

confirmation hearings. As a result, it is difficult for the Senate and the American public to understand how these nominees will approach their role on the Court.

This trend was obvious in the confirmation hearings of Chief Justice John Roberts and Associate Justice Samuel Alito. Throughout their hearings, they offered only general platitudes, with little indication of how they would rule on the bench. They refused to answer specific questions or to say how they would have voted in past cases, on the ground that doing so might compromise their duty to decide every case with an open mind.

Legal scholars are increasingly in agreement that political convenience, not principle, has motivated much of this stonewalling. Since Supreme Court nominees all have years of legal experience and, if confirmed, have lifetime appointments to the Court, they can be candid about their views on many issues, including previously decided cases, without doing any damage to the judicial system or to the rights of future litigants.

Since Supreme Court confirmation hearings have become increasingly lacking in significant content, it is no surprise that researchers find weak correlations between what nominees say at the hearings and what they do on the Court, and that academic and popular support for a more serious confirmation process continues to grow. Of course, no Senator should try to undermine judicial independence by asking nominees to make "commitments" to rule a particular way in a future case, but all Senators should insist that nominees participate in a serious conversation about the pressing legal issues of our time. Hopefully, Senators on both sides of the aisle can agree that, at a minimum, nominees should give full and forthright responses when asked about their views on specific legal questions. It does not compromise the integrity or impartiality of the judiciary to require nominees to tell the Senate what they honestly think about such questions. Their failure to do so has real costs for our democracy.

Madam President, I believe that this article will be of interest to all of us in the Senate in exercising our constitutional responsibility of advice and consent on judicial nominees, especially nominees to the Supreme Court, and I ask unanimous consent that the New York Times editorial and the article's abstract be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 14, 2008]

#### HOW TO JUDGE A WOULD-BE JUSTICE

It is hard to imagine a more solemn responsibility than confirming the nomination of a Supreme Court justice. And we have worried, especially in recent years, that nominees are far too carefully packaged and coached on how to duck all of the hard questions.

A new study supports our fears: Supreme Court nominees present themselves one way

at confirmation hearings but act differently on the court. That makes it difficult for senators to cast informed votes or for the public to play a meaningful role in the process.

The study—with the unwieldy title "An Empirical Analysis of the Confirmation Hearings of the Justices of the Rehnquist Natural Court"—published in Constitutional Commentary, looked at how nine long-serving justices answered Senate questions, and how they then voted on the court. While it does not say that any nominee was intentionally misleading, it still found a wide gap.

Justices Antonin Scalia and Clarence Thomas, for example, told the Senate that they had strong respect for Supreme Court precedents. On the court they were the justices most likely to vote to overturn those precedents. Justice David Souter deferred more to precedent than his Senate testimony suggested he would.

The authors examined one substantive area of the law: criminal defendants' rights. There what the nominees—both conservatives and liberals—told the Senate about their support for defendants' rights was reasonably well reflected in how they voted.

The study suggests that senators would be better off asking "very probing, specific questions," says Lori Ringhand, associate professor of law at the University of Kentucky and one of the paper's three authors.

As we see it, the study also delivers a larger lesson: Senators should examine a nominee's entire legal career and look for clear evidence that he or she is committed to fairness, equal justice and an unstinting view of constitutional rights.

The findings have particular resonance now because the next president could nominate three or more justices, shaping the law for decades to come. The Senate needs to upgrade the confirmation process so it can perform its vital advice-and-consent role more effectively.

[From Social Science Research Network]

#### AN EMPIRICAL ANALYSIS OF THE CONFIRMATION HEARINGS OF THE JUSTICES OF THE REHNQUIST NATURAL COURT

(By Jason J. Czarnezki, Marquette University; William K. Ford, John Marshall Law School; and Lori A. Ringhand, University of Kentucky)

Despite the high degree of interest generated by Supreme Court confirmation hearings, surprisingly little work has been done comparing the statements made by nominees at their confirmation hearings with their voting behavior once on the Supreme Court. This paper begins to explore this potentially rich area by examining confirmation statements made by nominees regarding three different methods of constitutional interpretation: stare decisis, originalism and the use of legislative history. We also look at nominees' statements about one specific area of law: protection of the rights of criminal defendants. We then compare the nominees' statements to decisions made by the Justices once confirmed. Our results indicate that confirmation hearings statements about a nominee's preferred interpretive methodologies provide very little information about future judicial behavior. Inquiries into specific issue areas—such as the rights of criminal defendants—may be slightly more informative. We emphasize, however, that this study is a preliminary look at this issue. As such, we hope this piece stimulates discussion regarding how to best use the wealth of information provided by confirmation hearings to facilitate a better understanding of the role those hearings do—or could—play in shaping the jurisprudence of the Supreme Court.

#### TRIBUTE TO MICHAEL A. HANNA

Mr. SPECTER. Madam President, I have sought recognition today to speak about Michael A. Hanna, who passed away on April 2, 2008.

Mr. Hanna was born July 1, 1952, in Oakland, MD to former county Democratic chairman and district attorney Michael A. Hanna and Eliza Jane Gibson Hanna of Monongahela. He spent time working on Capitol Hill and had the distinction of serving as the youngest U.S. House of Representatives page in the history of the program. He also served as a personal assistant to former Speaker of the House John W. McCormick.

An author and producer, Mr. Hanna graduated from Washington & Jefferson College and attended Duquesne Law School. Although perhaps best known for the animated series "Rockin' at the Rim" and authoring the book "Cuba: Fire Island," his professional experience extended a good deal further. He served as a special envoy to the country of Haiti and traveled extensively in various professional capacities throughout Europe and the Middle East.

Mr. Hanna is survived by his mother and brother, Mark Hanna, as well as Mark's wife Ashley and their son Michael. On their behalf, I would like to recognize and honor Michael A. Hanna's life and work.

#### HEALTH CARE

Mr. WYDEN. Madam President, Dr. Ezekiel Emanuel and Dr. Victor Fuchs, physicians and distinguished scholars, have recently written a particularly important article that I wish to bring to the attention of the Senate.

These two gentlemen have a long and impressive track record on the issue of reforming our Nation's broken health system, and their recent article in the Journal of American Medicine (JAMA), "Who Really Pays for Health Care? The Myth of Shared Responsibility," is one that every Senator should reflect on.

Drs. Emanuel and Fuchs assert in their article that when millions of Americans say that financing health care is a "shared responsibility" between "employers, government, and individuals" they are incorrect. The authors say there is actually no such thing as "shared responsibility"—health costs in America come out of the hides of individuals and households. Emanuel-Fuchs point out, for example, that money employers spend on health care for their workers would otherwise go to workers' salaries and that Government cannot secure funds at all without reaching into our wallets for tax payments or money we lend to them.

The work of these two scholars is particularly relevant because recent public opinion polls show significant numbers of Americans would be content "to just keep the health care they have." This seems understandable. If