AMERICAN BAR ASSOCIATION

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STATEMENT

OF

STEPHEN L. TOBER

STANDING COMMITTEE ON FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF

THE HONORABLE JOHN G. ROBERTS, JR.

to be

CHIEF JUSTICE OF THE UNITED STATES

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 15, 2005

Mr. Chairman and Members of the Committee:

My name is Stephen L. Tober of Portsmouth, NH, and it is my privilege to chair the ABA Standing Committee on Federal Judiciary. I am joined by Thomas Z. Hayward, Jr., of Chicago, my immediate predecessor, and Pamela A. Bresnahan, who represented the District of Columbia Circuit on the 2004-05 Standing Committee.

For more than 50 years, the ABA Standing Committee has provided a unique and comprehensive examination of the professional qualifications of candidates for the Federal bench. It is composed of fifteen distinguished lawyers who represent every judicial circuit in the United States and who each volunteer hundreds of hours in public service to our profession. The Standing Committee's evaluation of a nominee is based on its thorough, non-partisan, non-ideological peer review, which is conducted by using long-established standards that measure the nominee's integrity, professional competence and judicial temperament.

In the sense that a major portion of the investigation consists of scores and scores of interviews with judges and lawyers who know the nominee, our evaluation is very much the voice of the bench and bar of this nation.

Over the course of its history, the Standing Committee has never proposed a candidate of its own, nor does it do so now. Its function, rather, is to receive the name of each nominee, investigate and evaluate the professional qualifications of each nominee, and then rate that nominee either "Well Qualified," "Qualified" or "Not Qualified."

The Standing Committee's investigation of a nominee for the United States Supreme Court is based on the premise that such an individual must possess exceptional professional qualifications. The significance, range and complexity of issues that such a nominee will face on

that Court demand no less. As a result, our investigation of a Supreme Court nomination is more extensive and procedurally different from our other investigations:

- All circuit members on the Committee contact by letter or by phone a wide range of people within their circuits who are most likely to have information regarding the nominee's professional qualifications. Each circuit member then conducts confidential interviews with those individuals who have personal knowledge of the nominee. It is not unusual for the Standing Committee to conduct hundreds of such interviews during the course of a Supreme Court investigation.
- There are at least two reading teams that review the nominee's legal writings. A team of academicians from a respected law school examines the nominee's legal writings for quality, clarity, knowledge of the law, and analytical ability. This reading team is composed of professors who are recognized experts in various substantive areas of law. A second reading team composed primarily of pre-eminent practicing lawyers with Supreme Court experience examines the nominee's legal writings from the perspective of practitioners who are fully familiar with appellate practice at the highest level. All reading teams analyze the nominee's writings in detail, and their findings are reported to the full Committee for careful consideration.[1]

After the comprehensive investigation is completed, the findings are assembled into a detailed, confidential report. Each member of the Standing Committee reviews the final report thoroughly and individually evaluates the nominee using three rating categories: "Well Qualified," "Qualified," and "Not Qualified." Needless to say, to merit an evaluation of "Well Qualified,"

[1] In Judge Roberts' case, the chair of the practicing lawyers' reading team—Professor Charles Fried—has indicated that he will be testifying before this Committee on issues that are beyond the scope of those considered by the ABA Standing Committee. Professor Fried acknowledges that he does so as a private citizen, and not on behalf of the Standing Committee or the American Bar Association.

the nominee must possess professional qualifications and achievements of the highest standing.

With respect to Judge Roberts' nominations to the Supreme Court, the Standing Committee has rated him twice. When he was nominated by President Bush to be Associate Justice in July, the 2004-05 Standing Committee, chaired by Tom Hayward, undertook an extensive investigation of Judge Roberts' integrity, professional competence, and judicial temperament in order to evaluate whether he was professionally qualified for the position. That committee reached out to over 1,500 individuals to identify and interview as many people as possible who knew Judge Roberts professionally. Its evaluation of Judge Roberts was based on interviews with more than 300 judges, lawyers, and community leaders throughout the nation; reviews of Judge Roberts' decisions and selected substantive memoranda from the National Archives prepared by both reading groups and individual circuit members; and a personal, detailed interview with the nominee.[2] The 2004-05 Standing Committee unanimously concluded that Judge Roberts was "Well Qualified" to be Associate Justice of the Supreme Court.

When the President thereafter nominated Judge Roberts to be Chief Justice of the United States on September 5, the 2005-06 Standing Committee, which took office in mid-August with seven new members, including myself as chair, performed a supplemental investigation directed solely at determining whether the nominee had the requisite additional leadership and administrative skills that would be required of him as Chief Justice of the United States.

The Standing Committee had only a handful of days to complete its supplemental evaluation. Nonetheless, the supplemental effort included interviews with well over 80 judges, lawyers, and community members who had first-hand knowledge of John Roberts' leadership and management skills; a review of the background materials and report prepared by the

[2] Thomas Z. Hayward Jr., and the District of Columbia and Federal Circuit Representatives, Pamela A. Bresnahan and Sheila Slocum Hollis, conducted the first interview of Judge Roberts.

2004-05 Standing Committee; and a personal interview with Judge Roberts.[3] On the basis of its supplemental investigation, the 2005-06 Standing Committee unanimously concluded that Judge Roberts is "Well Qualified" to handle the administrative and leadership responsibilities of Chief Justice of the United States.

Our two ratings, when considered together and in conjunction with the accompanying detailed letter to your Committee, which we ask to be made a part of this hearing record, provide the Senate Judiciary Committee with our comprehensive, independent peer review of Judge Roberts.

Allow me to summarize. The ABA Standing Committee is fully satisfied that, by virtue of his academic training, his service in the Federal government, his experience in private practice, his scholarly writings, his distinguished service for the past two years on the Federal bench, and his administrative and leadership skills, Judge Roberts meets the highest standards required for service on the United States Supreme Court as Chief Justice. He enjoys the admiration and respect of his colleagues on and off the bench. And he is, as we have found, almost the very definition of "collegial."

Mr. Chairman, the goal of the ABA Standing Committee has always been--and remains--in concert with the goal of your Committee: to assure a qualified and independent judiciary for the American people.

Thank you for the opportunity to present these comments.

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[3] The 2005-2006 District of Columbia and Federal Circuit representatives, Marna S. Tucker and John Payton, interviewed Judge Roberts after he was nominated to be Chief Justice of the United States.