

NOMINATION OF JUDGE ANTONIN SCALIA

WEDNESDAY, AUGUST 6, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Present: Senators Specter, Hatch, Heflin, Simon, Metzenbaum, Kennedy, Leahy, Grassley, DeConcini, Mathias, and Biden.

Staff present: Duke Short, chief investigator; Dennis Shedd, chief counsel and staff director; Frank Klonoski, investigator; Jack Mitchell, investigator; Melinda Koutsoumpas, chief clerk; Mark Gitenstein, minority chief counsel; Cindy Lebow, minority staff director; Reginald Govan, minority investigator; and Christopher J. Dunn, minority counsel.

The CHAIRMAN. The committee will come to order.

First is the ABA. Will the ABA representatives come around, please? Mr. Robert B. Fiske, Jr., Mr. Gene W. Lafitte, and Mr. John D. Lane.

Stand and raise your right hand and be sworn. Will the testimony you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FISKE. It will.

Mr. LAFITTE. It will.

Mr. LANE. It will.

The CHAIRMAN. I have got to open the Senate in 10 minutes. Senator Hatch was to be here to take over. We will take a 10-minute recess.

[Brief recess.]

Senator SPECTER [presiding]. The hearing will come to order.

Senator Thurmond, the chairman of the committee, had to go open up the Senate and has asked me to chair in his absence. We will proceed at this time.

The current witnesses are representatives of the American Bar Association, Mr. Fiske, Mr. Lafitte, and Mr. Lane. We will proceed at this time. Mr. Fiske, if you will start.

TESTIMONY OF ROBERT B. FISKE, JR., CHAIRMAN, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY JOHN D. LANE, WASHINGTON, DC, AND GENE W. LAFITTE, NEW ORLEANS, LA

Mr. FISKE. Good morning, Senator Specter.

My name is Robert B. Fiske, Jr. I practice law in New York City, and I am chairman of the American Bar Association, Standing Committee on the Federal Judiciary.

With me today are two other members of our committee: John D. Lane of Washington, DC, and Gene W. Lafitte of New Orleans, LA.

I would like to say that during the time that the investigation of Judge Scalia went forward I was engaged in a major trial in New York. I am very grateful to Mr. Lafitte who undertook to coordinate and chair the investigation that was conducted of both Justice Rehnquist and Judge Scalia. Of course, Mr. Lafitte did present the position of the committee to the Senate Judiciary Committee last week on Justice Rehnquist.

Mr. Lane is the circuit member from the District of Columbia who conducted the principal part of the investigation on both Justice Rehnquist and Judge Scalia.

We appear today to present the views of the American Bar Association on the nomination of the Honorable Antonin Scalia of Washington, DC, to be an Associate Justice of the Supreme Court of the United States.

At the request of the Attorney General, our committee investigated the professional competence, judicial temperament, and integrity of Judge Scalia. Our work included discussions with more than 340 persons, including the Justices of the Supreme Court of the United States and many other Federal and State judges across the country; a national cross section of practicing lawyers; and a number of law school deans and faculty members, some of whom are specialists in constitutional law and scholars of the Supreme Court.

In addition, we have had Judge Scalia's opinions reviewed by a team consisting of the dean and law professors from the University of Michigan Law School, by a separate team of practicing lawyers, and also by three law students who were working in the office of one of our committee members during the summer. Finally, two members of our committee, Mr. Lafitte and Mr. Lane, interviewed Judge Scalia.

Based on our investigation the committee is unanimously of the opinion that Judge Scalia is entitled to the committee's highest evaluation of a nominee to the Supreme Court—well qualified. That evaluation is reserved for those who meet the highest standards of professional competence, judicial temperament, and integrity. Persons in this category must be among the best available for appointment to the Supreme Court.

I have filed with this committee yesterday a letter describing the results of our investigation and will not repeat those results in detail here. But I do request that the letter be included in the record of these hearings.

Senator SPECTER. The letter will be made a part of the record, without objection.

Mr. FISKE. Thank you, Senator.

[Information follows:]