

The CHAIRMAN. Thank you, Ms. Bronk, for a well-reasoned and succinctly stated statement, and within the time. Let me begin with you.

With regard to the issue of the equal protection clause of the 14th amendment, let me be the devil's advocate for a moment. It is true, isn't it, that the last part of his discussion on this issue and the least part of his criticism, when he talked about the middle tier, when he was refusing to say precisely what tier he would apply, attempting to avoid discussion of the precise principles he would apply, he said that his concern was, and his concern with the middle tier as presently constructed, was that it too easily "collapsed into the very lowest tier of review."

Now, so while you are correct in saying that he did not establish that he was for a test more exacting than the current test, some of his comments suggest that he might be inclined in that direction. Do you find his concern about collapsing into the lowest tier some evidence of the fact that he at least thinks that the middle tier is an appropriate test?

Ms. BRONK. Yes; as a matter of fact, for a few moments there, I was encouraged when I was listening to him speak. However, since he has obviously thought about the question in depth and written about it, I was very disappointed and we were disappointed to know that he could not clarify his position better, that he hadn't thought it through so that he did have one, when the minimum tier has been accepted for such a long period.

The CHAIRMAN. Ms. Hernandez, as you probably know, the newspaper articles referred to Judge Souter's speech, as you did, the speech that was made in the mid-seventies. In that speech, the article reported that he called affirmative action affirmative discrimination.

Now, during the hearing, Judge Souter testified that he did not believe that he had made that statement. I don't know whether he did or not, but I am sure that all of us have wondered sometimes whether we have been properly quoted, I suspect yourself included.

He also argued that in the face of discrimination the appropriate response was to undo the wrong, undo the wrong rather than just call for the discrimination to stop. That is a distinction.

Now, what are your views with regard to Judge Souter's testimony that, first, he doesn't think he made such a statement; and, second, that he was in his statement willing to go beyond merely stopping the discrimination, ending the discriminatory practice, and saying he wished to, felt we must undo the wrong? Do you find any significance in either of those two statements?

Ms. HERNANDEZ. Well, as to the first statement as to, you know—

The CHAIRMAN. I apologize. You must pull that very close. None of us can hear you.

Ms. HERNANDEZ. As to the first question as to whether he, in fact, made that statement or not, he questioned whether he was quoted properly, but he never denied the statement or disavowed the statement. And so, you know, in reading—

The CHAIRMAN. You are making a distinction. He said, "I didn't say it," so you are saying that that means that because he didn't say "I never said it in my whole life, or I never thought it," there-

fore he must have thought it or he must have said it some time? Is that what you are saying?

Ms. HERNANDEZ. No. If you look at what he said, he said, you know, that he could possibly have been misquoted, or he doesn't remember saying it. He never said, "I didn't say it," or, more importantly, "That statement, if I did say it, did not represent what I believed then," or, more appropriately, "does not represent where I stand today." That is one.

Now, on the second question—which I forgot. What was it?

The CHAIRMAN. That is understandable. The second question, I almost forgot, was that he indicated that with regard to the standard that should be applied when discrimination is found, he was asked by me and others what action the Government should take—because, as you know, the debate is just stop it and don't let it go forward, or go back and attempt to undo the wrong that was done. And he said that the appropriate response was to go back and undo the wrong, that Government must go back and undo the wrong.

Obviously, you find no solace in that assertion.

Ms. HERNANDEZ. Let me tell you why I find no solace. In reviewing our position as to Judge Souter, not only did we look into the few instances in which he had dealt with civil rights, and in those instances had been antagonistic, but we also reviewed the 200-some cases that had come before him. And our concern is his view of the courts, of the legal profession, and they are very limited. Whenever possible, and in the cases that he has taken, he has not seen the courts as an avenue for redress. Moreover, which is something that is of great concern to us, we want to know on what past record must we place our belief that he understands and that he is committed to these issues.

It is surprising that in his entire opening statement he never raised or addressed the issue of civil rights, and it was the prodding of you, Senator Kennedy, Senator Simon in which he was given opportunity after opportunity to say something about these issues, that he addressed questions that you posed. He had no problem addressing, you know, his values, his positions on, let's say, criminal justice, the death penalty and other issues. Those are values. And the questions that we asked ourselves is: What are his values as to these issues? Upon what is he going to draw? On what experiences—when he says that there is no discrimination in New Hampshire—is he going to draw when he decides issues of concern to us?

You know, the English-only issue has been very divisive in New Hampshire if you go beyond affirmative action. For the Hispanic community today and in the 1990's, the issue of access to the voting booth is critical to us. And for him to make those statements—so, yes, I was heartened that he made some statements after some prodding, but I would like to see much more than that. And why is this critical? This is not just another Associate Justice to the Supreme Court. That is what is at stake here today.

The CHAIRMAN. Thank you very much. My time is up.

I yield to my colleague from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

There was a reference made to Daniel Webster College. I have been informed that Daniel Webster College was founded by Senator Rudman about 1965, that he was chairman of the board until 1980,