

nothing in the background of a disqualifying nature and it was pretty routine. I mention this because I don't want anybody to read more into what is just, if anything, a housekeeping chore in this case.

Chairman SPECTER. Thank you very much, Senator Leahy.

We have six panels of witnesses, a total of 31 witnesses. It is our hope and expectation that we can conclude our work today. And while Senators have rights to question, we customarily have a 5-minute rule. To the extent that we can move ahead promptly, it would be appreciated.

We start first with the American Bar Association. The Chairman of the ABA Standing Committee on the Federal Judiciary is Mr. Steve Tober, undergraduate and law degrees from Syracuse University, law review, deeply involved in the New Hampshire and New England legal communities, former Chairman of the Committee to Redraft New Hampshire's Rules of Professional Conduct.

Thank you for joining us, Mr. Tober, and thank you for your service. And now we look forward to your testimony.

All witnesses will be limited to 5 minutes, which is standard under our rules.

STATEMENT OF STEPHEN L. TOBER, CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE FEDERAL JUDICIARY, PORTSMOUTH, NEW HAMPSHIRE; ACCOMPANIED BY THOMAS Z. HAYWARD, PAST-CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE FEDERAL JUDICIARY, CHICAGO, ILLINOIS; AND PAMELA A. BRESNAHAN, D.C. CIRCUIT REPRESENTATIVE, AMERICAN BAR ASSOCIATION, WASHINGTON, D.C.

Mr. TOBER. Thank you, sir.

Mr. Chairman and members of the Committee, my name is Stephen L. Tober, of Portsmouth, New Hampshire, and it is indeed my privilege to chair the ABA Standing Committee on the Federal Judiciary. I am joined by Thomas E. Hayward, Jr., of Chicago, sitting to my right, my immediate predecessor, and by Pamela Bresnahan, who was the 2004–2005 District of Columbia Circuit member, also of the 2004–2005 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 comprised of 15 distinguished lawyers who represent every judicial circuit in the United States and who individually volunteer hundreds of hours in public service to our profession. This Committee conducts a thorough, non-partisan, non-ideological peer review, and it does so by using long-established standards that measure the nominees' 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, it is very much the voice of the bench and bar of this Nation.

Over the course of its history, the ABA Committee has never proposed a candidate of its own, nor do we 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 vote. While factors used in considering lower Federal court nomina-

tions obtain here as well, the committee's investigation of a nominee for the United States Supreme Court is further 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 demands no less.

As a result, our approach to a Supreme Court nomination has two procedural differences. First, all circuit members of the Committee conduct confidential interviews within their circuits; and second, the Committee works with at least two reading groups composed of a team of academicians and a team of practitioners who analyze the nominee's writings in detail and report their findings to the full committee.

After the comprehensive investigation is completed and assembled, each member of the Standing Committee reviews the 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, the nominee must possess legal ability, experience, and reputation of the highest standing.

With respect to Judge Roberts's nominations to the Supreme Court, the Standing Committee has rated him twice. When he was first nominated by the President to be Associate Justice, on July 29th, the 2004–2005 committee, chaired by Tom Hayward, undertook a complete evaluation and measured the nominee's integrity, professional competence, and judicial temperament. That evaluation included interviews with more than 300 judges, lawyers, and community members throughout the Nation; a review of his decisions and selected substantive memoranda from the National Archives by both our reading groups and individual circuit members; and an in-person detailed interview with Judge Roberts. Based upon that evaluation, the 2004–2005 Committee found that Judge Roberts was unanimously well-qualified to be Associate Justice of the Supreme Court.

When the President thereafter nominated Judge Roberts to be Chief Justice, on September 6th, the 2005–2006 committee, which took office in mid-August with seven new members, performed a supplemental evaluation. That supplemental effort was focused solely upon the nominee's qualifications to perform the administrative and leadership skills incumbent upon the Office of Chief Justice of the United States. This new Committee had, essentially, a handful of days to perform that supplemental evaluation. Nonetheless, that supplemental effort included interviews with well over 80 judges, lawyers, and community members; a review of the materials gathered in the original report; and an in-person interview with Judge Roberts. Based upon that supplemental evaluation, and even with the change in membership, Judge Roberts was found by the 2005–2006 Standing Committee to be unanimously well-qualified to perform the administrative and leadership responsibilities required of the Chief Justice of the United States.

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

Allow me to summarize: The ABA Standing Committee is fully satisfied that Judge Roberts meets the highest standards required for service as Chief Justice of the United States. He has the admiration and respect of his colleagues on and off the bench. And he is, as we have found, 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 appear here. We are more than happy to entertain any questions.

[The prepared statement of Mr. Tober appears as a submission for the record.]

Chairman SPECTER. Thank you, Mr. Tober, for your testimony. Thank you, Ms. Bresnahan, for your contribution; Mr. Hayward, for your contribution. We thank the ABA for your hard work and a very comprehensive report. Obviously a great deal of effort has gone into it, with the very extensive interviews which you have conducted.

Senator Leahy?

Senator LEAHY. They are probably going to feel left out and disappointed if we don't grill the three of them the way we grilled Judge Roberts the last few days.

Ms. BRESNAHAN. I don't think so.

Senator LEAHY. But on their behalf, I am willing to waive that.

Mr. TOBER. We will take that risk, Senator.

Chairman SPECTER. A vote has just begun. I think we can move ahead into the next panel unless any of the members have any questions which are important to be asked.

Senator Biden?

Senator BIDEN. I just want to reiterate, we know how much work this entailed. I mean, it was an incredible amount of work. And truly, we thank you. There have been debates in this Committee in the past about the relevance and importance of the ABA recommendation. I think it is important, what you do; I think we all do now. And I want to thank you. It is a whole lot of work.

And thank you, Steve, for your efforts.

Mr. TOBER. Thank you, sir.

Chairman SPECTER. Senator Hatch?

Senator HATCH. Let me just second that. I have certainly appreciated over the years the good work you are doing. I have to say that over the last number of years it has just been exemplary in every way. I just want you all to know that, and we appreciate it. We know all the effort and especially, Ms. Bresnahan, the effort that you have put in on a number of the judges that have come up in this area. You have worked your heart out, and I have to say I want to compliment.

Ms. BRESNAHAN. Thank you, Senator Hatch.

Chairman SPECTER. Senator Sessions?

Senator SESSIONS. Mr. Chairman, I would also like to thank these members for their work and would just point out that, in the course of making these evaluations, you talked to the judges, lawyers on both sides, against whom they litigated. You know from your own personal experience normally who will give a fair and

honest evaluation and place good judgment on a person's professional skills. So I do think it provides a lot of advantages for our Committee, and I salute that.

Secondly, let me ask if one of you would comment just as a professional lawyer who has been involved in the practice for many years—how do you feel about the tendency that sometimes occurs to judge a lawyer by their client rather than how they perform honorably and effectively in court? Would you share your thoughts about that subject?

Mr. TOBER. I guess what I would say, Senator, is that a lawyer is an advocate in the first instance and an officer of the court as well. And the roles are distinct, well-defined. And if we only defended those that didn't need our help, we wouldn't be doing very much for the American people.

The role of a judge is very different. By definition, that person should know nothing about the case coming before them, should have no judgment about the parties either way, and must be fundamentally fair at the end of the day so that litigants and lawyers feel they've been treated properly in our system. The only thing, Senator, that keeps our buildings of justice standing is the respect of the American people, and that is the product that comes out of that building from judges.

Senator SESSIONS. And you would have some concern that if a judge judged lawyers by their clients and didn't give them the full fair hearing in court, I guess you would say.

Mr. HAYWARD. That is true, Senator, and I adopt the comments of Steve Tober. And I would even add to that. You should not judge it by who the lawyer represents because the lawyer, as you have heard over the last several days, is there as an advocate.

Chairman SPECTER. Thank you, Senator Sessions.

Senator LEAHY. I didn't want by my saying there would be no questions to suggest that we don't have appreciation. I have been Chairman of this Committee as have several others here, and we do know the work, we do know a number of instances where you have gone back and followed up on things. It is not easy. I should note for the people who are watching this, you don't get paid for doing this.

Mr. TOBER. That is correct, sir.

Senator LEAHY. In fact, we couldn't begin to afford it, with the fees of some of you, if you did. You do this pro bono. It is a tremendous service to the Senate, but it also a tremendous service to the bar overall, and I thank you for it.

Mr. HAYWARD. Thank you, Senator.

Mr. TOBER. Thank you, Senator.

Ms. BRESNAHAN. Thank you, Senator.

Chairman SPECTER. It is a high compliment to have no questions, or few questions.

Senator SESSIONS. Could I ask one more?

Senator LEAHY. We are diminishing the compliment now.

Senator SESSIONS. With regard to the lawyers and judges and others you interview, isn't it true that sometimes they are more willing to confide in you if they have a problem that they might share with someone else?

Mr. TOBER. I believe that is true, Senator. Tom served 6 years before being Chair. I served three as a member. Pam has been on for three. We all have had experience in talking to judges, to lawyers, to other community members who feel very comfortable understanding that what they tell us remains in the strictest of confidence, and we are able to do a true peer review because of that. I thank the Senator for the opportunity to explain that. We do get information of the most important kind from the process that we engage in.

Chairman SPECTER. Thank you very much, Mr. Tober, Ms. Bresnahan, and Mr. Hayward. Thank you.

Mr. TOBER. Thank you, Mr. Chairman.

Mr. HAYWARD. Thank you, Senator.

Ms. BRESNAHAN. Thank you.

Senator SESSIONS. I think that makes that report particularly valuable, Mr. Chairman.

Chairman SPECTER. I agree with you, Senator Sessions.

We will now call on our second panel, Governor Thornburgh, Congressman Lewis, Commissioner Braceras, Mr. Wade Henderson, Commissioner Kirsanow, and Judge Jones.

While the panel is being seated, just a word of explanation. There is a vote in process, but there is a second vote behind that so that when we break to vote, it is most efficient to vote a second time before returning. But we never know exactly when the first vote is going to end, so our time is best economized if we arrive there about 20 minutes after the vote has started so that we can return as promptly as possible.

Our first witness is the distinguished former Governor of Pennsylvania, Governor Dick Thornburgh, elected in 1978 and reelected in 1982, Attorney General for both President Reagan and President George H.W. Bush, Under Secretary General for Administration and Management of the United Nations, currently counsel for the international law firm of Kirkpatrick and Lockhart and a long-standing friend of mine. It began in 1966 when I campaigned with him in Squirrel Hill when he ran for the Congress of the United States.

Governor Thornburgh, thank you for joining us.

STATEMENT OF HON. DICK THORNBURGH, FORMER ATTORNEY GENERAL OF THE UNITED STATES, FORMER GOVERNOR OF PENNSYLVANIA, AND COUNSEL, KIRKPATRICK AND LOCKHART NICHOLSON GRAHAM, WASHINGTON, D.C.

Mr. THORNBURGH. I appreciate that, Mr. Chairman. Thank you, Chairman Specter, other distinguished members of the Judiciary Committee. It is my distinct honor and privilege to be here today in full support of Judge John G. Roberts's nomination to be the 17th Chief Justice of the United States.

I have known Judge Roberts as a friend and colleague for over 15 years and can attest to his outstanding personal characteristics and undoubted integrity. Perhaps more important for present purposes, Judge Roberts's extraordinary legal skills and keen intellect are undisputed.

Before his Senate confirmation by unanimous consent over 2 years ago to be a judge on the D.C. Circuit Court of Appeals, he