

Senator SPECTER. All right. That is a very important point and I am glad to hear you say that, because this really goes right to a core of a good bit of your writing.

Judge THOMAS. Well, it doesn't, as I mean that as a judge, Senator. I have had no basis as a judge to disagree with it.

Senator SPECTER. No, no, I am referring to the writings prior to the time you became a judge.

Judge THOMAS. Well, that is a policymaking function, and I—

Senator SPECTER. So, that was a different lifetime than all of this—

Judge THOMAS. Well, I have to adjudicate these as a judge and I know that is a distinction that some seem to think is troublesome, but it is a very, very important distinction for me.

The CHAIRMAN. Will the Senator yield on that point?

Senator SPECTER. Yes.

The CHAIRMAN. Not the case law, but the point about a judge. Judge, you are going to be the judge, you are going to be a judge who is not bound by stare decisis, has nothing at all that would bind you other than your conscience. And so I am a little bit edgy when you give an answer and you say, well, that's the policy, as if you are still going to be a circuit court of appeals judge, which means you have to follow that policy.

You are going to take a philosophy to the Court with you, as well, and you are not limited, as I understand it, in any way, including the methodology you have indicated you would apply to great questions of the day, from reaching a conclusion different than that which the Court has reached thus far. So I don't know why you can't tell us with a little more certainty in the case the Senator just laid out as the state of the law, because it is a big deal, whether you agree with it or not.

Judge THOMAS. Well, I understand that, Mr. Chairman, but what I have attempted to do is to not agree or disagree with existing cases.

The CHAIRMAN. You are doing very well at that.

Judge THOMAS. The point that I am making or I have tried to make is that I do not approach these cases with any desire to change them, and I have tried to indicate that, to the extent that individuals feel, well, I am foreclosed from a—

The CHAIRMAN. If you had a desire to change it, would you tell us?

Judge THOMAS. I don't think so. That would be— [Laughter.]

The CHAIRMAN. That is what worries me, Judge.

Judge THOMAS. But the—

Senator SPECTER. Was that an "I don't think so"?

Judge THOMAS. I think the point that I am trying to make, Mr. Chairman and Senator Specter, is that when I say I don't have an agenda, I mean I don't have an agenda. I operate that way as a court of appeals judge and that's the way I will function if I am fortunate enough to be confirmed as a member of the Supreme Court.

The CHAIRMAN. Thank you, Senator.

Senator SPECTER. Senator Biden, let me amplify Judge Thomas' answer for you.

The CHAIRMAN. I would appreciate it.

Senator SPECTER. He is testifying that he is not going to make policy as a Supreme Court Justice, if confirmed. He has written extensively that the courts have been thrust into a policymaking position and that the courts have made policy. He has disagreed with the policy and has stated that he would change a lot of law from an advocate's position on policy, saying, for example, in *Johnson v. Santa Clara*, that the dissent by Justice Scalia was preferable and saying, in another context, although not totally approving it, that one quick fix is to appoint new Justices to change the approach.

He is saying in these hearings, as I understand it, that all of that policy consideration that you were commenting about in those many speeches is a thing of the past, and you talked about that solely as an advocate.

The CHAIRMAN. Senator, you understand what concerns me. If I were a judge—

Senator SPECTER. Let me finish for him, Senator.

The CHAIRMAN. I leave those usually for Senator Hatch.

Senator SPECTER. I object. [Laughter.]

The CHAIRMAN. If he were employing me as a judge, in good faith, to change the position of the law, because he felt in good faith it was in my power to do so as a judge, and then he became a judge and didn't follow his own advice as to what he in good faith was giving me that was within my power to do, I would wonder about that. But that is my confusion and I will have to resolve that, but I would be delighted to hear more of your explanation, if you would like to give it.

Senator SPECTER. Well, to finish my question for you, Judge Thomas, which is really an understanding of mine as to what you are saying here, you are saying you are going to do your level best not to make policy. You are making a commitment not to make policy, you don't think that is a judge's function, and it is an about-face from a lot of what you have written.

Senator Metzenbaum earlier made a comment that he is disturbed by the position you have taken in disavowing much of what you have spoken about in your tenure as Chairman of EEOC, contrasted with your background and your roots, and I think that is something that this committee has to consider and the Senate has to consider. I am not so sure but what your roots are not more important in trying to predict what you will do, if confirmed, than your writings. Your writings and your answers are at loggerheads, they are inconsistent with what has been said.

You had written earlier in your career that you thought flexible goals and timetables were appropriate, and you changed that. Judge Thomas, isn't it entirely possible you could change your mind again and find that timetable and goals are the preferable course?

Judge THOMAS. Senator, what I have attempted to do here is to demonstrate that, in any number of areas, certainly the transition from policymaker to judge is an important transition. In specific areas, I have attempted to demonstrate, even when I have in the policymaking area strongly held views, that I have always looked to expand and to grow and to understand the counterarguments, not to simply reinforce my own.