

STATEMENT OF SENATOR JEREMIAH A. DENTON

Senator DENTON. Thank you, Mr. Chairman. Welcome, Judge Scalia. I will ask to include in the record, as if read, my rather extensive comments regarding the three criteria which I mentioned with respect to Justice Rehnquist; namely, those of Senator McClellan in which he asks about personal integrity, professional competency, and abiding fidelity to the Constitution. I will ask that the rather lengthy propounding of these qualities be included in the record, as if read.

The CHAIRMAN. Without objection, so ordered.

Senator DENTON. I congratulate you, Judge Scalia. You have said that the culmination of a dream for any attorney is to be appointed to the Supreme Court. I will not run through your qualifications, at length, but with respect to your integrity I would lean more toward a nuance of that, your personality, which I think will bear you in good stead here.

One rather liberal colleague on the circuit court characterized you as one who is, "fun to work with, who enjoys the dialog going back and forth". Good luck in the next few, or many hours.

Your intellectual capacity even as a young man in high school, far exceeded those around you, and one classmate commented that Antonin Scalia was so superior academically that his classmates just competed to be second.

He graduated magna cum laude from Harvard Law School; is highly recognized for vigorous and prolific writings; he is credited with 84 majority decisions written on the District of Columbia Circuit Court of Appeals; and has also written dozens of concurrences and dissents.

One comment I read, which I think will stand you in best stead here, stated: "On the bench, Judge Scalia has developed a reputation for meticulousness in preparation and ferocity in questioning." Presuming that ferocity in questioning also applies to answering, I think that will help you. One colleague characterized you by warning: "Pity the attorney who is not prepared. He is tough and formidable, and gives no quarter. He is fair and he's intelligent, but he's not deferential." That might be too harsh on you, but I think that that will stand you in good stead here, because I do not think you will be as meek and mild as some of the victims who have preceded you here.

I am particularly sensitive about one of those nominees. I would identify myself with the Senator from Wyoming, because I respect my colleagues, all of them. But I think that what has been done here lately, and rather obviously, conspicuously to the American public, is the use of a barrage of charges for partisan purposes, political purposes, to establish unjustified doubts among some very outstanding individuals nominated for Federal judgeships, the Supreme Court, or the Chief Justice of the Supreme Court.

We had ends justifying the means here. If their end is to perpetuate the kind of liberal judges who were appointed before President Reagan took over, I think they are flying in the face of the Reagan mandate in which the people of the United States very clearly expressed their misgivings as to the effect of those judges in overprotecting the victim—I mean overprotecting the offender and

underprotecting the victim of crime, among other things that we could talk about.

But in the case of one after another, we had Fitzwater, we had Sessions, Manion, Rehnquist, and now you. We are seeing stonewalling. We are seeing, in the case of Sessions, the campaign begun in certain newspapers 9 months before it even got here, charges delivered the day before his hearings and ultimately the ironic result of a man being condemned for being a bad guy precisely for the very reason that he is a good guy. So it was unfortunate for our country, and for Alabama, that Mr. Sessions was not able, through me and others, to defend himself against that barrage, which effectively represented the weight of appalling charges exceeding the weight of attention given to the refutation of those charges.

I hope you do not suffer the same fate. I do not think you will suffer the same fate from the characteristics I have already mentioned. I believe that you will, on television, prohibit the disporting of you. I think you have enough toughness, enough intelligence, enough qualities that will not permit your being defeated here.

I think there will be national backlash, which will not be in the many powerful electronic and print media, which side with those who have the philosophies and ends in mind which some here do. They are entitled to those just as I am entitled to mine. But I believe there will be a backlash evident, perhaps during your own hearings, and I hope before the end of Justice Rehnquist's.

With those remarks, I am confident my colleagues will review carefully the excellent record of this candidate and I encourage them to join me in giving wholehearted support to his confirmation.

Thank you, Mr. Chairman.

[The prepared statement of Senator Denton follows:]

PREPARED STATEMENT OF SENATOR JEREMIAH DENTON

Today we are most fortunate to welcome before this Committee Judge Antonin Gregory Scalia, a man who has quickly distinguished himself as an outstanding legal scholar, a keen and precise intellect, and a vigorous and forceful author of court opinions and legal scholarship.

Judge Scalia, allow me to take this moment to extend my most hearty congratulations to you as we begin these confirmation hearings for your nomination to the highest court in the Nation. There is perhaps no greater honor in the legal profession than to be appointed to the Supreme Court. It is, as you have said, "the culmination of a dream" for any attorney.

Your nomination is also a credit to President Reagan, who has demonstrated a commitment to appointing formidable and capable jurists to the Nation's highest court.

Undoubtedly you had an opportunity to observe the long and arduous questioning which Justice Rehnquist underwent here last week. I have no doubt that you will also encounter similar rigorous questioning. I also have no doubt as to your ability to answer all questions with clarity and candor.

Mr. Chairman, as we welcomed Justice Rehnquist here last week, you might recall that I remembered the words of former Senator John L. McClellan of Arkansas. Senator McClellan spoke of three criteria by which Judicial nominees should be evaluated. These criteria were:

- (1) Does a nominee have personal integrity?
- (2) Does a nominee possess professional competency? and
- (3) Does a nominee have an abiding fidelity to the Constitution?

Certainly it is proper that we ask the same of Judge Scalia as he makes his assent to become an Associate Justice of the Supreme Court.

In the realm of personal integrity, Judge Scalia is second to none. He is recognized on the District of Columbia Court of Appeals as a judge who eagerly seeks out the opinions and viewpoint of his fellow judges when he is formulating a position. Judge Scalia is one who is genuinely liked by his colleagues on the Court, whether of liberal or conservative bent, and is very effective at forging coalitions between those on all sides of the issue. One rather liberal colleague on the Circuit Court characterized Judge Scalia as one who is "fun to work with, (who) enjoys the dialogue going back and forth."

Judge Scalia's professional competency brings him high acclaim from other judges, practicing attorneys, and from those in academia. Even as a young man in high school, his intellectual capacity far exceeded those around him. One classmate commented that Antonin Scalia was so superior academically that his classmates competed to be second.

He has the great distinction of having graduated magna cum laude from Harvard University Law School, where he served on the Law Review. In six years of private law practice, Judge Scalia practiced real estate law, corporate financing, labor and anti-trust law. One colleague said of Judge Scalia's work as a practicing attorney * * * "he did everything * * * and he did it well. He was one of the last of the real generalists in the sense that he wanted to do as much of everything as he possibly could."

His distinguished career as an academician is also well known. He has served as a law professor at Georgetown University, the University of Chicago, and the University of Virginia. He was also a visiting professor at Stanford University.

Judge Scalia is highly recognized for his vigorous and prolific writing. His writing is said to have a "combination of commitment with vigor and an incisive, often wittily sarcastic, * * * style that will rally the troops even if it never commands a majority of the court." In his four years on the District of Columbia Circuit Court of Appeals, Judge Scalia has written eighty-four majority decisions and dozens of concurrences and dissents. Throughout his career he has written more than twenty articles for Law Reviews and other scholarly journals.

On the bench he has developed a reputation for meticulousness in preparation and ferocity in questioning. One colleague characterized Judge Scalia by warning: "Pity the attorney who's not prepared. He is tough and formidable and gives no quarter; he's fair and he's intelligent, but he's not deferential."

Finally, Mr. Chairman, Judge Scalia has demonstrated abiding fidelity to the Constitution and to precedent which has developed throughout our Nation's history. As a recognized authority on the balance of Constitutional power, he is credited with authoring the per curiam three judge opinion in *Synar vs. United States* invalidating the Gramm-Rudman provision which granted broad sequestration powers to the Comptroller General. He also filed a friend-of-the-court brief in the 1983 *Chada* case, in which the Supreme Court nullified the legislative veto. Judge Scalia's keen sense of administrative law, combined with his knowledge of balance of powers, will provide the Supreme Court with a fresh, incisive mind to grapple with the growing docket of cases involving administrative action and regulatory policy.

Mr. Chairman, Judge Scalia is highly qualified in those critical areas of personal integrity, high professional competency, and abiding fidelity to the Constitution and legal precedent. I encourage my colleagues to review carefully his excellent record in these three areas, and then join me in giving wholehearted support to his confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama.

STATEMENT OF SENATOR HOWELL T. HEFLIN

Senator HEFLIN. Judge Scalia, I believe that almost every Senator that has an Italian-American connection has come forward to welcome you to this or to participate in this hearing thus far.

I would be remiss if I did not mention the fact that my great great grandfather [laughter] married a widow [laughter] who was married first to an Italian American. [Laughter.]

The CHAIRMAN. Let us get quiet.

Judge SCALIA. Senator, I have been to Alabama several times too. [Laughter.]