold* would apply to single people as well as to married people under the *Eisenstadt* decision.

When it came to the critical question of *Roe v. Wade*, I did not ask him

whether he would affirm or reject the *Roe* doctrine. I did not do so because I believe it is inappropriate to ask a nominee how he would decide a specific case.

As chairman, it was my view that any member could ask the nominee any question that the member chose to, and the nominee would be free to respond as he chose. Beyond refraining from specifically asking whether he would affirm or overrule *Roe v. Wade*, others and I questioned him extensively about the import of *stare decisis*, the Latin term meaning "let the decision stand." He emphasized that *stare decisis* was a very important principle in the law and that even where a justice might consider *Roe* wrongly decided, it takes more to overturn a precedent than simply to conclude it was wrongly decided initially. Because—and this is Arlen Specter speaking, not Judge Roberts—where the case has stood for some 32 years and has been reaffirmed most emphatically in *Casey v. Planned Parenthood*, it has become, as some have called it, a super precedent.

I then made the point that the Supreme Court had taken up the issue so that *Roe* could have been reversed, overruled on some 38 occasions. Should it come before the Court again, perhaps the balance of the 38 cases would make super-duper precedent to uphold *Roe*.

The question remains as to how he will rule. Nobody knows that for certain.

The one rule that seems to be the most prevalent one is the one of surprise. He testified extensively about his concern for civil rights. He talked about affirmative action. He agreed with Justice O'Connor that the impact of the people in the practical everyday world was of considerable importance. I questioned him about his participation in the case of *Romer v. Evans*, where he lent some counsel to the lawyers who were arguing the case involving gay rights and he participated in support of gay rights.

His partner at Hogan and Hartson, Walter Smith, had this to say about Judge Roberts' participation in that case. Mr. Smith said that "every good lawyer knows that if there is something in his client's cause that so personally offends you morally, ligiously, or if it so offends you that you think it would undermine your ability to do your duty as a lawyer, then you shouldn't take it on, and John wouldn't have. So at a minimum he had no concerns that would rise to that level."

I then asked Judge Roberts if he agreed with Mr. Smith's analysis and if he would have refrained from helping in that situation, and he said: "I think it's right that if it had been something morally objectionable, I suppose I would have."

His support of gay rights is not an insignificant consideration in our evaluation of his views of civil rights.

Judge Roberts made quite a point of contending that he had answered more