Senator HATCH. You are very articulate.
Mr. Silard.

STATEMENT OF JOHN SILARD

Mr. SILARD. I am John Silard for the judicial selection project of the Alliance for Justice. And we are here to make a point that has not, so far as I can tell, been made to this committee before.

Senator METZENBAUM. Could you tell us, Mr. Silard, what is the Alliance for Justice?

Mr. SILARD. Well, it is a group of organizations that has come together a year or two ago to concentrate exclusively on the question of judicial appointments. The members are listed on our statement for the committee to know.

Senator METZENBAUM. Start his time running now.

Mr. SILARD. The first necessary qualification of a person appointed to head an organization is that he or she supports the organizational role and mission. Justice Rehnquist lacks that qualification for he strongly objects to the central constitutional role of the Supreme Court as it has developed over the past 200 years.

His opposition is clear and undisguised, and it leads him merely always to vote against the Bill of Rights and against civil rights, and for State's rights.

In my brief time, I can quote only this much from his opinion.

In the Richmond newspapers where the eight Justices said open trial was a constitutional right, he says, Rehnquist says, quite candidly, "It is basically unhealthy to have so much authority concentrated in a small group of lawyers." He means the Supreme Court.

Nothing in the reasoning of Mr. Justice Marshall in *Marbury* required this Court to broaden the use of the supremacy clause to smother a healthy pluralism which would otherwise exist in a national government and facing 50 States. He does not believe in the Bill of Rights and in the 14th amendment as charters of protection against State action because, as he puts it, it smothers a healthy pluralism in our society.

A case, such as *Carter* v. *Kentucky,* in which he dissents alone once more, demonstrates his point. Eight Justices say that a defendant who has not taken the stand exercising his right to silence, may have the jury instructed not to take his exercise of his constitutional right against him. Now, Justice Rehnquist never takes issue that the jury, in the absence of that instruction, might convict simply because the defendant chose his right to silence, nor does he assert any State interest to squelch a proper instruction to the jurors. He simply says we cannot interfere with trial judges' decisions on instructions to jurors. He is an abolitionist when it comes to the Bill of Rights and the 14th amendment as charters to restrain State violation of human rights.

Now, such a person cannot lead. It is a General who says, gentlemen—on his horse he says soldiers, advance to the rear. And that is where Justice Rehnquist is. He is candid in saying so. He does not think we have gone in the right direction in the last 50 years. But, as long as he is on the Court, he can atone that position, he is an inappropriate Chief Justice.

May I, Mr. Chairman, answer one question I was asked before about the 54 lone dissents?

The point of the 54 lone dissents is not just that there are 54, but that Justice Rehnquist always, I mean always comes up against the Federal Constitution on these 54 occasions. And he does so in expressing his view not the proper role of the Supreme Court to give force to the Bill of Rights and the 14th amendment.

He just is entirely inappropriate. He cannot lead the charge because he does not believe in the battle.

And that is the conclusion of my testimony, Mr. Chairman.

[Statement follows:]