Mr. TOBER. I believe that is true, Senator. Tom served 6 years before being Chair. I served three as a member. Pam has been on for three. We all have had experience in talking to judges, to lawyers, to other community members who feel very comfortable understanding that what they tell us remains in the strictest of confidence, and we are able to do a true peer review because of that. I thank the Senator for the opportunity to explain that. We do get information of the most important kind from the process that we engage in.

Chairman SPECTER. Thank you very much, Mr. Tober, Ms. Bresnahan, and Mr. Hayward. Thank you.

Mr. TOBER. Thank you, Mr. Chairman.

Mr. HAYWARD. Thank you, Senator.

Ms. BRESNAHAN. Thank you.

Senator SESSIONS. I think that makes that report particularly valuable, Mr. Chairman.

Chairman SPECTER. I agree with you, Senator Sessions.

We will now call on our second panel, Governor Thornburgh, Congressman Lewis, Commissioner Braceras, Mr. Wade Henderson, Commissioner Kirsanow, and Judge Jones.

While the panel is being seated, just a word of explanation. There is a vote in process, but there is a second vote behind that so that when we break to vote, it is most efficient to vote a second time before returning. But we never know exactly when the first vote is going to end, so our time is best economized if we arrive there about 20 minutes after the vote has started so that we can return as promptly as possible.

Our first witness is the distinguished former Governor of Pennsylvania, Governor Dick Thornburgh, elected in 1978 and reelected in 1982, Attorney General for both President Reagan and President George H.W. Bush, Under Secretary General for Administration and Management of the United Nations, currently counsel for the international law firm of Kirkpatrick and Lockhart and a longstanding friend of mine. It began in 1966 when I campaigned with him in Squirrel Hill when he ran for the Congress of the United States.

Governor Thornburgh, thank you for joining us.

STATEMENT OF HON. DICK THORNBURGH, FORMER ATTORNEY GENERAL OF THE UNITED STATES, FORMER GOVERNOR OF PENNSYLVANIA, AND COUNSEL, KIRKPATRICK AND LOCKHART NICHOLSON GRAHAM, WASHINGTON, D.C.

Mr. THORNBURGH. I appreciate that, Mr. Chairman. Thank you, Chairman Specter, other distinguished members of the Judiciary Committee. It is my distinct honor and privilege to be here today in full support of Judge John G. Roberts's nomination to be the 17th Chief Justice of the United States.

I have known Judge Roberts as a friend and colleague for over 15 years and can attest to his outstanding personal characteristics and undoubted integrity. Perhaps more important for present purposes, Judge Roberts's extraordinary legal skills and keen intellect are undisputed.

Before his Senate confirmation by unanimous consent over 2 years ago to be a judge on the D.C. Circuit Court of Appeals, he

was heralded by leading Democrats and Republicans alike as one of the very best and most highly respected appellate lawyers in the nation with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague, both because of his enormous skills and because of his unquestioned integrity and fair mindedness, that from his peers at the D.C. Bar.

I can echo this fanfare because of the deep and lasting respect I have for Judge Roberts's legal abilities that I saw firsthand when he served as the Principal Deputy Solicitor General while I was Attorney General under Presidents Reagan and George H.W. Bush. In that capacity, Judge Roberts represented the U.S. Government in all manner of cases before the Supreme Court, where he was charged to defend, among other things, legal attacks on the constitutionality of Acts of Congress. John represented the Government in 39 cases before the Supreme Court while in the Solicitor General's Office.

He is a truly remarkable lawyer—bright, witty, capable, respectful, and creative. I had the good sense to enlist him as my coach for my final appearance before the Supreme Court myself in 1991 and we won the case.

On the Court of Appeals for the last 2 years, Judge Roberts has demonstrated in practice the principles he has articulated as a young attorney working at the Department of Justice.

Reflecting on the role of judicial restraint as a guiding standard for how courts should approach the judicial decisionmaking process, Judge Roberts explained in the materials he drafted for then-Attorney General William French Smith, and I quote, "The phrase 'judicial restraint' may mean many things to many people, but at its core, it is a notion that Federal courts must scrupulously avoid engaging in policy making, which is committed under our system of government to the popularly elected and accountable branches of the States."

"Judicial activism," Judge Roberts stated, "is neither conservative nor liberal." He recognized that throughout history and to this day, both liberal and conservative interests have sought to enlist an activist judiciary in the achievement of goals which were not attainable through normal political processes. Today, different groups urge judges to substitute their own policy choices for those of Federal and State legislatures, but the evils of judicial activism remain the same regardless of the political ends the activism seeks to serve. So said Judge Roberts.

Indeed, he sagely recognized that the greatest threat to judicial independence occurs when the courts flout the basis of their independence by exceeding their constitutionally limited role and engage in policy making.

Let me highlight just one of Judge Roberts's D.C. Circuit opinions, which clearly reflects the correctness of his approach that cases should be decided upon the text of the statute, the Constitution, and the particular facts before the court. I know that most members of this Committee are familiar with this case, which has been nicknamed the "french fry case."

The facts are straightforward. The D.C. City Code made it illegal to eat or drink in a Metro station and the local transit authority imposed a zero-tolerance policy for violation, since it had received

complaints about bad behavior in certain Metro stations. A 12-year-old girl who stopped at a fast-food restaurant on the way home from school made the mistake of eating a french fry while waiting for her friend to purchase a farecard. She was arrested and hauled off to jail for booking, and ultimately, some three hours later, delivered to the custody of her parents.

Was this bad policy? Yes. In fact, after the publicity surrounding the case, the City Council adopted a new rule whereby they would merely issue citations to juvenile offenders rather than arresting them. Was the policy unconstitutional? Both the District Court judge and the unanimous panel of the D.C. Circuit agreed that it was not because age, or more specifically youth, is not a suspect classification under the Constitution or any Act of Congress and because probable cause existed to support the arrest, since she did, in fact, eat the french fry in violation of the city's zero-tolerance policy.

Why discuss such a seemingly silly case? I think that in the opening paragraph of the decision, which I will quote, Judge Roberts forcefully establishes his understanding of the court's limited role while at the same time expressing hope that the policy is changed at the appropriate level.

He said, "No one is very happy about the events that led to this litigation. A 12-year-old girl was arrested, searched, and handcuffed. Her shoelaces were removed and she was transported in a windowless rear compartment of a police vehicle to a juvenile processing center, where she was booked, fingerprinted, and detained until released to her mother some three hours later, all for eating a single french fry in a Metrorail station. The child was frightened, embarrassed, and crying throughout her ordeal. The District Court described the policies that led to her arrest as foolish, and indeed, the policies were changed after those responsible endured the sort of publicity reserved for adults who make young girls cry. The question before us, however, is not whether these policies were a bad idea, but whether they violated the Fourth and Fifth Amendments to the Constitution. Like the District Court, we conclude that they did not."

Judge Roberts has also stated repeatedly his belief that cases should be decided on the merits, not on the basis of a judge's personal opinion. As he expressed as recently as this past July in *United States* v. *Jackson*, sentiments do not decide cases. Facts and the law do. Understanding that most basic principle highlights the significant difference that exists between a lawyer acting as an advocate on behalf of a client and the role of a judge charged with deciding cases fairly and objectively.

But all too often in the soundbites that attach to reviews of Judge Roberts's record, one group or another will state that Judge Roberts doesn't support, for example, the rights of criminal defendants, environmental enactments, or the civil rights laws, or most egregiously, that Judge Roberts condoned the bombing of women's clinics. The supposed bases for these claims is gleaned, interpreted, and misconstrued by these critics from their interpretation of arguments that Judge Roberts made as a lawyer, both in private practice and for the Government.

The distinguished members of this Committee can easily see through this argument, for we all know and appreciate that lawyers are duty-bound to be zealous advocates for their clients. Cases argued by Judge Roberts as a Government lawyer or a lawyer in private practice, in my opinion, say little about how Judge Roberts as a Supreme Court Justice will approach cases, other than as he has all his professional life. He approaches matters with great skill, dedication, and earnestness.

It is Judge Roberts's record as a jurist that is most impressive and most persuasive. It is a record that speaks of a judge who understands the role of the judiciary, who approaches each case independently and objectively, who respects history and precedent, who interprets the law based on the facts before him, who does not engage in judicial policymaking, and who will make this country proud as the next Chief Justice of the United States.

I sincerely appreciate the Committee's invitation to speak today and the Committee's careful and deliberate consideration of Judge Roberts's nomination. He is, in my view, an exemplar of what we should seek in our next Chief Justice. Thank you.

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

Chairman SPECTER. Thank you. Thank you very much, Governor Thornburgh.

Congressman Lewis is voting at the moment.

Do we know how much time is left on the vote? Well, the time has expired, so we are going to go vote and we will return just as soon as we can. The Committee stands in brief recess.

[Recess 12:03 p.m. to 12:31 p.m.]

Chairman SPECTER. The hearing will resume.

Our next witness is Congressman John Lewis of Georgia, an architect of the historic march on Washington in August of 1963; has been the Representative for Georgia's Fifth Congressional District since November of 1986 when he was elected, took office in January; a B.A. in religion and philosophy from Fisk University, graduate of American Baptist Theological Seminary.

Thank you for crossing the Rotunda today, Congressman Lewis, and we look forward to your testimony.

STATEMENT OF HON. JOHN LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Representative LEWIS. Thank you very much, Mr. Chairman.

Mr. Chairman and distinguished members of the Committee, I am honored to be here today. As many of you know, this is not the first time I have come before this Committee. I was here 14 years ago when the nomination of another Justice to the Supreme Court moved me to speak out. I am here today with the hope that this Committee will hear my words and take heed.

When I was growing up in rural Alabama I saw those signs that said "White Men, Colored Men," "White Women, Colored Women." I used to ask my parents and my grandparents, "Why racism? Why racial discrimination?" And they would tell me, "Don't get in trouble. Don't get in the way."

As a participant in the civil rights movement of the 1960's I decided to get in the way. I was beaten, arrested and jailed more