

The worst one was *Miranda*, which you said we have learned to live with.

Now, I am prepared to accept you, interpretivism or noninterpretivism, but I think it is an important point to know where you stand, because your testimony, in my opinion, puts you way outside of the interpretivism school. Your decisions that I have read are much closer to the interpretivism school. There is *Richardson*, in which you find the liberty interest. But most of your cases are consistent with interpretivism and a restrictive construction of the Constitution, but that is not what I hear your testimony to mean.

Judge SOUTER. Senator, it depresses me that you may think that I am in this inconsistency. I think, in the narrowest compass, the reason that you are sort of reading me out of interpretivism is that you are making the assumption that the only brand of originalism, if you will, that is a genuinely interpretist brand is the brand of specific intent. And with respect, I think that is not, I think that is not so.

I think the brand of original meaning or original understanding is in fact a valid interpretivist position. And the only point at which that comes in in any way in conflict, if it is in conflict, with what you describe as the intentions of the framers of the amendment is at the point at which we say, when they drafted a provision which was broader than necessary to perform the specific functions they had in mind, they really meant what they said and we have a broader principle.

Senator SPECTER. My time is past due, so I will yield at this point. Perhaps Senator Biden will reopen the door, and perhaps we can pursue it somewhat further.

The CHAIRMAN. If I may say before I yield, I quite frankly thought that the Judge answered my questions, that the spectrum of interpretivism is very broad—it encompasses Black to Bork, to Ely, to others who are out there. It is a broad spectrum.

With that, let me yield now. Senator Simon is next, but I would like to yield for a moment to the ranking member, Senator Thurmond, who has a couple of things he would like to say. And then I will yield to the Senator from Illinois.

Senator THURMOND. I did not take my last round.

The CHAIRMAN. I understand.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Chairman, we are almost through the hearing today. I am going to leave in a few minutes. I wanted to make a few remarks.

First I want, as ranking member, I want to express my appreciation to all the members of this committee, Democrat and Republican, for the courtesies they have shown to Judge Souter. I think they have all been courteous and respectful, and we deeply appreciate that.

I especially wish to commend Chairman Biden. I have worked with Chairman Biden for a number of years now. When I was chairman, he was ranking member; now he is chairman and I am ranking member. We have always had a fine relationship. I have found him to be courteous and helpful, considerate. I just want to express my appreciation to you for the way in which you have handled this hearing.

The CHAIRMAN. Thank you very much, Senator.

Senator THURMOND. We deeply appreciate it.

Now, Judge Souter, I want to commend you for your demeanor in this hearing. You have appeared humble, and you have appeared courteous and, I think, tried to explain the answers to any questions that were propounded to you.

You have brought out the fact that you will listen on the Supreme Court. I do not know whether I have ever heard a Supreme Court Justice say that before, but I like that expression: I will listen. You will listen. And that is important. People cannot listen when they are talking. They learn by listening.

The very fact that you will be a good listener, I think, is a very fine symbol here of what you stand for.

Your experience in public life and in the Attorney General's office and on the State courts of New Hampshire, the trial court and the appellate court and then on the Federal circuit have certainly served you well and will be very helpful to you, I am sure, here.

I have been impressed, too, with your common sense. After all, I think that probably counts as much or more than anything else. A man can have all the education in the world, he can have all the experience; but it is common sense that counts. And I think because of your common sense you will make a fine Justice on the Supreme Court.

Now, we all were pleased with the outstanding rating that the ABA gave. They are going to testify after a while, but I just want to say this. One sentence here said: Judge Souter is highly competent and possesses a scholarly, analytical and writing skills necessary to serve successfully on the Supreme Court of the United States. And they conclude by saying: Based upon all the information available to it, this committee concludes that Judge Souter is entitled to its highest rating for a nominee to the Supreme Court of the United States.

They have not given all the judges the highest rating. Again, I compliment you. I am sure they have cited you up right.

I want to say further that the points I mention that I felt were important for a Supreme Court Justice were—and the ABA, I believe, bases these three: integrity, professional competency, and judicial temperament. In addition I added to that: courage, compassion, and understanding of the majesty of our system of government. And I feel that you possess all those qualities.

I have been very pleased with your testimony. I am just not exactly sure about this vacuum you talked about. I am of the opinion that, if there is a vacuum, it ought to be filled by the proper agency of the Government. If it is a legislative function, a legislative function; if it is an executive function, an executive function. I do not think there has to be any vacuum necessarily. I may disagree with you a little on that. But since you are right on everything else, it seems to me I can overlook that.

Judicial usurpation, sometimes when decisions are handed down, people feel the judges have taken over where they should not have done so. In other words, the judges should not usurp the authority of the Congress or the executive branch. Now, a few years ago Mr. Truman seized the steel mills, and the Court struck it down and

said you cannot take private property without due process of law. Well, he usurped there but the Court corrected him.

The Congress may usurp at times; the Court can correct it. But it is very difficult for anybody or any agency to correct the Supreme Court. I would just urge you to give it as much consideration as you can when it comes to this matter of judicial usurpation. I think that is extremely important. Some of us may feel, some judges may feel we need certain social reforms. And if the Congress does not make them, well then, we as judges will do it. I do not think that is right.

I think the people, if they are needed that bad, the people will bring pressure on the Congress to do it, that that is the Congress' duty. In other words, I think the three branches ought to stay in their respective spheres as provided under the Constitution, no matter how worthy the goals are. And a lot of the goals are worthy.

I tell my people back home, why did you not do so and so? I said, that is not a Federal responsibility; that is a State responsibility. Education is not mentioned in the Constitution. That is mainly a State responsibility.

I think we should make progress, but make it at the level of government as provided in the Constitution. And in that way we do not usurp.

This was a government established of limited powers. If any agency does not have the power it should have, executive, legislative, or judicial, we can amend the Constitution. We have amended it 26 different times. It can be amended again. But I do not think the judges ought to fill in if they feel there is a vacuum.

Now I want to mention this on habeas corpus. We had a man who came down from another State and killed a friend of mine, Turner, who worked at the Navy yard in Charleston, a coin collector. He came down and robbed him and, robbing him, he killed him. He killed three other people, four people, and thought he killed a fifth one, a woman. I am sure you remember that woman who came with a disfigured face; she is ruined for life. That case went to the Supreme Court four different times over 10 or 12 years. That is inexcusable. People lose respect for the law when such as that happens.

That is the reason we passed a crime bill this year to limit the Federal jurisdiction to 1 year. The Senator from Pennsylvania had a big part in that. He worked with me very closely on that habeas corpus provision.

Senator Hatch says in his State one case went for 16 years. In other words, I think we have got to respect as much as we can the rights of the States. I am sure that people in the States are just as interested in protecting and providing for law and order as the Supreme Court is. As much as we can, I think we ought to expedite the litigation, especially the criminal litigation.

We have got to remember the victims as well as the criminals. Too much sympathy, I think, sometimes goes to a criminal.

Now, those are just a few points I want to make to you. Again I want to say that I think you have done a fine job here. You have handled yourself well. I think you will make an excellent Supreme Court judge, and I wish you well.