

Senator SPECTER. Dean Calabresi, a good bit of our discussion has focused on Clarence Thomas' background in a sense, as opposed to Judge Thomas' writings. And some have said that the writings are a much better indication of the man than his background in terms of his roots and his previous position.

In looking at the critical issue of human rights, civil rights, affirmative action, I would be interested in your evaluation of Judge Thomas in comparing the writings which are much more restricted, constricted, than his background in terms of trying to make a prediction, which is essentially our job on this committee. How would you look at that?

Mr. CALABRESI. I cannot make a certain prediction. I wish I could. Predictions aren't of that order. All I can say is that I think that Judge Thomas is a person with respect to whom there is a significant chance—a significant chance—that were he on the Supreme Court of the United States he would be a powerful figure in the defense of civil rights.

That is more than is the case with most of the people who have been nominated by the last two administrations. If I am faced with a chance as against no chance, I will go for that chance. I cannot say I am confident. I do not think that one can be that sure, and I will be quite candid on that. On the other hand, I do think that there is enough in his background and enough in his sensitivity and enough in what he has said here to make me think that he may well be a significant figure.

Frankly, one can cut this another way. If I am wrong, he will join a majority that is already such a strong majority that, though it will make some difference, it will not make that much difference. But if I am right, it will make an enormous difference the other way.

Incidentally, I would cite one person, the Justice for whom I worked, of whom many of the same things were said, Justice Black. If one looked at certain things in his background, one would have said—some of his speeches, some of his things, one would have said he would not have been the kind of Justice that he was. If one looked at other things in his background, the things he had to struggle against, one would say that there was a chance. In that case, the chance came through. Did it ever.

Senator SPECTER. Dean Calabresi, on philosophical grounds, do you agree with Judge Thomas on affirmative action?

Mr. CALABRESI. No, I don't. I think affirmative action is a very complicated issue. It is not a simple kind of thing. I don't mean his position is simple, but I sometimes think that the people who have taken opposite views tend to make it more simple than it is.

One of the key things for with respect to affirmative action is: Is affirmative action really something that is benefiting a disadvantaged group where the bulk of the burdens are being borne by people who have all the advantages? And then I am for it, and it is in that respect that I disagree with Judge Thomas.

On the other hand, it often is the case that what is described as affirmative action is not those who have putting a burden on themselves for the benefit of the have-nots, which is admirable and should be supported, but it is those who have putting a burden on one group of have-nots in order to help another group of have-nots.

And that is much more of a problem. I think many of the issues which turn around affirmative action today turn on questions of which of these two things it is.

I think that Judge Thomas has been too sensitive to this second part and thinks that it always is this way. I think that some of the people on the other side have been too insensitive to the existence of that.

There has been discussion about affirmative action in a place like Yale and affirmative action in the workplace. And in many ways, the workplace is a more important place to have affirmative action than a place like Yale. On the other hand, it should be said that those who may lose because of affirmative action at Yale, those who are not admitted to Yale because of affirmative action, will end up going to Harvard. And that is not the end of the world. While in the workplace, those who may lose may be people who are also in need.

All in all, I still come out in favor of it, but it is on that issue that I think differences turn and why it is such an emotional issue, and properly an emotional issue.

Senator SPECTER. So notwithstanding the fact that you have a different philosophical approach to affirmative action than Judge Thomas and in fact disagree with him, you conclude that his view of affirmative action is within the realm of reasonableness and does not rule him out as having a keen sense of civil rights?

Mr. CALABRESI. If his views on affirmative action were not within the realm of reasonableness, neither would that of a great many people who currently are on the Supreme Court. His view is well within the range of that of others who have been confirmed.

Senator SPECTER. Well, Dean Calabresi, I don't know that that comparison necessarily holds up too well.

Mr. CALABRESI. It worries me. It worries me. But, in fact, I think that Judge Thomas' views are well within the range of reasonableness.

Senator SPECTER. He was characterized by one of the witnesses this morning as being from the radical right. Would you disagree with that characterization?

Mr. CALABRESI. Yes, I would disagree with that characterization. At least if one looks at the Court today, if one looks at the courts today, even more than the Supreme Court, if one looks at people who have been appointed in the last 24 years, Clarence Thomas is not on the radical right.

I might wish that he were as I might wish that the center were some place else, but the center has moved a long way.

Senator SPECTER. Dean Calabresi, other colleagues have joined us, and we are trying to move along. So I will ask you just one more question, and that is: The American Bar Association has rated Judge Thomas only as qualified. Would you agree with that, or would you give him a well-qualified rating for the U.S. Supreme Court?

Mr. CALABRESI. Senator Specter, I don't mean this to sound snide, but my ratings, if I were doing it, would be far more severe than those of the American Bar Association. If the American Bar Association rates, as they did, Justices Kennedy and Souter as well

qualified or highly qualified, I would certainly rate Judge Thomas as highly qualified.

My own judgment would have been to rate neither of the past two nor some who have been appointed before as highly qualified. I would save highly qualified for very, very few people. But on the basis of the ratings that they have exercised, he is as qualified as the others, and if they are highly qualified, so is he.

Senator SPECTER. Thank you very much, Dean Calabresi.

Thank you, Mr. Chairman.

The CHAIRMAN. Dean, thank you—oh, I am sorry. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have no questions of this witness. I would like to ask, though, whether or not we are going to finish all the panels that are on today's list.

The CHAIRMAN. Come heaven or high water, we are going to do it. That is why I didn't break for lunch. That is why I stayed in this chair, and we are going to go right through votes, even if it means I end up missing some votes. So we are going to keep going.

Dean, thanks a million.

Mr. CALABRESI. Thank you very much.

The CHAIRMAN. I really do appreciate your coming.

Now, our next panel is a panel of very distinguished Americans: Ms. Marcia Greenberger, an attorney at the National Women's Law Center, who authored the report on Judge Thomas that argues that Judge Thomas' record demonstrates a lack of support of women's rights; Ms. Judy Lichtman, of the Women's Legal Defense Fund, which wrote a report arguing that Judge Thomas' endorsement of an article by Thomas Sowell threatens working women's rights; and Prof. Patricia King, a professor at Georgetown University Law Center, who teaches family and poverty law. Professor King believes Judge Thomas' record is, as I understand it, antithetical to the interest of women and blacks.

If I have misrepresented your positions in any way, please at the very outset make it clear for the record that I did.

With that, why don't we start in the order that I—or does the panel have a desired way to begin?

Ms. LICHTMAN. We do. If it pleases you, can we have Professor King begin?

The CHAIRMAN. Of course.

Ms. LICHTMAN. Then we will proceed with Marcia Greenberger.

The CHAIRMAN. Professor King, why don't we begin with you.

**STATEMENTS OF A PANEL CONSISTING OF PATRICIA KING, PROFESSOR, GEORGETOWN LAW SCHOOL; MARCIA GREENBERGER, ON BEHALF OF THE NATIONAL WOMEN'S LAW CENTER; AND JUDITH LICHTMAN, ON BEHALF OF THE WOMEN'S LEGAL DEFENSE FUND**

Ms. KING. Thank you very much. Chairman Biden and members of the committee, as a black woman, it is exceedingly difficult for me to oppose the nomination of a black individual who has known great personal struggle. Nevertheless, Judge Thomas' extensive record and personal posture is so antithetical to the interests of