

So, to the extent that we reviewed them to see the extent to which he had spoken to any of the things we were concerned about, we did.

Ms. GREENBERGER. You know, Senator Simpson, it is a very good question. And there is a case that is pending now that Justice Thomas heard as a member of the panel that deals with equal protection and sex discrimination of the laws in the context of the FCC, and it tracks the very same kind of issue that was decided by the Supreme Court last term in the *Metro Broadcasting* case, whether or not it is constitutional to make affirmative efforts to ensure that radio stations have a diversity of ownership.

And the Supreme Court upheld the constitutionality of that policy with respect to minorities. The very same issue is pending in the D.C. Circuit now with respect to women-owned radio stations, and the media and press had, in fact, printed some excerpts of the oral argument and some of the questions that Judge Thomas asked.

It was a case that was argued in January 1991, the end of January. Unfortunately, we haven't seen an opinion. It is surprising because I did look and I know that there has been a lot of pride on the D.C. Court of Appeals for the short turnaround time between the time cases are argued and the time they are decided, and for the last 2 years they have been between 1 and 2, at most 3 months is an average time for a decision, and we have been waiting for this case for 8 months.

Justice Thomas asked some very disturbing questions during that oral argument. Perhaps he would have resolved those questions in a way that would allay our fears if that decision had come down. I am sorry in all this 8 months it hasn't come down.

And I might give you some flavor of the kind of question he asked that caused the concern. And very briefly, he wanted to know what are women's issues.

Senator KENNEDY. Can I just say I think the time of the Senator has expired. But I would hope that I would be the next questioner, and you can use the response on my time.

Ms. GREENBERGER. OK. Thank you.

Senator SIMPSON. I thank you, Mr. Chairman.

Senator KENNEDY. Do you want to—I would just at the outset want to join in welcoming this panel to the committee. I think Marcia Greenberger and Judith Lichtman have over a period of years been in the forefront of the fight for equal opportunity and equal rights from the really extremely important and critical time in the decision of the Supreme Court decision, and all of us, I certainly do, take your comments and your testimony very seriously and we thank you for the thoughtfulness—

Ms. GREENBERGER. Thank you.

Ms. LICHTMAN. Thank you, Senator.

Senator KENNEDY [continuing]. With which the presentation has been made.

Ms. King, we are delighted to have you, a distinguished scholar and thoughtful commentator on many of these same areas.

If you would just continue. As I understand, you are now quoting some of the questions raised by Judge Thomas when the circuit court was considering a particular case involving the FCC and the