

until he recently joined the Goldwin School of Public Policy at the University of California. He served as Secretary of Labor during President Clinton's first administration and subsequently published a book entitled, *Locked in the Cabinet*. Before taking office during the Clinton administration, he was a member of the faculty of Harvard's Kennedy School of Government. He has a B.A. from Dartmouth, a Master's from Oxford University, where he was a Rhodes Scholar with President Clinton, and a law degree from the Yale Law School.

I am pleased to see you again, Professor Reich, Secretary Reich. I have some questions left over which you did not answer when I questioned you when you were Secretary of Health and Human Services, which we will get to promptly.

Mr. REICH. That is because I was Secretary of Labor, Mr. Chairman.

[Laughter.]

Chairman SPECTER. Well, no wonder I couldn't understand what you were doing.

[Laughter.]

STATEMENT OF ROBERT B. REICH, FORMER SECRETARY OF LABOR AND UNIVERSITY PROFESSOR AND MAURICE B. HEXTER PROFESSOR OF SOCIAL AND ECONOMIC POLICY, BRANDEIS UNIVERSITY, WALTHAM, MASSACHUSETTS

Mr. REICH. Mr. Chairman and members of the Committee, I have prepared testimony and with your permission I will submit it for the record.

There has been much discussion in these hearings about social values, and I want to put on the table something that maybe has not received quite the attention it should, and that is economic values. And I don't think I have to tell the Committee what almost everybody knows, and that is that wealth and income and the power that come from wealth and income are more concentrated in fewer hands as a proportion of the population today than we have seen since the 1920s, and by some measures since the gilded age of the 1890s.

Now, if this doesn't present issues of economic morality, I don't know what does, and it comes to the fore with regard to Congress and the Supreme Court in a whole series of protections, some of them very old, some of them going back to the 1920s and 1930s and 1940s, having to do with workplace protections, unemployment insurance, interpretations of Social Security, interpretations of minimum wage, the ways in which we treat our working people in this country.

Now, I heard Judge Roberts, at least to the best of my memory, in the last couple of days tell this Committee that he would rule on the side of the little guy when the Constitution told him to and he would rule on the side of the big guy when the Constitution was on the side of the big guy. Now, I assume that he is talking about little guy and big guy in figurative terms, in terms of economic power and wealth and status in society. But last time I looked at my Constitution, it doesn't say anything about average working people or big guys or little guys at all.

In fact, there have been times in our history where the Supreme Court came down consistently on the side of wealth and power and against little guys, against average working people. Up until 1937, for example, the Supreme Court threw out a lot of State and Federal regulation that was intended to help average working people.

Judge Roberts has a record—it is not much of a record. It is something of a gamble for all of us. But let me reveal a little bit of autobiographical detail that perhaps you did not know, and I do this not to burnish my otherwise impeccable Republican credentials but simply to tell you that I know something about a particular institution. I started out my life in Government as Assistant to the Solicitor General where I had a chance to brief and argue Supreme Court cases. And my first boss was Robert Bork.

Now, in those days, the Solicitor General's office regarded its primary client as the Supreme Court, not the administration. It wasn't until the mid-1980s that there was a new position created in the Solicitor General's office called the Special Deputy. That was a political position. It was a political deputy, and it was about values. That political deputy was there for a very simple reason: to make sure that the Solicitor General's office and the briefs and arguments before the Supreme Court were in consistency, were consistent with the values of the President in terms of social values, economic values, whatever have you.

I have read Judge Roberts's memoranda, and there is no question in my mind, having had that experience in the Solicitor General's office, that he came down consistently, uniformly on the side of very conservative economic and social values. I am not criticizing him for it, but I think it is very important that you know that.

Here in this hearing he said, for example, he refused to affirm *Wickard v. Filburn*. Now, you know as well as I do, over the last 10 years more than 30 times the Supreme Court has struck down, either in whole or in part, laws of this Congress. Ten of those, at least, have been based on the Commerce Clause. *Wickard v. Filburn* in my knowledge, in my experience, is a cornerstone of building the protections of a strong Federal Government for average working people. His refusal to affirm that I find personally quite troubling.

There has been reference also to the hapless toad. Well, we know that he was looking for other ways, perhaps, to find that Endangered Species Act constitutional. But look at that logic in that particular case. When he says Congress didn't really have authority under the Commerce Clause to protect the life of a hapless toad that, for reasons of its own, lives its entire life in California, well, obviously people are not toads—at least the last time I looked—but what about protecting the job safety of a hapless retail worker who, for reasons of her own, lives her entire life in Pennsylvania, or a hapless coal miner who, for reasons of his own, lives his entire life in West Virginia?

Let me just finally say this: One Justice can make all the difference to our entire system of Federal protections. One Justice. The Court did change its mind in 1937, as I said before, and it stopped striking down laws that protected people, average working people, not because, as popularly understood, FDR threatened to

pack the court. No. In fact, the Court made that switch before it even knew that FDR had a court-packing scheme. The Justice—

Chairman SPECTER. Professor Reich, could you summarize your testimony at this point?

Mr. REICH. I will do it in one sentence. The Justice who made that switch was Justice Roberts, Justice Owen Roberts. And it would be a cruel joke of history if a namesake almost 60 years later turned the Court backward.

Thank you.

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

Chairman SPECTER. Thank you very much, Professor Reich.

Our next witness is Rabbi Dale Polakoff, President of the Rabbinical Council of America, whose membership consists of more than 1,000 ordained rabbis. He serves as Rabbi of Great Neck Synagogue, Long Island, a faculty member of the North Shore Hebrew Academy, a graduate of Yeshiva where he majored in psychology.

Thank you very much for joining us today, Rabbi, and we look forward to your testimony.

**STATEMENT OF RABBI DALE POLAKOFF, PRESIDENT,
RABBINICAL COUNCIL OF AMERICA, GREAT NECK, NEW YORK**

Rabbi POLAKOFF. Thank you, Mr. Chairman, and other distinguished members of the Committee. Good afternoon, or, perhaps, good evening. Thank you for inviting me to participate in these hearings.

The Rabbinical Council of America includes congregational rabbis, teachers and academicians, military chaplains, some of whom serve today in Iraq, Afghanistan, and other areas of the world, health care chaplains, organizational professionals, and others. I am here this afternoon to offer a statement of support for the nomination of Judge John G. Roberts to be Chief Justice of the United States.

My remarks about Judge Roberts begin this afternoon with broad brush strokes because the desired qualities of judges within the Jewish tradition are defined in just such broad brush strokes. We are enjoined to choose principled judges who refrain from showing favoritism to individuals or causes. We seek judges who are people of truth, whose words and decisions inspire confidence in those who rely upon them. Our tradition recognizes the tremendous responsibility borne by those who judge others and sees in their dispensing of truth and justice a divine partnership ensuring the continuation of a moral society.

At a time in which many in our society seek moral moorings and spiritual strength, I am certain that these broad values are also the values embraced by this great country in which we are privileged to live. Values of principle, values of truth, and values of responsibility are part of the foundation of religious ethics upon which our Nation has been built. And I am confident that Judge Roberts represents the embodiment of such values.

Within these broad brush strokes, though, are many hues of color, and it is the responsibility of this Judiciary Committee to try to determine how Judge Roberts sees those colors.