

bottom line, after everything is said, to hope that at least they say, "This was somebody who tried to do what was right." That is all. They don't have to say anything else. Just that, "In his lifetime, when he came to this agency, he tried to do what was right and did not try to play politics and did not succumb to pressure from various interest groups or politicians; he just took a mandate, took a job, and tried to do what was right."

That was your response to that lady's question. So it was. And I wanted to report that very moving trip to the EEOC, and I really have no questions.

I thank you for your courtesies and thank especially my colleagues, Paul and Herb, Senator Simon and Senator Kohl, for their courtesies. And thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. Have you answered the question?

Senator SIMPSON. He did answer the question. [Laughter.]

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

One of the questions that we face is: What really makes Judge Thomas tick? That is really what Senator Heflin's questions were approaching.

When you told the story about Judge Haynsworth saying to his wife, "I don't like this Judge Haynsworth guy," if we were to vote in this committee on whether we like this Clarence Thomas guy, it would be unanimous that we like Clarence Thomas. That is not the question that we have to face. It is where you are going.

When you told about being a student at Holy Cross, I would feel comfortable voting for that student for the Supreme Court. And then in describing yourself, you said, "Then we thought we really could change the world"—making it past tense.

Some of us still think we can change the world. Maybe not in huge giant steps, but in little steps. And you are going to a place where you are going to change the world for a lot of people.

The people on the Supreme Court who voted for *Dred Scott* changed the world. The people who voted for *Plessy v. Ferguson* changed the world for a lot of people. The people who voted in the *Brown* decision and *Roe v. Wade*, changed the world.

Members of the Supreme Court who voted on the *Crowson* decision that Senator Specter referred to, the set-aside, the *Richmond* decision, have denied the right, the opportunity for a great many people. They have changed the world for a lot of people.

The *Ward's Cove* decision changed the world for a lot of people, people like—again, quoting Senator Specter, "that 10th-grade dropout." And that is, I guess, the person that I am concerned about.

Frankly, a person with Clarence Thomas' ability is going to make out all right. Whether you get confirmed or not confirmed, you are going to do very well. That 10th-grade dropout may not do well.

We all bring something of a philosophy to our jobs, and Senator Simpson perhaps partially answered this question with his quotation from that interview, the bottom line. But what is the political philosophy, what is the judicial philosophy you bring to the U.S. Supreme Court?

Judge THOMAS. Senator, when I spoke earlier about changing the world, I think I would distinguish between the way that as a youth

you feel that you can go out and take on everything tomorrow morning and get it all accomplished tomorrow morning. At some point I think you realize that you have to take a step back and begin to approach it more—not so much in a rush or impatiently, but persistently. And if there was one lesson that I learned during that period, it was the difference between impatience and persistence, the difference between being upset and being committed to something.

So today I didn't suggest or mean to suggest by using the past tense that we felt that we could make a difference, or that we could change the world, that we can't do that today or have an impact today. I indicated earlier that I felt that if I were confirmed by this body and were fortunate to be on the Supreme Court that I could make a difference. And I also indicated that the same person that was at Holy Cross with the same feelings, a little older and a little wiser, is sitting before you.

There was a time when in law school—and I was asked why I went to law school. But there was a time actually before I went to law school that I didn't think there was any reason to go to law school. There was no further reason to prepare, to be ready to make some of the changes in society. There was a time when many of us didn't feel that working through the system, as we called it, was worthwhile.

So at some point we had to make the decision that if we prepared ourselves—and as Abraham Lincoln said, I paraphrase it, I will prepare myself and when the time comes I will be ready. What will you be ready for? I don't know exactly, or didn't know. With respect to my own approach, though, I tried to be persistent about preparing to make a difference.

As far as overall philosophy, Senator, as a judge I think that the approach that I have taken has been one of starting with the legislation or the document before me. It has been one to arrive at the intent of this body in statutory construction and certainly in broader analysis to not certainly impose my own point of view, but to be honest, intellectually honest and honest as a person in doing my job. I have done that.

But there is something that you point to also that goes beyond that, and I think this is either the third or the fourth time I have appeared before you for confirmation. And the something that you have been interested in is this, and I took it to heart—perhaps you don't remember it, but in my job, my current position on the court of appeals, one of the things that I always attempt to do is to make sure that in that isolation that I don't lose contact with the real world and the real people—the people who work in the building, the people who are around the building, the people who have to be involved with that building, the people who are the neighborhood, the real people outside. Because our world as an appellate judge is a cloistered world, and that has been an important part of my life, to not lose contact.

Senator SIMON. I think that is important, incidentally, and it is—if you are confirmed—I assume that is not a message for me to stop here, Judge.

The CHAIRMAN. A vote.

Senator SIMON. I think it is important, if you are confirmed, to go out of your way to do that. It becomes very easy, whether you are a Senator or a Supreme Court Justice, to become isolated.

How do I reconcile what I sense are two Clarence Thomases? One is the Clarence Thomas who is testifying here, that Holy Cross student, and the other is the Clarence Thomas that says government cannot be compassionate. Though here you have said, "I favor public housing," if I can use another illustration, you were in the magazine, Reason. You were interviewed. And they say, "So would you describe yourself as a libertarian?" And you say, part of the answer, "I certainly have some very strong libertarian leanings, yes." And then you say, "I tend to really be partial to Ayn Rand, the author. When she died, the New York Times had this comment about her. It said, "Her morality constituted"—and I am quoting now—"a reversal of the traditional Judeo-Christian ethic because it viewed rational selfishness as a virtue and altruism as a vice." She was opposed to Medicare. She was opposed to a lot of things that a lot of us would say are part of having a responsibility to those less fortunate in our society.

Anyway, I see these two Clarence Thomases: One who has written some extremely conservative and I would even say insensitive things—maybe you wouldn't agree with that description—and then I hear the Clarence Thomas with a heart. And Senator Heflin says you are in part an enigma, and that is part of the enigma here.

How do I put those two Clarence Thomases together, and which is the real Clarence Thomas?

Judge THOMAS. Senator, that is all a part of me. You know, I used to ask myself how could my grandfather care about us when he was such a hard man sometimes. But, you know, in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us to help ourselves. And he was honest and straightforward with us, as opposed to pampering us, and prepared us for difficult problems that would confront us.

With respect to the statement about government, I think I attempted—the government being compassionate, and I don't have that full quote. But I think the rest of that statement was something to the effect that people are compassionate. Government in my view has an obligation to solve those problems and to address those problems. We may disagree as to what the best solution is as policymakers, but the fact of the matter is that from my standpoint, as a community, as people who live in an organized society, we have an obligation as a people to make sure that other people are not left out. And I think I have said that, and it is important.

But as individuals, I think that we have the capacity to be compassionate to others without that obligation, beyond that obligation.

Senator SIMON. Well, as individuals, no one will argue with that. But collectively we also have responsibilities.

Judge THOMAS. Exactly.

Senator SIMON. Your statement, "I don't see how Government can be compassionate. Only people can be compassionate, and then only with their own money, not that of others."

We have to make decisions here where we are going to say we are going to take some money from taxpayers for public housing, for food stamps, for things that are important.

Anyway, this is one of the dilemmas that we face. And in this quote here you are siding with the privileged on a lot of things, and that is the reason for my question about South Africa yesterday. One of the reporters said, "Why do you ask him about South Africa? He is not a nominee for Secretary of State."

I want to know what makes Clarence Thomas tick, and in that connection, I mentioned the article where you were quoted as objecting to the tactics of the protestors at the South African Embassy. Does anyone remember any more of the details of that?

Judge THOMAS. Senator, you asked me a question, as I remember it—and correct me if my recollection is inaccurate. You asked me whether or not that was coordinated in any way.

Senator SIMON. Yes.

Judge THOMAS. And my response and recollection remains the same; that to the extent there was any—to the extent that those comments coincided, I think it was as a result of a reporter calling around.

Senator SIMON. I also asked about Jay Parker, and yesterday's Newsday, New York newspaper, has this article by Timothy M. Phelps:

Clarence Thomas asserted in Senate testimony yesterday that he did not know that his good friend, James J. Parker, represented South Africa although former aides say he did. A former assistant of Thomas, who asked not to be identified, said recently that Thomas brought up the subject of Parker's representation of South Africa in 1986. At that time Parker and a partner, William Keyes, were being paid more than \$360,000 a year to lobby for South Africa's foreign agents, according to Justice Department records.

Then I will skip a few paragraphs, but I don't think I am taking anything out of context here.

Thomas was asked yesterday by Senator Paul Simon about a New York Newsday story outlining his relationship with Parker. The 43-year-old Federal appeals court judge said he knew that Parker had represented some South African homelands but not South Africa itself. "I was not aware, again, of the representation of South Africa itself," Thomas said. "I was aware of Mr. Keyes' relationship with South Africa. I was not aware of Mr. Parker's." But the former aide of Thomas at the Equal Employment Opportunity Commission said in an interview that Thomas talked about Parker's representation of South Africa for 45 minutes at a staff meeting in 1986. He said that somebody had to represent the South Africans, and that if sanctions were passed, it would affect the black people more harshly than supporters of apartheid. "—well, I will not comment on that, though I think you would find most blacks in South Africa differing—" the former aide said. She said that when staff members entered the room for the meeting, Thomas had with him a newspaper article outlining Parker's relationship with South Africa. She said he asked the staff members what they thought of the article and became very angry when one said it was hypocritical of Parker to take money from South Africans.

Do you recall that at all?

Judge THOMAS. No, Senator. As I indicated to you, I understood or I knew about Mr. Keyes' representation. That is the best of my recollection. I did not recollect nor was I aware until recently of Mr. Parker's representation. I was aware, as I indicated, about his involvement with the homelands. And I don't know who that aide is or what article she is talking about.

Senator SIMON. And you do not recall that meeting?

Judge THOMAS. I do not recall that exchange at all. I was aware, however, of his representations and his trips to South Africa and his representation of the homelands, but not the paid representation of South Africa itself.

I do remember reading an article at some point indicating the involvement of Mr. Keyes and the significant amount of money that he was paid. I do recollect that.

Senator SIMON. In the exchange, you mentioned your position on divestiture at Holy Cross, and I commend you for that position. You say, "I took a strong position on the board of trustees of Holy Cross that we divest of stocks in South Africa. That was important to me then, and, of course, that is contrary to a position that they might take. But it was one that I felt strongly about."

I have to say I find a little bit of conflict in that and your opposition to sanctions for South Africa. But a publication that has just come out says—and I ask you whether this is accurate or not: "The Reverend John Brooks, the school's president, says there was no significant board opposition to Brooks' recommendation for divestment and that he does not recall Thomas or anyone else taking or needing to take a strong stand."

Judge THOMAS. As I indicated yesterday, there was significant discussion, and it is as I recall it at the board meeting.

Senator SIMON. OK. So that there was division—

Judge THOMAS. There was no opposition. Whether or not we would act now or later was the nature of the discussion, as I remember it.

Senator SIMON. One of the people you quote from in the course of some of the speeches—and in fairness, if somebody went over all of my speeches as carefully as I have gone over yours, I am sure they could find a lot of things that I wouldn't be too proud of today. But one of the things you say—Thomas said that the congressional committee "beat an ignominious retreat before Colonel North's direct attack on it and, by extension, all of Congress." That was a speech before the Cato Institute in 1987. And then in a speech a few months later, you say, "Congress' aggressive oversight of Federal agencies"—in commenting on it, I am quoting, it says, "As Ollie North made perfectly clear last summer, it is Congress that is out of control."

I am concerned about quoting Oliver North, who I assume you, along with all Americans, knew shredded papers, destroyed evidence. This was done, in fairness, before he was convicted of a felony. But how does Oliver North end up getting quoted, someone who is, at least in my mind, not a hero, not for what he did as a member of the Armed Forces, where he apparently was outstanding. But when he shredded paper, when he destroyed evidence, he is not the kind of person I would want to quote and I would think Clarence Thomas would not want to quote.

Judge THOMAS. Senator, I do not think I condoned—in fact, I think I remember us having discussions about whether he had done something improper, and my saying very distinctly that I felt that if he had done something improper or wrong, that should be addressed.

The point that I was making there, and you note it in the context—and I do not have that speech before me, but it was in the

context of oversight hearings, and I think during a time when I was having my own difficulty in that oversight process, and sometimes those hearings, though they serve the very, very important function of ferreting out facts and responding to those, they can often become highly charged, politicized public events.

I think myself, like many others, that in that highly charged political environment that Colonel North took the advantage to himself and used that environment to his advantage, as opposed to succumbing to it.

Senator SIMON. Since you are talking about the process, you have spent 4 days now before this committee and you have had to go through this grueling process, and it is that. What is your feeling, as you reflect upon this process that you are going through? Does it serve the Nation well, or does it not serve the Nation well?

Judge THOMAS. Senator, even before I was nominated, I was asked that question, because when I was nominated to the court of appeals, that was not exactly a joy ride and it had its difficulties. I would—

Senator SIMON. I helped create those difficulties, as I recall.

Judge THOMAS. Pardon me.

Senator SIMON. I helped to create those difficulties, even though I ended up voting you for the court of appeals.

Judge THOMAS. That is OK, Senator. You know, we each have to do what we think is best.

Senator SIMON. Right.

Judge THOMAS. I was asked that question then, and my response to people who felt I should have returned to the kind of acerbic comments about the process, was simply this, that we are, as judges, in the least democratic branch of government. We have lifetime appointments. We make very, very important decisions, and we do not stand for reelection. This process has to work.

People can disagree as to the nature of the process, we can say that it is flawed in one way or the other. Even in the speeches where I talk about oversight, I may talk about the flaws, but I also point out the importance of the legislative and oversight process.

This process is necessary and it has to me become more clearly necessary since I became a judge, and I have no reason to change that view and, in fact, would feel very strongly about it, even through this process, even if the process is difficult for me.

Senator SIMON. Earlier, Senator Heflin asked you about the fifth amendment and privacy implications. I mentioned yesterday, I guess, or the day before, we were talking about the ninth amendment, and there are in the Constitution some specific privacy things about quartering militia and searching your home. When you combine those specifics with the history of the ninth amendment, is there a privacy implication also, in your opinion, in the ninth amendment?

Judge THOMAS. Senator, I think I have made two points with respect to that and with respect to the finding of the right of privacy. I indicated that I felt that it was the analysis that I tended to agree with or agreed with, was the finding of that interest or that right in the liberty component of the due process clause.

The approach that you are talking about, of course, and I think we discussed, was the approach that Justice Douglas took, and similar to that was Justice Goldberg's approach.

I think that no one really knows the extent to which the ninth amendment can be used. There is a considerable amount of scholarly working being done, as I said before, and there may be a point where the Court has a case before it in which an asserted privacy right or privacy interest is or could be found in the ninth amendment. To date, though, a majority of the Supreme Court has not done that.

I would not foreclose it, Senator, but with respect to the privacy interest, I would continue to say that the liberty component of the due process clause is the repository of that interest.

Senator SIMON. Let me just lobby you here now, if I may. This is the only chance we get to lobby future Supreme Court Justices. I think the ninth amendment is a very fundamental protection of basic liberty and I would hope—there is an article written I believe by a person named Rappaport at the University of—maybe it is William and Mary, I am not sure where it is, but I will send you the article, that gives some additional background on the ninth amendment. I think that is important.

I just received today, and I assume my colleagues have received, a letter from 12 subcommittee and committee Chairs from the House who worked with you in the EEOC, asking that—well, let me just read the final line, and we can put the full letter in the record:

“We conclude Judge Thomas should not be confirmed as an Associate Justice of the United States Supreme Court. His conformation would be harmful to that Court and to the Nation.”

I do not know if you have seen the letter at all. There was a somewhat similar letter when you were up for nomination for the appellate court. Do you care to comment on that?

Judge THOMAS. As you indicated, Senator, there was a similar letter when I was nominated to the court of appeals, and I think as I may have indicated, either privately to you or maybe even in the hearings, I can't remember which, that, of course, I would want individuals with whom I have had dealings in the past to be supportive of me, certainly to be as supportive of me as the people who worked with me every day.

But during my tenure at EEOC, we did have some differences of opinion and some disagreements in a political and policymaking context. I certainly do not agree with them and do not think—

Senator SIMON. I did not expect you to agree with their letter.

Judge THOMAS. I think it is unfortunate, but, Senator, we had our disagreements and I did not think that they rose to the level to require a letter of that nature, but I can understand that they have to take positions that they feel comfortable with.

Senator SIMON. Thank you. I see that my time is up. I also see we have a vote over on the floor.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Judge, Senator Kohl, to accommodate your schedule and everyone else's schedule, went over to vote and should be back here by the time we all are up and leaving. The committee will recess until