

Senator MATHIAS. Mr. Rauh.

STATEMENT OF JOSEPH L. RAUH

Mr. RAUH. My name is Joseph L. Rauh, Jr. I appear here this afternoon on behalf of the Americans For Democratic Action and the Leadership Conference on Civil Rights. Mr. Kerr, who was to appear and whose statement is submitted for the record, is unavoidably detained in Pittsburgh.

The Leadership Conference, as Senator Mathias so well knows, is made up of the leading civil rights groups—blacks, Hispanics, women, et cetera—and I speak for them. A few groups do not take positions, but all who do take positions are opposed to Judge Scalia.

I have a preliminary point, sir. I think this committee is out of order. There is no vacancy for which Judge Scalia is being proposed. I know what the trick is. The trick is to make it look to the public as though the Rehnquist confirmation is obvious. But I think after what happened here last week, it is perfectly clear that there is a real question whether Mr. Rehnquist will be confirmed. If he is not confirmed, there is no vacancy.

I think the idea of going ahead with a confirmation of this kind, with a hearing of this kind, for a job for which there is no vacancy, is a terrible mistake.

As far as using my 3 minutes is concerned, I would simply like to say that I think the prestigious prelunch panel proved the case against their own arguments. They answered a question which I thought was a very good question from one of the members of the committee: What is the difference between Scalia and Rehnquist? All you got out of them was no difference.

Well, then, if the decision of the Senate is against Rehnquist, as I hope and trust it will be, I think they made the case against Scalia.

Mr. Kerr makes a very good point in his statement being submitted, in which he says: "Judge Scalia believes in all checks and no balances." If you took his theory, you would still have Plessy against Ferguson; you would not have the *Gideon* case; you would not have Mapp against Ohio; you would not have Loving against Virginia. You would not really have any of the great advances that were made, because, he says, if we have gone on a certain course in society, if we have gone on a certain way, you do not change that until society changes. I do not think that is the way the Constitution is to be read. I have never seen a situation where a judge threw himself, out in the open as clearly, and it is all in the record of this hearing, as Mr. Gold said. Look at this. Look at this record. There is only one way you can decide, and that is that neither Rehnquist nor Scalia should be confirmed.

Thank you. I see my time is up.

[Prepared statement of Mr. Thomas M. Kerr submitted by Mr. Rauh follows:]