

country with the type of leadership that law enforcement would desire on the Supreme Court. So my answer is emphatically yes.

Senator THURMOND. Again, I want to thank all of you for coming here and testifying. I appreciate your doing so. I am in accord with the statements you made.

I am going to have to leave now to go to another hearing. I just want to say to the chairman before I go that my position on this nomination is just the same as these able and distinguished law enforcement officers have given here today. I think that Judge Souter does possess the integrity, the professional competency, the judicial temperament, the courage, the compassion, the understanding of the majesty of our system of Government, and the fairness and the dedication to make an excellent Supreme Court Justice of the United States.

Mr. Chairman, before I leave, I want to take this opportunity again to express to you my appreciation for the fairness with which you have conducted this investigation, the courtesies you have extended to everyone, especially to the ranking member, and we appreciate all that you have done in connection with this investigation.

The CHAIRMAN. Thank you very much, Senator. It is always—and I mean this literally—always a pleasure to work with you. You are always fair as well.

The Senator from Illinois. I got it right this time.

Senator SIMON. Thank you, Mr. Chairman.

I have no questions. I simply want to thank all of you for your testimony, and also to note with pleasure that the police organizations have become more active on Capitol Hill in speaking up. I don't think there is any question that your speaking up played a decisive role in the passage of the DeConcini amendment, for example. If one of these days we pass a waiting period for handguns so that we don't have police officers killed once every 57 hours, I don't think there is any question that the police officers of this Nation are going to be playing the critical role. I think your influence on Capitol Hill has been a good one, and I simply want to take this opportunity to commend all of you.

Thank you, Mr. Chairman.

Mr. STOKES. Thank you, Senator, and I hope that the people who view these hearings will contact their Congressmen, their Representatives, and get our crime bill moving over on the House side, as effectively as you did in the Senate.

Senator SIMON. That is why you are a pretty good lobbyist, Dewey Stokes. You get those licks in wherever you can.

Mr. STOKES. Absolutely.

The CHAIRMAN. The Senator from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I join in thanking you men for appearing here today and for all of your hard work and effective service. There are a lot of things we could talk about on *Miranda* and retroactivity and many, many issues, but the hour is growing very late. As the chairman has already said, we are anxious to conclude. But I think your testimony is very helpful, and I join in thanking you.

The CHAIRMAN. Gentlemen, I have a couple questions, if I may.

We always are, when we look at judicial nominees—and, quite frankly, nominees in the Foreign Service and other committees I sit on, whomever is nominated for a position in the judicial branch or the administration—we always are focusing on their judicial temperament, how they treat people in the system with whom they have to deal. And when it comes to judicial nominees who are prosecutors, in my view we do not put enough focus on how they treat the people with whom they have to interact the most; that is, police officers.

I will not name names, but I know several of you very well, and I know if I asked you to name off the top of your head five or six prosecutors you have dealt with who you thought did not treat you with respect, you could do it in about one-tenth of a second. Am I wrong? I am not going to ask for names, but I suspect you could. I won't even ask you that, but I would be willing to bet you lunch anywhere that you could.

And so we have had a good deal of testimony about the degree to which Judge Souter has been sensitive in dealing with the people in his office and how he has treated litigants before him, and I want to ask you this. There was some reference by Chief Mosca to this effect, but I would like you to elaborate on it, if you can. Did you inquire of your colleagues in New Hampshire as to how Judge Souter treated your colleagues, local police officers, State police officers, with whom he had to deal as a prosecutor in New Hampshire. And if so, what response did you get?

Mr. MOSCA. If I may, Senator, I did speak with chiefs from New Hampshire, particularly Chief Walcek from Concord, and Chief Reynolds, our immediate past president, from Dover, New Hampshire. Both of them were highly motivated in making sure that Justice Souter was named, and they said his reputation across the board with law enforcement was absolutely great.

One of the things that seemed to come forward, aside from his thoroughness and thoughtfulness, was the fact that they always used the word that he had common sense. And if I can relate to you, that means an awful lot to those of us that are on the street, on the front lines. We really look to common sense. In all of my inquiries, common sense was always a part of the description of Judge Souter.

The CHAIRMAN. I am looking for something a little bit different; that is, to me, it makes a difference whether or not a prosecutor—if I can be illustrative—is the kind of man or woman who gets you in on your day off to testify in a case but fails to have the courtesy to tell you that the case has been pled, fails to have the courtesy to tell you that they are not going to trial that day. We all know prosecutors like that.

I can think of as many prosecutors who are disliked by police officers as I can public defenders who are disliked by police officers because they are not treated well. That is what I mean by being treated well, consideration being shown for the difficulty of your job. Most Americans don't know that you make an arrest, you may very well find on your day off you are sitting in the attorney general's office for 7 hours waiting for a prosecutor to decide whether or not they are going to go or not go, call you as a witness, not call

you as a witness. And those things are matters of extreme discourtesy, as well as courtesy extended.

Is there any input on how he treated not the law, not the cases, but the individual officers?

Mr. MOSCA. Nothing negative was volunteered at all.

The CHAIRMAN. I am not suggesting there—

Mr. MOSCA. You can bring up certain prosecutors' names in police circles, and you know the responses that that will elicit.

The CHAIRMAN. I know in Delaware.

Mr. MOSCA. But that did not happen in this case at all.

Mr. STOKES. Senator?

The CHAIRMAN. Yes, Dewey.

Mr. STOKES. We were recently in New Hampshire doing some recruitment, and we asked—

The CHAIRMAN. Taking them out of New Hampshire to Chicago?

Mr. STOKES. We got 276 of the troopers to affiliate with us. We have had an opportunity to talk to some of the officers up there about some of their problems. Not specifically did we get into Judge Souter, but overall we did not find anyone up there that came out from the law enforcement ranks that said anything negative about Judge Souter or the way he treated them.

The only thing I can say is sometimes when prosecutors or attorneys general get into these situations, because of previous court rulings, they must bring you in to testify and give the defendant the last second to make his or her decision, so, consequently, to safeguard the rights of the citizenry, it is necessary to pull the police officer in on his or her day off to be there.

The CHAIRMAN. I know that. All I am saying is that it is one thing to pull you in on your day off and while you are sitting there, offer you a cup of coffee, and when you do not go to trial, say, gee, I am sorry you had to sit here all day, and it is another thing to not talk to you. That is what I mean by respect.

Mr. STOKES. Well, we have not heard that complaint from any of the officers that we had the occasion to speak with.

The CHAIRMAN. Nor have I. I think people should know in the record, that as we are worried about how criminal defendants are treated, as we are worried about how plaintiffs are treated in civil cases by the judge sitting on the bench, as we are worried about how deputy attorneys general are treated by the attorney general and when they work with them, one of the things that is always left out of the equation, that always surprises me, is one of the places where they deal the most with, the people that they deal the most, and sometimes you are treated like you are an appendage and is just there, even though you are central to the case and you made the case, and other times you are treated with great respect.

That is all I am suggesting and I heard nothing to the contrary, but I just wanted to get it on the record, because it is a question that I ask, because I think it is important.

Mr. RICE. Mr. Chairman?

The CHAIRMAN. Yes?

Mr. RICE. About the same that came out of the group so far, we did talk to a couple of sheriffs and the chiefs of police, as I mentioned in my testimony, and I assure you that the things that you are asking, if they would have happened to either one of these

sheriffs of these chiefs, that would have been at the top of the list when we asked the questions.

The CHAIRMAN. I agree with you, that is why I asked the question.

Now, fellows, one last question. You have praised the decisions that the Judge has rendered, as evidencing a thread of common sense and a concern for the victim, as well as the defendant, without violating any of the defendant's constitutional rights.

Now, I am going to ask you a question that you may not like me to ask you, but when pushed during the hearing, Judge Souter pushed on *Miranda* and *Miranda* warnings, was asked about (a) how he felt at the time, and (b) how he felt now about *Miranda* warnings. And to paraphrase his statement, he gave the rationale for *Miranda* warnings and basically that he thought they worked fine and that they were a good thing.

Now, I will let the record stand and be corrected, if I am wrong, if anyone would like to suggest otherwise, but I think—let me be more precise, I have the record here, to be more precise, my staff has the record here.

I am quoting, "People of good will could disagree about that, but the fact is that the time the *Miranda* decision came down, it created a lot of problems for a lot of people who did not know how to respond to it." These problems are over and done with today. I think that most law enforcement officers can respond to it, and anyone who wants to attack *Miranda* today has got, I think, the same kind of pragmatic burden which those who had argued for *Miranda* in the first place.

At any rate, do you have any problem with his view on the *Miranda* warnings?

Mr. RICE. None whatsoever.

Mr. STOKES. Senator, I think that the two important cases that we reviewed—and there were several dealing with *Miranda*—was the *Lewis* case and the *Jones* case, out of New Hampshire, and I think that it is important to reflect that police officers since 1966, when the Arizona *Miranda* case came out in 1966, that those officers since 1966, in the past 24 years, is again alluding to—and I cannot speak for Judge Souter and what was in his mind, but at the time he was alluding to, more than likely, that the educational process and the professionalism of law enforcement has drastically increased in the last 24 years, and hopefully will continue on that pattern.

I believe what he was alluding to at that point is that the law enforcement officers in the last 24 years have adapted to the *Miranda* warning as just a protection of the individual or the accused, if you will, of their constitutional rights. So, I think we have adjusted to that in our training and our philosophy, so I would believe that, reading his decisions as they reflect—and I cite those two cases, the *Jones* and *Lewis* case—I believe that is probably what he was alluding to.

The CHAIRMAN. I do not disagree with that. I think it was. I just want it on the record that the fact that he believes that *Miranda* makes sense now is not inconsistent with what I know from what you have all told me personally before, that there is not a hue and cry out there by police officers to overrule *Miranda* and the fact

that he thinks it is a solid decision now is not something that gives you reason for difficulty.

Mr. DOYLE. No, and if I could add one thing: Judge Souter has had the opportunity to pass on many types of *Miranda* cases on the New Hampshire Supreme Court and he has shown no inclination to overrule the doctrine. At the same time, I think it is fair to say he has shown no inclination to extend it beyond its present bounds. So, I think, speaking for law enforcement, we all feel comfortable with the position that he has taken on *Miranda*.

Mr. STOKES. I think in the *Jones* cases, where he had the opportunity or was seeking to expand it, and Judge Souter felt that it went to that point, as was approved by the courts.

The CHAIRMAN. Senator Humphrey.

Senator HUMPHREY. No questions.

The CHAIRMAN. Gentlemen, as always, your testimony is helpful and I think it is always important for the public to be enlightened about how enlightened you guys are, and the women that you represent, as well, and I thank you for being here and thank you for your help.

As you said, Dewey, I am going to be needing to talk with you on a completely different talk very soon when these hearings are over, because I would like to revive my crime bill that you worked so hard to help get passed here, and that is another question.

Thanks for being here. I know that some of you stayed very late last night. I apologize for not being able to get you on late last night, but I suspect you would have not gotten on until midnight, had we kept going, so I want to thank you all very much.

Mr. STOKES. Thank you.

Mr. MOSCA. Thank you, Senator.

Mr. RICE. Thank you.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. DOYLE. Thank you.

The CHAIRMAN. Now, our final witness is very well read and very well known and very persuasive, the Chairman of The Conservative Caucus, Inc., Mr. Howard Phillips.

Is Mr. Phillips here? Thank you for being here. As I know you know, it was not intentional to have you last. We tried very hard to see what best panel would you fit in with, and it was your choice to be in this circumstance. I respect that and I think it makes sense. I hope you understand that we just did not decide to make you last.

#### STATEMENT OF HOWARD PHILLIPS, CHAIRMAN, THE CONSERVATIVE CAUCUS, INC.

Mr. PHILLIPS. I appreciate the opportunity to be here and I recognize that the perspective which I am bringing to this nomination is, from my standpoint, unfortunately unique. I know that everyone is anxious to move on and—

The CHAIRMAN. No, we have time.

Mr. PHILLIPS. Thank you.

The CHAIRMAN. Go right ahead. We are here to listen.