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January 9, 2006

The Honorable Arlen Specter
Chair, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This correspondence is submitted in response to the invitation from the Senate Committee on the Judiciary to the American Bar Association Standing Committee on Federal Judiciary (hereinafter "Standing Committee"), to present its report concerning the President's nomination of the Honorable Samuel A. Alito, Jr., to be Associate Justice of the United States Supreme Court.

The Standing Committee's evaluation of Judge Alito—and indeed, every other Federal judicial nominee—is based upon a comprehensive, non-partisan, non-ideological peer review of the professional qualifications of the nominee. In so doing, the Standing Committee uses well-established, well-defined, objective standards that measure the nominee's integrity, professional competence, and judicial temperament. As has long been recognized,

> (T)he selection of a member of the Supreme Court involves many other factors of a broad political and ideological nature within the discretion of the President and the Senate but beyond the special

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> competence of the (Standing Committee). Accordingly, the opinion of the (Standing Committee) is limited to the areas of its investigation.[1]

Consistent with that limitation, the Standing Committee did not investigate or consider Judge Alito's ideology or political views during the course of its evaluation, nor did it examine what Judge Alito's views might be on any issues that may potentially come before him, either on the Supreme Court or on the Court of Appeals for the Third Circuit.

President Bush announced his intention to nominate Judge Alito for Associate Justice on October 31, 2005. The Standing Committee began its evaluation the next day, and continued its work over the course of the next several weeks. This correspondence shall endeavor to detail the nature, scope, and findings of that effort.

Evaluation of Judge Alito's Professional Qualifications to Serve as Associate Justice of the Supreme Court

The Process

To merit the Standing Committee's evaluation of "*Well Qualified*" or "*Qualified*," a Supreme Court nominee must have standing at the top of the legal profession, demonstrate outstanding legal ability and exceptional breadth of experience, and meet the highest standards of integrity, professional competence, and judicial temperament. The evaluation of "*Well Qualified*" is reserved for those found to merit the Standing Committee's strongest affirmative endorsement.

Over the course of the last several weeks the members of the Standing Committee reached out to well over 2000 individuals across the nation through written correspondence,

[1] Correspondence from Lawrence E. Walsh, Chair, ABA Standing Committee on Federal Judiciary, to the Honorable James O. Eastland, Chair, United States Senate Judiciary Committee, January 26, 1970.

phone calls, and personal contact. Those contacts cut across virtually every demographic consideration, including individuals from varying and different political, racial, ethnic and gender backgrounds. Judges, lawyers, legal scholars, bar leaders (both traditional and non-traditional), community leaders and citizens were contacted, all in an effort to identify and interview as many individuals as possible with personal knowledge of Judge Alito. As a result, 13 members[2] of the Standing Committee subsequently interviewed more than 300 people from all Federal circuits who knew, had worked with, or had substantial knowledge of the nominee. Of that number over 130 were Federal judges, including all members of the Supreme Court of the United States, members of the United States Courts of Appeals,[3] members of the United States District Courts, United States Magistrate Judges, and United States Bankruptcy Judges.

In addition, scores of state judges were interviewed, along with lawyers who had been opposing counsel, co-counsel, colleagues, or advocates who had appeared before the nominee since he became a Federal judge. Law school deans, faculty, and other legal scholars throughout the United States were also included, as were non-lawyers from several walks-of-life. All interviews regarding the nominee were, in conformity with long-established practice, fully confidential to assure the most candid of assessments.

Judge Alito had been evaluated by the Standing Committee once before, back in 1990, and was found to be unanimously "*Well Qualified.*" The present Standing Committee reviewed that earlier report as part of its evaluation, and had the benefit of its findings and insight.

Finally, it has been the practice of the Standing Committee to ask distinguished legal scholars and practitioners to form "reading groups," and to conduct an independent and detailed

[2] Roberta D. Liebenberg, the Third Circuit representative who would normally have been the lead investigator, recused herself from the outset of this nomination under established Standing Committee practice, since she is counsel in a matter previously heard by a panel that included Judge Alito. That matter was argued prior to the announcement of his nomination, and the decision is still pending. John Payton shared responsibility for the Third Circuit investigation with Marna Tucker.

[3] The Standing Committee's investigation included interviews with virtually all of Judge Alito's colleagues on the United States Court of Appeals for the Third Circuit.

review of the nominee's written opinions and other legal writings. The reading groups, guided by the same standards that are applied by the Standing Committee, assist in evaluating the nominee's analytical skills, knowledge of the law, application of the facts to the law, and the ability to communicate effectively. For this nominee there were three reading groups, all working collaboratively to read and independently evaluate nearly 350 published opinions, several dozen unpublished opinions, a number of his Supreme Court oral argument transcripts and corresponding briefs, and several other articles and legal memos.[4] The reading groups that evaluated this nominee's writings were:

- A reading group of distinguished law professors from Syracuse University College of Law, chaired by Lisa A. Dolak, Professor of Law and Senior Associate Dean for Academic Affairs. This reading group consisted of ten members of the Syracuse law school's faculty, chosen for their expertise and diversity in a wide array of substantive areas of the law.
- A reading group of distinguished law professors from Georgetown University Law Center, chaired by Cornelia T.L. Pillard, Professor of Law. This reading group consisted of eleven members of the Georgetown Law Center's faculty, chosen for their substantial depth of knowledge and extensive experience in legal academia.
- A reading group of distinguished practitioners, chaired by John J. Curtin, Jr., Esq., of Bingham McCutchen in Boston, Massachusetts. This reading group consisted of six highly-skilled lawyers intimately familiar with the demands of appellate

[4] Judge Alito, along with Chief Justice John Roberts and Harriet Miers, are truly the first Supreme Court nominees in the "internet era." As a result, and with the generous assistance of Georgetown University and its library staff, all reading group members were provided access to the nominee's writings via a Georgetown web site that categorized his published (and unpublished) writings by subject matter, and provided comprehensive links to his full opinions, briefs, and commentary by topic and subtopic.

practice at the highest level, and with diverse backgrounds and a depth of legal experience.

The professors and lawyers who participated in these reading groups are listed in Exhibits A, B, and C, appended to this correspondence. The members of the Standing Committee wish to publicly thank the members of the respective reading groups for their thoughtful, insightful, and professional reviews of Judge Alito's writings. Their contributions are invaluable.

The three reading groups provided the Standing Committee with detailed, written independent analyses of Judge Alito's numerous opinions, briefs and writings, and these analyses were carefully considered by the Standing Committee members as part of their individual assessments of the nominee's professional qualifications. In addition, members of the Standing Committee have also reviewed other records written by the nominee as they have been released either by him (as appendices to his answers to the Senate Questionnaire, for example) or by Presidential libraries or the National Archives on-line in Washington.

Finally, three members of the Standing Committee personally interviewed Judge Alito at the U.S. Courthouse in the District of Columbia: Marna S. Tucker (D.C. Circuit representative); John Payton (Federal Circuit representative); and the Chair.

Evaluation

1. Integrity

The matter of integrity is self-defining. A nominee's character and general reputation in the legal community are investigated, as are his or her industry and diligence.

Judge Alito enjoys an excellent reputation for integrity and character, notwithstanding a widespread awareness of the *Vanguard* and *Smith Barney* recusal issues.[5] During his personal interview with us, Judge Alito was asked about the recusal matter in detail, and he acknowledged at length that he takes the matter of recusal "very seriously," and that the cases had "slipped through" the court screening process. He explained the following to us:

The *Vanguard* matter. In 2002 Judge Alito sat on a *pro se* panel in *Monga v. Ottenberg*, an unreported decision. He told us that the Circuit's conflict screening system is not used for *pro se* cases, and while *Vanguard* is identified in the caption of the case, by 2002 for reasons unknown to him, Vanguard was no longer on the permanent recusal list that would have been picked up by "automatic screening." Judge Alito acknowledged to us that, consistent with his earlier response to the Judiciary Chairman's letter of November 10, 2005, "Due to an oversight, it did not occur to me that Vanguard's status in the matter might call for my recusal."

Judge Alito wrote the opinion that affirmed the dismissal of the underlying action, which was issued in July 2002. The Supreme Court denied *certiorari* in April 2003. Thereafter the plaintiff filed a motion to vacate, claiming that Judge Alito was an owner/investor in some of the Vanguard funds. As a result, Judge Alito took steps to notify the Chief Judge of the Circuit that he was disqualifying himself from the case even though he did not believe that he was required to do so, and further requested that a new panel of judges be appointed to rehear the matter. A new panel was indeed appointed which heard the matter on the pleadings and affirmed the decision of the trial court dismissing the case.

The *Smith Barney* matter. In 1997 Judge Alito participated on a panel in *Johnston v. HBO Film Management.* Smith Barney is identified in the caption of the case. Apparently no

[5] *Monga v. Ottenberg,* 43 Fed. Appx. 523 (2002) (Vanguard); *Johnston v. HBO Film Management,* 129 F.3d 1255 (1997) (Smith Barney). A third matter, *Midlantic National Bank v. Hansen,* 48 F.3d 693 (1995) involved a matter handled by a law firm subsequently joined by the nominee's sister at the rehearing stage.

party or anyone else made an issue of Judge Alito's involvement at any time during the adjudication of the case. He told us that once again this case had "slipped by" and it was unclear to him why the screening system had not picked it up. He also told us, as he did in reply to the Judiciary Chairman, that he does not believe that the Judicial Code of Conduct or other parallel statutory language required him to be disqualified. Nonetheless, he did not seek to avoid responsibility for the concern that may have been created.

The *Midlantic* matter. The original case in *Midlantic National Bank v. Hansen* was heard by a three-judge panel. At that time Judge Alito's sister, who is a practicing lawyer and who (along with her firm) is on his permanent recusal list, was not with the law firm that was involved in the case. She joined that firm at the rehearing stage, but was not a participant in the rehearing. Judge Alito did not participate in the panel decision, but during the rehearing phase his vote was counted on the rehearing petition because his vote was registered by default rather than by an affirmative announcement, pursuant to established Circuit court practice. He told us he did not believe that the screening system is used for rehearings, although it had been used for the original hearing, and that he simply "missed it" when he let his vote be recorded on rehearing.

The nominee's answers to the 2005 Senate Questionnaire make it clear that, aside from these identified instances, a considerable number of matters are caught in the conflicts screen—many in the categories in question. Judge Alito explained to the satisfaction of the Standing Committee the special circumstances that resulted in the screen not working or otherwise not being applied in these limited matters, and he further accepted responsibility for the errors. We accept his explanation and do not believe these matters reflect adversely on him.

To the contrary, consistent and virtually unanimous comments from those interviewed include:

"He has the utmost integrity. He is a straight-shooter, very honest, (and) calls them as he sees them."

"His reputation is impeccable."

"You could find no one with better integrity."

"His integrity and character (are) of the highest caliber."

"He is completely forthright and honest."

"His integrity is absolutely unquestionable."

"He is a man of great integrity."

On the basis of our interviews with Judge Alito and with well over 300 judges, lawyers, and members of the legal community nationwide, all of whom know Judge Alito professionally, the Standing Committee concluded that Judge Alito is an individual of excellent integrity.

2. Professional Competence

Professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law, and breadth of professional experience.

Judge Alito enjoys an excellent educational background that brought him first to the practice of law and then to the Federal bench. He attended public high school in New Jersey and was, as he told us in his interview, the first student from that high school to enroll in Princeton University. He graduated from Princeton in 1972, where he was a member of *Phi Beta Kappa* and a Scholar of the Woodrow Wilson School of Public and International Affairs. He then graduated from Yale Law School in 1975, receiving awards for both the best moot court argument and for the best contribution to the Yale Law Journal.

After law school he worked briefly for a law firm in Trenton, New Jersey, and then as a law clerk to Judge Leonard Garth on the U.S. Court of Appeals for the Third Circuit (Judge Alito would later become a colleague of Judge Garth). His professional path from that point forward

has been dedicated to service on behalf of the Federal government: Assistant U.S. Attorney in New Jersey; Assistant to the U.S. Solicitor General; Deputy Assistant U.S. Attorney General; U.S. Attorney in New Jersey; and most recently as a member of the Third Circuit Court of Appeals.

Throughout his career, Judge Alito has had a significant appellate litigation practice, including having argued twelve cases before the U.S. Supreme Court. He prevailed in ten of those cases.

Judge Alito has also authored a significant number of decisions, briefs, and articles over the course of thirty years. He was praised uniformly in interviews as an excellent and unusually clear writer who combines with that skill exceptional intellectual legal abilities.

> "(His opinions) are very carefully drawn. He is very thorough and misses nothing."
>
> "He is a superb craftsman."
>
> "Judge Alito is gifted with profound analytical powers, coupled with the ability to write well."
>
> "His trademark is a clear explanation of position and views."
>
> "He is extraordinarily focused and his opinions show it. He is regarded as a 'judge's judge.'"

The comprehensive reports submitted to the Standing Committee by the three reading groups further support the quality of the nominee's scholarship and writing abilities. The chair of one reading group summarized colleagues' assessments of Judge Alito's opinions and writings as follows:

> Our review shows Judge Alito to be a conscientious judge with outstanding professional qualifications. As one reviewer aptly summed it up: "There is no question that, in terms of intellect, Judge Alito is highly qualified for the Supreme Court. His decisions consistently exhibit a complete mastery of the legal materials, a capacity for thinking at an extremely elevated theoretical level, and the ability to communicate about complex matters with exceptional clarity."

Members of another reading group had similar comments:

> "I have concluded that Judge Alito is a skilled jurist with a sharp analytical mind. His written opinions are clear, well-organized, and logical. His opinions demonstrate significant knowledge and understanding of federal procedural law and federal and state substantive law in a number of different areas."
>
> "[Judge Alito's opinions evidence] a deep dedication to precedent, a commitment to reasoned presentation of his views, a respect for the opinions of others (including those in conflict with his own), [and] a powerful mind that structures arguments with a virtuosity . . ."
>
> "Judge Alito displays first-rate analytical skills and awareness of substantive law and of the legal process. There seems here no reason to doubt his ability to think and write at the highest levels of judicial craftsmanship."

And from the chair of a third reading group:

> "I found Judge Alito's opinions to be well-written and clear, demonstrating intellectual vigor and ability to explain his position in persuasive terms. There seems to be no dispute among the reviewers about those characteristics in Judge Alito's opinions."

From intellectual capacity to judgment to writing and analytical ability; from knowledge of the law to breadth of professional experience, Judge Alito has demonstrated the highest level of professional competence consonant with qualification to serve on the U.S. Supreme Court.

3. <u>Judicial Temperament</u>

In investigating judicial temperament, the Standing Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law.

Comments gleaned from interviews and from the collective wisdom of our reading groups identified three potential general areas of concern regarding the nominee's judicial temperament. They are: (1) an occasional tendency for strident tones to enter into the nominee's written decisions; (2) a concern that the nominee's personal beliefs have entered into his judicial decision-making; and (3) a concern about whether or not the results of the nominee's judicial

decision-making tend to favor identifiable categories of litigants and reflect a particular bias. For the reasons that follow, the Standing Committee determined that these concerns—both individually and collectively—do not have overriding significance in understanding Judge Alito and his otherwise demonstrated capacity for exemplary judicial temperament.

First, with respect to a tendency for strident tones in his written opinions. Two or three members of our reading groups voiced this concern.[6] Judge Alito was asked about this tendency in his personal interview, and he acknowledged that on occasion he may have been "caught up in the rhetoric," particularly in his dissents. He further explained that he customarily tries to avoid such rhetoric by carefully reviewing his opinions before they are released, fully recognizing that the judges and lawyers below (and before him) are proceeding in good faith. On occasion some strident language has remained, he acknowledged, although it is something he continually seeks to avoid.

Beyond the occasional written word, comments about Judge Alito and his interpersonal relations create a very different impression:

> "He has an even temperament and a nice sense of humor."
>
> "He is never disrespectful of attorneys. . . .He is a great colleague."
>
> "(Judge Alito) has a restrained and polite temperament."
>
> "He is a shy person who tries to do what he believes to be fair within what the law allows him to do."
>
> "He is very patient with attorneys."
>
> "Alito is as mild mannered as you can get. He never raises his voice . . . When he disagrees he does so in a soft manner."

[6] However, several other reading group members disagreed, finding his writings to be quite appropriate in tone. For example, and with a particular focus on dissents, one wrote: "(His dissents) set out the major points advanced by the majority, conceding the accuracy of those opinions where necessary, harmonizing the language where possible, and focusing on a process of narrowing the bases of disagreement. There is neither diatribe nor sarcasm. The opinions evince collegiality and respectful disagreement."

> "He is an empathetic person by nature. Very tolerant. Salt of the earth. And genuinely humble"

Next, with respect to concern that the nominee's personal beliefs have entered into his judicial decision-making. This concern arises from the release of information surrounding the nominee's 1985 application for employment in the Reagan administration and, in particular, from a statement written by the nominee as part of that application.[7] In that statement Judge Alito indicated in 1985 that (1) he believed "very strongly in . . . the supremacy of the elected branches of government;" (2) he was a member of the Concerned Alumni of Princeton University; and (3) he disagreed with Supreme Court decisions in specifically-identified areas of law. In order, those statements presented questions about the nominee's adherence to a co-equal and independent judiciary; about membership in a group that was perceived in the media to have been formed to exclude diversity on the Princeton campus; and about the nominee's degree of respect for precedent and the application of *stare decisis*.

When colleagues and others with knowledge of Judge Alito were asked during their interviews about this 1985 statement, a majority of them reacted the same way: "I'm surprised." Few if any who have worked with or have known Judge Alito over the course of his last 15 years on the bench recognized those sentiments as his.

> "I am aware of the press stories regarding the 1985 job application. That is not the person I see (on this court)."

> "(I have) seen 'none of that' from Alito as a judge. (He) has grown as a judge and I am sure his views would be different today."

> "(I have) seen no evidence of Alito having any agenda."

> "His experience on the bench shows that he does not have fixed ideas."

> "What is in the application is not consistent with Alito's judicial stewardship over the last fifteen years."

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[7] White House PPO Non-Career Appointment Form.

> "As a judge you have to consider both sides of an issue. Alito brings a sense of justice to his role as a judge. He does not bring an agenda to it."
>
> "We have to keep in mind that we all mature and we all learn. No one is the same person they were in 1985."
>
> "I am confident (the nominee) has no political agenda. Alito's agenda is fairness and justice. He really wants to do the right thing and will not follow his personal views."

In our personal interview with Judge Alito, we inquired at length about his responses on the 1985 application. He reaffirmed his commitment to the equality and independence of the third branch of government, explaining that his 1985 reference to "supreme" branches was not carefully written and did not reflect his beliefs today. He further explained that his membership in the Concerned Alumni of Princeton (in which he said he was not active) was motivated only by his deep respect for ROTC, which was under threat of being barred from the Princeton campus. And he repeated his respect for precedent, referring to his Senate Questionnaire answer where he characterized *stare decisis* as supplying "essential stability to the law and is a fundamental feature of our legal system."[8] He asked the Standing Committee to consider him in light of his last fifteen years of service on the Federal bench, which, he urged, would be a more accurate measure of his professional qualifications.

Finally, with respect to the concern over whether the nominee's judicial decision-making tended to favor identifiable categories of litigants, thereby reflecting bias. This concern was raised in an isolated number of interviews, and in analyses offered by a few members of our reading groups. The former tended to be anecdotal, while the latter created differences of opinion and ultimately led to inconclusive findings.

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[8] One reading group chair noted, in language similar to that offered by the other two reading group chairs as well: "As for adherence to precedent, Judge Alito has generally shown the willingness to follow precedent of his own circuit and the Supreme Court that is fitting for a court of appeals judge. One committee member emphasized: 'I saw no examples where he used precedent creatively to reach a particular policy (or justice) outcome or looked to the policy behind the law when there was not controlling precedent on point.' A few readers noted that Judge Alito sometimes stated that he personally disagreed with the outcome in a case, but supported it nonetheless because he saw himself to be constrained by circuit or Supreme Court precedent."

The chair of one reading group wrote:

> More generally, dividing up opinions among many readers made it unlikely that we would discern overall trends and patterns . . . Despite the methodological limitations of our review, we did encounter opinions that raise concerns about Judge Alito's evenhandedness. Several readers independently noted uneven deference to agencies' legal interpretations,[9] while others observed an inconsistency in adherence to text over other indicators of congressional intent. . . .After we completed our individual reviews, we discussed whether we discerned any troubling patterns in these respects. That discussion was inconclusive. We flag this issue for your consideration in your review of a broader range of materials and reports.
>
> The cases also suggested to some readers a disturbing tendency to place greater obstacles in the way of discrimination plaintiffs than is warranted by the Federal Rules of Civil Procedure and Supreme Court precedent. Although we are not, at this stage, able to reach firm conclusions as to this issue, we believe that further review of Judge Alito's opinions would be warranted . . .

And a member of another reading group wrote:

> (In immigration cases, he) shows little empathy for the applicants, except for Soltane, and he excuses what he views as insignificant errors of procedure by agencies operating with expertise in the subject area.

However, a member of yet a third reading group, referring to the nominee's consumer protection decisions, noted:

> Judge Alito appears to be 'an impartial dispenser of justice.' (His) opinions are 'proportional, favoring neither the consumer nor the defendant,' dispensing justice impartially based on the law and facts unique to each case

And further, this from a second reading group chair:

> And one reviewer, who described his specific attention to the issue of a potential anti-defense bias in criminal cases, ultimately reported: "(E)ven within the opinions which raised questions for me about his anti-defense predispositions, I found evidence that Judge Alito listened to all arguments and considered them fairly." He also wrote: "(D)efendants had some success in persuading Judge Alito of the merits of their arguments in 5 out of 13 cases—a percentage surely much higher than the success rate for all criminal appellants before all judges in most Circuits."

When reading group writings from the twenty-seven readers are taken as a whole, no clear, overarching pattern of bias for or against certain classes or parties arises. In fact, one

[9] Compare, however, the comments of yet another member of a different reading group: "(T)he opinions as a group do not demonstrate a clear deference to agency determinations, either agency adjudications or agency interpretations of rules . . .."

reading group member who reviewed the nominee's opinions for evidence of partiality reflected the comments of others when he concluded that he did not attribute any leanings to personal bias, but rather to a likely concern with pragmatic considerations.[10] The inconclusive findings that resulted from our reading groups on this one issue did not, in the opinion of the Standing Committee, establish bias or a lack of open-mindedness on the part of the nominee.

The comments of those we interviewed must also be fully considered regarding this issue, and on that front the opinions were far more uniform.

> "Whether he agrees or disagrees with you, Alito always has a thoughtful reason for his views and is always willing to listen, discuss, and modify his views if appropriate."
>
> "He is a judge's judge. He does not let his views get in the way."
>
> "He enjoys brainstorming and is very good at looking at all sides of an issue."
>
> "His temperament is balanced and dignified. He is quiet and fair."
>
> "He takes judging seriously as a craft. He would not impose his personal views."
>
> "(Judge Alito) is fair, listens to everything carefully, and makes decisions on the facts and the law. He provides honest assessments on the merits of the case."
>
> "(His) judicial temperament and demeanor is thoughtful, evenly balanced, and very analytical."
>
> "(Judge Alito is) open minded (to) everyone's point of view, and (is) not in any way dogmatic."
>
> "He is thoughtful, judicious, works both sides of the cases and does not let his feelings dictate either left or right."
>
> "He is a fair-minded person personally committed to the deliberative process. He is thoughtful and deliberative to an extreme. (I have) great confidence in Judge Alito's fair-mindedness."

[10] That conclusion is bolstered by the nature of the discussion we had with Judge Alito during his personal interview, when we discussed his approach to decision-making. The process he described to us that he employs, including ultimately looking back from a proposed result to see that he has not misapplied the law and created an unjust outcome, is consistent with notions of judicial pragmatism.

The Standing Committee is satisfied that Judge Alito's judicial temperament meets the highest standards for appointment to the Supreme Court of the United States.

Conclusion

Judge Samuel Alito has, over the course of his career, created a substantial and perhaps even enormous record. Both as a lawyer and a judge he has dealt with a wide spectrum of issues and has distinguished himself at virtually every turn. It is clear that he sees majesty in the law, and remains a student of it to this day.

Through the outreach of its members, the Standing Committee has interviewed hundreds of individuals who know the nominee. With the assistance of our reading groups, the Standing Committee has reviewed the written record of the nominee in detail. And with his full cooperation, members of the Standing Committee conducted an extensive personal interview. His professional and judicial profiles are clearly in view.

Concerns have been raised and reviewed in detail. None of those concerns rises to a level that overrides what the nominee has demonstrated in a decade and a half of public service on the Federal bench. To the contrary, Judge Alito's integrity, professional competence, and judicial temperament are of the highest standing. It is the unanimous opinion of the Standing Committee[11] that Judge Alito is *"Well Qualified"* to serve as Associate Justice of the United States Supreme Court.

Fifty years ago a Supreme Court justice wrote of the traits of character necessary to serve well on the Supreme Court. He referred to the ability to put one's passion behind one's

[11] With one recusal. *See supra* note 2.

judgment instead of in front of it, and to demonstrate what he called "dominating humility."[12] It is the belief of the Standing Committee that Judge Samuel Alito possesses those same qualities.

Consistent with our longstanding practice, the Standing Committee will review this report at the conclusion of the public hearing, and notify you should there be any circumstances that would require a modification of these views.

On behalf of the Standing Committee, I wish to thank you and the Members of your Committee for the opportunity to participate in the confirmation hearing on the nomination of the Honorable Samuel A. Alito, Jr., to be Associate Justice of the United States Supreme Court. We are pleased to be able to work with you to assure the appointment of the highest quality of judges to the Federal bench for the American people.

Respectfully submitted,

Stephen L. Tober, Chair

cc: Members, Committee on the Judiciary, United States Senate
Michael S. Greco, President, American Bar Association
Members, American Bar Association Standing Committee on Federal Judiciary

[12] Hon. Felix Frankfurter, "Foreword," 55 *Columbia Law Review* 435, 436 (April 1955).

Exhibit A

Reading Group: Syracuse University College of Law

Lisa A. Dolak, Chair, Professor of Law, Senior Associate Dean for Academic Affairs (intellectual property, procedure, internet law and policy)

Aviva Abramovsky, Assistant Professor of Law (commercial transactions, insurance law, ERISA, contracts and remedies)

Hannah R. Arterian, Dean and Professor of Law (constitutional law, employment and labor law)

William C. Banks, Board of Advisors Professor of Law, Laura J. & L. Douglas Meredith Professor (constitutional law, national security law)

Peter A. Bell, Professor of Law (substantive criminal law, health law, tort law)

Sanjay Chhablani, Assistant Professor of Law (criminal law and procedure)

David M. Driesen, Angela R. Cooney Professor of Law (environmental law, administrative law, structural constitutional law)

Margaret M. Harding, Professor of Law (arbitration law and practice, securities law, tort law)

Janis L. McDonald, Associate Professor of Law (employment discrimination law, civil rights and constitutional law [individual rights and liberties])

William M. Wiecek, Congdon Professor of Public Law & Legislation, Professor of History (constitutional law and history, law and religion, federal jurisdiction, civil rights history, property)

* * * * *

Professor Thomas R. French, Director, H. Douglas Barclay Law Library

Exhibit B

Reading Group: Georgetown University Law Center

Cornelia T.L. Pillard, Chair, Professor of Law (constitutional law, civil procedure, employment, civil rights, Supreme Court practice)

Hope M. Babcock, Professor of Law (environmental law, natural resources law)

Sherman L. Cohn, Professor of Law (civil procedure, legal ethics, appellate practice)

James V. Feinerman, James M. Morita Professor of Asian Legal Studies (international law, corporate finance)

Michael Gottesman, Professor of Law (labor and employment law, constitutional law, civil rights, torts, Supreme Court practice)

Emma Coleman Jordan, Professor of Law (race and gender discrimination, law and economics, commercial law--payments and secured transactions, banking)

Gregory Klass, Associate Professor of Law (contracts, legal theory)

Naomi Mezey, Professor of Law (civil procedure, legal process, legislation, law and culture, jurisprudence)

John Mikhail, Associate Professor of Law (torts, legal theory)

Julia L. Ross, Professor of Legal Research and Writing (legal research and writing, civil litigation, entertainment law, copyright and trademark law, appellate practice)

William T. Vukowich, Professor of Law (commercial law, contracts, bankruptcy, consumer protection)

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Duncan Alford, Head of Reference, Georgetown Law Library

Exhibit C

Reading Group: Practitioners

John J. Curtin, Jr., Bingham McCutchen LLP, Boston, Massachusetts

Ralph I. Lancaster, Jr., Pierce Atwood LLP, Portland, Maine

Nory Miller, Dechert LLP, Philadelphia, Pennsylvania

Martin F. Murphy, Foley Hoag LLP, Boston, Massachusetts

Roscoe Trimmier, Jr., Ropes & Gray LLP, Boston, Massachusetts

Steven M. Zager, Akin, Gump, Strauss, Hauer & Feld, Houston, Texas