

September 18, 1990 Chicago Tribune p. 15

Reflections on the human quality of David Souter

By R. Eden Martin

What kind of person is Judge David Hackett Souter, the president's nominee for the Supreme Court? Because he is not a well-known public figure, reporters have scrambled the past several weeks to find people who knew him and could help answer that question. In so scrambling, they discovered many students in the judge's law school class who do not remember him.

Souter and I were proctors and freshman advisors together at Harvard College for two years, from 1964-66. Our job was to live in the freshman residence halls with the freshmen, provide personal and academic counseling, and make sure that college rules were followed. For these services, we received our room and board, which was a significant part of our law school expenses.

Souter was then in his second and third years at Harvard Law School and I was in my first and second. We lived in adjacent entries in Straus Hall, a freshman residence hall at the corner of Harvard Yard, next to Harvard Square. Because proctoring was time consuming, and also because we lived and ate our meals in the Yard rather than at the law school, many law student proctors did not become parochial well known to their law school classmates.

The news articles about Judge Souter have been generally accurate except for a tendency to paint him as somewhat bookish and antisocial. That picture could not be more inaccurate. It is true, as widely reported, that Judge Souter has a first-rate mind—and that in addition to law, he is widely read in history, literature and philosophy.

But it is not true that at Harvard he let his legal studies or his intellect interfere with his social life. Souter loved a good party, and dated a number of intelligent and attractive women. Also, no one was madder at the end of the day to put aside the books, light a fire, uncork a bottle of Scotch (usually cheap), and launch a conversation on virtually any subject. No one in the Yard was a better talker and no one had more interesting things to say.

To a Midwesterner, Harvard University then seemed disproportionately populated by students from wealthy Eastern families and prep school backgrounds. Despite his New England origins, his fine educational background—Harvard College and Magdalen College, Oxford—and his easy entry to the more rarefied social circles, David Souter did not tie himself to any narrow social group. His family was far from wealthy, and he had attended a small public high school rather than a prep school.

As a proctor, he had a natural ability to sense when



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his freshman advisees had problems and a relaxed way of making them comfortable and offering advice. According to one of the deans who supervised our part of the Yard and knew him well, Souter showed "compassion and understanding" in dealing with the freshmen who lived in his entry. An Episcopalian, his closest personal friends among the lawyer-proctor group included a Catholic Irishman from Cleveland, a Jewish student from New York, and a small-town Midwesterner from downstate Illinois.

Some reporters have wondered why he did not graduate at the very top of his law school class. It is an interesting question. Personally, I do not doubt that he could have. He was at the top of his class in college and won the Rhodes Scholarship. No one who knows him doubts his unusual intellectual gifts.

I think the answer lies in large part in his values. The law school was full of smart people competing to get the best grades in order to qualify for clerkships or positions with top firms and companies. In this competitively-charged environment, David Souter was less competitive about grade competition than anyone I knew. He had already proved himself academically—first at the college and then at Oxford. Also, he had no interest in working on Wall Street or LaSalle Street.

I remember him saying several times, only half in jest, that he intended to go back home, practice law and raise pigs. Money may not have been totally

irrelevant, but it ranked pretty low on his personal priority list. Besides, being a grind would have interfered with his social life. So Souter studied what he enjoyed, did very well when he worked at it, and somehow managed to do well enough even when he was not fully engaged by the subject.

If confirmed, David Souter will obviously not bring an empty mind to the Supreme Court, but it will also not be a closed one. Like Justice Holmes, another Harvard Yankee and one of Souter's intellectual heroes, he is a judge capable of growth and change. He is not "political" in any ideological or partisan sense of the word, and his mind and personality are too rich and complex to be assigned to a particular place on the traditional political spectrum.

Predicting how he will decide particular cases is also a risky business. However, one may safely predict that he will respect the Holmesian tradition of the limited role of courts in a democratic system of government, and that, consistent with this tradition, he will fully support and give effect to the fundamental freedoms of speech, belief and expression, and the protections of due process and equal protection embodied in the Constitution.

One might even venture to predict that, like Justice Holmes, he will from time to time surprise the president who nominated him to serve on our highest court.

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