Judge, I want to thank you and the members of your committee for coming here this morning and the fine report you made. I wish you continued success in what you are doing.

Judge TYLER. Thank you, sir.

The CHAIRMAN. Before you leave, Mr. Chairman, your asking my permission to leave is a little bit like a 300-pound gorilla asking whether or not he can get out of the cage. You can do whatever you want to do, and I am delighted you even ask.

But on a more serious note, let me ask unanimous consent of my colleagues that we go for 2 minutes into executive session for the purpose of passing on some nominees so they can get to the floor and hopefully be confirmed prior to us adjourning.

Senator THURMOND. I certainly favor that, Mr. Chairman, because I have advocated that, and I want to thank you for agreeing to it.

[Recess.]

The CHAIRMAN. Our next questioner is the Senator from Wyoming, Senator Simpson.

Senator SIMPSON. Thank you very much, Mr. Chairman. Thank you, too, for moving along those nominations. We will make good progress there, and I know that that is your goal, too.

I wish the Senator from Vermont had stuck around for a minute there. I did not want all that to go uncommented on. Someone will come up to me often and say, "Oh, you are the bald, gray-haired guy from Vermont." And I say, "No, I am not; no, I am not. That is not true." I do not know what they say when he is confronted with that, but Pat and I have some interesting and rich discussions. I enjoy and admire him very much.

I would just say that I would surely challenge what he just said. I believe I said he did not want anybody to know that this had happened the way that people who were Bork supporters said it happened. That is really an extraordinary statement that the candidate himself makes or breaks the case. I would love to believe that. It was indeed not the case with Judge Bork. He was clobbered from seaside, coast to coast, to mountain range in the entire United States in the most grotesque way.

I just wanted to say if Pat had been here, "Bah, humbug," would have been a proper phrase at this time of the year. So I would say it now, because what was really interesting to me. I must share with my colleagues, I received a great deal of mail from around the United States after the Bork hearing. I kept a lot of them that said: Let me tell you something, Simpson. I liked what you did, or I did not like what you did. But I want to tell you, I am a McGovern Democrat or a Kennedy Democrat. I have been a Democrat forever. I will die a Democrat. I did not like Bork. I did not like what he stood for, and I am glad he is not on the Supreme Court. But I am offended and embarrassed at the way it was done. Shocked, saddened and disappointed in my country.

Now, that is what they said. I have got a nice bale of those, and they are moving letters. And I send them to people who write about Bork. Then to go through it on the floor and have some of your colleagues you deeply respect come up to you and say: "Boy, you know, I am embarrassed. I got trapped in August, and I could not get out of the box. I got trapped in September when I was

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home because I read all the stuff and I believed it. I did not know there was that other side, had not heard Jack Danforth speak about this man who was his professor, has not heard these things come up, did not know the intensity of fair-minded people when they got into the blood spore tracking system."

Now, that is the way that was. So I think we want to keep that in perspective if we are going to keep anything in perspective with regard to that. That is why I come back to it. It will not be me coming back to it. They will be teaching that one in constitutional law classes for the rest of the decades about how to do a number on a man's reputation.

Now, that is my view. Everybody has their own. I have never been reluctant to express mine.

Now, I want to thank the American Bar for your very swift work on this nomination. You really did do this one; it must have taken a tremendous effort to get this one to us. You see, the thing is is whether you like it or not, somehow the American Bar has become a bigger player than they should be here. I was a member of the American Bar for many years. You are simply another player in the group, and yet we have given you a status, we have elevated you to a position of some type of omnipotence or something. We do not have a hearing until we know where you are. We do not proceed until we have had the word from the ABA, and I do not think that is right.

I think you must remember that you have a limited role like anyone else in the United States of America. Maybe that is our fault. Maybe we have done that. I think probably it is. But it is a limited role. You know, we look toward you. We love to toast you to the heavens when you support our nominees, and we love to hoot you down when you do not. We have all done that. Do not go back and look at my collected mutterings. You will see, "I think the ABA did a magnificent job with this nominee." Then I will say it the other way when it goes the opposite direction.

But I do have the same concern that was shared previously. I will not belabor it, but it just seems, you know, to kind of crystallize things, how could Robert Bork have deteriorated that much in five-and-a-half years? I mean, how did he go from the toast of the town to the poop of the year? And all the while, all the while, only doing things which were never challenged by the U.S. Supreme Court.

So to come in and then tell us about these marvelous things about political ideology or ideology, whichever term you wish to use and the definition, that it is prohibited there, and then to do that vote on Bork and then to release the figures and then to not believe that that had something to do with this when it was front-page news all over the United States: "ABA Rejects Bork." That is what it said, all over the United States. When you read it and you found out they had not rejected Bork; it was ten to four. But that is the way it came out. The four were unknown to us and still remain so, while we have to trot out all our work in here right under these lights. That is the way it ought to be, and that is the way it ought to be for the ABA the next time. I am going to help assure that it is, because I think it is wrong to give anonymity to some guy who

has got a political idea about a nominee trying to shroud himself in a bunch of stuff.

Now, then another thing that is absolutely fascinating to me, we hear about these clubs and we hear about discrimination. Discrimination against blacks and whites and women and Hispanics and rights and all that. You know something? The U.S. Senate is not bound by any of that stuff. Not a bit of it. We do not practice that ourselves. We go through our day firing people, hiring people. We have congressmen who discriminate against blacks, against whites, against Hispanics, against women. They will never tell you that; they do not have to. They have no legal reason to tell you. We can hire and fire people. They have no employment rights. They have no pension rights. They are just raw meat. That is us. Do not miss who I am talking about. That is 535 of us.

Isn't that fascinating? And yet you hear all this stuff all day long. I do not see any of my colleagues putting in bills to change that. I do not know of any hearings going on to change that. I do not hear any speeches going on to change that. Yet I hear it all day long.

Let me tell you. Line them up in the other alley is the way we do it here. And they do not have any way to challenge it in any way. Just hit the road, buster. You are done here. You are not working for me any more.

Now, that is the way it is. I think we ought to kind of bring that back occasionally and kind of review it.

Then I am going to throw out the eternal challenge, which may be the death of me. But I am going to stay in the Elks Club, and regardless of how long I stay here, I will remain in the Elks Club. I am going to stay in the Alfalfa Club. I am the vice president now. I have no choice.

That is the way it is. I have not the slightest desire to spent a whit of my life denigrating or belittling women. It is absolutely absurd. I married a lady 33 years ago that was an activist then, an activist now, and is a dazzling person. For heaven's sake, to go through this exercise. * * *

Well, enough of that. Good heavens; it's the Christmas season.

"Anyone that goes about with 'Merry Christmas' on his lips should be boiled in his own pudding with a stake of holly through his heart." I remember that. I shan't do that.

Well, now, that was too much watching Ronald Colman or listening to Ronald Colman in my youth, doing Ebenezer Scrooge.

I just have one question. As you did your work here—and you did good work, and I commend you—it was swift work, and you helped us. You did go through an extraordinary cross-section of human beings in your work. I was very impressed by that.

Would you say that as you came up with this very, I would call it, glowing recommendation of Judge Kennedy that in view of that should not your comments, unanimously held, should not those comments properly alleviate the concerns of some representatives of minorities and women's organizations who believe there is some cause for concern in this nomination? Would you not say that should be a helpful guide to them?

Judge TYLER. Well, Senator, I really cannot answer that. We, as you know, have expressed our views. Whether this will impress

others, I am not sure at all. We can only say what we say on the basis of what we found out.

Senator SIMPSON. I am not arguing that. I am just saying what you say, do you not think that should alleviate the concerns of others who seem to have some feeling that he is going to be tough on minorities' or women's rights?

Judge TYLER. Well, I am not sure who is saying that.

Senator SIMPSON. Well, we have some people that are going to come here and say that.

Judge TYLER. Well, we certainly encountered no evidence that would support that. As we say in our letter, one of the pervasive sentiments that we got in our interviews was that this was a man who was a judge who sticks to the issues and tries to be fair within the limits of his ability and to approach matters without a preordained approach or agenda.

There is no doubt that that is what we learned.

Senator SIMPSON. I know. And in your letter, you said that you had interviewed these various people, and you had also interviewed people and judges who are women or members of minority groups. Did any of them express to you a rich abiding concern about this man?

Judge TYLER. Well, we did not get any submissions that I know of, with the possible exception of a copy of a letter from the National Organization of Women. What we did was interview professionals who happened to be male and female and black and white. There was no breakout on any ethnic, racial or religious lines that we could perceive. This judge was viewed as a person in his career who was, on the whole, very much respected, and it had nothing to do with gender or sex or race at all, as best we could determine from our interview.

Senator SIMPSON. That is what I was inquiring about. It did not arise with this man.

Judge TYLER. Now, that does not mean that some organization does not have the right to disagree with us. Obviously, we can only do what we do.

Senator SIMPSON. Yes, fine. And you did interview sitting Justices and former Justices, did you not? I do not care to know their names.

Judge TYLER. No, no. I do not think we interviewed any former Justices. We interviewed senior appellate judges and I think one or two senior district judges. As far as Justices, we confined ourselves to the present members of the high court.

Senator SIMPSON. Okay, but they were Supreme Court Justices?

Judge TYLER. We interviewed them all, yes, sir.

Senator SIMPSON. All of them?

Judge TYLER. Yes, sir.

Senator SIMPSON. And as I say, I do not want to know the content of those interviews, but apparently there were no concerns that have been expressed to us?

Judge TYLER. That is a fair inference, sir.

Senator SIMPSON. I thank you very much, Judge Tyler.

The CHAIRMAN. Thank you.

The Senator from Alabama, Senator Heflin.

Senator HEFLIN. Judge Tyler——