Mr. LAFITTE. To summarize our findings, our investigation revealed that Justice Rehnquist is extremely intelligent, analytical, conscientious, and hardworking. He had an outstanding academic record, and our committee members heard strong praise for his leadership qualities, his intellect and his ability as a practicing lawyer and as a lawyer in Government service.

As an Associate Justice of the Supreme Court, he is held in high esteem by his colleagues on the Court for his scholarship and congeniality. The diversity of his experience as a practicing lawyer and as a Supreme Court Justice provides a valuable background for service as Chief Justice of the United States.

He has strong administrative abilities and a judicial temperament appropriate to serve in that position. His judgment is sound, and his integrity is above reproach.

In conclusion, Mr. Chairman, the committee has unanimously found that Justice Rehnquist is entitled to its highest evaluation of a nominee for the position of Chief Justice of the United States.

Thank you very much, Senator Thurmond and members of the committee.

That concludes our statement.

The CHAIRMAN. Is the rating you have given Justice Rehnquist the highest rating the American Bar Association gives?

Mr. LAFITTE. It is, Senator.

The CHAIRMAN. It is the highest rating.

Mr. LAFITTE. For the position of Supreme Court Justice; correct.

The CHAIRMAN. Mr. Lane, do you wish to add anything further?

Mr. LANE. No, Mr. Chairman. I think the statement of Mr. Lafitte accurately and completely states the position of our committee, which he noted was by unanimous vote after the telephone conference call meeting that lasted for a rather lengthy period.

I was also one of those privileged to have the opportunity to interview Justice Rehnquist, and for what it is worth, I concur fully in these findings and report.

The CHAIRMAN. The able Senator from Delaware.

Senator BIDEN. Thank you, Mr. Chairman.

Notwithstanding the fact, gentlemen, that I did not expect to see you for another 5, 6 hours, it is nice to have you here. Mr. Lane, I know you are in town, so you could always come back; it is just up the street.

We are not inconveniencing you, are we?

Mr. LANE. Not at all.

Senator BIDEN. Good. OK.

Mr. LANE. We were ready yesterday, also.

Senator BIDEN. Good. And you would be ready tomorrow, I am sure. [Laughter.]

Let me ask you a few questions, even though I had quite frankly not concentrated on this, because I did not think we were going to get to it. But let me ask a few questions, gentlemen.

No. 1, did you interview other Associate Justices?

Mr. LAFITTE. We interviewed all of them, Senator Biden, on the Supreme Court.

Senator BIDEN. Did the Associate Justices indicate whether or not—you said they said Justice Rehnquist is "collegial"; is that the phrase you used?

Mr. LAFITTE. Correct, Senator. And the word "congenial" was also used.

Senator BIDEN. "Congenial".

Mr. LAFITTE. Yes.

Senator BIDEN. And did they speak to the degree to which he participates in conferences and preconferences to discuss opinions that he has written before he writes them?

Mr. LAFITTE. I think that it might be well for Mr. Lane, who did that investigation, to respond to you. I can report to you that all of the Justices spoke very highly of Associate Justice Rehnquist's qualities as a collegial member of the Court; spoke highly of his intellect, of his work habits, and hold him in high esteem, very obviously.

But John may want to amplify.

Senator BIDEN. Mr. Lane, did you interview each of the Associate Justices?

Mr. LANE. Yes, Senator Biden, I did. I found almost virtual unanimous support for this among his colleagues, which was something that was very persuasive with me.

Senator BIDEN. Well, it is persuasive with me, also.

Mr. LANE. I started with the most senior member of the Court and proceeded on down.

Senator BIDEN. In light of the time commitment here, let me ask my question precisely, if I could, and maybe you could speak to the precise question.

Was there discussion with the Associate Justices with whom you spoke and the Chief, whom I assume you spoke to, also, was there discussion about the work habits of Justice Rehnquist as it relates to his inclination to discuss cases that had been heard prior to the writing of opinions.

As you know, there is a custom on occasion in the Court where Justices discuss at conference or preconference with one another a case; then, they go back to their chambers and they write their opinions on many occasions. Sometimes, it does not happen that way.

Did you get any indication as to what extent Justice Rehnquist, relative to other Justices, participated in conferences prior to having written his final decision?

Mr. LANE. Yes. I think that subject matter generally ran through most of the interviews. And the picture that I gathered was that Justice Rehnquist, having been originally the ninth in seniority, moving from nine to eight and finally to seven, was never one of those who would be called upon first in conference to present his views of the matter. So I believe there were many cases that were fairly well discussed by the time it came to his turn.

However, I did gather in these discussions, and I had the picture of a man who was open to his associates' and his colleagues' views; was always open and available and willing to discuss these matters.

I was reminded that these cases, do not get to the Supreme Court unless they involve tough issues. And many of them have at least two and sometimes three respectable positions. And so merely the fact that one may disagree over there in the Court on a final result does not detract in any way from the deliberative process, and the collegiality that apparently exists——

Senator BIDEN. I appreciate your editorial comment, and I happen to agree with it; I think it is a fine editorial statement. I am trying to find out what——

Mr. LANE. Well, I am really not trying to editorialize. I am trying to give you the picture that I gained in my own mind as I went through this process.

The CHAIRMAN. Yes. Go ahead. You are allowed to finish your statement. Go ahead.

Mr. LANE. I was pleasantly surprised at the results of this effort. There was genuine enthusiasm on the part of not only his colleagues on the Court, but others who served the Court in a staff capacity and some of the relatively lowly paid individuals at the Court. There was almost a unanimous feeling of joy, that I was not only surprised at, but found a very welcome fact.

Senator BIDEN. So the occasional press reports that Justice Rehnquist, because of his intellectual brilliance and his hard work, usually hears a case, departs from the bench, goes back to his office—the reputation that he has, at least in the press, is he is the first one to have his opinions finished, and that—first of all, did you find that to be true, that he is the first one, usually, that he has that reputation?

Mr. LANE. I found that he has a reputation of pushing his work under tight deadlines. He apparently gives his law clerks 10 days to get a draft out, and if they do not get it, he comes and takes it out of the typewriter and he will finish it himself.

To us lawyers who wait and wait and wait for courts to decide cases, this is a healthy development.

Senator BIDEN. I think it is healthy to get people to work hard, too. But what I am trying to get at is whether or not you get a picture of the Justice. The picture that has been painted in the past is that he is extremely bright, extremely honest, has a great sense of humor. I have even heard anecdotes about him hiring someone to do cardboard cutouts of the Chief Justice and then calling the Chief Justice to say his car is broken down and can he get a ride in with the Chief Justice, and then riding by, this fellow standing there with a—which is my kind of guy in that; I would like to have a cardboard cutout of some—but seriously, that he is very well loved, that he is very well liked.

But what I am trying to get at are his work habits. And my understanding is he is very, very precise and very, very thorough, and he moves very rapidly. But the other side of that, I am told, is that he in fact does not do what other Justices do as a habit, which is in addition to giving his clerk 10 days, that he does not sit and commiserate with the other judges about what do they think they should be doing, how are they going to write their opinion, what are they going to do about it. And he goes in and bangs out his opinion based on thorough thought, what he thinks should be the result, and delivers it, and comes to conference ready; he has already made up his mind as to which way he wants to go.

Is that the picture, or is that an inaccurate picture?

Mr. LANE. That is not quite the picture that I gained from all of the information that was given me.

Senator BIDEN. Why don't you tell me how the picture you gave is different than what I just suggested.

Mr. LANE. I talked to law clerks, clerks that are there now; I talked to clerks who clerked when he was also a clerk in the Court, who are now very prominent lawyers and one of them, a very prominent Federal judge.

You begin to get a view of the person in his earlier years in training. He was affable, one who was friendly, one who was always accessible, and one who was universally admired—even though two of these lawyers who clerked at the same time, both of them for the Chief Justice at the time, Chief Justice Vinson, are well-known liberal Democrats——

Senator BIDEN. Oh, I agree.

Mr. LANE [continuing]. Who disagree with him politically and philosophically——

Senator BIDEN. Mr. Lane, let me——

The CHAIRMAN. Just a minute, Senator. Let him finish his statement.

Mr. LANE. But they have the highest regard for him as a lawyer and as a person.

Now, as I proceeded further, I talked to a former clerk of the Supreme Court, a man who I have known for many years and have a high respect for, and he described how Justice Rehuquist is well-liked by the Court personnel, how they respect him, and how he gets the work done. Justice Rehnquist, being responsible for the ninth circuit, has probably more traffic with the clerks' office than the other Justices, because there are so many petitions that require his scrutiny and a decision. The clerks say that his work is done promptly, and his instructions to the clerk are clear and precise; they do not have to guess and go back for further instructions.

So these are the kinds of things we were looking for to see what kind of an administrator, what kind of a Chief Justice we would have in Justice Rehnquist.

To go on further, if I may, when talking to his colleagues about how they felt toward him, he is regarded as a close personal friend of men who are diametrically opposed to him philosophically and politically.

Senator BIDEN. Senator Thurmond and I understand that.

Mr. LANE. That is right. Well, I worked here years ago, so I understand the Senate, too.

The CHAIRMAN. Do you have any more questions?

Senator BIDEN. Do you want to say any more?

Mr. LANE. Not unless you have further questions.

Senator BIDEN. I do.

There is no question about the Justice being accessible. Does he seek access? That is my question; that is all I am trying to get at. Is he one of the Justices who seeks the opinion of other Justices prior to reaching his decision? There is no question he is accessible. The question is does he seek access?

Mr. LANE. I am afraid I cannot answer that question with any degree of precision. However, I think that he is one who listens. It was clear to me that he is one who listens to others, and being a rather junior member of the Court, he has to listen when these cases are discussed in the conference of the Court.

Mr. LAFITTE. I believe we did get a report, Senator Biden, if I might supplement Mr. Lane's remarks——

Senator BIDEN. Certainly.

Mr. LAFITTE [continuing]. That Justice Rehnquist is a Justice who will go down the hall and go to the chambers of another Justice and discuss matters. I do not have any sense that we know the particulars of the way he operates that you are inquiring about now, but I think our committee felt a clear sense, because of the emphasis on the collegial relationship that he enjoys with the other Justices, the way they have expressed sincere admiration for his work on the Court as a collegial member of it, that that carries with it a strong sense of participation. As people have put it, the Court members can be thought of as nine separate law firms, and so I guess they have to operate that way in a certain sense.

Senator BIDEN. Thank you, Mr. Chairman, and thank you, gentlemen, for your time.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Lane, you have been here several times.

Mr. LANE. Several.

Senator MATHIAS. I understand this is probably one of your last visits with the committee in this role.

Mr. LANE. I imagine that is probably true—unless I will be back on Judge Scalia.

Senator MATHIAS. I will take this opportunity to express my thanks to you for the years in which you have performed this important and rather thankless public service. It is not an easy job, and can be at times troubling. Nonetheless, you have done it with great distinction. The committee in particular, and the public in general, owe you a debt of gratitude.

Mr. LANE. I thank the Senator from Maryland.

Senator MATHIAS. Did your review of the qualifications of Justice Rehnquist include a review of his judicial opinions?

Mr. LANE. That is correct, Senator.

Mr. LAFITTE. By practicing attorneys, by practicing lawyers.

Senator MATHIAS. I am curious as to what you look for in that review of opinions. Are you looking at his style or form, or the substance?

Mr. LAFITTE. Yes, sir. We look for analytical ability, the ability to take apart and put back together complex legal issues; clarity of style; organization—that type thing—anything—as the Senator knows, we are not concerned with political ideology and philosophy of that nature, except to the extent that it bears on temperament or integrity.

Senator MATHIAS. Now, you mentioned philosophy and ideology. That raises a sensitive question for this committee, and I would be curious as to your advice. To what extent can a committee inquire into, devote its attention to, and rest its opinion on judicial decisions of a nominee without impinging on the very important principle of independent administration of justice? Can we ask a judge to account for his judicial opinions in a proceeding of this sort?

Mr. LAFITTE. Well, as I say, Senator Mathias, I suppose the main purpose of our review of the opinions is to see what kind of writing style the nominee has and then——

Senator MATHIAS. I understand that, and I think you expressed that very well. I am asking for your further advice.

Mr. LAFITTE. Well, we found nothing in his opinions that would indicate any problem of—at least, the reports received by us—indicate any problem of temperament or integrity. Now, we discussed with Justice Rehnquist comments that we had received about his stands and decisions on issues generally, but I do not relate that particularly to his writings, his judicial opinions.

Senator MATHIAS. I understand that. But how far can we go in looking at opinions without invading the province of judicial independence? How far can we go without having a chilling effect on every sitting Federal judge in the country who might someday be nominated for a different court?

Mr. LAFITTE. I am sorry. I do not think I understood your question until then. But I am not sure that I am able to advise you in that, Senator. As Mr. Lane has said, the issues that come before the Supreme Court are generally quite complex, as you have seen in the media. There often are certainly more than two positions that can be taken with respect to them. So that I do not know to what degree one can disagree with a decision, or the way an opinion is written, without impinging on judicial independence at all.

It is not an issue, though, that I think we address as a committee.

Senator MATHIAS. Mr. Lane, do you have any comment on that?

Mr. LANE. Well, I think that is why Federal judges are appointed for life, so they will not be hauled up and have to run for reelection or satisfy a certain body public in order to win reappointment. And that is why, in our statement today, we are focusing in on the fact that the Justice is a sitting Justice of the Supreme Court; he is there for life—he is going to be there anyway. And all we are dealing with is whether or not he should ascend to the traditional role as the Chief Justice of the United States.

I do not think you can take a judge and dissect his opinions and hold him in account for the way he may or may not have voted on any particular issue. Once the Court has decided, that is the supreme law of the land, and unless under the Constitution, you and the Congress can change that result, that result remains. We have to respect that.

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

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. Thank you very much.

I, too, want to express appreciation to Mr. Lane for the work that he has done over a long period of time to try and insure the basic integrity of the courts. We are glad to have you back here.

As I understand from the various news reports, you were recently denied reappointment to the ABA Committee on the Federal Judiciary, although you sought reappointment; is that correct?

Mr. LANE. Senator, it is not the kind of position that one campaigns for, and I did not do anything to further my chances for reappointment. I say that in all honesty.

However, I was informed that another individual would be appointed, and that is about the sum and substance of it.

Senator KENNEDY. I suppose you are aware of the news reports in the Washington Post and others that indicate that you were dropped from the panel for challenging some of the administration's nominees. Al Kamen in a recent Washington Post story said,

"ABA sources said Lane angered some conservatives because he is too aggressive in questioning the qualifications of some prospective candidates."

Mr. LANE. Yes, I am aware of that article.

Senator KENNEDY. Do you have any reaction to it? Let us see if he wants to complete the answer to this one, Mr. Chairman. [Laughter.]

Mr. LANE. Well, I guess if pressed, I would have to deny that I was too vigorous or too tough in my examination. I tried to be fair to all potential nominees. And I would also say that politics and ideology is something that did not get involved in my investigation. I could not care less what——

Mr. LAFITTE. Senator, maybe I ought to——

Senator KENNEDY. Well, if I could just finish this question.

Mr. LANE. In my investigations, I really could not care less how a person votes or how he feels on issues. I want a person that is honest, that has good experience and training in the law, and one that has a good disposition and judicial temperament. If you are going to put them on for life, you want to be reasonably sure that they are going to be able to do the job and do it well.

Senator KENNEDY. Well, do you think ideology or political philosophy had anything to do in dropping you from the judicial panel?

Mr. LANE. I really cannot comment on that. I would hope not.

Senator KENNEDY. No further questions.

The CHAIRMAN. The distinguished Senator from Nevada.

Senator LAXALT. In the interest of time, Mr. Chairman, I will yield my time to the distinguished Senator from Utah, Senator Hatch.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. Thank you, Mr. Chairman.

Mr. Lafitte, is it correct that "well-qualified," as you have stated, is the highest possible rating a Supreme Court Justice can have?

Mr. LAFITTE. That is correct, Senator.

Senator HATCH. Can you tell us how many deans, law professors, and scholars you interviewed in reaching your opinion here?

Mr. LAFITTE. Over 50, as I recall, Senator.

Senator HATCH. Over 50?

Mr. LAFITTE. Over 50.

Senator HATCH. OK. Now, to what degree——

Mr. LAFITTE. Deans and law professors.

Senator HATCH. Deans and law professors. You have indicated you have reviewed his written opinions. Could you tell us approximately how many written opinions you reviewed?

Mr. LAFITTE. Over 200.

Senator HATCH. Over 200?

Mr. LAFITTE. Yes, sir.

Senator HACH. Now, based on 200 opinions, which would seem to me to be a rather exhaustive study, you found him to be well-qualified?

Mr. LAFITTE. That is a factor we took into consideration in our evaluation.

Senator HATCH. Thank you. How many State court judges did you interview?

Mr. LAFITTE. I do not have a count on that, Senator. We interviewed over 180 Federal and State judges.

Senator HATCH. You interviewed over 180 Federal and State judges?

Mr. LAFITTE. Correct.

Senator HATCH. 180?

Mr. LAFITTE. Correct, sir, across the country.

Senator HATCH. Were any of these on State supreme courts?

Mr. LAFITTE. Yes, sir.

Senator HATCH. Quite a few?

Mr. LAFITTE. Yes, sir. We tried to contact and speak with those who were available.

Senator HATCH. So you interviewed some of the most eminent State supreme court judges with regard to this nominee as well?

Mr. LAFITTE. That is correct, along with the Federal judges.

Senator HATCH. How many States did you go into to interview various justices and judges, State judges?

Mr. LAFITTE. Well, I think all, Senator. We went about this by each of us working in our own circuits, so that we all contacted people in the States and our circuits.

Senator HATCH. Well, we understand that. But how many States did you cover?

Mr. LAFITTE. Well, I am not sure about Alaska, but I think virtually all of the States were covered.

Senator HATCH. Virtually all 50 States?

Mr. LAFITTE. Yes, yes.

Senator HATCH. So you virtually have opinions from the State justices and judges from all 50 States.

Mr. LAFITTE. They were included in our contacts, yes.

Senator HATCH. And quite a number of justices and judges.

I might add that that is a pretty strong national cross section of judges who have commended him, would you say?

Mr. LAFITTE. I would, Your Honor—force of habit, Senator—yes, I would.

Senator HATCH. How many lawyers did you interview with regard to Justice Rehnquist?

Mr. LAFITTE. I think approximately 70.

Senator HATCH. Seventy lawyers. From how many States?

Mr. LAFITTE. Well, again, this would be a cross section of the country, each——

Senator HATCH. So virtually all 50 States?

Mr. LAFITTE. That is right.

Senator HATCH. You may have missed one or two.

Mr. LAFITTE. That is right. And again, we had the problem of reaching, of making contacts, and I did not look at that.

Senator HATCH. Well, it seems to me that you made an exhaustive study; it was a nationwide study; it involved the highest scholars in the land, the most eminent jurists in the land; 180 judges, 70 lawyers, 50 law deans and professors, and in addition to that, Mr. Lane, his colleagues on the Supreme Court; is that right?

Mr. LANE. Yes.

Mr. LAFITTE. Correct.

Senator HATCH. And then you came out and recommended to this committee the highest possible rating anybody can have for Chief Justice of the U.S. Supreme Court; is that right?

Mr. LAFITTE. Correct.

Senator HATCH. In fact, I do not think you could have said it any better than you did in your letter to Senator Thurmond when you said, "Based on the investigation described above, the committee unanimously has found that Justice Rehnquist meets the highest standards of professional competence, judicial temperament and integrity, is among the best available for appointment as Chief Justice of the United States, and is entitled to the committee's highest evaluation of the nominees to the Supreme Court: well-qualified."

Did I read that accurately?

Mr. LAFITTE. That is correct, sir. That was the unanimous vote of our committee.

Senator HATCH. Well, I want you to know that I think a lot of us will agree with you.

Thank you, sir. We appreciate the work that both of you have done.

Mr. Lane?

Mr. LANE. I might add that we tried to reach lawyers who practiced before the Supreme Court.

Senator HATCH. Surely.

Mr. LANE. And I personally tried to reach lawyers who had lost cases in the Court.

Senator HATCH. And did you reach some of them?

Mr. LANE. I did, and I found very strong support for Justice Rehnquist, notwithstanding the results of particular cases.

Senator HATCH. Well, I think there is strong support across the country, and I hope that some of these terms like "extremist," in quote, I hope they go by the boards, and we talk about the record, and let us judge the man as all of these eminent people including yourselves have done so, who sat there for 15 solid years, and who has been considered the leading intellect on the Court, a consensus-builder, collegial, intelligent, warm, witty, decent man.

It seems to me that is what he ought to be judged on, and what we ought to be looking into here is not 30, 40 years ago, allegations that were considered back in 1971, 15 years ago, but we ought to be looking into fitness to be Chief Justice of the U.S. Supreme Court, and I think it is fair to say, Mr. Lafitte, that you have found, you and your committee and those who have investigated virtually every State in the Union in this exhaustive investigation, have found him to be the most fit.

Mr. LAFITTE. That is correct, Senator. We found him to be among the best available.

Senator HATCH. Well, thank you so much. I really appreciate the efforts you have put forth.

Mr. LAFITTE. Thank you.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. Thank you, Mr. Chairman.

Gentlemen, I want to express my appreciation for your dedication to the legal profession and your concern about the quality of members of the judiciary. I am very pleased to welcome you here.

In your inquiry, did you give any attention to the position of the National Bar Association, the Federation of Women Lawyers, the National Conference of Black Lawyers? Did you inquire of any of those other organizations—and there are some others as well—as to the position that they have concerning the confirmation of Justice Rehnquist?

Mr. LAFITTE. Senator, we did. I do not know whether it is appropriate for me to identify the particular organizations, but we did make contact with organizations that do represent minorities and women's interests. We spoke also with practicing lawyers and judges that are minorities and women.

The answer to your question about organizations is yes.

Senator METZENBAUM. And what did you find, Mr. Lafitte?

Mr. LAFITTE. I suppose it is a mixed bag, Senator. We found some negative comment, mixed with comment that Justice Rehnquist is a very competent jurist. I think the negative comment, it would be fair to say, had to do with his conservative philosophy and whether he was in step with civil rights interests, and whether or not he would have a sufficiently open mind as a Chief Justice.

Senator METZENBAUM. Is it your understanding, at least it is my understanding, that those organizations will testify here? I am not directly informed as to what their position will be, but I believe they will testify in opposition to the confirmation. Is that your understanding?

Mr. LAFITTE. Senator, I think I saw yesterday that some of these organizations will be testifying here. I also do recall that we were advised, we were given certain comments upon our contact with the advice that further investigation might be done with them and that they would be back in further touch with us if they had additional comment to make. And our report is based upon any additional comment that we received.

Senator METZENBAUM. But there were some concerns expressed by these other organizations, by blacks and women. Yet I noticed in the report that you sent to the committee that you make no mention of that whatsoever. Would that not have been appropriate to include the concerns that have been expressed by the other bar associations in the country?

Mr. LAFITTE. Well, I think our letter does make reference to our contact with minority and women lawyers. Maybe stylistically, Senator Metzenbaum, we might have said something differently, but I suppose our feeling is that that covers the inquiry you are making.

Senator METZENBAUM. Well, I guess my point is that you do not indicate anywhere in the letter this is stylistic. I do not see that you mention anywhere in the letter that. You say, "We interviewed a cross-section of the legal community, including women and minority lawyers, many who know Justice Rehnquist, including many who disagree with him politically and philosophically, speak of warm admiration for him and describe him as very talented, a bright and able man, always well prepared, and one who brings out the best in people and will facilitate the work of the Court," end of paragraph.

You do not mention there that there were concerns expressed by black lawyers' groups, women's lawyers' groups, that they had res-

ervations, that they were apprehensive about the appointment. And I do not know whether at that point they indicated that they were going to testify in opposition to his confirmation, but none of that found its way into your four-page letter, all of which I find to be only on the very positive side and supportive.

I am not saying that you should not be positive or supportive, except that if your investigation was as thorough as you indicate it to be, then it seems to me that it would have been appropriate for you to indicate that there were some problems expressed by certain other bar associations.

Mr. LAFITTE. Well, I think that it is true that some of the organizations certainly had not expressed negative comment to us along the lines that you and I are now discussing. In fact, our first knowledge of some of those positions came after our investigation was completed and our report was made, not in that letter. But at least that letter reports on comments that we were receiving as a committee during our investigation.

When I speak of negative comment, I am speaking more of comments received from individuals who are minority and women lawyers, and those are things that we discussed with Justice Rehnquist when we interviewed him.

Senator METZENBAUM. But it is not mentioned in the letter.

Mr. LAFITTE. Not mentioned in the letter.

Senator METZENBAUM. Not mentioned in the letter.

Mr. LAFITTE. That is right, sir.

Senator METZENBAUM. I thank you very much.

Mr. Chairman, I want to just repeat, and I want to say it very respectfully because I have tremendous respect for you. I work very well with you and have no question about your fairness.

But I think putting the ABA on at this point out of order, when we have not had an opportunity—and also Griffin Bell—provides a kind of positive emphasis for the confirmation process that I do not know provides the sense of balance that this Senator feels is the appropriate one. And without wishing to engage in confrontation with you, I do want to express my reservations and concern as to whether this is really fair to let only the affirmative witnesses and those who are very supportive be heard out of order.

The CHAIRMAN. We are going to hear all sides, and you have got a lot of witnesses the other way. I am sure you will enjoy hearing them, and they will come later.

Senator METZENBAUM. Well, I do not have them, Mr. Chairman.

The CHAIRMAN. The able Senator from Iowa.

Senator METZENBAUM. Mr. Chairman, I want to make it clear. I do not have any witnesses against or for, nor does this Senator have a position. I just think that we are all concerned about fairness and impartiality.

Senator HATCH. I think it is a pretty balanced report.

The CHAIRMAN. The able Senator from Iowa.

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Lane, you know, there are a few perceptions that have been given that Justice Rehnquist is an extremist. Now, despite these statements, is it true from your investigation that none of the other members of the Supreme Court held that view and that, in

fact, they believe that Justice Rehnquist contributes greatly to the deliberative process of the Court?

Mr. LANE. The best way I can answer that question, and I am not sure I can answer it directly, is that there is no doubt that Justice Rehnquist is a strong conservative and has conservative viewpoints on issues.

I never heard the word extremist. I cannot use that in the context of my answer.

Senator GRASSLEY. No. My alluding to that was based upon members of this committee as well as people in the public at large making those statements.

Mr. LANE. He is widely recognized as a strong conservative, but I have the feeling that that is not held against him. His strong views do not——

Senator GRASSLEY. Does he contribute to the deliberative process?

Mr. LANE. I think it is obvious that he does, and I think he brings something to bear on issues that others obviously must feel has some value; otherwise, they would not hold him in the high regard that they do.

Senator GRASSLEY. OK. Well, is it your view, then, that Justice Rehnquist's judicial philosophy has no negative effect on his temperament or integrity?

Mr. LANE. I think that is not only my view but was the conclusion of our committee after some consideration of that matter.

Senator GRASSLEY. Mr. Chairman, that is all the questions I have.

The CHAIRMAN. The distinguished Senator from Arizona.

Senator DECONCINI. Mr. Chairman, thank you.

Mr. Lane, you mentioned, I think to the Senator from Utah, that you had talked to a number of lawyers, I believe it was 70; is that correct?

Mr. LANE. Approximately.

Senator DECONCINI. Some of these were from Arizona?

Mr. LANE. Yes.

Senator DECONCINI. And were some of them former partners and legal associates of the nominee?

Mr. LANE. Some of those were included, Senator. I am not sure of the number, but there were some.

Senator DECONCINI. Some of them had had actual experience in the practice of law with the nominee before he was a judge?

Mr. LAFITTE. That is correct.

Mr. LANE. And I remember talking to one.

Senator DECONCINI. And any of his partners or associates in his law firms that he was involved in?

Mr. LANE. I believe that is correct.

Senator DECONCINI. And what did you find?

Mr. LANE. I found each of them gave him high marks.

Senator DECONCINI. High marks as a lawyer and——

Mr. LANE. As an outstanding lawyer. One individual who practiced law in another firm at the same time, in Phoenix, said he was the star of the bar and rose rapidly.

Senator DECONCINI. Thank you, Mr. Lane. In the course of talking to lawyers who had appeared before the Supreme Court, and

even some who had lost cases there, did that include any civil rights attorneys that handled civil rights cases? Mr. Lafitte, do you recall?

Mr. LAFITTE. Yes, I am sure it did, Senator. I do not have a—I know it did. I am just trying to recall some of the comments.

Senator DECONCINI. Can you recall any of them? Were there some negative comments by any of those lawyers who had appeared before the Supreme Court?

Mr. LAFITTE. I think it is fair to say that there was negative comment by some who felt that, again, his conservative philosophy was obviously a problem, a strong concern to the individual. But I cannot say that that was a uniform reaction among them.

Senator DECONCINI. Was there some positive comment?

Mr. LAFITTE. Oh, absolutely.

Senator DECONCINI. From such civil rights lawyers?

Mr. LAFITTE. Well, there certainly was strong positive comment from, I would say, the great majority of lawyers who had actually appeared before him. I do not know that I have a clear recall that they were civil rights lawyers.

Senator DECONCINI. Were there any civil rights lawyers that you recall who said that he was not competent or capable as a lawyer and a judge?

Mr. LAFITTE. I do not recall any comment at all to that effect.

Senator DECONCINI. You do not recall any of that. So if it was a disagreement, it was how he happened to decide or vote on the decision, rather than his professional capability and competence?

Mr. LAFITTE. Correct.

Senator DECONCINI. Is that fair?

Mr. LAFITTE. Correct, and I think most people were straightforward in saying that that was the problem.

Senator DECONCINI. So from what you have testified here, it seems to me quite clear that you did do a thorough investigation, and what you found is what we have known for some time; there is some disagreement with the Justice's former opinions and how he happened to rule on certain cases. But there is little or no evidence of any lack of professional competence and capabilities, both as a sitting judge or to keep him from serving as the Chief Justice. Is that a fair observation of what your letter and process has done?

Mr. LANE. Those lawyers that appeared before him almost unanimously advised that he was always well prepared; he was very much interested in the case, and that oral argument before him was an intellectual exercise that they enjoyed.

Senator DECONCINI. And even some of those lawyers also said that they happened to disagree with him in his decisions.

Mr. LANE. That is right, and some of those lost their cases, but still they had high praise for the Justice.

Senator DECONCINI. They certainly were not too happy with the results, but they had no criticism of his capabilities or competence; is that right?

Mr. LANE. That is right.

Senator DECONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The distinguished Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, Mr. Lafitte and Mr. Lane, I join in expressing appreciation to the American Bar Association. I would add that I believe obviously, that, this committee has to make its own judgments. There has been a fair amount of discussion as to whether overly great weight is being ascribed to the American Bar Association's conclusions on other nominees who have come before this panel.

And while I start with appreciation for your work, I think it appropriate to say that I really believe we have to take our own independent view. The ABA's views, while entitled to some weight, have to be taken with the views of many, many others as well.

Mr. LAFITTE. Senator, may I say that we certainly understand that, and it has always been our perception of how you must proceed. We just want to be of service.

Senator SPECTER. Speaking for myself, I had raised a question in some of the prior proceedings and introduced a resolution on the Senate floor raising a question as to some of the ABA's procedures. I do not think they are relevant here, but I think that general expression of reservation is appropriate, because there sometimes is a perception in this country that the lawyers have too much control over what goes on.

Speaking as a lawyer, but also as a citizen, I think that perception has a lot of merit to it. Sometimes the lawyers do have too much control over what goes on. And just as you have heard from many groups, so will this committee, and so will the Senate, so that we can take into consideration a much, much broader range of views.

With respect to the category of interviews with judges, your conclusions say that "Generally judges across the country who have become familiar with Justice Rehnquist have expressed admiration and respect for him as an able, hard-working, conscientious individual. On the whole, the judicial community was high in its praise of Justice Rehnquist's abilities and qualifications."

I note your qualification of the word "generally" at the start of the first sentence, and "on the whole" at the start of the second sentence, and I would inquire as to whether there was any significant minority view in terms of the appraisal given by judges on Mr. Justice Rehnquist.

Mr. LAFITTE. Senator, I think that the main reason, in my view, for the qualification is that the sentence speaks of expressions of admiration as well as respect. We had a lot of judges that were contacted who had had, you know, some contact with Justice Rehnquist, who regarded him as a very competent jurist, one clearly qualified to serve on the Supreme Court and to be Chief Justice, who I suppose we in fairness could not say had expressed great admiration or admiration for him because—well, for whatever reason.

So I suppose we felt that the qualification was necessary to be as accurate as we could in reporting to you.

Senator SPECTER. So that the limitation, as you articulate it now, goes to the issue of admiration as opposed to the issue of competency and qualification.

Mr. LAFITTE. Well, I do not mean to imply that there was no negative comment received from no judge across the country, Senator. I was simply saying that the word "generally," the sentence does

deal with admiration, and the word "admiration" is in there because we felt it was important to convey to the committee the strong praise that we did receive from a great many judges across the country for Justice Rehnquist as a jurist.

Senator SPECTER. So you say you do not mean to imply that there was no negative comment. To what extent, if at all, was there negative comment among the judges?

Mr. LAFITTE. Well, my best recall would be that the negative comment would have to do with his strong conservatism and whether he is flexible enough to serve as Chief Justice from that standpoint.

I do not mean to suggest—it was very difficult to quantify that, but I think when we had expression, it was along those lines.

Senator SPECTER. In your inquiries, did you have a catch-all question, as there sometimes is, about an overall evaluation? Or did you stop short of asking for that kind of a conclusory judgment from those whom you interviewed?

Mr. LAFITTE. I think that in most of the contacts with judges, an overall conclusion was offered by them without even the question being asked. And generally, that conclusion was he is clearly well qualified. He is clearly entitled to the position, that kind of thing.

Senator SPECTER. Well, again, Mr. Lafitte, you say "generally." Was there any dissent?

Mr. LAFITTE. If there was, Senator, it was very isolated. I do recall a couple of judges who felt that because of his conservative philosophy he ought not to be serving as Chief Justice.

Senator SPECTER. But those were only as to philosophy, not that he was unfair?

Mr. LAFITTE. That is correct. I do not recall any comment about unfairness.

I recall comments about fairness, but not unfairness.

Senator SPECTER. In earlier testimony, you had made an observation about some negative comment when you were referring to inquiries among women and minority groups. And the response that you made related to "conservative philosophy," and whether he had a sufficiently open mind.

Were any of the objections raised going to the issue of fairness as opposed to philosophy?

When you talk about open mind, you may go to the issue of fairness, but I think there is an important distinction as to whether the thrust of those objections related to philosophy as opposed to a feeling of unfairness, or a conclusion or judgment of unfairness.

Mr. LAFITTE. Senator, I do not recall any comment that I would have interpreted as a comment on Justice Rehnquist's unfairness and his inability to deal because of unfairness or bias on the issues of sexism or minorities.

Senator SPECTER. You raise another word for it, bias as well as unfairness. You are saying that that was not an expression of opinion by any of those whom you interviewed that went to that issue, fairness or bias? You are nodding yes?

Mr. LAFITTE. I think I—I am sorry. Could you repeat your question? I do not think I understood you.

Senator SPECTER. Well, as I understand what you have said, there was no conclusion or no feeling expressed by those whom you interviewed that Mr. Justice Rehnquist was biased or unfair?

Mr. LAFITTE. I think that is correct, Senator. It might help you to understand. I used the word "unfair" because I think on the committee we may tend to think of bias and unfairness along the same lines. Our guidelines may indicate that.

Senator SPECTER. Mr. Lane, do you concur with the last answer by Mr. Lafitte?

Mr. LANE. Yes, I do.

Senator SPECTER. Among the 65 practicing lawyers whom you interviewed, can you give us an approximate breakdown as to how many were in the categories you have mentioned—women and minority lawyers?

Mr. LAFITTE. I did not count them, Senator. I hesitate to do that.

We did make contact with blacks and minorities who are sitting judges and who are practicing lawyers, but I cannot give you a breakdown on the number.

Senator SPECTER. Could you supply that information to the committee? Would you supply that information to the committee?

Mr. LAFITTE. I do not see why not. Yes, sir.

Senator SPECTER. I would appreciate that.

Thank you very much, Mr. Chairman. Thank you very much, Mr. Lafitte and Mr. Lane.

The CHAIRMAN. The distinguished Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

Let me just make sure I understand the answer to Senator Specter's last question or last series of questions.

Is it that you heard no negative comments about Justice Rehnquist's ability to be fair and impartial? Is that correct?

Mr. LAFITTE. Senator, I think that is a fair assessment. The negative comment we heard with respect to the concerns expressed by minorities and women had to do with his conservative philosophy and the difficulty he would have, I think, in dealing with those issues so far as they were concerned.

Senator LEAHY. Maybe we can word it not as a negative, but as an affirmative question. Did you hear any negative comments about his ability to be fair and impartial?

Mr. LAFITTE. I think not, Senator. I have just expressed to you the way the comments that I am speaking about that were negative were phrased to us.

Senator LEAHY. The negative comments that you heard were about his philosophy but not about his ability to be fair and impartial?

Mr. LAFITTE. I think that is correct, sir.

Senator LEAHY. Do you both concur with that?

Mr. LANE. Yes; I do.

Senator LEAHY. Now, you looked, of course, at his legal abilities, as you have testified. Did you look at questions of his administrative abilities?

Mr. LAFITTE. We did, sir.

Senator LEAHY. What did you find there?

Mr. LAFITTE. Well, we had some kind of special work done on that. He has participated as a member of a national organization

dealing with uniform State laws, and people who worked with him had an opportunity to observe his administrative abilities in that respect and thought very highly of them.

Others said they did not know much about it, but the comment we heard was very favorable about his administrative ability.

Senator LEAHY. You both concur in that?

Mr. LANE. Yes, Senator Leahy.

Senator LEAHY. What about questions of leadership? The Chief Justice has a lot of responsibilities for leadership knowledge within the Court, with the eight other members of the Court, but also through various other aspects of the whole Federal Judiciary. What about his leadership qualities?

Mr. LAFITTE. Well, I think that the comment we heard on that issue, on that factor, was a sense of strong praise. Other members of the Court believe that he shows strong leadership qualities. Other judges and lawyers who have known him, all have high regard for him in that respect.

Senator LEAHY. Now, in an area of particular concern to me, what about questions of his health? Did you go into that or was that beyond your brief?

Mr. LAFITTE. Well, we did not discuss it with him because in the course of our investigation, we had no comment about it, really.

Senator LEAHY. You had no comment?

Mr. LAFITTE. Except to the extent that we may have had a couple of people who made reference to the fact that they understood at some time in the past that Justice Rehnquist had had a back problem, and they did not know how that was now, but very isolated.

Senator LEAHY. Is that you initiated no questions about his health or you heard none volunteered to you?

Mr. LAFITTE. Well, I cannot speak for other members as to the way the discussion went with the contacts they made, but I recall no reports in which his health was raised as an issue.

Senator LEAHY. Did you ask any questions about that?

Mr. LAFITTE. Did I personally?

Senator LEAHY. Yes.

Mr. LAFITTE. I did not.

Senator LEAHY. Sir, would that be about the same answer?

Mr. LANE. Well, I asked at one point in one of the interviews, of one of his colleagues on the Court—I asked about his health and was assured that he's a vigorous, hard-working member of the Court. I never really pursued it.

The CHAIRMAN. Mr. Lane, speak a little bit louder and in your microphone so we can all hear you.

Mr. LANE. Did you get that answer?

Senator LEAHY. I think the chairman wanted you to repeat it, Mr. Lane.

Mr. LANE. I would be happy to.

I think in one of my interviews with one of his colleagues on the Court, I mentioned health or it came up in the course of a discussion of his work habits. It was indicated to me that he is one of the hardest working members of the Court and has no trouble keeping up with the work of the Court.

What it meant to me was that there does not appear to be any health problems. There were no health problems detected in the

course of our interview. Mr. Lafitte went up to your fine State way up in the northern part of Vermont to interview the Justice.

It is a beautiful area.

Senator LEAHY. I was going to say, that is a hell of a hardship tour.

Mr. LAFITTE. The temperature is a little different from New Orleans.

Senator LEAHY. It really is.

Mr. LANE. He looked well and relaxed during that interview.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Kentucky.

Senator MCCONNELL. Gentlemen, at the risk of being redundant, then is it safe for us to conclude that all or virtually all of the very few negative observations about Mr. Justice Rehnquist were related to his judicial philosophy?

Mr. LAFITTE. I think that is correct, Senator.

Senator MCCONNELL. All of the observations?

Mr. LAFITTE. I cannot recall. I will not say that there was no one who said he is——

Senator MCCONNELL. But you cannot recall a single negative observation about Mr. Justice Rehnquist other than his political philosophy?

You either, Mr. Lane?

Mr. LANE. No; I think that is correct. I do not recall anything other than people who commented on the fact that he was too conservative.

Senator MCCONNELL. Let me just say, I think we must all conclude that that is a truly remarkable thing; that you talked to lawyers all over the country, on the bench, off the bench, and heard not a single negative observation about a man who has been in public service for 15 years, other than his political philosophy. Leading me to conclude, gentlemen, that the President has made here a truly outstanding nomination, because I do not know anybody else—certainly no one in this body—who could be in public service and in combat and in dealing with the political issues that come before us for such an extensive period of time and generate so few or, in fact, no negative observations about anything other than philosophy.

Mr. LAFITTE. Senator, I do not want to mislead you. I think that, in view of the breadth of your statement, I need to point out that, for example, we had received what you might call negative comment with respect to the matter that had been reported in the media about the memorandum that Justice Rehnquist had written as a law clerk, when he was a law clerk, to Justice Jackson. Those are matters that I think have been widely published.

Senator MCCONNELL. That is a philosophical observation.

Mr. LAFITTE. I just wanted you to know.

Senator MCCONNELL. By any interpretation, it is a philosophical observation.

Mr. LAFITTE. It is a matter of trying to be as enlightening to you as I can.

Senator MCCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. I want to pursue an issue that has been raised as to collegiality and consensus building, both qualities in the role of a Chief Justice.

I think we have given statements here yesterday and today and it has been in the press that there have certainly been occasions when there was a tremendous need for a consensus builder, where the quality of collegiality would have been involved. Such as Brown versus the Board of Education where you had a unanimous Court and the tapes case in the Watergate era, those certainly.

But I believe there are certain bounds and that there is a balance relative to consensus building and even collegiality that we may sometimes overlook. There is perhaps a danger of too much of an ability of one individual to build a consensus in the regular routine of case.

Were there any reports, at least from the media, that the Court is presently divided into at least three groups, perhaps more: a conservative wing, a democratic wing, and then a swing group which is in the middle? That swing group has a potential for a person who has strong ideas, strong beliefs, to try to obtain their support.

Was there any evidence in your investigation on the part of Associate Justice Rehnquist that he politicked his views, his opinions, his position relative to a case that might be before it?

Mr. LAFITTE. Senator, the answer to that is no. I think the reports that I can convey to you were reports of high admiration, high esteem for Justice Rehnquist in terms of his intellect, in terms of the collegiality of his relationship with the other members of the Court, and with his work habits. So the comments we received were, so far as I know, broader than maybe the limits of the precise question you are asking, but all of that suggests to me that he is regarded as one who is a leader and who can serve well as Chief Justice from that standpoint.

Mr. Lane may want to supplement what I have said.

Mr. LANE. Well, I gained the impression, Senator Heflin, that Justice Rehnquist, because of his many years of service on the Court, is now a very experienced and seasoned Justice. He understands perfectly well how the process works, and that you have eight other Justices. In our little discussion with him, he referred to them as like dealing with eight small law firms. And you have to have a majority in order to get anything done.

He appreciates and understands as well as anyone in this country the need to get a consensus. He has to get five votes in order to accomplish what he would wish to do in any particular case.

And I was told by one of his colleagues, one who I have the greatest respect for * * * that he looks for a tremendous improvement in the functioning of this Court. He thinks that Justice Rehnquist—if I can remember his words—will help pull this Court together, that this man has a deep interest in the product of the Court, which is the Court's opinions.

With these comments that I received from people that have tremendous regard for, I came away with a very strong opinion that Justice Rehnquist will make an excellent Chief Justice.

Now, I do not know whether that answers your question.

Senator HEFLIN. Well, I think to some degree it does. There could be some danger. I think there is a danger. I think an opinion or a

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holding ought to stand on its own merits. But in many instances, I think there is a fine line of demarcation that has to be drawn, and it is somewhere in the middle as to how far one should go and one should not go in that matter.

That, in effect, sort of brings up another question as to your statements that there were no negative comments on fairness or bias. This is really unusual because the subjective evaluation of ideology in the past has been in the past that if someone disagreed, they may have felt you had a bias or you had a lack of fairness relative to your position.

And since you had no negative comments whatsoever on fairness and bias, and we have been through an era which, in effect, has generated ideological issues that involve bias and fairness, I think that that is a remarkable comment that you have made and a remarkable finding that you have had.

One of you mentioned awhile ago something about the assignment to his law clerks—that he gave them 10 days. Was there any indication that the work product of his opinion was more of a law clerk than it was of his own language, his own writings? You said something about a law clerk having 10 days in which to finish, and I am not sure exactly what I understood from that.

Mr. LANE. Well, to the contrary, Justice Rehnquist reads the briefs and prepares for oral argument. He does not use a bench memorandum. What he does is read the briefs, as any good judge should, and then he sits down and discusses the case with his clerk prior to oral argument. He tries to get himself personally prepared for the argument of that case, and he regards oral argument as a very important part of the process.

But once an opinion is being prepared or being written, or if there is a memorandum on a point of law, and the assignment is given to the clerk, it is my understanding that he puts tight deadlines so that he can control the work of his own office and the productivity of that office.

If a clerk is having problems with something, he can move in and help and get the process moving along, which I thought was a very good thing.

Mr. LAFITTE. But, Senator Heflin, he uses the law clerk's first draft as a first draft and then goes from there. It is a rough product to give him the foundation for the work that then must go on to develop the opinion.

I think that he would use maybe a very low percentage of one first draft and maybe a higher percentage of another, but it is just that, a rough draft.

Senator HEFLIN. Let me ask you about the makeup of your committee. I assume here that Mr. Fiske is your chairman. What type of practice does Mr. Fiske have?

Mr. LAFITTE. Well, I know he does some antitrust work because that is what he is involved in right now.

I believe that he heads up the litigation section of Davis, Polk & Wardwell in New York so I am sure it is a high-powered, large city practice.

He is a former U.S. attorney, by the way, as you may know, Senator.

Mr. LAFITTE. Yes.

Senator HEFLIN. Thank you. That is all.

The CHAIRMAN. The distinguished Senator from North Carolina.

Senator BROYHILL. Thank you, Mr. Chairman.

As usual, when you get down to this end of the committee, all the questions have been exhausted. But thank you very much, gentlemen, for your very complete testimony here.

How many years has the American Bar Association conducted these types of investigations and offered these evaluations of nominations for the Supreme Court?

Mr. LAFITTE. Senator, I am sure the type of the investigation might have varied over the years or changed over the years, but for over 30 years I think the President has sought the advice of our committee through the Department of Justice as to virtually all the nominees. I think since 1948 the Senate has requested our opinion.

As I say, I have been on the committee 5 years, and the kind of investigation we do now is what we have been doing for that period of time.

Senator BROYHILL. Well, is this high evaluation of a nominee, well qualified, is that unusual? In the past history of these evaluations, have you failed to give that high qualification to a nominee in any cases in the past?

Mr. LAFITTE. I do not know that I can—the only experience that I can draw upon is the nomination of Justice O'Connor. I think that was a different evaluation, primarily because of the difference in her background and the different level of her experience. But it was certainly a vote of strong approval.

Beyond that, Senator, I am not sure. I am not even sure of the rating given to Justice Rehnquist on his initial advance to the Supreme Court.

Senator BROYHILL. Speaking personally, I am impressed with the exhaustive nature of the American Bar Association's investigation of Justice Rehnquist. I understand that over 70 practicing attorneys were interviewed, 50 deans and faculties of law schools, 180 Federal and State judges, as well as all associates of the Supreme Court, and many others.

Now, I assume that all members of your committee were involved in this and not just one or two members of the committee.

Mr. LAFITTE. All members of the committee participated, Senator.

Senator BROYHILL. Could you describe briefly, since we do have to rush off here for a rollcall, whether or not these were very short interviews—hey, Joe, what do you know about Rehnquist? Or was it an exhaustive interview? Did you follow a formal questionnaire approach?

Mr. LAFITTE. It is generally telephone contacts, Senator, because of the logistics of the problem. The interviews vary in length, depending on how much the individual feels like talking. Some of them are rather very lengthy. Others are quite short.

We do ask questions and get responses.

Senator BROYHILL. But in every case, everyone who is contacted is invited to contact you; in other words, the record, in effect, is left

open if they wish to contact you in writing with any additional comments or opinions?

Mr. LAFITTE. Well, we are happy to receive any. I cannot say that when we make the contact everyone makes that point with the interviewee, but certainly, in the course of our investigation, sometimes we get volunteers who will contact us with information.

Senator BROYHILL. I thank you very much.

Mr. LAFITTE. Thank you, sir.

Senator BROYHILL. I note that a vote is pending on the Senate floor.

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. I shall be very brief, Mr. Chairman.

First, just a comment. I have met with Mr. Fiske, the Chair of your committee on two occasions. I have had breakfast with the president of the ABA and the president-elect. I have expressed, and this is prior to the Manion nomination, it has nothing to do with the Rehnquist nomination—I have expressed concern that the American Bar Association is not maintaining high enough standards in approving Federal judges. It is a continuing concern that I have, and I simply pass that along.

Two questions, very briefly: One is, if you were a member of this committee, would you vote to confirm Justice Rehnquist? You have answered this by implication, but you have not answered it directly. I will ask each of you.

Mr. LAFITTE. I would, sir.

Mr. LANE. Yes; I would, too.

Senator SIMON. OK. Then the second question: The Chief Justice of the Supreme Court takes on many roles; one is administrator of the Court, one is to assign cases and so forth. One is also a symbolic role as representing justice for all: for minorities, for women, that symbolic role of Chief Justice.

Would Justice Rehnquist fill that symbolic role well on the basis of what you have read of his opinions and what you know?

Mr. LAFITTE. Well, I think, Senator, clearly, there would be dissent from the view of one who would answer in the affirmative, because I think there are people who have expressed concerns to us that I have tried to convey to the committee this morning, and the reasons for those concerns. So I do not know that—I certainly cannot report to you that all would feel that he would be entitled to be considered in that light.

Senator SIMON. Mr. Lane?

Mr. LANE. Your question goes to the very heart of what I was trying to get at in my investigation and the interviews that I conducted. It was almost the type of question that I pressed.

What I found was that, among those who knew the Justice best, the ones who really knew him, who had experience with him, either when he was in the Department of Justice on legal matters or since he has come to the Court, were of an opinion that he would make a very positive contribution and would make a very fine Chief Justice of the United States.

That is the best way I can answer it. It is based on what I received, the feedback that I got in the course of my personal examination.

Senator SIMON. You are not quite answering my question, Mr. Lane. Would he represent justice for everyone? Would he be a good symbol for minorities, for women, for others who may not feel they are—and who sometimes are not—getting the right breaks in our society?

Mr. LANE. I think he would make an effort to, and whether or not that would be understood and whether everyone would agree is another question.

Mr. LAFITTE. Yes. That is what I was trying to say, Senator. I would agree with that. I would think so, but I would understand that others might not agree with that.

Senator SIMON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The 5-minute bell is on. Actually, we only have about 4 more minutes, but I just wanted to ask you this question.

In your investigation, you interviewed judges; that is correct, isn't it?

Mr. LAFITTE. Yes, sir.

The CHAIRMAN. I notice from what you say here that the judges had to say this about Justice Rehnquist, and these are some excerpts from your report. A true scholar, collegial, genial, low key. Another: unbelievably brilliant. Another: a very capable individual in every respect. Another: able, hard-working, conscientious individual. Another: enjoys the respect and esteem of his colleagues on the Court.

Do you feel that that is a fair appraisal of Mr. Rehnquist by the judges?

Mr. LAFITTE. Well, yes, Senator. I think we tried to use those quotes in order to give the committee some idea of the kind of comment we were receiving from those who were high in their praise of Justice Rehnquist.

The CHAIRMAN. Thank you.

Now, on the interviews with lawyers, I notice some quotes. Very talented. Another: a brilliant and able man. Another: one who brings out the best in people. Another: will facilitate the work of the Court.

Do you feel that that represents the thinking of the lawyers that you interviewed?

Mr. LANE. Yes, Mr. Chairman.

Mr. LAFITTE. Yes, sir.

The CHAIRMAN. Then with the interviews with deans and professors of law. Many of these individuals spoke highly of his writing and analytical ability. The vast majority has strong praise for his professional qualification. That is from deans and professors of law.

Do you feel that is typical of the way they feel?

Mr. LAFITTE. I think so, Senator, and I might say that a number of these people commented that they differed strongly with Justice Rehnquist with respect to his judicial philosophy, but they felt that way about his competence.

The CHAIRMAN. And then as to a survey of his opinions, 200 of Justice Rehnquist's opinions were examined, and it was concluded that the Justice's legal analysis and writing ability are of the highest quality.

Is that your feeling as to the appraisal of the opinions that you examined?

Mr. LAFITTE. That is correct, sir.

The CHAIRMAN. Now, as I understand, the American Bar has three ratings: well qualified—that's the highest; next, not opposed by the committee; and third, not qualified.

The American Bar, as I understand from you, recommends him as well qualified; is that correct?

Mr. LAFITTE. That is correct, sir.

The CHAIRMAN. Do you gentlemen of the committee recommend him to the Senate Judiciary Committee to be approved by this committee and the Senate?

Mr. LAFITTE. That is our recommendation, sir.

The CHAIRMAN. We are now going to take a recess until 2 o'clock. We have got some different votes coming up so we will come back at 2 o'clock. You gentlemen are excused.

[Whereupon, at 11:42 a.m., the committee adjourned, subject to the call of the Chair.]

AFTERNOON SESSION

[Whereupon, at 2 p.m., the committee reconvened, Hon. Strom Thurmond, chairman, presiding.]

The CHAIRMAN. The committee will come to order. It is 2 o'clock. Are there any Democratic staff members here? You might tell your Senators.

Is Senator Biden's staff member here, the ranking minority member? If so, I would like for you to call him.

[Pause.]

The CHAIRMAN. It looks like we are going to have to take a recess for 5 minutes.

[Brief recess.]

The CHAIRMAN. Judge Rehnquist, I would remind you that you are still under oath, Mr. Justice.

TESTIMONY OF HON. WILLIAM H. REHNQUIST, NOMINEE, TO BE CHIEF JUSTICE OF THE UNITED STATES

Justice REHNQUIST. Yes, Mr. Chairman.

The CHAIRMAN. We are going to alternate 20 minutes each. I will take 20 minutes, Senator Biden 20 minutes; then we will pass on to other members 20 minutes each.

We will turn the red light on at 19 minutes so they see they have 1 more minute to wind up.

Justice Rehnquist, since the announcement of your nomination to be Chief Justice of the United States, there has been much talk about the opportunity you will have to lead the Court in a new conservative direction.

Would you please tell the committee to what extent you believe that a Chief Justice can influence, if at all, the philosophical direction of the Court?

Justice REHNQUIST. Mr. Chairman, members of the committee, I think that the Chief Justice can exercise a certain amount of leadership on the Court, but I do not think it is apt to be in a philosophical direction.