

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-

pret the policies of the elected branches of government, of course all the while guided by the Constitution.

This confirmation hearing will give the Senate, and at the same time the American people, the chance to become acquainted with Judge Thomas and to assess whether he possesses the qualities that a Justice should have—fairness, open-mindedness, and objectivity.

I suspect that we will all see an individual unlike any other who has come before us as a nominee for the High Court. Judge Thomas spent the first 17 years of his life in strict segregation of the South, directed as to what water fountain he could drink from and what public restroom he could use. Judge Thomas has described this “as close to totalitarianism as he would ever hope to get.”

He grew up without material comforts and even conveniences. We have heard from him and people who have known him well that it wasn't until he was 7 years old that he lived in a home with indoor plumbing. His home was run quite strictly by his grandparents who, in his words, had “Ph.D.'s in life earned at the university of experience with hard times as their advisor.”

They instilled in him discipline and respect. It seems to me that discipline is a shortcoming in too much of American society today. So, having that in Judge Thomas puts him a cut above average American society.

He was inspired by his grandfather and his teachers. They were Catholic nuns. They gave him his personal foundation—“God, values, morality, and education”—and these are the words that he told the nuns when he paid tribute to them in 1986.

In the Senate we have some who have started from humble beginnings and many who were born in great wealth and privilege. None of us, however, has had to surmount the obstacles Judge Thomas confronted. Racism and prejudice from his cruel teenage classmates in the seminary to supposedly enlightened employers he encountered as a young law school graduate.

As he has noted, he has been “deterred and preferred” by racially conscious policies. Many others with his experiences would become cynical and selfish, I am sure. But rather we have before us in Judge Thomas a man who has devoted his professional life to work on behalf of equal rights and opportunities for all individuals. He sees the respect for individual rights as a great and overriding tradition of our Nation. What is most important, and he knows while saying that that there is still a lot of work that needs to be done in this great country of ours.

Now some find Judge Thomas to be threatening because he challenges the liberal orthodoxy of special preferences and group entitlements. That has become, as columnist William Raspberry has said, “black political orthodoxy.” But Judge Thomas' message of self-reliance is a reminder to all Americans that while government's responsibility is to ensure equal opportunity, reliance, let me say too much reliance upon government-mandated preferences won't solve each and every problem.

Now we will have the opportunity in the next few days to explore many topics with Judge Thomas. However, he is no stranger to the Senate, and I think I am the fourth person this morning who

has said that he has been before this confirmation process of the Senate on four separate occasions, and I guess this is the fifth one.

Moreover, I think that Judge Thomas in many different ways, both in public and before this body, has already been very forthcoming. In response to the Committee's request for certain documents, Judge Thomas has provided, I have been told, some 36,000 pages of documents, and I understand that it has been cataloged in some 10 boxes of documents. I don't know, I suppose there could be others because we confirm a lot of people. But I really don't know of any other nominee who has been so scrutinized and so analyzed as you have been Judge Thomas in preparation for this hearing.

This document request is just an example of how far the Senate has strayed in the nomination process. I suppose I say that in a historical context. Some have stated that the Senate's "advise and consent" role in the elevation of Supreme Court Justices, of any Supreme Court Justice, for that matter, is the most important power that we in the Senate here exercise. Now, I don't happen to share that view, as important as I take my responsibilities today and through this process, because I happen to feel that confronting the issue of war—as we did only last January, and attempting to bring government spending under control are among the more significant responsibilities that we have.

And, of course, I think the Constitution doesn't elevate the confirmation process quite this high. The Constitution shows this because the "advise and consent" role is spelled out in chapter 2 with executive powers, and not with the legislative powers in Article 1. So I think the Constitution itself indicates it is not a preminent legislative power.

It is really only in recent years that the Senate has redefined its role. When Justice White was nominated, just 29 years ago, he came to this Judiciary Committee and was asked only eight questions. What has changed to require all these long hearings over the last quarter century? Well, something has lengthened the process, and to some extent I feel it has been lengthened needlessly. I don't know exactly why, but this is how the process works today, and I am a Member of the Senate and I am going to make sure the process works. But I think once in a while maybe we ought to take some—reanalyze how we do things.

And, of course, saying this doesn't mean that the Senate should be a rubber stamp. I don't believe that.

Judge Thomas, I look forward to talking with you over the next few days about the role of the courts in our democracy, how you approach cases, and the differences that you see between judicial restraint on the one hand and judicial activism on the other hand. And I will have some questions for you like my colleagues are going to have questions about how you see this whole issue of natural law. We should also have an understanding as to whether you bring a very personal philosophy to the job and the responsibilities of judging.

Finally, Judge Thomas, I wish you well in the process which lies ahead, and I caution very much against a quest for commitments on very specific issues, particularly issues that will come before the Court. For if you were to lay out any particular positions on the legal issues of the day, the independence and the integrity of the

judiciary would be compromised. We expect you to be a policeman for that integrity and independence, and I believe that you have been already.

Thank you.

The CHAIRMAN. Thank you very much, Senator.
Senator Heflin.

**OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S.
SENATOR FROM THE STATE OF ALABAMA**

Senator HEFLIN. Thank you, Mr. Chairman.

I would like to welcome you, Judge Thomas, to this historic confirmation hearing. Your nomination by the President is a continuation of a constitutional process begun over 200 years ago, and there are few duties that I take more seriously than the "advise and consent" function entrusted to the Members of the U.S. Senate.

As I have with every nomination hearing, I will use this occasion to listen and learn. Through the media, we have all seen and heard and read a great deal about your nomination and its uniqueness. But it is during these hearings where spontaneity and unpredictability are common so that those of us charged with the duty of advice and consent are able to make an informed decision.

I have often stated that the Supreme Court is really a people's court. But, while the Court deals with such abstract legal principles as justiciability, collateral estoppel, comity, due process, and so forth, the Court must ultimately deal with real people, their rights, duties, property, and most importantly, their liberty. The Justices of the Supreme Court are the final guarantors of the sacred text of the Constitution and its Bill of Rights and the liberties and freedoms which are enshrined therein and developed therefrom.

If confirmed, you will have vast power over the lives of Americans as to their rights of speech, religion, press, association, as well as their property rights. You will participate in decisions which will affect the rights of those accused of a crime, as well as the rights of a lawful society to be protected from the criminal element, and you will have an important say as to what degree of privacy the American people are entitled.

The list could go on, of course, but my point is that before we are called on to exercise our confirmation function, we in the Senate must explore what is in your heart and what is your basic judicial philosophy, because if you are confirmed you will serve a lifetime—for perhaps the next 30 years, thus well into the 21st century. We, on behalf of the American people, must investigate if you will zealously guard the freedoms and the liberties that provide a legacy and framework for generations to come.

In reviewing the qualifications of a nominee, I am of the opinion that an individual should possess at least the following three criteria: First, an understanding on the proper role of the judiciary under our Constitution; second, an abiding belief in an independent judiciary; and third, a deep commitment to equal justice under the law.

To some, you are the very embodiment of the American Dream—you have overcome the bonds of poverty and racial segregation and