

Our next witness is Professor Judith Resnik, the Arthur Liman Professor of Law at Yale. Interesting to see that they have a chair for Arthur Liman, who was in law school when I was there. She teaches on the feminist theory gender procedure, co-chair of the Women's Faculty Forum, a member of the Ninth Circuit Gender Bias Task Force—that is quite a title—and co-author of the monograph "Effects of Gender."

Thank you very much for coming again, Professor Resnik, and we look forward to your testimony.

STATEMENT OF JUDITH RESNIK, ARTHUR LIMAN PROFESSOR OF LAW, YALE LAW SCHOOL, NEW HAVEN, CONNECTICUT

Ms. RESNIK. Thank you. I am honored to participate, and I have submitted a written statement for the record. In these 5 minutes—

Chairman SPECTER. It will be made a part of the record in full.

Ms. RESNIK. Thank you. I am going to make five fast points.

First, while I am here because I was invited by this Committee, we are all here in this room with a TV because the Constitution has invited us all. The Constitution has committed to the political branches of the United States the decision about who shall be our life-tenured judges. The President nominates, the Senate confirms. We are part of a national teach-in about America, its values, and what the courts stand for.

In recent years, the confirmation process has been criticized. Some have been difficult. But conflict is not an artifact of these cameras or of the conflicts over Bork and Thomas.

It goes back hundreds of years. Remember that in the 1790's, the Senate did not affirm the Chief Justice because they disagreed with John Rutledge's view of a treaty with England. In the 19th century, it was a debate about railroads and unions. We have seen time and again that we debate our values through this process.

So in other words, this hearing is not only about John Roberts, it is about us, Americans, what we care about for our system of justice. Point one.

Point two. This is no ordinary hearing, even though it is about a life-tenured appointment to the United States Supreme Court. This is about who is going to be the Chief Justice of the United States, the 17th person in our entire history to hold that position. The job of the Chief has not remained static. It has grown enormously over the 20th century. As a law professor of the Federal courts and of adjudication and civil procedure, we get to credit William Howard Taft and, most recently, the extraordinary work of William Rehnquist. The person who wears the robe of the Chief Justice, striped or basic black, doesn't only wear one hat, but many hats.

Senator Kennedy, Senator Thurmond talked about this person as the major symbol of justice in the United States. More than that, this person has enormous power over the administration of justice in the United States. In addition to being the head of the United States Supreme Court, this person is the CEO, the chief executive officer of the entire Federal judicial system—1,200 life-tenured judges, a budget of more than \$4 billion, a staff of more than 30,000 working in 750 courthouses around the United States, hearing hundreds of thousands of cases every year for all of us. The

Chief is the head of the policymaking body for the Federal judiciary. The Chief picks about 50 judges who sit on specialized courts dealing from foreign surveillance to product liability. The Chief picks 250 people to serve on the committees that make the rules that we all litigate by in the Federal system. The Chief sets the agenda for the Federal courts through its annual state of the judiciary address.

Now, this repertoire of powers is startling and actually anomalous for a democracy. Unlike what judges do in court, working openly, giving decisions, accountable, transparent, the administrative powers are not easily seen, probably not even known to lots of people. Further, unlike most administrators, the Chief has that power, at least under current practices, for life. The President has term limits. You all have to run. Even administrators move on. Not so under current practice.

Now, this package of power is not constitutionally mandated. The Constitution only mentions the Chief once, and it is in terms of the impeachment of the President. So given that this is the rare occasion of how much we think about the Chief Justice, I would be remiss not to mention that there is a chance that we could rethink the issue of the Chief Justice rotating 4-, 5-year, 6-year terms.

Quick recap: Point one, an opportunity to reflect on American values, take our constitutional temperature. Point two, an extraordinary appointment, the unique roles of the Chief.

Point three, therefore this is the occasion to figure out what the qualifications and requirements for the Chief are, which gets me to my answer, Point four, the Chief Justice of the United States should be the chief advocate for justice in the United States, should be the person insistent on access to the courts. Clear, the courts are vital. The Chief Justice should be committed to an independent and vibrant branch of Government called the third branch. The Chief Justice should come here telling you, the Congress, that it needs more resources, needs more access, should be the guardian at the gate of justice. We need the Chief to be sure that the President, the Executive, respects the independence of adjudication and that the Congress does as well. Most important, we need a Chief Justice who understands that law has to be a source of strength for those who don't have it, who need it; not only a source a strength for those who already have the resources, who can already get easily into court. Those are the litmus tests of which we can be proud.

My fifth and final point: What does the nominee's record tell us thus far? I have reviewed only written materials from 1981 to 1986, when he was a policymaking lawyer and signing them in his own name; only decisions on the D.C. Circuit; only published essays and transcripts—nothing from the SG's Office, nothing from private practice, because we can't know what his own personal views are.

I regret to report that, at least as of this set of materials, Judge Roberts has not expressed an affirmative vision of deep enthusiasm for the role of courts for adjudication for the needs that courts fill for ordinary Americans. When given the opportunity to argue for courts for their accessibility, when given the opportunity to argue the Department of Justice should lend its hand to the needy Ameri-

cans in need of more resources, when given the opportunity to interpret statutes to let us into court, in general the nominee has argued against the use of courts.

There has been some shorthand in these hearings for some of those decisions. I feel obliged to mention at least one other. There is a case called *Booker*, which is about a problem all of us face, where the courthouse door is closing on us because we have cell phones and credit cards that mandate we go to arbitration. There is an Equal Action to Justice case, there are several others. There are many instances in the record in which, at least thus far, the nominee has not—

Chairman SPECTER. Professor Resnik, would you summarize your testimony, please?

Ms. RESNIK. I am just closing right now. What we are looking for in the Chief Justice is a person who will celebrate courts and the role they play in a vital, economically stable democracy. And that is the question before the Senate: Is this person's record the one to commend this person for that job?

Thank you.

[The prepared statement of Ms. Resnik appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Professor Resnik.

Our next witness is Professor Christopher Yoo, professor at Vanderbilt University Law School, a distinguished academic record, a graduate of Harvard, an MBA at the Anderson School at UCLA and Northwestern Law School, clerked for Justice Kennedy, and practiced with Hogan & Hartson.

Thank you very much for coming in, Professor Yoo, and the floor is yours for 5 minutes.

**STATEMENT OF CHRISTOPHER S. YOO, PROFESSOR OF LAW,
VANDERBILT UNIVERSITY LAW SCHOOL, NASHVILLE, TENNESSEE**

Mr. Yoo. Thank you, Mr. Chairman, members of the Committee. It is an honor to be here to testify in support of John Roberts's nomination as Chief Justice of the United States.

I have had the chance to observe Judge Roberts from three different vantage points—first as an associate working the appellate group of Hogan & Hartson, second as a law clerk watching Judge Roberts argue before the Supreme Court of the United States, and third as a member of the faculty of the Vanderbilt University Law School reading his judicial opinions.

Because there are many other colleagues here in a position to testify to his excellence as an appellate advocate and to his performance on the Court of Appeals, I will focus my remarks on the time Judge Roberts and I spent at Hogan & Hartson. I am sure Senator Biden will be gratified to hear that, during his time at Hogan & Hartson, John Roberts demonstrated to me an open-mindedness, an ability to bring people together, that would serve him well as Chief Justice. He also treated everyone around him with respect and decency. I had the chance to witness these qualities first-hand in the support and compassion that he showed to me when a tragedy struck my family.