

Reverend LE MONE. Mr. Chairman, that question is the type of interrogatory that demands prior notice of something like 3 weeks. It is a complex issue. At one time, I would—

The CHAIRMAN. If there is no one issue, then just suggest that.

Reverend LE MONE. Very well. I am a minister and I have to give an example, and I will be brief. I at one time was an unofficial tutor in a law school for black law students, preparing them for moot court examinations during their first year. I asked one of the students, can you give me a layman's working definition of what is the law. The student thought for a moment and said law is life. I would say also that the theology of the church has to do with life here on Earth, not in heaven. We want to enjoy life here on Earth and the benefits of the creation that was made for everybody on this Earth.

Equally, the one thing that disturbs us, as the Progressive National Baptist Convention and our sister convention, the National Baptists and the other National Baptist Convention, numbering over 14 million people, about the nominee is inconsistency.

We are living in a world that is unstable and increasingly becoming so by the day, and I think you know better than I, Mr. Chairman, what I am referring to, because you sit in judgment, economic and political judgment, over the welfare of thousands and millions, if not millions of people around the world.

The world is being constantly destabilized. We must have order, not law and order, but stability. Inconsistency does not lend itself towards stability. That inconsistency profoundly disturbs us.

Finally, Judge Thomas is a man of impeccable credentials. He has studied long and hard and has made a success of himself, but that is not for the individual, that is for the group. There is no self-made man or woman on the face of this Earth. It has to do also with the fact that Judge Thomas may be a good Supreme Court jurist, but not now, and I think it is too much of a risk to have Judge Thomas enjoy OJT, on-the-job training, when there is no recourse. It is much too delicate a situation for us to support his nomination, and certainly not his confirmation.

The CHAIRMAN. I thank you for your answer.

Since my time is up, I yield to my colleague from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

We are glad to have you gentlemen here and appreciate your appearance. I have no questions.

I just want to say, Reverend Brown, that in view of your statement against this nominee here and the manner in which you say it, you sound more like a politician than a preacher.

I have nothing else to say.

Senator KENNEDY. First of all, I want to welcome all of you to the hearing and say how much all of us appreciate the thoughtfulness of your presentation and the seriousness in which we regard these comments.

Mr. Hooks, in your testimony you talk about, on page 22,

Clarence Thomas' logic is straightforward: he sets up a liberal straw man (blacks have tried to abdicate all responsibility for their own liberation because of prejudice) and then knocks it down by citing some anecdotal evidence of those who survived. He infers from the few that everyone can make it.

I think all of us are enormously impressed by the personal qualities of Mr. Thomas—his resoluteness from the earliest of days; his steadfastness, dedication; his hard work; his obvious affection for the members of his family.

And, as I gather, what you are saying there is that you are observing that he was able sort of to make it. All of us admire the qualities which he had in order to be able to make it, and if we were to just interpret it the way that he presented it, it is almost an indictment for those that haven't made it. Somehow, those that have been left out or left behind, it is really because, you know, they haven't had the personal kinds of qualities to be able to emerge.

How real is that in the real world of people of color and women in our society? I think that is really what he is saying, but is that really real world which you are speaking from?

Mr. Hooks. Senator Kennedy, may I answer by saying that there has been presented testimony here that would indicate affirmative action has only benefited those at the top of the ladder. Nothing could be further from the truth. Adam Clayton Powell came to prominence in this Nation marching and demonstrating in Harlem to get black people jobs as sales clerks, as tellers in banks in Harlem in the 1930's.

When I came along in 1949 and was admitted to the practice of law, there was not a single black in the courthouse except janitors and maids and one messenger. There were no blacks in the banks receiving money or using computers or typewriters, as the case might be. There were no blacks working in the stores downtown.

Affirmative action has benefited America and millions of black people who otherwise would not have those jobs. The paper reported this morning that less than 3 percent of black women now work as domestics, when in the 1950's more than half worked, which meant those were the only jobs available.

Affirmative action has worked; it is necessary now. It is a fact that many black people have still not benefited, but that illustrates the whole dilemma that we face. Judge Thomas is apparently saying that we did not need affirmative action, and we certainly do not need it now since we have come so far.

But the fact that there are still 30 percent of black Americans who have not made it does not indicate to me that it is a lack of personal qualities. It means that we must continue affirmative action and reach the unreached. If, in the last 30 years, 40 percent of black Americans have risen from poverty to above poverty so that 70 percent of blacks—and those of us who love America must admit to its successes as well as its failures, and we have had a large number of blacks—millions of them have risen from poverty to at least living above the level of poverty, and it is due to the changed conditions, particularly the aftereffects and the effects of affirmative action.

Now, to be opposed to those programs now—and I read four things here: 11246, which was important in contracts, promulgated by a Democratic President, expanded by a Republican President. I talked about the effects test in the Voting Rights Act, which we fought, as you know, very well because you were involved in that

fight, to make sure that we dealt with effects and not intent because that is what counted.

When we look at the total record of Judge Thomas, he seems to be saying that the ladder, which not only brought him up, but brought millions of black Americans up, must now be knocked out. We are concerned about those—as Amos Brown put it, the least of the laws, the left out.

And we therefore feel, if the Secretary of Labor in this administration can talk about a glass ceiling, if the New York paper this morning can report that black men still lag far behind in the rate of pay, it means that affirmative action is necessary if we are going to bring in—that does not mean affirmative action is the only answer; other things must be done, but we cannot discount the major importance of affirmative action. Therefore, by any objective test, Judge Thomas fails in the only area which he has any expertise, supposedly in, and that is the field of affirmative action.

Senator KENNEDY. I would have been glad to hear from the others, but my time is up, Mr. Chairman.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Reverend Brown, in your statement you say that Judge Thomas, “ignores history and today’s realities with respect to race discrimination,” and I would cite an article which Judge Thomas wrote in the Howard Law Journal back in 1987 where he said this: “Major elements of Chief Justice Taney’s opinion in *Dred v. Scott* continue to provide the basis for the way we think today about slavery, civil rights, ethnicity, as well as the way we think of the nation in general,” which is a very strong statement in 1987 for Judge Thomas to say that the tenets of the *Dred Scott* decision remain in America as long as 1987. I think he said that in other of his speeches, and I think that is a factual situation, regrettably, that there is a great deal of discrimination and racism that goes on today.

What we are trying to do is to figure out here what Judge Thomas would do if confirmed, and it is hard to get a picture of him. We have heard a lot about his roots. More important is what he thinks about today. I thought that it was a telling bit of testimony when he commented about sitting in his office in the court of appeals, which overlooks the alley where criminal defendants are brought in, and he commented about African-American young men who were brought in and made a statement on the witness stand that there but for the grace of God goes Clarence Thomas.

And he at one point in his career, in 1983, favored affirmative action with flexible goals and timetables, and then he has turned against it. And a very significant case among many that he was a participant in was the *Lopez* case where he took socioeconomic factors which are supposed to be ruled out, not considered on sentencing, and over the objection of the prosecuting attorney, who said it would open the floodgates, Judge Thomas was a part of a panel which really expanded considerations at sentencing to the background of the young Hispanic who was involved in that case, *Lopez*.

Now, if we are going to try to predict what he is going to do in the future, aside from a lot of technicalities and case interpretation and whether he is going to provide diversity—and I have heard the