

Now I yield to Senator Simon from Illinois.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. The good news, Judge Souter, is we are getting near the end of this part of the process.

As my colleagues would tell you, I do not ordinarily prepare a written statement. In fact, in 6 years on this committee, I don't believe I have ever done that. But last night, late last night, I sat down at my old manual typewriter and pounded out my reflections on where we are right now.

No task is more awesome than the one we now confront—approving or disapproving a nominee for the U.S. Supreme Court. Seven months ago, I became a grandfather for the first time. Perhaps no vote I cast this term in the Senate will have a greater impact on my granddaughter's future, Judge Souter, than whether I decide for or against your nomination.

After reading your opinions and various writings, even including your senior honors thesis, I come away with some uneasiness. Candidly, I am not sure how to vote.

In your senior honors thesis, you wrote about a struggle in the philosophy of law, and I quote: "I cannot offer a solution to the controversy. I have tried, rather, to describe the alternatives which are open in settling what I believe to be the most important point at issue." In the only article you wrote over the next quarter century, you paid tribute to Justice Laurence Duncan in the New Hampshire Bar Journal for his sense of what is appropriate on the bench; for his keen sense of words; for his attention to the small things—but hardly a hint about any judicial philosophy that motivated him. And then at the end of the article, you say, and I quote: "He was my kind of judge. He was an intellectual hero of mine, and he always will be." But after reading your article, I have no idea what his philosophical moorings were, nor what yours are.

Because David Souter may have such an influential voice in the destiny of this Nation, we must know a little better who the real David Souter is. I hope these hearings will assist in that, and I hope you will make every effort to help us.

What am I looking for? The two essentials I mentioned to you in your visit to my office: I want a champion of basic civil liberties, because the Supreme Court must be the bastion of liberty; and I want someone who will champion the cause of the less fortunate, the role assigned to the Court in our system.

I also want someone to whom every American can look and say, "There is a champion of my liberty." That should be true of men and women, for the able and the disabled, for people of every religion and color and national background and station in life. That is an extremely high standard, but it is an extremely high court to which you aspire.

During these hearings I also want to get some sense of whether David Souter has an ability to grow. The great Justices were not suddenly great Justices, any more than great Senators are suddenly great Senators. Great Justices and great Senators emerge gradually.

There are those who are concerned because you come from a small New Hampshire community of 2,000. Coming from an Illinois community of 402, that does not bother me. But if your intellectual and emotional horizons are bounded by that community that would bother me. Checking your background I talked to an African-American classmate of yours, now practicing law in this city. His comments about you were positive. He allayed some of my fears. But I also want to know if you empathize with a woman on the west side of Chicago who did not go to Harvard, who barely made it through the fourth grade. You will be her voice for justice. Is there some understanding of her plight? Will there be an attempt on your part to grow and understand our society with all its richness and diversity and with all its joy, often within sound of its cries of anguish and hopelessness?

In a new book, Justice Richard A. Posner of the Seventh Circuit Court of Appeals has written, "Our legal certitudes are pragmatically rather than analytically grounded." He was speaking of *Brown v. Board of Education* when he wrote that. From case to case his statement may not be applicable, but in the broad sweep of history it is. When the Supreme Court has lacked vision or compassion or practicality or passion for liberty, as in the *Dred Scott* case, the Nation has paid a terrible price for the Court's shortcomings.

Above the entrance to the Supreme Court, just a few steps from where we meet today, are the words etched in stone "Equal Justice Under Law." I want those words to live. And I want a Supreme Court Justice who will make them live.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much, Senator.

Senator HUMPHREY did wish to make a brief statement?

Senator HUMPHREY. Thank you, Mr. Chairman.

Welcome, Judge Souter.

Are you having fun, yet? I hope so. You might as well enjoy it.

Mr. Chairman, I have the honor and privilege of formally introducing the nominee to the committee in just a few moments, so I will, for my part, at this juncture pass on an opening statement.

The CHAIRMAN. Thank you, Senator.

I misspoke. I made Senator Rudman the senior Senator and he is not. He is the junior Senator. Senator Humphrey is the senior Senator.

Senator HUMPHREY. He is senior in age.

The CHAIRMAN. As Senator Baker used to say, I do not have any dog in that fight. I understand.

So, Senator Kohl, from Wisconsin.

OPENING STATEMENT OF SENATOR HERBERT KOHL

Senator KOHL. Thank you, Mr. Chairman.

I am a person who has not sat through any Supreme Court nominations before and I think Judge Souter, you would agree with me that these opening statements—although we are probably all happy they are coming to a conclusion—have been most outstanding and say something unusual about our American system and the way in which we go about selecting Supreme Court Justices.