

Senator DECONCINI. I agree.

Mr. CHAMBERS. We have to make a decision whether he is qualified for the position.

Senator DECONCINI. That is a fair point, in my judgment.

Thank you, Mr. Chairman. I am sorry to take as long as I did.

The CHAIRMAN. Thank you. With the permission of my colleagues, I would like to just follow up.

Mr. RAUH, you said earlier that, something to the effect that there should be balance on the Court, and you pointed to the Roosevelt era and you mentioned Hoover, pre-Roosevelt, you mentioned and Calvin Coolidge and who they appointed.

Do you think you would be here if the Court had six liberals and the President nominated Judge Scalia, knowing what Judge Scalia thinks and how he views the world? Would you be here supporting or opposing Judge Scalia?

I have never heard anybody talk about Judge Scalia's qualifications. I have incredible difficulty with Judge Scalia's methodology, personally. But I never heard anybody talk about his qualifications as being in jeopardy.

Would you be here opposing Judge Scalia? It is a tough hypothetical, but.

Mr. RAUH. I don't think the exact case has ever come up, but it may have. The reason I say I don't think that the exact case has ever come up, it hasn't come up for liberals. I think it came up for the Republicans in the Senate in 1932. The conservative Republicans in the Senate, I think they had that, because you had a conservative Court in 1932 and you had a liberal appointed, which is the exact opposite of the case you gave me.

The CHAIRMAN. Yes. That is why I asked the question.

Mr. RAUH. And I think the Republicans in that instance acted with great dignity. Indeed, Senator Watson of Indiana—am I right?

The CHAIRMAN. I don't know.

Mr. RAUH. I think he was the majority leader. And he said to Hoover, "The best appointment politically is the best man," and, in fact, a liberal was confirmed there.

I can't—I want to give you an honest answer about Scalia there. I think I would feel that that was a pretty bad appointment. But I really think if there were six liberals this panel wouldn't be here.

The CHAIRMAN. I appreciate that.

I am sorry. The Senator from Pennsylvania, I believe, is next.

Senator SPECTER. Thank you, Mr. Chairman.

Within a short round, it is hard to cover much ground that this very distinguished panel has articulated in both the written statements and their oral testimony. Let me start with the qualification and background issue that Mr. Chambers writes about. And he lists a litany, one of which is the ability to grasp the intricate relationships and ramifications of a decision that is an integral part of the mosaic of Federal law, one among many qualifications. And he compared Judge Thomas to 48 Supreme Court Justices appointed in the 20th century and find him coming out lacking.

And, I wonder as I go through it if any really measure up except for the two that Joe Rauh talks about having clerked for—Benjamin Cardozo and Felix Frankfurter. And I think back on the testimony given here, Chief Judge John Gibbons from the Third Cir-

cuit, a very distinguished jurist who knew Judge Thomas for many years, or they sat on the board of Holy Cross and had some detailed of the individual and his legal qualifications, read all of his opinions before coming to testify. And you had Professor Drew Days of the Yale Law School who, although he opposed Judge Thomas, thought he was educationally and intellectually qualified. And then you had Dean Calabrese of the Yale Law School who was at Yale in the teaching field, although he did not have Clarence Thomas as a student when he was at Yale, and all of those individuals give him pretty high marks in terms of base qualifications.

Why should we not accept their approach, Mr. Chambers, as opposed to your analysis?

Mr. CHAMBERS. Well, first of all, Senator Specter, I listened to some of that testimony and I am not certain how high a mark they gave him, but let's make that assumption. But I ask you to look at the Justices we have listed here in this exhibit, at the litigation experience or practice of law experience, at the teaching experience, at the judicial experience they have had, at the status they had obtained in the legal field, and make a comparison with Judge Thomas.

I think if one wants to look at the Constitution and talk about what the standard is as what we have developed to judge candidates for the bench for, and in that instance I think the ABA said that Judge Thomas was qualified.

But, if we are trying to develop a Court, or preserve a Court that has been responsive to the issues that have been brought before it, that had people who were really exceptional as we collect here in this exhibit, Judge Thomas doesn't measure up, and that is what we are presenting with this exhibit.

Senator SPECTER. Well, you would disagree with Dean Calabrese who said that he at least may not measure up to the Cardozo-Holmes standard, but Dean Calabrese insisted that he at least measured up, if not better than, the other recent appointees.

But you would disagree with that as well?

Mr. CHAMBERS. Again, I would call your attention to this exhibit, and according to this exhibit and looking at the objective standards we are trying to use in the exhibit, the answer is no.

Senator SPECTER. Well, your exhibit picks seven standards, but you might pick some others. You might pick a totality. But I would be interested in the answer to that question as to your agreement or disagreement with what Dean Calabrese said, that Judge Thomas is at least as good as the recent appointees.

Mr. CHAMBERS. As the recent?

Senator SPECTER. Appointees to the Supreme Court of the United States.

Mr. CHAMBERS. If that is what Dean Calabrese said, I would think that that is not the way I would evaluate Judge Thomas' qualifications.

Senator SPECTER. I would like to discuss a number of the areas with you, but the yellow light is on, so let me instead turn to Mr. Lucy on one question.

Mr. Lucy went to the Yale article which Judge Thomas wrote, the Yale Law and Policy Review, and picked out his writings on Judge Thomas' disagreement on affirmative action. I note there