

that. At the hearing, he took pains to assure me and Senator FEINSTEIN, among others, that as Chief Justice, he would not continue to urge additional restrictions and would respect congressional authority. To do otherwise would greatly undermine Congress's ability to serve the interests of all Americans and protect the environment, assure equal justice, provide health care and other basic benefits. I think he knows that now.

From the initial questioning by Chairman SPECTER, throughout the testimony of the nominee, many Senators asked about the fundamental reproductive rights of women. He testified that he now recognizes *Roe v. Wade* and *Planned Parenthood v. Casey* as established precedents of the Supreme Court and entitled to respect.

He testified that he interprets the liberty protected by the due process clause of the 14th amendment as the constitutional bedrock of the right of privacy, both substantive and procedural. Here, too, within the overly strict confines of his own self-imposed constraints on his answers, he consciously created the impression that he would not be a judicial activist on this essential point. He left me with the understanding that he would not seek to overrule or undercut the right of a woman to choose. I trust that he is a person of honor and integrity, that he will act accordingly.

As Chief Justice, John Roberts would not be only an appointee of a Republican administration or a legal advocate for a narrow interest. As Chief Justice, he has to be able to check the abuse of presidential power. As Chief Justice, he must support congressional efforts to serve the interests of all Americans. As Chief Justice, he has to work to ensure that the Federal courts, and the Supreme Court in particular, are halls of justice where Americans such as Beverly Jones and Roderick Jackson and Christine Franklin can see and find redress for grievances, meaningful remedies for the violation of their rights, and protection of their fundamental interests.

Justice White wrote in the Franklin case:

From the earliest years of the Republic, the Court has recognized the power of the Judiciary to award appropriate remedies to redress injuries actionable in court.

As Chief Justice, John Roberts has to ensure that the Supreme Court and all Federal courts never "abdicate our historic judicial authority to award appropriate relief in cases brought in our court system."

Supreme Court Justices decide what cases to decide. They consciously shape the direction of the law by choosing which cases to hear as well as how they are to be decided. We know he believes in the rule of law. I was impressed when he talked about why he went to law school—because he believes in the rule of law. That was the same reason that I went to Georgetown Law School. But court decisions—and especially Su-

preme Court decisions—are not mechanical applications of neutral principles. If they were, all judges would always reach the same results for the same reasons. But they don't. Legal decisions are not mechanical. They are matters of judgment and often matters of justice.

As Chief Justice, John Roberts is responsible for the way in which the judicial branch administers justice for all Americans. He must know, in his core, in his heart, in his whole being, the words engraved in the Vermont marble on the Supreme Court building are not just "under law" but "equal justice under law." It is not just the rule of law that he must serve but the cause of justice under our great charter.

I heard days of testimony and held hours of meeting with Judge Roberts. I would have liked more information, of course. I always want more.

Is a "no" vote the easier, more popular one? Of course. For me it would be. But in my judgment, in my experience, but especially my conscience, I find it is better on this nomination to vote yes than no. Ultimately, my Vermont roots have always told me to go with my conscience, and they do so today.

Judge Roberts is a man of integrity. I can only take him at his word that he does not have an ideological agenda. For me, a vote to confirm requires faith that the words he spoke to us have meaning. I can only take him at his word that he will steer the Court to serve as an appropriate check of potential abuses of Presidential power.

I respect those who have come to different conclusions, and I readily acknowledge the unknowable at this moment, that perhaps they are right and I am wrong. Only time will tell. All of us will vote this month, but only later will we know if Judge Roberts proves to be the kind of Chief Justice he says he will be, if he truly will be his own man. I hope and trust that he will be.

I will vote for his confirmation. I will give my consent as a Senator.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I ask unanimous consent that I be allowed 15 minutes to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF JOHN ROBERTS

Mr. CORNYN. Mr. President, while the Senator is leaving the floor, I wish to say to the ranking member of the Judiciary Committee how much I appreciate his decision. I know how seri-

ously he has weighed his decision whether to vote to confirm John Roberts as Chief Justice of the United States. I believe we are at our best in this body when we set aside our differences that come from our partisan affiliation. The fact that some of us are Republicans and some are Democrats is a fact of life, and we have to work within our political system to try to solve America's problems the best we can. But I do believe we are at our best when we rely upon the principles and the values that bind us together rather than those that distinguish us and separate us as Senators.

I must confess that yesterday I was more than a little bit disappointed when the distinguished Democratic leader announced that he would vote no on this nomination. Clearly, it is within his right and prerogative, as it is within any Senator's right and prerogative to vote as they see fit. But I guess what struck me was the fact that at the same time he announced he would vote no, he called Judge Roberts an "excellent lawyer" and "a thoughtful, mainstream judge" who may make "a fine Supreme Court Justice."

These were words quoted in today's editorial in the Washington Post entitled, "Words That Will Haunt." I guess what concerns me is you can be an excellent lawyer, you can be a thoughtful mainstream judge who may make a fine Supreme Court Justice, and yet because of the outside groups that demand allegiance to their positions that do not represent the mainstream of America, do not represent rational thought but, rather, the triumph over partisanship and special interest groups over the public interest, what worries me so much is that they seem to have such undue influence on the decisionmaking process of some Members when it comes to judicial confirmations.

Indeed, I believe it was because of the interest groups that we had several years of near meltdown when it came to the unprecedented use of the filibuster to block a simple up-or-down vote on the President's nominees, something that had never happened before that time in the 200 years of the history of the Senate, and particularly when it came to judicial confirmation votes.

I do want to address some of the concerns the distinguished ranking member, Senator LEAHY, raised because I do have a different view. Unfortunately, the formula that seems to be creating the theme here of consultation, questions, and documents is one that was foreshadowed in earlier news stories that said this was the strategy the outside groups were going to use in an attempt to defeat this nomination.

By that I mean—first on consultation—I know Senator LEAHY said he did not think consultation was adequate, but there was unprecedented consultation by the White House with Senators about the nomination, something that had never before occurred.

The President listened to ideas of Senators on both sides of the aisle about the type of person and individual he should nominate to the Supreme Court.

Ultimately, though, the Constitution provides the authority to choose to the President and the President alone. The Constitution does not contemplate the Senate being cochoosers of the nominee but, rather, the President making that choice and then the Senate providing advice and consent during this judicial confirmation process, ultimately leading up to an up-or-down vote on the Senate floor.

I am a little disappointed that in spite of this attempt to reach out more than halfway to the Senate, and particularly the minority in the Senate on consultation, the President's good efforts have been rejected as inadequate. But I don't see how any reasonable outside observer could reach that conclusion.

Second, the issue of questions. What kind of questions should a nominee answer? The standard for this was set in the early 1990s by Ruth Bader Ginsburg who was nominated by President Clinton and confirmed to the U.S. Supreme Court. While she was willing to talk about things she had written in the past, it was clear that she was going to draw a very important line in terms of sending signals or prejudging cases or issues that were likely to come back before the Court. It was using that same standard observed by not only Judge Ginsburg but Judge Breyer, who was confirmed after her—also a Clinton nominee—Thurgood Marshall, Sandra Day O'Connor, or William Rehnquist in his confirmation proceeding.

It is clear, as Judge Roberts said, that there is an ethical line that judges cannot cross, one of which is set by the American Bar Association Model Code on Judicial Ethics. It says clearly, in confirmation proceedings—I asked Judge Roberts during the Senate Judiciary Committee hearings—that applies to judicial confirmation hearings. So it would have been unethical to cross the line. And now some Senators insist Judge Roberts should have crossed the line when it came to answering certain types of questions that would ask him to prejudge certain issues and cases.

But there is also a constitutional standard because the independence of the judiciary is a core value of our form of government and of the American people. Who could feel that a judge was truly independent and fair who has already stated in a confirmation hearing how he would rule on an issue that later comes before the Supreme Court? Everyone recognizes that is not fair, that is not an independent judiciary. So I believe the judge drew an appropriate line from that standpoint as well.

Finally, there is the third prong of this three-prong attack laid out by the special interest groups long before Judge Roberts was even nominated and has to do with the documents issue.

This has to do with documents prepared by the Solicitor General's Office as it prepared to represent the United States in the Supreme Court.

I asked Judge Roberts whether that sort of ability to have candid and confidential communications among the lawyers who are representing the United States was part of a recognized privilege that all lawyers and clients share, whether it is the Government or whether it is individuals, and he said it was.

In fact, a number of Senators on our Judiciary Committee were quite upset last year when it appears confidential documents written by their committee lawyer to those Senators were then published in the outside world, claiming their rights had been violated. If the Senators are entitled to have confidential communication from our own lawyers and our own staff without having it published in the outside world, then surely the President of the United States enjoys that same right and privilege.

This nominee has withstood in admirable form more than 20 hours of questions from members of the Senate Judiciary Committee. There were 32 witnesses who testified after he did, including the American Bar Association which has given him an A plus, so to speak, that considered him unanimously to be well qualified for this position. In the end, though, this nominee is probably better known to the Senate and the Senate Judiciary Committee than any nominee in recent history, having only 2 years ago been confirmed by unanimous consent to the District of Columbia Court of Appeals, what some have called the second highest court in the land.

I ask my colleagues who are bound and determined to vote against this nominee who, by most accounts, is one of the most impressive nominees and outstanding nominees who has ever been nominated to the Supreme Court, is there any nominee of this President for whom they could vote? I fear the answer to that is no, that for some of our colleagues, there is no nominee by this President to the U.S. Supreme Court for whom they could ever vote.

That should sadden and disappoint all of us because what it means is that the bitter partisan divisions that separate us in this body far too often and distract us from the important work we have been sent here by our constituents to do have triumphed over the constitutional obligation to provide advice and consent and to conduct our ourselves with civility and dignity and to resist the pressures of interest groups who cry out for the political scalp of not just this President but all of his nominees and discourage good men and women from being willing to answer the call to public service. If they know they are getting ready to be put through a sausage grinder, if they know everything they did and said would be examined and distorted even and in the end that the merit of their

nomination would play second fiddle to bitter partisan politics, I fear there are good men and women who would like to answer the call to public service who will simply say no.

I am looking forward on Thursday to the Senate Judiciary Committee voting Judge Roberts out of the committee and his nomination coming to the floor. I hope our colleagues will study his background, the record created before the Judiciary Committee, and come to their own decision, without regard to politics, without regard to partisanship, and judge it solely on the merits. But particularly it is my earnest hope and plea they resist the cry of the outside special interest groups who care nothing about good government but only about their narrow special interests and are using these nominations, more than anything, to raise money by scaring people and by distorting the qualifications and credentials of good men and women such as John Roberts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I understand that under the order, we now go to the Agriculture appropriations bill. I have a few housekeeping details I would like to take care of on behalf of the leader, and then I ask unanimous consent that the senior Senator from Massachusetts be granted half an hour in which he may speak in morning business, with the understanding that we will then go back to the Agriculture appropriations bill without any other requests for morning business being honored.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. I thank the Chair.

RECOGNIZING THE LIFE AND ACCOMPLISHMENTS OF SIMON WIESENTHAL

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 245 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The journal clerk read as follows:

A resolution (S. Res. 245) recognizing the life and accomplishments of Simon Wiesenthal.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to a man who dedicated himself to preserving the memory of the millions who perished in the Holocaust and to promoting human rights and preventing genocide.

Simon Wiesenthal lived through unimaginable tragedy and horror as a prisoner in Nazi concentration camps