He has impressed me as being a very fine, able man and an excellent lawyer and has a good record as a judge. I presume you agree with that.

Now, I have just one question I want to ask each one of you and I will just start with you, Mr. Broderick. Incidentally, you are now president of the New Hampshire Bar Association?

Mr. BRODERICK. Yes, I am, Senator.

Senator THURMOND. Ms. Cooper, you are former deputy attorney general under Judge Souter?

Ms. COOPER. Yes, sir.

Senator THURMOND. Mr. Douglas, you are now a Representative from the State of New Hampshire?

Mr. DOUGLAS. Yes, sir.

Senator THURMOND. I just want the record to show that. The question is a very simple question. Is it your opinion that Judge Souter has the competency, the dedication, the courage, the integrity, and the fairness to be a Justice of the Supreme Court of the United States? We can start, Mr. Broderick, with you.

Mr. BRODERICK. Yes, Senator, I think he is uniquely qualified in that regard. I think he has all of those qualities.

Senator THURMOND. Ms. Cooper.

Ms. COOPER. I concur wholeheartedly.

Senator THURMOND. Mr. McAuliffe.

Mr. MCAULIFFE. Absolutely, Senator Thurmond.

Senator THURMOND. Mr. Douglas.

Mr. DOUGLAS. Same answer. Absolutely.

Senator THURMOND. Thank you very much. I have no more questions.

The CHAIRMAN. Thank you, Senator.

Senator Kennedy.

Senator KENNEDY. I just want to welcome all of the panelists and thank them very much for joining us here and for your statements and comments. I have no questions.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Cooper, you commented about being the first woman to join the attorney general's office. Were you recruited or were you a walk-on?

Ms. COOPER. I think I wrote a letter to the Office of Attorney General, along with 1,000 other letters, during my third year in law school, and I received a response and an invitation to an interview in response to that.

Senator SPECTER. Was there any active recruiting program by Judge Souter to bring in other women or minorities into the State attorney general's office?

Ms. COOPER. I don't know that, Senator. I am not aware of any at the time that I was hired, and I was not in a position to know whether he was doing that at the time he was making the hiring decisions.

Senator SPECTER. Was there any Afro-American on the staff?

Ms. COOPER. Not during the time that I was there.

Senator SPECTER. Was the Office of the Attorney General an activist in the sense of pursuing consumer rights cases or antitrust cases if you had jurisdiction there, or activist in the sense of being

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concerned about issues like prison overcrowding, if your prisons were overcrowded in that era?

Ms. COOPER. I think that it was becoming during the time of Judge Souter's appointment as attorney general increasingly active in the fields of consumer protection and environmental law. I believe it was under Senator Rudman's term that those divisions of the office were established, and they continued to grow and become more involved in those issues in New Hampshire during Judge Souter's term.

Senator SPECTER. Well, I know that the Office of Attorney General of New Hampshire has responsibility of trial of murder cases, as I understand it. Was the office active in programs such as police education programs to try to give instruction on observing constitutional rights to make valid arrests without infringing on constitutional rights?

Ms. COOPER. At some point during my term—I don't know exactly when—there was established a State agency called the Police Standards and Training Council that was charged with the responsibility of training police officers. And I know that there were members of the staff that would provide seminars and assistant teaching during any of the continuing type of education provided to police officers in that context.

Senator SPECTER. Congressman Douglas, were you on the State supreme court at the same time that Judge Souter was?

Mr. DOUGLAS. I was from 1983 to 1985. I was appointed in 1977, and he went on the Superior Court in 1978. So we served as judges for about 8 years at the same time, but for 2 of those years we were at different levels of the court system.

Senator SPECTER. During the course of Judge Souter's testimony, I think there was a uniform reaction among committee members as to the powers of his intellect. We have very wide ranging discussions on many subjects, and he has a thorough command of the cases and of the rationale and of the reasoning and constitutional history. You might be in a position to give us some insight into his potential as a Supreme Court Justice. I would be interested to know what your speculation would be as to his potentiality as an intellect of some substantial dimension.

The Court is characteristically occupied by men and women of significant talent, but there are some legal giants in the Court from time to time. You have had a unique opportunity to work with him. I am not asking you to divulge any confidences of your court conferences, but I would be interested in your speculation or judgment on that question.

Mr. DOUGLAS. Well, Senator, if I could, I think that one thing that I observed, yesterday afternoon I sat in for about 1½ hours to see the questioning and how Judge Souter handled it. It impressed me at the time that this is the same David Souter I have known for years. He basically could have done the same job if the hearings had begun the morning after his nomination. You could have had him in here sitting here at 9 o'clock just the day after, and he would have been the same.

Senator SPECTER. All that preparation was for naught?

Mr. DOUGLAS. No. I am sure he was more prepared than he would have been, but his style, his demeanor, his ability to understand cases—I won't get into any specifics in conference, but——

Senator SPECTER. Was he a leader on the Court?

Mr. DOUGLAS. It would depend on the issue, as with any court. In other words, on a given case, each of the five of us might have stronger views than on the next case. Frankly, some areas of the law are less of interest to each particular Justice, just as all of us in the legislative body find some bills more interesting than other bills. But always he was on top of the material, could synthesize the arguments. If we seemed to be drifting aside and had not quite gotten the thing nailed down, Judge Souter would always be the one who could say, well, what you really want us to say is such-and-such, and if we were to change this paragraph, this would keep the principle of the law the way you want it but wouldn't do violence to the concern of Judge X over here.

Senator SPECTER. Excluding yourself, perhaps, was he a leader, a cut above the other justices?

Mr. DOUGLAS. Oh, yes, yes, in terms of intellectual capability, reasoning skills, writing skills, he is definitely not like most of the judges I have had contact with, and that is true around the Nation. He is an exceptional human being with a phenomenal ability to hear the arguments and synthesize the case and come out with something that I know will be a great credit, not only to this body who will hopefully confirm him, but also the Court.

Senator SPECTER. You may not want to answer this question, but I would be interested in your observation. We discussed extensively interpretivism and original meaning and judicial activism. In reading Judge Souter's cases, I had the firm impression that he was restrictive is his interpretation of the law, not expansive, selecting those words as opposed to liberal or conservative which have so much baggage which attaches to them.

In one of his cases, *Richardson,* he found a liberty interest. That was the only one that I could find. And while he recognized criminal rights in a number of cases, he was strong on law enforcement. I thought there was good balance in the criminal law.

In the civil side, it seemed to me that his opinion in the *Estate of Dionne* was more characteristic of his approach, where he went back to original meaning, wanted to find out the intent, the content of the drafters at the time the doctrine was entered. Judge Bell cited that this morning as a case of vision. I disagreed with that characterization. It seemed to me that that was restrictive, and that is all right if that is where he was.

His testimony was really significantly different, I thought. He was prepared to have the Court fill a vacuum which was not acted on by the legislature and by the executive. He found the liberty clause expansive. It wasn't just an incorporation of the Bill of Rights into the due process clause of the 14th amendment. The ordered concept of liberty of Cardozo in *Palco* was only a starting point for him. That is the bane of the existence of the interpretivists, as I read their writing.

I would be very interested to know, if you would care to comment, to whatever extent you would care to comment, about where

you saw Judge Souter on the philosophical spectrum in your work with him.

Mr. DOUGLAS. I wouldn't want to even speculate on that because we were in a different situation. When you serve on a State supreme court, you are not the free agent that you are in the sense of making a final decision as the U.S. Supreme Court does. A State supreme court does not have, in certainly Federal constitutional law, any variant. You are really an intermediate court.

When it comes, however, to our own common law, which, again, State supreme courts make but the U.S. Supreme Court does not—areas of law like torts, contract, family law—he is—I don't want to label anything. He did the job that we had to do. We are makers of law in the areas torts, contracts, whole varied areas where judge-made law is what you administer and you decide on a case-by-case basis the common law for New Hampshire, or in your State, the Commonwealth of Pennsylvania.

He knows the distinction between those two roles. So I don't know what label that gives you, but he knows the difference between where you are making law as a judge, where you are trying to figure out what a legislature or a Congress meant, perhaps inarticulately, and where you are looking at a constitutional provision such as one of the fundamental liberties in the Bill of Rights. And that is all I would say.

He does not view it with one label that would sweep all of those. He can make those distinctions, did on a day-to-day basis, and I think his cases reflect that, that he did so very admirably.

Senator SPECTER. One final question for you, Mr. Broderick. Senator Thurmond has a wonderful comment which he makes on nomination proceedings about Federal judges being courteous. The more power someone has, the more courteous they should be.

You practiced before Judge Souter. In terms of courtesy and perhaps better characterized as patience, not only for you, a former associate of his, but was he a patient judge, a very patient judge, a very, very patient judge? How many "very's" would you give him?

Mr. BRODERICK. Well, I would say this, Senator Specter: I have tried jury cases in front of him, and I think you can appreciate, as a former practicing lawyer, that things tend to get heated on occasion in a trial setting. Sometimes judges are given to get involved in that.

Judge Souter resisted that temptation. He was painfully courteous to lawyers, although expected quality performance and competence. He was a task-master in that regard but very civil, and painfully courteous to litigants.

I think if you had jurors here and litigants in front of this committee who appeared in front of Judge Souter, they would tell you that he is a gentleman. And so I think he has a unique temperament, and I think he will exercise it consistently on the Supreme Court of the United States. He is a very unusual man.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

First of all, two of the witnesses are old friends, Steve McAuliffe and John Broderick, and we are very pleased to have you here.