

lynching and to their descendants. It was, as was stated most eloquently and passionately on this floor, a very dark chapter, indeed, in American history, but a real mark against this Senate that, despite the repeated pleas of the victims and their families, thousands of Americans, the House of Representatives, and seven Presidents, of both parties, the Senate failed to act.

Tonight the Senate has admitted its mistake and has taken a very positive step in admitting failure so that we can have a brighter future. I know that many of these victims and their families—"survivors" is really a better word—have triumphed against this evil. Many were African Americans, but they were people of all different races and religious backgrounds. Many of them were here tonight and have been with us all day today.

I know their names are part of the record, but again they were James Cameron, 91 years old, a victim of lynching who miraculously survived to tell his story; Doria Johnson, the great-granddaughter of Anthony Crawford—Grandpa Crawford, as he has been called—from Abbeville, SC—what a story that family has to tell. Dan Distel, the great-grandson of Ida Wells. What a brave and historic journalist she was. In the face of literally constant threats to her life, she continued to write. What a role model for journalists everywhere of the courage of what it really takes to tell a story. And she did it.

We had many other family members and history professors with us today. There was a tremendous effort that enabled us to get to the floor tonight. As I wrap up, I want to again thank the staff. I thank my staff, including Jason Matthews, my deputy chief of staff; Kathleen Strottman, legislative director; Nash Molpus, who is with me on the floor. Our staff has been very helpful. Senator ALLEN's staff has also been remarkable and so many have contributed to this effort.

I had many quotes to choose from, Mr. President, to end tonight. Really, there were hundreds of them that would be appropriate. But one was especially appropriate, for the close of this debate because, while it ends one chapter, it begins many new chapters in the history of our Nation. The woman I will quote from is one I have admired my whole life. I have read much about her and have been taught a lot about her. I will read this quote from this particular woman because it took guts to say what she did, at a time when people in America didn't want to hear it. This came at a time when people didn't want to hear what women had to say, generally, about any subject, let alone the subject of injustice and intolerance not only in our Nation but the world.

The woman I will quote is Eleanor Roosevelt, who actually led a group of descendants into this Chamber in 1938 to urge the Senate, hopefully by their presence, to act—men and women who

came with their own being, their own bodies to try to tell the Senate what you are reading about isn't true; these are innocent people. Eleanor Roosevelt escorted them to this Chamber and, of course, through all of their mighty efforts, actions were not taken, but not through any fault of hers. What I want to quote is what she wrote about universal human rights. I read this as a young legislator. Of course, we read lots of things, and some things stick and some don't. This particular quote is seared into my heart. I try to remember it every chance I get. I read it often, and I would like to read it tonight because it is very relevant to the debate that we have had. She wrote:

Where, after all, do universal human rights begin? In small places, close to home—so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual person, the neighborhood he lives in, the school or college he attends, the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close at home, we shall look for them in vain in the larger world.

We have heard stories today—hundreds of stories about these small places close to home—trees in a public square, river banks, levees, streets, alleys, open fields, behind school buildings, and in front of stores. This is where people want to experience dignity and justice. Some of these towns are so little they may still not be on any map of the United States. Maybe in some of these towns—because of what happened in the past—there are very few people who live there. And some of these places are quite large, where you can find them on the map. I think it is instructive for the Senate, as we make this sincere apology tonight, that we really take a breath and be very introspective to think about where these small places are in America, where these places of any size are in America, and recommit ourselves to be honest about our failings and our shortcomings, to be honest about the fact that we are not always as courageous as we should be.

But when we come to a point where we know we made the wrong decision, we didn't act in the best interests of our country or the American citizens who look to us for their protection and their support, we should at least be able to sincerely say we are sorry. That is what we did tonight. I thank Eleanor Roosevelt. I am forever grateful for her great leadership for the country and for thousands of Americans, people of all races, who advocated for justice and freedom at great expense to their own life—which is not what most of us experience today, gratefully—with great expense to their reputation, their livelihood. She was really not understood or appreciated in the world in which she lived.

There were many children in the Senate today, these children and great,

great, great-grandchildren. Some of the victims and some of the journalists who have written about this in the past were here. Let's make sure they know the truth and they know that tonight we apologize.

Thank you, Mr. President.

Mr. BENNETT. Mr. President, I have listened with great interest to the presentations that have been made on the floor and wish to be associated with the sentiments involved.

I come from a State that does not have a history of lynchings, but that does not mean I should be absolved from the concern that all Americans should have over the lynchings that have occurred. I note that it was the filibuster that made it possible for the Senate to be the body that blocked this legislation in the past. I would hope that in the future, we would all realize that the filibuster should be used for more beneficial purposes than that.

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

IMPORTANCE OF CONSULTATION ON JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, I spoke on the Senate floor last week about the benefits to all if the President were to consult with Members of the Senate from both sides of the aisle on important judicial nominations. I return today to emphasize again the significance of meaningful consultation on these nominations because it bears repeating given what is at stake for the Senate, the judiciary and this country.

In a few more days the United States Supreme Court will complete its term. Last year the chief justice noted publicly that at the age of 80, one thinks about retirement. I get to see the chief from time to time in connection with his work for the Judicial Conference and the Smithsonian Institution. Sometimes we see each other in Vermont or en route there, and I am struck every time by his commitment. I marvel at him. I think that his participation at the inauguration earlier this year sent a powerful positive message to the country. I know that the chief justice will retire when he decides that he should, not before. He has earned that right. I have great respect and affection for him and he is in our prayers.

In light of the age and health of our Supreme Court justices, speculation is accelerating about the potential for a Supreme Court vacancy this summer. In advance of any such vacancy, I have called upon the President to follow the constructive and successful examples set by previous Presidents of both parties who engaged in meaningful consultation with Members of the Senate

before selecting a nominee. This decision is too important to all Americans to be unnecessarily embroiled in partisan politics.

I said again last week that should a vacancy arise, I stand ready to work with President Bush to help him select a nominee to the Supreme Court who can unite Americans. I have urged consultation and cooperation for 4 years and have reached out, again, over the last several months to this President. I hope that if a vacancy does arise he will finally turn away from his past practices, consult with us and work with us.

Some Presidents, including most recently President Clinton, found consultation with the Senate in advance of a nomination most beneficial in helping lay the foundation for successful nominations. President Reagan, on the other hand, disregarded the advice offered by Senate Democratic leaders and chose a controversial, divisive nominee who was ultimately rejected by the full Senate.

In his recent book, "Square Peg," Senator HATCH recounts how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. In his book, Senator HATCH wrote that he warned President Clinton away from a nominee whose confirmation he believed "would not be easy." Senator HATCH goes on to describe how he suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed "with relative ease." Indeed, 96 Senators voted in favor of Justice Ginsburg's confirmation, and only 3 Senators voted against; Justice Breyer received 87 affirmative votes, and only 9 Senators voted against.

The Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" judges. For advice to be meaningful it needs to be informed and shared among those providing it.

Those recent examples are not the only examples of effective and meaningful consultation with the Senate. According to historians, almost 150 years ago, in 1869, President Grant appointed Edwin Stanton to the Supreme Court in response to a petition from a majority of the Senate and the House. More than 70 years ago, in 1932, President Hoover consulted with Senator William E. Borah regarding who he should nominate to succeed Justice Oliver Wendell Holmes. According to historical reports, as has been confirmed by Republican Senators, Senator Borah counseled the President to select Benjamin Cardozo from his list of potential nominees.

Bipartisan consultation would not only make any Supreme Court selection a better one, it would also reassure the Senate and the American people that the process of selecting a Supreme Court justice has not become politicized.

Recently, a bipartisan group of 14 Senators joined together to avert an unnecessary showdown in the Senate over the effort to invoke the "nuclear option." That would have changed 200 years of Senate tradition and the protection of minority rights. In their agreement the bipartisan coalition say the following:

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree. Bipartisan consultation is consistent with the traditions of the Senate and would return us to practices that have served the country well. They are right to urge greater consultation on judicial nominations.

In that regard, I was pleased to see the President respond to a question at a news conference 2 weeks ago by agreeing to consult with the Senate about his nomination should a vacancy arise on the Supreme Court. I see that as a positive development. More troubling are reports that the White House plan does not include meaningful consultation at all, but a "war room" and some sort of preemptive contact to allow them to pretend they consulted without anything akin to the kind of meaningful consultation this important matter deserves. If the White House intends to follow that type of plan, it would be most unfortunate, unwise and counterproductive.

Though the landscape ahead is sown with the potential for controversy and contention should a vacancy arise on the Supreme Court, confrontation is unnecessary. Consensus should be our mutual goal. I would hope that the President's objective will not be to send the Senate nominees so polarizing that their confirmations are eked out in narrow margins. This would come at a steep and gratuitous price that the entire Nation would have to pay in needless division. It would serve the country better to choose a qualified consensus candidate who can be broadly supported by the public and by the Senate.

The process begins with the President. He is the only participant in the process who can nominate candidates to fill Supreme Court vacancies. If there is a vacancy, the decisions made in the White House will determine whether the nominee chosen will unite the Nation or will divide the Nation. The power to avoid political warfare with regard to the Supreme Court is in the hands of the President. No one in the Senate is spoiling for a fight. Only

one person will decide whether there will be a divisive or unifying process and nomination. If consensus is a goal, bipartisan consultation will help achieve it. I believe that is what the American people want and what they deserve.

If the President chooses a Supreme Court nominee because of that nominee's ideology or record of activism in the hopes that he or she will deliver political victories, the President will have done so knowing that he is starting a confirmation confrontation. The Supreme Court should not be an arm of the Republican Party, nor should it be a wing of the Democratic Party. If the right-wing activists who were disappointed that the nuclear option was averted convince the President to choose a divisive nominee, they will not prevail without a difficult Senate battle. And if they do, what will they have wrought? The American people will be the losers: The legitimacy of the judiciary will have suffered a damaging blow from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is just another setting for partisan contests and partisan outcomes. People will perceive the Federal courts as places in which "the fix is in."

Our Constitution establishes an independent Federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. That independence is at grave risk when a President seeks to pack the courts with activists from either side of the political spectrum. Even if successful, such an effort would lead to decision-making based on politics and forever diminish public confidence in our justice system.

The American people will cheer if the President chooses someone who unifies the Nation. This is not the time and a vacancy on this Supreme Court is not the setting in which to accentuate the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidate with the least number of votes possible, I have been urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity.

The independence of the Federal judiciary is critical to our American concept of justice for all. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want them to have a strong commitment to our shared constitutional values of individual liberties and equal protection. We expect them to have had a demonstrated record of commitment to equal rights. There are many conservatives who can meet these criteria and who are not rigid ideologues.

This is a difficult time for our country and we face many challenges. Providing adequate health care for all Americans, improving the economic prospects of Americans, defending against threats, the proliferation of nuclear weapons, the continuing upheaval and American military presence in Iraq, are all fundamental matters on which we need to improve. It is my hope that we can work together on many issues important to the American people, including maintaining a fair and independent judiciary. I am confident that a smooth nomination and confirmation process can be developed on a bipartisan basis if we work together. The American people we represent and serve are entitled to no less.

GUANTANAMO BAY

Mr. LEAHY. Mr. President, it has been well over 3 years since the administration began to hold detainees at the U.S. Naval Base in Guantanamo Bay, Cuba. The first batch of then only 20 detainees arrived in January 2002. There are now more than 500 detainees at Guantanamo. I cannot give you an exact number because our own Government refused to tell the American people an exact number.

In fact, there is much that we do not know about our Government's activities at Guantanamo. From the start, the administration's answer to every question regarding this secret detention facility has been: Trust us. Trust us that we know the law and that we will comply with it. Trust us to treat detainees humanely and in accordance with our laws and treaties and the great and wonderful traditions of the United States. Trust us that Guantanamo will make Americans safer. More than 3 years later, the one thing we know for sure about Guantanamo is that any trust we may have had was misplaced.

First, the administration either did not know or did not follow the law. The list of reversals of this administration's policies and practices at Guantanamo is long. From the Supreme Court's rejection of the claim that Guantanamo Bay is a land of legal limbo or, as one administration official said, "the legal equivalent of outer space," to a recent district court holding that the current military commission regulations are unlawful, there is much that needs attention and correction.

Secondly, the administration has not lived up to its promise to treat detainees humanely. Even with the administration's continuing stonewalling against any independent investigation into the mistreatment of detainees, we continue to learn of more abuses on an almost daily basis. Does anybody question that if American POWs were being treated in this way, we would have demonstrations in the streets of America, and everybody from the President down through every single Member of Congress would be up in arms and call-

ing for changes? But when these actions take place at Guantanamo, the administration refuses to acknowledge any wrongdoing. The dangerous implications that this posture has for our own troops and citizens becomes more obvious every day.

Third, and this is the bottom line: Guantanamo has not made our country safer. It is increasingly clear that the administration's policies have seriously damaged our reputation in the world, and they are making us less safe. The stain of Guantanamo has become the primary recruiting tool for our enemies. President Bush often speaks of spreading Democratic values across the Middle East, but Guantanamo is not a reflection of the values that he has encourages other nations to adopt. The United States has often criticized other nations for operating secret prisons where detainees are hidden away and denied any meaningful opportunity to contest their detention. Now we have our own such prisons. Even if the administration fails to see the hypocrisy of this situation, I can assure you, the rest of the world does not.

Guantanamo Bay, in addition to Abu Ghraib, is a national disgrace and international embarrassment to us, to our country's ideals, and a festering threat to our security. It is a legal black hole that dishonors the principles of a great nation. America was once very rightly viewed as a leader in human rights and the rule of law, but Guantanamo has drained our leadership, our credibility, and the world's good will for America at alarming rates. Even our closest allies cannot condone the policies embraced by this Government, not to mention the significant damage that has been caused by allegations and proven incidents of detainee abuse in Iraq, Afghanistan, and Guantanamo. These are not the policies of a great and good nation such as ours. This is not the American system of justice that I have grown up honoring and appreciating.

Within the last 2 weeks, I was at a meeting of NATO parliamentarians. These are parliamentarians from the countries that are our closest allies. They are members of the NATO alliance with the United States and proud to be part of that alliance. Every one of them I spoke with said the same thing: How can America continue to be a beacon for democracy with the stain of Guantanamo? Some of these countries were countries that originally had been behind the Iron Curtain. With the efforts of this administration and the Clinton administration, we see them now as proud members of NATO. They look to the United States for leadership, and they ask us: Why Guantanamo?

The 9/11 Commission understood that military strength alone is not sufficient to defend our Nation against terrorism. There has to be a role for working cooperatively with the rest of the world. In its report, the Commission

said that the Government "must define what the message is, what it stands for. We should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors." Guantanamo Bay is not the way to do this.

The administration got itself into this mess because it refused to accept Congress as a partner in its so-called war on terror and insisted on acting unilaterally. It would not even involve Congress, even though Congress is controlled by members of the President's party. Following the start of combat in Afghanistan in October 2001, I urged President Bush to work with Congress to fashion appropriate rules and procedures for detaining and punishing suspected terrorists. All of us agree, if you have terrorists, if it is proven they are terrorists, they should be detained and punished. As I noted at the time, our Government is at its strongest when the executive and legislative branches of Government act in concert. Unfortunately, the President was determined to go it alone.

Up until now, this Republican-led Congress has been content to go along for the ride. As the administration dug itself deeper and deeper into a hole, we stood idly by. Instead of providing checks and balances, we simply wrote one blank check after another.

This has to change. The Constitution provides that Congress, not the President, has the power to "make Rules concerning Captures on Land and Water." Congress, not the President, has the power to "define and punish Offenses against the Law of Nations." And perhaps most importantly, Congress, not the President, has the power of the purse. Maybe each one of us should take a few moments and reread the Constitution that we are sworn to uphold.

What is the administration's plan for Guantanamo Bay, assuming there is one? What does the administration intend to do with the more than 500 detainees still imprisoned there? How many will be released and when? How many will be charged and tried and when?

The administration consistently insists that these detainees pose a threat to the safety of Americans. The Vice President said that the other day. If that is true, then one would have to assume we have credible evidence to support it. If there is such evidence, then let's prosecute these people. If we have the evidence, prosecute them.

But we also know that some of the detainees have been wrongly detained. I suspect there are others who have not yet been released against whom the evidence is weak at best. It is one thing if they are being detained in accordance with the Geneva Conventions. But if not, they do not belong there.

Guantanamo Bay is causing immeasurable damage to our reputation as a defender of democracy and beacon of human rights around the world. It is