

Senator MATHIAS. Thank you, Dr. Maddox. Mr. Weiss.

STATEMENT OF PETER WEISS

Mr. WEISS. Mr. Chairman, I am here representing the Center for Constitutional Rights if I may start on a personal note, my grandfather and several other members of my family died in Nazi gas chambers. That has left me with a lifelong passion for human rights and for using the law to resist or seek redress for the commission of atrocities by governments of whatever political stripe.

I am here today because of my conviction that Judge Scalia does not share that passion and that this raises serious questions about his qualifications to sit on the Supreme Court of the United States.

I base that on one case, a rather unusual one that has not been touched on by the other witnesses so far. It was called *Sanchez-Espinoza v. Reagan*. We brought that case in 1982 in the District Court for the District of Columbia on behalf of nine Nicaraguan victims of Contra atrocities, people who had been subjected—or their relatives had been subjected—to murder, kidnapping, rape, torture, and other gross human rights violations. The defendants included the President of the United States and the Secretaries of State and Defense, the Director of the CIA, and various other high U.S. officials.

The case was dismissed in the District on the political question doctrine, and when it came before the Circuit Judge Scalia was his usual courteous self and was very interested in the case, and indicated that he would not decide it on that basis. He then proceeded, some 15 months later—maybe that was the time it took him to forge a consensus—to decide it on variety of grounds in which he dealt with every single cause of action that had been alleged.

The net result was a total rejection of these claims, and he rejected them even though he had to accept the facts as true, because this was a motion to dismiss. And he rejected them even though he conceded that the courts, in their discretion, could have granted some relief.

But he said it would have been an abuse of the court's discretion to grant that relief. He also said that sovereign immunity protected the U.S. officials even though, in another case, which we had had in the second circuit, sovereign immunity was held not to protect the officials of a foreign government from a suit for torture.

A strange message, it seems to me, to send to the world.

He also said that the fourth and fifth amendments did not protect these plaintiffs because of the danger of foreign citizens using the courts of the United States to challenge American foreign policy.

Now, in its starkest terms, the message of that decision is this: Nuremberg never happened; no matter what atrocities are committed abroad in the name of or under the direction of officials of the United States, foreigners need not apply for redress.

We are now in a time when terrorism and counterterrorism have become preferred instruments of foreign policy, and it would be nice to have someone on the Supreme Court who had the courage to protect the victims of that terrorism and of that counterterrorism.

I am afraid that Judge Scalia is not that person, because, although he said yesterday that he believes that checks and balances are the fundamental structure of the U.S. Government because they will prevent any one branch from abusing the liberties of the people, even though he may believe that in principle, what he decided in this case, Mr. Chairman, shows that he would not be prepared to enforce that principle as a member of the Supreme Court.

I thank you for your attention.

[Prepared statement follows:]