You have abandoned your previous statements that business rights are as important as individual rights or any other right. You now claim you are satisfied with the Supreme Court decisions that give less importance to business rights and greater importance to individual rights.

You have criticized Supreme Court decisions protecting voting rights and sustaining the power of Congress to appoint independent prosecutors, to investigate wrong-doing in the executive branch, now you seem to be supporting those positions.

You have trashed the leaders of the civil rights movement in many speeches, but now you emphasize your debt to them. You have trashed Oliver Wendell Holmes in one of your speeches, but last Friday you called him a giant in the law.

You have harshly criticized Congress, and, as an executive branch official in the Department of Education, you were on the verge of being held in contempt of a Federal court for failing to enforce civil rights laws.

You urge lower courts to follow a Supreme Court dissenting opinion restricting job opportunities for women, instead of the Court's majority opinion expanding those opportunities.

The vanishing views of Judge Thomas have become a major issue in these hearings. If nominees can blithely disavow controversial positions taken in the past, nominees can say those positions are merely philosophical musings or policy views or advocacy. If we permit them to dismiss views full of sound and fury as signifying nothing, we are abdicating our constitutional role in the advise-and-consent process.

Some say that the Senate should consider only the nominee's qualifications and not his ideological views, but the Constitution gives the Senate a shared role with the President in the appointment of Justices to the Federal courts, and for very good reason.

The Supreme Court thrives on the diversity of views of nine Justices who comprise it. It is our system of checks and balances. The role of the Senate is one of the most important checks on the power of the President to pack the Court with appointees who share a single one-dimensional view of the Constitution.

When ideology is the paramount consideration of the President selecting a nominee, the Senate is entitled to take ideology into account in the confirmation process and reject any nominee whose views are too extreme or outside the mainstream.

As we move to the next stage of these hearings, I continue to have major concerns about your nomination and about your commitment to the fundamental rights and liberties at the heart of the Constitution and our democracy. This is no time to turn back.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Now, where we are at this moment is that all Republican Senators have had a third round and we should be just going down the row here, but Senator Grassley, who did not complete a third round last week, apparently has a couple of minutes he would like to use now, is that correct?

Senator GRASSLEY. Yes, at least not more than 5.

The CHAIRMAN. OK. Well, if it is all right with the Senator from Vermont, if we yield to the Senator from Iowa. Everybody will

have more time if they want it on the Republican side. Senator Brown is entitled to any time he wants and we will do that. I just wanted to make sure that people who have had a chance to ask three times already yield to those who have only asked twice. Senator Brown has only asked twice, so he will get another chance.

At any rate, after all of that, why don't I just yield to the Senator from Iowa for whatever questions he has, and then we will go to the Senator from Vermont.

Senator SIMON. Are we going to be breaking for lunch?

Senator GRASSLEY. Mr. Chairman, my point——

The CHAIRMAN. Excuse me, Senator. I have been asked a question, are we going to be breaking for lunch. I think that is going to be inescapable. The question is whether we break immediately after the Senator from Vermont, and I think that depends on how long the Senator from Iowa goes, and he has as right to go long if he wants, or whether we break after the Senator from Alabama. That being the case, we would be down to very few minutes after that, but we are probably going to have to break for lunch, and we will do a very short break, meaning an hour, not an hour and a half, when that time comes. But let us see how far we get right now.

Senator GRASSLEY. Mr. Chairman, I take some time now just for further clarification, more than anything else. I had previously discussed for the committee's benefit, more so than to question the Judge, about the *Adams* v. *Bell* matter, and I thought maybe it would be closed, but it is apparent that it is not closed.

Last week, I had asked that the transcript of the proceedings be printed in the record, and you said it would be made available, and at the time I thought that would be sufficient, but now I think it is only fair that the transcript on the Judge's order in which Judge Thomas was not held in contempt be printed in the public record, and I think that it should be clear that Judge Thomas, as I said previously and as I laid out in a factual record, only inherited a very difficult situation and in no way intentionally violated the law, so I would like to have that printed in the record, if I could, Mr. Chairman.

The CHAIRMAN. Without objection, it will be printed in the record.

[The information referred to follows:]

THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT: Well, as Mr. Tatal in his letter of yesterday -- counsel have copies -- correctly surmised, we are reluctant to find the defendants in contempt for a variety of reasons, not the least of which is that they arrived on the scene relatively late and the motion to hold them in contempt was filed within a matter of just a few months after they came aboard.

We do find, though, that the order has been violated in many important respects and we are not at all convinced that these violations will be taken care of and eventually eliminated without the coercive power of the Court. We are not going to discharge the rule to show cause; we are not going to hold them in contempt at this time.

We shall give the Government until June 1, which is roughly 45 days -- a little longer than that -- or 75 days, two months and a half, within which to complete the study to which Mr. Clarence Thomas referred and to supply copies to all of the parties.

By the 15th of August, which is five months from now, we shall expect the parties on the basis of the completed study to arrive at a consent order which will either (1) reimpose the present guidelines, or (2) make modification of these guidelines in view of the changed circumstances to which Mr. Levie made reference, which guidelines would presumably

take into account the change in the mix of cases, any increases in the complexity and difficulty of cases, and any related considerations. But it is my intention that the order that the parties will submit will cover all of these contingencies so far as they are able to anticipate. On the other hand, if they are not able to enter into an order by consent, I shall expect that on, or before, the 15th of August, each of the parties will present his own order and at that time, we will again get into the question of what coercion will be necessary to insure the compliance with this order, absent the consent of the parties.

Let me say further that all of us have noted the game of "Musical Chairs" that the Department of HEW and now, apparently, the Department of Education is going through. I read in the papers that we may not have a Department of Education too much longer. I do not know what department of the Government will take over those functions. But I would think that any consent order should bear on its face the signatures, not only of the lawyers who are negotiating the settlement, but also the cabinet secretaries and department heads who are going to bear the burden of compliance.

Now having said this, I want to say that this subject, I think, has been very fully aired and I think all sides have been very competently represented. I am sorry that we have to delay further this matter of seeing what happens to the order

we entered in December of 1977.

Is there anything further, gentlemen?

MR. LICHTMAN: No, Your Honor.

THE COURT: Mr. Levie?

MR. LEVIE: No, Your Honor.

THE COURT: Stand recessed until further call.

(Whereupon, the Court's Findings and Conclusions were concluded at 3:11 p.m.)

* * * * *

CERTIFICATE OF REPORTER

The above and foregoing typewritten record is hereby certified by the undersigned as the official transcript of the proceedings in the above-captioned matter.

VERNELL A. MARSHALL
Official Court Reporter

Senator GRASSLEY. I would also like to correct what seems to be a wrong impression here regarding Judge Thomas' relationship with civil rights groups and leaders.

In an October 23, 1982, speech before the Maryland Conference of the NAACP, as the then newly installed Chairman of the EEOC, here is something that I thought Judge Thomas said well that expresses his working relationship:

I would like to talk with you about why I believe that you are the group that can truly make a difference for blacks in this country, what I think of the challenges will be in the future, and what we are doing at the Federal level to address the problems of discrimination. The pervasive problem of racial discrimination and prejudice has defied short-term solution. The struggle against discrimination is more a marathon that short sprint.

Political parties have come and gone, leaving behind them the failures of their quick fixes. Promises have been made and broken, but one group, the NAACP, has remained steadfast in the fight against this awful social cancer called racial discrimination. The NAACP has a history of which we can all be proud. From its inception in 1809 until today, the work this organization has done in the area of civil rights is unmatched by any other such group. At each turn in the development of blacks in this country, the NAACP has been there to meet the challenges.

Judge Thomas has often acknowledged the significant role of civil rights movements and how he personally has benefited from it. In volume 21 of the "Integrated Education" publication in 1983, Judge Thomas wrote, "Many of us have walked through doors opened by civil rights leaders, and now you must see that others do the same.

In a January 18, 1983, speech at the Wharton School of Business, in Philadelphia, Judge Thomas said, "As a child growing up in the rural South during the 1950's, I felt the pain of racial discrimination. I will never forget that pain. Coming of age in the 1960's, I also experienced the progress brought about as a result of the civil rights movement. Without that movement and the laws it inspired, I am certain that I would not be here tonight."

An October 21, 1982, speech to the Third Annual Metropolitan Washington Board of Trade, EEO Conference, Judge Thomas described himself as "a beneficiary of the civil rights movement."

An April 7, 1984, speech at the Yale Law School, Black Law Students Association Conference, Judge Thomas noted the freedom movement of black Americans was not a sudden development, but "had been like a flame smoldering in the brush, igniting here, catching there, burning for a long, long time before someone had finally shouted fire."

He asked, in effect, who was responsible for this. Then Judge Thomas went through a litany of people and events that helped fan the flames of black freedom. He asked in part whether it was—

* * * the founders of the NAACP or the surge of pride which black folks felt, as they huddled around their ghetto radios to hear Joe Louis preaching equality with his fists, or hear Jesse Owens humbling Hitler with his feet, was it A. Philip Randolph mobilizing 100,000 blacks ready to march on Washington in 1941, and FDR hurriedly signing Executive Order 8802, banning discrimination in war industries and apprenticeship programs, or the 99th Pursuit Squad, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy, was it Rosa Parks, who said no, she wouldn't move, and Daisy Banks, who said yes, black children would go to Central High School, of the three men who had been the black man's embodiment of Blitzkreig, the most phenomenal legal brains ever combined in one century for the onslaught against injustice, Charles Houston, William Hasty, Thurgood Marshall, or a group of students who said we have had enough, I mean

what is so sacred about a sandwich, Jack, or men named Warren, Frankfurter, Black, Douglas, who read the Bill of Rights and believed.

I realize, Judge Thomas and for members of this committee, it may seem more newsworthy to report the judge's remarks only when they have been critical of traditional civil rights leadership, and I realize some of his critics who object to his expressed views against reverse discrimination and preference wish to make him look ungrateful, but it is a false portrait of character being drawn.

So, Judge Thomas, I think you have a lot to be proud of in not only your statements, but your actions in support of efforts of others in the civil rights community who carry the ball and run with it, and I think you have adequately recognized their contribution, and I thank you for it.

That is the end of the time that I will use now, Mr. Chairman.

The CHAIRMAN. Well, I want to thank you, Senator.

After conferring with Judge Thomas' spokespersons in the break here, it seems appropriate we will take a break for lunch now.

Now, let me just give everyone a heads up on where we are going to go from here. We will go to Senator Leahy next, unless Senator Metzenbaum comes back and claims his 15 minutes. Then what we will do I hope, as I count the time, we should be able to finish everything by 4 o'clock today with Judge Thomas.

We will then move to the ABA today, and they will probably move to the first panel of witnesses. We will move at least to one other panel, maybe two, and tonight we will go with the public witnesses until sometime close to 6:30, to try to move this along, because we are going to end early tomorrow night and we will not be in session on Wednesday, so we will see how much we can move along and catch up with the other end here.

Now, we will break for lunch until 1:30, at which time, in all probability, we will resume with, if it is convenient for Senator Leahy, with Senator Leahy——

Senator LEAHY. I will be prepared to start my questioning right at 1:30, if that is what the Chair wants.

The CHAIRMAN. Yes, we will start at 1:30. We will recess until 1:30.

[Whereupon, at 12:17 p.m., the committee was recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order, please.

The Chair recognizes the Senator from Ohio, Senator Metzenbaum.

Senator METZENBAUM. Thank you very much, Mr. Chairman.

Judge Thomas, before the break this morning, I was inquiring about the EEOC's failure for 6 years to process sex discrimination charges involving fetal protection policies. I am frank to say that I regret that I missed your ensuing discussion of this issue with Senator Hatch and, as has been publicly stated, I missed it only because I am also sitting on the Gates nomination hearings which are going on at the same time.

But as I am informed by my staff, you agreed with Senator Hatch's statement that "women were not prejudiced by the EEOC's