

you saw Judge Souter on the philosophical spectrum in your work with him.

Mr. DOUGLAS. I wouldn't want to even speculate on that because we were in a different situation. When you serve on a State supreme court, you are not the free agent that you are in the sense of making a final decision as the U.S. Supreme Court does. A State supreme court does not have, in certainly Federal constitutional law, any variant. You are really an intermediate court.

When it comes, however, to our own common law, which, again, State supreme courts make but the U.S. Supreme Court does not—areas of law like torts, contract, family law—he is—I don't want to label anything. He did the job that we had to do. We are makers of law in the areas torts, contracts, whole varied areas where judge-made law is what you administer and you decide on a case-by-case basis the common law for New Hampshire, or in your State, the Commonwealth of Pennsylvania.

He knows the distinction between those two roles. So I don't know what label that gives you, but he knows the difference between where you are making law as a judge, where you are trying to figure out what a legislature or a Congress meant, perhaps inarticulately, and where you are looking at a constitutional provision such as one of the fundamental liberties in the Bill of Rights. And that is all I would say.

He does not view it with one label that would sweep all of those. He can make those distinctions, did on a day-to-day basis, and I think his cases reflect that, that he did so very admirably.

Senator SPECTER. One final question for you, Mr. Broderick. Senator Thurmond has a wonderful comment which he makes on nomination proceedings about Federal judges being courteous. The more power someone has, the more courteous they should be.

You practiced before Judge Souter. In terms of courtesy and perhaps better characterized as patience, not only for you, a former associate of his, but was he a patient judge, a very patient judge, a very, very patient judge? How many "very's" would you give him?

Mr. BRODERICK. Well, I would say this, Senator Specter: I have tried jury cases in front of him, and I think you can appreciate, as a former practicing lawyer, that things tend to get heated on occasion in a trial setting. Sometimes judges are given to get involved in that.

Judge Souter resisted that temptation. He was painfully courteous to lawyers, although expected quality performance and competence. He was a task-master in that regard but very civil, and painfully courteous to litigants.

I think if you had jurors here and litigants in front of this committee who appeared in front of Judge Souter, they would tell you that he is a gentleman. And so I think he has a unique temperament, and I think he will exercise it consistently on the Supreme Court of the United States. He is a very unusual man.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

First of all, two of the witnesses are old friends, Steve McAuliffe and John Broderick, and we are very pleased to have you here.

If I may follow the first question of Senator Specter just a little, structuring it a little differently, Ms. Cooper, you talked about Judge Souter's professional and skilled manner. But there is one other thing that we look for—at least I look for—in addition to being a champion of basic civil liberties. That is, some compassion, some understanding of those who are less fortunate.

The testimony of Judge Souter, I have to say, was somewhat different in tone, more compassionate than the opinions I read, than the record I read. Any reflections, if I may ask each of you, of how Judge Souter would be as a Supreme Court Justice in this area?

Ms. COOPER. I have not made a great study of Judge Souter's opinions, and I cannot comment on what compassion might be revealed by his record. I can state that having worked with him and having known him since 1976, there is a deep human compassion there. He understands the issues that are there, whether he has personally experienced them or not. And I am sure that he will bring that with him when he addresses any issues that would be before the Court if he is confirmed.

Senator SIMON. Did you see evidence of him reaching out to those who clearly are the least fortunate in our society?

Ms. COOPER. No, but I am not sure that I was in a situation where I would have witnessed something like that firsthand. I think what I can describe and perhaps am not articulating well is more a sense of the man from knowing him and from having had general discussions with him over a period of years.

Senator SIMON. Mr. Broderick.

Mr. BRODERICK. My associations, Senator, with Judge Souter have been largely professional. Therefore, I can't cite a specific instance other than by hearsay.

I would say this, however, on that topic: What strikes me most about the judge is his enormous sense of humility. I find that people who are humble, who have very little to be humble about, are rather extraordinary people. And I think Judge Souter is a man of enormous humility, and in my personal contact with him, he has a great sense of humor. And I find that people that have a sense of humor have a sense of proportion.

I have no question in my mind, having seen him for 12 years in our State, about his instincts or about his ability to be both intellectual and compassionate. And I think Mr. McAuliffe, in his statement today, indicates that in his own personal experiences, knows the judge to be a compassionate man.

Senator SIMON. Mr. McAuliffe.

Mr. MCAULIFFE. Senator, I think, as I said in my statement, I would like to reiterate that the issue of compassion, of course, was raised in this hearing while we had the pleasure of sitting in the back and listening. And as I said, I think it would be terribly unjust for this record to contain any doubt about David Souter's compassion and humanity. As Deborah Cooper said, there are many ways to approach it. I think I would approach it as follows:

Having worked for the gentleman, I can assure you that every person—and this was doctrine. I mean, anybody in the attorney general's office, from the lowest staff person to the deputy attorney general, understood very, very clearly that any person, however low in stature, however high and mighty in the State of New

Hampshire that came to our office for any matter, was treated with incredible respect, uniformly.

David Souter does not distinguish between people of low station in life or high station in life. He is not a man easily impressed by titles or position, and he is not a man that is adversely impressed by a low station in life.

There is a great story, and I will take a few minutes, since you have tempted me, and I will tell it to you, although it is probably going to take up somebody's time. But there is a wonderful woman who runs a convenience store near the office where I am now a partner. It is what I am sure everybody is familiar with. It is like a 7-Eleven where you go in and buy bread and milk and so forth.

When Judge Souter's nomination was announced, I was in there getting my daily candy bar, and she said, "You know, David Souter is quite a fellow." And I said, "Oh, Mary, I didn't know you knew David Souter." And she said, "Well, he comes in here to pick up milk or cokes and things when he is on hiking trips." And she said, "You know, one day he was in here, and he was in a rush and on his way to a hiking trip. And he was clearly in a rush. And there was a man behind him who was in, who I knew, whose car had run out of gas. And he was telling me about it, and he was about ready to hike off to a gas station and get some gas. And David Souter said, without even hesitating, turned to him and said, 'Oh, don't worry about it. Hop in my car. I'll take you.'"

You know, is it a monumental experience? Is it dramatically important in the universe in the sense of universal concerns that are discussed in this body? No. But I think it gives you an insight into the kind of man David Souter is. And I don't think you will find anybody who knows this man that has a doubt about that. I think you will understand—I hope—the frustration that we in New Hampshire sometimes feel when questions like that are asked, because it is the kind of question where you say, "my God, how can anybody ask a question like that about David Souter?" Then you hear the stumbling responses that we have.

It is simply not an issue. And as I said in my statement, I can tell you under oath without hesitation, David Souter is a compassionate man and a man of great dignity in his compassion. And I know Warren Rudman can tell you that from his personal experiences, and I know Tom Rath can tell you that from his personal experiences.

Thank you, Senator.

Senator SIMON. Congressman.

Mr. DOUGLAS. We are a small State, and I am going to ask Mary Hill sometime about you, Steve. [Laughter.]

I know just who she is.

Senator, if I could, the only thing that I can suggest as an indicator is one of those things that the record probably doesn't reflect. But when you sit on an appellate court, as I did, and you review the appeals from the superior court, you get a very strong feeling about who the problem judges are in terms of excessive sentencing, people who are going far beyond a fair and strong sentence and just, frankly, being excessive.

I had a chance to sit on our sentence review board, which was a group of judges on the superior court, and also on the supreme

court. We could always see who the peaks and valleys were. And I can tell you that we never had any sense at all that Dave Souter was being unfair, too strict in his sentencing. He was in the normal range, which means on a day-to-day basis, when someone had a legitimate argument, he heard it and he listened. We had judges who did not and, quite frankly, one of the reasons we had to create a mechanism was that there were some members of the bench who were overdoing the sentencing and in cases when it frankly wasn't appropriate.

So I can see it, having sat there and reviewed the sentences. You didn't get complaints that it was excessive, unfair, outrageous, heartless, done to play to the galleries, and that tells me a lot about that human being. And Dave Souter I know to be someone who is aware that those decisions have a big impact on someone's future and their life.

Senator SIMON. One final question, if I may address it to each of you. It is a speculative question. If you were to guess where on the spectrum of the Court Justice Souter ends up—presumably he will not be where Justice Brennan is, but Justice Stevens, Justice Powell, Justice Rehnquist, anywhere in that spectrum—what would you guess, Mr. Broderick?

Mr. BRODERICK. My initial instinct, Senator, as a trial lawyer is never to guess, but I would be happy to answer your question.

I don't know, to be honest, directly with you. My sense is—and that is all it is—that Judge Souter, if confirmed by this Senate, would be in the tradition of Justice Powell, perhaps.

Senator SIMON. Ms. Cooper.

Ms. COOPER. I don't know either, and I am not sure I can characterize Judge Souter in comparison to someone else who has been on the bench, except when you asked the question, the word "moderate" came to mind.

Senator SIMON. Mr. McAuliffe.

Mr. MCAULIFFE. Senator, you know, one thing that struck all of us from New Hampshire watching this is how beauty is in the eye of the beholder in terms of whether Judge Souter is a conservative, so-called, or a moderate, so-called. And I can tell you this: Wherever he falls, it will not be because he has a particular personal viewpoint that he will bring to the Court. He just doesn't do that.

I said in my statement even David Souter doesn't know what he is going to do in a particular case, and that is true. He doesn't. What he will do will, indeed, be a product of his analysis and sensitivity and respect for law and precedent. And I, being a Democrat and having worked for him, differ quite much, I am sure, with other people who think of where David Souter might be on the Court. I agree with Mr. Broderick. I think David Souter is going to be not only a great Justice, but I think he is going to be a pivotal centrist Justice.

Senator SIMON. Congressman Douglas.

Mr. DOUGLAS. I wouldn't want to try to speculate, Senator, if I could. The one thing I do say is this: Unlike the present Court that very often divides over footnotes and paragraphs and part 1, part 4, part 7, what he does bring to the Court is a goal that we always had for unanimity, if at all possible. And that requires some compromise, because five judges don't always see every case alike, and

yet our court had in the high 90 percentile unanimous opinions. You have to search long and hard in a pile of our cases to find dissents and concurrences. And so I think Judge Souter will bring a feeling of trying to give some better consistency to the law, and where that puts him on the scale I couldn't begin to speculate.

Senator SIMON. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman, if Judge Souter becomes Justice Souter and he brings unanimity to this Court—

Mr. DOUGLAS. Oh, well—

The CHAIRMAN [continuing]. I will be the first to move for canonization. [Laughter.]

I understand your point.

Mr. DOUGLAS. I am not saying he is—

The CHAIRMAN. He has one heck of a job cut out for him.

Mr. DOUGLAS. He won't pull it off, but at least his approach will not be to look for these little fine line differences. That is, I think, important.

The CHAIRMAN. I understand the point you are making, and I thank you for making it.

Senator Humphrey.

Senator HUMPHREY. Well, Mr. Chairman, I want to welcome my neighbors from New Hampshire. This, I think, you have to acknowledge, colleagues, represents a pretty fine mesh, this panel, people of diverse political points of view, probably diverse points of view on controversial decisions, judicial decisions; and yet, to a person, unanimous in their support of David Souter, both with respect to his professional competence and his personal attributes.

I don't know what finer mesh the committee can devise through which to push the nominee. Maybe we should subpoena his personal diaries or something or have somebody inventory his house or something. This is reaching ridiculous proportions.

The testimony of the witnesses is eloquent and speaks for itself. I can't embellish it further by questions, so I shall not.

The CHAIRMAN. Senator Hatch.

Senator HATCH. I would just like to welcome you all here. I think your testimony has been very persuasive. Representative Douglas, having served with him on the court, we are happy to have your viewpoint in particular. And, Mr. McAuliffe, Ms. Cooper, and Mr. Broderick, we really appreciate you.

Chuck, I have to say, being the authority that you are on the Constitution over in the House, I have a lot of respect for you. I am really happy to have you here speaking for Judge Souter. I think it makes a lot of difference here.

Mr. DOUGLAS. Thank you, Senator.

Senator HATCH. You bet.

The CHAIRMAN. Thank you, Senator.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, it is good to hear people that know someone best. I think that is a very important thing, the people that have their daily lives entwined with any person that we are having before us. And it has actually been quite moving in some of the things you say about this man, and I think this is a very important part of it for me. I always look at little things with people, especially politicians. I would never vote for a man who I

didn't think listened to anything that I was saying, that he wasn't home when I was speaking. There are people like that. Their eyes just glaze over, and you know that you are cut out of the process.

Then I am always interested in politicians and what vote they get in their home precinct. I always like to mess around. I say get me the election results, and let me look at the results in District 25-1 and see how that guy does right there among the people that he or she lives with. Ten years, 20, 5, that is always an interesting study for me as to how they really do in their lives and their interaction with others.

Well, I had some questions, but I am not going to ask those. We have a lot to do, and the chairman is very patient and would have allowed that. But I think we are ready to go forward.

Thank you very much for your testimony.

The CHAIRMAN. Thank you.

Before I dismiss the panel, in the interest of full disclosure, so it is not printed somewhere later and given a meaning or put in a context that it maybe shouldn't be put in, both Mr. Broderick and Mr. McAuliffe are very, very close personal friends of mine, and they were the cochairs of my effort to be the Democratic nominee. So I just thought that should be stated at this point before one of the reporters concludes that they found something out. I will just make it easy for them. I thank them and, as you might guess, I am somewhat prejudiced with regard to both of them. I thought their statements were eloquent, although not totally persuasive. [Laughter.]

Mr. BRODERICK. Thank you, Mr. Chairman.

The CHAIRMAN. I thank them both. I thank Ms. Cooper for being here. And, Congressman, thank you for coming over. I have one question for you before you depart and we go to vote. Would you rather be on the bench or in the Congress?

Mr. DOUGLAS. Congress.

The CHAIRMAN. Thank you.

Mr. MCAULIFFE. Mr. Chairman, if I might, just because I know you would otherwise have mentioned it, I think that the record should also reflect that we did not testify at your request, but actually were requested by the administration to testify and sought your permission.

The CHAIRMAN. That is correct on both scores, and I thank you all for being here. This panel is dismissed.

Now, before we go to the next panel, let me discuss out loud with my colleagues the way to proceed here. We have a very important panel that is coming next made up of Ms. Smeal, Ms. Yard, Ms. Allred, Ms. Neuborne, and Ms. Holtzman, and they all represent important groups and are important persons in their own right.

We have two votes. One has just been signaled. There will be two votes that are, as we say in this business, back-to-back, which means they will be in a row. I would suggest, depending on what my colleagues think, rather than bring such a distinguished panel up and then interrupt them and go and vote, why don't we go and vote, catch the tail-end of this one and the front-end of the next one and then get back here as quickly as we can.

Although I now look at the photographers who have good reason to be angry with me for not allowing them to be in that well