

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-

ency. And, in the courtroom when there is an inconsistency, and when there are witnesses that come up behind a chief witness and there is such inconsistency, and I think he said this, and someone else thinks he said that, then it is time to find out really what is thought.

And the philosophies of the jurists are going to be different, and I think that people on either side of the issue have to gain by clarity. I am concerned about the potential of executive branch influence preventing the purity, the truth, and the clarity of this man's thinking.

The CHAIRMAN. Thank you very much. I would point out for the record that the reason we didn't use to ask questions is they use to just summarily vote against nominees based on their philosophy. I am one who thinks philosophy always has been taken into account. The more the President takes it into account, the more the Senate historically has taken it into account. When he doesn't, the Senate doesn't. When he does, the Senate does.

And I might point out just for the record—I can help the Senator—Earl Warren, he asked about Earl Warren, was Governor of the State of California for 10 years. He was a Vice Presidential nominee in the Republican Party. He was a district attorney, and he had a distinguished legal career.

Justice Felix Frankfurter was assistant attorney for New York.

Senator SIMPSON. Well, Mr. Chairman, I really don't need that rehabilitation. I was talking about the issue of judicial experience. I know what those men did. I will take judicial notice of that.

The CHAIRMAN. Right.

Senator SIMPSON. I don't know what is appropriate about that. I was responding to the issue of judicial experience, and that is only what I was responding to.

The CHAIRMAN. I misunderstood you. Because the men you named, with the exception of Warren, were the most distinguished lawyers in America at the time they were nominated. The most distinguished lawyers in America by everyone's account.

Senator SIMPSON. Let the record show that I would concur with that, and let the record also show that none of them had one whit of legal judicial experience.

The CHAIRMAN. Now, having said all that, let me yield to—no, I am not going to yield to you—

Senator SIMON. I thought you were going to skip Senator Specter.

The CHAIRMAN. No, I wasn't going to skip him. You are looking out for him, and I appreciate that. I was looking to see if Senator Kohl had come in. He has not. I yield to my friend from Pennsylvania. The hour is getting late, and the Senator from Wyoming and I probably—we are good friends, and this isn't getting us anywhere.

Senator SPECTER. Ms. Axford, I agree with you that there are many people, I don't know if there are millions, who are watching this hearing at this moment. But had any chosen to watch you and Senator Simpson, it would have been better than "LA Law" for that last exchange. [Laughter.]

And, by the time we get to midnight, which is not too far away, this hearing could even become livelier.