

qualified or highly qualified, I would certainly rate Judge Thomas as highly qualified.

My own judgment would have been to rate neither of the past two nor some who have been appointed before as highly qualified. I would save highly qualified for very, very few people. But on the basis of the ratings that they have exercised, he is as qualified as the others, and if they are highly qualified, so is he.

Senator SPECTER. Thank you very much, Dean Calabresi.

Thank you, Mr. Chairman.

The CHAIRMAN. Dean, thank you—oh, I am sorry. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have no questions of this witness. I would like to ask, though, whether or not we are going to finish all the panels that are on today's list.

The CHAIRMAN. Come heaven or high water, we are going to do it. That is why I didn't break for lunch. That is why I stayed in this chair, and we are going to go right through votes, even if it means I end up missing some votes. So we are going to keep going.

Dean, thanks a million.

Mr. CALABRESI. Thank you very much.

The CHAIRMAN. I really do appreciate your coming.

Now, our next panel is a panel of very distinguished Americans: Ms. Marcia Greenberger, an attorney at the National Women's Law Center, who authored the report on Judge Thomas that argues that Judge Thomas' record demonstrates a lack of support of women's rights; Ms. Judy Lichtman, of the Women's Legal Defense Fund, which wrote a report arguing that Judge Thomas' endorsement of an article by Thomas Sowell threatens working women's rights; and Prof. Patricia King, a professor at Georgetown University Law Center, who teaches family and poverty law. Professor King believes Judge Thomas' record is, as I understand it, antithetical to the interest of women and blacks.

If I have misrepresented your positions in any way, please at the very outset make it clear for the record that I did.

With that, why don't we start in the order that I—or does the panel have a desired way to begin?

Ms. LICHTMAN. We do. If it pleases you, can we have Professor King begin?

The CHAIRMAN. Of course.

Ms. LICHTMAN. Then we will proceed with Marcia Greenberger.

The CHAIRMAN. Professor King, why don't we begin with you.

**STATEMENTS OF A PANEL CONSISTING OF PATRICIA KING, PROFESSOR, GEORGETOWN LAW SCHOOL; MARCIA GREENBERGER, ON BEHALF OF THE NATIONAL WOMEN'S LAW CENTER; AND JUDITH LICHTMAN, ON BEHALF OF THE WOMEN'S LEGAL DEFENSE FUND**

Ms. KING. Thank you very much. Chairman Biden and members of the committee, as a black woman, it is exceedingly difficult for me to oppose the nomination of a black individual who has known great personal struggle. Nevertheless, Judge Thomas' extensive record and personal posture is so antithetical to the interests of

women and blacks—especially black women—that I feel an obligation to testify against his nomination.

Much has been said of Judge Thomas' rise from Pin Point, GA, to the Federal bench. And without question, the Supreme Court should include people who have endured such struggles. But we must recognize that that alone is not enough.

I don't talk often publicly about my own background, but I think it is necessary here to put Judge Thomas' life story—dramatic and compelling as it is—into the context of life in black America. Judge Thomas' background is not unique among African-Americans of our generation. And virtually all of us over the age of 40 have at least one exceptional grandparent who has been injured and severely humiliated by racism in America.

I grew up during segregation with my sister in a female-headed household in a public housing project in Norfolk, VA. I attended segregated schools through high school and never knew any white contemporaries. I was able to apply to one college because we did not have money for multiple applications. I was able to attend Wheaton College in Norton, MA, because my uncle put a second mortgage on a house he owned—the only piece of real property owned by anyone in my family—in order to pay college bills.

I am very reluctant to parade that family history in public, but not because I am ashamed of my background. I am proud of my mother's strength and tenacity and the love and determination she employed in raising my sister and me. I am grateful to my uncle for what he gave to me and to the other members of my family for the encouragement they gave me. I am profoundly grateful to a high school teacher who taught, inspired, and pushed me to achieve. And I am proud of them all as strong black people who battled through racism and material poverty to hold themselves in dignity and to forge spiritually rich lives. I don't talk about it simply because it has no impact on my capacity to function effectively as an adult or professionally as a lawyer and legal educator. Moreover, my story is not unique in the black community, and frankly I don't want people's sympathy or their condescension.

My background was not a predictor of my performance as a Government worker in the State, Justice, and Health, Education and Welfare Departments, or during the time I worked at the Equal Employment Opportunity Commission. Some of that Government service, by the way, was rendered the Nixon and Reagan administrations. Nor could that background have served as a predictor of success in my 18-year career as a law professor at Georgetown University.

Frankly, I don't think Judge Thomas' background is any more a predictor of his future service on any bench than mine has been for my career.

Though there are similarities between Judge Thomas' background and my own, it seems to me that there is an attitudinal difference that separates us. I readily acknowledge that some of my successes resulted from affirmative action—my admission to Harvard Law School, for example—and from the help and support I received from others. In remembering where I came from, I also remember very bright young black people who were not as fortunate as I. They did not have my mother and my aunts and my uncles.

But if they have had a chance, they could have made some real contributions to this society. But affirmative action came too late for them; they had slipped away before it was firmly established in the late 1960's when I went to law school. Somehow Judge Thomas seems not to remember those he must have encountered along the way who were lost to the darkness simply because there was no help for them. I surely worry that that lack of memory and empathy in someone of my race who is proposed as a Justice for the Supreme Court.

Even his behavior toward his own family raises serious concerns. While Judge Thomas gives his grandfather great credit for his success, he has not been so generous to his sister, Emma Mae Martin. In describing his rise from humble beginnings, he has frequently criticized her need to turn to welfare for a period in her life, saying: "She gets mad when the mailman is late with her welfare check. That's how dependent she is." He has criticized her children as well: "What's worse is that now her kids feel entitled to the check, too. They have no motivation for doing better or getting out of that situation."

Judge Thomas' willingness to castigate his sister publicly for personal gain is deeply troubling not only for his opportunism but also for what it reveals about his lack of compassion and understanding about his own sister's struggle to overcome great obstacles. Similarly, Judge Thomas' ability to extend compassion to others whose cases may come before the Court is also in question since the situation faced by Emma Mae Martin is one shared by many other black women.

The story of the women in Judge Thomas' family demonstrates an ethos of family support, resourcefulness, and interdependence—not dependence. When husbands left the family or relatives fell ill, it was the women who carried the burden for the family—at great cost to any personal ambition. At the same time, though, their story makes plain the limited range of opportunities and choices available to black women, especially those who are single heads of households. Judge Thomas, however personal and painful his experiences were and are, because of racism, did not face the multiple barriers of race and poverty when compounded by sex discrimination and family responsibility. Moreover, in his oft-repeated recitation of his personal history, little space or respect is given to the intense struggle of these women. Yet stories like these are at the heart of the heroic rise of our people, and Judge Thomas' insensitivity to that aspect of his personal and our communal life is deeply troubling.

Judge Thomas' record shows no understanding of the imperative to provide opportunities and choices to black women. The notion of choice, usually perceived as limited to issues of reproductive freedom, is really a much broader concern for black women. Black women understand that no matter how hard they work and no matter how well prepared they might be, workplace choices and opportunities for them may be limited. The work experiences of Judge Thomas' mother and sister are not unique. African-American women historically have been represented in substantial proportions in the work force. However, we have yet to reap the full economic rewards of that participation. While it is true that many

of us have improved our status as workers, many more remain in low-wage jobs. Even when women hold equal amounts of education, job training, and work experience, they are three times more likely to earn low wages as white men. African-American women are four times as likely to be low wage workers. The average family income for black women is less than that of white women. The unemployment rate is higher for black women than for white women. Black women—like Judge Thomas' sister—are more likely to hold several low-wage part-time jobs with no health insurance or other benefits.

As demonstrated by Judge Thomas' own experience, the status of black women in the workplace contributes to their poverty and to the poverty of their families. It also reflects the dearth of choices available to them as black women—in particular black women heading households in rural Georgia.

Judge Thomas' positions on affirmative action, wage discrimination, class action litigation, and other proven remedies for discrimination may possibly become law and public policy that would further limit the choices of black women in the workplace.

Of equal concern to me is Judge Thomas' record on reproductive freedom. That issue is all too often viewed through the narrow prism of abortion and thought to be of interest only to white women. That is not the case. The fundamental right to privacy, including the right to abortion, is at the core of equality for all women, including black women and other women of color. If women cannot control their own bodies, it is difficult, if not impossible, for them to fight for or enjoy the other rights to which they are entitled.

Black women interpret this right as the right to choose to have a baby, as well as the right to choose not to. For black women, the right to reproductive freedom also means access to information about family planning and to safe and affordable health care, including prenatal and postnatal care. No one needs a broad array of reproductive choices more desperately than black women, poor women, and women with children.

Before he was nominated to the Court, Judge Thomas made speeches, he wrote articles, and signed onto reports that criticized or attacked constitutional protections of reproductive freedom that have enhanced the power of black women over their lives. His post-nomination retreat from his record, his refusal to discuss *Roe* to any meaningful degree, and his claims that he has never thought seriously about these issues provides us with scant comfort.

A decision to overturn *Roe* will have drastic implications for our lives and our health. Women who are captives of poverty or geography, including many women of color, will be robbed of their choices and again forced to risk their lives in back alleys.

In conclusion, I want to repeat that this has been a most difficult decision for me to make. Our role models are all too few, and Judge Thomas' personal achievements are indeed impressive.

However, we cannot afford to let those achievements blind us to the reality of his record on issues of critical importance to black women—including, but not limited to, his apparent lack of compassion and understanding of the struggle of the black women in his own life.

Our role models—and our Supreme Court Justices—should include not only those men and women who have demonstrated personal achievements, but also those men and women who have demonstrated an understanding of what it takes to rise up and out of oppressive circumstances.

All of us who have made it have an obligation to help others, and to recognize that others need our help. Judge Thomas has been able to dream and to reach for his dreams. Yet, he has ignored the need for or worked to deny that choice to others. He should not be confirmed.

Thank you.

[Prepared statement follows:]