two or three times David Souter's senior honors thesis, it seems to me that he still believes many of the things that were very much implied as reflecting his beliefs in that senior honors thesis at Harvard. It seems to me that this is a man who totally rejects higher law authority and that he is purely a legal technician.

Now, I would not have come here to testify against him but for the fact that he had been complicit in the performance of abortion because there are many others far more knowledgable about the law than I, and the issues would have been better addressed by others. But even had he given that assurance concerning which you inquired of me, I still would have been troubled in the context of his other statements.

Senator SPECTER. Well, I thank you, Mr. Phillips, for your very profound testimony.

Mr. PHILLIPS. Thank you, sir.

The Chairman. The Senator from New Hampshire, Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Welcome, Mr. Phillips.

Mr. PHILLIPS. Thank you, Senator.

Senator HUMPHREY. I, too, am disturbed about Judge Souter's participation in the decision by the Concord Board of Trustees to commence the performance of abortions at that facility. I am disturbed by his view that members of such a board should exercise no moral judgment in overseeing a hospital. A hospital of all places, it seems to me, should be subject, its operations should be subject to moral judgment.

But I am not sure it is dispositive. I am not sure of anything, frankly, about Judge Souter. I don't think anyone is. I think he soft-pedaled his views before this committee. That would only be human after what happened to Judge Bork. Anthony Kennedy certainly soft-pedaled his views and turned out to be far better than his testimony indicated to conservatives, at least, that he would be. So I am hoping that is the case with Judge Souter.

Mr. PHILLIPS. I hope you are right.

Senator HUMPHREY. I will tell you another reason I don't think it is dispositive. You and I have a friend in this very body who, as a State legislator back in the mid-1970's, supported pro-abortion legislation. Why? Because he hadn't really given much thought about it. But once he had, he came to a completely different conclusion. I think you know about whom I am speaking.

It is my experience that a lot of adults, intelligent, thinking adults, have not really thought an awful lot about this because it is human nature not to think about something as ghastly and as grisly as chopping up little babies. And the pro-choice slogan is very appealing. No doubt it was designed by pollsters and consultants. It is very effective. The Americans are for choice. It is democratic to be for choice. But when you think about what the choice is, then you have to come to another conclusion.

My opinion is that Judge Souter, because he has never faced this kind of case, has never really given it deep thought—and I hope I am right on that—he at least indicated with regard to the decision at the Concord Hospital that it did not indicate that he views—that he rules out personhood for the unborn child. I am paraphrasing

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

him now. He said that should not be taken as an indication. So I am not sure, but I am more inclined to be optimistic on that point than I think you are.

However, I do wholeheartedly agree with your views on natural law. It is just mind-boggling that in this country, of all countries, we should be splitting hairs to determine who is a person and who isn't. I mean, in the Soviet Union, at least until recent times, it was fairly routine for there to be a class of humans who were nonpersons, officially designated—at least, in any event, officially treated by that government as nonpersons. But in the United States to invent by splitting hairs a class of nonpersons, a class of human beings who are nonpersons is one of the great shames in our history, one of the great tragedies of our history.

You referred to Justice John Paul Stevens' statement in the *Thornburgh* case. You quoted him saying, "There is a fundamental and well-recognized difference between a fetus and a human being. Indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the State legislatures."

Did he say more on this subject, or did he just posit that as a given and move on, that there is a fundamental and well-recognized difference between a fetus and a human being?

Mr. PHILLIPS. I don't believe he went into detail. If he did, I am not aware of it.

Senator HUMPHREY. Well, it is true, out of ignorance in some parts of our history, a lot of people have probably believed that there is a difference between a fetus and a human being. But, likewise, during other shameful parts of our history, a lot of people thought there was a difference between Afro-Americans and citizens of the United States, including Chief Justice Tawney.

Mr. PHILLIPS. That is right.

Senator HUMPHREY. And at other times in our history, there have been a lot of people who thought there was a fundamental and well-recognized difference between enfranchised males and females who didn't have the franchise. And just because we did things wrong for a long period of time didn't mean that women should go without the vote forever, didn't mean that black Americans could be enslaved, and shouldn't mean that unborn human beings are treated as so much property that can be disposed of at will.

Mr. PHILLIPS. Senator, President Lincoln agreed with you. He was politically active during the period following the *Dred Scott* decision.

Senator HUMPHREY. Yes.

Mr. PHILLIPS. And he refused to accept the *Dred Scott* decision as applying to anything more than the parties to the case. And that is my view of the *Roe* v. *Wade* decision.

Senator, if I may, I pray that your optimism is well founded. It is entirely possible that Judge Souter will only now begin to think seriously about abortion. I think, however, his statements indicated that he still felt that his earlier decision was justified.

Now, you tried to ask him a question at the very end of your initial interrogation of him about his contact with that young couple when he was a Harvard law student counseling a young Harvard

student and the girlfriend of that student, who had indicated to him that the young lady was contemplating a self-induced abortion. And Judge Souter in response to your inquiry and that of other Senators was very reluctant to reply.

I find that reluctance to reply in and of itself very troubling. You know, young people throughout the country look to the Supreme Court of the United States, not just as the guardian of liberty but as the guardian of law. And if Judge Souter was unwilling to say that, yes, he told that young woman to obey the law and to reaffirm now that, yes, he told them to obey the law, or that if he told them to break the law and procure an illegal abortion he was wrong—if he today is unwilling to say that, then I don't think the right example will be set for our country if he serves on the Supreme Court of the United States.

Mr. Rauh, speaking for the Leadership Conference on Civil Rights, suggested that Mr. Souter be recalled to consider other questions. I would suggest he be recalled until it be determined whether as an adult, as a student at Harvard Law School, he advised a young woman whom he had taken under his professional care as a proctor to break the law. I think the people are entitled to know that. And if he did advise her to break the law, the people are entitled to know whether he now regrets that decision and would change it.

Senator HUMPHREY. I think that is a fair observation.

Well, I want to go back and briefly follow up on the points I attempted to make a moment ago about natural rights and the ridiculousness and the tragedy of trying to construe a distinction between a human being and a person. With regard to fetology, the study of the fetus, we have only recently emerged from the dark ages. The most eminent scientists and jurists thought for a long time that there was no life until at some moment it was infused and the mother felt the child move. Quickening used to be the accepted standard. Now we know that quickening has no particular significance; that, in fact, the infant is moving well before the mother can begin to feel it; and that quickening is just one day in the whole stretch of days of development from conception until death.

We have come through a lot of ignorance. That the argument should be raised in favor of abortion that we should continue to do things because we have done them this way for a long time, we have regarded—some people, at least, have regarded the fetus as something less than human, that we should continue, even though fetology and medical science have advanced greatly in recent years, is just preposterous. Just because we used to have slavery doesn't mean we should continue to have slavery; just because we used to deny the women the franchise and many other rights doesn't mean we should continue to do so. Just because out of ignorance people didn't understand fetology and human development and acquiesced and practiced abortion doesn't mean we should continue to do so.

In any event, it ought to be self-evident that the offspring of human beings are human beings, and under natural law one is endowed—not at birth or some moment convenient to modern society, but one is endowed when one is created. Otherwise, the Declaration of Independence is just so much rubbish. If it has no operative

status, then let's just declare it rubbish, something we summon up on the 4th of July. But if it does have operative status, then that means all of us are endowed by our Creator when we are created, not at some moment convenient to modern society. And, therefore, abortion is an abomination and ought to be made an unlawful act, as it once was.

Thank you.

The CHAIRMAN. Thank you very much, Senator.

I thank you, Mr. Phillips.

Mr. PHILLIPS. Thank you, sir.

The CHAIRMAN. Particularly for agreeing to be the clean-up hitter here.

Mr. PHILLIPS. I appreciate the opportunity.

The CHAIRMAN. With that, Mr. Phillips, we excuse you. We appreciate your being here.

[The prepared statement of Mr. Phillips follows:]