

many complex and emotional legal issues been so prominent and so controversial.

Yet during that period, and in the years following, when I sought his counsel, from the Department of Housing and Urban Development, he was ever the patient, careful and reasonable adviser.

In writing and by voice, formally and informally, he expressed his view on a wide range of issues, issues often of profound constitutional importance. Never did I perceive or hear an allusion to his having a bias or a leaning. He was respected for his objectivity, clarity, judgment and integrity.

In my view, the Senate has now a rare opportunity to celebrate our Supreme Court by its confirmation of Judge Scalia's appointment to that institution.

The essence of our legal system is its ability to provide a government that rules by law rather than by individual. The fairness of that system depends on the intellectual soundness and, thus, predictability of opinions that emanate from the Supreme Court.

However wise the Justices might be judged on the basis of any number of standards, the acceptance of their ruling by our body politic depends on how the public perceives the Court's work over the course of years. Inarticulate or fragmented decisions serve no purpose; well-reasoned opinions that bind the Court and set forth lucid rationales will serve all of us quite well indeed.

Judge Scalia brings distinction and respect to this Court. His ability to reason, write, and persuade is his hallmark.

That he will do this, all of this, with energy and good humor makes it a happy privilege for me to appear here in support of his confirmation.

The CHAIRMAN. Thank you very much. Dean Casper, we are glad to hear from you.

STATEMENT OF GERHARD CASPER

Mr. CASPER. Mr. Chairman and members of the committee, my name is Gerhard Casper, and I am the dean of the University of Chicago Law School. I am, of course, not appearing before you in my capacity as dean. I am referring to that role only because it made me for 4 years what FBI investigators like to call the nominee's supervisor; though God knows that there are few jobs more challenging than the task of supervising the University of Chicago Law School faculty.

I am well familiar with Judge Scalia's academic work and reasonably familiar with his judicial work. Judge Scalia possesses what I would call a tenacious intellect. He is intellectually refined and takes great pleasure in measuring a problem.

To put it differently: He is exceptionally probing in his investigation of legal matters. He is thoughtful and straightforward.

Of course, Judge Scalia is not a mere technician. He understands fully the intellectual, moral and practical difficulties inherent in most controversial legal issues. The best example from Judge Scalia's writings to illustrate my point is his article on judicial review of administration action in the 1978 Supreme Court Review, of which, incidentally, I am an editor. His article on the Supreme Court decision in *Vermont Yankee Nuclear Power Corp. v. Natural*

Resources Defense Council is a masterful and sweeping critique of the D.C. Circuit, the Supreme Court, and Congress failure to update the Administrative Procedure Act.

In recent weeks, I have often been asked what Judge Scalia's ideology is. I have noticed that the distinguished members of this committee also use the term ideology with great frequency. I am frankly not sure what everybody means when they say ideology.

For instance, President Reagan a few weeks ago seemed to employ the term mainly to criticize the opponents of the Manion nomination.

If you ask me what Judge Scalia's view of the Constitution and the rule of law is, I am inclined to answer that he believes that the Constitution and the laws mean what they say, and that it is not beyond human endeavor to determine the meaning of what they say. If you call that ideology, so be it.

I do not mean to suggest that, in my opinion, Judge Scalia is invariably right. I have had many disagreements with him. For instance, on the constitutionality of the legislative veto. But there is no question in my mind that Judge Scalia at all times attempts to be faithful to what we may call the American concept of the rule of law.

Permit me to say a word about how to evaluate judges. There was a time not too long ago when it was considered respectable and valuable for lawyers to sit down and do a painstaking, detailed analysis of a judge's single decision, keeping in mind the dictum of one of the great State judges of all time, former Justice Schaefer of the Illinois Supreme Court who died earlier this year.

The principal stimulus, Justice Schaefer said, comes from the facts of the case. The interaction between fact and law is close and continuous.

Without having studied the subject empirically, I have a sense that this genre of analysis is increasingly disfavored. Its place seems to be taken by more speculative endeavors which seem less interested in understanding the judge than in the approval or disapproval of outcomes.

In this world view, the courts are filled with heroes and villains rather than with professionals to whose professional performance we apply professional standards.

The CHAIRMAN. Your time is up. I have got a red light there.

Mr. CASPER. May I just give you my punch line, Mr. Chairman?

If one applies professional standards to Judge Scalia's case, one must confirm this splendid nomination.

Thank you.

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

Mr. Verkuil, how do you pronounce that?

Mr. VERKUIL. Mr. Chairman, it is Verkuil. Thank you for inquiring.

The CHAIRMAN. You are from the College of William and Mary. You are also a professor of law, are you?

Mr. VERKUIL. I am president and professor of law at the College of William and Mary.

The CHAIRMAN. Double duty.

Mr. VERKUIL. Well, I guess you might say that.

The CHAIRMAN. Do you get extra pay for that?

Mr. VERKUIL. I will inquire about that, Senator. I have not separated them.

The CHAIRMAN. You may proceed.

STATEMENT OF PAUL VERKUIL

Mr. VERKUIL. I am here, of course, in my individual capacity.

I would first like to say I am not here to testify in a partisan role or as one who necessarily shares the same views as Judge Scalia on legal issues. I am here to testify about why I believe he will make an outstanding Justice.

I shall emphasize two aspects of his background that bear upon his qualifications for the high post he seeks: his judicial temperament and his legal and scholarly qualifications. Temperament is not easy to describe or predict, but it is the best way I know to get at the quality of fairness that is essential to the judicial role.

My focus is upon Judge Scalia's openmindedness and willingness to engage in legal debate; what I might call his exuberant argumentativeness. These qualities translate into fairmindedness. I first had an opportunity to know Judge Scalia as a professional colleague 15 years ago when he was chairman of the Administrative Conference of the United States and I was a consultant to that organization.

From the outset our professional relationship was marked by a good-humored exchange of views. The first issue I recall debating in depth was the role of the courts on judicial review of informal agency rulemaking. This issue—that is, determining the proper relationship between the courts and agency in the promulgation of rules—has occupied the courts for years. I found Judge Scalia to be a thoughtful, persistent, and insightful student of the law. The article and Conference recommendation that came out of these efforts was much in debt to his efforts.

Later I had the opportunity to work with Judge Scalia on the Administrative Law Section of the American Bar Association during the period he was chairman. Here he not only demonstrated his usual astuteness on the issues, but he displayed a remarkable ability to distill and integrate widely differing views into effective statements of position. In fact, I have never seen a better coalition builder than Scalia. He uses his charm, humor, and intellect, frequently in that order, to bring people to a common position. This quality is indicative of a temperament that will, and I am sure does, serve the judiciary well. It also speaks to his likely success as a Justice on the High Court.

My most extended exposure to Judge Scalia was during the summer of 1984 when we both participated in the Anglo-American Legal Exchange at the invitation of the Chief Justice of the United States. This program dealt with the role of judicial review of administrative action in England and the United States, and involved a visit by a group of eight American lawyers and judges with a like group in the United Kingdom. Judge Scalia led many of the discussion groups and did so in an informed and entertaining manner that made him a favorite of the British team as well as our own.