

Judge Souter, you are a lucky man to have a friend like that, two friends, and we take their recommendations seriously and to heart.

Now, what we will do, Judge, if it meets with your approval, is we will recess until 2 p.m., at which time we will come back, swear you in, and begin the hearing.

We will recess until 2 p.m.

[Whereupon, at 12:29 p.m., the committee was in recess, to reconvene at 2 p.m., the same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

Judge, would you please stand to be sworn? Do you swear that the testimony you are about to give will be the whole truth and nothing but the truth, so help you God?

Judge SOUTER. I do.

The CHAIRMAN. We are going to wait a moment while the photographers have an opportunity to leave and get their lunch or whatever they would like to do. They are very angry with me.

[Pause.]

The CHAIRMAN. Welcome back to the hearing, Judge Souter. As I indicated before we left, we would welcome any opening statement you have to make for as short or as long as you wish to make it. Then we will begin with questions.

#### TESTIMONY OF HON. DAVID H. SOUTER, TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Judge SOUTER. Thank you, Mr. Chairman. I probably should begin by asking you if you can hear me as well as I can hear you.

The CHAIRMAN. Yes, we can, Judge.

Judge SOUTER. Mr. Chairman, Senator Thurmond, and other members of the committee, as you know, I did not ask to make a formal and preprepared statement, but I would like to accept your invitation to say a few words before our dialog together does begin.

I would like to start maybe in a very obvious way simply by saying thanks for some things, to begin with, to thank every member of this committee who, in the waning and the very hectic days that you went through prior to the summer recess, nonetheless found some time to see me when I came by to meet you, in most cases for the first time. I was grateful for the reception and the courtesy that every one of you gave to me.

Equally obviously, I would like simply to say here what I have already said privately this morning, or at least quietly this morning, in thanking both Senator Humphrey and Senator Rudman for their generosity to me in their introduction and their sponsorship of me before you. And I will have to continue, as I have been trying to do for the past 7 or 8 weeks now, to say some adequate thanks to the President of the United States for the confidence that he showed in me in making that nomination. I have not succeeded in doing that adequately yet, but I will keep trying.

In fact, I came to the notice of probably most of you on this committee when I stood next to the President and tried—again, with great difficulty—that afternoon in late July to express some sense

of the honor that I felt, despite the surprise and even shock of the event to me. It is equally incumbent on me to try to express some sense of the honor that I feel today in appearing before you, as you represent the Senate of the United States in discharging your own responsibility to review the President's nomination. I could only adopt what Senator Metzenbaum said earlier this morning about the grandeur of this process of which we are a part.

I mentioned to you the great surprise that I had on July 23 in finding myself where I was. I certainly found very quickly that I had no reason to be surprised at the interest which the United States and, actually, a good deal of the world suddenly took in me as an individual. And despite the reams of paper and I suppose the forests that have fallen to produce that paper in the time between July 23, I would like to take a minute before we begin our dialog together to say something to you about how I feel about the beginnings that I have come from and about the experiences that I have had that bear on the kind of judge that I am and the kind of judge that I can be expected to be.

I think you know that I spent most of my boyhood in a small town in New Hampshire—Weare, NH. It was a town large in geography, small in population. The physical space, the open space between people, however, was not matched by the interspace between them because, as everybody knows who has lived in a small town, there is a closeness of people in a small town which is unattainable anywhere else. There was in that town no section or place or neighborhood that was determined by anybody's occupation or by anybody's bank balance. Everybody knew everybody else's business, or at least thought they did. And we were, in a very true sense, intimately aware of other lives. We were aware of lives that were easy, and we were aware of lives that were very hard.

Another thing that we were aware of in that place was the responsibility of people to govern themselves. It was a responsibility that they owed to themselves, and it was a responsibility that they owed and owe to their neighbors. I first learned about that or I first learned the practicalities of that when I used to go over to the town hall in Weare, NH, on town meeting day. I would sit in the benches in the back of the town hall after school, and that is where I began my lessons in practical government.

As I think you know, I went to high school in Concord, NH, which is a bigger place, and I went on from there to college and to study law in Cambridge, ME, and Oxford, England, which are bigger places still. And after I had finished law school, I came back to New Hampshire, and I began the practice of law. And I think probably it is fair to say that I resumed the study of practical government.

I went to work for a law firm in Concord, NH, and I practiced there for several years. I then became, as I think you know, an assistant attorney general in the criminal division of that office. I was then lucky to be deputy attorney general to Warren Rudman, and I succeeded him as attorney general in 1976.

The experience of government, though, did not wait until the day came that I entered public as opposed to private law practice; because although in those years of private practice I served the private clients of the firm, I also did something in those days which

was very common then. Perhaps it is less common today—I know it is—but it was an accepted part of private practice in those days to take on a fair share of representation of clients who did not have the money to pay.

I remember very well the first day that I ever spent by myself in a courtroom. I spent in a courtroom representing a woman whose personal life had become such a shambles that she had lost the custody of her children, and she was trying to get them back. She was not the last of such clients. I represented clients with domestic relations problems who lived sometimes, it seemed to me, in appalling circumstances. I can remember representing a client who was trying to pull her life together after being evicted because she couldn't pay the rent.

Although cases like that were not the cases upon which the firm paid the rent, those were not remarkable cases for lawyers in private practice in those days before governmentally funded legal services. And they were the cases that we took at that time because taking them was the only way to make good on the supposedly open door of our courts to the people who needed to get inside and to get what courts had to offer through the justice system.

I think it is fair to say—I am glad it is fair to say—that even today, with so much governmentally funded legal service, there are lawyers in private practice in our profession who are doing the same thing.

As you know, I did go on to public legal service, and in the course of doing that, I met not only legislators and the administrators that one finds in the government, but I began to become familiar with the criminal justice system in my State and in our Nation. I met victims and sometimes I met the survivors of victims. I met defendants. I met that train of witnesses from the clergy to con artists who passed through our system and find themselves, either willingly or unwillingly, part of a search for truth and part of a search for those results that we try to sum up with the words of justice.

As you also know, after those years I became a trial judge, and my experience with the working of government and the judicial system broadened there because I was a trial judge of general jurisdiction, and I saw every sort and condition of the people of my State that a trial court of general jurisdiction is exposed to. I saw litigants in international commercial litigation for millions, and I saw children who were the unwitting victims of domestic disputes and custody fights which somehow seemed to defy any reasonable solution, however hard we worked at it.

I saw, once again, the denizens of the criminal justice system, and I saw domestic litigants. I saw appellants from the juvenile justice system who were appealing their findings of delinquency. And, in fact, I had maybe one of the great experiences of my entire life in seeing week in and week out the members of the trial juries of our States who are rightly called the consciences of our communities. And I worked with them, and I learned from them, and I will never forget my days with them.

When those days on the trial court were over, there were two experiences that I took away with me or two lessons that I had learned, and the lessons remain with me today. The first lesson,

simple as it is, is that whatever court we are in, whatever we are doing, whether we are on a trial court or an appellate court, at the end of our task some human being is going to be affected. Some human life is going to be changed in some way by what we do, whether we do it as trial judges or whether we do it as appellate judges, as far removed from the trial arena as it is possible to be.

The second lesson that I learned in that time is that if, indeed, we are going to be trial judges, whose rulings will affect the lives of other people and who are going to change their lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right.

I am conscious of those two lessons, as I have been for all of the years that I was on an appellate course. I am conscious of them as I sit here today, suddenly finding myself the nominee of the President of the United States to undertake the greatest responsibility that any judge in our Republic can undertake: The responsibility to join with eight other people, to make the promises of the Constitution a reality for our time, and to preserve that Constitution for the generations that will follow us after we are gone from here.

I am mindful of those two lessons when I tell you this: That if you believe and the Senate of the United States believes that it is right to confirm my nomination, then I will accept those responsibilities as obligations to all of the people in the United States whose lives will be affected by my stewardship of the Constitution.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Judge, for a statement that gives us all more insight into you. When I ended my opening statement, I said "maybe a little glimpse into your heart," I think you have given us a little glimpse into your heart as well as how you view the responsibility you hope to undertake.

Judge, before I begin my questioning, I want to make it clear to you that under precedence—we can debate and argue, which we will up here, about how long they have existed—but under precedence dating back, as one of my colleagues said, at least to the 1950's, and arguably much earlier, each member of the committee can decide whatever questions he deems proper to ask you. We have never imposed a gag rule on any committee member.

But, Judge, while we may ask any questions we deem proper, you are free to refuse to answer any questions you deem to be improper. No one is going to try to force you to answer any question you think in good conscience you cannot appropriately address. So, Judge Souter, I trust you are fully capable of deciding for yourself which questions you can and cannot speak to. And we or an individual Senator may not agree with your decision, but that decision is yours and will be protected.

Everyone involved in the process, both the members of this committee and you, I think have to be guided by the most considered interpretation of our respective constitutional responsibilities. And I know from my first discussion with you weeks ago that that was a judgment, as I think you have said, to paraphrase you, when the photographs had left my office, and I said "How are you? What are you looking forward to?" And you said something to the effect: Going home to New Hampshire to think about how you can appro-