

The CHAIRMAN. Thank you very much. I am going to limit my 5 minutes, quite frankly, to Mr. Colley, not because the others aren't important, but because, quite frankly, I know of your deep commitment. And not that others aren't committed, but I know personally of your deep commitment to the issues that quite frankly trouble me most about Judge Kennedy.

And that is why. It is out of no disrespect to the rest of the members.

I listened to you make a speech once when you were aware of my presence, I suspect, and once when you were not, about civil rights and civil liberties. And so if you mean what you say, and I know your background and record indicate you do, it is some of consequence to me that you would be supporting Judge Kennedy.

Most civil-rights organizations, and I believe you were—weren't you at one time on the Board of NAACP?

Mr. COLLEY. For as long as time goes back, almost, for over 20 years. And I still am.

The CHAIRMAN. Most civil-rights groups have either abstained from taking a position, not because they are reluctant to take a position, but because they are uncertain, as I read it, or some few have come out against—not the NAACP—but have come out against the Judge.

Some of his decisions are hard for me to reconcile with some of the rhetoric which he uses in his speeches—not that there are that many speeches, but in his speeches about the spacious phrases.

And it is clear from everything we have found in our investigation, your testimony, and his that he has fully, fervently, and completely embrace *Brown* and all that it stands for, *Brown v. the Board*.

But it is less clear to me that he is, for lack of a better word, sensitive to some of the more sophisticated means by which discrimination is undertaken, not only against blacks, but against browns, against women, against minorities.

Just use the remainder of my time, the next 3 or 4 minutes, to tell me about, if you can, what he is like in Sacramento, and whether or not—as Joe Rauh said, ask somebody who knows him where he was at the time of some of the monumental decisions, where his thinking was.

I am not suggesting you are with him all the time, but talk to me a little bit about why you have sense of confidence about him.

Mr. COLLEY. My sense of confidence does not arise from what he said when the Court made certain decisions. My sense of confidence arises because I know him very well. I know him to be a very fair man, a man who wishes the best for America and all of its groups, no matter what color, creed or otherwise.

I would say to you that Judge Kennedy has never done or said anything that I know of which would indicate that he harbors any kind of racial or ethnic bias.

The CHAIRMAN. If I can interrupt you, I don't think anybody has ever indicated that. The concern that—let me speak of my concern.

The concern that I have is that, like many prominent, honorable, decent, and intelligent members of, for lack of a better word, the establishment in various communities are never reluctant to remedy an injustice toward an individual, but many times, either

out of lack of wanting to take on the establishment or lack of appreciation for the depth of the problem, seem reluctant to deal with systemic problems.

Mr. COLLEY. All right. I think that is a fair statement, and what you described just now was the average American white male. The world was yours, and you were apathetic. The world was yours, and you didn't want to shoot anybody; you didn't want to lynch anybody. But you weren't concerned about all the subtleties we are concerned about now.

We have to give Judge Kennedy credit for, as early as 1980, beginning to reminisce about these clubs, for instance, which discriminate, and trying to change them, actually affirmatively trying to change them.

And in some instances where he thought change would not come, his only remedy was to withdraw. And I am not talking about 1987 withdrawals; I am talking about as early as 1980.

I also know from personal experience that he was uncomfortable in any situation where he thought discrimination might exist, but he was as not as sensitive earlier on as he should have been.

But as I said before, if you apply that as a test, not many of us escape.

The CHAIRMAN. Let me ask you, since my time is up, one concluding question. You know Judge Kennedy; you have known him for some time. Is he the kind of man that, after having gone through this process, in your opinion, will at least spend some time contemplating what was said about him?

Will he have listened to what I thought was just quite frankly a very, very articulate testimony by Ms. Hernandez? Is that the kind of the thing he listens to?

Mr. COLLEY. I would tell you that Judge Kennedy is a grown man, but he is a growing man. And I have no doubt that as he proceeds through life, he now knows how important it is to be more sensitive to the issues that now worry you.

I would predict that as he grows, your satisfaction with him will grow also.

The CHAIRMAN. Well, as you pointed out, or someone pointed out, earlier, I have no right to insist that a Supreme Court nominee agree with everything, or even a majority of the positions I would take, specific positions.

But it seems to me that we all have a right to insist that certain basic principles which we feel deeply about will be reflected. And I—

Mr. COLLEY. I know the time is gone, but could I just speak briefly about a couple of cases that he has dealt with, and which he has criticized for?

One is the *Spangler* case in Pasadena. All he did in that case was rule that the people who were making the motion to have the school board abolish the fundamental school were not parties to the action. And he said to them, "You will have to make a motion to intervene in order to get the court to do something, and you have not made a motion to intervene. You have not made a motion to be joined as plaintiffs, so you are strangers, really."

I don't see how a court can operate its business if it listens to people who refuse to intervene and refuse to be joined as parties,

yet dictate the outcomes of litigation. So I don't think there is anything unusual about that, and I am well aware of the situation in Pasadena.

Now, with reference to *TOPIC v. Circle Realty*, that was a narrowly decided case. I don't guess there is anything wrong in telling you that I talked with Judge Kennedy about that case, because he knew of my concerns about discrimination in housing.

His explanation to me was that he certainly harbored no animosity toward anybody, but he honestly thought that the section of the law which that case was brought under did not allow parties who were not discriminated against—community groups such as this—to bring an action directly in court.

He felt that the law required them to go through the administrative process, and he felt that the administrative process was really in many ways far superior to the long, drawn-out court actions.

So there was nothing in that case which expressed any view of race and housing so far as minorities are concerned.

The CHAIRMAN. I thank you, and I thank my colleagues for allowing me to go over a little bit of my time. The Senator from South Carolina.

Senator THURMOND. Thank you very much, Mr. Chairman. First, I want to express my appreciation to the witnesses who came here today to testify in behalf of Judge Kennedy.

Now, as I understand, Mr. Cartwright, you know Judge Kennedy personally.

Mr. CARTWRIGHT. Yes.

Senator THURMOND. How long have you known him?

Mr. CARTWRIGHT. Oh, 15 or 20 years.

Senator THURMOND. Mr. Colley, how long have you known him?

Mr. COLLEY. About the same time.

Senator THURMOND. Mr. Plant, how long have you known him?

Mr. PLANT. About 25 years.

Senator THURMOND. Now, Ms. Kuhl, do you know him personally?

Ms. KUHL. I do, Senator Thurmond. I have known him about 10 years. I was—

Senator THURMOND. Are you from Sacramento?

Ms. KUHL. I was his law clerk in 1977.

Senator THURMOND. A law clerk. Ms. Kepley, do you know him?

Ms. KEPLEY. I have not had the privilege of knowing—

Senator THURMOND. I can't hear you.

Ms. KEPLEY. I have not had the privilege of meeting Judge Kennedy as of yet.

Senator THURMOND. So four of you have known him personally, and you know him through reputation, do you, Ms. Kepley?

Ms. KEPLEY. Yes, sir.

Senator THURMOND. You have studied his cases and his records, speeches, and so forth?

Ms. KEPLEY. Yes, sir.

Senator THURMOND. Now, from your personal knowledge of Judge Kennedy, and the knowledge Ms. Kepley has obtained from studying his record, speeches, decisions, and so forth, I want to ask you this question.