The CHAIRMAN. Thank you very much.

Let me begin, Professor Grey, with you, if I may. If Judge Thomas had not spoken about the application of natural law with reference to the Lehrman article, his views on natural law as stated would not be particularly out of the mainstream. Would they at all be out of the mainstream, assuming he had not spoken, as you characterized, in a dogmatic way?

Mr. GREY. No, I think not, Senator. I think a lot of Americans would affirm their belief——

The CHAIRMAN. Well, not just Americans. There are an awful lot of Justices who believe that natural law does inform the Constitution. And there are a lot of people, a lot of Justices who served on the Court, who share the view that I share, that, at a minimum, natural law is a basis for a limited government, that our rights spring not from a document, but spring from other sources, and that the document represents a document of limited government.

Correct me if I misstate your concern, but what has you concerned is that you believe or at least have a strong concern that Judge Thomas thinks there are natural laws writ large in the sky that are bright lines that should be applied in the area where the Constitution is not clear on the meaning of some of the majestic phrases and words like liberty and property and due process, is that correct?

Mr. GREY. That is my view quite well, Senator. I think the application of natural law has been common in the Supreme Court.

The CHAIRMAN. Now, I think the record should show, since Judge Bork's name has been mentioned, Judge Bork is the absolute antithesis of your concern of what you think Judge Thomas might be. Judge Bork's entire judicial construct for a way to deal with those phrases was to go the other route, to suggest that there is only positive law and there were, consequently, no unenumerated rights in the Constitution, because they were not positively stated and the judge could not roam.

Ironically, in fairness to Judge Bork, he was worried about the same thing you all are worried about. He was worried about Justices roaming the landscape and applying their own subjective judgments to phrases like liberty. I see Professor Michelman is shaking his head no, and I would defer to him for a whole range of reasons. I would be curious as to why that is not correct.

Mr. MICHELMAN. What my head shaking was about—Senator, you notice that my friend, Tom Grey, a moment ago paid you a great compliment.

The CHAIRMAN. He called me a judge. I paid him a bigger compliment when I called him Senator earlier. So we just exchanged compliments. [Laughter.]

Mr. MICHELMAN. He didn't call you doctor, but he called you judge.

Here is what my head shake was about. I think that a part of what we are concerned about here—and Professor Grey referred to this—isn't not just a question of judges roaming about and picking and choosing among their own values as to what they will read into the Constitution. There is a difference in style and spirit of constitutional reasoning that I might try to characterize as the difference between a dogmatic style and a more pragmatic style.