

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.