Chairman SPECTER. Our next witness is Professor Patricia Bellia from Notre Dame, an extraordinary academic record, summa cum laude from Harvard, Yale Law School graduate, clerked for Justice O'Connor, and before that, Judge Cabranes of the Second Circuit. Thank you for coming in today, Professor Bellia, and we look forward to your testimony.

STATEMENT OF PATRICIA L. BELLIA, PROFESSOR OF LAW, NOTRE DAME LAW SCHOOL, SOUTH BEND, INDIANA

Ms. BELLIA. Thank you, Mr. Chairman, and other distinguished members of this Committee. It is an honor for me to appear before you in support of the President's nomination of John Roberts to be Chief Justice of the United States. I have never worked with Judge Roberts. Indeed, I have never met him. But during my time in Washington as a law clerk and as a lawyer in the Justice Department, I have had the privilege to know his work as an advocate before the Supreme Court.

More recently, in my teaching and research in constitutional law and other areas, I have come to know his work as a judge on the U.S. Court of Appeals for the D.C. Circuit. In my view, the best evidence of how a nominee will perform as a judge is how he has performed as a judge. I have read all of the opinions that Judge Roberts has written in his time on the D.C. Circuit. His service on that court demonstrates beyond doubt that he resolves cases with competence, care and fair-mindedness. Most importantly, his jurisprudence on the court of appeals demonstrates in decided fashion that Judge Roberts does not seek in his decisions to advance any platform of any current political ideology. He has joined and written opinions upholding claims of criminal defendants and joined and written opinions denying such claims. He has both accepted and rejected challenges to executive agency action claimed to be unlawful. He has interpreted statutes with great care, with a primary focus on the text that Congress has enacted, but never categorically dismissing any evidence that is probative of congressional intent.

His opinions, be they for the court or for himself, display no rancor; rather, they are notable for the respect and care with which they outline any disagreement he might have with the position of litigants or his colleagues on the court. Nor do his opinions betray any impatience for the claims of any class of litigants. The occasional hints of exasperation in Judge Roberts's opinions are reserved for the district court judge or the administrative agency that has decided upon the rights and claims of individuals without providing the considered explanation to which he believes all persons who find themselves before our tribunals are entitled. It is, therefore, no surprise to find in Judge Roberts's opinions an extensive and careful scrutiny of the individual claims that each case squarely presents, no more and no less.

There is not the time here for me to analyze each opinion that Judge Roberts has written on the court of appeals, and my written testimony examines in detail two areas of structural constitutional law in which Judge Roberts's work has been subject to criticism, the first involving questions of congressional power and the second involving questions of Executive power, particularly in foreign af-

fairs. Here I will simply allude to the first of those controversies and explain briefly why I believe that the criticism are unfounded.

A claim has been made that Judge Roberts takes an unduly narrow view of Congress's power under the Commerce Clause, one that endangers a variety of civil rights statutes and environmental regulations that Congress has justly designed to protect equal rights of all Americans in the environment in which we live. This concern stems from Judge Roberts's opinion in a case called *Rancho Viejo* v. *Norton*, the hapless toad case. In that case, a housing developer, after losing a Commerce Clause challenge to a particular application of the Federal Endangered Species Act, sought rehearing of its claim before the full court of appeals. The active members of the D.C. Circuit declined to rehear the case, and Judge Roberts dissented from that denial of rehearing.

It is important to establish precisely what Judge Roberts's dissent says and what it does not say. The dissent does not show that Judge Roberts believed the Endangered Species Act to be unconstitutional as applied in this case or as applied in any other case. Rather, he believed that the particular methodology that the court employed in deciding the case was out of step with Supreme Court doctrine. He took care to point out that en banc review would afford the court the opportunity to consider alternative grounds for sustaining application of the Act that may be more consistent with Supreme Court precedent. Rather than demonstrating a hostility to congressional power, the dissent demonstrates a concern that courts provide the right reasons for their decisions. That concern is, of course, well founded as the reasons that courts provide in support of their decisions are central to the corpus of law that will guide judicial action in subsequent cases.

A discussion of a single opinion in isolation certainly cannot capture the depth and care and respect for every litigant that Judge Roberts's opinions display, and I would welcome the opportunity to discuss other aspects of Judge Roberts's opinions in response to your questions. But I believe that his jurisprudence on the court of appeals reflects the best of what we can and should expect of a nominee to the Supreme Court of the United States. His decisions defy categorization as conservative or liberal, Republican or Democrat. Indeed, Judge Roberts himself has refused to characterize himself as subscribing to any particular judicial philosophy. He says that he simply decides every case as it comes before him according to the law as best he can discern it. What he has accomplished thus far on the court of appeals demonstrates that he has truthfully represented himself to the American public. Simply put, he has demonstrated that he possesses one of our Nation's foremost legal minds, that he employs that mind with full fairness and integrity, and in all of this that he well deserves our trust to lead our Nation's judiciary.

Thank you.

[The prepared statement of Ms. Bellia appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Professor Bellia. Thank you for being so close to the time. Three seconds yielded back.

Our next witness is Professor Judith Resnik, the Arthur Liman Professor of Law at Yale. Interesting to see that they have a chair for Arthur Liman, who was in law school when I was there. She teaches on the feminist theory gender procedure, co-chair of the Women's Faculty Forum, a member of the Ninth Circuit Gender Bias Task Force—that is quite a title—and co-author of the monograph "Effects of Gender."

Thank you very much for coming again, Professor Resnik, and we look forward to your testimony.

STATEMENT OF JUDITH RESNIK, ARTHUR LIMAN PROFESSOR OF LAW, YALE LAW SCHOOL, NEW HAVEN, CONNECTICUT

Ms. RESNIK. Thank you. I am honored to participate, and I have submitted a written statement for the record. In these 5 minutes—

Chairman SPECTER. It will be made a part of the record in full.

Ms. RESNIK. Thank you. I am going to make five fast points.

First, while I am here because I was invited by this Committee, we are all here in this room with a TV because the Constitution has invited us all. The Constitution has committed to the political branches of the United States the decision about who shall be our life-tenured judges. The President nominates, the Senate confirms. We are part of a national teach-in about America, its values, and what the courts stand for.

In recent years, the confirmation process has been criticized. Some have been difficult. But conflict is not an artifact of these cameras or of the conflicts over Bork and Thomas.

It goes back hundreds of years. Remember that in the 1790's, the Senate did not affirm the Chief Justice because they disagreed with John Rutledge's view of a treaty with England. In the 19th century, it was a debate about railroads and unions. We have seen time and again that we debate our values through this process.

So in other words, this hearing is not only about John Roberts, it is about us, Americans, what we care about for our system of justice. Point one.

Point two. This is no ordinary hearing, even though it is about a life-tenured appointment to the United States Supreme Court. This is about who is going to be the Chief Justice of the United States, the 17th person in our entire history to hold that position. The job of the Chief has not remained static. It has grown enormously over the 20th century. As a law professor of the Federal courts and of adjudication and civil procedure, we get to credit William Howard Taft and, most recently, the extraordinary work of William Rehnquist. The person who wears the robe of the Chief Justice, striped or basic black, doesn't only wear one hat, but many hats.

Senator Kennedy, Senator Thurmond talked about this person as the major symbol of justice in the United States. More than that, this person has enormous power over the administration of justice in the United States. In addition to being the head of the United States Supreme Court, this person is the CEO, the chief executive officer of the entire Federal judicial system—1,200 life-tenured judges, a budget of more than $4 billion, a staff of more than 30,000 working in 750 courthouses around the United States, hearing hundreds of thousands of cases every year for all of us. The