STATEMENT OF REGINALD M. TURNER, JR., PRESIDENT, NATIONAL BAR ASSOCIATION, WASHINGTON, D.C.

Mr. TURNER. Thank you very much, Mr. Chairman and Senators. It is an extraordinary honor for me to be here today to testify on behalf of the National Bar Association.

Our association was founded in 1925 at a difficult time in our Nation's history when lawyers of color could not belong to the American Bar Association or many of the State bars and other voluntary bar associations around the country. Today, we represent a network of over 20,000 lawyers with 80 affiliates around the world.

The National Bar has established a rigorous process for evaluating judicial nominees. We take a position on a nomination only after an exhaustive evaluation of the nominee's record.

Judge Alito was evaluated consistent with this process. The results of our review are troubling to us, and we cannot support this nomination. We don't take this position lightly. With President Bush's nominations that exceed 200 in number, we have only taken positions either without support for or in opposition to three of President Bush's nominees.

We understand that Judge Alito has solid educational and professional credentials, but these credentials alone are not sufficient, in our view, for a lawyer or judge to be an Associate Justice of the U.S. Supreme Court. We strongly believe that a nominee to our Nation's highest Court must share an unequivocal commitment to the basic rights and liberties afforded to all Americans under the United States Constitution.

In this country, race and the treatment of racial issues by the judiciary profoundly affect every aspect of American life and play critical roles in the formulation of social, economic, and political agendas. Accordingly, the National Bar Association has adopted a standard to determine whether a Federal judicial nominee will interpret the Constitution and laws to advance our great Nation's slow but steady progress toward equality of opportunity.

Unfortunately, our legal system is not as colorblind as it aspires to be. In *Grutter* v. *Bollinger*, Supreme Court Justice Sandra Day O'Connor acknowledged that. She said, and I quote, "...in a society, like our own...race unfortunately still matters." Thus, judicial nominees should be able to articulate support for constitutional principles, statutes, and legal doctrines that serve to extend the blessings of liberty to all Americans.

In sharp contrast to Justice O'Connor's philosophy, Judge Alito's work as a lawyer and as a judge reveal a hostility to these basic civil rights and civil liberties that makes his nomination particularly troublesome to the National Bar Association. His philosophy as a lawyer is revealed in his 1985 application for the position of Deputy Assistant Attorney General. Among other things in that application, then-Attorney Alito expressed disagreement with well-established Supreme Court precedents that relate to fundamental rights. Attorney Alito indicated at the time that he was attracted to constitutional law because of his "disagreement with Warren Court decisions," including a series of landmark decisions that established the constitutional principle of one person/one vote. Under this fundamental doctrine, every citizen of the United States has

the right to an equally effective vote, rather than the mere right to cast a ballot.

We heard Fred Gray testify a few moments ago very eloquently about the impact of the Warren Court decisions that upheld the provision of one person/one vote. We heard of the tremendous impact on the inclusion in our Nation's cadre of elected officials of people of color for the very first time in many States in the Southern part of this United States and in States around the country. We have heard of the tremendous progress made as a result of those decisions, progress which would not exist today if Judge Alito's views on this issue had carried the day.

In addition, Judge Alito expressed opposition to programs designed to increase diversity in education and employment. He mischaracterized these programs as "quota systems" when, in fact, many of these programs were benign efforts on the part of educational institutions and employers to promote opportunities for those who traditionally had been disenfranchised from the mainstream of American society.

At the same time, then-attorney Alito proudly listed his membership in Concerned Alumni of Princeton, a group that advocated quotas for children of alumni of Princeton in an effort to reduce the admissions of women and minorities to that prestigious university.

Although these writings are 20 years old, they are relevant today because the views espoused by attorney Alito are reflected in the judicial record of Judge Alito. His judicial opinions evidence an agenda to reverse hard-fought civil rights gains and to limit improperly the authority and power of Congress, particularly in the area of providing remedies to unlawful discrimination and protecting the health, welfare, and safety of the American people.

Just to summarize some of these points, Judge Alito has been the most frequent dissenter among the Third Circuit Court of Appeals judges since his appointment in 1990. According to estimates by University of Chicago law professor Cass Sunstein, more than 90 percent of Judge Alito's dissents take positions more conservative than those of his colleagues. He rejected the views of a majority of his court, as well as the rulings of six other Federal appellate courts, when he reasoned that the Federal law limiting the possession and transfer of machine guns was unconstitutional.

In civil rights cases where the Third Circuit was divided, Judge Alito opposed civil rights protections more than any of his colleagues. Indeed, he has advocated positions detrimental to civil rights 85 percent of the time and has filed solo dissents in more than a third of these cases.

In one civil rights case, *Sheridan* v. *Dupont*, all 10 of Judge Alito's colleagues—appointed by Republicans and Democrats alike—agreed that a sex discrimination victim's case was properly submitted to the jury, contrary to Judge Alito's sole dissent.

In *Doe* v. *Groody*, Judge Alito's dissent condoned the strip-search of a 10-year-old girl and her mother, even though they were not named in the warrant that authorized the search. The majority opinion by then-Judge Michael Chertoff criticized Judge Alito's view as threatening to turn the search warrant requirement into "little more than the cliche 'rubber stamp.'"

In his dissent in *Bray* v. *Marriott*, Judge Alito argued for imposing an evidentiary burden on victims of discrimination that, according to the majority, would have eviscerated legal protections under Title VII of the Civil Rights Act. In particular, the majority contended that Judge Alito's position would protect employers from liability even in situations where employment discrimination was the result of conscious racial bias.

In conclusion, on the basis of our thorough review of Judge Alito's record, the National Bar Association cannot support the nomination of Judge Alito to the U.S. Supreme Court. For several decades, Judge Alito has championed limitations on civil rights and voting, resulting in curtailed educational and employment opportunities for people of color and women. If his views had prevailed in many cases, our Nation would not be far beyond the regrettable days when opportunities for Americans, like retiring Justice Sandra Day O'Connor and the late Justice Thurgood Marshall, were truncated on the basis of gender and race. Now is not the time for retrenchment. Now is the time for America to step forward into the 21st century and open the doors of mainstream society for the benefit and protection of all Americans.

Again, thank you very much for the opportunity to testify.

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

Chairman SPECTER. Thank you, Mr. Turner.

Our final witness on this panel—and our final witness—is Mr. Theodore Shaw, Director-Counsel and President of the NAACP Legal Defense and Educational Fund here in Washington, D.C.; a graduate of Wesleyan University with honors and from Columbia University Law School, where he was a Charles Evans Hughes Fellow. He has also served in the Office of Civil Rights in the Department of Justice.

Welcome, Mr. Shaw, and you have some of that extra time. The clock is set at 8 minutes.

STATEMENT OF THEODORE M. SHAW, DIRECTOR-COUNSEL AND PRESIDENT, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., NEW YORK, NEW YORK

Mr. SHAW. Thank you, Mr. Chairman. In his absence, I would like to thank Senator Leahy and, of course, Senator Kennedy and the other Senators who are members of the Judiciary Committee.

Let me make one small clarification. While we have a Washington, D.C., office, the Legal Defense Fund headquarters are in New York, and I am a New Yorker.

I am acutely aware that I am the last witness on the last panel of these hearings, so I will come right to the point. You have my written testimony, and I would like to request that the NAACP Legal Defense and Educational Fund, Inc.'s report on the nomination of Judge Alito to the position of Associate Justice of the Supreme Court be entered into the record.

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

Mr. SHAW. Thank you, Mr. Chairman.

We at the Legal Defense Fund do not relish opposition to a nominee to the Supreme Court or, for that matter, any court, and our