

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-

American who is conservative and an African-American who is black. One of the difficulties is that there ought to be more people with the kind of credentials which you men and Judge Thomas have as part of the Government, part of the pool for selection for the Supreme Court, and I say this in a context that struck me right after I graduated from law school and joined a big law firm in Philadelphia. I saw the commitment of all the brains and talent to the profession, where there was money and there was prestige and there was an unwillingness to be a committee man or to be an assistant district attorney and to work up in the political ranks.

So, this is not a bad place to say that Government needs the kind of talent which Judge Thomas and you men bring, but into the political arena, because that is where appointments are made.

Professor Lawrence, now for the question after the comment: You criticized Judge Thomas for being on the radical right, and he opposes class preferences, because—and this appears in a *Yale Review*—he says they are bad for the beneficiaries, class preferences, because it tells them that they are in need of handouts, it tells them they are disabled and it is an affront to their dignity, and it is bad for individuals displaced, because they are displaced by a preference which is not based on merit and it increases racial divisiveness and is bad for the country.

Now, aside from whether you agree with that—and I think those are pretty strong arguments—can you say, Professor Lawrence, that they do not have at least sufficient merit for a reasonable man like Judge Thomas to hold them?

MR. LAWRENCE. I think that the arguments that you have made in your quote, that you noted that Judge Thomas has made, are reasonable arguments, that they have merit. I think that if you were to give me time, I would have responses to each of those arguments which also have a great deal of merit, which I might think have more merit, but I think that those are not the kinds of things I was referring to when I said that Judge Thomas, among this group of African-Americans who have come to the Government, even African-Americans who are Republicans, that I think Judge Thomas in many of his other statements has been considerably further from the mainstream than many of these other individuals.

I think that the particular quote that you give to me is a quote which reasonable persons have indicated and believe in. I would differ with their interpretation of where to put the weight on those things about where the divisiveness really comes from, whether it comes from the programs themselves or the way those programs are used by certain people to divide people, about whether one necessarily feels that one is inferior because one is given support that other people are not given. Certainly, I do not find the officers of the savings and loans feeling inferior, because Congress has supported their activities.

I think I could respond to those, but the activities I was referring to were the activities and the ideas with respect to natural law, were the condemnation of mainstream Supreme Court opinions, such as *Griggs* and *Swan*, were the support of dissenting opinions by Justice Scalia. I think these are indications of an adherence to a judicial philosophy, to a political philosophy that is considerably to