

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.