

The CHAIRMAN. Thank you very much.
 Senator Kohl.

**OPENING STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR
 FROM THE STATE OF WISCONSIN**

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

Judge Thomas, the next few days are going to be important for you, but they will be even more important for the American people. On their behalf, we will be talking with you about basic constitutional principles, which means we will be talking about the values at the core of our country. If you are confirmed, this will be the only such conversation the American people will ever have with you. So we must make an extra effort, Judge Thomas, to get to know you, and you must make an extra effort to help us do that.

By design, we give the Supreme Court great independence. Its members are unaccountable to the people and, absent severe dereliction of duty, unrecallable by the Congress. Members of the Court sit for life, and they shape the life of this country. We give them this freedom and independence because we expect them to remain above the pull of politics and the flow of fashion.

Justice Black put that point clearly when he observed, and I quote, "Under our constitutional system, courts stand against any ill winds that blow as havens of refuge for those who might otherwise suffer because they are weak or helpless or outnumbered, or because they are nonconforming victims of prejudice and public excitement."

Judge Thomas, you are 43 years old. If confirmed, you may serve for 30 or 40 years, decades in which you will shape the nature of our country. Before we decide whether to entrust you with this power, we ask you to stand before the public and explain your views, express our hopes, and expound on your approach to the bedrock principles that guide us as a Nation. We have an obligation to find out where you will take us before we decide whether we want you to lead us there.

So as we begin this process, let me identify three of the qualifications which I believe we should look for in a Justice. First, we should seek a nominee with exceptional character, and that you clearly have. You grew up in poverty and experienced segregation. Despite that, or perhaps because of it, you went on to Yale Law School. You worked for and earned the support of one of the most distinguished and demanding Members of the Senate, John Danforth. You served as head of the Equal Employment Opportunity Commission, and you now sit on a Federal court of appeals.

So yours, indeed, is a story we want to tell about America in the 20th century. It testifies to our achievements in creating opportunity for all from a social contract written for just a few.

More than that, it is evidence of your own intelligence, dedication, and commitment. No one can read the story of your life and your success and not be impressed. Nevertheless, as I am sure you would agree, that alone does not justify your confirmation.

Second, we should look for someone who can read the law and relate it to the competing interests of American culture. We want a nominee whose values reflect the diversity of American life, where

the Constitution protects all of us, those who live in high-rise condos and those who live in the depths of the tenements, those who work for wages and those who retire on investment, those who call for orthodoxy and those who champion revolution. All of these strains of American life must be protected if we are to keep spinning the fabric of renewal and regeneration which has clothed American history for more than 200 years.

Third, we want a nominee with an open mind but a firm sense of direction. When you came before this committee last year, in response to a question I asked you said, and I quote, that you did not have "a fully developed constitutional philosophy." That did not disqualify you for a seat on the court of appeals where you are required to follow precedent. But the Supreme Court sets precedent. It interprets the Constitution in which we as a people place our faith and on which our freedoms as a Nation rest. In my judgment, if you cannot articulate a constitutional philosophy, one that includes full safeguards for individuals and minorities and that also squares with your past statements, then in my judgment you are not qualified to sit on the Supreme Court.

I realize that is a strong requirement, Judge Thomas, but it is, I believe, a fair one. So during these hearings, we will want to determine what your philosophy is. We will want to learn what you really believe, and we will want to know how and when and why you came to believe it.

Let me give just a few examples of the themes running through your speeches and writings which trouble me. You have openly criticized decisions like *Griswold* and *Roe* which go to the heart of a woman's right of choice. You have been an outspoken admirer of natural law, a doctrine largely dismissed for the past half-century. In fact, you have suggested that, and I quote, "it provides the only firm basis for a just, wise, and constitutional decision."

You have opposed nearly all forms of affirmative action, and yet when we met in my office, you told me that you supported affirmative action. And you have frequently expressed disdain for Congress, its Members, and the legislative process, yet your oath as a Federal judge requires that you faithfully execute our laws.

Your own record raises serious questions. Since you have such low esteem for Congress, how can you expect us to believe that you will defer to congressional intent? And since you have criticized past Court decisions about the right to privacy, what credence should we give to your pledge to follow precedent in this area of the law? And since you said that natural law is the only basis for constitutional decisions, why wouldn't you overturn rulings which you believe conflict with natural law principles?

I am hopeful that you can resolve these and other questions to our satisfaction, and, Judge Thomas, in order for you to do that, you will need to be perfectly candid before this committee. When you came to my office in July, you told me not to believe what I had read about you; that we would see "the real Judge Thomas" at the confirmation hearings. This statement suggests that you recognize, as many of us do, that these proceedings are the only way the country and the Congress will be able to assess your qualifications and to determine your fitness to sit on our Nation's highest Court.

You can only help your cause by being forthcoming, so please don't hedge, please don't give us answers prepared for you by others, and don't hide behind the argument that you cannot pre-judge issues.

Judge Thomas, we do not have to agree with you on everything, but we do have to be sure that you have firm beliefs and reasoned conclusions about the role of the courts, the Congress, and the Constitution. And we do have to be sure that what you say to this committee today comports with what you have said to others in the past. And we do have to be sure, Judge Thomas, that we know what is in your heart and what is in your mind before we decide upon your nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Kohl.

Judge, that concludes the opening statements of the Senators. It is now 12:30. As you and I discussed and as I have informed my colleagues on the committee, let me briefly explain what will be the way in which we will proceed after we break.

We will shortly break for 1½ hours. We will reconvene at 2 o'clock, at which time the Senators who have requested the honor of introducing you to the committee will come to the table at your side, one at a time, and make their statements of introduction to the committee. When those six Senators conclude their remarks, I will then ask you to stand and be sworn.

After that time, I will then ask you if you would be kind enough to introduce your patient family who is sitting behind you for the committee to be formally introduced to your family. Then we will ask for an opening statement from you.

At the conclusion of your opening statement, I will begin questioning. Each Senator will have a 30-minute dialog with you.

There is a very important meeting in the Senate today that will take place, as we have discussed with you and your staff. We will break every day around 5 o'clock but there is a very important meeting today in the Senate. One of our Members, a very beloved member, Senator Pryor, who was almost fatally stricken with a heart attack, has returned and is in good health. There is a reception for him, which you are welcome to attend if you would like. You know so many of us so well.

The Senator asked the time and place. The time is 5 or 5:30. I am not certain. It will depend on how far along we are whether or not one of the members begins his questioning. If it takes us much beyond 5 o'clock, we will not begin, and we will conclude before 5:00.

So, again, the committee will recess until 2 p.m.

[Whereupon, at 12:30 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will please come to order.

Welcome back, Judge, and I say welcome to all our colleagues who are here to introduce you.

Judge, it has been a very difficult task for the Chair to decide which of the 74 Senators you have introducing you should go first,