

ment. Coach, you stood up in a very great tradition, in the great tradition where Rosa Parks sat down to make the same point, and Dr. King marched and others have protested and lobbied for justice. I think your children and your team should be very, very proud of you. I know I am. I hope your school appreciates you. I hope they value your participation. And I hope a lot of people in the country were listening to you because, by golly, if something is not being done right, stand up, speak up, and thank God there are people like you.

Mr. JACKSON. Thank you.

Chairman SPECTER. Coach Jackson, you are going to be regarded differently when you go back to your school.

[Laughter.]

Chairman SPECTER. But I am not sure which way.

Mr. JACKSON. Okay, okay.

Chairman SPECTER. To be commended by the Senate Committee, which I think this is one issue we can be unanimous on.

Thank you all very, very much.

Chairman SPECTER. We will move now to panel number five: Professor Fried, Professor Edelman—if panel number five would come forward, we would appreciate it.

Senator LEAHY. While they are coming forward, Mr. Chairman, could I ask consent that a number of letters regarding the nomination be included in the record?

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

Our first witness on this panel is Professor Charles Fried, Beneficial Professor of Law at Harvard, served as Solicitor General for 4 years; for 4 years was on the Supreme Judicial Court of Massachusetts as an Associate Justice; undergraduate degree from Princeton, law degree from Columbia, bachelor's and master's from Oxford, an extraordinary academic and professional record.

If the witnesses could move in and out, I would appreciate it. Professor Fried, we are going to start your time now because we are running very close.

STATEMENT OF CHARLES FRIED, FORMER SOLICITOR GENERAL OF THE UNITED STATES, AND BENEFICIAL PROFESSOR OF LAW, HARVARD LAW SCHOOL, CAMBRIDGE, MASSACHUSETTS

Mr. FRIED. Thank you very much, Mr. Chairman.

It is a great privilege to be allowed to participate in this historic hearing for such an important event, and it is particularly a privilege because I have been watching these hearings, and I must say, they have been a model of intelligence, fairness, substantiveness, and civility.

Chairman SPECTER. Thank you.

Mr. FRIED. I warmly support Judge Roberts because I am persuaded he knows the difference between law and politics.

I think that not because I know him well—I hardly know him at all—but because I have studied his judicial writings.

Politics at its best, as this distinguished group of Senators knows, is the art of recognizing and doing the best you can for the people you are responsible for. The judge does his or her best, too,

but the judge is hemmed in by the law—not in any simple-minded way, not in any mechanical way, by the intent of the Framers only, by the text of the statute only. And Judge Roberts does not believe that. He has told you so, and in his opinions he has written so, but by precedent, by the words of the statutes, but also by legislative history, by tradition, and the craft of the law. Judge Roberts seems to understand this down to his shoes, understands it with grace and humanity.

My former boss, Dick Thornburgh, stole a number of my lines because I, too, wanted to read to you that first paragraph from the *Hedgepath* opinion, because it shows a man who not only has a head but a heart. But the other thing it showed was that though he has a heart as well as a head, he understood that if he were to say that what happened there violated the Constitution, he would be unfaithful to Supreme Court precedent, which he was bound to adhere to, and, in fact, he would have been really worse than unfaithful to it.

The other thing which he might have thought is, well, this is a terrible result. He said that it was a terrible result. And I can get away with it because the case is probably too trivial for the Supreme Court to take on review. But that is not the man who you are passing on today.

In that opinion, you see his authentic voice and character. As I read and hear some of the criticisms of Judge Roberts's judging, I wonder whether we are talking about the same man. I wonder whether the critics are not really complaining that Judge Roberts didn't start with the result, their result, and then wrestle the law around until it fitted. That is not the man you are passing on.

And when I think of some of the cases which he decided which have become controversial in these hearings, not just the French fry case but, of course, the hapless toad case as well, which Professor Bellia will be talking about, when you consider his decision about arbitration under the Federal Arbitration Act where there is a congressional Act mandating that there be a preference for arbitration, when I consider the opinion which he did not write but which he joined in the *Hamdan* case, what I see is a fidelity to law, not the pursuit of an agenda.

Thank you.

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

Chairman SPECTER. Thank you very much, Professor Fried.

We turn now to Professor Peter Edelman from the Georgetown Law School, where he has been since 1982. He took leave from 1993 to work in President Clinton's administration as counselor to Health and Human Services Secretary Donna Shalala and as Assistant Secretary for Planning and Evaluation. He had worked as legislative counsel for Senator Robert Kennedy. He clerked for Supreme Court Justice Arthur Goldberg and Henry Friendly of the U.S. Court of Appeals.

Quite a background, Professor Edelman. Thank you for coming in today, and the floor is yours.