

Chairman SPECTER. Thank you very much, Professor.

We now turn to Professor Anthony Kronman. After teaching at the University of Chicago Law School and Minnesota Law School, Professor Kronman came to Yale, where he has been on the faculty for 16 years and was the dean of the law school from 1994 to the year 2004, and is the Sterling Professor of Law at Yale.

He has his undergraduate degree from Williams in 1968, with highest honors, a Ph.D. in philosophy, and a law degree from Yale in 1975, when he was a classmate of Judge Alito.

Thank you for being with us today, Professor, and the floor is yours.

STATEMENT OF ANTHONY KRONMAN, STERLING PROFESSOR OF LAW AND FORMER DEAN, YALE LAW SCHOOL, NEW HAVEN, CONNECTICUT

Mr. KRONMAN. Thank you, Mr. Chairman, Senator Leahy, other members of the Committee. I am grateful for the opportunity to appear this morning and offer my testimony.

I have known Sam Alito for 33 years, since we met in the fall of 1972 as members of the entering class at the Yale Law School. Over the next 3 years, we took nearly a third of our law school courses together. We worked on the law journal together. We debated in the moot court program. I had a chance to observe Sam Alito at close range and to form an estimate of his character.

Sam was hard-working and ferociously bright. No one, I think, would challenge that, but that wasn't the first thing that impressed me about Sam. What impressed me first and most emphatically was his generosity and gentleness. When Sam spoke in class or out, others listened. But when others spoke, Sam listened, and not just in the superficial sense of waiting politely until they had finished, but in the deeper and more consequential sense of straining to grasp the good sense of their position and to see it in its most attractive light.

Sam always spoke with modesty, but even when he was defending a position that he believed clearly to be right, did so with the knowledge that he might be wrong. Learned Hand once described the spirit of liberty as the spirit "that is not too sure of itself." That is a phrase that has always had a special meaning for me and it well describes the quality in Sam that I noticed from the start.

I noticed something else and admired something else as well, and that was Sam's faith in the law. Sam believed in the integrity of the law and in the essential fairness of its processes. Anyone who has studied the law knows that it is not a mechanical system. It requires moral judgments at many points.

But there is all the difference in the world between a person who approaches the law from the outside and views it as an instrument for the advancement of some program of one kind or another and a person who approaches it from the inside and whose fundamental, leading allegiance is to the law itself.

Sam falls clearly in that second category. He had, so far as I could tell, no political agenda of any kind. I would have described him in law school as a lawyer's lawyer, and if you had asked me on the day we graduated whether he was a Democrat, as I was then and am today, or a Republican, I couldn't have told you.

My knowledge of Sam Alito is based almost entirely on my personal acquaintance with the man, but since his nomination to the Supreme Court, I have attempted, as have many others, to glean at least a sense of his judicial temperament by reading a few of his opinions. I haven't read many. I haven't made a systematic study of them, but the ones that I have read suggest to me rather strongly that the judicial temperament that I discern in these opinions is entirely consistent with the human temperament of the man I came to know and admire more than 30 years ago.

The temperament of the judge, as I see it, is marked by modesty, by caution, by deference to others in different roles with different responsibilities, by an acute appreciation of the limitations of his own office, and by a deep and abiding respect for the past.

There is a name that we give to all of these qualities, taken together. We call them judiciousness, and in calling them that we recognize that they are the special virtues of a judge. Judge Alito has been a judicious judge and my confidence that he will be a judicious Justice is based on my personal knowledge of the man and my belief that his judicial temperament is rooted in his human character, which is the deepest and strongest foundation it could have.

Thank you very much.

[The prepared statement of Mr. Kronman appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Professor Kronman.

We turn now to Ms. Beth Nolan, a partner in Crowell & Moring's Litigation Group. She has a broad practice which focuses on constitutional and public policy issues. Ms. Nolan held prestigious and high-ranking positions in the Clinton administration and the Department of Justice in the Office of Legal Counsel. She had been a clerk to Chief Judge Collins Seitz, of the Third Circuit, has an undergraduate degree from Scripps College and a law degree, magna cum laude, from Georgetown in 1980.

Thank you for being with us today, Ms. Nolan, and we look forward to your testimony.

**STATEMENT OF BETH NOLAN, PARTNER, CROWELL &
MORING, LLP, WASHINGTON, D.C.**

Ms. NOLAN. Thank you, Mr. Chairman, Senator Leahy, members of the Committee. I am delighted to be here today, and thank you for inviting me to provide my views.

I want to address one issue: how Judge Alito, if he should become Justice Alito, would approach questions of Executive power. I have served, as you mentioned, Mr. Chairman, in the White House as Counsel to the President and in political and career positions in the Office of Legal Counsel in the Clinton and Reagan administrations.

And as might be expected of one who has served as Legal Counsel to the President, I believe it is essential to defend the power of the President to undertake his constitutionally assigned responsibilities and to resist illegitimate incursions on that power. And certainly, in my position as White House Counsel, I sometimes was in conflict with Congress, as each branch struggled to assert its views of its authority.