

**A CIVIL RIGHTS FORUM**  
**Commissioners Clarence Thomas and William Allen**  
**The Claremont Graduate School**  
**December 1, 1988**

**JOSEPH WOODWARD (MODERATOR):** I'd like to introduce this afternoon, Chairman William B. Allen of the United States Commission on Civil Rights, and Chairman Clarence Thomas of the Equal Employment Opportunity commission.

The format will be this. I would like to see both chairmen open with a statement of 20 minutes or less on their hopes for the future. And, at that point, a commentator from the Graduate School will comment. At that point we'll open this floor to a discussion.

**CHAIRMAN ALLEN:** Thank you, Joe. You'll pardon me if I don't stand. I think we are in an intimate enough group that we can simply hold a conversation. I would invite those of you, particularly those with Professor Foster, who are in the back, to come forward if we wish to increase the degree of intimacy.

I am not going to expatiate at great length on a political agenda this afternoon, thinking it perhaps more appropriate simply to talk about the kinds of motivations that inform my willingness in the first place to accept the appointment which I was asked to take up initially as a member of the Commission on Civil Rights, and most recently as the Chairman of that Commission.

We need to put all that in context. And the context is the continuing and disordered state of race relations and questions dealing with citizenship and civil rights in the United States. In general the questions remain disordered. In our society, our expectations remain, at best, ambiguous. We find ourselves working with purported remedies for past difficulties which, while sometimes being apt for the purposes for which they're designed, are equally often not merely inept, but in fact, covers for the most outrageous forms of bigotry and oppression that one would want to deal with. And we even see examples of that at work at The Claremont Colleges here this afternoon in the summoning of this forum.

We know for example that there is, at The Claremont Graduate School, a pending lawsuit by a professor of considerable reputation, charging racial bias in hiring.<sup>1</sup> We also know that the people here at the Graduate School, led by their president, have not only sought to hide from the truth of this charge, and similar representations from other people who have not filed suit, but have tried to create the illusion that they are anything but bigoted and biased in their approach to these questions. Professor Clark subsequently prevailed in a jury trial, being awarded \$1,000,016.

One of the ways they are able to carry out this sham is by hiding under the remedy of affirmative action. They easily have frequent opportunity to appoint to their faculties people with diverse backgrounds, diverse gender, diverse minority groups or whatever you wish to say, which they consistently fail to take advantage of. The opportunities are there; it's documentable, but they in fact do not do so. At the same time, they make a great show of maintaining an affirmative action program, a program of going down checklists and pretending to be sensitive,

pretending to have a close and intimate association with Martin Luther King and others, as if that were sufficient to establish their bona fides in the world.

Now, these same people today initially promised the organizers of this forum not only that they would cosponsor it but, indeed, that they could not possibly participate at all unless they were cosponsors. But, as I happened to believe at least, pressure from their president forced them to back out of that co-sponsorship in order, thus, to shield themselves from the public awareness of their own moral unsuitability not only to administer programs in higher education, but also to talk about these kinds of issues with others. This that you see happening here in your own backyard is characteristic of much that takes place throughout American society.

It is not difficult to demonstrate, for example, that the strongest support for affirmative action in the United States comes from American corporations. Now the ordinary political scientist, policy specialist, would look at that documentable evidence and raise certain questions about interests and whether, in fact, the demonstrated support of American corporations for affirmative action does not *prima facie* establish that there is probably an interested connection there. The ordinary political scientist would be able to demonstrate two things to you, that not only is there such a connection, but in fact affirmative action is kept in place by American business because it insulates American business against the need to change and against risk of enormous expenditures to be produced by tort actions and similar activities.

So it turns out that our entire government, and indeed the agency of my good friend, Mr. Thomas, to the extent that it is implicated in this, our entire government participates in a sham, the pretense to be ridding our society of racial discrimination, all for the sake of making it still more permanent. Now, that is the situation in which we find ourselves today, and we find ourselves constantly having to deal with the apologists for that state of affairs. There are apologists at every level of our society and in every profession, usually holding positions of responsibility. And the question we ask ourselves is how are we ever going to break through this massive deception that is practiced on the people of this country.

My own personal reaction to it is doubtless informed by my own experiences. I grew up in Florida; I grew up during the days of segregation; I attended segregated schools, and came to manhood having to make decisions about how I would chart my course in our society.

It is evident to me, it should be evident to all of you, that much has changed since the days of my youth—certainly on the surface of American society. There can be no doubt that petty apartheid has been eliminated in American life.

Let me make another example here to show you, however, that those changes at the surface level do not necessarily reflect true changes in depth in our relationships on these questions in this society. We've also had here very recently the exposure of a document that was pinned to the bulletin board of our library that has been variously described as racist throughout our community. Each of the presidents has written a letter, has condemned this racism, various faculty members throughout Claremont have penned resolutions insisting that their respective faculties renew their commitment to a black studies center, a Chicano studies center, and whatever else there is to add to their list. It is true, the document which was removed from the library bulletin board was outrageous.

No one can condone the insensitive kinds of comments that the document contained under the title "Black Whores." And yet a careful, a sensitive exegesis of that document would

raise questions in the mind of the average scholar as to what its provenance might have been. I'll give you an example. The document describes Muhammad Ali as, in effect, a disgrace to his race because he calls himself pretty. That's not a manly thing to do. So clearly, the document proceeds from the pen of someone who is obsessed in one way or the other by notions of manliness or machismo, if you will. But it goes on beyond that and speaks of his doing this in a way to undercut the image of black manhood and therefore playing into the hands of racists. Now, when you read that language in that document, I ask you to try as hard as you can to imagine a Nazi or a Klansman penning that particular passage. The evidence is going to be overwhelming that it's going to be highly unlikely; that it is more likely to have been penned by someone of the likes of Louis Farrakham than by a Klansman or Nazi.

And yet, what has happened here in Claremont? The genuflective reaction of white liberals is indeed to foster among minority youngsters in the college community new demands for old remedies once again to establish relationships of paternalism and dependence on those self-same white liberals. Now, it seems to me that we see in this the same perverse pattern that characterizes our relationships throughout the society at large and it is time for people to begin to stand up and say candidly that the racism which is most poisonous is precisely that genuflective reaction persists in reestablishing dependent relationships.

As I came to manhood and looked about the society that I had to wend my way through, the first question that confronted me was, precisely, how does one chart an independent course in the midst of these quite precise and articulated expectations which ordinarily do not leave opportunity for an independent course. I think in large measure a certain obstreperousness, and perhaps even rigidity of character, served me well throughout the bulk of the years that I have lived. That is to say, I chose not to integrate the University of Florida. I chose not to become the recipient of a generous scholarship at the black university in Alabama which recruited me, but rather to study in a school in California where the questions were not raised. That was a very personal decision, that was not a social decision. And yet it reflects an attitude towards things which, it seems to me, is critical for us as a society now to begin to cultivate: the attitude that the prison we wish to escape is the precise prison of racial categorization to begin with. America is not flawed in itself, which is to say in its principles. America is deeply flawed insofar as it runs away from its principles, as it refuses to abide by the principles which establish for us options, if you prefer, which can be rigidly analyzed, neutrally applied and which can, in fact, once and for all, eliminate relationships of dependence as the mediating structure for the participation in society of persons of diverse backgrounds.

When you look at the demands of the students in the Claremont demonstration last week, in response to the racist flier, in a sense I believe you cannot help but feel somewhat saddened that, in the face of such an insult, rather than their indulging the ordinary and healthful human instinct to punch someone in the face, they returned to the not very healthful instinct of begging for consideration at the hands of lords and masters.

When I was asked to serve on the Commission, it was against a background of having consistently in my life never begged anything at the hand of any master, never having wanted to have anything to do with this kind of business that you see me now sitting here talking about. I then made the decision to serve only because I had become persuaded that matters, though changed at the surface, were progressively worsening, not improving, in our society. And it was no longer a question of whether I could personally wend my way through this jungle of ours. The

question now is, will this country survive at all unless we find anew the strength to articulate those principles in the name of which we are convinced that it alone offers a true perspective for human life lived with dignity, and fulfilling all of the expectations of human nature that we have come to believe. So, I said yes.

What I expect for the future is nothing, in one sense, and everything in another sense. And with that distinction, I will close. I don't expect the task to be easy. I don't expect my presence to work any magical cure. I am now willing to serve as much out of frustration as out of hope. On the other hand, I am certain of this: that only when they systematically do so, who care deeply enough to express even their frustrations, will there be cause for any hope whatever. Only when we're willing to insist on a color blind society; only when we're willing to insist (in the eyes of others, even perversely) on the elimination of the least hint of dependent relationships; only when we are willing to reject the rather minimizing and depreciating conceit that black people in particular somehow carry from years of slavery and suffering, psychological, emotional and intellectual scars that make them unable to compete in this society, except at the sufferance of their great and superior overlords, only when all of these patterns are routed, and that at the force of a constant pressure, only then will we have occasion to talk about an improved future in the United States.

Clarence, you might want to say something.

**CHAIRMAN THOMAS:** I'll just take the lead from there. I'm not going to attempt to match you in articulation of the way you feel about things, although I share the substance of what you said. I come from a really different experience. I've spent the last seven and a half years in the so-called revolution and seen it from the inside. And perhaps, as we get into questions and answers, can share some of that. But it's interesting, I met Bill two years ago and we happen to have grown up within a hundred miles or so of each other. He grew up in coastal northern Florida and I grew up in coastal southeastern Georgia. He is from Fernandina Beach—although he'll probably tell you Jacksonville, but for those of us who know, that is the black beach near Jacksonville, which is not a beach. Actually, it's more in the marsh.

It's kind of fascinating to have run into Bill through his work and enjoying more the intellectual content of his work rather than knowing what his background has been. And it was also kind of interesting sharing our backgrounds as what some people have described, I guess, as geechies or gullas on coastal Georgia, South Carolina and Florida.

My background personally is, again, I did grow up in Savannah and Pinpoint, and I was one of the early integrators. We all went to segregated schools and *Brown vs. Board of Education* only prompted in Georgia "Impeach Earl Warren" signs. And I remember, as a kid, we were riding down Highway 17 in Georgia and I wondered who this Earl Warren guy was. There were red and white signs calling for his impeachment and I wondered if he was such a bad guy. And then later on in life I found out exactly why people were so upset with him.

But I went into a seminary in Savannah and did play the integration game where I was the only black in a boarding school for most of my high school years, having come out of strictly segregated environments. And even to this day I don't watch James Bond movies because we couldn't go to see James Bond movies, couldn't go in the theatres at that time. That's how recent it is. Or *The Sound of Music*. I still have not seen *The Sound of Music* because we could not get in the theatres to see it at that time.

I went to school ultimately in New England where we all proceeded to be radical, at least we thought we were radical. Twenty years ago, nineteen years ago this month, we all walked out of college because of apartheid in South Africa. I don't know what our walking out would have done to solve the problem in South Africa, but it's always stuck with me that we certainly attempted to change our own lives to resolve that problem. And it's interesting now to see that 20 years later we're still talking about the exact same problem almost in the exact same context as thousands of universities.

I arrived at my job in Washington in a way that was really kind of a surprise to me. I was just sitting in my office minding my business one day and got a call that asked me to go to the Department of Education to head up the Civil Rights Office there. And I neither asked for nor thought that this would be something I'd ever do. My background is in taxation and energy work and as close as I got to this is that I worked for New Haven Legal Assistance while I was there in law school. But, by and large, I had very little to do, and from a career standpoint I had nothing to do with this particular area.

I went to the Department of Education with no agenda. I remember early in the summer of 1981, essentially saying that we need to rethink how we address the issue of race and go beyond race to deal with the educational issues and some of the economic and social issues such as crime in the black communities, drugs, the educational issues involving particularly the elementary and secondary schools in order to prepare kids to go on to college and deal with some of the problems that we have.

Interestingly enough, one of the things that both Bill and I were fortunate to get in those segregated schools early on were strong academic backgrounds. And I am willing to suggest even now that there is no school in Savannah, Georgia that produced more Ivy League students than the segregated high school which I attended. I don't think—as a percentage of the student body. I would stand by that. I have yet to see any school that's done as well. And the first 98 and 99th percentiles that I saw on the SATs were in segregated schools. So it's interesting that we have this sort of notion that these schools have not really produced well. But I am very supportive of improving education in order to deal with that.

The reaction was, even as early as 1981, that there was going to be no sensible response to that. In fact, I was immediately accused—and this was the first I'd ever heard anything like this, from my standpoint—of blaming the victim. And I would hear that then for the next two or three years.

Points that I raised in speeches in 1981 were subsequently made, particularly with respect to the reduction of black males in higher education. Well, it was obvious from the data that was gathered in the mid-1970s that that was going to be a problem, not only in the early 1980s, which was where it was evident at that time, but in the out years. And I would suggest that if you look at the graduate student population, and any four-year institution, you will find some very low numbers. You'll also see it reflected in faculty and ultimately you're going to see it reflected in the higher paying areas. That was obvious from data that was available in the mid 1970s. But for suggesting that this was the case, I was accused of blaming the victim.

That pattern of accusations would continue throughout my career. And being a public policy maker, as well as being an imperfect human being, I would not go before any audience and suggest that everything that I have done, or that anyone that I know has done, is perfect. But

I would submit that a mythology has been created around this race area that there are those who are champions of truth and justice and there are those who are inherently evil and that anything that they say is wrong. An example of what I'm talking about: I go across the country and I would say to an audience, "Just considering what you have heard, who cut EEOC's budget over the last seven years?" I've been chairman of EEOC for six and a half years; I've submitted seven budgets, I'm into my eighth budget now. And it's just a simple question, it's just a matter of fact—who's reduced the budget? In light of the fact that we have a growing inventory and we have a lot of work to do and 99 per cent of what we do is noncontroversial. And the answer is invariably, "Ronald Reagan, because he's against civil rights." Wrong answer. The answer is that not once in my entire tenure has Congress given us the budget that Ronald Reagan has requested.

That's particularly true in the last two years where with impunity those who are again under this mythology the champions of truth and justice can with impunity make those kinds of reductions that Ronald Reagan himself could never consider making.

I would say that the most distressing part for me in the public policy arena really hasn't been the challenges, hasn't been the give and take. You get a lot of that. You go—you have hearings, you have the distortions in the media. You learn to live with that. But the really difficult part has been the virtual propaganda level of the information that's put out there. And anybody who's been there—myself, Bill—I think we can tell you that when you see something that is said that is nonrecognizable and there is no challenge to it whatsoever. I remember early in my tenure, when the late Clarence Pendleton was alive, the Atlanta Constitution writing this blistering editorial about him, but using my name throughout and identifying my agency. That shows you the level of scrutiny involved.

I remember also, for example, Hodding Carter of the Carter administration in *Playboy* magazine referring to me as a chicken-eating preacher. Now, I'm willing to bet you that, if Bob Michel or if Pat Buchanan or Al Campanis had made such a reference, there would be all sorts of letters and questions of racism, bigotry, etc. Well, what's the difference? Hodding Carter, in writing, in *Playboy* magazine, referred to me as a chicken-eating preacher. And if that doesn't have racial connotations, I don't know what else does. Nothing. Again, that was done with impunity. You learn to live with that; that's no problem. But the fact of the matter is, it does create a mythology.

I'll give you another example, on the positive side. In 1983, five years ago, one of the first things that I did was to settle a long outstanding lawsuit with General Motors for \$42 ½ million. And a portion of that settlement was devised, consistent with my own view of what is critically important, for those who are left out of this free enterprise system.

We need to get heavily into not only remedying the immediate discrimination that's there and working to make that work environment better and people's lives better, but also to look to the future. And one of the things that I developed there was a series of a quarter of a million dollar endowments in order to educate minorities and women. We now have distributed about \$10 million worth of those to colleges, including Howard University, Yale, Savannah State College and Central State in Ohio. But it's up to \$10 million. I'm willing to bet that if I were to take a poll, you rarely hear of anyone who knows that that was done. Now that was distributed to all the media as we did it. And, in fact, it's so interesting that even at the recipient black colleges, as a reporter said, no positive civil rights news in the Reagan administration is good news. Or, no

good news is newsworthy. And the presidents of the institutions involved would not even go so far as to send a letter saying thanks. Well, how often did Central State in Ohio receive \$250,000 in permanent endowment? I don't think it's too frequent. In fact, in a number of those schools, those were the largest endowments in their history.

Interestingly enough, where we didn't have the tension, at Pan American University down in McAllen, Texas, there was a totally different response. There was an enormous, a very gracious response to it. But the fact of the matter is that if it were positive news it did not get much press; if it's negative news, it will receive a lot of media and its currency will be much, much more significant than any positive news. Now that is not to say, in any sense, that there are not things that people can hold us accountable for. But the fact of the matter is that generally both sides of the equation are not filled evenly.

There's something that has come through in the policy making in Washington that I did not realize was so obvious or central in policy making on racial matters. It happens less often in the area of gender discrimination or sex discrimination, but it happens consistently with respect to certain minorities. There is an assumption more insidious than some of the stereotypes that I grew up with, that blacks are inferior. There is a feeling that first hit me at the Department of Education. For those of you who are not so elderly, I guess, as I am now—I aged 20 years for every year I was there—when I arrived at the Department of Education I was still wet behind the ears; I was a 32-year-old assistant secretary. I do not believe we should have 32-year-old assistant secretaries. And I went to EEOC, I was still relatively young—it was only a year later. But the fact of the matter was that the people there, in briefing me about the educational issues, made it very clear that they felt, because of what had happened historically, blacks would not and could not be as capable as whites. We could not expect blacks ever to do as well as whites. Now you can dress that up, you can put salt and pepper on it, you can put honey on it, you can sugarcoat it, you can do anything you want to do; when someone says that you cannot expect a person in a particular category to do as well as another person in the category, to me that is saying that this person is inferior.

Now you can justify that inferiority any way you want to; it still means that as of this moment we assume that that person is inferior. For example, we got into a debate as to whether or not black colleges should exist, even if they didn't keep whites out and if blacks were attending these schools because they wanted to attend these schools. The argument from the enforcement officials—none of whom were political people, I was the only political person there—was that no identifiably minority schools should exist in this country, even if there is no overt discrimination. Because no identifiably minority institution could be as good as a predominately white institution, by definition. Now that, of course it happened in the privacy of my office, but, I was absolutely horrified by it. Further, the policy approach that was taken was consistent with that view. And the effort was to dismantle all identifiably or predominantly black institutions, particularly in the South; in the North they didn't have to go through that. But schools like Savannah State or Hampton, etc., were the ones that were under the gun.

For the future, I guess, I have a lot more to say about that in the paper, an extensive paper, particularly on the issues of racism on the left and racism on the right, that we're developing and have spent a considerable amount of time working on. But for the future I am a little bit—well, I would love to say I am hopeful, but if I said I was really exuberant about the future or anticipating it with great wonder and merriment and all that sort of thing, it would be a

triumph of hope over experience. And actually I'd be, anything I'd say as a result would be the babbling of a mad man.

My experiences in Washington over the past eight years have been sobering to me. I went to Washington with all kinds of hopes of changing the world and beginning to address realistically and honestly a lot of these policies. And the dishonesty, the level of dishonesty and pandering on racial issues not only are insulting, they are dangerous and destructive. And I see nothing strong enough and forceful enough, other than a few dissenting voices, that is going to change that in the very near future. And I think that particularly blacks are going to be pandered to death. I don't see the educational opportunities.

An example: you've got Montgomery County, which is in the Washington suburbs and has one of the best public school systems in the nation. It's integrated because the blacks who can afford it have moved out beyond the perimeter of Washington, D.C. In the public schools they have always prided themselves in Montgomery County for having excellent work scores and doing well on all the standardized tests. Well, several years ago the scores went down and they were really concerned about it. They went through and did some analysis, desegregated their data and found that, well, it wasn't the white students, the white students had gone up. But the black students were a drag on the scores. And they went a little bit further, which was unusual, to find out why, what had happened that was different. They looked at what Tom Sowell often refers to, the input side. And they found that in mathematics, the average black student took one course in high school in mathematics. When those kids were seniors and took the mathematics exams that they offer, of course they did not perform that well. The average white student took three mathematics courses.

It has amazed me that nobody has gone into a public school system, that is supposedly integrated, and asked what kind of courses the black kids are taking, or the minority kids, Hispanic. Whatever. Just look at the courses. What you find is that blacks are over-represented in PE courses; over-represented in creative child care; over-represented in weight training; over-represented in educable mentally retarded courses. Underrepresented in English; underrepresented in history; under-represented in math. And I forgot the gentleman's name in L.A., but he's demonstrated that if you give these inner city kids a chance and you raise the expectation level, you get the work out of them, that they can do tremendously.<sup>2</sup> It's simply lowering this expectation that's self-fulfilling prophecy. And you're dead by grammar school. You don't take math in grammar school, you don't take it in high school; you don't have it in high school, you don't take it in college. And by the time they get to college the experts test them and say, well, blacks can't do math. That's stupidity. That's leading to this assumption of inferiority and supporting that.

I don't see that changing in the near future. I don't think anybody actually has the guts to stand up and say what's going on is wrong. Just say, "no more!"

So I don't think it's politically expedient to do the principled thing. That's one thing I've learned in Washington, that there's a big void between political expedience and principle. And those who stand up for principle more often than not are beaten down. Some do succeed. That does not mean that I am going to leave Washington and stop fighting. I am sort of like Bill, I am stubborn. When I arrived at the seminary—and I'll end on this note—as a 16-year-old in 1964 in Savannah, Georgia, the first time I had been around whites in my life and I was scared to death, after six weeks I was informed that I was inherently inferior. And after that day I would

absolutely not let anyone tell me that, or suggest that or develop public policy that suggests that, in my presence.

I spent those years by myself fighting this notion of inherent inferiority because I believe, as Bill does, that ultimately it will be destructive not only of my race and other races, but also of the kind of country that we all think we should have and the ideals that we believe in this country.

**MODERATOR:** I'd just like to reintroduce our commentators. Steve Hayward, editor of *Inland Business* magazine and Professor Lamont Hempel, professor of public policy.

**PROFESSOR HEMPEL:** Well, I'll throw out some ideas to get some discussion going, if you like. I think perhaps as a housekeeping chore I want to correct an impression here that I think is false. And that is that the Center for Politics and Policy did not back out of sponsorship of this event, nor to my knowledge was it pressured by John Maguire to do so. I guess I can defer this to Dan Mazmanian who actually handled it, who is here. If you know otherwise, please correct me, but it was not my understanding.

**PROFESSOR MAZMANIAN:** What are you talking about? I came in late.

**PROFESSOR HEMPEL:** Well, you came in late. But it was said we had, the Graduate School had, backed out of sponsoring this—had withdrawn its support for this event. And this was news to me so I thought you might want to set the record straight.

**CHAIRMAN ALLEN:** Actually, I think the appropriate question is why I said, "I believe," since the statement was, "I believe." So when you're done I'll tell you why I believed it.

**PROFESSOR MAZMANIAN:** If you'd like me to say a word to that, Monty, I will, but maybe I should...

**CHAIRMAN ALLEN:** I think you ought to ask me why I believe it; otherwise it will...

**PROFESSOR HEMPEL:** Okay, tell me why you believe it.

**CHAIRMAN ALLEN:** Finish your comments and I'll take care of it all at once.

**PROFESSOR HEMPEL:** I'm simply representing my understanding of a conversation... (inaudible) I did not take care of the ...

**CHAIRMAN ALLEN:** I didn't ask him. He's just commenting now on everything that'd been done and when he's done I'll answer everything.

**PROFESSOR HEMPEL:** Except I want to go on to more substantive things that had to do with...

**CHAIRMAN ALLEN:** I've got a good memory.

**PROFESSOR HEMPEL:** Okay. I guess... the themes that I heard here were kind of sandwiched into rich anecdotal material. I don't think that it's not important to do that. I just think that I'd like to shift the discussion to why we see the issue of civil rights or equality of citizenship in perhaps somewhat different terms.

I suppose I would start with the statement that I, too, am troubled by the evidence that comes from Sowell and Murray and others on the dependency relationships. I am also troubled,

however, that I see that overstated. The evidence is overstated, it seems to me, in that one can look at Murray's analysis, for example, of welfare having caused black unemployment and go back and do analysis starting in 1954 instead of when he started it in 1965 and discover that the trends of black unemployment among 20- to 24-year-olds and 16- to 19-year-olds were both evident from 1954 to 1965 before the great increase in so-called welfare programs. And so I'm not sure that the evidence is quite as clear perhaps about the dependency relationships or that it's quite as clear that the programs that we have developed, such as affirmative action, are as flawed, fatally flawed, as you would say they are.

I go back to Isaiah Berlin's classic essay on two notions, if you like, of liberty—a negative and a positive notion. And it seems to me that this may be an area where we can find some common ground for discussion although we take different poles, I presume, of that argument. I happen to believe that liberty has a positive notion, talks about the capacity to exercise meaningful choice.

Having meaningful choices in one's life, some control over one's life, is an important part of what liberty means. As opposed to a negative notion of liberty, which sees it simply as the absence of restraint, of government intervention, the absence of coercion on the part of individuals for individuals. As a result, this drives thinking about what to do on questions of affirmative action in rather different directions. Because if it's true, if the capacity to exercise meaningful choice means that one has to have, let's say, power, sufficient wealth, and access to education in order to exercise those opportunities for meaningful choice, then you talk about the possibility of providing in affirmative ways that power, that wealth, and eventually what we would call knowledge. Or at least the opportunity to avail oneself of an education that produces better understanding of how to get out of constraints in one's life.

So, it seems to me that that is one of the root problems that we have to deal with when we talk about the issue of civil rights or equality, the notion that liberty is sometimes set against equality comes out, I think, of this kind of thinking, of the negative concept of liberty. And it seems to me that there may be some productive ground here to start a discussion about how this relates to issues of affirmative action, because you have said that it's a sham. And to the extent that the evidence supports dependency relationships, I will admit that I'm not sure if the affirmative action programs we have in place now are as helpful as they're cracked up to be. But, I have also seen affirmative action programs that I think had very positive results. I have seen it work—this has to be impressionistic; it's people that I know, people that I've worked with, so it's hard for me to reject it out of hand as a sham. And I go back to this notion that if we are going to—and as I recall, the topic that you had here was “Equal Citizenship and Opportunity, Liberty and Transition”—so the notion here of transition is what I would emphasize. That we are all, I think, in agreement about the ends we search for of a color-blind society.

We may be in disagreement about how close we are to reaching that point. I'm convinced that we're a very long way from reaching that point. And I also believe that affirmative action in those cases where Lester Thurow's analogy comes to mind, of the race where it's a 20-lap race and some of the runners had to carry weights for the first 15 laps and then you change the rules to make them fair, but you don't change the position of the runners, you still don't call the outcome of that race, or the process, fair. And it seems to me that in that kind of world affirmative action has a place, but it has to be balanced against the dependency relationship problem. And I don't have an easy answer for that.

**MR. HAYWARD:** I just want to make one observation by way of setting up a political question, quite different I think from the policy or analytical question that Professor Hempel proposes. I've been reading, just this week, the new book by Taylor Branch, called *Parting the Waters, America During the King Years*, and it's—I'd recommend it to everybody. It's a wonderful narrative and as Mr. Thomas commented to me before we started, he said, it's really scary, some of it. But a couple of things emerged from that book, especially for someone my age, since I came to adulthood and awareness of the world in the '70s and '80s. One is the extent to which, in the South during all those years, segregation and discrimination were enforced and were the province of the Democratic Party there, such that when John Kennedy was casting about for a running mate he had to disqualify William Fulbright, who, as I learned from my college years, was a distinguished commentator on foreign affairs for America because of his staunch segregationist voting record in the Congress. And then when the Kennedy administration undertook trying to bring some progress in civil rights, they ran up against these Southern governors.

And, so, today what you've seen is white Southerners are now voting overwhelmingly, at least on the presidential level, for the Republican Party. And I'm troubled by this because it leads me to this proposition. It seems to me that it can be said that white Southerners today are voting for the Republican Party because they see the Republican Party as the anti-black party. And I'm wondering—you talked about the distinction between pandering and principle—it seems to me those are the two Ps in politics. I'm wondering what the future of civil rights is in the Republican Party. You see things like Vrdolyak in Chicago, who joined the Republican Party because—and that particularly viciously polarized racial politics there—he saw that as a haven for his particular hatreds. And so, as a person who is a Republican—and I know you're Republicans, I'm worried about this and wondering—as leaders of civil rights in the Republican Party and in the Reagan administration, what you see the future of civil rights under the Republican Party, if some of its important electoral constituency is voting out of racist motives.

**CHAIRMAN THOMAS:** Well, I'll start with that. Sure, any time you see someone who obviously, you think, has joined the Party because it's a haven or a retreat from the Democratic Party, it is troubling. Or the guy down in—Rizzo, down in Philadelphia—gosh, he was a Democrat and doing the same things he's doing now or saying now, but he was Mayor then. And we were certainly opposed to those statements back in the late '60s or so, whenever he was Mayor.

I think your statement that people are, the Southerners, are all moving to the Republican Party because it's a—because of race—is overstated. I think there are lots of other issues. And I know that some of the commentators have reduced it to simply the race issue recently. To what extent race is the issue, I cannot sort it all out. I am not sufficiently naive, however, to not appreciate the fact that race could be an issue, particularly now in many of the southern states. Which, interestingly enough, you see this happened over a 20-year period. When I was a kid they were all Dixiecrats, it was a solid, solid south. When I started voting in 1966—voted for the first, in the first presidential race in 1968, there was a solid south, still. And all of the Jim Crow laws were at the hands of the Democrats. And then over time, in that process, of course blacks have played a particularly strong role in the political process in the south, in the Democratic Party. And maybe, I would submit that certainly that had some—it was part of the reason why maybe some of the whites left and came to the Republican Party—and that works two ways. The Democrats have done a lot to secure the black vote in the Democratic Party. And when people

can casually toss around this notion that every Republican is a racist and that those of us who are black in the Republican Party are somehow misguided or Jim Crows, or Uncle Toms or something of that nature, or chicken-eating preachers, then I think that it's really on both sides. But if the Republican Party does not reach out and broaden its base, then I would have real trouble over the next few years. And if Lee Atwater, in his role as head of the RNC, doesn't begin to reach out, I'll have real troubles. I do not think we can have a segregated political process. I think it's bad for the country and I think it's going to continue to play into the hands of the people who are hiding in the Party because of race matters.

**CHAIRMAN ALLEN:** Let me speak to that, if you don't mind. Thank you. I have not read the Taylor Branch work either. I'm familiar with the arguments in general. And I not only think the argument is overstated, but I think the evidence is palpable that it's overstated.

You must recall that the electoral transition we've been looking at has long been identified as a Sun Belt transition. It involves more than the results in elections; it also involves the displacement of persons in the United States to a significant degree. And the demographics that I at least have seen make fairly clear that these people moving into places like Dallas are from the northeast and the mid-west and elsewhere and are the ones that are more likely to vote Republican than the people who have long been resident in Texas and voted Democratic. That's certainly true in places like California, Arizona, and Nevada. So that once you take the whole Sun Belt phenomenon into account you have to attenuate the claim that what's transpiring in the south is that the old segregationists are learning to vote Republican. What's happening is the old segregationists are becoming a minority more than they're learning to vote Republican. People are moving not only into Texas but into Florida, into Georgia, and South Carolina and North Carolina. The economies of those regions are changing fairly dramatically. Now there may well be some white southerners who once voted Democrat who also now vote Republican, I'm not denying that. I'm saying that portion of the transition is not so dominant as to raise the moral quandary which you suggest.

If in fact, however, whether in the south or outside the south, people were voting Republican because they foresee the Republican Party to be anti-black, one would have to question their rationality. Two reasons. First, because their votes rarely carry the day on the issues that are important to people who vote anti-black. In fact, I think it would be safe to say at this point they never do. And if they wanted to make a difference, you'd think they'd make the difference in the party which today decides those issues, as that same party decided those issues 30 years ago. That dimension of American political life has not altered one wit.

There are some peculiar reasons to explain why it hasn't altered, such as even though the Dixiecrat monolithic south has been broken up, it is still the case that the Democratic Party rules the question of race in the United States. It is further to be taken into account that the progressive isolation of black citizens within the Democratic Party, which Jesse Jackson has accomplished over the last two elections, points to a growing rift in that party wholly independent of those forces leading to the vote in the Republican Party. In spite of all those things, the fact remains, it is still the Democratic Party which determines the outcome of every question in the United States that touches upon race today, so that people who have fled the Democrats because of its hospitableness to black people or to Hispanics or others have not fled to any success.

**MEMBER OF AUDIENCE:** I was going to ask if in your judgment regarding that, whether, when you consider not simply the Presidential race, but the state legislatures particularly, that's still Democratic controlled and every issue seems to be controlled.

**CHAIRMAN ALLEN:** That's what I'm saying.

**QUESTIONER:** Both Houses, also.

**CHAIRMAN ALLEN:** Democrats are still in control of the laws in the south.

**CHAIRMAN THOMAS:** But, I think there is one point, I will not say that what he said was completely right—I think it is overstated—but to the extent that we have blacks in one Party and they can be ignored by the other Party, we've got a problem. And to the extent that you have given them a sense that one party is a haven in which you can avoid blacks, even on a presidential level, I think we've got a problem. And I think that the Democratic Party has in ways played to the race issue. But it didn't happen this time as much in the presidential race.

**QUESTIONER:** Even there on that national presidential level and everything we see what happens with regard to, say, Senator Sam Nunn and his coalition there, within the Democratic Party, taking away the heart and soul of some of those Democrats in the south, Dixiecrats, I guess you call them, that they are looking at national defense and crime as their primary interest. And the other hatred of the south, of the northeast, too, which is ...

**CHAIRMAN ALLEN:** You can refer to that as hatred, but historically of course, the power of the Dixiecrats was entirely based on their alliance with northeastern Democrats. That so-called hatred was a relationship of convenience for a long time which built the control the Democrats have had, particularly on the question of race, but also on other questions in the United States. They are closer in many ways than appears on the surface.

**CHAIRMAN THOMAS:** You know, it's interesting—I have problems with New Englanders, for different reasons, primarily because I went to school there and I'm sick of it. But the first time racial slurs were hurled directly at me was in Boston, Massachusetts. I grew up in Savannah, Georgia. I had never had some of the things said to me in my life down rural roads in Georgia, being in the wrong place at the wrong time, or anything else until I went to school in Worcester, Massachusetts and then ventured into Boston.

I'm heading—I'm leaving here tomorrow morning and I'm going to Logan Airport because I have to go to Worcester. And I can guarantee, I have one route to get to the Mass turnpike and I made a mistake once before and ended up in South Boston, I thought I was going to die of a heart attack, as an adult. So I don't have this vision of the northeast as a great savior.

And let me add one other thing, and that is I don't have this great vision of the federal government as a great savior. That's the same, let me just point that out. And I'm sort of drifting into your question, as to what role the government ought to play. You're talking about the same bodies. You walk around the halls of Congress or through the major part of any agency, you don't find any minorities there. The civil rights laws don't apply to the legislative branch. And you expect them to make better decisions than will be made, say, at a local level, a school board level, etc. I do not attribute to them any greater moral clout or moral stature than I do to a local school board. I have not seen it in my tenure in Washington, DC. So any approach that would give the lead role to the central government in Washington I think would be a wrong approach.

It's too remote, it's too big, and I have never seen any evidence that they have the commitment to do anything positive.

**MR. WOODWARD:** I just want to interrupt for a moment. I want to guarantee that the first questions raised are answered and then we'll just open up the floor for a free-for-all. In fact, if people would like to move up a bit, I think it might be a bit more comfortable. I don't expect anybody to actually respond to that sort of invitation, nobody ever does anyway, but I'd just like to make sure that this question got answered before we ...

**CHAIRMAN ALLEN:** I think that's appropriate. Thank you. Let me take up very briefly, I can't obviously go on too long because we want to have a conversation, but there are a series of questions that Professor Hempel raised that are important. The first and most important of which is the one I called the underclass argument, the argument about Charles Murray's evidence and whether it is inconclusive. Without even addressing that directly, I want to point out that there is something wrong with attaching the argument about the underclass to the argument for civil rights. I don't mean to say it's historically inaccurate; historically it has happened and it is a common phenomenon that we look at the entire welfare structure, for example, as part of our civil rights effort in the United States. But the fact of the matter is, providing for the unfortunate is not necessarily a civil rights claim. It may be a claim of humanity, but not a claim of civil rights. Civil rights has not to do with the unfortunate; it has to do with those who in dignity and citizenship are not to be distinguished in any degree whatever from the rest of the citizen body and who, therefore, ought to have guaranteed to them all of the requisites of that citizenship.

The underclass, on the other hand—and of course today it's common to put the word permanent in front of it—they are regarded as a special kind of problem, special wards of the state. Not a problem of citizenship, but a problem of their own insufficiencies, which we somehow are trying to supply through policy.

Affirmative action doesn't address that. Indeed, it has been constantly pointed out that affirmative action doesn't touch it, either. The people who benefit, to the extent anyone benefits from affirmative action, are people who are middle class, virtually exclusively. They are never people who are on welfare. Why? For the simple reason that the people on welfare who constitute the underclass are not in a position to take advantage of the opportunities defined by affirmative action.

Now, the reason I'm driving this home is, I think, there's nothing more urgent than for us to break the habit of talking about civil rights in the language of welfare. That only makes more pervasive this assumption that Chairman Thomas talked about, that minorities in general are inferior, requiring to be cared for rather than citizens requiring nothing more than to be respected.

All right. Go ahead and then we'll get to the rest in sequence.

**MEMBER OF AUDIENCE:** I have a question about that. I checked that thesis; I think it's an intelligent, informed, thoughtful one and I've associated it with you for some time, so it's not surprising to hear that. But it brings a question to mind. If we distinguish between civil rights—which has to do with citizenship—and this notion about underclass—which has to do with abilities inherent or otherwise that we bring to the job market, to life with us and which

allow us to compete in some kind of comparabile way with others—and distinguish between the two, in your mind, is there a role for government at all to deal with the underclass?

**CHAIRMAN ALLEN:** I say no. My friend would perhaps say yes. But I'll tell you why I say no, and this I haven't talked about much before.

I've been, in the last year, especially concerned with this case. I looked at Pete Hamill's argument in the March *Esquire* of last year in which Pete Hamill elaborately explains why the underclass are somehow the peculiar responsibility of middle class blacks. Middle class whites can't talk to them, it's not their burden, and they didn't cause it in the first place. It's middle class blacks who left the cities who caused the problem. It's an elaborate racist argument. My reaction is to say that the entire argument is misplaced. I don't think there is an underclass. I think there are unfortunate people who are largely victims of policy, sometimes victims of their own weaknesses but also largely victims of policy. And I think there's something at stake more important than the things that we are concerned about today, namely, the fundamental principles of the country. The country is founded on the affirmation that there are no human beings anywhere who are not capable of self government. That's the crux of the United States. If that proposition is true, the United States succeeds; if that proposition is false, the United States fails. Every argument about the permanent underclass, Murray's and others, is a refutation of that founding principle of the United States. So that my reaction is to say that not only can they care for themselves, but probably the best thing for us to do is to get out of the way and let them do it, even if that means desegregating cities like New York.

**CHAIRMAN THOMAS:** I do think that, particularly because of some of the damage that's been done, there is a role for government. I think there is an advantage from a public policy standpoint to unravel civil rights and these other socioeconomic problems. And that's the point that I was making in 1981, that civil rights is still an issue to some extent. You've got to always protect that.

But, over time, what I've seen in my own life is that the number of civil rights issues is sort of like rolling twine around a ball, it gets bigger and bigger and bigger. Every issue is a civil rights issue. South Africa is no longer an issue, an international issue of sane proportions or the same kind of human rights as, say, the Soviet Union or Central America or Cuba or Haiti or Uganda. It's a, it's grown into that civil rights ball. Education becomes a civil rights issue, welfare is a civil rights issue.

The way that I think Hempel got some of his arguments from William Julius Wilson, who places some of the responsibilities for the underclass on the black middle class and suggests a social democratic approach to it. But, I would say that you have a better chance of addressing the educational issue if you deal with it as an educational issue. And I still would submit, however, that the more attenuated, that the farther away that you get from local government and local control, the more attenuated the ability and the chances of remedying the problem. I do not think that remedy will ever come from Washington, DC. And I do not think that the unraveling of civil rights and these other problems will come from Washington, DC.

**CHAIRMAN ALLEN:** Mr. Hempel probably ought to comment on this, but I have to say that we don't disagree. When I say the government has no role, I only mean the federal government. We don't disagree.

**MR. HEMPEL:** I suppose you can imagine my problem is we're just fencing with monolithic units here. The national Party, the government. And, of course, I can find too much complexity in all that to say that we should or shouldn't. I can imagine some kinds of federal programs that would make a lot of sense and others that would make no sense. So I wouldn't want to dismiss the possibility, but I keep coming back to this notion that we are in a transition, we hope, to equality and citizenship. But there are prerequisites for equality of citizenship. And what are we going to do about those prerequisites if we don't attach to this notion of meaningful choice the ability to exercise it? It's fine to say to those people—and I'm going to say it as if Claremont is an island of snobbery, right? We're right next door to a city that has a lot of people; black, white, and Hispanic, who are very poor...

**CHAIRMAN ALLEN:** Asian.

**MR. HEMPEL:** ... Asian, who have lots of things stacked against them, in my view, in terms of exercising the equality of citizenship that we both desire. I don't see it happening without some outside—you believe self reliance will do it alone. For a few people I believe you're right.

**CHAIRMAN ALLEN:** I believe it for everyone.

**MR. HEMPEL:** Well...

**CHAIRMAN THOMAS:** It's a prerequisite for equality of citizenship. You never defined that.

**MR. HEMPEL:** In general, I talked in terms of—put it in the most general terms, power, wealth, and knowledge.

**CHAIRMAN ALLEN:** He was very clear about that. Meaningful choices, he said. If they can't make meaningful choices, how can they say they're equal?

**MR. HEMPEL:** I grant you that the word "meaningful" is a weasel word.

**CHAIRMAN ALLEN:** No, it's not a weasel word. I think that the conception itself is oxymoronic for human beings. I don't mean that negatively; I mean that logically. For human beings, choice is the meaning of life and, therefore, to speak of meaningful choice is, in effect, to detach oneself from nature and from what it means to be a human being.

**MR. HEMPEL:** No, but we can divert people with trivial choices. I can give you—there are 147 varieties of toothpaste sold in the United States. Now, is that a meaningful choice? I'll argue...

**CHAIRMAN ALLEN:** No, no. You're not following me. I say choice is the meaning. Some choices are worth more than other choices, that's the question of right and wrong. That's different from saying meaningful choices. That's saying choose well. We want people to choose well. But the point is that they choose, that's what makes them human beings. So you can't speak of meaningful choices to define humanity.

**MR. HEMPEL:** What is the choice to somebody making \$100 a month and on food stamps now to grow their own garden and eat off of what they can grow in their little front yard which is about the size of this table?

**CHAIRMAN ALLEN:** For a man who likes complexities, I think you know better than that. I think you know that no one is ever frozen into a contemporary circumstance; that life, of course, is dynamic. People make choices about where they will be, in light of where they have been as well as where they are, and so that complexity of choices must always reflect their degree of control of the circumstances, their relationship to others, and a number of other factors. You know that, you're the one who introduced complexity.

**MR. HEMPEL:** But you said they're all capable of being self reliant in the short term, apparently, because you know for many of them there isn't going to be a long term to succeed, to meet their needs.

**MR. WOODWARD:** I'd just like to call on Professor Lynch from San Bernardino State, who's writing a book on affirmative action.

**PROFESSOR LYNCH:** I've been doing research on this remarkably simple topic for the past 15 years. And so I've watched the ebb and flow and the definition and the court decisions and things like that. One of the perspectives I've tried to focus on in my work is a perspective that is not much heard from, and that is the perspective of white male, working class, middle class males, particularly the younger people, who are trying to get jobs, trying to get promotions, and so on. And, teaching at San Bernardino State, we're not a bastion of intellectual snobbery, we know that. A lot of our students are working students, a lot of them are trying to get jobs and so on and so forth. So it's interesting to sort of hear what students have to say about that. And, again, I did some independent interviews on this topic.

And, I wanted to ask our two chairmen here, I also wanted to plug into Steve's interesting comment on political realignment, from what I'm hearing both through the newspapers, through scuttlebutt from students and other people, we seem to be moving very much away from the ideal of a color blind society. It seems like just in the past year there has been a renewed drive for affirmative action, and I see this particularly in the public sector. And also in universities. There is now a drive to openly say we are recruiting, we are promoting, on the basis of race or gender. What are you going to do about it? I have an increasing number of students who applied for, you know, wonderful positions with the highway patrol or the sheriff's department or whatever, and they're simply told we're not taking white applicants this year. They have now cordoned off 50 percent of student admissions there. For a while they said, well, we're using subjective criteria. This morning's paper more or less said they are openly using race as the criteria now in that 50 percent subjective sector. So there seems to be a renewed openness, a renewed aggressiveness, if you will, by people who want to take us even more firmly into racial categorization and openly distributing jobs, educational positions, on the basis of race or gender. I'm wondering if you two gentleman see that from where you are and, if so, is anything being done about it?

**CHAIRMAN THOMAS:** First, with respect to the highway patrol, that's illegal. Secondly, the first occasions that I heard about reactions to preferential treatment—that's what they called it in 1968, I don't know what they call it today, diversity or something, it's always a euphemistic term—was from Jewish students in law school who felt they had been eliminated because of this preferential treatment.

The next instance of it came from Asian students in the late '70s who felt that, as we started looking at percentages, that the Asian students, who were overrepresented particularly in

the sciences, were going to be eliminated. And I assume that the Department of Education (and I think this ties into a response to what you're talking about), is now investigating, I think, several California schools for just that. And I heard the Chancellor of the University of California, Berkeley, state very clearly at a meeting or at a banquet that they did indeed have these kinds of programs that specifically assign percentages for various groups in order to obtain a diverse student body. And I, for one, felt strongly in 1969 and 1968 that we were headed in the wrong direction with that. And there's nothing that's happened over the past 20 years that has changed my mind. And, in fact, when you look at riots in places like India, over medical school admissions, you begin to wonder, not that we're going to wind up at that point in the near future, but some of the very same signs that we see in other multiethnic and multiracial societies where race is immersed in politics are beginning to be seen in this country.

I believe, I can't remember the guy's name, I believe it's David Horowitz, who wrote a book on conflicts in multiethnic societies about two or three years ago and pointed out that we were going to, at least that he saw those signs also. You see it in Malaysia, you see it in India, you see it even in Hawaii. and I see some of those signs now and I think they're pretty scary. And although I don't like—I'm not a person who gets into really being wild about things that are happening out here, getting all hysterical about it, my greatest fear is that if we don't begin to take race out of politics without getting away from our Constitutional ideals, and we don't move away from some of these policies at some point in the future, maybe not during my lifetime, we are going to be facing race wars in this country.

**CHAIRMAN ALLEN:** You know, when you raise a question like that, you have a right then to question some of the comments I made earlier, which seemed to suggest that these things in fact were not seriously pursued. I called it a sham; I meant that, I still mean it. But, the question is, how do you reconcile stories like the story in this morning's *LA Times* and the experiences that you have encountered with my calling it a sham? I think it's not as difficult as it may seem on the surface. In the first place, the work force, in fact, is not radically changing. People are being put through these severe emotional trials, there's no doubt about that. And people are being rejected on grounds of race and accepted on grounds of race from time to time. But it is not in a way that alters anything fundamentally. And that's the hardest thing to get people to see, that what we're doing is creating a revolving door policy whereby it is very important to agencies like this graduate school, for example, not to build upon the introduction of people from diverse backgrounds in the workforce, but rather to keep them circulating so that they can always have reasonable, positive statistics to report every year. And that's easier to do if you always go back to zero and start over than if you're supposed to keep building.

So, you've got a system based on what I call paper compliance that imposes the very things you complain about on people, but do not, in fact, ultimately help anyone. And there's one exception to this which I think finally proves the rule, if we will stop long enough to think about it. The exception is what's happened with women. For you could make the case that there has been a dramatic upsurge in the employment of women and admission of women to professional schools in the past 20 years as a direct result of affirmative action. That's true. I acknowledge it. You see it, for example, in the University of California hiring. After the *Bakke* case, when they finally were free to do so, the change in the presence of Hispanics and blacks was in fact practically nonexistent. There were 117 black males in 1978; 121 today. Change? Nonexistent. But with women, dramatic. Why? Well, it turns out most of the women, whether in professional schools or jobs or anything else who, in fact, benefit by affirmative action, are the wives,

daughters, and sisters of people who already held positions of advantage in the society. This is not most, like 50 plus 1, but virtually 90 percent or better. Now that pretty much begins to be self explanatory. It means that, at the same time we're building a society in which race is critical in every dimension of life we are not, in fact, delivering the goods in the name of which we installed those policies in the first place. It is a shell game, it is racist. And the people who insist upon it themselves are the bigots.

**MR. LYNCH:** I'm just troubled with affirmative action because I look at affirmative action and what it reminds me of is *Plessy vs. Ferguson*. And what it really does, I think what it tries to do, is to prevent racism. But what it does, actually, is promote it. And my question, my other question would be, shouldn't we get rid of affirmative action and put the money and energy into the U.S. Equal Employment Opportunity Commission on the state and local levels?

**MR. THOMAS:** I, well, we actually did a piece, both Bill and myself, from different angles—I did a piece in the *Yale Public Policy Journal* on enforcement. But, I want to go back to affirmative action. We never defined affirmative action. We asked the question whether or not we need to do something about the condition of some people in the society. I still believe we need to do something. We can't just sit there passively, maintain the status quo and say, I've got mine, you get yours. But, I don't think that you alter the results. I don't think that you—I don't believe in curves in grades, I believe you give everybody a fair chance and you give them the grade they earn. You give them extra help, you give them extra time. I, for one, thought it was affirmative action if you wanted to really help minorities, to give them five years of education for the price of four, you'd think that was doing you a favor. But, the bottom line result would be different. And if you look at this guy again, I go back to the guy in Los Angeles. What did he do? He said to these kids, you can pass the AP. But it's going to require that you study the summers, the weekends, the holidays, etc. But you can pass the AP. I have thought that blacks couldn't pass the AP or couldn't do well on SATs. Never entertained that notion. I wasn't raised to do that. But it was going to require extra work.

It was the Rose analysis, you know, I'd throw it out the window, because we knew back in the '50s and '60s that we had to work twice as hard to get half as far. That was part of the way we were raised. But, I think that you have to define affirmative action differently. It's not so much result, but it's the things that you have to do in order to give people an opportunity, a chance. And I do think that it's creating some problems.

As far as enforcement, I think that if you had strong civil rights laws—Congress is really interesting, and I intend to write quite a bit about it after I leave Washington.

**CHAIRMAN ALLEN:** Oh, another one.

**CHAIRMAN THOMAS:** Yes. No, no, it's not a kiss and tell. Congress is a fascinating body. What it in essence has done is to create a law that has no teeth, in Title VII, Civil Rights of 1964. Read it. What it says is that if you discriminate against somebody, then all you have to do is give that person what that person would have had if you didn't discriminate against them.

Now, let's put it in a different context. You see April 15 rolling around. You say, well, the law says if they catch me after April 15 all I've got to do is pay the taxes I would have owed if I had paid them on time. You said, the hell with April 15, I'll keep this money, put it in the bank, put it in the equity market, buy a new car. If they catch me then I'll liquidate it and give them the money. If they don't catch me, I've got all this extra money. No, but what they'd do to

you is they'd say, you don't file, there's a penalty for not filing, there's interest on top of that, then there are all kinds of other penalties So there's a price, there's a disincentive for you not filing and properly filing on April 15. And I guarantee you, people get it filed by April 15 or they get a disincentive.

There is no such disincentive in Title VII. You can discriminate all you want. You go outside and take a hammer to the mailbox and there's more of a penalty for you beating up that mailbox than discriminating against someone in the employment arena. Now that is a reality. So if you really want to make some changes in society, you have to put some incentives or some disincentives in Title VII of the Civil Rights Act of 1964. And I agree to a great extent with Bill, and that is that we need to get it out of the regulatory environment and put it back in the judicial environment where you have torts and other things. And you'll see some major changes. Can you imagine a couple of million-dollar judgments against an organization that is discriminating? Okay? Because the person just goes and gets a lawyer, files a suit, and wins. You see, Pinto is no longer on the road. Why? Because of a few million-dollar judgments, the Pinto was gone. And my point with discrimination is the same. There is no disincentive in Title VII of the Civil Rights Act of 1964. It's purely remedial.

**MR. HEMPEL:** Let me suggest, though, that the racism in this country is a lot more insidious than exploding gas tanks in Pintos. Harder to define.

**CHAIRMAN THOMAS:** That's nonsense. That's not true. We've done, we do 70,000 cases a year. Okay? We go through 70,000 cases a year; we litigate over 500 a year. And I heard when I first got to EEOC that it requires this, it requires that. Most of the cases are the same. Some guy promotes a white person and doesn't promote a black person with the same, with greater qualifications. Some guy goes out and says, I don't like women in these types of jobs. A lot of them are as blatant as that, still today. Then you have some that are very sophisticated, where you have to do all of your analysis, do your computer runs, etc. Those are broad cases. But, it is no more difficult than proving a murder case through circumstantial evidence. And, indeed, I think it is easier to do.

**MR. HEMPEL:** I'm talking about all those cases that are never filed because of the difficulty that the person—we've got two profiles of the person in need of affirmative action here. One is that they can work twice as hard to get half as far and that's the matter. And the other is that they're inter—your earlier comments that they've internalized the image of victim, which leads me to ask why they would do that, because if they're really going to be citizens in a society in which they see themselves as a victim, what incentive they have to participate as a citizen in a society that they think is patently unfair, I don't know why they would...

**CHAIRMAN THOMAS:** Wait a minute. I don't remember those words.

**MR. HEMPEL:** I thought you were saying...

**CHAIRMAN THOMAS:** Something I have said may have implied that, or may have been interpreted that way, but I certainly didn't use those words and didn't mean it.

**MR. HEMPEL:** I thought you were saying this was an outgrowth of a dependency relationship.

**CHAIRMAN THOMAS:** That doesn't mean it's internalized; that means people have been put upon. In other words, there are bastards and bastees. That's what I mean by that. I don't

mean anybody internalized anything. Now people often have to suffer the slings and arrows of outrageous fortune, but that doesn't mean that they willingly suffer.

**MR. HEMPEL:** What does dependency mean if it doesn't mean you see yourself as being dependent?

**CHAIRMAN THOMAS:** Well, consider slavery. The slave was not asked what job do you want to do today. The slave was told to do the job. The slave was not asked what would you like for lunch. The slave was given a pot of slop. Now the slave still had a choice to make, to live or to die. In choosing to live, the slave lived for that time in a relationship of dependency on that master, not chosen, not internalized, not desired but, in fact, real.

**MR. HEMPEL:** Of course, I would consider any choice made with penalty of death—somebody with a gun to your head—essentially, is not a meaningful choice.

**CHAIRMAN ALLEN:** That's an abstraction. You know, when you introduced the first question about Isaiah Berlin's thesis, you raised a theoretical question. Mr. Thomas, in fact, made it a moral proposition and, therefore, spoke with an appropriate degree of moral outrage. The theoretical question is in a certain sense not directly relevant; it's not a question of whether it's liberty to or liberty from. It's a question of what is legitimate government? Has one consented to certain relationships that obtain? Where one has not, it is in fact illegitimate. Now we can play with what it means to say people are free and self governing and whether they then have a liberty to or whether they're merely secured from certain things, but it seems to me that that is not the meaningful moral distinction. The meaningful moral distinction is whether, in fact, this is a free government or not. And I have argued that it is not. Now, it seems to me we have to resolve that question as citizens, as a practical question, that we're not mere academics. I used to be merely an academic, but then my life was intruded upon by people who thought I owed something more than mere academics. So now I try to speak morally and practically in order to satisfy their expectations.

The same thing is true, by the way—you mentioned the 20-lap race problem and you said, yes, we all knew we had to work harder. There's a certain sense about that because I don't think the 20-lap race analogy holds. It is simply not true that I carry the lashes that my ancestors received on their backs on my back. That is a lie. It is not true that I carry the scars even of some of the experiences of Jim Crow that happened this century. The race begins anew with every generation. I don't care how fast your daddy was, I'll bet that I can outrun you. So all I need is a fair trial—whenever you're ready!

**MR. HEMPEL:** I didn't mean to suggest all that. I meant to suggest only that discrimination existed, it was going to be more difficult because of where we were in society at that time. I think we all knew that and we accepted that.

**CHAIRMAN ALLEN:** In that sense, yes. Dealing with people's expectations imposes a harder task. But are we less well prepared for the task? No. Each of us at the moment of birth is as whole as any human being ever is anywhere. That, I think, is the critical point to make...

**MEMBER OF AUDIENCE:** Let's go back to the...

**CHAIRMAN ALLEN:** ... and those who argue the lingering legacy of slavery are in fact trying to bootstrap an inferiority argument to deny that we are whole at birth. And it ain't true.

**MR. HEMPEL:** Let's take that at birth. Are you saying, then, that the fact that black infant mortality was five times higher was—surely you're not saying that was something genetic? What accounts for that?

**CHAIRMAN ALLEN:** What accounts for what?

**MR. HEMPEL:** We're not talking about slaves. We're not talking about in the age of slaves. We're talking about in the '60s.

**CHAIRMAN ALLEN:** Why should I have to account for it in this context? My argument was that every person at birth was as whole in that sense as any other. And why, in order to say that, do I have to explain the infant mortality of anybody, let alone black people?

**MR. HEMPEL:** I would suggest that when one looks at the health of different peoples and one says that there's one group in society that has a much higher infant mortality rate than another, that should be an alarm, that should be a caution flag about...

**CHAIRMAN ALLEN:** Perhaps so. But in this context, why is it an alarm? It's a health alarm, yes?

**MR. HEMPEL:** It may say something about, the fact that it says something about differential treatment.

**CHAIRMAN ALLEN:** Not necessarily.

**MR. HEMPEL:** Says something about differential access to health care.

**CHAIRMAN ALLEN:** It might say that. It only says at first something about health. And whether the health problem is caused by differential treatment, whether it is caused by bad air, as they used to say in the good old days, or any number of other things, is yet to be determined. All it says, initially, is there's a health problem. Now how has that become a civil rights problem?

**MR. HEMPEL:** I suspect that if I were trying to devise rules of the game for citizenship and I wanted to emphasize equality of citizenship, I would want those rules to be such that no group in a democratic society had a disproportionate share of whatever the ills of the society was, whether they lived in the most polluted areas, whether they suffered the highest infant mortality. I would say that the expectations that people have as fully participating citizens have something to do with their sense of the initial fairness of the society, distributional fairness and initial fairness.

**CHAIRMAN ALLEN:** Allow me to be academic for a moment, then, rather than merely practical. Because it strikes me that this is the core of our disagreement. There is this particular language that we use. We speak of some people representing others. You say they're over-represented in the workplace, underrepresented in the workplace. We speak of people having a share of ills—as if the ills that took place in society are somehow owned collectively by the society and there are shares of them to be distributed. Now all of that language has a massive philosophical problem.

Let me just focus on the representation language, because I think there I can show it most clearly. When we say that a given person, a woman for example, say on the faculty here at CGS, represents women, what do we mean by that? What, in fact, does that representation amount to?

Does this person here pay taxes for other women? Are they somehow benefited by her being there? Or does she, in fact, not hold a position in her own right and in her own name?

**MR. HEMPEL:** I, of course, wouldn't say that she does represent women.

**CHAIRMAN ALLEN:** No, but this is the common language. It is indeed as common as the sharing language in this regard. It runs through all our government documents and all the academic discussions of this subject.

**MR. HEMPEL:** Then we both...

**CHAIRMAN ALLEN:** ...under-represented minorities. That's even the formal term now, everybody knows that, right? You know that, surely. That runs through all policy discussions today. So what does it mean to say that people are represented in that way? It means to say that we distribute social goods and social ills on a collective basis, that that is the first judgment we make. And we say that people have title to them only in terms of a *prima facie* determination of their share, their respective shares. Now that is the argument that leads next to the notion that people who have a higher infant mortality rate have more than their share of infant mortalities. It is based on this earlier argument about respective shares or an argument about distributive justice which, in fact, is founded on nothing but an arbitrary assertion. It is a mere act of will that we are going to make the goods and the ills collective and we are going to divide them. And there's nothing else behind it.

**MR. HEMPEL:** The point is, we want poverty, we want infant mortality, we want things like that to be an arbitrary matter, not something that is determined by one's class or race or ethnic position in this society. That's where the word arbitrary applies.

**CHAIRMAN ALLEN:** There you go again: what social scientist does not know that to say variables occur at random is not the same as to say they occur arbitrarily? And to say they are determined by class is to confuse our tools of analysis with causal terms. Because we, who are social scientists, are supposed to know that that does not mean determination, that does not mean cause. But, in fact, we don't stick by that. We go from correlation to cause and we say, if infant mortality correlates with race, then we assume it's determined by race. Well, that, in fact, is not true. That is an explanation only of a relationship, not a cause.

**MR. HEMPEL:** But our argument is not determined by race, it's determined by the way a race is treated in this society.

**CHAIRMAN ALLEN:** That's the same difference.

**MR. HEMPEL:** Oh, it's very different.

**CHAIRMAN ALLEN:** Just adds a few more words behind race. Determined by race and the way it's treated.. Okay.

**MEMBER OF AUDIENCE:** I'm with the local newspaper. You guys don't sound black or white, you sound like intellectuals.

**CHAIRMAN ALLEN:** I told you, I was trying not to do that. But they forced me.

**MEMBER OF AUDIENCE:** I've got a question. I don't mean this to sound offensive or anything, I'm just trying to find out. Do you believe that your appointments to your respective posts were an act of political affirmative action?

**CHAIRMAN THOMAS:** I think it was just politics, period.

**CHAIRMAN ALLEN:** I know mine was just politics.

**CHAIRMAN THOMAS:** If you spend a day or two in Washington right now, during transition, you'll see how it works. You're in danger of getting killed by flying resumes. That's politics.

**CHAIRMAN ALLEN:** Let me say something about that, too, because not everybody knows what politics is. The question is, were we appointed because of our race? And it assumes that the appointment process, the White House went through and, in my case—let's take as an example—was a fairly detached and abstracted process in which people sitting in the White House made an independent decision whom they were going to appoint, consulting certain criteria. They have criteria, I'm sure. But, I want you to know it was not their decision.

**CHAIRMAN THOMAS:** Well, with respect to me, I'll just say it was like Wheel of Fortune or something. As I said earlier, I was sitting in my office, minding my business, and I got a phone call from someone who knew someone...

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<sup>1</sup> Professor Clark subsequently prevailed in a jury trial, being awarded \$1,000,016.

<sup>2</sup> Jaime Escalante, formerly at Garfield High School, in Los Angeles.