

they see the world, and we need and we deserve to know what is in your mind and in your heart.

Judge Roberts, I am convinced that you satisfy the requirements of competence, character and temperament. I enjoyed meeting you a few weeks ago and appreciated our discussion. Your legal talents are undeniably impressive. Yet, while we are now familiar with your abilities, we still know precious little about your philosophies and views on crucial issues that you will face on the Supreme Court in the years ahead.

We look forward to these hearings as an opportunity to learn more and measure whether you meet our test of judicial excellence.

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

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Kohl.
Senator DeWine.

**STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM
THE STATE OF OHIO**

Senator DEWINE. Mr. Chairman, thank you very much.

Judge Roberts, I congratulate you on your nomination, applaud you on your extraordinary legal career, and welcome you and your wife, Jane, and your children Jack and Josie to our hearing. Over the next several days we will be spending a lot of time together, you and the 18 Members of this Committee and the American people.

This is the time really for a national conversation, a conversation about the document that binds us all together as a Nation and as a people. That document of course is our Constitution. For more than 215 years we have been having an extended conversation about the meaning of our Constitution. Sometimes the conversation has been civil, sometimes it has been passionate, and sometimes, tragically, it has been violent.

The New Deal and the court battles that were fought about the scope of the Federal Government's power to combat the Great Depression was really a debate about the meaning of the Constitution. The civil rights movement and the vigorous and often violent resistance to the efforts to bring about equality for all Americans, was and remains a debate about the meaning of our Constitution. The Civil War, the most violent and bloodiest time in our history, was really a war about the meaning of our Constitution.

We have seen a President resign, elections decided, and popular laws overturned all because of our Constitution. But our Constitution is more than just a symbol of our Nation's history. It is also a light for the rest of the world. As a Nation we were among the first to sit down and draft a document that quite literally constitutes our Government, but we were not the last. Since our Founders embraced the idea of a written Constitution, others have followed suit. In fact, after the fall of the Soviet regime, we witnessed an explosion of constitution writing in Eastern Europe. There are now more than 170 written constitutions in the world, more than half of which have been drafted just in the last 30 years. To paraphrase Thomas Paine, the cause of America truly is indeed the cause of all mankind.

That is why our gathering today is so significant. We are charged with providing our advice and consent on the President's nominee to the Supreme Court. Our job is important. But if confirmed, Judge Roberts, your job, your job will be even more important. It would be your job, as the 17th Chief Justice of the United States, to correctly construe that Constitution, to preserve the balance of power sewn into it, and to protect those rights and values that are so much a part of our history and our tradition.

Former Chief Justice John Marshall once warned that, and I quote, "People made the Constitution, and people can unmake it." It will be your job, in other words, to ensure that our Constitution is never unmade.

As of late, however, many Americans believe that the Supreme Court is unmaking the very Constitution that our Founders drafted. Many Americans are concerned when they see the Court strike down laws protecting the aged, the disabled and women who are the victims of violence. Many Americans worry when they see the Court permit the taking of private property for economic development. Many are troubled when they see the Court cite international law in its decisions, and many fear that our Court is making policy when it repeatedly strikes down laws passed by elected members of Congress and elected members of State legislatures.

I must tell you, Judge, I too am concerned. Judges are not members of Congress. They are not elected. They are not members of State legislatures. They are not Governors. They are not Presidents. Their job is not to pass laws, implement regulations, nor to make policy. Perhaps no one said this better than Justice Byron White. During his confirmation hearing in 1962, White was asked to explain the role of the Supreme Court in our constitutional form of Government. Nowadays, in response to this type question, we probably would hear some grand theories about the meaning of the Constitution and its history.

Justice White, however, said nothing of the kind. When he was asked about the role of the Supreme Court in our system of Government, he gave a simple answer. Justice White said the role of the United States Supreme Court was simply to decide cases.

To decide cases. So simple. It sounds too obvious to be true, but, you know, I think that is the right answer. Judges need to restrict themselves to the proper resolution of the case before them. They need to avoid the temptation to set broad policy. And they need to pay proper deference to the role of the Executive, the Congress, and the States, while closely guarding the language of the Constitution.

We would do well to keep this example in mind. The Constitution does not give us all the answers. It does, however, create the perfect process for solving our problems. The Congress and the President have a role in this process, the States have theirs, and when there are disputes, the courts are there to decide cases.

There is a reason that judges need to take on this limited role. As my esteemed colleague from Iowa, Senator Grassley, explained during Justice Souter's confirmation hearing, a judge should not be—and I quote—"pro this and anti that. He should rather be a judge of cases, not causes."

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.]