

a special hard-earned sensitivity is there, providing a special dimension to America's highest tribunal.

Lastly, as a nurse, I am particularly aware of the importance of sensitivity and compassion. The people of our country face many problems where a special understanding and patience makes an enormous difference in whether or not we successfully meet our challenges. I know that Judge Thomas will bring that special sensitivity and compassion to the Supreme Court, and all of us will benefit from his service on the Supreme Court.

Thank you.

Senator KOHL. Thank you very much, Ms. Holmes.

Justice Black once observed, and I quote, "Under our constitutional system, courts stand against any old winds that blow as havens of refuge for those who might otherwise suffer because they are helpless or weak or outnumbered, or because they are non-conforming victims of prejudice and public excitement."

My question is: Was Justice Black right when he argued that this is an important role of the courts? Or was that just rhetoric?

Mr. KERN. Right; not rhetoric.

Senator KOHL. He is right. Anybody disagree with that? The very important role of the courts. Ms. Norton.

Ms. NORTON. The role of the courts is that of something beyond the electoral branches where each person goes into court on an equal footing. And through that function, it allows people to have a voice that they might not otherwise have.

Senator KOHL. I would like to ask you all, in light of that, why you think Judge Thomas will measure up in this respect. Is it because of his work as a policymaker, his work on the courts for the past 16 months? What is it about Judge Thomas substantively—what can you point to in his background and his work history that leads you to believe that he will live up to this part of his responsibility as a Supreme Court Justice?

Mr. THOMPSON. Senator, if I may respond to your question?

Senator KOHL. Yes, Mr. Thompson.

Mr. THOMPSON. My response will be based somewhat on my knowledge of Judge Thomas as a lawyer and as a friend, and that is that in every position that he has held—in the private sector, as the head of a large public agency for which he had to have public policy considerations, and on to the District of Columbia Court of Appeals—he has taken every position seriously. He has attempted to and has discharged the duties of those positions faithfully, and I see nothing in his background that would lead me to believe that he would do anything less on the U.S. Supreme Court.

Senator KOHL. Any other comment on that, Ms. Bracher?

Ms. BRACHER. I would just like to comment. My comments come from a review of his criminal law opinions, and I take comfort that all of Judge Thomas' opinions are firmly grounded in law. He does not rule on policy considerations. When you review his opinions, you will see that he construes the statutes as written. He is very mindful of the precedent of the court, very mindful that, especially in criminal law decisions, there needs to be a firm ground from which people can work.

Senator KOHL. That isn't what I—I was referring to what Justice Black had said, that the courts stand as a haven for those people

who might otherwise suffer as a result of majority views or momentary public hysteria—that the court has an emotional and sympathetic kind of a role to play. You didn't answer that. Maybe I didn't make myself clear.

Ms. BRACHER. I would say that the court is a haven for people when they have a judge who is going to rule on the law, when they have laws that they can determine what is required, when they have laws that are not ruled upon a judge's personal views or policy matters. That is a haven for people to know that a judge is going to fairly give them their day in court, is going to follow the law as it is written.

Ms. NORTON. In looking at his criminal decisions, it is clear he did not just reflexively rule in favor of the Government and, in fact, criticized Government activities or arguments that they had made in a few instances because he felt that they were not giving appropriate deference to the rights of the defendant.

Mr. KERN. I would answer your question this way, Senator: You don't live to be more than 60, as I have, without developing a certain feel for a person based on conversations and working together. And my feel based upon my knowledge of Clarence Thomas is that I would be willing to trust my life and liberty and property to decisions that he makes. And I am convinced on the basis of my conversations with him and dealings with him that he has an extraordinary compassion and extraordinary sensitivity, and he would be the right person to be on a court in the sense of being very sensitive to those in the minority by one reason or another.

Ms. HOLMES. Senator, as I spoke in my testimony, we feel that Judge Thomas does have a compassion and sensitivity, and he has shown that throughout the years. And he is going to bring to the Court not only the sensitivity and the compassion, but I have found him to be a very just and fair person. And I, too, would put my life in the hands of the Supreme Court with he being on the Supreme Court.

Senator KOHL. How do you all square some of the things you have said with his position as stated here numerous times as he testified before us, which was that when he was a policymaker—the things that he was and did, the expressions of his views, the opinions he held, the kinds of compassions that he expressed before he became a judge were things that he was trying to put behind him, because being a judge was an entirely different kind of profession, requiring different disciplines? He, in fact, asked us not to regard the things that he spoke of as necessarily descriptive of how he felt at this time, having become a judge and wanting to go on to the Supreme Court.

How do you square that, particularly with what you said, Mr. Thompson? You said you have known him and seen him in different positions throughout his career, and you could predict, based on all of these things you have seen in his career, what kind of a Supreme Court Justice he is going to be. He said disregard that.

Mr. THOMPSON. I would respond to your question this way. I think Judge Thomas' performance as the head of the Equal Employment Opportunity Commission—which is a political appointment, we all know—showed that he still—he has integrity. He is not a shill for anyone. He didn't even, in that position, which was a

political appointment, he did not have any hidden agenda; he tried to carry out the duties of that job consistent with the mandate of that agency. And when in fact he had personal and professional disagreements with the administration that appointed him, he voiced those disagreements. He was critical of the Reagan administration's stand with respect to Bob Jones University. This is a man with integrity. This is a man who takes his job seriously, and he has done so at every job he has had, and he is certainly going to do so as a justice on the United States Supreme Court.

Senator KOHL. All right.

Ms. BRACHER. I just want to say I think that—I don't want to put words into Judge Thomas' mouth—but I think one's views as an advocate or as an educator or as a policymaker are very different from when one puts on the robes and joins the judicial branch. And I think Judge Thomas was trying to explain his recognition of the way you approach the law when you are judging the law as opposed to being an advocate or as opposed to being an educator or a policymaker within the executive branch.

Mr. KERN. I would just add that Judge Thomas has been on the bench for more than one year. Every opinion that he has made has been reduced to writing and published. In effect he has put his way of thinking and his views on the record day in and day out in the work as an appellate judge. And I have read some of those opinions, and I think they reflect a measured view, a fair statement of the contentions on both sides, a concise statement of what the issues are, a statement of the relevant facts and a persuasive conclusion. So you are not buying someone who has never done any kind of judicial work but in fact has been a judge and has articulated his decisions with an explanation, plus the fact that I think you realize that a judge doesn't have very much except his own integrity. Until you all raised salaries, there certainly weren't much material benefits out of serving on the court. And I think that when you are doing appellate judging, you've got to put your views on the line in public every time you make a decision, and nothing is more important than to be fair. You can't shade; you can't leave out a couple of facts in order to reach the conclusion that you want because the parties of both sides know those major facts. So you are called upon to tell it like it is within the framework of what are the precise contentions.

There is a lot of difference between being a lawyer before you go on the bench or being an administrator of a judicial education project and expressing viewpoints off the top of your head and making a decision on a precise question of law with contentions from both sides, and both sides looking at what you decide and how you decide it.

Senator KOHL. Thank you.

Senator THURMOND.

Senator THURMOND. Thank you very much, Mr. Chairman.

I want to take this opportunity to welcome this panel here today. I think each of you have brought out points that are very important. You know Judge Thomas, and you know of his activities, and you have firm convictions as to whether he'd make a Supreme Court Justice.