

And while we all agree there have been significant advancements, I could not agree more with Dean Griswold that but for those advancements, through the Supreme Court in most cases, this country would not be the country that it is. And I think we would be a long, long way away from what we consider to be the real objective, and that is the attainment of civil rights for all groups, both minorities and for women.

The CHAIRMAN. Well, I thank you both very much. I know you did not take this decision lightly, nor did the Lawyers Committee take it lightly. I appreciate your concern and your willingness to come forward. The committee thanks you, and I apologize that we kept you all waiting so long.

Mr. BROWN. That is quite all right. Thank you, Senator.

The CHAIRMAN. Thanks again.

Our next witness is a very distinguished American: Dean Calabresi, the current dean of Yale Law School, who has come to testify. He was going to be on a panel. Come forward, Dean. Welcome. He was going to testify with the president of Lincoln University whom we put on an earlier panel. So, Dean, the table is yours alone.

Thank you very, very much for taking the time to come. You have come to testify on behalf of Judge Thomas and we are anxious to hear what you have to say.

#### STATEMENT OF GUIDO CALABRESI, DEAN, YALE LAW SCHOOL

Mr. CALABRESI. Senator Biden, Senator Thurmond, over the years, I have had the honor and pleasure of teaching various Members of this body, ranging from former Senator Gary Hart, to Senator Joseph Lieberman, to Senator John C. Danforth.

I did not teach Judge Clarence Thomas, but because some of his closest friends in law school were students of mine and were people to whom I was especially devoted, I came to know him well when he was at Yale.

He was at the time an admirable person who demonstrated a capacity for independent thought that is always unusual, but is especially so among students, for they tend all too frequently to conform to the current mood. His approach to law when he was a student was not especially linked with the left or with the right. What characterized him was that he could not be predicted, that he was always seeking more information in order to decide what made sense to him, and that whatever position he took was his own and was powerfully and eloquently held. Because of this, I recommended him to Senator Danforth, who was looking for an able youngster who could think for himself. I was glad I did so then, and I am glad I did so now.

Many of his views have changed, several times, since those days. That does not surprise me. It is almost inevitable with people who are truly struggling with ideas and wrestling with the great issues of the day. I would expect that at least some of his views may change again. I would be less than candid, if I did not tell you that I sincerely hope so, for I disagree with many, perhaps most of the public positions which Judge Thomas has taken in the past few years.

But his history of struggle and his past openness to argument, together with his capacity to make up his own mind, make him a much more likely candidate for growth than others who have recently been appointed to the Supreme Court and who, whatever they may have said at their confirmation hearings, had in fact been set in their ways and immovable back to their lack school days.

Such a capacity for growth, as a Justice develops his or her own constitutional philosophy, is essential if a person is to become a truly great Justice. None of the great Justices of the past, not Justice Black, nor Justices Harlan or Stewart, not Justice Holmes nor Justices Brandeis or Cardozo, not even Justice Frankfurter, for all his years of teaching constitutional law, came to the Court fully formed.

The Court itself, and the individual cases that came before them, shaped them, even as they shaped the Court. In the end, it was a combination of character, ability, willingness to work really hard, and openness to new views that made them great Justices. These qualities, if there truly is openness, matter far more than past positions. Many a Justice has changed his mind dramatically since going on the Court. I hope and believe that Judge Thomas has these qualities, and that is why I am here today.

I would like to close with one anecdote about Judge Thomas as a student. Judge Thomas had a fine law school record. But early on he did get a poor grade, though clearly passing grade, from one of the toughest teachers in the school. When that happens, most students stay as far away from such a professor as they possibly can. Not Judge Thomas. He not only went back to the same teacher for another course, but chose to do his senior essay, his dissertation, for that teacher, and this time he received an honors, the highest grade given in the school. The quality this demonstrates has stood Judge Thomas well in the past. It will stand him well in the future.

Thank you.

The CHAIRMAN. I want to note, Dean, that you are being watched. Look to your right, and eagle-eye Danforth, your former student, is over there. I just did not want—

Mr. CALABRESI. He was a good student.

The CHAIRMAN. He is a good Senator, as well.

I do not have any questions for you, because you have stated your views very bluntly, and you have said it and you have summed it up.

Quite frankly, although some of us have not fully decided how we are going to vote, we have to vote, as you well know, and I think all of us share what I would only characterize as an aspiration you have, and that is that his character and tenacity and willingness to work hard, coupled with his basic sound intellect, will overcome what seem to be some preposterous notions he has asserted in the past. That is my words, not yours. I used the word "preposterous."

Believe me, Dean, whether or not I vote for Judge Thomas, I pray you are correct, because I, like you, disagree with a number of his previously asserted positions. But I, like you, also believe that, for a 43-year-old man, with his limited experience, not in life, not in dealing with the problems of life, but limited experience in law,

and it is limited, notwithstanding the fact he is on the Bench, the notion that he would have a fully informed view of constitutional law would be premature.

I hope, at a minimum, that preparing for this process has informed Judge Thomas as to what he does and does not know, and also has done what it does for anyone who goes through the process of having to represent one of the three branches of Government, the President, a Member of Congress or the Court. We all have our elections, if you will, and we hope that they are designed not only for us to let our views be known to the people, but let the people's views be known to us. I have never known a candidate who was not more informed when the process was over than before he or she ran. I have never known a President, and I have known five now, who did not have a clearer notion of the needs of the country after having campaigned in every nook and cranny of the country, than before he campaigned.

I am hopeful that that process works as well in this situation because this is the equivalent of a campaign for a Supreme Court Justice, in my view, as it should be. I can see one of your former graduates coming in. If you want to respond to that, I will yield.

Mr. CALABRESI. I just want to say that this is an extraordinary time in the history of the Court. It has been 24 years since a Democratic President has nominated a Justice to the Supreme Court.

The CHAIRMAN. That has not been lost on some of us.

Mr. CALABRESI. And that is as long a time, perhaps as there has ever been in the history of this country, certainly since the Civil War, from 1860 to 1884 was a period of equivalent time.

At other times when there has been such an extended period of time, the President has attempted to name people to the Court whose views are very different from his own. Presidents Roosevelt and Truman, for what seemed an eternity but was only 20 years, named all the Justices and made a point of naming some Justices who were very conservative and some from the other party. Justice Reid and Justice Burn were Democrats and very conservative; Justice Burton was a Republican.

The CHAIRMAN. I doubt whether we are ever going to see that enlightenment in this administration.

Mr. CALABRESI. This administration and the past administration have not done so. Under these circumstances, they have continued to name people whom they thought would share their views, and that is their right in the first instance. But under those circumstances, I think that we have to hope that the people they have named at least have the capacity for growth, which some of the previous people who were nominated and who had, in my judgment, a less distinguished—Dean Griswold was quite candid in saying that some at least were with no more distinguished a record than Judge Thomas—but those people did not have a capacity for growth which Judge Thomas has.

I hope that in the future the administration will be more open to other views, but in the meantime, I think we are bound to hold people to the standard you have held in the past, especially when this is a nominee who has some capacity for growth which I did not discern in some of the earlier ones.

The CHAIRMAN. Well, I respect you very much, Dean, as thousands and thousands of lawyers across the country do, and I mean that sincerely. Of all the testimony that has been received, yours is the most persuasive to me, in the sense that if I do not factor in what you are talking about, I quite frankly find it hard to find a sufficient rationale to support Judge Thomas, because, as has been pointed out by you, other Presidents in similar periods have understood the wisdom of having the third branch reflect a diversity of view on the great issues of the day. I do not see that occurring and, as you know, as a student of history, and the one thing I can say—it sounds self-serving, but I have become a student of the history of the Court—

Mr. CALABRESI. You have indeed.

The CHAIRMAN [continuing]. After having to do so many of these, and have spent a great deal of time with your colleagues and professors of the law and legal scholars. I know for certain that in all those instances where the Presidents have attempted to remake the Court in their own image, they are the instances and essentially only the instances in which the U.S. Senate has said all right, if that is the way you are playing the game, then we must play it the same way.

I yearn for the day, especially if I remain chairman of this committee, I yearn for the day when the President, Democrat or Republican, picks a nominee simply based upon his or her overall instinct about what the nominee's intellectual capacity is, and not on what his or her views are.

I trust President Bush. I believe he is an honest man. But I doubt whether there is a single American out there who believes that President Bush said:

By the way, just go find me a nominee who has an open mind, just find me a nominee who has integrity, just find me a nominee who is schooled in the law, I ask no more.

John Sununu would have had an apoplexy, if that were the call. I just cannot fathom that having happened.

Mr. CALABRESI. I cannot imagine that happened, either, Senator. On the other hand, it would be ironical, if the test were the one which you are now proposing, and that were applied for the first time to someone who has more promise of growth, who at least has experienced life in a way that the previous nominees had not, who knows these things and who, insofar as he is showing these views of the administration, is in that particular also at odds with many of the friends that he made all through his growing up, that is, that the person who is doing this has shown more independence, although an independence in a direction that I do not share. So, it would be quite ironical to find that person being turned down for this, when the others just got through with all sorts of people, even people who are opposing this one, clapping their hands.

The CHAIRMAN. Although I have more time, I do not wish to take more time now, but at some point after this is over, I would really enjoy having an opportunity to sit down with you and discuss this, not Judge Thomas, but this whole process. Because, as you know, this is a cumulative process.

Mr. CALABRESI. It is indeed.

The CHAIRMAN. If this were the first time a person was put on the Bench, if he or she is the first ideologue of a Republican President leaning to the right, I think that is fine. I say fine, there should be people on the Bench who share that view, even if it is further right than I would agree to.

The second one, I say it is less fine. When it gets to the point where it looks like the attempt for the entire Court, all nine members to be that, then the standard will and, I will argue, intellectually must change, must change, not will, but must. One is fine, two is okay, three is okay. Four, five, six, seven, eight nine—it gets to the point where you are talking about 40 years of Supreme Court Justices, and that does make us all think. And I am sure, because you are a man of great intellectual honesty and integrity, you are sitting there saying I hope to God I am right about this guy.

Mr. CALABRESI. Of course I am.

The CHAIRMAN. We share the same concern. I wasn't being solicitous. Yours, to me, because of where I am on this nominee, is probably the most compelling testimony that I have heard in the entire—

Mr. CALABRESI. It may come to the point, Senator, that it came with President Hoover when, I am told, that Senator Borah went to President Hoover and said, "There is one person whom this committee will confirm, and that is Benjamin Cardozo." It may come to the point where the committee will have to take a leadership role in suggesting names rather than simply listening if the administration does not do its part. But that is different from what one can do when a name has been sent.

The CHAIRMAN. I agree, and we may be approaching that point. I yield to my colleague from South Carolina.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Calabresi, I want to welcome you here. Wasn't there a Governor of Ohio by the name of Celebrezze?

Mr. CALABRESI. He spelled his name differently and was not related to me. His name was—

Senator THURMOND. He wasn't related to you?

Mr. CALABRESI. No. He arrived in the United States, or his family did, long before I did. I arrived 52 years ago yesterday.

Senator THURMOND. It is almost the same name, isn't it?

Mr. CALABRESI. Almost the same name. Almost the same.

Senator THURMOND. I think he was a Cabinet member down here at one time, too.

Mr. CALABRESI. He was a Cabinet member (HEW) in President Johnson's administration.

Senator THURMOND. He had two S's in his name?

Mr. CALABRESI. He had several Z's in it, I think.

Senator THURMOND. Well, how long have you been dean at the law school?

Mr. CALABRESI. This is my seventh year, and I am surprised to have survived that long—Dean Griswold, of course, being dean at Harvard, was able to survive much longer.

Senator THURMOND. How long did you teach there before you became dean?

Mr. CALABRESI. I have been teaching at Yale Law School since 1959, Senator.

Senator THURMOND. 1959?

Mr. CALABRESI. Yes, sir.

Senator THURMOND. Did you teach my good friend from Missouri, Senator Danforth?

Mr. CALABRESI. I did, indeed. He was one of my best students.

Senator THURMOND. Or was he in school with you?

Mr. CALABRESI. No, no. He was one of my students. [Laughter.]

He is much younger. He tries to look older, and has for many years, but he was in fact much younger.

Senator THURMOND. How about the distinguished Senator from Pennsylvania? Did you teach him?

Mr. CALABRESI. No, I did not. He is older. He looks younger. Unlike Senator Danforth. [Laughter.]

Senator THURMOND. He was in school with you, I guess.

Mr. CALABRESI. No. He could have taught me, but he graduated before I went to law school.

Senator THURMOND. Well, everybody knows those two gentlemen have a high regard for Yale Law School. I have to say that.

Now, we had a professor here from Yale earlier today. Did you hear him testify?

Mr. CALABRESI. Yes, I did. He was also my student.

Senator THURMOND. He is a member of your faculty?

Mr. CALABRESI. Yes, he is.

Senator THURMOND. He testified against this nominee. Now, I am glad to see the head man testify for Judge Thomas.

Mr. CALABRESI. I think that most members of my faculty would deny that a dean was the head man. They would allow that somebody has to raise money for them, but they would not give me much more primacy than that.

Senator THURMOND. I am very pleased to see the dean, the top man in the law school, come here and testify on behalf of Clarence Thomas.

Mr. CALABRESI. Well, I am delighted to do that.

Senator THURMOND. I don't believe we have had any other dean testifying against him.

Mr. CALABRESI. You had Dean Griswold of the Harvard Law School testify against him.

Senator THURMOND. Well, he retired many years ago. [Laughter.]

You are the only dean that has testified for Clarence Thomas, I believe, and I want to congratulate you. A person of that stature's opinion always carries great weight.

I am just going to ask you two questions. Again, I appreciate your appearing here today and taking the time and lending your talent to this hearing.

Is it your opinion—as I understand, you taught Clarence Thomas in law school, did you?

Mr. CALABRESI. I did not actually teach him, but I knew him well at the law school.

Senator THURMOND. I see. Well, from your knowledge of him—and that is what really counts—your knowledge of him—is it your opinion that Judge Thomas is highly qualified and possesses the necessary integrity, professional competence, and judicial temperament to be an Associate Justice of the U.S. Supreme Court?

Mr. CALABRESI. Yes, I do. I believe that he has the integrity and the knowledge and the ability to be a very good Justice of the Supreme Court. I think he is fully as qualified as the people who have been appointed and confirmed to the Supreme Court over many, many years.

Senator THURMOND. Do you know of any reason why Clarence Thomas should not be made a member of the Supreme Court?

Mr. CALABRESI. No; I do not know any reason why he should not. Incidentally, Senator, my colleague, Drew Days, who testified against, when asked by this committee if Judge Thomas was qualified to be on the Court, quite candidly gave the same answer I did, that he was. But he testified against for other reasons. But in terms of qualification, he agreed that he was qualified.

Senator THURMOND. That is all the questions I have. I think your answer covered everything.

Mr. CALABRESI. Thank you.

Senator THURMOND. I think your answers are clear, direct, to the point, and you are for Clarence Thomas being on the Supreme Court.

Mr. CALABRESI. I am here testifying in favor of him.

Senator THURMOND. That is all I have to say. Thank you very much.

Mr. CALABRESI. Thank you.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, I want to express regret that I was not here to hear the testimony of Dean Griswold and William Brown, representing the Lawyers Committee for Civil Rights Under Law. But we have a heavy schedule today with the Philadelphia Navy Yard, which took a little precedence for the past 45 minutes. So I have to absent myself, and I was especially sorry to miss the testimony of Bill Brown, who was a deputy district attorney when I was in office. I will peruse their report with care.

Dean Calabresi, it has been a good week for the Yale Law School, a good week and a couple of days, lots of good comments. When Senator Thurmond commented about you were the only dean and we found out there was one other dean, I think there was an alternative holding that Senator Thurmond might have used aside from the fact that he was a retired dean. It was only the Harvard Law School that he was dean of—

Senator THURMOND. Excuse me, what was that?

Senator SPECTER. The other dean was only from Harvard, Strom. This man is from Yale.

The CHAIRMAN. You think as little of Harvard, Strom, as he does, I know. [Laughter.]

Senator THURMOND. Who was the other dean?

The CHAIRMAN. Dean Griswold, former Dean Griswold from Harvard.

Senator THURMOND. Well, as the dean stated earlier, he is retired. He is no longer active.

The CHAIRMAN. The point the Senator was making was that even if he weren't retired, it wouldn't count for much because he is from Harvard. That was his point.

Mr. CALABRESI. You have not heard me say that.

Senator THURMOND. Well, I imagine that the chairman is right.  
Senator SPECTER. Thank you, Senator Thurmond.

First, Dean Calabresi, I thank you for your letter to me of September 6, 1991 in response to my inquiry about Judge Thomas in terms of the preferential program at Yale. I would ask, Mr. Chairman, that Dean Calabresi's letter be made a part of the record as if read in full.

The CHAIRMAN. Without objection, it will be.  
[The letter of Dean Calabresi follows:]