



**GRAND LODGE
FRATERNAL ORDER OF POLICE**

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TESTIMONY OF
DEWEY R. STOKES
NATIONAL PRESIDENT
FRATERNAL ORDER OF POLICE
ON
NOMINATION OF
JUDGE DAVID H. SOUTER
TO
UNITED STATES SUPREME COURT
BEFORE THE
SENATE COMMITTEE ON THE JUDICIARY
SEPTEMBER 18, 1990



MR. CHAIRMAN, MEMBERS OF THE SENATE JUDICIARY, IT IS INDEED AN HONOR AND A PRIVILEGE TO TESTIFY BEFORE YOU TODAY ON WHAT IS PERHAPS THE SINGLE MOST IMPORTANT SUBJECT THIS DISTINGUISHED PANEL WILL HAVE CONSIDERED DURING THIS SESSION OF CONGRESS -- THE NOMINATION OF JUDGE DAVID H. SOUTER BY PRESIDENT BUSH TO THE SUPREME COURT OF THE UNITED STATES.

MY NAME IS DEWEY STOKES. I AM THE NATIONAL PRESIDENT OF THE FRATERNAL ORDER OF POLICE (FOP), THE LARGEST ORGANIZATION OF LAW ENFORCEMENT PROFESSIONALS IN THE UNITED STATES AND REPRESENTING OVER 216,000 POLICE OFFICERS IN SOME FORTY-EIGHT STATES. THE FOP REPRESENTS "THE COP ON THE STREET" -- THE POLICE OFFICER MOST LIKELY TO BE THE FIRST LINE OF DEFENSE BETWEEN THE CRIMINAL ELEMENT AND SOCIETY AT LARGE.

THE NATURE AND BACKGROUND OF THOSE THAT I HAVE BEEN ELECTED TO REPRESENT CONFERS UPON ME A SPECIAL OBLIGATION WHENEVER I APPEAR BEFORE OUR ELECTED REPRESENTATIVES -- AND I HAVE TESTIFIED BEFORE THIS COMMITTEE ON A VARIETY OF LEGISLATIVE TOPICS. BUT PERHAPS, IN APPEARING TODAY TO SPEAK ON THE NOMINATION OF AN INDIVIDUAL TO THE HIGHEST COURT IN THIS GREAT COUNTRY, MY RESPONSIBILITY TO POLICE EVERYWHERE HAS NEVER BEEN GREATER.

MR. CHAIRMAN, YOU AND YOUR COLLEAGUES HAVE HEARD A VARIETY OF WITNESSES, ALL OF THEM EXPERTS IN ONE FIELD OR ANOTHER. SOME ARE LAWYERS RECOGNIZED FOR THEIR PROFESSIONAL ACHIEVEMENTS AND OTHERS ARE SCHOLARS IN CONSTITUTIONAL LAW. STILL OTHERS ARE REPRESENTATIVES OF CERTAIN ORGANIZATIONS, LIKE THE FOP, WITH A LEGITIMATE INTEREST IN THE WORKINGS OF THE SUPREME COURT. BUT VERY FEW OF THE WITNESSES APPEARING BEFORE YOU ON THIS SUBJECT WILL FEEL THE DAILY AND DIRECT IMPACT OF THE DECISIONS OF A JUSTICE SOUTER AS WILL THE MEMBERS OF MY ORGANIZATION, THE TYPICAL POLICE OFFICER CHARGED WITH THE AWESOME

RESPONSIBILITY OF ENFORCING THE LAWS OF THIS NATION -- ESPECIALLY AS INTERPRETED BY OUR COURTS. LAWYERS AND SCHOLARS MAY DEBATE THE FINE POINTS OF THE LAW, MR. CHAIRMAN, BUT POLICE OFFICERS PLACE THEIR LIVES ON THE LINE EACH DAY CARRYING THEM OUT.

WITH MY PERSPECTIVE VIEWED IN SUCH A CLEAR CONTEXT, LET ME FORMALLY STATE FOR THE RECORD THAT THE NATIONAL FRATERNAL ORDER OF POLICE IS PROUD TO ENDORSE THE NOMINATION OF JUDGE DAVID H. SOUTER FOR THE U.S. SUPREME COURT.

KNOWING THAT THE TIME OF THE COMMITTEE IS A VALUABLE COMMODITY, MR. CHAIRMAN, I WILL NOT ATTEMPT TO ENGAGE EITHER YOU OR YOUR COLLEAGUES IN A SCHOLARLY DISCUSSION OF THE LEGAL SUBTLETIES OF JUDGE SOUTER'S PREVIOUSLY AUTHORED OPINIONS OR ON ARCAINE POINTS OF CONSTITUTIONAL LAW -- I WILL LEAVE THAT TASK TO THE LAWYERS AND THE LAW PROFESSORS. I WILL, HOWEVER, TRY TO TELL YOU IN SIMPLE TERMS WHY THE FOP BELIEVES VERY STRONGLY THAT JUDGE SOUTER'S NOMINATION TO THE HIGH COURT WOULD BENEFIT THE LAW ENFORCEMENT COMMUNITY AS WELL AS THE COUNTRY AS A WHOLE.

I, ALONG WITH THE FOP'S EXECUTIVE COMMITTEE AND OUR GENERAL COUNSEL, HAVE HAD THE OPPORTUNITY TO REVIEW A NUMBER OF THE OVER TWO-HUNDRED OPINIONS WHICH JUDGE SOUTER AUTHORED DURING HIS SEVEN YEARS ON THE NEW HAMPSHIRE SUPREME COURT DEALING WITH ISSUES IMPORTANT TO THE POLICE COMMUNITY. WHETHER THE SUBJECT AT ISSUE INVOLVED CRIMINAL PROCEDURE AND DUE PROCESS, "MIRANDA" WARNINGS, SEARCH AND SEIZURE OR SENTENCING, I WAS REPEATEDLY IMPRESSED WITH THE STRIKING CLARITY OF HIS REASONING AND HIS DEDICATION TO APPLYING A GIVEN RULE OF LAW IN A COMMON SENSE MANNER TO THE CASE AT HAND. IN DOING SO, I BELIEVE THAT JUDGE SOUTER POSSESSES THE UNIQUE ABILITY TO POSIT A QUESTION OF LAW IN TERMS OF THE PRINCIPLE PURPOSE OF A GIVEN STATUTE VERSUS IT'S SPECIFIC INTENT. IN THIS WAY, JUDGE SOUTER HAS DEMONSTRATED AN APPRECIATION FOR THE APPLICATION OF BLACK LETTER LAW TO FACT

PATTERNS AND SITUATIONS FACED DAILY BY POLICE IN THE COURSE OF DISCHARGING THEIR SWORN DUTIES THAT DO NOT ALWAYS LEND THEMSELVES TO TIDY, LEGALISTIC CONCLUSIONS.

THE POP IS SUPPORTIVE OF JUDGE SOUTER NOT JUST BECAUSE OF HIS WORK ON THE BENCH, BUT ALSO BECAUSE OF HIS IMPRESSIVE TRACK RECORD WHILE IN THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF NEW HAMPSHIRE. DURING HIS RISE THROUGH THE RANKS FROM AN ASSISTANT ATTORNEY GENERAL IN THE CRIMINAL DIVISION TO DEPUTY AND FINALLY TO ATTORNEY GENERAL, JUDGE SOUTER CONSISTENTLY DEMONSTRATED AN APPRECIATION FOR THOSE OF US SERVING ON THE FRONT LINES OF THE WAR ON CRIME.

JUST AS IMPORTANT AS ANY ONE SPECIFIC OPINION AUTHORED BY THE NOMINEE IS, HOWEVER, THE SUGGESTION OF A COMMON THREAD WOVEN THROUGHOUT THE FABRIC OF JUDGE SOUTER'S LEGAL WRITINGS. I BELIEVE THAT COMMON THREAD OR THEME TO BE A STRONG DEVOTION TO THE INTEGRITY AND INDEPENDENCE OF THE JUDICIAL BRANCH OF GOVERNMENT AND THE VITAL ROLE THAT IT MUST PLAY IN OUR FORM OF GOVERNMENT. THE VERY VALIDITY OF OUR JUDICIAL BRANCH OF GOVERNMENT RESTS UPON THE CORNERSTONE OF A FUNDAMENTAL COMMITMENT TO ESTABLISHED RULES OF LAW COMPLETELY DIVORCED OF ALL POLITICAL OR PERSONAL DYNAMICS. WHAT MY FELLOW POLICE OFFICERS WANT IN A JUDGE -- ANY JUDGE -- IS A CONSISTENT, IMPARTIAL, CONCISE AND FAIR ADJUDICATION OF FACT AND LAW THAT HELPS US DO OUR JOB IN A PROFESSIONAL AS WELL AS EFFICIENT MANNER. IN THIS REGARD, I STRONGLY BELIEVE THAT THERE IS NO QUESTION BUT THAT JUDGE SOUTER EMBODIES THOSE QUALITIES.

I CANNOT HELP BUT TO BE DISMAYED BY CERTAIN ELEMENTS, ACROSS THE IDEOLOGICAL SPECTRUM, AT WORK HERE TODAY WHO SEEK TO ELICIT THE "RIGHT" OR "CORRECT" ANSWERS FROM THE NOMINEE ON A VARIETY OF CONSTITUTIONAL LAW SUBJECTS PRIOR TO THE RENDERING OF AN ENDORSEMENT. THE 1988 DEMOCRATIC NOMINEE FOR PRESIDENT WAS

FOND OF FRAMING THE CENTRAL ISSUE OF THAT ELECTION AS BEING "NOT OF IDEOLOGY, BUT OF COMPETENCE." LEAVING ASIDE THE VALIDITY OF THAT OBSERVATION IN THAT PARTICULAR CONTEXT, I WONDER WHETHER THAT STATEMENT MIGHT BE MORE TOPICAL TO TODAY'S PROCEEDINGS INSTEAD.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I URGE YOU TO VOTE FOR JUDGE SOUTER AND TO MOVE HIS NOMINATION TO THE U.S. SUPREME COURT FORWARD IN AN EXPEDITIOUS FASHION.

I THANK YOU FOR THE OPPORTUNITY TO TESTIFY AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS AT THIS TIME.