

suggest that the role of the courts is to carry out the will of the majority, yet this country was founded on the principle of individual freedom. The Bill of Rights was adopted as a permanent guarantee that the majority could not limit certain basic rights of individuals.

I have no doubt that I disagree with Judge Scalia on many issues, not simply issues of political philosophy, but of statutory and constitutional interpretation. But whether or not we agree on these issues is not a valid question as I exercise my advice-and-consent responsibility. The question is whether we will be faithful to fundamental constitutional values even if he may apply those in particular cases differently than I or any other Senator may prefer.

I have an open mind on this nomination. As in the case of the nomination for Chief Justice, we have an obligation to conduct thorough and complete hearings, even though the process is a demanding one for the Senate as well as the nominee.

Finally, I note that some Senators, including myself, have requested documents from the Justice Department, including certain memorandums prepared by Judge Scalia when he was in the Justice Department. As in the case of Justice Rehnquist, these memorandums were prepared while Judge Scalia was head of the Office of Legal Counsel. In this position, he was the chief legal adviser to the executive branch on a highly significant legal issue, issues that are of direct concern to the Senate considering this nomination.

I sincerely hope that the President will not choose to assert a claim of Executive privilege in denying us access to those documents. The country will be better served, and this process will be expedited, if the President does not assert the privilege.

I might also point out that based on his own—that is, the President's own 1982 Executive order regarding Executive privilege, it should not have been asserted in the case of Justice Rehnquist, and it should not be asserted in this instance.

I believe the Senate is determined to carry out its obligation in a responsible way, and I hope the President is as well.

I welcome you to these hearings, Judge Scalia, and look forward to working with you.

Judge SCALIA. Thank you, Senator.

Senator MATHIAS [presiding]. The Senator from Utah.

STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. Welcome to the committee, Judge Scalia. We look forward to this confirmation proceeding. I do hope it will not be quite as strenuous as the one last week.

I would ask that my full statement be placed in the record.

Perhaps no standard speaks more eloquently to the merits of this nomination than the performance of Judge Scalia on the Court of Appeals for the District of Columbia Circuit. In more than 4 years on that esteemed court, he has written 86 majority opinions and only 9 of them have been accompanied by a dissenting opinion.

In other words, Judge Scalia has won unanimous approval for his views in nearly 90 percent of his written opinions. Another 90-percent measure of success is found in the rate at which Judge Scalia's positions have been sustained on appeal. The Supreme Court

has adopted his views six out of the seven times his cases have been reviewed on appeal. This includes his courageous opinion in the *Synar* case which identified the separation of powers problems in the budget-cutting Gramm-Rudman law.

These facts are high praise for Judge Scalia from those best positioned to adjudge his legal stature and ability; those are his fellow judges. These judicial actions speak a lot louder than even the words of his judicial colleagues, among whom is Circuit Judge Abner Mikva who hails this appointment as "good for the institution" of the Supreme Court.

That is high praise.

I have a lot more to say, but let me just cite the report of the Almanac of the Federal Judiciary that Judge Scalia is highly respected in all categories, admired even by those lawyers who disagree with him. Over and over, the same qualities are admired in Judge Scalia—his fairness, his integrity, his openness to varied viewpoints, his amazing mastery of the law. Judge Scalia is respected as a lawyer's lawyer, by lawyers, and as a judge's judge by judges. In the words of the American Bar Association, this committee is privileged to consider the nomination of an individual who "is among the best available for appointment to the Supreme Court." The ABA has given you the highest rating they can possibly give to any candidate for this position.

I am happy to welcome you to the committee. I respect you. I have read your opinions. You will add a great dimension to the Court. I agree with my colleague, Senator Laxalt. There is no question that this is a happy day for millions and millions of Americans. As a matter of fact, I think it should be a happy day for all Americans.

Thank you, Mr. Chairman.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, perhaps no standard speaks more eloquently to the merits of this nomination than the performance of Judge Scalia on the Court of Appeals for the District of Columbia Circuit. In more than 4 years on that esteemed court, he has written 86 majority opinions and only 9 of these has been accompanied by a dissent. In other words, Judge Scalia has won unanimous approval for his views in nearly 90 percent of his written opinions. Another 90 percent measure of success is found in the rate at which Judge Scalia's positions have been sustained on appeal. The Supreme Court has adopted his views six out of the seven times his cases have been reviewed on appeal by the Court he has been appointed to join. This includes his courageous opinion in the *Synar* case which identified the separation of powers problems in the budget-cutting Gramm-Rudman law.

These facts are high praise for Judge Scalia from those best positioned to adjudge his stature and ability, his fellow judges. These judicial actions speak barely louder than the words of his judicial colleagues, among whom is Circuit Judge Abner Mikva who hails this appointment as "good for the institution" of the Supreme Court.

From these lofty commendations, the acclaim for Judge Scalia's appointment continues to crescendo. The American Bar Association, with a collegial accord matching that of Judge Scalia's written opinions, has unanimously concluded that Judge Scalia is well qualified for this appointment. Under the committee's standards, "The ABA continues on behalf of most of America's lawyers and Judges." This means that Judge Scalia meets the highest standards of professional competence, judicial temperament and integrity and is among the best available for appointment to the Supreme Court." It is hard to imagine higher commendation from an organization of lawyers and judges than to call one of their own "among the best available for appointment to the Supreme Court."

The Chicago Tribune strikes the same theme by calling Judge Scalia a "lawyer's lawyer: Meticulous, measured, determined to read the law as it has been enacted by the people's representatives rather than to impose his own preference upon it." It is interesting to note that many themes are repeated over and over by those examining Judge Scalia's accomplishments. For instance, former attorney General Edward Levi calls Judge Scalia a "Lawyer's lawyer" and states that he "came to know, with awe, how his mind works, his mastery of the law in principle and in practice, his high integrity and commitment to fairness, and his openness to the careful consideration of differing views."

Dean Guido Calabresi of the Yale Law School confesses that he has differed with Judge Scalia on many issues, yet he strikes many of the same themes:

"I have always found him sensitive to points of view different from his own, willing to listen, and though guided, as any good judge should be, by a vision of our Constitution and the roles of judges under it, flexible enough, also as a good judge should be, to respond to the needs of justice in particular cases."

This candid assessment verifies the report of the "Almanac of the Federal Judiciary" that Judge Scalia is "highly respected in all categories, admired even by those lawyers who disagree with him."

Over and over the same qualities are admired in Judge Scalia—his fairness, his integrity, his openness to varied viewpoints, his amazing mastery of the law. Judge Scalia is respected as a lawyer by lawyers, as a judge by judges. In the words of the American Bar Association, this committee is privileged to consider the nomination of an individual who "is among the best available for appointment to the Supreme Court."

Senator MATHIAS. Thank you, Senator Hatch.
Senator DeConcini.

STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeCONCINI. Mr. Chairman, thank you. I want to first not only welcome Judge Scalia, but I want to thank Chairman Thurmond for the way he operated and conducted the hearings last week on behalf of Justice Rehnquist. I know that my colleagues and I have had, I think, an excellent opportunity to question the witnesses at length, going into any subject matter. I know there is great pressure to move these nominations along, but I particularly want the record to show my deep appreciation to Chairman Thurmond in his fairness.

Mr. Chairman, I realize as I am sure we all do, that an equal responsibility now lies with us in the hearings of the nomination of Judge Scalia for Associate Justice of the U.S. Supreme Court.

Judge Scalia, if confirmed, will likely spend many many years on the Court, sharing an equal vote with the Chief Justice and the other Associate Justices. It is therefore our responsibility to keep up the steam, and fulfill our constitutionally mandated role of advice and consent on the nomination of Judge Scalia. Our job here is as important as the deliberation we took last week with respect to Justice Rehnquist.

Indeed, Justice Rehnquist will remain as a voting member of the Supreme Court regardless of the final action of this committee and the Senate on his confirmation for Chief Justice. Judge Scalia, however, is a new voice for the Court. It is of tremendous importance that we give this hearing our full energy and attention; let no one say that the Judiciary Committee ignored its duty to examine the President's nominee for Associate Justice.

I must say that I am very pleased that the President has nominated a person with the experience and credentials of Judge Antonin Scalia. Clearly, we have before us a nominee with legal experience, public service, academic experience, and judicial experience.