The CHAIRMAN. But let me move, if I may, for a second. As I said earlier, I mentioned that concomitant with those who want to sort of raise up the economic protections and business incorporation to make it harder for government to regulate them without paying them, which is a multibillion-dollar change in the law—not your view—where Mr. Epstein's views take place, the multibillion-dollar expense for the taxpayers if they wanted to continue to regulate the way we now regulate and consider reasonable. As I mentioned earlier, there is a second zone of individual rights, a zone which includes such rights as free speech, religion, and privacy in the family. These rights are also protected as informed by natural law principles.

Now, you say that is not what you mean, informed by natural law principles. But some of the specific protections are very specific. For example, the fourth amendment guarantees personal privacy in a particular context, illegal search and seizures, and other protections are more general, like the 14th amendment that says "nor shall any State deprive any person of life, liberty, or property without due process of law."

Now, Judge, in your view, does the liberty clause of the 14th amendment protect the right of women to decide for themselves in certain instances whether or not to terminate pregnancy?

Judge THOMAS. Senator, first of all, let me look at that in the context other than with natural law principles.

The CHAIRMAN. Let's forget about natural law for a minute.

Judge THOMAS. My view is that there is a right to privacy in the 14th amendment.

The CHAIRMAN. Well, Judge, does that right to privacy in the liberty clause of the 14th amendment protect the right of a woman to decide for herself in certain instances whether or not to terminate a pregnancy?

Judge THOMAS. Senator, I think that the Supreme Court has made clear that the issue of marital privacy is protected, that the State cannot infringe on that without a compelling interest, and the Supreme Court, of course, in the case of *Roe* v. *Wade* has found an interest in the woman's right to—as a fundamental interest a woman's right to terminate a pregnancy. I do not think that at this time that I could maintain my impartiality as a member of the judiciary and comment on that specific case.

The CHAIRMAN. Well, let's try it another way, Judge. I don't want to ask you to comment specifically on *Roe* there. What I am trying to get at, there are two schools of thought out there. There is a gentleman like Professor Michael Moore of the University of Pennsylvania and Mr. Lewis Lehrman of the Heritage Foundation who both think natural law philosophy informs their view, and they conclude one who strongly supports a woman's right and the other one who strongly opposes a woman's right to terminate a pregnancy.

Then there are those who say that, no, this should be left strictly to the legislative bodies, not for the courts to interpret, and they fall into the school of thought represented by John Hart Healy and former Judge Robert Bork, for example, who say the Court has nothing to do with that.

Now, let me ask you this: Where does the decision lie? Does it lie with the Court? For example, you quote, with admiration, Mr. Lehrman's article. Mr. Lehrman's article was on natural law and—I forget the exact title here. Let me find it. "Natural Law and the Right to Life." And you say when you are speaking at a gathering that you think that that is a superb application of natural law. You say, "It is a splendid example of applying natural law."

Now, what did you mean by that?

Judge THOMAS. Well, let me go back to, I guess, my first comment to you when we were discussing natural law—I think that is important—and then come back to the question of the due process analysis.

The speech that I was giving there was before the Heritage Foundation. Again, as I indicated earlier, my interest was civil rights and slavery. What I was attempting to do in the beginning of that speech was to make clear to a conservative audience that blacks who were Republicans and the issues that affected blacks were being addressed and being dealt with by conservatives in what I considered a less-than-acceptable manner.

The second point that——

The CHAIRMAN. In what sense? In that they were not——

Judge THOMAS. That they were not.

The CHAIRMAN [continuing]. Invoking natural law.

Judge THOMAS. No, that—no. The second point that I wanted to make to them was that they had, based on what I thought was an appropriate approach, they had an obligation just as conservatives to be more open and more aggressive on civil rights enforcement. What I thought would be the best way to approach that would be using the underlying concept of our Constitution that we were all created equal.

I felt that conservatives would be skeptical about the notion of natural law. I was using that as the underlying approach. I felt that they would be conservative and that they would not—or be skeptical about that concept. I was speaking in the Lew Lehrman Auditorium of the Heritage Foundation. I thought that if I demonstrated that one of their own accepted at least the concept of natural rights, that they would be more apt to accept that concept as an underlying principle for being more aggressive on civil rights. My whole interest was civil rights enforcement.

The CHAIRMAN. Judge, you said in that speech, "The need to reexamine natural law is as current as last month's issue of Time on ethics, yet it is more venerable than St. Thomas Aquinas. It both transcends and underlies time and place, race and custom, and until recently it has been an integral part of the American political tradition. Dr. King was the last prominent American political figure to appeal to it. But Heritage trustee Lewis Lehrman's recent essay in the American Sector on the Declaration of Independence and the meaning of the right to life is a splendid example of applying it. Briefly put, this thesis of natural law is that human nature provides the key to how men ought to live their lives."

And then Mr. Lehrman's article goes on, not you, Mr. Lehrman's article goes on and says, "Because it is a natural right of a fetus, there is no ability of the legislative body to impact in any way on whether or not there can or cannot be an abortion at any time for

any reason. And the Court must uphold applying natural law, the principle that abortion is wrong under all circumstances, whether it is the life of the mother, no matter what, all circumstances."

Judge THOMAS. It was not my intention, Mr. Chairman, as I have tried to indicate to you, to adopt—I think I have been explicit when I wanted to adopt someone or say something, adopt a position or say something. I think I have done that.

My interest in the speech I think is fairly clear, or is very clear. My interest was in the aggressive enforcement of civil rights. Remember the context. I am in the Reagan administration. I have been engaged in significant battles throughout my tenure. It is toward the end of the Reagan administration. And I feel that conservatives have taken an approach on civil rights where they have become comfortable with notions that it is okay to simply be against quotas or to be against busing or to be against voting rights and consider that a civil rights agenda.

What I was looking for were unifying themes in a political standpoint, not a constitutional adjudication standpoint, and I used themes that I thought that one of their champions had in a way adopted, not adopting his analysis or adopting his approach, but adopting a theme that he used to serve the purposes that I thought were very important.

The CHAIRMAN. Well, Judge, let me conclude this round by saying that—picking up that context, that you were a part of the Reagan administration. In 1986, as a member of the administration, you were part of what has been referred to here, the administration's Working Group on the Family. This group put out what I think can only be characterized as a controversial report. And you sign that report which recommends more State regulation of the family than is now allowed under the law. That report concludes that the Supreme Court's privacy decisions for the last 20 years are fatally flawed and should be corrected.

Judge, did you read this report before it was released?

Judge THOMAS. Well, let me explain to you how working groups work in the domestic policy context or the way that they worked in the administration. Normally what would happen is that there would be a number of informal meetings. At those meetings, you would express your—there would be some discussion around the table. My interest was in low-income families. I transmitted, after several meetings transmitted to the head of that working group, my views on the low-income family and the need to address the problems of low-income families in the report.

The report, as it normally works in these working groups in domestic policy, the report is not finalized, nor is it a team effort in drafting. You are submitted your document. That document is then, as far as I know, it may be sent around or may not be sent around. But there is no signature required on those.

The CHAIRMAN. Did you ever read the report, Judge?

Judge THOMAS. The section that I read was on the family. I was only interested in whether they included my comments on the low-income family.

The CHAIRMAN. But at any time, even after it was published?

Judge THOMAS. No, I did not.

The CHAIRMAN. You haven't to this moment read that report?

Judge THOMAS. To this day, I have not read that report. I read the sections on low-income families.

The CHAIRMAN. There was an awful lot of discussion in the press and controversy about it.

Judge THOMAS. There was controversy about it. I was interested in low-income families. If you work with the domestic policy group or the working groups at the White House, what one quickly learns is that you send your input, that that input is reduced to what they want it reduced to, and then the report is circulated in final.

The CHAIRMAN. Well, let me conclude. This is the last thing I will ask you. This report, which is only 67 pages long, of which your report is part of—and I acknowledge your suggesting, telling us that you did not read the report before or after, and your part was only a small part of this. But in this report, take my word for it, it says that one of these fatally flawed decisions—and they explicitly pick out one—is *Moore* v. *City of East Cleveland,* where the city of East Cleveland said a grandmother raising two grandchildren who are cousins and not brothers is violating the zoning law and therefore has to do one of two things: move out of the neighborhood or tell one of her grandchildren to leave.

As you know, that case, I believe, was appealed to the Supreme Court, that grandmother, and the Court said, "Hey, no, she has an absolute right of privacy to be able to have two of those grandchildren, even though they are cousins, to live with her and no zoning law can tell her otherwise."

Now, this report says, explicitly it says, that the city of East Cleveland and other cities should be able to pass such laws if they want and they should be upheld. And if we can't get them upheld, then we should change the Court. That is what this report says. And they say that the cities and States should be able to establish norms of a traditional family.

If you will give me the benefit of the doubt that I am telling you the truth and accurately characterizing the report on that point, do you agree with what I suggested to you is the conclusion of that report in the section you have not read?

Judge THOMAS. I have heard recently that that was the conclusion, but I would like to make a point there. I think—and I think the Supreme Court's rulings in the privacy area support—that the notion of family is one of the most personal and most private relationships that we have in our country. If I had, of course, known that that section was in the report before it became final, of course I would have expressed my concerns.

The CHAIRMAN. It is kind of outrageous, isn't it? Isn't it an outrageous suggestion?

Judge THOMAS. That would have had direct implications on my own family, that I could easily have been zoned out of my neighborhood should approaches like that take place. But my point to you—and I think it is very, very important, Senator—is this: That when you are involved or were involved in a working group in the White House, we were more in the nature of resource people. This was not a committee report. This was not a conference report which was circulated normally for comment. It was something generally that you provided your input, and I provided a significant memo, I believe, on low-income families and families that I felt

were at risk in the society and how we should approach resolving those families. I do not remember there being any discussion of the final draft.

The CHAIRMAN. Well, I have much more to ask you, Judge. We are going to go back, when I get a chance again, to the Macedo quote, the ABA speech, and the Lehrman speech, and this report. But, quite frankly, at this point you leave me with more questions than answers, but let me yield to my distinguished colleague, Senator Thurmond.

Senator METZENBAUM. Mr. Chairman, before proceeding forward—and I don't wish to interrupt my colleague, Senator Thurmond—would you be good enough to ask the Judge to read that report in order that we might inquire further of him tomorrow in our questioning period?

The CHAIRMAN. Well, if you plan on inquiring of him, I will make sure he has a copy available, and he can decide whether he wishes to read it or not.

Senator METZENBAUM. I do intend to inquire of him.

The CHAIRMAN. I will see to it that he has a copy, and he can make the judgment whether he wishes to read it.

Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Now, Judge, I think we can move right along. I have about 30 minutes here, and I have approximately 14 questions. I think we can finish them if you will just make your answers fairly brief.

Judge Thomas, the Constitution of the United States is now over 200 years old. Many Americans have expressed their views about the endurance of this great document. With the events in the Soviet Union, this document takes on an even greater significance as the foundation of our domestic form of government. Would you please share with the committee your opinion as to the success of our Constitution and its distinction as the oldest existing Constitution in the world today?

Judge THOMAS. Senator, I think it should be clear to all——

Senator THURMOND. Speak in the microphone. Speak out so we can all hear you.

Judge THOMAS. Senator, I think it should be clear to all of us that our Constitution, as it has endured, is one of the greatest documents, not only in our lifetimes, but certainly in the history of the world. It protects our freedoms as well as provides us with a structure of government that is certainly the freest government in the world, and it has certainly been a model for other countries.

Senator THURMOND. Second question: Judge Thomas, *Marbury* v. *Madison* is a famous Supreme Court decision. It provides the basis of the Supreme Court's authority to interpret the Constitution and issue decisions which are binding on both the executive and legislative branches. Would you briefly discuss your views on this authority?

Judge THOMAS. Senator, I think it is important to recognize—and we all do recognize—that *Marbury* v. *Madison* is the underpinning of our current judicial system, that the courts do decide and do the cases in the constitutional area, and it is certainly an approach that we have grown accustomed to and around which our institutions, our legal institutions have grown up.