

decade of the 1980's in articulating a new set of priorities for this Nation.

Part of the mandate that the citizens of 49 of these United States entrusted to President Ronald Reagan has been to rein in the extreme activism of our Federal judiciary. The President, in nominating Judge Scalia, is carrying out that mandate. I would respectfully submit that those who maintain that the President's nominees are outcasts from the mainstream of contemporary judicial thought are themselves so far adrift on the fringes that they have lost contact with the prevailing currents of American society—Judge Scalia's credentials and qualifications place him square on the crest of this new wave.

Mr. Chairman, last week I set forward the five criteria that I believe should be weighed by Members of the Senate in carrying out their constitutional duty to advise and consent in the matter of the nomination of a Supreme Court Justice.

I will not go through those elements in detail today. I would like to go on record, however, in stating, that based upon his competence, professional achievement, a judicial temperament that places a premium on fairness, courtesy, and congeniality, and just as important, his personal and professional integrity and high ethical standards, Judge Scalia is set apart as being among the most distinguished and eminently qualified individuals ever to aspire to sit on the highest Court of this land.

Judge Scalia has not only shown himself to be academically and professionally "a lawyer's lawyer," but "a judge's judge" as well. He is highly regarded among his peers as an exceptional judicial craftsman, skilled in the arcane art of cogently drafting judicial opinions. It is this ability, no less so than his other ample qualifications, that distinguishes him from his peers, and establishes him as uniquely fit to serve on the Supreme Court. It is this talent that lends practical substance to his abilities, permitting his colleagues on the lower courts to clearly carry out the edicts of the Supreme Court. It makes him a leader.

Thus, without reservation, I can confidently go on record today as supporting the confirmation of Judge Scalia. I hope this committee will act favorably and act quickly on your nomination.

Congratulations, again.

The CHAIRMAN. The distinguished Senator from North Carolina.

STATEMENT OF SENATOR JAMES T. BROYHILL

Senator BROYHILL. I thank the Chairman, and I want to welcome Judge Scalia to the committee. I have received a number of comments in my office with respect to your nomination by the President.

The comments that I have received note that you are highly intelligent, well prepared, and congenial. Of course, they also praise your ability to articulate your views with respect to the legal issues which are brought before you.

I note that in your legal career you have served in a number of capacities. You have served on the faculty of at least four law schools. You have served in the Justice Department as well as in private law practice. Of course, as a result you have come into con-

tact with many, many attorneys from around the Nation. And generally, I find that you are highly regarded in the bar.

In short, you are a well qualified professional. Of course, we are going to have a long line of witnesses here who will be giving their views with respect to your nomination.

I find a great number of these individuals and organizations are going to support you, and in fact you have been given the highest evaluation by the American Bar Association which has conducted an exhaustive investigation of your background.

But there will also be a parade of witnesses who will come before us who will disagree with you. I have found, already, in looking at some of these comments, that they say you are closeminded. Apparently, they are assuming that because you are able to study the facts that are brought to your attention, and come to a firm conclusion that may not agree with theirs, that somehow your conclusion is faulty.

I do not agree with that assessment. I admire your professional, your academic, and your personal qualifications. I think that you will bring to the Court a strong voice for reason. I think that the President is making an excellent choice, and applaud that choice.

Thank you very much.

The CHAIRMAN. Judge Scalia, we will take you as the first witness after the recess. All of the members now have made statements, so we will go into your testimony, and, we are going to recess now until 1:45. That is 1 hour and 15 minutes.

[Whereupon, at 12:30 p.m., the committee recessed for lunch, to reconvene at 1:45 p.m.]

[The following was received for the record:]

ANTONIN SCALIA

1. Birth: Born March 11, 1936, in Trenton, New Jersey.

2. Marriage: Married to Maureen McCarthy, Sept. 10, 1960; nine children (Ann Forrest, Eugene, John Francis, Catherine Elisabeth, Mary Clare, Paul David, Matthew, Christopher James, and Margaret Jane).

3. Education: Georgetown University and University of Fribourg (Switzerland), A.B., 1957; Harvard Law School, LL.B., 1960; Harvard Law Review; Sheldon Fellow, Harvard University, 1960-61.

4. Bar: Admitted to practice in Ohio (1962) and Virginia (1970).

5. Experience: In private practice with Jones, Day, Cockley & Reavis, Cleveland, Ohio, 1961-67; professor of law, University of Virginia Law School, 1967-74 (on leave 1971-74); General Counsel, Office of Telecommunications Policy, Executive Office of the President, 1971-72; Chairman, Administrative Conference of the United States, 1972-74; Assistant Attorney General, Office of Legal Counsel; Department of Justice, 1974-77; scholar in residence, American Enterprise Institute, 1977; visiting professor of law, Georgetown University, 1977; professor of law, University of Chicago, 1977-82; visiting professor of law, Stanford University, 1980-81; editor, Regulation Magazine, 1979-82; chairman, ABA Section of Administrative Law, 1981-82; chairman, ABA Conference of Section Chairmen, 1982-83; board of visitors, J. Reuben Clark Law School, Brigham Young University, 1978-81; nominated by President Reagan to U.S. Court of Appeals for the District of Columbia Circuit July 15, 1982, confirmed August 5, 1982, took oath and assumed duties August 17, 1982.

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Judge Scalia, if you will come around, please. Hold up your hand and be sworn.

Will the testimony you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you God?

Judge SCALIA. It will.

The CHAIRMAN. Have a seat.

TESTIMONY OF HON. ANTONIN SCALIA, TO BE U.S. SUPREME COURT JUSTICE

The CHAIRMAN. Would you like to introduce your family? You have got a lot of children there, and they may want to—

Judge SCALIA. I would, Senator. They have taken a lot of trouble to get dressed up and come downtown. I think the little ones will probably want to leave after the first recess, but I did want to give them their moment in the limelight here, if I can remember all the names. [Laughter.]

The CHAIRMAN. They are like old friends; you see them all over there. You have nine children. I believe you have eight of them here, don't you?

Judge SCALIA. I think all nine are here, Senator. I think we have a full committee.

My wife, Maureen, is at the right in the front row. Next to her is Meg. Her real name is Margaret but she said I should introduce her as Meg because when she is called Margaret, she is usually in trouble. Catherine, Christopher, Matthew. And in the next row, from the other end, Mary, and my oldest, Ann, Eugene, John, Paul, and that is it.

The CHAIRMAN. You have a good memory.

Judge SCALIA. But do not try me on the ages Senator.

I would also like to introduce, behind me, my law clerk, Patrick Schiltz who has helped me in getting together the materials I will probably need for this hearing.

The CHAIRMAN. Judge, do you care to say anything before we begin questioning? Do you have an opening statement you would like to make?

Judge SCALIA. No, I do not, Senator, except to express my honor at being nominated by the President, and the fact that I am happy to be here and look forward to answering the committee's questions.

The CHAIRMAN. Now I believe Senator Biden suggested we have 20 minutes for the opening round, until we get around, and then, if we have a second round, it will be 10 minutes from then on. The same way we did it in the Rehnquist hearing.

Senator Grassley, did you ever make an opening statement?

Senator GRASSLEY. Yes, sir. I did.

The CHAIRMAN. Thank you. Judge Scalia, there are some very obvious differences in the roles of a circuit court of appeals judge and an Associate Justice of the Supreme Court.

The most glaring difference, I suppose, is that the Supreme Court has the final word on what the law is. It is the final ruling in the appeals ladder, and can be overruled on constitutional interpretations, only by a later Supreme Court decision or by constitutional amendment.

What do you view as other major differences in the role of a circuit court judge and an Associate Justice?