

ous intellectually. He has a certain sense of the degree of the importance of not getting too much ahead of himself in terms of arrogating unto the judiciary some of the things that perhaps courts from time to time become more involved in. But at a time when we have the Congress in good hands, I take comfort in knowing that we would have in Judge Souter one who would listen carefully and try to administer the Congress' laws as they have been written.

Senator DECONCINI. Has your relationship been such that you discuss political issues?

Mr. WILLIAMS. Actually not. I mean, we were all in formation at the outset, and I would say it was a heyday of the jurisprudence of Justice Brandeis and notions of judicial restraint there and the craftsmanship of John Marshall Harlan. That seemed to be the predominant standard that students were called to address, and, frankly, I personally have seen a lot of similarity and detected a lot of sympathy—

Senator DECONCINI. You have never sat around—

Mr. WILLIAMS. On his part on those issues.

Senator DECONCINI. You have never sat around having a beer or a cup of coffee or lunch or dinner with him and talked political philosophy?

Mr. WILLIAMS. Not as such, no.

Senator DECONCINI. Do you know offhand his personal view on the death penalty?

Mr. WILLIAMS. I do not.

Senator DECONCINI. Or on abortion?

Mr. WILLIAMS. I do not.

Senator DECONCINI. Thank you, Mr. Chairman.

Senator KENNEDY. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Williams, I am concerned about the experience that Judge Souter may have had with Afro-Americans on understanding their problems. There was some testimony about some of his other experience. This is obviously not a ground for rejection, but I think it is a ground which warrants some exploration.

Did you have an opportunity to hear or review the testimony of Mr. Joseph Rauh, the head of the Civil Rights Leadership Conference?

Mr. WILLIAMS. No, I did not. I would have enjoyed doing so since I very much respect Mr. Rauh.

Senator SPECTER. Well, Mr. Rauh testified yesterday. I did not get a copy of his prepared testimony, and he is in the room today. I had asked if he had one. He is a great extemporaneous speaker, and he testified without prepared testimony, but had you heard that and been in the position to comment, I would have been interested.

In the absence of that, I am interested to know what you know about Judge Souter's exposure to the Afro-American or black community. He has lived in a State which does not have the kinds of problems that, say, Philadelphia, PA, has, or other major American cities have. There is a good bit to the feel of those kinds of problems, and I would be interested in what you could give us in a factual context which would shed some light on his experience in that context.

Mr. WILLIAMS. All I know, Senator, is that in our years in Boston and Cambridge, certainly David Souter had as much exposure as anyone else to African-Americans.

Senator SPECTER. That may not be a whole lot in Cambridge at Harvard. It could be in Boston.

Mr. WILLIAMS. That may or may not be true relative to the country and to the community of universities to which our alma mater belongs. I think it was more than at most in those days, but—

Senator SPECTER. Well, but that is a different—

Mr. WILLIAMS. I have not reached my conclusion, Senator.

Senator SPECTER. OK.

Mr. WILLIAMS. I would also say that surely he had responsibility for supervising and for looking after minority students and—

Senator SPECTER. Many?

Mr. WILLIAMS. I would say some, not many. The number has grown dramatically, but it was certainly a lot more in the years when we were faculty advisers than in the year when I was a student. I was—

Senator SPECTER. Could you give an approximation as to how many black students he counseled?

Mr. WILLIAMS. Oh, I would say all of us had—I would say the minority population of the class was probably somewhere on the order of 5 percent in those days. That was out of a class of maybe 1,200.

But let me say that I cannot give you factual information that can confirm to you that David Souter has been widely exposed to African-Americans. I tend to suspect that he has not. What I can tell you is that in the dealings that he has had, I have had the impression that he has been on a personal level—and I am not speaking to larger political issues, but on a personal level he has been eminently fair and has shown in that wonderful New England way a remarkable color-blindness—a concern about the issues of the day, yes, but no signs of uneasiness.

Senator SPECTER. Well, Mr. Williams, I certainly think it is possible to listen and learn a lot, but there is a difference if you have experience. The kind of student that you would have at Harvard College, Afro-American, is different from the kind that you face, for example, in the discrimination cases which we are concerned about under the Civil Rights Act. One of those matters is now before the Congress. It arises in the *Griggs* case and the *Ward's Cove* case, I am sure—you are nodding in the affirmative—where you really have a feel for the underclass of minorities who are seeking employment. The Court has set up some very important guidelines beyond actual discrimination where we have the so-called disparate impact, illustratively where a community may be, like Philadelphia, 45 percent Afro-American, and illustratively there may be only a few percentage in the work force.

That doesn't prove discrimination, but the Court sets up a standard; if there is that disparity, then the employer has to show business necessity because it may not be possible and there may be very good business reasons. That sets the context of controversy which is now in the Congress. The Senate has passed a bill to change *Ward's Cove*; so has the House. The President has suggested a veto, and these issues are certain to come before the Court again.

If a person has had some experience, say, in the ghettos of a big American city, has worked with problems of delinquency, problems of young minorities trying to get a job, that experience would be very helpful. I don't say it is indispensable. I don't think you can give any litmus test or any indispensable prerequisites on these lines, but I would be interested in your evaluation as to how he would stack up on, say, the kind of an issue which would come up in the disparate impact cases or how he would stack up if he has a case like *Metro Broadcasting*.

I notice in your résumé that you are active in minority entrepreneurship, where you have a case like, set aside, *City of Richmond v. Croson* or you have *Bakke* where some consideration is to be given to race. Judge Souter did say that he would give some weight to the racial factor.

In that rather broad but very vital and important context, how would you evaluate him?

Mr. WILLIAMS. I am particularly glad that you mentioned the *Metro Broadcasting* and *Astroline* cases, because in that context I have thought a bit about this nomination and what the implications are. What you are referring to is the fact that I am chairman of the board of a minority entrepreneur, of a capital venture firm, a nonprofit firm that specializes in encouraging minority entrepreneurs in the broadcast field. *Astroline* and the *Metro Broadcasting* cases were very much directed to things that are of key interest to us.

I had to ask myself, gee, is this the kind of case that David Souter, as opposed to Justice Brennan, would have given us. I have resolved the matter in my mind as follows, and it is on this basis that I really find that I am quite comfortable in supporting his nomination.

David Souter understands. He has lived in the world. He is an observer. He has seen the terrible situation that our minority populations, including our African-American population, find themselves in. Against that backdrop and, I think, a very humane set of values, I think he is prepared to do the right thing, so to speak, in close cases. His fundamental jurisprudence would incline him to follow your lead and to do what the Congress has outlined for the courts to do.

I have in mind the fact that there is very good legislation in this area being developed in the House and Senate, and that the national legislature seems to be in very good shape on those issues. If there is one person who you can count on absolutely trying to advance your principles in a way that is faithful to the legislation that is presented to him, it would be David Souter. I think he is fundamentally fair, I think that he is lacking in prejudice, and I think that he is prepared to listen very carefully to the Congress.

Senator SPECTER. Thank you very much. My time is up. I would just like to conclude by thanking Mr. Beck and Mr. Barr for coming. Regrettably, in a short round and with so many, many witnesses, we don't have a chance to give appropriate deference to the important ideas which you have mentioned in the question-and-answer session. But I do thank you for being here.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you.