

Thank you, Mr. Chairman.

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

Chairman SPECTER. Thank you very much, Judge Aldisert.

We now turn to Judge Leonard Garth, who is coming to us—you see him on the television screen, coming to us from California. Judge Garth is a graduate of Columbia, 1942, served in the United States Army, Lieutenant, from 1943 to 1945, and then from the Harvard Law School where he graduated in 1952. In 1969, he was appointed to the district court by President Nixon and then to the circuit court by President Nixon in 1973, a lecturer at Rutgers Law School and the Seton Law Hall School; has known Judge Alito since Judge Alito clerked for Judge Garth back in 1976 and 1977 and has served with him on the Third Circuit for the 15 years of Judge Alito's tenure there.

Judge Garth, we very much appreciate your being with us, and we look forward to your testimony.

STATEMENT OF LEONARD I. GARTH, SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, CHICAGO, ILLINOIS

Judge GARTH. Thank you, Senator Specter, Senator Leahy, and the honorable members of the Senate Judiciary Committee, and, of course, my own family of judges who have preceded me in speaking to you today.

I, too, am privileged to appear before you today, albeit by videoconferencing rather than in person. I cannot be with you in person because I recently had some major spinal surgery, and I find it extremely difficult and painful to travel.

As Senator Specter has indicated, I have served as a Federal judge for some 36 years: as a district court judge in New Jersey, and since August 1973 as a member of the Third Circuit Court of Appeals.

Now, I do want to interject and say that in that respect, perhaps Judge Aldisert is older than I am, but not by many days. And I am almost as old as he is, but not quite as handsome as Judge Barry of my court.

[Laughter.]

Judge GARTH. I hope you will forgive that aside, but I want to ask you for something else to forgive me. I have heard all of my colleagues speak so eloquently and, I will use the term that Judge Barry used, glowingly about Judge Alito. But I have known him just a little bit longer and in a different capacity over the course of his career.

Following his graduation from law school, he served as one of my two law clerks in 1976 and 1977. And as you have heard, since 1990 he has served as my colleague on the court of appeals. During the interim years, because of the relationship that we developed during his clerkship and the fact that both he and I are New Jersey residents, we remained close to one another. Hence, I think I can speak knowledgeably about Sam's qualifications, his talents, his discretion, his honesty, his fairness, and his integrity. These are qualities that Judge Alito possesses now and has possessed since the very beginning of his legal career.

Let me first tell you about Sam's clerkship with me. As you may know, a law clerk is a judge's legal advisor and a sounding board, if I may use that term. But he or she often becomes much more than that—a member of the judge's extended family. And as a result, a judge gets to know his law clerk in a particularly personal way. I knew Sam in this personal way at the very beginning of his career as a lawyer. For that reason, I think I have a unique perspective to share with you about him.

I chose Sam to be my law clerk in 1976 from among the literally hundreds of applicants who sent their resumes to me and the other judges of our court that year. Sam was still a law student when I interviewed him, but he struck me in that encounter as fiercely intelligent, deeply motivated, and extremely capable.

I did not know at that time that Sam was the son of Samuel Alito, Sr. That is a gentleman who had impressed me very, very much as a witness in a New Jersey redistricting case that I heard about 1972. Once I made the connection, however, I fully understood why Sam was so impressive and why he regarded—and regards today—his father as a role model.

During his tenure with me, Sam bore out all my initial impressions of his excellence—impressions which had led me to engage him. He was a brilliant and exceptional assistant to me. He enabled me to test judicial theories and to fashion appropriate judgments in each case that came before our court.

I have had some 85 law clerks assisting me in chambers over the course of my career on the bench. They have all been extremely well qualified in all ways to serve a court of appeals judge. Sam Alito stands out even among that very elite group.

During the year that he was my law clerk, Sam and I frequently took an afternoon walk near the courthouse in Newark and discussed the cases while we walked. I can tell you that the recommendations and arguments that Sam made about those cases were, as my colleagues have pointed out, always reasoned, principled, and supported by precedent. I developed then a deep respect for Sam's analytical ability, his legal acumen, his judgment, his institutional values, and, yes, even his sense of humor, which, if he is confirmed, as I hope he might, will probably compete with that of other Justices.

Few of the cases that come before our court are "slam dunk" cases. Most involved difficult questions on which reasonable people can disagree. And, generally, Sam and I reached agreement after discussing these cases, but more than once we did not. Even in those latter cases, the ones on which we disagreed, I understood and respected the positions that Sam advanced and the contours of his analyses.

Our afternoon walks invariably ended at a neighborhood store—T.M. Ward Company—where we purchased peanuts and coffee. I note parenthetically that Ward's has since honored Sam by naming a special blend of coffee that he favors "Judge Alito's Bold Justice Blend." I think there are a few of us that have that distinction.

After he left my chambers, Sam continued on in public service, as you have heard. In a letter to the then Deputy Assistant Attorney General Arnold Burns, I endorsed Sam's candidacy for United

States Attorney for the District of New Jersey, and I want to just read you what I wrote. This was a long, long time ago:

I can certify to Mr. Alito's integrity, ability, discretion, and honesty. Above and beyond those qualities, however, I believe his talents as a lawyer are exceptional. I am sure that his tenure in government service since he has left my chambers has reflected the fact that he is a thorough, meticulous, intelligent, and resourceful attorney and that his judgments are mature and responsible. Indeed, he was one of the finest law clerks I have had the privilege to engage. And if I were to rate him on the basis of 1 to 10—10 being the highest rating—he would, without question, receive a 10-plus rating.

I stressed these same attributes when I endorsed Sam for membership on our court several years later. He has more than lived up to my rating and the qualities that I attributed to him in the 15 years since he joined the court and became my colleague.

Sam is an intellectually gifted and morally principled judge. We have not always agreed on the outcome of every case, as I have just recently stated. Just this fall, for example, Sam dissented from a majority opinion that I wrote in an Employee Retirement Income Security Act—ERISA—case. In that case, Sam and I disagreed about how two provisions of the statute interact. I and the other majority judge were attracted in large part to the reasoning of the Second Circuit. Judge Alito, on the other hand, was attracted by the reasoning of the Seventh Circuit. Even in the cases on which we disagree, however, I always respect Sam's opinion, just as I did during our afternoon walks when he was my law clerk.

Sam is also a prudent judge. Make no mistake: he is no revolutionary. He is a sound jurist, always respectful of the institution and the precepts that led to decisions in the cases under review.

I have heard concerns expressed about whether Judge Alito can be fair and evenhanded. Let me assure you from my extensive experiences with him and with my knowledge of him, going back, as I have stated, over 30 years—that he will always vote in accordance with the Constitution and laws as enacted by Congress. His fairness, his judicial demeanor and actions, and his commitment to the law, all of those qualities which my colleagues and I agree he has, do not permit him to be influenced by individual preferences or any personal predilections.

As you may know, when the judges of our court meet in conference—and I think Judge Becker referred to this in his remarks—we are the only individuals in chambers. No law clerks, no assistants, no administrative personnel, or indeed anyone else attend these conferences. I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court, and the countless number of times that we have sat today in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda, nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

He has a deep and abiding respect for the role of *stare decisis* and established law. I appreciate, of course, that the Supreme Court can retreat from its earlier decisions, but it does so rarely

and only in very special circumstances, and I am convinced that if Judge Alito is confirmed as an Associate Justice of the Supreme Court, he will continue to honor *stare decisis* as he did as a law clerk and as he has done as a member of our court. He will sit among those jurists whose qualities of fairness and of principles are the loadstar of the judiciary. In my opinion, Sam is as well qualified as the most qualified Justices currently sitting on the Supreme Court.

A word about Sam's demeanor is in order. Sam is and always has been reserved, soft-spoken, and thoughtful. He is also modest, and I would even say self-effacing, and these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability.

Over the 30 years I have known Sam, I have seen him grow professionally into the reserved, mature, independent, and apolitical jurist that graces our court today. I regard him as the most qualified member of our court to be considered as an Associate Justice of the Supreme Court. I know that just as Judge Alito has brought and brings grace and luster to the Third Circuit, so too will he bring grace and luster to the U.S. Supreme Court if he is confirmed.

Thank you, members of the Senate Judiciary.

Chairman SPECTER. Thank you very much, Judge Garth, coming from, I have just been advised, from Phoenix, Arizona. Thank you.

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

Chairman SPECTER. Our next witness is Judge John Gibbons, a graduate of Holy Cross in 1947 with a bachelor's, Harvard Law School in 1950. He was nominated to the Third Circuit by President Nixon in 1970, Chief Judge from 1987 to 1990, at which time he resigned to become a professor of law at Seton Hall University. He now is in the practice of law. He has known Judge Alito for more than 20 years, when Judge Alito was a U.S. Attorney and tried cases before Judge Gibbons.

Thank you very much for being with us today, Judge Gibbons, and we look forward to your testimony.

STATEMENT OF JOHN J. GIBBONS, JUDGE (RETIRED), U.S. COURT OF APPEALS, AND DIRECTOR, GIBBONS, DEL DEO, DOLAN, GRIFFINGER AND VECCHIONE, NEWARK, NEW JERSEY

Judge GIBBONS. Mr. Chairman and members of the Judiciary Committee, as you all probably know, or as Senator Specter has just said, I was a member of that court of appeals where Judge Alito is now a member for 20 years, and indeed, it was my retirement from that court 16 years ago that created the vacancy which Judge Alito filled on the court of appeals.

Since his appointment, lawyers in the firm of which I am a member have been regular litigators in the courts of the Third Circuit, not only on behalf of clients who pay us handsomely for such representation, but also frequently for the firm's Gibbons Fellowship Program on behalf of nonpaying clients whose cases have presented those courts with challenging human rights issues. The Gibbons Fellowship Program is certainly a significant part of our practice,