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HON. ARLEN SPECTER: UNITED STATES SENATE, PENNSYLVANIA

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**DEAN REUTER:** Good morning and welcome on this second day of the Federalist Society's National Lawyers Convention. We have an eventful day planned for you. Tonight, the vice president; later today, Governor Haley Barbour and Secretary Michael Chertoff; also, panel debates on executive power in war time, civil rights in the 21st century, the proper role of state AGs, law firm and diversity hiring, ABA accreditation of law schools and much, much more. To begin our day, we are very pleased to welcome Judiciary Committee Chairman Senator Arlen Specter.

We here at the Federalist Society place a great deal of emphasis and importance on the role of the Judiciary, so I'm going to introduce Senator Specter in that context. One of my favorite parts of the Federalist Society's statement of purpose reads, "It is emphatically the province and duty of the judiciary to say what the law is, not what it should be." Unfortunately, this is not a self-executing provision. It takes the right people in black robes to help make this statement a reality, and in this regard we owe Senator Specter a considerable debt of gratitude, for he can be credited with a tremendous, unparalleled, indeed an historic, accomplishment. That, of course, is the confirmation of two U.S. Supreme Court justices in the space of six months time, Chief Justice John Roberts and Justice Samuel Alito. It was due to his leadership that last night at our banquet we were able to hear from Justice Samuel Alito, rather than Judge Samuel Alito. Senator Specter ran a very tight ship before and during both confirmation hearings, controlling everything with seeming ease, while preserving collegiality with all the members of the Judiciary Committee. If you followed the hearings and the exchanges that took place between the announcement of each nomination and the subsequent confirmation, you will recall that Senator Specter was unflappable, unflinching, and unyielding when it came to making certain that the nominees got fair hearings. From the beginning, it was clear that the hearings would be run openly and expeditiously. The Roberts confirmation took only ten weeks; the Alito confirmation, which included the Christmas break, only slightly longer: 13 weeks. Senator Specter's superior management skills, tact, and tenacious perseverance were clearly in evidence

throughout and should not be forgotten. He was indeed the cooler head that prevailed, and happily the effects of Senator Specter's leadership will be felt on the Court for decades to come. Please join me in welcoming Senator Arlen Specter.

**ARLEN SPECTER:** Thank you. Thank you. That's more applause than I can remember receiving. I infer that most of it is for Chief Justice Roberts and Justice Alito, but thank you. I make it a point whenever I begin to speak to take off my watch and conspicuously place it on the podium to give my audience a false sense of security that I will pay attention to the time. But I really will, and reserve time for questions and answers, which I understand to be your format.

I appreciate that very nice introduction, Dean. I was especially interested in your statement about the confirmation of two senators. I would like to see two senators someplace other than the United States Senate, so long as they're Democrats, to give us a majority. It would be too high a price to pay to confirm them to the Supreme Court, but I would certainly be amenable to confirming them to a district court. So, maybe we can work out an arrangement on that at a later time.

The confirmations of Chief Justice Roberts and Justice Alito are obviously of enormous importance. I think it is accurate to say that the confirmation of a Justice is the most important thing the Senate does, with the possible exception of a declaration of war. And to have Chief Justice Roberts in there at 50 with the prospect of decades of service -- Justice Stevens is now 86 and Justice Alito at 55--is an achievement. It certainly was a highlight of the Judiciary activity during my chairmanship, and it may turn out to be the highlight of the administration of President Bush; certainly one of the highlights, beyond any question.

We had lively hearings. When Chief Justice Roberts was up, Senator Biden went on and on and on--(not uncharacteristically). One of the fascinating parts about questioning by senators is, when most senators finish the so-called question, any one of six, eight, or ten responses could be given. It's not a very complicated art to ask a single question. If you ask a single question, you move in the direction you'd

like to find out some information about, as opposed to asking a question that could be responded to in many, many ways--and then having to listen to the answer – another principle totally ignored in the Senate. (I'm serious about this. I've come to think that it's a violation of the Senate canons of ethics to listen to an answer.) But you recall that Senator Biden wouldn't let Chief Justice Roberts answer the questions. I believe the senators ought to have a lot of latitude when they ask questions, but there comes an endpoint when they have to permit a response. I said, "Senator Biden, let Judge Roberts answer the question." And he responded, "But he's giving misleading answers." But I said, "Well, you may think so, but they're his answers; let him answer the question."

During the confirmation proceeding of Judge Alito, you may recall that Senator Kennedy got confused. He thought he was the chairman. And right in the middle of a key part of questioning, he interrupted and said, "I want a subpoena. I want a subpoena for the records of Samuel Alito when he was at Princeton." And I responded, "Well, if you really want to subpoena, as opposed to a grandstand play, why didn't you ask me about it when we were in the corridor earlier this morning?" I never see Senator Kennedy in the Senate gym. The rumor is that Senator Kennedy hasn't been in the Senate gym since the Johnson administration – (that's the Andrew Johnson administration). But we got through it, and we got them confirmed, and it's a great thing for the Court.

President Bush called up and said, Arlen, when do I get my next pick? We got them through and he called it a "pick", and I said, "Well, I can't exactly tell you about that, Mr. President. That's up to a higher authority when that will happen." But it will be an extraordinary event to see how that will unfold. I have it very much in my mind. You cannot have an eight-person Court because that would result in a lot of 4-4 decisions and the Democrats will be put to the test. It is an eventuality that we have to be concerned about.

We had some progress on the judges. Judge Bill Pryor had been held up. We got through Janice Rogers Brown. We got through Priscilla Owens. We had to get Brett Kavanaugh a second hearing. We got him through. The questioning by Senator Schumer on Judge Kavanaugh I thought was beyond

the pale and practically like rehabilitating a witness at trial after prosecution has muddied the waters. Josh Bolton told me a few days after we had that hearing that he got home from the White House very late, about 11:30. He turned on TV and did a little surfing, and came to C-SPAN. They usually play the Judiciary Committee when I'm on at about 3 a.m. I have an enormous following among America's insomniacs. Bolton said it was about 11:30, and he couldn't turn it off, it was so engrossing.

But we got Kavanaugh through, and now we'll get Peter Keisler through. Even the *Washington Post* says that. I thought we'd be in only a week. That was the rumor when the Democrats won, that we'd be here only a week. And now we're going to be in the week of the fourth and the week of the 11th, so I'm going to go ahead and put Michael Wallace back on the list, whom I talked to last night, and the others the President nominated. I'm not optimistic, as I told Mike last tonight. He expressed his appreciation for what we've done thus far. I questioned him at some length on his confirmation hearing and brought out his exemplary record. I wanted it all on the table before anybody else had a chance to question him. That's a big advantage of being the Chairman, by the way. You get the first chance to question; you can set the table and the stage.

The President has exercised his constitutional authority to nominate and has sent them back to the Senate; so, we're going to take them up in regular order. And if the Democrats want to obstruct them, as they will have the power to do in a couple of weeks, that's their call. But there will be another election. The voters of South Dakota held Senator Daschle accountable for his obstructionism, and that's something they will have to keep in mind. It's very much in my mind as to strategy and the approach in how to handle them.

We had a good confirmation hearing on Attorney General Gonzales. We got him off the stand at 4:30 in the afternoon. That, by the way, is the secret to getting a nominee confirmed, getting him on and off the stands. If John Bolton had had a one-day hearing, he would now be the confirmed Ambassador to the UN. But if they drag on and on and on, that just works to the detriment of the nominee. We're still going to deal with Bolton this term. I don't know quite what will happen. It's a pretty tough situation in a lame-duck session, as

short as it is. I was on one of the Sunday talk shows last week with Schumer, and the question came up about the Democrats' confirmed dates, and Senator Schumer pontificated about how the President ought to have great discretion when he has foreign policy and defense matters. When my turn came, I said I think the Schumer Doctrine is a really valid doctrine; let's just apply it to Bolton. And Schumer quickly retreated. It's nice to see Schumer in retreat.

We had some interesting legislative matters. We got out class action reform, which had languished for years. We got the Bankruptcy Code revised. That had also languished for years and years. For the first time, we got asbestos out of committee and onto the floor. We faced opposition by the trial lawyers on asbestos reform, and I don't know what the future of that will be, but I'm going to press the new majority leader to take it up, to see if we can't deal with that issue. Senator Hatch had a great idea on the trust fund concept, and we're going to be pushing there and in many, many other directions.

Well, I'm up to the 12 minute mark, and that's about as long as any speech ought to be. So I'd be glad to respond to questions. And as I always immediately add, I'd be glad not to respond to questions.

