

What insight can you provide, based upon your own understanding of his actions, both in government speeches, in terms of the poor, those that are left out and left behind, if his views were to become a majority view on the Supreme Court? Would their interests, based upon his statements and his actions, be advanced or threatened?

Ms. KING. Senator, he has spoken quite eloquently about poor people and about black people. I listened carefully at one point in this hearing, when he was asked about preferences and he was asked about his admission to Yale Law School. And he was asked, I believe by Senator Specter, would he be willing to use that same rationale with respect to a person who had a 10th grade education, and the issue was employment.

I listened very carefully for the Judge's answer, because it had been quite clear about his admission to Yale, and I did not hear the same statement about what the needs of a person with a 10th grade education, the needs of the poor person or minority person who was seeking employment. Employment is critical to many other aspects of life, and I listened carefully and I did not hear an answer, I must say, and that leads me to conclude or fear that, while Judge Thomas is eloquent in talking about poor and minority people, that when it comes to policies that are designed to make it easier for people to have opportunities and to advance, then he would suggest the policies that have been followed with success to date, are the policies that he has difficulty with, affirmative action, class action litigation, so I am at a loss to try to explain the difference between his words and his actions.

Senator KENNEDY. My time is up. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The Senator from Utah.

Senator HATCH. Thank you, Mr. Chairman.

I want to welcome all of you here today. I have appreciated listening to your testimony. Ms. King, the only thing that I saw differently from Judge Thomas was that he just plain rejects the idea of preferences, and there is a legitimate strong argument on his side to do that. In fact, I think the majority of American people would agree with him.

The question is from there, if you do not have preferences, what do you do to right these wrongs, and I think there is a legitimate argument on both sides, a very good argument on both sides as to what you should do.

I happen to come down on the side that nobody should be discriminated against, that literally we ought to right those wrongs in the best way we can, but we should not do so by discriminating against innocent people. But that to me is the only difference. I think he will be, from my experience with Clarence Thomas and watching him on the EEOC, I think he will be very much for women's rights and other rights.

Ms. Greenberger, let me just make one comment. I do not mean to take the full 10 minutes, because I think you folks have had enough questions asked of you. You know, having been before the appellate courts, I would never read into what the Judge is asking to determine in advance what he is thinking, because they ask these puckish questions all the time and sometimes just to see

what your answer is going to be and to see just what—you know, they may be a little fuzzy on it and they may just want to have some better answer than what presently exists in their mind.

That reminds me a little bit of last year with Justice Souter, why, even one of our eminent members of this committee used his briefs against him. You know, when you start using the briefs of an advocate against him when he comes up for a position like Justice Souter came up for, Judge Souter then, you know, that I think is the wrong thing.

Advocates may put forth the best foot that they can for their clients, and they may not please us with some of their advocacy, but nevertheless they do. The same thing, when the judge asks questions, that does not necessarily mean he is going to rule against women or rule against the position that you think is right.

I just point that out, because my whole experience with Judge Thomas has been that he is really a very fair person, who really does want to make the right decisions. Then again, maybe people like Professor Carter, who has just written this recent book on affirmative action, Shelby Steele, who has written a wonderful book that both sides have to admit is an intellectually compelling book. I think Carter's is, as well, a wonderful book.

Certainly, I would not discount Tom Sowell or any number of other less liberal thinkers, less liberal African-American thinkers, if you will, because they are creating a debate that is viable, because they are—like I say, there are arguments on both sides and we are all working on it to see if we can come to good conclusions to resolve them.

You know, I really question, I think it is dubious to think that because a judge asks questions from the bench that look like he is going in one area or going in one direction, that that means he is. I do not necessarily think it is. I think it means—

Ms. GREENBERGER. Senator Hatch, I just want to respond quickly to your two points.

Senator HATCH. Surely.

Ms. GREENBERGER. First, I think there is much more at stake than the differences on preferences, as important as that difference may be.

Senator HATCH. OK.

Ms. GREENBERGER. When Judge Thomas, for example, was at the head of the office for civil rights, he took the position that title IX and other anti-discrimination laws didn't cover employment discrimination. Ultimately, the Supreme Court rejected that position and said employees were protected against discrimination in the statutes. That has nothing to do with preference that would have hurt individual employees who were intentionally discriminated against from getting remedies from the Department of Education and schools.

As another example that we talked about on this panel, Judge Thomas, when he was at the EEOC, took a very restrictive position with respect to employer policies which intentionally and purposefully excluded individual women of child-bearing years from high-paying jobs. That has nothing to do with preferences.

There is a pretty extensive report that we prepared and the Women's Legal Defense Fund prepared of example after example—

and I know time is short—of problems of narrow interpretations with what our laws mean that have nothing to do with preferences, but have to do with defining out of the law purposeful and intentional discrimination, and that is of major concern.

Senator HATCH. I understand, but I remember, you know, these are very intricate difficult questions of law that have been debated pro and con by the very best minds on both sides of the equation, sometimes liberals arguing for what the EEOC did and sometimes arguing on the other side.

I think we brought out yesterday that the Supreme Court basically adopted what he was saying, but it did go a little bit further.

Ms. GREENBERGER. No, it was not basic at all.

Senator HATCH. Well—

Ms. GREENBERGER. Maybe some others want to talk about that, but there was as fundamental and critical difference between—

Senator HATCH. Yes, there was, it went farther than what Judge Thomas—

Ms. GREENBERGER [continuing]. Between what the Supreme Court in nine votes accepted and the position that Judge Thomas advocated when he was at the EEOC. He was rejected by nine Justices in the most critical of issues that have enormous importance for women's employment rights.

Senator HATCH. My point is that does not necessarily make it wrong. He did the best he could. He was not as far as you were or the Court would be, but that does not mean that he is anti-women or anti-anything. My goodness, people differ on these very intricate difficult issues. Now, if he is wrong, I think he would be the first to admit that he was wrong and that the Court overruled him.

On the other hand, I have seen him fight very, very hard to try and enforce the equal employment laws of this country, and he did a job better than anybody I have seen at the EEOC in the whole almost 16 years I have been in the Congress and even before then.

Now, is it perfect, are there not things you can criticize? Of course there are, but, then again, that is true of you, it is true of me, it is true of everybody. Well, I do not want to keep you, but I am just saying that I think it is not as cut and dried or as black and white or as difficult as we tend to make it. There are differences, there are legitimate differences, there are well-reasoned differences, there are honest differences, and sometimes he will be right and you will be wrong, and sometimes you will be right and he will be wrong. I mean that is just the way it is.

Ms. KING. Senator, if I might. I think that one of the major points is that when given an opportunity, Judge Thomas has adopted cramped or pinched views, and let me give you an example.

I was the Deputy Director of the Office of Civil Rights in the Nixon administration, and at that time in which we administered title IX—it was actually passed during that period—and we administered title VI, it was our view that employment was, in fact, covered. This precedes Judge Thomas.

What I think that we have to worry about is does he—and we do worry about it—does he seek opportunities, the way it almost comes down, does he seek opportunities to adopt these very pinched and cramped statutory interpretations? Is he indeed reversing or