

THE UNITED STATES SENATE JUDICIARY COMMITTEE

A SHORT MODERN HISTORY



U.S. SENATE COMMITTEE ON THE
JUDICIARY

The United States Senate Judiciary Committee: A Short Modern History

The Senate Judiciary Committee is one of the original standing committees of the U.S. Senate. Established in 1816 during the second session of the 14th Congress, it began with four members. Its focus was on the courts and law enforcement.

As new issues arose, so did the purview of the committee. So, after the Civil War, the Judiciary Committee took over law related to the restoration of the Confederate states. Immigration, which had been assigned its own committee in the late 19th Century, returned to the Judiciary in 1946. Today, issues related to technology, privacy, and social media are an important focus of the committee as well.

Amongst the figures in the early history of the committee, one of the most important was Republican Lyman Trumbull, who served as the chair from 1861-1872. Originally from Connecticut, Trumbull had been the Illinois Secretary of State and argued the case *Jarrot v. Jarrot*, which banned slavery in Illinois. As chair of the Judiciary Committee during the Civil War and after, Trumbull authored a number of bills that would take apart the legal arguments allowing for slavery, such as the *Confiscation Acts*, which allowed the federal government to seize anything used in act of rebellion, including persons held in slavery; the 13th Amendment, which outlawed slavery; and the *Civil Rights Act of 1866*, which argued that anyone born in the United States was a U.S. citizen.

One of the key elements of the Judiciary Committee's work from its earliest days has been its role in the nomination process of federal judges. Under Article II of the Constitution, presidential appointments require "the advice and consent" of the Senate. The exact meaning of that phrase has evolved over time. In the earliest days of our government, senators debated how strongly to interpret their authority in such appointments. Gradually, it became the accepted understanding that senators owed the president due deference but had the power to step in and oppose a nomination if necessary. Today, the Senate Judiciary Committee continues to wrestle with the relationship between due deference and appropriate challenge.

The history of the Senate Judiciary Committee is filled with figures and moments that reflect not only the questions of the Committee, but of the country. The choice to organize this brief contemporary history around Committee chairs is somewhat arbitrary—some chairs would prove far less essential to the work of the Committee than individual members, appointments, or bills. But it does offer a clear timeline, and is offered here as such, with individual issues or events presented as subheadings within different chairs' sections.

SEN. JAMES EASTLAND (1957-1978)

Civil Rights

In some ways, the modern era of the Committee and the Senate began still deeply mired in the aftermath of the Civil War. The Judiciary Committee, like most committees of the Senate, was chaired by a Southern Democrat. James Eastland was a Mississippi lawyer originally appointed to the Senate in 1941 by the governor when Senator Pat Harrison died

in office. Like many of his southern peers, Eastland opposed integration, and he denounced *Brown vs. Board of Education*—which mandated the integration of public schools—as having “destroyed” the Constitution. “You are not obliged to obey the decisions of any court which are plainly fraudulent sociological considerations,” he said in a speech in Mississippi in 1955.

In 1957, Eastland became chair of the Judiciary Committee, a role he would hold for 22 years, making him the longest-serving Judiciary Chair in American history. During a speech on the Senate Floor in that same year, said, “All free men have the right to associate exclusively with members of their own race, free from governmental interference, if they so desire.” Later, when Supreme Court Associate Justice Abe Fortas was nominated for Chief Justice, Eastman opposed his nomination, saying: “I couldn’t go back to Mississippi if a Jewish chief justice swore in the next president.”

When the Senate considered the *Civil Rights Act of 1964*—which outlawed discrimination on the basis of race, color, religion, gender, or national origin, as well as banned segregation in schools and public locations—Majority Leader Mike Mansfield enabled the bill to go straight to the Senate Floor, rather than face possible oblivion at the hands of the Judiciary Committee. Committee member Richard B. Russell of Georgia led almost two months of filibustering to try and kill the bill before it finally passed.

A year later, the Committee would consider the *Voting Rights Act*, which proposed to outlaw literacy tests and other practices intended to keep Black people from voting. To prevent Eastland and other members from keeping the act trapped forever in Committee, Mansfield offered legislation requiring the Committee to report the bill out to the full Senate, which passed 67-13.

Thurgood Marshall

In 1967, President Johnson nominated Thurgood Marshall as the country’s first African American Supreme Court justice. While Marshall was supported by both Democrats and Republicans, Eastland and others on the Judiciary Committee criticized his progressive views, labeling him a “Constitutional iconoclast.” In 1961, a subcommittee of the Judiciary committee appointed by Eastland had delayed Marshall’s confirmation hearing for an appellate court judgeship for more than eight months. “The long siege,” as Marshall described it, only ended when other members of the Judiciary Committee took control away from the subcommittee. Eastland was one of four to oppose Marshall’s nomination at the time, and did so again six years later. But in the end, Marshall was confirmed by the Judiciary Committee and the Senate.

Eastman’s long tenure as chair also saw the Judiciary consider many other issues, including a number of Constitutional questions. In 1970, the Judiciary Committee considered a plan that would have radically changed the Electoral College, offering one electoral vote for each congressional district within a state. Eastland expressed an opinion that the Senate could not approve a Constitutional amendment to this effect, saying it would hurt too many states. In 1974, the Committee also held hearings and considered a bill from Committee member Jesse Helms supporting prayer in schools, despite the Supreme Court having ruled

in 1963 that prayer in schools violated the First Amendment. Eastland was once again among the bill's supporters.

Collegiality

Despite Eastland's strongly-held segregationist views, he also remained on good terms with those who fought for civil rights, including President Lyndon B. Johnson and members of the NAACP. For Eastland, as for many in his generation of the Senate, having respect for the institution of the Senate and one's colleagues was of the highest value. So, when a young Senator Edward Kennedy approached Eastland about joining the Judiciary Committee, Eastland not only agreed, he assigned him to immigration and civil rights, despite the fact that Kennedy's positions would conflict with Eastland's.

Likewise, when Kennedy later asked Eastland to allow a bill to move forward in Committee, despite Eastland's own opposition to it, Eastland agreed on the condition that Kennedy could prove he had the votes. And when one of those who had agreed to support Kennedy changed their mind during the vote, Eastland switched his vote to enable the bill to pass, and then used his authority as chair to prevent that senator from ever bringing a piece of legislation to the Committee. Eastland said at the time, "When a senator gives his word, he is bound to keep it, and changed his own vote so it could pass." Kennedy would go on to follow Eastland as chair of the Committee, from 1978-1981.

Watergate

Near the end of Eastland's term, the Senate Judiciary Committee was also instrumental in the investigation of the Watergate bugging scandal. Early on, the Administrative Practices and Procedures Subcommittee chaired by Ted Kennedy subpoenaed members of the Justice Department and gathered a large body of evidence, including establishing the connections amongst the players involved. This information would be used by Senator Sam Ervin, Chair of the Subcommittee on Constitutional Rights, when he was appointed chair of the special Senate committee into the matter.

SEN. STROM THURMOND (1981-1987)

Civil Rights

Like Eastland, South Carolinian Strom Thurmond was a segregationist who believed that segregation was the best way to organize a multiracial society. When the *Voting Act of 1965* came up for renewal in 1981, tried to kill the legislation by arguing for extending Section 5, which forced southern states to have any changes in their voting rules approved by the federal government, to the entire country—a move that would have been practically impossible.

But ultimately, Chair Thurmond moved the bill on for a vote. And when others on the Committee tried to kill the renewal by delaying the vote, Thurmond insisted that the Committee would hold night sessions if that's what it took to get a vote. He himself would vote to pass the extension. During his tenure as chair, Thurmond also voted in favor of making Martin Luther King Jr.'s birthday a federal holiday.

Supreme Court Nominations

Thurmond's term as chair would see three major judicial appointments: Sandra Day O'Connor as the first female Supreme Court justice (1981), Supreme Court Justice William Rehnquist appointed as Chief Justice of the Court (1986), and the nomination of Antonin Scalia (1986), the first Italian-American Supreme Court justice and one of the defining figures of the Court in the decades after his appointment.

Thurmond had a history of hostility toward past Supreme Court nominees. During Thurgood Marshall's hearing, Thurmond spent over an hour quizzing him on Constitutional law and the Reconstruction Period, in an attempt to make him seem ignorant. During the hearings for Fortas as Chief Justice, Thurmond questioned him on Supreme Court cases he had not been involved in trying and accused him of being responsible for a spread in hardcore pornography across the country.

And yet, when it came to O'Connor, Thurmond ensured that things went smoothly—even standing up to religious conservatives in his own party who feared O'Connor would be too moderate on pro-life issues. O'Connor's nomination involved the first televised hearing in the history of Court nominations. The vote in Committee was 17-0-1. She would be approved by the full Senate 99-0.

Five years later, Antonin Scalia, too, would pass through the Senate unanimously guided by Thurmond, 98-0.

SEN. JOSEPH BIDEN (1987-1995)

Violence Against Women Act

Both as a member and as chair of the Judiciary Committee, Delaware Senator Joseph Biden involved himself in a number of important issues, from school busing—which he opposed as the wrong solution to the school desegregation issue—to the revision of the U.S. Criminal Code in 1984.

In 1990, Biden started holding hearings about women's experience of domestic abuse. The information he gathered revealed a scale to the problem beyond anything Biden or his fellow Committee members understood. Out of those hearings and additional research by his staff, Biden wrote the *Violence Against Women Act*.

Over the course of years, support for Biden's bill slowly grew, with other senators beginning to hold hearings of their own, including Ranking Member Orrin Hatch. Sheila Wellstone, wife of Minnesota Senator and Judiciary Committee member Paul Wellstone, was also very invested in the myriad of issues surrounding domestic violence. She and her husband got important measures added to the bill, among them greater outreach and support for children who lived in abusive homes and the protection of immigrant women. Senator Wellstone would also go on to write bills enacting other important measures, including the creation of a new Office of Violence Against Women in the Department of Justice.¹

¹ Devin Henry, "Minnesota Democrats invoke the Wellstones in debate over domestic violence legislation," MinnPost, May 5, 2012.

Finally, in 1994, Biden was able to get the bill through Congress by attaching it to a major crime bill offering additional funding to police. It would prove to be one of the most significant acts of the Judiciary Committee in modern times outside of the appointment of a Supreme Court justice. The *Violence Against Women Act* radically changed how both government and Americans thought about domestic violence. It created means for women to get protection and justice, and made acts of violence against women a federal hate crime. Notably, at the signing of the bill, Biden said that Sheila Wellstone “has done more than most people who serve in the United States Congress” to see it come to fruition.

Supreme Court Nominations

Biden’s term as chair would also be defined by two major Supreme Court appointments that radically changed the way both the Senate and the country understood the Supreme Court nomination process.

Robert Bork

In normal course, the Senate Judiciary Committee saw as its duty to support a president’s Supreme Court nominations. Their job was to make sure a candidate had the requisite expertise and support of their colleagues, and if so, vote to appoint. Despite his fierce conservatism, Antonin Scalia was approved unanimously by the committee in 1986.

For Senate Judiciary Chair Joseph Biden, the 1987 nomination of Justice Robert Bork represented something out of the ordinary— an attempt by the president to promote an agenda that would represent a radical shift in the jurisprudence of the Court. Before the nomination process began, Biden spoke to the Senate as a whole, arguing that given the amount that Bork had expressed about his legal philosophy and the exceedingly limited role his ideas allowed to the Court, the Senate’s job was not simply to evaluate his credentials but that ideology.

What ensued was a public examination of Bork unlike anything a Court nominee had faced to that time. While Biden insisted that questions focus on his philosophy and not his character, personal attacks were unavoidable, and Ranking Member Orrin Hatch would say the Bork nomination process permanently and adversely transformed the process by which people were nominated to the Court into that of a political campaign. “The more politically partisan the nomination process,” he later wrote, “the more likely its only survivors will be either political partisans or persons adept at non[-]answers.” He predicted that as a result of this process, the Republicans would no longer simply presume goodness on the part of Democratic nominees, either.

In the end, Bork would only get five votes from the Judiciary Committee, and would lose in the Senate 42-58.

Dr. Anita Hill and Clarence Thomas

The nomination of Clarence Thomas in 1991 had some elements of the issues the Senate had encountered with Bork. President George H. W. Bush was appointing Thomas to replace Thurgood Marshall, the first African American justice and an enormously

significant figure in the realm of civil rights. And yet, Thomas openly opposed many of Marshall's signature issues. His nomination was opposed by the National Organization for Women, the NAACP, and the Urban League. Where the American Bar Association had rated every other sitting Supreme Court justice as "well-qualified," none of the 15-member committee rated Thomas that highly. Two deemed him "unqualified."

But the bigger issue surrounding Thomas dealt not with his legal opinions, but accusations by women that he had sexually harassed them in the workplace. University of Oklahoma law professor Dr. Anita Hill, who had worked as personal assistant to Thomas ten years previously, alleged that she had been repeatedly sexually harassed by Thomas. Under pressure to submit testimony, Hill refused twice before agreeing under the condition that she would remain anonymous, and with the understanding she was one of a group of women whose allegations were being investigated.

But when her affidavit reached Chairman Biden, Biden insisted he would need to bring her claims to Thomas and use her name. When she refused, Biden dropped the matter, and the Committee interviewed Thomas with no knowledge of the accusations.

When the Senate as a whole began to deliberate over Thomas' nomination, news broke of Hill's accusations, which led to the reopening of the Judiciary Committee hearings. Hill and Thomas were both questioned on national television, though Hill under significant restrictions—Biden said she could speak only to "the most embarrassing of all the incidents you have alleged," and allowed other woman to testify only in writing. After telling Hill that she would testify first, Biden also allowed Thomas to testify both before and after Hill.

The hearing, which involved 14 white men questioning a Black man and a Black woman, proved to be an incredibly ugly moment for all involved. Thomas, who would win appointment by the narrowest margin in over 100 years, 52-48, called the process "a national disgrace... a high-tech lynching for uppity blacks who in any way design to think for themselves, to do for themselves, to have different ideas."

Meanwhile, Hill was accused by various senators of being a liar, of stealing a scene from the Exorcist, or being delusional. Decades later, Biden would say "I regret I couldn't come up with a way to get her the kind of hearing she deserved... she paid a terrible price," though it would not be until 2019 that Biden formally apologized to Hill. Hill later argued that the Thomas hearing had set the stage for the Kavanaugh hearing, in which another woman, Christine Blasey Ford, faced similar treatment after testifying that Brett Kavanaugh had sexually assaulted her in high school.

The Assault Weapons Ban

After the Thomas hearings, Biden gave senior roles on the Judiciary Committee to female staff for the first time. After the 1992 election, he also actively recruited the newly elected Senators Carol Moseley-Braun from Illinois and Dianne Feinstein from California to join the Committee. They would be the first female senators ever on the Judiciary Committee.

In her 20 years on the committee, Feinstein would become an important voice regarding gun control— writing the Assault Weapons Ban in 1994 and fighting for its renewal after the measure was allowed to lapse ten years later. “These things are not going to stop, members. They’re just not,” she told her colleagues in 2017, at a hearing on gun control the day after a mass shooting in Colorado. “I’ve sat here for a quarter of a century listening— they don’t stop. And if you give people the ability to easily purchase a weapon that can be devastating to large numbers of people, some of them will use that.” In 2017, she would become the first-ever female ranking member of the Judiciary Committee.

SEN. ORRIN HATCH (1995-2001, 2001, 2003-2005)

Utah Senator Orrin Hatch’s terms as Chairman of the Judiciary Committee would see a number of important measures adopted relative to criminal justice, including the *PROTECT Act*, which simplified the means of prosecuting pedophiles and child pornographers, and the *Justice for All Act*, which provided funding for DNA tech to solve crimes and eliminated a massive backlog of rape cases.

Hatch also backed a massive 1500-person increase in officers at the border to prevent crossings; was a lead proponent of the *Antiterrorism and Effective Death Penalty Act of 1996*, which would provide swifter legal proceedings in cases of terrorism, allow the State Department to designate certain organizations as terrorist groups, and provide a means for legal and financial response by victims’ families; and brought forward the *Copyright Term Extension Act*, which would enable holders of copyrights to keep control of their material for decades longer than had previously been allowed.

Despite his frustration with the treatment of Robert Bork, Hatch showed significant deference toward President Bill Clinton’s judiciary nominees. Though the Democrats held control of the Senate for only two of Clinton’s eight years in office, Clinton was able to appoint almost as many judges as Reagan had. “Whoever is president deserves fair and prompt treatment of his or her nominees,” Hatch wrote in his memoir *Square Peg*. “One of the consequences of a presidential election, is that the winner has the right to appoint nominees to the Court and to the thousands of term appointments at federal agencies and departments.” Members of his own party tried to undermine his approach, arguing that a majority of the senators from states representing a judicial circuit should be able to veto an appellate court nomination, or any senator from that circuit, but to no avail.

Democrats, too, became frustrated with the relationship Hatch had with Clinton, after Clinton consulted with him about whether to nominate Bruce Babbitt to the Supreme Court, a choice Hatch counseled against. But Hatch also suggested Ruth Bader Ginsburg in 1993, despite her progressive views, and assured Clinton her appointment would go smoothly.

The Impeachment Trial of President Clinton

In early 1999, the Senate served as the jury in the impeachment trial of President Clinton. Judiciary Committee member Senator Patrick Leahy (D-Vermont) was one of a number of senators who spoke to the gathered Senate, arguing from his experience as a former prosecutor and the testimony of other prosecutors before the House Judiciary Committee

that the charges against Clinton were not strong enough to merit prosecution. His Republican committee colleague Arlen Specter from Pennsylvania, likewise argued impeachment was not the proper course of action in response to Clinton's actions, but condemned the proceedings as a "sham trial" because of the Senate's refusal to hear from live witnesses.

SEN. ARLEN SPECTER (2005-2007)

In 2005, Hatch's fellow Republican Arlen Specter took over leadership of the Judiciary Committee, having served on the committee for 30 years. As a member, he was involved in many areas, including oversight of the FBI. He held hearings over the FBI's handling of various matters, including the Atlanta Olympics bombing and revelations that FBI agent Robert Hanssen was spying for Russia. In 2001, he cosponsored legislation with fellow committee member Dick Durbin proposing an independent Inspector General for the FBI. While the measure did not pass, Specter's continued hearings into the FBI led to changes in its procedures.

As a Committee member, Specter had opposed the appointment of Robert Bork to the Supreme Court, and later decried Anita Hill as having perjured herself during the Clarence Thomas hearing. As chair, he would preside over the appointments of Samuel Alito to the Supreme Court and John Roberts to its Chief Justice. Years later, he would also propose legislation requiring Supreme Court sessions to be televised. "The Supreme Court makes pronouncements on constitutional and federal law that have direct impact on the rights of Americans," he said. "Those rights would be substantially enhanced by televising the oral arguments of the Court so that the public can see and hear the issues presented." The Supreme Court opposed the bill and it failed.

In his term as chair, Specter penned a revision to the *USA PATRIOT ACT* which would allow the Bush Administration to appoint interim U.S. Attorneys without term limits or a Senate confirmation process. He also sponsored legislation allowing members of the U.S. military to appeal courts-martial to the Supreme Court, and condemned the Bush Administration over revelations that the government was wiretapping U.S. citizens without warrants. In 2010, he would hold a further hearing on surveillance of U.S. citizens, eventually offering an amendment to the *Wiretap Act* making it illegal for anyone to capture images of the inside of someone's home. And as ranking member, he cosponsored legislation with then-Chair Patrick Leahy requiring companies to protect the personal data of its consumers and to notify them of any data breaches.

SEN. PATRICK LEAHY (2001-2003, 2007-2015)

As a senator and member of the Judiciary Committee, Vermont Senator Patrick Leahy prided himself on putting the institution of the Senate first. So, when Sandra Day O'Connor was nominated to the Supreme Court by President Ronald Reagan, Leahy not only supported her nomination, but pushed for her to receive a unanimous vote of support from his colleagues in the Senate, arguing that her work as Supreme Court justice was of such significance it demanded unanimous acclamation. In 2005, as ranking member, he would similarly back the Republican appointment of John Roberts to replace William Rehnquist as

Chief Justice, over opposition within his own party, saying he believed Roberts' appointment too important a vote to break strictly along party lines.

In 2009 and 2010, Leahy also oversaw the appointments to the Supreme Court of law professor Elena Kagan and Sonia Sotomayor, the first Hispanic justice in U.S. history.

In the aftermath of the September 11th attacks, Leahy refused as chair to rush through the Bush administration's anti-terrorism legislation, adding sunset measures that prevented them from continuing in perpetuity, ongoing judicial review, and compensation for victims' families. In 2013, he also joined a group of 24 senators in calling on the federal government to begin tracking anti-Sikh, anti-Hindu, and anti-Arab hate crimes, noting how members of these groups had faced rising persecution since 9/11, despite having no cultural or religious connections to Islamic terrorism.

In the first decade of the 21st century, Leahy also collaborated with his colleague and former Chair Orrin Hatch (R-Utah) on a number of pieces of legislation meant to curb piracy and copyright infringement.

SEN. CHUCK GRASSLEY (2015-2019)/SEN. LINDSAY GRAHAM (2019-2021)

Both as a member of the Judiciary Committee and as chair, Iowa Senator Chuck Grassley focused on a number of issues, including the rights and support of victims of crime, the protection of children against online exploitation, and funding for police. In 1989, he also penned the *Whistleblower Protection Act*, which would provide protection for federal employees who report on abuse of authority or mismanagement within the federal government.

Grassley's Republican colleague from South Carolina Lindsay Graham, who would replace him as chair, has been a strong advocate of immigration reform on the Committee, pushing for stiff penalties upon any who enter the United States without a visa, and exploring pathways to citizenship for law-abiding undocumented immigrants who have been in the country for many years.

Supreme Court Nominations

While Supreme Court nominations are always been a major aspect of the work of the Judiciary Committee, the years chaired by Grassley and Graham were particularly defined by issues surrounding Court nominations.

In 2016, Grassley and Senate Majority Leader Mitch McConnell refused to allow Democratic president Barack Obama's nominee Merritt Garland to be considered by the Judiciary Committee, arguing that a new Court appointment should not be considered until after the presidential election, which was then 10 months away. It was the first time in Senate history that a president's nomination to the Supreme Court had been refused consideration. Four years later, despite having insisted that its decision to stop Garland because of the coming election could also apply to Republican nominations near an election as well, Judiciary Chair Lindsay Graham pushed through the nomination of Amy Coney Barrett less than two months before the 2020 election.

Grassley's term would also see the nomination in 2018 of Justice Brett Kavanaugh, whose hearing process would in many ways mirror that of Clarence Thomas 40 years earlier. After the end of a four-day committee hearing with Kavanaugh, news broke that psychology professor Dr. Christine Blasey Ford had written to Ranking Member Dianne Feinstein six weeks previously alleging that Kavanaugh had raped her when they were both in high school. When the story broke, two other women also came out with their own accusations of sexual assault.

As with Thomas, the Committee invited Ford and Kavanaugh to testify. Ford's honesty and sobriety were questioned, and she became the subject of death threats. Meanwhile Kavanaugh attacked Democrats on the Committee, saying the hearing was a "calculated and orchestrated political hit" that had "destroyed my family and my good name."

In the end, the Committee approved Kavanaugh's nomination 11-10, and Kavanaugh was approved by the full Senate 50-48-1, the smallest margin in 130 years.

Between 2017 and 2020, the Senate Judiciary Committee would also consider and approve the nominations of roughly 25 percent of the country's federal judges. It was the largest number of federal judicial confirmations ever until the Biden Administration.

The First Impeachment Trial of Donald Trump

After stories broke in 2020 that President Donald Trump may have threatened to withhold aid to Ukrainian President Volodymyr Zelenskyy until he assisted him in his investigation of former Vice President Joseph Biden and his son Hunter, the House of Representatives voted to impeach him. Senate Judiciary Chair Lindsay Graham denounced the impeachment efforts as "based on the thinnest of pretenses" and "an abuse of power" on the part of the Democrats. In the end, both of the articles to impeach failed, with the vote breaking almost entirely along party lines.

SEN. DICK DURBIN (2021-2025)

Legislation

Illinois Senator Dick Durbin has served on the Judiciary Committee for nearly 30 years. As a member of the Committee, he been heavily involved in immigration issues, advocating for the passage of the *Dream Act*, which would grant citizenship to undocumented immigrants brought here as children by their families. As co-writer of the bill, Durbin held the Senate's first hearing on the *Dream Act* and invited an undocumented immigrant to give testimony—the first time an undocumented immigrant was ever invited to speak to U.S. senators.

Criminal Justice

Over the course of his tenure on the Judiciary Committee, Durbin invested a tremendous amount of time and energy into criminal justice reform, serving as lead on a number of bills concerned with the victims of crime and the criminal justice system. Concerned with the extreme sentencing disparities between those convicted of being in possession of crack cocaine versus powder cocaine—which saw African Americans incarcerated at six times

the rate of White Americans—in 2010, Durbin penned the *Fair Sentencing Act*. This act eliminated the five-year mandatory minimum sentence for possession of crack cocaine and reduced the sentencing ratio between crack and powder cocaine from 100:1 to 18:1.

Eight years later, Durbin followed up with the *First Step Act*, which applied the *Fair Sentencing Act* retroactively to anyone currently in prison. The *First Step Act* also called for the development of a system to assess the risks and needs for all those in federal prisons, so as to better prevent recidivism, expanded the federal prison system's practice of compassionate release for the terminally ill, gave female prisoners with greater access to female hygiene products, and offered other measures meant to help both the incarcerated and prison staff. Notably, Durbin drew together bipartisan support for the *First Step Act*, including from then-President Donald Trump.

As Judiciary Committee Chair, Durbin also called for the replacement of the Director of the Bureau of Prisons amid widespread allegations of corruption and mismanagement, and created an ombudsman position for the country's federal prisons to which both prison staff and the incarcerated could go with any safety or welfare concerns.

Durbin's tenure as Chair would also see Cory Booker (New Jersey) become the first African American to Chair the Subcommittee on Criminal Justice, and Alex Padilla (California) the first Latino Senator to Chair the Immigration Subcommittee.

Justice Ketanji Brown Jackson and other Judicial Nominations

During Durbin's four years as Chair of the Judiciary Committee, he was asked by the Biden Administration to consider an extraordinary number and range of federal judicial nominees—26 percent of the total number of federal judges. It is the most judges ever appointed by one administration and involved historic diversity. Under Chair Durbin, the Committee oversaw the appointments of more Black women to the federal courts than all previous administrations combined, as well as many firsts for different individual courts, such as the first LGBTQ judge in some jurisdictions and the first person of color or member of a specific ethnic or religious group in others. Together these appointments constitute the most radical demographic adjustment of the federal judiciary in U.S. history. And Chair Durbin, who took the job of chair at a time when the government was deeply divided along party lines, managed to achieve bipartisan support for an overwhelming percentage of those nominees.

As Chair, Durbin also oversaw the 2022 appointment process of Supreme Court justice Ketanji Brown Jackson—the first public defender ever to be named a Supreme Court justice, as well as the Court's first Black woman. And once again, despite the highly partisan times in which her nomination occurred, Jackson's nomination received support from three Republicans and the Senate's two independents on the way to her 53-47 confirmation.

In light of reports of Supreme Court Justice Clarence Thomas' participation in Republican donor summits, as Chair, Durbin pushed for the passage of the *Supreme Court Ethics, Recusal, and Transparency Act*, which would create a code of conduct for Supreme Court justices and create a mechanism for investigating violations and possible wrongdoing.

Faced with growing issues around Big Tech, social media, AI, and privacy, Democratic and Republican members of the Judiciary Committee have also pushed for greater examination of companies involved in social media and AI, and for more measures to ensure the safety of children online. In January of 2024, the Judiciary Committee held a public hearing in which they questioned the executives running Meta, X, Discord, TikTok, and Snap.

CONCLUSION

In one sense, every Senate committee walks its own road, with challenges, champions, and defining moments particular to its own portfolio. Amongst the members of the Senate Judiciary Committee have been not only future presidents and vice presidents, but also some of the Senate's most important and visionary voices.

But the range of issues that the Judiciary Committee represents, from criminal justice to immigration law to the Constitution to court appointments, also offer a unique glimpse of both the Senate as a whole and our American experiment.

While the modern history of the Senate Judiciary Committee might be characterized in many ways, at a broad level, its story has been about the relationship (and sometimes conflict) between institution and party politics. Chairs like Patrick Leahy, Dick Durbin, Chuck Grassley, and Orrin Hatch entered the Senate at a time when the institution and the relationships amongst senators was understood to matter more than politics. "You can question a colleague's position," Senate Majority Leader Mike Mansfield had advised new senators in the 1970s, "but you never question their motivation." Even elections did not outweigh the importance of those relationships: It was understood that a senator would never publicly campaign against other senators, because to do so would hurt your ability to work together afterwards.

Recent decades have seen that comity fractured at times in the Judiciary Committee as in Congress as a whole, with maneuvering and political undermining that would have been unheard of in prior generations. And yet, as the bearers of the longer institutional memory have retired, others from both parties have also stepped forward to preserve the respect for colleagues and the institution which has been at its core.

As after every election, the page turns again now. New issues will present themselves, and new voices and advocates emerge to tackle them. Issues of technology and privacy, which have united the Senate Judiciary Committee in recent years, seem especially likely to demand more of its attention.

The relationship between the institution of the Senate and the pressures of the politics of its parties seems likely to continue to play an important role in the committee as well. In the final chapter of his memoir *The Road Taken*, former Chair Patrick Leahy speaks of people's doubts about the institution of the Senate, saying he chose to be optimistic. "One person with courage makes a majority," he wrote. "If there are still SENATORS here" — people who are able to see beyond the fierce partisanship of the political contest—"that means there can be more of them. And that's what we need."