

because of economic circumstances, would that be a factor that you would weigh, among others?

Judge THOMAS. I think it would be important for me to take that into account, Senator.

Senator SIMON. OK. Let me shift to a couple of loose strings. The Jay Parker/South Africa issue we have talked about. We have received one additional phone call from someone who verified that there was a staff meeting. We talked about it; you did not recall. Do you recall this any further upon reflection, or has anyone reminded you or anything at all?

Judge THOMAS. Senator, I have attempted to reflect on it. My recollection is as I have told you. I have attempted to try to understand where the confusion could come from. And I knew that Jay Parker, for example, represented one of the homelands. That could be a source of confusion as to whether or not he represented South Africa. I also knew that a colleague and friend of mine who worked with me here in the Senate and went on to other endeavors, as well as worked with me during the Reagan administration, represented South Africa. That was a matter of public knowledge.

I don't think—I do not remember or recall Jay Parker's involvement being a matter of public knowledge prior to my nomination. I certainly was not aware of it until the last few months.

The only confusion that I could think of, based on my own recollection, would be that he has had significant dealings in South Africa, and someone may have felt—or I may have imprecisely stated that, and they may have felt that he was representing South Africa. But I simply didn't know. I don't recall knowing, and I don't recall such a meeting.

Senator SIMON. Do you now or have you ever had any financial dealings with Jay Parker?

Judge THOMAS. No. We had no financial dealings. He is a friend of mine.

Senator SIMON. And, again, on recollection, you were not aware prior to your nomination and the publicity that came with it of any involvement on his part with the Government of South Africa other than the homelands?

Judge THOMAS. No, I was not. My recollection was that, again, a mutual friend of ours, a Bill Keyes, was representing—and that was public knowledge. He represented South Africa.

I was not aware of Mr. Parker's involvement, and I do not recall the meeting that you indicated. Again, there may have been confusion, as I have indicated, but I did not—I was in no way aware of that.

Senator SIMON. Thank you very much, Judge.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

I would like to commend you on your patience and open-mindedness during this hearing, particularly under circumstances which were at times trying.

Judge Thomas, I would like to give you one more opportunity to talk about what many of us are concerned about, and that is the

possibility that you have a philosophy that tends to change with your audience.

I would like to quote for you a part of a column that appeared this morning in the New York Times and then ask you if you wouldn't think about it for a moment and then comment on it, hopefully to enlighten us.

The most striking aspect of Judge Thomas' testimony was his disavowal of just about everything that he said in speeches made while he was Chairman of the EEOC. The strident right-wing message was appropriate to his role in a right-wing administration, he suggested, but he donned a new skin of impartiality when he became a judge. Indeed, Judge Thomas went further in his disavowal. He implied that he had made some of his conservative comments partly to please conservative audiences. That was his explanation for his praise for the extreme anti-abortion position of Lewis Lehrman. But if he tailored his philosophy to please his audiences in the past, might he not be doing so at this time in the Senate Caucus Room?

Judge THOMAS. Senator, there is much that has been said, but I don't think that I said that I tailored my message to please an audience. In fact, the Heritage speech was precisely the opposite of that, it was to make the audience uncomfortable. My explanation with respect to the Lew Lehrman reference was simply to convince the audience to re-look and revisit the issue of civil rights. The bulk of that speech, the first part of that speech is a criticism of conservatives as well as the Republican administration.

The second point I would like to make, Senator, is that I do think it is important to have be a member of the judiciary, as opposed to being a member of the executive branch. There is a significant difference, and I have not through my history at EEOC or on the bench or any place else attempted merely to please individuals. That has not been a suggestion of mine.

I was a member of the executive branch and I think I conducted myself as a member of the executive branch. I am a judge now, and I think I conduct myself as a judge.

Senator KOHL. But you said that there was a difference—and you said that consistently—between being a member of the executive branch and being a member of the judiciary. And certainly there is a difference, it is a simple fact. But you are being considered here to become a member of the Supreme Court, because of whatever your philosophy is—and we are attempting to get at that.

Now, are you saying that that philosophy has changed, as you moved from the executive branch to the judicial branch, or are you saying that you had a philosophy in the executive branch, but you come now to judiciary with no philosophy?

Judge THOMAS. I said that, I think I have indicated I engaged in ideological and political debates and discussions. I participated in debates and policymaking, I participated in debates between the two political branches. As a member of the judiciary, I do not think that ideology is important and I do not engage in those political or policymaking battles or discussions.

Senator KOHL. Just one more question and then we move on. I don't differentiate perhaps as much as you might between ideology and philosophy. I think that what we are saying here is we are asking ourselves and asking you whether the philosophy that you expressed when you were in the executive branch is the same philosophy that you have today.

Judge THOMAS. I am the same person, my outlook, I believe in our country, I believe in trying to look at a problem and solve that specific problem, to look at a statute or a case and be true to my obligations with respect to that statute or that case.

I do not believe, however, that there is a role in judging for the expressions of the kinds of personal views or the policymaking or the personal opinions that you have in the executive branch.

Senator KOHL. That is all right, but would you say that I can assume that, in general, the kinds of philosophies that you had expressed, however we interpret those, when you were in the executive branch, are not that dissimilar from the kinds of philosophies that you carry today?

Judge THOMAS. I am the same person. I think the role, again, the judicial philosophy versus being a policymaker is different. I think that there is an indication of the kind of person I am when I was in the executive branch and my outlook on life.

The only point that I am making is that, to the extent that those are political statements or policymaking statements, I don't think they are relevant in my role as a judge.

Senator KOHL. Thank you very much, Judge Thomas. I don't suppose I will be speaking to you again, at least not in this capacity. I found you to be an intelligent, bright, and humorous person.

With respect to the process itself, Mr. Chairman, I think that one of the things that has come out of this confirmation hearing is that we need to do as much as we can to ensure that the hearings in the future leave us all, at least most of us, with a little more definite feeling about what kind of a person, in terms of philosophy, we are voting on.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I have questions. It is my turn to come around. What I will do is I will ask a few of them and then I will yield to the Senator from Pennsylvania who has questions on his last round, and then I will conclude.

Judge I would like to go right back to methodology, if I may, without any preamble. I would like to talk to you about the *Michael H.* case, and famous footnote 6, if I may. I don't want to bore the listening public with the esoteric underpinnings of that debate, but let me just simply ask you: Do you concur with the rationale offered by Justice Scalia as to how one is to determine whether or not an interest asserted by a person before the court, an interest asserted that there is a fundamental right that that person has, whether or not you must go back and look at the most specific level of that interest as asserted, like he suggests, or as has historically or traditionally been viewed, a broader look back at the more general interest asserted, as Justice Kennedy and Justice O'Connor indicated, notwithstanding the fact they concurred in the opinion with Justice Scalia in the *Michael H.* case? Would you speak with me a little bit about that?

Judge THOMAS. Senator, again, that is a very recent case and I am in the position of not wanting to comment on that specifically, but I am very skeptical—

The CHAIRMAN. I am not asking you to comment on the case. I am asking you to comment on the footnote.