

is my instinct and inclination—and I have been working with my staff on this—to hold a series of hearings on the process to determine whether or not new ground rules have to be set for a process, and debate it in this committee and with the leading intellectuals of this country who are for and against the way it runs now, but it frustrates me.

Ms. SMEAL. It totally frustrates me. I mean, that is why I decided to move to the process because those of us who are participating in it and, in fact, are being questioned, as well as you, as the Senators—how can we be more effective—basically, there is a hopelessness now that is setting into the opposition mainly because there don't seem to be any game rules.

And, basically, I don't know who established these game rules on philosophy, but even on that it falls so shallow and so flat. But then there is the bottom line that our opposition on certain key issues has said they are going to stack the Court and now are proceeding to stack the Court. We cannot act in a vacuum. That is why I decided to bring in this magazine. We are not in a vacuum; we are all living right now, and we know that is the opposition's tactic.

I think that you Senators who are opposed to having the Court stacked must use every power that you were given, including the power to filibuster an appointment. You don't need to take what the president gives you on blind faith. I don't see why anybody would have to do that.

You were given a power of confirmation. We beg you to use that power with all of its might to protect our rights.

The CHAIRMAN. I apologize to my colleagues. I have run over my time. Again, I thank you for the precision of your statement and for raising an issue that is perplexing, I think, everyone for and against and undecided. But I yield to my colleague from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

I want to welcome these distinguished ladies here today. I am glad to see Ms. Yard again. I hope your health is better. We have been concerned about you. I have no questions. I appreciate your presence.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Thank you very much.

I too want to join in welcoming the panel and to welcome back Molly Yard, who has had a difficult struggle fighting and continues the battle. We welcome your continued fight and courage.

In the testimony of Judge Thomas on the issue about women's rights, he indicated to a question that he had no quarrel with the heightened scrutiny test and indicated that he might even apply a more rigorous test. Why doesn't that give you some assurances that he would be more sensitive to the range of different issues involving gender?

Ms. NEUBORNE. Well, one of my thoughts, Senator, is that while he may use those words, in his actions and in his other discussions about women's rights he has not shown that he acknowledges the need for a heightened scrutiny test. In his treatment of women, for instance, in his discussion of the *Santa Clara* case where there were 258 male road workers and one female applied, he saw abso-

lutely no reason why she should be given even the most marginal voluntary preference by an employer in that situation. That to me says that he does not understand the need to move forward on women's equality, to have heightened scrutiny.

I think when we look back at what he did on the fetal protection policy that the EEOC basically sat on for several years while women were not able to get jobs in companies because the companies were excluding them because of the possibility of some injury to the fetus; again there he didn't move forward quickly. He sat on that policy for many years, and then came out with a very weak policy favoring women.

I don't believe that he truly understands the need for heightened scrutiny. He may say it, but when it comes to his making a decision that would resolve the issue against the Government and in favor of the women's right, I am not convinced that he will act that way.

Senator KENNEDY. Are you concerned about his quoting of Sowell about stereotyping women in terms of employment?

Ms. NEUBORNE. I think that was the most devastating, when he stated that he thought that women—he was very comfortable with Sowell's statement that women were not achieving—or not in particular jobs because they chose to remain at home, that they chose not to take the more difficult jobs. And then he again wanted to sort of wave that statement away and said he really was just addressing the issue of statistics and that we mustn't always count on statistics.

We must look at statistics because the numbers of women that have achieved in the workplace and the difficulty of women and minorities to move forward are still vital issues for us, and the numbers are very low. And it cannot be just on an individual basis that we would identify discrimination.

Senator KENNEDY. Is this one of the central concerns of women, that the stereotype is very alive and real out there in the job market?

Ms. WOODS. I was in my opening remarks talking about the one-by-one-by-one approach, and then citing the specific example in St. Louis at the EEOC office. We heard statistics back and forth, and everyone is going to cite them. But the fact is that most women are not in a position to seek individual redress, and you don't hear about it. But the overall impact is to depress their earnings, to make it less possible for them to support their families at a time when—what is it?—two-thirds of the new hires in the next decade are going to be women and minorities, and we are sitting around, instead of trying to get the final redress for women to make it possible for them to support their families. We are trying to find the excuse why we can justify casting a vote for a man whose record has been in the opposite direction.

That is why I think you hear this theme. We didn't consult on this at all about concern for the advice-and-consent process and our skepticism about it, because listening out there you can't believe this is happening.

Senator KENNEDY. Let me just ask a final question of Anne Bryant on title IX and the *New Haven* case, the application in terms of employment for women. What is your own sense about

how if Judge Thomas had been on the Supreme Court he might have ruled in that extremely important case involving employment for women?

Ms. BRYANT. The record of Judge Thomas at the Department of Education is one that I have in my written testimony in greater detail. But the case that you are referring to, the *North Haven Board of Education v. Bell*, was a very important case, coming after a series of events that I think are important. One is, Judge Thomas comes to the Department of Education and announces, when he is at the Office of Civil Rights, that he in fact has it in his future plans to undermine the enforcement of title IX regulations.

He comes in after the *Weil* case has been decided, and in fact that case and a court order has determined that certain time lines and policies need to be monitored, and he in fact does not—he basically goes against that court order and does not enforce the Title IV regulations.

So what the *North Haven Board of Education* case confirms again is that within title IX, as it was intended from 1975 on, it should, in fact, also include job discrimination and job protection for employees in schools and colleges, not just title IX regulations for students.

I think the connection that I worry about is the whole issue that I was talking about in terms of equal opportunity in education and employment.

Your prior question I think is important. The Department of Labor under Secretary Martin has come out with this major "glass ceiling" study. The fact is stereotyping is alive and well. Women are not moving up in the work force into jobs where there is a greater wage than minimum wage. And I think the Department of Education study, Cliff Adelman's study on "Thirtysomething," where he studies masses of women in the class of 1971—the fact is that we have a discriminatory workplace, and we need these laws to protect women.

Senator KENNEDY [presiding]. Thank you.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Welcome to the committee. Ms. Yard, I do indeed wish you well and healing. You and I have had a couple of good rounds together in the past, both here and in private—spirited would be the word, I guess—and then once in the hall, too. I don't agree with you on many things, but I want to tell you I deeply admire your courage, and I told you that before. That is not some obsequious statement or fawning statement. I really do. It does take one to know one. You are a very courageous lady, and you have passion, true passion, for your causes. I wish that more people had passion for their causes. Maybe some of the Justices, if they showed that passion, they would never get by this committee, though. That is the problem—for them. And so we have to have the passion from the citizens, and you certainly are one of those.

You make that passionate defense of a woman's right to abortion, and I have said before to you I fully agree with that position on reproductive choice. And I grilled him pretty extensively on that in private when he was making his visits. I asked him, you know, I said I feel very strongly on this issue. And he answered

much as he did here. There was nothing different he said in private than what he said here publicly.

And he knows, like all of them know, whatever decision he would make in public he would get torn to pieces. I mean, that is the way it works. If he sat on one side, the other side would tear him to shreds! If he goes one way, the other side tears him to shreds. Suddenly this procedure, which I earnestly say to you is very fair and very expansive—and that is the way the chairman does his work. Chairman Biden is fair. And this is rather tedious, protracted, prolix. We help make it so. That is part of our lives. It is a long procedure. It is not news of the hour procedure or news of every half-hour procedure, and that is what I think some seek in it. They are over—they expect something that cannot be in a procedure like this.

So it works, and I think it is good that we do have some hearings on the system and what it is, and maybe we can make it better. But we can't make it better by limiting people from both sides, who feel very, very strongly on both sides.

I have been asked—I come from Wyoming, and I get my lumps on the reproductive rights issue. But I get another one. They say, Why don't you ask him about something that really is important to us, and that is ask him about how he is on the 2d amendment and gun control. Because if he is not right on that, Simpson, junk him. Get him. We are counting on you to do that.

Well, I am not going to do that. I have asked him about that, and he said, you know, he wasn't going to get into anything of high controversy. No Justice ever has, and especially Justice Thurgood Marshall when he avoided all questions with regard to the *Miranda* decision when he was seeking confirmation. He never responded to the passion of Irwin, to the passion of Eastland who wanted to nail Thurgood Marshall and find out what he was going to do with that decision, *Miranda*, which so irritated them and they wanted to do something through him. He responded just as Clarence Thomas has responded to us.

Let me just ask one question. I appreciate your forbearance, Mr. Chairman.

I think it was Anne Bryant—and my wife is very active in AAUW for many years in a chapter in Wyoming, and I know what work you do. It is very special. But you spoke of the characterization of the testimony of those in opposition as being very detailed and specific. It wasn't the same hearing I have been at all these days. You say the testimony in support of him was just mainly stories about his personal life from his childhood and so on.

I respectfully say that that isn't so. Some of the law professors who testified against the nomination had not even read his opinions. One lady last night, a lady lawyer, had not read his criminal decisions and was speaking about how terrible they were. And I said every one of his criminal decisions was concurred in by Judge Ginsburg, by Pat Wald, and by Abner Mikva, so please let's have honest remarks. If you don't like him, that is a different matter. I can understand that.

But all of the highly qualified witnesses that studied his record spoke authoritatively of his skill. The American Bar Association said that to give him this rating he had to have "outstanding legal

ability and wide experience and meet the highest standards of integrity, judicial temperament, and professional competence." That is the ABA. A thousand lawyers were polled to give that decision.

It just seems to me that it is, I think, not correct when we have been here all these days and found that these things are just not so. I guess that is what makes the hearing vexing.

Well, I haven't asked any questions. I have done that again.

Ms. BRYANT. Senator Simpson, let me just respond to that.

Senator SIMPSON. Yes, please.

Ms. BRYANT. I can speak for my colleagues here and for those that I have worked with as they prepared their testimony in opposition to Judge Thomas. And I will tell you that the kinds of case analysis, his speeches, his writings have been in great detail. So we may disagree on the nature of everyone's testimony, but I was talking about the highlights and simply referring to the comments that were made to the panel before us about what a wonderful person he was. And I think he probably is. But I am talking about his record as a jurist, his record in EEOC, and the Office of Civil Rights, which is what I focused on.

So we may have a disagreement about all of the different people who came before you, but I think the homework has been done, at least by my colleagues here.

Senator SIMPSON. Well, I do appreciate that, and I think the homework has been done by those of us here, too, respectfully. And I think if you can read the decisions about the accusations about the EEOC, hear what he did for women in the *Meritor Savings Bank* case, hear what he did for them with regard to the U.S. Navy and the woman with the sex discrimination case—these things were done by Judge Clarence Thomas, not by some surrogate. And it seems to me that it is so easy to overlook those things, and my purpose is to try to address them.

The *Adams v. Bell* litigation was clearly defined by the man that was his predecessor. He said there was amassed a tremendous backlog of complaints and that Clarence Thomas was the one who just happened to move into the cross hairs at the time that the trigger was pulled.

Now, Singleton wrote about that. That is in the record. I would just say for everything that you can present to us, almost without exception today, everything has been covered and responded to.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you.

First, I want to join everyone else in welcoming Molly Yard. They didn't take any fire out of you in the hospital. One great advantage of having been there is that even Alan Simpson is good to you now. [Laughter.]

Senator SIMPSON. She kind of got to me.

Senator SIMON. Harriet Woods started off by saying advice and consent is more than a prerogative, it is a protection for the people. If I may modify that excellent statement, by saying it is more than a prerogative, it should be a protection for the people. Whether it is a protection for the people depends on what we do.

If I may differ just slightly—and I am not sure I am differing with the Chairman—in terms of philosophy, that has always been