

dent Reagan to the district court in 1970 and to the Court of Appeals for the Third Circuit in 1981. He has really been performing services as the 101st Senator, and by way of full disclosure I have known Judge Becker since the fall of 1950, when he was a freshman at the University of Pennsylvania and I was a senior, and we have been good friends ever since.

Judge Becker, thank you for your service to the United States in so many capacities.

Judge BECKER. Thank you, Mr. Chairman.

Chairman SPECTER. We have a procedure for five minutes. I don't intend to bang the gavel on any of you judges, and not because you are judges, but because my gavel is almost broken.

Judge Becker.

STATEMENT OF EDWARD R. BECKER, SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, PHILADELPHIA, PENNSYLVANIA

Judge BECKER. Mr. Chairman, Senator Leahy and other members of the Committee, Sam Alito became my colleague when he joined our court in 1990. Since that time, we have sat on over a thousand cases together, and I have therefore come to know him well as a judge and as a human being.

Many do not fully understand the intensity of the intellectual and personal relationship among appellate judges. We always sit together in panels of three and, in the course of deciding and writing up cases, engage in the most rigorous dialog with each other. The great violinist Isaac Stern, describing an afternoon of chamber music, once opined that after such a session, one knows his fellow quartet members better than a man knows his wife after 30 years of marriage.

Now, this analogy, hyperbole aside, vividly describes the intense relationship among appellate judges. I therefore believe myself to be a good judge of the four matters that I think are the central focus of this Committee as it decides whether to consent to this nomination—Sam Alito's temperament, his integrity, his intellect and his approach to the law.

First, temperament. Sam Alito is a wonderful human being. He is gentle, considerate, unfailingly polite, decent, kind, patient and generous. He is modest and self-effacing. He shuns praise. When he had completed his tenth year of service on our court, Sam declined my offer extended as chief judge—I was then the chief judge of the court—to arrange the usual party to observe 10-year anniversaries. Sam was uncomfortable at the prospect of encomiums to his service.

Sam has never succumbed to the lure of big-city lights. He has a sense of place, which for him is not nearby New York City, but New Jersey, which to him has always been home.

Finally, there is an aspect of appellate judging that no one gets to see, no one but the judges themselves—how they behave in conference after oral argument, at which point the case is decided, and which I submit is the most critically important phase of the appellate judicial process.

In hundreds of conferences, I have never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and tempered tones.

Second, integrity. Sam Alito is the soul of honor. I have never seen a chink in the armor of his integrity, which I view as total. That opinion is not undermined by the furor over the Vanguard issue, by which I remain baffled. My wife holds Vanguard mutual shares which I report on my financial disclosure form. However, I do not identify Vanguard on my recusal list because I am satisfied that my wife possesses no ownership interest in the Vanguard Management Company, which is what controls the recusal determination. She has never received a proxy statement, an opportunity to vote for directors, or any indicia of ownership, other than her aliquot share and the fund to the extent of her investment. I believe that the view of Dean Rotunda which is in your record explains why Judge Alito was not required under the law to recuse himself in the suit against Vanguard.

Third, intellect. Judge Alito's intellect is of a very high order. He is brilliant, he is highly analytical, and meticulous and careful in his comments and his written work. He is a wonderful partner in dialog. He will think of things his colleagues have missed. He is not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague. Contrary to some reports, Sam does not dissent often. According to our court statistics, in the last 6 years he has dissented only 16 times, a little over two cases per year. That is the same number that I have dissented, and fewer than a number of our colleagues.

In my view, Sam Alito has the intellect to sit on the Supreme Court. I know all of its members. I know them reasonably well, and in my view he will be a strong and independent Justice, his own man. Finally, Sam's intellect is not abstract, but practical. He does not mistake the obscure for the profound.

Fourth, approach to the law. As I address this topic, I am acutely aware of the deep concern of the members of the Committee about this subject. I am also aware that my role here is to testify to fact, not to opinion, and hence I will express neither normative or predictive judgments.

The Sam Alito that I have sat with for 15 years is not an ideologue. He is not a movement person. He is a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants.

He was a career prosecutor, but in the numerous criminal cases on which we have sat together, if the evidence was insufficient or the search was flawed, he would vote to overturn the conviction. And if the record did not support summary judgment against the plaintiff in an employment discrimination or civil rights case, he would vote to reverse. His credo has always been fairness.

Now, I know that there has been controversy about certain ideological views expressed in some 20-year-old memos. Whatever these views may be, his judging does not reflect them. I think that the public does not understand what happens when you become a judge. When you take that judicial oath, you become a different

person. You decide cases not to reach the result that you would like, but based on what the facts and the law command. What you decide as a judge are not general principles, but the case in front of you. You do it as narrowly as possible. That is what Sam Alito always does, with great respect for precedent. Sam Alito has been faithful to that judicial oath.

Now, my final point relates to another facet of his approach to the law, and the best calipers that I could find to measure his approach to the law was to compare it with my own. I have been a Federal judge for 35 years, one week and one day. My opinions would fill many book shelves, but I think that I am fairly viewed as a mainstream or centrist judge.

A computer survey run by our court librarian received 1,050 opinions in cases on which Sam Alito and I sat together. In these cases, we disagreed 27 times, which is probably about the same number that I would have disagreed with most other colleagues. Some cases turned on a reading of the record, others on how rigorously or flexibly we interpreted the reach of a statutory or constitutional provision or a State court's jurisprudence, or applied our usually deferential standard of review. But in every case on which we differed, Sam's position was closely reasoned and supportable either by the record or by his interpretation of the law, or both.

The short of it, members of the Committee, is that Sam Alito is a superb judge in terms of temperament, integrity and intellect, and he has exhibited a careful, temperate, case-by-case approach to the law.

Thank you for the opportunity to address you.

[The prepared statement of Judge Becker appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Judge Becker. We now turn to Chief Judge Anthony Scirica, who, like Judge Becker, has known Judge Alito on the Third Circuit for the 15 years of Judge Alito's service there. Judge Scirica became Chief Judge in May of 2003, succeeding Chief Judge Edward Becker.

Judge Scirica has a bachelor's degree from Wesleyan, 1962; Michigan Law School, 1965; appointed to the district court by President Reagan in 1984, and to the circuit court also by President Reagan in 1987.

Thank you very much for coming in, Judge Scirica, and we look forward to your testimony.

STATEMENT OF ANTHONY J. SCIRICA, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, PHILADELPHIA, PENNSYLVANIA

Judge SCIRICA. Mr. Chairman, thank you very much. For the last 15 years, I have worked with Judge Alito. For 15 years, we have decided thousands of cases while serving on the same court of appeals. On most cases, we have agreed, but not always. Judges don't always agree on every case.

As the Chief Justice remarked last summer, much like a baseball umpire, a judge calls balls and strikes. If the pitch is down the middle or way outside, the call is straightforward, but many pitches are on the corners and then the calls are difficult. These