

fifth amendment and the takings clause was correct, why wouldn't I have gone on one more paragraph and said it? If I wanted to make the case that Macedo was right, why would I have quoted Macedo the way I did and then spent a significant portion of the speech pointing out that Macedo had gone too far? If I wanted to make my point known on *Roe*, why would I have complemented, for any reasons other than I stated, this splendid application of natural law by Lew Lehrman in Lehrman Hall of the Heritage Foundation and then never again mention abortion?

Is it that this man 9 years ago thought, "I want to get to the Supreme Court, and I'd better not say anything"? Could he have been that—how can I say it—optimistic about his future?

Mr. RAUH. No, that isn't the point, Senator. You are making a good point, but I think you are wrong. I think the words "splendid application of natural law" are a statement of fact, and if you—

The CHAIRMAN. Let's assume they are, Joe, for the sake of discussion.

Mr. RAUH. Let me go on, please.

The CHAIRMAN. Sure.

Mr. RAUH. If you were making a speech to someone, you wouldn't use those pedestrian words—"I think we ought to overrule *Roe v. Wade*." That's not the way a speech is constructed. It is constructed in a way that—

The CHAIRMAN. That's the way he talks in his speeches, though.

Mr. RAUH [continuing]. There is a certain elegance which, if you are a natural law freak, as he was at that time—

The CHAIRMAN. I am one of those natural law guys, you know—I think, by the way, Frankfurter was, too.

Mr. RAUH. I'm not saying what he said here; I'm saying what he said there. To say that's a "splendid application of natural law" is the best way to say the overruling of *Roe v. Wade*. He said something worse, though, because if that memorandum was right, then abortion is murder, and maybe he didn't want to go quite that far. But if you start parsing it and saying, "Oh, I am for the repeal," then the next question will be, "Well, are you also for the other half of this memorandum, which says abortion is murder?" I just—

The CHAIRMAN. Well, at least you admit it raises the question that he might not have been for the whole memorandum. The only point I am making is that it doesn't seem clear because he is very explicit about other things he says. He is very explicit when he talks about issues relating to affirmative action. He doesn't mince words in his speeches. He is very explicit about the privileges and immunities clause. He doesn't mince words.

And I am in a quandary, a sincere quandary, as to why, if these phrases were as troublesome as they could be from my perspective, why he didn't—one of the things he said to us was, "Look, if I meant to say it, I'd say it." He said it other places. I don't know whether that is compelling, but at least it has me thinking, and I wondered.

I've got to yield now to my colleague. But I want to point out that when I was talking about natural law in *Bork*, you all were applauding. I want to remind you all of that. When I talked about I derive my rights not from a piece of paper, you all thought that