

Mr. LANCASTER. With that, Mr. Chairman, I will simply say that we are very pleased to have had the opportunity to appear here tonight and we are very grateful to you, even though the hour is late, for giving us the opportunity to appear here and not having to return tomorrow.

The CHAIRMAN. Let me begin, if I may, by asking you, Mr. Lancaster or either of your colleagues, if they wish to answer: You have testified in your statement that your committee used three criteria to evaluate Judge Souter's nomination, his competence, his integrity, and his judicial temperament.

Did the committee, in any way, evaluate Judge Souter's constitutional philosophy?

Mr. LANCASTER. Only to the extent that it would in any way impact on the three criteria which we investigated, professional competence, judicial temperament, and integrity.

The CHAIRMAN. Having listened to Judge Souter testify here for several days, I have no doubt that he is a man of great integrity and competence, and I have no doubt that he has a reasonable judicial temperament. He has demonstrated that, in my view, over the period of the questioning.

To the extent that there are serious and debatable issues involving his nomination, I believe they involve Judge Souter's views on his constitutional philosophy. Would you agree, then, that the ABA's evaluation of Judge Souter does not and should not address or relate to these concerns?

Mr. LANCASTER. Clearly, I would agree that the ABA's investigation should not include any investigation into or consideration of his ideology or his political philosophy. To the extent that his judicial philosophy were to be shown to affect either his predilections toward or his bias or his commitment to equal justice, I think they are proper within the scope of our investigation.

The CHAIRMAN. Running the risk of opening a Pandora's box, if Judge Souter had said to you his judicial philosophy dictates that the vast majority of cases that have been decided relating to equal justice were wrongly decided, beginning with *Brown*, and if he were on the Court he would be compelled to seek to reopen those cases and overrule them, would your committee still have, notwithstanding he was a man of intelligence, competence and—what was the other criteria that was used—competence, integrity, and judicial temperament, would they still have supported him?

Mr. LANCASTER. Judge Souter's responses to our interviews and if his record showed that he had a closed mind and that he was approaching issues, not as an independent jurist, but as a man who, either because of bias or because of personal judgments or personal moral positions, was totally closed, would not listen to arguments and would not bring his obviously superior intellect to a judgment which would show that he was an independent jurist, yes, the answer would be yes.

The CHAIRMAN. If Judge Souter were to have volunteered to you that which he did not and it is not his view, would have volunteered to you that the equal protection clause of the 14th amendment does not apply to women, would you have been willing, sir—well, I am going to ask all three of you that—to have voted to sup-

port his nomination, notwithstanding fact that he is a man of competence, integrity and judicial temperament? Ms. Richmond?

Ms. RICHMOND. I would not.

Mr. RANGEL. I would not, either.

The CHAIRMAN. Thank you. I will not ask the chairman, because occasionally the chairman has to do a lot of things, and since there are two of the three people answered on the panel, I will not press the chairman.

Let me yield to my colleague from Iowa.

Mr. GRASSLEY. Mr. Chairman, I am going to waive any questions that might be asked, but I do have an observation, and I am sure, Mr. Chairman, you would not be surprised if the observation I make about the ABA is 180 degrees different from yours, but I would like to raise that issue.

I start by saying to you, Mr. Lancaster, that I appreciate your efforts to try to restore the ABA committee to its legitimate and very modest role, and I appreciate the time that you spent with me in my office when you first took on the role as chairman.

What I have to say is somewhat different than what the chairman had to say, when he introduced you as the ABA committee. I mean no personal disrespect when I say that especially when it comes to Supreme Court nominees, the ABA is at best an irrelevancy.

This nominee, Mr. Souter, proves it better than anything I could say. Everybody on this planet Earth recognizes that Judge Souter is a very skilled lawyer. We all know he writes sound opinions and we all know that he is a man of impeccable integrity. Not surprisingly, that is your conclusion, as well.

You say that you read all of his opinions and had outside experts do the same. So did we. Our chairman even employed his own outside law professors as experts.

You say you talked to people who know him and appeared before him, and so did we. You said you had an extensive interview with him. Well, I doubt that you have spent more than the 15 hours or so that we as a committee have, asking him questions like we did. And because you cannot do any more than we can, you cannot tell us anything that we do not already know and have known for several weeks.

In fact, someone more cynical than I might suggest that the only time the ABA has a meaningful role in Supreme Court nominations is when you smuggle illicit political considerations into the evaluation. On the other hand, when the ABA sticks to objective criteria, the result is just what we would expect. So, then, my question: Why do we need the ABA?

Now, perhaps you hope that your ratification of what we already know about Judge Souter will rehabilitate the committee in its relationship with the Attorney General, and I do not know if this strategy is working. Maybe the Attorney General is simply easier to please than some of us on this committee are.

Mr. Chairman, I know that you have heard me say this before, but it bears repeating, that I honestly think the time has come to give the ABA a gold watch for their years of service and retire them and let it go at that.

The CHAIRMAN. I thank the Senator. I would only ask who would pay for the gold watch.

Senator GRASSLEY. Do you want me to buy it? [Laughter.]

The CHAIRMAN. I thank the Senator. As he indicated, we do have a very different point of view.

Now my colleague from Alabama, Senator Heflin. Judge, do you have any questions?

Senator HEFLIN. I wanted to tell you that I think you have done a good job. I think over the years the ABA has done an outstanding job and has been of great assistance to the committee. We do not always agree. I know that I differed on a couple at one time. Nevertheless, I think that the present policy that you follow is commendable and it certainly supplements. The American people I think are entitled to know that a careful outside body selected three panels of truly experts who reviewed all of his writings and expressed an opinion concerning them.

I am a little interested in just one or two things. I noticed that one of your members is William J. Brennan, III, of New Jersey. Is that the grandson of the Justice who just left the Court?

Mr. LANCASTER. He is the son.

Senator HEFLIN. He is the son. That is sort of unusual.

The methodology that was used with your reading panels, you had an interview in which all members of your committee were present and interviewed, or were they separate? How was the interview or interviews with Judge Souter conducted?

Mr. LANCASTER. First, Senator Heflin, you will recall that we investigated Judge Souter for the first circuit earlier this year. That investigation was conducted, as are all our investigations for district and court of appeals judges, by the circuit member who has the responsibility for that jurisdiction. In this case, that was Alice Richmond.

In the course of that investigation, Ms. Richmond spent a substantial amount of time with Judge Souter in an interview with him and the results of that interview were then, as they always are, shared with the other members of the committee.

In this instance, the investigation for the appointment to the Supreme Court, the three people appearing before you tonight traveled to New Hampshire and visited with Judge Souter for an extended interview, and then there were additional telephonic interviews. Over the course of that entire period, I would estimate that we spent some 10 to 15 hours in discussions with Judge Souter.

Senator HEFLIN. Ms. Richmond, in your investigation for the first circuit and again in regards to this, I assume you followed the methodology of contacting lawyers and judges who had practiced before Judge Souter and got their opinion. Were lay citizens also contacted?

Ms. RICHMOND. No, sir. I spoke with lawyers and judges in New Hampshire and throughout the first circuit, I think probably in excess of 100 or 125.

Mr. LANCASTER. There were, however, Senator, some lay people contacted throughout the rest of the country.

Senator HEFLIN. In your investigation, Ms. Richmond, other than perhaps what we might say derogatory, and that may be too tough of a word, pertaining to judicial philosophy that undoubtedly was