

Senator METZENBAUM. On the other hand, in some of your opinions, I am frank to say that you seem to have sprinkled an extra dose of logic in places where a dash of common sense or compassion would have been, in this Senator's opinion, more appropriate.

Moreover, having combed through your record as a judge and attorney general, I am frank to say that I am hard-pressed to find many instances in which you broke new ground, provided additional legal protection for the poor, the elderly, minorities, and women. These are people whose progress in integration in the mainstream of American life has been aided immeasurably by judges who grasp the special role which the Supreme Court plays in ensuring fairness and equal dignity for all Americans.

Frankly, Judge Souter, I do not expect your views on the law and the Constitution to accord precisely with mine. If they did, President Bush would not have nominated you.

But the diversity and strength of this Nation depends upon the Court's willingness to continue to fulfill its role as the guarantor of individual liberty, equal justice, and fundamental fairness. The American people need to be sure that you understand that role and that you are committed to preserving it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

The Senator from Wyoming, Senator Simpson.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. Welcome, Judge Souter. Relax now, they have not rolled out the cannons to the crest of the hill yet. The grape-shot and the ball have not yet been fired. It will occur. It may come. You will be ready for that.

Remember, the best shield to use when that comes, the best shield to raise before it will be patience, ultimate, blessed patience, because it will likely get very ponderous, very prolix, very arcane. Because while we poor souls have been off home in the hustings, the staff has been burrowing and scratching, and the advisers and the consultants and the lawyers and the professors on the payroll are near exhaustion, and all for you, a conservative, an apparent adherent to constructionism.

We are here today to learn more about you, in order that the committee may make a recommendation to our colleagues on your nomination. What we really need to know here is whether you have a good legal education and a broad knowledge of the law. We need to assure ourselves that you are of good moral character and have a proper judicial temperament.

We want to know, and quite properly so, whether you as a Justice will make decisions based upon the law, rather than upon your own personal, moral, and political views.

We are certainly not here to determine whether you will decide the various issues that come before the Supreme Court, as the various zealous interest groups may think they should be decided. That is not the function of this.

My personal believe, I think a deep belief of most thoughtful Americans, is that a Justice should be a person of integrity, recti-

tude, intelligence, superior legal scholarship, and proper temperament for the Supreme Court bench.

It is also my personal belief, I think shared by many, that a Justice should have a judicial philosophy of respect for the laws and the Constitution, a Justice should interpret the laws and uphold the Constitution, but he or she should not legislate from the bench.

This is the painful part of this operation for the special interest groups. They have had free rein in that area for so many years, and this is a very difficult thing and we must wean them away from it very carefully, else they be in shock.

We are hired on in this tripartite form of government to do just that, to legislate. That is our job. We do that rather imperfectly, but with good intent, expressed through a pretty able group of Democrats and Republicans alike. We try.

From my time with you and from all that I have read and heard, you surely appear to possess all of these important traits, and I feel that you will make a very fine addition to the Supreme Court.

However, many on the committee, including our able and energetic chairman, have expressed their interest in having your views on key constitutional issues. I do certainly believe that judicial nominees should respond to appropriate questions, but overly explicit questions are not only unwise, but I think even impermissible from a legal ethics perspective, because you, sir, are a sitting Federal judge and you are, as a judge, then bound by the Code of Judicial Conduct, and I believe it is vital and critical for all to know and keep in mind, as we do these proceedings, that canon 3(a)(6) of that code provides that, "A judge should abstain from public comment about a pending or impending procedure in any court." You are a judge. This would apply to you.

We all well know how politicized the abortion issue has become and we know how hard the purists among the special interest groups are pushing and pounding and howling to get you to reveal your views on this topic. But we are also all very well aware that there will be abortion cases argued before the Supreme Court in the coming term.

I happen to be personally prochoice. I deeply believe that women should have this right, this freedom, this right of privacy, even, if you will, even though it was stretched like a drum head in *Roe v. Wade*, with the use of the words like "penumbra."

But extremists on both sides are now controlling that debate, extremists, and I would humbly suggest that legislators, especially male legislators, should not even be involved in the decision. But be sure to read all I have said on that intimate personal issue before you write. [Laughter.]

I would also point out to my colleagues that abortion is most clearly a pending or impending issue before the courts, and I personally believe that Judge Souter, you, sir, are prohibited from public comment about that issue, not as a nominee, but as an invested sitting Federal district judge. That is my personal view.

We heard from our chairman on Tuesday that "questioning directed particularly at issues on which the Court is closely divided has long been our practice." But let me remind you that in 1981 we were all admonished by our chairman that "a nominee can speak in general terms about the law, but should not be forced to state

opinions on controversies likely to come before her." That was the chairman's statement at Sandra Day O'Connor's nomination hearing.

We were also advised on Tuesday by the chairman that Judge Souter must answer questions on particular issues, because if he wants the job, the burden of proof is on the nominee, as it is on us when we seek election as Senators.

But in 1981, we were once again admonished by the chairman on the same Senate floor that the nomination process is "unlike the situation with respect to Senators, in which the electorate can demand of us what our philosophic background is or what we think about a particular issue."

Let us be very refreshingly candid and honest with each other. Really, the only thing that has ever long been our practice with regard to judicial nominations in this arena in these recent years is politics, pure politics.

We have a certain and perfect right to inquire about your judicial philosophy, but we do not have the right to know a nominee's position on specific issues, and certainly not with a sitting judge.

So, which is it? We cannot have it both ways. Was it true in September 1981, or is it true now in September 1990? Some of the panting and hand-wringing special interest groups are very disturbed about your quiet lifestyle, the fact that, according to media reports, you spend much of your time with the law, music, books, and nature. Good heavens.

Some even seem to be concerned that you are a bachelor, and it is even clumsily and desperately suggested that you are somehow "out of touch" and not in "the mainstream of humanity." It is thus expressed that a doctor, then, I guess, or a priest or a judge or one who has not been married and who seeks solitude and contemplation, rather than the excitement and the bright lights is unfit to counsel, advise, or judge his fellow humans.

Are we saying that a priest who took the vows of celibacy was not able to counsel the estranged and anguished wife or husband, or comfort the tormented child, because he or she had none? That logic surely diminishes and denigrates the doctrine and process and practice of several of the world's significant religious orders.

Well, I would suspect that most thoughtful Americans would like to take more time to engage in just those pursuits—music, books, and nature—if they had the ability, in their hurried existence. So, let us, if nothing else, let us be fair. Let us follow our constitutional responsibility, as the chairman may see it, as I may see it, determine whether Judge David Souter has the—this is what the chairman asked—whether you have the "intellectual capacity, background and training, character, and judicial temperament to serve on the Supreme Court."

Those are also the words of our chairman. I do know him well. I know him as a very fair man—I really do—vigorous, energetic, full of spirit—you are going to get it all—but he is fair.

You are going to be alright here. In the West we would say, "sit deep in the saddle," and you will ride it out well.

The CHAIRMAN. I might say to my colleague from Wyoming, while those who he said were ensconced here, staff scurrying through statements, obviously yours was on vacation, because they

did not give you the whole quote. The remainder of the quote was, "I believe nominees should be required to answer all questions, except for those questions that would necessitate an opinion as it applies to a specific set of facts that is likely to come before the Court for decision." I will be happy to give your staff the rest of the quote, when we go on.

Senator SIMPSON. We will put it in the record.

The CHAIRMAN. I now yield to my colleague from Arizona.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeCONCINI. Thank you, Mr. Chairman.

Judge Souter, another welcome. You will have many and, I suspect, after several days you may wonder what kind of a welcome the Senate might give you. You are going to have some difficult days in the sense of being asked a lot of questions.

A lot of information about your life has already come out, I am sure some of which you would rather not come out, not that there is anything embarrassing that I have seen, but we all have our private lives, those of us that choose some public service, as you have, realize that it is part of the price we pay.

I do not like it all the time and I have had accusations and things written about me I would rather not have been written, but I realize that it is part of the process and I suspect that you do, too. The process demands that we go through exactly what we are doing today and exactly what the Senator from Wyoming said has been happening over the last 5 to 6 weeks.

Yes, people are scratching, people are interested in knowing about you, because President Bush has nominated you to the position of extraordinary importance in our country. Whether one believes the framers intended it or not, no one can deny the immense power that Supreme Court Justices wield through their opinions. Decisions by the Supreme Court affect the lives of each and every one of us every day.

Whether you label them conservatives or liberals or tag them as activists or constructionists, Supreme Court Justices are unquestionably active participants in the national policymaking. Once the President appoints and the Senate confirms, a Supreme Court nominee never has to look back. There are no strings attached, if you are confirmed here. He or she has been set free to interpret that great document our Founding Fathers signed over 200 years ago. Each Justice defines the great ideas of freedom, liberty, and equality embodied in that Constitution.

For these reasons, the constitutional responsibility of advice and consent conferred on the Senate is crucial to our system of government and laws. I am sure that no one on this committee or in this body takes his or her role in this process lightly.

In nominating Judge Souter to the Supreme Court, I believe President Bush has chosen an individual with a keen intellect and solid judicial background. His colleagues speak of his dedication. Lawyers who appeared before him praise his hard work. The American Bar Association has found that Judge Souter meets their highest standards of professional competence, judicial temperament, and professional integrity, as well.