

## **Senator Arlen Specter Press Conference Discussing the Nomination of Judge Samuel A. Alito, Jr. to be Associate Justice on the U.S. Supreme Court**

**January 13, 2006**

### **U.S. Senator Arlen Specter (R-Pa) Holds A Media Availability**

SPECTER: I was asked to step before the microphones. And I don't know why; I've said everything that I have to say. But in accordance with the tradition of the Senate, it won't stop me from saying something more. QUESTION: Mr. Chairman, Senator Feinstein mentioned the possibility of doing it on Thursday, that they wouldn't hold it over if you agreed to Thursday. Is that something you're open to? Have you ruled it out?

SPECTER: I want to start it on Tuesday.

I think we have a good-faith agreement. I've read in detail what Senator Leahy and I have said in the presence of many of you back on November 3rd in the Television Gallery. And as I said at that time and read today, I thought that the other members of the Democratic Caucus were privy to what we had said would be the schedule. And certainly they knew about it after it was said, beyond any question. And nobody has raised an objection from November 3rd until today. There have been some rumblings that they might want to put it off, but nothing was said.

There's no reason to have a delay. I think everybody knows where the committee members are going to vote. And we ought to move ahead and conduct the business of the Congress, the Senate, the people, get it done.

QUESTION: Has anyone indicated anything that they think is an extraordinary circumstance or the something extraordinary that would...

SPECTER: No, no. Nobody has said that Senator Leahy's escape route of something extraordinary happened, which I agree with, but nobody has suggested that at all, not a twit.

QUESTION: Aside from the good-faith agreement, what's the value of getting the vote done Tuesday as opposed to Thursday? It seems like it's just two days.

SPECTER: The value is that you can start the floor debate on Wednesday and you can finish it by the 20th. That's what we talked about.

Also, there's value in going forward with the arrangement which we made. The business of scheduling is extraordinarily difficult. You'd have a hard time believing how tough it was.

But there are many people who wanted to start the hearings January 23rd or later. And the president wanted to get it finished before Christmas. And there was a certain amount of unhappiness about my willingness to go into January. And I went into January on the understanding which I just stated, that we'd get to vote on it before the 20th.

We're going to have another hearing someday. We're going to have another schedule to make up some day and I think schedules ought to be maintained.

QUESTION: Do you think that the discussion of the issue of abortion rights played out differently in this set of confirmation hearings than it has in some in the past?

SPECTER: No, I do not.

I think it has been fairly evident where nominees have stood on the issue of a woman's right to choose. We knew where Chief Justice Rehnquist stood because he voted against Roe -- that issue was not raised. We pretty much knew where Justice Scalia stood, where Justice Thomas stood. And it really wasn't an issue with Judge Bork. There were many, many other issues.

We also knew where -- Souter was in doubt. Justice Breyer and Justice Ginsburg weren't in doubt.

I think there's developed more intensity on the issue than there was. Certainly there was no intensity when Justice Scalia was up for confirmation.

QUESTION: Senator Specter, I apologize if this has already been asked, but do you think you'll end up with a partisan party line vote out of committee? I know most of the Republicans already said they're going to vote for Judge Alito. Do you think you'll see all the Democrats vote the same way?

SPECTER: My expectation is it regrettably that it's going to turn out to be a party line vote.

QUESTION: (OFF-MIKE)

SPECTER: What does it say about the proceeding? What does it say about the proceeding?

QUESTION: Yes.

SPECTER: Politics are pretty heavy in Washington these days. You can cut it with knife. Independence from party line is almost non-existent in this town. That's what I have to say.

QUESTION: What about the final vote on the Senate floor. Do you have a sense that it will also be party line?

SPECTER: No, I think there will be a little deviation. They'll get out that big map and red and blue; where President Reagan did well and who's up for election and what happened to Senator Daschle and all that sort of high-level principle.

Thank you.

QUESTION: So at this point, when do you expect a final vote on Sam Alito will be on the Senate floor? Given everything that's happened now -- we have the delay in committee -- when do you expect all of this to wrap up?

SPECTER: When do I expect all of this to wrap up? I don't know any more than I've already told you.

QUESTION: Would you be open to a compromise about a Thursday markup, the 19th? Would you be OK with that idea?

SPECTER: Would I give a thought to a compromise for an executive committee session on the 19th and then what?

QUESTION: Versus the 24th. Versus (OFF-MIKE), and as a middle ground, having it on the 19th?

SPECTER: Well, what does that do to the state of argument? I guess I would if we could go to the floor on the 20th and 21st and finishing it up on Saturday, maybe having a Sunday session like we had.

Just kidding. Just kidding.

I don't know what's going to happen on all these dates. I just don't do piecework. I'm here for the duration.

QUESTION: What if the Democrats came back and said, We will guarantee an up-or-down vote, on, say, the 24th ? Would you be willing to bump back the committee vote if there was that sort of arrangement made?

SPECTER: When you use the magic words up or down, I might be willing to listen.

QUESTION: Now that we've been through these two hearings, which have proceeded in a dignified, informative way, and I think you're happy with them, can I get you to revisit your statement of a year ago about the challenges of confirming a judge who was opposed to Roe v. Wade? I think you made a statement it was a political challenge...

SPECTER: Can you get me to revisit it? No.

(LAUGHTER)

I live with it. Why should I revisit it? There's nothing to revisit.

QUESTION: In the eyes of partisans on both the left and the right -- I know you don't share this view, it seems -- but they both feel like this is a judge whose natural inclinations on the question of abortion rights are well-known, but he looks headed for confirmation. Do you think you were wrong?

SPECTER: Well, I don't know how it will turn out.

But I do know the history of David Souter. David Souter was attorney general of New Hampshire. Objected to repealing the New Hampshire law banning abortions, even after the Supreme Court and Roe had declared the law unconstitutional. He wouldn't do that. And they had these big posters, Stop Souter or Women Will Die, big rally on Capitol Hill at his hearing. And he's become a very strong supporter of a woman's right to choose.

Both Justice Kennedy and Justice O'Connor were very much opposed to abortion rights. The three of them wrote the opinion.

You had a little conversation between Senator Coburn and Senator Durbin about Senator Durbin's change of position. Two other members of the committee had been pro-life and they're now pro-choice.

And there are weighty considerations involved in changing Roe v. Wade, very weighty considerations in modifying that principle on a woman's right to choose.

QUESTION: So as for your political calculus, your descriptive political statement of a year ago, I can't get you to affirm or contradict it?

SPECTER: I've already answered your question. I'm not going to revisit that statement.

QUESTION: You came out immediately with your endorsement rather than waiting a few days for the floor speech. Was this an easier decision or just a matter of timing?

SPECTER: I had a strong suspicion that when I walked out of the hearing room, people would say, How are you going to vote? And I'd be asked on the Sunday talk show, How you going to vote? I'd be asked again and again, How you going to vote?

And I know how I'm going to vote.

So I decided to how I was going to vote.

I think that Judge Alito went as far as he could go on considerations on Roe. And I don't think that his 1985 statement binds him. Certainly his memorandum in the Thornburg case was an advocacy memorandum; that doesn't weigh at all. I think if you start to talk about what lawyers do, you're missing the boat.

And then we had Vanguard. Vanguard was not even a relevant consideration, in my opinion. When you're in a mutual fund, you don't have any effect at all on what happens. The stock is a composite of the entire stock market; got nothing to do with it.

And then we had the business of the club at Princeton. And, boy, was that a puff of smoke. And after we got access to the records, nobody cared anything about looking at the records, except my staffers who had to stay up until 2 a.m.

When we then considered on Wednesday afternoon what we're going to do on Thursday, nobody said to me, Well, we can't tie down the hearing because we got to see what's in the records. If somebody had said that when I wanted to get a fixed time on Thursday to finish Judge Alito's testimony, I would have been bound to say, You're right; we got to look at the records before we can see what will that require by way of further hearing.

So you really wonder about the timing, whether it was an effort to get me to rule, then to have my ruling sustained, then to have an issue about stonewalling some important matters. That evaporated instantaneously.

QUESTION: Senator Hatch called those phony issues. Do you agree?

SPECTER: No, I'm not going to characterize them. I'm going to have to be with those fellows and gal a lot of times in the future. I'm not going to characterize them.

QUESTION: Mr. Chairman, having conducted now, I guess, two hearings, back to back, for Supreme Court nominees, would you change this process in any way?

Did the witnesses (inaudible) you know, the six panels of witnesses should have before the nominee Q A session? Would you change it?

SPECTER: That's a very good question as to whether there ought to be some modifications in the procedures. And that's something I'm going to give some thought to -- going to give some thought to.

QUESTION: There's been some suggestion that the questions could have been more probing, particularly on issues of the law. Professor (inaudible) suggested that the issue of Casey that could have been explored further. What do you think of how the questions went on legal -- on his jurisprudence?

SPECTER: Well, there are many, many complex issues. Even when you have 30 minutes and 20 minutes, that's not really enough time to explore all the issues. And I think that some senators asked the repetitive questions again and again and again and did not really make effective use of the time.

But that's an individual senator's choice. Nobody can tell a senator what questions to ask.

And I think they could be refined a lot. And I was not -- would have liked to have followed up on many of the answers. But I only covered four subjects, five subjects in the course of 50 minutes, and I would have liked to have pursued them longer.

QUESTION: Senator, are you concerned that the delay that the Democrats are likely to seek is being done to keep this alive as a political issue for another week?

SPECTER: I don't think there is any life in it as a political issue. I do not know what reason there is for any delay.

I think we know how the vote in committee is going to come out, and we ought to go to the floor and debate it on the floor.

Thank you all very much. Thank you.

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