SOCIETY OF AMERICAN LAW TEACHERS

c/o Howard A. Glickstein
Touro College
Jacob D. Fuchsberg Law Center
300 Nassau Road
Huntington, New York 11743
(516) 421-2244

September 17, 1990

President
Howard A Glickstein

President-Elect
Sylvia A Law

Past Presidents
Norman Dorsen
Howard Lesnick
David L Chambers
George J Alexander
Wendy W Williams
Rhonda Rivera
Emma Coleman Jordan
Charles R Lawrence, III

Past Vice Presidents
Anthony G Amsterdam
Derrick A Bell, Jr
Gary Bellow
Ralph S Brown, Jr
Thomas Emerson

Board of Governors
Barbara A Babcock
Katharine Bartlett
Mary Becker
Patricia A Cain
Paulette M Caldwell
Charles R Calleros
Martha Chamallas
Richard H Chused
Kimberle W Crenshaw
Clare Dalton
Harlon L Dalton
Drew Days
Richard Delgado
Leslie Espinoza
Linda Greene
Jean C Love
Charles Ogletree
Judith Resnik
Dean Rivkin
Elizabeth Schneider
Marjorie Shultz
Avram Soifer
Elizabeth Spahn
Nadine Taub
Stephanie Wildman
Patricia Williams
Zipporah Wiseman

Treasurer
Stuart J Filler

Editor
Michael M Burns

Historian
Joyce Sakatamacha

SALT Statement on the Confirmation of
David H. Souter

The confirmation of anyone to take the seat of Justice William Brennan is an awesome undertaking. This choice will profoundly affect the quality of justice and life in this nation as well as the capacity of our Supreme Court to merit worldwide attention for its role in protecting human rights. The Board of the Society of American Law Teachers calls upon the Senate Judiciary Committee and the Senate to judge all nominees to the Supreme Court according to whether they have demonstrated a commitment to equal justice and empathy for the experience of discrete and insular minorities. This standard is consistent with the crucial role of the Court as enforcer of the Bill of Rights and protector of the rights of the less advantaged, the different and the dissident.

Serious questions about qualifications of Judge David Souter arise from his record as Attorney General and Judge of the New Hampshire Supreme Court. Significant questions remain unanswered after two days of hearings. The record cries out for an in depth inquiry. Among the issues to be addressed are:

- the principles that underpin his view of the right of privacy beyond the concept of marital privacy;
- his understanding of the complexity of race and gender discrimination;
- his views on discrimination against lesbians and gays;
- issues of separation of church and state;
- questions about the power of Congress to declare war, and;
- the inconsistency of his refusal to discuss anything he defines as touching upon Roe v. Wade , when he has been willing, by contrast, to discuss other legal issues of immediate interest, such as the death penalty, the Powell Commission recommendations and many decisions from last year's Supreme Court term.

Judge Souter's record raises serious questions about his understanding of the poor and the impact of governmental policy on their lives.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

President, Secretary – Arline Mann
Vice President – Steve Plafker
Treasurer – Dee Tagliavia

POSITION PAPER OF THE ASSOCIATION FOR OBJECTIVE LAW ON THE NOMINATION OF DAVID H. SOUTER TO THE SUPREME COURT OF THE UNITED STATES

Throughout this confirmation process, the focus of almost every organization, no matter where on the political or jurisprudential spectrum it falls, has been on the question of what David H. Souter should reveal about his beliefs. Many on the political left have demanded that Judge Souter state his positions on specific issues, such as abortion. Many on the political right disagree, maintaining that at most, Judge Souter may properly be asked his position only on broader topics, such as "privacy" and "judicial activism", they praise Judge Souter as having an "open mind" on specific issues

The position of the Association for Objective Law is different: Judge Souter must be questioned probingly on fundamental issues, but the fundamental issues are not issues on the level of abortion, judicial activism or even privacy. The fundamental and crucial issue is David Souter's view on individual rights. If David Souter is to be confirmed, he must have a view on this issue, and his view must be revealed.

A nominee for Justice of the Supreme Court of the United States should be asked if his vision of individual rights is the one on which the United States is grounded. Under this view, rights arise out of the nature of man; they are not gifts or permissions, and may not be withdrawn for any reason. They are absolute; no invasion of a right may be justified by "balancing" against a so-called "public interest" or "government interest." Indeed, the only proper purpose of government, and of laws, is to protect the rights of individuals. This principle is crystallized in the Declaration of Independence: "To secure these rights, governments are instituted among men. . " For a judge to express and implement these principles is not "judicial activism." In fact, it is unacceptable for a judge to have an "open mind" on such principles. They are not optional.

501 West Glenoaks Boulevard #726 • Glendale, California 91202

39-454—91——38

Statements on narrower, more concrete issues, such as abortion, or the right of privacy, will of course be revealing. But statements on individual rights as such are infinitely more revealing, as the hearings on Robert Bork's nomination made chillingly clear. To the extent that a judge is consistent, his philosophy will determine and make predictable his view on every specific issue coming before the court. Bork believed that there are no rights, only what the political majority writes down as permissions. The "majoritarian" principles Bork espoused are fundamentally opposed to individual rights, and therefore Bork was properly adjudged unfit to serve as a Supreme Court Justice on the basis of his philosophical approach.

What is David Souter's philosophy of individual rights? His supporters appear to believe that confirmation would be doubtful if Judge Souter revealed his views. But for the reasons stated above, a nominee who refuses to state his fundamental principles should be immediately rejected. Moreover, majority and dissenting opinions written by Judge Souter as a state court judge raise many questions. There is more to be seen in these opinions than a passionless, antiseptic, "strict construction" approach or a hard-line tendency towards criminals. The writings suggest an acceptance of the notion that rights may be "balanced," and of the notion that rights may be overridden by "public interests." There is even some suggestion that, like Robert Bork, Judge Souter believes that rights may be voted away by the majority. See, e.g., New Hampshire v. Koppel, 499 A.2d 977, 984-85 (1985); Cole v. Combined Insurance Co. of America, 480 A.2d 178, 180 (1984).

It is terribly important that David Souter state forthrightly and precisely his view of individual rights. The fate of our freedom should not be at the mercy of hidden standards.

* * *

The Association for Objective Law is a national organization formed in 1988. Its members are lawyers, law students and others. Its purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system. TAFOL currently has members in some 30 states and 7 foreign countries.