

that it is an aeronautical training and business college. I just wanted to put that on the record.

I have no questions of these witnesses.

Senator KENNEDY [presiding]. I want to join the chairman in welcoming the panelists to the committee and express our appreciation for the time that you have spent in the consideration of your recommendation.

I would just ask of Mr. Rauh, were you able to complete your thought on the kinds of incidents which had taken place in New Hampshire? Were there additional points that you wanted to make in just completing the testimony?

Mr. RAUH. Thank you, sir. I did say a sentence or two in a hurry about each of the 10 examples. We have then another 10 or a dozen that we are putting in the record. I don't know if you were here the whole time, but I wanted to make sure that I had made myself clear.

We are not charging anything on the judge. We are charging he didn't do anything. We are charging he hasn't done anything. He claims that there is no discrimination. How can a man who says there is no discrimination find discrimination? How can he be so insensitive to our problems? We are not making an attack on him.

I would like, if I might, to address myself to Senator Thurmond. I have a letter here from 22 students there which includes this statement:

These harassments range from students dressing as members of the Ku Klux Klan, walking around the college yelling "We don't want your kind around here," to the breaking, entering, and destruction of our rooms and personal property. The slurs "KKK" and "niggers suck" are frequently written on the walls of our rooms.

Now, to forget that, to try to put that under the table or sweep it under the rug because Senator Rudman may have had a connection with this about which I didn't know, but the fact of the matter is, Senator Thurmond, that this letter shows what kind of a place it is, and that these students that were harassed, there was no outcry from the attorney general. They made a plea for help. No help whatever. This is an insensitive man that you are foisting on us.

Senator KENNEDY. I think all of us, including my own State, have gone through and continue to go through a good deal of anguish, in terms of trying to deal with the problems of racism, and that continues even today and has existed for a long period of time. I think we understand that that certainly is not limited to the problems in any particular part of the country. It is more widespread than is generally understood.

There is the Human Rights Commission in new Hampshire and they deal with a number of allegations, charges, and complaints. And as I understand the procedure, when there is some finding and when the Human Rights Commission then is challenged by a defendant, then the attorney general represents the Human Rights Commission, so there is this association with the Human Rights Commission. I believe that to be the situation.

I was wondering, in your review of the record, whether the problems dealing with race had been raised with the Human Rights Commission and what the record—you know from your own—

Mr. RAUH. Some of the cases I gave you, at least one or two of them, the attorney general's office was the lawyer for them and, therefore, he would have been aware of the discrimination charges there, and, therefore, you do not get the situation where he did not know about the charges.

We have not been able, as I understand it—I have not been up there, but others of the Leadership Conference have—we understand that we may not see the record of the Human Rights Commission, the various records. I am not being critical of that. That is to protect some of the witnesses, I am sure. But what has happened is that we only know there were a certain number of complaints and we know some of the things that got in the newspapers. We have not been allowed to look at the actual transcripts.

Senator KENNEDY. Let me go back to a line of questioning that I had in the opening day of the hearings, and that had to do with representing the State's position on the question of collecting data and information relevant to the EEOC, and also representing the Governor on challenging the literacy tests, both situations which were eventually overturned by the Supreme Court, in one instance 9 to 0.

The judge indicated that he was just effectively living up to the kind of ministerial function of attorney general in pursuing the State's interest. I tried to point out during the questioning that the attorney general of New Hampshire takes an oath to uphold the Constitution, as well as the New Hampshire Constitution, and I read in the record the particular New Hampshire statute that indicated that part of his functions relate not just to the attorney general, but to the public at-large, and we had an exchange on that issue.

My question is this: If the position that was taken by the Judge in those particular cases had prevailed, what would have been the impact, in terms of Congress' power to enforce the 14th amendment with regards to race discrimination?

Mr. RAUH. Well, there could not have been any affirmative action, without it. When he denies the words "affirmative discrimination," he is going contrary to the whole thing, he against affirmative action. How can you have affirmative action, if you do not know the results, if you do not know whether people are getting hired, if you do not know whether there are any blacks on the roster.

The whole thing is a pattern, Senator Kennedy. What you have is a speech at a racist school which I read to you, and then after the speech, in the same year, he is saying that you cannot get a racial breakdown. There is no way that you could possibly have affirmative action.

There has been a rewriting of history. What he has done is to say I am for affirmative action, in a sense. He has made that statement, but everything in his career has opposed it. If there was any conversion, confirmation conversion, Senator, when Judge Bork was up here, this is a constitutional rewriting. It has just changed the whole thing, from what the facts were during the time he was there and what they have been since Thursday morning, this statement of his.

Remember—and I think it was in answer to you, sir—that he said one of my reasons for taking that position was there is no discrimination in New Hampshire. He made that statement in connection with the answer to you, in addition to the statement that I read the committee in my testimony.

Senator KENNEDY. You provided the information with regard to gender, but not with regards to race.

In talking about the sensitivity, did you form any impression about his comments during his pursuit of the challenge to the United States on the suspension of the literacy tests? Remember, New Hampshire had a literacy test that was used to suspend it. I know you have been involved in the long history of the battles over the 1965 act and the 1970 act, I know from personal experience.

I stated at that time that the reason that we were abolishing the literacy test nationally was really to indicate, when that issue was raised by many sections in the southern part of the country, that we were going to lift them with regard to the South, why do we not do it nationwide, and the Congress responded to that, and he challenged Congress' power under section 5 of the 14th amendment to do so.

Then he made some comments about the illiterates and how that watered down the rights of others. Did that statement trouble you, with regards to this issue of sensitivity to individuals? I think, by and large, those are going to be the poor individuals, working men and women, in many instances I suppose minorities, people who are often left out, left behind. I would ask you both, or any members of the panel—maybe you would make a comment and then Ms. Hernandez make a comment.

Ms. HERNANDEZ. Well, that is most troubling, in watching Judge Souter testify, that there is no question about his intelligence, there is no question that, in many ways, he is a legal scholar. The problem is in his value system and what he uses as a resource to make his decisions, the human compassion, the understanding, the experience to really understand how the law is applying to human beings, particularly those that in the past have been deprived of their constitutional civil rights. He reverts back to very analytical frame of mind.

Well, the law is meant to protect people, it is for the benefit of people. It is not for the benefit of intellectual theorizing of how one point of view might go or the other. And if you listen to his testimony for the last three days, when pushed on these issues—and I believe if you looked at my testimony, I go specifically to those questions—is that you really push on those issues, he reverts back to that, because of the fact of the lack of—well, there is a lack of experience there from which to choose from.

You have judges who are going to be put on the Supreme Court for life, who are going to judge on cases that deal with human beings, and if you do not know, if you do not understand, if you do not have a feel for their problems and what they are encountering, then it is very easy to fall back.

The other point, as far as the issue of Section 5 of the Fourteenth Amendment, is that, you know, he questioned Congress' ability to legislate in that area. And what is most troubling to us is the Jus-

tice that he most admires, Harlan II, is the one that dissented in *Katzenbach v. Morgan*.

So once again, there is a paucity of any affirmative statements or activities that show a sensitivity, and the only thing that we have to go on is on his statements here before you, and I will tell you that I was here before you on the Kennedy nomination and we were asked to rely on the same thing.

And we are asking once again, on a very critical nomination to the Court, to once again take a leap of faith based on some statements for the first time made before here in this hearing that he will be open-minded and neutral. We are not asking his views specifically on how he would deal. We are asking him to be open-minded, neutral and to have a reservoir of experience from which he is going to use when he decides the cases that impact our lives.

Mr. RAUH. I agree with that completely, and I think the word "open-minded" is good, because, in fact, what you have, you cannot be open-minded if you are unwilling to look, and he is unwilling to look.

Senator, you will recall that in one of the answers to your questions was, Judge Souter saying, "I was persuaded that this was a reasonable argument, because there was no discrimination in the literacy tests." What he meant by that, there was no discrimination against black voters, well, we do not know the answer to that, because we were not there and we did not do it, but there was discrimination. This happened to be a poor education discrimination against the people who could not read, but he will not see. You cannot be open-minded, unless you are willing to have an open sight and look at the problems. He says there are no problems. He answered that on both of your questions, he answered there are no problems.

Senator KENNEDY. What is the significance of those range of different reports and newspaper articles in relationship to the Judge's statement that he does not believe that there are racial problems? I mean what conclusion can you draw?

Mr. RAUH. Well, I do not see how you can look at the ten cases I gave—these are going into the record, the ten cases I gave—and say that New Hampshire is not a discriminatory State. I do not say it is the worst State, it just happens to be the worst State on Martin Luther King's birthday, but it is not the worst State on everything, but it is a State where there is substantial discrimination, which Judge Souter has refused to see.

Ms. HERNANDEZ. Let me add another point as to that. As I indicated, we are looking to those newspaper articles. He was an attorney general, a deputy attorney general, and, as you know, that office in most States or at least the States that I am familiar with, has the responsibility to monitor and sometimes to prosecute in cases involving issues of discrimination.

It is difficult for me to sit here and understand and believe that, during his tenure as deputy attorney general or attorney general, that he never ran across such complaints or such problems. That is the problem in this nomination.

Senator KENNEDY. Let me add, Joan Bronk, you said that NCJW views reproductive freedom as a religious liberty issue. Can you

give an example of how Court action to overturn *Roe* would impinge on your religious liberty?

Ms. BRONK. Yes, sir, the fact of the matter is that, in my own religion, I am taught that the mother's life is paramount to the fetus, and if, obviously, *Roe* were overturned, that would put women of the Jewish faith in an untenable position.

Senator KENNEDY. Do other religious organizations agree that this is a religious liberty issue?

Ms. BRONK. Yes, we work in coalition with many partners, other Jewish organizations and Protestant organizations, as well, who would agree with me on that, yes.

Senator KENNEDY. OK. Is there any further comment?

[No response.]

Well, I want to thank you all very much. You have been very provocative in your comments and I think all of us are going to certainly give them a good deal of weight. I certainly will.

I want to thank you very much, and we will recess until 3:00 p.m.

[Whereupon, at 1:50 p.m., the committee was in recess, to reconvene at 3:00 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order, please.

We are, as I indicated earlier, voting in the Senate, so the Congressman understand, I suspect, better than anyone how the process is working here, and my colleagues are still there, anticipating there may be another vote. I have taken the chance of thinking that the vote that we just took will prevail, which would preclude another vote, so one of two things is going to happen very shortly: I am either going to leave or a number of people are going to appear, but I thought it important that we start.

Our fourth panel consists of four highly respected citizens of the State of New Hampshire: John T. Broderick, Jr., current President of the New Hampshire Bar Association, an extremely well-respected member of the community, and I think in this context it is relevant to say is active in the Democratic Party and here to testify on behalf of the nominee.

Steven J. McAuliffe, president-elect of the New Hampshire Bar Association, who worked under Judge Souter as an assistant attorney general and equally involved in the community; and Deborah Cooper, former deputy attorney general of New Hampshire, who also served with Judge Souter and very involved in the community, as well; and Congressman Chuck Douglas, whose comment to me earlier is he is in a sea of Democrats at the table.

Congressman, welcome to the body. Congressman Douglas represents Judge Souter's hometown in the United States Congress, and obviously is here to testify on behalf of the nominee.

Now, unless you all have worked it out, I would like to reverse the order and give the Congressman the opportunity to speak first, because I know there are votes on the House side off and on and he may have to leave to vote, so why don't we just work our way back. Actually, we should go then to the current president, President