

record to this point in your life, I am especially pleased about the emphasis which is placed on the fact that you are the son of an immigrant, as am I, and I think that is one of the greatest things about this country; that the opportunity is unlimited.

I think one of the things that we have to do in Congress and on the Court is to provide opportunity for the future, and equal opportunity for all of the minorities that we focus on from time to time in these hearings.

I will have some questions about the authority of the Court and its jurisdiction, and the commitment, and the preeminence of the Court as the final decisionmaker in our society. It seems that we have 230 million people and 231 million ideas. I know that as a Senator from a State like Pennsylvania, which is really six States and includes 12 million constituents, there are many, many differences of opinion. Although the Senate votes many times, 2,400 times since I have been in this body, there has to be a final court which has jurisdiction, unquestioned authority, and the final word on the constitutional issues which is rockbed in our society.

When my time comes for the line of questions, that is the area of concern which I will address myself to. But I congratulate you for being here and the outstanding record that you bring to this point in your career.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Specter. I believe that the opening statements have been completed by our colleagues.

Senator McCONNELL. I think not, Mr. Chairman.

Senator SIMPSON. On this side of the aisle, I am saying. Yes, yes. I realize there are more of us than there are of them. [Laughter.]

Senator KENNEDY. Tentatively.

Senator SIMPSON. Hopefully, for quite a while.

Senator McCONNELL. We like to keep it that way.

Senator SIMPSON. Senator McConnell from Kentucky. Mitch McConnell.

STATEMENT OF SENATOR MITCH McCONNELL

Senator McCONNELL. Thank you, Mr. Chairman. Judge Scalia, I too, want to congratulate you and your family. Our association, as you may recall, goes back to the days when we served together in the Justice Department during President Ford's administration, and I recall, at that time, everyone within the Department, without exception, felt that you were not only the brightest lawyer that we had, but had the best sense of humor.

And of course those were days when we needed a good sense of humor. I never will forget, one morning, at a staff meeting, we all had to suffer through the embarrassment of the morning Washington Post, which revealed, that on the day before, two illegal aliens had been arrested working for the Immigration and Naturalization Service. So, we had to maintain a good sense or humor, and you were clearly the one who made those meetings entertaining, as well as informative.

Much has been said about your nomination, and that of Justice Rehnquist, in terms of the philosophical balance on the Court. Since President Reagan announced his nominations of yourself,

and Justice Rehnquist, the question has been what kind of impact is this going to have? I think it is important to ask whether judicial conservatism really means the same thing as political conservatism.

Judicial conservatism denotes a philosophy that treats the intent of the Constitution, the actual language of the Constitution and statutes, cautiously, and with respect, in short, strict construction. Judicial conservatism also encompasses a healthy regard for the doctrine of separation of powers. This conviction holds fast to the proposition, that the role of the judiciary, of the courts, is to merely interpret the law as written, and not to act as a superlegislature and substitute its own judgment, of social preference, for that of our duly elected representatives.

Judge Scalia has often pointed out that this philosophy does not necessarily advance a conservative political agenda. For example, writing early last year on the issue of judicial activism in the realm of economic rights, he observed, in a magazine article—and I quote you, Judge Scalia:

Though it is something of an oversimplification, I do not think it unfair to say that this issue presents the moment of truth for many conservatives who have been criticizing the courts in recent years. They must decide whether they really believe, as they have been saying, that the courts are doing too much, or whether they are actually nursing only the less principled grievances, that the courts have not been doing what they want.

For Judge Scalia, it would appear that judicial conservatism speaks more to the judicial process than to the substantive political consequences of the Court's holdings.

Judicial conservatism is politically neutral. Judge Scalia has clearly demonstrated his adherence to this philosophy in practice. A cogent illustration is the recent holding, referred to earlier this morning, of the U.S. Court of Appeals for the District of Columbia Circuit in *Synar v. United States*, better known on the Hill as the Gramm-Rudman-Hollings case.

In an unsigned opinion generally attributed to Judge Scalia, the court voided the key provision of that law for being unconstitutionally violative of the doctrine of separation of powers. This holding came as a blow to political conservatives interested in effectively reigning in a runaway deficit. Yet there was no hesitation on the part of Judge Scalia to strike it down. So, too, does Judge Scalia's judicial conservatism make him an opponent of the legislative veto, another pet project of political conservatives.

Judicial conservatism hinges upon a tight and principled reading of the Constitution, and does not turn on political considerations. It rejects judicial activism, either of the left or of the right, as constitutionally repugnant.

Mr. Chairman, that leads to one additional issue that I believe ought to be put to rest. It has been asserted dogmatically by members of this committee, and certain sectors of the media, that candidates such as Justice Rehnquist and Judge Scalia are too extreme in their judicial philosophy. That they are far removed from the mainstream of contemporary judicial thought.

Such characterizations, to be blunt, are nonsense. Main Street America has spoken clearly and unequivocally throughout the

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-