

going backward, rather than forward, in providing opportunities? And I think that is what we are stressing.

We are not just talking about stereotypes of women, at least I am not. I am also talking about the fact that a good portion of the minority community in this country are women, and we women benefit from, and suffer, because we are both minority and because we are female. So we suffer from the stereotypes, but we also suffer from the fact that we too get caught by the lack of opportunities.

And I think that the point here is that some of us at least feel that he seems to reach for the opportunity to adopt a more pinched version. Now, that is not to say that within the African American community that we cannot have multiple views, multiple strategies, and indeed we shouldn't have a vigorous debate about what some of the remedies should be.

But, as some of the professors pointed out on the panel this morning, Judge Thomas doesn't seem to be in the mainstream, and I think that is worthy of note. I mean, there are some point at which, not by himself, but I certainly wouldn't put him in the center, and I think that that is worthy of note, even though I quite agree with you that there is room on all sides of this debate for different views and different strategies.

I would also point out that we are waiting to get a clearer view of Judge Thomas' strategy because the only thing that we have been able to infer is either that he lacks one or that he wants to cut back on those remedies that have proven effective in the past.

Senator HATCH. Well, I respect all three of you, and you are all three very intelligent lawyers and thinkers, and I have had enough experience to know that I don't want to really get in a tough debate with any of you. You are very, very good.

But let me just say that that has not been my experience with Judge Thomas, and I think Guido Calabresi, the Yale Law School dean, said that he is definitely in the mainstream. You may not agree with him on everything, but he is definitely within the mainstream, and within the legitimate mainstream. And I agree with that.

But there are differences and I am glad that—we will keep working on them and see what we can do to bring people together.

But thank you for being here.

Ms. KING. Thank you.

Senator HATCH. I enjoyed listening to you and appreciate your testimony.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Mr. Chairman, I don't believe I have any questions.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have no questions for this panel.

The CHAIRMAN. Senator Simon.

Senator SIMON. I have no questions. I have read all three statements. They are excellent. I think, Professor King, your statement was more than excellent, it was eloquent, and I thank you.

Ms. KING. Thank you, Senator.

The CHAIRMAN. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Ms. Greenberger, you had mentioned earlier in helping us with some background on the Judge that he hadn't read what he had signed, and I was wondering if that was testimony that you had heard or what the source of that was.

Ms. GREENBERGER. Yes. In the White House working group paper on the family, there were a number of very troublesome statements that that report contained, including a challenge to the appropriateness of a Supreme Court decision, the *Moore* case that dealt with the right to privacy, protecting a family, of a grandmother living with her two grandsons who were cousins.

Senator BROWN. I am familiar with that case.

Ms. GREENBERGER. And that that violated the zoning ordinance. And that particular White House report among other things challenged that case as being wrongly decided, and Judge Thomas had been part of the group that signed onto that report.

His response was that he wrote only one section of the report and had never read the rest of the report that had contained a lot of very troublesome and controversial positions.

Senator BROWN. Your view of it is that he signed that report?

Ms. GREENBERGER. Yes.

Senator BROWN. He physically signed the report.

Ms. GREENBERGER. Well, I don't—he was indicated as one of the preparers and supporters of the report, and there was nothing on the basis of that document when we certainly looked at it to give us any indication that when his name was on the report as part of the Working Group there was anything in the report that he disagreed with.

He said in his testimony he didn't read many sections of the report, and only read the one section on low income families that he prepared, and that was how he distinguished what some of the troublesome statements were in the report from what he said his views were.

Senator BROWN. I think it is important to get the facts on the record. First of all, he never signed anything, by your own admission. That report was not signed.

Second—

Ms. GREENBERGER. I think I said signed off on.

Senator BROWN. Perhaps I took the notes incorrectly.

Ms. GREENBERGER. But certainly I think for the public reading it, and I think we did try to be as careful as we could, it was certainly our impression that as part of the Working Group it was a report that he endorsed and supported. There were no dissenting views that he signed off on or indicated.

Senator BROWN. Well, I—on the contrary, the folks who helped put that report together very clearly indicated that he had not authored the section that you found objectionable, that there was no attempt to link him to that section that you found objectionable, that his involvement, indeed, was limited to a working paper that he presented.

I find that concerning. To suggest that you are responsible for something someone else has put together, obviously, does not get us to a good judgment of that candidate.

Ms. GREENBERGER. Senator Brown, I just do want to stop and say, if someone else put a report together and he had no connection to

it, I wouldn't ever suggest that he had a responsibility for it. This was a report that had his name on it, and it was a very natural and honest expectation that since his name was on it it was a report that he supported. It had no—it didn't, there were no dissenting views indicated.

And certainly in the general debate about that report, it was very controversial, there were no public statements he had ever issued after it was released disavowing any of its positions. It was only during the confirmation hearings when the question was raised that he said that there were aspects of the report that he had nothing to do with it in terms of drafting, but also had never read.

And that may have been his method of operation——

Senator BROWN. You know, the drafters—it may not have been that you had a chance to listen to that, but the people that put that report together had indicated that he had not seen that portion of the report that you are concerned about. It had not been circulated to him. That he did not contribute it—to it. And he does not claim it.

Your own report, on page 45, makes I think a very significant charge and, obviously, a very serious one. It says, "In Judge Thomas' view the Court may not rely on the constitutional right to privacy to prevent a legislature from, for example, limiting the number of children a family may have or require, or requiring the sterilization of certain individuals so long as the State could articulate a rational reason for the policy."

Obviously, that is a very extreme view and a great seriousness. May I inquire where that information came from?

Ms. GREENBERGER. When we prepared this report, we took Judge Thomas' written record and statements at face value, and there has been a lot of discussion since that time about the fact that when he came to testify he had said that he didn't mean to imply certain things that many people have said.

Senator BROWN. Well, no. No. My question is where is it you got that from?

Ms. GREENBERGER. Well, then let me go back and be very specific. He did, for example, refer to Griswold and the right to privacy as an invented right. He did have his name on this working group paper which challenged the *Moore* case and challenged the right to privacy.

Senator BROWN. I am sorry. The question that I asked, you have given a description of the Judge's view.

Ms. GREENBERGER. That we took based on what he himself had endorsed, in our view, and which many people assumed he had endorsed and meant. What he has come in and——

Senator BROWN. Well, the fact that he specifically states that he had never seen that——

Ms. GREENBERGER. Well, we, of course, didn't——

Senator BROWN [continuing]. Did not author it.

Ms. GREENBERGER. Right.

Senator BROWN. Does this mean that this portion of your report is no longer valid?

Ms. GREENBERGER. No. I think that part of what our testimony today does is take what we had looked at, at the written record,

and when this report was prepared it was on the basis of his enforcement record, his statement, his writings, and compare those to his testimony and see if some of our concerns that were reflected from his record were allayed by his testimony.

Unfortunately, and I do mean that, rather than our fears being allayed, they were heightened. In the area of privacy, he did say at the hearings that he did agree with the *Moore* case, and what he said at the hearings, as I understand it, was he hadn't read the section of the report that criticized the *Moore* case.

So it was——

Senator BROWN. But specifically here——

Ms. GREENBERGER. It was some moment that he said that he agreed with——

Senator BROWN. Excuse me. I am trying to get the source. I am hoping you can say we got this statement from somewhere. To say that someone would allow forced sterilization is a very serious charge. I would hope you would be willing to share with us where you found that information.

Ms. GREENBERGER. The right to privacy has been used to prohibit the government from forcing individuals to be sterilized. It is the right to privacy as it applies to procreation for married persons and for single people. That the text thereof——

Senator BROWN. Didn't the Judge specifically state——

Senator KENNEDY. Mr. Chairman, can the witness be permitted to answer the question without interruption?

Senator BROWN. Well, I would like to have the witness answer the question.

Senator KENNEDY. Well, maybe they can answer it whatever way that they like.

Senator BROWN. I believe this is my time, Senator.

Senator KENNEDY. Can they answer it the way that they—they are witnesses. We have followed—it has been very orderly. I would like to hear the witness respond to the question.

Senator BROWN. Well, I believe it is my time, Senator.

Senator KENNEDY. But the committee, the Chair is entitled to ensure that the witnesses are going to be treated courteously.

The CHAIRMAN. Gentlemen? You are OK, aren't you?

Ms. GREENBERGER. I would appreciate being able to finish because I think I can respond to your concerns.

Senator BROWN. Sure. I would appreciate it.

Ms. GREENBERGER. Thank you, Senator Kennedy. I am happy to go forward.

The right of privacy is of such enormous concern as it affects procreation. Because of the right to contraception and the right to abortion, but also so that women have a right not to be sterilized and have a right to have children. It is both sides of the equation, as Justice O'Connor herself recognized in questions that she has asked on this issue.

If there is not a strong right to privacy that protects not only married individuals but single people too, we in this country do not have a strong right to protect against sterilization, against being forced not to have children or to have abortions against our will, as well as the right to have them.

When Judge Thomas came, and we know there have been so many questions on his views on the right to privacy, he was questioned again and again about the right to procreation, including sterilization, I would assume implicitly. And what his views were, he said that he thought there was a marital right to privacy.

But when he was questioned, for example, by Senator Biden, does that apply to single people, I think there was a real ambiguity and there was a grave moment where it seemed as if he said yes. But then there was the break, and Judge Thomas came back and started talking about equal protection. That if there was a right for married persons there would be a right for single people on equal protection, not on right to privacy grounds, and that is so central in terms of whether we as individuals have these rights.

And, unfortunately, and I cannot underscore how unfortunate I think it is, I didn't hear what I hoped to hear. That Judge Thomas would allay some of these concerns that apply far more broadly than abortion, even more broadly than contraception, but to the very right to have a child, not to be sterilized, for all Americans in this country.

Senator BROWN. Let me just observe, because the time has run out, the question was what the source of this very serious charge was. The report that makes this very serious charge was written and published before the hearings that have been referred to, not afterwards.

Ms. GREENBERGER. That is right.

Senator BROWN. So it does not appear what was said in the hearings could be the source of—

Ms. GREENBERGER. I was responding, Senator Brown, to your question to me of whether there was something in the hearings that allayed the concerns that were in the report.

Senator BROWN. I guess my question throughout this has been the source of this very serious charge where he said that he would allow sterilization.

Ms. GREENBERGER. The source again—and it is a 75-page report, and there are a lot of footnotes and a lot of references in the report to the written record, but based on that record before the hearings. The sources included that White House Working Group, which he later disavowed in the hearings, the sources included his questioning of *Griswold* and the right to privacy is an invented right. The sources included his footnote questioning of the validity of *Roe v. Wade* from conservatives, of which he included himself as one. The source included some references in political statements and other places he had made with respect to abortion and right to privacy.

So, there are a number of sources that are cited that were the basis of our concerns when the report was written, and, as we discussed, those concerns were only heightened after the testimony.

Senator BROWN. Thank you.

Senator KENNEDY. Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. As I understand, Judge Thomas was as part of the working group and the report was a working group report. I think the record speaks for itself.

I have no further questions.

The CHAIRMAN. The Senator from South Carolina.