

So, former Chief Judge Becker, Chief Judge Scirica, Judge Barry, Judge Aldisert, Judge Gibbons, Judge Lewis, Judge Garth from Phoenix, Arizona, you lucky fellow, we thank you all very much for coming in.

We are going to take only a 10-minute break now. I didn't have a chance to discuss it with Senator Leahy, but we do not have the situation where Judge Alito is on the stand and he needs a little longer break. We will have fresh witnesses and tired Senators.

Ten minutes. We will resume at 5:20.

[Recess from 5:10 p.m. to 5:20 p.m.]

Chairman SPECTER. We will now proceed with panel three, and our first witness is Edna Axelrod, who has known Judge Alito for nearly 20 years, having worked with him when he was United States Attorney. She is a sole practitioner in South Orange, New Jersey. She served in the U.S. Attorney's Office from 1980 to 1983 and 1985 to 1994 during Judge Alito's tenure as U.S. Attorney. She had an important position as the Chief of the Appeals Division. She is a graduate of Duke's Law School, has a master's degree in Law from Temple, and we welcome you here, Ms. Axelrod.

We are going to have to be mindful of the time because we have four panels and about 23 witnesses.

Senator LEAHY. Are you going to finish tonight?

Chairman SPECTER. Well, I would like to, but it is subject to negotiation with you, Senator Leahy.

Senator LEAHY. Mr. Chairman, could I just ask unanimous consent that a number of letters I have and usual things to put in the record?

Chairman SPECTER. Sure. Without objection, they will be made a part of the record.

Thank you, Ms. Axelrod, for being here, and we are starting the clock at 5 minutes.

**STATEMENT OF EDNA BALL AXELROD, ATTORNEY AT LAW,  
LAW OFFICES OF EDNA BALL AXELROD, SOUTH ORANGE,  
NEW JERSEY**

Ms. AXELROD. Thank you. Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to appear here today to testify in support of the nomination of Samuel Alito. I am a former Chief of the Appeals Division at the United States Attorney's Office for the District of New Jersey, and for the past 11 years I have practiced as a Federal criminal defense attorney in northern New Jersey. At this point in these proceedings, I am sure there is little need to provide further comment concerning Judge Alito's legal acumen and outstanding accomplishments. However, I hope that the Committee may find it useful to hear the insights and observations of someone who worked closely with Judge Alito during the period of time that he served as United States Attorney for the District of New Jersey.

I first met Judge Alito when I joined the United States Attorney's Office in 1980. At that time, he was laboring in the Appeals Division, and I was in the Frauds Division. As a rookie, I quickly learned that if I ran into a particularly thorny legal or procedural problem, the most knowledgeable and approachable person to consult was Sam Alito. Although he soon left for the Solicitor Gen-

eral's Office, he returned in 1987 as United States Attorney. Shortly after his arrival, he began selecting the supervisory staff who would assist him during his tenure, and after reviewing my work in the Appeals Division, he asked me to serve as Chief of Appeals. This was particularly meaningful to me for two reasons: First, Judge Alito's estimable reputation as an appellate and Supreme Court advocate had preceded him, and the importance that he placed on the appellate process was well known. Second, in 1987, it was still unusual for women to be elevated to positions of authority in either Government or private offices, and I was gratified to see Judge Alito's appointments were based on merit, not gender.

As a member of the supervisor staff, I met frequently with Judge Alito, sometimes alone but usually with other division chiefs, to discuss ongoing significant criminal prosecutions, appeals, and investigative initiatives. During these meetings he openly invited the thoughts and input of everyone, asking subtle questions to guide the discussion to areas where he had concerns. Although it was clear that in the end he would make up his own mind, it was equally clear that there was no danger in advocating a position that he might ultimately reject. His goal was to get as much information as possible so his decisions could be firmly grounded in a comprehensive understanding of the law and the facts.

Consistent with this approach, his stewardship of the office was grounded in quiet confidence; his decisions and actions were measured and thoughtful—never impulsive or purely reactive. Although it is possible for U.S. Attorneys to use their offices as showcases for themselves and their further aspirations, that is, to enjoy and employ the limelight, this was never Judge Alito's way. It was always the work, not the image, that came first.

It is a well-known motto of Federal prosecutors—one most often heard on those occasions when they suffer a defeat—that “the United States wins when justice is done.” Under the leadership of Samuel Alito—and I should say “Judge Alito”—that was more than a catch-phrase. It was office policy. Judge Alito expected the assistants in his office to work hard to achieve and preserve convictions where the evidence supported guilt, but he also demanded that they remain ever mindful of the very great power that they wielded as Federal prosecutors and the need to use that power with appropriate discretion. Based on my experience in that office, I am confident that Judge Alito would approach the power of being on the Supreme Court with an equal if not heightened sense of responsibility and care.

As I noted earlier, I am present a criminal defense attorney, and I am also a lifelong Democrat. As such, I might be expected to have concerns about Judge Alito's nomination. However, in supporting his nomination, I am actually representative of a large number of former colleagues of Judge Alito of all political stripes who support his nomination because they know firsthand what kind of man he is. Those of us who know him know that he is not an ideologue and that he does not use his position to pursue personal agendas. We have seen his profound respect for the law and precedent and his unfailing respect for all participants in the criminal justice system, prosecutor, defense counsel, and defendants alike. We know him to be a man of unquestionable ability and integrity, one who ap-

proaches each case in an open-minded way, seeking to apply the law fairly.

The appointment of Sandra Day O'Connor to the Supreme Court in 1981 was an event of special importance to me. At the time I thought that the most significant fact was that she was a woman, the first woman on the Court, and, of course, that was truly ground-breaking. But in time I have come to appreciate that, more than her gender, it is her extraordinary mixture of character and intellect that has most profited our country. As a person of both great character and great intellect, Samuel Alito would be a worthy successor to Justice O'Connor, and I hope that he will be speedily confirmed.

Thank you very much.

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

Chairman SPECTER. Thank you, Ms. Axelrod.

Our next witness is Professor Michael Gerhardt, distinguished professor of constitutional law at North Carolina School of Law. Professor Gerhardt is the author of a number of books on constitutional law, served as special consultant to the White House on the nomination of Justice Stephen Breyer. He received his bachelor's degree from Yale in 1978, master's from the London School of Economics, and law degree from the University of Chicago in 1982.

Thank you for joining us, Professor Gerhardt, and the floor is yours for 5 minutes.

**STATEMENT OF MICHAEL J. GERHARDT, SAMUEL ASHE DISTINGUISHED PROFESSOR OF CONSTITUTIONAL LAW, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL LAW SCHOOL, CHAPEL HILL, NORTH CAROLINA**

Mr. GERHARDT. Thank you very much, Mr. Chairman, Senator Leahy, and other distinguished members of the Committee.

For almost 20 years, I have had the honor of teaching constitutional law. For almost as long, I have studied the process of Supreme Court selection in some detail and have had the privilege and opportunity to write about it at some length. And I come to you today with the hope that whatever expertise I have developed in that process may be of some use to you.

In this statement, I want to just make three brief observations as extensions of my written statement, which you already have.

First, the Constitution allows every Senator to make a decision about a Supreme Court nomination based on whatever factors he or she considers to be pertinent, including judicial philosophy. The Constitution, I believe, does not require absolute deference to a President when it comes to making Supreme Court nominations, nor, for that matter, does it require hostility. The Constitution allows you, I think, to do what you see fit. It allows you to engage in a robust dialog about the qualifications for service on the Supreme Court.

With that in mind, I just want to give you one brief example of what I am talking about what the Constitution allows just to illustrate, I think, the robustness of the process that we shouldn't be ashamed of but, in fact, should be prepared to embrace.