

The CHAIRMAN. Assuming they find African-Americans who are capable of competing at Holy Cross College, does that mean they will be admitted?

Father BROOKS. If they meet the positive judgment of the admissions boards, they are certainly admitted.

The CHAIRMAN. Now, assuming you find white Americans who are qualified, does that mean they will be admitted?

Father BROOKS. No. Going back to what you were discussing earlier, the lawyers panel, there are a number of students who are applicants Holy Cross, certainly well qualified, and are denied admission.

The CHAIRMAN. Judge Gibbons, are you still on the board of Holy Cross?

Mr. GIBBONS. I was until September 6 last.

The CHAIRMAN. Did you support that policy when you were on the board, Judge?

Mr. GIBBONS. Yes, very positively.

Senator SIMON. Would you pull the microphone a little closer to you?

Mr. GIBBONS. Yes, I was a strong supporter of it.

The CHAIRMAN. Is it fair—

Mr. GIBBONS. So was Clarence Thomas.

The CHAIRMAN. Is it fair to refer to that as affirmative action? What would you call it, Judge, as a judge, knowing the law as you do and unwilling to slide out from under the question?

Mr. GIBBONS. It is affirmative action. We take affirmative steps to increase the percentage of minority enrollment in the school.

The CHAIRMAN. And it means that if there is a white student and a black student, equally qualified, and one place left in class, it goes to the black student, correct?

Mr. GIBBONS. Very likely.

The CHAIRMAN. I compliment you on the policy.

Mr. GIBBONS. Thank you.

The CHAIRMAN. I think it is a wise policy.

Mr. GIBBONS. Of course, it is a private institution.

The CHAIRMAN. I understand it is a private institution. I might say, my experience with Jesuit institutions is that this is uniformly the case; I have a son who goes to a sister institution that I am not allowed to mention here, but which happens to be in town.

Now, let me ask you, Judge, I have never heard anyone refer to Clarence Thomas as "a legal positivist."

Mr. GIBBONS. No, I referred to Robert Bork as a "legal positivist."

The CHAIRMAN. I see. OK. I thought you said—that clears it up. Thank you very much.

Sister, if Judge Thomas had a view of the Constitution you did not like, you would still be for him, wouldn't you?

Sister VIRGILIUS. I sure would.

The CHAIRMAN. That is right. God bless you. Thank God for loyalty. [Laughter.]

I yield to my friend from Utah.

Senator HATCH. I want to compliment each of you for what really were collectively eloquent statements for and on behalf of Clarence Thomas. I think he was very fortunate to have you, Sister

Virgilius, as one of his early teachers, and he says so. He dearly loves you.

Father, I am well aware of Holy Cross and I think that you do a terrific job up there. I have known Judge Gibbons for a long time and he has been a great jurist in this country and I have great respect for him.

I have to say, Dr. Sudarkasa, that was as eloquent a statement as I have ever heard for a judicial nominee, bar none, the Supreme Court or otherwise. So, I was very impressed with everything that you folks said.

The only thing I would ask is do each of you agree with Dr. Sudarkasa that this man will be an advocate for equal and civil rights, while on the Court?

Mr. GIBBONS. I have no doubt.

Senator HATCH. You have no doubt about that.

Mr. GIBBONS. None. In fact, from reading his opinions, I suspect that, with respect to the rights of criminal defendants, his addition to the Court may result in a net improvement of its jurisprudence.

Senator HATCH. That is interesting, because I believe that he will be very broadminded with regard to the rights of those who are accused, as well.

The CHAIRMAN. Do not scare Senator Hatch off now, Judge. [Laughter.]

Senator HATCH. Actually, Chairman Biden and I are not too far apart on some of these issues. It scares him sometimes.

I do not want to take any more time. I was just impressed with all of your testimony. I think Judge Thomas is very fortunate to have four people like yourselves testifying for and on his behalf. Like Senator Thurmond, I give great weight to the testimony of those who know him, not just those who posture what they think he is.

I know him, too, and my experience is very similar to the experience of all of you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Simon.

Senator SIMON. Thank you very much. We thank the panel.

First of all, Sister Virgilius, you mentioned that Judge Thomas said "thank you" to teachers, that is one of the things that most of us don't do. Once in a while I will speak to a Rotary Club or some group, and they will ask: What can we do to raise the standard of teachers and encourage more young people to go into teaching? And I will say, "How many of you have ever thanked one of your teachers?" Hardly ever is a hand raised. I appreciate that.

One of the problems we have, those of us who are struggling with this nomination, is to sense where he is going. Sister, you have been sitting in on a lot of these hearings. Do you recall ever discussing abortion or any of the other issues that have been discussed here with Judge Thomas?

Sister VIRGILIUS. I think Judge Thomas is a man of his own convictions, and he will make up his mind according to what he thinks and knows is best according to the Constitution. I spoke to him during the summer, around the beginning of August, and I asked him what he was going to do. And he said, "I am going to continue