

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-