

Senator METZENBAUM. Do I understand that we will be in several rounds?

The CHAIRMAN. Yes. What we will do is this. We will have those Senators who have additional questions ask them tomorrow afternoon and/or Monday morning, or whatever the appropriate time is. Yes, there will be an opportunity.

Senator METZENBAUM. I do, Judge Souter, wish to inquire of you concerning church-state issues, but time obviously does not permit it at this moment. Thank you very much for responding to my questions.

Judge SOUTER. Thank you, sir.

The CHAIRMAN. Thank you, Senator.

Senator SIMPSON.

Senator SIMPSON. Thank you, Mr. Chairman.

We lawyers often are out doing our business, like correcting the record. So I did want to—you will notice Senator Biden and I this morning, as I pungently gave a comment about his quote and he pungently spliced it back together. So I thought we would just put the whole thing in because we both said exactly that, and it is in the same paragraph. And we have already had that answered, I think, now.

But it is clear that what I said and what Senator Biden said are the exact quote with regard to the specific attitude of questions. So I just wanted to get that on record, because my staff was not on vacation. They were here laboring diligently. They were not at Rehoboth or anywhere.

The CHAIRMAN. Well, mine were not in a hole clawing to get this information, or however you mischaracterized it.

Senator SIMPSON. I was talking about those poor law professors. I think that was the part I should have clarified. Diana and the staff were doing their work, but the poor law professors and the academics, they were clawing and scratching. We have to realize that they have had an arduous summer and an arduous August, without question.

Judge SOUTER. If they were reading my opinions, they were.

Senator SIMPSON. Well, we all did a little of that. In any event, your remarks when you spoke with hardly or nary a note at 2 p.m. today was very impressive. I think to me, as a person who practiced law for 18 years in really what I thought of as the real world—and it was; you know, I have represented some real weird people, and did some real weird cases with some weird results, too, I can tell you that. [Laughter.]

So the thing that impressed me is to hear you able to describe yourself and then hear you describe answers and form answers to pretty piercing questions from Senator Biden, Ted, Howard, Orrin, Strom. All of those—your answers come back with the lucidity of very impressive degree.

I have always had the peculiar view that legislating should be done in a way—as I said earlier, in a way that is understandable to the governed. And certainly I always had a view of the law practice that if your clients could not understand what you had drafted for them, what was the purpose of practicing law?

I know that is a screwy view, but it was mine. In other words, if the client did not know and looked at a contract that you had

drafted and did not know what it said, what is the purpose of the law practice?

And I think as a judge, writing opinions, what greater purpose of a judge is to write an opinion that the public can understand or to answer a question in a way that the public can understand, not just from some intellectual level, but from the gut level, from the commonsense level?

And that is what has been most impressive to me—to hear you respond to these questions in a way that is extraordinarily understandable—

Judge SOUTER. Thank you, sir.

Senator SIMPSON [continuing]. And showing, in a hackneyed word in these times, sensitivity and empathy. I know my friend, Howard Metzenbaum and I know my friend, Ted Kennedy, and we get to know each other pretty well in 12 years, and Joe Biden and Orrin Hatch and all the men at this table, and our fine ranking member. And we do know each other pretty well after 12 years and going through these kinds of exercises. We have been through some grinders here.

The Bork thing was extraordinary in its, you know, intensity, in what occurred, and I do not see any portent of that at all here. Yet, my friend, Ted Kennedy, speaks with power as he gets into those issues of—he and I are chairman and ranking—and it was more fun when I was chairman and he was ranking, but we have done tough work together on immigration, refugees, things filled with, I often say, emotion, fear, guilt, and racism.

None of us on this panel are racists. I do not know any racists in the U.S. Senate. So it is always something that when you bang around the edges of it, you almost want to ask the question, David Souter, Are you a racist?

Judge SOUTER. The answer is, no.

Senator SIMPSON. A crazy question to ask, is it not?

Judge SOUTER. Well, far be it for me to say that a question from you, Senator, is crazy. [Laughter.]

Senator SIMPSON. No, do not. Just stop right there.

Senator HATCH. But we all agree.

Senator SIMPSON. Do not listen to them, just go ahead.

Judge SOUTER. In a way, I think that answer might have been impressive to some people if I had grown up in a place with racial problems, and some people have pointed out that I did not. The State of New Hampshire does not have racial problems.

So you can ask, well, what indication is there, really, as to whether you mean it or not. And you did not provoke this thinking on my part by your question immediately because I thought of it before I came in here. I can think of two things to say.

The first is something very personal and very specific to my family. In a way, it surprises me when I look back on the years when I was growing up that never once, ever in my house that I can remember did I ever hear my mother or my father refer to any human being in terms of racial or ethnic identity. I have heard all the slang terms and I never heard them in my house.

Now, as much as I esteem my family, I do not want to try to make them a race of saints, but the fact is, in that respect, they

were perfect. They were perfect in some other ways, too, but they were in that respect.

And if there is a kind of homely vision for America, in my mind, it is simply the vision of my home. And I have lived long enough and I have lived outside of my home long enough to know what the difference is. I am glad that I am conditioned by my beginnings and I am glad that I do not have to overcome them. I am glad that I can have an aspiration for America which is as good as the circumstances that I came from.

Another thing that occurred to me, and it is equally personal—and I think that I will not offend the two people involved by saying this—two of my closest friends in this world are sitting in the row behind me. You have already heard from Warren Rudman. I heard Warren Rudman talk about what it was like to be discriminated against when he was a kid because he was Jewish. Somewhere out there, there is somebody who is discriminating against a friend of mine who is close enough to me to be a brother.

And there is another friend of mine in that category in the row behind me; you haven't heard from him today. His name is Thomas Rath. I can remember Tom Rath telling me once years ago—I don't know why, I don't know how it came up. I remember him telling me about his grandparents, and his grandparents remembered the days when there were help-wanted signs up around the city of Boston that said "No Irish need apply." And that meant them.

So if you want to know whether I have got the vision, if you will, behind the answer to my question, I will be content to have you look to my friends.

Senator SIMPSON. Well, I come from Wyoming, and people think that I don't have the sensitivity about race. I remember I was at a baseball game with Coretta Scott King. It was the World Series in Kansas City several years ago, and she said, "I don't know much about baseball." I said, "Coretta, you will when I finish with you."

So when we finished the game, she said, "Now, I want to ask you what you know about racism in Wyoming. And how many blacks are there in Wyoming?" I said, "Well, probably less than 1 percent. I have a large Hispanic population of 11 to 12 percent or something of that nature, and a native American population." Funny how you can be from a small area and somehow be known as not sensitive enough. I don't know what that is, but it is not real. And on the immigration reform business, was I sensitive enough to Hispanics? I don't know. Three million of them have come forward under that bill, and they are now no longer living in some illegal subculture, and that just pleases me immensely—Hispanics and Germans and everybody else, all the way up and down the line. So it isn't just one.

This is a line of questioning that destroyed Robert Bork because all he had done was be a judge on a Federal district court, just like you, for 5½ years, and he did 106 opinions, and 6 of his dissents became majority opinions of the U.S. Supreme Court, and he was never overturned. And he was turned into a racist right here—in a different room—also a sexist, also a violator of the bedroom, also a sterilizer of women. That is what happened right here. I was here. You don't have to like him or not. You don't have to get into anything else. That happened.

So, you know, that is something we must be very careful about. That is not a good trait for any of us to say that somehow if someone does not agree with our views they are somehow, you know, racist or poll taxers or whatever or whatever. And that was uncomfortable. I didn't mean to drag that out, but it was all false. There was nothing in the background of the man that proved up one bit of it, and that is pretty tough stuff. That could happen to any of us.

We saw John Tower, you know, with ballerinas dancing on pianos and things that were all fake. We had to go look at the FBI report on our colleague and found that witness T-4 said this. I said, "Who is T-4? Some disgruntled former somebody?" And that could happen to each one of us.

That is what this committee, I think, should pride itself on, and we do pride ourselves in trying to assure that we do it right. I think we are going to do it right.

The issue of abortion, that was a powerful, powerful response to my friend from Ohio. Those were not only eloquent answers; the questions were eloquent by Howard Metzenbaum. And he and I don't always agree, but I do enjoy that ornery rascal. And he is as spirited as I am in his causes, and I have enjoyed him in many ways. And the thing that—I guess I could almost ask that same question just the way he did. I really would, because it comes from real life.

What we are dealing with here are real live people. I went through the abortion debate in 1975 when I was a State legislator. It was one of the most grueling, powerful, impressive debates of the State legislature that I had ever been involved in. From that and from my practice, I came to the determination that a woman should have the choice, and that I as a man and especially as a male legislator—a spouse would be different. That would be a whole new scenario God knows one would never want to go through. But as a male legislator, what was I even doing in the decision process, especially with, you know, a woman I remember—since we are speaking in some rather powerful little personal reminiscences of the woman who sat there and said, "I have five marvelous children, and now I know that if I am going to have the next one and I am pregnant, I am going to lose my mind. And I am here because you are a lawyer, and I am asking you what I should do."

You know, I sat for over 2½ hours with that lady, and she eventually made the decision to do that. And she also said that she, as I said, would destroy herself. She did not destroy herself. I had yet another situation that did destroy herself in that situation. So, really, it is so unfortunate that we get into this issue of extremism on both sides of this issue.

In any event, there are two or three things that I would say, and then I do have a question. But I think you have said several times in just this short day that all activities and decisions and the things you have done as a judge or a lawyer, you have realized that the most paramount feature of it is that it has some impact on another life, somebody's life, some other person.

Judge SOUTER. Yes, sir.

Senator SIMPSON. And that is your deep feeling. You have said that.

I would like to ask you a question. What else have you done in that little community where you grew up and where you practiced and what you did to tie you closer to the human condition? You have talked about a hospital board. You talked about these other things. What is it you are most proud of in the things you have done that would disclose the man I think that the American people are seeing here today? You have given us some. Who are you?

Judge SOUTER. If I had to pick one thing—you have already mentioned it—it would be that hospital board. It was like a second occupation for me. I went on it the way lots of people went on it. Somebody asked me to go on it. You say, well, why do you do it? Why do you do any of those things? You do it because you are paying your dues. You are in the group that is lucky. And the people in the group that are lucky have got an obligation to pay it back. And so we go on boards like that.

Then the activities start taking sort of lives of their own. I went on in an unassuming way. I was a quiet trustee for a couple of years. Sooner or later, it became obvious that we were outgrowing a building, and in kind of an innocuous way, a lawyer who was a mentor of mine said, "Well, why don't you go on the planning committee and just make sure we don't do something foolish?" And I said, "Well, yes, I will do that."

By increments, by short steps, I finally found myself back in the years when I first went on the superior court as the chairman or, as we called it, the president of the board. And I saw all sorts of conditions of people in doing that. We dealt with a regulatory bureaucracy because we could no longer just go out and build what we thought we needed. We dealt with a health care bureaucracy because whatever we built was going to affect the cost of health care throughout the State of New Hampshire. We dealt with the fact that there were people out there who did not have health insurance and who might or might not be eligible for governmental health benefits.

Once a year, we all trotted around to the town meetings. I remember standing up in the town meeting of my town telling how much money the hospital had given away in free care in that town every year because there was a neighborhood tradition around there that the towns would chip in to offset the costs that the hospital would otherwise have to drain out of an endowment or recoup by raising rates to the people who did pay. So we all knew exactly what it was costing. We knew what it was costing our neighbors. We knew what health care was costing the people who couldn't pay for it. We knew what it was going to do to the cost of health care throughout the State when we had to build a building. And we finished, ultimately we finished the job.

I am glad I did that. There are many other things, I suppose, that I might have done that would have given equal satisfaction. The reason it gave satisfaction I think is simply that in ways I never dreamed it would it was paying the dues. And I had a lot of dues to pay, and I got a chance to pay them.

Senator SIMPSON. And you paid those dues not only through that service but through pro bono activities, some of which you have described earlier today.

Judge SOUTER. I did some back in the time when I was in private practice. Of course, I couldn't do that as a public lawyer.

Senator SIMPSON. Well, I have just a few minutes left, and I had a great temptation to ask about an issue. But since I have been railing about that most of the day, I can't really do much of that, but I will. That is the issue—here is the kind of tough stuff I would love to get into, but I think that you can see that 1 year with one nominee we will want to ask a lot of specific questions, and 1 year with another nominee we won't want to ask any. And we have all done that. I could bring out the quotes, seeing my friend from Massachusetts. But how about gun control? See there, there is one.

There is a sign in Massachusetts on the border that says if you have a gun in your possession it is a \$100 fine. And in Wyoming you carry a gun in the gun rack of your pickup truck. Now, that is a pretty big difference in the United States, and that is the kind of thing that you are going to be dealing with. And we fiercely defend the right to keep and bear arms, and my friend from Massachusetts has an ever more intimate and personal reason why it is deeper than anything any of us have ever hit on that one. Talk about crazies with arms, versus the legitimate citizen with his arms. So there is one for you.

I guess I am not going to worry about you at all. I have read, and my President appointed you, and I think you are going to be a splendid, splendid judge. I can't wait to see you get on there with some of those others, get into some discussion. I wish we could record those. But the thing that is most critical and most important and the most exciting is that you are a listener. You are a listener, and that is the key. That is the very key.

I would have very great difficulty voting for a politician who was not a listener or a judge, if I had the opportunity—

The CHAIRMAN. I think you would have a great difficulty finding a politician who was a listener.

Senator SIMPSON. That is right. Finding one would be the tough part.

Judge SOUTER. That is why Senator Rudman and I have always gotten along so well. I listen. [Laughter.]

Senator SIMPSON. We do know the propensities of your former employer.

Senator HATCH. We do understand that, let me tell you.

Senator SIMPSON. Indeed we do. But that is so critical. And politicians need that and judges need that, and it is so important. That is impressive to me because there are people we deal with every day in this place, of either party, where you are talking to them and their eyes are just glazed over and you know they are not listening to one thing you are saying. You almost want to say, "Are you in there? Is anybody home back there? Are you just waiting to get out and get your suit boiled by the camera that is out in the hall? What are you doing?"

And so enough. But I thank you for sharing a bit of yourself and your philosophy and your sensitivity—that is certainly not an overworked word and certainly a most appropriate one—and yourself.

Thank you, Mr. Chairman.

Judge SOUTER. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.