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Before the United States Senate
Committee on the Judiciary

On the

Nomination of Judge Samuel A. Alito Jr. to be
Associate Justice on the Supreme Court of the United States

January 11, 2006

Mr. Chairman and Members of the Committee, I am Stephen R. Dujack. I am not affiliated with any of the groups that have been besieging your offices in this great exercise of democracy, for which perhaps you can be grateful. I testify as a citizen, but one who in his profession as a journalist has acquired some special knowledge that may prove helpful to you in your important decision.

You have been hearing a lot about the Concerned Alumni of Princeton. I graduated from Princeton in 1976, and became an editor on the university's alumni magazine, which allowed me to follow events concerning this organization at first hand. In 1986, a few years after I left Princeton, I wrote a long expose of CAP published in the *Princeton Alumni Weekly*.[1] The following fall, the *Daily Princetonian* invited me to write CAP's "obituary."[2] I was happy to oblige.

One year earlier, in October 1985, a 35-year-old attorney in the Reagan Justice Department named Samuel A. Alito Jr. applied for a promotion. In what might be called the essay portion of the application, he established his political qualifications for the high-level position. He chose to highlight two organizations that he belonged to. One was the Federalist Society, whose luncheon meetings he sometimes attended. The second was "the Concerned Alumni of Princeton University, a conservative alumni group."[3] This was an essay; he wasn't required to put these memberships down, but he chose to make them a major part of his credentials.

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[1] "The Contradictions of CAP," Stephen R. Dujack, *Princeton Alumni Weekly,* April 9, 1986.
[2] "Princeton's Cancer: Concerned Alumni's many sins, Stephen R. Dujack, *Daily Princetonian,* September 18, 1986.
[3] Samuel A. Alito Jr., 1985 job application.

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This is the same brief essay, by the way, in which this ambitious attorney disagreed with the Court's one-person, one-vote decision and said, "I am particularly proud of my contribution in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed and that the Constitution does not protect a right to abortion."

Today, some of CAP's former principals are speaking about the need at the time for a conservative voice at Princeton, one that would speak up for more conservatives on the faculty, for the defense of traditional mores, and, yes, for ROTC on the Princeton campus. I fully accept that Judge Alito may have joined CAP in protest over Princeton's decision in 1969 or 1970 to banish ROTC from the campus (although Army ROTC was back by 1972).[4]

But what *was* this Concerned Alumni of Princeton group? And why should we be concerned that Judge Alito was a member, one who, apparently, did not attend meetings, did not write for the organization's publication, and never was involved in the organization's policies?

We should be concerned because CAP was not "a conservative alumni group." It was a pressure group that tried to deny women and minorities a Princeton education, and it published a membership magazine called *Prospect* that peppered its conservative content with articles containing racist and misogynist material.

Sometimes this material was expressed in the special code of discrimination and exclusion. "We had trusted the admission office to select young men who could and would become part of the great Princeton tradition," wrote one alumnus in 1974.[5] But more often than not it was in full view as taunts and epithets that no person with a respect for the dignity and concerns of women and minorities could have overlooked -- nor tolerated. To CAP, the university's feminists were "frumps and freaks,"[6] a Latino dean was "señor,"[7] student gays were "campus lispers."[8]

As you have heard in testimony this week, your future colleagues Bill Bradley and Bill Fritz, both alumni of Princeton, repudiated the organization within a short time after its founding. Its reputation only got worse over the years.

CAP was an organization that was so toxic to decent people that, after its founding editor left in 1976, it could not find a Princeton graduate to edit its membership magazine for the rest of its existence – a period of 10 whole years. And at the end – the two years or so before Alito bragged of being a member -- it hired two editors in succession who were

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[4] Princeton University Archives.
[5] *Propect,* March 11, 1974.
[6] *Prospect,* October 1985
[7] *New York Times,* March 25, 1984
[8] *Prospect,* January 1984

known to have printed racist material in the previous publication they had managed.[9] Unfortunately, they lived up to their reputation, and even exceeded it, in putting out the magazine that went to all members.

Let's look at that period. Two years before Alito's job application, CAP printed an article in the membership magazine entitled, "In Defense of Elitism."[10] According to the article, "Everywhere one turns blacks and Hispanics are demanding jobs simply because they're black and Hispanic, the physically handicapped are trying to gain equal representation in professional sports, and homosexuals are demanding that government vouchsafe them the right to bear children."

As the *New York Times* reported a year and a half before Alito's job application, "the magazine ... referred to the director of the Women's Center at Princeton as 'the Wicked Witch of the Women's Center.'" The same *New York Times* article reported that the editor had printed details of the sex life of an underage female student. For most of its history, *Prospect* was distributed not only to members, but also to the entire alumni body. It went to every room on campus. This very young first-year student had to live her entire undergraduate experience under the shame of CAP's scarlet letter.[11]

As the great political analyst William Greider would put it in the *Washington Post,* describing *Prospect* at the this time – the time of the Justice Department job application -- it was "a nastly little magazine . . . which spewed venom rather freely on women, racial minorities, and gays."[12]

I do not believe that Samuel Alito is a racist. Nor do I believe he is a sexist. But the fact that he could belong to an organization such as CAP – no matter the reason he joined – raises important questions about his sensitivity to the special issues and concerns of women and minorities in the United States. The fact that he can't remember that he was a member, or be sure of the reason why he may have joined, merely accentuates this indifference. The Senate, in my view, must concern itself about whether Samuel A. Alito Jr. has sufficient perspective to sit as a Justice on the Supreme Court, a Court that weighs the issues of the People of the United States -- not just the white male people.

One month after that 1985 Justice Department application was submitted by Alito, CAP hired an airplane to fly a banner around Princeton's football stadium during a critical home game. The banner made remarks intended to humiliate Princeton's president. I was at that game. I was sickened by the stunt. And it wasn't the first time. At this point, CAP had compiled an unmatched record of such outrages spanning 13 years.

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[9] "The Contradictions of CAP."
[10] Prospect, November 1983
[11] "Magazine Angers," *New York Times*, March 25, 1984. Article on young woman appeared in March 1984 issue of *Prospect*.
[12] *Washington Post*, April 20, 1991.

When CAP first started, it sent a letter to the parents of all freshmen, implying that the coed dorms their children were living in were really a form of "cohabitation." Two years later, one of its leaders sent a letter to alumni in the business community discouraging them from giving to Princeton.[13] In 1985, just a few months before Alito's Justice Department application, they repeated that injurious interference in the university's fund raising in an open letter to *all* alumni.[14]

So CAP, an organization created "To Fill An Obvious Void By Functioning As A Mature, Independent Agency Qualified To Evaluate The Directions Being Taken By Princeton University, To Provide Constructive Criticism Where Indicated, To Funnel To Appropriate Administrators Opinions And Suggestions Received From Individuals Or Groups, And To Keep The Alumni Informed And Up-To-Date Regarding Important Happenings On The Princeton Campus, Making Certain That Both Sides Of Controversial Matters Are Covered,"[15] as it declared on its founding, started off its discourse by sending sexual scare mail to frighten parents. And at the time Alito would submit his job application boasting of his membership 13 years later, it was "funneling to appropriate administrators opinions and suggestions" by the use of mocking airplane banners.

Samuel Alito graduated from Princeton in its last all-male class. 1972 was a year of turmoil on the nation's campuses, and the same year CAP was founded by one of his classmates, T. Harding Jones, and two old wealthy blue-bloods, Asa Bushnell, Class of 1921, and Shelby Cullom Davis, Class of 1930.[16] While Princeton like many universities in 1972 could have used a responsible conservative voice for alumni dissent, with CAP, instead it got Gangster Conservativism.

CAP used the guise of conservative principles as cover for the irresponsible expression of unrequited anger as it fought an all-out, take-no-prisoners rear-guard battle against the modern age that was sweeping all American universities. It professed to have a set of grievances with the Princeton administration, but it refused to meet with the university's president – who wrote to CAP's officers 13 times suggesting a meeting -- except in Bern, Switzerland, where Davis served as U.S. ambassador.[17]

Bushnell died in 1975, Davis retired from an active role in the group, and Jones left in 1976. Despite the best efforts of Princeton's president, William G. Bowen (now president of the Andrew W. Mellon Foundation) to reach out to the group in those four years, CAP's original leaders never did take their grievances to the Princeton administration.[18] But two years later, CAP then turned around and charged that Princeton has "not taken

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[13] "A Tiger by the Tail," E. J. Kahn Jr., *The New Yorker,* May 23, 1977.
[14] *Prospect,* February 1985.
[15] Asa Bushnell and Shelby Cullom Davis, letter to the Princeton alumni, October 9, 1972.
[16] "A Tiger by the Tail."
[17] "A Tiger by the Tail."
[18] "A Tiger by the Tail."

even the smallest step toward initiating some rapprochement with a group of alumni who have long since demonstrated their concern for Princeton and their willingness to work constructively to improve the university."[19]

To my knowledge, no CAP leadership ever met with Princeton's top official. CAP clearly wasn't interested in having its grievances resolved. It sought abuse, not compromise, mayhem, not resolution.

What CAP really wanted was impossible. Federal law prohibited it. CAP's program was first expressed by co-founder Davis in an issue of *Prospect* shortly after its founding: "Why shouldn't a goal of 10 percent women and minorities be appropriate for Princeton's long-term strength and future?"[20] CAP was especially opposed to the presence of women. Davis wrote wistfully of the old Princeton -- "a body of men, relatively homogenous in backgrounds."[21] *Prospect* editor Jones lamented that the increasing numbers of women on campus meant that "the make-up of the Princeton student body has changed dramatically for the worse"[22] and told the *New York Times* that "coeducation has ruined the mystique and the camaraderies that used to exist" among the students and "would prove to be a very unfortunate thing."[23] CAP later put forth a formal statement, never rescinded, that would limit the number of women to 1,000 in a student body of 4,200 to 4,400.[24]

As a result, CAP received major attention in last year's best-seller *The Chosen: The Hidden History of Admission and Exclusion At Harvard, Yale, and Princeton.*[25] The book tells the story in shocking detail about how these three elite institutions used their admissions policies to perpetuate a white male WASP aristocracy in the United States for most of the 20th century. Those policies were all but gone by 1972, the year of CAP's founding and Alito's graduation. The Civil Rights Act of 1964 had opened up the campus to African Americans and other minority groups in the previous decade. Women had begun to arrive in 1969. Congress passed Title IX of the Education Amendments in 1972, which ensured equality in higher education for women.

But CAP, which since its inception had the law against it, fought fiercely with the university over a policy of sex-blind admissions for its first several months, and lost when the trustees adopted "equal access" as university policy – a bow not only to changing times, but to Title IX. Equal access simply means that women would not be

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[19] *Prospect,* Fall 1982.
[20] *Prospect,* May 7, 1973.
[21] *Daily Princetonian*, November 18, 2005.
[22] *Prospect,* February 26, 1973.
[23] *New York Times,* March 3, 1974.
[24] "A Statement of the Concerned Alumni of Princeton Executive Committee," *Prospect,* March 15, 1975.
[25] *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton,* by Jerome Karabel, Houghton Mifflin, 2005.

discriminated against in admissions; it is not affirmative action. *The Chosen* calls CAP's loss on the equal-access issue its "Gettysburg."[26] But, apparently, it wasn't its Waterloo.

As E. J. Kahn Jr. wrote in the *New Yorker* in 1977, Harvard and Yale had their versions of CAP at the time. "They felt things were going to the dogs in Cambridge and New Haven, but after growling for a bit they subsided." Then speaking of Princeton, he writes, "The most loyal and supportive alumni body on earth, in startling contrast, has for nearly five years been racked by the stubbornly continuing existence of [CAP] – a highly conservative outfit that has done practically everything to torment its alma mater but sue her for nonsupport."[27] Kahn would no doubt have been surprised to find out that CAP would continue to torment its alma mater for another eight years, until the point when Alito filed his job application, and for most of another year beyond that.

Those who are hearing about CAP for the first time in these last few weeks may have wondered why it fills so many Princeton alumni with revulsion to hear that a proud member of that organization is up for membership in the nation's highest court. Not only alma mater was tormented.

Perhaps the words of Diane Weeks, a Princeton alumna from the class of 1975 who worked with Alito when he was Assistant U.S. Attorney in New Jersey, can give an idea of the sense we feel. She has praised the judge's integrity and legal mind. But "when I saw CAP in that 1985 job application, I was flabbergasted," she said in a recent press interview. "I was totally stunned. I couldn't believe it." She said that CAP "made it clear to women like me that we were not wanted on campus. And he is touting his membership in this group 13 years after he graduated. He's not a young man by this point, and I don't buy for a second that he was doing it just to get a job. Membership in CAP gives a good sense of what someone's personal beliefs are. I'm very troubled by this, and if I were on the Senate I would want some answers."[28]

As mentioned earlier, your colleague Bill Bradley, a 1965 graduate of Princeton who was then among its most famous alumni as a star on the Knicks, had been enticed onto *Prospect*'s advisory board. He declared in a letter to the editor after the first issue, "I cannot concur with the views presented. When I accepted the position on the Advisory Committee, I felt there would be a more representative cross-section of opinion. I do not believe from what I have read that an open forum is what the magazine desires to give to alumni."[29] A few issues later, he became convinced that he was right, and he quit in disgust.[30]

Two years later, your colleague Bill Frist, now the Senate Majority Leader, a member of Princeton's Class of '74, was asked to co-author a study on CAP, which was passed

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[26] *The Chosen.*
[27] "Tiger By the Tail."
[28] Eyal Press, *The Nation*, December 12, 2005.
[29] *Prospect,* December 4, 1972.
[30] *Prospect,* September 10, 1973.

unanimously by the Board of Trustees. The report condemned the organization. The report concluded that "CAP, through *Prospect* and its mailings, has presented a grossly inaccurate view of what is going on at Princeton. . . . And the language has become more strident."[31]

The Trustees Report emphasize that no Princeton graduate could reasonably associate him or herself with the organization, regardless of the reasonableness of that person's cause – such as ROTC:

"Many CAP supporters profess to disassociate themselves from the organization's more extreme language and more questionable activities. They appear to believe, however, that CAP's announced goal of changing the university in more conservative directions justifies their support regardless of the means to achieve that end. Other alumni, too, appear to tolerate CAP as if it were a 'loyal opposition' whose existence might be bothersome to the university but is, on balance, healthy. We emphatically disagree."[32]

That report was mailed to all living Princeton alumni. It was bound into the November 17, 1975, issue of the *Princeton Alumni Weekly*. A full-page "Letter to the Alumni" by the Chairman and Vice Chairman of the Trustee Committee on Alumni Affairs drew attention to the report.[33]

That is not the position taken by the aspiring lawyer in the Justice Department in 1985, however; nor, apparently, in 2005, when responding to questions from Members of your Committee. Judge Alito chose another course when publicly confronted with the fact of his membership. He has said he had "no recollection" of being a member and claimed not to have heard of any of these disputes, which were widely covered in the media.

Women were not the only evil at Princeton. The "body of men, relatively homogenous in backgrounds" that CAP wanted to reserve Princeton's leafy greens and spire-topped dormitories for was homogenously white. When CAP sought "a more traditional undergraduate population," as it warned in code in one of its first fund-raising letters, it made clear it wanted to avoid a quota it thought the university was striving for: "A student population of approximately 40 percent women and minorities will largely vitiate the alumni body of the future."[34] The disturbing thought of 40 percent non-male, non-white Princetonians caused Jones to write, "The make-up of the Princeton student body has changed dramatically for the worse."[35]

Apparently, quotas are only bad when they are for minorities. CAP was strongly in favor of affirmative action, as long as it was for alumni. A few months before Alito's job application, *Prospect* printed an open letter decrying the fact that "currently alumni

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[31] Report of the Trustee Committee on Alumni Affairs, October 1975.
[32] Trustees Report.
[33] *Princeton Alumni Weekly*, November 17, 1975.
[34] *Daily Princetonian*, November 18, 2005.
[35] *Prospect*, February 26, 1973.

children comprise 14 percent of each entering class, compared with an 11 percent quota for blacks and Hispanics."[36]

CAP had no meetings or events. CAP was simply *Prospect.* CAP was the forerunner in many ways to the Washington phenomenon that we see multiplying rapidly now, a pressure group that consists of a small communications staff in rented space and wealthy funders with an ax to grind – a one-room office and a post office box.

But by 1976, CAP had become so toxic, the organization was no longer able to find concerned Princeton alumni to edit its publication. So a succession of seven outsiders came in as mercenaries, to shoot up the university for a while, then leave town, while CAP's rich backers sat back in safety. By the time of Alito's job application, that had been going on for nine years.[37]

Under their direction, *Prospect* continued along the path of printing conservative philosophy alongside racist and misogynist rhetoric meant to hector the students CAP had failed to keep out of Princeton. "In my day [the dean of students] would have been called to task for his open love affair with minorities," wrote an alumnus in 1980.[38] In 1984, the editor dismissed the concerns of female Harvard professors who were claiming sexual harassment by noting, "We've noticed that women who claim sexual harassment often tend to be low on the pulchritude index. We bring this up not to sneer or make a political point, only to define a curiosity which sociologists may want to take up for further study."[39] A few months later, the magazine noted that a female coal miner who had won her job through a discrimination suit had died in a mining accident. The item concluded, "Sally Frank, take note."[40] Frank was a former student who famously took legal action to successfully open the doors of all-male eating clubs at the university to women. But to *Prospect,* she was a "putative female."[41]

The Sally Frank coal mine item, incidentally, was virtually plagiarized from a 1980 book called *The Journal of the Absurd.*[42] *Prospect* was frequently getting into trouble like that. It once had to backtrack on an article it had published by A. Bartlett Giamatti, then Yale's president, admitting that not only was the article not written for *Prospect*, it was copied without Giamatti's permission from his Yale inaugural speech.[43]

Prospect reached its apogee of visciousness near the time of Alito's job application. "People nowadays just don't seem to know their place," according to an essay titled "In

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[36] *Prospect*, February 1985.
[37] "The Contradictions of CAP."
[38] *Prospect,* Winter 1980.
[39] *Prospect,* January 1984.
[40] *Prospect,* June 1984.
[41] *Prospect,* November 1983.
[42] "The Contradictions of CAP." Also, *Journal of the Absurd* is by Jules Siegel and Bernard Garfinkel, Workman Publishing, 1980.
[43] *Prospect,* Spring-Summer 1980.

Defense of Elitism" published in 1983. "Everywhere one turns blacks and Hispanics are demanding jobs simply because they're black and Hispanic, the physically handicapped are trying to gain equal representation in professional sports, and homosexuals are demanding that government vouchsafe them the right to bear children." It was a year later that CAP exposed to the ridicule of the entire university community an underage female student because she had sex.

One might think that CAP's wealthy backers might have hired the editor who published these last two items by accident, but the facts are exactly the opposite. Dinesh D'Souza was an undergraduate at Dartmouth, where he was chairman of the *Dartmouth Review*, a conservative student publication that had garnered a well-deserved reputation for racist rhetoric and unethical journalistic practices. He received national condemnation for printing an article written in jive that was clearly intended to outrage the college's African American students – and succeeded. Your former colleague Jack Kemp, a member of the *Review*'s board, quit in protest over the racist article.[44] It doesn't speak well for CAP that they recruited this man to edit *Prospect* – and kept him on when he continued to print racist and misogynist material.

Worse, D'Souza was replaced in 1985 by Laura Ingraham, also an alumna of Dartmouth and the *Dartmouth Review*, where she had printed the transcript of a meeting of gay students made from a surreptitious tape recording, and drawn similar national approbation.[45] The *Daily Princetonian* quoted an African American professor at Dartmouth who accused Ingraham of using "all kinds of racial slurs" in an article about him. In an interview with the *Princetonian* at the time the editorial torch was passed, D'Souza countered, "I don't think Laura's a racist." Apparently not knowing when to stop, he added, "I do think she's kind of a sexist. And I'm sure she's a homophobe."[46]

This was the organization that we know Alito belonged to as a high Justice Department official. An organization without meetings, because it was not a real organization but a scare group. An organization that produced a filthy publication decent people wouldn't allow in their homes. An organization that "made it clear to women like me that we weren't wanted on campus," one of Alito's own legal colleagues has said. Its defenders have recently claimed that it was a mainstream conservative group, and that its views on women and minorities only amounted to opposition to affirmative action. But affirmative action never applied to women. And opposition to affirmative action is not expressed using racial insults. Let's face it. CAP didn't want women and people of color in their all-male, all-white bastion.

Whom we choose to associate with indeed does give the measure of the man or woman. We have been told that Alito joined the group to protest university policy in regard to

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[44] "The Contradictions of CAP."
[45] "The Contradictions of CAP."
[46] *Daily Princetonian*, November 13, 1985.

ROTC. But as can be seen, he wasn't joining an organization that actually met with the university president or led any form of constructive protest.

People simply did not brag about belonging to CAP. It was an admission usually made in private, if at all. Not because its views were unpopular, which they were, but because they were repulsive.

The Justice Department is supposed to enforce the laws of the United States, so why was Alito a member of an organization that ran counter to federal laws ensuring equality in education for women and minorities? How can we be sure that he will view women and minorities as deserving full equality under the law?

Thank you.