I can only infer that the FDA and Dr. Crawford, as its head, are continuing to put politics ahead of science. I am not the only one. According to the Washington Post editorial page, August 30:

In recent months, critics have accused the FDA—which is required by law to make decisions exclusively on scientific and legal grounds—of falling victim to outside political agendas.

They have claimed that the Plan B decisions have reflected not sound science and legitimate caution but rather the influence of ''moral'' antiabortion lobbies . . .

By abruptly rejecting an application that had been tailored to meet the FDA's requirements, Mr. Crawford appears to confirm the critics' worst fears.

Whatever the legal arguments taking place, this unexpected delay at this stage of the approval process makes the FDA—long admired around the world for its neutrality and professionalism—look like an easily manipulated political tool.

Here is what Newsday said:

Drugs and politics do not mix.

The current case in point is Plan B, the morning after emergency contraceptive, and the politics of abortion.

Taken together, they are threatening the Food and Drug Administration's credibility as an agency that dispassionately evaluates the safety and effectiveness of drugs.

The FDA said Friday it will delay for 60 days a decision on whether to allow Plan B to be sold to those 16 and older without a prescription.

Officials attributed the foot-dragging to a concern that younger teens would get the drugs and wouldn't use it responsibly.

That rings hollow.

When the FDA rejected an application for over-the-counter sales without age restriction 2 years ago it overruled that staff and an advisory panel, and discounted the experience of six states and 33 countries where such pills are sold without prescription.

The most recent application responsibly included the age restriction.

Here is how the Virginian Pilot put it:

Plan B contraceptives can prevent tens of thousands of abortions and unwanted pregnancies. Restriction on availability to minors is consistent with other national reproductive policies and therefore valid.

A country that can put a man on the moon can surely figure out how to distinguish between younger and older women in selling a pill. If, that is, policymakers care half as much about science in one case as in the other.

And perhaps most succinctly, I quote from the Baltimore Sun:

Dr. Crawford has been forced to adopt many improbable positions in order to keep his job. But now he is at risk of turning the world's most respected drug reviewing agency into a laughingstock.

Nobody wins if that happens.

No amount of semantics or politicking can change the fact that the HHS Secretary and the FDA performed a bait and switch with the Senate and, more importantly, to the American people. Today, the Bush administration has its FDA Commissioner, but the American public still does not have an answer on plan B. Unfortunately, the FDA, which has long been known as the gold standard in drug approval, is now at risk of becoming known for a double standard.

The health and well-being of the American people should not blow with the political winds. Caring for our residents is an American issue, and part of that goal is ensuring that our residents have access to safe, effective medicines in a timely fashion. As a new member of the Senate HELP Committee back in 1997 I faced the daunting task of working to help reform the FDA. I, along with my colleagues, was dedicated to making the Food and Drug Modernization Act work.

The intent of this landmark legislation was to introduce a new culture at the FDA, one which would expedite the drug approval process by eliminating unnecessary bureaucratic delays while ensuring product safety.

This new partnership was intended to open the lines of communication and ensure that manufacturers had a clear understanding of what would be required in our drug approval process. The FDA has broken those lines of communication and has now called into question the future of drug approval within the agency.

I believe strongly in a strong and independent FDA, but I believe this agency has made a mockery of Congress and of its own procedures and its own protocols. They have abused the trust of Congress and of the American people in the way they have played around with plan B. It is far past time to return credibility to the FDA. The FDA needs to return to the gold standard, not continue to create a double standard that puts politics ahead of the health and safety of the American public.

This is not the last word on this issue. The problem with politics subverting the FDA's adherence to science and its integrity is so profound and so urgent that I intend to use every tool available to me as a Senator to make sure this discussion about our priorities and our future is not lost.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent that I may speak for up to 20 minutes.

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

Mr. LEAHY. I thank the distinguished Presiding Officer.

NOMINATION OF JOHN ROBERTS

Mr. LEAHY. Mr. President, this week, as we celebrate our Constitution's 218th anniversary, we are nearing the exercise of one of the Senate's most solemn constitutional requirements and responsibilities. Few decisions the Senate faces are as consequential and enduring as when the Senate decides whether to confirm, by giving its consent, the nomination of a justice—of course, even more so when the nomination is for Chief Justice of the United States.

The Supreme Court is different from the lower courts. The Supreme Court is the only Federal court required by the Constitution itself. Actually, the Chief Justice is the only member of the Court expressly named in the Constitution. All other courts are bound by the decisions of the Supreme Court. Its decisions are final. They are unappealable. Only the Supreme Court can modify or overrule its precedents. Its power is enormous. The role of the Chief Justice is to lead not only that all-powerful Court but the entire third branch of Government. We have had 43 Presidents in this country, but we have had only 16 Chief Justices—all appointed for life.

The distinguished senior Senator from West Virginia, Mr. BYRD, whose passionate advocacy established our Constitution Day commemoration, describes the Constitution very accurately as the soul of our Nation. The Senate's advice and consent responsibilities are at the core of this body's vital role in our Republic.

This week, we commemorate our Constitution in a time of great challenges, and we are reminded again how resilient our Constitution is in empowering our Nation to meet each era's challenges. The carefully calibrated checks and balances within our Constitution are essential to that. No branch of Government is intended to be the rubberstamp of another branch.

Each day, Americans are fighting and dying in Iraq. Hundreds of thousands of Americans have been displaced by disasters here at home. Four years after 9/11, with public confidence shattered, we have to embark on a review of why we are still not prepared to respond to a terrorist attack or foreseen natural disasters.

The cost of energy—gas and home heating fuels—continues to climb to all-time highs, adding to the cost of other goods. The administration is suspending environmental and worker protections. Poverty and the disparities of opportunity between races and classes continue their insidious rise each year. After having seen recent years of budget surpluses, now the country's budget deficits are at previously unheard of levels—between $300 billion and $400 billion a year. Our national debt is at $8 trillion—8,000 billion dollars—that is a profligate amount. It can only be paid off by our children and our grandchildren.

So Americans need to know their constitutional rights will be protected, that their Government is on their side, and that the courts will be a place of refuge, stability, independence, and justice.

The nomination of Judge John Roberts to be Chief Justice of the United States presents a close question and one that each Senator must carefully weigh and decide. This is a question that holds serious consequences for all Americans today and for generations to come. I have approached this nomination with an open mind, as I do all judicial nominations. There is no entitlement to confirmation for lifetime

appointments on any court for any nomination by any President, Democratic or Republican.

I have served in the Senate for slightly over three decades, and on the Judiciary Committee for most of that time. I take my constitutional responsibility with respect to advice and consent seriously. I am 1 vote out of 100, but I recognize those 100 of us privileged to serve in the Senate are entrusted with protecting the rights of 280 million of our fellow citizens. We stand in their shoes. We and the President are the ones with a vote in the choice of the Chief Justice of the United States.

With this vote, I do not intend to lend my support to an effort by this President to move the Supreme Court and the law dramatically to the right. Above all, balance and moderation on the Court are crucial. I want all Americans to know the Supreme Court will protect their rights and respect the authority of Congress to act in their interests. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill of Rights and human dignity are honored.

I have voted for the vast majority of President Ford's, President Carter's, President Reagan's, President George H.W. Bush's, President Clinton's, and President George W. Bush's judicial nominees. I have drawn the line only at those nominees who were among the most ideologically extreme who came to us in the mode of activists. That is what they were intended to be. That is the way they were described. That is the way they came to us. In those cases, the President opted not to seek moderate candidates. I think some of these extreme choices were sent here to politicize the process and did so to a greater extent than I had previously seen in my 31 years in the Senate.

I have not reflexively opposed Republican nominees or conservative judicial nominees nominated by Republican Presidents. In fact, I recommended a Republican to President Clinton to fill Vermont's seat on the Second Circuit, Judge Fred Parker. I recommended another Republican, Judge Peter Hall, to President Bush to fill that seat after Judge Parker's death.

I voted for President Reagan's nominations of Justice Sandra Day O'Connor and Justice Anthony Kennedy, and for President Bush's nomination of Justice Souter.

Unfortunately, this President has said he approached this matter as if fulfilling a campaign pledge to appoint someone in the mold of Justice Thomas and Justice Scalia. I voted against confirmation of Justice Thomas. I voted for Justice Scalia, and I now question that vote, as many of those who voted for him do today. If I thought Judge Roberts would easily reject precedent in the manner of Justice Thomas or would use his position on the Supreme Court as a bulwark for activism in the manner of Justice Scalia, then I would not hesitate to vote no. If I were convinced he would undercut fundamental rights of privacy or equal protection, this would not even be a close question.

I want to vote for a Chief Justice of the United States who I am confident has a judicial philosophy that appreciates the vital role of the judiciary in protecting the rights and liberties of all Americans. Chief Justice Marshall understood the essential function of the judiciary as a check on Presidential power. Under his leadership, the Constitution's guarantee of an independent judiciary and the bedrock principle of judicial review became realities. But Chief Justice Roger Taney, who everybody said was a brilliant lawyer, led the Court in a different and destructive direction. He authored the Dred Scott decision which propelled the States toward Civil War by relying only on technical reasoning and an unjust holding that denied all African Americans the status of citizens.

Contrast that with Chief Justice Earl Warren. He led the Supreme Court and the Nation in a crowning achievement when he forged the unanimous decision in Brown v. Board of Education and breathed life into the equal protection guarantee of the 14th amendment and put a stop to segregation in this country, which will always be a blot on our national conscience.

The President has asked that this nomination be handled with fairness and dignity. No matter how we vote, the Judiciary Committee has met those standards. Our committee held a hearing on the merits. I worked with the chairman to expedite the committee's consideration of the nomination of John Roberts to the Supreme Court out of respect to Justice O'Connor and the work of the Court.

Fewer than 36 hours after the announcement of the passing of Chief Justice Rehnquist and during the horrific aftermath in the week following Hurricane Katrina, the President withdrew that nomination to be Associate Justice. Thereafter, we were sent this alternative nomination for Judge John Roberts to become the Chief Justice of the United States. Again, I cooperated with Chairman SPECTER in an accelerated consideration of this nomination.

I wish we had had as much cooperation coming from the administration. Although we started off well with some early efforts at consultation after Justice O'Connor's retirement announcement in early July, that consultation never blossomed into meaningful discussions. It was truncated after a bipartisan meeting with Senate leaders at the White House. The President did not share his thinking with us or his plans, although that would be the nature of true consultation. His naming of Judge Roberts as his choice to replace Justice O'Connor came as a surprise, not as something that came resulted from meaningful consultation.

He then preemptively announced that he decided to withdraw that nomination and, instead, nominated Judge Roberts to succeed Chief Justice Rehnquist. He did so at 8 a.m. on the Monday morning following the announcement on the previous Saturday night of the Chief's passing. There could and should have been consultation with the Senate on the nomination of somebody to succeed Chief Justice Rehnquist and to serve as the 17th Chief Justice of the United States. For that position as Chief Justice there was no consultation. In fact, I learned about the President's decision shortly before his televised announcement Monday morning.

I think the administration committed another disservice to this nomination and, especially to this nominee, by withholding information that has traditionally been shared with the Senate. The administration treated Senators' requests for information with little respect. Instead, for the first time in my memory, they grafted exceptions from the Freedom of Information Act to limit their response to legitimate requests from Senators for information.

In fact, they stonewalled entirely the narrowly tailored request for work papers from 16 of the cases John Roberts handled when he was the principal deputy to Kenneth Starr at the Solicitor General's office during the President's father's administration. The precedent from Chief Justice Rehnquist's hearing and others, of course, goes the other way.

Previous Presidents have paid the appropriate respect and acknowledgment to the Senate and to the constitutional process by working with the committee to provide such materials. Accordingly, it is understandable if a Senator were to vote against the President's nomination on this basis alone.

I must also say that some of my friends on the other side of the aisle disserved the confirmation process by urging the nominee not to answer questions or reveal his judicial philosophy during the course of the hearing. One notable exception was the chairman of the committee. I appreciate Senator SPECTER's commitment to the role of the Senate and his taking our duty to advise and consent as seriously as it deserves to be taken. Regrettably, many of the answers of the nominee seemed to take to heart the bad advice that he had heard from the other side.

Finally, I believe the nominee disserved himself by following the script that he developed while serving in the Reagan administration. He and this administration rejected the spirit of Attorney General Jackson's opinion that with respect to Senate consideration of nominations, no person shall be submitted ''whose entire history will not stand light.'' The nominee took a narrow judicial ethics rule correctly limiting what a judge or judicial nominee should say about a particular case—I agree with him on that—and turned it into a broad excuse from comments on any issue that might arise at any time, in any case. He apparently rejected the Supreme Court's

holding in 2002, in Republican Party of Minnesota v. White, in which Justice Scalia held that a State canon limiting judicial candidates from announcing their views on legal and political issues was unconstitutional.

By contrast, however, the public witnesses who appeared last Thursday were extraordinarily helpful in underscoring what is at stake for all Americans with this decision. No one who heard Congressman John Lewis, Wade Henderson, and Judge Nathaniel Jones can doubt the fundamental importance of our refusal to retreat from our Nation's commitment to civil rights. This Nation can never retreat from that commitment to civil rights or we fail as a nation.

The testimony of Coach Roderick Jackson and Beverly Jones reminded us how courageous Americans are still opening doors and going to our courts to right wrongs. The testimony of Anne Marie Talman of MALDEF reflected what is at stake when alien children are denied education and benefits that should be available to every child in America.

We had a dignified and fair process. Again, I commend Chairman SPECTER and those members of the committee on both sides of the aisle who did not prejudge the matter and who did not seek to politicize the process.

The hearings did provide the committee with some information. I was encouraged by Judge Roberts' answer to my question about providing the fifth vote needed to stay an execution when four other justices vote to review a capital case. That has not always been the practice of late. He was right to recognize the illogic—if not the injustice—of having the necessary votes to review the case but lacking the necessary vote to allow that review to take place, especially a review that takes place when someone's life is in the balance.

I hope the nominee will take up our suggestion to allow greater access to the Supreme Court's proceedings by authorizing their being televised. I will work with him and Chairman SPECTER and Senator GRASSLEY to increase transparency in the work of the increasingly important FISA court. This is the foreign intelligence surveillance court that acts in secret, with very little oversight—certainly precious little oversight in the past few years—from the Senate. Only recently have we begun to ask the questions we should have been asking.

I also urge him to consider ways to decentralize the power accumulated to the Chief Justice so that the Judicial Conference, the circuit courts, and others can do more. I encourage him to reform the recusal procedures and conflict-of-interest protections at all levels of the judiciary but in particular with regard to the Supreme Court itself. Perhaps what many have said were his own missteps in connection with his interviewing for this nomination during its consideration of the Hamdan case will inspire him to greater efforts in this important regard.

As a young man, Judge Roberts clerked for Judge Henry Friendly of the U.S. Court of Appeals for the Second Circuit. That is my circuit, a circuit I have been proud to argue before. The Second Circuit has been home to a number of leading judicial lights; certainly, Henry Friendly was among them. I hope he is going to be faithful to Judge Friendly's fairness and thoughtfulness, something all of us in that circuit respected.

I made no secret of my concerns about this nomination. In advance of the hearing, I met twice with Judge Roberts, and for nearly 3 hours in all I raised my concerns. I provided him additional opportunities to respond during the hearing. This is not a case of ''gotcha.'' This is a case of finding out how he thinks and who he is.

I told him I was concerned that he would not act as an effective check on the abuse of presidential power. Judge Roberts' work in the Reagan and Bush Justice Departments, as well as his former period in the Reagan White House, seems to have led him to a philosophy of significant deference to presidential authority. It is exhibited in his recent decisions in the Hamdan, Acree, and Chao cases, among others. Maybe this deference was a principal basis on which the President chose him. None of us know.

But I did learn other things. I learned, throughout the process, that Judge Roberts and I share admiration for Justice Robert Jackson. Justice Jackson's protection of fundamental rights, including unpopular speech under the first amendment—of course, popular speech never needs protection; it is the unpopular speech that needs protection—and his willingness to serve as a check on presidential authority are among the finest actions by any Justice in our history.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LEAHY. Mr. President, I ask unanimous consent for 10 additional minutes.

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

Mr. LEAHY. When Judge Roberts testified about his respect for Justice Jackson, I hoped it was a signal he was sending. I actually posed that question to him and asked him if he was sending us a signal.

I accept his assurance that he will act as an independent check on the President in the mold of Justice Jackson and that when he joins the Supreme Court, he will no longer heavily defer to presidential authority. It is one of the crucial roles of the Court, and I take him at his word that he will do so.

This is a fundamental question. We know that we are in a period in which the executive has a complicit and, some would say, compliant Republican Congress that refuses to serve as a check or balance. Without the courts to fulfill that constitutional role, excess will continue, and the balance will be tilted.

The other dimension of the fundamental balance of constitutional powers involves appropriate deference to congressional action taken by the people's elected representatives. The manner and techniques Judge Roberts has used while in the executive, private practice, and while briefly on the DC Circuit, show him to require an unrealistic exactitude in drafting laws that no collective body could ever meet, especially one of 535 people. I wish he had served in Congress or worked for a time in Congress so he would have a deeper understanding of the legislative process. I hope that his experience during the hearing and the many questions from Senators of both sides of the aisle have helped to increase his appreciation for congressional authority and its importance.

I believe the current activism of the Supreme Court must be curtailed. I hope that will not be a part of Chief Justice Rehnquist's legacy that John Roberts seeks to continue. Congress acts to protect the interests of Americans through the commerce clause, spending powers and the 14th amendment. That has to be respected. I am encouraged by his assurances that he will respect congressional authority.

My reading of his dissent from the denial of rehearing en banc of the Rancho Viejo v. Norton case, in which he made the ''hapless toad'' reference, is that he urged rehearing to ''afford the opportunity to consider alternative grounds for sustaining application of the Act.'' Indeed, his steadfast reliance on the Supreme Court's recent Raich decision as significant precedent contravening further implications from Lopez and Morrison was intended to reassure us that he would not join the assault on congressional authority under the commerce clause. I heard him, and I rely on him to be true to the impression he created.

As a lawyer, John Roberts has been significantly involved in the development of Supreme Court authority limiting the authority of Congress under its constitutional spending powers. He argued before the Supreme Court in the 1980s, 1990s, and in this decade in a series of cases—South Dakota v. Dole, Wilder v. Virginia Hospital Association, Suter v. Artist M., and Gonzaga University v. Doe—in which he talked about narrowing Congress's spending powers and limiting the ability of individuals to sue to compel the protections Congress required under Federal law.

His briefs in Gonzaga adopted the extreme view that spending power enactment was a contract between the State and Federal Governments and that the intended beneficiaries of those programs had no rights to sue to enforce the commitments, even when states were violating the law and the Federal government was not effectively enforcing it. I questioned him extensively on

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 Supreme 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 seriously 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.