

bit of order being restored to the caucus room, when it occurs that you leave, to the American Bar Association which has been traditional under Democratic and Republican leadership in the Senate. They are the first public witnesses we hear from.

Then we will hear from a panel of legal scholars who support your nomination, and we will see how far along we are this evening. But, again, it is my intention to finish the public witnesses by Friday. So I want everyone to know that.

Again, thank you all. Thank you and your family for your cooperation. We will recess for 5 minutes.

[Recess.]

The CHAIRMAN. The hearing will resume.

Our first panel is a panel of distinguished members of the American Bar Association, and I would like to welcome them all: Mr. Ronald Olson, Mr. Best, and Mr. Watkins, all of whom are here to do as the ABA has done in the past, I don't know for how many years, give us their best judgment as to the qualification of the nominee, as they have with all nominees, to the Supreme Court.

Mr. Olson, I understand you are speaking for the committee, and I would ask you to keep your statement to 10 minutes or less, and then the panel of Senators will have questions for you all.

Again, welcome and thank you for being here.

**STATEMENT OF RONALD L. OLSON, CHAIR, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY JUDAH BEST, DISTRICT OF COLUMBIA CIRCUIT REPRESENTATIVE, AND ROBERT P. WATKINS, FEDERAL CIRCUIT REPRESENTATIVE**

Mr. OLSON. Thank you, Mr. Chairman, Senator Thurmond, honorable members of the Judiciary Committee; I will meet that 10 minutes.

I would first like to elaborate a little bit on our introduction. My name is Ron Olson. I am a practicing lawyer in Los Angeles, CA, and since August of this year, I have been the chairman of the ABA's standing committee on the Federal judiciary.

I am accompanied today by two of my colleagues: Mr. Judah Best on my left, and Mr. Robert Watkins on my right. Both are practicing lawyers here in Washington, DC. Because of their location, they were the primary investigators on behalf of the committee insofar as the investigation of the Honorable Clarence Thomas is concerned.

The three of us are here in a representative capacity on behalf of the American Bar Association committee, and further our committee on behalf of the legal profession as a whole. I would like to say, Senator, at the outset that it is a high honor to be here and be able to participate in this proceeding, and we would like to express our appreciation for the work of this committee, not only with regard to this very important nomination, but every nomination to every Federal court in the land.

Second, I would like to say that it has been a distinct privilege for all of us on this committee to revisit the professional credentials of the Honorable Clarence Thomas. With regard to our investigation, we were requested by the Attorney General of the United

States to commence an investigation of Judge Thomas' integrity, temperament, and professional competence. We did that, beginning July 3, and we carried it through until August 19.

That investigation consisted of over 1,000 interviews. We talked to some 400 different judges, over 300 practicing lawyers, and over 150 academics.

Our investigation included careful examination of colleagues with whom Judge Thomas associated at each stage of his career, from the attorney general's office in Missouri right up to his present position. We especially concentrated on the work that he has performed as a U.S. Court of Appeals judge for the District of Columbia. We spoke with his judicial colleagues. We spoke with lawyers who appeared before him. We spoke with academicians who reviewed his opinions.

The three reading committees that we have identified in our submission to this committee were especially helpful to us, and I want to pay particular respect to their work and express appreciation on behalf of the committee.

At all turns, Mr. Chairman, we focused on three criteria: Integrity, temperament, and professional competence. In conclusion, a substantial majority of the committee is of the view that Judge Thomas is qualified for appointment to the U.S. Supreme Court. The substantial majority concluded that Judge Thomas' integrity is above reproach, his temperament outstanding, and that he has demonstrated professional competence sufficient to meet the committee's qualified standard.

A minority of two on our committee concluded that Judge Thomas does not have the depth or the breadth of professional experience and competence necessary for appointment to the Supreme Court. There was one recusal.

Our rationale, Mr. Chairman, is set forth in a written statement that we have submitted to the committee. I would respectfully request at this time that that written statement be received by the committee as part of the written record of this proceeding.

The CHAIRMAN. It will be placed in the record without objection. Mr. OLSON. Thank you very much.

[The prepared statement of Mr. Olson follows:]



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September 14, 1991

The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D. C. 20510-6275

Re: The Honorable Clarence Thomas

Dear Mr. Chairman:

This letter is submitted in response to the invitation from the Senate Committee on the Judiciary to the Standing Committee on Federal Judiciary of the American Bar Association (the "Committee") to present its report regarding the nomination of the Honorable Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

The Committee's evaluation of Clarence Thomas is based on its investigation of his professional qualifications, that is, of his integrity, judicial temperament and professional competence.

**THE PROCESS**

The Committee investigation began on July 3, 1991, and ended on August 19, 1991. On two different occasions, Judge Thomas was personally interviewed by members of the Committee.

Committee members interviewed over 1,000 persons throughout the United States, including well over

Honorable Joseph R. Biden, Jr.  
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75 state and over 300 federal judges, 28 federal magistrate judges, and 29 federal bankruptcy judges. The interviews included present and former members of the Supreme Court of the United States, members of federal courts of appeals, members of the federal district courts, members of state courts, including those before whom Judge Thomas appeared as a practicing lawyer, and, in particular, Judge Thomas' colleagues from the United States Court of Appeals for the District of Columbia Circuit.

Committee members questioned approximately 300 practicing lawyers throughout the United States with special emphasis on those who had occasion to appear before Judge Thomas and those who worked with Judge Thomas during his tenure in the Office of the Attorney General of the State of Missouri, his employment in the Office of General Counsel of Monsanto and the office of United States Senator John Danforth, and his service as Assistant Secretary of Education, and later as Chair of the Equal Employment Opportunities Commission.

Committee members additionally inquired of over 150 deans and faculty members of law schools throughout the United States, including some 12 professors at the law school which Judge Thomas attended, as well as constitutional and Supreme Court scholars.

At the request of this committee, all of Judge Thomas' opinions were reviewed by:

1. A Reading Committee chaired by Rex E. Lee, former Solicitor General of the United States and presently President of Brigham Young University;
2. A Reading Committee chaired by Professor Ronald Allen of the Northwestern School of Law in Chicago; and
3. A Reading Committee composed of professors from Duke University School of Law.<sup>1</sup>

- 
1. Members of these three Reading Committees who participated are listed in Exhibit A to this letter.

Honorable Joseph R. Biden, Jr.  
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The results of the reviews of the Reading Committees were independently analyzed and evaluated by each member of the Committee. In addition, each member of the Committee independently selected and read opinions of Judge Thomas. This Committee also had the benefit of a thorough and recent investigation of Judge Thomas for appointment to the United States Court of Appeals for the District of Columbia. The present Supreme Court investigation, while built on the base of the earlier work, was substantially expanded and included further review of Judge Thomas' professional qualifications, including an analysis of his performance while a sitting appellate judge.

While the same factors considered with respect to the lower Federal courts are relevant to an appointment to the Supreme Court of the United States, this Committee's Supreme Court investigations are based upon the premise that the Supreme Court requires a person with exceptional professional qualifications. The significance, range and complexity of the issues considered by the Supreme Court require a person of outstanding ability. Such exceptional ability is further demanded by the Supreme Court's extraordinarily heavy docket.

Because of the foregoing, the ratings employed by the Committee for Supreme Court nominees have higher thresholds. The evaluation of "Qualified" for one of the lower federal courts means that the prospective nominee meets very high standards with respect to integrity, judicial temperament and professional competence and that the Committee believes that the nominee will be able to perform satisfactorily. To meet the committee's "Qualified" rating for the Supreme Court is more demanding. The nominee must have outstanding legal ability and wide experience and meet the highest standards of integrity, judicial temperament and professional competence.

Finally, consistent with the Committee's long-standing policy, the Committee did not undertake any examination or consideration of Judge Thomas' political ideology or his views on any issues that might come before the Supreme Court.

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## EVALUATION

### Integrity

Virtually all comments on Judge Thomas' integrity, character and general reputation were highly favorable. Many people who know Judge Thomas remarked, as did one United States Court of Appeals judge, that he is a "good, caring human being." Those who have observed Judge Thomas characterize his integrity in extremely positive terms: He is viewed as an "honest and straight-forward person, always putting his cards on the table". One litigator, not known for effusiveness, put it this way: "Judge Thomas has great personal integrity. He is at ease with himself and others. He has great self discipline and a strong personal value system. He is a very good person. I have implicit trust in him. He would not do anything he did not think was right." Several judges who have sat with him and have had the opportunity for close observation regard Judge Thomas "as a man of the utmost integrity" who has "moral courage." Indeed, several appellate judges, when addressing the subject of Judge Thomas' qualifications advised the Committee they could only "speak in terms of superlatives." Descriptive terms such as "honest" and "totally open-minded" appear during the interviews.

While no one questioned Judge Thomas' personal integrity, a few interviewees expressed disagreement with Judge Thomas' interpretation of equal employment laws at the EEOC and his adherence to existing court orders, suggesting that those differences raised doubts as to his professional integrity. The Committee investigated these concerns and is satisfied that the disagreement over the interpretation of the law reflects an honest and reasonable difference of opinion. Those who have worked with Judge Thomas stated emphatically to the Committee that he "wanted to do what the law required him to do" and that "[w]hen he thought goals and timetables were required by the law he stood up to those who opposed them."

The Committee, therefore, concludes that Judge Thomas possesses integrity, character and general reputation of the highest order.

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#### Judicial Temperament

While serving the Court of Appeals, Judge Thomas has consistently been fair and open-minded in his dealings with his fellow judges and with attorneys appearing before him. He has been patient in his questioning of counsel and his questions are focused and to the point. Judge Thomas has been described as deliberate, thoughtful, "business-like, judicious and quiet." Some of his colleagues on the United States Court of Appeals note that he "listens as well as talks" and "has displayed remarkable equanimity in handling his oral arguments." He has also evidenced the capacity to reach a decision efficiently and to defend that decision politely but firmly. A Reading Committee characterized one of Judge Thomas' dissents as one of his "strongest opinions where with civility and deftness of reasoning," he took issue with the majority's position. He is described as an "excellent colleague" who is extraordinarily conscientious and works long hours. The Committee became aware of certain charges concerning Judge Thomas' management as EEOC Chair in which his conduct was characterized as being allegedly "retaliatory." The Committee's investigation revealed these allegations arose from disputed facts and perceptions and involved matters that were in the realm of management discretion. The Committee is satisfied that existing evidence of Clarence Thomas' appropriate conduct and suitable temperament as a judge is much more relevant and persuasive than these few allegations of intemperate conduct. The Committee concludes that Judge Thomas possesses a highly suitable temperament for judicial service.

#### Professional Competence

To make an assessment of Judge Thomas' professional competence, the Committee sought to measure his intellectual strength, the breadth and depth of his legal knowledge, his analytical skill and his ability to communicate clearly and rationally. The assessment of these considerations produced the only significant differences within the Committee.

Honorable Joseph R. Biden, Jr.  
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Judge Thomas' professional experience to date has not been as extensive or as consistently challenging as that of others who might have been available for appointment to the Supreme Court. Nevertheless, the substantial majority of the Committee concluded that Judge Thomas meets the Committee's "Qualified" standard.

Particularly persuasive to the substantial majority has been Judge Thomas' performance on the Court of Appeals. There, he has demonstrated intellect, analytical ability and writing skills that are well within the zone of competence for those rated "Qualified" for the Court.

The Reading Committees support the majority of this Committee in their evaluation of Judge Thomas' legal opinions. Thus, as noted by the one of the Reading Committees:

"His writing is direct, clear and carries the hallmarks of competent appellate craftsmanship. His opinions, as another member of the committee has noted, 'reveal that he is certainly intelligent, as well as diligent and thorough in his approach to deciding cases.' His work evidences broad analytical skill and open-mindedness. Several of Judge Thomas' opinions (discussed above) contain clear indications that he will perform competently when given further opportunities to consider cases of real complexity and import."

Another Committee stated that:

"A consensus \* \* \* emerged, but we were somewhat diffident in expressing it confidently because \* \* \* [e]ighteen opinions over a little more than a year is not enough to give one \* \* \* certain insight \* \* \* [.] In brief, Judge

Honorable Joseph R. Biden, Jr.  
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Thomas' writings reflect a highly intelligent man, well versed in the technical skills of the law. His opinions are carefully and systematically reasoned, clearly articulated, respectful of the record (so far as we can tell), fair in consideration of opposing arguments, extensively supported by citations to authority, and demonstrate no obvious bias in decision. \* \* \*

In sum, we were collectively quite impressed with Judge Thomas' opinions. We found only one opinion to criticize, and many to praise."

The last Reading Committee's comments were equally supportive:

"In conclusion, our review committee found that Clarence Thomas has performed capably as a judge on the U.S. Court of Appeals. He has shown no evidence of judicial bias. His opinions have been, by and large if not without exception, well reasoned and well written. We cannot speculate on the basis of the materials we have reviewed how Judge Thomas, if confirmed, would function under the different demands placed upon a Supreme Court justice. Our review of his work to date suggests that his analytic and communicative capabilities would be adequate to that job."

Additionally, during oral argument and deliberation, Judge Thomas has been well prepared, attentive, and focused on the issues necessary for decision while being sensitive to broader policy considerations, and has challenged attorneys and fellow judges with questions that were thoughtful and useful. The Committee finds his opinions to be clear, direct and thorough. The results have been fair and understandable to litigants. Further buttressing these

Honorable Joseph R. Biden, Jr.  
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favorable conclusions is a wide set of life and professional experiences. These experiences suggest a special capacity for personal growth and professional wisdom.

On the other hand, Judge Thomas' background as a trial and appellate lawyer has been limited to relatively brief experience gained immediately upon his entry into the profession, and very little of his experience as a practitioner was in the federal court system. His several articles in legal journals have little analysis, are not particularly well formed, and, in part, rely upon an undefined reference to "natural law." Reading Committee representatives and others found these articles to be "disappointing" in presentation, content and scholarship. Our Committee noted, however, that in an interview with Committee members, Judge Thomas rejected "natural law" as a basis for judicial decision making.

The substantial majority of the Committee believes that these limitations are overcome and outweighed by Judge Thomas' brief but highly satisfactory performance on the Court of Appeals. The Committee minority of two, on the other hand, is of the view that Judge Thomas is "Not Qualified" for the Supreme Court. They conclude that Judge Thomas does not have the depth or breadth of professional experience sufficient to place him at the top of the legal profession, as is required by the Committee's criteria for appointment to the Supreme Court of the United States. This minority believes that Judge Thomas' track record in the profession does not demonstrate exceptional or outstanding ability. They further believe that the hope or expectation that such ability will be demonstrated in the future is insufficient in the absence of a prior and extended history of exceptional work in the profession.

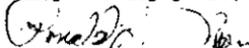
#### CONCLUSION

Based on all of the information available to it, the substantial majority of the Committee is of the view that Judge Thomas is "Qualified" for appointment to the Supreme Court of the United States. A minority of two rated Judge Thomas "Not Qualified". There was one recusal.

Honorable Joseph R. Biden, Jr.  
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The Committee will review its report at the conclusion of the hearings and notify you if any circumstances have developed that require modification of these views. On behalf of our Committee, we wish to thank the members of the Judiciary Committee for their invitation to participate in the confirmation hearings on the nomination of the Honorable Clarence Thomas to the Supreme Court of the United States.

Respectfully yours,



Ronald L. Olson  
Chair

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Professor Madeline Morris  
Professor George Christie  
Professor Tom Rowe  
Professor Lawrence Baxter  
Professor Tom Metzloff

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

Professor Ronald J. Allen  
Professor Mayer Freed  
Professor Daniel Polsby  
Professor Victor Rosenblum

THE LAWYERS' READING COMMITTEE

President Rex E. Lee, Brigham Young University  
Hon. Arlin M. Adams, Schnader, Harrison, Segal & Lewis  
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Professor Sara Sun Beale, Duke University School of Law  
Professor Drew S. Days, Yale University Law School  
Professor John H. Garvey, University of Kentucky Law School  
Philip A. Lacovara, Managing Director & General Counsel,  
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September 17, 1991

The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6275

Re: The Honorable Clarence Thomas

Dear Mr. Chairman:

Pursuant to the request of Senator Heflin during our testimony yesterday, we enclose a list of non-judicial articles written by Judge Thomas which were considered by the ABA's Reading Committees.

Sincerely yours,

Robert P. Watkins

RPW:keu

Enclosure

BY HAND

Attachment to Sept. 17, 1991 letter to  
the Hon. Joseph R. Biden, Jr., Chairman  
Committee on the Judiciary

NON-JUDICIAL ARTICLES WRITTEN BY THE HON. CLARENCE THOMAS:

Thomas, The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment, 12 Harv. J. of L. & Pub. Pol. 63 (1989)

Thomas, Toward a "Plain Reading" of the Constitution -- The Declaration of Independence in Constitutional Interpretation, 30 How. L. J. 983 (1987)

Thomas, Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!, 5 Yale L. & Pol. Rev. 402 (1987)

Thomas, The Equal Employment Opportunity Commission: Reflections on a New Philosophy, 15 Stetson L. Rev. 27 (1985)

Thomas, Pay Equity and Comparable Worth, 34 Labor L. J. 3 (1983)

Thomas, Current Litigation Trends and Goals at the EEOC, 34 Labor L. J. 208 (1983)

Why Black Americans Should Look to Conservative Policies. The Heritage Lecture, June 18, 1987

Civil Rights as a Principle Versus Civil Rights as an Interest, from ASSESSING THE REGAN YEARS (D. Boaz ed. 1988)

The CHAIRMAN. I have no questions. I yield to my colleague from South Carolina.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Olson, I want to congratulate you on the fine job you are doing as chairman of the standing committee on the Federal judiciary. You have a very outstanding reputation as a distinguished lawyer, and I am glad you have two of Washington's finest lawyers sitting here with you—Mr. Best and Mr. Watkins too—to help you.

Now, I had a number of questions here, but to save time I am just going to ask one question. Mr. Olson, does the ABA qualified rating mean that the nominee has the outstanding legal ability and wide experience and meets the highest standards of integrity, professional competence, and judicial temperament? Isn't that how the ABA defines a qualified rating? And isn't that exactly what you are saying about Judge Thomas and that he is an outstanding nominee?

Mr. OLSON. That is exactly right, Senator, with respect to the substantial majority of our committee.

Senator THURMOND. I have no further questions.

The CHAIRMAN. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

This is basically a two-part question. That is, what would have been necessary for Mr. Thomas to be well qualified in terms of the American Bar Association's findings?

Mr. OLSON. The distinction between qualified and well qualified is admittedly, in our general definitions, less than clear. To reach the well-qualified standard, one has to be among the very most prominent members of our profession. Not simply at the highest grouping, but among the single most prominent members of the legal profession. And it is that very important distinction that we made. We made it on the basis of an analysis of Judge Thomas' performance to date, and I would be happy to elaborate on that if the Senator cares for it.

Senator KENNEDY. Well, anything you want to add to make the answer complete.

Mr. OLSON. I think it is important for the committee to recognize that we made the finding exactly as Senator Thurmond has summarized it on behalf of the substantial majority. But it is also important to recognize that while he has distinguished himself in each one of those three criteria that we have recognized, there were limitations in his work that precluded the committee from finding him well qualified. His opinions on the court of appeals have been very well written, very well documented, very well explained. He deals with precedent carefully, honestly, and open-mindedly. He has been without bias.

On the other hand, his opinions have been limited in number. He has not been tested in many of the fundamental issues that the U.S. Supreme Court will face. He has not had the opportunity to face questions of first impression. He has not had the opportunity to deal with important constitutional concepts such as federalism, separation of powers, first amendment—many others. He has not been faced with those experiences yet, and therefore has not had the opportunity to demonstrate them.

That does not mean that he is incapable of doing so. It simply means that he is untested. But being untested left us with a sense that he was less than our well-qualified rating would indicate.

Senator KENNEDY. Finally, what was the basis of the minority holding?

Mr. OLSON. The minority view, Senator, focused on the criteria of professional competence. The minority of two did not reach any resolution of the other two issues, but they determined that with regard to professional competence, Judge Thomas did not measure up with respect to his track record. He had not had the breadth of experience or the depth of experience to demonstrate in their mind that he is at the top of the profession.

They particularly, I believe I am fair in saying, focused on the mixed writing that we have seen from Judge Thomas. As I have noted earlier, the opinions that he has crafted on the court of appeals have been highly praised. On the other hand, the writings that he has done off the court particularly those published in legal journals, have been generally criticized by a wide range of individuals.

I think it is that unevenness which was of particular concern to the minority of two.

Senator KENNEDY. Just in clarification, the criticism, was that based upon philosophical differences of opinion or based upon some other reason?

Mr. OLSON. It was not based upon philosophy or politics. That is, as far as we are concerned, outside the parameters of our investigation, Senator. With regard to the criticisms, I think they can be summarized very simply. The criticisms of his law journal writing are simply that they were shallow. They were without—the positions he took were not well documented and supported, and he failed to confront and deal with strong arguments on the opposite side of the issue. They simply did not evidence the kind of scholarship that one would like to see on a regular basis, and they did not demonstrate the kind of scholarship that he has shown as a judge on the U.S. court of appeals.

Senator KENNEDY. Thank you very much.

No further questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Grassley.

Senator GRASSLEY. I will pass for this round.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. I will pass, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Just a question or two.

When you refer to scholarship and you talk about the issue of wide experience, how much do you look toward a familiarity with the specific work of the Court as to whether the nominee would be able to move right in, understand the kinds of issues the Supreme Court has, to be able to deal with it as an initial matter?

Mr. OLSON. Let me respond and relate my answer particularly through our examination of Judge Thomas. Judge Thomas has had, as the Senator has indicated, a very wide set of life experiences. We took note of that. We believe that it demonstrates a tremen-

dous potential for personal growth and a background for professional wisdom.

The experience that he has had on the U.S. court of appeals has demonstrated his capacity to craft good judicial opinions where he has dealt with established precedent and applied that in a careful way to the cases before him. He has been very disciplined in his approach to decisionmaking, disciplined in terms of the kinds of issues that he addresses, generally no more than necessary to answer the case before him, and disciplined in the way in which he expresses himself, focusing very carefully on the particular statute or rule at issue.

What this record that we have reviewed does not have in it is the very area that the Senator has raised. We have seen very little of his writing that grapples with the kind of issues that are typically dealt with on the Supreme Court. There have been very few cases on the court of appeals that have raised those fundamental issues. Most of them have been dictated by the precedents already established.

On the U.S. Supreme Court, as the Senator well knows, there are a lot of issues that come around for the first time. He has had very little practice dealing with cases of first impression, at least as far as the written record is concerned. He has had very little practice dealing with the fundamental constitutional principles that govern wide areas of conduct. He has had very little practice reaching out and defining over-arching principles that go across the spectrum of our Constitution.

Those are the kinds of things that I think limited our ability—let me say that differently. Those were the kinds of areas that limited the rating that was given to Judge Thomas. If he had had 10 or 12 years and 200 opinions on the U.S. court of appeals, I suspect he would have had a lot more opportunity to practice in that very basic constitutional area.

Senator SPECTER. I had some other questions in mind, but that answer was so complete that you have already covered them.

Mr. OLSON. Thank you.

Senator SPECTER. Let me turn to one other aspect of the issue, and that is on a comparison to the Court. A nominee for the Supreme Court attracts a lot of attention, obviously. I have had a question about a comparison of the current Court, say the Court with Holmes and Brandeis, are there evaluations made by the scholars in the field—there is a phase of writings I don't know—evaluating the current Court? I ask this in the context of Judge Thomas is going to join a court and his ability to perform may well turn on the balance of the Court. Has there been any distinguished writing comparing this Court to other Supreme Courts like the Holmes-Brandeis court?

Mr. OLSON. There certainly is and it is ongoing on a regular basis, and I am going to turn to my colleague Mr. Best in a moment, but I will refer briefly to one article that was published recently in the Minnesota Law Review, trying to identify the characteristics of the great Justices of the U.S. Supreme Court, trying to identify the characteristics of individuals, and then see if there were central characteristics that carried through.

The one that I remember being above all was character, the individual character of a Justice was more important than any other single factor in identifying greatness on the Court.

I should also say that I think it was Justice Frankfurter who said that the ability to define greatness for a judge is a very uncertain art, and I would agree with that.

Mr. Best I believe may have some further answer to your question.

Mr. BEST. If I may, Senator, I think the same law review article demonstrated an attempt statistically to determine what was the best background for a Supreme Court Justice, demonstrated that there are no hard and fast rules. The character was extremely important, and the only other factor that came out in the analysis and discussion was, of course, the question of background, and to the extent that would be helpful to this committee, it seems that the analysis of those candidates for the Supreme Court who had come up, as it were, the hard way, who had scratched and crawled their way and had made their career for themselves were probably the greatest of the Supreme Court Justices.

So, to the extent that that sort of meager sociological information is helpful, I offer it to you.

Senator SPECTER. Any other references on that subject besides the single Minnesota Law Review article?

Mr. OLSON. Well, I suppose we could go back to Socrates, he had a quote or two, and certainly wrote about what it—

Senator SPECTER. I mean about an evaluation of this Supreme Court.

Mr. OLSON. I don't have any specifically to suggest at this time. We would be happy to supplement the record, if the Senator would like.

I would make one other statement that I think too often tends to get overlooked with respect to our Federal judiciary, and that is the single criteria of integrity. It seems to me it is very easy to take that criteria for granted, and if you look around at this Federal judiciary that we have had for so many years and, in particular, the Supreme Court, there has been very, very few breaths of scandal. It is that integrity that I think in my mind speaks directly to the majesty of the law that Senator Thurmond referred to about half an hour ago, and I think it is something that this committee that you represent and, hopefully, our committee and our work have something to do with, and it strikes me that that has distinguished our judiciary here in the United States from virtually every other judiciary in the world, and it is one that I am very proud of, and I think when you talk about greatness on the courts and consistency, that to me is a criteria that is very, very important.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Heflin.

Senator HEFLIN. How many members are there on the committee?

Mr. OLSON. Fifteen members on our committee.

Senator HEFLIN. On the issue of reading his opinions, was there a committee of the 15, or did the full 15 read all of them?

Mr. OLSON. All of the members of the committee read opinions of Judge Thomas. In addition, Senator Heflin, we used the services of three separate reading committees. Two of those committees were based at distinguished law schools, one at Duke Law School and one at Northwestern Law School.

A third group was comprised of practicing lawyers around the country, and that group was headed by Rex Lee, a former Solicitor General and currently president of Brigham Young University. The membership on that committee was comprised of practitioners who have had active practices before the Supreme Court and had themselves presented I think somewhat over 100 cases to the Supreme Court. They read each one of the writings of Judge Thomas and reported to us.

Senator HEFLIN. You said writings. Was it a different group or the same group that read his articles?

Mr. OLSON. The same group.

Senator HEFLIN. The same group read his articles. Now, were they articles that were limited to articles that had been published in law journals?

Mr. OLSON. Generally speaking, yes. The ones that are found, six or eight of them, in law journals, Stetson, Howards, and so on.

Senator HEFLIN. Could you provide us a list of the—I am not talking about his opinions, because we have all of that—could you provide us a list of the articles in law journals that were read by this committee, and if any other writings or speeches or articles that were published in nonjudicial publications, if you could furnish—in other words, furnish a full list of the articles that were read. I don't want his cases, but the articles.

Mr. OLSON. I would be happy to do that, Senator.

Senator HEFLIN. That is all.

The CHAIRMAN. Any other questions before the committee?

[No response.]

There being none, thank you, gentlemen, very much for your effort. I thank the committee as a whole.

Mr. OLSON. Thank you very much for allowing us to appear.

Senator THURMOND. I thank you gentlemen for appearing.

Mr. OLSON. Thank you.

Mr. BEST. Thank you.

The CHAIRMAN. Now, I indicated that we had two more panels. I have gotten the order reversed. The next panel of witnesses is a panel of academic scholars who have expressed either concern or opposition to the judge, and then we will follow with a panel of four very distinguished witnesses who wish to testify for the judge.

The first panel we will call up is Thomas Grey, from Stanford Law School, who has written extensively about using historical sources to interpret the Constitution, and also about the fifth amendment and property rights. Professor Grey was a law clerk to Justice Marshall from 1969 to 1970, and I believe he is also the same Thomas Grey that is quoted somewhat extensively by Mr. Epstein in his book. I believe Mr. Grey is here to express concern—I am not sure, I will let him tell you what he is going to express.