

What I have to rely upon is what a person has done and what a person has said, and I might have some hopes harbored deep down in me that that person will grow, that person may change, that person may broaden his or her outlook, but that is pure speculation on my part and I do not know whether that is a satisfactory basis for making the decision to confirm somebody to the Supreme Court.

Mr. EDLEY. Senator, I would put it more strongly than Professor Days. I think that good character and integrity are necessary, but not sufficient. The good character will not predict whether or not a Justice appointed in 1885 will work to usher in the *Lochner* era, will vote in the majority in *Plessy v. Ferguson*. Character alone will not be a good predictor of the constitutional vision that that Justice brings to the Court.

So, while I certainly would urge the committee to satisfy itself with respect to the nominee's character, I would also urge you to discern his constitutional vision. It seems to me you have a responsibility, in partnership with the President, to determine the course of our constitutional history, to determine what vision will be represented on that Court, and if you focus exclusively on character, it does not seem to me that you were discharging that shared responsibility with the President.

Senator SIMPSON. Professor Lawrence, do you have any thought on that?

Mr. LAWRENCE. I would only add, Senator Simpson, that, to my mind, I have very little to go on in judging Judge Thomas' character. I would certainly, as Professor Days has indicated and I indicated in my opening statement, want to believe, very strongly want to believe, as a fellow African-American, that this is a person of the highest character.

I think that it is true that when one, as you say, passes through the crucible of American racism and poverty, that that can be a character builder. I think that it can do other things, as well, that we certainly have too much evidence in our community of people whose character has been destroyed by that same experience. I am not saying that is true of Judge Thomas. I believe that his character is a good one, but I have very little evidence to know that, except for the record, the public adult record. I cannot rely upon just the fact that he has lived through this experience.

Mr. DAYS. Senator, may I just add one brief footnote to my remarks—

Senator SIMPSON. Please.

Mr. DAYS [continuing]. And that has to do with the function of a Justice of the Supreme Court. When a new Justice gets into conference, I assume that his brothers and sisters will recognize that he is a person of high character. The question is what kinds of arguments is he going to make, what kinds of positions will he or she take. Indeed, in opinions and dissents, how will that person express himself or herself?

We give character as the baseline, but it is how that Justice explains what is going on in the world and how the Constitution is supposed to influence that. People will live or die, based upon not his character, but how he views the law and how he thinks it applies to their situations.