

Judge Souter, I hope you will stand your ground when you sincerely believe you are being asked for answers which you clearly cannot provide and have the good faith to be able to act as a Supreme Court Justice later.

The Senate should not probe into the particular views of the nominee on particular issues or public policies, let alone impose direct or indirect litmus tests on specific issues or cases. If it does, the Senate impinges on the independence of the judiciary. It politicizes the judging function. The confirmation process becomes a means to influence the outcome of future cases on issues of concern to particular Senators. This course is inappropriate as it would be for the President to seek such influence, himself. The judiciary is one branch which should be above politics.

Judge Souter, we are happy to have you here and we look forward to hearing your testimony. We look forward to getting to know you better and we look forward to seeing you sit on the Supreme Court.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge, as you can already see, there is unanimity on the committee.

Senator from Ohio, Senator Metzenbaum.

Senator METZENBAUM. I did not like the fact that you said that just before you introduced me. [Laughter.]

The CHAIRMAN. Well, we all follow you, Howard, and that is why I mentioned you.

#### OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Judge Souter, there is something reassuring about this hearing. Reassuring in the fact that probably no other nation in the world has this concept that a President makes an appointment, nomination, and then the U.S. Senate has the right, as the peoples' representative to vote up or down on your confirmation.

Our Founding Fathers, how they were able to come up with this structure, I do not know; but I do not know of any other nation that has that same structure—to their credit. They could not have known at that time that there is another factor that is in place now and that is that it is possible for us, as we meet here today, to open the vista of the American people so that the American people can hear you respond, hear us inquire of you, so that the American people can be a part of the process, itself.

I must say to you that there are many comments and criticism about how the committee does this or does that, but there is something wonderful about this entire concept that the President nominates and the Senate either confirms or refuses to confirm. I feel privileged to be a part of that process.

The fact is that you cannot become a member of the Supreme Court in this country simply because the President and those around him are comfortable with a nominee's views on the law. We have an obligation, it is a constitutional responsibility, to make an independent examination of your constitutional views, your judicial philosophy, and your approach to law.

We also have a further responsibility and that is to try to determine, as best we can, what kind of person is Judge David Souter? This is a different type of nomination from others that we have had in the past, because it is a fact—although some have challenged the statement—but it is a fact that when you look at the record you find little that you have written on many of the critical constitutional issues which face the Court. Therefore, it makes it all the more important that we inquire fully into your views on these subjects.

But there is probably another, maybe equally as important a reason, for us to undertake a full and complete inquiry. When the President nominated you he stated that he did not solicit your views on any of the controversial issues facing the Court. But just a day later, John Sununu, his Chief of Staff, went out of his way to reassure political advocacy groups on the right that Judge Souter could be counted on to vote with them. Sununu reportedly stated, that the far right should consider the Souter nomination "a home run that is just about to leave earth orbit."

I say to you, frankly, does John Sununu know something which we, on the committee, do not know and I think we are entitled to try to learn?

Much has been said about the impact of your nomination on the right to privacy and the right of a woman to choose to have an abortion. I am concerned about that subject, and I will, with appropriate questions ask you about these matters. Less has been said about you in the civil rights issues facing the country. On that subject, frankly, the nominee's record is practically blank. I believe it is necessary to ask whether Judge Souter can understand and empathize with the aspirations, the concerns, and the frustrations of blacks, hispanics, women, minorities. I want to know would you, as the nominee, have a feel for the conflicts and problems which arise from our diverse and heterogeneous population?

Since this nomination, I have had the opportunity to meet with you, Judge, on two separate occasions; once for over an hour and to speak with you over the telephone as well. I am frank to say that I enjoyed those meetings much. I found you to be a thoughtful, caring, and personable man. I respect your deep feelings for and commitment to the community in which you were raised.

Like most of the people who have met you in the last few weeks, I have no doubt about your legal intelligence nor your legal acumen. It is clear that you possess a keen legal mind. But I think most Americans want to know more about the kind of person you are. Justice Oliver Wendell Holmes, who was the subject of a thesis written by you once wrote that "The life of the law has not been logic; it has been experience."

Legal acumen is, indeed, important. But I think many Americans would not be comfortable with a Judge whose logic and reason were not tempered by experience and compassion. Judges must understand and have a feel for the human situations which underlay the disputes which come before the court. The dilemma faced by an unwed pregnant teenager; the sting felt by women and minorities victimized by discrimination; the temptation of the majority to ignore the consciousness of the religious minorities; or censor on popular expression.

These are not simply abstract, technical matters; they are real-world controversies whose resolution directly affects the degree of liberty, fairness, and diversity which Americans enjoy.

The quality of justice rendered by judges depends upon their capacity to grasp both the human and legal elements which underlay the case before them. Do you have that capacity? You are obviously a community-spirited man and you are obviously a caring human being. We know that you have devoted considerable time—in some respects it might be said an unbelievable amount of time—and energy to the Concord Hospital.

As you know, I asked you for a list of your charitable contributions, though I made it clear that I was not interested knowing the amount of those contributions. I thought that it would give this Senator some insight into the kind of human being you are. You were kind enough to share that list with me and I will make that list available to the Chair and to the public.

I found that you have given to an impressive variety of groups. I have a copy of the letter which you sent to me in connection with that, and unless the Chair has some objection, I would like to place it in the record.

The CHAIRMAN. Without objection.

[The letter of Judge David Souter follows:]