

judges are supposed to do, namely, settle legal disputes by applying already established law.

A judicial standard means that a judicial decision can be entirely correct even when the result does not line up with our preferred political positions or cater to certain political interests. When he was here last fall, Chief Justice Roberts compared judges to umpires who apply rules they did not write and cannot change to the competition before them. We do not evaluate an umpire's performance based on which team won the game, but on how that umpire applied the rules inning after inning. We do not hire umpires by showing them the roster for the upcoming season and demanding to know which teams they will favor before those teams even take the field. Similarly, we should evaluate judges and judicial nominees based on the general process for applying the law to any legal disputes, not on the specific result in a particular case or dispute.

The fact that Judge Alito is such a baseball fan gives me even more confidence that he knows the proper role of a judge. I know that there is a pitched battle going on outside the Senate, with dueling press conferences, television ads, e-mail, petition drives, and stacks of reports and press releases. The Senate can rise above that battle if we remember the proper role for the Senate and the proper role for judges. We can rise above that battle if we respect that judicial nominees are limited in what they may discuss. Take each part of Judge Alito's record on its own terms. Consider Judge Alito's entire record and apply a judicial rather than a political standard.

Judge Alito, I know you. I have known you for a long time. You are a good man. You are an exceptional judge as well. I welcome you and your family to this Committee, and I hope that the days ahead will reflect more light than heat. We congratulate you that you are willing to go through this grueling process to represent your country on one of the three separated powers. It means so much to all of us, and I am grateful to personally know you as well as I do.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Hatch. Senator Kennedy?

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Thank you, Mr. Chairman.

Judge Alito, I join in welcoming you and your family to this Committee. I appreciated the opportunity to visit with you in my office a few weeks ago, and I was particularly impressed by your personal family story of how you were encouraged to do well and contribute to your community. And I also applaud your dedication to public service throughout your lifetime.

Supreme Court nominations are an occasion to pause and reflect on the values that make our Nation strong, just, and fair. And we must determine whether a nominee has a demonstrated commitment to those basic values. Will a nominee embrace and uphold the essential meaning of the four words inscribed above the entrance of the Supreme Court Building, "Equal justice under law."

Justice Louis Powell spoke for all of us when he said, "Equal justice under law is perhaps the most inspiring idea of our society. It is one of the ends for which our entire legal system exists."

As we have seen from Justice O'Connor's example, even one Justice can profoundly alter the meaning of those words for our citizens. Even one Justice can deeply affect the rights and liberties of the American people. Even one Justice can advance or reverse the progress of our journey.

So the question before us in these hearings is this: does Judge Alito's record hold true to the letter and the spirit of equal justice? Is he committed to the core values of our Constitution that are at the heart of our Nation's progress, and can he truly be evenhanded and fair in his decisions?

In a way Judge Alito has faced this issue before as a nominee to the Court of Appeals. I had the privilege of chairing his confirmation hearing in 1990, and at that time he had practiced law for 14 years, but only represented one client, the U.S. Government. I asked whether he believed he could be impartial in deciding cases involving the Government, and in that hearing Judge Alito said on the record that the most important quality for a judge is open-mindedness to the arguments, and he promised the Committee that he would make a very conscious effort to be absolutely impartial. We took him at his word and overwhelmingly confirmed him to the Third Circuit Court of Appeals.

We now have the record of Judge Alito's 15 years on the bench, and the benefit of some of his earlier writings that were not available 15 years ago, and I regret to say that the record troubles me deeply.

In an era where the White House is abusing power, is excusing and authorizing torture and is spying on American citizens, I find Judge Alito's support for an all-powerful executive branch to be genuinely troubling. Under the President's spying program there are no checks and balances. There is no outside review of the legality of this brazen infringement on the civil rights and liberties of the American people. Undeterred by the public outcry, the President vows to continue spying on American citizens. Ultimately the courts will make the final judgment whether the White House has gone too far. Independent and impartial judges must assess the proper balance between protecting our liberties and protecting our national security.

I am gravely concerned by Judge Alito's clear record of support for vast Presidential authority unchecked by the other two branches of Government. In decision after decision on the bench, he has excused abusive actions by the authorities that intrude on the personal privacy and freedoms of average Americans, and in his writings and speeches he has supported a level of overreaching Presidential power that, frankly, most Americans find disturbing and even frightening.

In fact, it is extraordinary that each of the three individuals this President has nominated for the Supreme Court, Chief Justice Roberts, Harriet Miers and now Judge Alito, has served not only as a lawyer for the executive branch, but as a defendant of the most expansive view of Presidential authority. Perhaps that is why this President nominated them. But as Justice O'Connor stated, even a

state of war is not a blank check for a President to do whatever he wants. The Supreme Court must serve as an independent check on abuses by the executive branch and a protector of our liberties, not a cheerleader for an imperial presidency.

There are other areas of concern. In an era when too many Americans are losing their jobs or working for less, trying to make ends meet, in close cases Judge Alito has ruled the vast majority of the time against the claims of the individual citizens. He has acted instead in favor of Government, large corporations and other powerful interests. In a study by the well-respected expert, Professor Cass Sunstein of the University of Chicago Law School, Judge Alito was found to rule against the individual in 84 percent of his dissents. To put it plainly, average Americans have had a hard time getting a fair shake in his courtroom. In an era when America is still too divided by race and riches, Judge Alito has not written one single opinion on the merits in favor of a person of color alleging race discrimination on the job; in 15 years on the bench, not one.

When I look at that record in light of the 1985 job application to the Reagan Justice Department, it is even more troubling. That document lays out an ideological agenda that highlights his pride in belonging to an alumni group at Princeton that opposed the admission of women and proposed to curb the admission of racial minorities. It proclaims his legal opinion that the Constitution does not protect the right of women to make their own reproductive decisions. It expresses outright hostility to the basic principle of one person, one vote, affirmed by the Supreme Court as essential to ensuring that all Americans have a voice in their Government. This application was not a youthful indiscretion. It was a document prepared by a mature, 35-year-old professional.

Finally, many of us are concerned about conflicting statements that Judge Alito has made in response to questions from this Committee and others. As Chairman Specter has stated, this confirmation largely depends on the credibility of Judge Alito's statements to us, and we have questions. When asked about the ideological statements and specific legal opinions in his 1985 application, Judge Alito has dismissed those statements as just applying for a job.

When he was before this Committee in 1990 applying for a job to the circuit, he promised under oath that he would recuse himself from cases involving Vanguard, the mutual fund company in which he had most of his investments. But as a judge he participated in a Vanguard case anyway, and has offered many conflicting reasons to explain why he broke his word. We need to get to the bottom of this matter to assure ourselves that what Judge Alito says in these hearings will not be just words, but pledges that guide him in the future if he is confirmed.

Judges are appointed by and with the advice and consent of the Senate, and it is our duty to ask questions on great issues that matter to the American people and to speak for them. Many Republican Senators certainly demanded answers from Harriet Miers. We should expect no less from Judge Alito. There is not time for a double standard. If confirmed, Judge Alito could serve on the Court for a generation or more, and the decisions he will make as

Justice will have a direct impact on the lives and liberties of our children, our grandchildren and even our great-grandchildren. We have only one chance to get it right, and a solemn obligation to do so.

Judge Alito, I have serious questions to ask. I congratulate you on your nomination, and I look forward to your answers in these hearings.

Chairman SPECTER. Thank you, Senator Kennedy.

Senator Grassley.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. I have a much more positive view of Judge Alito.

[Laughter.]

Senator GRASSLEY. I think the record will sustain my view. But first, Judge Alito, I welcome you and your proud family to the Committee, and congratulations on your nomination.

I first want to remind all Americans who might be listening that the Senate has a very important responsibility to confirm only well-qualified individuals who will faithfully interpret the law and the Constitution. Confirmation should be limited to those individuals who will be fair, unbiased, devoted to addressing the facts in the law before them without imposing their own values and political beliefs when deciding cases. Nominees should not be expected to precommit to ruling on certain issues in a certain way, nor should Senators ask nominees to pledge to rule on cases in a particular way.

If we fulfill our responsibility to the Constitution, the Supreme Court will be filled with superior legal minds who will pursue the one agenda that our Founding Fathers intended in writing the Constitution, justice rather than political or personal goals. The Supreme Court will then consists of individuals who meticulously apply the law and the Constitution regardless of whether the results they reach are popular or not. If we do our job right, the Supreme Court will not be made up of men and women who are on the side of the little guy or the big guy, rather the Supreme Court will be made up of men and women who are on the side of the law and the Constitution.

From all accounts, Judge Alito has an impressive and extensive legal and judicial record, certainly one worthy of someone on the Supreme Court. Judge Alito excelled at top-notch schools, member of law review, clerked for a Federal judge. He also held important positions at the Department of Justice, Office of Legal Counsel, the Solicitor General's Office and was U.S. Attorney for New Jersey before being appointed to the Third Circuit.

I want to remind the American people this nominee, Judge Alito, has been confirmed unanimously by the U.S. Senate, not once, but twice. This is a tremendous record of accomplishment in public service equal to any Supreme Court nominee that I have considered in the 25 years I have been on this Committee. Not only that, Judge Alito has a reputation for being an exceptional and honest judge devoted to the rule of law, as well as being a man of integrity.