

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