

Bush's Choice

High Court Nominee Is Conservative but Isn't Seen as an Ideologue

David Souter Hasn't Written Much in Judicial Career On a Key Issue: Abortion

A Solitary Man Fond of Books

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WASHINGTON—President Bush, seeking to defuse a political fight already brewing over his first vacancy on the Supreme Court, struck quickly by choosing a conservative jurist with no paper trail on abortion.

In nominating Judge David H. Souter of New Hampshire, President Bush chose a strict constructionist who he hopes will satisfy conservatives, but a man whose lack of any articulated stand on abortion may make him acceptable to moderates in the party. And by moving within 72 hours of getting an opening, the president short-circuited efforts by activists to campaign for a nominee that took their side on the abortion issue.

Mr. Souter, who will turn 51 during his Senate confirmation hearings this fall, is a former member of the New Hampshire Supreme Court. State courts, however, rarely hear abortion cases. In his current post on the federal bench, as a member of the U.S. First Circuit Court of Appeals in Boston, he has spent exactly one day hearing cases. During his confirmation proceedings for that job—he was eventually approved unanimously—he told the Senate he had given no speeches worthy of reporting.

"He doesn't talk much about abortion, even to his closest friends," says Thomas Rath, a former New Hampshire attorney general.

Mr. Souter doesn't have any reputation for the kind of conservative judicial activism that aroused fierce opposition to President Reagan's nomination of Robert Bork in 1987. "He isn't a politician or an ideologue, and he's not much affected by contemporary political winds at all," says Gregory Smith, another former New Hampshire attorney general.

Even Clesson Blaisdell, the dean of Democrats in the New Hampshire state senate, says, "I can't say anything bad about him." Mr. Blaisdell's words may carry some extra weight in Washington: He co-chaired the 1988 New Hampshire presidential campaign of Delaware Democrat Joseph Biden, the chairman of the Senate Judiciary Committee, which will decide on Judge Souter's nomination. Mr. Blaisdell is offering to speak to Sen. Biden on the judge's behalf.

"He'll interpret the law," Mr. Blaisdell says of Judge Souter. "He won't be there representing one side or the other."

In one of Judge Souter's few actions regarding abortion, he joined with a majority on the New Hampshire Supreme Court in 1986 ruling that a woman who gave birth to a seriously deformed child could sue her doctors because she wasn't adequately informed of abortion as an option in her case. That decision may give pause to anti-abortion activists, who generally see such "wrongful birth" decisions as promoting abortion. On the other hand, Judge Souter wrote a separate opinion expressing concern that the ruling would require doctors to engage in abortion counseling of their patients, even if they opposed abortion.

According to some of his friends, Mr. Souter's selection follows a behind-the-scenes campaign waged on his behalf by a group of New Hampshire Republican politicians led by Sen. Warren Rudman and former Gov. John Sununu, now White House chief of staff. They have been promoting Mr. Souter for the Supreme Court ever since the Bork nomination failed. "It's like having your younger brother put on the court," Mr. Rudman said last night. Mr. Sununu officially recused himself from the choice of a successor to the liberal and activist Justice William Brennan.

Paul McEachern, a Democrat who became an avowed Sununu adversary in losing two gubernatorial campaigns to him, yesterday termed the Souter nomination an eminent one. "He's perfect politically," he said. "He defuses a huge problem for Bush because he has found a man with views that aren't really on one side or the other. They're not going to pin him down on abortion."

"If they wanted somebody who wasn't controversial, he would be the ideal choice," added Rep. Chuck Douglas, a New Hampshire Republican.

By many accounts, Judge Souter is a solitary man who loves his books. Never married, listed in *Who's Who* as an Episcopalian, he lives in Weare, N.H.—population approximately 2,000—in an old farmhouse distinguished by a living room "so cluttered with books there's a path to where you can sit among the books," says Mr. Rath, the former state official. He is a 1966 Harvard Law School graduate and Rhodes Scholar who drives a dilapidated car. He hikes in the White Mountains and has conquered all the 4,000-footers in the area.

Though ambiguous on abortion, Mr. Souter's views on a variety of other issues are decidedly conservative. On the New Hampshire Supreme Court he wrote numerous decisions in criminal cases, generally taking a tough stance and recognizing society's interests in being protected.

In 1985, for instance, the New Hampshire court ruled that the state constitution barred police from setting up roadblocks to catch drunken drivers. Judge Souter was the only dissenter, saying the technique

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