Third Judicial District Court

Denise Posse Lindberg
District Judge

Mr. Chairman, Mr. Leahy, members of the Committee:

My name is Denise Posse Lindberg. I am a state trial court judge from the state of Utah, and I am honored to appear before you in enthusiastic support of the nomination of Judge John G. Roberts as Chief Justice of the United States. He brings to this appointment a keen intellect and sound judgment, fairness and decency, and exceptional knowledge of and respect for the law, the Court, and our constitutional system. He has all the attributes necessary to be a Chief Justice in the highest traditions of that office.

I am here today because everything I know about John Roberts convinces me that he is exactly the right person for this demanding and crucial position at this equally demanding and crucial time in our nation's history. I preface my comments by noting that although our lives have intersected at various times over the past fifteen years, I cannot say that we are close personal friends. However, over that period of time I have observed his career from three different vantage points. First, I came to know him in my role as a law clerk to Justice Sandra Day O'Connor. Second, I was his colleague at the Washington, D.C. law firm of Hogan & Hartson and was a member of the Appellate practice group which he headed. Third and finally, I am a fellow judge who has reviewed his judicial record.

My first exposure to John Roberts came on opening day of October Term, 1990 at the Supreme Court when then-Deputy Solicitor General Roberts was scheduled to present one of the

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"First Monday" arguments. I expected a professional presentation from the Solicitor General's office, but the skill and effectiveness with which then-Deputy Solicitor General Roberts argued his case far exceeded my expectations. Notwithstanding his relative youth at the time, his composure, his clear command of the relevant facts and law, and his exceptional ability to engage with the Court in a discussion of the issues made a lasting impression on me.

John Roberts argued five additional cases during my term at the Court, and brought to each the same thorough preparation and skill. My respect for him as an outstanding appellate advocate was firmly established by the time my clerkship ended.

Following my clerkship I joined Hogan & Hartson's appellate practice group and worked with John on a number of cases following his return to the firm. John was a hands-on manager, doing much of his own drafting and working closely with other attorneys to ensure he was fully conversant with every aspect of the case. He also generously lent his assistance and expertise to cases where he was not, officially, the "counsel of record." I particularly recall the unstinting support and guidance he offered on my first solo effort at drafting a brief for a case before the U.S. Court of Appeals for the D.C. Circuit. Generally, appellate writing is a team effort, with different attorneys drafting sections of the brief under one person's overall direction and editing. That particular case, however, involved a *pro bono* matter I had taken on, so I was responsible for drafting the entire brief. He willingly spent considerable time reviewing my drafts and providing feedback. For someone with his exceptional talent it would have been easy for John to become impatient with a less-experienced colleague. But that never happened. He was a genuinely nice person to work with, incredibly bright but never arrogant. He gave his time freely, and his feedback on my work was invariably insightful, helpful and courteous. He had a

way of making complex issues seem simple, but not simplistic. John analyzed issues creatively without distorting precedent or stretching a point of law beyond proper bounds. In short, consistent with the best traditions of our profession, John's work was always principled and carefully circumscribed. I learned appellate practice from watching John work, and being taught by him.

My personal and professional experiences with, and observations of, John are not unique. In recent conversations with some of our former colleagues, similar comments were frequently repeated. For example, another former O'Connor clerk and former associate at Hogan, Amy Kett, told me how much it had meant to her that John had taken time to go hear her argue her first case before the D.C. Circuit. Additionally, as head of the appellate group John facilitated and gave his complete support to Amy's efforts to balance her career with the demands of raising a family.

John reveres the law, and treats it–and everyone connected with it–with utmost respect. One example of this occurred following an associate's oral argument before an appellate panel. In debriefing the case John gently reminded the associate always to shake opposing counsel's hand. It was a small thing, but emblematic of his commitment to civility in the practice of law.

My final comments about John come from my perspective as a judge, evaluating the work of a fellow judge. In preparing these remarks I reviewed a substantial number of his published opinions. I also read some of the commentary that attempts to draw inferences about his views based on those writings. I have noted three problems with some of that commentary. In some cases commentators have failed to acknowledge that judges do not choose the cases that come before the bench, but must instead respond to particular facts in light of applicable law. Others

overlook the fact that whenever an appellate judge writes for the court, that judge is not writing simply for him- or herself, but rather must reflect the judgment of at least one other member of the appellate panel. Others appear to misunderstand the judicial role. John has correctly noted that judges "do not have a commission to solve society's problems, as they see them, but simply to decide cases before them according to the rule of law."

University of Chicago law professor Cass Sunstein has described John's judicial writing as "careful, lawyerly and narrow."[1] I agree. I would further describe his body of work as judicious -that is, reflecting sound judgment. In each opinion I reviewed, John focused on the case before him and did not overreach. He was respectful of precedent. In short, he demonstrated the judicial restraint that this body has said is an important consideration in evaluating a nominee to the Court. For example, in *Rancho Viejo v. Norton,*[2] a dissent from denial of rehearing *en banc* (for which, in my view, he has been unfairly criticized), John correctly noted the inconsistency between the panel's opinion and binding Supreme Court precedent. He also noted that the panel's opinion created a circuit split. Rather than reflecting hostility to the Endangered Species Act, as some have characterized it, his dissent offered the possibility that *en banc* review would "afford the opportunity to consider alternative grounds for sustaining application of the Act" in a manner that would be more consistent with Supreme Court precedent.

To be sure, policy issues acquire a different salience when one moves from the Court of Appeals to the Supreme Court. To the best of my knowledge John is personally, judicially, and

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[1]Cass R. Sunstein, *Minimal Appeal*, THE NEW REPUBLIC, August 2005, at 17.

[2]334 F.3d 1158, 1160 (D.C. Cir. 2003).

constitutionally conservative. I would not hazard a guess as to his specific views on "hot button" issues, nor as to the areas of law or policy on which we may personally agree or disagree. What is important to me is that John Roberts is disciplined, thoughtful, and respectful of the role of the judiciary in our constitutional structure. He will not impose his personal policy preferences on his reading of the law. I have complete confidence that he will be judicious in the exercise of power.

To the office of Chief Justice John will bring a remarkable combination of skills, personality, and respect for constitutional principles that will make him highly effective. His vast intellectual skills and winsome personality will enable John to work effectively with his colleagues and bring consensus to a divided Court. These same traits will make him an outstanding leader of the federal judiciary and will allow him to work cooperatively with the coordinate branches of government.

I urge this Committee to recommend to the full Senate swift confirmation of his nomination. Thank you for this opportunity to share my views.