

law, as I indicated, solutions that the courts and administrative agencies had developed in response to real problems.

Now, there are debatable points in the voting rights area, in the school desegregation areas, and in the employment area. But I join Professor Edley in thinking that there is nothing that has come out of his writings and in his statements that suggests the framework that he would use for going about deciding some of these issues. There tends to be a very superficial and sloganistic approach that he demonstrates to these very complex and profound issues. And given this background, I have no reason to think, in light of that world view, that if he were to get on to the Court that that process would not continue. It has very little to do with the fact that he was one of the President's men. It has to do with how he views the world and what values and what mode of analysis he uses. And I think that mode of analysis is terribly flawed.

Mr. LAWRENCE. I would add, Senator Simon, that I think another thing to look at, when one says, well, after all, he was a member of the administration, he had to take the administration line, that I look to more than that. Certainly in his responsibilities as a member of the administration there are certain areas in which one might do this.

On the other hand, most of his writings, most of his speeches were outside of the context of his role as a member of that administration.

If we look at other individuals who have served in these roles, if we look, for instance, at William Coleman, who was a member of the Cabinet, and look at the difference between his life outside of his position as a Cabinet member, the positions that he took, they are vastly different in terms of his concern for the very kinds of issues that would touch those people at the beginning of Judge Thomas' life than Judge Thomas' activities have been. And I am concerned about those persons and those groups and those ideas that he chose to foster, even outside of the scope of his responsibilities in the administration.

Senator SIMON. Since we have three academicians here, let me pose a question because this really is part of a bigger package in terms of the administration. Several of us on this committee serve on another committee dealing with the whole education field, and the chairman of that committee is here.

We have seen in recent months the administration using the civil rights laws to question the legality of minority scholarships. We have the Department of Education using their legal authority in accrediting agencies—which we gave to them so that some of these fly-by-night schools could be eliminated from getting any Federal assistance—all of a sudden saying to one of the major accrediting agencies in this Nation, "For you to require diversity on college campuses is beyond your prerogative." In both cases, I don't think anyone in Congress ever dreamed of anything like this.

My question to you is: Do you believe that your universities legitimately should be asking for diversity and pushing for it? And, No. 2, is there a legitimate reason for accrediting agencies to be pushing for diversity on campuses?

Mr. LAWRENCE. I think, Senator, that the answer to both of those questions for me is yes. It is important to remember—and I think

too many people have forgotten—that we are not so far away from *Brown v. Board of Education*, that we have not reached a place where these institutions are meaningfully integrated, certainly not at the levels of faculty and administration and not even at the levels of our students. As I have pointed out, without this push, as you indicated, to make our campuses more reflective of the larger society, those campuses would once again be lily white to a large extent.

And I think that it is both important as a moral consideration, as a policy consideration, for universities to continue to advance programs that ensure the diversity of those student bodies and their faculties, and that it is extremely important for the Congress—and the administration should support the Congress in that effort—to take whatever steps are necessary to support that effort by funding and by the use of the sanction of denying funds to those universities who do not make those kinds of efforts in the correct way.

Mr. DAYS. I agree with Professor Lawrence. I would just add that it is important, in my estimation, for efforts in the diversity area and in the minority scholarship area to be thoughtful and tailored to various situations. Of course, Congress has to legislate for the entire Nation, but it seems to me that institutions that are trying to reach out to minorities and women and bring them in and make certain that minority children get real opportunity, should be sensitive to the realities of their communities, the needs of their institutions and so forth.

In other words, I am not in favor of boilerplate responses by institutions to some of these problems, but I think again we have to recognize that these responses—minority scholarships and the push for diversity—those responses are against a backdrop of years and years of exclusion. And as I indicated earlier, if we are going to change the situation, there has to be this extra effort. There has to be a reaching out. It can't be done, as some people have suggested, by looking at poverty, for example, because in raw numbers there are more poor nonminorities than minorities. So that is not the answer to the problem of how do we change the traditional exclusive and exclusionary nature of many of our institutions.

Senator SIMON. Professor Edley.

Mr. EDLEY. I would just underscore that the impulse to press for diversity in these institutions and through these various mechanisms is a very good one, is a very noble one. And the impulse can be implemented well or not so well. So I hope the committee understands that for all three of us, as we speak in favor of these diversity measures, that is not to say that all ways of going about the search for diversity would make sense.

I would not be for rigid quotas in the education context any more than I am for them in the context of Supreme Court nominees.

Senator SIMON. And no one is suggesting that.

Thank you, Mr. Chairman.

Senator KENNEDY. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Lawrence, beginning with you, you have identified Judge Thomas' nomination as political, which I think is true, but I think it is not surprising that the President would seek an African-