

I can only really say that about two people, and, strangely enough, by irony, both of them are from small towns in New Hampshire. One is David Souter, and the other is my wife.

Lastly, I want to talk about an issue—

The CHAIRMAN. We all have to think that of our wives. Otherwise, they wouldn't have married us. [Laughter.]

Mr. DIAMOND. Last, Senator Biden, I want an opportunity to address an issue that really is, to me, the most important issue involving his nomination.

The CHAIRMAN. General, I don't want to push you too far, but I don't want to get myself in trouble the rest of the day. You are way over your 5 minutes. So if you could summarize, we would appreciate it.

Mr. DIAMOND. I will, indeed.

To me the issue of civil rights and a commitment to the guarantee and protection of civil rights is the most important issue facing this committee and its decision on a nominee to the U.S. Supreme Court. When I had an opportunity to work with Pat Leahy for 6 years as a State's attorney in Vermont, we came to know that our grandparents as immigrants to this country—his Catholic, mine Jewish—made us extremely aware that the guarantee of those civil rights was the difference between this country and all others and what made this country great.

I am coming to this committee to say to you that I believe there could be no fairer person than David Souter to sit on the Supreme Court and to judge and to guarantee the civil rights to me and to all my fellow citizens in this country. And, without reservation, I hope that this committee will ultimately unanimously endorse his nomination to the Court.

The CHAIRMAN. Thank you very much, General.

Senator THURMOND.

Senator THURMOND. Thank you, Mr. Chairman.

I am impressed. I don't know when we have had four more impressive witnesses before this committee sitting at one time: a former U.S. circuit judge and former U.S. Attorney General, able former attorney general and able Senator from Washington State, able former attorney general and able Governor of Virginia, and able attorney general of Vermont. We thank you for coming here and testifying. We appreciate your taking the time to do so.

I am just going to ask you one question. I will ask it, and then each one of you can answer it. Is it your opinion that Judge Souter has the competency, the dedication, the courage, the integrity, and the fairness to be a Justice of the Supreme Court of the United States? We will start with you.

Mr. BELL. That is my opinion.

Senator GORTON. Yes, sir.

Mr. BALILES. Yes.

Mr. DIAMOND. Yes, sir.

Senator THURMOND. That is all. Thank you very much.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Judge Bell, we are delighted to see you back here again. You add an element of trust to these proceedings. Knowing your background on the fifth circuit in dealing with judges and dealing with the Constitution while serving in the fifth

circuit when it was at the forefront of the civil rights controversies, how do you really develop a trust in a person? In other words, what do you look at in order to determine whether we should entrust the Constitution to Judge Souter if he were to serve on the Supreme Court?

Mr. BELL. Well, you just have to make that judgment based on all of the facts. But that is why I mentioned the vision. If he doesn't have a vision of the Constitution and of the Bill of Rights and its subsequent amendments, particularly the 14th amendment, and how that operates in our system with so many diverse people, I don't think we could entrust the Constitution and our rights to him. But I thought from what I have heard him say and from the questions that were asked of him and what I read about him that he does have that vision. He seems to be a person of—you know, you can be intelligent, but you have got to put it all together some way or another. He seems to understand the system. And he understands the role that the Federal Government plays and the role that the State governments play.

I think that the federalizing influence, I call it, if you don't understand the federalizing influence in our Nation, it is difficult to administer the Constitution. I think all those things added together, I have the feeling that we can trust him. And that is all you can do in the end. All judges in a sense are trustees of the Constitution and all the laws, the precedents, even. That is why you would have to have a decent respect for precedents. What harm would it do? What harm is there in leaving the precedent as it is?

Somebody brought up this morning whether Congress could take away the jurisdiction of the Supreme Court. Well, that has been held by a decision shortly after the Civil War that the Congress could take away the jurisdiction of the courts. That is a case called *Ex Parte McCordle*. That case will have to be overruled, if that ever arose again. I don't look forward in my lifetime to seeing the Congress take the jurisdiction away from the Federal courts to administer the Constitution or some constitutional right. So I don't think it will ever come up.

All those things together give me the feeling that I could trust him.

Senator HEFLIN. He has written over 200 opinions. With you serving on the fifth circuit with judges who wrote a similar number of decisions, not restricted to Federal issues, do Mr. Souter's writings, looked at both collectively and separately, give you some guidelines as to whether or not he can be a trustee of the Constitution and the precedents?

Mr. BELL. Well, I think I read about five of his opinions. I was struck with one where he dissented, and he dissented on the basis of history. He cited Justice Holmes who said a page of history is sometimes worth a volume of logic in his dissent. That shows some vision. You have to understand history.

I couldn't get a whole lot out of his opinions because most of them deal with State issues, not with constitutional law. The one opinion I didn't read but I read about it in the paper or I guess I heard it on C-SPAN in the hearing, where he put the burden of proof to show that someone ought to be confined in a mental institution as beyond a reasonable doubt, the same as you have in

criminal law. That is a civil rights holding. That is in favor of rights there. That gives you a clue.

On the exclusionary rule under the New Hampshire Constitution, what you could call the exclusionary rule, he seemed to me to come to the position in one case that the Supreme Court has now come to, and that is a good-faith exception to some defect on a warrant in a search. Although he was not talking about the Federal Constitution, he was talking about the New Hampshire Constitution.

I have got a good feel for the way he approaches. He is a very good writer, incidentally, and that will help a lot. If you can write an opinion or another Law Review article, it will help the lawyers of the country understand what the law is.

That is a long answer to your question.

Senator HEFLIN. Mr. Diamond, you mentioned something that I think is very important, that Mr. Souter was an appointed attorney general and was appointed by the Governor and the executive council. How is that council made up? Do you know?

Mr. DIAMOND. I stand to be corrected, but I think there are five members of the council, and they are elected from districts in the State. I am not from New Hampshire.

The CHAIRMAN. That is correct. I am not either, but I know that one.

Senator HEFLIN. And it is a 2-year term that he would serve at the pleasure of the Governor and that executive council?

Mr. DIAMOND. That is correct. I think it is a 2-year term, but it is the appointment.

Senator HEFLIN. That is all.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Would you please go to Senator Specter and then come back to me?

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I join in thanking you gentlemen for coming here today. You make a very distinguished group of ex-attorneys general who have held some other positions as well. While I never got to that lofty ran, I served as a district attorney, so a number of our paths crossed over.

I don't want to take a great deal of time because we have so many witnesses, but I would like to ask just one question so that you do get some questions here.

Judge Souter was very cautious in his responses, understandably so. On quite a number of occasions, he responded in a way to avoid making any enemies, again, an understandable position. I found one of his answers just a little bit different, a little curious, when he was asked and pressed—not by me but by another Senator—as to some opinion from the Warren court with which he disagreed.

Now, you men were attorneys general at a time when the Warren court was handing down opinions which made life somewhat complicated, and the question that I would ask you relates to any opinion with which you disagreed. While you think about that, let me tell you one which came readily to my mind when the question was posed, but I didn't have a chance to discuss it with Judge Souter because of the shortness of time.