

Mr. RYDER. Well, most specifically and the most obvious is, of course, a number of Senators' efforts to get some response even as to the constitutional principles underlying *Roe v. Wade*. That is plainly the most obvious. The War Powers issue is the other most notable instance. This is talking about an action 30 years ago that is dusty history. I think that to have entered into some discussion of the constitutional principles, the issues, is radically different from discussing the outcome of the specific case.

That distinction is fundamental, and as was noted even by those favorable to Judge Souter's confirmation, if there were reasons of propriety, if there were an interpretation of the code of judicial conduct that would have said that one may not comment on issues—not cases, issues—likely to come before the Supreme Court, then I think we would all be subject to disbarment.

Senator KENNEDY. Thank you very much, Mr. Chairman. I thank the panel.

The CHAIRMAN. Thank you.

Senator THURMOND?

Senator THURMOND. Thank you, Mr. Chairman.

I want to welcome the members of this group to the committee. I have no questions.

The CHAIRMAN. Thank you.

Senator SIMON?

Senator SIMON. Yes, I apologize for not being here for your statements. I have been involved in a meeting on the Middle East situation that Senator Biden has also been involved in.

Let me just make a note that I think is appropriate at this occasion, Mr. Chairman. Someone who ordinarily has been here who would be testifying today, Althea Simmons, the lobbyist for the NAACP, died the other day. Her funeral service is tomorrow. She made a great contribution over the years to this committee for all kinds of good causes, and I think we should note in the record that this committee has suffered a loss, the NAACP has suffered a loss, and the Nation has suffered a loss from the death of Althea Simmons.

Let me ask just one general question of you. I have been trying to read your testimony here quickly. As I examine the record of Judge Souter—the record being not simply the formal record but also newspaper clippings and other things—I confess I had a considerable amount of unease. Frankly, his testimony reveals a more enlightened Judge Souter. The question is, I guess—and this is a subjective thing that each of us has to consider, and I would be interested in any reactions you may have—is this modification growth or is it political adaptation before the Judiciary Committee? Any reflections?

Ms. VAID. My grandfather always said you are measured by your deeds, not by your words, and I urge this committee to look at the nearly 20 years, I think, of public service that the nominee has. There is a record. There are opinions. The extensive schooling and training and study that he has, indeed, by admission, put in in the last couple of months to prepare for this forum are reflected in his brilliant performance, but we are not here to measure a stylistic performance, I think, as I am sure you acknowledge. We are here to evaluate how he will handle the Constitution.

I hope that answers your question. I think you measure him by his words and his deeds over time.

Senator SIMON. Any other reflections?

Ms. RIOS. I would agree that he has to be measured by his record, and I think it is also telling that his record is consistent up until the time that these hearings began to take place. As we indicated in our testimony, we believe he has gone through a confirmation conversion.

I also think that even in his answers throughout this hearing and throughout the questioning, he has indicated a lack of commitment to equal justice and to liberty. His refusal to answer many questions, his speaking in very vague and ambiguous generalities has indicated to me that he has no change of heart with regard to his previous record of 20 years.

Senator SIMON. I would hasten to add, while I said his testimony showed greater enlightenment, a major exception was when he said there was no discrimination in New Hampshire. Obviously there are problems in every one of our 50 States, I regret to say.

Mr. BURNS. Senator, I, too, agree that there is a great gap between the rhetoric and the record with respect to Judge Souter. I am not in a position, of course, to say whether he had some kind of road to Damascus conversion in the last 3 months, but I do think that what we have to depend upon, if we are going to make a judgment as somber as the one that you have to make, is what the person has done over the last two decades. The Supreme Court of the United States is one in which in the last 2 years the person sitting in the seat that Judge Souter seeks to occupy was the deciding vote, and more than 20 times, on issues that are fundamental to the people of this country: civil rights, civil liberties, Federal-State relations, and so forth. We can't afford to make a leap of faith over that gap that I am talking about. I think we have to read the record and go on the record.

Ms. ETTLEBRICK. Senator Simon, I think there is probably no other panel than this one and the panel of women's groups who testified yesterday who would love to see that conversion as being a matter of growth. I think when I look at the record—and I have listened to a good part of Judge Souter's testimony—I am more disturbed than I was even coming into this on some level. I feel I know less about the man than I did before.

We all read his record. We all had a good sense where he was. We thought long and hard about our decision to oppose this nominee. The reason that there were no groups that came out immediately opposed to Judge Souter is that all of us were looking very closely at all facets of his record.

I feel I know him less now, and, No. 1, I think that that question might be best delivered to him and asked of him. In support of that, I think that he needs to be brought back to this table and asked some of those questions in light of some of the other views that we have presented to this committee.

Mr. RYDER. If I may, Supreme Court Watch's concern is principally the analysis of the record, and that is the history of the institution. On that basis, we have that broad range of concerns that we share with you.

On the other hand, his words even in his testimony had exceptions above and beyond, and I cited the mathematical statement as really a very, very strong statement and quite an unfortunate one. Also, the inconsistency even within the testimony is now record, and that as well evinces, I think, some very troubling concerns. I share this notion that one should perhaps explore these issues yet further. That, of course, was our stated position before the hearings, that the Senate must explore this candidate extremely, extremely carefully.

The upshot of this is really the basis of our position beforehand. Now it is more important to get a clear view from the testimony since the record was silent or unclear. In part, that is our concern with the nominee after the testimony.

Ms. Rios. I would like to add one more thing, if I might, and I add this most respectfully to all of you. I think that if the nominee had been questioned as rigorously and in as exacting a manner as the panel of feminist women who were here yesterday, perhaps we would know a little bit more about him at this point than we do.

Senator SIMON. I thank all of you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Ryder, you testified, and your written statement is the same, to the effect about the *Colbath* case, where you say that, "In *State v. Colbath*, on the other hand, Judge Souter granted an accused rapist a new trial because he considered that evidence of the victim's previous sexual conduct should have been admissible where consent was a defense." Then you go on to say, "In what may at best be described as insensitivity, Judge Souter suggested that a victim might have alleged rape as a way to excuse 'her undignified predicament.'"

When you testify that Judge Souter suggested that the victim might have alleged rape as a way to excuse her undignified predicament, I would raise the question with you as to whether he made that suggestion or whether he said that the evidence should have been submitted to a jury so that they could come to a conclusion. They are two very, very different things as to whether Judge Souter is stereotyping or drawing any conclusions as to the alleged victim, or whether he is saying that these are probative and relevant for a jury to consider.

In that case—and I read now from the opinion—"Before they"—referring to the defendant charged with rape and the woman who said that she was raped. "Before they left the trailer, the two of them were joined unexpectedly by a young woman who lived with the defendant, who came home at an unusual hour suspecting that the defendant was indulging in faithless behavior. With her suspicion confirmed, she became enraged, kicked the trailer door open, and went for the complainant, whom she assaulted violently and dragged outside by the hair."

Then the opinion goes on further on an analysis of the factual allegations. "The companion's furious behavior had a further bearing on the case as well, for the jury could have regarded her attack as a reason for the complainant to regret a voluntary liaison with the defendant and as a motive for the complainant to allege rape