

Senator THURMOND. The rating of well qualified is based, as I understand it, on three factors, more or less: integrity, judicial temperament, and professional competence. Is that correct?

Judge TYLER. That is correct.

Senator THURMOND. Also, I understand that the persons in this category must be among the best available for appointment to the Supreme Court. Is that correct?

Judge TYLER. That is certainly correct.

Senator THURMOND. Now, you made a very searching investigation, I presume, of Judge Kennedy in all aspects and came up with that final rating.

Judge TYLER. We did.

Senator THURMOND. Do you know of any reason that Judge Kennedy should not be confirmed for the Supreme Court?

Judge TYLER. Well, accepting our limited role and confining my answer only to that limited role, we know of none.

Senator THURMOND. So, as I understand it, your committee recommends that Judge Kennedy be confirmed?

Judge TYLER. We certainly agree that under our criteria——

Senator THURMOND. That is a——

Judge TYLER. Under our criteria, we certainly agree.

Senator THURMOND. Mr. Andrews, I believe you are a member of this committee. Do you agree with the conclusion of Judge Tyler?

Mr. ANDREWS. Very definitely.

Senator THURMOND. Mr. Elam, I believe you are a member of this committee. Do you agree with the conclusion of Judge Tyler?

Mr. ELAM. As he stated it, yes.

Senator THURMOND. Mr. Lane, how do you feel?

Mr. LANE. I certainly agree.

Senator THURMOND. Judge Tyler, were there any dissenting votes in your committee on this matter?

Judge TYLER. None, sir.

Senator THURMOND. In other words, your entire committee, every member favored approving Judge Kennedy for the Supreme Court?

Judge TYLER. We all agreed, all fifteen, that his integrity, professional competence, and judicial temperament made it very clear that he deserved our highest rating.

Senator THURMOND. And therefore your committee unanimously recommended Judge Kennedy for appointment to the Supreme Court?

Judge TYLER. We did.

Senator THURMOND. I have no other questions. Thank you very much, Mr. Chairman.

Senator KENNEDY. Senator Metzenbaum.

Senator METZENBAUM. Judge Tyler, it is good to have you before us again, particularly with my old friend, John Elam, from my own State. I just have a couple of questions.

On page three, I guess it is, you talk about interviews with lawyers. You say, on the whole they spoke affirmatively about the nominee's intellect, temperament, and integrity.

Your report is so effusive in its praise, that I am interested in knowing what, if any, negatives did come up. I do not want to canonize Judge Kennedy, and I would like to find, if there were some negatives, what they were.

We do not expect nominees for the Supreme Court, nor do we expect Senators, not to have some negatives. Can you tell us something of those negatives, even though you did not consider them significant enough to make a point.

Judge TYLER. Very simply, Senator Metzenbaum, as always, we encountered a few lawyers who were probably result-oriented as much as anything else. In other words, frequently, with lawyers, it depends on whether or not you and your client won or lost.

Senator METZENBAUM. Never. As a former practicing lawyer, never.

Judge TYLER. I must say, in fairness, though, there were one or two who did say that they thought that in connection with certain appeals which they handled, that he might have gone further in his discussion of the issues, and that sort of thing. But no one suggested, even those who were result-oriented, or quarreled a little bit with the opinions, doubted his integrity or his intellectual ability, and his willingness to try to address the issues in the case and not do any more.

Senator METZENBAUM. Thank you. I want to say that I stand shoulder to shoulder with Senator Kennedy, and many of us on this committee, on this question of judges being a member of a discriminatory club, or clubs. Yet in saying that, I also have to tell you, that I feel somewhat sensitive about the fact that we in the United States Senate act in connection with civil-rights laws, fair-housing laws, equal-employment laws, discriminatory laws with respect to women, and, yet I know that some Members of the United States Senate who are acting in connection with such laws are indeed members of clubs that have discriminatory policies with respect to women, and with respect to minorities.

And so I must tell you that—not that it is specifically relevant, but maybe confession is good for the soul. I am not confessing that I am a member of such a discriminatory club.

But I think that the United States Senate, makes this a very strict criterion in connection with the judicial appointments. I am not sure we turn it around on ourselves, and we probably do not have any opportunity to do that because, in the last analysis, the only people who can judge us are those of our own constituencies.

Whereas, in this case, we, in the Senate, and you, in the ABA, are in a different role. I thought I'd comment on that. I do not need any response from you, but I do feel a sense of sensitivity in this area with respect to our own House. Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from Utah. Senator Hatch.

Senator HATCH. Well, I would like to welcome each of you here, and we appreciate the work that you attempt to do in all of these matters. It is a lot of work, and you do not get much thanks for it, and sometimes you get beaten up pretty badly for it.

And I have been in both positions, where I have thanked you, and also found a great deal of fault.

In looking at what Senators Kennedy and Metzenbaum have drawn your attention to, the Olympic Club, did you consider the fact that Judge Kennedy had resigned from the Del Paso Country Club due to a perception problem over women members, and did you find—if you did look at that—that that illustrated the necessary sensitivity to these problems and issues?