

Mecklenburg, which I argued, for school districts to disestablish the vestiges of past discrimination.

He has soundly criticized litigation such as class action lawsuits designed to bring about remedies to address systemic discrimination. He has problems with group or affirmative obligations established to ensure equal opportunities for minorities in the workplace.

Since Brown, the Court and Congress have tried to develop fair and effective means to make real Brown's promise of equality. The civil rights remedies that exist today are the product of experience drawn from a wide array of efforts, some successful and some which have not been.

For example, we have tried voluntary efforts like freedom of choice, broad prohibitions as in the voting rights area, and threatened damages as are available under the 1866 Civil Rights Act.

Whatever steps were finally taken have come only after careful analysis of the facts, the law, and proven experience. Judge Thomas would discard all of this.

Second, if we accept the nominee's statements during this hearing at face value, the Senate and the committee would be left with the fact that we have nothing here to determine whether the nominee has the qualifications, the judicial temperament to serve on the Supreme Court. We have prepared an exhibit, an appendix A to our submitted testimony, and I would like to call your attention to it because it lists the 48 Supreme Court Justices who were appointed during the 20th century.

In every instance here, the nominees possessed at least two major qualifications to serve on the Supreme Court. Judge Thomas possesses not one of those. We think when you make your comparison with this list with the qualifications that Judge Thomas has presented, you too would agree that this nominee simply does not have the qualifications to be elevated to the U.S. Supreme Court.

Thank you.

The CHAIRMAN. Thank you very much.

Mr. Rauh.

STATEMENT OF JOSEPH L. RAUH, JR.

Mr. RAUH. I testify this afternoon for organizations of people devoted body and soul to the Bill of Rights. But I also testify for myself.

I had the honor and privilege to serve as last law clerk to Justice Benjamin Cardozo and first law clerk to Felix Frankfurter, the two great successors to the legendary Oliver Wendell Holmes. When Senator Kennedy read Clarence Thomas' trashing of Oliver Wendell Holmes last week, I was made ill. I felt not only Holmes but Cardozo and Frankfurter, his great successors, were being trashed as well.

The years I spent with the Court in the 1930's were years when Presidents reached out for the best person. Republican conservative President Calvin Coolidge appointed Justice Harlan Fiske Stone, a great Justice and ultimately the Chief Justice. His successor, Republican conservative President Hoover appointed Justice Cardozo

even though that meant two Jews and three New Yorkers on the Court and knowing how liberal he was.

The importance of that minority cannot be understated. What happened was that the Brandeis-Stone-Cardozo minority on the anti-New Deal Court saved the New Deal and the system under which we lived by two things. One, they educated the public and two, they restrained the majority.

There is no such minority now. You have no such persons who are going to restrain the Court or are going to educate the public to what is wrong with the present system. Now, that was a time when the Presidents reached for the best.

President Bush has suggested, and I quote, that he has appointed "the best person for the job." Why, he didn't even look for the best person. They took the sitting judges and decided which one is best for what we believe in—no abortion, no affirmative action, school prayer, defendants' rights. This was a question of starting with sitting judges and looking for those who would carry out their position. There is no distinction in this man. How he can be called the best person for the job when there is no distinction in anything he has written that has been shown to us.

He has the lowest rating—not only the performance in the appendix just offered the committee, but he has the lowest rating from the American Bar Association of any nominee. There have only been two that had unqualified votes. But Thomas, he not only had unqualified votes, he didn't have a single well-qualified vote. How could the President of the United States tell the people that this is the best person for the job when he can't get 1 of 15 conservative lawyers to say he is well qualified?

Even Carswell had a better record. Thomas has a worse record than even Carswell. I can't see how the Senate can confirm somebody who has a worse record, a worse evaluation than Carswell.

And the hearing. The hearing is quite remarkable. The testimony is inconsistent, incredible, and inoperative. It was inconsistent. You all heard the number of inconsistencies, but probably the basic one is the inconsistency of testifying about dozens of cases that are going to come before the Court and refusing to say where *Roe v. Wade* stood. It is incredible. The idea that he has never discussed with anyone *Roe v. Wade*—well, the word is incredible. I think there are better odds on the existence of the tooth fairy than the truth of that statement that he never considered or discussed *Roe v. Wade*.

Finally, it is inoperative. What he said is everything he has said in life up to the time he went on the court is inoperative because he was doing policy for the administration. Well, I think whichever way you look at that, it is very, very damning.

Well, in the 5 minutes—they are almost up—I only have this final appeal to the committee. Don't approve this man. He will do what he said he was going to do. He believes in the things—the conversion at the hearing here is no answer for you. The last two have done exactly what they said they were going to do on the Court, and what we argued they shouldn't be on the Court for, because they would do just what they said. And this man will, too.

Finally, you are the keeper now of the Bill of Rights. There is a majority of the Court which is very prone to having an erosion of