

ute of limitations, was the request response from the general counsel's office concerning cases, not charges.

There was no effort ever to mislead the committee. In fact, we attempted to have the committee clarify for us precisely what it wanted us to respond to in such a short period, so that we could do that quickly.

Normally, when a request comes to EEOC, the request or the requesting body sits down with our staff people and we go through the documents, we go through the requests and we determine how to respond. In this instance, that did not occur.

Now, with respect to learning about the mischarges, as opposed to the cases, what we attempted to do was, as soon as I found out, was to not only inform Congress, but to make it public. I found out in December 1987 and reported to Congress the day Congress returned for the next term in January.

Senator METZENBAUM. My time is about to expire, but I want to make it clear before it does, that when the lapsed age case issue came to light, you stated that it wouldn't happen again. But as we all know now, after Congress' corrective legislation in 1988, the problem didn't go away, you didn't take care of it. Thousands of age cases continued to lapse, due to your agency's failure to insure that the claims were processed in a timely manner. We had to pass a separate bill in October of 1990, due to the inaction of your commission and, as a consequence, costing thousands of aged workers the loss of their rights.

Judge THOMAS. Senator, we did everything, and I certainly did my tenure, with the resources that I had, we have a very spread-out agency, to respond to that problem. As you remember, it was a difficult problem. If I could have investigated every one of those cases, I would have. There were approximately 2,000 cases within EEOC or charges within EEOC which had missed the statute during over a 4-year period out of the approximately 50,000 or 60,000 that we receive a year, and I believe approximately 100 cases did involve actual—there was as finding of discrimination. But even one, as I have indicated, is too many.

We took steps to solve the problem. We automated or completed automating the automation of the agency, so that the cases could be more accurately tracked, that is both at headquarters and in the field offices. We sent notices to the individuals, so that they would know when the statute was approaching. We held managers more accountable. We had done that before, but we redoubled our efforts.

The point was that we are trying to make an entire agency respond to something that I felt strongly about and I know that you felt strongly about. It was enormously frustrating. I did as much as I could possibly do. I did not want a repeat of that. In fact, I never wanted it to happen. But getting an agency to respond, a bureaucracy to respond is sometimes far more difficult than wanting it done.

Senator METZENBAUM. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Well, there are lots of things to talk about. I do agree and I want to say that I agree with Senator Hatch about the issue of abortion. I don't know how many times you can ask that question and however many times it will be asked, it will be answered in the same manner. But it is interesting to me to hear the continual response and the continual asking of it, because I couldn't help but think, after being on this committee for 13 years, back in 1980, Senator Metzenbaum, who was in the majority and chairing hearings with Judge Ruth Ginsburg, was very clear on this issue that seems to have taken over a good deal of discussion, and that is what questions we should ask you.

Senator Metzenbaum was saying, in connection with the Ruth Ginsburg nomination, and he chaired that as ably as he does his work, and talked about her statement and said:

You don't mean that every nominee up for confirmation ought to have his or her views explored as to what his or her positions are on all of the controversial issues that may come before those jurisdictions, you don't actually mean that, do you?

That was a quote of Senator Metzenbaum.

Then he went on to say:

Do you think the Judiciary Committee members in days of yore should have refused to confirm Justice Black, who had been a member of the Ku Klux Klan and went on to become one of the more liberal members of the bench, do you think that they would have been doing their job right, or would the Nation have suffered or gained, if he had not been confirmed?

And then it was said:

Should we then vote against her, or should we look at her and say is this a person who has the kind of integrity, temperament, and ability that can make a good or a great jurist? And if he or she has, then regardless of our agreement or disagreement with his or her particular views, shouldn't we then under those circumstances send that nomination to the floor with our recommendation?

And I concur totally with those views of my senior colleague from Ohio, and that is the way it works in this place.

Senator Kennedy, I served with him and enjoy the service with him on this committee. He said, in a hearing with regard to Justice Sandra Day O'Connor, he said:

It is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential Justice must pass the litmus test of any single issue interest group. The disturbing tactics of division and distortion and discrimination practiced by the extremists of the new right have no place in these hearings and no place in the Nation's democracy.

Now, I just happened to think, as I looked at that, that what is true for the new right is also true for the old left. So, that is an interesting thing, but what it shows is that there isn't a thing we couldn't find here in what we do of those of us on this committee, where we haven't said one thing one time 4 years ago or 5 or 10, and another thing last month. I have done it, and I can tell you, if you have been in politics long enough, the wheel will come around and kick you right in the rear-end, and that is the way it works.

So, to put this test on you—and I think you have explained it pretty well, but I think you maybe ought to just say, you know, I've done some things when I was a politician that I sure wouldn't do as a judge, and then we would understand it better. It would fit, it would be something we could grasp, and then you wouldn't have to

say that you were a quasi-public person or that you were in the executive branch. Just say you were a pretty hard-hitting politician at one time. You worked for a President, helped get him elected. I didn't know, did you ever do any precinct work or pack around in that stuff?

Judge THOMAS. No, Senator.

Senator SIMPSON. Oh, you missed something, I will tell you. [Laughter.]

We have all done a little of that, I think. But if you were just to reflect, you know, that, obviously, the things you said as you dealt with emerging thoughts and as a political person serving a President of your party and then part of the executive branch, I think those things need to be very carefully segregated as to the importance.

Unfortunately, I think it is kind of sad to see it turned into something as if it were a confirmation conversion, when there isn't one of us here that could pass that test. You won't pass it, either, but it doesn't have a thing to do with our integrity or with our honesty, and you made certain promises to this panel when you started as to what you would do. You said you would serve with honesty and integrity. It was a very beautiful statement and it is already in the record.

But we as politicians, we have learned that, when those things happen to us, we call it a maturity in thinking that has overcome us or evolution of mental weighing of the issues. We don't lay bad things on it, because this is the way it is. Facts change, things change, people change.

So, I think that it is very important. I would be quite hurt, if I heard people impugning your integrity or your honesty or your character. You handle that one a hell of a lot better than I would.

Now, if I might get to the Select Committee on Aging. I must be one of the last of the line. I serve on that, and let me tell you what happened when I got on there, because I wanted to get on to see what was going on on the Select Committee on Aging, and what was going on with you was a vendetta by a Senator who is no longer in the U.S. Senate and a staff that had just gone on an absolute hunt. I know, because I used to show up occasionally and pop my head in and I would say what's going on, and the staff members just kind of stood around and kind of salivated. They said, well, what's going on, boy, we're going to get into the EEOC.

It was very curious to me that everything that has been presented here by the senior Senator from Ohio has all been presented before. There is not one thing here that hasn't come up before, and that was before you went on the bench before, because this was the only stuff to use on you, and I won't want anybody to believe that this is new stuff or that somehow this terrible thing that has happened is all brand new.

You could go back and look at the record, go back and look at the Select Committee on Aging record, and it was not at the direction of Senator Pryor that this occurred, it was at the direction of his predecessor, and it got so bad that the members didn't even show up any more. Now, let the record show that. Let the record also show that, after all those months of wasting your time and ours, nothing came of it, because you had a committee staff that

never even understood the difference between a charge and a case and couldn't even compute it correctly, and it was appalling to watch.

Along came Senator Pryor, our wonderful colleague who is back with us now, and, I can tell you, he made some sweeping changes in the staff of the Select Committee on Aging. There ain't anybody left that was involved in that kind of absolute extreme activity.

So, the exaggerations as to the charges and criticisms of your handling of age discrimination cases before the EEOC is really, really old laundry, and some of those exaggerations came from the very tenacious group in the community known as the AARP. I have dealt with them before. I had a full head of hair before I got into it with them. [Laughter.]

But I can tell you, they are tough. You know, whenever we do something that affects them, they say, "Huh, don't forget, there are 32 million of us out here." Of course, that includes the magazines on dentists' stands anywhere in the country, too, of Modern Maturity, which is a better magazine than the Smithsonian. That is what they said. Actually, I think the distinction is that it is of the same paper quality and print quality, but the interesting thing is that in it the advertising is some of the sleekest gray-haired catch you ever saw, but all the editorial comment is about how everybody over 65 is somehow underprivileged, and they lose some credibility in that, and that is how I lost all this hair.

So, the AARP led that charge with a Senator who was willing to lead it, a Senator who is no longer in the Senate, and it was a bust. It didn't go anywhere. It was an embarrassment to some. And another of our colleagues who is no longer with us was the ranking member on that committee, and if he were here, he would put all of this stuff to bed, and that was our friend, John Heinz.

So, I hope we won't spend too much time on that. It was brought squarely before the Senate, and who brought it to the Senate was you, because your predecessor surely didn't. So, every single bit of this was presented to the U.S. Senate by you, and the Senate considered every one of these criticisms in total and rejected every single one of them when we confirmed you previously, so I hope we can keep that old tired issue in its proper perspective.

I think that Senator Metzenbaum quoted a news article, if I heard correctly, to the effect that you said that some violation of age discrimination laws made economic sense to some employers.

Senator METZENBAUM. It was the ABA banking magazine.

Senator SIMPSON. Thank you.

I guess the implication was that not only you understood that, but that you also approved of that. Did that get clarified?

Judge THOMAS. I think my final comment on that was that I in no way endorsed any violation of the Age Discrimination in Employment Act, so I think I did say what my view of it was, and I certainly would not have intended to do that.

Senator SIMPSON. I don't think you ever misled this Senate Special Committee on Aging, not from the times that I knew or my staff was there. I was not there throughout, because I finally just got tired of it, it was too much to—it was so feckless, so silly.

But I don't believe that, in any sense, ever have you misled, and I often thought that you were being blamed for the inability of the

Aging Committee staff at that time, their failure to understand what it was that you did or what the agency did, especially with regard to the interchangeable use of case and charge. I think that 13,000 figure has been terribly overblown and that, of course, has been covered rather thoroughly.

So, I just want to make those comments with regard to the Select Committee on Aging and its hearings on you. Do you have anything to add to how you felt that came about and what the results were as you perceived it, after you sat there patiently for many hours, with your staff? What is your assessment of that?

Judge THOMAS. Senator, as I noted to Senator Metzenbaum, that was an enormously difficult period. There were misunderstandings about information early on. It required a redirection of an enormous amount of resources in the agency, and it was a problem that was difficult to solve and we recognized that. It was a problem that we had to solve with limited resources, and we recognized that.

But the point is that we took every step possible and ultimately, with a refocusing or redoubling of our efforts in paying attention or having the agency staff pay more attention to the statutes of limitations, as well as finalizing a computer data base, not a perfect data base, but a working computer data base. We were able not only to track the time-sensitive age discrimination charges, but we were also able to monitor and to send out notices to the charging parties involved.

Prior to that, and I will end on this note, we were unable to even discern what we had in the agency. We could in no way tell you what kind of problem we had or what was even there. We did not have the data base capability. I think the recognition for us was, and it is an important recognition, is that those time-sensitive charges, perhaps we should have thought about tolling the statute in some way legislatively or perhaps some other action.

But when you attempt to fully investigate time-sensitive charges, it requires that you do more and do it more quickly. Remember that EEOC receives about 60,000 charges a year, and that is something that requires us to manage our work more closely, and we attempted to do that.

Senator SIMPSON. I have noted in recent weeks that your predecessor has been very critical of you, and she speaks critically of you in various forums, which puzzles me because, you know, all of this happened before you got there. And I would like to enter into the record the digest of the General Accounting Office report of April 1981 saying that the rapid charge process has overemphasized obtaining settlement agreements with the result that EEOC has obtained negotiated settlements for some charges on which GAO believes there was no reasonable cause to believe that the charges were true. Settlement agreements for these charges have little substance, and they distort the results of the rapid charge process by inflating the number of settlements. I think the entire digest ought to go in the record.

The CHAIRMAN. Without objection, the entire document will be placed in the record.

[The GAO report follows:]