

Senator Leahy.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Welcome, Judge Souter. Being from New England, I will try not to say anything as inflammatory as Senator Grassley did. [Laughter.]

Chuck has a way of stirring us up around here.

Judge, we do welcome you here, and though there may be a moment of levity here and there, you know—as we do—the seriousness and the importance of this hearing. I think that you as well as the Senate welcome it, and that you have enough of a dedication to the Constitution to know its importance for all of us.

Your nomination comes at a historic time. The individual who takes a seat on the Supreme Court today is going to have a dramatic impact on that institution, on our Nation well into the next century, long after the President and the Members of the Senate are gone. The 105th Justice to this country's High Court is going to affect the lives of individual Americans on issues ranging from personal privacy to equal protection to the free exercise of their religion. That power is not bestowed on an individual unless and until the U.S. Senate is confident that he or she will exercise it fairly.

The Senate's duty to advise and consent to nominations to the Supreme Court is, in my opinion, one of our most profound and meaningful responsibilities. It brings together the three distinct branches of our Government. It proves the wisdom of our system of checks and balances. The constitutional separation of powers is envied and emulated by emerging democracies around the world. In fact, the genius of our Nation's Founders denied the possibility of tyranny here in the United States, and it did that by devising our system of checks and balances.

Now we, the members of this committee, and the rest of the Members of the U.S. Senate, have to demonstrate our own wisdom and fairness in undertaking a thorough review of Judge David Souter's record. The Constitution mandates it. The times demand it.

Now, the President has said that this nomination was not subject to a litmus test and I applaud President Bush for that. He did not apply a litmus test and I do not apply a litmus test. I do not think any Senators will do so.

Look at where we are. Justice Brennan, whose departure precipitated the nomination, viewed the Constitution as a "sparkling vision * * * of the human dignity of every individual." He never sacrificed the liberties of the individual—no matter how unpopular—for the sake of appeasing the majority. Justice Brennan resisted the anti-individual direction the Court has taken over the last decade. He never lost sight of that institution as the Nation's legal tribunal of last resort. Justice Brennan's intellect, leadership, and compassion represented the best of a public servant. His seat on the Court is immensely difficult to fill.

Today we consider whether the President should receive the consent of the Senate in the nomination of Judge David Souter. Judge Souter, you are an articulate and intelligent man with an engaging

sense of humor. In fact, I passed on last night to my son your comments about the motorcycle. He got a laugh out of it, too.

You also have a strong streak of Yankee individualism. By most accounts, you are a scholar and have dedicated your life to the law. Now, those qualities are admirable, but we are all agreed that they are not enough by themselves to entitle a person to a seat on the Supreme Court.

We must be persuaded that Judge Souter has the commitment and the capacity to preserve the freedoms the American people have fought for two centuries to protect. Will Judge Souter serve as a trustworthy guardian of our fundamental rights? I want to be sure that the next Supreme Court Justice understands the extraordinary nature of the position he or she assumes. That Justice must never forget, in the words of our great Chief Justice Marshall in 1809, that "it is a Constitution we are expounding"—a Constitution in a living, breathing, changing society on the threshold of the 21st century, a Constitution that can fit in this little book, but that has meant so much for the last 200 years in this country.

Any nominee to the Supreme Court must recognize that discrimination is not a high-minded issue about standards of review, but a daily struggle for minorities and women in this country; that rights for the disabled are not academic fodder in the debate over federalism, but the opportunity for an individual with a disability to lead a rich, full life; and that privacy is not an abstraction but a critical issue for a woman struggling with the dilemma of an unwanted pregnancy.

These are not esoteric hypotheticals. They are vitally important issues that affect the basic principles and fundamental values of the American people.

We 100 Members of the Senate, representing 260 million Americans, are sworn to uphold the Constitution. That Constitution requires us to offer our advice and consent to the President's nomination. We are in this body to represent the American people. This hearing process is how we must satisfy their concerns about a potential nominee. These proceedings are the public's sole opportunity to assess the qualifications of an individual who could greatly influence their daily lives. We owe it to the American people to proceed carefully, thoughtfully, and fairly.

We will hear from interest groups on both the right and the left, and that is as it should be. They are exercising their first amendment rights, and very properly so. But my decision will not be influenced by any group on the left or the right. My decision is going to be determined really, Judge, based on what I hear from you, in the answers to my questions and the answers to the questions of the other members of this committee.

I have a number of questions—ranging from the first amendment to the right to privacy to Judge Souter's views on criminal law. In addition, Judge, I will explore fully your involvement in the Seabrook incident, an issue I have already discussed with you. In fact, I first raised it with you when I sent you a telegram in 1977, and we have since talked about it.

Judge Souter, it is incumbent upon you to be forthcoming in your responses so that we have an adequate basis on which to make our recommendation to the full Senate and the American

people. That recommendation gets made only once, only once in your lifetime.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The Senator from Pennsylvania, Senator Specter.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

Judge Souter, I join my colleagues in welcoming you here today. We are giving you a lot of advice. You really have to run between the raindrops in a veritable hurricane here. But we are very much concerned about the successor to Justice Brennan because so many major issues are decided by 5-to-4 votes, and a single Justice can decide questions of enormous importance to this country. If you are fortunate enough to be confirmed and to serve as long as Justice Holmes did, you will serve until the year 2031.

There has been overriding concern about the abortion question, and while it is of great moment, there are many other matters of tremendous importance to this country. We talked about some of them: Civil rights and freedom of religion and freedom of the press and freedom of speech and right to die and death penalty as a deterrent to violent crime. In looking over next year's docket on the Supreme Court, there is a major desegregation case. There are major matters on employment discrimination, taxation, antitrust, citizenship, death penalty. And even beyond the range of importance for the United States, the Supreme Court may be called upon to make a decision which will have international implications as to what is happening in the Persian Gulf today.

There is much concern at the moment about the authority of the President to dispatch U.S. troops under concerns of the War Powers Resolution with the very vital constitutional provisions on the President's authority as Commander in Chief contrasted with the congressional authority, sole prerogative to declare war. Those are the kinds of issues on which you may be the decisive vote, and your influence may be greater than many Presidents', certainly many, many Members of the Senate. So we have very strong reasons to be extremely careful in this very important confirmation process.

My reading of several dozen of your opinions tells me that you have a very extensive record—not a complete record, but a very extensive record to consider. Some of your opinions are restrictive on criminal defendants' rights and some are expansive. You have an opinion on the *Dionne* case which is candidly very narrow on interpretation and original intent, something that if others don't cover first I will, about how much emphasis is appropriately placed. That opinion you cite goes back to matters in 1663 and 1781 and 1768, and it is narrow. And we will be concerned, I will be concerned, about how you apply the equal protection clause as to women and indigents.

At the same time, your opinion in *Richardson* has a broad interpretation of the liberty interest in a very difficult case involving a charge against a man allegedly French-kissing a 14-year-old girl under his charge. In an employment rights case, you found an ex-