

sure that we know you have a problem about it, because it is a big deal issue, it is a big ticket item, and I just want to make sure everybody knows what he said. I take him at his word, and I know you do, too. But I heard an explicit endorsement of *Miranda*, nothing about modification.

Mr. BALDWIN. On balance, I find his position a strong one that law enforcement can support. Now, we can single out an issue and might have a little difference, but on balance I would say—

The CHAIRMAN. I am not suggesting, by the way, that if you had a difference that would change the reason to be for him. It is a matter of balance. When 1 of maybe 5 or 6 or 10 most vocally expressed issues, not by law enforcement necessarily, but relative to law enforcement—that is why I wanted to know your stand. I yield to my colleague—

Mr. SUTHARD. Could I expand 1 second?

The CHAIRMAN. Sure you can.

Mr. SUTHARD. It has always bothered me, whether I was a trooper or sergeant, anywhere in law enforcement, that one technical problem could cause a serious offender to be set free because some police officer didn't follow something to the very last point of law. And I have seen on occasions a person who should have been convicted of serious crimes be freed when a police officer made the mistake. And it seemed to me like the police officer perhaps needed to be penalized, and the guy still needed to serve the penalty. To that extent, of course, I would like to see some possibility somewhere of all of the evidence being considered before a case would be thrown out of court based on one technical—whether it is *Miranda* or anything else.

The CHAIRMAN. I thank you for your further explanation. I yield to my friend from South Carolina.

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

I want to welcome you men here today. I want to compliment you for having the courage to come and testify in support of a man that you think will serve well on the Supreme Court of the United States; one who will stand for law and order and protect the citizens of this country. I appreciate your appearing here.

Now, as I understand it, Sheriff Peed, the National Sheriffs' Association has endorsed the nominee here. Is that correct?

Mr. PEED. Yes, sir; wholeheartedly.

Senator THURMOND. Wholeheartedly.

Mr. Hughes, I understand that your organization, the National Troopers Coalition, has endorsed the nominee here. Is that correct?

Mr. HUGHES. Yes, Senator Thurmond; at a meeting earlier this month up in Portland, ME. We certainly did.

Senator THURMOND. Mr. Doyle, you are working with the Troopers Association, too, as I understand it.

Mr. DOYLE. Yes, Senator. That is correct.

Senator THURMOND. You endorse him, too, as I understand.

Mr. DOYLE. That is correct.

Senator THURMOND. Now, Chief Suthard, you represent the International Chiefs of Police, do you?

Mr. SUTHARD. Yes, sir.

Senator THURMOND. I understand that organization has endorsed him.

Mr. SUTHARD. Very strongly, sir.

Senator THURMOND. Very strongly.

Mr. SUTHARD. Yes, sir.

Senator THURMOND. Mr. Baldwin, I believe you represent the National Law Enforcement Council and that is an umbrella group for 14 member organizations, involving 500,000 law enforcement officers in this country. Is that correct?

Mr. BALDWIN. Yes, sir; that is correct. And these organizations—

Senator THURMOND. And this organization has endorsed the nominee.

Mr. BALDWIN. It has, very enthusiastically, and it includes these organizations and a number of others, as you point out.

Senator THURMOND. Mr. Collins, I believe you represent the Citizens for Law and Order.

Mr. COLLINS. That is right, Senator.

Senator THURMOND. And I notice in your statement it says, "We are committed to reducing violent crime, bringing about a fair and balanced criminal justice system, and ruling out inequities for our judicial processes. We also hold a very special concern for victims of violent crime."

I understand your organization has endorsed the nominee.

Mr. COLLINS. That is very true, Senator.

Senator THURMOND. Is that correct?

Mr. COLLINS. Yes, sir.

Senator THURMOND. So it appears that the law enforcement agencies of this Nation, not just States but nationwide, although, for instance, the Alabama Sheriffs' Association here specifically has endorsed him. But nationwide the law enforcement organizations have endorsed this man, Clarence Thomas. Is that true?

Mr. BALDWIN. Yes, sir.

Mr. PEED. Yes, sir.

Senator THURMOND. Now, are you doing this through personal knowledge or through his reputation and the record you have studied and are convinced that he is the right man? Sheriff, we will take you.

Mr. PEED. Yes, sir. We certainly are, Senator.

Senator THURMOND. How is that?

Mr. PEED. We like his rulings, his anticrime and prolaw enforcement positions.

Senator THURMOND. I just want to know why your organization endorsed him. Is it a personal acquaintance, you know him well, or his reputation and the service he has rendered heretofore and you are satisfied with that or what?

Mr. PEED. His reputation.

Senator THURMOND. I see.

Mr. HUGHES. Reputation and service from the troopers.

Mr. DOYLE. Reputation and record, Senator.

Senator THURMOND. Chief Suthard.

Mr. SUTHARD. His reputation, his decisions in court cases, and some of the chiefs across the Nation are familiar personally with Judge Thomas, but I represent more than 8,000 police chiefs across the Nation.

Senator THURMOND. Mr. Baldwin.

Mr. BALDWIN. From my personal knowledge of him and from my observation and respect for his decisions that he has made.

Senator THURMOND. Mr. Collins.

Mr. COLLINS. Sir, his character, his professional reputation, and a special study we commissioned on his criminal law decisions.

Senator THURMOND. I have two questions. You can answer them very briefly. In your opinion, does this nominee have the integrity, the professional qualifications, and the judicial temperament to be a Supreme Court Justice of the United States? Sheriff Peed.

Mr. PEED. From the National Sheriffs' Association, yes, sir.

Senator THURMOND. Johnny Hughes.

Mr. HUGHES. From the troopers, yes, Senator.

Senator THURMOND. Mr. Doyle.

Mr. DOYLE. I have studied all of his criminal law decisions, Senator, and I believe that he does.

Senator THURMOND. Mr. Suthard.

Mr. SUTHARD. On behalf of the International Association of Chiefs of Police, yes, sir.

Senator THURMOND. Mr. Baldwin.

Mr. BALDWIN. The National Law Enforcement Council certainly believes that.

Senator THURMOND. Mr. Collins.

Mr. COLLINS. Yes, sir. On behalf of Citizens for Law and Order, we certainly do.

Senator THURMOND. So you all answer yes to that, as I understand.

Now, the next question is: Do you know of any reason why this committee and the Senate should not approve this man for the Supreme Court of the United States?

Mr. PEED. No, sir.

Mr. HUGHES. I know of none, Senator Thurmond.

Mr. DOYLE. No, I do not.

Mr. SUTHARD. No, sir, I do not.

Mr. BALDWIN. No, sir.

Mr. COLLINS. No, sir.

Senator THURMOND. The answer is no by all of you.

That is all the questions I have. I think those are the most important aspects. The two questions I have asked go right to the guts of our decision. Thank you very much for your appearance and keep up your good work.

Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. I too want to join in welcoming all of you. Thank you very much for expressing your views and opinions about the nominee.

Senator SPECTER.

Senator SPECTER. Thank you very much.

The analysis of the cases is very helpful, especially the testimony by Mr. Doyle on analyzing the cases. I am interested in your response that he did not think the Warren Court was an activist court in bringing down the *Miranda* decision, which candidly I found a little surprising.

I remember the day *Miranda* came down. It was on a Monday. It was June 13, 1966. I had been DA of Philadelphia for about 6

months. And all hell broke loose when that decision came down, especially when, the week following, it was decided—I think it was a New Jersey case—that it would be applied to any case where the trial had started on June 13 or after. So that I had cases where we had gotten confessions and found evidence, conclusive evidence on people, where the police practices were exactly correct when they were undertaken, for example, in May of 1966. You couldn't bring a case to trial before June 13, but when you brought the trial up in July or August, you couldn't use the evidence which had been obtained because it was applied to cases where the investigation was done consistent with the *Escobedo* rules.

So the *Miranda* cases that applied before we had a chance to put out information on the warnings and waivers was really extremely, extremely problemsome. And that gave me a lot of pause at that time, and I thought—the law enforcement agencies have learned to live with *Miranda*. But to apply it in a context where it affected investigations which were proper when done seemed to me very difficult.

Do any of you gentlemen feel that Judge Thomas himself might be an activist judge in bringing up another case like *Miranda*?

Mr. BALDWIN. I don't feel so, Senator, and I think what I am basing my thought on this is—I was listening to you. The National District Attorneys Association—and you were very active as a district attorney—has endorsed Judge Thomas enthusiastically, and they have filed a statement with this committee backing his confirmation. So I think that I would rely on their analysis.

Senator SPECTER. Don, what did you think about the *Lopez* case, the case I questioned him about where he sat on a panel, did not write the opinion but sat on a panel which disregarded the limitation on socioeconomic factors in sentencing? As you know, we now have Federal guidelines, and one of the guidelines is that you may not consider socioeconomic factors. And Mr. Lopez complained about the sentence and brought up his background and his childhood and his family circumstances, and the panel, where Judge Thomas said that notwithstanding the prohibition against bringing up socioeconomic factors, you could bring up these matters in Mr. Lopez' background, over the objection of the prosecuting attorney that that would open the door wide to all sorts of considerations in violation of the sentencing guidelines. What do you think about that kind of a case?

Mr. BALDWIN. Well, it would bother me a little bit if it were opened up broadly. I think that is a concern that the law enforcement community has. I think we just had a recent concern, and I discussed it with the Attorney General of the United States and his staff, the decision by the Ninth Circuit Court of California where they ruled that personnel records of a Federal investigator could be opened up and brought into court by a defense attorney if he wanted to go back. And I think that they have ruled, in further looking into it to decide whether or not to appeal, that it did not say that; that, in fact, there was a limitation. You could not bring it into court unless it was for some specific fact that was in his record that was needed to support a charge, a criminal charge against him, but not the whole record.

So I think there is a—we have problems with the broadening of the use of evidence.

Mr. SUTHARD. Senator Specter, could I comment?

Senator SPECTER. It is up to the chairman.

Senator KENNEDY. Briefly. Regrettably, having to follow these clocks, we would welcome a brief comment, if you would, please.

Mr. SUTHARD. In regard to the *Miranda* decision, no one was any more disappointed than I was as a young police officer when that decision came down. But in looking back on that decision, even though many guilty people have been released as a result of it, I am convinced that a few people that were innocent have not been convicted as a result of it. And so the good that came out of the *Miranda* decision in the training of police to me outweighs the problems that it caused in the years that passed, although I still continue to say that anything that is so rigid where the evidence is overwhelming that the case is thrown out on one technicality, including the *Miranda* decision, is bad for the overall criminal justice system.

Senator SPECTER. Well, I don't quarrel with the *Miranda* case today, but I did quarrel very much with its retroactive application. I still quarrel with that today as a principle. But there is no way to define that except as an activist court coming into that area as they did.

Thank you very much.

Senator KENNEDY. Thank you very much.

Senator DeConcini.

Senator DeCONCINI. Mr. Chairman, I only want to make a comment regarding this panel and all the panels here because it goes more to the chairman and the ranking member of the wide dispersion of the different interests that we have had. I am glad to see law enforcement take a position, just like I am glad to hear from the NAACP and the American Association of University Women and many, many other groups that have appeared here. I think that is part of the process, and I am pleased that these gentlemen—I know most of them—will take the time to review in their area of concern Judge Thomas' decisions. And I thank them very much for being here.

Senator KENNEDY. Thank you very much.

Senator Heflin.

Senator HEFLIN. Mr. Doyle, I assume you have read a good deal about Judge Thomas and his criminal law philosophy. I believe there are three opinions that he has written in the field of criminal law since he has been on the court of appeals. They are not particularly significant in giving you some idea—at least, they weren't particularly significant in giving me an idea as to whether he would be, in the field of criminal law, a liberal judge or a law-and-order judge. What indications do you have in the field of criminal law, other than his opinions, that persuade you that he would be a law-and-order judge?

Mr. DOYLE. I think if I recall, he has written approximately seven criminal law opinions. I reviewed each of those, and that is what I base my opinion on. I think that those opinions, if you look at each one of them, are very well reasoned, well documented, well supported legally.

For example, in the search-and-seizure case that I mentioned in my direct testimony, there were issues involved regarding the search of the particular hotel room. And the judge upheld the search on the basis of exigent circumstances, meaning that he felt that under the particular circumstances the police officers did not need a warrant to go into the hotel room.

I think in that case—and in other cases—he has shown an understanding of the difficulties that a police officer in that particular situation, in that hotel on that evening, has in making determinations about whether or not, for example, a warrant is necessary. And I think he has shown a willingness in the case of a doubt, in the case of a tie, to rule in favor of law and order, to rule in favor of the police officer. I think he understands the difficulties that the officer faces when he is investigating that kind of a drug operation with its ever-changing circumstances.

I can only base my opinion on the six or seven or eight criminal law decisions that he has written. But having reviewed all of them, I think they are very well reasoned and have been extremely supportive of law enforcement.

Senator HEFLIN. I have no other questions.

Senator KENNEDY. Senator Simon.

Senator SIMON. I just want to thank the panel for your coming here and your testimony. Let me add my appreciation for what at least most of your organizations have done in the field of gun control, which I hope we will listen to a little more gradually. We want to make sure responsible citizens have the opportunity to have guns, but we do need restraint in this field obviously for the criminal element.

Let me just add, Mr. Collins, I don't know as much about your organization as I should. If you can send me some information, I would appreciate it. I have always believed that if we get more people involved, more citizens involved—not just the troopers and the others, but more citizens involved in this area of law enforcement, we could do a heck of a lot better job in our country.

Mr. COLLINS. I will be happy to do that, Senator. Our organization has made quite an impact in 21 years in California, and it is only this past year, Senator, that we have, in effect, opened up an office on the east coast. And I am the director here, so you will be hearing a lot more about the organization.

Senator SIMON. You send me some literature.

Mr. COLLINS. I certainly will, sir.

Could I add a footnote on what Senator Heflin asked before? He asked a question about what made us think that Judge Thomas might be a law-and-order judge. In the good sense of the word, I was heartened, Senator, by Judge Thomas' response to the question as to whether he was philosophically opposed to the death penalty. And my recollection is he said he is not philosophically opposed in appropriate cases, which I think is a fine answer. And I am heartened in this sense: Obviously I have a personal concern because our daughter was viciously murdered, and we are involved in capital litigation right now.

But I was doubly heartened by Judge Thomas' later comment. I think he said when he looked out the window of his district courthouse and he sees these vans pulling up with young black defend-

ants in them. It seems to me that here is a man who is going to bring a balanced approach to the Court. This to me is true law and order. I think the true advocates of law and order don't want their judges to be on one side of the spectrum. We want our judges to really look at both cases, to be sensitive to victims, criminal defendants, but as well be sensitive to victims and survivors. And this is what we have lacked, in my opinion, over the last 15 or 20 years, a lack of balance.

And I am very heartened by Judge Thomas because, first of all, philosophically he feels there is a place for capital punishment, but he has also indicated that he is going to be open minded and fair in judging these types of cases. And I am very, very heartened by that.

The CHAIRMAN. Are there any further questions of the panel?

[No response.]

There being none, gentlemen, again, thank you for your service. We appreciate your always being willing to come and give us your views.

I want to personally thank you on a matter totally unrelated to this nomination, for your work on the crime bill and for your help. Quite frankly, it would not have been passed, without us being able to work together. Thanks for your help, and thank you again. We appreciate it.

Mr. HUGHES. Thank you, Chairman Biden.

The CHAIRMAN. Now, our next panel is an extremely distinguished panel testifying in opposition to Judge Thomas' nomination, and the panel includes:

Ms. Harriet Woods, former lieutenant governor of the State of Missouri, on behalf of the National Women's Political Caucus, an extremely articulate spokesperson in whatever she chooses to be involved in. It is good to see you again, Harriet, and welcome.

Ms. Molly Yard, on behalf of the National Organization for Women. It is a pleasure to have Ms. Yard back again.

Eleanor Smeal, on behalf of the Fund for the Feminist Majority. Ms. Smeal has testified on a number of occasions before this committee on nominees, as well as other issues, and it is a pleasure to have her back, as well.

Ms. Helen Neuborne, on behalf of the NOW Legal Defense and Education Fund, who probably spent more time up here on the Hill working on behalf of issues that affect Americans, I suspect—and I might add, I am going to be very presumptuous—knows the process and is extremely bright, is a resource that I personally rely on a great deal, as well as the rest of the committee, and it is good to have you here, Ms. Neuborne.

Ms. Anne Bryant, on behalf of the American Association of University Women, an organization that has a wide and long involvement in issues of the day and is always listened to up here on the Hill.

And Ms. Bylye Avery, on behalf of the National Black Women's Health Project. Welcome, Ms. Avery.

Now, let me ask the panel, has the panel concluded how they would like to proceed, or, if not, then I would suggest we begin in the order in which you were called by the Chair, unless there is