

nated against, it is not only for justice for them, but it has very broad societal benefit. It goes beyond the discriminated class. It goes beyond African-Americans. It helps society as a whole. But when you help African-Americans who are discriminated against and bring them into a part of the share of the American livelihood, and women, it helps us all. It tackles basic problems in the core society. And too many people think of us against them. And when you help the minorities, it is more than justice for them; it is a benefit for all of us, what we are looking for.

Thank you very much.

Senator KENNEDY. Thank you very much.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

I welcome this panel. I see Drew Days, and I remember some very delightful visits with him when I was a freshman U.S. Senator. This is a very impressive man, and he was very helpful to me in my beginnings here. And I think he served with real distinction. It is nice to see you again.

Mr. DAYS. Thank you, Senator.

Senator SIMPSON. The other gentlemen, I know of your reputations and your interest, and you present things very crisply for us. It is our job to do this advise and consent, and I know that you have certainly been in the forefront of these things and these kinds of hearings in the past.

It is for us to do this process, and all of you have testified as to the fact that he has this extraordinary early life experience, and yet it doesn't seem to have done what should be done, or at least given a result that you would like to see with regard to his writings and his commentaries and so on; that he has simply been a good soldier in the Reagan-Bush administration, has not been too forthcoming, has done little to help out those on the fringes of society; and, of course, trying, as so many have, to put the test to him on, you know, what would you decide with *Roe v. Wade*, what would you do and go back and look at his commentaries on *Brown* and many other cases.

You all speak eloquently in support of affirmative action, and you state your clear views on title VIII, and you talk about the issue of economics versus these other things that are more personal. But one of the witnesses yesterday spoke of a study of what characteristics a good Justice would have in common with some of our fine Justices in the past, and the word "character" continued to be used a great deal. Character. Strength of character, if you will, the most common attribute of our best Justices. And those that perhaps came through the crucible of a life described as we know it now of Justice Thomas, might be one who would have the firmest and strongest character.

Do you agree with that statement about character alone, not about cases and the things to come and philosophies, but just plain old character?

Mr. DAYS. Senator, I think character is very important, but I am at a loss as to how to accurately and predictably measure character or the impact that character will have on the decisions and functioning of the Supreme Court Justice.

What I have to rely upon is what a person has done and what a person has said, and I might have some hopes harbored deep down in me that that person will grow, that person may change, that person may broaden his or her outlook, but that is pure speculation on my part and I do not know whether that is a satisfactory basis for making the decision to confirm somebody to the Supreme Court.

Mr. EDLEY. Senator, I would put it more strongly than Professor Days. I think that good character and integrity are necessary, but not sufficient. The good character will not predict whether or not a Justice appointed in 1885 will work to usher in the *Lochner* era, will vote in the majority in *Plessy v. Ferguson*. Character alone will not be a good predictor of the constitutional vision that that Justice brings to the Court.

So, while I certainly would urge the committee to satisfy itself with respect to the nominee's character, I would also urge you to discern his constitutional vision. It seems to me you have a responsibility, in partnership with the President, to determine the course of our constitutional history, to determine what vision will be represented on that Court, and if you focus exclusively on character, it does not seem to me that you were discharging that shared responsibility with the President.

Senator SIMPSON. Professor Lawrence, do you have any thought on that?

Mr. LAWRENCE. I would only add, Senator Simpson, that, to my mind, I have very little to go on in judging Judge Thomas' character. I would certainly, as Professor Days has indicated and I indicated in my opening statement, want to believe, very strongly want to believe, as a fellow African-American, that this is a person of the highest character.

I think that it is true that when one, as you say, passes through the crucible of American racism and poverty, that that can be a character builder. I think that it can do other things, as well, that we certainly have too much evidence in our community of people whose character has been destroyed by that same experience. I am not saying that is true of Judge Thomas. I believe that his character is a good one, but I have very little evidence to know that, except for the record, the public adult record. I cannot rely upon just the fact that he has lived through this experience.

Mr. DAYS. Senator, may I just add one brief footnote to my remarks—

Senator SIMPSON. Please.

Mr. DAYS [continuing]. And that has to do with the function of a Justice of the Supreme Court. When a new Justice gets into conference, I assume that his brothers and sisters will recognize that he is a person of high character. The question is what kinds of arguments is he going to make, what kinds of positions will he or she take. Indeed, in opinions and dissents, how will that person express himself or herself?

We give character as the baseline, but it is how that Justice explains what is going on in the world and how the Constitution is supposed to influence that. People will live or die, based upon not his character, but how he views the law and how he thinks it applies to their situations.

Senator SIMPSON. I concur with that totally. I have been impressed in my research and in the testimony of Judge Thomas that the people that know him the very best are saying things about him that I have never heard about anybody in my time here on this panel, Democrat or Republican alike, under Jimmy Carter, under Ronald Reagan, under George Bush.

I have never heard those things said about a man by the people who know him best, the people in the EEOC—and I went and visited with them, as I said before—people who worked with him, and his degree of, an overworked word, sensitivity and compassion I think is beyond commentary as to what he would do.

He spoke eloquently of how the person facing abortion, what an anguishing decision. He spoke eloquently of the criminals awaiting justice in the system. To me, that is what it is all about. Is this a man, when your case is being presented, who is going to listen, pay attention, and then generate the motions of fairness and compassion and sensitivity, love, caring, you know, the works, that is what this is all about in my mind, not sterility, you know, of what he might or might not do based upon this or that.

Of course, you three have watched this confirmation process now for years and know that we are slowly going to get to the point where we will just not know anybody at all when they get here, some big zip will be presented to us and we will mess around trying to figure out who he or she is, and the more zip, the better chance they will have—I mean zip in a zero, and not zip in spirit.

Mr. DAYS. Senator, may I say one thing in that respect?

Senator SIMPSON. Yes.

Mr. DAYS. I have read all the transcripts of these proceedings and seen some of them on television, and I was very affected, Senator, by your report of your visit to the EEOC. But I will tell you something that sticks with me today and has troubled me throughout these proceedings, and it has to do with—I know that you have been crossing swords over the question of abortion, but I was struck by the fact that Judge Thomas gave his speech in the Lew Lehrman Auditorium to the Heritage Foundation, and he commended the approach that Lewis Lehrman took, using natural law—and, Senator Biden, I do not want to get into natural law, it is another point.

The CHAIRMAN. That is OK by me.

Senator HATCH. It is OK by us, too. [Laughter.]

Mr. DAYS. He was asked about this particular speech and whether he had read then or since Lewis Lehrman's speech, he said he had not. Now, I put his comments about the importance of this issue in our society and how it divides the society and how painful it is for all of us to deal with, and some of us have had to deal with the issue up close. For a person to talk about that issue, without even having read the speech that asserted that a fetus was as person, strikes me as not sensitive at all. It strikes me as the height of insensitivity, given the tremendous emotion that is invested in the issue of abortion in the society.

Senator SIMPSON. I do hear that, but I think if you go look at his testimony, you can see exactly what he explained as he was asked about that speech, and it is funny to me how Lew Lehrman, you know, somehow has been in his life and place on the scene has