Senator MATHIAS. Our next panel will be composed of Dr. Robert L. Maddox, executive director of Americans United for the Separation of Church and State; and Mr. Peter Weiss of the Center for Constitutional Rights. Ms. Dudley is not here.

Gentlemen, if you will raise your right hand. Do you swear that the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. MADDOX. I do.

Mr. WEISS. I do.

Senator MATHIAS. Dr. Maddox, do you want to start? I remind you of the 3-minute rule and also of the fact that your full statement will be included in the record.

TESTIMONY OF ROBERT L. MADDOX, EXECUTIVE DIRECTOR, AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE, AND PETER WEISS, VICE PRESIDENT, CENTER FOR CONSTITUTIONAL RIGHTS

Dr. MADDOX. Thank you. I am Robert Maddox, executive director of Americans United for Separation of Church and State. We are a 39-year-old national organization dedicated to the preservation of religious liberty and the separation of church and state.

We represent within our membership some 50,000 people, a broad spectrum of religious and political viewpoints, but we are all united in the conviction that separation of church and state is essential.

We of Americans United believe that religious liberty is the preeminent liberty of the American Republic, the benchmark of all other civil liberties.

We believe in the inherent strength of the American religious community to manage its own affairs, to make its own mark, and to impart a sense of values to the Nation.

This rich and diverse community does not need propping up by the Government and should at all costs remain free from Government entanglement.

Therefore we respectfully suggest that the Senate consider carefully the appointment of an individual to the Supreme Court who seems hostile to the time-honored principle of the separation of church and state. Judge Scalia, in testimony before the U.S. Congress, and in other ways, has criticized the direction this Court has taken in its decisions on religious liberty.

In 1978 he testified on behalf of a bill to give tuition tax credits to patrons of private and parochial schools. He supported the bill; Americans United opposed the bill. At that session, in our opinion, Mr. Scalia demonstrated a disregard for the establishment clause of the first amendment. He told the Senate not to worry about the question of whether tuition tax credits were constitutional, but to decide on the basis of what the fundamental traditions of the society require—those words coming from a man who has been characterized as a strict constructionist.

He argued that the denial of tuition tax credits to parents of students at religious schools was an antireligious result that the Framers of the Constitution had not intended.

Fortunately, the Congress rejected this unwise advice and defeated the tuition tax credit bill later that year.

Mr. Scalia has also characterized the Court as being terribly confused about this and other matters of religious liberty.

Mr. Scalia has also questioned the High Court's policy of granting broad standing to taxpayers who want to file lawsuits in first amendment cases, thus shutting the door of the Court to many who would bring up first amendment establishment of religion cases.

Throughout his career Mr. Scalia has demonstrated an insensitivity to matters of the first amendment.

We think also that the Senate should take stock of the direction in which the Reagan administration seems to be taking the Supreme Court. We fear that a Rehnquist-Scalia axis in the Court would further subvert individuals to the power of the State. We Americans thought that many of these issues of personal liberty were settled, but apparently they are not. A spirit of confusion prevails in this country.

We make the assumption that Judge Scalia reflects the views of President Reagan on church and state, views we find inimical.

On the basis of Judge Scalia's record and in vigorous protest of the attitudes of the Reagan administration who appointed him, we oppose the nomination. We ask you to reject the nomination of Judge Scalia to the U.S. Supreme Court.

[Prepared statement follows:]

TESTIMONY OF

DR. ROBERT L. MADDOX
Executive Director

AMERICANS UNITED FOR SEPARATION
OF CHURCH AND STATE

Mr. Chairman and Members of the Committee,

I am Robert L. Maddox, executive director of Americans United for Separation of Church and State, a 39-year old national organization dedicated exclusively to the preservation of religious liberty and the separation of church and state. We represent within our membership of 50,000 a broad spectrum of religious and political viewpoints. But we are all united in the conviction that separation of church and state is essential. As Justice Wiley Rutledge observed in his 1947 Everson opinion: "We have staked the very existence of our country on the faith that a complete separation between the state and religion is best for the state and best for religion."

We at Americans United believe that religious liberty is the preeminent liberty of the American republic, the benchmark of all other civil liberties. We believe that the constitutional guarantee of religious liberty through the separation of church and state is the single most important contribution this country has made to Western civilization during the past two centuries. We believe in the inherent strength of the American religious community to manage its own affairs, make its own mark, and impart a sense of values to the nation. This rich and diverse community does not need propping up by the government and should, at all costs, remain free from government entanglement.

Therefore, respectfully, we believe the Senate should carefully consider the appointment of an individual who seems hostile to the time-honored principle of the separation of church and state. Judge Scalia has criticized the direction this Court has taken in its decisions on religious liberty.

In 1978 Mr. Scalia and Americans United testified at the same set of hearings before the Senate Finance Committee on a bill to give tuition tax credits to patrons of private and parochial schools. Mr. Scalia supported that bill. Americans United opposed that bill.

At that session, in our opinion, Mr. Scalia demonstrated a disregard for the Establishment Clause of the First Amendment. Mr. Scalia, who has been characterized as a strict constructionist, told the Senate not to worry about the question of whether tuition tax credits were constitutional, but to decide on the basis of what "the fundamental traditions of the society require." He argued that the denial of tuition tax credits to parents of students at religious schools was an "anti-religious result" that the Framers of the Constitution had not intended.

Fortunately, the Congress rejected that unwise advice when it defeated the tuition tax credit bill later that year.

In his testimony at that hearing, Mr. Scalia cited what he called the "utter confusion" of Supreme Court rulings on church-state separation. Mr. Scalia's characterization of the past forty years of Supreme Court rulings deeply disturbs us. The Court's decisions do not represent confusion, particularly in the area of public assistance for church-related schools. Beginning in 1971 the Supreme Court rejected scheme after scheme which state legislatures had devised to circumvent the Constitution and provide substantial public subsidies for church schools. Indeed the landmark Lemon case has established guidelines to test the constitutionality of any legislation which might run afoul of the Establishment Clause. Those guidelines represent a major achievement of the Burger Court. We wonder if Mr. Scalia would dismantle them. We worry about the consequences to religious freedom both for the taxpayer who does not wish to be taxed involuntarily for religion and for the church schools themselves which need to be protected from government intervention and meddling.

Mr. Scalia also questioned the High Court's policy of granting broad standing to taxpayers to file lawsuits in First Amendment church-state cases. "That has enabled cases to reach the Court which couldn't have gotten there before," he added. Taxpaying citizens of the United States should have a right to seek redress under the law when they believe their religious liberties are being infringed. It would be a terrible retrenchment if we were to restrict the freedom of citizens to challenge governmental action in the sensitive area of religion.

Finally, Mr. Chairman, let us take stock of the direction in which the Reagan Administration seems to be taking the Supreme Court. Those of us who labor for religious freedom day in and day out experience grave anxiety by the apparent attempt of the President to reshape the entire direction of our Supreme Court. We see individual liberties suffering. We see citizen's rights sacrificed by and to the state. We fear that a Rehnquist/Scalia axis in the Court could further subvert individuals to the power of the state. Americans thought many of the issues of personal liberty were settled. We thought that religious freedom was safe from the buffeting winds of change. We thought there was a consensus in this country that religion was too sacred and precious an area for government to meddle in or for government to support and thereby attempt to control.

Now a spirit of uncertainty prevails in this country. We no longer know whether the Supreme Court will remain a bastion of liberty and a bulwark of justice.

We make the assumption that Judge Scalia reflects the views of President Reagan on church and state, views we find inimical. On the basis of Judge Scalia's record and in vigorous protest to the attitudes of the Reagan Administration who appointed him, we oppose the nomination.

We ask you to reject the nomination of Judge Scalia to the United States Supreme Court.

(Statement of Frank Brown, professor of economics, DePaul University, and Chairman, National Association for Personal Rights in Education(NAPRE), speaking on behalf of NAPRE, to the U.S. Senate Judiciary Committee at the hearings on the nomination of Judge Antonin Scalia to the U.S.Supreme Court, Senate Office Building, Washington, D.C. Aug. 6, 1986).

PERSONAL RIGHTS AT THE U.S.SUPREME COURT

I am Frank Brown, an economics professor at DePaul University, and, in speaking here as Chairman of the National Association for Personal Rights in Education(NAPRE) wish first to thank the Senate Judiciary Committee for the opportunity to present our position on and our rationale for the nomination of Judge Antonin Scalia to the U.S.Supreme Court.

NAPRE is a group of parents dedicated to the personal civil and constitutional rights of families, parents, and students to academic freedom and religious liberty in education. We hold that if families are taxed by government for schooling then they should have a right to an equitable share of the taxes, especially their own, to enroll their children in schools of their choice, including those with church-related base.

This is a civil right and civil liberty honored in all other democracies of the West, but in America it is among the most abused of personal rights. For taxpaying parents are told that they can either accept what a state system considers to be public elementary and secondary schooling or else forfeit their education taxes and seek out private resources to fulfill the public obligation to school their children, a task well-nigh impossible for many parents, especially the low-income. NAPRE points out that many families, including its own, have been hurt by this system.

This state system is not a product of the Founding Fathers. Its prototype was the Massachusetts system developed in the mid-19th century by Horace Mann, an educational statist indifferent to parental choice. Since then state school systems have grown, especially in the earlier days through the political support of leading religious sects, many of whose parents are now questioning the wisdom of their alliance with the state in the matter of schooling.

To heal old wounds and to meet new needs many state legislatures have in recent decades enacted many laws to extend the benefits of the education taxes to all children, including those in church-related and other private schools, but unfortunately the U.S.Supreme Court has blocked almost all these efforts.

The prime source of the Court's argument is the interpretation by Justice Hugo Black (Everson, 1947) of the Establishment Clause of the First Amendment, in which he relied almost exclusively on the successful struggle of Madison and Jefferson in Virginia to outlaw any one church or religion being given preferential tax status.

But, going beyond the condemnation of a government according special privilege to one church or religion, Black concluded that the First Amendment also meant that neither a state nor the Federal government could pass laws which "aid all religions", but there is no historical proof, no constitutional justification, no precedent, no stare decisis for this conclusion.

Black did not research this matter well. He did not refer to the Annals of Congress, which portrays quite adequately the congressional debates out of which the First Amendment evolved. Nor did he refer to Elliott's Debates, which in reporting the debates on the ratification of the constitution in the various states furnishes abundant proof that the people of the time widely considered establishment of religion to be government support of one preferred church or religion.

But, despite its errors or perhaps because of them, the Black doctrine, relying on his substitution of his newly-forged constitutional weapon of "absolute separation of church and and state" for the language of the Constitution, is the foundation for the theory of the separation of the state and religion and for the denial of education tax equity to children in church-related schools.

In thus placing the personal education rights of parents and students under a church-state umbrella, Black and his allies have practically nullified the guarantees of these rights by

the Establishment and Free Exercise clauses of the First Amendment, the liberty and property provisions of the Fifth Amendment, and the liberty and property and equal protection of the laws provisions of the Fourteenth Amendment, but these rights have their own constitutional standing and are in no way contingent on the constitutional status---or lack of status--- of any church or religion.

We do not fear the Constitution. We respect it. But we fear and do not respect justices who have gotten out of hand.

Fortunately the Black doctrine has not been able to obtain full acceptance on the Court, with almost all its decisions on this matter drawing persistent dissent from fellow-justices.

Thus then-Chief Justice Burger(Meek v. Pittenger, 1975) said in dissent:"One can only hope that, at some future date, the Court will come to a more enlightened and tolerant view of the First Amendment's guarantee of free exercise, thus eliminating the denial of equal protection to children in church-sponsored schools, and take a more realistic view that carefully limited aid to children is not a step toward establishing a state religion----at least while this Court sits."

As citizens and parents we respectfully recommend to your Judiciary Committee a favorable vote on Judge Antonin Scalia.

We recommend him because he is a scholar. We have been severely hurt in recent decades by lack of scholarship on the Court and we welcome him.

We recommend him because he respects the Constitution. Some justices consider the constitution as anachronistic and as little more than a set of noble pronouncements, but we believe that there is great wisdom in this document, certainly in the area of our discussion here today, the personal rights of parents and children.

We recommend him because he believes in the rule of law over that of men. As victims at the Court of the opposite, namely, the rule of men over that of law, we endorse Antonin Scalia's insight into this cornerstone of American jurisprudence. We also note that a Court that can abuse the rights of some citizens can abuse those of others and indeed of all as well.

We recommend him because we believe that he will be a judge and not a legislator. We have suffered too much from a U.S.Supreme Court which has legislated itself into a National School Board, which has placed the educational statism of Horace Mann under the protection of the First Amendment, and which has long been blocking the public policy attempts of many legislatures to provide for the extension of educational benefits to all children.

Finally,we recommend Antonin Scalia to your committee, because we believe that the rights and liberties in education of parents and children will be safe in his judgment.

NAPRE,
Box 1806,
Chicago, Ill. 60690

1-312-333-2019.

Frank Brown,
Chairman, NAPRE.

Senator MATHIAS. Thank you, Dr. Maddox. Mr. Weiss.

STATEMENT OF PETER WEISS

Mr. WEISS. Mr. Chairman, I am here representing the Center for Constitutional Rights if I may start on a personal note, my grandfather and several other members of my family died in Nazi gas chambers. That has left me with a lifelong passion for human rights and for using the law to resist or seek redress for the commission of atrocities by governments of whatever political stripe.

I am here today because of my conviction that Judge Scalia does not share that passion and that this raises serious questions about his qualifications to sit on the Supreme Court of the United States.

I base that on one case, a rather unusual one that has not been touched on by the other witnesses so far. It was called *Sanchez-Espinoza* v. *Reagan.* We brought that case in 1982 in the District Court for the District of Columbia on behalf of nine Nicaraguan victims of Contra atrocities, people who had been subjected—or their relatives had been subjected—to murder, kidnapping, rape, torture, and other gross human rights violations. The defendants included the President of the United States and the Secretaries of State and Defense, the Director of the CIA, and various other high U.S. officials.

The case was dismissed in the District on the political question doctrine, and when it came before the Circuit Judge Scalia was his usual courteous self and was very interested in the case, and indicated that he would not decide it on that basis. He then proceeded, some 15 months later—maybe that was the time it took him to forge a consensus—to decide it on variety of grounds in which he dealt with every single cause of action that had been alleged.

The net result was a total rejection of these claims, and he rejected them even though he had to accept the facts as true, because this was a motion to dismiss. And he rejected them even though he conceded that the courts, in their discretion, could have granted some relief.

But he said it would have been an abuse of the court's discretion to grant that relief. He also said that sovereign immunity protected the U.S. officials even though, in another case, which we had had in the second circuit, sovereign immunity was held not to protect the officials of a foreign government from a suit for torture.

A strange message, it seems to me, to send to the world.

He also said that the fourth and fifth amendments did not protect these plaintiffs because of the danger of foreign citizens using the courts of the United States to challenge American foreign policy.

Now, in its starkest terms, the message of that decision is this: Nuremberg never happened; no matter what atrocities are committed abroad in the name of or under the direction of officials of the United States, foreigners need not apply for redress.

We are now in a time when terrorism and counterterrorism have become preferred instruments of foreign policy, and it would be nice to have someone on the Supreme Court who had the courage to protect the victims of that terrorism and of that counterterrorism.

I am afraid that Judge Scalia is not that person, because, although he said yesterday that he believes that checks and balances are the fundamental structure of the U.S. Government because they will prevent any one branch from abusing the liberties of the people, even though he may believe that in principle, what he decided in this case, Mr. Chairman, shows that he would not be prepared to enforce that principle as a member of the Supreme Court.

I thank you for your attention.

[Prepared statement follows:]

Testimony of Peter Weiss, Vice President, Center for Constitutional Rights, on the Nomination of Judge Antonin Scalia to the Supreme Court of the United States

My name is Peter Weiss. I am a senior partner in the New York law firm of Weiss, Dawid, Fross, Zelnick and Lehrman, which counsels a number of major corporations in the field of industrial property. I am also a Vice President and volunteer attorney of the Center for Constitutional Rights and I appear before you today in that capacity.

The fact that my grandfather and several other members of my family died in Nazi gas chambers has left me with a lifelong passion for human rights and for using the law to resist or seek redress for the commission of atrocities, or crimes against humanity, by governments of whatever political stripe. I am here today because of my conviction that Judge Scalia does not share that passion and that this raises serious questions about his qualifications to sit on the Supreme Court of the United States.

In 1982, the Center for Constitutional Rights brought a case in the United States District Court for the District of Columbia, Sanchez-Espinoza v. Reagan, on behalf of nine citizens of Nicaragua, two citizens of Germany and one of France, alleging that they or their deceased relatives had been victims of atrocities committed by the contras, as well as on behalf of twelve members of Congress who claimed that U.S. support for the contras violated the Boland Amendment and the War Powers clause of the Constitution. The defendants were various executive officials, including the President, the Secretaries of State and Defense and the Director of the Central Intelligence Agency.

The complaint, supported by extremely detailed affidavits, alleged that the foreign plaintiffs or their relatives had been subjected to summary execution, murder, abduction, torture and rape, all as part of a plan authorized, financed and directed by the federal defendants to terrorize the civilian population of Nicaragua and foreign volunteers working in that country.

In the District Court, Judge Corcoran granted the government's motion to dismiss on the ground that the complaint presented a nonjusticiable political question. I argued the appeal on May 24, 1984 before a panel of the Circuit Court consisting of Judges Scalia, Tamm and Ginsburg. At the hearing Judge Scalia was, as is his custom, courteous and interested in the issues. He let it be known that he was not a devotee of the political question doctrine, a point on which I found myself in agreement with him, since, as a student of comparative law, I have never understood this doctrine, peculiar to United States jurisprudence, which holds that certain cases charged with political interest are not appropriate for judicial resolution even though they may involve violations of law.

There then ensued a very long silence. Finally, on August 13, 1985, nearly fifteen months after the argument, the Circuit upheld the dismissal of the suit in an opinion written by Judge Scalia, 770 F.2d 202.

It is a curious opinion. It begins by reciting the facts alleged by the plaintiffs concerning the atrocities committed by the contras and the responsibility of the defendants for those atrocities and by stating, as required by the Federal Rules, that, "for purposes of this appeal from a pretrial dismissal, we must accept as true the factual assertions made in the complaint". It states, as foreshadowed by Judge Scalia's comments at the Hearing, that, without necessarily disapproving the District Court's reliance on the political question doctrine, he chooses "not to resort to that doctrine for most of the claims". It then goes on to dismiss the various claims, one by one, in considerable detail. I shall deal here only with the claims of the foreign plaintiffs.

One such claim was based on the Alien Tort Statute, 28 U.S.C. §1350, which grants federal jurisdiction to aliens suing for a tort "in violation of the law of nations or a treaty of the United States". As to this, Judge Scalia holds that, insofar as the defendants are being sued in their private

capacity, international law does not apply; a questionable holding, but let that pass. Insofar as the defendants are being sued in their official capacity, Judge Scalia concedes that, at least as to nonmonetary relief, i.e. relief by way of injunction, mandamus or declaratory judgment, the court has discretion to grant or withold such relief. But, he goes on to say, concerning "so sensitive a foreign affairs matter as this . . . it would be an abuse of our discretion to provide discretionary relief". Another reason for withholding the relief requested is that "[t]he support for military operations that we are asked to terminate has . . . received the attention and approval of the President, the Secretary of State, the Secretary of Defense and the Director of the CIA, and involves the conduct of our diplomatic relations with at least four foreign states".

Now this is a truly astounding, as well as alarming, statement. In the first place, the foreign plaintiffs never asked that "support for military operations" be discontinued, only that such operations be conducted without resort to rape, summary execution, torture and other gross human rights violations. Indeed, we said in our briefs and at oral argument that this was a case of international police brutality and should be judged by principles similar to domestic police brutality cases.

Everyone, myself included, agrees that, if Judge Scalia is to be faulted on any score, it is not on his intelligence. Why, then, this glaring analytical failure at a critical juncture of the case? It is, after all, not too difficult to distinguish between atrocities attendant upon an operation and the operation itself or to draw a line between war and war crimes. It is almost as if, by the time he reached page 208 of his opinion (as reported), the atrocities "accepted as true" on page 205 - "summary execution, murder, abduction, torture, rape, wounding, and the destruction of private property and public facilities" -

had slipped his normally alert mind. Could it be that Judge Scalia simply could not bring himself to conceive that the highest officials of our government might be guilty of crimes against humanity? Yet the atrocities committed against unarmed civilians by the contras and other surrogates of American policy abroad are a well known fact; at least one member of this Committee, Senator Kennedy, has played a leading role in exposing and documenting them. As recently as July 31, Anthony Lewis, in a New York Times column entitled "Don't We Care?", discussed the terror tactics of the contras in Nicaragua and another U.S. ally, Jonas Savimbi, in Angola, and suggested that "if Americans were asked whether any political cause could justify the deliberate maiming and killing of innocent civilians, most would surely reject the idea."

It is not likely that Judge Scalia refused outright to believe the allegations of the complaint. He is, in any case, too good a judge to reject factual allegations before a trial on the merits. No, it is more likely, and more in tune with Judge Scalia's view of the executive as the predominant branch of government, that he simply does not regard the courts as an appropriate instrument for curbing executive abuse, no matter how shocking to the conscience. But if so, why did he not, like Judge Corcoran below, resort to the time honored political question doctrine which so many judges before him have used to avoid dealing with troubling questions of legal limits on executive action? As I said, it is a curious decision.

There are other curious aspects to it. In footnote 5, Judge Scalia felt it necessary to explain why, in a previous case brought by the Center for Constitutional Rights, Filartiga v. Peña-Irala, 680 F.2d 876 (2d Cir. 1980), damages for torture were held to be recoverable from a Paraguayan police official, while, in Sanchez, sovereign immunity was held to bar such recovery from officials of the United States. The explanation: "The doctrine of foreign sovereign immunity is quite distinct from the doctrine of domestic sovereign immunity that we apply

here, being based upon consideration of international comity, . . . rather than separation of powers". A strange message, it seems to me, to send to the world: a Paraguayan can sue for money damages in an American court for the death by torture of his son in Paraguay, but a Nicaraguan cannot bring such an action in an American court against American officials responsible for torture in Nicaragua.

One further aspect of the rather long and complex decision deserves attention in the current context. The foreign plaintiffs also sought damages for violation of their rights under the fourth and fifth amendments to the Constitution of the United States. Without reaching the question whether the protection of the Constitution extends to noncitizens abroad, on which there appear to be conflicting precedents, Judge Scalia found this portion of the complaint barred because "the foreign affairs implications of suits such as this cannot be ignored" and "the danger of foreign citizens using the courts in situations such as this to obstruct the foreign policy of our government is sufficiently acute that we must leave to Congress the judgment whether a damage remedy should exist".

Again, the message is clear. In its starkest terms, it is this: Nuremberg never happened, and even though the most grievous atrocities may be committed abroad, as part of a regular pattern of conduct, by forces trained, financed, supervised and even directed by the United States, foreigners need not apply for relief to American courts.

I would like to end on a note of fairness to Judge Scalia. The Sanchez opinion which he wrote was unanimous. Our Petititon for Rehearing en Banc was denied. Nor has the Congress, in approving aid to the contras, shown any great sensitivity to American responsibility for the contras' crimes. It may be also, that we have not progressed very far since Judge Wyzanski, in a case in which a Vietnam draft resister was invoking the Nuremberg defense, said, in a moment of unusual candor, that you couldn't really expect a judge whose salary was being paid by

the executive to consider whether the President was guilty of war crimes.

Nevertheless, it would be nice, if, at a time when terrorism and counterterrorism are increasingly becoming preferred instruments of foreign policy, the next appointee to the Supreme Court were one who had the courage to apply the law in favor of the victims, even where the perpetrators or their accomplices are high officials of the government of the United States. What is troubling about Judge Scalia, in this respect, is that, not content with the old-fashioned, sometimes even slightly embarrassed, "political question" evasion, he chooses to mount an elaborate, aggressive and superficially convincing defense of judicial abstention in an area which cries out for judicial intervention. Not judicial intervention, mind you, to make or unmake policy, but to redress and put an end to the most ancient, most direct and most universally condemned wrongs: assault, battery, torture, the slaughter of the innocent. As to all of this, Judge Scalia, in his finely crafted opinion, has said "Even if true, it's not the business of the courts". It was a difficult decision to explain to our plaintiffs, who included a woman doctor kidnapped by the contras and beaten, assaulted and subjected to multiple rapes, at a time when the CIA was intimately involved with contra operations.

Senator MATHIAS. Thank you, Mr. Weiss. Dr. Maddox, you referred in your statement to the *Lemon* case as establishing guidelines to test the constitutionality of any legislation which might run afoul of the establishment clause. You say you wonder if Judge Scalia would dismantle those guidelines.

Dr. MADDOX. Yes, sir.

Senator MATHIAS. What is the basis of your concern?

Dr. MADDOX. We are frequently known by the company that we keep, and one studies the associations of the Judge, particularly the American Enterprise Institute and other organizations, with which he spent a great deal of time. And these organizations are committed to the destruction of the wall of separation between church and state; they frequently criticize the *Lemon* decision, and other guarantors of this kind of protection.

And so it is not only by what the Judge himself has said and written. The stump from which he is hewn makes us look very carefully at Judge Scalia when it comes to religious liberty and the separation of church and state.

Senator MATHIAS. Do you feel that this indicates a bias on his part?

Dr. MADDOX. Again, that question has been asked of other witnesses, and one cannot, of course, predict that kind of thing, but it does make us really uneasy, fearful, that the Judge comes to the Supreme Court with a bias toward some kind of establishment of religion, support of religion, by the Government.

Senator MATHIAS. Now, Mr. Weiss, you have a somewhat similar concern based on the *Espinoza* case.

Mr. WEISS. I do, Mr. Chairman.

Senator MATHIAS. Do you feel that this indicates a disposition or a bias on Judge Scalia's part?

Mr. WEISS. Well, I think it indicates a disposition on his part to consider the executive branch as the predominant branch of Government, and that is a very dangerous thing at a time when the executive is doing some things that it ought not to be doing, like right now.

It also indicates a lack of concern for fundamental human rights, which is an area of the law that has developed greatly in the last 20 or 30 years, and to which Judge Scalia, in this particular opinion, showed very little sensitivity.

When you dismiss a claim alleging multiple torture and rape and summary execution on the ground that it might be an embarrassment to the foreign policy of the United States, I don't think you are speaking as a judge. You are speaking as a Secretary of State. And you ought to be speaking as a judge if the case is presented to you from the other side of the bench.

Senator MATHIAS. Let me go back to Dr. Maddox. You are raising a question of whether or not Judge Scalia will observe precedents—we did question him on that subject and gained his assurance of the value that he places on precedents.

Did you by any chance hear that testimony?

Dr. MADDOX. I missed that portion of it. I listened to a great deal of it, but I missed that portion of it.

Senator MATHIAS. Well, I'm sorry, because I would like to have asked you whether that allayed any of your fears.

Dr. MADDOX. We hear what the man is saying and we judge him to be a man of integrity, but it is very difficult to change what seems to be a lifelong bent, a lifelong commitment. We have read that Supreme Court Justices do change their minds sometimes; we also have run across a few that do not change their minds or become more intent on the direction in which they are heading.

So our feeling is let's stop it before it gets started.

Senator MATHIAS. I see the Chairman has rejoined us, and I turn over the Chair to him.

The CHAIRMAN. Thank you very much. You don't have any other questions, Senator Mathias?

Senator MATHIAS. No, Mr. Chairman.

The CHAIRMAN. We want to thank you, and you are now excused—I mean, the questions are through. Thank you very much for your appearance.

Mr. WEISS. Thank you, sir.

Dr. MADDOX. Thank you, Mr. Chairman.

The CHAIRMAN. Now, is James Carpenter here?

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

Mr. CARPENTER. Yes, sir.

The CHAIRMAN. Have a seat. You have 3 minutes.

TESTIMONY OF JAMES CARPENTER, LIMA, OH

Mr. CARPENTER. My name is James M. Carpenter, I live in Lima, OH, I represent myself as a radio common carrier licensed by the FCC, and I represent my wife, who is also present, my small family business which includes my family and my grandchildren.

We have a business named Carpenter Radio Co., and on the personal side of it we started in the business in 1965. We were a pioneer in the paging and radio business, and we had probably the first talk-back pagers in the United States in 1965.

The president of the telephone company come in with a goon squad—and that's United Telecommunications, United Telephone Co. today—unlocked our door, ripped out our equipment, stole our equipment.

I had to give you that background because that is the basis of my opposition to Judge Scalia.

Judge Scalia has been the general counsel, Office of Telecommunications Policy, Executive Office of the President; chairman of the Administrative Conference of the United States; Assistant Attorney General, Office of Legal Counsel, Department of Justice.

I've come across him several times in the time that I have been in this litigation purely because I believe—on a personal note again—no one could unlock my door, rip out my equipment and steal my equipment, which is against the fourth amendment of the U.S. Constitution; no one could do that—and every time I think of it today, I think of my trip to Berlin, which was sponsored by your predecessors, for the Potsdam Conference, and in that trip I went there to smell a million dead in the rubble and afraid then to occupy and watch America sold into the weak position in the world today.