

Testimony of

The Honorable Ruggero Aldisert

Judge (Senior)
Third Circuit Court of Appeals
January 12, 2006

REMARKS of RUGGERO J. ALDISERT

Confirmation Hearings U.S. Senate Judiciary Committee
for
SAMUEL A. ALITO, JR.
January 12, 2006

Mr. Chairman and members of the committee, I thank you for this opportunity to offer my views on my distinguished colleague.

When I first testified before this committee in 1968, I was seeking confirmation of my own nomination to the federal appellate bench. I speak now as the senior judge with the longest record of service on the Third Circuit.

I begin my brief testimony with some personal background. In May 1960 I campaigned with John F. Kennedy and his brother Edward in the critical Presidential primaries of West Virginia. The next year I ran for judge in Pittsburgh on the Democratic ticket for the Court of Common Pleas in Allegheny County and I served for eight years as a state trial judge.

Democratic Senator Joseph Clark of Pennsylvania, was my chief sponsor when President Lyndon B. Johnson nominated me to the Court of Appeals in 1968. Senator Robert F. Kennedy of New York was one of my key supporters.

Yet, political loyalties became irrelevant when I took up my commission as a federal judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our Court. Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our Court bears witness to this fundamental truth.

I have been a judge for 45 of my 86 years. Based on my experience, I can represent Judge Alito is among the first rank of the 44 judges with whom I have served on the Third Circuit, . . . and including another 50 judges on five other Courts of Appeals on which I have sat since taking senior status.

Moreover, I have been a long-time student of the judicial process. I have written four books and more than 30 law review articles on the subject. This study required me to study the current work of 22 justices on the U.S. Supreme Court. I have read hundreds of opinions of appellate judges of every federal circuit, every state and every political stripe.

The great Cardozo taught us long ago: "The judge even when he is free, is not wholly free. He is not to innovate at pleasure." This means that the crucial values of predictability, reliance and fundamental fairness should be honored. As his judicial record makes plain, Judge Alito has taken this teaching to heart. He believes that legal outcomes will follow the law as dictated by the facts of the particular case, whether the facts involve commercial interests, governmental regulation, or intimate relationships.

According to these criteria, Judge Alito is already a great judge. We who have heard his probing questions during oral arguments, of being privy to his wise and insightful comments in our private conferences. We who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions. We who are his colleagues are convinced that he will also be a great Justice.

If Judge Alito is confirmed, as I believe he deserves to be, he will succeed a Justice who has gained a reputation as a "practical" Justice whose resistance to ideologically-driven solutions has positioned her as a "swing" vote on the Court. Justice O'Connor has long described her approach to judging in this way:

Quote: "It cannot be too often stated that the greatest threats to our constitutional freedoms come in times of crisis. . . The only way for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone." End Quote

Knowing Sam Alito as I do, I am struck by how accurately these words also describe the way in which he has performed his work as a federal appellate judge. It is why, with utmost enthusiasm, I recommend that he be confirmed as a an Associate Justice on the Supreme Court.