So, when the Court decision came down, whether I agreed with it or not, my focus was primarily one of determining what did the Court say, to whom did the decision apply, were there any exceptions, what advice should I give the Governor, the General Assembly, law enforcement officials or State agency administrators. Then I would, on occasion, confer with other attorneys general around the country, with staff, make a determination and give my advice.

My personal feelings really did not have very much to do with the advice I gave, because this was a matter involving the law and not necessarily a personal feeling about the correctness of a Court decision.

Senator SPECTER. General Diamond.

Mr. DIAMOND. Senator, I think that, like Judge Bell, the retroactivity was more of an issue than *Miranda,* but it turned out to be, in our experience, not a significant problem, because most of the cases that were pending at that time, by chance, did not rely upon confessions for the central focus of the prosecution, and so we were not dealing with that particular issue.

The exclusionary rule was probably, from my standpoint, the most difficult—and I think I still feel that way—with regard to the Warren court decisions, and I was very pleased to see a good-faith exception carved by a later Supreme Court, but still have to deal with the issue that in the State of Vermont that good-faith exception is not recognized by our own State law, where Federal issues are not involved.

Senator SPECTER. Thank you very much, gentlemen. My time is up. I think that the answers are really significant, for this reason: When we have gone through these proceedings, we have probed very hard to find where Judge Souter stands on the line of interpretivism versus judicial activism. There has been an enormous amount of criticism of judicial activism, and I have been critical of it in a number of aspects, and there has been a tremendous generalization of criticism about the activist Warren court.

But when Judge Souter was asked about any opinion that he disagreed with, not limited only to law enforcement, but one-man/one-vote and many other lines, he did not cite any case, did not feel comfortable, for a variety of reasons or whatever reason, in not citing a case. And now we have four very experienced and distinguished lawyers, public officials, ex-prosecutors and asked about the expanse of the activist Warren court, and nothing readily leads to mind.

I realize that it is not easy to go back and pick up specific cases, and the one that is mentioned is the exclusionary, and even in Vermont the exclusionary rule is maintained rigidly, without the good-faith exception. So, perhaps this question tells us something about how bad the activist Warren court was, or perhaps how it was not so bad.

Thank you very much.

The CHAIRMAN. Every day, in my view, the wisdom of the Warren court becomes more apparent.

The Senator from Vermont.

Senator LEAHY. Mr. Chairman, I apologize again for being out because of the farm bill conference, but I see four good friends here—Griffin Bell, Slade Gorton, Gerry Baliles and Jerry Diamond. I

would just note that, in Vermont, we have been blessed with good leaders in the law enforcement field.

To be totally bipartisan about this, Senator Thurmond, I would mention first a Republican attorney general, who is now Chief Judge of the second circuit, Jim Oakes, whom I had the pleasure of serving with when I was State's attorney, and ever since then a very, very close friend. Jerry Diamond was State's attorney of Windham County down near the New Hampshire border when I was State's attorney of Chittenden County. Jerry went on, however, to a higher position in law enforcement and became attorney general, while I disappeared into the obscurity of the U.S. Senate.

I have listened to the testimony of these four witnesses, as I have been trying to get back from another meeting on an entirely different issue. I have no questions, but I did want to welcome all four of them. The other three I have worked with and know well and they are all good friends of mine, who will excuse me if I make a special welcome to Jerry Diamond, a neighbor and a close friend. We began our careers together as prosecutors, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Grassley.

Senator GRASSLEY. Judge Bell, you said that there is a rebuttable presumption that the President's choice ought to be confirmed, and I agree with you. Many others—I should not say many others on this committee, a few others, including Chairman Biden, on the other hand, have spoken in terms of the burden of proof being on Judge Souter.

Now, that is quite a different standard from what you enunciated, Judge Bell, at least that is the way it seems to me, and it seems that we are, in a sense, ratcheting up quite a bit here, you know, is it the burden of production, is it a burden of persuasion, is it by a preponderance of evidence, or is it beyond a reasonable doubt.

It seems to me that, once you start using this burden of proof metaphor, that you set up criteria that fails to set a clear, objective standard. Of course, any Senator can adopt whatever personal standard that he or she chooses. But I would like to ask you, Judge Bell, why do you think that a presumption of approval is a better way?

Mr. BELL. Well, I think it is a better way, because I do not agree with the burden of proof being put on the nominee. The President has already investigated him before he sent his name over here, I would assume, in all cases, and the Senate then undertakes to cross-examine him and bring out anything wrong with him. That has been done. As I said in the beginning, this is a classic hearing. It is one of the best I ever remember. This man has been vigorously cross-examined.

If you put the burden of proof on him, what will the next candidate do? He will come over and he will try to get a poll to find out what everyone is thinking, and maybe he will come over and make a great statement, taking solid positions on four or five big issues which have to do directly with what he is going to be called upon to decide. I do not know where that would take us.

I am saying that putting the burden of proof on the nominee would seem to me to be a dangerous approach, and it probably