

Senator KOHL. I am very sorry, Senator Specter. Senator Simon. Forgive me.

Senator SIMON. I have no questions for the panel, Mr. Chairman. Thank you.

Senator KOHL. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Attorney General Norton, in the case of the *United States v. Lopez*, Judge Thomas sat on a panel which remanded the case for resentencing under the Uniform Guidelines, notwithstanding a provision which prohibited the consideration of socioeconomic factors, where the argument was made by the defendant's lawyer that the defendant should be entitled to special consideration because of his home background, the circumstances of his mother's murder by the father, the defendant's problems growing up, and the threats made by the father against the young defendant. And the United States attorney prosecuting the case made the argument that if socioeconomic factors could be broadened or if those factors did not come within the ban, that socioeconomic factors should not be considered. There would be very wide latitude for trial courts to consider the background of individuals, and we would not have the desired uniformity in sentencing procedures.

What is your view of the Court's ruling in that case in the context of the argument made by the prosecuting attorney?

Ms. NORTON. I am sorry. I have seen a summary of that, but I have not seen the entire decision that was rendered in that case, and so I cannot comment in detail on that.

Senator SPECTER. Well, that was a matter that I had asked Judge Thomas about when he was testifying here, but I thought that you might have some knowledge of it.

Perhaps you do, Ms. Bracher. You had analyzed Judge Thomas' opinions, and I realize this was not one of his opinions. But if you are familiar with it, I would be interested in your observations on the case.

Ms. BRACHER. Unfortunately, no, I am not. I limited my research into the opinions that he authored. The similar opinion I found that he did author, not having read *Lopez*, is the *Chavez* decision where he reviewed the length of the sentence under the Federal Sentencing Guidelines. In his review of the Federal Sentencing Guidelines, the opinion is replete with discussion on its terms of textual analysis and construing the Sentencing Guidelines according to the intent of Congress.

Not having read the *Lopez* decision, I am not sure if that is helpful. But that is the philosophy he used in reviewing the decision in that case.

Senator SPECTER. Judge Kern, where you have the uniform sentencing guidelines precluding a trial judge from considering socioeconomic factors, do you think it is a fair interpretation for the court to consider the background of an individual defendant, where there were severe marital problems between the defendant's parents, the father apparently killed the mother, the kinds of things that I described earlier?

Mr. KERN. I think it is obviously a judgment call, when you are faced with what would appear to be a restrictive statutory demand that there be a limitation, but at the same time you are confronted

with a case in which a significant element is the extraordinarily troubled background of the defendant. I think it is a pull and a tug, and it would not disturb me to find—I am not familiar with the facts of the case, but it would not disturb me to find a certain leeway where the trial court could take that unique particular factor into consideration.

Senator SPECTER. You are not troubled by Judge Thomas' joining in that opinion?

Mr. KERN. No.

Senator SPECTER. Ms. Holmes, I believe you were in the hearing room this morning when the panel testified on the abortion issue and opposed Judge Thomas on the concerns they have on what might happen with *Roe v. Wade* and the issue of sensitivity to women's concerns in that kind of a situation? You heard that?

Ms. HOLMES. Yes.

Senator SPECTER. What is your evaluation, if you care to give one, as to how you think Judge Thomas might respond to sensitivity for women's concerns, especially for African-American women?

Ms. HOLMES. Senator, my organization, the National Black Nurses Association, has a great concern about the abortion issue, but we have not come out with a position statement on abortion, and anything that I would say here today would be construed as coming out from the association. Therefore, I would rather not make any comment on that.

Senator SPECTER. Well, I respect that, Ms. Holmes. Would you have any comment to make on your view as to his sensitivity on women's issues, generally?

Ms. HOLMES. He is going to be fair, he certainly is going to read all the opinions, sit down and meditate on it and think about it, and whatever he comes up with as his decision, I am sure that it will be something that has taken great thought.

Senator SPECTER. Mr. Thompson, I could not be present during your testimony. I came in shortly after you finished, but I understand you had testified in support of Judge Thomas, of course, but some difference in view with Judge Thomas on affirmative action. Do you agree with his position on affirmative action?

Mr. THOMPSON. I did not testify with respect to any difference of opinion, as I understand his views on affirmative action, so I do agree. As I understand what Judge Thomas' views are on that subject, Senator, I do agree with his views, but I think that his views on affirmative action as they have been portrayed in the media have been misinterpreted.

I do not view and understand Judge Thomas to take the position that he is opposed to all forms of affirmative action. He is opposed to quotas, as I am, but he understands that some forms of affirmative action are necessary, because they are really truly needed to make some of our individual rights and aspirations a reality, and they are fair. But he is opposed to quotas, and so am I.

Senator SPECTER. Well, with respect to his opposition to quotas, he was emphatic about that, and I think there is general agreement that quotas are bad. He did testify about agreeing to limited affirmative action in an educational context, and there was considerable discussion about his own experience. But he did oppose affirmative action in an employment context, unless the affirmative