

would just note that, in Vermont, we have been blessed with good leaders in the law enforcement field.

To be totally bipartisan about this, Senator Thurmond, I would mention first a Republican attorney general, who is now Chief Judge of the second circuit, Jim Oakes, whom I had the pleasure of serving with when I was State's attorney, and ever since then a very, very close friend. Jerry Diamond was State's attorney of Windham County down near the New Hampshire border when I was State's attorney of Chittenden County. Jerry went on, however, to a higher position in law enforcement and became attorney general, while I disappeared into the obscurity of the U.S. Senate.

I have listened to the testimony of these four witnesses, as I have been trying to get back from another meeting on an entirely different issue. I have no questions, but I did want to welcome all four of them. The other three I have worked with and know well and they are all good friends of mine, who will excuse me if I make a special welcome to Jerry Diamond, a neighbor and a close friend. We began our careers together as prosecutors, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Grassley.

Senator GRASSLEY. Judge Bell, you said that there is a rebuttable presumption that the President's choice ought to be confirmed, and I agree with you. Many others—I should not say many others on this committee, a few others, including Chairman Biden, on the other hand, have spoken in terms of the burden of proof being on Judge Souter.

Now, that is quite a different standard from what you enunciated, Judge Bell, at least that is the way it seems to me, and it seems that we are, in a sense, ratcheting up quite a bit here, you know, is it the burden of production, is it a burden of persuasion, is it by a preponderance of evidence, or is it beyond a reasonable doubt.

It seems to me that, once you start using this burden of proof metaphor, that you set up criteria that fails to set a clear, objective standard. Of course, any Senator can adopt whatever personal standard that he or she chooses. But I would like to ask you, Judge Bell, why do you think that a presumption of approval is a better way?

Mr. BELL. Well, I think it is a better way, because I do not agree with the burden of proof being put on the nominee. The President has already investigated him before he sent his name over here, I would assume, in all cases, and the Senate then undertakes to cross-examine him and bring out anything wrong with him. That has been done. As I said in the beginning, this is a classic hearing. It is one of the best I ever remember. This man has been vigorously cross-examined.

If you put the burden of proof on him, what will the next candidate do? He will come over and he will try to get a poll to find out what everyone is thinking, and maybe he will come over and make a great statement, taking solid positions on four or five big issues which have to do directly with what he is going to be called upon to decide. I do not know where that would take us.

I am saying that putting the burden of proof on the nominee would seem to me to be a dangerous approach, and it probably

would be better not to get into these standards that you are using, burden of persuasion, burden of going forwards, and those sorts of things. Those are highly technical theorems that are used in a trial and sometimes even the lawyers do not understand them. It is hard for me to understand what the burden of going forward is, for example. That gets too technical.

Just to let the President send somebody over here, he seems to have sent a good man here, and then the Senate needs to make certain that he is good and follow the Biden test, and you have done that. That is the way I would leave it.

The reason I use that rebuttable presumption is that is an easy way to decide something.

Senator GRASSLEY. I thank you very much. I would like to go on to another point I would like to make.

Every one of us, and many Court watchers, as well, since we have heard Judge Souter now for 3 days, are engaged in the games of guessing where he will fit into this Court spectrum. I would like to ask each of you to compare, assuming that Justice Marshall is on one end and Justice Scalia is on the other end, where you might feel, after listening to Judge Souter for these 2½ days, you think he might come down.

Senator GORTON. Somewhere between the two. [Laughter.]

Senator SPECTER. Judge Bell.

Mr. BELL. I have the feeling that he is rather moderate in his views, somewhere around the middle. The thing about a court is there has to be a middle. It would be a tough country, if we did not have a middle. We would turn it into a nation of extremists. We have got 10 percent on each end, but somebody has to be in the middle, and I have a feeling that is the way he would turn out.

Senator GRASSLEY. Mr. Baliles.

Mr. BALILES. Senator, based on my own personal knowledge and working experience with Judge Souter, I would categorize him, as I stated or suggested in my remarks, that he is moderate in tone and in expression, and for the reason I stated, the personal qualities that he possesses remind me a great deal of Justice Powell, who I think also fits into that category of being moderate in tone and in expression.

Mr. DIAMOND. Senator, I think that central to Judge Souter's philosophy is the dignity and freedom of the individual. I think that will, rather than put it on a continuum, will probably lead him to be a strong supporter and guarantor of civil liberties, I think he will take a strong stand on law enforcement issues, for antitrust enforcement. I think that those are things he has demonstrated in the past.

I do not know how that fits on a continuum between the two Justices that you named, but I think that that is a very central philosophy to his life, to him as a judge, and that will probably be prevalent for him as a Justice.

Senator GRASSLEY. I would not argue with your characterization of how you suggest he might come down, but that leads me, then, to my final question, and I would ask this just of the three Democrat partisans on the panel. Is this the best that you can hope for, in terms of judicial philosophy?

Mr. BELL. Well, I am not a partisan Democrat. I am a Democrat, but I am not a partisan Democrat and I have rather conservative views about things.

Senator GRASSLEY. Well, I will let you describe your—

Mr. BELL. Just because you are a Democrat does not mean you cannot have conservative views about matters.

I think the President has sent somebody over here who is moderate in tone, as somebody on the panel said. I do not know where he will come out. I think that much is being made over the abortion issue. We seem to overlook the fact that there are two parts of the abortion opinion, one that receives more criticism is the trimester system, which was set up by the Supreme Court. Many people think that the Supreme Court passed a law, a court of law, by setting up the trimester system. That can be totally separated from the rest of the opinion.

In addition to that, one of the big things that has happened here is Judge Souter said that he had no trouble finding the right of privacy in the 14th amendment. If privacy is a constitutional right, as the Supreme Court has held in other cases, and five Justices think it is a constitutional right, then the Congress can deal with the entire problem under section 5 of the 14th amendment. There is no danger of anybody losing a right, if it is a constitutional right, because Congress has got the duty to enforce the 14th amendment. So you might end up having to deal with the trimester system, and if so, that would be the end of the matter, you would just simply pass a code of law.

That is one of the big complaints that I have heard over the years about the abortion decision, and it is unfortunate that the issue of privacy, and a woman's right to control her own body is one of the most sensitive things that there is in the society, and we get it totally mixed up by criticizing an opinion which can be straightened out, if necessary, if that is the way they come out. It is not necessary that it just be totally overruled. I think out of the hearing that is the one thing that has gotten almost out of hand, I think, is that one issue.

Senator GRASSLEY. Could I hear from Mr. Diamond and Mr. Baliles on my question about how you see it, from the standpoint of being a Democrat?

Mr. BALILES. Senator, the fact is that there is a vacancy on the Court and the President has sent the U.S. Senate a nominee. I think, if you are asking my opinion, Judge Souter is qualified to serve on the U.S. Supreme Court. I may not agree with all of his decisions in the future, but I am satisfied that his approach to legal issues, the process by which he examines legal questions will serve this country well.

In a time in which many things are going on in our society, the complexity, the mobility, the transient nature of our country, the issues that will face the Court for many years to come, I think requires someone who has a sense of history, as well as a sense of humor, someone who has an understanding of the Government structure in this Nation and the principles upon which our Constitution are based.

I am satisfied that he possesses the qualifications to serve on the Court, and I think ultimately that is your decision that you are going to have to make.

Mr. DIAMOND. Senator, first of all, I adopt Governor Baliles' statement. I think what he said is very accurate, very true, and I would just like to offer one addition to that.

I would consider myself far more liberal on issues than David Souter. I know of at least three other Democratic attorneys general that served with him in the New England area that wanted very much to come to testify on his behalf today, all of them far more liberal than David Souter, but all of us have something in common.

The CHAIRMAN. Let us make it clear, so you do not leave the wrong impression, none of them were prevented from coming today?

Mr. DIAMOND. Not by this committee.

The CHAIRMAN. Anyone that wanted to come was able to come, let us make sure we have got that straight.

Mr. DIAMOND. They were certainly not prevented by this committee, no.

The CHAIRMAN. Sometimes, statements like that, unintended, get blown out of proportion in these debates.

Mr. DIAMOND. I think the thing that all of us share with Judge Souter, at least we believe we do, is his basic philosophy with regard to the dignity and freedom of the individual, as being a central judicial philosophy.

Now, as far as I am concerned, that is central to a liberal philosophy, as well as a conservative philosophy and is rooted in both. So, I do not know if that answers your question about whether it is the best President Bush could have sent up, but he is certainly someone with whom we felt quite comfortable, from a philosophic standpoint.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Gentlemen, thank you all very much. We appreciate you taking the time and making the effort.

The CHAIRMAN. Now, let me ask—we have each of our caucuses, the caucuses meaning that the Democrats are caucusing and discussing important issues that are coming before the Senate, that started at 12:30, as well as the Republicans doing that. I am trying to make a judgment here and I will yield to my colleagues for a moment.

We have the next panel, a very important panel, as well, made of three people. Let us see if we can get it finished in half an hour, because I know myself, and I suspect that others have to be at our caucus before it closes out, so let us attempt to do one more panel between now and 1:30.

Ms. Antonia Hernandez, president and general counsel of the Mexican-American Legal Defense and Education Fund; Joseph L. Rauh, Jr., general counsel, Leadership Conference on Civil Rights; and Joan Bronk, president of the National Council of Jewish Women.

Would you please come forward. Ms. Hernandez, why don't we begin with you and your testimony. Keep in mind our 5-minute rule, if you would, please.