is harshly judgmental, and that is not the kind of representation certainly that I believe the Supreme Court needs.

Mr. LAWRENCE. I would only add, Senator Kennedy, that, to my mind, we must hold him responsible for the choices that he makes in his adult life, as I indicated, what he has done with this experience, and it seems to me quite clear from his record that those choices have been choices that would not lead us to believe that he would be sensitive to these very things that might have been so important an influence on him.

I think the other thing that I would be concerned about is that he has been so unforthcoming in these hearings, in his discussion of the particulars of his judicial philosophy and what that philosophy might be, that if this committee has any uncertainty as to whether his record or his beginnings really influence his life, in order to assure us of his direction, that we must require that he be considerably more forthcoming on the particulars of his judicial philosophy than he has been willing to be.

Senator KENNEDY. Let me ask also the panel, as we obviously have got limited time, about what our country would have looked like, if Judge Thomas' view had been the prevailing view in the Supreme Court, say, for the last 20 years.

Perhaps, Mr. Days, because, unfortunately, I know that light is going to go on, if you can also perhaps in your response try and help me to understand the distinction which Judge Thomas placed upon diversity for women, the *Santa Clara* case, diversity for women in the workplace, versus diversity at the university, which you are currently associated with at Yale, what that distinction is that he mentioned and how important, serious is it.

Finally, on the voting rights cases, you are familiar with his general criticisms of voting rights cases, this has been an area of particular interest, I know, to you and to the panel. I have difficulty in understanding the nature of the criticism, given both the Supreme Court holdings and the legislative action.

I think I have probably given you an awful on that, but, first of all, what the country would have looked like, if his view had been the prevailing view, generally, and then specifically, if you would address those two subquestions.

Mr. DAYS. Senator Kennedy, it gets back to my initial point. Over the last 20 years, the Supreme Court has demonstrated its greatness, it seems to me, when it understood the realities outside of the marble walls of the Supreme Court, when it understood that real people were going to be affected by its decisions and did not let labels, as such, blind them to the fact that there needed to be pragmatic and effective remedies to discrimination and exclusion.

I think that if Judge Thomas' approach had been the prevailing one during this period, we would have been left with slogans and with very superficial catch lines and buzz words to describe very complex situations.

For example, in school desegregation, the Supreme Court was not responding to an abstraction, when it voted in *Green* v. *New Kent County,* to require school boards to do more than just sit on their hands, when they had been involved in years, decades of intentional segregation. That was as pragmatic response, it was responsive to the realities.

Now, with respect to Judge Thomas' distinctions, I have to admit, Senator, that I have tried very hard to understand those distinctions and they continue to elude me, as well.

Yale Law School has had an affirmative action program for a number of years, and the idea is, given the fact that in this country there has been a systematic exclusion of minorities and women from legal education and other types of higher education, it was necessary for institutions to reach out and find qualified individuals and bring them in, because doing it by the numbers, putting them through a computer would not produce that result.

I think the situation is the same, when we talk about *Santa Clara County* and the *Johnson* case. Over 250 men were employed in that agency, and no woman had ever had a supervisor job. For us to think only in terms of the individual and not see that institutional context, it seems to me is to miss the reality that the law ought to respond to.

I think that Justice O'Connor was correct, when she talked about Justice Scalia's appearing to write on a clean slate in dealing with these issues. I think that is Judge Thomas' inclination, to write on clean slates, with no history, with no background, with no reality to guide his responses.

Now, with respect to the Voting Rights Act, he apparently agrees with all of the decisions that have been mentioned to him in these hearings, although he made a categorical statement of opposition to what was happening in the voting rights area.

He did say he was opposed to the effects test. I do not know exactly what he means by that, but you know, Senator Kennedy, that the Congress struggled with that issue and arrived at the position that, given the continuation of very deeply imbedded evidence of discrimination and vestiges of discrimination, it was necessary to provide some trigger to identify where minorities probably would continue to be excluded from the political process, and that was necessary in 1982, and I would expect that the Congress will look again to determine whether new responses are necessary to respond to new problems. I do not see Judge Thomas doing that.

Mr. LAWRENCE. I would add to this, Senator Kennedy, in response to the first part of your question, what would this look like, I recall being here in Washington for the argument of the *Bakke* case, that Professor Cox began his oral argument by pointing out that if the Supreme Court were to decide that voluntary affirmative action were improper on behalf of universities, that we would return to a time when our campuses were lily white, and I think that one of the changes might have been that Clarence Thomas would not have been at the Yale Law School, were his policies implemented by the Supreme Court at an earlier time.

The other thing that I want to point out that troubles me about the distinction between the education cases and the employment cases is that those of us who have litigated employment cases on the front line know that these cases, that even the voluntary programs are in response to deeply imbedded discriminatory practices and attitudes, that are not attitudes that people state purposely, but are, nonetheless, deeply imbedded in the attitudes in the institutions.

It seems to me that, if anything, as important as it is to integrate our educational institutions, that it is the working people, that it is the kind of people that Senator Specter and Senator Heflin and other people have questioned how—what is it about this young man who drops out of school or the young woman who drops out of school in the 10th grade, that is the person who needs to be integrated into our workforce.

To my mind, if anything, it is more important to apply these principles in the employment cases, at the entry level of employment and promotion and employment, than it is, even as important as it is in education.

Mr. EDLEY. May I make two very brief points, Mr. Chairman? The two points are this: In these areas that we have just been talking about, I believe that Judge Thomas stands quite some distance from the mainstream on civil rights. And the second point is that I believe he stands quite some distance specifically from Congress and a willingness to embrace congressional intent.

For example, I combed the transcripts as best I could, particularly the colloquies with Senator Specter, and I could not find any reassurance on the question on his interpretation of title VII. As far as I can tell, he believes that title VII requires race neutrality. He believed that that ought to be the law, while recognizing that the courts have held otherwise.

But there is nothing to suggest from the transcripts that I have been able to find that he doesn't still believe that title VII ought to be interpreted so as to require race neutrality, certainly in the voluntary context and perhaps at least in substantial areas of the remedial context.

He has the same attitude, as far as I can tell, with respect to the 14th amendment. A constitutional ruling from a Justice Thomas could not be reversed, no matter how many times you passed a civil rights restoration act.

So it seems to me that in terms of his distance from the mainstream and his continuing and repeated resistance to the most reasonable interpretation of congressional will, Judge Thomas simply doesn't deserve confirmation.

Senator KENNEDY. Senator Thurmond.

Senator THURMOND. Mr. Chairman, I understood from Senator Biden we were going to limit the witnesses to 5 minutes. Now, I don't want to complain, but these witnesses have all gone over 5 minutes. And I understood further from Senator Biden you are going to cut the committee members from 10 to 5 minutes. Is that your understanding?

Senator KENNEDY. The witnesses for 5 minutes and the questioning for 10.

Senator THURMOND. Senator Biden didn't change the 10 to 5?

Senator KENNEDY. That is my understanding, and I want to say that they have been responsive to questions. No one is interested in delaying this hearing. And if there is some, then I will be glad to take another round.

Senator THURMOND. Well, I understand we have about 85 witnesses to hear. Now, is it going to be the intent just to carry this hearing on and on, or bring it to a conclusion?