

And while we all agree there have been significant advancements, I could not agree more with Dean Griswold that but for those advancements, through the Supreme Court in most cases, this country would not be the country that it is. And I think we would be a long, long way away from what we consider to be the real objective, and that is the attainment of civil rights for all groups, both minorities and for women.

The CHAIRMAN. Well, I thank you both very much. I know you did not take this decision lightly, nor did the Lawyers Committee take it lightly. I appreciate your concern and your willingness to come forward. The committee thanks you, and I apologize that we kept you all waiting so long.

Mr. BROWN. That is quite all right. Thank you, Senator.

The CHAIRMAN. Thanks again.

Our next witness is a very distinguished American: Dean Calabresi, the current dean of Yale Law School, who has come to testify. He was going to be on a panel. Come forward, Dean. Welcome. He was going to testify with the president of Lincoln University whom we put on an earlier panel. So, Dean, the table is yours alone.

Thank you very, very much for taking the time to come. You have come to testify on behalf of Judge Thomas and we are anxious to hear what you have to say.

STATEMENT OF GUIDO CALABRESI, DEAN, YALE LAW SCHOOL

Mr. CALABRESI. Senator Biden, Senator Thurmond, over the years, I have had the honor and pleasure of teaching various Members of this body, ranging from former Senator Gary Hart, to Senator Joseph Lieberman, to Senator John C. Danforth.

I did not teach Judge Clarence Thomas, but because some of his closest friends in law school were students of mine and were people to whom I was especially devoted, I came to know him well when he was at Yale.

He was at the time an admirable person who demonstrated a capacity for independent thought that is always unusual, but is especially so among students, for they tend all too frequently to conform to the current mood. His approach to law when he was a student was not especially linked with the left or with the right. What characterized him was that he could not be predicted, that he was always seeking more information in order to decide what made sense to him, and that whatever position he took was his own and was powerfully and eloquently held. Because of this, I recommended him to Senator Danforth, who was looking for an able youngster who could think for himself. I was glad I did so then, and I am glad I did so now.

Many of his views have changed, several times, since those days. That does not surprise me. It is almost inevitable with people who are truly struggling with ideas and wrestling with the great issues of the day. I would expect that at least some of his views may change again. I would be less than candid, if I did not tell you that I sincerely hope so, for I disagree with many, perhaps most of the public positions which Judge Thomas has taken in the past few years.

But his history of struggle and his past openness to argument, together with his capacity to make up his own mind, make him a much more likely candidate for growth than others who have recently been appointed to the Supreme Court and who, whatever they may have said at their confirmation hearings, had in fact been set in their ways and immovable back to their lack school days.

Such a capacity for growth, as a Justice develops his or her own constitutional philosophy, is essential if a person is to become a truly great Justice. None of the great Justices of the past, not Justice Black, nor Justices Harlan or Stewart, not Justice Holmes nor Justices Brandeis or Cardozo, not even Justice Frankfurter, for all his years of teaching constitutional law, came to the Court fully formed.

The Court itself, and the individual cases that came before them, shaped them, even as they shaped the Court. In the end, it was a combination of character, ability, willingness to work really hard, and openness to new views that made them great Justices. These qualities, if there truly is openness, matter far more than past positions. Many a Justice has changed his mind dramatically since going on the Court. I hope and believe that Judge Thomas has these qualities, and that is why I am here today.

I would like to close with one anecdote about Judge Thomas as a student. Judge Thomas had a fine law school record. But early on he did get a poor grade, though clearly passing grade, from one of the toughest teachers in the school. When that happens, most students stay as far away from such a professor as they possibly can. Not Judge Thomas. He not only went back to the same teacher for another course, but chose to do his senior essay, his dissertation, for that teacher, and this time he received an honors, the highest grade given in the school. The quality this demonstrates has stood Judge Thomas well in the past. It will stand him well in the future.

Thank you.

The CHAIRMAN. I want to note, Dean, that you are being watched. Look to your right, and eagle-eye Danforth, your former student, is over there. I just did not want—

Mr. CALABRESI. He was a good student.

The CHAIRMAN. He is a good Senator, as well.

I do not have any questions for you, because you have stated your views very bluntly, and you have said it and you have summed it up.

Quite frankly, although some of us have not fully decided how we are going to vote, we have to vote, as you well know, and I think all of us share what I would only characterize as an aspiration you have, and that is that his character and tenacity and willingness to work hard, coupled with his basic sound intellect, will overcome what seem to be some preposterous notions he has asserted in the past. That is my words, not yours. I used the word "preposterous."

Believe me, Dean, whether or not I vote for Judge Thomas, I pray you are correct, because I, like you, disagree with a number of his previously asserted positions. But I, like you, also believe that, for a 43-year-old man, with his limited experience, not in life, not in dealing with the problems of life, but limited experience in law,

and it is limited, notwithstanding the fact he is on the Bench, the notion that he would have a fully informed view of constitutional law would be premature.

I hope, at a minimum, that preparing for this process has informed Judge Thomas as to what he does and does not know, and also has done what it does for anyone who goes through the process of having to represent one of the three branches of Government, the President, a Member of Congress or the Court. We all have our elections, if you will, and we hope that they are designed not only for us to let our views be known to the people, but let the people's views be known to us. I have never known a candidate who was not more informed when the process was over than before he or she ran. I have never known a President, and I have known five now, who did not have a clearer notion of the needs of the country after having campaigned in every nook and cranny of the country, than before he campaigned.

I am hopeful that that process works as well in this situation because this is the equivalent of a campaign for a Supreme Court Justice, in my view, as it should be. I can see one of your former graduates coming in. If you want to respond to that, I will yield.

Mr. CALABRESI. I just want to say that this is an extraordinary time in the history of the Court. It has been 24 years since a Democratic President has nominated a Justice to the Supreme Court.

The CHAIRMAN. That has not been lost on some of us.

Mr. CALABRESI. And that is as long a time, perhaps as there has ever been in the history of this country, certainly since the Civil War, from 1860 to 1884 was a period of equivalent time.

At other times when there has been such an extended period of time, the President has attempted to name people to the Court whose views are very different from his own. Presidents Roosevelt and Truman, for what seemed an eternity but was only 20 years, named all the Justices and made a point of naming some Justices who were very conservative and some from the other party. Justice Reid and Justice Burn were Democrats and very conservative; Justice Burton was a Republican.

The CHAIRMAN. I doubt whether we are ever going to see that enlightenment in this administration.

Mr. CALABRESI. This administration and the past administration have not done so. Under these circumstances, they have continued to name people whom they thought would share their views, and that is their right in the first instance. But under those circumstances, I think that we have to hope that the people they have named at least have the capacity for growth, which some of the previous people who were nominated and who had, in my judgment, a less distinguished—Dean Griswold was quite candid in saying that some at least were with no more distinguished a record than Judge Thomas—but those people did not have a capacity for growth which Judge Thomas has.

I hope that in the future the administration will be more open to other views, but in the meantime, I think we are bound to hold people to the standard you have held in the past, especially when this is a nominee who has some capacity for growth which I did not discern in some of the earlier ones.

The CHAIRMAN. Well, I respect you very much, Dean, as thousands and thousands of lawyers across the country do, and I mean that sincerely. Of all the testimony that has been received, yours is the most persuasive to me, in the sense that if I do not factor in what you are talking about, I quite frankly find it hard to find a sufficient rationale to support Judge Thomas, because, as has been pointed out by you, other Presidents in similar periods have understood the wisdom of having the third branch reflect a diversity of view on the great issues of the day. I do not see that occurring and, as you know, as a student of history, and the one thing I can say—it sounds self-serving, but I have become a student of the history of the Court—

Mr. CALABRESI. You have indeed.

The CHAIRMAN [continuing]. After having to do so many of these, and have spent a great deal of time with your colleagues and professors of the law and legal scholars. I know for certain that in all those instances where the Presidents have attempted to remake the Court in their own image, they are the instances and essentially only the instances in which the U.S. Senate has said all right, if that is the way you are playing the game, then we must play it the same way.

I yearn for the day, especially if I remain chairman of this committee, I yearn for the day when the President, Democrat or Republican, picks a nominee simply based upon his or her overall instinct about what the nominee's intellectual capacity is, and not on what his or her views are.

I trust President Bush. I believe he is an honest man. But I doubt whether there is a single American out there who believes that President Bush said:

By the way, just go find me a nominee who has an open mind, just find me a nominee who has integrity, just find me a nominee who is schooled in the law, I ask no more.

John Sununu would have had an apoplexy, if that were the call. I just cannot fathom that having happened.

Mr. CALABRESI. I cannot imagine that happened, either, Senator. On the other hand, it would be ironical, if the test were the one which you are now proposing, and that were applied for the first time to someone who has more promise of growth, who at least has experienced life in a way that the previous nominees had not, who knows these things and who, insofar as he is showing these views of the administration, is in that particular also at odds with many of the friends that he made all through his growing up, that is, that the person who is doing this has shown more independence, although an independence in a direction that I do not share. So, it would be quite ironical to find that person being turned down for this, when the others just got through with all sorts of people, even people who are opposing this one, clapping their hands.

The CHAIRMAN. Although I have more time, I do not wish to take more time now, but at some point after this is over, I would really enjoy having an opportunity to sit down with you and discuss this, not Judge Thomas, but this whole process. Because, as you know, this is a cumulative process.

Mr. CALABRESI. It is indeed.

The CHAIRMAN. If this were the first time a person was put on the Bench, if he or she is the first ideologue of a Republican President leaning to the right, I think that is fine. I say fine, there should be people on the Bench who share that view, even if it is further right than I would agree to.

The second one, I say it is less fine. When it gets to the point where it looks like the attempt for the entire Court, all nine members to be that, then the standard will and, I will argue, intellectually must change, must change, not will, but must. One is fine, two is okay, three is okay. Four, five, six, seven, eight nine—it gets to the point where you are talking about 40 years of Supreme Court Justices, and that does make us all think. And I am sure, because you are a man of great intellectual honesty and integrity, you are sitting there saying I hope to God I am right about this guy.

Mr. CALABRESI. Of course I am.

The CHAIRMAN. We share the same concern. I wasn't being solicitous. Yours, to me, because of where I am on this nominee, is probably the most compelling testimony that I have heard in the entire—

Mr. CALABRESI. It may come to the point, Senator, that it came with President Hoover when, I am told, that Senator Borah went to President Hoover and said, "There is one person whom this committee will confirm, and that is Benjamin Cardozo." It may come to the point where the committee will have to take a leadership role in suggesting names rather than simply listening if the administration does not do its part. But that is different from what one can do when a name has been sent.

The CHAIRMAN. I agree, and we may be approaching that point. I yield to my colleague from South Carolina.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Calabresi, I want to welcome you here. Wasn't there a Governor of Ohio by the name of Celebrezze?

Mr. CALABRESI. He spelled his name differently and was not related to me. His name was—

Senator THURMOND. He wasn't related to you?

Mr. CALABRESI. No. He arrived in the United States, or his family did, long before I did. I arrived 52 years ago yesterday.

Senator THURMOND. It is almost the same name, isn't it?

Mr. CALABRESI. Almost the same name. Almost the same.

Senator THURMOND. I think he was a Cabinet member down here at one time, too.

Mr. CALABRESI. He was a Cabinet member (HEW) in President Johnson's administration.

Senator THURMOND. He had two S's in his name?

Mr. CALABRESI. He had several Z's in it, I think.

Senator THURMOND. Well, how long have you been dean at the law school?

Mr. CALABRESI. This is my seventh year, and I am surprised to have survived that long—Dean Griswold, of course, being dean at Harvard, was able to survive much longer.

Senator THURMOND. How long did you teach there before you became dean?

Mr. CALABRESI. I have been teaching at Yale Law School since 1959, Senator.

Senator THURMOND. 1959?

Mr. CALABRESI. Yes, sir.

Senator THURMOND. Did you teach my good friend from Missouri, Senator Danforth?

Mr. CALABRESI. I did, indeed. He was one of my best students.

Senator THURMOND. Or was he in school with you?

Mr. CALABRESI. No, no. He was one of my students. [Laughter.]

He is much younger. He tries to look older, and has for many years, but he was in fact much younger.

Senator THURMOND. How about the distinguished Senator from Pennsylvania? Did you teach him?

Mr. CALABRESI. No, I did not. He is older. He looks younger. Unlike Senator Danforth. [Laughter.]

Senator THURMOND. He was in school with you, I guess.

Mr. CALABRESI. No. He could have taught me, but he graduated before I went to law school.

Senator THURMOND. Well, everybody knows those two gentlemen have a high regard for Yale Law School. I have to say that.

Now, we had a professor here from Yale earlier today. Did you hear him testify?

Mr. CALABRESI. Yes, I did. He was also my student.

Senator THURMOND. He is a member of your faculty?

Mr. CALABRESI. Yes, he is.

Senator THURMOND. He testified against this nominee. Now, I am glad to see the head man testify for Judge Thomas.

Mr. CALABRESI. I think that most members of my faculty would deny that a dean was the head man. They would allow that somebody has to raise money for them, but they would not give me much more primacy than that.

Senator THURMOND. I am very pleased to see the dean, the top man in the law school, come here and testify on behalf of Clarence Thomas.

Mr. CALABRESI. Well, I am delighted to do that.

Senator THURMOND. I don't believe we have had any other dean testifying against him.

Mr. CALABRESI. You had Dean Griswold of the Harvard Law School testify against him.

Senator THURMOND. Well, he retired many years ago. [Laughter.]

You are the only dean that has testified for Clarence Thomas, I believe, and I want to congratulate you. A person of that stature's opinion always carries great weight.

I am just going to ask you two questions. Again, I appreciate your appearing here today and taking the time and lending your talent to this hearing.

Is it your opinion—as I understand, you taught Clarence Thomas in law school, did you?

Mr. CALABRESI. I did not actually teach him, but I knew him well at the law school.

Senator THURMOND. I see. Well, from your knowledge of him—and that is what really counts—your knowledge of him—is it your opinion that Judge Thomas is highly qualified and possesses the necessary integrity, professional competence, and judicial temperament to be an Associate Justice of the U.S. Supreme Court?

Mr. CALABRESI. Yes, I do. I believe that he has the integrity and the knowledge and the ability to be a very good Justice of the Supreme Court. I think he is fully as qualified as the people who have been appointed and confirmed to the Supreme Court over many, many years.

Senator THURMOND. Do you know of any reason why Clarence Thomas should not be made a member of the Supreme Court?

Mr. CALABRESI. No; I do not know any reason why he should not. Incidentally, Senator, my colleague, Drew Days, who testified against, when asked by this committee if Judge Thomas was qualified to be on the Court, quite candidly gave the same answer I did, that he was. But he testified against for other reasons. But in terms of qualification, he agreed that he was qualified.

Senator THURMOND. That is all the questions I have. I think your answer covered everything.

Mr. CALABRESI. Thank you.

Senator THURMOND. I think your answers are clear, direct, to the point, and you are for Clarence Thomas being on the Supreme Court.

Mr. CALABRESI. I am here testifying in favor of him.

Senator THURMOND. That is all I have to say. Thank you very much.

Mr. CALABRESI. Thank you.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, I want to express regret that I was not here to hear the testimony of Dean Griswold and William Brown, representing the Lawyers Committee for Civil Rights Under Law. But we have a heavy schedule today with the Philadelphia Navy Yard, which took a little precedence for the past 45 minutes. So I have to absent myself, and I was especially sorry to miss the testimony of Bill Brown, who was a deputy district attorney when I was in office. I will peruse their report with care.

Dean Calabresi, it has been a good week for the Yale Law School, a good week and a couple of days, lots of good comments. When Senator Thurmond commented about you were the only dean and we found out there was one other dean, I think there was an alternative holding that Senator Thurmond might have used aside from the fact that he was a retired dean. It was only the Harvard Law School that he was dean of—

Senator THURMOND. Excuse me, what was that?

Senator SPECTER. The other dean was only from Harvard, Strom. This man is from Yale.

The CHAIRMAN. You think as little of Harvard, Strom, as he does, I know. [Laughter.]

Senator THURMOND. Who was the other dean?

The CHAIRMAN. Dean Griswold, former Dean Griswold from Harvard.

Senator THURMOND. Well, as the dean stated earlier, he is retired. He is no longer active.

The CHAIRMAN. The point the Senator was making was that even if he weren't retired, it wouldn't count for much because he is from Harvard. That was his point.

Mr. CALABRESI. You have not heard me say that.

Senator THURMOND. Well, I imagine that the chairman is right.

Senator SPECTER. Thank you, Senator Thurmond.

First, Dean Calabresi, I thank you for your letter to me of September 6, 1991 in response to my inquiry about Judge Thomas in terms of the preferential program at Yale. I would ask, Mr. Chairman, that Dean Calabresi's letter be made a part of the record as if read in full.

The CHAIRMAN. Without objection, it will be.

[The letter of Dean Calabresi follows:]



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GUIDO CALABRESI
DEAN

September 6, 1991

The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

Via FAX: 202-224-1893.

Dear Arlen,

It has taken me more time than I would have hoped to get the information about affirmative action plans at Yale Law School at the time Judge Clarence Thomas was admitted. The reason for this is that I was not then Dean and I did not wish to go merely on my recollection as a faculty member. After talking to the then Dean, the Associate Dean in charge of Admissions at the time, etc., I think I can be pretty confident of what I am writing you.

First, a bit of history. Affirmative action both in its sense of looking widely and more deeply and in its sense of some possible preferential treatment has deep roots at this Law School. In the 1880's Francis Wayland, the first Dean of the Yale Law School, wrote Samuel Clemens (Mark Twain) to ask him for scholarship money specifically for a black student, because the student was holding down two jobs while going to law school to pay his way. Clemens sent the money and wrote that he would not have given money to white students, but in view of the way blacks had been treated and were still treated, it was an appropriate thing to do. (This is apropos of the current debate about scholarships designated for particular groups.) The student who received that scholarship went on to win one of the first desegregation cases, a housing case, out of Maryland. And it was in his office, I believe, that Thurgood Marshall first started practicing law.

By the time Clarence Thomas applied, the number and quality of black applicants to the Yale Law School had increased greatly. In part for that reason, a few years before his application, the faculty voted to create a more formal structure than the casual "affirmative action" approach, that had been in place earlier. The program that was put in was essentially a "set aside" program. Up to 10% of the places in the entering class were set aside for members of minority groups. The members of these groups would compete with each other for these places. A minimum standard was also applied, and a rather interesting one.

Before this program was put into effect members of minority groups were pretty much automatically accepted if it was thought that they could do the work well. The increasing size, quality of the applicant pool, and availability of places at other law schools, which had earlier not been as open to minority students as Yale, led to a different "minimum standard." Students would now be admitted only if it was believed that they were of such ability as to make it a distinct advantage for them to come to Yale Law School as against any other law school. In other words, while, before, anyone who would do well here was likely to be admitted, even if he or she might get as much or more from another school, at the time Judge Thomas was admitted the standard was to accept only those of such quality that coming to this School was a clear benefit.

As to Judge Thomas himself, I cannot say whether he would have been admitted apart from this program. This is because admissions among people of top ability are always highly subjective and so, unless I could speak to those who actually read his files (some of whom are dead), I could not give an answer to the question. Frankly, even if I could, I would not. It has long been the policy of the Law School not to divulge information with respect to admission of particular students. Our policy, I believe, is now required as a matter of law by the Buckley Amendment.

Not many years after this program was put in effect, it started to fall of its own weight. The quality and numbers of minority applicants continued to increase at such a rate that a "set aside" program seemed unnecessary and undesirable. By the time the Bakke case (which held similar programs invalid) came along, our "set aside" program was well on its way to being abandoned. Today all applicants are considered as part of one pool and I believe that our minority students are the equal of, or superior to, the whole student body in any other law school. Whether some faculty readers give advantage to individual applicants because they are members of minorities, is impossible to say. But the same is true as to any number of other possible characteristics for admission. There is one large pool and every member of the faculty reads files and applies to them his or her subjective judgment. Each file is read by three different faculty readers and this, too, tends to mitigate the effect of any one reader's enthusiasms.

I hope this is of help to you as you begin what undoubtedly will be a very interesting set of hearings.

Best always,



Senator SPECTER. Dean Calabresi, a good bit of our discussion has focused on Clarence Thomas' background in a sense, as opposed to Judge Thomas' writings. And some have said that the writings are a much better indication of the man than his background in terms of his roots and his previous position.

In looking at the critical issue of human rights, civil rights, affirmative action, I would be interested in your evaluation of Judge Thomas in comparing the writings which are much more restricted, constricted, than his background in terms of trying to make a prediction, which is essentially our job on this committee. How would you look at that?

Mr. CALABRESI. I cannot make a certain prediction. I wish I could. Predictions aren't of that order. All I can say is that I think that Judge Thomas is a person with respect to whom there is a significant chance—a significant chance—that were he on the Supreme Court of the United States he would be a powerful figure in the defense of civil rights.

That is more than is the case with most of the people who have been nominated by the last two administrations. If I am faced with a chance as against no chance, I will go for that chance. I cannot say I am confident. I do not think that one can be that sure, and I will be quite candid on that. On the other hand, I do think that there is enough in his background and enough in his sensitivity and enough in what he has said here to make me think that he may well be a significant figure.

Frankly, one can cut this another way. If I am wrong, he will join a majority that is already such a strong majority that, though it will make some difference, it will not make that much difference. But if I am right, it will make an enormous difference the other way.

Incidentally, I would cite one person, the Justice for whom I worked, of whom many of the same things were said, Justice Black. If one looked at certain things in his background, one would have said—some of his speeches, some of his things, one would have said he would not have been the kind of Justice that he was. If one looked at other things in his background, the things he had to struggle against, one would say that there was a chance. In that case, the chance came through. Did it ever.

Senator SPECTER. Dean Calabresi, on philosophical grounds, do you agree with Judge Thomas on affirmative action?

Mr. CALABRESI. No, I don't. I think affirmative action is a very complicated issue. It is not a simple kind of thing. I don't mean his position is simple, but I sometimes think that the people who have taken opposite views tend to make it more simple than it is.

One of the key things for with respect to affirmative action is: Is affirmative action really something that is benefiting a disadvantaged group where the bulk of the burdens are being borne by people who have all the advantages? And then I am for it, and it is in that respect that I disagree with Judge Thomas.

On the other hand, it often is the case that what is described as affirmative action is not those who have putting a burden on themselves for the benefit of the have-nots, which is admirable and should be supported, but it is those who have putting a burden on one group of have-nots in order to help another group of have-nots.

And that is much more of a problem. I think many of the issues which turn around affirmative action today turn on questions of which of these two things it is.

I think that Judge Thomas has been too sensitive to this second part and thinks that it always is this way. I think that some of the people on the other side have been too insensitive to the existence of that.

There has been discussion about affirmative action in a place like Yale and affirmative action in the workplace. And in many ways, the workplace is a more important place to have affirmative action than a place like Yale. On the other hand, it should be said that those who may lose because of affirmative action at Yale, those who are not admitted to Yale because of affirmative action, will end up going to Harvard. And that is not the end of the world. While in the workplace, those who may lose may be people who are also in need.

All in all, I still come out in favor of it, but it is on that issue that I think differences turn and why it is such an emotional issue, and properly an emotional issue.

Senator SPECTER. So notwithstanding the fact that you have a different philosophical approach to affirmative action than Judge Thomas and in fact disagree with him, you conclude that his view of affirmative action is within the realm of reasonableness and does not rule him out as having a keen sense of civil rights?

Mr. CALABRESI. If his views on affirmative action were not within the realm of reasonableness, neither would that of a great many people who currently are on the Supreme Court. His view is well within the range of that of others who have been confirmed.

Senator SPECTER. Well, Dean Calabresi, I don't know that that comparison necessarily holds up too well.

Mr. CALABRESI. It worries me. It worries me. But, in fact, I think that Judge Thomas' views are well within the range of reasonableness.

Senator SPECTER. He was characterized by one of the witnesses this morning as being from the radical right. Would you disagree with that characterization?

Mr. CALABRESI. Yes, I would disagree with that characterization. At least if one looks at the Court today, if one looks at the courts today, even more than the Supreme Court, if one looks at people who have been appointed in the last 24 years, Clarence Thomas is not on the radical right.

I might wish that he were as I might wish that the center were some place else, but the center has moved a long way.

Senator SPECTER. Dean Calabresi, other colleagues have joined us, and we are trying to move along. So I will ask you just one more question, and that is: The American Bar Association has rated Judge Thomas only as qualified. Would you agree with that, or would you give him a well-qualified rating for the U.S. Supreme Court?

Mr. CALABRESI. Senator Specter, I don't mean this to sound snide, but my ratings, if I were doing it, would be far more severe than those of the American Bar Association. If the American Bar Association rates, as they did, Justices Kennedy and Souter as well

qualified or highly qualified, I would certainly rate Judge Thomas as highly qualified.

My own judgment would have been to rate neither of the past two nor some who have been appointed before as highly qualified. I would save highly qualified for very, very few people. But on the basis of the ratings that they have exercised, he is as qualified as the others, and if they are highly qualified, so is he.

Senator SPECTER. Thank you very much, Dean Calabresi.

Thank you, Mr. Chairman.

The CHAIRMAN. Dean, thank you—oh, I am sorry. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have no questions of this witness. I would like to ask, though, whether or not we are going to finish all the panels that are on today's list.

The CHAIRMAN. Come heaven or high water, we are going to do it. That is why I didn't break for lunch. That is why I stayed in this chair, and we are going to go right through votes, even if it means I end up missing some votes. So we are going to keep going.

Dean, thanks a million.

Mr. CALABRESI. Thank you very much.

The CHAIRMAN. I really do appreciate your coming.

Now, our next panel is a panel of very distinguished Americans: Ms. Marcia Greenberger, an attorney at the National Women's Law Center, who authored the report on Judge Thomas that argues that Judge Thomas' record demonstrates a lack of support of women's rights; Ms. Judy Lichtman, of the Women's Legal Defense Fund, which wrote a report arguing that Judge Thomas' endorsement of an article by Thomas Sowell threatens working women's rights; and Prof. Patricia King, a professor at Georgetown University Law Center, who teaches family and poverty law. Professor King believes Judge Thomas' record is, as I understand it, antithetical to the interest of women and blacks.

If I have misrepresented your positions in any way, please at the very outset make it clear for the record that I did.

With that, why don't we start in the order that I—or does the panel have a desired way to begin?

Ms. LICHTMAN. We do. If it pleases you, can we have Professor King begin?

The CHAIRMAN. Of course.

Ms. LICHTMAN. Then we will proceed with Marcia Greenberger.

The CHAIRMAN. Professor King, why don't we begin with you.

STATEMENTS OF A PANEL CONSISTING OF PATRICIA KING, PROFESSOR, GEORGETOWN LAW SCHOOL; MARCIA GREENBERGER, ON BEHALF OF THE NATIONAL WOMEN'S LAW CENTER; AND JUDITH LICHTMAN, ON BEHALF OF THE WOMEN'S LEGAL DEFENSE FUND

Ms. KING. Thank you very much. Chairman Biden and members of the committee, as a black woman, it is exceedingly difficult for me to oppose the nomination of a black individual who has known great personal struggle. Nevertheless, Judge Thomas' extensive record and personal posture is so antithetical to the interests of