

Senator Grassley?

Senator GRASSLEY. Mr. Williams, so you think that Judge Souter might rule the same way as Justice Brennan in the *Metro Broadcasting* case?

Mr. WILLIAMS. I don't know for sure. I would think that if there were a Justice Brennan to start the ball rolling, Justice Souter might be inclined to go along. But who is to tell? I would say, most importantly—and this is the key to my understanding of the situation—if the Congress were to say that that is the kind of law we would like, we could surely count on Justice Souter to support that.

Senator GRASSLEY. Mr. Chairman, I have no further questions.

Senator KENNEDY. Thank you very much. I, too, want to express our appreciation for taking the time and giving us the benefit of your judgment on the nominee. We appreciate it very much.

Mr. WILLIAMS. Thank you.

Mr. BECK. Thank you, Mr. Chairman.

Mr. BARR. Thank you.

Senator KENNEDY. Our next panel is Haywood Burns, immediate past president of the National Lawyers Guild; Christopher Ryder, a member of the advisory board of Supreme Court Watch; Paula Etzelbrick, who is the legal director of Lambda Legal Defense Fund; the next witness, Urvashi Vaid, who is the executive director of the National Gay and Lesbian Task Force; and finally, Sara Rios, staff attorney, Center for Constitutional Rights.

We want to welcome all of you. We appreciate your willingness to come here this morning and give us the benefit of your judgment. We would ask your cooperation in respecting the time constraints that the committee is under and the fact that there are a number of other witnesses as well. But we want very much to hear your testimony. So we will proceed in that order.

Mr. Burns, immediate past president of the National Guild.

PANEL CONSISTING OF HAYWOOD BURNS, IMMEDIATE PAST PRESIDENT, THE NATIONAL LAWYERS GUILD; CHRISTOPHER F.D. RYDER, MEMBER, ADVISORY BOARD, SUPREME COURT WATCH; PAULA L. ETTTELBRICK, LEGAL DIRECTOR, LAMBDA LEGAL DEFENSE AND EDUCATION FUND; URVASHI VAID, EXECUTIVE DIRECTOR, NATIONAL GAY AND LESBIAN TASK FORCE; AND SARA E. RIOS, STAFF ATTORNEY, CENTER FOR CONSTITUTIONAL RIGHTS

STATEMENT OF HAYWOOD BURNS

Mr. BURNS. Good morning, Mr. Chairman, Senator Thurmond, my name is Haywood Burns. I am the immediate past president of the National Lawyers Guild and dean of the City University of New York School of Law at Queens College. I would like to thank the committee this morning for its opportunity to, on behalf of the National Lawyers Guild, testify before you in opposition to the nomination of David Souter to the U.S. Supreme Court.

Mr. Chairman, when Senator Biden at the beginning of these proceedings on the floor of the Senate indicated that we are at a constitutional crossroads and that the work of this committee is of monumental historical importance, it is certainly an observation with which we agree. He indicated that long after the Mideast

crisis and into the next century we will be affected by what happens in this committee and in the Senate.

I must say that as we sit here in the last decade of the 20th century, on the eve of the bicentennial of the Bill of Rights, we share this view because we see how many rights of the people hang by the thread of a 5-4 vote. At this moment in history, the National Lawyers Guild urges that we need a defender of the Constitution and of the Bill of Rights. Not a negative standard, not a standard that looks for the absence of a smoking gun or a paper trail, not is he or she more confirmable than Judge Bork, we need a positive standard. We need a standard that speaks to whether or not this person, he or she, will be a true guardian of our liberties under the Constitution.

This is not a partisan issue. It transcends partisan issues. This is for the good of the Republic and its people. We should keep at it, Mr. Chairman, until we get it right.

Would that there were more constitutional scholars here to inform this process, as there were in the *Bork* hearings. It is my understanding that a number of constitutional law professors have asked to testify before this committee and were informed that they would not be able to do so, that they could, for whatever reason, only participate by way of written testimony.

So you are, therefore, forced to listen to us on this issue of human rights, and we say to you that because we all here at this table are involved on a daily basis in the issue of human rights, we feel it is very important that you not only listen but that you hear. Our message is that David Souter is not the person for this seat on the United States Supreme Court.

The record and the rhetoric do not match. There is a lack of conformity between the David Souter that we saw come here on September 13th and the David Souter whose jurisprudence is on the record for the last 20 years. We ask you to look at the record as well as listen to the testimony. He was charming, he was disarming, he spoke in terms of protection of the people's rights, but there is a record that doesn't conform to that, given his views with respect to due process and limited protections that he is prepared to give.

He talked about the first amendment. He talked about church and state. This is the same David Souter who would defend the flying of the flag at half-mast on Good Friday as not in violation of the first amendment.

He talked about his sensitivities, about his views on equal protection. Very impressive, but the record does speak about a David Souter who would obstruct the enforcement of the civil rights statutes by failing to give statistics to the EEOC; a David Souter who would disenfranchise illiterate citizens in his own State; a David Souter who would not give rights to Bosselait brothers, poor as they were, elderly as they were, who without counsel had gone before the hearing on their workmen's compensation.

He is a person who has talked about his views on civil rights, but this is the same David Souter who said in a speech, according to two newspapers in his own State, that he was against affirmative action as affirmative discrimination.

I am concerned that he has appeared before this body and said that in his State he knows of no discrimination. Now, I know New Hampshire. New Hampshire is a great State, and I spent much time there, going camping with my boys, Jeremiah and Seth. But for him to say that in his State or any State in these United States is free of racism portrays to me a lack of understanding of what racism is or what discrimination is. It boggles the mind to think that anyone in this day and time would make that assertion. It makes me very worrisome concerning his own views about what is involved in discrimination.

He has not, in my view, evinced the kind of sensitivity or knowledge or human standing that this position calls for.

Mr. Chairman, I was not prepared today to make any personal statement with respect to my own personal knowledge of David Souter. But after the last witness, let me just say that with all the respect that I have for Mr. Wesley Williams, whom I have known for many, many years, I, too, knew David Souter in this period. In fact, I knew him before Mr. Williams, and just as with Rashamon or different people who are blind, feeling the elephant, and you may get a different description of what you see, I did not have that experience with him. I did not find him mean-spirited. I did not find him biased. But certainly I did not find that he had any understanding of human rights or any concerns expressed in this very turbulent time when we were in college together, living in the same dorm, sleeping under the same roof, eating in the same dining hall for years.

I have not kept up with him over the years, and I can readily admit people change. Anyway, this is not a litmus test, but let me just say that since the committee was given one view, it is only fair, I feel, that it get another view.

Mr. Chairman, in conclusion, let me just say that it is too much to ask that we do justice to the subject of justice in 5 minutes. This is an awesome task that we have before us. As you can see, I am an African American. When my grandfather was a boy, it was against the law of the State where he lived to teach him to read, and when he was 1-year-old, the Supreme Court said that black people had no rights that white people are bound to respect.

A scant 12 years before my father was born, the Supreme Court, in *Plessy v. Ferguson*, said that separate but equal, a kind of American apartheid, was the law of the land and did not offend the Constitution. I was 14 years old and in high school before *Brown v. Board of Education* was decided to put a crack in that wall of apartheid condoned in *Plessy v. Ferguson*, so that I understand that the Supreme Court has awesome power in our national life. With that in mind, then I ask this committee to look to the entire record, not just the rhetoric.

He asked that we make a leap of faith. That is assuming too much, I think, because we have too far to fall. It is, in my view, necessary for this committee to look at 20 years of jurisprudence, not just what was said in the David Souter that was born on September 13, 1990, in this committee room.

Yesterday, when I was waiting to testify, I walked 2 minutes across to First Street, to the Supreme Court, and sat outside and thought for a while and looked at "Equal Justice Under Law" en-

graved above the columns of the Supreme Court, and I wondered what that will mean for my son and all of my sons and all our sons and daughters their grandchildren into the next generation, because that is the impact of the decision that you are about to make.

I ask that you help give some real meaning to this. It has always been an aspiration, rather than a reality, but help us live in an America where we can continue to push forward together to make that reality something that comes down to the lives of each and every one of us, whether we are black or white, men or women, rich or poor, old or young.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Burns follows.]