

Statement of
The Honorable Patrick Leahy

United States Senator
United States Senate
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I welcome Justice Scalia and Justice Breyer back to the Senate Judiciary Committee. We are honored to have you with us today. We are also joined by scores of students and other Americans attending this hearing and following these proceedings over the Internet and on television who are interested in hearing what I hope will be a civic-minded conversation about the role of judges under our Constitution.

I believe that public discussions like this serve our democracy. As public officials, we owe it to all Americans to be transparent about what we do in our official capacities. We justify their trust by demonstrating how our Government works to uphold our common values, how we are guided by the Constitution, and how that Constitution has served over the years to make our great Nation more inclusive and more protective of individual rights in our continuing effort to become that "more perfect union." As the great Chief Justice John Marshall acknowledged many years ago, our Constitution is "intended to endure for ages . . . and consequently, to be adapted to the various crises of human affairs."

In recent months, there has been renewed focus on our Constitution. Almost every week, I open the newspaper or see an electronic posting that involves some radical invocation of the Constitution that differs from what I was taught at Georgetown Law many years ago. It could be someone suggesting that Congress should just get rid of dozens of judges if that strikes our fancy, or it might be the assertion that the three branches of our Federal Government are not of equal importance under our Constitution. Or even the assertion that our fundamental charter was drafted solely to limit the Federal Government's ability to solve national problems. These comments show the need for more opportunities to increase understanding of our democracy. That is what gave me the idea to invite some of the Nation's leading jurists to speak with us today about the role that judges play under our Constitution.

Both Chief Justice Roberts and Justice Scalia have remarked that the fundamental genius of the Constitution is its separation of powers. The legislative, the executive, and the judicial branches each have different powers and are limited or checked by the other branches. The three branches interact frequently. We recently observed the 222nd anniversary of congressional enactment of the first Judiciary Act, establishing the Supreme Court and Federal judiciary. We in the Senate have an obligation to provide our advice and consent to the President to fill a growing number of judicial vacancies. On this Committee, we are working diligently to address the serious judicial vacancy crisis that the Chief Justice highlighted in his most recent annual report. This Committee also works to pass legislation recommended by the Judicial Conference of the United States in order to help the third branch operate fairly and efficiently. Congress also appropriates resources to fund the important work of our independent judiciary.

The judicial branch, including the Supreme Court, decides cases to resolve controversies in accordance with the rule of law. The judiciary is called upon to interpret and apply statutes passed by Congress to specific disputes, and to review acts of the other branches to determine whether those acts violate the Constitution. On rare occasions, court decisions can be overturned with legislation or with an amendment to the Constitution.

Four years ago, I invited Justice Anthony Kennedy to appear before this Committee to discuss judicial security and judicial independence. That appearance renewed a tradition of Justices testifying before Congress on matters other than their appropriation requests, a tradition which included appearances by Chief Justice Taft and Chief Justice Hughes in the 1920s and '30s, as well as by Justice Jackson in 1941, among others. Justice Kennedy recognized that the Supreme Court's rulings would be debated and criticized but noted "that is the democratic dialogue that makes democracy work."

In furtherance of that democratic dialogue, this Committee has held several hearings highlighting the significant impact of recent Supreme Court hearings on hardworking Americans. This has been an effort to raise awareness about the relevance of the Court's cramped interpretations of laws that Congress enacted with the intent of protecting American workers, retirees, consumers, and small business owners.

Today's hearing is designed to have a different focus. Rather than examining recent or upcoming decisions of the Supreme Court, we will discuss the proper role that judges play in our democracy. In a time of increasing political rancor, some like to emphasize divisions as though they were between warring factions. Although the witnesses before us approach decision-making in different ways, they demonstrate a profound respect for each other. That is the example that the Ranking Member and I also strive to achieve in our work together on this Committee. The American people expect their Government to work for them, and that requires us to work together to uphold our national values. Despite different perspectives, we all need to work together to uphold the predictable rule of law where liberty and prosperity can thrive.

Judge Learned Hand said: "The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women." It is this spirit that I hope will guide our discussion today.

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