

The CHAIRMAN. Assuming they find African-Americans who are capable of competing at Holy Cross College, does that mean they will be admitted?

Father BROOKS. If they meet the positive judgment of the admissions boards, they are certainly admitted.

The CHAIRMAN. Now, assuming you find white Americans who are qualified, does that mean they will be admitted?

Father BROOKS. No. Going back to what you were discussing earlier, the lawyers panel, there are a number of students who are applicants Holy Cross, certainly well qualified, and are denied admission.

The CHAIRMAN. Judge Gibbons, are you still on the board of Holy Cross?

Mr. GIBBONS. I was until September 6 last.

The CHAIRMAN. Did you support that policy when you were on the board, Judge?

Mr. GIBBONS. Yes, very positively.

Senator SIMON. Would you pull the microphone a little closer to you?

Mr. GIBBONS. Yes, I was a strong supporter of it.

The CHAIRMAN. Is it fair—

Mr. GIBBONS. So was Clarence Thomas.

The CHAIRMAN. Is it fair to refer to that as affirmative action? What would you call it, Judge, as a judge, knowing the law as you do and unwilling to slide out from under the question?

Mr. GIBBONS. It is affirmative action. We take affirmative steps to increase the percentage of minority enrollment in the school.

The CHAIRMAN. And it means that if there is a white student and a black student, equally qualified, and one place left in class, it goes to the black student, correct?

Mr. GIBBONS. Very likely.

The CHAIRMAN. I compliment you on the policy.

Mr. GIBBONS. Thank you.

The CHAIRMAN. I think it is a wise policy.

Mr. GIBBONS. Of course, it is a private institution.

The CHAIRMAN. I understand it is a private institution. I might say, my experience with Jesuit institutions is that this is uniformly the case; I have a son who goes to a sister institution that I am not allowed to mention here, but which happens to be in town.

Now, let me ask you, Judge, I have never heard anyone refer to Clarence Thomas as "a legal positivist."

Mr. GIBBONS. No, I referred to Robert Bork as a "legal positivist."

The CHAIRMAN. I see. OK. I thought you said—that clears it up. Thank you very much.

Sister, if Judge Thomas had a view of the Constitution you did not like, you would still be for him, wouldn't you?

Sister VIRGILIUS. I sure would.

The CHAIRMAN. That is right. God bless you. Thank God for loyalty. [Laughter.]

I yield to my friend from Utah.

Senator HATCH. I want to compliment each of you for what really were collectively eloquent statements for and on behalf of Clarence Thomas. I think he was very fortunate to have you, Sister