

statistical disparities as evidence of employment discrimination," and then you claim, "Thomas attempted to make proof of discrimination insurmountably difficult, with total disregard for current law."

I respectfully say that I think that you have misread current law. Current law does not allow a disparate impact suit to be based on statistics alone. It requires that plaintiffs demonstrate how certain employment practices cause the statistical disparity.

In fact, even in our colleague's civil rights bill of last year, Senator Kennedy, about which I have very strong concerns, he stated the following: "The mere existence of a statistical imbalance in an employer's work force, on account of race, color, religion, sex or national origin is not alone sufficient to establish a prima facie case of disparate impact violation."

Are you then telling us that Judge Thomas is wrong, that statistics alone are sufficient to establish that type of impact violation? Is that what you are saying?

Mr. AIYETORO. No, Senator Simpson, that is not what we are saying. I would like to respond, if I can, to several of the statements that you made. First of all, we don't purport to speak for all black Americans. Our statement that the nomination of Judge Thomas is an insult to the people of color, as well as to the legacy of Thurgood Marshall, is that our assessment of what has happened to black Americans and African-Americans in this country is one that there is a need for someone who at least understands and supports remedies that will go to actually eradicating racism and the results of racism in the society.

It is our view, based on our review of the materials and Judge Thomas' position on a number of things that Judge Thomas, even though he has the background of being a black man raised in a situation of not as many resources as many others, is a person that has turned his back on the very remedies that our organization feels are essential, and it is not simply our organization, but any number of organizations who speak not simply for African-Americans, but people of color and women, so that we would not purport to do so.

As to the polls that you spoke about, one of the things that we have found, as we have talked to people about Judge Thomas' nomination, is that many people who were polled are really people who don't know about his record. I realize that, for many persons, it is hard to understand that, in fact, when a black man is appointed, even though, as Senator Biden said earlier, there was as certain number of people who reserved their position, that for many people, when they have not heard the full record, will support.

We have found, when we speak to people and talk to them about the record, they indeed either question whether we should support Judge Thomas or, in fact, go the other way. The margins are not that great.

The last thing, in terms of the issue of statistics, I am also a litigator and I do civil rights and constitutional law. What we are not saying is that Judge Thomas said that you can't totally rely on statistics, but Judge Thomas did not even want to utilize statistics at all in title VII cases. It is, of course, part of title VII proof, part of the statute itself is the statistical evidence is very much a part of

the case. That is not 14th amendment law, in many ways, but for title VII it is.

When we criticize *Griggs*, at the time Thomas criticized *Griggs*, that was the law, so he indeed criticized and did not support the law as it existed at the time and that is the point we were making in our testimony.

Senator SIMPSON. Mr. Chairman, I just had one other question, if I might ask it.

The CHAIRMAN. Go ahead.

Senator SIMPSON. I would ask Ms. Axford, your organization criticized Judge Thomas for having only 17 months experience on the U.S. Court of Appeals for the District of Columbia. Have you, or have you, Ms. Aiyetoro, have you read his decisions while on the circuit court that he serves on?

Ms. AIYETORO. Yes, I have read some of them. I am not sure if I have read every single one of them. I have read a summary of every one. I have read some of them page to page.

Senator SIMPSON. Have you read the criminal decisions that he has given?

Ms. AIYETORO. I have read some of them. I have read summaries of all of them.

Senator SIMPSON. Are you aware that in the criminal decisions, and other on the panel have spoken to those, that there is not a single dissent in those criminal decisions, and Judge Ginsburg, Judge Pat Wald, and Judge Abner Mikva all unanimously supported Judge Thomas' opinions in that arena? Are you aware of that?

Ms. AIYETORO. That is not my understanding. In some of the—

Senator SIMPSON. It is the truth. It is not just an understanding. On the criminal cases, that is the way it is, so I think it is important—

Ms. AXFORD. Senator Simpson, before you—

Senator SIMPSON. Yes?

Ms. AXFORD. I have read the decisions and I am curious about what the relevance of that is to his performance and the questions before you today.

Senator SIMPSON. Well, I do not have time to ask those questions. I believe it was Mr. Schuder who said something about the criminal—one of you in your testimony spoke of the criminal cases and how they were not appropriate or they were not sensitive enough, and so and so. I am saying it must be so, that Judge Ginsburg and Judge Wald and Judge Mikva are not sensitive, either, because they supported totally his position. That I guess is what I am saying.

Ms. AXFORD. I don't know where you are getting the characterization.

Senator SIMPSON. You don't have to worry. Let me ask you a question. Then you can have rebuttal, if you wish. I will stick around all night.

You criticize Judge Thomas for a lack of experience, and yet he has had 17 months of experience on the U.S. Circuit Court of Appeals for the District of Columbia. I believe that is your statement.

Ms. AXFORD. Well, that is not totally correct. Not lack of experience, but inadequate experience, considering the position for which he is being considered.