



NATIONAL TROOPERS COALITION

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BEFORE
THE UNITED STATES SENATE
JUDICIARY COMMITTEE

CONFIRMATION HEARING
FOR
THE HONORABLE DAVID SOUTER
AS
ASSOCIATE JUSTICE
OF THE UNITED STATES SUPREME COURT

SPEAKING IN FAVOR OF THE NOMINATION
THE NATIONAL TROOPERS COALITION
JOHNNY L. HUGHES
DIRECTOR, LEGISLATIVE AND
CONGRESSIONAL AFFAIRS
JAMES J. DOYLE III, ESQUIRE

PARTICIPATING MEMBER, NATIONAL LAW
ENFORCEMENT COUNCIL

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

September 18, 1990

Confirmation Hearing
David Souter
For Associate Justice of the
United States Supreme Court

TESTIFYING: Captain Johnny L. Hughes
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Captain Hughes is a twenty three year veteran of the Maryland State Police. He is director of Legislative and Congressional Affairs for the National Troopers Coalition. The National Troopers Coalition is composed of state police and highway patrol agencies throughout the United States and has a membership of approximately 45,000 troopers.

Mr. Chairman, Honorable members of this distinguished committee. I would like to thank the committee for giving me the opportunity to speak on this matter of great public interest.

The National Troopers Coalition, an organization representing State Troopers in forty-four states, strongly endorses the nomination of Judge David Souter to Justice of the United States Supreme Court. Judge Souter's background as the New Hampshire Attorney General, that state's chief law enforcement officer, as a trial judge, and as a member of his state's highest Court well qualifies him to be appointed to our nation's highest Court. The National Troopers Coalition has reviewed Judge Souter's criminal law opinions, and knows him to be a tough law-enforcement judge who, at the same time, will protect the constitutional rights of the accused.

Law enforcement officers, like the vast majority of citizens throughout this country, are particularly interested in a nominee's qualifications in the area of criminal law. Our organization believes that in this area, which occupies a large percentage of cases that reach the Supreme Court, Judge Souter has demonstrated throughout his career a clear understanding of the challenges facing police officer in combating crime. Judge

Souter has, we believe, struck the appropriate balance between protecting the rights of society to enforce its laws on the one hand, and upholding the constitutional rights of an accused on the other. We could not support a nominee who would sacrifice either of these interests for the sake of the other.

More than others, police officers know of the evil and tragic side of life: crack houses, senseless and brutal killings, the carnage caused by the drunk driver. These deeply concern millions of Americans, and need to be dealt with effectively by our criminal justice system. We view the nomination of Judge Souter as evidence of the President's strong commitment to effective law enforcement.

Far too often our legal system breaks down after an arrest is made. Prosecutors are handcuffed by legal rulings that turn a trial away from a search for the truth into an exercise in legal gymnastics and technicalities. Miranda rulings and the exclusionary rule may turn a criminal proceeding into a trial more of the police officer than of the defendant. Officers who act in good faith in conducting a search or interrogating a suspect may find highly relevant evidence inadmissible because a Court, sitting with 20/20 hindsight, finds a technical violation of a legal right.

Throughout his judicial career Judge Souter has applied sound legal principles and common sense reasoning to protect the rights of society through effective law-enforcement. He has refused to expand the Miranda doctrine beyond its present bounds, and has admitted confessions that were voluntarily given by a defendant.

He has been supportive of drug enforcement measures, by upholding the use of pen registers on the telephones of drug suspects. In other cases, he has rejected the hypertechnical interpretation of the scope of search warrants, and has protected the identity of confidential informants from disclosure at trial where the presence of the informant was not necessary for a fair

trial.

In the area of drunk driving enforcement, he has supported the use of sobriety check points to detect drunk drivers, and has upheld the introduction at trial of evidence of a driver's refusal to take a breathalyzer test when arrested for drunk driving.

We strongly endorse Judge Souter, and urge confirmation by the Senate.

TESTIFYING: James J. Doyle III, Esquire
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Mr. Doyle is a former Maryland Assistant Attorney General and former Counsel to the Maryland State Police.

I would like to thank the committee for taking the time to hear the views of the law enforcement community on the nomination of Judge David Souter to the United States Supreme Court.

I share the view taken by law enforcement agencies that Judge Souter has taken effective positions that support police and prosecutors in their efforts to combat crime.

Beyond that, however, it is important to emphasize the scholarly and well reasoned approach that Judge Souter has consistently taken in his criminal law opinions. While a member of the New Hampshire Supreme Court, Judge Souter has authored a number of criminal law opinions that are impressive for their logic and analysis, even though some of his decisions have resulted in reversals of convictions.

Many of Judge Souter's opinions display these qualities, but only three will be briefly mentioned here. In State v. Valenzuela, 536 A.2d 1252 (N.H. 1987), the defendant was arrested on numerous drug charges after the execution of a search and

seizure warrant. The warrant had been based, in part, on information gathered through the use of a pen register, a device which records outgoing telephone numbers dialed from the telephone line to which it is attached. The court order authorizing the use of the pen register had not been supported by probable cause. Defendant argued that the use of the device violated his right against unreasonable search and seizure, as guaranteed by the New Hampshire Constitution.

In rejecting defendant's claim and affirming his conviction, Judge Souter referred to an earlier Supreme Court decision, Smith v. Maryland, which had held that the use of a pen register without a warrant did not violate the Fourth Amendment to the U.S. Constitution.

What is impressive about Judge Souter's opinion in this case is that he did not simply adopt the reasoning of the U.S. Supreme Court, but performed his own analysis and followed his own route to his own conclusion. While the U.S. Supreme Court, in its opinion, had spent considerable time in concluding that a defendant did not have a subjective expectation of privacy in dialed numbers, since he must have realized that the telephone company in some fashion recorded those numbers, Judge Souter thought that issue to be irrelevant. For that reason he did not rely on the portion of the U.S. Supreme Court analysis concerning a defendant's subjective beliefs in privacy.

The only relevant issue for Judge Souter was whether society would recognize as objectively reasonable the privacy of dialed numbers. Relying on a number of decisions that held that no Fourth Amendment protection attached to information voluntarily conveyed to third persons, Judge Souter concluded that the use of a pen register in this situation would not violate the principle against unreasonable searches and seizures.

In State v. Koppel, 499 A.2d 977 (N.H. 1985) Judge Souter filed a dissenting opinion concerning the operation of sobriety check points set up to catch drunk drivers. The majority opinion

had concluded that the procedure violated a defendant's rights under the New Hampshire and United States Constitutions. Judge Souter dissented.

Judge Souter believed that the intrusion faced by a motorist during a sobriety check point stop was minimal, and outweighed by society's significant interest in apprehending intoxicated drivers.

It is significant and a favorable reflection on Judge Souter's analysis that in 1990 the Supreme Court of the United States upheld the use of sobriety checkpoints in Michigan State Police v. Sitz, employing essentially the same reasoning as Judge Souter.

Finally, Judge Souter's dissent in State v. Denney, 536 A.2d 1242 (N.H. 1987) is also an excellent example of his logical and well reasoned analysis in criminal cases. Judge Souter persuasively argued that the due process clause did not require that police inform a drunken driver of the evidentiary consequences of refusing to submit to a blood alcohol test, where there was no evidence of police deception or misconduct in failing to advise the driver of those consequences.

In conclusion, Judge Souter's criminal law opinions have consistently been scholarly and well written. His legal reasoning has been impressive. He has been extremely supportive of legitimate police procedures and of society's right to effective law enforcement. The National Troopers Coalition urges confirmation of Judge David Souter by the Senate.