

tion is is this Senate ready to turn down a Thomas and someone of that ilk. I think the third time would be the charm, as it was in the Blackmun case.

Mr. BUCHANAN. Mr. Chairman, can I respond? You know, members of this committee have repeatedly expressed something of a redemption theory in terms of Clarence Thomas, notwithstanding his writings, because of his origins, because of what he said about a different attitude if he reached the Court, that he would be different.

And I want to express a redemption theory so far as the President is concerned. I think many of us who are concerned about such things believe that the Federal judiciary over the last 10 years has been filled with ideological conservatives to an extent that Franklin Delano Roosevelt never dreamed of, on the other side.

I think—I can't prove it sitting here, Mr. Chairman, but I think there is significant evidence that that process has taken place in the Court itself, and its sea change in 1989 would reflect that change.

The President is replacing the towering figure of Thurgood Marshall, truly an exclamation point. He appears to have done so with someone who is a long series of question marks. He could decide to attempt to replace a Thurgood Marshall with a towering figure. The Court already has a strong conservative leaning. But think of the strength he could give the Court, and think of what it would mean to the President in terms of statesmanship in terms of history if he were to decide, wait 1 minute. Maybe we have done enough of this. Maybe it is time to truly look through that large pool of, yes, black Americans who might be persons of more clearer stature, longer experience, clear track record, and decide to make an appointment that is truly statesmanlike.

Senator DeCONCINI. You have a lot more faith in President Bush than I do, Mr. Buchanan, I must say.

Mr. BUCHANAN. Well, it is the redemption theory, Senator.

Mr. CHAMBERS. May I briefly respond to that too? And first going to the question by Senator DeConcini about the similarities between Judge Thomas and Judge Bork.

I think, as Mr. Rauh mentioned, they may differ in some areas or in some degrees, but I think the adamancy and the position that they are advancing and the unwillingness to look at approaches that are necessary in order to provide some meaningful relief, as in the race area, they are pretty much together.

And I think it is pretty clear from Judge Thomas' writings, speeches and action that he would come out in a sitting with the Court that would be at odds with many of the precedents that the Court has adopted.

But finally in that connection, on the equal protection clause that you are talking about, one also has to remember that there are three tiers, and one of those tiers provide very limited relief. And, in the alien situation there is a real problem in terms of the kind of protection that is there.

And finally, I think when we look at a candidate like this we make a decision on the basis of the qualifications of the candidate. Regardless of what the President may do tomorrow, we are faced now with a candidate.

Senator DECONCINI. I agree.

Mr. CHAMBERS. We have to make a decision whether he is qualified for the position.

Senator DECONCINI. That is a fair point, in my judgment.

Thank you, Mr. Chairman. I am sorry to take as long as I did.

The CHAIRMAN. Thank you. With the permission of my colleagues, I would like to just follow up.

Mr. RAUH, you said earlier that, something to the effect that there should be balance on the Court, and you pointed to the Roosevelt era and you mentioned Hoover, pre-Roosevelt, you mentioned and Calvin Coolidge and who they appointed.

Do you think you would be here if the Court had six liberals and the President nominated Judge Scalia, knowing what Judge Scalia thinks and how he views the world? Would you be here supporting or opposing Judge Scalia?

I have never heard anybody talk about Judge Scalia's qualifications. I have incredible difficulty with Judge Scalia's methodology, personally. But I never heard anybody talk about his qualifications as being in jeopardy.

Would you be here opposing Judge Scalia? It is a tough hypothetical, but.

Mr. RAUH. I don't think the exact case has ever come up, but it may have. The reason I say I don't think that the exact case has ever come up, it hasn't come up for liberals. I think it came up for the Republicans in the Senate in 1932. The conservative Republicans in the Senate, I think they had that, because you had a conservative Court in 1932 and you had a liberal appointed, which is the exact opposite of the case you gave me.

The CHAIRMAN. Yes. That is why I asked the question.

Mr. RAUH. And I think the Republicans in that instance acted with great dignity. Indeed, Senator Watson of Indiana—am I right?

The CHAIRMAN. I don't know.

Mr. RAUH. I think he was the majority leader. And he said to Hoover, "The best appointment politically is the best man," and, in fact, a liberal was confirmed there.

I can't—I want to give you an honest answer about Scalia there. I think I would feel that that was a pretty bad appointment. But I really think if there were six liberals this panel wouldn't be here.

The CHAIRMAN. I appreciate that.

I am sorry. The Senator from Pennsylvania, I believe, is next.

Senator SPECTER. Thank you, Mr. Chairman.

Within a short round, it is hard to cover much ground that this very distinguished panel has articulated in both the written statements and their oral testimony. Let me start with the qualification and background issue that Mr. Chambers writes about. And he lists a litany, one of which is the ability to grasp the intricate relationships and ramifications of a decision that is an integral part of the mosaic of Federal law, one among many qualifications. And he compared Judge Thomas to 48 Supreme Court Justices appointed in the 20th century and find him coming out lacking.

And, I wonder as I go through it if any really measure up except for the two that Joe Rauh talks about having clerked for—Benjamin Cardozo and Felix Frankfurter. And I think back on the testimony given here, Chief Judge John Gibbons from the Third Cir-