

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.