humans, and we must strive to provide every single individual with an equal opportunity to realize his or her full potential.

You exemplify what all of us might be able to accomplish, good things if we were to stop making excuses, and I was awfully good at that. I was known as "Alibi Al" in high school, and it worked. I could fake anybody out except myself. Finally, creeping maturity overcame me, and there was some progress.

So, you are an inspiration to us all. Mr. Chairman, I thank you and I sincerely welcome Judge Thomas to our committee, and I thank you for your past and present courtesies.

The CHAIRMAN. Thank you, Senator, for once again not disappointing. I think you will soon find out that Judge Thomas' views are so different from Judge Bork's that you will be surprised to find that this is not about conservatives; rather, this is about how people think.

Senator SIMPSON. I have an opportunity for rebuttal, thank you. [Laughter.]

The CHAIRMAN. Senator Metzenbaum.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

Judge Thomas, this is the fifth Supreme Court vacancy in the Reagan-Bush era. Once Justice Marshall's seat is filled, Presidents Reagan and Bush will have filled a majority of seats on the Supreme Court.

A judicial nominee cannot become a member of the High Court, simply because the President and his advisers are comfortable with that nominee's views and judicial philosophy. The Supreme Court is not an extension of the Presidency. The Constitution makes it clear that the Supreme Court is a separate and independent branch of government. That same Constitution assigned the Senate a role in the confirmation process, to help preserve the independence of the judiciary.

The importance of the Senate's role has grown in recent years, because, quite frankly, Presidents Reagan and Bush have made no bones about using the Court to advance their political and social agenda.

A core element of the Reagan-Bush political program has been reversal of Supreme Court decisions in the areas of abortion, civil rights, individual liberties, and the first amendment. The Reagan and Bush administrations have used the courts to achieve policy outcomes on social issues which they could not obtain through the legislative process.

Make no mistake about it, the Reagan and Bush administrations have succeeded. You only have to look at the Court's astonishing decision last term in the abortion gag rule case, to realize that the Rehnquist court is intent on implementing the Reagan-Bush social agenda.

An omen of things to come from the Rehnquist court was contained in a paragraph in *Payne* v. *Tennessee*, a 1991 case in which the Court reversed itself on a question of constitutional liberties. The majority in that case stated that adherence to precedent is

most important in cases involving property and contract rights. But with respect to constitutional rights and liberties, a majority of the Rehnquist court stated that adherence to precedents "is not an inexorable command, particularly in constitutional cases."

In other words, the Reagan-Bush Supreme Court thinks that Justices should be more respectful of precedent, when a business person's contractual rights are at stake than when a woman's constitutional right to choose or an African-American's right to equal treatment is at stake.

As Justice Marshall wrote in his dissent in *Payne*, this statement by the Reagan-Bush court sends "a clear signal that scores of established constitutional liberties are now ripe for reconsideration, thereby inviting open defiance of our precedents," said Justice Thurgood Marshall.

It is in that context that the current nominee comes before the Judiciary Committee.

The nomination of Judge Clarence Thomas has provoked debate and differences of opinion throughout the country. But there is one thing upon which everyone, including this Senator, agrees: Judge Thomas' life story is an uplifting tale of a youth determined to surmount the barriers of poverty, segregation, and discrimination. It was an extraordinary journey from hardscrabble Pin Point, GA, to the promise and privileges of Yale Law School.

It would be easy, and probably smart politically, for Senators to vote in favor of this nomination, because of Judge Thomas' personal triumph over adversity. Frankly, I suspect the President and his advisers believe that some Senators will do just that. But the Senate must evaluate the nomination based upon the career and record of the nominee, Judge Thomas. The question for this committee is not where does Judge Thomas come from, rather, the question for the committee is this: Where would a Justice Thomas take the Supreme Court?

I am deeply concerned about the answer to that question. The record suggests that Judge Thomas may be an eager and active participant in the Rehnquist court's assault on established judicial precedents which protect civil rights and individual liberties. Judge Thomas has harshly criticized important court decisions which have protected voting rights for blacks and promoted equal treatment for minorities and women. Indeed, he has suggested that many of these decisions be overturned.

Virtually every public statement which Judge Thomas has made regarding the issue of abortion indicates that he does not believe the Constitution protects a woman's right to choose. Judge Thomas even signed onto a White House report which urged the appointment of new Supreme Court Justices who would overturn decisions such as *Roe* v. *Wade*.

There are those who suggest that because of his extraordinary background, Judge Thomas will bring a different perspective to the Court. That may be true. It also may not be true. I am concerned that the nominee's statements and record indicate that, rather than bring a different perspective to the Court, he will fit in all too well with the Court that has spurned its special duty to protect the rights of women and minorities, the elderly, and the poor.

During his tenure as Chairman of EEOC, Judge Thomas failed to fulfill his duty to protect the legal rights of older workers. Now, some argue that this failure as EEOC Chairman is irrelevant in determining his qualifications for the Court.

I believe that his disregard for the rights of older workers is very relevant. It directly relates to his sensitivity and to his duty to provide judicial and constitutional protection for the aged. Unfortunately, while Judge Thomas was head of the EEOC, thousands of older workers who believed that they were victims of age discrimination lost their right to bring age bias suits in Federal court, because his agency failed to process their claims in a timely manner. Despite assurances from Clarence Thomas that he would correct the problem, Congress found it necessary, in 1988 and again in 1990, to pass legislation to restore the rights of these older workers.

In his career with the Federal Government, Clarence Thomas was appointed to jobs designed to protect and enforce the rights of the disadvantaged. Yet, in speech after speech, Clarence Thomas rails against governmental efforts to aid minorities and the disadvantaged. In one article, Judge Thomas even asserted that it was "insane" for African-Americans to expect the Federal Government to help relieve the harmful effects of decades of discrimination.

Judge Thomas benefited both from affirmative action and from the work of civil rights leaders and government officials who have tried to break down the barriers of poverty and discrimination. Yet, Judge Thomas condemns government efforts to give other people the same chance he had to climb over those barriers to success.

One other area of concern is Judge Thomas' constitutional philosophy. Judge Thomas' speeches and writings suggest that he might read the Constitution as forbidding the minimum wage law, banning affirmative action, and severely restricting constitutional power.

In addition, Judge Thomas has asserted that the Constitution must be interpreted in light of natural law. As has already been pointed out, natural law is a broad, vague concept which means different things to different people. Over 50 years ago, conservative judges used natural law arguments to uphold antiunion practices by employers and strike down health and safety legislation.

Similarly, a 19th century Supreme Court decision relied upon natural law arguments about "the paramount destiny and mission of women" to justify an Illinois law which banned women from practicing law. Today, antiabortion advocates have cited natural law as the basis for their argument that a fetus has a constitutionally protected right to life which overrides a woman's right to choose. In 1987, Judge Thomas called one article which made that argument "a splendid example of applying natural law."

So, Judge Thomas, I begin this hearing with a great deal of respect for your accomplishments, but also with a great deal of concern about your record and about the direction in which the Court has been moving.

You have been nominated for a seat on the Supreme Court which can no longer be counted on as a force to promote racial harmony, equal treatment, and social justice. A majority of the Supreme Court has taken a sharp right turn and declared open

season on a number of constitutional liberties and civil rights which Americans hold dear.

While the President may celebrate the Court's movement in this direction, I lament it. Ultimately, Judge Thomas, I must examine your record and determine whether you will be a Justice who will accelerate this movement, or a Justice who will help to restore balance to the Court, and once again make it a force for equal justice, fair treatment, and individual liberty.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, I want to thank you for scheduling this hearing so soon after the recess is over so that we have an opportunity to get through this and to get Judge Thomas sworn in and serving on the Court when it opens its fall term. So, thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator GRASSLEY. Congratulations, Judge Thomas, and I welcome you, and, primarily, I want to also welcome your family. This is for you and for us on this committee a really historic moment, because there has been only 105 Supreme Court Justices since the Supreme Court was set up in accordance with the Constitution. So that will put you, Judge Thomas, in a very small prestigious group. But somehow I feel it is a group you have prepared yourself for diligently.

I hope that my fellow Americans know that Judge Thomas has served with distinction in both Federal and State governments. At the Federal level he has substantial experience in all three branches of government, and I would venture to guess that few nominees have ever had such a breadth of experience before being nominated to the highest court in the land.

I would hope that this background has given Judge Thomas an appreciation for the appropriate role of courts that they have within our democratic government. Our American governmental system is, of course, a delicate one, with a structure of checks and balances and defined roles for each branch of our government.

Sometimes Justices haven't always understood that they are not policymakers. For example, some have criticized Judge Thurgood Marshall for continuing to be an advocate even after he donned the robes of an umpire.

One of the architects of article 3, Alexander Hamilton, wrote that the courts must declare only the sense of the law, and if they should be disposed to exercise will rather than that judgment the consequence would be the substitution of their pleasure to that of a legislative body.

To be faithful to our Constitution's framers, Judge Thomas will actually be required to step away, step back from his past involvement in the shaping of public policy. Being a judge, as he has said since assuming his position on the Court of Appeals, requires discipline. Rather than making policy, he will be called upon to inter-