

Do you draw from the range of different comments on a wide variety of different economic issues that Judge Thomas would not provide the kinds of protections for working men and women that you think should be at least evidenced by a nominee to the highest court of the land?

Mr. KIRKLAND. His record, as we have found it on the record over a significant period of time and up until very recently, has been one of consistent expressed and strongly expressed hostility to the pattern of laws and social and economic programs that have been developed in this country through experience and after considerable sacrifice, and after disasters have occurred and proven their necessity. His record in that regard has been consistent, and I have no reason to believe that they do not represent his deeply-held views.

I cannot believe that they were simply opportunistic expressions designed for a particular audience.

Senator KENNEDY. So you think that his expressions about entitlements, for example, his opposition to the economic interests of working men and women, and his expressions about, as you point out, hostility in terms of a wide range of different legislative initiatives to try and provide some degree of economic justice, you think that the correct interpretation of those statutes—not so much with regard to this particular question about the constitutionality of them—most of them obviously have been upheld from the constitutional point of view—but there are going to be many statutes that affect working men and women that are going to be interpreted by the court over the period of the next 10 or 15 years, and it is difficult for me to read the past statements that he has made in terms of the economic rights that would protect working men and women and not feel that his construction of those particular statutes that are passed to protect the economic interests of working men and women would not be threatened.

I have no further questions. I thank the chair.

Senator KOHL. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Kirkland, one of the questioning areas that I pursued with Judge Thomas involved a bitterly contested dispute with a labor union in New York City, Local 28 trade union. It was a case which arose back in 1964 when the New York Human Relations Commission complained about discriminatory practices in hiring with the union. They went through a series of court tests with the district court, finding the union discriminating and then in contempt and being upheld by the court of appeals, and more contempt citations, and finally more than 20 years later, getting to the U.S. Supreme Court. The EEOC during the period of chairmanship of Judge Thomas came in on behalf of the union in that case, and the record is not clear whether that was the solicitor's view or whether it was the view of the commission. But EEOC came in on behalf of the union, contending that there ought not to be a remedy which would correct discrimination other than against the specific individuals who were discriminated against, and it should not be directed to put the class in a position that it would have been but for historical discrimination.

I don't want to get involved in too many hyper-technicalities, and I don't—

Mr. KIRKLAND. I understand the principle that you are addressing, Senator Specter.

Senator SPECTER. Excuse me?

Mr. KIRKLAND. I understand the principle that you are talking about and the issue.

Senator SPECTER. I would be interested in your view as to whether Judge Thomas was right or wrong in that case when he sided with Local 28 of the building trades union in New York.

Mr. KIRKLAND. In my view, he was wrong, sir. And this goes to a very basic proposition. I think the AFL-CIO can fairly claim a considerable share of the authorship of title VII of the Civil Rights Act. In fact, in 1963, I have a rather vivid memory of going to the White House. I was then assistant to George Meany, and he was out of the country, and he called from abroad and said he had had a call and that I should go over, together with our legislative director, who at that time was Andrew Behmiller.

The civil rights law was in the process of being drafted, and it was before it was passed by the Congress. President Kennedy at that time was concerned that the balance in the Congress was so narrow that to incorporate title VII in it at that stage might have doomed the legislation.

The AFL-CIO, the trade union movement, supported Title VII very strongly. We worked very closely with the NAACP, and I recall with Clarence Mitchell particularly, in drafting it and in putting it together, and we insisted on its inclusion, over some considerable countervailing pressures. It was subsequently enacted—because of the change in climate, I think it was problematical whether it could have passed in 1963—it was enacted, and the emotions of the time following the assassination of President Kennedy I think was a major component of it. But that was the key guts part of that Civil Rights Act, and it was the insistence of the AFL-CIO and of its leadership at that time that that provision should apply with equal force to both trade unions and to employers; that trade unions actually needed the support of that legislation, being democratic bodies, to help them take the right position in support of comprehensive efforts to eliminate employment discrimination.

That is our history. It is an established fact. And that is our position today.

Now, this debate as to whether that act as tendered was only to apply to ex post factor acts of discrimination against particular individuals, or whether it contemplates and supports and calls for more comprehensive acts both to assure against continued discrimination in the future or to remedy past discrimination, is a very central issue, and it applies not only to the Civil Rights Act and to employment discrimination but against one's vision of society and one's attitude toward the role of Government and of efforts to cure basic lingering social problems generally.

There are many, many people in this world who are very kind and forthcoming and compassionate about the problems of individuals, particular individuals, but who take a wholly different view when the subject is measured to address the problems of masses of

individuals or individuals as a class where they may be totally resistant and in opposition to that.

It is our strong view that these wholesale problems must be addressed in a wholesale way and not in a retail way, one by one. If it is done one by one, singly, after proven particularized cases of abuse have happened, and the remedy addresses only that case, no social problem will ever be competently addressed. And that applies to a whole range of issues, including all relations between the labor and management and the contest or the frequent tension between what is called property rights and individual workers' rights and human rights.

I don't know if I have answered it satisfactorily, sir, but that is my very strong view on it.

Senator SPECTER. I think you have answered it eloquently, Mr. Kirkland. I take it you are not only against Judge Thomas but against Local 28 in that particular circumstance.

Let me wrap up with one question which has quite a number of components—

Mr. KIRKLAND. And I trust that our learned counsel did not appear as a part in that case.

Mr. GOLD. No.

Senator SPECTER. Let me ask you one other question—and I can only ask the question and then leave, Mr. Kirkland, because we have about 4 minutes left in this 15-minute rollcall vote, but I will study your answer with care in the transcript.

You have been very emphatic in your statement that you oppose Judge Thomas and the efforts to put "nine persons who have the virtual power by interpretation to rewrite the Constitution for our times, the unchallenged preserve of a narrow and privileged segment of American opinion". My question to you—and this is more than one, but as I said, I'm going to have to wrap it up because we have to go vote—is how important is it in your view to have an African-American on the court? Others have testified, African-Americans have, that they prefer to have someone not African-American advancing their values as opposed to having someone who is African-American. But how important is it to have an African-American in your opinion on the court in the context of whether a replacement will do better than carry on the ideas which you disagree with as an appointee of this President?

Mr. KIRKLAND. Senator, I would be delighted if the Supreme Court were broadly representative of the entire spectrum of American society. I think it is rather outrageous that over so many years, there has been no representative of the black community on the Supreme Court, and then only one; and then that he should be replaced by a person whose views are so diametrically opposed, I believe, to the measures that have been designed in this country to address the problems of the afflicted and the underprivileged, and who has elected to align himself with the forces of privilege and of power in this country.

I believe that consideration overrides the question of ethnic representation. I would be delighted and I would support a Court made up of five, six, seven, eight or nine black Americans drawn from what is now a considerable body of distinguished jurists who are black and who represent within their views the spectrum of

opinion in society and who embody the possibility that those views, affecting everyone, of every race, creed, color and previous condition of servitude, are adequately and thoroughly debated.

Now, I firmly believe that the forces on that court whose decisions on issue after issue, and in controversy after controversy, are absolutely predictable and are becoming more predictable, I am quite confident, regrettably, that if Judge Thomas is appointed to that Supreme Court that he will join that group whose anticipated positions on these issues will be highly predictable. And I do not think that is good for the country or for the court.

Senator SPECTER. Thank you, Mr. Kirkland.

Thank you, Mr. Chairman.

Senator Heflin [presiding]. I have taken over as presiding officer due to the fact that there is a vote on the floor of the Senate and others have gone. I went and voted early and got back.

As I understand it, there are a group of Congressmen who are here that Chairman Biden wants to accommodate because they have duties in the House of Representatives. But he wants to be here when they start, and he should be back momentarily, in the next minute or 2, but since I have been requested to do it, I will declare about a 3- to 4-minute recess at this time, and we'll resume very shortly and proceed with the congressional group from the House of Representatives.

Thank you, Mr. Kirkland, for your testimony.

Mr. KIRKLAND. Thank you, Mr. Chairman.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Senator HEFLIN. Mr. Chairman, Attorney General Jimmy Evans, Attorney General of Alabama, was scheduled to be a witness, but was unable to be here, and I ask that his remarks be placed in the record.

The CHAIRMAN. Without objection, they will be placed in the record.

[The prepared statement of Mr. Evans follows:]