

did not give you the whole quote. The remainder of the quote was, "I believe nominees should be required to answer all questions, except for those questions that would necessitate an opinion as it applies to a specific set of facts that is likely to come before the Court for decision." I will be happy to give your staff the rest of the quote, when we go on.

Senator SIMPSON. We will put it in the record.

The CHAIRMAN. I now yield to my colleague from Arizona.

#### **OPENING STATEMENT OF SENATOR DENNIS DeCONCINI**

Senator DeCONCINI. Thank you, Mr. Chairman.

Judge Souter, another welcome. You will have many and, I suspect, after several days you may wonder what kind of a welcome the Senate might give you. You are going to have some difficult days in the sense of being asked a lot of questions.

A lot of information about your life has already come out, I am sure some of which you would rather not come out, not that there is anything embarrassing that I have seen, but we all have our private lives, those of us that choose some public service, as you have, realize that it is part of the price we pay.

I do not like it all the time and I have had accusations and things written about me I would rather not have been written, but I realize that it is part of the process and I suspect that you do, too. The process demands that we go through exactly what we are doing today and exactly what the Senator from Wyoming said has been happening over the last 5 to 6 weeks.

Yes, people are scratching, people are interested in knowing about you, because President Bush has nominated you to the position of extraordinary importance in our country. Whether one believes the framers intended it or not, no one can deny the immense power that Supreme Court Justices wield through their opinions. Decisions by the Supreme Court affect the lives of each and every one of us every day.

Whether you label them conservatives or liberals or tag them as activists or constructionists, Supreme Court Justices are unquestionably active participants in the national policymaking. Once the President appoints and the Senate confirms, a Supreme Court nominee never has to look back. There are no strings attached, if you are confirmed here. He or she has been set free to interpret that great document our Founding Fathers signed over 200 years ago. Each Justice defines the great ideas of freedom, liberty, and equality embodied in that Constitution.

For these reasons, the constitutional responsibility of advice and consent conferred on the Senate is crucial to our system of government and laws. I am sure that no one on this committee or in this body takes his or her role in this process lightly.

In nominating Judge Souter to the Supreme Court, I believe President Bush has chosen an individual with a keen intellect and solid judicial background. His colleagues speak of his dedication. Lawyers who appeared before him praise his hard work. The American Bar Association has found that Judge Souter meets their highest standards of professional competence, judicial temperament, and professional integrity, as well.

You have two sponsors, and one of them, Senator Humphrey, sits on this committee. Senator Humphrey has been an active and well-respected member of this committee since 1987. Senator Rudman, his colleague and your close friend, is well respected and liked by members of this committee and the entire Senate. That goes a long way, I believe, because it is important as to who put you forward, as well as the President in the White House.

I was left with some very positive impressions, Judge Souter, after our office visit over a month ago. I found you to be thoughtful and a sensitive person. Since that time, I have had a chance to read a number of your court opinions. These opinions lead me to believe that you have an open mind and that you will be an open-minded jurist.

Judge Souter's opinions, in my judgment, are thoughtful and well written. Though I did not agree with every one, that is not why I was reading them. His unique approach to an issue, in certain cases, reflects great thought on the case before he wrote out his particular opinion, at least that is my observation. I saw no evidence of any tendency toward carrying out a personal agenda.

But as important as these attributes are to your confirmation, we still know very little about you. From all indications, it appears that President Bush did not apply a litmus test in choosing you for the Supreme Court. This Senator never has and never intends to apply such a test. I will not keep a scorecard on the number of areas upon which I may agree or disagree.

Instead, I hope to find through these hearings that Judge Souter is indeed an advocate of judicial restraint and not a judicial activist. I hope to find a jurist who is respectful of precedent, rather than a jurist who is on a mission to impose his personal beliefs or hidden agenda on the country through the broad, sweeping opinions that he may write.

In the past, some Supreme Court nominees who have come before this committee have been evasive in answering valid and what I believed necessary questions posed to them by myself and my colleagues. I find that practice to be disturbing. Neither this Senator, nor do I believe any other Senator on this panel, is looking for a nominee to pledge how he or she will vote on specific cases that may come before the Court.

We all understand and agree with the need to protect the interests of future litigants who will appear before you. However, it is essential that the committee ask and that you, Judge Souter, provide some answers to questions regarding your judicial philosophy, your views on constitutional interpretation. To settle for less would be a great disservice to this body and to this country.

As I do with all judicial nominees, I presume the President's nominees should be confirmed and that they are qualified and competent. In my 14 years in the Senate, I have only voted against three judicial appointments. I have in the past voted for conservative judges, as well as liberal judges, including recommending William Canby and Mary Schroeder for the ninth circuit, who did not agree with me on some particularly sensitive issues. But I knew them and I knew their competence and capabilities.

Unfortunately, in a practice that is becoming all too common, interest groups are attempting to turn a Supreme Court nomination

hearing into a referendum on *Roe v. Wade*. Those who view these procedures as just a question of how a nominee will vote on one case, in my judgment make a mockery of this process.

If confirmed, Judge Souter, you will serve on the Court long into the future, as it has been pointed out. Like any other Justice, you will face countless opportunities to cast a deciding vote on issues that can shape our society for decades. It is a nominee's ability to interpret the Constitution for these as yet unforeseen issues that we must evaluate in this process starting today. Thus, Judge Souter, your opinion on a particular case is not as important as your approach to judging and your understanding of the Constitution.

Will you be able to separate your personal beliefs from your judicial duties and your constitutional oath? Will you respect the traditions of precedents of the Court? Will you wield your judicial power with restraint and respect for the two other branches of government? Will you acknowledge that the Constitution should not only protect the haves, but also the have-nots?

I hope to be satisfied with the answers to these questions as we conclude these hearings. I am most favorably impressed with what I know about you and have read about you. I hope and, quite frankly, expect, Judge Souter, that you will be forthcoming and candid in answering my questions and those of my colleagues. I also hope that after a thorough examination, the committee and the Senate and this Senator will be able to vote for you. It certainly appears today that that is where we are headed, and I am pleased that that is how the process is moving.

In closing, I join my colleagues once again in extending a warm welcome to you. From what I know of you, it appears that you are qualified, that you have the education, that there is no question of your intellectual capacity. And the American people now will have an opportunity through this democratic process, second to none, equaled no place that I know of, to get a glimpse at perhaps the new Justice of the Supreme Court. I hope, Judge Souter, whatever the questions are, as uncomfortable as they might be, that they are taken in the spirit of this committee and certainly this Senator as trying to understand you and fulfill our constitutional responsibility.

Thank you, Mr. Chairman. Thank you, Judge.

The CHAIRMAN. Thank you, Senator.

The Senator from Iowa, Senator Grassley.

#### **OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY**

Senator GRASSLEY. Thank you, Mr. Chairman.

More than 200 years ago, Alexander Hamilton, the architect of much of what became the judiciary article of the U.S. Constitution, wrote, and I quote, "the complete independence of the Courts of justice is \* \* \* essential" in a Republic governed by a "limited Constitution."

Hamilton reasoned that the courts, the weakest of the three branches, must declare the "sense" of the law made by the other two branches, but if they should be disposed to exercise "will" instead of "judgment," the consequence would be the substitution of