

Testimony of

The Honorable Leonard Garth

Judge (Senior)
Third Circuit Court of Appeals
January 12, 2006

STATEMENT BY JUDGE LEONARD I. GARTH, Senior Judge
UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
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Senator Specter, Senator Leahy and Honorable Members of the Senate Judiciary Committee:

I am privileged to appear before you today - albeit by video conferencing rather than in person - to support Judge Samuel A. Alito's nomination to the United States Supreme Court. I cannot be with you in person because I just recently had major spinal surgery and I find it extremely difficult and painful to travel.

I have served as a federal judge for some 36 years: 2 years as a federal District Court Judge in New Jersey, and - since August of 1973 - as a member of the Third Circuit Court of Appeals.

I have known Judge Alito in several different capacities over the course of his career. In 1976-77, following his graduation from law school, he served as one of my two law clerks. Since 1990 he has served as my colleague on the Court of Appeals. During the interim years, because of the relationship we developed during his clerkship and the fact that Judge Alito's home and chambers are in New Jersey (as are mine), we remained close to one another. Hence, I can speak knowledgeably about Sam's qualifications, his talents, his discretion, his honesty, his fairness and his integrity. These are qualities Sam possesses now, and has possessed since the very beginning of his legal career.

Let me first tell you about Sam's clerkship with me. As you may know, a law clerk is a judge's legal advisor and soundboard (if I may use that term). But he or she often becomes much more than that - a member of the judge's extended family. As a result, a judge gets to know his law clerk in a particularly personal way. I knew Sam in this personal way at the very beginning of his career as a lawyer. For that reason, I have a unique perspective to share with you about Sam.

I chose Sam to be my law clerk in 1976 from among the literally hundreds of applicants who sent their resumes to me and the other judges on our court that year. Sam was still a law student when I interviewed him, but he struck me in that encounter as fiercely intelligent, deeply motivated and capable.

I did not know at the time that Sam was the son of Samuel Alito, Sr., who had impressed me very much as a witness in a New Jersey redistricting case that I heard around 1972. Once I made the connection, however, I fully understood why Sam was so impressive, and why he regarded - and regards today - his father as a role model.

During his tenure with me, Sam bore out all my initial impressions of his excellence - impressions which had led me to engage him. He was a brilliant and exceptional assistant to me, enabling me to test judicial theories and to fashion appropriate judgments in each case that came before our court.

I have had some 85 law clerks assisting me in chambers over the course of my career on the bench. They have all been extremely well-qualified in all ways to serve a Court of Appeals judge. Sam stands out even among that elite group.

During the year he was my law clerk, Sam and I frequently took an afternoon walk near the courthouse and discussed the cases while we walked. I can tell you that the recommendations and arguments that Sam made about those cases were always reasoned, principled, and supported by precedent. I developed then a deep respect for Sam's analytical ability, his legal acumen, his judgment, institutional values, and yes, even his sense of humor (which, if he is confirmed, might compete with that of other justices).

Few of the cases that come before our court are "slam dunks" one way or the other; most involve difficult questions on which reasonable people can disagree. Generally Sam and I reached agreement after discussing the cases, but

more than once we did not. Even in those latter cases, I understood and respected the positions Sam advanced, and the contours of his analyses.

Our afternoon walks invariably ended at a neighborhood store - T. M. Ward Coffee Company - where we purchased peanuts and coffee. I note parenthetically that Ward's has since honored Sam by naming the special blend of coffee that he favors "Judge Alito's Bold Justice Blend."

After he left my chambers, Sam continued on in public service. In a letter to the then Deputy Assistant Attorney General Arnold Burns, I endorsed Sam's candidacy for United States Attorney for the District of New Jersey. I wrote: I can certify to Mr. Alito's integrity, ability, discretion and honesty. Above and beyond those qualities,

however, I believe his talents as a lawyer are exceptional.

I am sure that his tenure in government service since he has left my chambers has reflected the fact that he is a thorough, meticulous, intelligent and resourceful attorney and that his judgments are mature and responsible. Indeed, he was one of the finest law clerks I have had the privilege to engage. If I were to rate him on the basis of 1-10 - 10 being the highest rating - he would, without question, receive a 10+ rating.

I stressed these same attributes when I endorsed Sam for membership on our court several years later. He has more than lived up to my rating and praise, and the qualities I attributed to him, in the fifteen years since he joined the court and became my colleague.

Sam is an intellectually gifted and morally principled judge. We have not always agreed on the outcome of every case. Just this fall, for example, Sam dissented from a majority opinion I wrote in an Employee Retirement Income Security Act (ERISA) case. In that case, Sam and I disagreed about how two provisions of the statute interact. I and the other majority judge were attracted in large part to the reasoning of the Second Circuit. Judge Alito, on the other hand, was attracted by the reasoning of the Seventh Circuit. Even in the cases on which we disagree, however, I always respect Sam's opinion, just as I did during our afternoon walks when he was my law clerk. Sam is also a prudent judge. He is no revolutionary. He is a sound jurist - always respectful of the institution and the precepts that led to decisions in the cases under review.

I have heard concerns expressed about whether Judge Alito can be fair and evenhanded - in effect, an impartial umpire. Let me assure you from my extensive experiences with Judge Alito and my knowledge of him - going back, as I have stated, over thirty years - that he will always vote in accordance with the Constitution and laws as enacted by Congress. His fairness, his judicial demeanor and actions, and his commitment to the law do not permit him to be influenced by individual preferences or by any personal predilections. I feel free to make this assertion and prediction because of my intimate knowledge of Judge Alito and the experiences I have had with him on our court.

As you may know, when the judges of our court meet in conference after hearing oral argument on the various cases before us, we are the only individuals in chambers - no law clerks, assistants, administrative personnel, or indeed anyone else attend these conferences. I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me on our court - and the countless number of times that we have sat together in private conference after hearing oral argument - has he ever expressed anything that could be described as an "agenda." Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions. Therefore I do not believe the concerns expressed about Sam's impartiality by several of the members of the Committee over the past few days have merit.

Sam has a deep and abiding respect for the role of stare decisis and established law. I appreciate, of course, that the Supreme Court can retreat from its earlier decisions, but it does so rarely and only in very special circumstances. I am convinced that if Judge Alito is confirmed as an Associate Justice of the Supreme Court, he will continue to honor stare decisis as he did as a law clerk, and as he has done as a member of our court. He will sit among those jurists whose qualities of fairness and principles are the lodestar of the judiciary. In my opinion, Sam is as well-qualified as the most qualified Justices currently sitting on the Supreme Court.

A word about Sam's demeanor is in order. Sam is and always has been reserved, soft-spoken, and thoughtful. He is also modest and, I would even say, self-effacing. These are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability.

Over the 30 years I have known Sam, I have seen him grow professionally into the reserved, mature, independent and apolitical jurist that graces our court today. I regard him as the most qualified member of our court to be considered as an Associate Justice of the Supreme Court. I know that just as Judge Alito has brought and brings grace and luster to the Third Circuit, so too will he bring grace and luster to the United States Supreme Court if he is confirmed.