

Senator THURMOND. Ms. Bracher.

Ms. BRACHER. No, sir.

Senator THURMOND. Ms. Holmes.

Ms. HOLMES. No, Senator.

Senator THURMOND. So all of you have answered "Yes" to the first question and have answered "No" to the second question. I think that's the essence of the whole hearing, just what you have answered in those two questions.

Thank you very much for your appearance. This is a very intelligent panel. I congratulate you on your appearance.

I have no further questions, Mr. Chairman.

Senator KOHL. Thank you very much, Senator Thurmond.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I too thank the witnesses for coming. Your testimony was very moving and useful and very helpful and important to us, and we appreciate it, and I thank you for it.

Senator KOHL. Thank you very much.

Senator Heflin.

Senator HEFLIN. I apologize, I didn't get to hear all of your previous testimony. As many of us do, I have many other things going on, and we have to leave the hearing room and come back. So you may have answered this question, but what political party do each of you belong to?

Ms. NORTON. I am an elected Republican.

Mr. THOMPSON. I am a Republican, Senator.

Mr. KERN. I was appointed by President Lyndon Johnson after serving as an executive assistant to Attorney General Ramsey Clark.

Senator HEFLIN. What are you now?

Mr. KERN. As I have aged, Senator, my views have moved a bit more to the center than they were when I served with Attorney General Clark, whom I admire very, very much and have a deep personal regard and affection for.

Senator HEFLIN. You still haven't answered my question. [Laughter.]

Mr. KERN. I am registered an Independent in the District of Columbia.

Senator HEFLIN. All right. Ms. Bracher.

Ms. BRACHER. I am registered as a Republican in the State of Virginia.

Ms. HOLMES. I am registered as a Republican in Massachusetts.

Senator HEFLIN. All right. Ms. Bracher, you seem to have read a good deal of Judge Thomas' opinions on the Court of Appeals. Unfortunately, I don't have the cases before me, but two of those cases, according to my memory, were *United States v. Long* and *United States v. Harrison*. In regard to part of the decision in each—there were several issues involved—but one issue was the possession of a weapon during a drug raid where drugs were actually present, and the defendant in both these cases was convicted of the possession of a weapon, which carries more severe penalties with it. Both involved the constructive possession of a weapon. Judge Thomas went one way—it seems to me that he found for the

defendant in *Long*, and he found for the Government in the case of *U.S. v. Harrison*.

Now, in reading those cases, I was somewhat confused, and I wanted to ask him about it, but there were other matters that I thought were of higher priority. But are those decisions consistent in your judgment, and if so, why?1

Ms. BRACHER. Yes, they are consistent. As a matter of fact, they exemplify Judge Thomas' careful review of the statute. In *Long*, he looked at the statute and realized that in order to establish constructive possession, he must find that the defendant actually—and this is in quotes—“used the gun.” To find that—he used in *Long*—the gun was located in the cushions of the couch. The defendant was coming into the room where the gun was located, and Judge Thomas stated that the prosecution failed to offer any evidence that he had actually or constructively used the gun or had it in his possession.

In contrast is the *Harrison* case where you had—I believe there were three people in a van with a gun under the seat, one person with a gun on his person, and the third person was found to have constructively possessed the gun by means of the other two persons in his proximity in the van.

Senator HEFLIN. As I recall, one of the reasons Thomas said was that if a bullet had been fired towards the defendant, the one that didn't have a gun, it was reasonable to assume that he could get a gun and fire back, which seemed to be some rather nebulous thinking relative to that.

Ms. BRACHER. Well, I believe you are referring to the *Harrison* case where the three gentlemen were in the van. Ms. Norton spoke on the case similarly where they were in possession of cocaine; one had a bulletproof vest on; they had a temporary license, unregistered gun; and the other gentleman actually had a gun on his person, and they were involved in cocaine dealings. Whereas, the other situation was a person who wasn't in the room where the gun was, he was alone, and just entering the room, and Judge Thomas found the fact that the gun was present in the room was not sufficient because if he had, there would be no limits. And the statute clearly required some boundaries and parameters to be set.

Senator HEFLIN. So you think that there is a factual distinction in his analysis of whether or not the defendant in each of these cases was in constructive possession of a gun?

Ms. BRACHER. I don't think it is just factual. I think it is the constructive possession, the law as it is written in interpretation, and the application of the precedent and the finding that it is actually used within the precedent set by the Court and the interpretation of the statute. It is not just on the factual ground.

Senator HEFLIN. That is all.

Senator KOHL. Thank you very much, Senator Heflin.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

I appreciate very much your testimony. I think it brings a lot of common sense to the support of Judge Thomas. Most importantly, it doesn't seem to be a shrillness voice in support of him, as we have had a lot of shrill voices in opposition to him. I think the lack of shrillness will sell better with the American people who oppose