

Senator KENNEDY. Well, I think Senator Biden has responded to that. He indicated he—we went late into the evening last evening, as you remember, Senator. Do you remember how late we went? We went late into the evening. And I am sure that the committee will go and have a full day.

I want to thank these witnesses for very responsive answers, and we have every intention of moving the hearing along.

Do you have any questions?

Senator THURMOND. Well, I just want to say, if you are going to say 5 minutes, make it 5 minutes. If you are going to make it 7 minutes, make it 7 minutes. You went over and they went over, too.

I thank you for your presence. I have no questions.

Senator KENNEDY. Senator Simon.

Senator SIMON. Yes. I want to thank the witnesses for their testimony.

One of my Senate colleagues said it is not clear where Judge Thomas will go, but up to this point, he has had to basically follow the Reagan administration line; now he is going to be a free person; I think because of his background he will be doing the right thing.

How would you respond to my colleague?

Mr. EDLEY. The problem that I have with the question, Senator, is that it contains an assumption with respect to the burden of proof and the burden of persuasion—the burden of production and the burden of persuasion here.

It seems to me the administration and the nominee have the responsibility of persuading you that the nominee ought to be confirmed. It is not, it seems to me, for you to guess as to whether or not the nominee has an acceptably mainstream constitutional vision. It is the purpose of the confirmation process, it seems to me, to detect what that constitutional vision is.

Now, background and character are not a substitute for constitutional vision. As I said in my remarks, the character, integrity did not prevent *Dred Scott* or *Plessy* or *Lochner*.

In the discussion yesterday, for example, that Senator Specter began over various national security matters—war powers, Korea, and so forth—I was looking for the constitutional vision. Not that the question can be simply answered, but some sense of what are the principles that will inform a Justice Thomas as he struggles with the imponderable issues that are put before a Supreme Court.

I saw no indication that he has a framework for approaching constitutional issues. I saw artful ways of largely evading the question. Eventually, after a belabored discussion, he reached out for the political question doctrine, but I don't understand why the political question doctrine ought to apply or how it would be evaluated. There is simply nothing there, and character cannot fill in the blanks.

Mr. DAYS. Let me add, Senator Simon, that in my earlier comments I pointed to his role as a civil rights enforcement officer in the Government. He was not just any bureaucrat. And I think that it is some indication of his values and the standards and his world view that he took such a harsh position in opposition to existing