

Senator KENNEDY. Thank you very much.

We will follow a 10-minute rule for the questions. Some people argue that, despite Judge Thomas' record of hostility on civil rights, we should trust that if he is confirmed to the Supreme Court, he will be sensitive on civil rights. Given both his past record, statements, position, actions, and statements before the committee, what kind of weight should we give that kind of advice or guidance, Professor Days?

Mr. DAYS. The concerns that I expressed, Senator Kennedy, the administration and Judge Thomas have suggested that his humble beginnings will cause him to rise to the defense of those who are most in need of protection, but it seems to me that, given his world view and the examples that I just described, his impressive story of his journey from poverty to prominence is not assurance enough.

What strikes me about his discussion of the world is that there seem to be two periods in his life, his early experiences in Savannah and today, and there seems to be very little recognition of what had gone on between that. And when he talks about discrimination, he talks about his own experience. He rarely talks about the little people out in the street who are struggling to get jobs, trying to get their children into decent schools, trying to get an effective way to participate in the political process.

So, I do not think the record causes us any assurance that, when he gets into the Supreme Court, if he gets into the Supreme Court, he will do what is required of him.

One of the things that I think is important about the role, as Professor Lawrence indicated, about Justice Marshall and Justice Brennan, was that they represented those who are at the margins of the society not only in their opinions and not only in their dissents, but I am confident that in conferences, in the formal and informal discussions within the Court, they helped educate some of their colleagues to what was going on on the streets, what was happening down below the level that they perhaps had ever experienced in their own lives, and I do not have any confidence, given what I have read of Judge Thomas' writings and what I have heard him say in these hearings, that he can play that role or is willing to play that role.

I am sure that the other Justices will know about his life in Pin Point, GA, but whether they know about the lives of those kids in Savannah who were struggling to get a decent education is as big question.

Senator KENNEDY. Mr. Edley, Mr. Lawrence.

Mr. EDLEY. The only thing I would add, Senator, is that it seems to me it is just simply too romantic. I would like to believe in the possibility of redemption, but I would like some evidence. It seems to me it is too much to play Russian roulette with our rights or with the role of the Congress, the critical issues that I think are at stake here.

The background determinism that is suggested by the fact that he came from Pin Point and, therefore, will act in a special way on the Court seems to be counter-factual. That is not what the record demonstrates. What the record demonstrates is that, despite the diversity suggested by his experience, what has he made of that experience? And what he has made of that experience, it seems to me,

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.