

as a Justice, but it appears that he is leaning—in all but one he supports the Government, and that is our concern.

Senator SPECTER. Well, by supporting the Government's position that doesn't necessarily mean he is wrong. If it is *United States v. Rogers*, which you cite, I don't conclude that he was wrong there.

Beyond supporting the Government's position, are you contending that he was wrong in doing so?

Ms. AIYETORO. We think, Senator Specter, that because of the fact that the criminal arena now, the criminal justice arena now is disproportionately dealing with people of color that it is important that procedural due process rights of the defendants get supported to the *n*th degree, to make sure that we are not convicting people who are not guilty and sending people to prison who are.

It seems to me, not that I disagree with this specific opinion, but the point that we were attempting to make is that even though Judge Thomas may have said, and he has said in several of the criminal defense opinions that he has authored, that indeed it was a problem, indeed the Government was wrong. But he finds harmless error.

And it is our opinion that we have to go further. We can't just say harmless error when you are looking a national prison statistic that almost 50 percent of the people that are incarcerated in this country are black and more than 50 percent are people of color.

And that is not to say that we think that he should go the other way and never uphold the Government, but that we feel that there has to be—that the harmless error issue becomes more and more problematic when you are looking at the kind of criminal justice system we have now. So that is our position.

The other point that I believe you asked me was whether or not—how I would view his intellectual capability, and you named other persons who had said that he was intellectually qualified. Our opposition to him is not based on whether or not he has the intellectual capability to be a judge. Not many people go and graduate from Yale who don't have the intellectual capacity to qualify to be a judge. We are not taking the position that he is unqualified because of that.

We are opposing him because of his record; because of his record in all of his public office that appears to undermine the right of people of color, women, and the disenfranchised. We take that position.

We take the position also, as I said in my oral testimony, that his testimony and his record also indicate someone that is not really 100 percent aboveboard in many ways, and we've given examples of that. For those reasons, we oppose him. Not because he is not smart enough. Not because he didn't go to law school. Not because of anything else, even though we think that he doesn't have the kind of stellar background that many other justices have.

Senator SPECTER. One final brief question, if I may, Mr. Chairman.

The CHAIRMAN. Yes.

Senator SPECTER. Reverend Taylor, you said in your statement that Judge Thomas has not, in his years of public service, conducted himself as one who can think clearly for himself. Did you see

his testimony or any part of his testimony during his 4 days before this committee?

Reverend TAYLOR. Yes.

Senator SPECTER. And after seeing that, you think he cannot think clearly for himself?

Reverend TAYLOR. Well, his past issue has been to mimic the administration points of view, and I think he was doing that in the hearing by evading questions that were put before him.

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

The CHAIRMAN. Thank you. I wish all the witnesses would stop inflating the Senator from Pennsylvania's ego by suggesting that you have to be smart to have graduated from Yale Law School. The last panel said something complimentary about him. From now on, the Chair rules, no more complimentary comments about the Senator from Pennsylvania.

Senator SPECTER. Yale has done very well at these hearings.

The CHAIRMAN. In a sense that it's been present, it has. Now with that, I thank the panel very, very much.

Mr. SCHULDER. Mr. Chairman, before we leave, could I enter into the record the statement of two older persons, Ray Albano and Georgiana Jungels, who came here—one from Seattle, one from Buffalo—to give testimony on ADEA treatment of their work and were unable to testify? They've asked me to ask you to submit it for the record.

The CHAIRMAN. Without objection, it will be submitted for the record.

Mr. SCHULDER. Thank you.

[The statements of Mr. Albano and Ms. Jungels follow:]