criminate against women and minorities So long as that is truly a club where it is not small and it is not confined closely to simple social events, et cetera.

I do not think there is any doubt that this committee for some time has been concerned about approaching the problem on these two levels.

Senator KENNEDY. I appreciate your response. I know you agree that it is vitally important that all segments of the population have confidence in the fairness and the impartiality of the judiciary, and a judge's membership in a discriminatory club obviously undermines that confidence. A judge who hears a gender discrimination case in the morning and then has lunch at an all-male club is just not going to inspire the public's confidence.

Judge TYLER. Yes. You are dealing, of course, with the appearance problem. We would agree that the appearance problem, among others, is important.

Mr. ELAM. Senator Kennedy?

Senator KENNEDY. Yes?

Mr. ELAM. My name is John Elam. I was a member of the group that interviewed Judge Kennedy. You mentioned lessons for others. I think that our group was impressed in connection with this club that in the summer of 1987, before he was under consideration, he struggled with this question, brought it up to the board, and then took action in that he ultimately resigned. We were impressed by the fact that he was, over a period of time, increasingly sensitive. And I believe if you are asking what does this tell others in the future, I think his action expresses something that he came to over time and advanced his consideration for a position on the Supreme Court.

Senator KENNEDY. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

I am not too convinced that someone should be disqualified if he belongs to a group of men who want to just meet in a personal way, or if a woman wants to belong to a women's group that wants to meet in a personal way. For instance, you may have a group of women who have a sewing club. Why shouldn't they be allowed to have that without having men required to be there?

In other words, I am not too sure that—a few years ago we have a very high ranking officer, I think it was William French Smith, I believe, who was one who belonged to some club, and he feels there is nothing wrong with that whether there is no discrimination of those of the same category. After all, there are some differences in sexes, and there are some differences in other ways of people. So long as there is no intent to discriminate and so long as they will not discriminate when it comes to their official duties; but when it is purely personal, it seems to me it is a little different situation. People ought to be allowed to choose their own associates. I just want to throw that out to you.

Now, I want to ask this question of Judge Tyler. Judge Tyler, I believe you gave Judge Kennedy—or your committee did—the rating of well qualified. Is that correct?

Judge TYLER. Yes, correct.

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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.