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September 14, 2005

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 letter is submitted in response to the invitation from the Senate Committee on the Judiciary to the Standing Committee on Federal Judiciary of the American Bar Association (hereafter the "Standing Committee") to present its report regarding the nomination of the Honorable John G. Roberts, Jr., to be Chief Justice of the United States.

The Standing Committee's evaluation of Judge Roberts (and every other judicial nominee) is based upon a thorough, non-partisan peer review investigation of his professional qualifications, that is, his integrity, judicial temperament and professional competence. In addition, because Judge Roberts was nominated for Chief Justice -- a position with distinct additional duties, the Standing Committee also undertook a separate peer review investigation of his administrative abilities and leadership qualities to determine if he also possesses the additional professional

qualifications that are essential to fulfilling the role of Chief Justice. The Standing Committee did not investigate or consider Judge Roberts' ideology or political views during the course of either of its evaluations, nor did it examine what Judge Roberts' views might be on any issues that may potentially come before the Supreme Court.

The timing of President Bush's announcement of his intention to nominate Judge Roberts for Associate Justice in July, followed by President Bush's re-nomination of Judge Roberts for Chief Justice last week, posed an unusual situation for the ABA Standing Committee; the nominations straddled the end of one association year and the beginning of the current one, an event that is marked by changes in leadership and committee membership throughout the organization. While there was considerable continuity of membership on the committee, the 2004-05 Standing Committee, chaired by Tomas Z. Hayward, Jr., had initiated the investigation of the professional qualifications of Judge Roberts for Associate Justice on July 20, and was therefore charged with completing the investigation and evaluation. It submitted its rating of Judge Roberts for the position of Associate Justice to your Committee on August 17 and was poised to present its detailed evaluation during the confirmation hearings originally scheduled to commence September 6. In the meantime, as you well know, President Bush withdrew Judge Roberts' nomination for Associate Justice and nominated him to be Chief Justice of the United States. Given the need to complete the evaluation of the nominee's fitness for the added responsibilities of this new position in approximately one week, the current (2005-06) Standing Committee, chaired by Stephen L. Tober, undertook a peer investigation directed solely at determining if Judge Roberts had the requisite additional professional skills needed to fulfill the role of Chief Justice. This letter, therefore, explains the Standing Committee's two separate ratings of Judge Roberts – the 2004-05 Standing Committee's rating reflects its evaluation of Judge Roberts'

professional qualifications for Associate Justice of the Supreme Court, and the 2005-06 Standing Committee's supplemental rating reflects its evaluation of whether the nominee possesses the leadership and administrative skills necessary for the position of Chief Justice of the United States.

Evaluation of the Professional Qualifications of Judge Roberts for the Position of Associate Justice of the Supreme Court

To merit the Standing Committee's evaluation of "Well Qualified" or "Qualified," the Supreme Court nominee must be at the top of the legal profession, have 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 only those found to merit the Standing Committee's strongest affirmative endorsement.

In conducting its investigation, the members of the Standing Committee personally reached out by letter to over 1,500 individuals representing a wide spectrum of people across political, racial and gender lines, including lawyers, judges and community leaders, to identify and interview as many people as possible with personal knowledge of Judge Roberts. The Standing Committee interviewed more than 300 people with such knowledge. This included over 150 federal and state court judges, including all members of the Supreme Court of the United States, members of the United States Courts of Appeals, members of the United States District Courts, United States Magistrate Judges, United States Bankruptcy Judges, and numerous state judges. The investigation included contacting all of Judge Roberts' colleagues on the United States Court of Appeals for the District of Columbia Circuit and all United States

District Court Judges from the District of Columbia. Most of the judges on the District of Columbia federal courts were interviewed in person.

Members of the Standing Committee personally questioned several hundred other individuals. These individuals included former Supreme Court law clerks, practicing lawyers and law professors. Interviewed practitioners included lawyers who were adversaries and co-counsel, as well as lawyers who have appeared before Judge Roberts since he was appointed to the District of Columbia Circuit. Standing Committee members also interviewed law school deans, faculty members of law schools and constitutional scholars throughout the United States.

All circuit members of the Standing Committee conducted confidential interviews within their circuits with individuals who had information regarding Judge Roberts' professional qualifications.

The Standing Committee also reviewed its files pertaining to two earlier investigations of Judge Roberts when he was nominated by President George W. Bush in 2001 and by President George H.W. Bush in 1991. In 1991, Judge Roberts was unanimously found by the Standing Committee to be Qualified. In 2001, he was unanimously found by the Standing Committee to be Well Qualified to sit on the District of Columbia Circuit, which recommendation was reaffirmed by the Standing Committee in 2003.

It has been the practice of the Standing Committee to ask distinguished legal scholars and Supreme Court practitioners to conduct an independent review of all of the opinions and other legal writings authored, in whole or in part, by the nominee for the Supreme Court. This practice was followed again for this nomination. Judge Roberts' opinions were reviewed by:

(1) a Practitioners' Reading Committee of distinguished lawyers chaired by Charles Fried. Professor Fried is a former Solicitor General of the United States and a former Chief

Justice of the Massachusetts Supreme Court. He is presently Beneficial Professor of Law at Harvard Law School. The Practitioners' Reading Committee consisted of a diverse group of fourteen lawyers who have practiced before the Supreme Court and Courts of Appeals; and

(2) a Reading Committee of distinguished law professors chaired by Ronald J. Allen, John Henry Wigmore Professor, Northwestern University School of Law. This Reading Committee consisted of eleven members of Northwestern's law school faculty chosen for recognized expertise in a wide variety of substantive areas of the law.

The lawyers and professors who participated in these Reading Committees are listed in Exhibits A and B to this letter. The Standing Committee commends the Reading Committees for their thorough and thoughtful review of Judge Roberts' writings.

The two Reading Committees submitted reports to the Standing Committee regarding their independent analyses of Judge Roberts' opinions, briefs and other writings. These detailed reports were carefully reviewed by the members of our Standing Committee and taken into consideration in developing its assessment of Judge Roberts' professional qualifications.

In addition, one of the two principal investigators for the Standing Committee has reviewed indices and documents authored by the nominee that were made available by the National Archives. The investigator, Pamela A. Bresnahan, then selected substantive memoranda that were reviewed by the Chair and forwarded to the law school reading committee for evaluation and to the members of the Standing Committee for their consideration.

Finally, three members of the Standing Committee personally interviewed Judge Roberts: Pamela A. Bresnahan and Sheila Slocum-Hollis, appointed to the Standing Committee to represent the District of Columbia Circuit and the Federal Circuit, respectively, and Chair Hayward.

Evaluation

Integrity

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

Judge Roberts has earned and enjoyed an excellent reputation for integrity and character. No one interviewed by the Committee had any question or doubt in this regard. Representative comments about his character and integrity are as follows:

“He is probably the most honorable guy I know and he is a man of his word.”

“I would be amazed if anyone had any greater integrity on either a personal or professional level.”

“He's a man of extraordinary integrity and character.”

“He is honest and straightforward and I do not have the slightest hesitation about any aspect of his integrity.”

On the basis of our interviews with Judge Roberts and with over three hundred judges, lawyers and others who know Judge Roberts professionally, the Standing Committee concluded that Judge Roberts is a man of impeccable integrity.

Judicial Temperament

In investigating judicial temperament, the Standing Committee considers the nominee's compassion, decisiveness, open-mindedness, judicial courtesy, patience, freedom from bias and commitment to equal justice under the law. His colleagues and opponents from private practice, the Attorney General's office, the White House Counsel's office and the Solicitor General's office, lawyers who have appeared before him in the District of Columbia Circuit and his current

judicial colleagues universally give Judge Roberts the highest rating for his demeanor, temperament and manner of treating people. Representative comments include:

“He’s collegial and, if he disagrees, he does so in a respectful way.”

“With respect to his demeanor, Judge Roberts is an even-paced guy, very low-key, open and fair-minded.”

“He has one hundred percent integrity, open-mindedness, demeanor and integrity.”

“He is a very appropriate, polite, well-tempered and pleasant individual.”

“He is very easy to deal with in a social setting.”

“He is not just an engaging person, but he is very interested in hearing and conversing with others.”

“He is compassionate and an extremely good listener.”

“He’s the kind of judge you like to be before.”

“He’s very nice and he asks good questions.”

“He has the kind of temperament and demeanor you would want in a judge.”

“He is extremely well-mannered with the advocates, always courteous to them and extremely pleasant.”

“He was extremely even-tempered and was so good that he could give classes on it.”

“John Roberts is respectful, polite and understated. He has no bluster and is a fabulous lawyer. He has no need to impress anyone.”

“He is a terrific listener; he absorbs both sides of all questions. He has no preconceptions about anything. He is, in one sense, a highly traditional lawyer because of his absorption of the facts and the law.”

“He will decide the cases that come to him and he is not an ideologue.”

Judge Roberts’ judicial temperament meets the highest standards set by the Standing Committee for appointment to the Supreme Court of the United States.

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 Roberts' educational background has amply prepared him for service on the Supreme Court of the United States. He attended public and private schools in Indiana. He graduated from Harvard College in 1976 *summa cum laude* and was elected a member of Phi Beta Kappa. He graduated from Harvard Law School in 1979 *magna cum laude*. He served as the managing editor of the Harvard Law Review. After law school he served as law clerk to Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit. Following his clerkship with Judge Friendly, he served as law clerk to then Associate Justice William H. Rehnquist of the Supreme Court of the United States.

His service with the federal government included the positions of Special Assistant to Attorney General William French Smith, United States Department of Justice; Associate Counsel to the President, Ronald Reagan, White House Counsel's Office; and Principal Deputy Solicitor General, United States Department of Justice. He was an associate and then a partner in the respected Washington, D.C., law firm of Hogan & Hartson. There, he became a leader of the firm's appellate practice section. After his second nomination by President George W. Bush, he was appointed to the United States Circuit Court of Appeals for the District of Columbia Circuit in 2003.

Prior to his appointment to the District of Columbia Circuit, he had an extensive federal appellate litigation practice, both in the private and public sectors. From 1984 to 2003, he argued 39 cases before the Supreme Court. In addition, he has argued cases before the Second, Fourth, Fifth, Sixth, Ninth and Tenth Circuit Courts of Appeals, the Federal Circuit and the Court of Appeals for the District of Columbia Circuit. He represented clients in a broad range of

appellate matters, including administrative law, admiralty, antitrust, arbitration, banking, bankruptcy, civil rights, constitutional law, environmental law, federal jurisdiction and procedure, First Amendment matters, health care, Indian law, interstate commerce, labor law and intellectual property rights.

Judge Roberts has participated actively in legal organizations and has lectured and written about the law throughout his career. Judge Roberts was praised repeatedly by his peers during the Standing Committee's investigation for his excellent analytical writing skills.

Representative comments include these:

"He is brilliant and he understands the importance of the independence of the judiciary and the role of the rule of law."

"His opinions are clear, succinct and very well-written."

"His opinions are in the mainstream of American jurisprudence."

"His competence is off the charts, and he is one of the smartest lawyers I have ever worked with."

"He asks good and tough questions but with a great manner."

"He is one of the best appellate lawyers in the country."

"As an advocate, Judge Roberts was the best oral advocate around practicing before the United States Supreme Court."

"He has good intellect, good judgment and a lot of common sense. He is well-balanced as a person and a lawyer."

"John Roberts is superb as an advocate."

The legal opinions that Judge Roberts has written during his two years on the District of Columbia Circuit also cover a wide range of subjects.

The comprehensive reports submitted to the Committee by the two Reading Committees of scholars and Supreme Court practitioners further support the Standing Committee's conclusions concerning the scholarship and writing ability of Judge Roberts. The Chair of one of

the Reading Committees summarized his colleagues' assessment of Judge Roberts' opinions and other writings as follows:

“Judge Roberts has written 49 opinions in his two years and two months on the bench in which 40 were opinions for unanimous opinions, three were majority opinions for a divided panel, three were concurring opinions, one was an opinion concurring in part and dissenting in part and two were dissenting opinions. All of the members of our committee agree that all of Judge Roberts' opinions were very well-written, clear, as simple as the subject matter allowed and meticulous in their treatment of the facts and the law, with occasional light touches but no rhetorical displays. No member of our committee thought that Judge Roberts stretched a point, disregarded appropriate arguments or authority or dealt other than fairly with the cases before him.”

The Chair of the second Reading Committee summarized his colleagues' assessment of Judge Roberts' writings as follows:

“We reviewed 51 of Judge Roberts' opinions and 49 briefs filed in the United States Supreme Court that were signed by Judge Roberts in cases that he argued. There was remarkable unanimity in our group regarding the inferences that can be drawn from Judge Roberts' opinions. He is highly intelligent, well-trained, skillful in every respect, and he writes lucid and convincing opinions that adhere closely to the letter of the law whether the letters be found in statutes or case law. The upshot of all of this is that there is no serious question about whether he is highly qualified in terms of legal ability and professional competence. He is as qualified as any appointment to the Supreme Court in recent memory. There is nothing in his written product that indicates that he is other than a man of integrity and accommodates disagreement with grace and respect, strongly indicating an appropriate judicial temperament.”

The same Reading Committee Chair commented as follows with respect to his briefs:

“The briefs confirm the view that Judge Roberts' reputation is one of the leading Supreme Court advocates of his generation. They are very well crafted in every meaning of the term. Like his opinions, they are exemplars of effective legal writing: clear, succinct, organized and persuasive. They give the suggestion of total command of the relevant fields as well as an inexorable logic favoring the position of his clients. Like his opinions, there are no diversions into peripheral academic debates or needless theorizing. Collectively, they comprise an impressive body of work and again contain nothing that casts doubt on Judge Roberts' qualifications for appointment to the Supreme Court.”

The same Reading Committee Chair perhaps best summarized the reasons why both Reading Committees praised the excellence of Judge Roberts' writing and scholarship by stating:

“Judge Roberts’ opinions are very well-written. They are clear and concise in their description of the facts and the law. Judge Roberts is deferential to government agencies, and to lower courts – as standards of review often require – but this deference does not cause him to skimp on his own analysis of and explanation for a particular outcome. Moreover, Judge Roberts’ opinions focus on legal doctrine but they do not shy away from engagement with public policy arguments. However, he ties his evaluation of public policy arguments not to his own social/moral compass but to the Congressional concerns and purposes that seemed to motivate the statute at issue.”

As mentioned previously, one of the Standing Committee’s principal investigators has personally reviewed the indices provided by the National Archives and online documents and individual files. From that review, the investigator selected substantive memoranda on diverse subject matters written by Judge Roberts during different time periods. The memoranda were then submitted to the law school Reading Committee for review and evaluation. Substantive writings and analyses, consisting mostly of memoranda about legislative proposals, statutory interpretation, agency proposals or specific legal problems, were cogent and well-written. The numerous substantive memoranda reviewed represented an attorney’s advice and independent counsel to his client, the United States Government or the President. His legal analyses of substantive issues were always well-crafted and well-written, although at times reflective of Judge Roberts’ young age at the time. Judge Roberts’ memoranda from his years at the White House cover a plethora of legal issues. His writing is prolific but careful. He clearly worked very hard and diligently during his tenure at the Department of Justice and White House. Clearly, Judge Roberts’ later writings and opinions show a more in-depth analysis of the subject matter at hand and are generally reflective of his greater maturity as a lawyer. In sum, the later written products are a far better indicator of his professional competence as a lawyer and as a judge.

Judge Roberts meets the Standing Committee’s criteria for having the highest level of professional competence.

**Supplemental Evaluation of the Administrative and Leadership Ability of Judge Roberts
for the Position of Chief Justice of the United States**

On September 5, the Standing Committee commenced a limited supplemental investigation focused solely on determining whether Judge Roberts has the requisite additional leadership and administrative skills necessary to successfully execute the responsibilities of Chief Justice of the United States. These responsibilities include managing the decision-making of the Court and overseeing the various administrative functions of the federal judiciary (the Judicial Conference of the United States, the Administrative Office, the Federal Judicial Center, the various specialized courts, etc.). In addition, there is the overall leadership obligation placed on the Chief Justice as both the real and symbolic head of the third branch of government.

As with the first investigation, each committee member contacted a variety of individuals within his or her circuit who were likely to have personal knowledge of Judge Roberts’ leadership and management abilities. The Standing Committee made a concerted effort to interview judges, lawyers and community leaders from diverse backgrounds. In total, approximately 80 interviews were conducted.

The challenges of managing the decision-making process of the Court (e.g., conducting the Court’s conferences and assigning the drafting of opinions) seem to be particularly well-suited to the personality and the leadership style of Judge Roberts. Virtually everyone who has worked with or observed Judge Roberts described him as a “very good listener” and as someone

who made sure everyone's views "got a fair hearing." He displays a "light touch" in his management style and is respectful of others. The results of his style and approach are uniformly described in glowing terms. Representative comments include:

"He has excellent skills in managing people."

"A great manager. He gave the staff tremendous support and never lost his temper. He is a great listener."

"High marks on collegiality. He reaches out to people for their input and opinions."

"[H]e can advocate for the judicial system as well as he can for a client."

"He has a superb ability to state reasons for his views, which makes him valuable and effective as a leader."

As a result of its investigation, the Standing Committee is satisfied that Judge Roberts' leadership and administrative skills are of the highest quality and make him well-suited for the position of Chief Justice of the United States.

CONCLUSION

Over the years, John Roberts has garnered praise for his impeccable professional demeanor, his graciousness, his careful and thoughtful manner, his ability to listen to and treat people with respect, and his self-deprecating manner. His work products are finely-crafted, his analytical skills are unparalleled and his oral advocacy is outstanding. He is an exceptional lawyer whose strong connections with the community in which he and his family live will keep him grounded and aware of the problems and needs of those he will serve. Judge Roberts is a conscientious and deliberative individual, an excellent manager with strong "people" skills and

proven leadership abilities, as well as a widely respected leadership style. During the Standing Committee's two investigations, a number of individuals commented that even though they were not of the same political party and did not share some of the ideological values held by Judge Roberts, they nevertheless believed, based on first-hand experience, that he is well qualified and deserving of the Standing Committee's highest rating.

His academic training, his broad experience in the federal government and private practice, and his service on the District of Columbia Court of Appeals have contributed to his professional stature as a well-rounded and well-trained lawyer who meets the articulated standards of professional excellence set by the Standing Committee's guidelines.

The 2004-05 Standing Committee, having determined that Judge Roberts has impeccable integrity and the finest judicial temperament and meets the highest standards of professional competence, unanimously concluded that Judge Roberts is Well Qualified for appointment to the Supreme Court. Furthermore, the 2005-06 Standing Committee is unanimously of the opinion that Judge Roberts is Well Qualified to assume the administrative and leadership responsibilities of Chief Justice of the United States. These two unanimously "Well-Qualified" ratings, when considered together, provide the Senate Judiciary Committee with the Standing Committee's comprehensive evaluation.

In sum, the Standing Committee's two recently completed independent peer-review evaluations of Judge Roberts have satisfied the Standing Committee that Judge Roberts meets the highest professional standards and is Well Qualified for appointment as Chief Justice of the United States.

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

On behalf of the Standing Committee, thank you Mr. Chairman and the Members of the Committee for your invitation to participate in the confirmation hearings on the nomination of the Honorable John G. Roberts, Jr. We are grateful for the opportunity to participate in the process of assuring the highest quality of judges in the federal judiciary.

Respectfully submitted,

Thomas Z. Hayward, Jr.
Chair (2003-2005)

Stephen L. Tober
Chair (2005-2006)

cc: Members, Committee on the Judiciary, United States Senate
Michael S. Greco, President, American Bar Association
Robert J. Grey, Immediate Past-President, American Bar Association
Members, American Bar Association Standing Committee on Federal Judiciary

Exhibit A

Practitioners' Reading Committee

Donald B. Ayer, Jones Day Reavis & Pogue, Washington, D.C., former Deputy Attorney General of the United States

John Bouma, Snell & Wilmer L.L.P., Phoenix, Arizona

Daniel H. FitzGibbon, Barnes & Thornburg LLP, Indianapolis, Indiana

John J. Gibbons, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., Newark, New Jersey, retired Judge, Third Circuit Court of Appeals

William F. Lee, Wilmer Cutler Pickering Hale and Dorr LLP, Boston, Massachusetts

Timothy K. Lewis, Schnader, Harrison, Segal & Lewis LLP, Washington, D.C., and Pittsburgh, Pennsylvania, retired Judge, Third Circuit Court of Appeals

Neil L. Lynch, Boston, Massachusetts, retired Associate Justice, Supreme Judicial Court of Massachusetts

Maureen E. Mahoney, Latham & Watkins LLP, Washington, D.C.

Vincent L. McKusick, Pierce Atwood LLP, Portland, Maine, retired Chief Justice, Supreme Judicial Court of Maine

Kathryn A. Oberly, Ernst & Young LLP, Washington, D.C.

Charles B. Renfrew, San Francisco, California, former Deputy Attorney General of the United States, retired Judge, District Court for the Northern District of California

Ignacio Salceda, Wilson Sonsini Goodrich & Rosati, PC, Palo Alto, California

Charles Stevens, Stevens & O'Connell LLP, Sacramento, California

Charles Fried, Committee Chair, Beneficial Professor of Law, Harvard Law School, former Solicitor General, retired Associate Justice, Supreme Judicial Court of Massachusetts

Exhibit B

Reading Committee, Northwestern University, School of Law

Ronald J. Allen, John Henry Wigmore Professor of Law, expert in the fields of evidence, procedures and constitutional law

Robert W. Bennett, Nathaniel L. Nathanson Professor of Law, former dean of the School of Law, expert in the field of constitutional law and a professional arbitrator

Steven G. Calabresi, George C. Dix Professor of Constitutional Law

Charlotte Crane, Professor of Law, expert in the area of tax law

David A. Dana, Professor of Law, Associate Dean for Faculty and Research, expert in the fields of environmental, property, intellectual property and professional responsibility law

Mayer G. Freed, Professor of Law and Associate Dean for Academic Affairs and Curriculum, expert on employment discrimination and employment law issues, constitutional law and Jewish law

Andrew M. Koppelman, Professor of Law and Political Science, expert in constitutional law and political philosophy

John O. McGinnis, Research Professor of Law, expert in international trade and constitutional law

Victor G. Rosenblum, Nathaniel L. Nathanson Professor of Law Emeritus, expert in administrative law and constitutional law

James B. Speta, Professor of Law, expert in telecommunications and internet policy, antitrust, administrative law and market organization

Kimberly A. Yuracko, Professor of Law, expert in antidiscrimination law, employment law, property and family law