Likewise, does he recognize that powers not expressly given to the Federal Government by the Constitution are reserved to the States and the people thereof rather than to the Supreme Court?

And particular to this role as Chief Justice, will he be a thoughtful and eloquent spokesperson on important issues of judicial administration and the role of the high court?

I look forward to our hearings as the best way to answer these questions. About a few items however there can be no doubt. It has been said both by those who agree and those who disagree with the nominee that Justice Rehnquist is a man of powerful intellect and very great independence of mind.

A fellow justice is said to have remarked that no member of the Court carries more constitutional law in his head than Justice Rehnquist. These qualities will, undoubtedly, stand him in good stead as Chief Justice.

With respect to his opinions, it seems to me that Justice Rehnquist has struck several consistent themes, prominent among these is federalism, a belief that Federal intervention into the affairs of a State requires convincing justification and that, in fact, it ought to be an exception rather than the rule.

Other themes include a commitment to the Framers original intent, a skepticism about judges setting out to solve social problems by themselves, a defference to legislative judgments and to the political process and a belief that judicial review ought to be restrained within clearly defined bounds.

All of these views will also, in my opinion, make him an effective Chief Justice, and so I look forward to these hearings, making those points that I think establish and certify what we already know about this gentleman.

The CHAIRMAN. The able and distinguished Senator from Illinois, Mr. Simon.

STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman.

I want to join in welcoming Justice Rehnquist and his family. Several things have been talked about here. One is what is our role here, and I may be accused by Senator Simpson of being that bird to dig something out of the dust here now but I think as fine an article about what our role is that I have read was written by William H. Rehnquist in 1959 in the Harvard Law Record. I have an idea it is more carefully read today than it was in 1959, Mr. Justice.

But among other things he said the Senate should thoroughly inform itself on the judicial philosophy of the Supreme Court nominee before voting to confirming him. He talks about the debate when Herbert Hoover nominated Judge John Parker, who was rejected 41 to 39, but says that debate was the kind of debate and care that we should be providing.

He quotes Senator William Borah of Idaho saying:

> Upon some judicial tribunals it is enough perhaps that there be men of integrity and of great learning in the law. Upon this tribunal something more is needed, something more is called for, for here the widest, broadest, deepest questions of government and governmental politics are involved.

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And then the future Justice writes:

> In the case of the Supreme Court, the something more which Borah spoke of comes into play. I would prefer to interpret this phrase not as meaning that it takes more ability to be a Justice of the Supreme Court than a judge of the lower federal courts but rather that there are additional factors which come into play in the exercise of the function of a Supreme Court Justice.
>
> If greater judicial self-restraint is desired or a different interpretation of the phrases "due process of law" or "equal protection of the laws," then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to inquire of men on their way to the Supreme Court something of their views on these questions.

It makes a pretty good, solid analysis. The questions that I am concerned about are these. First, what is the role of the Chief Justice and particularly Justice Rehnquist, what is your vision of that?

One of the things that hit me as I was reading, one of the things I just somehow thought picking the Chief Justice was in the Constitution that the President is supposed to do that. It is a statutory thing.

I am not at all sure when this is all over that we should not be looking at whether we really ought to be involved in this. The President should be involved or whether the Justices themselves in the future should not be selecting the Chief Justice.

I think it is basic as Senator Grassley has just said that the Chief Justice be a person of ability and integrity. I think the other questions I have that I would like to probe during the course of these hearings, one, is the nominee open-minded? Two, can he be a symbol of fairness to all people in this country, because the Chief Justice is not only an administrator but a symbol for the country?

Three, does he show a sensitivity in this whole area of civil liberties? Related to that is, four, basic respect for the Constitution, how we view church-state issues, first amendment issues, and other issues?

And on those areas I have questions and concerns. There is a fifth one that I think is also extremely important. Does he have the courage to be unpopular? Some of my colleagues view the numbers of dissents that Justice Rehnquist has made as a liability.

I think we ought to examine the content but frankly, I view it as an asset that someone shows the courage to stand up. As you view the history of the Court, occasionally the Court has not had the power, the courage to be unpopular.

One example in my lifetime, a tragic example is when Japanese Americans were taken from the West Coast and the U.S. Supreme Court bowed to public opinion rather than the Constitution.

But does the nominee have the courage to be unpopular? I think that is another important question. These are the things I am going to weigh as I consider how to vote.

Thank you, Mr. Chairman.

The CHAIRMAN. The able and distinguished Senator from Alabama, Mr. Denton.

STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. Thank you, Mr. Chairman.

It is indeed a great honor and a pleasure to welcome Mr. Justice Rehnquist before this committee, and I offer you my personal con-