

of my colleagues who would dare arouse the ire of the Scalia clan.  
[Laughter.]

As far as the family is concerned, at times these questions are going to be hard and difficult. There is a reason for that; because under the Constitution, we on this committee and the full Senate have a serious fundamental constitutional responsibility. It is up to us not to rubberstamp the recommendation of the President, but to take an independent look. We do that, and it is a trying experience, very often, for all concerned.

Please understand that every one of the members of the panel here is attempting to discharge his responsibility as he sees fit as a member of this very important committee.

I feel very strongly, Judge Scalia, you are going to acquit yourself well because you are a pro. You are a thoroughbred. I look forward to a speedy confirmation.

I thank the Chairman.

The CHAIRMAN. The distinguished Senator from Ohio.

#### STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Judge Scalia, we are happy to welcome you here and welcome your family as well.

Parenthetically, I would like to say that looking out at that youngest daughter of yours and your young son, I do not think there is any requirement that they sit through these laborious, tedious hearings. Any time they leave, I think every one of us on the committee will understand that they still support you, but it is a rather tiring process for young children.

Judge Scalia is an accomplished scholar. A former assistant attorney general, sitting judge of the court of appeals, and well known in my own community of Cleveland, where he practiced law for 6 years.

There can be little question about the fact that he is qualified for the position of Associate Justice. To my knowledge, there are no allegations of impropriety or misconduct. Consequently, I believe the integrity of the nominee is not in issue.

Judge Scalia, you know personally of your own area of bad judgment. I think it was bad judgment in whipping me on the court, not in the courts, but I think that, too, can be passed over and not made a major point of issue.

Judge SCALIA. It was a case of my integrity overcoming my judgment, Senator.

Senator METZENBAUM. Touché. [Laughter.]

My only area of concern relates to some of the views Judge Scalia has stated in a number of critically important areas such as the proper approach to constitutional interpretation, separation of powers, and the circumstances under which citizens may seek relief in Federal court for Government action. Judge Scalia seems to take a view that there should be very little limitation on the authority of the executive branch. That view concerns me because the Framers of the Constitution clearly had in mind that the three branches of Government were to be coequal. No branch would be able to dominate the others. I also have concerns about his approach to interpreting the Constitution. Some of your statements

suggest that the role of the courts is to carry out the will of the majority, yet this country was founded on the principle of individual freedom. The Bill of Rights was adopted as a permanent guarantee that the majority could not limit certain basic rights of individuals.

I have no doubt that I disagree with Judge Scalia on many issues, not simply issues of political philosophy, but of statutory and constitutional interpretation. But whether or not we agree on these issues is not a valid question as I exercise my advice-and-consent responsibility. The question is whether we will be faithful to fundamental constitutional values even if he may apply those in particular cases differently than I or any other Senator may prefer.

I have an open mind on this nomination. As in the case of the nomination for Chief Justice, we have an obligation to conduct thorough and complete hearings, even though the process is a demanding one for the Senate as well as the nominee.

Finally, I note that some Senators, including myself, have requested documents from the Justice Department, including certain memorandums prepared by Judge Scalia when he was in the Justice Department. As in the case of Justice Rehnquist, these memorandums were prepared while Judge Scalia was head of the Office of Legal Counsel. In this position, he was the chief legal adviser to the executive branch on a highly significant legal issue, issues that are of direct concern to the Senate considering this nomination.

I sincerely hope that the President will not choose to assert a claim of Executive privilege in denying us access to those documents. The country will be better served, and this process will be expedited, if the President does not assert the privilege.

I might also point out that based on his own—that is, the President's own 1982 Executive order regarding Executive privilege, it should not have been asserted in the case of Justice Rehnquist, and it should not be asserted in this instance.

I believe the Senate is determined to carry out its obligation in a responsible way, and I hope the President is as well.

I welcome you to these hearings, Judge Scalia, and look forward to working with you.

Judge SCALIA. Thank you, Senator.

Senator MATHIAS [presiding]. The Senator from Utah.

#### STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. Welcome to the committee, Judge Scalia. We look forward to this confirmation proceeding. I do hope it will not be quite as strenuous as the one last week.

I would ask that my full statement be placed in the record.

Perhaps no standard speaks more eloquently to the merits of this nomination than the performance of Judge Scalia on the Court of Appeals for the District of Columbia Circuit. In more than 4 years on that esteemed court, he has written 86 majority opinions and only 9 of them have been accompanied by a dissenting opinion.

In other words, Judge Scalia has won unanimous approval for his views in nearly 90 percent of his written opinions. Another 90-percent measure of success is found in the rate at which Judge Scalia's positions have been sustained on appeal. The Supreme Court