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.

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Judge Souter, the President of the United States has asked you to serve on the Supreme Court. And if confirmed, you will be making decisions which will shape the fabric of American society for the rest of your life. You will be interpreting the Constitution in which, we as the people, place our faith and on which our freedoms as a nation rest.

During your tenure on the Court you will be free of all political constraints, unaccountable to the people, and unrecallable by the Congress—absent some severe dereliction of duty. Before we place that power in your hands, we need to know what is in your heart and in your mind.

While the issues the Court must address are well known, your views are not. Indeed, some cynics have even suggested that you were nominated precisely because you have not spoken to those issues in any detail. They even implied the President believed that a nominee would be more easily confirmed if his views were largely unknown. Those cynics do not understand, as I am sure the President does understand, the role of the Senate in this process.

The Constitution requires us to give our advice and consent to this nomination. The oath of office we took obligates us to examine your fitness to serve on the Supreme Court. We must conclude that the quality of your thinking deserves our respect, that you will relate the law to the basic values we have embraced as a nation, and that you are interested in doing justice as well as giving logic to the law.

In this process, a number of groups have told us to use this hearing to determine your views on one single issue or another, and they have told us that our decision to confirm you ought to depend on whether you pass their litmus test.

Well, let me add my own personal single-issue litmus test to the mix; and that is judicial excellence. Judicial excellence, it seems to me, involves at least four elements. First, a nominee must possess the competence, character, and temperament to serve on the bench. He or she must have a keen understanding of the law, and the ability to explain it in ways that the American people will understand. Based on the record developed thus far, Judge Souter, certainly you appear to have those qualifications.

Second, judicial excellence means that a Supreme Court Justice must have a sense of the values which form the core of our political and economic system. No one, including the President, has the right to require ideological purity from a member of the Supreme Court. But we do have a right to require the nominee to understand and respect our constitutional values. We do not elect Justices. They do not have the representational role that Members of Congress have.

The Framers of the Constitution gave the Supreme Court Justices lifetime tenure for a reason—they wanted the Court to be insulated from the momentary pull and tug of our daily politics. We do not want Justices who will change their legal opinions as the tide of public opinion turns. Indeed, we charge the Court with the task of defending the rights established in the Constitution even if those rights are, for the moment, reviled.

In my opinion, that means that a Supreme Court Justice must, at a minimum, be: Dedicated to equality for all Americans, deter-

mined to preserve the right of privacy and the right to be left alone by the Government, committed to civil rights and civil liberties, devoted to ensuring the separation of church and state; willing to defend the Bill of Rights and its applications to the States against all efforts to weaken it, and able to read the Constitution as a living, breathing document.

Third, judicial excellence requires a sense of compassion. The law is more than an intellectual game, and more than a mental exercise. As Justice Black said, "The Courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

Indeed, the courts are our refuge, our sanctuary, and our safe haven. The courts are where people seek justice, not just the application of law. A Supreme Court Justice must understand that. He or she must recognize that real people, with real problems are affected by the decisions rendered by the Court. They must have a connection with and an understanding of the problems that people struggle with on a daily basis. Justice, after all, may be blind, but it should not be deaf.

And finally, judicial excellence requires candor before confirmation. We are being asked to give you enormous power. We want to know, in general, how you will exercise it. We want to know what you think about certain issues—abortion and privacy, civil and individual rights, the balance of power and separation of church and state. We do not want to know in advance how you will rule on cases that will come before you, but we do want—and we need and we deserve—to know what you think about these basic issues.

Judge Souter, let me be presumptuous enough to give you just a bit of advice. Do not hedge. Do not give us prepared answers. Do not hide behind the argument that you cannot talk about this or that. We are not trying to trap you and we are not trying to obtain a commitment from you about how you will vote. But, Judge, I believe you have thought about the great issues of the day and I believe you have some views on them, and I do not believe that those views will require you to vote in any specific way. I trust your ability to remain openminded about the specifics that may come before you. But I believe the country is entitled to know, before you take a seat on the Court and tell us ex-cathedra, how you view basic constitutional doctrine.

On behalf of the American people, we will be having a conversation with you over the next few days. If you are confirmed it is the last conversation we can have about basic constitutional issues. So, in these next few days, we must make an extra effort to get to know you and you must make an extra effort to help us do that.

The burden of proof rests on you, and only you can discharge it. Let me conclude on this note. Much of this hearing will focus on facts, but behind all of this is a sense of mystery. The Supreme Court is one of the most majestic institutions in American life. By its nature, the Court makes decisions which people oppose, but so far it has had the moral standing to compel compliance with those decisions, no matter how unpopular they are.

We have made a covenant with the Court; we have given it the power to make ultimate decisions and in return, asked the Court to

exercise that power responsibly. As Justice Stone once observed, and I quote, "The only check upon our own exercise of power is our own sense of self-restraint."

This hearing will help us to determine, as a Congress and as a country, how Judge Souter intends to exercise that power and that restraint.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much, Senator.

Now, Judge, what I propose to do before we break is to have our two distinguished colleagues, both of whom strongly favor your nomination, join you at the table. I will ask the senior Senator, Senator Humphrey, to speak first, and then Senator Rudman. At which time, after that is done, Judge, with your permission, unless you would prefer to do it another way, I would suggest that we break; we will come back; I will swear you in and we will hear your opening statement and then begin the questioning.

Is that all right with you?

Judge SOUTER. Yes, sir.

The CHAIRMAN. Senator Humphrey.

STATEMENT OF SENATOR GORDON J. HUMPHREY

Senator HUMPHREY. Thank you, Mr. Chairman.

With my colleague, Senator Rudman, I take pride in introducing to the Judiciary Committee, Judge David Souter, of Weare, NH.

I have to, because we are so very proud of our State, I have to correct my dear friend from Utah, it has not been 145 years since someone from our State sat on the Supreme Court. In fact, Chief Justice Harlan Fiske Stone was born in New Hampshire in the town of Chesterfield and he served, of course, until his death in 1946.

The uninformed suggest that David Souter is from a small town. Well, Mr. Chairman, I think perhaps you are better informed on this point than others, because you visited our State extensively drawn by its natural beauty and conservative politics. [Laughter.]

The CHAIRMAN. I wish I had been able to stay longer. [Laughter.]

Senator HUMPHREY. So do we. Drawn as you are by its natural beauty and conservative politics, but the uninformed, Mr. Chairman, think that David Souter is from a small town. Nothing, in fact, could be further from the truth, because where is a town so very large in area that it has no less than five separate metropolitan centers? There is the village of Weare, itself; there is East Weare, from which the Judge hails; there is South Weare; by now you might have guessed there is a West Weare; and, in fact, in the north, Mr. Chairman, is the village, which is sometimes abbreviated on signs as No. Weare, and sometimes pronounced by tourists as Nowhere.

But we do not mind tourists laughing at our signs, or even laughing at us, as long as they spend all of their money before they go home because that helps to keep down our taxes.

Mr. Chairman, the elegant pundits here, inside the beltway, think that David Souter may not be quite up to the big city or the big time because he drives a clunky old car, because he believes in conserving energy by not mowing his lawn until the grass begins to