

OPENING STATEMENT

SENATOR JOSEPH R. BIDEN, JR.

HEARINGS ON THE NOMINATION OF JUDGE DAVID SOUTER  
TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT  
THURSDAY, SEPTEMBER 13, 1990

JUDGE SOUTER, I WOULD LIKE TO WELCOME YOU TO THE SENATE  
JUDICIARY COMMITTEE.

SEVEN WEEKS AGO, PRESIDENT BUSH DISCHARGED ONE OF THE MOST  
IMPORTANT CONSTITUTIONAL RESPONSIBILITIES ASSIGNED TO THE CHIEF  
EXECUTIVE, BY SELECTING YOU TO BE HIS NOMINEE FOR THE UNITED STATES  
SUPREME COURT.

TODAY, WE EMBARK ON A SOLEMN TASK THAT ARTICLE II OF THE  
CONSTITUTION COMMITS TO THIS BODY -- THE SENATE'S RESPONSIBILITY  
TO OFFER ITS "ADVICE AND CONSENT" TO THE PRESIDENT'S NOMINATION.

AS THESE HEARINGS BEGIN, I BELIEVE THIS COMMITTEE'S ROLE IN  
THE PROCESS IS THREE-FOLD:

- \* FIRST -- AND FOREMOST -- WE MUST CONDUCT FAIR AND  
THOROUGH HEARINGS THAT PROVIDE YOU WITH A FULL  
OPPORTUNITY TO PRESENT YOUR CONSTITUTIONAL PHILOSOPHY TO  
THE SENATE AND TO THE NATION;

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- \* SECOND, WE MUST EXPLORE THOSE VIEWS WITH YOU, TO TRY TO IDENTIFY THE MEANING YOU WOULD GIVE TO OUR CONSTITUTION, IF YOU BECAME "JUSTICE DAVID SOUTER;" AND
  
- \* THIRD, WE MUST DECIDE -- EACH SENATOR, BOUND BY HIS OWN CONSCIENCE -- WHETHER THAT CONSTITUTIONAL VISION IS ONE THAT THE NATION SHOULD EMBRACE.

THESE HAVE BEEN OUR OBLIGATIONS FOR MANY YEARS NOW -- OBLIGATIONS THAT THE CONSTITUTION MAKES IT OUR DUTY TO COMPLETE.

TO FULFILL OUR CONSTITUTIONAL DUTIES, JUDGE SOUTER, WE WILL NEED YOUR HELP.

YOU COME BEFORE US WITHOUT AN EXTENSIVE WRITTEN RECORD THAT DETAILS YOUR VIEWS ON THE IMPORTANT CONSTITUTIONAL QUESTIONS OF OUR TIME. AS A RESULT, WE NEED YOU TO HELP US IN UNDERSTANDING THE CONSTITUTIONAL PHILOSOPHY YOU WOULD BRING TO THE NATION'S HIGHEST COURT. WE NEED YOU TO JOIN US IN A MEANINGFUL AND IMPORTANT DIALOGUE ABOUT OUR CONSTITUTION.

AND LET ME BE CLEAR ON ONE POINT, JUDGE: WE ARE NOT ASKING FOR ANY COMMITMENTS AS TO HOW YOU WOULD RULE ON ANY SPECIFIC CASE -- NOR ARE WE TRYING TO PRY INTO YOUR PERSONAL VIEWS ON PUBLICLY-DEBATED ISSUES.

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RATHER, WE WANT TO KNOW WHAT PRINCIPLES YOU WOULD APPLY -- WHAT PHILOSOPHIES YOU WOULD EMPLOY -- AS YOU EXERCISE THE AWESOME POWER YOU WILL HOLD IF YOU ARE CONFIRMED AS A JUSTICE OF THE UNITED STATES SUPREME COURT.

THE SUPREME COURT HOLDS FAR-REACHING POWER OVER THE CONSTITUTIONAL RIGHTS AND THE DAILY LIVES OF EVERY AMERICAN CITIZEN. THROUGHOUT THE COURSE OF OUR HISTORY, ITS IMPACT -- UPON WHAT WE CAN DO, WHAT WE CAN SAY, AND HOW WE CAN LIVE -- HAS EXCEEDED THAT OF ANY PRESIDENT OR ANY CONGRESS.

THE FACT OF THE MATTER IS THAT WE HOLD MANY OF THE FREEDOMS WE ENJOY BECAUSE OF THE WISDOM, COURAGE AND FORESIGHT OF THE 104 JUSTICES WHO HAVE SAT ON THE SUPREME COURT.

BUT THERE HAVE BEEN MOMENTS IN HISTORY WHEN THE COURT -- LIKE OTHER INSTITUTIONS IN THIS NATION -- HAS COME TO A CROSSROADS; MOMENTS WHEN THE COURT'S FUTURE HAS CONFRONTED ITS PAST -- MOMENTS WHEN ITS LONG-TERM DIRECTION HAS BEEN AT STAKE.

IT IS AT THESE MOMENTS WHEN THE COURT IS MOST SHAPED BY THE OUTLOOK AND PHILOSOPHY OF THE INDIVIDUALS WHO SERVE AS JUSTICES. IN MY VIEW, WE ARE WITNESSING SUCH A MOMENT TODAY.

TODAY, OUR NATION -- OUR CONSTITUTION AS INTERPRETED BY THE COURT -- IS AT A CROSSROADS. THERE ARE SOME FUNDAMENTAL CHOICES

## TO BE MADE:

- \* WILL THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF RELIGION CONTINUE TO PROTECT THE RIGHTS OF ALL AMERICANS -- PROTESTANT AND CATHOLIC; JEWISH AND MUSLIM -- TO PRACTICE THE FAITH OF THEIR CHOOSING?
  
- \* WILL THE FOURTH, FIFTH, AND SIXTH AMENDMENT'S PROTECTION OF CIVIL LIBERTIES -- OF A FAIR TRIAL AND FREEDOM FROM UNREASONABLE SEARCHES -- REMAIN STRONG?
  
- \* WILL THE POWER OF THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE -- USED TO ROOT OUT DISCRIMINATION AGAINST RACIAL MINORITIES AND WOMEN IN OUR SOCIETY -- BE DIMINISHED?
  
- \* AND WILL THE MAJESTIC SWEEP OF THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE -- WHICH PROTECTS THE RIGHT OF PRIVACY OF ALL AMERICANS -- BE CURTAILED?

JUDGE SOUTER, BECAUSE OF THE CLOSE DIVISION ON THE COURT ON THE MEANING OF THESE CONSTITUTIONAL GUARANTEES, IF YOU ARE CONFIRMED, YOU WILL HAVE THE POWER TO DETERMINE WHICH DIRECTION THIS NATION WILL TAKE -- WHICH PATH WE WILL FOLLOW AS WE REACH THIS CRITICAL CONSTITUTIONAL CROSSROAD.

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LET THERE BE NO MISTAKE ABOUT IT, JUDGE SOUTER. IF CONFIRMED, THE FATE OF OUR PRIVATE LIVES AND OUR PUBLIC RESPONSIBILITIES WILL BE PLACED IN YOUR HANDS.

I SINCERELY HOPE, JUDGE, THAT YOU WILL JOIN ME IN A DIALOGUE ON THE CONSTITUTION -- A DIALOGUE IN WHICH YOU RESPOND WITH SPECIFIC ANSWERS TO MY SPECIFIC QUESTIONS ABOUT:

- \* THE DUE PROCESS CLAUSE AND ITS PROTECTION OF OUR RIGHT TO PRIVACY AND INDIVIDUAL LIBERTY;
- \* THE EQUAL PROTECTION CLAUSE AND ITS GUARANTEES OF RACIAL EQUALITY AND EQUAL RIGHTS FOR WOMEN;
- \* THE FIRST AMENDMENT AND ITS PROTECTION OF FREEDOM OF SPEECH AND RELIGION;
- \* AND OTHER IMPORTANT CONSTITUTIONAL ISSUES OF OUR DAY.

AT THIS FATEFUL MOMENT IN OUR HISTORY, WE HAVE A RIGHT TO KNOW -- AND A DUTY TO DISCOVERY -- PRECISELY WHAT YOU, JUDGE DAVID HACKETT SOUTER, THINK ABOUT THE GREAT CONSTITUTIONAL QUESTIONS OF OUR TIME.

I BELIEVE WE CAN ENGAGE IN A REAL DISCUSSION OF THESE ISSUES WHILE RESPECTING YOUR JUDICIAL INDEPENDENCE. WE VALUE IMPARTIALITY

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IN OUR JUDICIAL OFFICERS, AND IT IS NOT A FUNCTION OF THESE HEARINGS TO TRESPASS UPON ANY BOUNDARIES THAT ARE SET BY THE NEED TO MAINTAIN THAT INDEPENDENCE.

YET THE OFFICE OF SUPREME COURT JUSTICE INURES TO NO ONE BY BIRTH OR BY RIGHT -- OR BY VIRTUE OF A PRESIDENTIAL NOMINATION ALONE. TO ATTAIN THAT POST, A NOMINEE MUST PERSUADE THE SENATE THAT HE OR SHE IS THE PERSON IN WHOSE HANDS WE SHOULD AGREE TO VEST AWESOME POWER AND RESPONSIBILITY.

NO ONE IS ENTITLED TO BE A SUPREME COURT JUSTICE, ANY MORE THAN ANY MEMBER OF THIS COMMITTEE IS "ENTITLED" TO BE A SENATOR.

THE BURDEN OF PROOF IS ON YOU, JUDGE SOUTER, THE NOMINEE -- AS IT IS ON US, WHEN WE SEEK ELECTION AS SENATORS. WE HOLD OUR POSTS ONLY IF A MAJORITY OF THE ELECTORATE DEEMS US THE RIGHT PERSONS FOR THE JOB, GIVEN THE PARTICULAR TIME AND CIRCUMSTANCES FACING THE COUNTRY. AND A SUPREME COURT JUSTICE CAN ASSUME HIS POST ONLY IF THE SENATE IS PERSUADED THAT THE NOMINEE IS THE RIGHT PERSON FOR THAT POSITION, AT THAT PARTICULAR JUNCTION IN HISTORY.

THE POWER IS AWESOME, THE DUTY IS PROFOUND, THE OBLIGATION IS YOURS, THE RESPONSIBILITY IS OURS.

NO ONE KNOWS, JUDGE SOUTER, WHAT QUESTIONS THE SUPREME COURT

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WILL HAVE TO RESOLVE IN THE YEAR 2024 -- THE YEAR UNTIL WHICH YOU WILL SERVE ON THE COURT SHOULD YOU BE CONFIRMED AND SERVE AS LONG AS YOUR PREDECESSOR DID.

OF ONE THING, THOUGH, WE CAN BE SURE.

IF HISTORY IS ANY GUIDE, TOMORROW'S ISSUES -- WHATEVER FORM THEY TAKE -- WILL PIT GOVERNMENTAL POWER AGAINST INDIVIDUAL LIBERTY; MAJORITY TYRANNY AGAINST PERSONAL RIGHTS; THE DANGER OF DISCRIMINATION AGAINST THE DREAM OF EQUALITY FOR ALL AMERICANS.

FOR 200 YEARS, THE SUPREME COURT HAS SERVED AS THE COURT OF LAST RESORT IN SUCH STRUGGLES -- THE FINAL GUARDIAN OF OUR FUNDAMENTAL RIGHTS.

SO IT WAS FOR OUR PARENTS AND GRANDPARENTS; AND SO I HOPE IT WILL BE FOR OUR CHILDREN AND GRANDCHILDREN IN THE 21ST CENTURY.

IF CONFIRMED, YOU, JUDGE SOUTER -- MORE THAN ANY OTHER PERSON IN THIS ROOM -- WILL DECIDE WHAT THE CONSTITUTION MEANS FOR OUR NEXT GENERATION. TO CONSENT TO YOUR NOMINATION, WE MUST HAVE CONSIDERABLE GUIDANCE AS TO WHAT KIND OF SUPREME COURT -- WHAT VISION OF THE CONSTITUTION -- YOU WILL PROVIDE FOR THEM.

FOR THE NEXT FEW DAYS, JUDGE SOUTER, OPEN FOR US A WINDOW INTO YOUR MIND.

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