Statement
United States Senate Committee on the Judiciary
Nomination of John G. Roberts (Witness List for September 12, 2005)
September 12, 2005

The Honorable Richard Lugar
United States Senator , Indiana

Senator Richard Lugar
Introduction of Judge John G. Roberts to Senate Judiciary Committee

Thank you, Mr. Chairman. It is a privilege and pleasure to appear before you, Senator Leahy and my other distinguished colleagues who serve on this important Committee, to introduce the President's nominee to serve as the 109th Justice of the Supreme Court and the 17th Chief Justice of the United States, John G. Roberts, Jr.

As is now well known, Judge Roberts was born in Buffalo, New York, but moved at age eight to Indiana. The Roberts family settled in Long Beach, a small Hoosier community on the shores of Lake Michigan. John attended local schools there and in nearby La Porte, and in 1973 was graduated first in his high school class of 22, having also excelled in numerous extra-curricular activities – including co-captaining the football team despite self-described status as "a slow-footed halfback." Summers were spent, as they still are by young Hoosiers today, earning money for college, which in John Roberts' case included work in the local steel mill.

Judge Roberts' path would lead first to Harvard, and then to serving his fellow citizens in numerous important posts in our Nation's Capital. But as one friend remarked when his nomination was first announced, "If you ask John where he's from, he says Indiana." One of my friends, a native Hoosier who worked alongside him in the Reagan White House Counsel's Office, also testifies to Judge Roberts' open appreciation of and pride in his Indiana roots. I know Committee members will understand my observing that our State takes a certain pride of its own in his nomination by the President to lead our Nation's highest court.

Growing up in Indiana, one learns early-on that talent and accomplishments count – but honesty and integrity count more. One learns, too, that arrogance is scorned and pomposity will quickly be punctured. Modesty about one's gifts, and the obligation to use them responsibly and in the service of others, are lessons taught in the home and the classroom, and reinforced in the workplace and the public square. Love of country runs deep, as does profound gratitude for living in the heartland of a Nation endowed as none other in history with the blessings of liberty. For Hoosiers, the term "Midwestern values" is not a cliché but a way of life, passed-on by word and living example from one generation to the next.

I believe most Americans realized, while listening to his thoughtful, humble remarks on the evening the President first introduced him as a Supreme Court nominee, that those values were at the core of John Roberts, both as a judge and as a man. Those introduced to him long ago – from the Hoosier neighbors, classmates and teachers of his youth, to those who later worked and served with him in the White House and other arenas – speak with one voice that this is the John Roberts they have always known.

Judge Roberts' intellectual and professional qualifications to serve on the Supreme Court are beyond debate. He completed Harvard College in three years, graduating summa cum laude. He was

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graduated magna cum laude from Harvard Law School, serving on the Harvard Law Review. A clerkship with Second Circuit Judge Henry Friendly, among the most renowned jurists in our history, was followed by a Supreme Court clerkship with then-Associate Justice William Rehnquist. A year's service as Special Assistant to William French Smith, President Reagan's first Attorney General, was succeeded by four years of serving the President directly as Associate White House Counsel. After five years in a leading law firm, John Roberts returned to public service as principal Deputy Solicitor General under the first President Bush. In that role and after his subsequent return to private practice, he argued 39 times before the Supreme Court, earning wide acclaim as an advocate of exceptional skill. His reputation for personal courtesy, fairness, decency and integrity was equally well-earned and widespread, among colleagues and opposing counsel alike and on both sides of the political aisle. Two years ago, the Senate unanimously confirmed him for his current position on the United States Court of Appeals for the District of Columbia Circuit, arguably the most important of the federal circuit tribunals and, as this Committee knows, on which three current members of the Supreme Court also served.

Simply put, John Roberts is a brilliant lawyer and jurist with an extraordinary record of accomplishment and public service. On this score alone, he readily merits the American Bar Association's "well qualified" rating, which is the highest it gives. He merits it all the more given the personal character and values that have marked each stage of that service. As the Founders observed when our Constitution was drafted, few persons "will have sufficient skill in the laws to qualify them for the stations of judges," and "the number must be still smaller of those who unite the requisite integrity with the requisite knowledge." Judge Roberts embodies the rare combination that the Framers envisioned. He also has remarkable industry and self-discipline, which are essential to a Court that Americans respect, as Justice Louis Brandeis remarked and Chief Justice Rehnquist reminded us, in large part "because we do our own work."

This exceptional blend of professional and personal qualifications is especially important now, given the further responsibilities Judge Roberts has been called on to assume on the passing of the Chief Justice. Among the many tributes to this extraordinary public servant, I have been struck most by the observations of his colleagues on the Court. Whatever differences may mark their judicial philosophies, they stand as one in praising the qualities that made him such an outstanding Chief Justice for nearly two decades.

As Justice Scalia noted, in leading "a philosophically diverse group of Justices . . . [h]is keen intellect and sound judgment commanded the respect of his colleagues, and his personal qualities of considerateness and fairness won their affection." In Justice O'Connor's words, "He led the Court with firm principles but with a light touch," and "secure[d] the cooperation and admiration of all of the Justices for the years in which he served." Justice Ginsburg called him simply "the fairest, most efficient boss I have ever had," who "fostered a spirit of collegiality . . . perhaps unparalleled in the Court's history."

I know Judge Roberts is keenly and humbly aware of the large shoes he has now been asked to fill, the more so since the late Chief Justice was his own initial boss when he arrived in Washington a quarter century ago. All Americans can be grateful that Judge Roberts not only learned but has lived the lessons taught by his mentor and role model. In my judgment, he is supremely qualified to carry forward the tradition of fair, principled and collegial leadership that so distinguished the man for whom he once worked and has now been nominated to replace.

Under the judicial confirmation standards that prevailed throughout most of our history, my remarks could appropriately end at this point, and this Committee and the Senate as a whole could proceed to

consider Judge Roberts' nomination in light of the outstanding qualifications just summarized. Indeed, as Senator Biden noted shortly before chairing 1993 confirmation hearings for Judge (now Justice) Ruth Bader Ginsburg, nominees almost never testified in such hearings before 1955; and the last Supreme Court Justice from Indiana, Sherman Minton, was confirmed without controversy despite declining even to appear before this Committee following his nomination by President Truman.

I am not troubled by the fact that Committee hearings, including testimony by Supreme Court nominees, are now firmly established as part of the confirmation process. These proceedings serve a vital role in our deliberations, and are a vivid course in "living history" for all Americans. It is important that we write that history well.

Today's Supreme Court regularly faces issues of enormous public import and attendant controversy. Many are deeply divisive, with well-funded, well-organized advocacy groups passionately committed to one or the other side, and for whom the central, well-nigh exclusive focus is simply "who wins." Media coverage in the "information age," whether on talk radio or countless cable outlets featuring "talking heads" for each side, fuels both the controversy and the resultant tendency to see the Supreme Court as a kind of "political branch of last resort." When a Court vacancy occurs, the confirmation process takes on the trappings of a political campaign, replete with interest-group television ads that often reflect the same over-simplifications and distortions that are disturbing even in campaigns for offices that are in fact political.

All of this may be understandable. It remains, in my view, a fundamental departure from the vision of the courts and their proper role that animated those who crafted our Constitution. The Founders were at pains to emphasize the difference between the "political branches" – the Executive and the Legislature – and the Judiciary. Their concern about the potential dangers of passionate, interest-driven political divisions, which Madison famously called the "mischiefs of faction," influenced their design of our entire governmental structure. But they were especially concerned that such mischiefs not permeate those who would sit on the bench. Otherwise, they warned, "the pestilential breath of faction may poison the fountains of justice," and "would stifle the voice both of law and of equity."

I believe that each of us in the Senate bears a special responsibility to prevent that from occurring. The primary focus of these hearings and our subsequent debate and vote on the floor will be Judge Roberts and his qualifications. But another focus will be whether the Senate, in discharging the solemn "advise and consent" duty conferred by the Constitution, is faithful to the trust the Founders placed in us. That focus necessarily will shine with special intensity on this Committee, as millions of the fellow citizens we serve follow its proceedings in the coming days.

Former Yale Law School Dean Eugene Rostow once described Supreme Court Justices as "inevitably teachers in a vital national seminar." When vacancies occur and Supreme Court nominees are presented for confirmation, members of the Senate – and particularly members of this Committee – become guest lecturers in that seminar, with all Americans in the classroom paying close attention. I believe that seminar's vital lesson should not and must not be "who wins" a given case, or how the nominee might "vote" on a given controversy of the moment. Rather, the timeless lesson that transcends any particular case and whatever controversy may swirl about it is how our courts resolve disputes, from the momentous to the mundane, in administering a fair, impartial system of justice that must stand outside the political passions and pressures of the day, and whose judges must put aside whatever personal views they may have on the issues presented.

I believe this Committee taught that lesson well in 1993, when then-Chairman Biden, in

foreshadowing the impending confirmation hearings on Judge Ginsburg, cautioned that she should not be questioned about "how she will decide any specific case that may come before her." The full Senate followed suit, confirming Judge Ginsburg by a vote of 96-3. This occurred even though many of the 96 undoubtedly disagreed with one or another aspect of her judicial philosophy, and had little doubt that her votes as a Supreme Court Justice might well differ from their own preferences.

I have every confidence that Judge Roberts, in addition to the extraordinary intellectual, professional and personal qualities he will bring to the task of leading our Nation's highest court, will also bring a profound understanding of and commitment to the transcendent principles I have endeavored to summarize about the proper role of the judiciary in our constitutional system. I am confident as well that just as in Judge Ginsburg's 1993 confirmation proceedings, this Committee and the great majority of my Senate colleagues will demonstrate that same understanding and commitment as we consider the confirmation of Judge Roberts.

I thank you, Mr. Chairman, and all members of the Committee for your courtesy in allowing me to introduce Judge John G. Roberts, Jr., a distinguished son of Indiana whom I believe will prove to be an outstanding Chief Justice of the United States.