

Senator KENNEDY. Thank you very much.

All of the statements in their entirety will be included in the record. I have no questions.

Senator THURMOND?

Senator THURMOND. I want to thank you all for coming here and testifying. Taking time to come here shows you are interested in this matter, and it shows your admiration, I think, for Judge Souter.

Now, Judge Souter was propounded several questions that he declined to answer because those questions might come before the Court. He is a judge now on the circuit court. He has been nominated to the Supreme Court.

In your opinion, did he take the proper stance to refuse to answer those questions? I would be glad to start with you.

Mr. WILLIAMS. Senator, on balance, I think he has taken the proper approach, given the two circumstances that you addressed: No. 1, that he has been asked a number of questions that relate to matters that would be coming before Supreme Court and matters that would be of live interest before the Supreme Court, not just ancillary issues but matters that are quite fundamental. Second, he sits on a court now that also has to deal with such issues.

I think under the total circumstances it probably would be quite inappropriate for him to express views, if he had them. One of the things that I would urge you to give some consideration to is that perhaps the judge doesn't have well-founded views on these issues but instead is prepared to listen and to assess, as his skill affords him the opportunity.

Senator THURMOND. Mr. Beck?

Mr. BECK. I would share the comments of Mr. Williams. I think it is appropriate under both the ethics provisions and as a sitting judge to not—

Senator THURMOND. Speak out. You all speak into the machine. We can't hear you.

Mr. BECK. Yes, sir. I think it is perfectly appropriate for a sitting judge not to give his opinion on things that are about to or prospectively will be heard by the Court. I think that, on balance, that was appropriate conduct.

Senator THURMOND. Mr. Barr?

Mr. BARR. Senator Thurmond, we at Southeastern Legal Foundation are a body very interested in maintaining the sanctity of the rule of law in this country and all constitutional processes thereunder, and we believe that for Judge Souter to have done anything else in our opinion would have cast doubt on his ability to properly serve on the Court. I think he took the only proper course ethically and in line with the correct reasoning, we believe, under the Constitution in refusing to be drawn into those debates and rendering those opinions.

Senator THURMOND. In fact, wouldn't he have violated the rule of ethics if he had answered such questions?

Mr. BARR. It is my understanding of the rule of ethics as they pertain to judges, the ABA rules, that he would have.

Senator THURMOND. I want to ask all three of you this question. You have studied his background; you have heard his testimony; you are familiar with his education, training, and experience. Do

you know of any reason whatever that he should not be confirmed by this Senate?

Mr. WILLIAMS. I do not.

Mr. BECK. I do not.

Mr. BARR. No, sir. We do not see any.

Senator THURMOND. I will ask you this last question: Is it your opinion that Judge Souter has the competency, the dedication, the courage, the integrity, and the fairness to be a Justice of the Supreme Court of the United States? Mr. Williams?

Mr. WILLIAMS. Very definitely.

Senator THURMOND. How is that?

Mr. WILLIAMS. Very definitely.

Senator THURMOND. Mr. Beck?

Mr. BECK. Based upon our analysis of his historical decisions and the process he followed to reach his decisions, the answer would be yes.

Senator THURMOND. Mr. Barr?

Mr. BARR. Yes, Senator Thurmond, we believe that.

Senator THURMOND. That is all the questions I have. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you.

Let me ask you, Mr. Williams, would your position be any different if Mr. Souter would not discuss the rationale or legal reasoning in *Brown v. Board of Education*?

Mr. WILLIAMS. Would my position be any different if he would not?

Senator KENNEDY. Yes.

Mr. WILLIAMS. I have listened to your discussion, the committee's discussion—not your personal discussion—of that issue with him and to the discussion of the various witnesses on that subject, and I believe that the *Brown v. Board of Education* underlying reasoning is eminently settled and probably at that level of fundamental principle not likely to be challenged in ways that would make it a live issue before the Court, either before the court on which he sits or before the Supreme Court. I think that is a fact if you analyze the dockets of those two courts.

The situation is not the same. The country is being really rent asunder, as you know, by the abortion issue, and I think that it has become a live political topic that really probably at this time in our history requires a little different approach. It is an interesting question, and I don't come to that conclusion easily.

Senator KENNEDY. Well, it is somewhat more than an interesting question. What year do you think it became settled law, the issue of race discrimination?

Mr. WILLIAMS. Oh, gee, I don't think I am qualified to tell you—

Senator KENNEDY. Was there sometime when it was—

Mr. WILLIAMS. It was certainly a settled question with me long before it became settled with the Supreme Court.

Senator KENNEDY. You don't think that there is a parallelism in terms of questions of the constitutional rights in privacy?

Mr. WILLIAMS. I think that stating the question as broadly as you have, having to do with constitutional rights of privacy, I think maybe is not quite the question that we are talking about here. I