

The CHAIRMAN. Thank you very much. We appreciate your appearance.

Now, the next witness is Mr. Kenneth F. Collier. Is he here?

If you will hold up your hand and be sworn.

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

Mr. COLLIER. I do.

The CHAIRMAN. Mr. Collier, you have 3 minutes.

TESTIMONY OF KENNETH F. COLLIER, WASHINGTON, DC

Mr. COLLIER. I would like my statement submitted to the record as written, and I would like to address you directly related to what it is describing.

The issue of the integrity of the nominee has been questioned in the statement which the committee has been given. And that statement has been distilled from 4 hours of testimony which investigative reporters from the Dade County Home News in Florida submitted to the Federal Bureau of Investigation earlier this month, within 6 weeks ago.

It is a serious claim that Judge Scalia actually created a counterfeit concurrence—and a concurrence is a document which is used in order to express a concurring view with a slightly different twist. And in a very important case that is cited in this document and in the Federal District Court and in a case in the Superior Court of the District of Columbia, Judge Scalia is charged with having utilized this concurrence to virtually fix a case for the Republican National Committee.

Now, these are serious charges, and we are aware of the gravity of such a charge. But the paper work has been submitted to your staff, Senator Thurmond, Jack Mitchell in particular, and the FBI report and the statements in full in a good 4-hour debriefing of this matter so it wouldn't be held in 3 minutes and some mud slung and some charges made.

But instead there have been 6 weeks for these charges to be evaluated and, in addition, in order to test them on their merits, a lawsuit was instituted against Judge Scalia as soon as it was found out that he was up for this nomination, in order to test in the Federal Court of the District Columbia—it's right now in front of a judge who has been assigned to it at random—I won't mention his name, it's not important at this point. And this lawsuit against Judge Scalia directly challenges his integrity and the reasoning that was used and the cronyism and the tampering of records that was implicit in his deliberate concocting of a so-called concurrence, which was nothing but a counterfeit which served to derail several cases in the courts below, all of which cases involved personal close associates and friends of Judge Scalia's, and also certain other judges who ruled in the courts below, utilizing that concurrence in a most unfavorable manner in view of the posture of those cases, were also former colleagues of 13 years' duration in one case with Judge Scalia.

And so we can see why these lower court judges, particularly in the Superior Court of the District of Columbia—I see my time is up.

The CHAIRMAN. Do you want 2 more minutes?

Mr. COLLIER. I'd accept that, yes, sir. Philosophically, we will say this—I'm an investigative reporter, I'm not perfect—no one is perfect—these hearings here are not to test anything but deliberate questions as to whether or not this nominee in this time, in this place, is going to be challenged as we did this afternoon in order to come to these hearings—I was hoping that one question alone would be asked, and I called up the attorney for Judge Scalia, who is an Assistant U.S. Attorney in the Justice Department defending him against the lawsuit, and I said to her would you kindly, prior to the time when I have to testify, see if you can reach your client and tell him that we are going to be stating that as of now, since 6 weeks has elapsed since the filing of the suit—it's had a chance to mature—and this maturity, Senator Thurmond, has resulted in not a denial on the merits of the suit, which attacked the integrity of Judge Scalia to the utmost and put him as a codefendant with the Republican National Committee, but the answer instead went to a procedural thing, such as he has immunity to do whatever he did do, and if he didn't file the concurrence and it was the only concurrence that was never filed in the history of the appeals court, so be it.

This kind of behavior should be noted at this time. We felt constrained to come to the committee, because we saw what happened when Mr. Brosnahan failed to do so in years past, and now his credibility, which I have no knowledge of, is being questioned—and they are saying why didn't you come to us when it first was done? This is going to be in the record.

And if Judge Scalia had only replied to these charges by not having his attorney state the absolute truth, which she is correct, that there is no requirement for a judicial officer to submit—may I have 1 more minute, sir, and I will be very concise on what she told me.

The CHAIRMAN. Well, if you take 1 more minute.

Mr. COLLIER. Yes, I will, sir.

The CHAIRMAN. And that will give you twice as much as the other witnesses.

Mr. COLLIER. Thank you, sir. The attorney for Judge Scalia told me that he was going to plead—that she had discussed it with him, and that he is going to plead procedural defenses to these specific charges. All he needs to do is say did he know Henry E. Peterson back in the days of 1972 through 1974, and did he know Craig C. Donsanto, a material witness in one of the cases that was dismissed and derailed because of the counterfeit concurrence. And why didn't he take himself off the case. And all of those fundamental questions which go to these things.

Now, in the face of these hearings we anticipate that his answers will be forthcoming, and we look forward to those in court. And I'm sure that this committee also does.

Thank you, sir.

[Prepared statement follows:]