

Such critics need to be reminded that one of the Nation's most eminent and humane Justices, the great Benjamin Cardozo, was a scholarly bachelor. As always, my colleagues, we need persons marked by fairness, wisdom, and self-restraint sitting on the bench. Judge Souter fits that description in every way.

President Bush has made an excellent nomination. I am honored, therefore, to introduce him to my colleagues on the Judiciary Committee and confident that he will leave them impressed in every way.

Thank you.

The CHAIRMAN. Thank you, Senator, for a thorough and entertaining and informative opening statement.

Senator Rudman.

**STATEMENT OF HON. WARREN B. RUDMAN, A U.S. SENATOR  
FROM THE STATE OF NEW HAMPSHIRE**

Senator RUDMAN. Mr. Chairman, Senator Thurmond, and my colleagues on the committee, it is a very rare event in a public career that one has the opportunity to recommend a close and dear personal friend, as well as a former colleague for the highest position the legal profession offers, that of Associate Justice of the U.S. Supreme Court.

Therefore, this is a very special privilege for me personally, because more than 20 years ago, when I was attorney general of New Hampshire, I first met a young lawyer named David Souter and, like many, I recognized that this was a rare man, of great talent and extraordinary capacity for legal analysis, and quiet strength.

We worked together for 6 years, but more importantly, we have been friends for 20. So, I do feel qualified, not only to introduce this nominee to the committee with my colleague Senator Humphrey, but also to discuss his enormous capability, his accomplishments, and his humanity.

David Souter, throughout his distinguished career, has demonstrated that he possesses the intellectual judicial temperament, the personal qualities that will make him an outstanding addition to the Court.

His scholastic credentials we have already heard, Harvard, the Rhodes scholarship, Harvard Law School, and the positions in public life. But his personal credentials are equally impeccable—fairminded, considerate, eventempered, warm, and compassionate. It speaks volumes that the consensus in New Hampshire, from lawyers, judges, Democrats, Republicans, liberals and conservatives, is that David Souter is eminently qualified for the U.S. Supreme Court.

As a member of the superior court, the trial court of general jurisdiction of the State of New Hampshire, David Souter witnessed the panorama of life. As a trial court judge, he dealt with the gritty and oftentimes unappealing cases which, unfortunately, packed the docket and comprise a part of American life today.

He presided over cases involving the full range of people who comprise our society, from the poorest to the most affluent. As a trial court judge, he confronted cases of violent crimes, the scourge

of drugs, economic disputes, family conflicts, and crimes of passion. In short, Mr. Chairman, David Souter has seen it all.

When you speak to those who appeared before David Souter in his capacity as a trial judge, his fairness and even-handedness in the administration of justice is cited by all.

On the New Hampshire Supreme Court, Judge Souter demonstrated that he is a classic conservative. Judge Souter respects precedent, applies the law to the facts before him, without predefined conclusions. He is committed to the application of the traditional rules of statutory construction and constitutional interpretation, and recognizes the proper role of judges in upholding the democratic choices of the people through their elected representatives.

As recently as April 13, 1990, Judge Souter wrote, as a member of that court, "The basic scheme of the Constitution is a limitation of powers. Government is limited and courts and legislatures can only do what they are authorized to do."

Judge Souter's opinion are admired for their crispness, their strength of reason, for their clarity, and for the intellectual attainment they demonstrate. His record makes clear his commitment to the rule of law, his full understanding of judicial restraint and precedent. I believe that his judicial philosophy reflects the thinking of the great Justice Oliver Wendell Holmes, as expressed in *Missouri, Kansas and Texas Railway v. May*. That quote says,

Great constitutional provisions must be administered with caution. Some play must be allowed for the joint of the machine, and it must be remembered that legislatures are the ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.

I know how carefully the members of this committee and your staff have worked to assess this nomination. I know that your exchange with David Souter will be enlightening and comprehensive, as it should be. I think you will find a first-rate legal mind, a writer of great precision and force, a jurist of uncommon quality, who brings no agenda, no ideology to the bench, only a single-minded commitment to serve justice in the greatest traditions of American jurisprudence.

Mr. Chairman, Senator Thurmond, and members of this committee, I cannot let this moment pass without sharing with you my own observations of a man I have known and worked closely with for 20 years. Having sat for 10 years now in your positions at confirmation hearings, I know it is customary for a home State Senator to praise a native nominee. Indeed, I have done that, as we all have.

I want to make it clear today that my association with this man is far beyond that norm. David Souter is my friend. I trust him, I respect him, and I like him. He has made me think, he has made me reflect, and he has made me laugh.

When I became attorney general, our office was small. I recognized its potential to make a difference for the citizens of our State. To realize this potential, I needed to invigorate the office with new talent and new energy. David joined me in that task and succeeded me as Attorney general of our State.

He oversaw the expansion of the attorney general's office during my tenure and his own. He did so by recruiting a staff of young,

able, dedicated lawyers and then reared them to maturity. He hired on the basis of talent alone, no political, no philosophical tests. We soon boasted a staff that was the envy of law firms in that State. Today, those lawyers have led distinguished careers in their own right. A number are familiar to the members of this committee. They are judges, public servants, partners in major firms in our State and beyond.

To a person, they cite their relationship with the attorney general's office and David Souter, in particular, as the outstanding experience of their lives. That is because David did not just hire good lawyers, he hired good people. Once hired, he showed these people how a lawyer can and must balance all of the elements of a demanding professional career and a personal life. He stressed service to State and Nation, but also to your community and to your family. He brought the office together, not as a cheerleader, but as an understanding and concerned friend.

Much has been made of David's New Englandness—I think that is a word. I am not sure what it means. You do not have to spend much time in our State or our region at this time to appreciate its special qualities. I know, Mr. Chairman, that several members of this committee have had firsthand experiences in New Hampshire. You know that it is indeed a very special and a very unique place. But New England and New Hampshire are not just states of mind. They are real places, where real things happen to real people.

There is no demographic profile of the perfect judge. The people who we seek to discharge these responsibilities must have certain human qualities, not fixed life résumés. I know that David Souter, shaped by his experiences, knows that judges must understand that their decisions are not mere academic or scholarly exercises, but, rather, the best hope of resolving human dilemma.

Judges must realize that real people are impacted by what they do, that the essence of judging is its humanity. I am confident that my friend David Souter knows that.

Finally, Mr. Chairman, I must say that it is remarkable that there are some here in Washington who view a man who has a single-minded dedication to his chosen profession, the law, and possesses great qualities of humility, graciousness, frugality, charity, reverence to his faith and to his family is somehow regarded as an anomaly and somehow out of touch with life. I believe that most Americans see these as endearing and desirable qualities, all too often sacrificed in the frenetic pace of modern life.

In closing, Mr. Chairman and Senator Thurmond, allow me to suggest that we in New Hampshire are enormously proud to sit here today and have David Souter appear before this distinguished committee on the occasion of his confirmation hearings to our Nation's highest court.

His life has been rooted in our rocky soil and nurtured by a lifelong commitment to public service. I present to you a good person, one who will bring honor to the Supreme Court and to our constitutional system, with enthusiasm and with deep personal conviction. I urge your favorable consideration of a dear friend and a deserving nominee.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Judge Souter, you are a lucky man to have a friend like that, two friends, and we take their recommendations seriously and to heart.

Now, what we will do, Judge, if it meets with your approval, is we will recess until 2 p.m., at which time we will come back, swear you in, and begin the hearing.

We will recess until 2 p.m.

[Whereupon, at 12:29 p.m., the committee was in recess, to reconvene at 2 p.m., the same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

Judge, would you please stand to be sworn? Do you swear that the testimony you are about to give will be the whole truth and nothing but the truth, so help you God?

Judge SOUTER. I do.

The CHAIRMAN. We are going to wait a moment while the photographers have an opportunity to leave and get their lunch or whatever they would like to do. They are very angry with me.

[Pause.]

The CHAIRMAN. Welcome back to the hearing, Judge Souter. As I indicated before we left, we would welcome any opening statement you have to make for as short or as long as you wish to make it. Then we will begin with questions.

#### TESTIMONY OF HON. DAVID H. SOUTER, TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Judge SOUTER. Thank you, Mr. Chairman. I probably should begin by asking you if you can hear me as well as I can hear you.

The CHAIRMAN. Yes, we can, Judge.

Judge SOUTER. Mr. Chairman, Senator Thurmond, and other members of the committee, as you know, I did not ask to make a formal and preprepared statement, but I would like to accept your invitation to say a few words before our dialog together does begin.

I would like to start maybe in a very obvious way simply by saying thanks for some things, to begin with, to thank every member of this committee who, in the waning and the very hectic days that you went through prior to the summer recess, nonetheless found some time to see me when I came by to meet you, in most cases for the first time. I was grateful for the reception and the courtesy that every one of you gave to me.

Equally obviously, I would like simply to say here what I have already said privately this morning, or at least quietly this morning, in thanking both Senator Humphrey and Senator Rudman for their generosity to me in their introduction and their sponsorship of me before you. And I will have to continue, as I have been trying to do for the past 7 or 8 weeks now, to say some adequate thanks to the President of the United States for the confidence that he showed in me in making that nomination. I have not succeeded in doing that adequately yet, but I will keep trying.

In fact, I came to the notice of probably most of you on this committee when I stood next to the President and tried—again, with great difficulty—that afternoon in late July to express some sense