

The CHAIRMAN. Senator Thurmond.

OPENING STATEMENT OF SENATOR STROM THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, today the committee begins hearings to consider the nomination of Judge David H. Souter to be an Associate Justice of the Supreme Court of the United States. This marks the 6th nominee to the Supreme Court that this committee has considered in the past 9 years and, once confirmed, would be the 105th person to serve as a Justice. As well, I might say, it is the 23d Supreme Court nomination that I have had the opportunity to review during my 36 years in the Senate.

As we begin the hearing process, we must remain keenly aware that it is a solemn responsibility. Those chosen for appointment to this Nation's highest court occupy a position of great power and authority, as this appointment is one of life tenure granted without accountability by popular election. With this position of great status comes a greater responsibility to the people of this Nation—to the concept of justice, and to the Constitution.

Mr. Chairman, I have always believed that the Constitution is the greatest document ever penned by the hand of man. The Constitution creates the basic institutions of our National Government and spells out the power of these institutions, the requirements for holding office, and the rights of our citizens. Our Constitution is the fundamental law of the land. It is the basis for laws written by Federal, State, and local governing bodies, and it defines the separation of power between the individual States and our National Government. The fact that our Constitution has survived since its adoption in 1787 is a true testament to its enduring nature.

Our magnificent Constitution confers tremendous responsibility on both the House and the Senate to declare war, maintain the Armed Forces, borrow money, regulate commerce, mint currency, and make all laws necessary for the operation of Government. However, the Senate alone holds exclusive to "advise and consent" on all judicial nominations, without a doubt one of the most important responsibilities undertaken by the Senate. It is a responsibility that takes on greater significance when a nomination is made to the highest court in the land. The Senate has assigned the task of holding hearings and reviewing judicial nominees to the Judiciary Committee. It is our duty to make the recommendation to the full Senate. This critical role in the judicial process must be equitable, thorough, and diligent. It is this committee that will be called upon to cast the first vote which will in all likelihood determine the fact of this nomination. I am not aware of any nominee to the Supreme Court in this country who has failed to attain a majority of the votes of the members of this committee and then been confirmed by the full Senate. This track record clearly underscores the importance of our responsibility.

The role of the Supreme Court in America's development has been vital because the Court has faced many difficult issues, using its collective intellectual capacity, precedent, and constitutional interpretation to address such issues as criminal law, privacy rights, church-state relations, freedom of speech and press, the death pen-

alty, civil rights, and much, much more. Throughout the course of this Nation's history, the Court has been thrust into the center of many difficult controversies. As Justice Holmes stated: "We are quiet here, but it is the quiet of a storm center."

Due to the broad range of difficult, controversial, and important issues which must be resolved by the Court and the impact of its decisions, great responsibility is placed upon each Justice. An Associate Justice must be an individual who possesses outstanding qualifications. In the past, I have reflected upon the judicial qualifications. The attributes I believe a nominee to the Court should possess are:

First, unquestioned integrity. A nominee must be honest, absolutely incorruptible, and completely fair and just.

Second, courage. The courage to decide tough cases according to the law and the Constitution.

Third, compassion. While a nominee must be firm in his decisions, he should show mercy when appropriate.

Fourth, professional competence. The ability to master the complexity of the law.

Fifth, proper judicial temperament. The self-discipline to base decisions on logic, not emotion, and to have respect for lawyers, litigants, and court officials.

Sixth, an understanding of the majesty of our system of government. The understanding that Congress makes the laws, that the Constitution is changed by amendment, and that powers not delegated to the Federal Government are reserved to the States.

An individual who possesses these attributes cannot fail the cause of justice.

My review of the background of this nominee convinces me, as we start these hearings, that he possesses the necessary qualifications to be an outstanding member of the Supreme Court. His intellectual credentials are impeccable: Phi Beta Kappa, Rhodes scholar, undergraduate and law degrees from Harvard, and graduate study at Oxford University. His experience is extraordinary: Currently serving as a member of the U.S. Court of Appeals for the First Judicial Circuit, formerly an associate justice of the New Hampshire Supreme Court for 7 years, previously served as a judge on the New Hampshire Superior Court for 5 years, served as the attorney general for the State of New Hampshire, held positions as deputy attorney general, assistant attorney general, and practiced law in the private sector.

Recently, Judge Souter's professional experience and qualifications were scrutinized by the American Bar Association in connection with his appointment to the first circuit and his nomination to the Supreme Court. For both positions, the ABA gave Judge Souter the highest possible rating based on his professional competence, integrity, and judicial temperament. Without question, Judge Souter has the professional credentials to serve on this Nation's highest court. He has long been known as a man of keen intellect and devotion to the law—a perception certainly warranted by his distinguished professional record.

Mr. Chairman, our critical role in the selection process of a Supreme Court Justice requires us to carefully examine and review the intellectual capacity, moral character, and background of a

nominee. However, it does not convey the right to question a nominee about how he or she would decide a particular case. It is inappropriate to ask a nominee how he would rule for several reasons. A nominee cannot, and should not be expected to, indicate how he would rule until there has been an opportunity to fully examine precedent and relevant law, to study briefs, and to listen to oral argument. Only after a complete review of all the facts and relevant law, and after sufficient time for calm, rational deliberation, should an individual be called upon to render a decision. Direct questioning about sensitive issues that may come before the Court could impinge on the concept of an impartial, independent judiciary. We must take all precautions to ensure that the judiciary is shielded from the political pressures that are imposed on the legislative and executive branches. For these reasons, I urge all members of this committee to be diligent, thorough, and thought-provoking in questioning this nominee, but not to exceed the appropriateness to the purpose for which these questions are intended.

Mr. Chairman, a member of the Supreme Court must consider hundreds, even thousands of issues during his or her tenure. No one issue should be the sole criteria by which a nominee is judged fit to serve. While any one issue may now be more prominent than others, as times change so will the issues before the Court. A Supreme Court member is confirmed for life, not put in place to make short-term decisions to satisfy any political constituency. A member of the Supreme Court makes decisions in a vast array of areas which affect all the people of this Nation and not just one individual or a particular group. To expect otherwise would diminish this august institution.

Mr. Chairman, I believe a nominee selected by the President of the United States for the Supreme Court comes to the Senate with a presumption in his favor. As well, a man who has been recently considered by the Senate and unanimously confirmed comes with an even greater presumption in his favor.

The Framers of the Constitution established the judicial branch as a coequal branch of government, along with the legislative and executive branches. In 1803, Chief Justice John Marshall stated that "it is the duty of the judicial department to say what the law is." Because the Supreme Court is the final arbiter of legal disputes, its authority is immense. With that view in mind and a keen awareness of the great responsibility facing each of us, I look forward to a fair, thorough review of Judge Souter's intellectual capacity, background, and his sense of justice.

Judge Souter, we welcome you to the committee and look forward to your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Just before I yield to Senator Kennedy, let me explain, Judge. I noticed you heard that buzzer. The way this place works is the Senate is in session as we conduct this hearing; that is, over on the Senate floor. I failed to mention that for you and for some in the audience. Those buzzers indicate whether or not there are votes, and we may at some point during this hearing today have to—some will get up and go vote and come back while we are trying to keep this thing going. So that is what that buzzer was about, and I