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Despite 11th-Hour Leftist Protests

Senate Likely to Approve Souter Nomination to High Court

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As the Senate Judiciary Committee last week began hearings on the nomination of Judge David Souter to the Supreme Court, the betting in Washington was that he will be confirmed with votes to spare, despite a last-minute campaign blitz against him by leftist groups.

While the Senate easily defeated the 1987 High Court nomination of conservative Judge Robert Bork after he was rejected by the Judiciary panel by a 9-to-5 margin, Administration sources are confident that Souter will have a much easier time of it.

Unlike Bork, who brought to the confirmation process an extensive "paper trail" of published writings on virtually every constitutional question that was likely to arise at the federal level, Souter's record on such issues is virtually nonexistent, despite his having written more than 200 judicial opinions for the state courts of New Hampshire.

Bork also brought other baggage with him that Souter doesn't have, such as Bork's firing, while serving as solicitor general in 1973, of Special Watergate Prosecutor Archibald Cox—the so-called "Saturday Night Massacre."

Also in Souter's favor is the unanimous decision of the American Bar Association's judicial selection evaluating committee to give him its highest rating for "integrity, professional competence, and judicial temperament." By contrast, Bork, though a former professor at Yale Law School who was renowned for his brilliance as a legal scholar, took a major hit when liberal members of the ABA panel dissented from the majority's decision to accord him its highest rating.

There are other striking differences. While Bork went into his hearings with a sizable contingent of Democratic senators publicly on record against him, not one senator had come out against Souter prior to last week's hearings. Moreover, the black civil rights establishment, which was in the forefront of the anti-Bork forces, has shown none of the same fervor against Souter, at least so far. And his initial appearance before his inquisitors, furthermore, clearly bolstered his chances.

Given Souter's strengths, some in the Administration believe there is a good



BIDEN



SOUTER

chance that he will sail through the Senate with minimal opposition, as Justice Anthony Kennedy did when he was nominated in 1987 in the wake of Bork's defeat.

When the hearings opened last week, Judiciary Chairman Joseph Biden (D.-Del.), along with such liberal allies as Ted Kennedy (D.-Mass.) and Howard Metzenbaum (D.-Ohio), tried to get Souter to express controversial opinions on politically sensitive issues like abortion. Souter, however, coolly countered this tactic by expressing a balanced and reasonable approach to judicial philosophy while refusing to be pinned down about how he might vote in any specific case.

That strategy worked well for Justice Kennedy when he was up for confirmation, and the White House and most conservative observers thought it was working equally well for Souter.

The "worst-case scenario, which no one expects to happen," a Justice Department source told HUMAN

EVENTS last week, "would be if Souter at some point screws up and says, 'Well, I think *Roe v. Wade* was incorrectly decided,' or 'I'd have to wait and see the case in front of me, but I might vote to overturn it,' in which case we'd have a battle royal but even so he'd get out of the Judiciary Committee 8 to 6."

The reason, he said, is that at least three senators who opposed Bork — Republican Arlen Specter (Pa.) and Democrats Howell Heflin (Ala.) and Dennis DeConcini (Ariz.) — would be likely to stay with the five other committee Republicans in supporting Souter, even in such an extreme case. Souter, furthermore, hadn't come close to making such a tactical mistake.

"Eight to six is the worst-case scenario on this," the source said, "because Specter is not going to jump ship or it would end his political career. Heflin in an election year is also not go-

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COLUMBUS

The NCC Assaults Western Civilization See page 12

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to the FSLN unions, Chamorro not only damaged her government's financial position, but, more importantly, she provided an incentive for the Sandinistas to strike again. This will exacerbate the country's instability and could scare away direly needed foreign investment.

Some Americans, such as Jim Woodall, Latin America specialist for Concerned Women for America, say that Chamorro is doing the right thing by moving slowly and compromising with her Sandinista foes.

"Sure, I can throw stones at some of her decisions, but I'm looking at the broad picture and I'm satisfied," said Woodall, who has visited Nicaragua twice since the election.

"The people know the Sandinistas have one goal in mind—to enrich themselves," he said. "They proved that by sacking the country after the election. In the eyes of the people, they're finished."

Woodall added that Chamorro is restricted by the lack of qualified people to appoint to replace Sandinistas in government.

But Godoy says Chamorro's endless compromising has slowed the process of reform—and hence economic recovery—in Nicaragua precisely because she has failed to clear out inefficient Sandinista bureaucrats from state businesses.

"There should have been changes in the more than 400 state enterprises that continue to be governed, directed and controlled mostly by people who obey the FSLN and not the government's policy," he said in the August 13 interview.

More ominous, according to Godoy, are statements by senior Chamorro government officials denigrating him and saying that the army stands as a kind of "insurance" against his aspirations for power. If such statements are true, it would certainly be ironic that some in Chamorro's government feel more kinship with the Sandinista army than a conservative leader who helped the ruling coalition come to power. (The FSLN media have conducted a crude propaganda campaign against Godoy.)

One comment that illustrates the rift in the government's ranks was made June 23 by Alfredo Cesar, a key Chamorro adviser and member of the Legislative Assembly.

Describing how the new administration hopes only to correct the abuses of the Sandinista revolution, Cesar referred to Godoy when he said the new government "does not intend to work against the revolution's gains, and it does not aspire to introduce 'drastic changes,' as a revengeful sector in [UNO], which won the elections, wishes."

Godoy said Chamorro and her circle of advisers made a critical mistake when they "took reconciliation to mean tolerating the actions of the FSLN. The people thought that this program meant shaking hands with one's enemies and withdrawing support from those who elected the government...."

"Sandinism is now convinced that it can shake up the government at any time, and the government is simply forced to forgive, forget and tolerate and seek reconciliation with those who are openly attacking [it]."

ing to jump ship, and DeConcini is not going to do it on an abortion vote."

"For Souter to do worse than that," the source said, "he'd have to say he'd overturn *Brown v. Board of Education* [which outlawed segregated schools], and he won't do that."

The "worst-case" prospect for Souter in the full Senate similarly seemed sufficient for confirmation. When Bork was defeated by a 58-to-42 margin, six Republicans voted against him and only two Democrats—David Boren (Okla.) and Fritz Hollings (S.C.)—voted for him.

For Souter, even in the unlikely event that he somehow inflamed the abortion issue, the Justice Department source expected that he "would lose only one Republican, Bob Packwood (Ore.), and maybe not even Packwood."

Meanwhile, the source predicted that Souter would pick up additional Democratic votes from Max Baucus (Mont.), James Exon (Neb.) and Richard Shelby (Ala.), as well as DeConcini and Heflin.

Those votes alone would be sufficient to confirm Souter, and that, the source said, would be the "worst-case" situation. Assuming Souter, as expected, was impressive in his testimony—and that was certainly the case last week—many believed it not inconceivable that the nomination could sail through both the committee and the full Senate with few, if any, dissenting votes from either party.

One major question mark as the hearings began was how DeConcini would vote. Despite the expectation of many that the Arizona lawmaker would support Souter—an expectation that was bolstered by a strong opening statement by DeConcini in which he indicated that he wanted a justice who would interpret the law as it was written, not substitute his own desires—others still considered the Arizona Democrat to be a possible swing vote, who might be subject to pressures from the liberal wing of his party.

If DeConcini were to succumb to such pressure and vote against Souter, that would probably mean the committee would deadlock on the nomination, 7 to 7. And, though a tie vote would not be sufficient to report the nomination favorably, the committee would still be likely to send it to the full Senate, where the odds in favor of confirmation would be good.

Biden Politicizes Souter Nomination

Though Souter went into his confirmation hearings with not one senator publicly announced against him, his supporters could hardly be confident that the judge would be treated fairly by the committee's chairman, Sen. Joe Biden.

Indeed, after Biden's performance on the Bork nomination, it would be hard to make any prediction about the chairman's probable performance except that it would be heavily politicized and designed to keep the Delaware senator and sometime presidential hopeful in the good graces of the feminists, homosexual rights advocates, and other extreme-left elements of the Democratic party.

Biden, after all, is that man, who less than a year before Ronald Reagan nominated Bork to the High Court, told the *Philadelphia Inquirer*:

"Say the Administration sends up Bork, and after our investigation, he looks a lot like another [Associate Justice Antonin] Scalia," whom the Senate had confirmed earlier in 1986.

"I'd have to vote for him," said Biden, "and if the [liberal] groups tear me apart, that's the medicine I'll have to take. I'm not Teddy Kennedy."

But that statement, which appeared in the *Inquirer's* Nov. 16, 1986, edition, was made before Bork was nominated and the leftist pressure groups turned up the heat.

At that point, Biden pulled a switcheroo. Bork was a "brilliant" jurist and an "honorable man," Biden now said, but he was too conservative. Sure, the Constitution says the President has the right to choose whomever he wants to sit on the Supreme Court, Biden allowed. But conversely, he added, "It also indicates that the Senate has equally as much right to insist on ideological purity as the President does."

But that statement, too, was a flip-flop. Back in 1979 when Jimmy Carter, a Democrat, was in the White House, Biden had said that a nominee's ideological views were irrelevant. "I do not think that under the Constitution I have a right to say I will not vote for someone to be on the Supreme Court or secretary of the Treasury because I disagree with the view he holds on a particular issue."

It was about the same time that all of these inconsistent statements were coming to the fore in connection with the Bork nomination that Biden's reputation for veracity received a jolt from another quarter. While campaigning for the Democratic presidential nomination in Iowa, the *New York Times* and other newspapers revealed, Biden had lifted almost verbatim and without credit a long segment of a speech by the British Labor party leader, Neal Kinnock.

Biden not only plagiarized Kinnock's words, the *Times* reported, but he represented personal details from Kinnock's life as though they were his own.

Soon after the Kinnock episode broke, the press discovered that Kinnock was not the only politician to have his words stolen by Biden. Other victims, all deceased at the time, included John and Robert Kennedy and Hubert Humphrey.

When this was followed by a report, admitted by Biden at a Sept. 17, 1987, news conference, that he had been disciplined while a first-year law student for plagiarizing five pages from a published law review article, the Delaware lawmaker was forced to withdraw from the presidential race.

But if there is one thing consistent about Biden, it is that, whatever he says, he is sure to say the opposite sooner or later.

Thus, while preparing to chair the Souter hearings last month, Biden told a C-SPAN audience that he had never plagiarized in law school, though the Dec. 1, 1965, minutes of a meeting of the Syra-

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cuse University law dean and his faculty clearly show otherwise (see HUMAN EVENTS, September 8 issue).

And then, on September 11, just two days before convening the Souter hearings, Biden gave a long speech on the Senate floor that not only contradicted many of his past statements but was laden with internal contradiction.

Far be it from him to "politicize" the Supreme Court nomination process, said Biden. It was the Reagan Administration, he said, with its commitment "to a detailed ideological agenda," that did that. "Remember," said Biden, "it was the Reagan Administration that added a new phrase to our judge-picking vocabulary: 'litmus test.'"

Maybe that's how Biden remembers it. Strange, how he forgets that the Carter Administration issued a long list of specific issues — women's rights, affirmative action, and on and on — that judgeship candidates had to agree with the White House on as the price for being considered.

By contrast, the Reagan Administration consistently maintained a policy of not asking prospective judges their positions on specific political issues, choosing instead to insist only that candidates would interpret the laws in line with precedent and their textual meaning.

Even more strange is how Biden forgets that he saw nothing wrong with the Carter Administration's insistence on appointing only liberal judges, declaring at the time:

"I think that the advise and consent responsibility of the Senate does not permit us to deprive the President of the United States from being able to appoint that person or persons who have a particular point of view unless it can be shown that their temperament does not fit the job, that they are morally incapable or unqualified for the job, or that they have committed crimes of moral turpitude."

As he considers the Souter nomination, Biden sees things in a peculiarly different light. Our history, he now claims, points "to one consistent conclusion: consideration of a nominee's substantive views is a proper part of the Senate's deliberation on Supreme Court nominees."

Souter, he said, "must be specific about... his views" on certain issues "about which the Court is divided," including "the right to reproductive freedom [English translation: abortion]."

And, if the Senate doesn't agree with those views, said Biden, then it has the right to vote Souter down. Far from his past position which held that the Senate owed great deference to a President's choice of a nominee, now Biden likens the Supreme Court nominee to a political candidate, who either tells the voters—in this case the Senate—what they want to hear or faces the prospect of electoral defeat.

"The burden of proof," said Biden, "is on 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 person for the job, given the particular time and circumstances facing the country."

"And a Supreme Court justice can assume his

post only if we in the Senate are persuaded that that nominee is the right person for that position, at that particular time in history."

Taken at face value, Biden's speech did not appear to bode well for Souter. The implication was that he must "run" for the Court as a liberal or have his candidacy rejected.

But, given Biden's record of inconsistency and self-contradiction, it was by no means certain as the hearings began that Biden himself wouldn't cast a "yes" vote for Souter before it was all over.

The Left's Last-Minute Assault on Souter

The chances that Souter's nomination would be defeated looked slim last week, but it was not for a lack of trying by a handful of groups on the fringe left.

While many of the organizations that spearheaded the anti-Bork campaign, including People for the American Way, decided not to take a stand on Souter until after completion of his hearing testimony, pro-abortionists, feminists, homosexual rights activists, and the extreme left National Lawyers Guild revved up a noisy campaign against Souter in the days immediately preceding the start of the hearings.

At a September 11 news conference, National Organization for Women President Molly Yard warned in apocalyptic tones that all American women would lose their freedom if Souter ascended to the court.

"Instead of viewing the U.S. Constitution as a living document, brilliantly designed to grow with a changing society," said Yard, "Souter seeks the 'original intent' of the framers of the 18th Century—a time when all blacks were slaves and women were the property of their husbands."

Noting that Souter was supported by White House Chief of Staff John Sununu, whom she described as "one of the leading right-wing politicians of this country," Yard added:

"Those who would gut abortion rights, deny affirmative action and reject the rights of lesbians and gays, as well as the separation of church and state, have embraced the candidacy of David Souter."

The Fund for a Feminist Majority, headed by former NOW President Eleanor Smeal, announced the creation of a "Stop Souter Hotline," where opponents of Souter could call an "800" phone number and, for \$14, send mailgrams to Senate Judiciary Chairman Biden, Senate Majority Leader George Mitchell (D.-Maine), and to the caller's own senator.

The message on all the mailgrams was to be identical: "save women's lives, protect abortion rights—vote no on Souter."

The Lambda Legal Defense and Education Fund, a homosexual rights group, announced that it was opposing Souter's nomination "because of Judge Souter's participation in the infamous decision of the New Hampshire Supreme Court barring gay and lesbian people from becoming foster or adoptive parents."

The National Lawyers Guild, an organization cited by congressional committees as a Communist



LaROUCHE

front group during the Stalin era, denounced Souter as "a man who stands for irresponsible judiciary—that is, a court that is unwilling to uphold the Constitution when a legislature or prosecutor decides that their agendas are more important than the Bill of Rights."

And the September 18 edition of the *Village Voice*, in an amazing piece of journalism, linked Souter in a headline to Lyndon LaRouche, the extremist third-party presidential candidate who is currently serving a federal prison term for fraud.

The supposed LaRouche connection, however, turns out to be nothing more than the fact that, during the period when Souter was New Hampshire's attorney general, state law enforcement officials met with members of LaRouche's U.S. Labor party to see what they knew about anti-nuclear extremists who were working to block construction of the Seabrook nuclear plant.

The *Voice* article, by James Ledbetter and James Ridgeway, reveals that state law enforcement authorities did not rely exclusively on the U.S. Labor party for their information but received similar information from the Federal Bureau of Investigation.

But that piece of information was presented by the *Voice* as further evidence of the sinister ties maintained by New Hampshire officials. The FBI, the article complains, eavesdropped on Committee in Solidarity with the People of El Salvador (CISPES) in the early 1980s and more recently has spied on Earth First!, the radical environmental group.

Considering that CISPES is an organization set up to support the Communist insurgency against the elected government of El Salvador and that Earth First! is a militant group that uses methods that can injure or possibly kill those who disagree with its goals, the authors' own extremist bias seems abundantly clear.

Such anti-Souter noises from the far left were wholly predictable. More significant is the isolation of the anti-Souter groups, and the belatedness of their efforts.

As the hearings began last week, the implications of this for Souter and his supporters were most encouraging.