leadership that the Nation expects of its Chief Justice, and that will be particularly essential in the Chief Justice, whose duty it will be, to lead the judicial branch of government into the third century of the Republic. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. The distinguished Senator from Massachusetts. Mr. Kennedy.

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

Senator KENNEDY. Thank you very much, Mr. Chairman.

The confirmation of a Chief Justice of the United States is a more important responsibility for the Senate than our action on any other nomination to any other Federal office. And the vote we cast on the Rehnquist nomination may be the most significant vote any of us cast in this Congress. It may also be the most important civil rights vote that any of us ever cast.

The Framers of the Constitution envisioned a major role for the Senate in the appointment of judges, it is an historical nonsense to suggest that all the Senate has to do is check the nominee's IQ, make sure he has a law degree and no arrests and rubber stamp the President's choice.

The Virginia plan, the original blueprint for the Constitution gave the legislature sole authority for the appointments of members of the judiciary. James Madison favored the selection of judges by the Senate. The provision ultimately adopted in the Constitution was a compromise described by Gouverner Morris as giving the Senate the power to appoint judges nominated to them by the President.

The original intent is clear—the Senate has its own responsibility to scrutinize judicial nominees with special care, and the highest scrutiny of all should be given to the person nominated to be Chief Justice.

It is no accident that the Constitution speaks not of the Chief Justice of the Supreme Court, but the Chief Justice of the United States. As the language of the Constitution itself emphasizes, the Chief Justice is more than just the leader of the Court. He symbolizes the rule of law in our society; he speaks for the aspirations and beliefs of America as a Nation.

In this sense, the Chief Justice is the ultimate trustee of American liberty; when Congresses and Presidents go wrong under the Constitution, it is the responsibility of the Supreme Court to set them right. As first among equals among members of the Court, the Chief Justice is chiefly responsible for ensuring that the Court faithfully meets this awesome responsibility.

Presidents and Congresses come and go, but Chief Justices are for life. In the 200 years of our history, there have been only 15 Chief Justices. The best of them, the greatest of them, have been those who applied the fundamental values of the Constitution fairly and generously to the changing spirit of their times.

With his famous dictum, "We must never forget that it is a constitution we are expounding," John Marshall shaped the Court in the early years, and laid the groundwork for America to become a

nation. Roger Taney failed the test and helped put the country on the path to Civil War.

Charles Evans Hughes helped guide the country safely through its severest domestic test of modern times, the upheaval of the Great Depression. Earl Warren understood the central role of the individual and helped guarantee that the civil rights revolution would pursue a peaceful path.

Two hundred years of history have made the Chief Justice more than the Chief Enforcer of the law, Chief Defender of the President, Chief Advocate for transient majorities in Congress, State legislatures, and city councils. Equal justice under law also counts for something, and so does the Bill of Rights.

Measured by these standards, Justice Rehnquist does not measure up. As a member of the Court, he has a virtually unblemished record of opposition to individual rights in cases involving minorities, women, children, and the poor. His views are so far outside the mainstream, even of the Burger Court, that in 54 cases decided on the merits, Justice Rehnquist could not attract a single other Justice to his extremist views. Again and again, on vital issues, such as racial desegregation, equal rights for women, separation of church and State, he stood alone in 8-to-1 decisions, with all the other Justices on the other side.

U.S. Law Week's review of the past five terms of the Supreme Court indicates that Justice Rehnquist voted against the individual 77 percent of the time in cases involving individual rights.

If unanimous decisions are excluded, where no plausible argument could be made against the individual, Justice Rehnquest voted against the individual's claim 90 percent of the time.

Another revealing statistic involves Justice Rehnquist's dissents from action on the Court rejecting review of lower courts' decisions. He has written or jointed opinions dissenting from the denial of certiorari in over 70 cases, most of which involved individual rights or issues of criminal law. With rare exceptions, the government had lost below, and Justice Rehnquist argued that the Supreme Court should hear the case.

Mainstream or too extreme? That is the question. By his own record of massive isolated dissent, Justice Rehnquist answers that question. He is too extreme on race, too extreme on women's rights, too extreme on freedom of speech, too extreme on separation of church and state, too extreme to be Chief Justice.

His appalling record on race is sufficient by itself to deny his confirmation. When he came to the Supreme Court, he had already offered a controversial memoranda in 1952 supporting school segregation; he had opposed public accommodation legislation in 1964; he had opposed remedies to end school segregation in 1967; he had led the so-called ballot security program in the sixties that was a euphemism for intimidation of black and hispanic voters. On many of these issues, it now appears that Mr. Rehnquist was less than candid with the committee at his confirmation hearing in 1971.

As a member of the Supreme Court, Justice Rehnquist has been quick to seize on the slightest pretext to justify the denial of claims for racial justice. His dissent in the *Bob Jones University* case supported tax credits for segregated schools. In *Batson* v. *Kentucky,* his dissent supported the rights of a prosecutor to prevent blacks and

minorities from serving on a jury. In the *Keyes* case, his dissent supported the view that segregation in one part of a school district does not justify a presumption of segregation throughout the district.

America can be thankful that in the difficult and turbulent years since World War II, we have had a Supreme Court that has been right on race, right on equal rights for women, right on apportionment, and the separation of power, right on free speech, and right on separation of church and state.

Imagine what America would be like if Mr. Rehnquist had been the Chief Justice and his cramped and narrow view of the Constitution had prevailed in the critical years since World War II. The schools of America would still be segregated. Millions of citizens would be denied the right to vote under scandalous malapportionment laws. Women would be condemned to second class status as second class Americans. Courthouses would be closed to individual challenges against police brutality and executive abuse—closed even to the press. Government would embrace religion, and the walls of separation between church and state would be in ruins. State and local majorities would tell us what we can read, how to lead our private lives, whether to bear children, how to bring them up, what kind of people we may become.

In these ways and in so many others, a Court remade in the image of Justice Rehnquist would make the Constitution, whose bicentennial we celebrate next year, a lesser document in a lesser land.

It would no longer be the bold charter of freedom, equality and justice that has made America great, but a structure for government decree and bureaucratic efficiency, a structure so suffocating to liberty that the Nation's founders—the patriots who fought a revolution to secure their freedom—would not recognize the reactionary revolution we had wrought.

That is not a vision of America I can support, nor is it a vision that the vast majority of our people would support. Justice Rehnquist is outside the mainstream of American constitutional law and American values, and he does not deserve to be Chief Justice of the United States. To paraphrase John Marshall, we must never forget that it is a Chief Justice we are confirming.

The CHAIRMAN. The able and distinguished Senator from Nevada.

STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator LAXALT. I thank the Chairman.

I would like to join with the Chairman and the other members of the committee in welcoming Justice Rehnquist on the occasion of his confirmation proceeding.

When he joined the Court in 1971, Justice Rehnquist brought to the bench a brilliance of intellect, an independence of thought, and a soundness of judgment that superbly qualifies him, in my opinion, to be the next Chief Justice of the United States.