

Dean Griswold, the committee is honored that you would join us today. I can't help but noting that you had presented arguments on cases before the U.S. Supreme Court some 5 years before William O. Douglas was nominated to that Court, if my mathematics is correct.

I would be interested in your observations about Justice Douglas and his young, relatively young age at being elevated on to the Court. Obviously Judge Thomas is relatively young or quite young compared to other judges when they have been nominated.

Was the youth of Justice Douglas a major impediment to his functioning on the Court? What was your observation about his early service?

Mr. GRISWOLD. Well, Senator, that is a long—a question that involves reviewing a long period of time and is very complicated.

Douglas was a man of great intellectual brilliance, which I don't think the present nominee has shown so far. He had great energy, great imagination, and his first 10, 15 years he was a great Justice.

After that, he in my judgment went steadily downhill. He got bored with the Court's work. He dashed it off. And the final 10 years, at least, of his membership on the Court was not, in my view, distinguished. And I have heard the same reaction expressed by other people.

In the case of Douglas, you are starting out with a really great mind. I don't see any signs of corresponding scholarly intellectual ability in the present nominee. As I have said, if he had 8 or 10 years on the court of appeals he might show it. But to me it is quite clear that he has not shown any qualifications comparable to those of Justice Douglas at the time he was appointed.

Senator BROWN. Mr. Brown, your committee has been kind enough to come and share their views today with us. Was the decision of your committee a unanimous one?

Mr. BROWN. No, Senator. As I have indicated, we have 90 members of the committee who support the position. There were 8 individuals who either filed their own position in dissent or had joined with others. So there were 8 who did not ascribe to the position of the 90 of those who did.

We also had some 20 members who abstained for various reasons, some of which would have presented conflicts of interest for them.

Senator BROWN. If you are comfortable, would you be willing to summarize for us the comments or the concerns or those who dissented?

Mr. BROWN. I think, as best I recall the primary reasons for their dissent, some felt that we should delay taking any position until after the conclusion of the testimony of Judge Thomas. Some felt that he did, in fact, possess the necessary qualifications to be considered and approved for service on the Supreme Court.

Senator BROWN. Well, I am sure we all appreciate both of you coming, and we appreciate your taking the time to counsel the committee. Thank you.

The CHAIRMAN. I have one question. Senator Kennedy wanted very much to be back to ask this question of the panel, and he asked if I would ask it on his behalf.

That is, gentlemen, what do you anticipate the impact on the past 25 years of progress on civil rights would be if Judge Thomas' views, as you believe them to be, prevail on the Supreme Court?

Mr. GRISWOLD. Judge Thomas alone is very important on that question. But we already have on the Court a number of far more conservative Justices than we have seen for many years. And the real substance of the question is what would be the impact of the last four appointments. I think in my view it will be disastrous. I think it will stop in its tracks the slow but steady progress we have been making.

Let me just add, Senator, that I think my interest in civil rights goes back to the time when I was in the fourth grade in the public schools in East Cleveland, OH. And for the first time, I had in my hand a copy of the Constitution. I was about 10 years old. And I read it. And I raised with the teacher problems about voting in the South.

The teacher said to me—and I pointed to the 15th amendment. The teacher said to me, well, that is a part of the Constitution that is not enforced. And I remember that just burned me up at age 10. Here is the Constitution. This is us. This is our Government. But there is the part that isn't enforced. As I look back, I think that then and there I decided I was going to try to do what I could to try to see to it that the Constitution is enforced, including the 13th, 14th, and 15th amendments, and that we have real due process of law and real equal protection of the laws.

Nothing really much happened until the early 1950's, but since then many things have happened. Many of the current generation are not aware of how much things have improved, but they have improved. But the task is by no means done, and I feel that that is one of the important issues before this committee and the Senate now, whether we shall erect another obstacle toward the eventual achievement of true equal protection of the laws of all persons in this country.

Mr. BROWN. Senator, I can only add to that, if in fact Judge Thomas' articulated positions on these issues had been followed, many of the major advancements in the area of civil rights would not have occurred. There is no doubt about that in my mind. I guess the best example we can give is of the AT&T litigation which we were involved in at the Equal Employment Opportunity Commission.

If we had indeed had to prove individual cases, we would be even today still trying to resolve many of those issues. We found that some 7 percent of the individual charges pending before the Commission involved some of the same issues. And we were able on an across-the-board basis to eliminate discrimination and the systems which have given rise to many discriminatory conducts. I think that is critically important.

I also think that if we were to follow Judge Thomas' current positions, if we look at his record at the Office of Civil Rights and at the EEOC, the idea of not completely enforcing all the laws that the agency which you are heading would have a devastating effect on this country.

I think that laws which are either flagrantly broken or laws which are poorly enforced strike at the very heart of our society.