deprivation and have risen to the top. To others, you have succeeded, but forgotten your past and turned your back on others now less fortunate than you.

I and my colleagues will attempt to look into your heart and mind. I will be looking to see if you intend to bring a rigidly ideological agenda to the Court. I will want to know if you respect the principles of stare decisis and judicial restraint, and, most importantly, if you intend to turn the clock back on almost 30 years of racial progress and harmony which have occurred, albeit imperfectly, in the diverse society known as America.

Under the "advise and consent" function it is our solemn duty to explore any doubts about you and your thinking.

The theme of this hearing could be entitled "Doubting Thomas." The term "Doubting Thomas" has been applied to individuals from biblical times, but it is applied today in a different context. You are not the doubter. It is we in the Senate who are the doubters. This hearing can remove, clarify, increase, or decrease the doubts and the doubters.

There are many who have expressed doubts that you are sensitive to equal rights and equal justice under the law for all Americans; doubts about your commitment to achieving the legitimate aspirations of all Americans from whatever walk of life and regardless of their political persuasions; doubts about your concept of natural law, its standards, restrictions, breadth and application; doubts as to whether your judicial thinking is within the mainstream of judicial thought; and many other doubts as well.

Judge Thomas, if the Senate is persuaded that you will pursue an ideological agenda, have a closed mind, and will be a judicial activist ignoring the will of elected bodies, then the doubts will become impediments to your confirmation. On the other hand, if your testimony persuades us that you will dispense justice fairly and impartially and that you will listen and be open-minded, then, in my judgment, doubts will be alleviated.

President George Washington told his first Attorney General, Edmund Randolph, "The administration of justice is the firmest pillar of government and if justice is the ultimate goal and indispensable for the survival of a free republic, we best ensure it by the people we select as its custodians." We will now have the opportunity to learn if you are worthy of that admonition, and I look forward to hearing from you.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Specter.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much.

Judge Thomas, I join my colleagues in welcoming you here this morning. I have read extensively on your opinions and your speeches and your background, and I congratulate you on a very remarkable career.

As I have read about your roots and about the instructions and guidance which you got from your grandfather, I could not help

but think that your grandfather and my father would have been good friends. You have really pulled yourself up, perhaps without bootstraps, perhaps by your kneecaps. You come to the Senate, for what we have an obligation to do, is to make a very careful analysis of your background and record, as we will attempt to make an evaluation as to what kind of a Supreme Court Justice you would be, if confirmed.

The importance of your nomination is overwhelming. At the age of 43, if you serve as long as Justice Thurgood Marshall did, that would be until 83 or 40 years, which is the equivalent of 10 Presidential terms. And when you consider that in the last Supreme Court session, out of 121 decisions, that 19 were decided by a 5-to-4 vote, where the Court is on the cutting edge of the most important issues which confront our country, a Justice who can provide that fifth vote for 40 years, 10 presidential terms, may really be more important than a President.

The opening statements, Judge Thomas, I think are useful, to give some idea as to what the individual Senators think are important, as we proceed with the questioning. A major concern that I have involves the functioning of the Court as a super legislature.

You have already heard many say that we want the laws interpreted and not made, and I am concerned by a major case on federalism handed down by the Supreme Court in 1984, where two Justices in the minority, on a 5-to-4 decision, said they only awaited a fifth Justice to change the complexion of the Court. That case could be reversed, placing ideology at the forefront. And I could cite many cases, but only one more within the confines of limited time here, the interpretation of the 1964 Civil Rights Act.

In 1971, a unanimous Supreme Court, with an opinion written by Chief Justice Burger, a noted conservative Justice, interpreted the Civil Rights Act in a very meaningful way. In 1989, that decision was changed, as a matter of judicial interpretation, even though the Congress of the United States had allowed that decision to stand for some 18 years.

Four of the Justices who voted to change the law, not to interpret the law, but to change the law, have appeared before this committee during the past decade and have placed their hands on the Bible and have said that they would not make new law, but only interpret the law, but they changed a view of congressional intent in the context that Congress allowed that law to stand for some 18 years.

I think it is fair to take a look at your writings and your decisions as a basis for questioning. I do not believe that you ought to be called upon—I say this, speaking for myself, because there are no conclusive parameters to what a Senator may ask, but I do not believe you ought to be asked for the ultimate decision as to how you will decide any case, because in our judicial process, that really calls upon a specific statement of facts, briefs, arguments, deliberations among the Justices, and then a decision.

But as I read through your readings, Judge Thomas, and take a look at what deference you will give to constitutional process and the congressional will, as I evaluate your judicial temperament in carrying out congressional will, I have noted a number of your writings—and this is not an isolation, but illustrative of one of

your speeches, that you say Congress is no longer primarily a deliberative or even a law-making body, that there is little deliberation, and even less wisdom in the manner in which the legislative branch conducts its business.

Now, I have noted your critical view of the Congress that would pass an ethnic set-aside law, I have noticed your critical view of a major case interpreting affirmative action in a context where the Congress could have changed those decisions, but did not, and I have noted your recognition of the Congress leaving those cases in place. I think it is appropriate to analyze your approach to our constitutional continuum in that context.

At one point in your writings, although you don't endorse it as a conclusion, you refer to a quick-fix of additional Supreme Court nominees. In another place, you talk about the preference of having additional nominees change the minority opinion into a majority opinion, and I believe that these are important issues, as we see the role of a nominee, a prospective Supreme Court Justice in a critical role, as to whether we may expect you to interpret the law, which I believe is the role of the Court, as opposed to making new law.

In terms of the questions which are appropriate to ask you, that has been an evolving matter. There is a fascinating article written by Chief Justice Rehnquist, when he was a lawyer in 1958, which admonished the Senate in the confirmation proceedings for Justice Whittaker for asking mundane questions about his experience as a skunk trapper and the fact that he brought honor to two States, being born in Kansas and I think appointed from Missouri, and Chief Justice Rehnquist admonished the Senate for not really going into the very substantive questions on equal protection of the law and due process of law.

When we come to the question of separation of powers, that is rockbed in our society, and the Senate has a duty to make an independent evaluation. I for one continue to believe that deference is due to the President's nomination, but even that could be subject to question, Judge Thomas, if the trend of the Court continues as a super legislature establishing policy.

There has already been some discussion here today, and I think it is worth nothing that an early draft of the Constitution gave the Senate the authority to appoint Supreme Court Justices. And going back to Chief Justice Rehnquist's observations in 1958, he is very pointed in approving an editorial which said that the Senate would have the authority, if it chose to exercise it, to insist on balance on the Court.

As I say, I for one believe that, at this point in our constitutional evolution, we have not come to a point of equal partnership between the President and the Senate, so deference is still owed to the President, but this could be a more complex question, if the Court continues to function as a super legislature.

The issue of affirmative action, I think, will be very important in these hearings, for two reasons. One is to test your own development as a lawyer and your own philosophy of life, your philosophy of law, your philosophy of justice, because at one point you had sanctioned affirmative action in terms of standards and goals, and there has been a change in your thinking, and you are certainly

entitled to that, but I think that is an issue which will bear some scrutiny.

I have noted in your writings, Judge Thomas, your conclusion that the *Dred Scott* decision, which upheld slavery, and the opinion of Chief Justice Taney put a backdrop of racism and discrimination, which are deeply rooted in the history of the United States and remain even to the present time, which is a very strong statement. Unfortunately, I agree with you. I think it is an accurate statement about racism and discrimination.

I noted your comment in a fairly recent writing about you in the Atlantic Monthly, by Mr. Juan Williams, "There is nothing you can do to get past black skin. I don't care how educated you are, how good you are at what you do, you'll never have the same contacts and opportunities, you will never be seen as being equal to whites." That again is a very strong statement and raises the question in my mind as to whether we should be promoting affirmative action, and I think our discussion here will move far beyond the surface labels of what are quotas, which we hear to much about today, and what affirmative action really means.

I know that there are some who are critical of any person who takes the benefit of affirmative action and then rejects it for others. I have read the newspaper accounts, and I don't know firsthand whether you were the beneficiary of affirmative action. But even if you were, you may be the best witness on the subject to really delve into this issue which is on the cutting edge of one of the most important issues facing our society today, and that is equality of employment opportunity.

Beyond these issues, Judge Thomas, there are many, many other questions which we are going to have to go into. As Senator Grassley commented, the war powers issue is a big one. We just went through a heated debate just a few months ago which involves the question of Congress' authority to declare war versus the Commander-in-Chief's authority, the President's authority, as Commander-in-Chief, very big issues on freedom of speech, freedom of religion, the exercise clause, the establishment clause, so I think we will have subjects of real great importance, and I approach this hearing totally with an open mind.

Speaking for myself and others who disagree and have already announced positions, I believe that separation of powers calls for independence of the Senate, repeating what I have already said, with deference to the President's views. But I think we ought to listen to you carefully, in a very friendly way, in a very constructive way, and clear out the other witnesses before coming to a judgment of the case.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Simon.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman.

Judge Thomas, I join in welcoming you and your family here.