

the case. That is not 14th amendment law, in many ways, but for title VII it is.

When we criticize *Griggs*, at the time Thomas criticized *Griggs*, that was the law, so he indeed criticized and did not support the law as it existed at the time and that is the point we were making in our testimony.

Senator SIMPSON. Mr. Chairman, I just had one other question, if I might ask it.

The CHAIRMAN. Go ahead.

Senator SIMPSON. I would ask Ms. Axford, your organization criticized Judge Thomas for having only 17 months experience on the U.S. Court of Appeals for the District of Columbia. Have you, or have you, Ms. Aiyetoro, have you read his decisions while on the circuit court that he serves on?

Ms. AIYETORO. Yes, I have read some of them. I am not sure if I have read every single one of them. I have read a summary of every one. I have read some of them page to page.

Senator SIMPSON. Have you read the criminal decisions that he has given?

Ms. AIYETORO. I have read some of them. I have read summaries of all of them.

Senator SIMPSON. Are you aware that in the criminal decisions, and other on the panel have spoken to those, that there is not a single dissent in those criminal decisions, and Judge Ginsburg, Judge Pat Wald, and Judge Abner Mikva all unanimously supported Judge Thomas' opinions in that arena? Are you aware of that?

Ms. AIYETORO. That is not my understanding. In some of the—

Senator SIMPSON. It is the truth. It is not just an understanding. On the criminal cases, that is the way it is, so I think it is important—

Ms. AXFORD. Senator Simpson, before you—

Senator SIMPSON. Yes?

Ms. AXFORD. I have read the decisions and I am curious about what the relevance of that is to his performance and the questions before you today.

Senator SIMPSON. Well, I do not have time to ask those questions. I believe it was Mr. Schulder who said something about the criminal—one of you in your testimony spoke of the criminal cases and how they were not appropriate or they were not sensitive enough, and so and so. I am saying it must be so, that Judge Ginsburg and Judge Wald and Judge Mikva are not sensitive, either, because they supported totally his position. That I guess is what I am saying.

Ms. AXFORD. I don't know where you are getting the characterization.

Senator SIMPSON. You don't have to worry. Let me ask you a question. Then you can have rebuttal, if you wish. I will stick around all night.

You criticize Judge Thomas for a lack of experience, and yet he has had 17 months of experience on the U.S. Circuit Court of Appeals for the District of Columbia. I believe that is your statement.

Ms. AXFORD. Well, that is not totally correct. Not lack of experience, but inadequate experience, considering the position for which he is being considered.

Senator SIMPSON. OK. And can you tell me how much experience Earl Warren spent on the bench before being appointed Chief Justice?

Ms. AXFORD. No.

Senator SIMPSON. None. How much time did Justice William O. Douglas spend on the bench before being appointed to the Supreme Court?

Ms. AXFORD. I don't know.

Senator SIMPSON. None. How much time did the great liberal Justice Hugo Black spend on the bench before attaining the Supreme Court?

Ms. AXFORD. I don't know.

Senator SIMPSON. None. How about Felix Frankfurter? None. Justice Louis Brandeis, none, who first wrote about privacy rights, that I believe in just as strongly as I think Judge Thomas does.

I really find it hard to believe that your organization would have opposed those remarkable people. I really take it then, and I have the sense, especially hearing your testimony personally, that your opposition based on this issue of judicial experience is directed only at conservatives, and when it comes to liberals prior experience really is quite irrelevant. That is a—if that is true. Is that true?

Ms. AXFORD. No. In fact, I think you are making quite a leap of reasoning in order to make that conclusion. I am also concerned about you singling out one of the factors that we have mentioned; that is, what we consider to be not enough experience on the court, and comparing it with some of the fine jurists, conservative or liberal.

I appreciate your opportunity for me to be able to give you rebuttal on those issues, and I think that when you take a look at the general experience of all of those jurists, and you take a look at Judge Thomas' experience as it pertains to employment law, and my focus is truly in the area of employment law, we are deeply, deeply troubled by what he has said about employment law, about the impact on employment law.

And I would like to stay this evening and debate employment law, privacy issues, disability matters, seniority systems, limitation of damage awards, arbitration clauses, job performance issues, workplace restrictions—many, many issues related and the Supreme Court decisions as it relate to it. But, in deference to the others here, I don't think you and I will be able to do that.

Senator SIMPSON. Oh, but it would be fun if we could do that.

Well, I appreciate that. Those are serious issues to you and you speak with power when you speak of them. And, unfortunately, or fortunately, depending on your point of view, that is what everybody does here. So, if everybody just got the answer out of him or her, whoever would be before us, as to only the things that they were just terribly gut-hard interested in, we would never get anything done in here. Absolutely nothing, especially on the issue of abortion. The Miranda rights.

Go look at Thurgood Marshall and how beautifully he blunted Senator Eastland, how beautifully he blunted Senator Erwin as they kept asking, "What are you going to do with Miranda when you get on the Court?" And he said, "I will not answer that question." Nor should this man answer this question.

Those are areas of controversy, discord. There is no reason for him to answer it, and he won't answer it. And neither did Judge Thurgood Marshall answer it in a question that was just exactly as controversial.

Ms. AXFORD. Senator, how do you perceive the role of this committee vis-a-vis the advice-and-consent function? And how far do you think you can go to ask a candidate to answer a question?

For instance, I am a litigator also, and when there is a witness on the stand or, I imagine, in Judge Thomas' courtroom, how far would someone get if a witness doesn't answer the question?

Senator SIMPSON. Let me share with you, Ms. Axford, that no one even asked anybody anything for 100 years in this Senate. Nothing was asked of these nominees, not one single thing. In fact, one of them sat outside the door and tapped, like it was a secret session, and finally he said, "Do you want to see me or not?" and they said, "No, we don't." One of them was asked eight questions.

We have done this because I guess the people must like it. We respond to the people. We are representatives of the people. But let's understand what this process is.

Ms. AXFORD. But this process when Rutledge was being considered there were 5 months of debates in the press, and certainly the Pony Express may have had to have brought record of those, or the telegraph or whatever the technology was. But thank the Lord, we are making progress. There are Americans, millions across the Nation, who are watching this legal process with the same interest as they watch as "LA Law." And this is an important function to the legal system.

Senator SIMPSON. I would respectfully say that that is the way we lawyers look at the world, but it is not really the way the American public looks at the world because our job is one singular thing: To find out the character, the integrity, the honesty, the quality of this man. That is what our job is to find out. Not his philosophy.

In fact, under the American Bar Association rulings of qualified and well-qualified and all the rest, that is all we are seeking, and that is our job to seek too. That same thing.

The CHAIRMAN. Ms. Axford, I think he has answered your question. I think he is dead wrong, but he has answered your question. [Laughter.]

And so, rather than litigate this thing—

Senator SIMPSON. Well, we find some lapse of judgment in our chairman.

Ms. AXFORD. May I respond to one thing that he said, so that there is not a misunderstanding in my position on the record as the position of my organization?

The CHAIRMAN. Surely. You are just going to encourage the man now.

Senator SIMPSON. No, I won't. I won't. I won't. I promise. I have been very good. I think I have.

The CHAIRMAN. You have. You have. You have.

Senator SIMPSON. Thank you.

Ms. AXFORD. If you hear me as saying this is a matter of philosophy, I need to clarify. I don't think it is a matter of philosophy. It is a matter of concern about credibility. It is a matter of inconsist-