Judge THOMAS. Senator, I believe—again, I have not reviewed the transcript—I believe I indicated that I would have raised concerns, and I believe that those concerns would have been of the same character and the same nature as the concerns that I would raise in this case. I thought that we had a grand opportunity there to focus governmental policy on existing low-income and at-risk families.

I felt that was very important, and it was very important in this context, it was important to me: It was important, because you had I think about one-third or more of the minority kids in our society being under the poverty limit, and I felt that the administration could have addressed that in a policy that was important to the entire administration.

Senator METZENBAUM. My time is up, but, Judge Thomas, I am really asking you specifically yes or no. You indicated you would have objected to the *East Cleveland* decision, had you known that language with reference to the *East Cleveland* decision, had you known it was in there. So, I am asking you if you had known about the abortion case references, would you have objected, and the answer is just yes or no.

Judge THOMAS. Senator, I would have raised concerns for the reasons I have expressed to you.

The CHAIRMAN. Thank you very much, Senator Metzenbaum.

Dr. Hatch——

Senator SIMPSON. Dr. Hatch?

The CHAIRMAN. Excuse me. I am so accustomed to attempting to avoid the Simpson-Metzenbaum skirmish that I guess it was a reflex action. I do apologize. I was so impressed with Senator Hatch's rehabilitation yesterday that I just wanted to hear more. [Laughter.]

Senator HATCH. With Senator Simpson's permission, I would be really happy to pick up with this.

The CHAIRMAN. I apologize, Senator Simpson. I am sorry. Senator Simpson.

Senator SIMPSON. Mr. Chairman, you have often left the Senator from Ohio and I to our own skirmishes, which we certainly enjoy.

The CHAIRMAN. You will understand if both Senator Thurmond and I just reflexively push our chairs back. If you will notice Senator Thurmond has already started back. I am heading back, too, so you can see one another. [Laughter.]

Senator SIMPSON. I want to get a little eye contact with Howard. Get out of the way, Ted.

Well, let me say that you see one of the great pleasures of being on this committee. It is a splendid committee, and we have a splendid chairman. And the members I think have a comity and a nature of dealing with each other which is something I think that no nonlawyer could understand. It is a little tough for my friend from Iowa; sometimes he will say, "What are you guys up to?" But it is part of the practice of law. You whack around on somebody all day long, and then you go off and have dinner together or visit with each other, and that is the best way to legislate.

I have the highest regard for every single member of this committee, and my spirited friend from Ohio and I had one one time where we were both just standing going toe to toe. I think it was

during the Rehnquist hearings. And let me tell you, our neck muscles were bulging in the hall. And Howard said, "Well, smart alec, here they come, here come the media. They have seen what we are up to." And we both said, "Yes, but by the time they get here, we will be smiling and clapping each other on the back." And by the time they made it there, we were chuckling and doing our chicken dance, whatever it is we do. Anyway, it is interesting work.

I want to welcome the family here: The son and the mother and the daughter, Jamal and Ginnie, who I think I knew before she knew you, with the Department of Labor when I was working on immigration issues. Very splendid lady.

I go back to the words of probably our most respected colleague, Jack Danforth. He mentioned that you had a great propensity for laughter and good humor. You display that. I have a propensity to sometimes cross the line between good humor and smart alec. And when I do, I certainly pay for it dearly, and should.

My dear mother taught me that humor was the irreplaceable solvent against the abrasive elements of life, and that remarkable lady, in her ninth decade, will be critiquing whatever I say. And I must be very diligent and clear in saying it.

I think you can already see the hazards of speaking out. Your collected speeches—I heard Dr. Hatch yesterday. The reason the chairman refers to him as "Dr. Hatch," he is the great rehabilitator. He can take broken bodies and stretch them back into proper shape after Kennedy or Howard or whoever have raveled them unyielding. And so that was just a slip there.

But what has happened is you took the collected ramblings of all of us, and we were sitting there, and they said Senator Biden or Senator Metzenbaum or Senator Kennedy or Senator Simpson, do you remember a speech you gave to some institute in Detroit on the night of October 1, 1981? You probably scribbled it on the back of a matchbook. Then you did it, and you either got carried away with the crowd or you didn't, or you took them or you didn't. And to think that you can go back in life and try to put those things together as something that has to do with now is a very difficult thing for me to believe in life. But I am one who believes that if they were putting together the life of Al Simpson at the age of 60, at which I arrived September 2, and the Al Simpson of 17 or 35 or 40 or 45, no one can pass that test. There may be a lot of people here that say they can pass that test, but nobody—nobody—can pass that test.

So you see the hazards of this, and I think it is very important that we heed the warning—I read it as a warning—of Jack Danforth not to pay one bit of attention to snippets and pieces and bits and shards and jagged edges, or whatever you have said in the past, unless you have a little stack of it right there. And every time somebody pulls one out, you just say, "I ask that the entirety of that speech go into the record." We will make that an automatic. I think that is a very important thing because there isn't anything that I have read—and I have read a great deal—and knowing others on this panel, Senator Leahy or Senator Specter, and I know how they burrow in stuff and read extensively everything you probably have done. I think it is critically important that it all be presented. Because, indeed, in looking at the questions that have been

presented and then looking at the speeches, it just doesn't fit, unless, of course, you are just taking the one phrase.

Well, I must comment on the so-called confirmation conversion. That seems to be a bit of a topic of the day. I mentioned in my opening statement that certain special interest groups would go after you in a rich and vigorous way. That is not exactly what I said, but it could be rancorous and it could be contentious. And I said that, and that now is, you know, coming to pass.

And after you explained to us yesterday, I thought rather clearly, on this issue of natural law that you had used it as a basis for political theory but not as a basis for constitutional adjudication. That was your statement. And this issue of natural law, it would be really interesting to know what that is. But since you don't know what it is, it is kind of tough to talk about it I would think.

These are the reasons why I struggled in law school. Little sessions like that used to just leave me huddled in the corner as to what it was that was trying to be developed, losing track of how do you assist a person in extremity, what is a lawyer supposed to do, what is your duty to society, and real life things that have to do with a lawyer-client relationship.

But, anyway, one of the leading spokesmen, or at least one of the continually most vocal spokesmen for some civil rights groups have accused you of a confirmation conversion. Let me read the quotation in one of today's journals. It says, "The Executive Director of the Leadership Conference on Civil Rights said that Judge Thomas was running from his record"—"He seemed to be sprinting from his record," not running from his record. "He seemed to be sprinting from his record." That was the earlier confirmation conversion we have witnessed.

I think that is a bit of an overreaction, but I think that is but a portrayal of a sound bite syndrome that suddenly overcomes some people in that line of work. And I think it is an inaccurate accusation, and I think it is untrue. And I use that word without being light about it. Untrue. An act of desperation, if you will, and that is used often by that group.

Here is their publication of July 17, 1991, of this Leadership Conference on Civil Rights. By the way, the record should disclose that more than several of their membership organizations dropped out of the fight here with you and decided not to join them in denouncing you. That is clearly of record.

Then in July, they didn't know what to do with you. You got them. They are very frustrated about you. And they said that if they decided to oppose you—and, believe me, from my experience with them, I know that they were ready to oppose you on July 17, 1991—but if they decide to oppose you, it will come only after the most serious consideration.

In that same document, they go on to say about what is at stake for them. So far they say, "The right wing of the Court, led by Chief Justice William Rehnquist and Justice Antonin Scalia, have had to compromise on many occasions in order to get their 5–4 and 6–3 majorities. If Justices Rehnquist"—and I emphasize this—"and Scalia get one more like-minded Justice, they will have without question the votes to overturn directly Supreme Court decisions.

Overnight, constitutional and statutory rights Americans have had for decades could vanish."

Now, that is half hysterical stuff there. You only get one vote, as far as I am aware. But here is the part that deserves, I think, the attention of fair-thinking people. Here is what you said to this chairman on February 6, 1990. Everybody had a good look at this. They scoured your record with a brush, a wire brush.

So you said to this chairman and this committee on February 6, when you were nominated to the circuit court, with regard to the issue of natural law—and everybody knows this. Let us try to stay at least basic, in fairness. You said:

> But recognizing that natural rights is a philosophical, historical context of the Constitution is not to say that I have abandoned the methodology of constitutional interpretation used by the Supreme Court. In applying the Constitution, I think I would have to resort to the approaches that the Supreme Court has used. I would have to look at the texture of the Constitution, the structure. I would have to look at the prior Supreme Court precedents.

Now, that is what you said. You made that quite plain 17 months ago, the exact distinction that you were making yesterday. I might ask you, then, to set the record straight: Is it accurate to say that on the day of September 10, 1991, was that the day on which Clarence Thomas changed his views or had a conversion or sprinted from his previous record on natural law? Or were those the views you explained so well and ones that you have held for some period of time?

Judge THOMAS. Senator, I have been consistent on this issue of natural law. As I indicated, my interest in the area resulted from an interest in finding a common theme and finding a theme that could rekindle and strengthen enforcement of civil rights, and ask the basic or answer a basic question of how do you get rid of slavery, how do you end it.

Our Founders, the drafters of the 13th, 14th amendments, abolitionists, believed in natural law, but they reduced it to positive law. The positive law is our Constitution. And when we look at constitutional adjudication, we look to that document. We may want to know, and I think it is important at times to understand what the drafters believed they were doing as a part of our history and tradition in some of the provisions such as the liberty component of the due process clause of the 14th amendment. But we don't make an independent search or an independent reference to some notion or a notion of natural law.

That is the point that I tried to make, and there was no followup question, as I remember it, at my confirmation to the court of appeals. But that has been a consistent point. We look at natural law beliefs of the Founders as a background to our Constitution.

Senator SIMPSON. Have you seen anything come up at this hearing thus far that is really anything different, much different than what happened when we confirmed you for the circuit court, other than the fact that you have remained absolutely silent as those out there decided to distort these issues?

Judge THOMAS. Well, I think the one difference, Senator, of course is that I am a sitting Federal judge now. When I came before this committee the last time, I was a policymaker. I was

someone who had taken policy positions, and those questions and concerns were raised of me as Chairman of EEOC.

Today I am a sitting Federal judge, and I find myself in a much different posture. It is a different role. I have no occasion to make policy speeches, have no occasion to speculate about policy in our Government, or to be a part of that policy debate. And I believe at my last confirmation, much of that debate or those debates were explored in the hearings.

Today I have refrained from it, from those debates, primarily because, as I have said before, engaging in such policy debate, particularly in public, I think undermines the impartiality of a Federal judge. Taking strong positions on issues that are of some controversy in our society when there are viewpoints on both sides undermines your ability.

My Dallas Cowboys, for example, played the Redskins on Monday night, and I am totally convinced that every referee in those games is a Redskins fan. But none would admit to it.

I think that in something as simple as that, even though we have strong views about who should win, something as simple as that, we would want to feel that the referees—and judges are, to a large extent, referees—are fair and impartial, even when we don't agree with the calls.

The CHAIRMAN. Judge, are you for the Dallas Cowboys or the Redskins?

Judge THOMAS. I am a lifetime—I have been a Dallas Cowboys fan for 25 years.

The CHAIRMAN. Thank you very much. [Laughter.]

Senator SIMPSON. That didn't come off of my time, did it?

The CHAIRMAN. No. It doesn't come off your time. I am just curious.

Judge THOMAS. I am certain that that will probably have someone else express his concern about me.

Senator SIMPSON. I think that will create more concern than anything thus far. To have you in this nest of Redskin fans, to be a Dallas Cowboy fan certainly discloses a degree of independence which will serve you very well on the Court. [Laughter.]

Let me ask a couple more. My time is running down. Some have raised a litany of questions about this issue of natural law. I think some of your critics—and I do not say this about the chairman because I know the way he does his research, in a powerful, skilled way, using resources that are available to him. But it seems to me that as I read stuff about, it has been selected as an issue to try to confound people because natural law is an inherently vague concept. And then your detractors can conjecture all kinds of things about you and your philosophies without being taken to task for the obvious inaccuracies and vagueness.

Now, for example—and I love this definition—the commentator in the Legal Times—I didn't get the name, but I love the quote. He recently wrote, he or she—

> Of all the perplexing questions surrounding the Supreme Court nominee, few are more nettlesome than natural law. It is sure to come up at confirmation hearings, but don't expect any clear answers, and don't blame Thomas for being unclear. Natural law philosophy and its adherents live in a world apart, a world that is dense

and combative and, above all, unclear. A journey to the world of natural law is not for the faint of heart.

That is a quote from the Legal Times. In the article, it says:

Tap into the natural law crowd, and you quickly learn that there are factions of adherents who hate each other. There are the East Coast Straussians and the West Coast Straussians, both followers of philosopher Leo Strauss but sharply in disagreement with each other. You are instructed if you talk to Walter Byrnes, a leader of the East Coast faction, you don't mention the name of Harry Jaffa, the West Coast leader, until your conversation is nearly over. And it is true. When asked about Jaffa, Byrnes said, "At one time we were close friends, but ten years ago we parted company."

Yesterday I saw a report in a national publication that had four paragraphs of Jaffa. I don't even know what he has to do with this. As far as I know, he is not going to testify. But if he does, I certainly want to be here. He has got some unique ideas and concepts I would like to ask about.

So it goes on to say, "It goes on like that"—I am quoting from the article—"propelling one on a fairly fruitless search through writings by the likes of St. Thomas Aquinas and Abraham Lincoln in hopes of discovering how Clarence Thomas would carry out natural law precepts. The simple answer, the one that frightens liberals, is that nobody knows."

And then, of course, it was interesting to me—and it was mentioned yesterday—that Laurence Tribe, who I greatly respect and who I know and feel quite certain that when the Democrats wrench the Presidency back to their bosom, he will be exhibit A right here. And I want to talk with him and visit with him and hear his views, but we won't have to look far because he has a ton of opinions that he has written. And I admire his guts. Because there aren't going to be people who are bright and energetic who are ever going to write much more again as long as this committee continues to do what we do. And there is a purpose for what we do, and I am not challenging that. And it is done with fairness.

But, in any event, you were asking about natural law solely on the basis of something that was deep in your craw, and that was slavery. Isn't that correct?

Judge THOMAS. Senator, that is correct. The issue of civil rights has been something that, of course, has affected my entire life, and which I indicated in my opening statement, but for those changes I would not be here.

My concern was how do you, from a standpoint of our political philosophy, how do you end slavery and how do you reinvigorate civil rights enforcement. How do you convince people who may be skeptical of aggressive enforcement that it is actually central to our country?

I think that those who heard me during that time understood how deeply I felt about that and continue to feel about that. And I think that anyone who grew up where I grew up, in the world that I grew up in, would be deeply impassioned about civil rights enforcement. But I was trying to engage not only the passion but the intellect, and it was an effort to help and to add to and to support and sustain that I was looking at the whole area of natural law; not as an effort to undermine or destroy individual freedoms in our society, but to actually support it and to defend it and enhance it.

Senator SIMPSON. Well, I think that that is a very good answer. Obviously I concur with it. But it seems to me that this natural law business, if I can understand it, does have a very clear foundation. And it has been used by anyone of both parties, and I have quotes of members of this committee who have used it to talk about racism in South Africa or what we have done with the disadvantaged in society. Professor Tribe has used it, the other side of it with Judge Bork. Good heavens.

But I think if you asked us what is a natural law, it has to do with things like the right of privacy—and that is a critical right, in my mind, in life, a principle shared by all of us about inalienable rights, the Declaration of Independence itself. That, I gather, is what you were referring to, that we hold these truths to be self-evident, or, rather, natural—if I may interpret it—that all men are created equal, which must have puzzled you greatly from your résumé of life that you have presented to us; that all men are endowed by the Creator with certain inalienable rights, which must have stunned you, too.

So I can hear it from that standpoint, and although I hesitate to use today's trendy jargon, I believe one would have to be terribly insensitive not to hear what you are saying and the way you are saying it and understand your explanation of your exploration of this thing called natural law in an effort to find meaning in a Constitution that apparently permitted slavery in the United States. That must have been a most torturous path to travel, one that I nor any one of us could even conjecture.

So I fear that we lawyers have become fascinated with this new vague theory of law which most of us never heard one whit about in law school. This is like the doctrine of Renvoi. I never tried a case with the doctrine of Renvoi, but it sounded good, and one guy talked about it all day. And he got an A, and I got a D. So I knew he was on the right track.

So I believe this fascination has caused us to elevate this rather peripheral matter to a central issue in the confirmation, kind of a penumbra of stuff floating around, to quote another Justice.

You have told us so clearly that you feel that natural law is not applicable to constitutional adjudication, is the word you used, or interpretation. You testified that you had not considered it in your adjudications on the circuit court and that you hadn't spoken publicly or written on it since you left the EEOC. Now, that seems to me pretty well to cover it, but I don't think it will.

So my final question for you, do you believe that that passage that I just moments ago quoted from the Declaration of Independence has meaning, perhaps the meaning I attached to it? Is the belief that all men are endowed with certain inalienable rights one that you would consider well accepted within the judicial mainstream and consistent with most Americans' values and principles?

Judge THOMAS. Senator, I think that most Americans, when they refer to the Declaration of Independence and its restatement of our inherent equality, believe that. And I believe that our revulsion when we think of policies such as apartheid flow from the acceptance of our inherent equality.

Now, we haven't always lived up to that. And, indeed, principles or concepts such as liberty were added by individuals who believed

that we were all created equal, abolitionists some of them, to the Constitution itself. But once it is in the Constitution, then our rights are set out. It is no longer an ideal. It is a constitutional right—liberty. And once it is in the Constitution, we adjudicate it, we interpret it, understanding what our Founders believed. But adjudicate it, looking at our history and our tradition, not just what their beliefs were when they drafted the document.

Senator SIMPSON. Mr. Chairman, I am going to conclude. I know I have a couple of minutes left, but I would be starting on another approach on issues that I think I would not be able to properly address. I thank you for your courtesy.

The CHAIRMAN. Thank you.

I am going to suggest that we take a 5-minute break, to accommodate the Judge. If I may, Judge, I want to put one notion to rest here.

Number 1, do not count me as one of your detractors, because I ask you tough questions. No. 2, the issue of natural law may confound the people, to use Senator Simpson's phrase, but not a single legal scholar in America. I hope you meet that criteria, or you should not be on the Supreme Court. You must have a knowledge and insight to the Constitution that is better than the average lawyer, and I am sure you do. That is why I am sure you understand what I am about to say.

Not a single legal scholar in America fails to understand the significance of whether or how one applies natural law. Judge Bork devoted a chapter in his book about how those people who want to apply natural law are bad, not bad in a moral sense, but wrong.

There is an entire school of thought with which you are fully familiar. I did not fail to accept your answers yesterday. I just want to make sure we all know what we are talking about here. You and I know, at least, what we are talking about.

There is not a single legal scholar who does not understand that there is a fervent, bright, and aggressive school of thought that wishes to see natural law further inform the Constitution than it does now. The positivists, led by Judge Bork, argue against this school.

Again, that may be lost on all the people, but you know and I know what we are talking about. Now, all I am out to do in my second round is to find out whether you, in fact, do apply natural law, and, if you do, how. You answered that partially yesterday, and yet I am still somewhat confused, so I plan to come back to it. But for the record and for all the press to know, whether someone applies natural law is of phenomenal significance, and there is not a single legal scholar in America who will disagree with this statement.

Now, someone may apply it in a way, like Moore, who leads him in a direction that is liberal. You may apply it in a way that leads you in a direction that is conservative, or you may, like many argue, not apply it at all. Nevertheless, it is a fundamental question that is going to be almost impossible for nonlawyers to grasp and exchange, but you know and I know that it is a big, big deal.

In conclusion, the only reason most of us asked you about natural law, is that is how you gained your reputation. Rightly or wrongly, when you are spoken about by other lawyers or when you