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Guillermo Benavides and one of his lieutenants for the murder of the Jesuit priests is a step in the right direction. But more needs to be done to end the impunity with which gross human rights violations have been committed.

Mr. LeMoyne also urges the United States to consider offering scholarships, training, and other support to former guerrillas who now need new talents to create a new civil society. By helping these Salvadorans understand democratic institutions and the importance of economic growth, Americans can help foster a better future for the long-suffering Salvadoran people.

Mr. LeMoyne a former New York Times correspondent for Central America, is an renowned authority on Central American issues, and the author of "A Thin Waist of Tears," a forthcoming book on the region.

I ask unanimous consent that his article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 27, 1991]

HOPE AGAINST HOPE IN EL SALVADOR

(By James LeMoyne)

Watching the survivors of an army massacre or a guerrilla attack gather the broken bodies of sons, daughters, and others they loved, it was hard to image that peace could ever come to a land as soaked with blood and hatred as El Salvador.

Now, after 75,000 deaths in 12 years of terrible civil war, the new U.N. brokered agreement between the guerrillas of the Farabundo Marti National Liberation Front and the Salvadoran Government gives the first real cause for hope that a measure of peace may at last be achievable.

But major steps are needed before that possibility becomes reality. In El Salvador, the Government, army and guerrillas must all change more if peace is to prosper. The United States and ths international community also face large obligations.

The weakness of the U.N. agreement just signed in El Salvador is that it still leaves the main issues for future negotiation. All sides are still armed and the war goes on. The accord's value is that it keeps all sides negotiating and establishes a commission that for the first time will bring the guerrillas, opposition political parties and the Government together under U.N. mediation to debate the real causes of the civil war.

The issues must involve demilitarization and access to economic opportunity, as well as respect for human rights and the establishment of a democratic system based on law. Salvadorans have been killing one another over these issues for most of this century and almost certainly will continue to clash until improvement is made.

It is not going to be easy to reduce the army, purge its many corrupt and homicidal members and finally break its century long domination of El Salvador. The army and the police will, as always, resist losing power.

Nor is it going to be easy for the ruling Nationalist Republican Alliance Party ARENA—to sever its old this to death squads and intolerance. The rightists must accept trade unions, along with decent wages, and leftist political parties."

President Alfredo Cristiani, who has become the first member of the conservative elite to reach out to his people and offer a national vision, deserves support in his struggle with the extremists in this party.

It is going to be perhaps even more difficult for the five guerrilla groups of the F.M.L.N. to practice democracy and give up once and for all clandestine political organization and their dreams of power.

Salvadorans in general now have to face the 500 years of social disaster that constitute their history and to learn to make their society a tolerable place.

But they cannot do this alone. Now, more than ever, the international community and the United States must lend a real helping hand. This process has already begun. The U.N. is playing a remarkable role in mediating an end to the civil war. This effort should be continued.

At the same time, nations of goodwill like Venezuela, Mexico, Costa Rica, Spain, Portugal and Canada, among others, could help heal El Salvador's wounds.

But the greatest responsibility of all now falls on the United States and countries like Cuba, Nicaragua, Vietnam and the Soviet Union that supported the war in El Salvador. Cuba and the Sandinistas in Nicaragua in particular should be pressured to stop their military support for the Salvadoran guerrillas.

The United States has special obligations. For 40 years of the cold war our nation trained brutal armies and supported corrupt dictators throughout Latin America in a Manichaean struggle against Communism. We did not create the instinct for violence and injustice that pervades El Salvador and most of Latin America—but we did at times urge and direct those dark habits in the dirty wars of an often dirty century.

In El Salvador, our nation has now shown it can oppose Marxiste, if necessary, by supporting even a bloodstained army. But our nation has not yet shown a deeper long-term commitment to social, economic and political development that is the only soil enduring democracy can take root in.

The American Government should be lauded for supporting free elections and recent negotiations in El Salvador. But these have been only first steps in a long process.

The U.S. should now commit itself to an international effort to encourage demilitarization in El Salvador and the rest of Central America.

This means backing measures that place military budgets and armies in the region under control of civilian governments. The Salvadoran Army high command has to understand in no uncertain terms that the military murderers of six Jesuit priests have to be punished, and that a purge and reduction of the armed forces are a precondition for further American aid. The trial of Salvadoran soldiers accused of the killings that is to open today will be a test of both American resolve and the capacity for reform in the Salvadoran Government and army.

At the same time, the U.S. should seek contact with the F.M.L.N. guerrillas. It is time to recognize that in El Salvador, as in Spain, Portugal and Italy, the left is an authentic and necessary part of national life. If extreme rightists of the ruling party can be given the chance to become democrats, then why can't the rebels? Some of them are fanatics. But others are among El Salvador's finest people.

As it already does for other Salvadorans, the U.S. should consider offering scholarships, training and other support to former guerrillas who now need new talents to create a new civil society. To give them the chance to become democrats, why not assist them in visiting and studying trade unions, city councils, factories, businesses, police forces, courts, schools, legislatures and other civil institutions in the United States and other democracies?

But for such steps to occur, the rebels must face up to their own shortcomings and accept the historic responsibility this moment places on them.

The guerrillas have killers among them who should be purged—those who murdered mayors, Government officials and other civilian politicians, as well as two unarmed, wounded American soldiers. The rebels must acknowledge that Cuba is as falled a model as the Soviet Union, and they should visit Costa Rica rather than Havana.

If they are true to their pledges, the guerrillas will now work to create a democracy offering social security to the majority of Salvadorans, with a fair legal system and regular election of a civilian government under a constitution. To better the lot of their people, the rebels have to understand that economic growth is essential.

Simply distributing land will not do this; encouraging foreign investment and decent wage levels for agrarian workers will. If they take these many steps, the guerrillas will be true revolutionaries who helped end a tradition of intolerance and injustice in El Salvador.

As Marxists and soldiers, the rebels have guns but little future. As reformist democrats and politicians they will risk their lives—but ultimately they will win a better future for a small country that deserves one.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of the nomination of Clarence Thomas, to be an Associate Justice of the Supreme Court of the United States.

The nomination will be stated.

SUPREME COURT OF THE UNITED STATES

The legislative clerk read the nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the United States.

Mr. THURMOND. Mr. President, I believe we were to start at 11 o'clock on the Thomas nomination, but something happened to intervene and it was put off until this time. We are now ready to begin. I might say the chairman of the committee has sent word to me to go ahead, so I will proceed.

The PRESIDING OFFICER. The Senator may proceed.

Mr. THURMOND. Mr. President, today the full Senate begins consideration of the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States. If confirmed, Judge Thomas will be the 106th person to serve as a Justice. As well, I might say, it is the 24th Supreme Court nomination that I have had the opportunity to review during my almost 37 years in the Senate.

As floor consideration begins, we must remain keenly aware that this body faces a solemn responsibility. When a nominee is considered for the Supreme Court, our responsibility is an enhanced one. Those chosen for a seat on our Nation's highest Court occupy a position of great authority, trust, and power as this appointment is one of life tenure without accountability by popular election. Members of the Supreme Court make vitally important decisions and can only be removed in very limited circumstances. A Supreme Court Justice must be an individual who understands the responsibility to the people of this Nation, the concept of justice, and the magnificence of our Constitution.

Mr. President, I have always believed that our Constitution is the most enduring document ever penned by the hand of man, and certainly remains the finest, most significant political document ever conceived. Our august Constitution confers tremendous responsibility on the Senate in a vast number of areas. In the confirmation process, the Senate alone holds exclusive authority to "advice and consent" on all judicial nominations. While the President of the United States has the constitutional authority to "appoint * * * judges of the Supreme Court," the "advice and consent role" of the Senate is one of the most important ones we undertake. The Senate has assigned the task of holding hearings and the detailed review of judicial nominees to the Judiciary Committee. It is a task that the committee undertook with the clear awareness of the importance of its role in the confirmation process.

Mr. President, the role of the Supreme Court in our history has been vital because the Court has been called upon to solve many difficult and controversial problems—using its collective intellectual capacity, precedent, and constitutional interpretation to solve them. Throughout the course of our Nation's history the Court has been called on to administer justice. As George Washington said, "The administration of justice is the firmest pillar of good government." There is every reason to expect that the Court's role in the administration of justice will continue to be a major factor in the future.

For this reason, an individual chosen to serve on the Supreme Court must be one who possesses outstanding qualities. The impact of the decisions of the Court require that a nominee is eminently qualified. During my consideration of the previous 23 nominations to the High Court in my almost 37 years in the Senate, I have often reflected on the attributes I believe a Supreme Court Justice should possess. As we again consider a nominee to the Supreme Court, I believe these special qualities warrant reiterating:

First, unquestioned integrity. A nominee must be honest, absolutely incorruptible, and completely fair.

Second, courage. The courage to decide tough cases according to the law and the Constitution.

Third, compassion. While a nominee must be firm in his decisions, he should show mercy when appropriate.

Fourth, professional competence. The ability to master the complexity of the law.

Fifth, proper judicial temperament. The self-discipline to base decisions on logic, not emotion, and to have respect for lawyers, litigants, and court personnel.

Sixth, an understanding of the majesty of our system of Government. The understanding that only Congress makes the laws, that the Constitution is only changed by amendment, and that all powers not delegated to the Federal Government are reserved to the States.

I believe an individual who possesses these qualities will not fail the cause of justice. I am convinced that Judge Thomas possesses them and will be an outstanding member of the Supreme Court.

Without question, Judge Thomas' background and experience will serve him well on our Nation's highest court. He has an exceptional educational background, graduating from Holy Cross College in 1971, with honors. In 1974, Judge Thomas earned his juris doctorate degree from Yale Law School, one of the country's most prestigious institutions. Following his graduation from law school, Judge Thomas became an assistant attorney general for the State of Missouri, under then Attorney General John Danforth.

In 1977, he joined the Law Department of the Monsanto Co. where he handled corporate matters, and in 1979 he relocated to the Nation's Capital to be a legislative assistant for newly elected Senator DANFORTH. In this capacity, he handled legislative issues related to energy, the environment, public works, and the Department of the Interior. In May 1981, Judge Thomas was nominated by President Reagan, and confirmed by the Senate, to be Assistant Secretary for Civil Rights at the Department of Education.

He then assumed the position of Chairman of the Equal Employment Opportunity Commission in 1982. President Reagan nominated Judge Thomas to this position twice, with the Senate confirming his nomination on both occasions. As Chairman of the EEOC, he was responsible for the administration and policy development undertaken by an agency comprised of 3,100 employees across the Nation and an annual budget of $180 million. Judge Thomas was responsible for revitalizing and reinvigorating the mission of the EEOC. At the close of his tenure, the EEOC had won nearly a billion dollars in relief for victims of discrimination.

At his recent confirmation hearings, Ms. Pamela Talkin, a Democrat who worked with Judge Thomas at the EEOC, testified that he "sought to vigorously enforce all the laws prohibiting discrimination on behalf of all workers, including women, older workers, and Hispanic Americans." Mr. James Clyburn, who has served 17 years as Commissioner of the South Carolina Human Affairs Commission and describes himself as a moderate to liberal Democrat, testified that he found Judge Thomas "to be highly compassionate, sensitive, and judicious * * * there is the integrity, the conscientious spirit, and the basic sense of fairness."

On October 3, 1989, President Bush nominated Judge Thomas to serve as a member of the U.S. Court of Appeals for the District of Columbia Circuit. At that time, the Judiciary Committee extensively reviewed his professional record. The full Senate overwhelmingly approved him to serve on what is commonly known as the Nation's second highest court. This was the fourth time the Senate had confirmed him for a position of great trust and responsibility. Judge Thomas has rendered distinguished service on the court of appeals, authoring a number of opinions while participating in some 150 other cases.

On July 8, 1991, President Bush nominated Judge Thomas to serve as an Associate Justice of the Supreme Court of the United States. The Judiciary Committee conducted thorough and extensive hearings which lasted 8 days. Judge Thomas testified before the committee for almost 25 hours, longer than any other Justice confirmed in the last 10 years. We heard testimony from approximately 100 outside witnesses.

As the Committee hearing commenced, Judge Thomas was introduced by a bipartisan panel of several of our distinguished colleagues: Senators NUNN, FOWLER, WARNER, ROBB, DANFORTH, and BOND.

Senator SAM NUNN, of Georgia, Judge Thomas' home State, stated:

> Clarence Thomas has climbed many jagged mountains on the road from Pin Point, Georgia, to this Senate Judiciary Committee. I believe that * * * Judge Thomas will rsmember his own climb and will always insist on fairness and equal justice under the law for those who are still climbing.

Senator DANFORTH, one of the strongest supporters of Judge Thomas, stated:

I have no doubt whatever in giving the committee this assurance: Just as Clarence will resist any effort to impinge on his independence by seeking commitments on how he will decide cases before the Court, so he will never become a sure vote for any groups of Justices on the Court * * * [Judge Thomas] has special qualities he will bring to the Court * * * [He is a man] I know so well and believe in so strongly.

Of the witnesses who testified, I was most impressed by those who personally knew Judge Thomas and who could attest to his outstanding qualities.

Mr. Alphonso Jackson, executive director of the Housing Authority for the city of Dallas and a personal friend of Judge Thomas for the past 18 years stated:

Judge Thomas is intuitive, insightful, and highly proficient in the law, with extremely valuable hands-on experience in public policy. He possesses keen intellect and strong values * * *. He will serve the Supreme Court well through his own strength of character, perseverance and strong belief in the American Dream.

There were other impressive witnesses who testified in support of Judge Thomas. Ms. Emily Holyfield is a member of the Compton, CA, Chapter of the NAACP that voted unanimously to support the confirmation of this nominee. She testified that Judge Thomas will be an "an excellent judge, a judge that will represent all of the people throughout the Nation."

Mr. President, upon reviewing the decisions Judge Thomas has written and participated in on the Court of Appeals and listening to his testimony, I have concluded that he has exhibited an adherence to the rule of law and the true principles upon which our Nation was founded. Without question, the opinions he has authored are within the mainstream of judicial thinking. The American Bar Association reported to the committee that throughout Judge Thomas' tenure on the Court of Appeals, he "has been consistently fair and open-minded." His legal opinions were carefully reviewed and described by the ABA as "clear and [carrying] the hallmarks of competent appellate craftsmanship." Further, the ABA found that his work evidences broad analytical skill and open-mindedness * * *. He has shown no evidence of judicial bias * * * and his opinions have been * * * well reasoned and well written." My own review shows he has articulated a clear and concise understanding of the law and conformance to established principles of Constitution interpretations. Ms. Barbara Bratcher, an attorney with Wilmer, Cutler and Pickering, who prepared a comprehensive report on Judge Thomas' judicial opinions, concluded that he "has demonstrated strict adherence to the rule of law." She noted his opinions demonstrated an "observance of controlling precedent and accepted principles of statutory construction." Ms. Bratcher stated that Judge Thomas "faithfully construed the law to preserve the rights of individuals and the rights of society."

Mr. President, some have stated that Judge Thomas has articulated a personal philosophy of law and constitutional interpretation which would curtail individual rights. I strongly disagree with those who have reached that conclusion. In fact, Judge Thomas has stated he believes, and I quote, that "equality is the basis for aggressive enforcement of civil rights laws and equal opportunity laws designed to protect individual rights." Those are words stated by a person who truly believes in the civil rights of the individual and a commitment to the principles of fairness and equality, not a nominee who is out of the mainstream of judicial interpretation and analysis. An examination of the professional record of Judge Thomas provides no valid reason to believe he would seek to diminish the rights of any American citizen. Judge Thomas acknowledges that he has been a beneficiary of the diligent work of individuals such as Justice Thurgood Marshall and others involved in civil rights efforts.

Judge Thomas also testified before the Judiciary Committee about several other important constitutional issues. In his testimony, he stated the Constitution protects the fundamental right of privacy, and that the Court has recognized in the case of Eisenstadt versus Baird that the rights of privacy extends to single persons, as well as married couples. He acknowledged that the Miranda warning requirements and the exclusionary rule are settled judicial principles.

Mr. President, during the hearings there was mention that Judge Thomas had undergone a confirmation conversion. This nominee was before the committee for almost 5 days. During that time, he explained the positions taken by him in some of his writings and speeches when he was a policymaker in the executive branch. In each of these policymaking positions, clearly Judge Thomas would be expected to be a strong advocate for the administration which he served. I found his explanations for the positions he took in the executive branch reasonable and consistent with his earlier speeches and writings. I firmly believe there was no confirmation conversion. Ms. Margaret Bush Wilson, who was chairpereon of the national board of directors of the NAACP from until 1984 and has known Judge Thomas since 1974, testified before the committee on his behalf. In her written testimony she stated, and I quote:

One of the most disagreeable charges leveled at Judge Thomas is that he has changed his stated views to gain confirmation. Those who make this unfair charge do not know the man. Judge Clarence Thomas would not violate this principle for any purpose—and certainly not to gain a seat on the Supreme Court * * *. I am confident he will make a great Justice and will continue to defend and protect the rights of the needy, the powerless, and those who have suffered from discrimination.

Additionally, there were lengthy discussions of the topic of natural law during the committee hearings. Judge Thomas testified that he has always discussed this topic in the context of civil rights and equality under the law. He has never referred to the use of natural law as a substitute for the language of the Constitution, judicial precedent, or legislative intent. Upon reviewing the opinions he wrote while on the D.C. Circuit, it is apparent that he has stayed well within the appropriate framework of judicial review and constitutional interpretation.

Mr. President, the issue of judicial philosophy, or ideology, has often been raised in relation to recent nominees to the Supreme Court. Some argue that philosophy should not be considered at all in the nomination process, while others state that philosophy should be the sole criteria. I believe it is not appropriate that philosophy alone should bar a nominee from the Supreme Court unless that nominee holds a belief that is contrary to the fundamental, longstanding principles of our Nation. Clearly, if a philosophical litmus test can be applied to defeat a nominee, then the independence of the Federal judiciary would be undermined. Judges are not politicians put in place to decide cases based on the views of a political constituency, but are sworn to apply constitutional and legal principles, and to arrive at decisions that do justice to the parties before them. To reject a nominee based solely on ideology, would be inappropriate. As well, requiring a nominee to pass an ideological litmus test on controversial topics would seriously jeopardize the efficacy and independence of the Federal judiciary.

Additionally, the Constitution provides that the President of the United States shall choose the nominee to fill a vacancy on the Supreme Court. For this reason, I strongly believe that a nominee comes to the Senate with a presumption in his favor. Accordingly, opponents of the nominee must make the case against him, especially since Judge Thomas has been confirmed to positions of great trust and responsibility on four separate occasions. Based on the exhaustive review completed by the Judiciary Committee, I am strongly convinced that the presumption in favor of Judge Thomas has not been overcome.

Mr. President, I believe the circumstance of Judge Thomas' background will give him a unique sense of sensitivity in understanding the impact his decisions will have on the par-

ties before the Court. Judge Thomas has overcome difficult circumstances he faced early in life—both the anguish of poverty and the humiliation of discrimination. As Larry Thompson, an attorney with the law firm of King and Spaulding testified: "His background * * * is needed * * * inside the Court in its deliberations on a variety of issues." I am convinced that the life experiences of Judge Thomas show that he is a man of immense courage who will broaden the perspective of the Court and bring an added dimension to it. As Dean Calabresi of Yale Law School, who has known Judge Thomas since he began his legal education there, testified, Judge Thomas "has the integrity, * * * knowledge and the ability to be a very good Justice * * * he is fully as qualified as the people who have been appointed and confirmed to the Supreme Court over many, many years."

In closing, Judge Thomas has demonstrated that he possesses the attributes which will make him an outstanding justice: integrity, a keen understanding of the law, sensitivity, the intellectual capacity to deal with complex issues, fairness, patience, proper judicial temperament, and a willingness to be open-minded.

Mr. President, I urge the Members of this body to vote to confirm Judge Thomas for a position on the U.S. Supreme Court.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I rise, guided by the dictates of my conscience, to express my views about the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

I have reviewed the hearing transcripts and have conferred with many of my colleagues, both Democrat and Republican. Through my review and discussions, many more questions were raised about Judge Thomas than were answered. There are inconsistencies and contradictions between Judge Thomas' prior statements and his well-rehearsed and polished presentation to the Senate Judiciary Committee.

Article II of the U.S. Constitution provides the President with the power to nominate the Justices of the Supreme Court, with the advice and consent of the Senate. Our Founding Fathers intended that the Members of this honorable body share in the awesome responsibility of selecting the Justices of the highest court to ensure the quality, competence, and integrity of Presidential appointees, and to ensure that we, as public servants, are upholding to the best of our ability the letter and the spirit of the U.S. Constitution.

The advice and consent power acts as a check and balance. It is a responsibility I take very seriously. An error in judgment may have detrimental ramifications and may negatively impact upon the quality of life of all Americans for years to come.

For this reason, I am most disappointed at the current state of our confirmation process—a process our Founding Fathers intended to be an open and candid opportunity for the Members of the Senate to learn about the views and policies of the President's nominee. With such knowledge, we would be able to exercise our constitutional responsibility to provide advice and consent. Regrettably, the confirmation process has become a game of hide and seek, a game of semantical tag, and game of Simon Says. The ability to duck a question has gone from a sign of weakness to an art form. Rather than securing what I believe are simple answers to straightforward questions, my colleagues on the Judiciary Committee were trapped in a tangled web of evasion and skillful sidestepping. This cannot be what our Founding Fathers intended.

Judge Thomas' performance can be described in many ways. It was well-rehearsed, well-choreographed, and well-presented. Unfortunately, it did not provide for candid and open dialogues. I cannot believe that Judge Thomas has never discussed the right to privacy issues involved in Roe versus Wade. It is one of the most controversial issues of our time. It is discussed and debated on the streets of Washington, DC, Honolulu, HI, and St. Louis, MO. The housewife, the student, the teacher, and the mechanic each have a viewpoint on abortion—whether for or against, whether grounded in religious principles or personal experience. Judge Thomas' answers on the abortion issue are beyond belief. As a respected attorney and policymaker, I cannot fathom that he has "no position" or "no preconceived leanings" on this important issue. With each repeated and rephrased question relating to Roe versus Wade, Thomas' answers were generally the same. In fact, on at least 19 occasions they resembled the following:

To take a position would undermine my ability to be impartial, and I have attempted to avoid that in all areas of my life after I became a judge.

I have not made a decision one way or the other with respect to that important decision [Roe versus Wade].

I don't recollect commenting one way or the other. There were debates about it [Roe versus Wade] in various places, but I generally did not participate.

Do these responses provide any answers or insights into the policies of Judge Clarence Thomas? With such vague and puzzling answers, I find it extremely difficult to exercise my responsibility to provide advice and consent. In all candor, I do not know the policies of Judge Clarence Thomas. Will he stand upon his past positions in accord with his belief in the doctrine of natural law? Will he have no position which is his present position? Or will he develop a new position if confirmed? I cannot with a clear conscience take such a chance. My doubts are too numerous, and the stakes are too high.

Judge Thomas wrote, "justice and conformity to the Constitution, not 'sensitivity,' should be the object of race relations." I agree that we must be unfailingly loyal to the Constitution and to the Framers' intent. However, I take exception with Thomas' belief that justice and sensitivity are mutually exclusive. The very concept of "justice" embodies compassion and sensitivity. I believe that the Framers deliberately used broad language that invites us, as policymakers, to continue the process of shaping a just society. The principles of the Constitution are not stagnant. Rather, they change to fit the contours of our time, and in doing so, the Framers would have expected us to be sensitive and compassionate in according justice for all.

Judge Thomas' opposition to the established affirmative action and equal opportunity programs evidence, I believe, a lack of sensitivity for those struggling to reach their dreams. As the grandson of a poor sharecropper raised in the segregated South, he persevered, endured and strived for excellence, and all would agree that he has achieved it. On his way up the ladder of success, Judge Thomas was a beneficiary of the very type of affirmative action program he now opposes. Through the preferential admission policy of the Yale Law School, Thomas was admitted and later graduated.

In a recent Washington Post article, Thomas is quoted, "I've benefited greatly from the civil rights movement, from the Justice whom I'm nominated to succeed, from organizations such as the Urban League and the NAACP." Were not Justice Marshall and the NAACP motivated in their quest for equal justice by compassion and sensitivity? Judge Thomas is appreciative of benefits he received, but now believes that such policies should be abolished. If I understand him correctly, he would kick out the ladder he used which helped him to reach for and accomplish his dreams.

Mr. President, I, too, have scars from discrimination. I know what it feels like. I also know about personal drive and inner strength. Accordingly, while my sights are always set forward, I look back now and then to ensure that I do now forget where I came from and who I am. However, unlike Judge Thomas, I would not kick out the lad-

der of hope and make it more difficult for those who have come after me. Rather, in my 37 years of public service, I have worked to fortify and preserve that ladder in an effort to help those with the personal drive and inner strength to overcome the obstacles and achieve their dreams. Our differences in this regard go to the core.

Supreme Court Justice Oliver Wendell Holmes stated, "The life of the law is not logic but experience." I am disappointed that the lifetime experiences of Judge Thomas, from his humble beginnings in the segregated South, to his participation in Black Panther activities, to his present position of national prominence, are not embodied in his philosophy and constitutional interpretation. If they were, the very values of compassion and sensitivity which were bestowed on him would be carried forward to define who he is. Justice is not handed down in a vacuum. Rather, the Supreme Court, by its very mandate, concerns itself with the realities of human lives. It has embraced, throughout the years, the values of flexibility, sensitivity and justice to uphold not only the words, but also the spirit of this document that has guided this great Nation for 200 years.

Judge Clarence Thomas has an impeccable set of accomplishments. He has held important positions in all three branches of our Federal Government. However, I do not know who Judge Thomas is. I have reviewed his past statements and his hearing testimony. From it, I feel I know less about him than I did before I began my research. What are his insights, his motivations, his passions, and why? I do not know.

I have too many questions and too many doubts. To faithfully carry out my responsibility, my choice must be free of doubt. The future of the Court and its direction for years to come is too important to accept a lesser standard. Accordingly, I must respectfully oppose the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBB). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, it is a great honor for me to address the Senate on behalf of the nomination of Judge Clarence Thomas.

I say this because I know Clarence Thomas very well. And when I got the call from the White House on July 1 telling me that Judge Thomas would be nominated for the U.S. Supreme Court, that was one of the happiest moments of my life, and I think the happiest moment of my life in the U.S. Senate.

I believed on July 1 that I knew Clarence Thomas very well. I hired him 17 years ago when he was a third-year law student at Yale Law School. I saw in him even during that hiring interview special qualities which I thought would lead to an outstanding future.

I brought him out to Jefferson City, MO, for a further interview, and that confirmed my initial impression of this person. Clarence Thomas worked for me in the attorney general's office for about 2 years, maybe a little more, and then I was elected to the U.S. Senate, and he went to work for Monsanto Co. located in St. Louis, in their legal department.

Then, after I had been in the Senate for a couple of years, I asked Clarence Thomas if he would come to Washington and join me here, and he did come here and stayed with me from 1979 until 1981, when President Reagan asked him to join the administration as Assistant Secretary of Education for Civil Rights.

So Clarence Thomas has worked with me for approximately 4 years, and I have kept in touch with him ever since he left my employ. I see him periodically. I have had many discussions with him on a whole variety of subjects. He is a person of great breadth.

On the basis of that knowledge, I believed on July 1 that this was an outstanding nominee for the U.S. Supreme Court. I believed I knew him on July 1 but, Mr. President, I did not know him then nearly as well as I know him now.

I have had an unusual, if not a unique, experience over the past 3 months with Clarence Thomas as we had face-to-face meetings with some 60 Members of the U.S. Senate. It is an interesting experience to do that for several reasons. It is interesting to be there in the office of our colleagues and see how they interact with visitors to their offices, and it is especially interesting to see a whole variety of snapshots of a person you thought you knew. Not that the meetings were really different in substance, because Clarence Thomas was not one thing in one office and something different in another office. But the questions would be a little different. The wording of the answers would be a little different. The anecdotes which I had never heard before would be a little different from office to office. And it was as though I had been furnished with 60 snapshots of the same person, each giving a slightly different perspective of the human being.

And then I was there, Mr. President, during what have been called the murder board meetings. I would call them batting practice sessions. These are sessions where a variety of people—almost all of them were lawyers—asked Clarence Thomas all kinds of questions relating to the work of the Supreme Court. It was the kind of preparation that we politicians do before going into an important debate, where questions are fired at us to see whether we have thought of them and whether we have some response at hand.

Some people have said, "Oh, well, Clarence Thomas has been coached. He has been overly coached." But, Mr. President, each one of those meetings started with a statement that we were not there to correct the substance of what Clarence Thomas said, and we were not there to change his opinion on anything. We were there to make sure that he had heard the questions, to the best of our ability, in advance, and that his answers were clear and understandable. But we were not there to coach him on the substance, and we did not do that.

Clarence Thomas is his own person. I found that out when he worked for me 17 years ago. He is not a person who is going to trim his position in order to make people happy. He certainly did not do that with me in the attorney general's office, and there was no effort to transform Clarence Thomas into something that he was not. As a matter of fact, Mr. President, the consistent advice that I gave him—hardly advice—throughout this whole process was: Be yourself. Let people see the person you are. Let people understand who you are. Then they will support you.

Clarence Thomas was himself. I must say that I was astounded by the way in which he prepared for his confirmation hearings.

Let us face it, Mr. President, even those of us in the Senate who are lawyers, other than perhaps members of the Judiciary Committee, do not exactly sit around reading slip opinions of the U.S. Supreme Court and talking about the latest developments in jurisprudence. At least this Senator does not. I might read a few opinions every year on something that is of specific interest. But as far as keeping up with the whole breadth of material that comes before the U.S. Supreme Court, I do not do that, and I do not think many other people do either.

Clarence Thomas set to work in early July studying for what amounted to a bar exam. He was furnished a number of thick briefing books by the Justice Department, and he read those books, and he read the cases in order to try to learn what the latest developments are before the Court. He had been at the EEOC, and at the Department of Education for most of the last 10 years, and 1½ years on the U.S. Court of Appeals. There were many issues that he had to learn about, and he took that mission very seriously. He wanted to give a meaningful response to the members of the committee, and he wanted to educate himself to the best of his ability. What was remarkable to me was the

breadth of his knowledge that he brought to that hearing.

Mr. President, I would be quaking in my boots if I had to face murderers' row for 5 days and be peppered with questions, some of which come out of the blue, or asked to defend, sometimes line by line, words and speeches that I made 10 years ago. I would not know how to go about that. But Clarence Thomas prepared for us, and he did answer to the best of his ability, the questions that were put to him by the committee.

Mr. President, I have heard a number of comments of people who have at least attempted to give some kind of explanation for why they intended to vote against Clarence Thomas. And one of the pop explanations is, "Well, we really do not know who he is. We really do not know who this Clarence Thomas is. And, because we do not know who he is, we will not vote for him."

I ask, Mr. President, for my colleagues to consider what kind of answer that is, and how that answer squares with the vote on the confirmation of David Souter 1 year ago to the U.S. Supreme Court.

Here is a person, David Souter, who was confirmed by the Senate on October 2, 1990, 1 year ago yesterday, by a vote of 90 to 9.

Mr. President, I ask unanimous consent that the rollcall vote of the Souter nomination be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

YEAS (90)

Republicans (44 or 100%).

Armstrong, Bond, Boschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Helms, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Wallop, Warner.

Democrats (46 or 84%).

Baucus, Bentsen, Biden, Bingaman, Boren, Breaux, Bryan, Bumpers, Byrd, Conrad, Daschle, DeConcini, Dixon, Dodd, Exon, Ford, Fowler, Glenn, Gore, Graham, Harkin, Heflin, Hollings, Inouye, Johnston, Kerrey, Kohl, Leahy, Levin, Lieberman, Metzenbaum, Mitchell, Moynihan, Nunn, Pell, Pryor, Reid, Riegle, Robb, Rockefeller, Sanford, Sarbanes, Sasser, Shelby, Simon, Wirth.

NAYS (9)

Republicans (0 to 0%).

Democrats (9 or 16%).

Adams, Akaka, Bradley, Burdick, Cranston, Kennedy, Kerry, Lautenberg, Mikulski.

NOT VOTING (1)

Republicans (1). Wilson.[2]

Democrats (0).

Explanation of absence: 1—Official Business, 2—Necessarily Absent, 3—Illness, 4—Other.

Symbols: AY—Announced Yea, AN—Announced Nay, PY—Paired Yea, PN—Paired Nay.

Mr. DANFORTH. Mr. President, David Souter was called the "stealth nominee" for the U.S. Supreme Court. Those were the words used to describe David Souter—the "stealth nominee." Nobody knew what he believed. It was said he would not answer any questions; yet, he was confirmed by a vote of 90 to 9.

Now, it is said the Clarence Thomas is a person we do not know enough about and therefore we cannot vote for Clarence Thomas. What, Mr. President, is the difference between David Souter and Clarence Thomas? As a matter of fact, much of the commentary comparing the Souter nomination with the Thomas nomination is to the effect that David Souter had no track record; that he wrote very little, if anything; that he had not made a lot of speeches; but that Clarence Thomas had quite a paper trail, it was said, quite a paper trail, that people knew what he had said, knew what he had written. That was said to be the difference between David Souter and Clarence Thomas.

So, Mr. President, how can anybody conceivably argue that they will not vote for Clarence Thomas because they do not know Clarence Thomas when 1 year ago yesterday they voted for David Souter? What kind of double standard is that to apply to the Thomas nomination: "Oh, we do not know him"? Well, we knew David Souter enough to vote for him 90 to 9. We do not know Clarence Thomas; therefore, we will not vote for him? No, Mr. President. I do not think that is any kind of argument for voting against the Thomas nomination, that we do not know him. I think that is an excuse rather than a reason.

It is said that Clarence Thomas did not come clean when he was before the committee, that he did not really answer questions that came before him. But, Mr. Preeident, Clarence Thomas took the same position that other Supreme Court nominees have taken. He said that he would not offer an opinion on a matter that could come before the Court, that it would be improper to do so.

He was asked repeatedly about the question of abortion. "What is your position on abortion?" At one point, about halfway through the hearings, Senator HATCH noted that he had counted 70 different times when Clarence Thomas had been asked about abortion one way or another by Members of the Senate Judiciary Committee; 70 times he had been asked about abortion. That was only halfway through the hearings. I have not made a count of how many times he was asked from beginning to end, but it was surely more than 70. Was it 80, 90, 100?

Mr. President, when do we move beyond an honest inquiry into a person's views and badgering somebody? Is it after the first five questions, or 10 or 20, or 50 or 60 or 70?

Repeatedly he was asked the question on abortion as though abortion is the litmus test for serving on the Supreme Court of the United States. "Answer our question on abortion. We insist on knowing what your position is. How would you vote on abortion? What do you think about abortion? Do you have a personal opinion of abortion? Have you ever discussed abortion with anybody?"

I do not know, Mr. President; the nominee said, "Oh, I haven't even discussed it with anybody."

I do not know how to prove a negative. I do not understand how to prove a negative. I know that my administrative assistant, who served as my administrative assistant both when Clarence Thomas was with me in the Attorney General's office and when Clarence Thomas was with me here in Washington, wrote me a letter saying that he has had probably thousands of discussions with Clarence Thomas over the years about everything ranging from English literature to jogging, and he has never discussed abortion with Clarence Thomas.

I know that a lawyer here in town named Chris Brewster, who served with me both in the Attorney General's office and here in Washington, and who worked with me on the brief of my own Supreme Court case on the subject of abortion, said that the whole time he served with Clarence Thomas he never discussed the subject with him.

Most people I suppose are intensely interested in the subject of abortion. It has just never been particularly on Clarence Thomas' screen. People say this is a question of credibility. "Of course he must have talked to somebody." And so the liberal interest groups are now taking out paid advertising in a newspaper to ask people to come forward if they have ever talked about abortion with Clarence Thomas.

I ask the Senate: Is that an honest inquiry into a matter that should be discussed by a Supreme Court Justice? Or is it picking on somebody?

I think it is picking on him.

He would not answer the question. He said, "I do not think it is appropriate for somebody to go to the Supreme Court and not be able to decide the case on the basis of the law and the facts in front of him. I think that a judge should be impartial," says Clarence Thomas. And I agree. And so have other people who have been confirmed for the Supreme Court agreed.

A judge should be impartial. And it truly is an interference with the independence of the judiciary to ask a nominee to promise a vote on the Court in exchange for our confirmation in the Senate. It is not right. It interferes with the independence of the judiciary and most Americans know that, no matter what their view is on the subject of abortion.

Have we not had enough judges who were trying to impose some pre-

conceived idea of their own on the American people? And do not really want judges who will decide cases on the basis of the facts and on the basis of the law, without trying to fob off on the American people some personal philosophical point of view?

If a judge has a personal opinion, is not Clarence Thomas exactly right, that personal opinion should be put in the background, that personal opinion should be something that the judge takes off, as Clarence Thomas said, like a runner takes off his extra clothing before running a race.

The issue is the independence of the judiciary. And other nominees have stated that before the Judiciary Committee and their explanation was accepted. And people say, "Oh, we do not know, we do not know what his views are, because he won't prejudge cases for us."

When Justice Marshall, just retired, testified before the Judiciary Committee during his confirmation, a question was put to him by Senator McClellan. Here is the question:

Do you subscribe to the philosophy, as expressed by a majority of the Court in the Miranda case, that no matter how voluntary a confession or incriminating statement by a defendant might be, it must be excluded from evidence unless the prescribed warnings of that opinion were given?

Here is the answer that Thurgood Marshall gave in his confirmation hearings:

Respectfully, I cannot answer your question, because there are many cases pending in the Supreme Court right now on variations of the so-called Miranda rule, and I would suspect that in every State of the Union there are other cases on different variations of the Miranda rule that are on their way to the Supreme Court, and if I am confirmed, I would have to pass on those cases.

Question:

I will not ask you about any presently pending case here. * * * But, I think it has become so critical that we who have this responsibility here of upholding confirmations need to have some idea, at least glimpse, some impression as to the trend of the thinking and the philosophy of the one who is to receive confirmation.

Answer:

My difficulty is that from all of the hearings I have ever read about, it has been considersd and recognized as improper for a nominee to a judgeship to comment on cases that he will have to pass on.

Different question from McClellan:

Do you subscribe to the philosophy that the fifth amendment right to counsel requires that the counsel be present at a police lineup?

Answer by Thurgood Marshall:

My answer would have to be the same. That is a part of the Miranda case.

Anything familiar about that exchange, Mr. President? Anything ring a bell with those who watched the proceedings before the Judiciary Committee?

Justice William Brennan, inquiry from Senator Joseph McCarthy of Wisconsin:

Mr. Brennan, we are asked to either vote to confirm or reject you. One of the things I have maintained is that you have adopted the gobbledegook that communism is merely a political party, is not a conspiracy. The Supreme Court has held that it is a conspiracy to overthrow the government of this country. I am merely asking you a very simple question. It doesn't relate to any lawsuit pending before the Supreme Court. Let me repeat it. Do you consider communism merely as a political party or do you consider it as a conspiracy to overthrow this country?

Answer by William Brennan:

I can only answer, Senator, that believe me there are cases now pending in which the contention is made, at least in the frame of reference in which the case comes to the Court, that the definitions which have been given by the Congress to communism do not fit the particular circumstances. * * * I can't say anything to you, Senator, about a pending matter.

Antonin Scalia, at his confirmation hearing.

Senator Kennedy:

Do you expect to overrule the Roe versus Wade Supreme Court decision if you are confirmed?

Justice Scalia:

Senator, I do not think it would be proper for me to answer that.

The confirmation of Abe Fortas. Senator Thurmond:

Did you condone the [Escobedo]?

Justice Fortas:

It is with the greatest regret that I must say that the constitutional limitations upon me prohibit me from responding.

So now we say, well, we do not know enough about Clarence Thomas. Well, he answered the same way that, as far as I know, everyone has answered who has been hauled up before the Senate Judiciary Committee.

Then, Mr. President, there are those who say, well, the problem is not that we do not know enough about Clarence Thomas. The problem is we know about Clarence Thomas. That is the next attack. First, we do not know him; second, we know him. Which way do we want to have it?

So it is said, well, Clarence Thomas cannot be confirmed because Clarence Thomas is a conservative. My answer to that is: This is a new standard.

I have already put in the RECORD, Mr. President, the rollcall vote on the confirmation of David Souter, confirmed 90 to 7, I believe.

I now ask unanimous consent to have printed in the RECORD the rollcall vote of September 17, 1986, on the nomination of Antonin Scalia to be an Associate Justice of the U.S. Supreme Court. The vote is 98 to zero. And further, the rollcall vote of February 3, 1988, of Anthony M. Kennedy to be an Associate Justice of the Supreme Court. The vote is 97 to zero.

There being no objection, the rollcall votes were ordered to be printed in the RECORD, as follows:

NOMINATION OF ANTHONY M. KENNEDY TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

YEAS (97)

Democrats (51 or 100%)

Adams, Baucus, Bentsen, Bingaman, Boren, Bradley, Breaux, Bumpers, Burdick, Byrd, Chiles, Conrad, Cranston, Daschle, DeConcini, Dixon, Dodd, Exon, Ford, Fowler, Glenn, Graham, Harkin, Heflin, Hollings, Inouye, Johnston, Kennedy, Kerry, Lautenberg, Leahy, Levin, Matsunaga, Melcher, Metzenbaum, Mikulski, Mitchell, Moynihan, Nunn, Pell, Proxmire, Pryor, Reid, Riegle, Rockefeller, Sanford, Sarbanes, Sasser, Shelby, Stennis, Wirth.

Republicans (46 or 100%).

Armstrong, Bond, Boschwitz, Chafee, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Evans, Garn, Gramm, Grassley, Hatch, Hatfield, Hecht, Heinz, Helms, Humphrey, Karnes, Kassebaum, Kasten, Lugar, McCain, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Quayle, Roth, Rudman, Simpson, Specter, Stafford, Stevens, Symms, Thurmond, Trible, Wallop, Warner, Weicker, Wilson.

NAYS (0)

Democrats (0 or 0%).

Republicans (0 or 0%).

NOT VOTING (3)

Democrats (3). Biden—3 AY, Gore—2 AY, Simon—2.

Republicans (0).

Explanation of Absence: 1—Official Business, 2—Necessarily Absent, 3—Illness, 4—Other.

Symbols: AY—Announced Yea, AN—Announced Nay, PY—Paired Yea, PN—Paired Nay.

NOMINATION OF ANTONIN SCALIA TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

YEAS (98)

Democrats (47 or 100%).

Baucus, Bentsen, Biden, Bingaman, Boren, Bradley, Bumpers, Burdick, Byrd, Chiles, Cranston, DeConcini, Dixon, Dodd, Eagleton, Exon, Ford, Glenn, Gore, Harkin, Hart, Heflin, Hollings, Inouye, Johnston, Kennedy, Kerry, Lautenberg, Leahy, Levin, Long, Matsunaga, Melcher, Metzenbaum, Mitchell, Moynihan, Nunn, Pell, Proxmire, Pryor, Riegle, Rockefeller, Sarbanes, Sasser, Simon, Stennis, Zorinsky.

Republicans (51 or 100%).

Abdnor, Andrews, Armstrong, Boschwitz, Broyhill, Chafee, Cochran, Cohen, D'Amato, Danforth, Denton, Dole, Domenici, Durenberger, Evans, Gorton, Gramm, Grassley, Hatch, Hatfield, Hawkins, Hecht, Heinz, Helms, Humphrey, Kassebaum, Kasten, Laxalt, Lugar, Mathias, Mattingly, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Quayle, Roth, Rudman, Simpson, Specter, Stafford, Stevens, Symms, Thurmond, Trible, Wallop, Warner, Weicker, Wilson.

NAYS (0)

Democrats (0 or 0%)

Republicans (0 or 0%).

NOT VOTING (2)

Democrats (0).

Republicans (2). Garn—2 AY, Goldwater—1.

Explanation of absence. 1—Official Business, 2—Necessarily Absent, 3—Illness, 4—Other.

Symbols: AY—Announced Yea, AN—Announced Nay, PY—Paired Yea, PN—Paired Nay.

Mr. DANFORTH. Mr. President, then it is said that, well, we really know

what Clarence Thomas thinks because of speeches that he made when he was in the executive branch, and somehow those speeches are relevant to how he would decide cases before the Supreme Court. And so that has been this extremely careful, precise, analysis of words and phrases that have been used by Clarence Thomas in making speeches around the country when he was the chairman of the EEOC.

And, as a matter of fact, that analysis has been so specific and so precise that one line of questions that one member of the Judiciary Committee directed at Judge Thomas had to do with the citing of a case in a footnote in a Law Review article. He was asked about the citing of a footnote in a Law Review article when he was before the Judiciary Committee.

And then there is the famous case of the speech before the Heritage Foundation in which a single sentence in a 9- or-10-page single-spaced printed speech, complimenting a man named Lewis Lehrman during a speech given at the Lewis Lehrman Auditorium at the Heritage Foundation, is used as an explanation that Clarence Thomas has taken a full-blown position on the ralationship between natural law and abortion, which he never intended to do.

But, in any event, there is this fastidious, sentence-by-sentence review of speeches that have been made by Clarence Thomas around the country when he was a member of the executive branch.

Mr. President, my advice, after all of this, to any Member of the U.S. Senate who has aspirations to serve on the U.S. Supreme Court is: Forget it. Forget it. Because every speech is going to be analyzed sentence by sentence; every form letter to constituents is going to be analyzed sentence by sentence over years of time. Think of the wealth of material for those who are looking for something to criticize in the statement of anybody who has been in politics. And Clarence Thomas was in a political branch of government, the executive branch. He was an appointee of the President of the United States, and he made a lot of speeches. And there was this tremendous effort.

People say, oh, my, was Clarence Thomas not coached? Was Clarence Thomas not coached? How about the Senators who ask questions of him? How about all of the interest groups who have been pawing through every statement that he made, all of the staff members who have been analyzing every footnote in every Law Review article? What is coaching if that is not coaching?

Clarence Thomas said repeatedly: There really is a difference between being a judge and being a politician. There really is a difference between serving in a political branch of government and serving on the Court. Mr. President, that is absolutely true. There really is a difference and there must be a difference. What we say in a political context should not be relevant to how we judge cases. How we take positions on the stump should not be relevant to how we judge cases on the bench. Because, if it is relevant, then I submit that our Founding Fathers made a terrible mistake in giving lifetime tenure to members of the judiciary. There is a difference between what you say in one context and how you think as a jurist.

Again, I refer to the nomination of Thurgood Marshall to the Supreme Court because the debate in that nomination sounded so much like the questioning of Clarence Thomas. Many members of the Judiciary Committee stated the view that, as Clarence Thomas had made certain comments in the executive branch, so Thurgood Marshall had a paper trail. The chairman of the Judiciary Committee said to Thurgood Marshall during his hearing, concerning his views on the Miranda case and the Escobedo case:

"Judge, I have a clipping from a paper, the Daily Texan, for Sunday, March 19, 1967, in which you were interviewed, which reads, in part, as follows." And the quote then goes on, "Turning to criminal procedure cases"—and so on and so forth.

And Thurgood Marshall said to the Judiciary Committee, about that quote—here is the quote that he made:

That view was as the Solicitor General of the United States talking to law students, trying to give them the benefit of my advice, not as a nominee for this position." That is what Thurgood Marshall said. And then Thurgood Marshall refused to give his views on this matter to the committee, the same position that had been reported in the newspaper article. And here is what Senator Kennedy, our own Senator Kennedy, said in coming to the defense of Thurgood Marshall:

> Actually, Mr. Solicitor General, there would have been nothing improper for you to express an opinion down in Texas Law School because you were not nominated to the Supreme Court at that time. So, actually, now having received the nomination, then I assume that you have a different responsibility as far as commenting on these matters.

Mr. President, I agree with what I will call the Kennedy standard for reviewing past comments by Supreme Court nominees. What applied to Thurgood Marshall should apply to Clarence Thomas.

I have had an unusual experience. I serve on the Intelligence Committee as well as having been an advocate for Judge Thomas during these proceedings. So I have become, I guess, an expert on confirmation hearings. And people have said, is there something wrong with the process?

Mr. President, there is something wrong with the process. There is something wrong with the process. There is something wrong with the process because, if you have any kind of record, if you have made speeches, if you have written things, if you have served in positions of public responsibility, that is a terrible burden to bear before a committee of the U.S. Senate holding confirmation hearings. It is a terrible handicap to submit nominees today to grillings about things they have said in the past. So some people have said we are not going to have that anymore. We are not going to have known quantities. Everybody is going to be a stealth candidate. Everybody is going to come out of the mountains of New Hampshire or someplace.

I think to comb through prior speeches, taking what has been said in a political context as a foreshadowing of what might be said in a judicial context is mistaken, and it has the effect of inviting Presidents of the United States, present and future, to send us nominations of total nonentities. And I think that Senator KENNEDY was right back in 1967. I think that he was right that Thurgood Marshall should not have been held accountable for a speech he made as Solicitor General down in Texas.

So, Mr. President, those really are my comments for the moment. I guess I would just add one other comment. When the President asked Clarence Thomas, on July 1, to go to Kennebunkport, the President interviewed Judge Thomas and then they both went outside. The President of the United States said that in his opinion Clarence Thomas was the best qualified person in the country for the job.

And, of course, everybody immediately started dumping all over that and saying, "Oh, that cannot be. He's not the best person in the United States for the job. That is a stupid thing for the President to say. There are a lot of people who have much more experience or are smarter than Clarence Thomas," and that is true. But, Mr. President, I want the Senate to know that I agree with the President of the United States. I guess I am not exactly unbiased, having known this man for so long. But I agree with the President of the United States. I think he is the best person in America for the job, and I want to tell you why.

Yes, we could get law professors. Yes, we could get eminent jurists and elevate them to the Supreme Court. Yes, it may be that what we need is the greatest intellects of the country, nine strong, sitting on the Supreme Court of the United States. But, Mr. President, I do not believe that a Supreme Court Justice is a bottled brain, a brain disembodied from the rest of life, a computer with shoes on. I do not believe that is what a Supreme Court Justice is.

I believe that a Supreme Court Justice is a living, breathing human being

and that person should be judged as a living, breathing human being. That is what Clarence Thomas brings to the U.S. Supreme Court.

I consider him to be a great American, and I do not say that lightly. I consider him to be a great American because he has come further in his life than anyone I have ever known. I have heard Members of the Senate say to me, "Well, I was poor, too. I was disadvantaged, too." Mr. President, there is no one who serves in the U.S. Senate who knows disadvantage as Clarence Thomas knows disadvantage. Nobody here. Nobody here was born black in the segregated South. Nobody here was raised in a shack for 7 years without plumbing, in a broken home. Nobody knows that. Nobody has experienced that. Clarence Thomas has. He knows what it is like to be very poor. He knows what it is like to have no advantages except his grandfather who loved him and had high expectations, and some nuns who taught him.

That is what he brings to the Supreme Court: The character of the man. When Guido Calabresi, the dean of Yale Law School testified before the Judiciary Committee, this was exactly the point he made. He has grown more than anybody else and he has the potential of future growth unknown by any other potential nominee for the Supreme Court. Who else is George Bush going to nominate for the Supreme Court who brings this kind of wealth of personal experience, this kind of history of personal growth and this kind of future of growtb? Nobody.

Mr. President, I ask unanimous consent that an op-ed piece by Guido Calabresi, the dean of Yale Law School, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 28, 1991]

WHAT CLARENCE THOMAS KNOWS

(By Guido Calabresi)

NEW HAVEN.—I am a Democrat. Since the President and others have started to throw mud on liberals, I have proudly asserted that I am a liberal. I despise the current Supreme Court and find its aggressive, willful, statist behavior disgusting—the very opposite of what a judicious moderate, or even conservative, judicial body should do.

I think it strange that these strict destructionists should be allowed to get away with the claim that they are following the Constitution when, instead, they persistently reach well beyond the issues before them to impose their misguided values on the Great Charter and on all of us.

Yet I support the nomination of Clarence Thomas to that Court. Why?

First, because I know him and know he is a decent human being who cares profoundly for his fellows. He is not the caricature that some of his opponents have put forth. It is true that he has come to believe that some things we liberals have espoused to help African-Americans (and many other people, too) are counterproductive. I think that on the whole he is wrong.

But his conclusion is not so important as the fact that he does not deny that such measures helped him or that the people whom these remedies seek to help are deserving and often desperately need help. He has not turned his back on those in need, and especially not on African-Americans. If he had, he would be unworthy to sit on the Supreme Court. What he has done is to conclude, with many others and probably wrongly, that certain measures have done more harm than good. I wish I could convince him otherwise. Maybe some day someone will.

What matters most, though, is that, unlike many on the Court, he does know the deep need of the poor and especially of poor blacks, and wants to help. That will keep him open to argument as a Justice should be.

The second reason I support him derives from this direct knowledge of what it is like to be in need. This Court is outrageously homogeneous. It is overwhelmingly made up of gray Republican political hangers-on of virtually identical backgrounds. They all bring to the Court the same life experience and lack thereof.

How can they know what discrimination really means? How can they understand what fear of police, prosecutorial or state abuse and brutality is? When they babble that coerced confessions need not make trials unfair; that discrimination must be proved in individual cases and not through statistics, or that a single appeal is adequate even if a defendant is served by a lousy lawyer, they sound like what they are: people who neither through personal expeirence not academic thought could ever imagine themselves erroneously crushed by the power of the state.

Clarence Thomas, at least, knows better, and someday, in some case, that knowledge will make itself felt.

Of course, there are others as able as Clarence Thomas who also know this. And if I were President I would name someone like that who also shared my views. But it is a gross illusion to think that this Administration will do anything like that any more than the Reagan White House did when Robert Bork was cruelly caricatured and defeated. What we got then, what we would get now, is someone less able, with less life experience, a gray follower of all that is worst in the Court today.

And now, as then, The New York Times and eminent scholars who defeated the nominee will join the bandwagon of support for the nonentity. For in such a person the "offending" views will not stand out against the grayness of his background.

No, I would much rather have someone who does stand out, who holds his or her own views, with which I deeply disagree but who has somewhere, some time, experienced life and has been willing to stand up against the pack. Better such a one than someone who will readily blend in and be another anonymous vote for the activist and virulent views now so dominant on the Court.

For there is just a chanoe that such a one may stand up to the pack again, and remind us all of what it is like to be poor and friendless and to be facing a hostile state.

Mr. DANFORTH. Mr. President, this op-ed piece makes essentially the same point. Calabresi is a critic of the Supreme Court. In fact, he calls the modern Supreme Court disgusting. He says in the op-ed piece that he frequently disagrees with Clarence Thomas, but he believes that Clarence Thomas would bring to the Court the special qualities that come from his background that are totally unrelated to the qualities and the background of anybody serving on the Court today. And I think that is an excellent point.

The people who have come forward over the last 3 months, the people who feel strongly about this, are the people who have known Clarence Thomas for so long. Roy Allen, his former schoolmate, fellow altar boy, black State senator, Democrat from Georgia; the nuns who educated him in the Catholic schools in Savannah; the president of Holy Cross College; the dean of Yale Law School, all kinds of people who worked with him over the years in my office in Jefferson City, or here in Washington, or at Monsanto; the people at EEOC who have spoken to me with such a heartfelt view of this human being, the people who have known him and worked with him are those who have come forward, and it is those people against the interest groups. It is those who know him, on one hand, and the high hired guns, on the other hand. And that is the battle that is now going on.

The people who know Clarence Thomas believe in him. The little people who know him believe in him. That is where his heart is. When he walks the corridors of the Senate office buildings, the people he knows are the Capitol Police and the people who are pushing maps. He asks them about their kids. He knows them by name. The people who push the hampers around the halls with papers in them, those are the people he knows. Those are the people who have been hanging out outside the Senate caucus room. Amidst the lobbyists, amidst the special interest groups, have been the ordinary folk who have known Clarence Thomas over the years. Those are the people who feel strongest about him. That is where his heart is and that is where his heart would be if he is confirmed as an Associate Justice of the Supreme Court.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have spoken on this subject immediately after the hearings were concluded and again during the Judiciary Committee session, and I have sought recognition again today as the full Senate considers the confirmation process on Judge Thomas. I have sought recognition to state my support for Judge Thomas for the Supreme Court of the United

States because I believe that he is intellectually, educationally, and professionally qualified, and his nomination will bring a very important element of diversity to the Supreme Court of the United States.

My comments relate to the nature of the process and the questions which Judge Thomas did answer and the questions which Judge Thomas did not answer.

It is an evolving process in our consideration of Supreme Court nominees as to the scope of the answers which the nominees will give.

During the course of the past decade, and the seven Supreme Court nominees who have been heard by the Judiciary Committee in which I have participated, it is my conclusion that nominees answer just as many questions as they feel they have to in order to be confirmed. In my judgment, Judge Thomas answered a sufficient number of questions but, candidly, I would have preferred he had answered more questions.

He did answer questions about the freedom of religion, on the Jeffersonian wall of separation between church and State. He answered questions about the free exercise clause. He answered extensive questions on privacy, although he did not go to the ultimate question as to how he would decide Roe versus Wade, nor do I think he could reasonably be expected to do that. Because on that kind of a critical issue, which is the most divisive one facing America since slavery, that issue really in my opinion can be answered only in the context of a specific case, on the facts, briefs, argument, discussion among the Justices, and then a decision.

He did answer questions extensively with respect to following court precedents. He did not answer some questions which in my opinion he really should have answered.

Illustrative of that, and I would not detail many, would be the questions I asked him on whether Korea was a war or not. That was a question which I had asked Judge Souter, and he declined to answer saying the issue might come before the Court. And I disagreed, saying it seemed to me that was one which was 40 years old and was not going to come before the Court.

And when I met with Judge Thomas back on August 1, I commented that I would ask him that question, and he replied recognizing that I had asked Judge Souter the question and he had some 6 weeks to think about it, and he declined to answer that question. In my view, an issue on the constitutional interpretation of congressional authority to declare war contrasted with the authority of the Commander in Chief, the President, is a very basic issue, and that, with 40 years having passed, the Judiciary Committee and the Senate are entitled to an answer as to how he would approach an issue like that.

This is an evolving matter. When Chief Justice Rehnquist was before the Judiciary Committee for confirmation, he at first declined to answer questions about whether Congress had the authority to take away the jurisdiction of the Supreme Court on some constitutional issues. And when I reminded him that, as a young lawyer back in 1958, William H. Rehnquist had written an article for the Harvard Law Record criticizing the Senate for not asking Justice Whittaker some piercing questions to get his philosophy on due process of law and equal protection, Chief Justice Rehnquist relented a little and did say he thought Congress could not take jurisdiction from the Supreme Court on first amendment issues of speech and religion.

I then asked him about the fourth amendment, whether the Congress had the authority to take away the Court's jurisdiction on fourth amendment issues, and he declined to answer that. I asked him what the difference was between taking jurisdiction from the Court on the first amendment contrasted with the fourth amendment, and he declined to answer that—perhaps, he said, first amendment rights are more fundamental.

Justice Scalia answered virtually no questions, would not even comment about Marbury versus Madison, a rock bed decision from 1803, establishing the authority of the Supreme Court as the final arbiter of constitutional issues. Justice Scalia would not even respond there.

So then Senator DECONCINI and I had formulated a resolution to try to provide some guidance to what nominees should answer. Before that could be moved upon, Judge Bork's nomination hearings came, and in the light of Judge Bork's record and his extensive writings he answered many questions.

I believe that it is appropriate to inquire into judicial ideology. There have been many questions answered by Justice Kennedy, many questions answered by Justice Souter, and many questions answered by Judge Thomas.

The process has evolved where it has a lot of similarities to the National Football League, where each team looks at the other's tapes before the Sunday game. We read Judge Thomas' writings, get an idea of him, and he looks at the tapes where we questioned other Justices in the past, and that highly stylized process has some real limitations. There is a dynamic quality, a certain dynamism of the hearings. And when nominees appear to feel safe, they answer fewer questions. If they feel they have to answer more questions to be confirmed, they do so.

We are going to have some hearings on this subject. I frankly doubt we are going to find any magical formula and that the real recourse in disagreeing with what a nominee has done is to vote no. That is the only real way to establish the parameters and the boundaries.

But in my judgment, Judge Thomas answered a sufficient number of questions and we do have a substantial insight into his approach to the law. Most fundamentally, we have insight into his approach, his background, and his life experience as an African-American. It is my view, a strongly held view, that there is an urgent necessity to have that kind of background among the nine Justices who will decide important questions.

Judge Thomas has come through a bitter experience with discrimination. One of his statements—and this is illustrative again—about looking out of his judicial chamber's window and seeing young African-Americans being brought for criminal trials. "And there," he said, "but for the grace of God go I." So that life experience, in my view, is extremely important, and is a very important factor in adding Judge Thomas to the bench.

I have expressed a concern about Judge Thomas in terms of whether he will follow congressional intent. His former writings evidence certain disdain, if not hostility, for the Congress. And there is a concern which this Senator has about whether he will join what I call the revisionist Court. And it is a revisionist Court and not a conservative Court because the current Court is revising the law, not in accordance with the conservative approach on interpreting the law, but I believe in many cases they are making the law. They take opinions written by a unanimous Supreme Court, illustrated by the Griggs decision in 1971, that was written by the conservative Chief Justice Burger; and five Justices in 1989, changed the law. Four of those Justices came before the Judiciary Committee in the past decade, put their hands on the Bible and swore not to make law but only to interpret law.

That is not in accordance with the appropriate standard, where Justices are supposed to interpret the law rather than make the law.

Judge Thomas has under oath insisted that he will follow congressional intent and that he does not have an agenda. And given the totality of circumstances I accept what he says in that regard.

One final note. I regret the delay in confirmation until Tuesday at 6 o'clock. The additional time is not cataclysmic or overwhelming in the course of a lifetime appointment. A man who is 43 may be on the Court, if he lives as long as Justice Thurgood Marshall, for some 40 years. But it seems to this Senator that 48 hours of debate would have been sufficient.

I would be surprised if there is more than 48 hours of debate consumed on this subject. I think that I may make a prediction—I hope I am wrong—but there will be a lot of quorum calls here

on Friday and Monday, although on Tuesday it will become a little more active. But we could have started last night at 6 o'clock. We could have gone late. We could have started early today and gone late. We could have started early tomorrow morning and gone late and finished our confirmation proceedings by the end of Friday so that the Senate would have concluded its business at least in time to allow Judge Thomas to take a seat if he is to be confirmed, or we could have come to the judgment before the first Monday in October. It would not have been a rush to judgment.

A number of Senators have commented about the problems of coming back. One Senator has to travel—Senator MURKOWSKI said on the Senate floor—some 20,000 miles in order to come back for a 6 o'clock vote on Tuesday. It is no major moment for this Senator coming from a relatively close State like Pennsylvania.

So it might be my hope that, at 1:12 p.m. on Thursday, we still might make a modification and vote before the end of business tomorrow. But I am realistic enough to know that is not likely to occur.

But I appreciate the opportunity to take the floor and make these remarks.

I support Judge Thomas for confirmation to the Supreme Court because he is intellectually, educationally, and professionally qualified and because he will bring an important element of diversity to the Supreme Court. I am concerned by his pre-nomination speeches disparaging Congress which raise a question as to whether he will follow congressional intent. Since he has insisted in Judiciary Committee hearings that he will uphold congressional intent, those earlier statements alone are insufficient to oppose his confirmation.

CONFIRMATION PROCESS

Some of my colleagues on the Judiciary Committee have criticized Judge Thomas for not answering enough questions. In my opinion, our procedures in the Judiciary Committee could be improved, but I believe that we have made considerable progress in terms of inquiring into the background and philosophical approach of a prospective Supreme Court Justice.

Since this country was founded in 1787, no nominee even appeared before the Judiciary Committee until Harlan F. Stone in 1925. Stone, then Attorney General, was treated to a barrage of questions concerning allegations of political revenge in the Justice Department's investigation into charges that Senator Burton Wheeler had improperly practiced law before a governmental agency. The Stone hearings, however, set no precedent: Testimony by nominees did not become a mandatory feature of the confirmation process for another 30 years.

Indeed, two nominees in the 1930's, Charles Evans Hughes and John J. Parker, did not testify, even though their nominations encountered significant opposition—in fact, Parker was defeated by a narrow vote of 39- to -41 over charges that he was insensitive to African-Americans and organized labor. While Felix Frankfurter testified before the Judiciary Committee in 1939, his testimony was limited to questions concerning his personal history and activities, especially his membership in organizations like the ACLU. Two months after the Frankfurter hearings, William O. Douglas, the next nominee, waited outside the door of the subcommittee in case any member wanted to question him, but none did.

In 1949, one nominee, Sherman Minton, went so far as to refuse to testify before the Judiciary Committee even though he had once made a speech arguing that a check was needed on the Supreme Court's power. That speech was made at the height of the Supreme Court's overturning of New Deal legislation and Minton, a Senator and ardent New Dealer, claimed that he had made that speech as a strong partisan of the New Deal, but that he had left politics behind when he became a judge. The committee respected his refusal and conducted hearings in his absence.

Since the nomination of John Marshall Harlan in 1955, however, every Supreme Court nominee has testified before the Judiciary Committee. And, in a departure from those few previous hearings where the nominee did testify, nominees increasingly were questioned regarding their views on substantive legal issues. Because isolationists opposed Harlan's nomination, he was questioned concerning his views on national sovereignty, the first time a nominee was asked his views on legal issues. Potter Stewart in 1959 became the first to be questioned about his political and social views, arising largely out of opposition to the Court's recent school desegregation and national security decisions. Even so, Byron White in 1962 was asked only eight questions by the Judiciary Committee, taking up barely five pages of the committee's hearing transcript. He was questioned about judicial disqualification, judicial review, the Court as a super-legislature, and Congress stripping the jurisdiction of the Court.

QUESTIONS CONCERNING PARTICULAR CASES

Even in present times, however, nominees have refused to answer questions as to how they would decide a particular case that could very well come before the Court during their tenure. In 1955, Harlan was the first nominee questioned about a specific case when he was asked to comment on the Steel Seizure Case, Youngstown Sheet & Tube Co. versus Sawyer. The questions came from conservative Senators seeking assurances that Harlan did not favor any diminution of national sovereignty. Senator Edward Jenner asked Harlan whether he agreed with the dissenters in the steel seizure case who, according to Jenner, "found that the President had the power to seize the steel mills * * * to meet his obligation to the United Nations, not to the Constitution. * * *" Harlan refused, suggesting that commenting on the case might prejudice his deliberation upon similar cases coming before the Court in the future.

Similarly, in 1967, Thurgood Marshall refused to answer questions concerning the Court's recent decisions in Escobedo versus Illinois and Miranda versus Arizona. Marshall explained that he could not answer the question:

> * * * because there are many cases pending in the Supreme Court right now on variations of the so-called Miranda rule, and I would suspect that in every State of the Union there are other cases on different variations of the Miranda rule that are on their way to the Supreme Court, and if I am confirmed, I would have to pass on those cases.

The Senator questioning Marshall, Senator McClellan, argued that since a new Supreme Court Justice could change the balance of the Court, especially since Miranda was decided by a 5-to-4 vote, the committee needed to glean some impression as to the trend of the thinking and the philosophy of the one who is to receive confirmation. Once again, Marshall replied that "on decisions that are certain to be reexamined in the Court, it would be improper for me to comment on them in advance."

Indeed, even though Lewis Powell had previously made comments about Escobedo and Miranda, he refused to answer questions about whether those cases should be overruled. As a member of the President's Commission on Law Enforcement and Administration of Justice, Powell joined in the minority statement which criticized the Miranda and Escobedo decisions. Later, Powell criticized the decisions again in an article in the FBI Law Enforcement Bulletin for October 1971. Powell argued in his article that the decisions had further strengthened the rights of accused persons and limited the powers of law enforcement. When questioned again by Senator Mathias, Powell stated that he believed that Escobedo was properly decided on its facts but that the Commission's minority report was concerned with the scope of the opinion rather than with its precise decision.

CONSIDERATION OF JUDICIAL PHILOSOPHY

A question which is still very much in debate is whether a nominee's judicial philosophy should be the subject of questioning and, ultimately, whether it may play a role in the Senate's vote on confirmation. The history of our country demonstrates—at least in my view—that a nominee's philosophy and approach to legal issues are indeed germane to the confirmation process and

this view has evolved to become the predominant practice of the Judiciary Committee.

Thus, the Founding Fathers in earlier drafts of the Constitution gave the right of confirmation solely to the Senate. In their initial voting, the Constitutional Convention rejected both a plan granting advice and consent to the Senate and a proposal to place the appointing power solely with the Executive. Instead, what survived until the final days of the Convention was a provision giving the Senate sole power to appoint Judges of the Supreme Court: to wit, "The Senate of the United States shall have power * * * to appoint * * * Judges of the Supreme Court." (Aug. 6, 1787 Report of the Constitution, Art. IX, sec. 1). Then, in the last days of the Convention, the Committee of Eleven offered a compromise between those who wanted the power to reside solely with the President and those who wanted it to reside solely with the Senate: nomination by the President, and advice and consent of the Senate. Lest one view this change as undermining the Senate's role in this process, Alexander Hamilton, in Nos. 66 and 76 of the Federalist, clearly stated that the Senate would have a full role in the process:

[T]he necessity of [the Senate's] concurrence would have a powerful, though, in general a silent operation. It would be an excellent check upon the spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity. (No. 76 at 457)

However, Hamilton also indicated that the Senate must accord some deference to the President's choice:

There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President. (No. 66 at 405)

The history of rejected nominees confirms that the Senate may take into account legal philosophy and approach in determining whether to confirm a nominee. John Rutledge, the first nominee to the Supreme Court to be rejected by the Senate, was rejected because of his views. Rutledge, who was nominated to be Chief Justice by President Washington, had served as a delegate to the Constitutional Convention, as an Associate Justice of the Supreme Court, as chief justice of the South Carolina Supreme Court, and, pursuant to a recess appointment, as Chief Justice of the United States. He was a man of acknowledged professional ability; thus, integrity and judicial temperament simply were not at issue. Nevertheless, his nomination to serve as Chief Justice of the United States was rejected by the Senate.

John Rutledge's nomination was rejected largely because members of his own party strongly disagreed with the position he had taken, shortly after his nomination, in opposition to the Jay Treaty. The Jay Treaty had been negotiated by Washington to ease tensions with the British and resolve a number of trade issues. It was strongly opposed by many anti-British elements. Rutledge spoke out against the treaty, and that single political position led to the rejection of his nomination after a long and acrimonious debate. The vote to reject the Rutledge nomination was 14-to-10, and it is of particular import as we consider the constitutional advice and consent role of the Senate that among the Senators voting against the nomination were some who, like Rutledge, signed the Constitution.

Chief Justice Roger Taney, of Dred Scott infamy, originally was nominated to be an Associate Justice of the Supreme Court. Taney was not confirmed by the Senate because, as a member of the Jackson Cabinet, he had removed all Federal funds from the Bank of the United States on President Jackson's orders and thus incurred the wrath of certain Members of the Senate who supported the Bank.

In this century, ideology has continued to play a role in opposition to some Supreme Court nominations. There was considerable—although ultimately unsuccessful—opposition to the nomination of Justice Brandeis, based on his progressive political philosophy. Similarly, the nomination of Judge John Parker to the Supreme Court was rejected in large part because of his anti-union views and his views on race issues. More recently, ideological considerations played a determining role in the Senate's failure to confirm President Johnson's nomination of Justice Abe Fortas to be Chief Justice. Nor can there be any doubt that ideology played an important part in the Senate's rejection of President Nixon's nominations of Clement Haynesworth and Harold Carswell to the Supreme Court.

Hearings on nominations during the 11 years I have been on the Judiciary Committee demonstrate how important it is that nominees answer basic questions, including questions regarding legal philosophy. At the same time, I believe it is inappropriate for a nominee to answer questions regarding how he or she would decide a particular case, for example, Roe versus Wade.

Justice Scalia's hearing provides an example of a nominee refusing to answer even the most basic questions. For example, when asked whether he agreed with the bedrock decision in Marbury versus Madison that established the supremacy of judicial review of questions of constitutionality, Justice Scalia, while acknowledging that the decision was indeed a pillar of our jurisprudence, said: "I do not want to be in a position of saying as to any case that I would not overrule it." Justice Rehnquist—now Chief Justice—was also very reluctant in his confirmation hearing for Chief Justice to state views on whether he agreed with landmark Supreme Court decisions. When asked about Marbury versus Madison, he sought to justify his refusal, saying:

[T]he fact that the issue is fundamental, and important, does not make it any less one that could well come before the Court. And I think the approach I have to take is, in a case like that, I ought not to attempt to predict how I would vote in a situation like that.

Justice Rehnquist's position represented a reversal of his own conclusion stated in a 1959 article in the Harvard Law Record. There he had criticized the Senate for failing to obtain Justice Whittaker's views during confirmation hearings on fundamental issues, including school segregation and Communists' rights and constitutional doctrines such as equal protection and due process. Indeed, he concluded his article saying, "The only way for the Senate to learn of these sympathies is to inquire of men on their way to the Supreme Court something of their views on these questions." In his own hearing, Justice Rehnquist retreated from answering many such questions, although he did finally answer on important substantive issues saying that the Supreme Court's jurisdiction could not be undercut on first amendment issues such as freedom of speech, press, and assembly and that the due process clause of the 14th amendment incorporated basic rights from the Bill of Rights such as freedom of religion.

JUDGE THOMAS' ANSWERS

I believe Judge Thomas' responses were adequate:

Judge Thomas answered questions in some detail on the establishment clause of the first amendment, saying that he agreed with the idea, first advanced by Thomas Jefferson, that there should be a wall of separation between church and State, a very important doctrine.

He answered questions on the free exercise clause, agreeing with Justice O'Connor's concurrence in Smith versus Oregon that Justice Scalia's majority opinion wrongly jettisoned the traditional strict scrutiny standard used by the Court for judging State practices which impacted on an individual's free exercise of religion.

He answered fairly detailed questions on stare decisis, specifically disagreeing with the view, expressed by Chief Justice Rehnquist in Payne versus Tennessee, that decisions involving individual rights should be accorded less deference than property and contract decisions.

Judge Thomas answered detailed questions on the right to privacy. He went beyond Justice Souter's answers on the issue to recognize a right to privacy for married and unmarried individuals grounded in the liberty compo-

nent of the due process clause. Those answers were amplified by his answers to Chairman BIDEN's written questions on this issue.

He responded to questions regarding the death penalty, indicating that he had no philosophical opposition to it.

He stated his agreement with the Supreme Court's current three-tiered standards for analyzing equal protection cases.

He specifically stated that he accepted the Supreme Court's decisions on the validity of affirmative action. In particular, he stated his agreement with a statement by Justice Stevens in Metro Broadcasting versus FCC, which upheld the constitutionality of the FCC's policy giving preference to minority applicants for new broadcast licenses, that "Today, the Court squarely rejects the proposition that a government decision that rests on a racial classification is never permissible, except as a remedy for a past wrong." This is a significant statement on his part, recognizing the validity of decisions on voluntary affirmative action programs with which he personally disagrees.

Even when he felt constrained—rightly in my view—not to answer a question because it required him to indicate how he would vote in a particular case, Judge Thomas gave the Judiciary Committee a sense of how he would approach such a case. For example, when discussing Rust versus Sullivan, the recent decision affirming the constitutionality of regulations preventing federally funded clinics from mentioning abortion to patients, he stated that he would be troubled by the view that the Federal Government has an unfettered right, unimpeded by the first amendment, to restrict the speech of individuals simply because those individuals receive Federal funding. And, in refusing to answer a question about Payne versus Tennessee, which upheld the constitutionality of victim impact statements in the sentencing phase of capital cases, he nevertheless stated that he would be concerned about the possibility of emotion being injected into the serious decision whether to invoke the death penalty in a particular case.

Although he would not answer questions about Roe versus Wade, the abortion case, and Bowers versus Hardwick, the case on other privacy rights, we have to remember that these are very contentious issues which may very likely come before the Court in the near future. In particular, Roe versus Wade concerns the issue of the legality of abortion, which is the most divisive question to face this country since slavery.

There have been a number of witnesses who appeared before the Judiciary Committee, in particular Ms. Eleanor Smeal, a very powerful witness, who stated that Judge Thomas ought to state how he would have voted on Roe versus Wade. It is my judgment—and Senators differ on this—that it is not appropriate to compel or press nominees to answer how he or she would vote on a particular case involving difficult and hotly debated questions; rather, such a case ought to be decided in a specific factual context where there are briefs, arguments and deliberation among the Justices, and then a final decision is made.

THE COURT AS A SUPER-LEGISLATURE

From Judge Thomas' answers on following congressional intent, there is reason to expect him not to be a party to the recent decisions of the revisionist court. In Garcia versus San Antonio Metropolitan Transportation Authority, a decision recognizing Congress' extensive power to legislate in the field of economic regulation concerning wages and hours, two justices expressly stated they awaited another appointee who would overturn that decision. Similarly, in Wards Cover Packing Co. versus Atonio a majority of the Supreme Court overturned a unanimous Supreme Court decision, Griggs versus Duke Power Co., which had set the standard of proof for cases challenging employment requirements and tests that were discriminatory in their impact on minorities. That precedent had held for 18 years, during which Congress refused to act to change that decision; nevertheless, this did not stop Supreme Court Justices from making new law, including four Justices who had placed their hands on the Bible during the course of the past 10 years and swore not to make law but only to interpret it.

Similarly, in Rust versus Sullivan, a majority of the Supreme Court upheld regulations, put in place only in 1988, which reversed 17 years of regulations and prohibited clinics receiving Federal funds from discussing the alternative of abortion with patients. When Congress has acted, and contemporaneous regulations are put into effect, and Congress leaves those regulations untouched for a period of 17 years, it raised a strong if not conclusive, presumption that those regulations express the will of Congress.

I questioned Judge Thomas extensively on this issue because of his prior statements disparaging Congress. Illustratively, in a speech on April 8, 1988, Judge Thomas said that "it may surprise some but Congress is no longer primarily a deliberative or even a lawmaking body * * * [T]here is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business." In a speech on April 23, 1987, Judge Thomas criticized Johnson versus Transportation Agency, Santa Clara County, which upheld a voluntary affirmative action program for job categories traditionally segregated agalnst women, and stated that he hoped Justice Scalia's dissent in the case would "provide guidance for lower courts and a possible majority in future decisions." Johnson and the other cases Judge Thomas has criticized involved purely statutory issues, not constitutional issues, and thus the intent of Congress must be controlling. Notwithstanding my concerns, I am relying on Judge Thomas' testimony that he will not promote an agenda on policy issues, but will follow congressional intent.

In my questioning of Judge Thomas, he stated that he accepted Johnson as well as other Supreme Court decisions upholding affirmative action programs as the law of the land. He also agreed that the fact that Congress had the authority to change those decisions but had not done so was strong evidence that those cases expressed Congress' intent regarding title VII of the Civil Rights Act of 1964. He also stated that he had no reason to disagree with the statement by Justice Stevens in Metro Broadcasting.

On the policy issue regarding affirmative action, while I disagree, I believe his views are within the realm of reasonableness. I accept his assurances that many of the statements he made regarding Supreme Court decisions on affirmative action represented a policy disagreement rather than any disrespect for the Court and Congress as institutions.

JUDGE THOMAS' BACKGROUND

Of paramount importance, I believe that Judge Thomas has the intellectual, educational, and professional qualifications for the Court. Yale Law School Professor Drew Days, who opposed Judge Thomas, conceded that Judge Thomas has the intellectual and educational capability to be on the Court. Yale Law School Dean Guido Calabresi testified that he thought Judge Thomas merited a "well qualified" designation from the American Bar Association compared to others who had received that rating from the ABA. Former Chief Judge John Gibbons of the Third Circuit testified he knew Judge Thomas well from their joint service on the Holy Cross College Board of Trustees; he had read all of Judge Thomas' opinions, and concluded he was well qualified for the Supreme Court. I personally found Judge Thomas' responses to intense questioning to be at a high intellectual level.

My own reading of Judge Thomas' opinions led me to believe that he is a solid judicial craftsman with a healthy streak of independence. They also show that he may defy those who would pigeonhole him in any particular mold. In United States v. Lopez, a decision when he sat on the three-judge appellate panel, the lower court, believing it had "no discretion" because of the Sentencing Guidelines' bar on consideration of socioeconomic factors in sentencing, refused to depart downward because of the defendant's violent and

traumatic upbringing in which his stepfather threatened to kill him and he watched as his mother was thrown off a roof—allegedly by his stepfather. The circuit panel Judge Thomas sat on remanded for resentencing, noting that domestic violence is not necessarily socioeconomic and thus that the lower court had failed to differentiate between truly socioeconomic factors and Morales' tragic childhood.

However, implicit in the Lopez decision is that traumatic family history may, in unusual circumstances, require a reduction in sentence. Judge Thomas was willing to go the extra mile in giving this young Hispanic an opportunity to lessen his sentence, even though the statute and other case law prohibited consideration of socioeconomic circumstances.

At one point in the hearing, Judge Thomas poignantly testified that, as he looks out the window of his chambers in the courthouse and sees the police buses bringing in African-American defendants, he thinks, "There, but for the grace of God, would go I."

Judge Thomas will bring a measure of diversity to the Supreme Court with his African-American roots, which the Supreme Court sorely needs to give it a fuller picture of our great country.

Based on Judge Thomas' intellectual and educational background and the diversity he will bring to the bench, I believe he is qualified to sit on the highest Court in the land.

I want to congratulate the chairman of the Judiciary Committee on an outstanding job, congratulate the ranking member of the Judiciary Committee on an outstanding job. Senator BIDEN has just come back to the floor. So I would seek his attention on my congratulations on the work which he has done in collaboration with the ranking member, Senator THURMOND.

I notice I have gotten Senator THURMOND'S attention. It is a laborious proposition to run those hearings. It is one big job. They have excellent staff, some of who are on the floor now. I thank the staff of the Judiciary Committee.

I note my own staff, Richard Hertling, Tom Dahdouh, and Barry Caldwell have done an outstanding job. We have brought this matter I think to a good conclusion and, had we finished by Friday, I think it would have been preferable. But I think the Senate has done its job and soon will work its will.

Mr. BIDEN. Mr. President, I would like to thank my colleague from Pennsylvania for his kind remarks, and only add that I too would have been happier as the ranking member would have been had we been able to finish this by Friday. I expect that we will have a fair amount of downtime between now and the time we vote on Tuesday in terms of accommodating Senators' schedule to get to the floor to speak.

But having said that, nonetheless, we are pretty much on track and we will have a final vote on this matter on Tuesday at 6 o'clock. But I thank my colleague for his kind remarks.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I am glad that we are finally getting to the point of consideration on the floor of this body of the nomination of Judge Thomas to be Associate Justice for the Supreme Court.

I hope that everybody has come to the conclusion that by this time, after several weeks now that this has been discussed publicly as well as behind the scenes and in the open on Capitol Hill, that there is little doubt in any Senator's mind that Judge Clarence Thomas is fully qualified to fill the position of Associate Justice of the Supreme Court to which he was nominated on July 1 by the President of the United States.

Even though I feel confident about this, even though I think everybody else should have come to that same conclusion obviously, probably not everyone has for one reason or another, we are devoting then 4 days of debate to this confirmation.

I agree with Judge Thomas' opponents that the Senate's advise-and-consent function is an important responsibility. I am not sure that I agree with how it is carried out, or that long hearings are necessary. But if we are also going to make Supreme Court nomination fights about our individual policy agendas, litmus test-type issues that we all have interest in, then I think that everybody here, both pro and con on Judge Thomas, ought to admit that politics is the real issue, and then be candid about the standards that we are applying.

Judge Thomas survived the strict scrutiny of our Judiciary Committee, as well as rhetorical lynchings by single-issue interest groups inside the Beltway but outside the Congress; but very much groups that can have and sometimes do have too much influence on Congress.

Despite the broad inquiry into Judge Thomas' record, no one can credibly question his qualifications as a judge or his commitment to judicial restraint. Members of the Judiciary Committee—and I am one of those—had a role in considering all things about Judge Thomas. We poured over 36,000 pages of documents that Judge Thomas was required to produce, looking for the extremist that groupe outside of Congress, but inside the Beltway, describe Judge Thomas to be.

We did not find any evidence whatsoever of an extremist out of any of those 36,000 pages.

Judge Thomas' opponents did lift some throwaway lines, none of which were germane to the speech or the article in question, and read them back to Judge Thomas somewhat out of context to make this candidate appear to be scary.

I think Judge Thomas showed, through his testimony, as well as his legal opinions—for those who bothered to read his legal opinions—that he is very much of a mainstream judge. He looks at the factual record, considers the arguments, and applies the law fairly. He made it clear that he will use traditional methods of constitutional analysis, looking to the text and the framers' intent. Clarence Thomas is not a judge who will look to his personal preferences for the appropriate rule in a case.

There is nothing out of the mainstream about Clarence Thomas. Clarence Thomas stands for fairness, for equal treatment of every individual in our society; basic American values, I believe, is what he stands for and projects.

We know from the record of Judge Thomas, both on the bench and off the bench, and also as a public servant and from the powerful testimony of those who know him well, that this is the sort of individual he is. People of all political persuasions, people who care deeply about the composition of the Supreme Court, told the committee of the depth of their confidence in Clarence Thomas' fairness and commitment to the principles of equality and justice.

Former NAACP head Margaret Bush Wilson, Yale law school dean, Guido Calabresi, Holy Cross President Father John Brooks, and many others—all say Clarence Thomas is one of the most fair-minded individuals that they have ever met.

I find the testimony of those who know a man far more credible than ideologically motivated attacks by strangers, and there has been plenty of that.

I think every Senator should be convinced of Clarence Thomas' fairness and commitment to justice. But Clarence Thomas' opponents are not satisfied with fairness. They do not want a Justice who takes into account all sides. They do not want a Justice who reserves his judgment until the arguments are over. They want a Justice who has already picked a side, their side. They want a Justice who will side with the defendant in a criminal case every time, a Justice who will refuse to take into account the interest of the victims of crime. They seem to also want a Justice who will tolerate reverse discrimination in order to give special preferences to groups, regardless of individual need.

They also seem to want a Justice who would turn every special entitlement of the welfare state into a constitutional "right." They want a Justice who adheres to precedent, so long as it is their precedent—a liberal precedent.

Mr. President, Clarence Thomas is not outside of the mainstream. It is his opponents inside the beltway lobbying against this nomination who are outside of the mainstream. They are insulated from the rest of the country. They see the United States as 99 percent DC and the 1 percent the rest of the 50 States.

The opponents of Clarence Thomas are right to push for Supreme Court nominees who will sign onto their ideological checklist, because they cannot get the American people to implement this liberal social agenda through the legislatures or the executive. The only way they can get their program implemented is through activism in the least democratic branch of Government.

Let me say, when I talk about the Supreme Court as the "least democratic branch," it is not intended to be democratic. People do not seek election to the Supreme Court. They are appointed there with lifetime tenure, to be insulated from public opinion, so that they can interpret the laws, and so that they can interpret the Constitution free of that pressure, according to original intent, or the intent of the legislative bodies.

They should not look to the Court to adopt some social policy just because there is a vacuum created by the political branches of Government. These people are, hence, upset, because the Supreme Court is no longer dominated by Justices who would convene a Constitutional Convention of nine unaccountable people every October to solve some of these problems.

The opponents of Clarence Thomas have been talking a lot about the purported problem of conservative judicial activism. I am glad to hear that they are concerned about judicial activism per se, and the need for a proper regard for judicial precedent. I only wish, Mr. President, they would not be so selective about when they raise these concerns.

During the hearing, several Senators wanted Judge Thomas to agree with quotes from Justice Marshall's recent dissent in Payne versus Tennessee in which he says Justices should not overturn precedent simply because they have the votes to do so.

This is the same Justice Marshall who voted more than 750 times to hold the death penalty unconstitutional, despite the clear constitutional language and judicial precedent to the contrary. Justice Marshall joined his liberal colleagues last year to disregard a 1-day-old decision on the constitutionality of Arizona's death penalty in a case that Justices O'Connor and Kennedy could not participate in because of their involvement in lower court decisions. Justice Marshall overturned a 1-day precedent because—and simply because—he had the votes at that point, just for a 24-hour period of time.

The opponents of Clarence Thomas believe in judioial restraint and adherence to precedent—conservative Justices should restrain themselves and adhere to liberal precedent. That is not right. The same voices who now make pious declarations about adhering to precedent were noticeably silent when the Warren and Burger Courts were busy overturning dozens of cases.

These opponents voice concern about judicial activism, but I have not heard any of them criticize the Missouri judge who ordered a tax increase, or the New York judge who said the city could not prohibit panhandling in the subways, or the New Jersey judge who held that a city could not prohibit vagrants from making their home in the public library.

The fact is the opponents of Clarence Thomas, who are the most vocal critics of the Rehnquist Court, only insist on following precedent when it is liberal precedent, and only talk about judicial activism when they disagree with a judge's decision.

The opponents of Clarence Thomas have questioned his credibility. I think there is a credibility problem with those who question Judge Thomas' credibility. When the Court hands down decisions whose results they disagree with, they shout "judicial activism," and "no regard for precedent."

When someone they disagree with says judges should stick to the written text of the law and adhere to long-standing rules, they have a long list of names to call him: Reactionary, right-wing extremist, ultra-conservative, implications of being heartless, and so on and so on.

The opponents of Clarence Thomas present themselves as champions of civil rights, of equal opportunities for minorities. They are all for the advancement of minority individuals, so long as individuals stick to the list of politically acceptable ideas about civil rights.

The opponents of Clarence Thomas cannot be fighting him because they think he is unqualified. He has a solid record as a judge, and, at 43 years of age, he is one of only three nominees for the Court in this century who have worked as lawyers in all three branches of our Government, and at both the State and Federal levels of our Government.

They cannot be opposing him because he is a judicial activist. His opinions and writings show clearly that he is not. They cannot say he lacks credibility when he says the same things he said a year and a half ago when being confirmed to the court of appeals, and did not back away from any of those during the hearings for Associate Justice.

Maybe they oppose him because he is a Republican judicial conservative who opposes quotas, and also happens to be black.

As the warning calls from the top of the liberal watchtower here in Washington get louder, and they get louder in the next 4 days, I think maybe we can conclude that things for Justice Thomas are getting better.

To judge by the way this debate has been conducted, we can be confident that the more we hear about judicial nominees being out of the mainstream, the more mainstream these nominees probably and actually will be. The more we hear about conservative judicial activism, the more certain we can be that judicial activism has been eliminated on the Court.

We have been hearing a lot from the people who oppose Clarence Thomas, but I am sure that we are going to hear a lot more in the future, when they find they have to present their social agenda to the people of this country, making decisions through the democratic branches of our Government, through the legislative process, instead of foisting it upon us through the unelected officials on the highest court in this land.

So, after 2 weeks of hearings, after 3 months of this nominee's name being before the people of the United States, after my own questioning of him as to his competence, his integrity, and most importantly, his judicial philosophy, I am satisfied that the vote I cast for Judge Thomas a year and a half ago for the court of appeals was the right vote.

I thought with his nomination to the Supreme Court, that I could vote for him again. But I had an obligation to wait until those hearings were over. As the end of those hearings, I am still very satisfied with his judicial philosophy, with his integrity, and with his competence to be on the Supreme Court. And I praise President Bush for this nomination.

At this point, in the last 4 days of the debate, all I can do is urge my colleagues who have not made up their minds to think in terms of the entire record, and not the political agenda of the opposition and the lobby groups, and they will come to the conclusion I have.

And so I urge those colleagues to support Judge Thomas' confirmation.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I rise in support of the nomination of Judge Clarence Thomas for the U.S. Supreme Court. I do so after reviewing this nomination for the last 2 months, including hundreds of pages of documentation submitted both for and against the nomination; and most importantly having watched Judge Thomas' testimony on his own behalf and the testimony of others before the Senate Judiciary Committee over the past 2 weeks; I have decided to cast my vote based on that review.

My support is based primarily on three factors:

First, based on all the evidence that I have received, Clarence Thomas'

record as a judge, although brief, has been a very good one. Indeed, I was very impressed by the American Bar Association's testimony on this point. And in determining fitness for the highest court in the land, it is the nominee's actual record as a judge which is most important.

Second, in my personal meeting with Judge Thomas and in his testimony before the committee, I became convinced that he has both the proper judicial temperament for the Supreme Court and the necessary fundamental respect for the law and recognition of its real-life consequences.

Finally, there is the personal trait that is very hard to describe, but which might best be simply called character or integrity. And as a native Georgian, as well as a U.S. Senator from Georgia, I can say with pride that I believe the Nation has seen something distinctly Georgian in Clarence Thomas, in the strong sense of self and purpose he tracks back to a very close community.

I do want to stress that this decision has not been an easy one. As many of us have noted at the outset of this process, I believe that the responsibility for passing judgment on Presidential nominees to the Supreme Court is the most important constitutional duty of a U.S. Senator. The Senate's role of advice and consent is the last step along the road to permanent, lifelong service on the highest court in our land. As one Senator, my vote represents the last voice that more than 6 million Georgians have or will ever have on this issue.

I must also confess that, unlike others, my vote is not cast without some doubt. But from the day that I met with Judge Thomas last July, I told him, and I have tried to insist on every judicial nomination of every President, that I would give both the President and his nominee the benefit of the doubt.

Mr. President, I do not know—and I emphasize "know"—I do not know how Clarence Thomas will vote on any of the upcoming controversies facing the Supreme Court of the United States. And there are many, many examples in American history of Supreme Court Justices defying the expectations of those who appointed them. But even if we did know with certainty about the handful of cases that currently looms largest on the judicial horizon, it is more likely that future cases and controversies not yet articulated will prove at least equally important in setting the bounds for personal freedom and individual liberty in civil law as those currently pending.

So, in the final analysis, my vote is essentially one of hope and one based on what I consider to be Judge Clarence Thomas' promise, a hope that Clarence Thomas will demonstrate the same independence, the same self-reliance, and the same promise that have been the hallmarks of his struggle and his career; a hope that Clarence Thomas will not forget those who are seeking still to better this Nation and better themselves, yet who remain cloaked in the shadows of the injustice, intolerance, and inequality that still exist in our society; finally, a hope that Clarence Thomas will remain true to his promise to uphold the Constitution of the United States, to restrain from judicial activism, to approach each and every case before the Court with an open mind, and to judge each case on its merits and its merits alone.

Most Americans have seen the play "My Fair Lady." As we know, "My Fair Lady" is the theatrical depiction of George Bernard Shaw's play "Pygmalion."

The story is about a little flower girl, Eliza Doolittle. The old professor, Henry Higgins, decides and places some bets that he can make a proper lady out of this London street girl who sells flowers. After getting all the bets from his friends, he sets about his training.

There are many, many wonderful scenes, but my favorite is at the dinner table when Professor Higgins is trying to teach Eliza at least which knife to use, which fork to use, where she places her napkin; in other words, basic manners. But being frustrated in his attempt, suddenly, in this wonderful scene, he throws down his books and he looks over and he says,

> The great secret, dear Eliza, is really not whether you have good manners or bad manners, but the same manner towards all people, to act as if you are already in Heaven where there are no second-class characters and one soul is as good as another.

Under our constitutional system, Mr. President, it is the same manner toward all people that is the hallmark of the law, the mandate of justice, and in the end the responsibility of judges.

As I called Judge Thomas this morning and informed him of my decision, I asked him again simply, when he puts on the robe of judicial independence, to remember that there are still many, many people in our Nation who are left in the shadows, who seek and deserve simple justice, and all they ask of an individual Supreme Court Justice or those who serve on the highest court of the land is to have the same manner toward all people when judging these cases and controversies. That is my hope for Judge Clarence Thomas. I have every belief that he will rise to that standard.

I thank the Chair.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I understand that there has been a rotation policy between those who are supporters and those who are opposed to the nomination. I understand that has been the procedure which has been followed.

I see that my friend and colleague, the Senator from Ohio, would like to speak briefly. I ask unanimous consent that, following the Senator from Ohio, I be recognized and be permitted to speak out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I appreciate the consideration of my good friend from Massachusetts. the Intelligence Committee is proceeding at this point, I have inquired of staff representatives on the other side of the aisle, and they indicated they did not see any problem with that.

Mr. President, I take the floor today with one purpose, and that is to urge Senators to take the time to read and reflect upon the record in the nomination of Judge Clarence Thomas for the Supreme Court. Two and one-half months ago, Judge Thomas' nomination was regarded as a shoo-in. In the days just prior to his confirmation hearing, it was still regarded as a sure thing.

Well, last week, Judge Thomas was unable to muster support from a majority of the Judiciary Committee. The reason for that turnaround is simple. The members of the committee have taken the time to study the lengthy and controversial record of this nominee and to reflect upon his evasive, unresponsive, and at times simply unbelievable testimony before the Judiciary Committee.

The message for the entire Senate is unmistakable. If Senators take the time to examine carefully Judge Thomas' record and his testimony and his failure to answer a host of questions, they will come away with a very different perception of him than was created by the White House media blitz this summer.

The White House spin doctors created a powerful picture of Clarence Thomas. They stressed his up-from-poverty roots and his childhood experiences with segregation. It was—and it is—a powerful story. But that is not the entire question before this body.

For weeks the media and most Members of the Senate obliged the White House by focusing chiefly on Judge Thomas' life story. Judge Thomas spent weeks visiting dozens of Senators, and it is a fact that he is a very warm and personable man. I would even say he is a nice guy and I am sure that he made a good personal impression with most Senators.

But, then, you have to look at the record. And when you look at the record you come up with a different

conclusion. No Senator should be stampeded into voting for this nomination, and certainly no Senator should vote for this nomination by reason of loyalty to the President.

One of the most disturbing aspects of this entire confirmation process is the question of: You have to do it because the President nominated him and therefore it is a sense of loyalty; we have to vote to support him.

I say to my colleagues in this body that each of us has a solemn obligation to our constituents, and, yes, to our own consciences, and to all Americans, to thoroughly and carefully consider this nomination based on Judge Thomas' record, based on his credentials, based on his testimony before the Judiciary Committee. We owe the American people nothing less before the Senate confirms one of the nine people who are the final arbiters of the law of this land.

If Senators examine Judge Thomas' record, credentials, and testimony—and then reflect upon the fact that he could be on the Supreme Court until the year 2030—I believe that a majority of this body will conclude that Judge Thomas should not be confirmed for the U.S. Supreme Court. And I say to those on both sides of the aisle who have already indicated how they intend to vote, do not let that be the final answer. Go back and look at the record. Go back and see what he said and what he did not say. And if you do that, my guess is you may reconsider your previously announced position. I address that to those who have indicated they intend to support him at this point.

At a later point I will address myself more fully to the whole question of Judge Thomas' nomination.

I very much appreciate the courtesy of my good friend from Massachusetts, Senator KENNEDY.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, there was a time, more recently than most of us would like to remember, when all Americans were not equal under the law. For nearly two centuries, the eloquent promises of the Constitution remained unfulfilled, as the Nation systematically denied equal justice under law to women, minorities, the poor, and the disadvantaged.

In our lifetime, however, we have seen the promise more nearly fulfilled, because of the genius of the Constitution, in which the judicial branch of Government is insulated from the unfair pressures that can sometimes be exerted by majority rule. When the legislative and executive branches failed to defend the rights of all Americans, the Supreme Court finally stepped in to protect those whom our political institutions had swept aside. The Court made clear that majorities cannot segregate Americans based on the color of their skin, cannot silence minorities by denying them the right to vote, cannot abuse the right of criminal defendants to due process of law, cannot dictate the most fundamental and most private decisions of individuals about how to live their lives, and cannot relegate women to the status of second-class citizens. By default, the Supreme Court became the principal defender of the constitutional rights of individuals against the will of the majority.

Justice Thurgood Marshall has been one of the champions of this renaissance. Throughout his lifetime, he has been one of the greatest and most committed defenders of individual liberty. He enabled us to see injustice more clearly and overcome it more fully. Now it is up to us as Senators to see that we do not squander the advances he spent a lifetime struggling to secure.

As the full Senate begins its consideration of Judge Clarence Thomas' nomination to serve as an Associate Justice of the Supreme Court, a central issue is the role of the Supreme Court in our Government of separated powers. For the unique and irreplaceable role of the Court defines the test each nominee must pass.

Will nominees continue the Court's progress? Will they be committed defenders of individual rights? Or will they turn back the clock, reversing the still-fragile protections which too many Americans waited too long to enjoy?

Nominees to the Supreme Court are different from all other nominees, because their decisions are so final. It is essential therefore for the Senate to insist that nominees shoulder the burden of demonstrating a commitment to fundamental constitutional values. If we are not confident that nominees possess a clear commitment to the fundamental constitutional rights and freedoms at the heart of our democracy, they should not be confirmed. The Constitution is too important, and the appointment of a Justice is too permanent, to accept anything less.

The merits of this nomination were not settled by the 1988 election. There is no presumption in favor of the President's nominee.

As we consider this nomination, we must also consider the context within which the President made it. As the hearings made clear, no one can credibly maintain that President Bush selected the most qualified person for the Supreme Court. A litmus test was clearly employed in this process, and it was not—as Judge Thomas' supporters claim—invoked by those who oppose his confirmation.

The 1988 Republican Party platform states:

> Deep in our hearts, we do believe: * * * That the unborn child has a fundamental individual right to life which cannot be infringed. We therefore reaffirm our support for a human life amendment to the Constitution, and we endorse legislation to make clear that the 14th amendment's protections apply to unborn children.

The platform goes on to say:

> We applaud President Reagan's fine record of judicial appointments, and we reaffirm our support for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life.

This is the platform upon which President Bush was elected, and he has spent his entire Presidency upholding these provisions. We cannot ignore the President's explicit promise to appoint Justices who are hostile to a woman's fundamental right to choose.

Similarly, we must not ignore the current trend of the Supreme Court. Presidents Bush and Reagan have attempted to transform the Court into an institution that will be less vigorous about defending those whom it was designed to protect—those who must rely on the Court because they lack the political power to protect their fundamental rights in the political process.

Presidents Bush and Reagan have also attempted to create a Court which will reduce the power of Congress and extend the power of the President. By persistently taking a narrow view of congressional statutes, by tilting toward the President and his exercise of executive branch authority, the Supreme Court can dramatically shift the balance of power in Government and seriously diminish the constitutional role of Congress.

The Supreme Court is supposed to be the impartial umpire of our Federal system, resolving disputes fairly between the legislative and executive branches of the Federal Government. If a shift by the Supreme Court turns the judicial branch into an ally of the President against Congress, the Constitution will not work, and the entire Nation will suffer.

We have already begun to feel the effects of such a shift. In several critically important cases, the Court has adopted absurdly narrow interpretations of statutes, or has deferred to executive branch interpretations which defy the clear intent of Congress and disregard the plain legislative history. The President is then able to invoke his veto power, to prevent a majority of Congress from restoring laws nullified by the Court.

The shift we have already begun to see, however, pales in comparison to the shift that will occur if the President convinces the Supreme Court to recognize a line-item veto power. The Republican Party platform explicitly states that the President has this inherent power. Judge Thomas may well agree: In a 1987 speech, he described the line-item veto as within a range of concerns which "is coequal with the range of economic rights itself." According to Judge Thomas, these rights "are

protected as much as any other rights" and "are so basic that the Founders did not even think it necessary to include them in the Constitution's text."

Presidents Reagan and Bush have clearly attempted to pack the Supreme Court with Justices who share a single one-dimensional view of the Constitution. The Senate has a constitutional right—and a constitutional duty to the country—to defend both individual rights and congressional power against this onslaught. We must reject any nominee who fails to demonstrate a basic commitment to fundamental rights. Judge Thomas is not a nominee to an executive branch post.

He is not a nominee to a lower court. If we make a mistake on this nomination, we cannot reverse it at the next election, or even in the next generation.

The Senate's role in confirming Supreme Court nominees is one of the most important checks in our system of checks and balances.

It is the only check we have to prevent a President's attempts to stack the Court against the basic individual rights tbat every American enjoys as a citizen of this land. We are abdicating our constitutional responsibility in the confirmation process, if we defer to the President, instead of making an independent evaluation of a nominee to the Nation's highest court.

Judge Thomas' record raises too many deeply troubling issues of great importance to permit his confirmation.

It is for this reason—the breadth and depth of the concerns which his record raises, and his failure during the hearings to satisfy those concerns—that so many members of the Judiciary Committee voted against his confirmation.

We cannot be confident that he will uphold a woman's fundamental right to choose whether to have an abortion. Indeed, when we study Judge Thomas' record, it is impossible not to draw the opposite conclusion—that he stands ready to overrule Roe versus Wade at the first opportunity, and that he will give the Government the power to substitute its will for one of the most private and important decisions any woman can make.

During his testimony before the Judiciary Committee, Judge Thomas attempted to shed a career of extremist views and cloak himself with more moderate positions than his record supports.

This is a nominee who has given literally dozens of speeches around the country on constitutional issues. Yet, it was not until the hearings that he acknowledged for the first time the existence of a right to privacy under the Constitution. Even at the hearings, he refused to answer questions about specific applications of that right.

In particular, Judge Thomas consistently refused to discuss whether the right to privacy protects a woman's right to decide whether to have an abortion. He said the issue was likely to come before the Court, as it obviously will. But he discussed the death penalty. He discussed habeas corpus reform. He discussed victim impact statements in criminal sentencing—all controversial issues likely to come before the Court.

He analyzed the Supreme Court's current test on church-state questions, even though a case seeking to overturn that test is already scheduled for argument before the Supreme Court this fall.

Most strikingly, he discussed a 1990 Supreme Court ruling on preferences for minorities in communications law, despite the fact that a virtually identical case is currently pending before him on the D.C. circuit. He failed in his comments even to mention that pending case.

Because Judge Thomas refused during the hearings to discuss the right to privacy in any meaningful way, we have only his prior record before us in deciding whether to trust this fundamental right to his care. Yet, this record contains many statements hostile to the right to privacy and the right to an abortion, and not a single expression of support.

In a 1987 speech to the Heritage Foundation, Judge Thomas commended as "a splendid example of applying natural law" an extreme antiabortion polemic which argues that a fetus has a constitutionally protected right to life, beginning at the moment of conception, and that abortion is murder. Judge Thomas now says that this endorsement was merely a rhetorical comment, a throw-away line designed to convince his right-wing audience to be more supportive of civil rights.

The concerns raised by Judge Thomas' reference to the Lehrman article are buttressed by other statements is his record. In 1987, he argued that blacks and conservatives agree on the abortion issue. In a 1989 article he wrote that "[t]he expression of unenumerated rights today makes conservatives"—a group which Judge Thomas has clearly joined—"nervous, while at the same time gladdening the hearts of liberals." He added in a footnote that "The current case provoking the most protest from conservatives is Roe versus Wade.* * *"

When questioned about this citation, Judge Thomas did not explain it—he simply said he did not remember making it.

Judge Thomas also claimed to be unfamiliar with a report issued by a White House Working Group on the Family, of which he was a member.

The group's 1986 report sharply criticized the Supreme Court's decision in Roe versus Wade and other abortion and privacy cases, and stated that this "fatally flawed line of court decisions can be corrected, directly or indirectly, through the appointment of new judges and their confirmation by the Senate." Judge Thomas attempted to distance himself from this section of the report by saying he did not read it. But he refused to state that he would have objected to it on its merits had he known of its contents.

Even President Bush, an avowed opponent of the right to choose, balked in 1988 at saying that women who have abortions should be treated as criminals. Yet the Senate is being asked to place this core constitutional right in the hands of a nominee who may well take this extreme position.

Judge Thomas' supporters defend his right to refuse to state any views on the subject, despite his willingness to comment on other issues which are equally likely to come before the Court. They urge us to believe that Judge Thomas—who was in law school when the Supreme Court decided Roe, who has referred to Roe as one of the Court's most important decisions, and who has spent more than a decade as a lawyer in Washington, DC—has never discussed Roe versus Wade with anyone.

They ask too much. They are asking us to suspend belief, and to ignore the only real evidence there is.

The Senate should not give its approval to a nominee who refuses to answer fair questions on issues of bedrock importance to the vast majority of Americans. When we contrast Judge Thomas' willingness to discuss many controversial issues with his reluctance to discuss issues like abortion, it is transparently clear that Judge Thomas was not demonstrating his impartiality, but defending his prospects for confirmation. We should not acquiesce in such conduct when the right at issue is so fundamentally important.

The concerns raised by Judge Thomas' record extend far beyond the right to privacy and abortion.

His record also reveals a number of reasons to question his understanding of and commitment to ending sex discrimination in our society. He has condemned a landmark Supreme Court decision recognizing an employer's right to engage in affirmative action to open its historically segregated work force to women. Indeed, his hostility to this decision was so strong that he expressed his hope that the dissenting opinion would provide guidance for the lower courts and form the basis for a future majority opinion.

In all of his writings, many of which deal with the problem of discrimination and virtually all of which were prepared when he was the chief Federal official responsible for protecting a woman's right to be free from employment discrimination, Judge Thomas mentions discrimination against women infrequently and only in passing.

On a number of occasions, Judge Thomas has actually made or endorsed

stereotyped views of women and work. In 1987, he said that hiring disparities "could be due to cultural differences" between men and women, and that "[i]t could be that blacks and women are generally unprepared to do certain kinds of work by their own choice. It could be * * * that women choose to have babies instead of going to medical school."

In 1988, he commended as "a much needed antidote to cliches about women's earnings and professional status" a discussion of women and work which incorporates the very stereotypes which have historically been used to exclude women from full participation in the workplace.

During the hearings, after having spent almost a decade as the chief enforcement officer for the Federal antidiscrimination laws protecting women, Judge Thomas stressed the reasonableness of these stereotypical comments and his lack of knowledge about the causes of women's second-class status in America's workplaces, rather than stating categorically that discrimination is at the root of many of the problems faced by women.

Judge Thomas did attempt during the hearings to portray himself as a vigilant protector of women's rights. However, his comments did not create a convincing image. Although he appeared to state that he agrees with the Supreme Court's "heightened scrutiny" test for gender discrimination, he subsequently indicated that his statement may mean only that he does not know where he stands or has not reviewed the issue in detail, rather than that he personally agrees with the test.

Judge Thomas' record on civil rights also raises deeply troubling concerns, because it reflects a fundamental ideological disagreement with much of contemporary civil rights policy and jurisprudence.

He has sharply criticized Supreme Court decisions upholding the use of certain evidentiary methods to prove systemic discrimination, both in the voting rights and employment contexts.

During the hearings, he failed to explain his harsh criticism of recent Supreme Court voting rights cases. His comments left the inescapable conclusion that when he condemned these decisions, he had no idea what they held.

In his testimony, he also attempted to soften his repeated rejection of Griggs versus Duke Power, which outlawed practices that disproportionately exclude women and minorities from the workplace. His testimony, however, cannot be reconciled with his earlier statements condemning Griggs and the effort to combat the subtle forms of discrimination which have denied women and minorities equal opportunity in the workplace.

In his speeches and writings, Judge Thomas has argued strenuously against the use of race-conscious remedies for job discrimination, despite the Supreme Court's sanction of such remedies for certain types of discrimination. During the hearings, he repeated his objections to the Supreme Court's decisions upholding affirmative action to overcome past discrimination. We cannot escape the conclusion that Judge Thomas is committed to reversing these decisions, and thereby denying Congress, employers, and the courts the power to overcome the Nation's legacy of racism.

Judge Thomas' condemnation of race-conscious remedies for job discrimination is especially troubling when contrasted with his repeated attempts to distinguish the affirmative action program under which he was admitted to Yale Law School. His distinction ignores the fundamental similarity between education and job training, and ignores the needs of persons who must rely on on-the-job training because they lack formal education.

In the hearings, when pressed about his many extreme statements, Judge Thomas' only real defense was, "That was then and this is now." He claimed, in effect, that the rightwing policy positions he had advocated as an executive branch official were no longer operative, because now he is a judge.

But recent press accounts underscore the probability that Judge Thomas' opposition to all race- and gender-based programs has indeed accompanied him onto the bench. During the hearings, he was asked about the Supreme Court's recent decision in Metro Broadcasting, which upheld an FCC license preference for minority-owned broadcast stations. Although Judge Thomas stated that he had "no reason to disagree with" the state of the law under Metro Broadcasting, press reports now indicate that less than 3 months ago, he did have a reason to disagree—and that Judge Thomas had in fact circulated a draft opinion he had prepared for the Court of Appeals limiting the Metro Broadcasting case and rejecting the license preference for women. If this report is true, it indicates that judge Thomas may have had a more concrete, and apparently hostile, view of Metro Broadcasting which he concealed from the committee.

Judge Thomas' hostility to civil rights issues is underscored by his expressed hostility to civil rights leaders. In five 1985 speeches, he denounced the civil rights community for "wallowing in self-delusion and pulling the public in with it."

In 1987, he stated that there were no areas where he thought that the civil rights establishment was doing good work. He publicly castigated civil rights leaders who "bitch, bitch, bitch, moan and moan and whine."

During the hearings, Judge Thomas again expressed his bitterness toward the civil rights community, which is apparently the result of his belief that the community has excluded him and has not acknowledged his positions on civil rights issues as legitimate.

I might mention here, Mr. President, that during the period of the 1980's, civil rights leaders were extremely active and extremely effective in a number of different policies affecting voting and other civil rights. We had the extension of the Voting Rights Act in the early 1980's and we were able, when that legislation was sponsored by the former Senator from Maryland, Senator McMathias, and ourselves and was basically opposed by William French Smith at that time, after many weeks, months of hearings, debate in the House of Representatives and here, to get even an extension of the Voting Rights Act.

And then we faced in the mid-1980's the decision by the Supreme Court in the Grove City case. We had, I believe, in this body, made the decision that we were not going to use taxpayers' money to support further desegregation in this country. That was true with regards to segregation on the basis of religion or minorities or on gender, and yet the Supreme Court made the decision in Grove City that if there was no evidence of discrimination in the disbursing office of Grove City, even though there might have been discrimination in the athletic programs against women or minorities in terms of other departments, as long as in that limited area which actually received the Federal funds, you could not demonstrate in that very small office of the institution there was any discrimination, the Court was not bound to look beyond it.

It took us years to overturn that, Mr. President. The good work that was done by civil rights leaders during that period of time was enormously important. We found out on the important issue of sanctions on South Africa and overturning a Presidential veto in the last 1980's they were extremely important, and they were extremely important when we were able to accept and adopt with, I might say, President Reagan's support the housing provisions, fair housing provisions to eliminate discrimination in housing.

So there were major battles during this period of time, and many of these leaders were very much in the vanguard of trying to work with the American people and their representatives in the House and the Senate and were extremely effective, I believe. But nonetheless during this period of time the condemnation of many of those leaders in the general way that I have described must not be lost.

In addition to these concerns about Judge Thomas' commitment to specific fundamental rights, his record provides disturbing evidence that he has a view of the separation of powers which would grant excessive power to the ex-

ecutive branch and would limit the role of Congress in our constitutional structure.

His many bitter confrontations with Congress during his tenure at the EEOC have apparently left Judge Thomas extremely hostile to Congress. He has repeatedly condemned this body in very strong terms.

He has referred to Members of Congress as "petty despots," and has stated that Congress has been "an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom."

He has argued that Congress "has thrust the tough choices on the bureaucracy, which it dominates through its oversight function," and that congressional subcommittees "micro-manage the running of agencies." He also alleged that "[i]n obscure meetings, [Members of Congress] browbeat, threaten, and harass agency heads to follow their lead." In Judge Thomas' view, "there is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business."

Judge Thomas has expressed this underlying hostility in concrete ways. He has condemned the Supreme Court's decision in Morrison versus Olson, which upheld 7 to 1 the constitutionality of appointing independent counsels to investigate suspected criminal activity by high-ranking executive branch officials.

Although Judge Thomas now seems to say that he does not believe that the independent prosecutor law is unconstitutional, he never adequately explained his statement condemning the majority opinion, or his strong praise for Justice Scalia's dissent, which argued that any law enforcement by officials independent of the executive branch is unconstitutional. Obviously, in scandals like Watergate, the executive branch cannot be trusted to investigate itself. Yet that is the result that Judge Thomas' views would seem to require under his reading of the Constitution.

Press reports about Judge Thomas' pending decision in Lamprecht versus FCC also raise questions about his views of Congress and his willingness to defer to Congress. During the hearings, Judge Thomas testified that he accepts the Supreme Court's decisions directing courts to give greater deference to congressional enactments than to State or local laws. Yet according to press reports describing his draft decision in Lamprecht, Judge Thomas refused in this case to defer to Congress' decision to give women a preference in the award of broadcasting licenses. If the press accounts are true, Judge Thomas' only opinion in a case raising a significant question of deference to Congress sharply contrasts with his testimony to the committee.

Judge Thomas' views apparently go beyond disagreement with Congress and disrespect for particular judgments made by this body. He has argued in a number of speeches that during the last few decades, Congress has abandoned its proper constitutional role by ceasing to perform its deliberative, law-making function and transforming itself into a quasi-executive body. If one takes his statements at face value, he would be likely as a Supreme Court Justice to strike down congressional enactments which are too specific and to prohibit Congress from engaging in much of its oversight activity. Such a narrow view of Congress, when combined with his expansive view of the President, could dramatically shift the balance of power from the legislative branch to the executive branch.

In addition, Judge Thomas has made many other extreme statements which raise questions about his nomination.

He described one of America's greatest jurists, Justice Oliver Wendell Holmes, in the following harsh terms:

If anything unites the jurisprudence of the left and the right today, it is the nihilism of Holmes.

As Walter Berns put it in his essay on Holmes, most recently reprinted in William F. Buckley and Charles Kessler's "Keeping the Tablets": "* * * No man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach * * * what a people needs in order to govern itself well." Or, as constitutional scholar Robert Faulkner put it: "What [John] Marshall had raised, Holmes sought to destroy." And what Holmes sought to destroy was the notion that justice, natural rights, and natural law were objective—that they exist at all apart from willfulness, whether of individuals or officials.

He also criticized Justice Thurgood Marshall for noting a few years ago that the Constitution, as originally enacted, accepted slavery and failed to provide equality for black Americans:

I find exasperating and incomprehensible the assault on the Bicentennial, the Founding, and the Constitution itself by Justice Thurgood Marshall. * * * His indictment of the framere alienates all Americans, not just black Americans, from their high and noble intention.

Perhaps, as Judge Thomas' defenders have suggested, he was simply willing to read anything that his rightwing speechwriters put in front of him.

But that strident take-no-prisoners attack on Thurgood Marshall is hardly the sign of a judicial temperament.

He has condemned much of the Supreme Court's recent work to enforce constitutional rights, alleging that:

The Supreme Court has used the due process and equal protection clauses in a variety of extremely creative ways. The Court has used them to make itself the national school board, parole board, health commission, and elections commission, among other titles. But these activities overlook (when they do not trivialize) the fundamental purpose of the 13th and 14th amendments. * * *

He commended radical conservative blacks like Jay Parker for "refusing to give in to the cult mentality and childish obedience which hypnotizes black Americans into a mindless, political trance."

And finally, while an administration official, he commended the following extreme descriptions of modern America:

[W]e are careening with frightening speed toward collectivism and away from free individual sovereignty, toward coercive centralized planning and away from individual choices, toward a statist-dictatorial system and away from a nation in which individual liberty is sacred.

As the noted constitutional historian Forrest McDonald recently said of the size of our government, "Its only saving virtue is its incompetence." Otherwise it would really be dangerous.

These statements do not reflect the sort of careful, considered judgments we rightfully expect from a Supreme Court nominee.

In many speeches, Judge Thomas repeatedly and forcefully advocated the use of natural law in constitutional decisionmaking. But in his testimony he said that he does not—and never did—see a role for the use of natural law in constitutional adjudication. Like all the other rightwing baggage he brought to the hearing, he simply jettisoned a longstanding belief he had vigorously held and frequently argued for.

This nomination is not about whether there should be a black American on the Supreme Court. I join with many of my colleagues in believing very strongly that a black American should fill the seat vacated by Justice Marshall.

President Bush could have chosen among many who are obviously well qualified to hold that high position, and who would certainly have obtained a "well qualified" rating from the American Bar Association.

But the Senate's responsibility is to decide whether this nominee should be confirmed to sit on the Supreme Court.

We should not confirm a person to the Court who has not demonstrated his commitment to fundamental constitutional rights and values merely because we fear that the President will retaliate against the Senate and the country by selecting another nominee who might be even worse. In my view, the Senate would and should reject that nominee too.

Finally, each of us and all of us admire Judge Thomas for his background and his ability to rise above even the harshest imaginable conditions of poverty, adversity, and deprivation.

I have heard people I respect say that it is wrong to blame him for taking the right lane to the top when he found the left lane crowded. An eloquent black writer has suggested that he is a caged bird who will start to sing.

Perhaps, but that is a slender reed for the Senate to grasp in an effort to find a rationale to support his confirmation.

If his background were the issue—he would be confirmed by a vote of 100 to 0.

But his background is not the issue, and it should not be the issue.

I urge each of my colleagues to study the record on Judge Thomas compiled by the Judiciary Committee.

There are compelling reasons why the committee deadlocked over this nomination.

His soothing testimony of 1 short week when his confirmation was at stake is far from sufficient to warrant a lifetime position on the Supreme Court. On his record, Judge Thomas falls far short of demonstrating a commitment to fundamental constitutional values in numerous key respects. I therefore urge my colleagues to reject his nomination. If we confirm him, we deserve the Court we get.

Mr. President, I ask unanimous consent that a compilation of Judge Thomas' statements on a variety of important issues be included in the RECORD, and I urge my colleagues to look closely at Judge Thomas' views, in his own words.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDGE THOMAS: IN HIS OWN WORDS

ON THE STATE OF THE NATION

"[S]ince I've been here, I've thought a lot about the rights of the individual. If the things that are done to the individual in this city were being done by one person, we'd all think that we were living under a dictatorship. We'd all be thinking in a rebellious way about how we are going to get out from under this dictatorship. The erosion of freedom is incredible." Interview, Reason Magazine, November, 1987.

"[A]s the head of a government agency and as a citizen of this country, I find myself agreeing whole-heartedly with former Treasury Secretary, William E. Simon, when he asserts that: 'The most important thing I can conceive of in the realm of American political life is to make Americans aware . . . that the fundamental guiding principles of American life have, in fact, been reversed; that we are careening with frightening speed toward collectivism and away from free individual sovereignty, toward coercive centralized planning and away from free individual choices, toward a statist-dictatorial system and away from a nation in which individual liberty is sacred.'"—Cato Institute, April 23, 1987.

"[I]t is the principles and ideas of the nation which have become anathema to an influential and growing elite. In criticizing the practice of American institutions, they hope to undermine the public opinion which buttresses public support for the regime itself. They do so for the purpose of changing the form of government, from one which is a limited constitutional government—based on a self-evident truth, to a government dominated by the ever-changing—or progressive—private interests of a political and intellectual elite.—California State University, April 25, 1988.

"The passage of major civil rights legislation coincided with a revolutionary burst in the growth of government. You know the sorry tale as well as I do. As the noted constitutional historian Forrest McDonald recently said of the size of our government, 'It's only saving virtue is its incompetence.' Otherwise it would really be dangerous."—Cato Institute, April 23, 1987.

"I, for one, don't see how the government can be compassionate, only people can be compassionate, and then only with their own money, their own property and their own effort, not that of others."—California State University, April 25, 1988.

ON BLACK AMERICANS

"I have been the guinea pig for many social experiments on minorities. To all who could continue these experiments, I say please 'no more.' Please leave me alone."—Associated Industries of Cleveland, March 13, 1986.

"[A] few dissidents like . . . J.A. Parker have stood steadfast, refusing to give in to the cult mentality and childish obedience which hypnotizes black Americans into a mindless, political trance. I admire them, and only hope I could have a fraction of their courage and strength."—Heritage Foundation, June 18, 1987; Suffolk University, march 30, 1988; and California State University, April 25, 1988.

"Blacks know when they are being set up. . . . I object now to the leftist exploitation of poor black people. The attack on wealth in their name is simply a means to advance the principle that the rights and freedoms of *all* should be cast aside, to advance utopian schemes, which in fact end in despotism."—Pacific Research Institute, August 10, 1987.

The tragedy of the current state is, that those who have long had a legitimate reason for disenchantment—those who have been excluded from the American dream— . . . [i]ncreasingly . . . are being used by demagogues who hope to harness the anger of the so-called underclass for the purpose of utilizing it as a weapon in their political agenda. Not surprisingly, that agenda resembles the crude totalitarianism of contemporary socialist states much more than it does the democratic constitutionalism of our founding fathers."—California State University, April 25, 1988.

"It is preposterous to think . . . that the interests of black Americans are really being served by minimum wage increases, Davis-Bacon laws, and any number of measures that pose as beneficial to low-income Americans but which actually harm them."—California State University, April 25, 1988.

ON THE CIVIL RIGHTS COMMUNITY

"What, dare I ask, is the moral basis for racial policies today. I often hear that it is to make up for a history of deprivation. That's not much of a moral basis: It is merely some form of retribution."—Georgia Southern College, February 24, 1987.

The civil rights community is "wallowing in self-delusion and pulling the public with it."—American Bankers Association, September 11, 1985; EEO Coordinators, July 10, 1985; National Urban League, June 18, 1985; EEO Law Seminar, May 2, 1985; and Cascade Employers Association March 13, 1985.

"[T]he civil rights movement used the machinery of the New Deal and the Great Society to reserve spaces for its adherents. Affirmative action represented a new plateau for interest-group liberalism."—Palm Beach Chamber of Commerce, May 18, 1988.

The civil rights community "is effective and has a tendency to sensationalize. All too often, the players in this arena intentionally distort and misinform. The tendency is to exploit issues rather than solve problems."—Machinery and Allied Products Institute, December 15, 1986; Georgia Bar, December 12, 1986; North Carolina Affirmative Action/EEO Conference, December 8, 1986; and University of Tulsa, November 21, 1986.

"We must not merely be critical of the many blunders and follies that have occurred in the practice and theory of civil rights. We must show how our reliance on American principles produces better results than those of our enemies."—Pacific Research Institute, August 4, 1988.

Reason: Are there any areas where you think today that the civil rights establishment is doing really good work? By that I mean NAACP and . . .

Thomas: No.

Reason: None?

Thomas: I can't think of any.—Interview, Reason Magazine, November 1987.

ON SUPREME COURT JUSTICE THURGOOD MARSHALL

"I find exasperating and incomprehensible the assault on the Bicentennial, the Founding, and the Constitution itself by Justice Thurgood Marshall. . . . His indictment of the framers alienates all Americans, not just black Americans, from their high and noble intention."—Savannah Morning News, September 18, 1987.

ON JUSTICE OLIVER WENDELL HOLMES

"If anything unites the jurisprudence of the left and the right today, it is the nihilism of Holmes. As Walter Berns put it in his essay on Holmes, most recently reprinted in William F. Buckley and Charles Kessler's *Keeping the Tablets:* ". . . No man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach . . . what a people needs in order to govern itself well.' Or, as constitutional scholar Robert Faulkner put it: 'What [John] Marshall had raised, Holmes sought to destroy.' And what Holmes sought to destroy was the notion that justice, natural rights, and natural law was objective—that they exist at all apart from willfulness, whether of individuals or officials."—Pacific Research Institute, August 4, 1988.

ON JUDOE BORK

"I strongly support the nomination of Bob Bork to the Supreme Court. Judge Bork is no extremist of any kind. If anything, he is an extreme moderate, one who believes in the modesty of the Court's powers, with respect to the democratically elected branches of government. I am appalled by the mudslinging *cum* debate over the Bork nomination."—Pacific Research Institute, August 10, 1987.

"I know Bob Bork as such a man of integrity and moderation the founders would have wanted on the Court. . . . Judge Bork . . . if he is an extremist at all, is an extremist on behalf of the modesty of the judiciary."—American Bar Association, August 11, 1987.

"It was a disgrace on the whole nomination process that Judge Bork is not now Justice Bork."—Cato Institute, October 2, 1987.

ON EXTREMISM

"Perhaps the most powerful contemporary statement defending freedom based on our founding principles comes from an address [by Senator Goldwater in 1964] more noted for its controversial but true couplet, 'Extremism in the defense of liberty is no vice, moderation in the pursuit of justice is no virtue.'"—Cato Institute, October 2, 1987.

ON ROE V. WADE AND ABORTION

"The current case provoking the most protest from conservatives is *Roe* v. *Wade*, 410 U.S. 113 (1973), in which the Supreme Court found a woman's decision to end her pregnancy to be part of her unenumerated right to privacy established in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965)."—"The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 Harvard Journal of Law & Public Policy (Winter 1989).

"Heritage Foundation Trustee Lewis Lehrman's recent essay in *The American Spectator* on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."—Heritage Foundation, June 18, 1987.

ON DEMOCRATS

"One reason I left the Democratic Party was the language barrier which I developed during law school—I could no longer understand globbledygguck and Berlitz does not offer a course. I also had a very serious problem with logic. . . . I could not follow the reasoning that more criminals on the streets, and fewer criminals in more comfortable jails (or hotels as my grandfather called them) solved the crime problem. . . . [I]f these criminal justice policies are so beneficial to society, I suggest that those who push such policies be willing to accept these criminals in their neighborhoods—if not in their homes. . . . I believe the Preeident put it best: the Democratic party creates a desert—then gives you a glass of water and calls that compassion."—Undated handwritten speech (apparently from 1984).

"I had the highest hopes for the Reagan Administration in breaking the Democratic Party's hold on Black voters. If you'll pardon somewhat partisan remarks, I don't believe a party with a collectivist program for the economy and government should command such overwhelming allegiance from Blacks."—Tocqueville Forum, April 18, 1988.

ON CONGRESS

"To put it simply, there is little deliberation and even lees wisdom in the manner in which the legislative branch conducts its business."—Palm Beach Chamber of Commerce, May 18, 1988, and Brandeis University, April 8, 1988.

"In defending the administrative deliberative process, [Senator] Hatch expressed a sentiment shared by many who go before these [congressional] committees, but few would publicly state. 'If I were in the Executive Department,' he commented, 'I would tell us to go to hell, I really would.'"—Palm Beach Chamber of Commerce, May 18, 1988, and Brandeis University, April 8, 1988.

"In conclusion, let me emphasize the importance of upholding our ideals. What else could have kept me defiant in the face of some petty despots in Congress. . . ."—Harvard University Federalist Society, April 7, 1988.

Congress has "been an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom."—Tocqueville Forum, April 18, 1988.

"In obscure meetings, [members of Congress] browbeat, threaten, and harass agency heads to follow their lead. Thus Congress operates in the shadows, and then produces press releases to show what a fine job it has been doing."—Tocqueville Forum, April 18, 1988.

"I thought Ollie North did a most effective job of exposing congressional irresponsibility. He forced their hand, and revealed the extend to which their public persona is fake."—Tocqueville Forum, April 18, 1988.

"As Ollie North made perfectly clear last summer, it is Congress that is out of control."—University of Virginia Federalist Society, March 5, 1988, and Harvard Federalist Society, April 7, 1988.

"Partly disarmed by his [Oliver North's] attorneys' insistence on avoiding closed sessions, the [Iran-Contra] committee beat an ignominious retreat before Colonel North's direct attack on it, and by extension all of Congress."—Cato Institute, October 2, 1987.

"I reluctantly cite GAO, since, at a later point during my tenure I referred to it as the 'lapdog of Congress.'"—Creighton Law School, February 14, 1991.

"Not that there is a great deal of principle in Congress itself. What can one expect of a Congress that would pass the ethnic set-aside law [10% set-aside in federal construction grants for minority-owned businesses] the Court upheld in *Fullilove* v. *Klutznick?*"—"Civil Rights As A Principle Versus Civil Rights As An Interest," in *Assessing the Reagan Years* (D. Boaz, ed. 1988).

ON THE LINE-ITEM VETO

"I commend you to read the full text of President Reagan's economic bill of rights speech. . . . His proposals include protection of intellectual property, education reform, welfare reform, privatization initiatives, and a line-item veto."—American Bar Association, August 11, 1987.

ON THE CONSTITUTIONALITY OF THE INDEPENDENT PROSECUTOR

"Unfortunately, conservative heroes such as the Chief Justice failed not only conservatives but all Americans in the most important Court case since *Brown* v. *Board of Education*. I refer of course to the independent counsel case, *Morrison* v. *Olson*. . . . Justice Antonin Scalia's remarkable dissent in the Supreme Court case [holding the statute unconstitutional] points the way toward [conservative] principles and ideas."—Pacific Research Institute, August 4, 1988.

ON THE SUPREME COURT AND THE RULE OF LAW

"The Supreme Court has used the due process and equal protection clauses in a variety of extremely creative ways. The Court has used them to make itself the national school board, parole board, health commission, and elections commission, among other titles. But these activities overlook (when they do not trivialize) the fundamental purpose of the 13th and 14th Amendments. . . ."—Tocqueville Forum, April 18, 1988.

"Now from this experience [Thomas's experience growing up in the segregated South] you would correctly infer that I am deeply suspicious of laws and decrees."—Cato Institute, April 23, 1987.

ON THE NINTH AMENDMENT

"In a nutshell, this is the problem with the Ninth Amendment. Maximization of rights is perfectly compatible with total government and regulation. Unbounded by notions of obligation and justice, the desire to protect rights simply plays into the hands of those who advocate a total state. . . . Far from being a protection, the Ninth Amendment becomes an additional weapon for the enemies of freedom."—"Civil Rights As A Principle Versus Civil Rights As An Interest," in *Assessing the Reagan Years* (D. Boaz, ed. 1988).

ON DISCRIMINATION AND INDIVIDUAL RIGHTS

From an intsrview with Judge Thomas: "It could be, Thomas says, that blacks and women are generally unprepared to do certain work by their own choice. It could be that blacks choose not to study chemical engineering and that women choose to have babies instead of going to medical school."—Atlantic Monthly, February, 1987.

"[B]y analyzing all the statistics and examining the role of marriage on wage-earning for both men and women, Sowell presents a much-needed antidote to cliches about women's earnings and professional status. In any event, women cannot be understood as though they were a *racial* minority group, or any kind of minority at all."—"Thomas Sowell and the Heritage of Lincoln: Ethnicity and Individual Freedom," and Lincoln Review, vol. 8, no. 2 (Winter 1988).

"How can a principled person find preferences for a dominant minority repugnant and yet support them for groups of which he or she is a minority? . . . Personally, I would protect the rights of the biggest bigot to preserve individual freedoms—the safe harbor of liberty."—American Bankers Association, September 11, 1985, Tulsa EEO Coordinators, July 10, 1985, National Urban League, June 18, 1985; and EEO Law Seminar, May 2, 1985.

"Today we are far from the legal inequities my grandfather suffered. Indeed, our current explosion of rights—welfare rights, animal rights, children's rights, and so on, goes to the point of trivializing them."—Washington Times, January 1988.

ON BUSINESS RIGHTS

"I believe that the government's role is to assure a climate in which businesses can flourish and then stand back and stay out of the way."—Palm Beach Chamber of Commerce, May 18, 1988.

"[E]conomic rights are protected as much as any other rights."—American Bar Association, August 11, 1987.

"We have today ignored economic liberties as a vital part of the rights protected by constitutional government."—"Civil Rights As A Principle Versus Civil Rights As An Interest," in *Assessing the Reagan Years* (D. Boaz, ed. 1988).

Economic rights "are so basic that the founders did not even think it necessary to include them in the Constitution's text. . . ."—American Bar Association, August 11, 1987.

"Why do you need a Department of Labor, why do you need a Department of Agriculture, why do you need a Department of Commerce? You can go down the whole list—you don't need any of them really."—Interview, Reason Magazine, November 1987.

"When [the] EEOC or any other [government] organization starts *dictating* to people, I think they go far beyond anything that should be tolerated in this society."—Interview, Reason Magazine, November 1987.

ON ENTITLEMENT PROGRAMS

"As [Friedrich] Hayek has noted, the attack on freedom and rights had to be accompanied by their redefinition. In the socialist view, 'the new freedom was thus only another name for the old demand for an equal distribution of wealth.' The new freedom meant freedom from necessity. And it was a short road from rights to what we call today 'entitlements.'"—Pacific Research Institute, August 10, 1987.

"Winston Churchill noted [the] problem with socialism when he described capitalism as offering only unequal blessings, while socialism offered equal misery. Because we Americans have often failed to seize the opportunity of freedom, as restricted as that may have been, some thinkers and politicians want to call the promise of equal rights 'entitlements."—Washington Times, January 18, 1988.

ON NATURAL LAW

"The best defense of limited government, of the separation of powers, and of the judicial restraint that flow from the commitment to limited government, is the higher law political philosophy of the Founding Fathers. . . . [N]atural rights and higher law arguments are the best defense of liberty and of limited government. . . . Rather than being a justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok majorities and run-amok judges."—"The

Higher Law Background of Privileges or Immunities Clause of the Fourteenth Amendment," 12 Harvard Journal of Law & Public Policy (Winter 1989) Federalist Society, University of Virginia, March 5, 1988.

"The higher-law background of the American Constitution, whether explicitly invoked or not, provides the only firm basis for a just, wise, and *constitutional* decision."—"The Higher Law Background"; Federalist Society, University of Virginia, March 5, 1988; and Federalist Society, Harvard University, April 7, 1988.

"[W]ithout recourse to higher law, we abandon our best defense of judical review—a judiciary active in defending the Constitution, but judicious in its restraint and moderation."—"The Higher Law Background", and Federalist Society, University of Virginia, March 5, 1988.

"To believe that natural rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law."—"The Higher Law Background."

"The Constitution must always be understood in light of the ends set forth in the Declaration."—Federalist Society, University of Virginia, March 5, 1988.

"[Justice] Harlan's [dissenting] opinion [in *Plessy* v. *Ferguson*] provides one of our best examples of natural right or higher law jurisprudence."—Federalist Society, Harvard University, April 7, 1988, and Federalist Society, University of Virginia, March 5, 1988.

"Justice Harlan's reliance on political principles [in his dissenting opinion in *Plessy* v. *Ferguson*] was implicit rather than explicit, as is generally appropriate for Supreme Court opinions. He gives us a foundation for interpreting not cases involving race, but the entire Constitution and its scheme of protecting rights."—"The Higher Law Background", Federalist Society, University of Virginia, March 5, 1988; and Federalist Society, Harvard University, April 7, 1988.

Mr. KENNEDY. Mr. President, I yield the floor.

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, shortly after the President proposed Judge Clarence Thomas to the Supreme Court, I began receiving letters from across the country about the nomination. I told those who contacted me that I intended to examine carefully the views of Judge Thomas before making a decision.

I said I would use the same criteria to evaluate Judge Thomas as I did in examining the qualification of Justice David Souter last year. I was then, as I am now, most concerned about preserving individual civil liberties.

Throughout Judge Thomas' appearances before the Senate Judiciary Committee, I found him to be an engaging and informed individual with a robust sense of humor. I was also impressed by the resolute and steadfast support of his family, presently and in earlier years. After 5 days of testimony, Judge Thomas proved he was articulate, composed, and exceedingly good-natured.

He competently fielded most legal queries and was certainly forthcoming with information about his formative years. However, his quiet but adamant refusal to answer many other fundamental constitutional questions was thoroughly disturbing. Attempts by Judiciary Committee members to elicit answers were rebuffed by the simple response: To give an opinion would compromise his objectivity as a judge.

Yet, he had no compunction about compromising his objectivity when he willingly offered views on other volatile issues such as capital punishment and the use of victims' impact statements. Judge Thomas' retreat from past speeches and writings also causes me great concern. If Judge Thomas and the White House felt that refuting previous public expressions of his convictions would guarantee confirmation to the Supreme Court, I believe they were wrong.

Let us make no mistake about it, President Bush nominated Clarence Thomas because of his strong conservative views on a number of vital issues.

During the confirmation hearing of Judge Souter last year, I said his silence on the issue of reproductive choice placed a cloud of uncertainty over well-settled legal precedents governing the rights of individuals to make fundamental choices involving themselves and their families.

Regrettably, Judge Thomas' refusal to discuss his views on reproductive choice continues this pattern.

Unfortunately, we now have a Supreme Court nominee who is unwilling to shed any light on views that are already a matter of record. Over the past decade, Clarence Thomas has openly stated his opposition to Roe versus Wade through writings and speeches, including a White House report on the family. Therefore, I was dismayed and frustrated over his hesitance in admitting to having an opinion on the issue, not to mention skeptical of his contention that he had never discussed the subject at all. Although his statements are public record, Judge Thomas took great pains to distance himself from these highly visible positions.

I remain unconvinced that Judge Thomas would adequately protect older workers against age discrimination. As head of the EEOC, he willfully delayed rulings on age discrimination cases. He also admitted that he violated a court order concerning the handling of civil rights cases while head of the Office for Civil Rights at the Department of Education.

I am also deeply troubled that Judge Thomas declined to answer repeated inquiries concerning an unmarried individual's right to privacy. As I said last year when I opposed Judge Souter's nomination, a retreat in this area could deny millions of men and women basic constitutional guarantees that previous Supreme Courts have affirmed. Apparently, Judge Thomas continued to be evasive even when given the opportunity to respond to these questions in writing.

Since the nomination of Judge Thomas, our colleagues on the other side of the aisle have asked that we consider Judge Thomas within the same parameters as other recent Supreme Court nominees. They claim it would be unfair to subject Judge Thomas to a higher standard than Robert Bork, David Kennedy, and David Souter.

Unlike Justice Souter, whose record on matters relating to the Constitution was unusually sparse, Judge Thomas has an extensive record of speeches, writings, and rulings as Executive Director of the Office of Economic Opportunity, head of the Civil Rights Office in the Department of Education, and as a private citizen. It is on this record and his Senate testimony that I base my decision.

And, unlike Justice Souter, who refused to answer questions about fundamental constitutional rights, Judge Thomas has a lengthy paper trail reflecting a disregard for some of these basic rights. One can only assume that the beliefs he espoused as an administrator would shape his judicial philosophy.

In reaching my decision on this nomination, I compared Judge Thomas' statements before the Judiciary Committee with his statements and writings over the past years. As I made this comparison, it became clear to me that this nominee, while in Government service, viewed the Constitution in a manner different than he would as a member of the High Court.

Since the words of the Constitution have not changed, I must conclude that Clarence Thomas' views have undergone a transformation since his nomination to the Supreme Court. Regrettably, I must vote against this nomination.

I yield the floor.

Mr. HATCH. Mr. President, I have been listening to some of the remarks that have been made here today, and I have watched some of the comments on television that others have made. I am particularly troubled by some of the distortions of Judge Thomas' record and of some of the statements that he made while he was before the committee.

In particular, I know of at least two Senators on the committee who felt—or at least indicated—that they personally did not believe Judge Thomas was speaking the truth with regard to abortion and his position on abortion. I have seen a number of Senators use this argument that Judge Thomas said he never discussed the issue of abortion when he appeared before the committee. Not only is that false; it is wrong for them to say that.

I want to take a minute or two here today and go through the transcript of the record. I might add that I raised

Cain in the committee because Judge Thomas did answer the issue of abortion. He said:

I have no reason or agenda to prejudge the issue, or * * * to rule one way or the other on the issue of abortion. * * * I think that it is most important for me to remain open. I have no agenda. I am open about that important cases.

He was referring to Roe versus Wade. I do not think you can have a better answer than that. He does not know which way he would rule. I have known him for nearly 11 years, and I do not know where he stands on it. I am perfectly willing to accept his statement there. That is a definitive statement.

Judge Souter, now Justice Souter, was asked 36 times about abortion; that was excessive. When I raised a fuss about it during Judge Thomas' testimony in front of the committee, up to that point, Judge Thomas had been queried about abortion 67 times. And by the end of the hearings, it was up to around 100 times, which is triple the number of times Justice Souter was asked. And every time, he basically said:

I have no agenda; I do not know where I stand on that issue. I really do not think that it would be appropriate for me to answer in advance of hearing the matter when it is before the Court.

When I am on the Court, I do not want to prejudice my right to decide these issues by telling you how I will decide them in advance, and especially since I do not know how I would decide.

Time after time, he explained that to the committee.

How about this point that he never discussed abortion with anybody? I have heard that mentioned by the distinguished Senator from Massachusetts more than once, here today, and in other areas.

The distinguished Senator from Vermont, Senator LEAHY, has also raised this issue. Let us look at the record. Here is Senator LEAHY speaking:

Judge, you were in law school at the time Roe versus Wade was decided. That was 17 or 18 years ago. I would assume well, let me back up this way. You would accept, would you not, that in the last generation, Roe versus Wade is certainly one of the more important cases to be decided by the U.S. Supreme Court?

Judge Thomas:

I accept that it has certainly been one of the more important, as well as one that has been one of the most publicized cases.

Mr. LEAHY:

So, I would assume that it would be safe to assume when that came down, you were in law school, recent cases law is often discussed. Roe versus Wade would have been discussed in the law school while you were there?

Judge Thomas:

The case that I remember being discussed most during my early part of law school was, I believe, in my small group with Thomas Emerson may have been Griswold, since he argued that, and we may have touched on Roe versus Wade at some point and debated that. But let me add one point to that. Because I was a married student and I worked, I did not spend a lot of time around the law school doing what the other students enjoyed so much, debating the current cases and slip opinions. My schedule was such I went to classes and generally went to work and went home.

I will skip over some of this.

Senator LEAHY says:

Have you ever had discussion of Roe versus Wade, other than in this room, in the 17 or 18 years it has been there?

Judge Thomas:

Only, I guess, Senator, in fact in the most general sense that other individuals expressed concerns one way or the other, and you listen and you try to be thoughtful.

Look what he says up to that point, "Yes, I guess I have." He did not quite say it that way, but he said he discussed it only in that other individuals expressed concerns one way or another; you listen and try to be thoughtful. Then he added this. It was a very thoughtful remark. He said: "If you are asking me whether or not I have ever debated the contents, the answer to that is no, Senator."

He was very careful to make it clear that he might have discussed it, but he did not remember it. As to whether he ever debated it—he chose the word "debate" specifically because he wanted to make it clear that he had not debated it. He might have discussed it, but he had not debated it. Basically, the implication by some of the people criticizing him is he must have lied. That is pretty clear, it seems to me.

Let me go further. Senator LEAHY said:

Let me ask you this: Have you made any decision in your own mind whether you feel *Roe* v. *Wade* was properly decided or not without deciding what that decision is?

Judge Thomas:

I have not made, Senator, a decision one way or the other with respect to that important decision.

I mean, how many times do you have to say it?

Senator LEAHY came back again:

So you cannot recollect ever taking a position whether it was properly decided or not properly decided, and you do not have one here that you would share with us today?

Judge Thomas:

I do not have a position to share with you here today on whether or not that case was properly decided. And, Senator, I think that it is inappropriate to just simply state that it is—for a judge, that it is late in the day as a judge to begin to decide whether cases are rightly or wrongly decided when one is on the bench. I truly believe that doing that undermines my ability to rule on these cases.

It then goes on and Senator LEAHY asked another question.

Judge Thomas responded:

Senator, your question to me was did I debate the contents of *Roe* v. *Wade*. Do I have this day an opinion, a personal opinion or comment on the outcome in *Roe* v. *Wade;* and my answer to you is that I do not.

That is just as clear as a bell. Yet we went through a hundred questions by various Senators, did you or did you not discuss Roe versus Wade, and he indicated that he had and then he said to make it very clear, "I did not debate Roe v. Wade. I was too busy working my way through law school."

I understand that. I understand that because my wife and I lived in a two-room chicken coop with three kids as I went to law school. We lived on $150 a month, and I worked all night long so I could go all day to law school and sleep 4, 5, or at the most 6 hours in any one day. I did not have any time to debate people very much either while my other fellow law review students were studying 80 hours a week. The most I could give to it was 20 hours a week under most circumstances.

I suspect that is what Judge Clarence Thomas went through. He was a young black man with no money, really very little, very little opportunity in his life except that which he made for himself.

How many more times do we have to have this man and have the implication that he is a liar? That is how far some people have gone on this particular issue.

I have to say, Mr. President, there is a myth being constantly repeated in the media and even on the floor of this body that simply has not been corrected. And this myth has it that Judge Thomas somewhere stated that he never discussed the case of Roe versus Wade with anyone. Some who are perpetuating this false myth embellish on it, julce it up, where they claim that Judge Thomas somewhere stated he never discussed the Roe case with a single human living being in the 18 years since it was decided. Those claims, as I have just shown, are totally inaccurate. They are easily defeated by the careful reading of the actual transcript of the Thomas hearing. I was there and I remember those questions, I remember Senator LEAHY doing that. I recall what Judge Thomas said on this subject. I just read it to you. It is not what his opponents are claiming. For those of my colleagues who did not attend the hearings, I have the relevant portions of the transcripts that I have just read, and they are only a few pages, and they show that Judge Thomas never stated that he had not discussed Roe with anyone.

At the hearings—let me go through it again—Senator LEAHY asked Judge Thomas if the Roe case "was discussed in the law school while you were there."

Judge Thomas, trying to remember back nearly 20 years, recalled specifically the Griswold case was discussed most in his study group. He also stated: "We may have touched on Roe v. Wade on some point and debated that." Far from denying any discussion of Roe, Judge Thomas admitted he may have discussed it in a study group, but simply could not remember for sure after nearly 20 years.

How many of us even remember the courses we took in law school or college, let alone the specific cases and issues that were discussed? And I specifically point out that Roe versus Wade is hardly the only significant case in the last 20 years. Indeed Judge Thomas' professional career, as I understand it, never gave rise to that case being central in his work. In the last 10 years of his career, civil rights preferences loomed larger than any other issues for Judge Thomas. Still Senator LEAHY pressed Judge Thomas on this issue. He said: "Have you ever had discussion of Roe versus Wade other than in this room in the 17 or 18 years it has been here?"

Again, contrary to what many have been alleging in the press and here on the floor, during the committee hearings, Judge Thomas did not answer that he had never discussed Roe; he said just the opposite. He admitted that he had discussed the case "in the most general sense, that other sides have expressed concerns one way or another, and you listen and you try to be thoughtful". He only denied that he had debated, and he carefully chose that word, and it has been carefully overlooked, in my opinion, by some who have been criticizing him in their zeal in trying to defeat this young African-American, one of two ever nominated to the Supreme Court of the United States of America. So he only denied he had debated the contents of Roe versus Wade.

Clarence Thomas is a man who appeared in numerous public forums, including numerous formal debates. In denying he publicly debated Roe, he clearly stated only that he had not engaged in a formal debate on the subject. That does not imply that Clarence Thomas never discussed the subject in other settings.

But let me just tell you why he did not say, "Yes, Senator, I have discussed it with a lot of people." The minute he did, the Senators on the committee who are against him anyway because they feel that he must be against Roe versus Wade or Bush would not have appointed him, they would have said: With whom did you discuss it? Then they would have said: And what did you discuss and what were your contributions? After all of which he would have to go back and say, "Look, I have not formulated my opinion on this issue. I have no agenda. And even if I had, it would be wrong for me to tell you in advance of my tenure on the Court what I would do in any given case in the future."

Moreover, if he answered otherwise, said, "Well, I am for Roe versus Wade or against Roe versus Wade," he would have irritated one or the other side of the Judiciary Committee. He answered it in the only honest way he could. The fact is I do not think there was any confusion about the distinction that Judge Thomas was drawing at the hearing, and yet I have seen this misused and distorted on television and in open debate here today on the floor.

If there was any confusion, the Senators who wish to draw inferences from his testimony opposed to what he actually testified should have had Judge Thomas clarify the point. After all, we had him before us for nearly a week.

I notice the distinguished Senator from Rhode Island is here. Let me just finish making this point and then I will resume my comment and I will yield the floor so that his valuable time can be saved, and then I will come back to my remaining comments afterwards.

Judge Thomas, at a minimum, deserves to be considered on the basis of what he said, not on the basis of inaccurate comments by my colleagues or inaccurate press reports of that testimony or distortions of what he said, and that is what they are. These inaccurate reports are obviously fueled by increasingly desperate special-interest group trying to find out a way to deny him a seat on the High Court. What is the point of the Senate Judiciary Committee even having hearings on a judicial nominee if Senators are going to base their vote to confirm not on what was said at the hearing but on a fictional rendition of what was said, a rendition at variance with the actual testimony? I think we have got to be a little more fair to this young man, who I think answered as cogently and as best he could before the committee. If you look at this record, it is as clear as a bell, and to have these distortions by anybody, including Members of this august body, I think is just plain wrong.

I think it has to be rebutted now. And that is what I have been trying to do.

Let me just make one other point and then I will yield the floor temporarily to Senator PELL. I would like to get it back afterwards.

Charges were made and rebutted, but repeated again and again—we heard it said again just a few minutes ago—that Judge Thomas criticized civil rights leaders. In July, I quoted lengthy statements that he made in speeches praising the civil rights movement and civil rights leaders including Thurgood Marshall, Justice Marshall. I ask unanimous consent that those remarks be printed in the RECORD again at this point.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

PRAISE FOR CIVIL RIGHTS GROUPS

In an October 23, 1982 speech before the Maryland Conference of the NAACP, as the then newly installed chairman of the EEOC, here is part of what Judge Thomas said:

"I would like to talk with you about why I believe that you are the group that can truly make a difference for blacks in this country; what I think the challenges will be in the future; and what we are doing at the federal level to address the problems of discrimination. * * * The pervasive problem of racial discrimination and prejudice has defied short term solution. The struggle against discrimination is more a marathon than short sprint. Political parties have come and gone, leaving behind them the failures of their quick fixes. Promises have been made and broksn. But one group, the NAACP, has remained steadfast in the fight against this awful social cancer called racial discrimination.

"The NAACP has a history of which we can all be proud. From its inception in 1909 until today, the work this organization has done in the area of civil rights is unmatched by any other such group. At each turn in the development of blacks in this country, the NAACP has been there to meet the many challenges. * * *"

The Judge has often acknowledged the significant role of the civil rights movement and how he, personally, has benefitted from it.

In volume 21 of Integrated Education, in 1983, the Judge wrote, "Many of us have walked through doors opened by the civil rights leaders, now you must see that others do the same." In a January 18, 1983, speech at the Wharton School of Business in Philadelphia, Judge Thomas said, "As a child growing up in the rural South during the 1950s, I felt the pain of racial discrimination. I will never forget that pain. Coming of age in the 1960s, I also experienced the progress brought about as a result of the civil rights movement. Without that movement, and the laws it inspired, I am certain that I would not be here tonight."

In an October 21, 1982, speech at the Third Annual Metropolitan Washington Board of Trade, EEO Conference, Judge Thomas described himself as "a beneficiary of the civil rights movement."

In an April 7, 1984, speech at the Yale Law School Black Law Students Association Conference, Judge Thomas noted that the freedom movement of black Americans was not a sudden development, but "had been like a flame smoldering in the brush, igniting here, catching there, burning for a long, long time before someone had finally shouted "Fire!"

He asked, in effect, who was responsible for this. The Judge then went through a litany of people and events that helped fan the flames of black freedom. He asked, in part, whether it was "the founders of the NAACP * * * or the surge of pride which black folks felt as they huddled around their ghetto radios to hear Joe Louis preaching equality with his fists, or hear Jesse Owens humbling Hitler with his feet?

"Was it A. Philip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941—and FDR hurriedly signing Executive Order 8802 banning discrimination in war industries and apprenticeship programs?

"Or the 99th Pursuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy?

"Was it Rosa Parks who said 'No' she wouldn't move; and Daisy Banks who said 'Yes,' black children would go to Central High School?

"Or the three men who had been the black man's embodiment of *blitzkrieg*—the most phenomenal legal brains ever combined in one century for the onslaught against injustice—Charles Houston, William Hastie, Thurgood Marshall?

"Or a group of students who said, 'We've had enough. I mean, what's so sacred about a sandwich, Jack?

"Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Righte and believed?"

I realize it may seem more newsworthy to report the Judge's remarks only when they have been critical of the traditional civil rights leadership. I realize some of his critics, who object to his expressed views against reverse discrimination and preference, wish to make him look ungrateful. But it is a false portrait—a caricature—being drawn.

Mr. HATCH. Moreover, some civil rights leaders began severely criticizing Judge Thomas. Now, when they started to do that, no one surely can be expected to engage in unilateral verbal disarmament, so the judge responded to some of these critics.

Yet his current opponents pluck only those critical comments out of context to make this charge. They try to paint a false picture of the judge and I think that is absolutely wrong. He has always expressed his gratitude to the civil rights movement and to many of its leaders. And I think when they start criticizing him, he is entitled to defend himself, and that is what he did.

Let us not just lift the defense of himself against some scurrilous comments and some inaccurate comments made about him. Let us look at the whole set of statements of this fine young man.

Mr. President, I ask unanimous consent that I be permitted to yield to the distinguished Senator from Rhode Island, with the floor to return to me as soon as he has concluded with his remarks.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the distinguished Senator from Utah?

Without objection, the Senator from Utah yields the floor to the distinguished senior Senator from Rhode Island, and at the conclusion of the remarks of the distinguished senior Senator from Rhode Island, the Chair will again recognize the distinguished Senator from Utah.

The Senator from Rhode Island is recognized.

Mr. PELL. I thank the Chair and I thank my friend and colleague, the Senator from Utah.

Mr. President, I address the Senate today regarding the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

At the outset, I admire and respect the rise of Clarence Thomas from a miserable life of poverty in the rural South to the achievements and honors of his still young life. His is a story which embodies the best of what is America. Yet, as compelling as is the story of Judge Thomas' life, it cannot be the sole determinant of whether or not he is qualified to sit on the U.S. Supreme Court. Of paramount importance are his qualifications as a judge. It is in this regard that this nomination causes me real concern.

One of the most striking aspects of the debate over the Thomas nomination has been the general acceptance of the notion amongst both supporters and detractors that this nominee does not possess any recognizable record of distinction within the various circles of the legal world, be it as a judge, a lawyer, or a legal scholar. Perhaps Erwin N. Griswold, a Republican, former Harvard Law School dean, and Solicitor General summed it up best when he said: "This was a time when President Bush should have come up with a first-class lawyer, of wide reputation and broad experience, whether white, black, male, or female. And it seems to me obvious he did not." Acknowledging the lack of Judge Thomas' judicial distinction, I too am deeply disturbed when considering his lifetime appointment to the Supreme Court of the United States.

I am additionally troubled by the record Judge Thomas has built regarding his philosophic outlook, a philosophy which he will inevitably carry with him to the Supreme Court. When questioned about this record during his confirmation hearings before the Judiciary Committee, Judge Thomas argued that the views that he took as a member of the executive branch should be discounted because he was acting as an advocate for that branch. While I believe that fairness allows for a tempering of those positions, I feel that permitting a complete disavowal of those views and statements is unrealistic on my part and, at the very least, disingenuous on Judge Thomas' part.

When one looks at that record, it is clear that Judge Thomas was espousing a political philosophy that rests somewhere near the far right wing of the American political spectrum. He has attacked the notion of the existence of the right of privacy in the Constitution and has praised a long-discarded jurisprudential theory of so-called natural law. He has also questioned the remedies, albeit imperfect ones, that have been developed to deal with the discrimination that has plagued our country since it was founded, and he has showed disdain for the balancing of powers between the various branches of our system of Government. Given this record, I believe that the desire to appoint Judge Thomas to what is universally seen as an already conservative Supreme Court smacks of court stacking—the pursuit of a political agenda by an administration.

Accordingly, I believe that I must oppose the Thomas nomination to the Supreme Court. I do not do so lightly and indeed, regret that I have come to this decision. I have voted to confirm each of the other eight sitting Justices on the Court and, in general, feel that Presidential prerogative speaks strongly in favor of a candidate subject to his appointment.

I also regret opposing an African-American for I believe that diversity on the Court is important and with the departure of Thurgood Marshall, the Court loses an important perspective as it debates and reaches its decisions. However, in this light I also believe that such a candidate still must be eminently qualified for the position. It seems apparent to me that this nominee lacks that qualification and that were he not an African-American conservative, he would not have been chosen.

Perhaps with a few more years on the Federal bench, Judge Thomas would dispel the doubts that I have about his qualifications, but we do not have that luxury. As a U.S. Senator, I have been asked to confirm a nominee who on the one hand has an extraordinary story of achievement to tell with regard to his personal life but who on the other hand is noticeably lacking in distinction as a judge and one who has espoused a curious and often extremist political philosophy. I must vote on this nominee as he now stands before the Senate, and in this regard feel that I must oppose his nomination.

The PRESIDING OFFICER. The distinguished senior Senator from Rhode Island yields the floor.

Under the unanimous-consent agreement, the Chair recognizes once again the distinguished Senator from Utah.

Mr. HATCH. I thank the Chair.

Mr. President, when President Bush announced that he was nominating Judge Clarence Thomas to the Supreme Court, I said that it was a great day for America. I have known Judge Thomas for over 10 years, and I knew at the time of his nomination that he is eminently qualified to be a Supreme Court Justice. Personally, I do not think President Bush could have sent a finer nominee to us.

The American people are now familiar with Judge Thomas's rise from poverty to the doorstep of the Supreme Court, overcoming the barrier of racial discrimination along the way. In that rise, Judge Thomas obtained an excellent education, and first served as an assistant attorney general of the State of Missouri, under our distinguished colleague, JOHN DANFORTH. Judge Thomas then worked in the private sector as a lawyer in the Monsanto Corp.'s legal department. So he has private sector experience. After that, he worked in all three branches of the Federal Government. In so serving, he won Senate confirmation four times in less than 9 years, perhaps more than any other person during the same period.

Judge Thomas warrants confirmation because his nomination is meritorious today and because he has an outstanding and courageous record of public service, not for the patronizing reason that he might "grow in the position." All persons learn from their experience. But I take it to mean that those who have voiced this thought hope that, once on the Supreme Court, he will vote in a more liberal way than

they now think he might. No one knows how Judge Thomas will vote once on the Court, but I certainly do not support him out of any wishful thinking.

I share President Bush's view that a Justice of the Supreme Court should interpret the law according to its original meaning and not legislate his or her own policy preferences from the Bench. Based on a careful review of his writings and judicial opinions, and my knowledge of the man, I am confident Judge Thomas will interpret the law according to its original meaning, rather than substitute his own policy preferences for the law.

He will not act as a legislator from the Bench.

I am also confident that Judge Thomas will zealously safeguard the principle of equal justice under law for all Americans—not just white Americans, not just black Americans or Hispanic Americans or Asian-Americans, or Native Americans, but for all Americans, without unfair preference.

Mr. President, Judge Thomas has been most identified, by his writings and speeches, with positions on civil rights and affirmative action while a policymaker. Therefore, I think it appropriate at this point to digress for a moment to discuss what I believe are crucial distinctions in the often-clouded subject of affirmative action. Affirmative action can mean different things. It can mean reviewing one's employment practices to eliminate discriminatory practices. It can mean increasing an employer's outreach and recruitment activities aimed at increasing the number of minorities and women in the applicant pool, from which all applicants will then be considered fairly, without regard to race or gender. There are similar activities aimed at widening the pool of applicants. This form of affirmative action has widespread support. Judge Thomas has written and spoken in favor of it. I believe discrimination against anyone should be ended, and remedied. And there is still discrimination against minorities and women and we must root it out. And I favor the kind of affirmative action I just described. I am not aware of a single Member of the Senate who opposes that form of affirmative action.

But there is another form of affirmative action that is highly controversial, deeply divisive, and wrong. By whatever euphemism or label used to describe or to mask it, this form of affirmative action calls for preferences on the basis of race, ethnicity, and gender. Lesser qualified persons are preferred over better qualified persons in jobs, educational admissions, and contract awards on the basis of race, ethnicity, and gender. Some argue there is a distinction between a quota and a so-called goal and timetable, but that, in my view, is misleading and of no practical meaning. It is not the label that is objectionable, but the practice—and that practice is unfair preference that discriminates against fellow citizens in this country. It does not matter what one labels a numerical requirement that requires, causes or induces preference—if you are discriminated against because of it, the harm is all the same regardless of the feel-good label someone else puts on it. And the harm to the victim is the same whether the employer is private or public.

I just want to make this comment. During the hearings, the only people who basically asked about affirmative action policies were two Republicans, Senator SPECTER and myself. The only other person that I recall asking about affirmative action—one aspect of affirmative action—was, I believe, Senator KENNEDY when he raised the Johnson versus Santa Clara case briefly. But that is one little aspect of the overall problem.

I wondered why Members on the other side of the aisle did not ask a lot of questions on affirmative action. And I believe the reason why is because they knew that Clarence Thomas, a African-American who had lived through the sting of discrimination, understands that issue better than any of us and that his position is very, very difficult to undermine and that most Americans are agalnst quotas in the form of preferences or other discriminatory action.

During the hearings, brief reference was made to the Johnson versus Santa Clara case, a 1987 Supreme Court decision. Under a nondiscrimination standard, Mr. Johnson would have been hired by the Santa Clara County Transportation Agency for a position in a job category that had 238 men and no women. Among seven qualified applicants, he was deemed under a neutral, nondiscriminatory hiring process as the most qualified for the job. The district court found that in the ordinary course of events, he would have been hired by the division director of that particular job category. What happened next, however, is that the county affirmative action office got involved and contacted the agency's affirmative action coordinator. The affirmative action coordinator in turn intervened and suggested to the agency director that he intervene and direct that the most qualified candidate, Mr. Johnson, be passed over and the most qualified woman of the seven qualified finalists be hired instead so that the county could make progress toward its affirmative action goal of attaining a work force in each job category whose composition was 36 percent female. It cannot be emphasized enough that the district court found that this recommendation was not to remedy any prior discrimination by the county against this individual woman, or even against women generally. In a word, the affirmative action coordinator's recommendation to hire the lesser qualified woman over the better qualified man was a preference made to reach an employment level of 36 percent women. Moreover, the agency director was not ordinarily involved in hiring at this level, and would not have been involved at all but for the intervention of the affirmative action coordinator.

Now, the district court found that the agency director directed that the woman be hired, without even inspecting the applications and related examination records of her and the man who was originally selected for the job by the division director. The district court found that it was enough for the agency director to know that both the woman and the man were minimally qualified, and that one was male and the other was female. Further, the agency director knew that as the head of the agency, his chances on further promotion depended in part on how well his agency's hiring advanced the county's official affirmative action plan of achieving statistical proportionality of 36 percent women in each job category. After a 2-day trial, the district court found, in factual findings that were not disturbed by the court of appeals and binding on the Supreme Court under the Federal Rules of Civil Procedure, that the woman's gender was the determining factor in her selection for the position.

Now, all of this was done under a plan that I believe one of my colleagues described in the Judiciary Committee hearings as not a quota, but just a mere affirmative action plan to increase female participation in the workplace. Supporters of racial and gender preferences like to say that the person preferred was qualified. But if a better qualified person, even if ever so slightly, loses a job because race or gender counts agalnst him or her—as Paul Johnson did in the Santa Clara case—that is fundamentally unfair and violative of title VII as written. As Judge Thomas said in the hearings, if you reversed the facts in the Santa Clara case—if a more qualified woman was passed over in favor of a lesser qualified man in order to reach a statistical level of males in the work force—I do not think anyone would disagree that title VII had been violated.

I must stress that the label, whether called quota or affirmative action or anything else, is not the key. It is the practice of preference in hiring and promotion based on race, gender and other outlawed characteristics that is the key here. The reason to oppose a quota is because it causes preferences, not because the word quota sounds bad. So it is not enough to say we oppose quotas, we must oppose preferences. And we must oppose the various means by which preferences are required, caused or induced.

If I do not miss my bet, most young people who were raised in the sixties, regardless of gender, regardless of race, oppose quotas and preferences also. Because many of them at one time or another have either received a benefit from a quota system or have received the sting of having been rejected because of a quota system. Because that is the way it is being run, in part, in this country today.

Title VII as written bans preference. Title VII is not heavyhanded interference with the private sector as its opponents claimed in 1964.

It is the embodiment of the principle of equal opportunity and nondiscrimination. But in a 1979 decision George Orwell could appreciate, the Weber case, the Court construed title VII to permit preferences in training, not to remedy any prior discrimination by the employer, but to increase the numbers of minorities in a job category where there was a large statistical imbalance. In Weber, a more senior white male was discriminated against. In the Johnson case that I mentioned earlier, the Court extended this creative interpretation to hiring. Five members of the Johnson Court indicated that Weber was wrongly decided; that it had turned title VII on its head. Five of the Justices on the Court—in other words, a majority of the Court—said it was wrong. However, two of them adhered to stare decisis and not only let Weber stand, they also extended it, in this case, to hiring methods.

It is desirable to increase the number of minorities and women in various jobs, but not at the price of discriminating against other hardworking, innocent persons who are not privileged people in this country. I might add there have been many instances in which preferences for members of one minority group have disadvantaged members of other minority groups and women. Preferences for women have disadvantaged minority males, as well as white males. In an increasingly multicultural society, the preference problem is less and less a black-white issue.

The victims of preference do not have 150 groups out there lobbying for them. Nor do they have Justices and judges twisting the civil rights laws in their favor. But they do have a moral right to be free of discrimination. That moral right was codified in statute, at long last, in 1964 for all Americans. It is that statute to which judges must be faithful. The victims of preference know that, however labeled or candycoated, preferences are unfair, immoral, and they do not even have to be lawyers to understand it turns the statute on its head.

It is not divisive to defend the principle of equal opportunity for every individual—it is divisive to compromise that principle.

If all one wishes to require is equal opportunity for all individuals regardless of race, ethnicity, and gender—our laws and Constitution as written already require that. There is no need to establish a numbers requirement.

A racial, ethnic, or gender numerical requirement, however labeled, is intended to be met. It is not intended merely to increase recruitment of minorities and women into the applicant pool, which can be required in its own right. It is intended to induce preferences of lesser qualified over better qualified persons in order to reach the so-called right numbers in hiring and promotions, educational admissions, and contract awards. That is as true in the private sector as in the public sector.

Judge Thomas criticized this kind of preferential affirmative action while in policymaking positions.

I said at the beginning of his confirmation hearings that Judge Thomas is a man of fierce independence. He demonstrated that independence during the hearings when he took the position that the 14th amendment's due process clause contains a substantive content, a position with which many conservatives take issue. Judge Thomas demonstrated that independence again when he disassociated himself from Chief Justice Rehnquist's comment on stare decisis in Payne versus Tennessee to the effect that erroneously decided procedure cases are automatically entitled to less weight than erroneously decided property cases.

Judge Thomas' independence, however, does not sit well with some special interest groups and some liberal academics and pundits. These critics would like to impose their liberal policy agenda on the American people through the judiciary. They cannot win in Congress because people here are afraid of up-front preferences and rightly so, because they know the vast majority of Americans do not favor them. And the proponents of preferences want to achieve preferences through the courts, these liberal academics and other thinkers. They fear Judge Thomas will be faithful to the Constitution and Federal laws as enacted, instead of to their political agenda.

We have heard from some quarters that Judge Thomas' previously held views vanished when he was before this committee and that certainly was not so. For example, his writings on natural law were overstated by various pundits and interest groups. In his writings and speeches Judge Thomas said that the Framers' understanding of natural law requires limited government, and limited government requires that judges, no less than legislators and executive branch officials, not overstep their constitutional authority. His discussions with the committee were entirely consistent with this principle.

The judge's discussions of affirmative action with the committee were similarly steadfast. Judge Thomas refused to budge from his stated opposition to racial preferences, articulated as a policymaker in the executive branch. Much of the opposition to Judge Thomas, in my view, stems from his forthright stand on this issue. They are not saying it, but that is what is really behind a lot of the opposition to him. Judge Thomas was and is unequivocal in his support for outreach programs, for making efforts to broaden the scope of employee applicant pools, for making whole the actual victims of discrimination, and for punishing the wrongdoers rather than innocent third parties. At the same time, he defended his opposition to race-conscious preferences that do not provide relief to actual victims of discrimination, but rather provide benefits to members of particular groups solely because of their membership in those groups. His support for educational preferences based on disadvantaged status, regardless of race, is fully consistent with his opposition to racial preferences.

I would like to emphasize that again. Clearance Thomas said let us not discriminate against our fellow men and women on the basis of preferences, on the basis of race, ethnicity, and gender. Let us treat all disadvantaged people, regardless of race, ethnicity, and gender, all the same. That is acceptable because it is neutral on the basis of race, ethnicity and gender. Frankly, the most astonishing vanishing act was by supporters of racial preferences on the other side of the aisle, who barely raised the issue with the judge, other than the Johnson case which I think is a clear-cut case where the judges, if they could have overcome their deference for stare decisis in that matter, would have overruled Weber.

The advocates of preference and reverse discrimination know that these policies are extremely unpopular with the American people. Accordingly, supporters of these unfair policies couch their attacks on Judge Thomas in other language. Thus, they criticize him for his civil rights record or alleged lack of sensitivity, or for being against all affirmative action rather than only the preferential, unfair aspects of affirmative action, as reflects his position while in the executive branch. In my view, it is really the Judge's expressed belief in the equal rights of all Americans that some of these critics are really upset about. I do not know how Judge Thomas will vote on specific aspects of affirmative action. As a Supreme Court Justice, he will be in a new and unique role. But because he has spoken out while in policymaking positions against preferences and what has become popularly known as reverse discrimination, the

supporters of these unfair policies wish to punish him. I trust, however, the Senate will not sacrifice Judge Thomas on the twin altars of preferences and reverse discrimination.

We have heard criticism of Judge Thomas stemming from his tenure as chairman of the Equal Employment Opportunity Commission. I will not recite the particulars of that criticism and then rebut them charge by charge. I think that the record of the Judiciary Committee hearings does that. Instead, I will make three brief points in response to this criticism. First, upon assuming the chairmanship of the EEOC in 1982, Judge Thomas inherited an agency that was left in a shambles by his Carter administration predecessors. Second, Judge Thomas markedly improved the performance of that agency. The Washington Post, no shill for the Reagan administration's civil rights record, praised "the quiet but persistent leadership of Chairman Clarence Thomas" in an editorial on May 17, 1987, entitled, "The EEOC is Thriving." The July 15, 1991 U.S. News & World Report wrote: "Overall, it seems clear that he left the [EEOC] in better condition than he found it."

Mr. President, I ask unanimous consent that the Washington Post editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 17, 1987]

THE EEOC IS THRIVING

Civil rights advocates have apparently given up on the Civil Rights Commission and disagree only on how little should be appropriated for the agency. Some groups have even suggested that the Treasury save the money and abolish the CRC altogether. This is probably due to the sharp philosophical disagreement between traditional civil rights lobbyists and those now leading the panel, most of whom have been appointed by President Reagan. Or it may simply reflect the fact that the commission, whose work was so vitally needed and so widely supported in the late '50s and early '60s, no longer seems to be fulfilling a function.

Another important executive agency charged with civil rights enforcement—the Office of Civil Rights in the Department of Education—has been hamstrung since 1984, when the Supreme Court sharply limited the scope of the law prohibiting discrimination by recipients of federal funds. Because Congress has not yet acted to overturn that ruling by legislation, OCR—even if its leaders were willing to act aggressively—has been unable to move against many kinds of discrimination that had been its responsibility before.

But things are markedly different at the Equal Employment Opportunity Commission, the federal agency created in Title VII of the Civil Rights Act of 1964 and charged with rooting out employment discrimination. Here, the caseload is expanding and budget requests are increasing. Under the quiet but persistent leadership of Chairman Clarence Thomas, the number of cases processed has gone from 50,935 in fiscal 1982 to 66,305 last year. In the same time period, legal actions filed went from 241 to 526. To handle this much larger caseload and higher litigation level, this year's budget request was a record $193,457,000. That's one-third more than was spent at the beginning of this administration and $28,457,000 over last year.

Domestic budget requests, even for meritorious programs such as this, are being cut with a vengeance, and the request for the EEOC is no exception. The House did vote a $13 million boost, and the commission has asked the Senate to restore the full amount requested. Whether that is possible, given other budget constraints, is uncertain. But legislators who care about civil rights enforcements have a special obligation to sustain an agency doing this work and enjoying, to an unusual degree in these times, the support and encouragement of the administration.

Mr. HATCH. During his tenure, the agency brought over 3,300 lawsuits and recovered nearly $1 billion in relief for the victims of discrimination. Finally, these charges have all been aired before, sometimes several years before, yet Judge Thomas was subsequently confirmed by this body at least once and sometimes as many as three times after the charges were initially made. If these charges were serious, why did this body confirm Judge Thomas, and in particular why did this body confirm Judge Thomas for the court of appeals, clearly one of the most important courts in this country, or for a second term as EEOC chairman? The fact is, the Senate has implicitly rejected these charges before, and in some cases repeatedly.

What this confirmation struggle is really about is the vanishing liberal hope that the judiciary, under the pretext of interpreting the Constitution, will impose on the American people the same liberal policies that have been overwhelmingly rejected in five out of the last six Presidential elections.

If there was a central theme to Judge Thomas' testimony, it was this: The roles of the judge and the policymaker are wholly and completely distinct.

As Judge Thomas correctly stated on taking the bench, a judge must shed his previously held policy views and interpret the written law. The people themselves, through their elected representatives in their State legislatures and Congress, determine what the policy shall be. The role of the judge, according to Judge Thomas, is to discern the intent of the lawgiver and carry out that will. For a court to second-guess policy determinations made by the political branches is to overstep its role.

This distinction—between the judge as interpreter of the written law and the legislator as the author of the written law—appears to be wholly lost on some of Judge Thomas' critics. They are incredulous that Judge Thomas could, as a policymaker, have taken strong positions, and then, as a judge, forswear any policy agenda. For them, apparently, adjudication in the courts is nothing more than a continuation of politics by other means. Put more bluntly, some of the critics of Judge Thomas would collapse the distinctly different functions of adjudication and policymaking into an approach that simply reaches a preferred policy result, whatever the violence done to the written law, including the Constitution.

Any philosophy of judging other than adherence to original meaning permits unelected Federal judges to impose their own personal views on the American people, in the guise of construing the Constitution and Federal statutes. There is no way around this conclusion. This approach is judicial activism, plain and simple. And it can come from the political left or the right.

Let there be no mistake: The Constitution, in its original meaning, can readily be applied to changing circumstances. But while circumstances may change, the meaning—the principles—of the text, which applies to those new circumstances, does not change.

Alexander Hamilton, an advocate of a vigorous central government and a defender of the judiciary's right to review and invalidate the legislative branch's acts that contravene the Constitution, made clear that Federal judges are not to be guided by personal predilection in their exercise of that power of judicial review. In the Federalist No. 78, he rejected the concern that such judicial review made the judiciary superior to the legislature:

> A Constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. * * * It can be of no weight to say that the courts, on the pretense of a repugnancy [between a statute and the Constitution], may substitute their pleasure to the constitutional intentions of the legislature. * * * The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the subetitution of their pleasure to that of the legislative body. [This] observation * * * would prove that there ought to be no judges distinct from that body.

Such a commingling of the legislative and judicial functions, of course, would tend to start us down the road to the kind of tyranny the Framers fought a revolution to overthrow, and warned about when they separated executive, legislative, and judicial functions in our constitutional scheme.

When judges depart from these fundamental principles of construction, they elevate themselves not only over the executive and legislative branches, but over the Constitution itself, and, of course, the American people. These judicial activists, whether of the left or right, undemocratically exercise a power of governance that the Constitution commits to the people and their elected representatives. And these judicial activists are limited, as Alexander Hamilton shrewdly noted over 200

years ago, only by their own will—which is no limit at all.

As a consequence of judicial activism, we have witnessed, in an earlier era, the invalidation of State social welfare legislation such as wage and hour laws. Since the days of the Warren Court, judicial activism has resulted in the elevation of the rights of criminals and criminal suspects, resulting in the strengthening of the criminal forces against the police forces of our country; the Orwellian twisting of the constitutional guarantee of equal protection of the law and statutory prohibitions against discrimination into a license to engage in reverse discrimination; the creation out of thin air of a constitutional right to abortion on demand; and more. I might point out that restoring the original meaning of the Constitution or statutes is not extreme, or ultra, or part of what one of my colleagues, in opposing Judge Thomas, called the rightwing extremist movement. One of the objectives of the judicial activists for the future is the elimination of the death penalty.

The Constitution, as it has been amended through the years, in its original meaning, is our proper guide on all of these issues. It places primary responsibility in the people to govern themselves through elections. That is why appointing and confirming judges and Supreme Court Justices who will not let their own policy preferences sway their judgment is so important.

While on the topic of judicial activism, I note that many of my liberal colleagues—now that they fear that their ideological brethren will no longer control the Supreme Court—have suddenly discovered the doctrine of stare decisis; standing by decided rulings. They even suggest that a failure to adhere to stare decisis now by the Rehnquist court would amount to judicial activism.

In my view, respect for legal precedent is important principally in order to facilitate adherence to the original meaning of statutes and the Constitution. Restoring original meaning by overruling earlier, overreaching decisions is not judicial activism. Rather, it is a reflection of fidelity to the Constitution and laws as enacted, not the personal preferences of the judiciary, be they liberals or conservatives. Overturning prior decisions that depart from original meaning is politically neutral. It is the fulfillment of the principle of democratic self-governance by which we are supposed to live. Now, some prior erroneous decisions are so embedded in our very way of life, with so many expectations and institutions built around them, that overturning them would be imprudent. But Justices across a wide spectrum, including Justices Brandeis, Cardozo, Frankfurter, Powell, and Brennan, have acknowledged that prior Supreme Court decisions can be overturned in a proper case. In fact, there have been about 200 of them that have been thus overturned.

The touching concern that some liberals express for precedents today is based largely on their desire to preserve only certain percedents—the judicial activist decisions of which they approve. But when the Supreme Court had earlier overturned precedents of which these liberals disapproved, they were not to be found among the ranks of the advocates of stare decisis.

In 1961, in Mapp versus Ohio, the Supreme Court overturned a 12-year-old precedent, Wolf versus Colorado, and imposed the exclusionary rule on States. I do not recall much, if any, concern expressed by liberals about stare decisis at that time. As Prof. Milton Handler of the Columbia University Law School had written as early as 1967:

> Eminent scholars from many fields have commented upon [the Warren Court's] tendency towards overgeneralization, the disrespect for precedent, even those of recent vintage, the needless obscurity of opinions, the discouraging lack of candor, the disdain for the factfinding of lower courts, the tortured reading of statutes, and the seeming absence of neutrality and objectivity. [Handler, the Supreme Court and the Antitrust Laws: A Critic's Viewpoint, 1 Ga. L. Rev. 339, 350 (spring 1967)].

Law Prof. Earl Maltz, in 1980, wrote:

> It seems fair to say that if a majority of the Warren or Burger Court has considered a case wrongly decided, no constitutional precedent—new or old—has been safe." [Maltz, Some Thoughts on the Death of Stare Decisis in Constitutional Law, 1980 Wis. L.Rev. 467 (1980)].

As the June 20, 1966 U.S. News and World Report report said:

> The upheaval in America * * * under the Warren Court has been characterized by legal scholars as the most "daring and revolutionary" period of "judicial activism" in constitutional history.

This disregard for precedent is acceptable to some when it implements a liberal social and political agenda. Then when the judicial activist decision is rendered, it is supposed to be sacrosanct under the suddenly reappearing doctrine of stare decisis.

One more example: The Supreme Court in 1976 held in Gregg versus Georgia that the death penalty is constitutional. Nevertheless, Justices Brennan and Marshall repeatedly dissented in subsequent cases and in denials of stays of execution on the ground that the death penalty is unconstitutional. I am not aware of any criticism of these Justices for ignoring stare decisis by liberal opponents of the death penalty.

In contrast to a result-oriented approach, the application of stare decisis for the purpose of retaining the original meaning of provisions enacted by the people through their elected representatives or convention delegates is a principled and politically neutral use of stare decisis.

While Supreme Court decisions obviously bind the lower courts, when it comes to the Supreme Court's later consideration of an issue, Justice Frankfurter's words are apt:

> * * * the ultimate touchstone of constitutionality is the Constitution itsslf, and not what we have said about it. [Graves v. O'Keefe, 306 U.S. 466 at 491, 492 (Frankfurter, J. concurring)].

In conclusion, Judge Thomas understands the limited role of the courts in our constitutional scheme. He is eminently qualified to serve on the Supreme Court, and he acquitted himself admirably before the committee, as he has done in all of his professional endeavors in the private sector, the State sector, and in all three branches of the Federal Government.

As a matter of fact, let us just be honest about it, those who are criticizing him for lack of experience: Not any of us in this body has the experience, at age 43, in my opinion, that Judge Clarence Thomas has had.

Let us give some credit for that. I think he is eminently qualified to serve on the Supreme Court. He did a good job before the committee, as he has done in all of his professional endeavors.

I look forward to voting for his confirmation and his tenure as Associate Justice of the U.S. Supreme Court.

Mr. President, I yield the floor.

ORDER OF PROCEDURE

Mr. GORTON. Mr. President, I ask unanimous consent to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield for an inquiry? Might I pose a request to the Chair that I follow the Senator, so my waiting around will not be in vain?

Mr. GORTON. I will be delighted.

Mr. DOMENICI. I ask unanimous consent that the Senator from New Mexico follow Senator GORTON, when he has yielded the floor, for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington is recognized.

Mr. GORTON. I thank the Chair.

(The remark of Mr. GORTON pertaining to the introduction of S. 1803 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 1804 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. SANFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

THE SENATE ROLE OF ADVICE AND CONSENT

Mr. SANFORD. Mr. President, history has a way of calling attention to itself. In 1932, just 2 months shy of his 91st birthday, Oliver Wendell Holmes informed then President Hoover of his intention to resign from the U.S. Supreme Court. Holmes, in declining health, submitted his letter of resignation to the President stating that he was compelled to sever "the affectionate relations of many years and the absorbing interests that have filled my life." The President replied, "I know of no American retiring from public service with such a sense of affection and devotion of the whole people." Chief Justice Hughes wrote of Holmes that his colleague's opinions "have been classic, enriching the literature of the law as well as its substance."

Last June, another icon of constitutional jurisprudence, Justice Thurgood Marshall, announced his retirement from the Nation's highest court. Coincidentally, this week marks the 24th anniversary of the day Justice Marshall was sworn in as a member of the Supreme Court. With Justice Marshall's retirement we are again met with the constitutional duty to raise to that body another justice, and must consider the individual whom the President has nominated. It is fair to measure the nominee by the career, legal scholarship, and wisdom of the one he would replace. The Hughes appraisal of Justice Holmes suggests an ultimate standard to which all Supreme Court Justices should aspire but few can attain. Now, as the Senate reviews the President's choice for a Supreme Court Justice, it is a fair question to ask how close might this nominee come to reaching the Oliver Wendell Holmes standard? How close will the nominee come to the Thurgood Marshall standard? The qualities possessed by those men and their great service are legitimate and proper standards. Why should the President not seek the best?

Whoever is ultimately confirmed will become only the 106th Justice of the Supreme Court—so few, serving so many, in a unique and important exercise of American freedom, protecting the unity and the diversity in our pluralistic society.

The determination of who shall be the 106th person in whom we place our trust for a lifetime is not a political decision. It is a sole and solemn obligation of each U.S. Senator. We each must decide how we will make such judgment. We should set tough standards and exacting standards.

My questions about nominees for the Supreme Court have not been related to what his or her decisions will be, but rather to how these decisions will be reached. Certainly those who vote on the confirmation of a Justice should examine prior positions and writings, but my approach has been to inquire about a candidate's scholarship as defined by the integrity of his intellect, his knowledge of the law, and his objectivity. True scholarship is the best guarantee we have of a justice's future performance. All other attributes pale in comparison.

I have said in deliberations about Supreme Court nominees that scholarship is definable and recognizable, and it is the relentless, uncompromising search for truth. The intellectual honesty of true scholarship and the concomitant intellectual capacity that will measure up to the challenge are the indispensable attributes that we should consistently demand, with no compromise, of a Supreme Court Justice.

These are the standards I have used for others, and are the standards I must use today in making my sole and solemn decision about the confirmation of Judge Clarence Thomas.

JUDGE CLARENCE THOMAS

Rarely has the Senate heard a more moving and impassioned opening statement to the Senate Judiciary Committee than the one delivered by Judge Thomas on September 10. Indeed, there is much to applaud in the life of Clarence Thomas. He is a self-made man, he has lifted himself out of an impoverished childhood in rural, segregated Georgia. His sruggles are not unique to those of his generation and race, but they are important statements about the man and his ability to face hostilities and prejudice, to educate himself, to work hard and to succeed. I praise that kind of success, and have dedicated my public career to shaping an America where far more such success stories can be achiveved. His record is more than relevant here, for it is, I might note, the peculiar place of the Supreme Court among all of American institution to protect the disadvantaged from abuse and prejudice and discrimination. It was the Supreme Court, after Presidents, Congresses, Governors and State legislatures had failed, who broke the shackles of prejudice and ended the racial segregation in our schools.

The question for us goes beyond his biography to his qualfiications to participate from such a special pedestal in the shaping of the Nation for the next half century.

Having spent a large measure of his adult life in various appointed offices in the executive branch before being appointed to the Federal bench a scant 18 months ago, Judge Thomas has been noted for his willingness and stridency in speaking out on a variety of issues.

During the confirmation hearing, Judge Thomas retreated from many of his opinions and positions in the speeches and articles of his past. His disavowal of previously held opinions as statements expressing hostility and lack of support for Supreme Court precedents, and his challenges to congressional authority, raise serious questions. By distancing himself from these earlier statements, the judge, at one time or another, offered reasons such as: he had not read a document before citing it in a speech; he had not agreed with the statements he explicitly endorsed in an article; or, he was only trying to make a point with his audience.

Are these the responses of a scholar—of a truth seeker? Judge Thomas, he seemed to be contending, had simply expressed frivolous views for the benefit of the moment. Consider some examples of his responses.

Judge Thomas was the highest admininstration official to serve on a White House working group which issued a report sharply criticizing as fatally flawed a series of decisions protecting the right of privacy including Roe versus Wade. The report noted that such decisions could be corrected by either constitutional amendment or by "appointment of new judges and their confirmation by the Senate." This may or may not be true. I am not concerned with the appraisal, nor with the suggested scheme. I find the explanation of Judge Thomas to be astounding. "To this day, I have not read that report," he said. That tells me something I did not want to know.

With respect to natural law, Judge Thomas in both speeches and articles repeatedly found the concept and application of natural law to constitutional interpretation attractive when advocated by others and praiseworthy as a firm basis for constitional decisionmaking. The danger with the application of natural law is, of course, that it can be whatever the beholder wants it to be, and used to achieve just about any result desired. These previous endorsements of natural law by Judge Thomas did not survive the confirmation hearing but they relate now to the soundness of his scholarship.

During a speech before the Federalist Society at the University of Virginia Law School in March 1988, Judge Thomas stated,

> The higher law background of the American Government whether explicitly appealed to or not, provides the only firm basis for a just and wise constitutional decision.

In an article published in the Harvard Journal of Law and Public Policy in 1988, Judge Thomas stated:

Natural rights and higher law arguments are the best defense of liberty and of limited government.* * * rather than being the justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok majorities and run-amok judges.

As a final example, the praise and support for the Lewis Lehrman article, "The Declaration of Independence and the Right to Life: One Leads Unmistakably to the Other," which applied natural law to the right to life and afforded constitutional rights to a fetus at the moment of conception, was extravagantly praised in the speech Judge Thomas delivered before the Heritage Foundation in 1987. In that speech the judge stated that the Lehrman article was "a splendid example of applying natural law to the right to life."

Yet, during the hearings, Judge Thomas qualified his statement as merely an attempt to "convince his audience" concerning conservative views on civil rights. He stated that he "did not endorse the article" and did not agree with the Lehrman conclusions. He testified that he had only skimmed the article before praising it, that it was merely a throwaway line and that "I do not believe that Mr. Lehrman's application of natural law is appropriate."

During the hearings, Judge Thomas in rebuttal of his Harvard Journal article as well as these other examples, also told the Committee:

I don't see a role for the use of natural law in constitutional adjudication. My interest in exploring natural law and natural rights was purely in the context of political theory. I was interested in that. There were debates that I had with individuals, and I pursued that on a part-time basis.

Unfortunately, there are other examples of this wrenching disassociation with former beliefs to be found in the judge's statements on economic rights under the Constitution, on Oliver Wendell Holmes, on the obligations of Government for the less fortunate. In explanation, although he did not see any inconsistencies in his own statements, Judge Thomas offered a rationale in the change of role he had assumed on moving from the executive branch to the judicial branch that his words then were those of an advocate and his words now are the result of efforts to remain above the fray and under the cloak of impartiality.

In a speech in 1987, Judge Thomas continued his attack on precedents as egregious and commended the lone dissent of Justice Scalia in the case of Johnson versus the Transportation Agency of Santa Clara expressing the hope that it would "provide guidance for lower courts and a possible majority for the future." That case tested the appropriateness of voluntary affirmative action plans by private and public employers. Judge Thomas called the law an improper creation of "schemes of racial preference where none was ever contemplated."

In response to questioning on this issue, Judge Thomas stated that "when one is involved in the midst of debate in the executive branch and advocating a point of view * * * one continues to advocate that point of view. When I moved to the judiciary, as I noted earlier, I ceased advocating those points of view."

I am also troubled by Judge Thomas's critical views on the limits of congressional power. In another case in which Justice Scalia was the lone dissenter and used natural law to opposed a statute authorizing the appointment of the special prosecutor, Judge Thomas said of the case, Morrison versus Olson, that the Chief Justice had "failed not only all conservatives but all Americans" and that Justice Scalia showed "how we might related rights to democratic self-government and thus protect a regime of individual rights."

As a member of the Court he would be charged with faithfully interpreting the congressional legislation and determining Congress' authority in our constitutional system. Despite his disclaimers, his views are disturbing for their bearing on his understanding and appreciation for the separation of powers and his qualifications to interpret statutory laws.

CONCLUSION

I cite these examples not to question Judge Thomas' views, but to examine his reasoning and intellectual processes. As Prof. Christopher Edley of Harvard put it, support for Judge Thomas would be "choosing evasion over candor, conversion over consistency, political scripts over constitutional debate."

I have examined Judge Thomas' qualifications to serve as a Justice on the Supreme Court of the United States. I have listened to his testimony and I have read his articles and speeches and I have found him wanting. His 5 days of testimony were less than convincing.

We witnessed a likeable individual with a hazy understanding of the law, a thought process frequently meandering and unsure of its path, and with ill-fixed and vacillating beliefs. I am also less than confident that he could stand up to his colleagues in debate and discussion of the law in all its shapes and shadows. The Winston-Salem Journal, in yesterday's editorial, affirms my own concern. The Journal refers to a seminar attended by Supreme Court reporters and constitutional law professors this past weekend, at the College of William and Mary's Marshall-Wythe School of Law, to preview the coming Supreme Court term. The editorial stated when evaluating Judge Thomas' qualifications, "(t)o a person, they noted that when Thomas departed from his scripted answers, he demonstrated little familiarity with constitutional jurisprudence. * * * For years, he is likely to remain in the shadow of better-prepared justices."

I am also reminded of a conversation I had recently with John Hope Franklin, emeritus professor of history at Duke University. He expressed deep regret that the President had sent forward the name of Judge Clarence Thomas. "Thurgood Marshall," he reminded me, "graduated first in his law school class, and served as Solicitor General of the United States, as well as sitting as a Federal appellate court judge." He went on to say it was "anything but complementary to the hundreds of highly qualified black men and women who are legal scholars to have the President declare a candidate such as Judge Thomas the 'best' for the job."

I hold my duty under the Constitution to render "advice and consent" on the nomination of an individual to the Supreme Court to be an honored and privileged responsibility and one that must be exercised with every effort to seek truth and reason.

Sadly, I come to the conclusion that I must exercise my duty by withholding my consent to the nomination of Judge Clarence Thomas to be a Justice on the Supreme Court of the United States.

Mr. President, I thank you and I yield the floor.

Mr. THURMOND. Mr. President, I yield to the Senator from Colorado.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Colorado.

RURAL HEALTH CARE IN AMERICA

Mr. BROWN. Thank you, Mr. President, for your willingness to sign on to a letter we will send to the White House asking if there is not some way we can fund the 1-800 lines for Medicare. I do not want to divert the Senate from this important deliberation, but I think this is a matter my colleagues will be interested in.

Rural health care has a number of problems in America. Through a variety of programs, we tried to address those and help out. One of the significant programs I know all of our colleagues are familiar with is the Medicare Program. One of the things that impacts the rural areas with the Medicare Program is the fact that when people have trouble filling out the very complicated forms, which are very difficult to understand, they have a 1-800 number they can call to get some help. It is important for the rural areas because our urban areas all have offices in them. That is perfectly obvious to everyone. But in the rural areas, often the areas with the least income of anyone in our country, they need that 1-

800 number to simply find out what is going on.

I think what is happening now is alarming. The suggestion by HCFA is to eliminate the 1-800 numbers. Some who live in urban areas may say, "So what? That is not a problem." But let me assure them that it is a problem for much of America.

The simple facts are these: Rural health care providers are paid a small fraction of what urban health care providers are paid for doing the same service. That is right. In rural Florida, or rural Colorado, oftentimes our rural health care providers will receive half of what health care providers are paid in the city for exactly the same function. In Colorado, we have some services that the rural areas get half of what the Denver hospitals get, and the Denver hospitals get half of what the Los Angeles hospitals get.

I am not here to address that issue. That is a separate issue. But the point is this: Rural health care in America is a major problem and it suffers in part because of the way we discriminate against them in the formulas. The 1-800 numbers per beneficiaries and providers are vital to them to at least be able to fill out the form and understand the law so they can submit their claims.

HCFA has proposed to eliminate the 1-800 numbers. What it means is you can no longer call in and find out why your claim has been turned down. If you do not have the money to pay a private physician, you no longer have a 1-800 number to call and find out which health care providers will take Medicare patients. If you do not have the 1-800 number, providers cannot call in and find out what the problem is with a form or a billing that was not paid or, more precisely, how to fill it out in the first place.

We are not talking about anything that is easy or simple. We are talking about something the IRS would find shocking and complicated. The simple fact is the regulations in Medicare are some of the most complicated in the history of mankind. Any OSHA inspector would be proud of the complications that have gone into those regulations. The simple fact is people need help in knowing how to fill these forms out. The regulations are complicated and involved.

Some may say: What is the problem? If they need help in filling out the forms, why not call directly on a regular number? A couple things happen. First of all, a portion of the people do not have the money to call. Second, if someone on the receiving end of the call does not want to deal with one more problem that day, all they have to do is put you on hold and it is on your nickel. Someone who does not have money to pay for a half an hour phone call soon gets discouraged.

There is no subtlety in this. The simple fact is Medicare is talking about 10 percent fewer inquiries. This is not designed to shift the burden of the cost of those calls. It is designed to eliminate those calls. In their own review, they have suggested this will eliminate 10 percent of the calls. It might.

Mr. President, let me suggest that problems do not go away. The inability to understand the regulations do not disappear if you make it difficult to find out the information. The inability to file a claim does not go away if you do not have an 800 number. What it does is it becomes compounded. Work will increase, not decrease. This is a bad idea. I think it is to HCFA's benefit that they have suggested they can save $37 million this coming year in administrative costs. My colleagues might be surprised to know that they spend $1.45 billion a year for overhead. Let me repeat that: Overhead on Medicare is $1.45 billion; $1 billion 450 million a year on overhead.

Sure, they ought to save some money; absolutely. But before we cut off the people who have the least money and who do not understand how to fill out their forms, let us take a look at the kinds of things you could do to really save money. Let us take a look at the offices in which they reside. Let us take a look at their travel budget. Let us take a look at simplifying the forms. We could even take a look at simplifying the regulations. What about suggesting ways to revise the insurance protection so the benefits are available, but you simply eliminate some of the paperwork?

There are a lot of ways to save that money, but cutting off poor people in rural areas from finding out why their health claim is simply plain wrong and reflects bad priorities.

Already 41 of our colleagues have signed a letter to the President of the United States asking him to take a look at this and review the decision to eliminate the 1-800 numbers. I think we need to do it.

Health care providers are involved in these, too. Health care providers have problems knowing what those regulations mean and call for. They are part of this. There are 6.2 million calls from health care providers every year simply to find out how to fill out the forms and how you follow up on claims.

Mr. President, I hope all of our colleagues will consider signing this letter. I think the letter can make a difference. I believe if the President of the United States understands what is at stake here, he will help HCFA and the Medicare system turn these priorities around. We ought to be eliminating waste and fat and complications in the Medicare system, not cutting people off from finding out how to comply with the laws and the regulations.

I ask all of my colleagues, please give our office a call. Let us add your name to this letter to the President. I think by quick movement now we can save the elimination of this phone service that is so vitally needed. The decision is to be made within the next week or two. Money has to be made available from the contingency fund to keep the 1-800 lines going. If it is not done within the next 2 weeks, millions of Americans in rural areas who do not have the money for those calls are going to be cut off completely.

I thank the Chair.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate resumed consideration of the nomination.

Mr. BIDEN. Mr. President, today, as we all know, the Senate has begun debate on how it will discharge one of the most important responsibilities, and that is deciding on whether to give our advice and consent to the confirmation of a Supreme Court Justice. It is a duty, obviously, we should not apologize for taking seriously, for it is precisely how the framers intended us to respond, that is, to take it very seriously.

Indeed, the early drafters of our Constitution gave this body and this body alone the power to select Justices to the Supreme Court now merely just to vote on them but to select them in the first instance.

It was only in the final hour of the constitutional convention, and as a matter of compromise it was decided that the President of the United States should also share in that responsibility. The Founders of our country did not envision that the Senate should be circumspect in exercising this advice-and-consent duty that we have. Otherwise, we should not gave gotten to the point where it was not until the very end that the President was even counted in on this arrangement.

Indeed, it was just 6 years after the Constitution was written when this body numbered 3 drafters of the Constitution among its Members. Just 6 years after the Constitution was ratified, the Senate voted to deny confirmation to George Washington's choice for Chief Justice. The Chief Justice nominee was John Rutledge. As the Senate of 1795 understood, so we should understand today; that is, that the gravity of our power to withhold

our consent to the President's nomination should not overburden our exercise of that power where it is appropriate.

For me, Mr. President, the nomination of Clarence Thomas to be Associate Justice of the Supreme Court is just such a case. For me, now is the time again for the Senate to exercise its prerogative not to give its consent to the President's nominee.

Mr. President, my view on this matter has nothing to do with Judge Thomas' character, for he is a man of character; it has nothing to do with his competence, his credentials, or his credibility. None of these are the sources of my opposition to Judge Thomas' confirmation to be an Associate Justice of the Supreme Court.

Mr. President, for me the question concerns Judge Thomas' judicial philosophy, his approach to interpreting the ennobling but nonetheless ambiguous phrases of our Constitution. And on this score, as I made clear during the consideration of Justice Souter's nomination, the burden of proof, in my view, rests on the nominee to demonstrate that his or her suitability for the Court in fact exists.

The burden is on the nominee to prove that he should go to the Court, not, in my view, upon the Senate to prove that he should not go to the Court. Just as the nominee must, in my view, persuade the President that he or she is the right person for the job before the President nominates that person, it makes eminent sense that that requirement of persuasion exists with regard to the Senate, for no one would suggest that a nominee, as a matter of right, can say to the President, "Nominate me." Obviously, the nominee has to demonstrate to the President of the United States of America that he or she is worthy of the position.

Based on what I just said about our Founders' acknowledgment that we, the Senate, had an overwhelming responsibility with regard to this process of how to form the third branch of government, how to fill it out, it makes then equally as much sense, is equally as compelling that just as the nominee must prove to the President that he or she is qualified, he or she must so prove to the Senate that he or she is qualified. The nominee must persuade the Senate that he or she is the right person for the Court before receiving our vote for confirmation.

In my view, Judge Thomas has not met that burden. Let me say at the outset here I acknowledge that reasonable women and men in this body, listening to all of the testimony, men and women of good conscience and good intentions, can differ on the judgment that I have made. I do not believe this is an absolutely cut-and-dried case. This is a close call, Mr. President. But I have concluded, reluctantly I must note, that Judge Thomas has not met the burden.

It is not that I know for certain that he will take the Court in a troubling new direction as some have suggested. I am not nearly as certain as others who say with absolute certainty, "I know the judge will take us careening off the path of history in this direction or that." I do not know that. I do not know that.

It is rather that I have too many doubts about the judicial philosophy of Judge Thomas to be confident that he will not do that and, for me—every Senator makes a different judgment—the minimum burden that must be met is the nominee convincing me that he will not—will not—take us off careening in the path that in fact is against the interests of the people of the United States, in my view.

Given what is at stake, Mr. President, and where the Court currently stands, it is a risk that I believe we cannot afford to take.

So let me start by discussing for a few minutes—I will not take much time today—just what is at stake now with respect to the freedoms of all Americans given the current direction of the Supreme Court.

Because we have heard so much about abortion, many people seem to think that this is the only right at stake in this debate. Such a view is very much mistaken, for the issues here go far beyond any one concern. Were that the only concern, Mr. President, that would not be a sufficient concern, in my view, because the judge did not state what his view was for me to vote against him merely because he refused to state his view. What is at stake now is the entire fabric, in my view, of our modern Constitution, an entire framework of legal protections, rights, and powers built up with care and caution over the past 6 decades, which I believe is now on the verge of being repudiated by the Rehnquist Court. That is what is at stake here, Mr. President. That is what concerns me the most.

Since the mid-1930's the Supreme Court has been erecting a basic framework of protecting our constitutional rights, a framework which is elaborate, and any attempt to reduce it to a few principles is a vast oversimplification. But, in the interest of time, in an attempt to make my point, I think it is important to recognize that there are at least three basic tenets of this approach that are under aggressive attack from the far right, this approach that has been in place for at least the past four decades.

The three basic pillars of this structure that are now seriously threatened are as follows: First, the Court's increased protection of our personal and individual freedom, like the right of privacy, freedom of speech, and freedom of religion, and the Court's insistence that the Government can interfere with these rights only in the most extreme circumstances. That is a principle that has been established for the last 40 years, Mr. President, and has been built upon and built upon year after year, and one which I believe is now in jeopardy.

The second broad principle is that the Court grants to Congress broad powers to advance the common good by enacting laws to regulate health, safety, the economy, and the environment and its restraint—that is, the Court's restraint—from blocking such laws passed by the legislature in any but the most extreme cases; in short, giving the legislative body, in the name of the people, the right under the police power of this country to protect the health and welfare of the Nation.

Third, the Court's fair balance between the legislative branch and executive branch to make sure that laws passed by Congress are fairly and fully applied. Think about the significance of these three developments in our constitutional law, new in the past 60 years. Sixty years ago the Supreme Court recognized no right of individuals to choose their own marriage partners or to enjoy the freedom of the press, or the freedom of religion beyond the interference of State government. Sixty years ago those principles were not enshrined in our Constitution in the cases that have been decided by the Supreme Court. Sixty years ago there was no power of the Congress to pass laws regulating the safety in the workplace or the quality of our air and our water. And 60 years ago there was no ability of Congress to establish independent agencies to see that laws were evenhandedly administered.

Today, all these principles having been established over the past 60 years there is an ultraconservative campaign to undercut the basic legal framework the Court has erected around these three freedoms over the past 60 years. The far right aims to pull down the pillars which support our modern constitutional philosophy. Ultraconservatives want to rip apart the framework built over the past six decades, supplemented and sustained by both liberal and conservative Justices over the last 60 years, by Courts dominated by both Democratic and Republican appointees. And that demolition, Mr. President, has already begun.

To cite just one example, about a year ago, in the case of Employment Division versus Smith, the Supreme Court threw out a 30-year-old precedent and drastically limited the freedoms of religious minorities to practice their faith free of Government intrusion. In other respects, the ultraconservative agenda is clear and lacks only the votes on the Court to be turned into law immediately.

In the case called Michael H. versus Gerald D., for example, Justices Scalia

and Rehnquist, speaking for a minority, outlined a judicial philosophy for dealing with the right to privacy that would vastly contract the scope of what rights that we now so highly treasure, which are highly treasured by Americans.

This radical approach, which Scalia and Rehnquist represented, so far has not won a majority of the Court.

In yet another respect, further assaults on the framework of protecting constitutional rights loom ever more clearly on the horizon, being advanced by legal scholars, whose ideas were once considered intellectual oddities, but who are now growing in power and influence.

In his writings and his speeches, Judge Thomas appealed, and appeared to embrace through his appeal, the views that advanced each of these three major items on the agenda of the far right. That is, he appeared to embrace the desire to narrow the protections for individual rights; he appeared to embrace tbe notion of the desire to limit the Congress' power to pass laws protecting our health, safety, and our environment; the desire to fundamentally alter the balance of power between the branches of the Government.

Like those who promote these views, Judge Thomas often phrased his support for them in the context of natural law. That is why there was so much questioning centered on this obscure and confusing matter—natural law. I want to make clear that I was not pressing Judge Thomas on natural law and his views on it because I wanted him to embrace it, or not to embrace it, nor because I wanted him to reject any particular view on it, as so many scholars whom I respect do. The point was to learn what philosophy, what method of interpreting the Constitution, Judge Thomas would bring to the Court, no matter what label he chose to put on his philosophy—natural law or otherwise.

Thus, what concerned me about his decision early in the hearing to repudiate his natural law writings was not that Judge Thomas was against natural law, any more than I feared that he was for natural law before the hearing began. What concerned me before the hearings, at hearings, and after the hearings, and as we stand here today, has been trying to learn just what approach to interpreting the Constitution Judge Clarence Thomas would bring to the Supreme Court; or, more specifically, whether Judge Thomas would join the emerging ultra conservative activist majority on the Court in dismantling the constitutional and legal framework I have described that has emerged over the past 60 years. In that regard, Judge Thomas' responses to the questions of the Judiciary Committee were, in my view, inadequate.

Many have expressed frustration at Judge Thomas' lack of responsiveness to the committee's questions. Others have said that vagueness and imprecision in responding to the questions was inevitable, because such an approach has become the most likely path for a nominee to win confirmation.

As I have made it very clear on many occasions, Mr. President, only the nominee can decide what question he or she will or will not answer. But if the choice is the nominee's to make, if this choice to decide whether or not the answer is theirs to make, the decision about what to do in response to a nominee's action is totally for us to make. If the nominee chooses not to answer a question, that is the nominee's right. But it is equally as much the right of a Senator to conclude that he will or will not vote for the nominee, based upon the refusal to answer, the inadequacy of the answer, or the vagueness of the answer.

I cannot force a nominee to complete a thought. I cannot force a nominee to engage the committee in his answers. But I am also not obliged to vote for the confirmation of a nominee who fails to do either.

Throughout his testimony, Judge Thomas gave us many responses and many full responses, but too few real answers.

Let me be clear. I am not talking about his refusal to say how he would vote on Roe versus Wade. For the 400th time, Mr. President, as long as I have chaired this committee, I have never asked any nominee, nor did I ask Judge Thomas, this question; nor am I opposing him because of his failure to answer this question when it was put to him by others. Instead, I am talking of the many constitutional issues on which Judge Thomas declined comment and provided unclear and uncertain distinctions.

What little we did learn about Judge Thomas' approach to the critical issues of the constitutional and judicial concerns has left a substantial question in my mind. As I noted before, Judge Thomas has praised some extreme ideas about economic rights, ideas which, if applied as their authors intended, would invalidate virtually every single modern legislative scheme to regulate the economy, the environment, and the workplace. He has endorsed a rigid view of separation of powers, an idea which, if fully implemented, would radically restructure government and its laws to affect a radical transfer of power from one branch of the Government, the Congress, to another, the President.

All of his writings and speeches, which address the question of the right of privacy, were hostile to the concept of the right to privacy—every one of them were hostile to the concept of the right to privacy.

Let me digress to make something clear with respect to the right of privacy. I asked about the right to privacy at such length, not in a result-oriented effort to determine how Judge Thomas would rule on Roe versus Wade, nor because I think there is any real chance that any State might ban the use of contraception in the year 1991. Rather, I made these inquiries because it is important that we place on the Court an individual who has an expansive view of personal freedom with respect to issues that will arise at the Court in the future, so we can have some faith that in issues that we have to even contemplated, they might very well be addressed in a way by someone who had an expansive view of personal liberties and freedoms.

So it is not good enough that a nominee begrudgingly pledges not to reverse the battles already won in the privacy area. Rather, I am looking for a nominee's disposition with respect to the question of personal freedom, not yet framed to the Court or the country.

I want to make it clear that this is not a liberal versus conservative question, and it does not require a liberal or conservative answer. There is no political or substantive reason why President Bush cannot nominate a jurist who would be good on these issues.

We all know many conservatives who think Government should stay out of people's private lives and that the courts, if necessary, should be vigorous in their defense of this ideal.

So to return to my principal point, Mr. President, these ideas on individual rights, economic rights, and on separation of powers, are part of an ultra conservative agenda to use the Court to fundamentally argue or alter the legal framework within which the Government operates. That is why I devoted so much of my time, Mr. President, at the hearings to questioning Judge Thomas on these matters.

Of course, Judge Thomas went out of his way at the hearing to assuage these fears. He said he had no agenda for the Supreme Court; that he had no disagreement with the Court's current approach to economic rights cases; that he had no idea of the full agenda behind the separation of powers views he endorsed in a speech, and that he supported the right of privacy. I accept each of these statements by the judge. I believe Judge Thomas when he says that he does not now have a checklist of cases to be overruled, and when he says that he never meant to advocate the full range of implications one could draw, or would have to draw, from his remarks.

So the question about Judge Thomas is what views will he, over time, apply to the Court?

I believe that Judge Thomas does not now know, nor does he have an agenda, but also he does not know, in my view, what views he will apply. But with the predisposition he articulated, I wonder what sort of an approach he will have as a Justice, once he does acquire a point of view on these issues.

This is a matter that I found to be of constant concern during the hearings and as I attempted to evaluate the judge after the hearings in determining how I should vote. Would Judge Thomas take the views hinted at in his speeches and writings and apply them to their full extent and conclusion as a Justice of the Supreme Court? This, for me, is the single most difficult question to resolve with respect to the nomination of Judge Thomas.

The major object of Judge Thomas' testimony was to reassure us that we need not worry. Unfortunately the major effect of his writings on these matters is to give great cause for concern. Where such doubts exist, I cannot vote to confirm the nominee. There is too much at stake for me to take a chance, too much at stake for us, as one newspaper urged, to "take a leap of faith."

Mr. President, Judge Thomas' writings sketch for us a judicial philosophy, if fleshed out and applied with force, would spell disaster for the balance this country has struck between the rights of individuals, the limits on abuses by businesses and corporations, and the powers of Congress.

I cannot gamble on what will happen once he arrives at the Court with the views he now acknowledges and the lack of a broader view of the role of the Court which he has demonstrated. This is a risk that I am not prepared to take.

Mr. President, these are the principal reasons why I will not vote to confirm Judge Thomas. It is not a decision I come to lightly, nor is it one that I enjoy making.

Everyone is impressed by Judge Thomas' personal life story. As I said at the outset, I have no questions at all about his fitness for high office in this country. Indeed, that is why I voted to place Judge Thomas on the second highest court in this land last year. But as difficult as this decision has been for me, it is one that I have made with conviction.

During the hearings, I found myself impressed by the testimony of Dean Calabresi, the dean of Yale Law School, who said of Judge Thomas: "I would expect that at least some of his views may change again." Having reference to the fact that he has changed his views over the past 20 or more years, as all of us have, to some degree or another.

Starting again and quoting:

I would expect that at least some of his views may change again. I would be less than candid, if I did not tell you that I sincerely hope so,

For I disagree with many, perhaps most of the public positions which Judge Thomas has taken in the past few years.

But his history of struggle and his past openness to argument, together with his capacity to make up his own mind, make him a much more likely candidate for growth than others who have recently been appointed to the Supreme Court. * * *

Mr. President, like the dean of Yale Law School, I believe that Judge Thomas is likely to change his views once again, once he is confirmed. The problem for me, Mr. President, is that no one can know the direction that growth will take, not Dean Calabresi, not me, not even Judge Thomas himself.

I can best summarize my views on Judge Thomas' writings and speeches as follows: It seems to me that the major focus of Judge Thomas' works was the construction of an intellectual framework for an approach to the question of civil rights and equality that would be a marked departure from the prevailing view, an approach that is one I generally do not accept, but that does have a growing number of adherents, and I might add, does have some substance to it and is arguably correct.

In the process of developing this philosophy with respect to civil rights, Judge Thomas referenced theories being developed by other writers, for other purposes.

These theories, as I have pointed out in detail in my earlier speeches and to some degree earlier in this speech, would have devastating consequences if taken to the conclusion that their authors intend for them. I acknowledge that perhaps Judge Thomas, as he indicated at the hearing, I acknowledge the fact Judge Thomas, as he said, did not intend to embrace the conclusion of these theories and instead meant only to endorse them so far as they supported his view on civil rights.

But the litany of speeches and writings Judge Thomas has made in the past, the consistency with which they have appeared to embrace ultraconservative views, the State of the current Supreme Court and the danger of the fabric of our laws if these views were implemented all make it an unacceptable risk. Let me repeat that: If you take the views he stated, admittedly maybe only for the purposes of justifying and providing an intellectual framework for his view on equality and civil rights but nonetheless much more far reaching in their potential application, much more far reaching, if you take the intention of the persons whose views he speaks out in support of, take this as one element, Mr. President, take the second element that the Court is no longer a Court that is balanced in the sense that it has a Justice Brennan and a Justice Scalia on the Court, someone from the left and someone from the right, there is no longer any anchor on the left that I am aware of to any significant degree. There is a Court no longer in balance, Mr. President, add that to the equation, one, views stated if taken to their extreme although intended to be applied to civil rights but are applicable to many other fields, a Court that is about to make judgments and decisions that may have five votes to fundamentally change 60 years of accepted precedents with regard to the rights of individuals with regard to their privacy, with regard to the balance between the executive and legislative branches of Government, and with regard to the ability of government to protect the citizens against the intentions if they are bad—and they are not usually—but if they are bad, of major power sources and centers in society, you add those together, Mr. President, and it seems to me that the only way one can vote for Judge Thomas is to take a leap of faith, which I wanted to take. But when you think of those three pieces and the potential consequences, if any one of those pieces were missing, Mr. President, I would vote for Judge Thomas, who potentially is ultra-right but has not an agenda, but views that will take him down that road, if in fact Judge Thomas would be placed on a court where he became one or two of a nine-person Court sharing those views, I would be willing to take a chance he does not take those views. If Judge Thomas had reputiated the views as they applied to things other than equality and totally reputiated them, I would be willing to take a chance and, Mr. President, if the fabric of the laws of this Nation were not being reconsidered to such a degree at this moment in our history I might take the risk, but the fact is all three circumstances pertain.

Where Dean Calabresi and I part company is in the extent to which I am prepared to take a chance on Judge Thomas' change being in the right direction as opposed to the wrong direction. For me, because of where the court currently stands, the costs of adding yet another ultraconservative member could be extremely high indeed. Rulings deemed unthinkable just a decade ago may be on the verge of becoming reality.

In the era of the Warren Court, such views could have been seen as intellectually interesting, but in the era of the Rehnquist Court, these views present a truly daunting possibility of taking the country in the direction that I fundamentally disagree with, taking it in a direction that I ran for public office to prevent from happening.

I wish Judge Thomas had put to rest my misgivings on this score, but, as I have already indicated, he has not. And we are at a place in our country's history where the risks of confirming his nomination are simply too high.

So we have come to this difficult juncture, and all of us have come to it—the Senate, the President's nominee, and the President.

But this confrontation was not inevitable; it could have been avoided.

Later during the Senate's consideration of this nomination, I intend to have much more to say about where the confirmation process stands and where I think we should go from here.

I, for one, believe, respectfully, that the President of the United States must shoulder a major share of the responsibility for bringing us to this place of uncertainty by adopting the agenda of the legal ultra-conservatives in his administration and attempting to use judicial appointments to radically alter the legal framework of our government and so state in the platform of the party and so state while campaigning.

Most of our other Presidents have taken a far different approach—a far less ideological approach—to filling vacancies on the Court.

But as I said a minute ago, this is a topic I will address in more detail later on during this debate.

For now, I will say only that I hope the President will join us in breaking out of the cycle of political skepticism that has grown up around the confirmation process, because without him it will be impossible to make that break.

I hope that this is the last Supreme Court nomination I am forced to oppose during my tenure in the Senate, for it is with a truly heavy heart that I oppose the confirmation of this nominee—and it is with real regret that I contemplate the possibility of more such conflicts in the years ahead.

But neither sorrow, nor regret—nor a desire to be able to support Clarence Thomas—can permit me to vote for his confirmation when so much is in doubt and so much is at stake.

If Judge Thomas is confirmed, then I hope for the day when I could come to the Senate floor and announce that my decision to vote against his confirmation was the wrong one, that I should have followed my instinct and my heart and not my intellect. That is my hope, Mr. President. But I cannot today vote my hopes.

Therefore, I will not vote to confirm Clarence Thomas as an Associate Justice of the U.S. Supreme Court, while recognizing that equally well-intended, decent women and men in both parties can arrive at a very different view, because it is a close call.

Mr. President, I cannot vote my hopes. Too much is at stake.

I yield the floor.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. SEYMOUR. Mr. President, I ask unanimous consent that I be permitted to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SEYMOUR. I thank the Chair.

(The remarks of Mr. SEYMOUR pertaining to the introduction of S. 1807 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Thank you Mr. President.

MEDICARE TOLL-FREE LINES

Mr. GRAHAM. Mr. President, I wish to bring to the attention of the Senate this afternoon a matter that is of great importance to older Americans. In my State, we have 2.3 million older Americans who are Medicare beneficiaries.

Earlier this year, the Health Care Finance Administration, commonly referred to as HCFA, notified Medicare contractors that Medicare toll-free phone service for beneficiaries would be eliminated effective October 1.

HCFA announced that 800 numbers would be discontinued due to inadequate funding levels requested by the administration in its fiscal year 1992 budget request to the Congress and expectations of what congressional appropriations levels would be.

Although toll-free service was not, in fact, terminated as of the 1st of October, it is expected to be after the House and Senate Labor-HHS appropriations bills are completed in the conference committee if funding levels are not increased.

Mr. President, here are some important facts about the 800 toll-free numbers for medicare beneficiaries:

Nationally, the toll-free line received about 33 million calls during the last fiscal year—33 million older Americans used this service in order to seek information.

In my State, there were approximately 2 million calls made last year, roughly 6 percent of the inquiries placed nationally.

Toll-free phone service represents the front line of defense against Medicare fraud and abuse. Let me repeat that, Mr. President. Toll-free phone service represents the front line defense against Medicare fraud and abuse. In my State of Florida, there were 10,000 fraud inquiries last year, almost all of which were initiated by phone.

At an Aging Committee hearing held yesterday, witnesses testified the toll-free line represents the first and primary point of contact for most beneficiaries who are reporting circumstances that appear to be fraudulent or abusive to the Medicare system.

Miss Janet Shickles of the General Accounting Office opposed discontinuation of the phone lines. She argued that such a discontinuation "would be devastating as almost all of the complaints come in by phone. I think there are about 18 million calls a year to carriers from the beneficiaries and about 1 million letters addressing Medicare complaints."

Mr. President, I ask unanimous consent that an article which appeared in today's Washington Post entitled "Medicare Fraud Said to Cost Hundreds of Millions" be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRAHAM. Mr. President, Gloria M. Cartwright, from Pinellas Park, FL wrote to me on September 11 and asked that we continue toll-free services for this reason.

Miss Cartwright stated: "Please vote to keep the toll-free phone number for medicare in Jacksonville." Jacksonville being the office that services the citizens of Florida. "To have to pay to call Medicare and then be put on hold, as happens so frequently, could be disastrous for most senior citizens in Florida."

Mr. President, I ask unanimous consent that Miss Cartwright's card be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. GRAHAM. What will be some of the consequences of the termination of this toll-free service? Inattention to about one-third of the 30 million-plus inquiries about Medicare claims now submitted by beneficiaries and providers. That will be one of the consequences.

Further costs, stemming from increased physician administrative costs, costs attributable to fraud and abuse which would go unreported, and written inquiries, including those from Congress—that would be another consequence of cutting off the toll-free line.

Lack of access for beneficiaries to information on how Medicare, a complicated and ever-changing program, works, and how claims processing affects those beneficiaries; that would be a third implication of elimination of the toll-free line.

An especially troubling situation for the Florida Medicare contractor, Mr. President, is the fact that contractor experiences a distinct claims increase each winter due to the seasonal change in Medicare population. If 800 lines are turned off during these critical months, the effect in Florida could be even more dire than in States that do not experience this surge in Medicare population.

Over the last several months, in conjunction with a number of my colleagues, I have taken a series of actions relative to the maintenance of the Medicare toll-free service. On June 26, I wrote to the chairman of the HHS Appropriations Committee, Senator HARKIN, requesting an adequate appropriation level for the Medicare contractor budget in order to protect vital beneficiary services such as the toll-free line.

Similarly, the administration's earlier decision to no longer reimburse Medicare carriers for toll-free lines for health care providers eliminated one of the most cost-effective methods of meeting the needs of Medicare clients.

Medicare providers are required to submit all claims on behalf of their Medicare patients. With the anticipated changes in the Medicare fee schedule and the complexity of the program, health care providers need basic support services to help them comply with correct billing procedures.

Toll-free provider lines cost an estimated $3 million annually to maintain. In fiscal year 90 they serviced 6.2 million calls, for about $.48 per call. Toll-free provider lines have been especially important to physicians in rural areas who have relied on them to assist in answering patient questions and concerns about Medicare. It now will be much more difficult for physicians' offices to provide the same level of information services to their patients because of the added time and expense of calling the Medicare carrier long-distance.

On June 28, 10 Senators sent a letter to HHS Secretary Louis Sullivan asking for a review of the Department's decision to shut down the toll-free lines, but never received a response. Last July, the Senate Appropriations Committee report on the fiscal year 1992 Labor-HHS-Education appropriation bill identified the continued operation of the toll-free lines as a priority.

We ask that you intervene to stop the elimination of Medicare beneficiaries' toll-free lines. We also ask that as soon as they become available, fiscal year 1992 HHS contingency funds be released to support this service and reinstatement of the reimbursement allowance for provider toll-free lines.

Sincerely,

HANK BROWN, DAN COATS, J. JAMES EXON, CHARLES E. GRASSLEY, LARRY CRAIG, LARRY PRESSLER, RICHARD C. SHELBY, BOB SMITH, DENNIS DECONCINI, CHARLES S. ROBB, HERBERT KOHL, MARK O. HATFIELD, WILLIAM S. COHEN, THOMAS A. DASCHLE, JAMES JEFFORDS, BOB GRAHAM.

PAUL WELLSTONE, JOSEPH R. BIDEN, JR., TRENT LOTT, RICHARD BRYAN, PAUL SIMON, CONNIE MACK, CONRAD BURNS, SAM NUNN, QUENTIN N. BURDICK, TIMOTHY E. WIRTH, TOM HARKIN, ALFONSE M. D'AMATO, JOHN MCCAIN, MALCOLM WALLOP, JOHN WARNER, DANIEL K. AKAKA.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I thank the Chair.

Mr. President, having served on the Labor and Human Resources Committee, I got to know, and certainly got to respect, Clarence Thomas as a man of outstanding integrity, of intellect, and independence.

I predict—with no more certainty than anybody can predict in the opposite direction—that he will be an outstanding Justice. I predict it because I know his mind, I think. I predict it because I know his character and his integrity.

In adding my own voice of support to those favoring his confirmation, I feel compelled to make some points both about the nominee and about the sadly deteriorated nomination process.

It is utterly astounding to this Senator to hear opponents of Judge Thomas attack him for allegedly lacking candor before the Judiciary Committee. Admittedly he gave cautious answers, a caution due not only to judicial prudence but also to the Star Chamber quality of the new proceedings, having unfairly earned him charges of lacking a well-informed judicial philosophy and, most astonishing of all, lacking intellectual curiosity.

Others, who evidently observed different hearings but who share the same agenda, accuse him of being a judicial extremist. Mr. President, he cannot be both.

Well, he is neither an extremist, a fool, nor disingenuous. He is a principled man trying to survive a politically dominated process calculated to humble and humiliate anyone who does not share its liberal pieties and prejudices about the place of blacks in America. Woe betide the man who in his politically correct atmosphere dares to have independent thoughts and judgments.

But I do agree with some of the judge's critics that the obsession with his admittedly remarkable personal story overshadows the far more important intellectual story that can teach Americans and all freedom-loving persons throughout the world. Particularly at this moment in world history it is essential to recall the significance of Judge Thomas' invocation of natural rights.

Now the judge said repeatedly that natural law would have no place in his constitutional adjudication, and he has often indicated this in his writings. But it is utterly shameful that the Judiciary Committee of the U.S. Senate would have he or any other American feel apologetic for invoking it as a basis for our constitutional liberties. It is nothing less than a travesty when the very basis of our limited, constitutional Government should be treated with leering skepticism by too many who ought to know better.

It is only natural that Thomas, a descendant of slaves, should find natural rights appealing. Whatever phases of black nationalism existed in his younger life, they were transcended in his discovery of natural rights, and his absorption in the rich freedom emanating from the minds of Madison and Lincoln, natural rights men to the core.

Invoking Martin Luther King, Abraham Lincoln, and the American Founders, the judge has argued that natural rights provide the basis for constitutional government. Without natural rights we would, as Judge Thomas has warned, be subjected to run-amok majorities as well as run-amok judges. Without providing a formula or a code, natural rights remind us that mere willfulness cannot serve as a legitimate, principled basis for democratic government.

Natural rights have ever been the voice of common sense and the commonpeople against the willfulness of tyranny, whether one man or a mob, a fascist, a Communist, a theocratic despot or a self-centered king. We hear the language of natural rights in the era of ancient Greek democracy, in the voice of Antigone, as she beseeched Creon for common decency. We hear it in the language of the English revolutionaries, as they sought to limit the power of the monarchy, and of course, we heard it again in that epoch-making declaration: "we hold these truths to be self-evident, that all men are created equal.* * *"

I would say, Mr. President, self-evident to all but Judge Thomas' critics.

Today, we hear that very language of natural rights echoed in Eastern Europe and in China, where workers and students read the declaration to assembled masses. We hear it in South Africa, now finally appearing to abandon apartheid. Even the recent Soviet declaration of human rights and freedoms begins: "Every person possesses natural, inalienable and invincible rights and freedoms."

And what are these natural rights that so frighten Judge Thomas' critics while they continue to inspire the lovers of liberty the world over? Natural rights generally mean what most people today mean by human rights: basic freedoms of speech and press, freedom of worship, fair trials, the right to emigrate, the right to buy and sell property, and equal rights for women, among many others. Are these things, struggled for since the dawn of civilization and the foundation stones of our democracy, really so terrible? To listen to some of my Democrat colleagues, one would certainly think so. But perhaps they are indeed anathema to those whose liberal agendas would ride roughshod over these and any other liberties and decencies to reach their quota-driven goals.

Our rights as human beings exist from time immemorial; they are not created by a piece of paper; nor do they cease to exist because they are so often denied. A devotion to natural rights means a devotion to constitutional government: For Government officials that means respect for the powers and responsibilities that each particular branch possesses. Natural rights confer obligations on all citizens through the Constitution and laws; it is not a license for judges—or anyone else—to do

as they wish, thrusting themselves above the laws. Indeed, natural rights is why the law should be obeyed.

But as Lincoln emphasized in his speech on the Dred Scott decision, the declaration of the right does not mean its enforcement. It was the duty of the children and grandchildren of the founders, which means all of us, including the children of slaves, for the children of the founders are the upholders of their convictions to finally enforce that right. By recognizing that "all men are created equal" Americans could recover "the father of all moral principle in them, and that they have a right to claim it as though they were blood of the blood, and flesh of the flesh of the men who wrote that declaration, and so they are." So wrote and so spoke Abraham Lincoln.

The Civil War was the tragic result of America attempting to resolve the contradiction with which it was born—slavery in a land founded on the self-evident—Read Natural—Truth of Human Equality.

But the dangers to Lincoln's natural rights political philosophy did not end with the 19 century. They lived on in the antinatural rights ideologies and resentment and hatred that swept the Nation and the Court into enacting and approving segregation laws.

This antinatural rights ideology was one element in the rise of both nazism and communism, movements predicated more than anything else on the denial of the natural rights of individuals. Each sacrificed human rights to the will of a master race, a master class, and a master social agenda. Each denied, with gas and gulags, that legitimate government had to respect a fundamental, natural, human decency.

Those, Mr. President, today who scoff at natural rights should remember what the 20-century alternatives to natural rights—both here and in the world—have been.

In the long fight against segregation, natural rights was a vital ally in one of Thurgood Marshall's briefs in Brown versus Board of Education: "The Roots of our American equalitarian ideal extend deep," Marshall said, "Into the History of the Western World."

Indeed, they do, and it is time that Americans, including Senators, remember these roots: the political philosophy of natural rights. Surely the least that a Senate seeking to avoid being characterized as a body of "little deliberation and even less wisdom" can do is reaffirm the natural rights doctrine that underlies all of our liberties, the liberty of the body to advise and consent not excluded.

Mr. President, this Senator intends to vote with pride for Clarence Thomas.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The nomination of Clarence Thomas is the pending business.

Mr. HELMS. I thank the Chair. I ask unanimous consent that, as in morning business, I be allowed to proceed for about 2 or 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

(The remarks of Mr. HELMS pertaining to the submission of Senate Resolution 190 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, like his predecessors, President Bush is entitled to nominate individuals to the Court who he believes share his philosophical views. It is my personal opinion that should we reject the President's nominee, the Senate must be convinced that his choice is so lacking in intelligence, personal or professional integrity, or judicial competence that the nominee's confirmation will result in a great disservice to the Court and to the Nation.

This is not to say that the Senate should simply act as a rubber stamp, deferring to the President's wishes on each and every occasion. Indeed, I think the Senate's role in the appointment of Supreme Court Justices is one of its most important and critical functions. In fulfilling its constitutional responsibility and duty of giving advice and consent, I believe the Senate does, in fact, share with the President the responsibility for shaping the quality of the Federal judiciary and thus the quality of justice in our Nation.

In order to meet the responsibility imposed by the Constitution, each one of us has an obligation to very carefully evaluate the qualifications and competence of the individuals who are nominated by the President. A considerable amount of time has been spent reviewing the background of Judge Thomas, his academic credentials, as well as his years of public service.

Having carefully reviewed Judge Thomas' qualifications, his writings, and his testimony before the Judiciary Committee, I believe he should be confirmed for a seat on the U.S. Supreme Court. I say this despite the fact that I am confident that Judge Thomas does not share my views on a number of key issues and despite the uncertainty on how Judge Thomas will rule on issues of considerable importance, such as a woman's right to choose to have an abortion.

I must say that I am troubled by Judge Thomas' testimony before the Judiciary Committee that he has no personal view on the issue of abortion, that he has not discussed the issue or the decision of Roe versus Wade. I personally can think of no other decision that has generated as much controversy and ongoing public and private debate during the past decade as Roe versus Wade.

As a strong supporter of a woman's right to choose, I share the concerns of pro-choice individuals and organizations about how Judge Thomas is going to rule on challenges to Roe. But I am also convinced after hearing his testimony, and also talking to people I respect who are strongly in support of his nomination, that Judge Thomas brings no personal agenda to the Court.

I am referring specifically to Senator DANFORTH of Missouri. I do not know of any other individual in this Chamber that I have more personal regard for in terms of the high standards that he demands not only of himself but of the people who work with him.

In large measure I have turned to JACK DANFORTH to tell me about the character of Judge Thomas. He knows him well. He has worked with him. Judge Thomas, in fact, worked with Senator DANFORTH over a long period of time. I think he is in a good position to make a judgment about the character of Judge Thomas, and he has assured me that Judge Thomas has no personal or hidden agenda, and that he will be openminded on the Court.

Therefore, I feel confident that Judge Thomas will meet the responsibility imposed by the Constitution and that he will, in fact, keep a fair and open mind as the abortion issue and other difficult issues come before the Court in the months ahead.

The American Bar Association Standing Committee on the Federal Judiciary concluded that Clarence Thomas "possesses integrity, character, and general reputation of the highest order."

I think he is clearly an intelligent and thoughtful man, an independent thinker, and a competent jurist. He has overcome poverty, segregation, and deep-seated racism in this country—and there is still deep-seated racism in this country—and has achieved a position as a Federal judge, a position of great public trust and respect. I think

he is going to bring to the Supreme Court a perspective and range of experience unlike that of any of the current or previous Justices.

Mr. President, I recall reading in Justice Cardoza's book, "The Nature of the Judicial Process," that "In the long run there is no guarantee of justice except for the personality of the judge." That may come as a shock to many people, but I think a truth is revealed in that particular aphorism.

I have looked long and hard at the personality of Judge Thomas and I believe a man of his experience, while not fully developed in terms of his constitutional theories, nonetheless has the capacity for growth, moderation, and flexibility. I believe that he has the same capacity that we have witnessed in Justices such as Hugo Black, Earl Warren, and others, to become a truly outstanding member of the Supreme Court. For that reason, I intend to support his nomination when we have an opportunity to vote next week.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I shall vote to confirm the President's nomination of Judge Clarence Thomas to the Supreme Court when the Senate votes on this matter in the days to come.

I will cast this vote with the confidence that Judge Thomas will continue to distinguish himself as a thoughful, fair, and independent jurist, and that he will bring a spirited and dynamic perspective to the Supreme Court.

Regardless of one's particular view on the issues raised in the debate surrounding his confirmation, all must be impressed by the exemplary life of Clarence Thomas. By now, most Americans are familiar with his rise from humble beginnings in Pinpoint, GA, his strict religious education, his distinguished legal training, and his ascension through the ranks to hold several key positions in Government.

The President's announcement that Judge Thomas would be his nominee to succeed Justice Thurgood Marshall on the High Court signaled the beginning of a fascinating national dialog about the Court, the nominating process and the nominee. Much attention has been focused on the often controversial conetitutional and political views attributed to Judge Thomas prior to his judicial career.

I followed this debate, as I did when Judge Thomas was confirmed as a Judge on the United States Circuit Court of Appeals for the District of Columbia. Once again, I am convinced that he is well qualified for the position under consideration.

Mr. President, the nomination has again raised the difficult and possibly unanswerable question surrounding the Senate's proper role in the judicial confirmation process. Article II, section 2 of the Constitution, in classic constitutional ambiguity and brevity, provides plainly that the President shall nominate and "with the advice and consent of the Senate, shall appoint *** Judges to the Supreme Court."

The Constitution gives no further guidance. Thus, the Senate is required to address that aspect of the nomination, which Alexander Hamilton once characterized as "fitness."

As individual Senators, we are left to develop our own approach to this process. This is a highly, highly individualistic process.

Undoubtedly, there are organizations and individuals who oppose this nomination who will accuse those of us who vote to confirm Judge Thomas of being insensitive to their concerns. This charge exposes what I believe is a fundamental misunderstanding of the Senate's role in the confirmation process. If part of the Senate's responsibility under article II is to vote against nominees unless they hold views consistent with our own, I am afraid that I would never be able to support a judicial nomination.

I would certainly not be able to support this one, or any other nominee presented in the last decade. From this single-issue perspective, all of these nominees would fail the test on an issue that I care very deeply about, and that I have expressed myself many times about. This is the issue of the death penalty. Unlike the many who oppose Judge Thomas because of what they do not know about his position on Roe versus Wade, I know precisely where Judge Thomas stands in his judicial approach to capital punishment.

In response to questioning during his confirmation hearings, Judge Thomas stated that he would have no problem affirming a case involving capital punishment. In this regard, he is similar to every other Justice sitting on the Supreme Court today, with one exception. Justice Marshall, who has now confirmed that his retirement is effective next Monday, the first day of the Supreme Court's term, is the only Justice who opposes capital punishment and the application of capital punishment.

Some would argue that my opposition to the death penalty will somehow be diluted by my support for Judge Thomas' confirmation. Nothing could be further from the truth. In fact, to apply this type of single-issue litmus test to Supreme Court nominees would not only be a disservice to the particular cause, it would also imperil the separation of powers doctrine that has stabilized this Nation for over 200 years. In the words of former Chief Justice of the United States, Warren Burger:

> Presidents and legislators have always had platforms and agendas, but for judges the only agenda should be the Constitution and laws agreeable with the Constitution.

Our Nation which contains an infinitely diverse population has survived countless divisive national debates, including a bloody Civil War, partly because our forefathers endowed us with a constitutional government based on pluralism and individualism, and a Supreme Court free of daily political pressures. To hold up a single issue as the passkey to a seat on the Supreme Court is contrary to, and distorts, the fundamental principles this Nation was founded upon.

Mr. President, I do not believe that it is a coincidence or mere happenstance that single-issue politics have come to roost so firmly on the Supreme Court nominating process. In campaigns and speeches, we have continued to narrow the civic focus of this Nation. We have helped to addict Americans to the sugary junk food of single-issue politics. We talk the game of single-issue politics, but then, after all the talk, we duck the tough issues.

For a number of important policy areas, all of this has resulted in a continuing legislative void.

We have now reached a stage where it is not uncommon to see a throng of protesters march up Constitution Avenue, past the Capitol Building, and right past our buildings, and stop with their signs and slogans and calls for action directly in front of the Supreme Court Building. It is no wonder. Many questions intimate to diverse political agendas hang in the balance of the Court's membership.

In the current political landscape, exacerbated by the strains of a divided Government, who is surprised when Supreme Court nominees are asked to show their single-issue ID cards in order to gain admission to the most sacred branch of our Government? Few should be surprised, but each of us should be concerned about where this process is leading us.

The increasingly political nature of our confirmation process, and the strong influence of single-issue politics, in my view, seriously endangers the continuation of a truly independent judiciary. As I have said before, partisan politics should not play a part, either in support of or in opposition to a nominee.

Mr. President, some of us have the burden of history. Some of us were alive and can recall when President Roosevelt appointed practically all the Justices to the Supreme Court. It was not until President Truman came along and said maybe there ought to be a Republican on the Court, not for the

sake of partisan politics, but certainly for the diversity and pluralism recognized in our body politic, did we see some balance on the Court.

Mr. President, Clarence Thomas has found himself the focus of this awkward and often painful process, and has emerged thus far as a thoughtful and principled jurist. Many have taken advantage of this forum to label him an ideologue, a jurist well outside the mainstream of judicial thinking, a fanatic who has forgotten his humble beginnings. And these charges clearly misunderstand Clarence Thomas the person.

I would be less than candid if I did not say that this nominee has taken positions that are of concern to me. However, if I were to judge this nominee or any other based on the number of political beliefs we hold in common, I would then surrender my ability to urge tolerance upon my colleagues when a nominee whose views match my own reaches this body for confirmation.

I do not view this decision as fundamentally different from the one I faced in the nomination of Kenneth Adelman to the directorship of the Arms Control and Disarmament Agency. While I disagreed with Mr. Adelman on nearly every basic issue that might come within the purview of the Agency, I nevertheless voted in favor of his nomination. He was qualified, and he was not an extremist. If I had opposed him, I would have forfeited my ability to fight in favor of the nominee more in step with my own views on arms control.

And that is another issue I feel very deeply about—arms control.

Mr. President, we flatter ourselves if we believe that we can accurately predict, through our political lenses, the great legal issues that will come before the Supreme Court during the tenure of the Justices we confirm today. Our time would be much better spent looking at the personal side of the nominee. We should focus on the family background, personal character, intellectual independence of the nominee. We should focus on his moral Constitution and his value system. it is here that Clarence Thomas, the person, excels.

On the matter of his judicial intellect, Judge Thomas brings to the Court a distinguished and hard won education, having graduated from the Yale University Law School. He is one of the few nominees in this century to have served in a legal capacity in each branch of our government, at both the State and national levels.

I have reviewed his record as a Federal circuit judge on what is commonly referred to as a second highest court in the land. And his is not the record of an ideologue. One commentator wrote in the Wall Street Journal that "the best way to predict how Justice Clarence Thomas would rule is to review how Judge Clarence Thomas has ruled. His political enemies won't find much grist in these rulings, which are textbook examples of judicial restraint."

We had a parallel case in the nomination of Judge Bork. We heard all the statements made by Bork the professor and Bork the Solicitor General. But when we began to review Bork the circuit court judge, we found that he voted with the liberals more often than he did the conservatives of that court. And yet he was presented to this body, to the same judicial review process, as some kind of a rightwing extremist.

I think we have to be total in our review of the record, especially when we are reviewing a record from a position that is most similar to the one which we are asked to conform him to, namely a circuit court of appeals judge.

Those who have known Clarence Thomas for many years testified on his behalf before the Judiciary Committee. They described a contemplative, caring, and warm person. I believe that these attributes will benefit the Court and this country long after the single issues have faded into the past.

One last point: I really disagree with labeling people. I think labels are so superficial and oftentimes lead to even inaccuracies when we talk about conservatives and liberals in our political process. This is no less the case when we talk about strict constructionists and liberal constructionists in the judicial world.

Mr. President, I would only say that in appointing Judge Thomas to the Supreme Court, we have an elected appointing authority that is basically conservative—the President of the United States. I am sure that we are going to get, as we have in the past from a conservative President, conservative nominees. Likewise, we get from liberal Presidents liberal nominees to the Court. Nobody would have ever considered any of President Roosevelt's nominees strict constructionists or conservatives. They were all liberals. And we believe that maybe there ought to be a balance on the Court. But let me point out that it is not necessarily true that once a Justice is appointed and remains in those so-called classifications as they are losely applied.

Let me remind you one of the most strict constructionist or conservative Members of the current Supreme Court was appointed by a liberal President. Three others who are considered today in the liberal wing of the Court were appointed by conservative Republican Presidents. And this anomoly has always been the case.

Look at the great feud that Thomas Jefferson had with Chief Justice Marshall. And yet, gradually, every one of those Jeffersonian appointments who came out of the Republican tradition of Jeffersonian Republicanism ended up under the influence of Justice Marshall.

So Justices on the Court are not locked into these artificial labels that are so loosely applied at times. I would also say that not only are we going to get a conservative nominee out of a conservative President, but we have confirmed three already in very short order. These were, I might add, white conservatives—Justice Scalia, Justice Kennedy, and Justice Souter.

But somehow the fact that we are now considering a so-called "black conservative," there is some difficulty because it does not fit some kind of predetermined mode. I think this is a point we ought to think about. Labels are transitory. Labels are not permanent. And labels are oftentimes very, very inaccurate. That is why I think fundamentally our role must always come back to basically the fitness of the person, the man or the woman, the personal, academic, scholarly and intellectual capabilities as demonstrated by the work and the personal and moral character of the individual.

And to apply some kind of a political litmus test under a single issue and to try to make a determination on the basis of labels about a strict liberal or a strict conservative, I think is really stretching the Senate's role and putting it on very loose sand.

We all know the historic fact of Justice William O. Douglas as a nominee who went around to knock on the doors of Judiciary Committee members to ask them if there were not some questions that they wanted to ask him after he had been nominated.

So the whole process has evolved and changed—even the confirmation process. Here we have four-star rated television programs based on the confirmation process. Mr. President, I might just gratutiously comment that from my mail and from the personal comments of my constituents, I do not think the institution of the Senate has been enhanced a great deal by the way these proceedings have turned into media events based on single-issue politics.

It is now almost an adversarial relationship between the nominees and the committee. In my opinion, this is part of the reflection of divided Government that we have today.

I do not know about your mail, but I must say that, while these great productions of the confirmation process may be getting some local coverage and may be providing some amount of political enhancement for individual Senators, I do not think that the production has been much of a plus for the U.S. Senate.

I am proud to stand here today and announce my support for Judge Thomas. I an very hopeful that somehow we will be a little more reflective as we think about nominees and how we conduct this process.

Of course, I could always come back and say I am one of those who voted

against televising Senate proceedings and, very frankly, I would have included committee sessions at the same time. I am not sure televising the proceedings of the U.S. Congress has enhanced the institution either. But that is another subject.

I am very hopeful that we will act expeditiously and confirm Judge Thomas and get on with the other matters that are before the Senate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLUE RIBBON AWARD KALAHEO HIGH SCHOOL

Mr. AKAKA. Mr. President, I rise today to congratulate Kalaheo High School for being selected as the 50th State's 1991 Blue Ribbon School.

As my colleagues are aware, the Department of Education, through the School Recognition Program, annually bestows meritorious distinction upon institutions of learning that have shown themselves to be at the forefront of educational excellence. Kalaheo High School has proven itself to be one of this country's leading institutions in offering topnotch educational programs within an exemplary learning atmosphere. Furthermore, Kalaheo serves as an extraordinary example of what can be achieved through student, teacher, parent, and community cooperation.

Mr. President, one of the keys to Kalaheo High School's success, according to Mr. William Tam, Kalaheo's principal, is the spirit of cooperative learning that has been fostered there. Mr. Tam refers to the school's environment to that of an "ohana," or family, where family values traditionally found in the home, such as giving, receiving, understanding, and mutual support, are unabashedly promoted. Small wonder, then, that the students at Kalaheo have garnered accolades on the State and national levels, as well as received international recognition for their production of a film depicting the life of Napoleon Bonaparte.

Mr. President, Kalaheo High is truly a Blue Ribbon School, eminently deserving of that prestigious designation. I commend the students, faculty, families, and the community at large for the high tribute they have earned and the signal honor they have brought to Hawaii Imua.

TRIBUTE TO CARROLL ROBBINS

Mr. KERRY. Mr. President I rise today to recognize Carroll Robbins, who recently retired after 5 decades as a journalist and 40 years with the Springfield Newspapers of Springfield, MA.

While the notion of a free press is intrinsic to our way of life, this constitutionally guaranteed right is only as strong as the character, honesty, and decency of those who work in the press.

Carroll Robbins' career has reflected these attributes. His decision to retire will leave a void in the daily operations of a news organization which has benefited from the perspective of a man with such a distinguished career.

From writing a column of high school notes for his hometown newspaper, the Norwood Daily Messenger, to becoming managing editor of the Springfield Newspaper's Daily News and later executive editor of the Union-News and Sunday Republican, Carroll Robbins has covered a half century of news.

He delivered local, regional, national and international news home to the doorstep of western Massachusetts citizens. He was responsible for seeing that his readers got complete coverage of the issues of the day from war and peace, civil rights and the election of President Kennedy to the revitalization of downtown Springfield, the Big E or the impact of current economic times on our region. Carroll Robbins has spent a lifetime working to inform the public.

Now Carroll's wife, Rose, their four children and nine grandchildren can enjoy a bit more time with their husband and father—though I'm told by a reliable source that Carroll's plans may also include some traveling and "getting back to nature" as well.

Next Tuesday, October 8, friends and colleagues will gather at the Carriage House, Old Storrowton Tavern in West Springfield to honor this fine gentleman. This day will bring full cycle the career of a journalist who believes so dearly in, and has worked so hard for, the concept of a free press.

On behalf of the U.S. Senate, I wish to extend my very best wishes to Carroll Robbins and his family as they experience this very special time.

SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. SEYMOUR. Mr. President, on June 19, the Senate passed S. 1204, the Surface Transportation Efficiency Act. But today, more than 3 months later, the Democratic leadership of the House of Representatives has still not acted to bring a surface transportation bill to the floor of the House.

Because of this delay, confusion reigns on many of our Nation's highways. These problems result from the Congress' inability to send a bill to the President and thus enact a surface transportation bill in time for the new fiscal year.

Mr. President, there is no excuse for this lapse. No one can claim surprise that current law authorizations expired 2 days ago. Those responsible for this costly and painful delay knew full well that our transportation programs and projects would come to a screeching halt if they didn't pass a transportation reauthorization bill before October 1. No, time lapse can only be blamed upon the politicking of the House Democratic leadership who have committed themselves to holding the bill hostage until they get what they want. Why are they holding the bill hostage?

Rather than moving forward and passing a viable bill, as the Senate did in June, the Democrats in the House preferred to waste time trying to foist on the American taxpayer yet another unpopular and economically unjustified gas tax. They wanted to terrorize the taxpayer with yet another foolish, unwise, and unnecessary taking of their hard-earned money.

And who loses, Mr. President? Well, I think it's pretty clear that we all do.

I was amazed yesterday when I saw the American Association of State Highway and Transportation Officials' estimates on the effects of this inexcusable delay.

An estimated $1.3 billion in output will be lost in the construction industry alone. And just as the other party is playing political football with the unemployment compensation bill trying to paint the President as uncaring, they invite the loss of an estimated 22,000 jobs or as many as 87,000 jobs, when you count those service industries, manufacturers, and other sectors that depend on mass transit and highway construction and maintenance programs.

Back home—where the rubber meets the road—such a loss will stab our fragile economy's halting recovery right smack dab in the back.

Who else loses, Mr. President? How about our small businesses, especially those who can ill afford delay and project uncertainties. Adding to the unemployment roles is not the way to bring this Nation out of recession.

Mr. President, Chairman ROE, NORM MINETA, and the other members of the House Public Works Committee are very talented in the transportation arena. They understand that much work needs to be done to help us move into the postinterstate era.

Under the leadership of Senators MOYNIHAN and SYMMS, the Senate bill

ship, and when President Bush vetoes an unpaid promise tomorrow, I want Senator RIEGLE, Senator SASSER, my colleague Senator BENTSEN, and the others, to help pass my bill, S. 1789. Let us do it on Monday or Tuesday of next week.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. I thank the Chair.

(The remarks of Mr. DURENBERGER pertaining to the introduction of S. 1810 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,393d day that Terry Anderson has been held captive in Lebanon.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the Senate now go into executive session to consider the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The nomination of Clarence Thomas, of Georgia, to be an associate justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

The PRESIDING OFFICER. The Senator may proceed.

Mr. WELLSTONE. Mr. President, this will, I believe, be one of the most important decisions that I have made or will make as a Senator of the United States: whether to confirm Clarence Thomas as the 106th Justice of the U.S. Supreme Court.

The placing of a human being on this Nation's highest Court cannot be done by the President alone. Section 2 of the second article of the U.S. Constitution states that the President shall have the power to nominate someone to the high Court only "by and with the Advice and Consent of the Senate. * * *"

At the Constitutional Convention, the delegates first agreed on the ways that the legislative and executive branches of government would be structured. There was extensive disagreement, however, on how to create the third—judicial—branch. Most preliminary proposals gave Congress alone the power to appoint judges to the Supreme Court. It was not until relatively late in the proceedings that the idea of nomination by the President and confirmation by the Senate was proposed and, finally, adopted.

The coequal power of both of the remaining branches of government in the creation of the third branch is at the core of our governmental structure of separation of powers. The fact that both of the remaining powers must concur also reflects the gravity of these decisions. The Supreme Court is the guardian of all of our Constitutional rights, including the rights guaranteed by the first amendment, those rules by which we live in a democracy. It is the place where each person has an equal right to be heard, regardless of political power, wealth, or influence. It is the only place in our national governmental structure where all citizens have equal standing to have their concerns addressed and their rights vindicated. It is only the Supreme Court that can provide protection against usurpation of power by one or the other branches of government.

It has been said that there is hardly an aspect of American life that has not been addressed by the Supreme Court. Its decisions have not been easy ones, and have often been embroiled in the controversies that have torn and divided us as a people. But throughout our history, the gravity of its role has never been questioned. Although it has no standing army, its decisions have commanded the ultimate respect and obedience of the people and of the other branches of Government for more than 200 years.

The fate of all of our constitutional rights, and of our governmental system of separation of powers, ultimately rests in the hands of the nine men and women who comprise this Court. The appointment of someone to this Court is not for a few years, but for a lifetime. The decisions made by this Court cannot be reviewed by anyone, except by the Court itself. Whoever replaces Justice Thurgood Marshall will serve well into the next century and will influence the legal and political landscape for decades to come. The choice of anyone for this position of ultimate power is a test of the governmental structure designed by the Founders and of our will as a people.

PROCESS OF CONFIRMATION

The process of confirmation under all of these circumstances must be a searching one. The Constitution requires nothing less. For the Senate to confirm a nomination to this Nation's highest Court with fundamental ignorance about the nominee's true character, beliefs, and vision for our society and for our country would be an abdication of the grave responsibility that the Constitution has placed upon us.

At the outset of the confirmation hearings, I felt that I knew who Judge Thomas is. Although I might differ—indeed do differ—with many of the underlying visions of reality that his past writings and speeches represent, I felt that I knew, fundamentally, who this man is. I admired the great odds that he overcame in his life and his apparent attachment to principle. As the hearings progressed, I became increasingly and deeply disturbed. During the course of these hearings, he proceeded to disavow his prior speeches, writings, and statements of belief. His prior speeches, writings, and statements are now said to be creatures of the moment, crafted in response to the particular audiences; he is now an empty vessel, without policy positions, beliefs, or "opinions in important areas that could come before [the] Court." He is, is in own words, "stripped down like a runner." What is this? Where is the substance here on which I can, as a Senator—bound by my oath to serve the people who elected me—give my advice and consent?

I believe that the presentation of a nominee to the Senate as an empty vessel, with no articulable judicial philosophy or beliefs, is a blatant attempt to destroy the Senate's constitutional right and obligation to render its advice and consent. As a U.S. Senator, I cannot vote to confirm someone who has no views. I cannot give advice and consent when I have been deliberately told that I cannot know anything about how this nominee will approach any of the fundamental questions of our time.

BUSH ADMINISTRATION ARGUMENTS

The Bush administration and its supporters argue that the Senate has no right to know the judicial philosophy of the nominee. It argues that the text of the law answers all questions, that a nominee who swears to uphold the law should not be questioned further. It claims that any attempt to obtain answers is an attempt to interject politics into the judicial process.

The absurd nature of this argument is apparent on its face. Law and legal decisions resolve disputes between people. They are the process of choice about what kind of society, what kind of a nation, we wish to be. What is the "establishment" of religion? What is the meaning of "equal protection" of the laws? What is "cruel and unusual" punishment? What are we to do with "unenumerated" rights, such as the right to privacy, or questions which were never even posed to the Founders, such as those involving biotechnology and the "right to die" or the right to privacy in a era of massive systems of electronic data and electronic intelligence? None of these questions are answered by the constitutional text. Nor are they answered by the writings or speeches of the Founders—who, by varying accounts, could include the

small group of men who drafted the Constitution, the hundreds of citizens who gathered in 13 State conventions to ratify the Constitution, or the thousands more who—although many of them were disenfranchised or enslaved—"ratified" it by tacit acquiescence to its terms. To say that all of these questions are answered by the Constitution's text or that concern about these questions is just "politics is to insult the intelligence of the American people.

The relationship of law to society is, indeed, glaringly apparent in the history of the Supreme Court's decisions themselves. The Supreme Court, in times past, has held that black Americans are not citizens—Dred Scott versus Sandford, 1857; upheld the barring of women from the practice of law—Bradwell versus Illinois, 1873; struck down legislation which attempted to establish a minimum wage—Adkins versus Children's Hospital, 1923; and upheld the mass internment of thousands of Japanese Americans who committed no crime—Korematsu versus United States, 1944. All of these decisions were made in another time. All of them are ones that we, now would find abhorrent. But to say that the process of Constitutional interpretation is the "mechanical application" of the "literal letter of the written law" is a naivete that is indicated by our own history.

The Bush administration also opposes any inquiry on the ground that it is inappropriate for the Senate to ask how a nominee would vote in a pending or possible case. I agree that attempting to commit a nominee to a particular position on a specific issue is inappropriate. Such questions are, however, far different from questions which attempt to determine who this nominee is, what the basic beliefs that he will bring to the task are.

In 1987, Judge Thomas wrote an article entitled "Toward a 'Plain Reading' of the Constitution, the Declaration of Independence in Constitutional Interpretation." In that article, he wrote that "the first principles of equality and liberty should inspire our political and constitutional thinking." It is not know to me if this statement is one that he now disavows. His statement, however, reflects what we all know: that external values must be brought to the tasks of Constitutional interpretation.

The conviction that the Senate is constitutionally bound to make an independent determination of the fitness of every Presidential nominee is not an invention of the 20 century or of these political times. At the Constitutional Convention, Gouverneur Morris described the advice and consent clause as granting to the Senate the power "to appoint judge nominated to [it] by the President." Joseph Story, in his famous "Commentaries on the Constitution of the United States," wrote more than 40 years later that Senators' "own dignity and sense of character, their duty to their country", depend upon their independent discharge of this obligation. In the 200-year history of our country, the Senate has rejected 27-Presidential nominations for the Supreme Court. When considering the nomination of Judge John Parker in 1930, Senator Norris of Nebraska stated: "When we are passing on a judge, * * * we not only ought to know whether he is good lawyer, not only whether he is honest * * * but we ought to know how he approaches these great questions of human liberty." If the beliefs of a nominee cannot be know, either because he has none or because the process of inquiry itself is deemed to be illegitimate, then we are in deep trouble indeed. Senators, bound by the Constitution and by their own consciences, cannot execute the duty that they have been sworn to perform. The delicate balance of powers, so carefully crafted by the Framers, is paralyzed.

CHALLENGE TO THE SENATE AND DECISION

The Founders of this Nation and the drafters of our Constitution were fare more profound thinkere—or more honest—than we. They understood that the quality or oppression of this government is dependent upon the beliefs and character of the people who wield its power. In a speech to the Virginia ratifying convention in 1788, Madison stated: "I go on this great republican principle, that the people will have virtue [dedication to the public good] and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checke—no form of government—can render us secure."

As citizens of this country, we may differ in our views. The fact that there are divisions does not, however, mean that we can pretend that the law is a mechanical enterprise or that, in the Supreme Court, the fate of our constitutional rights and liberties is not dependent upon the beliefs, character, and integrity of those who occupy the highest positions of power.

As a U.S. Senator, I am in no position to confirm someone who have no views. I cannot give advice and consent to someone who is an empty vessel, when I have no idea what this person stands for. It is impossible for me, in this situation, to carry out the responsibility that the Constitution requires that I perform.

I think that it is time for the Senate to refuse to confirm a nomination that has been presented and structured in a way that attempts to deprive us of the ability to exercise our independent judgment. This will be my position not just for this nominee, but for any nominee. If a person has no views, no articulable philosophy, then I cannot make the judgment that the Constitution requires. I will vote against this nominee, and any nominee, presented this way. I therefore vote no on this nomination. I challenge my fellow Senators to join me in my refusal to acquiesce in the evisceration of our historio role—our constitutionally mandated role—of advice and consent.

Mr. President, I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Thank you, Mr. President.

Mr. President, yesterday, I expressed my concern about the fact that Judge Thomas' opponents are arguing against his confirmation because they disagreed with the position that he took as a policymaker under positions he held with President Reagan and President Bush, not because my colleagues have any sound basis for questioning his qualifications to become a Supreme Court Justice.

In reality, my colleagues cloak their ideological opposition in a debate about judicial philosophy that they attribute to Judge Thomas. While I believe that the debate over Clarence Thomas' policy decisions before he became a judge is an appropriate and shortsighted subject for a debate, the record should be set straight about positions Judge Thomas took while he was still Clarence Thomas, a political official under President Reagan and President Bush.

What he did as a policymaker he made very clear to use—that he was not going to let that interfere with his job of judging. The position of Justice of the Supreme Court, as he has practiced as an appeals court judge, is to interpret the law, to interpret the Constitution. So he let us know clearly that is what he was going to do. That is what he has been doing for a year-and-a-half on the Court of Appeals and that is what he is going to do as a judge.

During this debate, of course, our colleagues try to bring a lot of these policy statements that he made as an administrative branch official, that somehow this was going to determine his position on interpreting law and interpreting the Constitution. He made very clear that was not going to be the case.

On the other hand, these views were expressed on this floor yesterday and I am sure they will be today trying to muddy the waters, that somehow something he did or said as an administrative branch official for President Reagan and President Bush will, in fact, have an impact upon his decisionmaking as a judge. Not so. But because those accusations are being made here, Mr. President, I think we have to respond to them. Not respond because we give them credibility that they have a legitimacy in determining the qualifications of this person to be an Associate Justice, but because they are not,

as they are being characterized, as extreme positions even if they did justify our consideration.

Judge Thomas' opponents characterized those opinions as extreme when they were not. They were opinions that, in my opinion, are shared by a majority of Americans. Here is what Clarence Thomas had to say when he was a policymaker for President Reagan and President Bush. He said: "Officials of our Government need to get back in touch with the moral philosophy that is the foundation of our constitutional system."

He said: "The traditional liberal approach to civil rights, especially the emphasis upon quotas, isn't working, and we need new approaches."

He said: "Congress has evolved into an irresponsible institution that has lost sight of the public interest."

Mr. President, you and I and our constituencies face that accusation all the time. There is nothing extreme about an administrator, Clarence Thomas, saying those things when our constituents say those to us all the time. These are hardly extreme views.

Some of the views that Clarence Thomas espoused as a policymaker were new ideas, but this body, this Government, the American people would be in a sorry state if policymakers must be punished for proposing new ideas solely because they conflict with the party line of those in control of Congress.

I happen to think that people who weigh these policy statements that Judge Thomas made as an administrator, and trying to detract from what he has done as a judge or what his philosophy of a judge is, is in fact punishing Judge Thomas if he would be denied a seat on the Supreme Court just because of some statements he made as a policymaker that are not going to be involved in his position, doing his job as a judge.

In Judge Thomas' search for a way to reinvigorate and rethink civil rights policy, he looked to the right place, the place that all of us ought to be looking—The Founding Fathers and the moral philosophy that they tried to codify in our Constitution.

The Founding Fathers, Clarence Thomas noted, adhered to the classical liberal theory of natural rights. This theory, which I think we all still subscribe to, holds that there are certain indisputable moral truths of human society that are self-evident to reason. The most fundamental of these truths is recited in our own Declaration of Independence: All men are created equal. It is self-evident that no man is born to rule over other men.

From this principle followed the notion that our Government must be constructed in a manner most likely to protect this fundamental liberty which is every person's birthright. Thus, we arrived at our constitutional system of separation of powers with checks and balances against each other entrusting the duty of protecting individuals from each other and promoting the common welfare to three separate branches of our Government whose structure would limit the powers of other branches sufficiently to inhibit unnecessary, as well as unconstitutional, infringements upon the liberty of our citizenry.

Clarence Thomas did not argue that judges should look to moral philosophy for the rule in a case or controversy and it is very constitutional, fundamental to the powers of the judicial branch of Government that they only deal with cases and with controversy presented to them.

He said that officers of our Government should be mindful of these founding principles in carrying out their constitutional responsibilities of law making, law execution, and the applying of the law.

Perhaps my colleagues who oppose Clarence Thomas think that there is something extreme about someone who suggests that American government should be informed by morality. But the legitimacy of government is ultimately a function of its morality.

We have seen many governments in this century which were legal but not moral. Maybe we can see them this very day on the surface of this planet of ours. But somehow being legal, even though not moral, as far as I am concerned is still illegitimate. Apartheid is legal. Jim Crow was legal. Both systems of separate but supposedly equal were protected by laws promulgated pursuant to constitutional authority. But they were not moral systems.

National socialism in Germany was legal pursuant to the Nuremberg laws but morally reprehensible—a legal regime dedicated to hideous subversions of the natural rights of individuals. The tyranny of Soviet communism was imposed pursuant to their constitution and their laws but at the same time it was dedicated to the destruction of fundamental individual liberties.

Clarence Thomas' espousal of natural rights was no more extreme than Thomas Jefferson's, for without morality behind the laws we pass, the President enforces, and our courts apply, the people have no obligation to subject themselves to our governance. Clarence Thomas's natural rights theories were not judicial philosophies. They were political philosophies about the moral foundations that are essential to a just government doing its job—performing its function.

Upon his thoughtful return to classical liberalism, Clarence Thomas evolved a theory of civil rights which accorded with his philosophy of true liberalism—limited government to promote individual liberty. Clarence Thomas was never opposed to affirmative action. He was opposed to quotas. If that is extreme, then a majority of Americans are extreme.

Clarence Thomas expoused a broarder vision of affirmative action, a broader vision than is espoused or foreseen by most Members of Congress. He advocated affirmative action for those who really deserve a break, based upon a disadvantaged status. He said a person should not get a special preference just because of their sex or of their race, for a person may be a member of a suspect class and still not suffer many of the unfortunate incidents associated with that status.

During his hearing before our committee, he said it this way to Senator SPECTER, and I quote Judge Thomas:

> I think we all know all disadvantaged people aren't black and all black people aren't disadvantaged. The question is whether or not you are going to pinpoint your policy on people with disadvantages, or are you going to simply do it by race.

That determination, of an individual's disadvantaged background, is a difficult determination. Now, of course, for Senators or for policymakers downtown, or for even judges enforcing our laws, it is easier to extend a benefit to a minority group as a whole rather than individuals who need the affirmative action based upon disadvantaged status.

But just because it is an easier way of doing it does not make it right, and that is the question that Clarence Thomas puts before our Government, before the American people.

Clarence Thomas was no Benedict Arnold, contrary to the assertions of same. He was and is a Patrick Henry. He had the courage to question whether affirmative action in the form of quotas might actually work against the long-term interests of his own race. He said this even though he knew there were many who have vested interests in the status quo who would try to silence him. They have not silenced him yet. But as long as this debate goes on, they will keep trying.

Clarence Thomas did not claim ours to be a colorblind society. He knew racism and was devoted—and still is devoted—to fighting it. But he had the honesty and the courage as a policymaker to say that the old approaches to discrimination of numerical quotas without regard for each individual's needs, he had the courage to say that this was not working after 2½ decades. He said that quotas were not changing the quality of life in the ghettos. All you have to do is travel there and we all can find it out for ourselves. Instead, he said, the best remedy for the legacy of slavery and discrimination is to better educate the poor, be more aggressive about promoting jobs for the poor and, perhaps most important, eliminate crime from poor neighborhoods so that the ma-and-pa operations can he there like they were prior to a quarter of a century ago.

These, Mr. President, are not extreme views. They are views I think

most Americans share. They may be views that are threatening to the patrons of the dependent poor, but Clarence Thomas should not and cannot and I do not believe will be punished by this body for his efforts to liberate the poor from their dependency upon government, although that might eliminate a significant political constituency of the liberal plantation.

After years of contemplating civil rights issues and the failure of established approaches to eliminate the vestiges of discrimination and slavery, Clarence Thomas began in his position as a policymaker espousing positions that may have his senatorial opponents most concerned, and that theory is that there could be a problem right here on Capitol Hill, that Congress in fact may be part of the problem. His extreme position was that Congress is no longer a truly deliberative body; that we are not as concerned about the public interest as we are concerned about protecting our own fiefdoms by taking care of special interest groups.

Mr. President, if that is an extreme position, then I am afraid most of our constituents are also extremist because they think that about Congress, for this is hardly an unusual opinion of a Congress that gives itself midnight pay raises, a Congress that uses taxpayers' money to give itself overdraft insurance at the House of Representatives bank, a Congress that refuses to subject itself to the laws that it foists upon society as a whole, because we exempt ourselves from a lot of those laws. Those are just three reasons why we might not be held in high regard, and a legitimacy to Clarence Thomas' questioning of whether or not Congress fulfills its constitutional role as a deliberative body.

My colleagues can criticize Clarence Thomas for having espoused a return to morality in government. They can criticize him for trying earnestly to develop new approaches to eliminating the last vestiges of Jim Crow and slavery. They can criticize him for criticizing Congress. But when they criticize Clarence Thomas for the fresh ideas he has advocated before he became a judge, they are only engaging in that hallowed congressional physics experiment of seeing how much hot air it takes to inflate a member of Congress on to the evening network TV news, for most Americans have heard Clarence Thomas. They support him because he shares their values.

I close by warning those who are watching the debate that some of my colleagues criticize Clarence Thomas for questioning the effectiveness of civil rights laws, minimum wage laws, and laws depriving individuals of their property. But these are the same Members, with the same philosophy, who have legislated themselves to be the only class of people in our society expressly exempt from following civil rights laws, from following minimum wage laws, and many other laws passed for everyone else to follow but the 100 Members of the Senate.

So there is nothing extreme about Clarence Thomas' views as a policymaker. But it would not matter if there was something extreme about those views. He has made it very clear to us that he is going to be a judge who interprets our law, not foist his view of the law upon the people of this country. But he accepts our view of the law, and he is going to be concerned about original intent of the Constitution being considered in the debate on interpretation of that document.

That is what we ought to be judging Clarence Thomas on: his judicial philosophy of restraint, the fact that he is competent to be Associate Justice, and that he is a person of integrity. We should not be judging him upon statements he made as an appointee of President Reagan and President Bush.

So I urge my colleagues to support Clarence Thomas on his record as a judge, and upon his philosophy of judging.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to speak on the nomination of The Honorable Clarence Thomas to be an Associate Justice of the Supreme Court. In doing so, I want to recall and recount the path that I have walked along to come to the conclusion that I will indicate today.

When I met with Judge Clarence Thomas in my office this past summer, I was impressed by his strength of character, independence of mind, and intellect generally. I found him to be an engaging, thoughtful man who clearly enjoys grappling with complex legal issues and delights in the special challenges and responsibilities of being a judge. His academic and professional achievements are testimony to his appreciation for the value of hard work and determination—qualities that, in my mind, are too often overlooked in evaluating judicial nominees, but the importanoe of which cannot be overstated because being a good judge requires the willingness to do hard work. Indeed, his entire life is an inspiring example of what an individual who has faith, ability, and a desire to work can achieve in this country, even in the face of the worst kinds of prejudice and adversity. As he himself has said, "Only in America."

During our hour-long meeting, we discussed a number of general legal issues, certain of his writings, and his approach to deciding cases before him at the circuit oourt. I was reassured by his answers. He did not and does not strike me as a rigid ideologue. In fact, his life story demonstrates that he does not find easy comfort in convention, but challenges settled truths with vigor and intelligence.

I have read Judge Thomas' political writings and his circuit court opinions. The tone and content of some of his earlier articles and speeches raised questions in my mind, but I understand that they were written while he was in the political arena. Judge Thomas' judicial opinions, on the other hand, have a distinctly different cast. They are, on the whole, solid, thoughtful, and balanced.

The uproar over Judge Thomas' exploration in his writings of principles of natural law is curious and, I fear, on the part of some who should know better, disingenuous. Jurists of all persuasions have looked to higher principles in interpreting the Constitution and have found emanations and penumbras and original intent. Indeed, natural law as applied to debate over equal rights—which is how Judge Thomas limited it in his conversation with me and in his testimony—has a distinguished history in our Nation and, in fact, I am proud to say found its origins in my State of Connecticut. As Justice Thurgood Marshall noted in his brief on behalf of the NAACP Legal Defense Fund in Brown versus Board of Education:

> The first comprehensive crystallization of antislavery constitutional theory occurred in 1834 in the arguments of W.W. Ellsworth and Calvin Goddard, two of the outstanding lawyers and statesmen of Connecticut, on the appeal of the conviction of Prudence Crandall for violation of an ordinance forbidding the education of non-resident colored persons without the consent of authorities. They reveal this theory as based on broad natural rights premises and on an ethical interpretation of American origins and history.

Judge Thomas has explained to my satisfaction that his praise for Lewis Lehrman's article applying principles of natural law to the debate over abortion does not signal his adoption of natural law as a judicial philosophy or his endorsement of Lehrman's conclusions. There is no hint of natural law analysis in any of Judge Thomas' circuit court opinions.

Many people are deeply and understandably troubled by the serious consequences for our society if Roe versus Wade is overruled by the Supreme Court. On this question, I take Judge Thomas at his word, given under oath, that he has not reached a conclusion on the legal issues underpinning Roe versus Wade. Those who doubt that and assume he has passed a White House litmus test on the issue also have to assume that the next nominee would face the same testing.

Overall, Mr. President, however, I must say that I found Judge Thomas' testimony before the Judiciary Committee to be unsatisfying, and I would guess he did, as well. I was disquieted by his testimony, not because he expressed some views which are different from mine, which he did, but because

he appeared almost casually willing, at times, to express opinions on some very current and complex issues of constitutional law—for example, on the establishment of religion clause—and reluctant to express any thoughts on others.

That quick conclusiveness on some issues and labored circumspection on others is at odds with my personal impression of Judge Thomas from our meeting this summer, from my reading of his judicial opinions, and from the impression of many others who have known Judge Thomas long and well.

I have concluded that the confirmation process, particularly as it has evolved since the Bork nomination, evoked that result. The lesson apparently learned by the White House and by nominees from Judge Bork's defeat is that blandness and selective forthrightness are rewarded. Nominees are in the position of choosing which constitutional issues appear to be politically safe and popular to speak about freely, and which are not.

That leads me to say that I am sure I find myself in the minority in suggesting that Judge Thomas and other nominees should express fewer, rather than more, opinions on controversial constitutional cases in their testimony before the Senate.

I do not believe that a nominee should be required to indicate how he or she may vote on a particular issue that is likely to be coming before the Court, or be asked to endorse or criticize particular Supreme Court decisions that are unsettled or controversial.

As a lawyer, I am disturbed by the notion that litigants may appear before Justices of the Supreme Court, who have committed themselves in a political forum to one or another side of a complex constitutional issue, without the benefits of briefs, oral arguments, or research. Nominees should be asked their views on legal issues, but not be cajoled or coerced into proclaiming positions on unsettled or controversial cases that have been heard by the Court, or are likely to be heard by the Court.

Part of the blame for this politicization of the judicial nominations process lies, of course, with the tendency of some in the Reagan and Bush administrations to treat the Supreme Court appointments as just one more campaign promise. Who can blame the members of the Judiciary Committee for asking probing questions on controversial constitutional issues aimed at determining if a litmus test has already been applied, if a Presidential candidate has baldly promised the voters one kind of Supreme Court or another? And who can blame the administration for selecting nominees whose judicial records and writings are thin enough to avoid alienating too many Senators, or for coaching nominees, especially those like Judge Thomas who do have ample written records, to be circumspect on some issues and not on others.

Mr. President, I think this cycle has deep roots, and it originates, I believe, in the unwillingness of the executive and legislative branches to confront controversial societal problems, preferring instead to let the judiciary make society's tough choices. Indeed, the first aggressive Senate questioning of Supreme Court nominees was by conservative Senators in the late 1950's who, disturbed by the Court's activism on civil rights in the face of congressional and Presidential delay, sought assurances that nominees favored judicial restraint.

The pattern has been repeated, of course, several times since then. The judiciary fills the vacuum on a pressing political problem which neither executive or legislative branches is willing to confront. The nomination process then becomes highly politicized as advocates on opposite sides of the Court's decision seek to endorse or reject nominees who are likely to overturn the precedent.

The process, in my opinion, is not healthy. It harms all three branches of Government. It muddles the process of evaluating nominees, and makes the task of developing a uniform standard to apply to all nominees virtually impossible.

Mr. President, after much thought, I have concluded that the dissatisfaction I felt after the Thomas hearings is more a reflection of the cycle I have described, the shortcomings of the process, of which I see Judge Thomas as a victim rather than an indictment of his abilities or character.

In listening to our colleague from Missouri, Senator DANFORTH, on the floor of this Senate during the morning of the Judiciary Committee vote, I was struck, as I must say I so often am, by the good sense of what he had to say. The process of evaluating any judicial nominee, he noted, contains a large element of trust. We are trying to project what a nominee will do over a period of years to come.

Judge Thomas' strongest supporters, Senator DANFORTH continued, are those who know him best. His most vocal critics are those who know him least. I have heard from a wide range of people, people I know, people I do not know, many of whom know Judge Thomas well, either because they worked for him, or with him, or in the case of Senator DANFORTH, for whom he worked. I have been struck by the uniformity of their praise for his openmindedness, his character, his intellect and powers of analysis, his discipline, and his fairness.

The heartfelt loyalty and respect he engendered from many people who hold very different political views than he, including my teacher and friend, Guido Calabresi, now dean of the Yale Law School, is impressive.

Mr. President, while we in this Chamber are agitating over what effect this nominee may have on our system of justice, we must be certain not to treat him unjustly; for if we do an injustice to an individual in pursuit of a general notion of justice, have we, in fact, acted justly? Judge Thomas has come very far in his life, from impoverished rural Georgia, to two of the finest academic institutions in our country, to the Missouri Attorney General's Office, to the staff of the U.S. Congress, to the private sector, to the executive branch, to the D.C. Court of Appeals, and now to the steps of the U.S. Supreme Court.

We must not deny him entrance because we are disturbed by how political the nomination process has become, or because we are concerned about the direction that previous nominees, already confirmed by the Senate and sitting on the Supreme Court, may take. In my opinion, it would be unfair and unjust to this man, Clarence Thomas.

Mr. President, the Constitution does not grant the Senate the privilege of nominating Supreme Court Justices. Our responsibility is to advise and consent. For me, that means determining whether the nominee, the person nominated by the President, has the requisite legal competence and balance, the personal character and intellect, and the independence and fairness of judgment.

Mr. President, I conclude that Judge Thomas does have these requisite characteristics, and I will, therefore, vote to confirm his nomination.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KOHL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH. Mr. President, the 1988 election was a referendum in that it was not only a referendum for our President, but I think it was a referendum as a nation in terms of what kind of courts we are going to have in the future, what kind of people we are going to have upon those courts.

The American people in that election rejected the lenient courts of the 1970's, judges who place the rights of criminals above the rights of victims, judges who expunge from the Bill of Rights enumerated rights they do not agree with, while inventing rights not mentioned in the document at all.

Mr. President, the American people did choose George Bush but, in the process, they cast their lot in favor of judges who interpret the law, not judges who make it, judges who do not

place the rights of criminals ahead of the rights of victims, and judges who do not view their role as engineering society around their particular social views. I believe that Clarence Thomas is that kind of judge.

By now, the details of Clarence Thomas' childhood have become as familiar as they are extraordinary. He was raised by foster parents, educated by nuns, victimized by poverty and racism. Thomas is a role model for children currently struggling against the same formidable obstacles. Despite the representations to the contrary by even his harshest critics, Thomas succeeded on the basis of his own merit, period. He attended college and was admitted to Yale Law School before the infamous 1972 Executive order, which made affirmative action the law of the land.

Now we are treated to somewhat insulting insinuations that Clarence Thomas could not have made it without racial preference, this by the same partisans who claim that racial quotas, rather than standardized test scores, should be considered in everything from college admissions to employment decisions. It is almost as if these critics begrudge Clarence Thomas his success.

Let me repeat that. It is almost as if these critics begrudge Clarence Thomas his success. He did not make it because of affirmative action. He made it on his own. He pulled himself up by his bootstraps. He now is a nominee for the highest court in the land and somehow he should feel guilty about his success.

Mr. President, I support the nomination of Clarence Thomas to the Supreme Court, and I support the nomination not because I am sure how he will decide any particular case—I might know how I hope he would decide those cases, but I am not sure—but because I believe his judicial philosophy is consistent with the judicial role envisioned by the Founding Fathers, that judges should interpret the law, not make it.

Clarence Thomas has been pilloried for stating that "Economio rights are protected—by the Constitution—as much as any other rights." But the protection of private property from the whims of government was a concept which was built into the Constitution by the Founding Fathers themselves. The fifth amendment specifically prohibits the taking of private property without just compensation. And the 14th amendment prohibits the taking of property without due process of law.

Therefore, if Thomas' detractors have problems with economic rights, they should direct their grievances against their real enemies, James Madison and Alexander Hamilton.

Clarence Thomas has been impugned for writings about racial quotas and his belief that people should be hired on the basis of merit, rather than the color of their skin. Thomas' own life stands as a moving example of the validity of this concept. This is what Clarence Thomas believes, but, Mr. President—and perhaps more importantly—this is also what the American people believe. The American people agree with Clarence Thomas.

The process of confirming a Supreme Court Justice has become a strange and curious animal. We have heard a lot over the past few days about the need for balance, balance on the Court.

Less than a decade and a half ago, when a liberal President was nominating liberal judges to a liberal Court, you did not hear a whole lot about the need for nominating conservatives in order to balance the Court. In fact, when confronted with some of the radical leftwing views of some of the Carter nominees, many of those most vociferous critics of Thomas' refusal to take positions on specific issues were denouncing what they called litmus test and singing a different tune.

Let us listen to some of that music. Speaking on the Senate floor on September 25, 1979, concerning the nomination of a controversial liberal Congressman Abner Mikva to be a judge on the D.C. Circuit Court of Appeals, the current distinguished chairman of the Senate Judiciary Committee laid out the standard which I believe is just as relevant today as it was under the Carter administration. "I believe," said Chairman BIDEN, "what is properly before us here as we consider Congressman Mikva's nomination is not the views that he has expressed on public issues as a Member of Congress, but rather the degree to which he possesses those attributes experience has been shown to be desirable in a judge, particularly the ability to be objective on the bench. To apply any other standard would be to disqualify from the judiciary virtually any public person who has been willing to take positions on judicial issues. Specifically, I do not believe elected officials should be disqualified for service on the Federal bench simply because during the course of their political careers they have advocated positions with which some seem have disagreed." Those remarks were made by Chalrman BIDEN in 1979 regarding a liberal appointee.

The Senator from Massachusetts [Mr. KENNEDY] echoed these same sentiments during the same debate when he stated: "When an individual is nominated to the Federal bench the question for us to consider is not how he would or did write the law as a legislator. The question is whether he is willing and able to interpret the law as we and those before us have written it. The answer does not turn on politics; it turns on ability, sensitivity, and perhaps most importantly, integrity." Those remarks were made by Senator KENNEDY, one of the harshest critics today of conservative Judge Clarence Thomas.

Well, Mr. President, I agree with Senator KENNEDY. And furthermore, I believe that what is sauce for the goose is sauce for the gander. There is no differenoe between Abner Mikva and Clarence Thomas other than the fact that Clarence Thomas is not a denizen of the far left.

Just because we have a conservative President and conservative nominees does not mean that the congressional role has somehow been radically altered. This Senator, for one, is offended by organizations which first attached Thomas because of his opposition to abortion which now attack him because he refused, in his Judiciary Committee testimony, to speak out against abortion. Judge Robert Bork, one of the most distinguished scholars ever to be nominated for the Supreme Court, answered all of these questions—and he was lambasted for having prejudged the issues. The process has become a game in which groups are willing to use any argument necessary to destroy the reputation and career of a decent man because they believe he will not adjudicate in accordance with their views. That is a bad process and it ought not be adhered to.

Mr. President, it is hard to imagine what sort of nonliberal nominee would be acceptable to the liberal Washington interest groups. Who would it be? If a nominee has extensive writings and is candid with respect to his views, he is attacked for having prejudged the issue. If he has written little and refuses to comment on issues, he is attacked for being an unknown quantity. What can a nominee say that will satisfy these people? What if, for instance, in response to repeated demands that he endorse so-called constitutional rights which judges have pulled out of their hats, a Supreme Court nominee in Thomas' position had simply responded:

> It is emphatically the province and duty of the Judicial Department to say what the law is. * * * If two laws conflict with each other, the courts must decide on the operation of each. * * * This is of the very essence of judicial duty.

Clearly, such a neanderthal could never be confirmed by our enlightened Judiciary Committee. Such a mechanistio view of the law would surely deny a woman's right to choose—and would reverse three decades for civil rights advances.

So the Senate would reject this narrow-minded ultraconservative nominee. And, in the process, it would have rejected John Marshall for a seat on the Supreme Court and would have repudiated Marbury versus Madison.

Mr. President, if Thomas' detractors have problems with the Founding Fathers, they can always try to amend the Constitution. If they have problems with the choices made by the American

people through our democratic process, they can take their case to the electorate. But let us not scapegoat Thomas because he represents a convenient target for Washington interest groups who are out of touch with the popular will.

Mr. President, I am proud to support the nomination of Clarence Thomas as an associate justice of the U.S. Supreme Court and urge the Senate to act accordingly and put him on the bench.

Mr. CRANSTON. Mr. President, the vote to confirm an individual to assume a lifetime position on the Supreme Court is one of the most important votes that any Member of the Senate is ever called upon to cast. A Supreme Court Justice serves for life, is not directly accountable to the people, and affects the lives of millions of Americans and generations of future Americans.

Our Founders understood the significance and potential consequences of a nomination to the Supreme Court. The Founders knew that those called to serve on the Nation's highest court are entrusted with the responsibility of safeguarding the individual rights and liberties secured by the Constitution, particularly the Bill of Rights.

That is why they gave the Senate its advise-and-consent role and the responsibility to serve as a check and balance to the President's power to nominate. And, in my view, that is why there should be no presumption in favor of confirming a nominee simply because the President selects him.

I know that the Presiding Officer at the moment, the distinguished Senator from Wisconsin [Mr. KOHL], viewed his role on the Judiciary Committee as one totally independent of the President and of the executive branch. He voted his own conscience, and I think he made a very wise decision on that committee in voting against this nominee.

The burden is on the nominee to demonstrate to the Members of the Senate—who have the awesome responsibility to make a judgment on the nominee's qualifications to serve on the highest court of the land—that he or she possesses an understanding and commitment to the fundamental rights and liberties which are inherent in our Constitution and way of life.

Judge Thomas had the opportunity to meet that burden. Judge Thomas did not have to answer questions as to how he would rule in a specific case. He was never asked to do so. He was asked to share with the committee how he would approach fundamental issues. Judge Thomas' task was to instill confidence that he appropriately values our hard-won rights and liberties.

But Judge Thomas chose not to meet that challenge. Instead, he chose to disavow and disassociate. He asked that we evaluate him based solely on his brief tenure on the court of appeals and his 5 days of testimony. He asked that his prior statements raising concerns about his views on issues such as abortion, natural law, affirmative action, separation of powers, and congressional intent be disregarded. He sought to disavow statements and principles he espoused as a member of the Reagan and Bush administrations. But then he declined to give the Senate any insight into his constitutional philosophy.

The sparse content of the testimony offered before the Judiciary Committee served only to intensify the scrutiny of Judge Thomas' pre-judicial remarks. Judge Thomas conducted himself as if the presumption of suitability was in his favor rather than accepting that the burden of proof rests with him to establish his understanding of, and his commitment to, the concepts embodied in the spirit and words of the Constitution. Before his appearance before the Judiciary Committee, the odds were high that he would receive the support of a majority of the committee. His decision to refuse to answer in a forthright manner the questions posed to him has, rightfully, resulted in the growing tally against his nomination.

Mr. President, my responsibility in this vital process of advise and consent is not to take a leap of faith that a nominee is committed to protecting our valued rights and freedoms. I cannot ignore the positions a nominee articulated and the actions he took on important issues while a member of the executive branch. I cannot simply hope that a nominee will exhibit the qualities we most need in our Justices.

Mr. President, a nominee who seems to tailor his remarks to his audience, who would have us believe that he has never even discussed with anyone on Earth one of the most important issues of our time—choice—and who now claims to have no attachment to the ideas he embraced in the recent past, does not inspire confidence that the robe of the Justice will fit as well as Judge Thomas would have us believe.

I voted against Justice Souter because he took the position that Members of the U.S. Senate were not entitled to know his views or understand what legal philosophy he would apply in approaching important, fundamental issues such as a woman's right to choice in matters relating to abortion. Justice Souter's decisions during his first term—particularly his vote upholding the right of the Federal Government to prevent doctors from providing their patients information relating to their right to choose an abortion—suggests that my concerns about a nominee who is not willing to answer questions about individual liberties are well-founded. I will not vote to confirm a nominee to the Supreme Court who refuses to be forthcoming in the very process the Constitution says we in the Senate must carry out.

I think the nomination process, particularly in the committee but also on the floor, becomes a travesty when we are not given the opportunity to understand the philosophy of the nominee. And that travesty is an even greater problem when, as in the case of Justice Souter, and now Judge Thomas, we are presented a nominee whose record leaves so many questions.

We have not been given, in the cases of Judge Thomas and Justice Souter, a nominee with a distinguished and clear record on the issues, in general philosophical terms, that will come before the Court. And what record does exist fails to give us any significant clues or insights.

I hope we will return to the time when the President chooses nominees who have distinguished records that are very clear, that cannot be denied or concealed or changed in the course of the process.

I think the country will be better when we return to the situation we had in the past. Certainly, the Supreme Court will be better.

Mr. President, for these reasons I will vote against confirmation of the nomination of Clarence Thomas to sit on the Supreme Court of the United States.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I would like to briefly respond to some comments which have been raised regarding Judge Thomas during the debate on his nomination.

First, Judge Thomas was questioned at length before the Judiciary Committee regarding the abortion issue. I have reexamined Judge Thomas' testimony on this matter. Judge Thomas testified that he had not debated the specific ruling in Roe versus Wade to the point of a conclusion regarding its outcome. He also made it very clear that, even if he had, he felt it inappropriate to discuss that opinion before the committee. I commend Judge Thomas for attempting to maintain his impartiality on controversial issues, such as abortion, that may come before the Court.

When asked about discussions of the Roe case between law students at Yale, he stated that he did not remember personally engaging in those discussions. Judge Thomas stated that since law school he has engaged in general discussion regarding the issues raised by Roe. He also testified that he has not formed, or expressed, an opinion on the outcome of that case. I believe a careful reading of Judiciary Committee hearing transcript will show that Judge Thomas stated that he did not

actively debate the legal basis for Roe to the point of forming an opinion on its outcome.

One other point I believe is relevant to this discussion. Judge Thomas has stated that he believes the Constitution protects the fundamental right of privacy. Mr. President, this is an important point which should be considered in this debate.

As well, it has been suggested that Judge Thomas selectively answered questions during his hearing on topics such as the death penalty and the use of victim impact statements and should, therefore, be willing to openly discuss abortion.

The question about the death penalty and victim impact statements were general and in those areas where the law is now weil settled, and not in dispute.

I believe it is inappropriate now for a nominee to the Supreme Court to answer specific questions about unsettled cases or issues that may come before the Court. Each case must be decided upon the facts and questions of the law raised by that case after a judge has had time to fully contemplate a just decision. The impartiality and independence of the Court would be compromised if a nominee had to prejudge any issue that may come before him.

Mr. President, the topic of natural law was raised throughout the committee hearing and was touched upon during the debate. Some have criticized Judge Thomas because of his previous remarks on the use of natural law; namely, that his comments do not give them a clear understanding of Judge Thomas' judicial philosophy. Judge Thomas has stated that he does not believe that natural law should be relied upon in constitutional adjudication. His record on the District of Columbia circuit bench is clear that he has decided the issues based on constitutional interpretation and legislative intent, and not natural law.

Mr. President, I would like to briefly respond to the comments suggesting that Judge Thomas is insensitive to the rights of women and minorities. Nothing could be further from the truth. In fact, as Chairman of the EEOC, Judge Thomas was instrumental in helping women. During his tenure, the EEOC won monetary relief for victims of sex discrimination. Women benefited from over a total of $95 million in lawsuits pursued by the EEOC under Judge Thomas' leadership. I believe that his record in this area is a solid one. As well, during his tenure, lawsuits filed on behalf of victims of discrimination more than doubled. Some 3,300 lawsuits were filed and nearly $1 billion dollars in monetary benefits were obtained for those who had suffered discrimination. Additionally, Judge Thomas was influential in helping develop the position that sexual harassment claims were covered by title VII of the Civil Rights Act in the case of Meritor Savings Bank versus Vinson. The rhetoric by those opposing Judge Thomas is simply not supported by the facts of his record. I believe his action on behalf of women and minorities is highly commendable.

Mr. President, I thought it was important to clear up these points which were raised.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in my remarks today, I want to address Judge Thomas' past statements and actions as a member of the executive branch, which raise grave concerns about his views on the separation of powers and the role of Congress in our constitutional structure.

In some instances, his views are a challenge to 200 years of precedent. His comments reflect an extraordinary degree of hostility toward the legislative branch of Government. His statements and actions display a strong inclination to exalt the executive branch in ways that ought to be of deep concern to every Member of this body.

Judge Thomas' approach to the separation of powers, if accepted by a majority of the Supreme Court, will undermine Congress ability to function effectively as the day-to-day voice of the American people in a wide variety of areas.

If the Justices of the Supreme Court tilt toward the President instead of fairly arbitrating our disputes, they can profoundly after our system of government, which depends on the existence of thrse separate and coequal branches. By adopting absurdly narrow interpretations of congressional statutes or deferring to minimally plausible executive branch interpretations which defy the clear intent of Congress and disregard the plain legislative history, the Court can effectively deny the legislative branch its constitutional power to make law.

Judge Thomas' record reveals many reasons to believe this is exactly what he will do as a member of the Supreme Court.

During his tenure at the EEOC, Judge Thomas had many bitter confrontations with Congress, which apparently left him extremely hostile to this body. Here are a few of the things he has publicly said about Congress:

> To put it simply, there is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business.
>
> Congress has been an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom.
>
> In obscure meetings, [members of Congress] browbeat, threaten, and harass agency heads to follow their lead. Thus Congress operates in the shadows, and then produces press releases to show what a fine job it has been doing.

Judge Thomas has called Members of Congress petty despots and has said that the institution is "out of control." He has said that many who go before congressional committees share a desire to tell Congress to go to hell. He has referred to GAO as "the lapdog of Congress."

Judge Thomas has also repeatedly condemned Congress' exercise of its oversight function. He has argued that a Senate Aging Committee investigation, which discovered that the EEOC has allowed the statute of limitations to expire in thousands of age discrimination cases, "disrupt[ed] civil rights enforcement." Without congressional intervention, thousands of older workers would have lost their federally protected right to be free from employment discrimination. Apparently, that fact did not demonstrate to Judge Thomas the need for the committee's investigation.

On a number of occasions, Judge Thomas praised Oliver North and condemned Congress' investigation of the Iran-Contra scandal. According to Judge Thomas, Oliver North "did a most effective job of exposing congressional irresponsibility. He forced [Congress'] hand, and revealed the extent to which their public persona is fake."

Even during the hearing, when virtually every statement he made was designed to avoid controversy, he said that he still believes that some oversight efforts go too far in micromanaging Federal agencies.

Yet Judge Thomas asks us to accept his view that he now respects Congress oversight function, and that he bears no bias or any other hard feeling against Congress because of past conflicts. He asked us to trust that as a Justice he will set aside his long-held policy beliefs and defer to Congress when interpreting statutes.

He asks us to ignore his sharp criticisms of virtually all race-conscious remedies for past discrimination.

He asks us to ignore his statements asserting that business rights deserve the same protection as individual rights or any other rights.

He asks us to ignore his hostile statements about the minimum wage, the Davis-Bacon Act, the Family and Medical Leave Act, entitlement programs, and the Departments of Labor, Commerce, and Agriculture.

Judge Thomas' record reveals that he may not be able to shed his past as easily as he asks us to believe. According to reoent press reports, just 3 months ago Judge Thomas prepared a draft opinion in his first case on the D.C. Court of Appeals to raise a significant question of deference to Congress. Judge Thomas circulated his draft

opinion to other members of the court, but no further action was apparently taken after his nomination to the Supreme Court, and the opinion has not been made public.

This case, Lamprecht versus FCC, involved a challenge to Congress' decision to increase the number of women and minorities with scarce Federal broadcast licenses by requiring the FCC to grant qualified women and minorities some preference in awarding such licenses. Congress decided that such an increase would benefit all Americans by promoting diversity in broadcasting. In the case, the FCC had awarded a license to a woman, and the award was challenged by a competing applicant for the license on the ground that the statute directing the FCC to continue its preference policy was invalid. According to press reports, Judge Thomas' draft opinion accepted that argument, on the ground that Congress had offered inadequate evidence when passing the statute that awarding licenses to women would increase broadcasting diversity.

Last year, the Supreme Court upheld the congressional preference for minorities in Metro Broadcasting versus FCC. During the hearings, Judge Thomas specifically testified that he had no reason to disagree with the Court's decision in Metro Broadcasting. He also stated that he accepted Supreme Court rulings directing courts to give greater preference to congressional enactments than the State or local laws. But Judge Thomas never mentioned Lamprecht versus FCC in either of these exchanges, even though he obviously has been deeply involved in both aspects of the questions he was asked—his views on the statutory preference for women and minorities, and his views on the degree of deference courts must give to Congress.

It is not clear whether Judge Thomas' D.C. Circuit opinion will ever see the light of day. What is clear is that he was not entirely candid with the committee in discussing this issue, and that the open mind he professed to have on the Metro Broadcasting case may well have been much more closed than he led us to believe.

(Mr. BINGAMAN assumed the chair.)

Mr. KENNEDY. Mr. President, it is clear why Congress provided a preference for women and minorities in licensing broadcast stations. The fact of the matter is that minorities in this country have been a lot less able to formulate the capital needed to purchase broadcast stations, whether TV stations or radio stations. As time goes on, there are fewer and fewer frequencies remaining for television and radio stations for any individuals in this country. And the existing small number of stations owned by minorities, women, and disabled is striking.

It was with this problem in mind that Congress decided to give some degree of preference to minorities and women. There was a recognition by the Congress that diversity in this extremely important area of communication is advantageous to the United States as a society.

On the one hand, we see that the nominee apparently does not dispute the Supreme Court decision permitting some degree of recognition on the basis of race. The question now is whether that same recognition will be provided to women. The best information that has been made available in the press is that Judge Thomas did not believe that there was sufficient evidence for Congress to take that action, to provide the degree of recognition for women in our society that it provided for minorities.

But I think if any of us in any of our States was asked how many of the major radio stations, how many of the major television stations, owned by women in our communities, they would be hard pressed to mention many, or even a few. That certainly is true with regard to the major networks or Fox Broadcasting, or CNN, or others.

So it would have been entirely appropriate for the Judiciary Committee to delve into Judge Thomas' views on, and understanding of, the kind of discrimination women have experienced across this country in recent times. This issue is particularly important given his comments about the issue of affirmative action.

But by failing to mention the Lamprecht case, Judge Thomas left us to make a judgment on a very, very important issue that reflects on the kind of society that we are going to be with an important question unresolved. The Judiciary Committee and the Senate were really left in the dark on this issue.

In addition, Judge Thomas has expressed his agreement with Justice Scalia, one of the current Court's most conservative members, on several important and highly controversial issues.

After the Supreme Court decided in Johnson versus Santa Clara that an employer can use affirmative action to open its previously segregated work force to women, Judge Thomas condemned the majority opinion and expressed his hope that Justice Scalia's dissent would provide guidance for the lower courts and would form the basis for a future majority opinion.

In that case, the employee has 238 professional positions and not one woman prefessional employee.

When the employer went to fill the next job opening, it qualified people for the position, one of whom was a woman. The employer gave the job to the woman, and its decision was challenged by one of the other applicants, who had scored two points higher on a subjective interview—not on a written test—on a subjective interview. Two of the three members of the interview panel had previously worked with the woman applicant. One had refused to provide her necessary work clothing. He told her that she ought to wear her own clothes because coveralls were for men. The second referred to this woman as a rebel-rouser. There is clear evidence that two of the three individuals on that panel had expressed hostility toward the woman applicant, and still she had only scored two points on a subjective interview below the individual who challenged her selection. She was deemed to be qualified in every other respect, and there were no other women in any of those professional positions. The Supreme Court made the decision that the woman should be able to hold that job. Judge Thomas disagrees.

If we look back again at what his position allegedly is on set-asides for women, if we look back on his references to Thomas Sowell, where he commended Sowell's stereotyped descriptions of women in the work force, we must have serious doubts. Sowell apparently believes that a woman's place is in the home, and it should be in the home if that particular Woman chooses to be in the home. But if that woman needs or wants to work, she should not be held back on the basis that she is a woman.

That is what we are talking about. We are going to need justice when we are faced with questions about equal protections of the law. The Constitution promises equal protection of the law without regard to race, without regard to religion, without regard to gender. We want an individual who is going to be promoted to the Supreme Court who has that kind of core understanding of a key element of the 14th amendment.

Just as Judge Thomas sided with Justice Scalia or Johnson, so he sided with Justice Scalia on Morrison versus Olson. After the Supreme Court, Decided 7–1 in Morrison that Congress can constitutionally authorize a special independent prosecutor to investigate criminal wrongdoing by high-level Government officials, Judge Thomas praised Judge Scalia's dissent in glowing terms.

In a speech at Hofstra University Law School, Justice Scalia discussed his view of the proper use of legislative intent in judicial decisionmaking. According to Justice Scalia, courts should never look at legislative intent when interpreting statutes because, in his view, committee reports and floor debates are too contradictory and vague to provide an appropriate basis for judicial decisionmaking. Let every Member of the Senate who is going to be making their judgment know what Justice Scalia has stated about legislative intent in judicial decisionmaking.

According to Justice Scalia, who Judge Thomas has praised, courts

should never look at legislative intent when interpreting the statutes because, in his view, committee reports and floor debates are too contradictory and vague to provide an appropriate basis for judicial decisionmaking.

Rather, whenever a statute is not absolutely clear on its face, Judge Scalia believes the courts should defer to executive branch interpretations, even if those interpretations defy Congress' clear intent.

We know that Judge Thomas has sided with Justice Scalia on two critical issues concerning the separation of power between the executive and legislative branches. He may well side with Justice Scalia on the question of legislative intent.

If we vote to confirm Judge Thomas, we may well be condemning Congress to deal with every conceivable possibility in express statutory language, or let a hostile executive branch decide what our statutes mean.

Or take another example. The roles of the legislative and executive branches would be drastically altered if the Supreme Court gives the President the power to veto particular line items in appropriations bills, rather than requiring him to sign or veto the bills as a whole. The Republican Party platform explicitly states that the President already possesses this power, and Judge Thomas may well agree. In a 1987 speech, he described the line-item veto as within a range of concerns which "is coequal with the range of economic rights itself."

Judge Thomas has repeatedly stated that economic rights "are protected as much as any other rights" and "are so basic that the Founders did not even think it necessary to include them in the Constitution's text."

The current right-wing agenda includes developing a test case to take this issue to the Supreme Court. President Bush has apparently instructed his White House counsel and his Budget Director to find an appropriate test case.

With Judge Thomas on the Supreme Court, they are more likely to win it.

There are many reasons to be concerned by the prospect that Judge Thomas' views on the Constitution and the separation of powers may become the law of the land. There is, however, absolutely no reason to permit that to occur.

The Constitution gives the Senate and the President a shared role in deciding who sits on the Supreme Court. The Senate's advice and consent role is not subordinate to the President's role.

Indeed, the Constitution originally gave the Senate alone the power to appoint Supreme Court Justices. It was only at the last minute that the Framers modified this provision to share the responsibility between the President and the Senate.

The Framers, in making this last-minute change, once again recognized the benefit of the separation of powers and checks and balances. By dividing responsibility between the President and the Senate, the Framers ensured that each can stop any attempt by the other to stack the Court. But the system will not work unless each Member of this body exercises his constitutional responsibility independently to consider the President's nominee.

President Bush clearly did not rise above ideological considerations when he decided to nominate Judge Thomas, and the Senate has both the right and the duty to reject his confirmation if we feel that he is wrong for the Supreme Court.

If we confirm Judge Thomas despite the serious concerns raised by his record, there is little doubt that we will be acquiescing in the continued transfer of power away from Congress and into the hands of the President.

Mr. President, I ask unanimous consent that a more detailed analysis of Judge Thomas' view on executive power and the role of Congress be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

JUDGE THOMAS, EXECUTIVE POWER, AND THE ROLE OF CONGRESS

Judge Thomas' past statements and actions as a member of the Executive Branch raise troubling concerns about his views on the separation of powers and the role of Congress in our constitutional structure. Numerous statements demonstrate a harsh attitude toward Congress. He record indicates that he may have a narrow view of the circumstances under which Congress may investigate or restrain actions by Executive Branch officials, either through direct congressional oversight or through the use of special independent prosecutors. In addition, he has condemned Congress generally and has criticized it for exercising powers vested in the Executive under the Constitution. These views indicate that Judge Thomas may lack respect for Congress' role as a lawmaking body or, more fundamentally, that he may view much of what Congress does as unconstitutional.[1]

Although during his testimony before the Judiciary Committee Judge Thomas modified or abandoned many of his prior statements and stated that as judge he would set aside his personal views, his record still raises serious concerns about his views of the Executive, Congress, and the separation of powers.

I. CONGRESSIONAL OVERSIGHT

A. General statements

During Judge Thomas' tenure at the EEOC, his relations with Congress were often quite strained.[2] These conflicts apparently left Thomas quite hostile to Congress and caused him to criticize congressional oversight efforts in very strong terms. In speeches given during 1987 and 1988, he argued repeatedly that Congress, "has thrust the tough choices on the bureaucracy, which it dominates through its oversight functions"[3] and that congressional subcommittees "micro-manage the running of agencies."[4] Without naming names, he referred to members of Congress as "petty despots" and stated that Congress has been "an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom."[6] He also alleged that "[i]n obscure meetings, [Members of Congress] browbeat, threaten, and harass agency heads to follow their lead."[7] In Thomas view, "[t]o put it simply, there is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business."[48]

In addition to these general criticisms, Thomas has criticized specific efforts by Congress to investigate Executive Branch actions.

B. The Oliver North investigation

In several articles and speeches, Thomas has praised Oliver North for exposing Congress' failures. In 1988 he stated:

"That [the] defense [of freedom] is still possible is seen in the testimony of Oliver North before the congressional Iran-contra committee. Partly disarmed by his attorneys' insistence on avoiding closed sessions, the committee beat an ignominious retreat before North's direct attack on it and, by extension, on all of Congress. This shows that the people, when not presented with distorted reporting by the media, do retain and act on their common sense and good judgment, and that members of Congress can listen if their attention is grabbed. Self-government need not be an illusion!"[9]

Thomas also stated that he thought North "did a most effective job of exposing congressional irresponsibility. He forced their hand, and revealed the extent to which their public persona is fake."[10]

C. The Senate Aging Committee's investigation of the lapsed age discrimination cases

During Judge Thomas' tenure at the EEOC, the Senate Aging Committee discovered that the EEOC had allowed the statute of limitations to expire in thousands of age discrimination cases. Initial data submitted by the EEOC dramatically understand the scope of the problem. The EEOC did not cooperate with the investigation to the Committee's satisfaction, and it therefore issued a subpoena to obtain certain records. Ultimately, Congress adopted remedial legislation to extend the statute of limitations in affected cases.

Thomas was very critical of the Senate investigation. In 1988, for example, he alleged that Congress was out of control and stated:

"To give a current example, my agency will be virtually shut down by a willful committee staffer, who has succeeded in getting a Senate Committee to subpoena volumes of EEOC records. It will take weeks of time, and cost in the hundreds of thousands of dollars, if not in the millions. Thus, a single unselected individual can disrupt civil rights enforcement—and all in the name of protecting rights."[11]

The fact that without congressional intervention, thousands of older workers would have lost their federally-protected right to be free from employment discrimination apparently did not cause Judge Thomas to respect the need for the Committee's investigation.

D. The Senate confirmation hearings

During the hearings, Judge Thomas attempted to distance himself from his harsh statements criticizing Congress. He stated that "the oversight function of Congress [is] very appropriate"[12] and that "sometimes those of us who have nominated and needed to be confirmed have deep regret[s] about negative comments about this body [Congress]."[13] He also claimed that he did "not think he condoned" Oliver North's actions.[14]

[1] Footnotes at end of article.

He did, however, admit that he still believes that some oversight efforts go "too far in micro-managing" federal agencies.[15] In addition, although he testified that "[e]ven in the speeches where I talk about oversight, I may talk about the flaws, but I also point out the importance of the legislative and oversight process."[16] His prior statements do not support this claim.

II. THOMAS' CRITICISM OF THE SUPREME COURT'S DECISION IN MORRISON VERSUS OLSON AND THE ROLE OF THE INDEPENDENT PROSECUTOR

In Morrison versus Olson, the Supreme Court upheld in a 7-1 opinion the constitutionally of appointing special Independent Counsels to investigate suspected criminal activity by high-ranking federal officials. The Court, in an opinion written by Chief Justice Rehnquist, held that Congress has the authority to create special prosecutors. Justice Scalia, the lone dissenter, argued that Congress has no such authority, no matter how serious the allegations of criminal activity by Executive branch officials.

In a 1988 speech, Judge Thomas stated the Morrison was the most important Supreme Court decision since Brown versus Board of Education. He critioized Rehnquist's decision, and commended Scallia' dissent. He stated:

"Unfortunately, conservative heroes such as the Chief Justice failed not only conservatives but all Americans in the most important Court case since Brown versus Board of Eduation. I refer of course to the independent counsel case, Morrision versus Olson. As we have seen in recent months, we can no longer rely on conservative figures to advance our cause. Our hearts and minds must support conservative principles and ideas. As Judge Lawrence Silberman concluded his opinion in his D.C. Circuit Court of Appeals opinion: "This is no abstract dispute concerning the doctrine of separation of powers. The rights of individuals are at stake.' Justice Antonin Scalia's remarkable dissent in the Supreme Court case points the way toward those principles and ideas. He indicates again how we might relate natural rights to democratic self-government and thus protect a regime of individual rights."[17]

During the hearings, Judge Thomas appeared to state that he does not now believe that the independent prosecutor is unconstitutional.[18] He argued that he was merely expressing his concern that a law enforcement officer, unrestrained by either of the political branches, might trample on individual rights.[19] However, he did not adequately explain why, if this was his only concern, he used such strong language condemning the decision and praising Justice Scalia's dissent—which argued that any law enforcement by persons outside the executive branch is unconstitutional. Moreover, he did not explain why the provision allowing the Attorney General to dismiss an independent prosecutor for cause would not be sufficient to prevent the abuses of individual rights he said he feared.[20]

Thomas explicitly stated that he was unfamiliar with, and had not intended to endorse, the view that the separation of powers doctrine should be used to curb government regulation of business, or to rule that the independence from the President of certain Executive Branch agencies is unconstitutional.[21] These positions are, however, key issues on the agenda of various right-wing groups whom Judge Thomas often addressed. In addition to issues such as the constitutionality of special prosecutors or the independence of quasi-executive agencies, that agenda includes (1) urging the President to assert the line item veto power; (2) rejecting the use of legislative history to construe statues on the theory that Congress speaks with too many voices to be clear, while accepting Executive Branch interpretations,[22] and (3) expanding the use of the President's "pocket veto" power to nullify Acts of Congress during any recess longer than three days.

III. THOMAS' CRITICISM OF CONGRESS' LAWMAKING ACTIVITIES

In a number of speeches and articles, Judge Thomas has argued that during the last few decades Congress has abandoned its role as a deliberative, law-making body and has transformed itself into a quasi-executive. For example, in 1988 he stated that "Congress no longer stands for a deliberative body which legislates for the common good or public interest. It has become a coalition of elites, reflecting various interest groups."[23]

In Thomas' view, members of Congress enact vague legislation which leaves difficult policy decisions to executive agencies and to the courts, and then mirco-manage the administrative process in order to promote the goals of the interest groups to which they are indebted, while avoiding paying the political price for their decisions.[24]

Thomas appears to believe that such activities are not only improperly instrusive—they are unconstitutional. He has argued that Congress' transformation from a law-making body to a quasi-executive has altered the constitutional role of the Executive and the courts and threatens the separation of powers.[25] Although his position is not entirely clear, he appears to argue that Congress may only enact statutes which control "the general conditions under which departments and agencies ought to operate" and that it must leave to the executive branch decisions about "how to adapt the general law to particular circumstances.[26]

If Thomas in fact believes that Congress acts unconstitutionally when it enacts specific legislation or engages in agency oversight, he would be obliged as a Supreme Court Justice to strike down the legislation or prohibit the oversight activity.

FOOTNOTES

[1] In addition to the issues described in this paper, Judge Thomas' record raises other areas of concern with respect to his view of the separation of powers. His failure while an Assistant Secrstary in the Department of Education to comply with a court order may indicate that he has a limited view of an executive official's obligation to obey the direct commands of the judicial branch. His insistence on taking a very narrow view of Section 504 of the Rehabilitation Act (over the objection of Assistant Attorney General William Bradford Reynolds), his statement expressing hope that lower courts would be guided by the dissenting opinion in a landmark Title VII case, and some of his opinions as a Judge on the D.C. Circuit indicate that he may have a cramped view of congressional enactments and a tendency not to give effect to congressional intent when that intent conflicts with either the Administration's interpretation of a statute or with his own policy beliefs.

[2] Indeed, fourteen members of House committees and subcommittees (almost all of them Chairpersons) co-signed a 1989 letter denouncing Thomas for "an overall disdain for the rule of law." Letter to President Bush, July 17, 1989. Eleven of these members urged the Senate to reject Judge Thomas' 1990 nomination to the D.C. Circuit. Letter to Chairman Biden, Feb. 28, 1990. Twelve such members of the House have also urged the Senate to reject Thomas' nomination to the Supreme Court. *See* Hearing Transcript, Sept. 13, 1991, p. 95–96 (questioning of Senator Simon).

[3] Prepared text, Speech at Harvard University Federalist Society, Apr. 7, 1988, p. 13 (prepared text not delivered) ("Harvard Federalist Society").

[4] "The Modern Civil Rights Movement: Can a Regime of Individual Rights and the Rule of Law Survive?," Speech at the Tocqueville Forum, Wake Forest University, Apr. 18, 1988, p. 21 ("Tocqueville Forum").

[5] Harvard Federalist Society at 13.

[6] Tocqueville Forum at 20.

[7] Tocqueville Forum at 21.

[8] Speech to the Palm Beach Chamber of Commerce, May 18, 1988, p. 12 ("Palm Beach Chamber of Commerce"); Speech at Brandeis University, April 8, 1988, p. 4 ("Brandeis University") "Congress, the Bureaucracy, and the Enforcement of Civil Rights," Paper President to the Annual Meeting of the American Political Science Association, Sept. 3, 1987, p. 4 ("American Political Science Association"). Thomas has also condemned the General Accounting Office as the "lapdog of Congress." *See* Speech at Creighton Law School, Feb. 14, 1991, p. 6.

[9] Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," p. 399–400, in *Assessing the Reagan Years* (D. Boaz ed.) (1988) ("Civil Rights as a Principle").

[10] Tocqueville Forum at 21. *See also* Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 Harv. J. Law & Pub. Pol. 69 (Winter 1989) ("The Higher Law Background"); Speech to the Federalist Society for Law and Public Policy Studies, University of Virginia School of Law, Charlottesville, Virginia, March 5, 1988, p. 13 ("Virginia Federalist Society"); Harvard Federalist Society at 13 ("[a]s Lt. Col. Oliver North made perfectly clear last summer, it is Congress that is out of control!").

[11] Virginia Federalist Society at 13; see also Tocqueville Forum at 21–22; "The Higher Law Background" at 69.

[12] Hearing Transcripts, Sept. 11, 1991 at 122; Sept. 12 at 13; Sept. 13 at 92, 93–94.

[13] Hearing Transcript, Sept. 11, at 162.

[14] Hearing Transcript, Sept. 13 at 92; see also Sept. 16 at 105–06.

[15] Hearing Transcript, Sept. 12 at 13.

[16] Hearing Transcript, Sept. 13, at 93–94.

[17] "How to talk About Civil Rights: Keep It Principled and Positive," Keynote Address Celebrating the Formation of the Pacific Research Institute's Civil Rights Task Force, Vista Hotel, pages 7–8 (Aug. 4, 1988) (emphasis in original).

[18] Hearing Transcript, Sept. 12 at 69, 73. His statements, however, are not entirely clear. On September 12 he stated: "I don't think my point of departure was that it was unconstitutional, although I disagreed and argued that the Scalia opinion was the better approach." Transcript at 69. Later in the exchange he agreed that Morrison "is a decided case," Transcript at 73, but again did not state that he agreed with the result. See also Transcript, Sept. 13 at 17.

[19] Hearing Transcript, Sept. 12 at 29, 35, 70, 72; Sept. 13 at 15–17. Thomas also claimed that he commended Justice Scalia's opinion because it showed how "we might relate natural rights to democratic self-government." *Id.*, Sept. 12 at 31.

[20] *See* Hearing Transcript, Sept. 12 at 72.

[21] Hearing Transcript, Sept. 16 at 153–60.

[22] The Supreme Court's handling of the "gag rule"/abortion dispute is a perfect example of this aspect of the issue. In its final years, the Reagan Administration reversed its longstanding interpretation of Title IX, the Family Planning Act, and promulgated the gag rule as a regulation purporting to "interpret" that statute. The Supreme Court north Rust versus Sullivan sustained the regulation as a valid interpretation of Congress' intent. Now, to reject the gag rule, Congress must pass a new statute and override a likely Presidential veto.

[23] Tocqueville Forum at 22. At the hearings, Thomas testified that "I think I said [this] in tha context of saying that Congress was at its best when it was legislating on great moral issues." Hearing Transcript, Sept. 12 at 14. The speech, however, does not place the comment in that context.

[24] *See* Palm Beach Chamber of Commerce at 15–16; Brandeis University at 6, 11–13; American Political Science Association at 5, 11–13, 17–18, 20. *See also* Virginia Federalist Society at 13; "The Higher Law Background" at 69.

[25] Palm Beach Chamber of Commerce at 10–27; Brandeis University at 3–14; American Political Science Association at 3–21. *See also* "Civil rights as a Principle" at 397–98.

[26] Palm Beach Chamber of Commerce at 11; Brandeis University at 4; American Political Science Association at 4.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection, it is so ordered.

Mr. DOLE. Mr. President, was leader time reserved?

The PRESIDING OFFICER. Yes.

THE BLOCKADE OF DUBROVNIK, CROATIA

Mr. DOLE. Mr. President, I was just on the telephone—I think it would be of interest of my colleagues—with the mayor of Dubrovnik in Croatia, Zeljko Sikic.

He was just calling frantically to get in touch with someone in America with a plea for help for Dubrovnik's community of 70,000 people. Bombs were dropping in the city as we spoke just 30 seconds ago. There is a total blockade by the Yugoslav army and the Serbs: They have cut off their water supply; they are burning their forests, bombing their churches. This mayor is just reaching out to the world for help. People were being killed as we spoke on the telephone.

I said I did not know what I could do, but that I will go immediately to the Senate floor and let people know of your telephone call and of your plea for help. This is happening all over Croatia.

I know there are deep hostilities and long-held hatreds between the Serbs and the Croats. But something must be done, some way must be found to bring the fighting to an end and to end this quest by the hard-line Communist leader, one of the last in the world. Mr. Milosevic, the Serbian leader, is using the Yugoslav army, and it is not even a fair fight. They do not have any airplanes in Dubrovnik. They do not have any tanks. They are being bombed from the air; they are being blockaded by sea. And it is all part of Milosevic's effort to have a "Greater Serbia."

Maybe my colleagues have ideas on how we can bring this tragedy to an end—everybody else is heading toward peace but Milosevic wants war. It is a very serious matter. I urge my colleagues on both sides to take a look at what is happening to what used to be Yugoslavia, especially if you have any Albanians in your State, any Slovenians in your State, any Croatians in your State, or any Serbians in your State—because there are a lot of Serbians who do not agree with Milosevic, whose actions run counter to everything that is happening around the world.

Mr. President, I promised the mayor I would make that statement.

EXTENDED BENEFITS LEGISLATION

SEPTEMBER'S UNEMPLOYMENT FIOURES

Mr. DOLE. Mr. President, as President Bush noted in his news conference earlier today, some encouraging news came this morning with the report that September's unemployment rate dropped to 6.7 percent.

While this rate is still unacceptably high and I hope very much we see further improvement, it does appear to indicate a leveling off during the last couple of months and the beginning of a downward trend consistent with signs of economio recovery.

ACTION SPEAKS LOUDER THAN WORDS

I heard a bunch of fancy speeches from the other side of the aisle this morning that seemed to indicate concern for the unemployed and passing extended benefits legislation.

But let us be frank, Mr. President, action speaks louder than words. It seems that each time the democrats send extended benefits legislation to the President, they make it worse, not better. Their first bill increased the deficit $5.8 billion and now they want to increase it by $6.2 billion.

WHERE IS THE ACCOUNTABILITY?

Unlike the proponents of the conference report, the President is sticking to his promise to abide by the budget agreement. The commitment of those who support the conference report to the budget agreement would appear to extend only as far as its political utility. Apparently for them, its utility has passed.

I ask where the accountability is? Is it that hard to say we agreed to pay for new programs and that we will stick by that promise because that is what is best for America?.

The one thing the American people understand is that you have to pay for things and that is what my alternative does. The alternative offered by Senators DURENBERGER and BURNS also pays for itself.

REPUBLICAN ALTERNATIVES

The President has said he would sign the Dole et al. alternative. He has said that before and he repeated it in no uncertain terms this morning during a news conference.

He has said he will veto the conference report because it is a tax on the American economy just when we continue to see encouraging signs.

Personally, Mr. President, I do not see what is taking so long to get the conference report to the White House so that we can start debating serious extended benefits legislation such as the alternatives we have offered.

I have seen bills move out of here quickly before, and the American people should be asking themselves why, when the House and the Senate passed the legislation last Tuesday, the bill has still not reached the House for Signature—let alone made its way down Pennsylvania Avenue.

The answer to that question is politics, and the fact that my colleagues on the other side of the aisle don't want to have to cut into next week's recess to work out a responsible piece of legislation with this side of the aisle.

They just want showdowns with President Bush. But while some Democrats are chuckling about trying to put the President in a tough spot, unemployed Americans are not laughing.

UNANIMOUS CONSENT TO BRINO UP DOLE ALTERNATIVE

Before the day is out, Mr. President, I will seek unanimous consent to bring up the alternative offered by myself, Senators DOMENICI, ROTH, DANFORTH, BOND, and others.

I know that this proposal probably doesn't please a lot of Members on the other side of the aisle because it is a Republican alternative. Indeed, the other side of the aisle hasn't even bothered to offer suggestions to a bill that the President has said he would sign instantly.

In my book, that does not look like a lot of concern for the unemployed, and I think the unemployed workers should be asking where the beef is behind those great speeches we heard this morning.

PARITY FOR MILITARY PERSONNEL

Mr. President, I just want to take a moment to reply to earlier statements made by the Senator from Tennessee [Mr. SASSER].

The Dole et al. proposal provides for complete parity of treatment for unemployment extended benefits between military and civilian personnel.

The Senator from Tennessee suggests that our proposal hurts veterans returning from the Persian Gulf or other military personnel who have bravely and proudly served this country.

It is obvious to me that the other side of the aisle has not even bothered to read our alternative, which, based on other statements I have head, does not really surprise me.

Identical to standards for the civilian work force, our proposal provides 26 weeks of benefits to those involuntarily separated from the service and no benefits to those who voluntarily choose to leave the service, such as taking a new job in the private sector. This is what civilian workers get, and my proposal ups benefits for military personnel to make them consistent.

I also want to stress the point that our proposal would provide a full 26 weeks of benefits to those separated from the service due to defense downsizing because the denial of the right to reenlist or to sign up for additional service is considered an involuntary separation.

So, before criticisms are lobbed against our proposal by the other side of the aisle, let us at least get our facts straight.

The American people—particularly those who are unemployed—deserve to

situation. If you want to get on the floor of the U.S. Senate and blame the Democrats as a group for all the evils that presently exists with our fiscal mismanagement, then that is one thing. If you want to float a flag or a balloon that somehow the President and the Republicans are really the ones that are concerned about passing onto our children and grandchildren the enormous debt that has accrued—I did not intend to make a political talk on this matter.

Suffice it to say that when we had the last Democratic President of the United States, we had a debt of less than $1 trillion. Today that debt is $3.6 trillion. It is going to over $4 trillion within the next year, and the famed budget summit that I hear so much about on the floor of this Senate as a restraint is not a restraint. It is a phony piece of legislation, and I voted against it. And I declare again now that that famed budget summit the Democrats and Republicans were involved in under the leadership of the President at Andrews Air Force Base was a phony deal.

Therefore, I do not take much comfort in the fact, if we do not do something about unemployment, that that is going to solve the problem and make the salient point that the Republicans are indeed going to lead the way to a balanced fiscal course of action for the United States of America.

I was somewhat shocked, Mr. President, when I heard some of the statements that were just made. I would agree with the minority leader that it is entirely proper and wise to have the bill that was passed and enrolled acted upon promptly, to give the President an opportunity to exercise his veto, which he has every right to do as the President of the United States, and then come back and start all over again. But when I heard the talk about alleging that the Democrats and the Democratic leadership were causing the delay and causing the harm to all these troubled people who are unemployed, I was amazed.

I am further amazed that some people on this floor seem to have forgotten that the President of the United States a short few weeks ago signed into law—signed into law, Mr. President—a Democratic-led and sponsored bill to address this problem. In signing that into law, one would have to assume that the President of the United States felt it was a good piece of legislation. The reason, though, that it did not become effective, I would point out, is that the President of the United States simply, while signing the law, neglected and specifically said he would not sign the executive order that would be necessary to allow the measure to go forward.

So what we have now, Mr. President, contrary to what has been said on the floor, is the President of the United States signed into law the identical bill that we are talking about enrolling and sending to the President. If the President thought that bill was so bad, why did he sign it?

Of course, it is politics. It is raw and simple politics. And I may be misinformed, but I had never heard of the famed Dole-Domenici, et al., compromise bill that would be a pay-as-you-go maneuver until after it was obvious that we were going to pass some kind of a bill in the Congress of the United States.

I also think it is most amusing, Mr. President, that we talk about budget busting.

I was trying to explain this to my wife the other night. She has a pretty keen interest and a pretty keen understanding of Government, but she was puzzled about all of this. She said, "Republicans are saying you are going to bust the budget."

I said, "Yes, that is what they are saying."

"But," she said, "isn't it true that there is already $8 billion in a fund designed for the exact situation that we find ourselves in today? That money has been paid in by employers around the United States over a period of years. Isn't it true that there is $8 billion in that fund now? Isn't it true that this bill that the Republicans are alleging is wasteful spending would only spend $6 billion of that $8 billion in the trust fund?"

And I said, "That's right."

Then she said, "Well, how is it busting the budget?"

I said, "That is the most misunderstood or best-kept secret in the United States of America today."

It is not only with regard to that $8 billion trust fund, but it is all of the other trust funds that we have, including Social Security that this administration has ignored.

If there is any budget-busting allegation with regard to the bill in question, it is because the $8 billion in the trust fund, that therefore would not affect the budget whatsoever, has already been spent on other programs. It is just like the Social Security trust fund.

The people of the United States think a trust fund means something. I have said time and time again on this floor that there are no funds and there is very little trust. And yet we hear: "Those irresponsible Democrats are going about their usual irresponsible ways in trying to meet the needs of society."

The key question that I would like to have answered is, why was it, if the President is as concerned as he seems to now be and now solidly behind the belated proposed known as Dole-Domenici, et al., that there was nothing but silence, and an argument from the President of the United States and others of his political affiliation on this floor that there was simply no need for any kind—any kind—of relief or additional benefits for the unemployed?

Well, at least we brought them this far. The key question comes down, Mr. President, to a suggestion that I made earlier. If the President is concerned, why does the President not simply issue the Executive order to place right now, this afternoon, in effect the unemployment benefits extension that the Congress previously acted upon and that the President of the United States signed into law?

I am not saying directly that there is any politics involved here, but at least I raise a question.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with consideration of the nomination.

Mr. EXON. Mr. President, from my experience as Governor of the State of Nebraska as the appointing official for State judges, through my responsibilities in the U.S. Senate as part of the confirmation process for Federal judges, I have always felt a heavy responsibility to reach the best judgment possible on such matters. The individuals suggested for judicial positions must meet qualification tests in a number of areas, not just one. Few have met all of the criteria of the extensive panorama of tests that I have applied to each potential jurist. Perfection in all our actions and decisions as we pass through life is a worthy but unattainable goal. The same is true of those who serve on the Federal bench.

Judges face especially difficult and vital decisions affecting people over a period of years on a wide range of issues. They dispense justice and we dare not submit them to anything but the greatest scrutiny.

If there is a single ideal requirement for the judiciary, it is balance. The political system that we have employed in the selection process does not well lend itself to that worthy goal. In reviewing the report from the Judiciary Committee I noted with particular interest the references to this concern by Chairman BIDEN. Yes, it could be alleged that previous Supreme Courts have obviously had a bent far different from the present one. Two wrongs do not make a right and I would prefer a more balanced court philosophically.

I am convinced that the present administration and the one preceding it have gone more doctrinaire and strident in their nominees at every level of the Federal bench that any others. Generally the litmus test on strongly held conservative viewpoints has been applied. So much for balance. Indeed the current Justice Department has dramatically stepped up its political involvement in the process. But the

people have overwhelmingly supported the last two Presidents and evidently they are satisfied with the result. I am very concerned and may be addressing the process of selecting Federal judges at a subsequent time.

But the challenge today is to face the situation with reality and make the best decisions possible.

With regard to the current nominee, there were early surprises that reflect on my increasing concern for the process.

The President, supposedly devoid of all political or quota considerations, proudly announced his nominee as the best man for the job on the merits for the vacancy. This pleased me a great deal.

Since them, via the examination process, the truth has come to light. I would expect that there are few, if any, who believe what the President told the people of the United States as I have just quoted him. Maybe the President just misspoke or got carried away with his rhetoric over his "find." I do not buy for a moment what at best was an overstatement. It is my hope that the President does not come into possession of a hatchet because it might endanger the survival of every cherry tree in the Potomac Valley if Presidential history repeats itself. Confessions afterward could not restore the forest.

After a personal interview with Judge Thomas some time ago, I said I was inclined to support the nominee pending the outcome of the hearings and my review of the findings of the Judiciary Committee. I was surprised that he was not approved by the committee but my review of their findings have shown me their deliberation and carefully studied conclusions were difficult if not tortured. I salute all committee members of their studious efforts to reach their individual and collective conclusions.

I gathered the distinct conclusion that the committee did not agree that the best person has been selected but at least half of the committee felt he was qualified as did the American Bar Association.

My personal evaluation of Judge Thomas is that he is qualified. During my personal meeting with him, I was impressed with his academic credentials intelligence, determination, and family values. Indeed, he is an American success story by any measurement. It is certainly true that he does not have extensive courtroom or trial experience as a lawyer, and little if any in the Federal courts. There have been others, however, with similar limited private practice who have subsequently served in the courts with distinction.

It is my view that Judge Thomas' background and very human personal experiences would make him intellectually incapable of being other than a thoughtful and independent-minded jurist whose positions on issues could not be predicted in advance. He may well turn out to be a keen disappointment to some of his most vocal supporters, and a happy surprise to some of his more vocal opponents.

One member of the Judiciary Committee challenged other Senators to study the facts and vote their conscience. I have done that. Judge Thomas has demonstrated to me that he has judicial temperament, honesty, talent, academic credentials, fairness, and fitness for the Supreme Court of this land, notwithstanding what I consider an unfortunate oversell of his credentials by the President. In my view, he is qualified and I will support his nomination with my vote.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I had the pleasure of working with the distinguished Senator from Nebraska. He is the chairman of our Strategic Subcommittee, and I want to commend him for the fine work he has done on armed services on that subcommittee. I want to commend him for the conclusion he reached on Judge Thomas. He has reached the right conclusion.

Thank you very much.

Mr. EXON. Mr. President, I thank my friend and working partner on a whole series of issues, the distinguished former President pro tempore of the Senate, and now a very close worker with me on the whole matter of national defense, and I thank him so very kindly for his remarks.

Mr. THURMOND. Mr. President, I have already spoken on Judge Thomas this morning and answered some criticism of him. I think he is an outstanding candidate who will make the best Supreme Court Justice. I wish, now, to make a statement on another subject.

Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ALCOHOLISM IN AMERICA

Mr. THURMOND. Mr. President, in today's world of drive-by shootings and adolescent drug dealers, where crack cocaine and other illegal drugs are available on playgrounds as well as street corners, it is all too easy to forget that our Nation's No. 1 drug problem is alcohol abuse. Although it rarely makes the morning headlines or the evening news, alcohol is the most widely used and abused drug in this country affecting the lives of millions of Americans. Alcohol taken to excess dulls the bright minds of our youth, robs our artists of inspiration and prematurely takes the lives of thousands of Americans each year.

On Monday of this week the Department of Health and Human Services released the results of a Federal survey on alcoholism. This survey, conducted by the National Center for Health Statistics and the National Institute on Alcohol Abuse and Alcoholism, shows that alcohol affects even more Americans than was previously thought.

According to the survey, 76 million Americans—about 43 percent of the adult population of the United States—have been exposed to alcoholism in their families. Almost one in five Americans lived with an alcoholic growing up, and about 38 percent of adults in this country have a blood relative who is an alcoholic or problem drinker. In addition, almost 10 percent of adults have been married to or in a long-term relationship with an alcoholic or problem drinker, and alcohol appears to play a significant role in marital problems.

Mr. President, in spite of the strong evidence of the destructive effects of alcohol, many Americans lack even a basic knowledge of the possible consequences of drinking. These same Americans, however, are well aware of the numerous alcoholic beverages available at the corner liquor store. Like the rest of us, they are constantly bombarded with advertisements touting the virtues of various alcoholic beverages and strongly implying that to have fun, you have to drink.

Alcohol advertising remains the primary, if not the only source of alcohol education to which most Americans are exposed. The alcoholic beverage industry spends over $2 billion a year encouraging American consumers to purchase their products, with many of the ads specifically targeting young people.

Alcohol ads paint a glamorous and seductive picture of drinking, linking it with precisely those attributes and qualities—happiness, success, sexual prowess, athletic ability—that young adults find desirable. Ironically, these are the same qualities that alcohol abuse can diminish or destroy.

In an attempt to help educate Americans about the possible dangers of drinking, I have introduced legislation—S. 664, the Alcoholic Beverage Advertising Act of 1991—that would require alcoholic beverage advertisements to carry health warning messages. The bill provides for five rotating health messages, which would be included in all alcoholic beverage advertisements and promotional displays in both print and broadcast media. The measure also provides for the establishment of toll-free numbers which would provide information on drinking-related problems.

This legislation builds on the foundation of the alcohol warning label measure I authored in 1988. That bill, now a law, requires that all alcoholic beverage containers carry health warning labels.

The health messages required by the advertising legislation are very similar to those appearing on beverage con-

tainers. They provide information on the possible consequences to drinking during pregnancy; impaired ability to drive or operate machinery under the influence of alcohol; the possibility of interactions with other drugs; the possibility of becoming addicted to alcohol; and a reminder to consumers that it is illegal for those under 21 to purchase alcoholic beverages.

I believe this measure is both necessary and long overdue, and public opinion supports my conclusion. In survey after survey—some sponsored by alcohol industry and advertising publications—the majority of Americans polled favored health messages in alcohol advertising.

These health messages do not impose any legal restriction or penalty to those who do not heed them. They merely caution consumers that use of the product may entail serious consequences. The legislation is aimed at providing important health information to the public, not at eliminating legitimate advertising.

The Alcoholic Beverage Advertising Act of 1991 has been endorsed by dozens of public safety and health organizations, including the American Medical Association, the American Academy of Pediatrics, the National Parent-Teacher Association, the Center for Science in the Public Interest, the National Council on Alcoholism and Drug Dependence and Mothers Against Drunk Driving.

Several weeks ago I wrote the chairman of the Committee on Commerce, Science, and Transportation requesting hearings on this legislation, and it is my hope that they will be held before the end of this session. I urge my colleagues to consider this timely and important piece of legislation.

Mr. President, I ask unanimous consent that an article entitled "Study Finds Alcoholism Touches 4 in 10 in U.S." from the Washington Post be included in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 1, 1991]

STUDY FINDS ALCOHOLISM TOUCHES 4 IN 10 IN THE UNITED STATES

(By Paul Taylor)

More than four in 10 adult Americans have been exposed to alcoholism in his or her family, and divorced or separated men and women are three times as likely to have been married to an alcoholic as other married men and women, a federal survey shows.

"It is clear from this study that statistics on the number of alcoholics in this country—10.5 million—greatly underestimate the total number of people affected by the disease of alcoholism," Secretary of Health and Human Services Louis W. Sullivan said in releasing a survey by the National Center for Health Statistics.

"Since the beginning of the war on drugs, there has been so much focus on illicit drugs that there's been a tendency to forget that the drug that most profoundly affects people's lives is alcohol," said Christine Lubinski, director of public policy for the National Council on Alcoholism and Drug Dependence, a private, nonprofit advocacy group. "We are gratified that these findings dramatize how much we need to focus on alcohol."

The survey was based on interviews with 43,809 adults in 1988. It did not define the terms "alcoholic" or "problem drinker," but allowed respondents to interpret those terms as they wished. All of the following figures combine those two terms. Among the major findings:

76 million adults, or 43 percent of the adult population, either grew up in a family with an alcoholic, married an alcoholic or have had a blood relative who is an alcoholic.

Exposure to alcoholism in one's childhood has grown more prevalent in recent generations. The report found that 21.4 percent of persons age 18–44 reported growing up in a family with an alcoholic, compared to 16.5 percent of those age 45–64 and 8.5 percent of those over age 65.

It speculated that some of this increase may stem from the fact that younger adults identify problem drinking at an earlier stage than older adults, who grew up in a social milieu that did not identify alcoholism until an alcoholic was "falling down" drunk or could not work.

More than one-third of all separated or divorced women said they had been married to an alcoholic at some time, compared to 12 percent of all married women. Widows were about twice as likely as married women to have been married to an alcoholic. Just under 11 percent of all separated or divorced men said they had been married to an alcoholic, compared to 3 percent of married men.

"Although many marriages survive the effects of alcoholism, either because the alcoholic seeks help or because the family accommodates to the alcoholic drinking, it is clear that a large number of marriages dissolve in the face of alcoholism," wrote Charlotte A. Schoenborn, the report's author.

"Not only are family members of alcoholics more vulnerable to developing alcoholism themselves," said William L. Roper, director of the Centers for Disease Control, "they also are often subjected to many adverse conditions associated with alcoholism—conditions ranging from economic hardship to physical abuse."

Lubinski said she hoped the report would fuel two legislative initiatives currently before Congress—one that would include alcoholism as one of the diseases covered under the various universal health coverage proposals being drafted, and another that would require health and safety warnings be included in all alcohol advertising.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I have followed closely the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. I have watched the confirmation process with much interest, and with an enormous sense of the impact that Judge Thomas could have on the lives of all Americans for the next half century.

I have been struck by Mr. Thomas' personal history, and by how he overcame racial bigotry and State-sanctioned discrimination to become a successful public official and an appeals court judge. I have found Judge Thomas to be personally engaging and charming. But through it all, I have not found sufficient evidence that Mr. Thomas possesses the qualities Americans should expect—indeed demand—from a member of the highest court in our land.

Mr. President, the Senate's advise and consent role is among its most significant responsibilities. The Senate is obligated to ensure that any individual appointed to the Supreme Court will vigorously uphold the Constitution and protect the many freedoms that we, as Americans, enjoy.

The President is not entitled to a blank check when it comes to judicial nominations. The judicial, executive, and legislative branches are coequal partners in our Government. While the President may be entitled to some degree of deference when he nominates individuals for Cabinet positions, he is entitled to no such deference when it comes to the Supreme Court. And the Senate should test every Supreme Court nominee based not on politics, but on ability, temperament, and sincerity.

Mr. President, after watching the hearings, reading numerous materials written both by and about Mr. Thomas, examining Mr. Thomas' record and discussing with Mr. Thomas various aspects of his personal philosophy, I have concluded reluctantly, I might say, that I cannot vote to put Clarence Thomas on the U.S. Supreme Court.

Throughout the nomination process, I have tried to piece together the real Clarence Thomas. I began the process with an open mind and liked Mr. Thomas personally when I met him. But much to my disappointment, Clarence Thomas did little to show the country who he is, or what he believes in. In fact, he provided more questions than answers.

As I watched the Judiciary Committee's confirmation hearings, I was dismayed to see Mr. Thomas backpedal from virtually every controversial opinion he has expressed over the last decade. The Clarence Thomas who espoused the use of natural law as "the only firm basis for a just and wise constitutional decision" was absent at the hearings. In his place sat a new Clarence Thomas who told the Judiciary Committee that he does not "see a role for the use of natural law in constitutional adjudication."

Then there was the Clarence Thomas who told the committee that Roe versus Wade was one of the two most important Supreme Court cases to be de-

cided in the last 20 years, but claimed never to have discussed it. The old Clarence Thomas, on the other hand, referred to an essay on the right to life, written by Lewis Lehrman, as "a splendid example of applying natural law." That article's principal focus was the Roe versus Wade decision, yet the new Clarence Thomas claims never to have discussed the case or even formed an opinion on its outcome. Mr. President, this is not a case of prochoice or prolife; it is a question of credibility.

Even if Mr. Thomas is telling us the truth, I have to question the thoroughness, temperament, and intellectual curiosity of an individual who could so easily commend an article that advocates a viewpoint on which he has formed no opinion.

Mr. President, I am also troubled by Mr. Thomas' comments about Justice Oliver Wendell Holmes. In his remarks before the Pacific Research Institute in 1988, Mr. Thomas castigated Justice Holmes for his views on natural law. He quoted from an essay by Walter Berns, stating "no man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach. * * * what a people needs in order to govern itself well."—views which, as Senator Heflin pointed out, Mr. Thomas now claims as his own.

But Mr. Thomas told the Judiciary Committee that he respected Justice Holmes as "a giant in our judicial system." He said that he later read additional materials about Justice Holmes and changed his view. And he dismissed his previous comments on Holmes as merely the words of another scholar.

Again, just as with the Lehrman article, I have to question not only Mr. Thomas' forthrightness but also his thoroughness and impartiality. As Senator Heflin put it, "Judge Thomas' responses suggest to me deceptiveness, at worst, or muddle headedness, at best."

Judge Thomas insists that he should be judged as the Judiciary Committee saw him, not based on the decade of writings, speeches, and policy positions he has under this belt. But what the Judiciary Committee saw was a man who engaged in a full-scale retreat from countless public positions he has taken over the past decade. Thomas abandoned his pronounced opinions on affirmative action. He abandoned his advocacy of natural law. He abandoned his opinions about congressional power and oversight. And he abandoned his views on Justice Holmes. How can Mr. Thomas expect anyone to discount his abrupt transformation, when he stands to inherit an office from which he will render decisions that will affect the rights of millions of Americans for years to come?

Mr. Thomas tells us that we should believe him because his previous writings and speeches were made in his role as an executive branch official. He asserts that many of his previous opinions were the musings of an amateur political philosopher, while others were given in his role as an advocate.

Mr. President, even if one accepts these arguments, which I do not, one has to question the logic of Mr. Thomas' views about the responsibilities of judges. Mr. Thomas asserts that as a judge he has cast aside all of his former opinions, and in fact, no longer forms opinions on any issue that could come before the Court, lest he lose his objectivity.

Of course, judges should be objective. That is their job. But it is either naive or disingenuous for Judge Thomas to suggest that he does not bring values and opinions into the courtroom. Indeed, I believe it is far-fetched for Judge Thomas to suggest that his previous opinions, presumably shaped by his experiences earlier in life, are somehow irrelevant now that he is a judge. Judge Thomas describes his childhood experiences at length, presumably so that Members of the Senate will take that past into account in determining how to vote. Yet he tells us that nothing he said during the last decade matters. He tells us to ignore opinions that he expressed vehemently as recently as 2 years ago.

Mr. President, I find it extremely difficult to ignore those opinions.

Then there is Mr. Thomas' chairmanship of the Equal Employment Opportunity Commission. During his tenure, Mr. Thomas allowed thousands of age discrimination complaints to exceed the statute of limitations. When the Senate Special Committee on Aging first confronted Mr. Thomas about the complaints, the committee did not find him to be forthcoming or cooperative. In fact, the Aging Committee tried for months to extract from Mr. Thomas' EEOC information on the number of age discrimination charges that had expired due to inaction. After Mr. Thomas repeatedly stonewalled the committee, it was forced to resort to use of a subpoena.

By the time the committee issued its subpoena, it had been inquiring for several months into the number of complaints that had exceeded the statute of limitations. The subpoena was issued after Mr. Thomas publicly stated that 900 claims had expired—a statement he made after failing to supply that same information to the Aging Committee.

Mr. Thomas' inaction caused thousands of individuals to lose their right to have their day in court. As far as these people were concerned, Congress might just as well never have enacted the Age Discrimination in Employment Act—because Mr. Thomas' neglect rendered the act virtually useless to them until Congress restored their right to be heard.

Mr. Thomas expressed to the Judiciary Committee his sorrow at the lapse that caused so many individuals to lose their rights. But this sounded quite different from the Clarence Thomas who piloted the EEOC. During an EEOC meeting where the commissioners discussed an important age discrimination case, Mr. Thomas was asked whether he thought it would be coercive for a company to threaten older workers with job loss if they refused to retire early. He responded, "I think it constitutes reality." That indifference to older workers leads me to believe, Mr. President, that Mr. Thomas' sorrow runs much more toward his personal reputation than toward the hardship suffered by countless victims of age discrimination on whom his agency turned its back.

Finally, Mr. President, I am concerned that Judge Thomas does not have the scope of legal knowledge that a Supreme Court justice should possess. Justice Souter showed an exceptional command of constitutional law. He showed a depth of judicial knowledge leagues above that demonstrated by Judge Thomas. And he showed a measure of thoughtfulness that I do not see in Judge Thomas.

Some believe that Mr. Thomas' background would add important diversity to the Court. But Mr. President, there are two kinds of diversity—diversity of experience and diversity of thought. And this Senate is not voting on Mr. Thomas' past, but on the Mr. Thomas of today—and 30 years from today. While Mr. Thomas may come from roots vastly different from the other Justices, I do not believe he is an individual who will contribute to the intellectual and philosophical balance of the Court—a balance that has steadily eroded during the last 10 years.

Mr. President, I fully expect that the Senate will confirm Judge Thomas. Therefore, I share the hope of those who believe that Mr. Thomas will grow as a Justice, and will approach constitutional adjudication with a truly open mind. However, I am not prepared to gamble my vote on such hopes. The stakes are simply too high.

I thank the Chair and yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to take just a few moments today. It is no secret that I feel Judge Clarence Thomas should be confirmed to the Supreme Court of the United States of America. I have known him for over 10 years, and I can tell you he is one extraordinary human being. He is honest; he is a person of integrity; he is a person of capacity; he is a person of good work habits; he is a person of fairness. He is the type of person that I would like to have my cases heard before, on either the trial or appellate benches of this country, and certainly on the U.S. Supreme Court.

It has been amazing to hear some of the arguments against him. I would

like to take a few moments to briefly touch on and respond to some of the more egregious charges. I am only picking a few at random—there have been a lot more—from some I heard yesterday on the Senate floor by some of my colleagues who voiced their opposition of Judge Thomas' confirmation.

Let us take one charge: Judge Thomas was evasive and did not respond to the questions of the Judiciary Committee. The real complaint, in my opinion, is that Judge Thomas would not commit himself to voting the liberal agenda. What Judge Thomas said again and again is that he has no agenda other than interpreting the law as written by those who are entitled to write it.

Another charge: Judge Thomas, they say, is unbelievable when he says he has never talked about Roe versus Wade, the abortion case, and he has no position on it. I went into this yesterday. What Judge Thomas said is that he has never debated the merits of Roe versus Wade. That is considerably different from saying he has never discussed it. He did not say that he has never thought about it or discussed it. What he did say is that, as a judge, he has no position on it, and that he would approach the case with an open mind and no preconceived agenda.

That is all we can properly ask of any judge. We cannot extract the kind of commitments that some of our liberal colleagues seem to want. We should not seek to extract commitments in advance by judiciai nominees to vote for conservative or liberal results.

Another charge: Judge Thomas is opposed to affirmative action and equal opportunity programs. That is pure rubbish, and those who charge him with that know it. Judge Thomas made clear that he, like the majority of the American people, opposes preferences which, as I explained yesterday, are vastly different from outreach programs and other nondiscriminatory measures that increase opportunities for members of all groups. Judge Thomas has expressed support for this latter form of affirmative action, increased outreach and recruitment. He has opposed racial and gender preferences.

Another one: The distinguished Senator from Massachusetts said that the Supreme Court is supposed to be the "impartial umpire," and says that Judge Thomas might possibly threaten that role. This is the same colleague who argues that the Supreme Court is supposed to take notice of the racial, ethnic, or gender identities of the litigants before it and rule according to whether the litigants happen to be members of particular preferred groups. With all due respect, my friend and colleague does not, in my opinion, want an impartial Supreme Court. He appears to want a Court that will serve as an engine for imposing the liberal agenda on all of America.

Another charge: Judge Thomas has had a career of expressing "extremist views." That is hogwash. Anybody who looks at his career knows it. This is nothing more than an effort to define the mainstream by those who, I respectfully suggest, could not find the mainstream if they paddled for weeks and months. These are the people who want the courts to continue to invest rights, to impose policy outcomes on the American people that they know would never be accepted at the ballot box and that they cannot get here through the Senate and through the House of Representatives.

These very same people, since they cannot get their liberal agenda through the Congress, because most Americans will not stomach it, want the courts to do it for them, and in the past we know the courts have.

Another charge: Judge Thomas was misleading when he did not discuss the Lamprecht case before him in the D.C. Circuit Court of Appeals when he was asked about Metro Broadcasting by Senator SPECTER. Judge Thomas could not discuss that particular case because it was pending before him, and if he had tried to, he would have violated the canon of judicial ethics. Judge Thomas is to be credited for maintaining his judicial impartiality.

In Metro Broadcasting, the Supreme Court held that the FCC—the Federal Communications Commission—could grant preferences to minority applicants in broadcast license application proceedings. The Court, however, expressly declined to reach the question of whether the FCC could grant similar preferences to applicants on the basis of gender.

In the Circuit Court of Appeals for the District of Columbia there was a case involving Jerome Lamprecht's application for a radio broadcast license. Mr. Lamprecht was denied a license because, in the words of the administrative law judge who made the ruling, he had a "birth defect"; that is, he was male—simply, purely because he was male.

This case was held in abeyance pending the resolution in the Supreme Court of Metro Broadcasting. When the Supreme Court decided that case, the D.C. Circuit took up again Mr. Lamprecht's case. Judge Thomas was assigned to the panel that is considering the case, and it is still under consideration. To criticize him for not discussing it in open forum is highiy improper, highly unusual, and absolutely wrong.

With respect to this case, now pending before the Court of Appeals for the District of Columbia, Mr. President, I find it incredible that Members of this Senate relied essentially on a press report for attacking this nominee. I believe the opponents of Judge Thomas have well exceeded the bounds of decency and fairness on this issue.

The serious breaches of judicial confidentiality upon which the Legal Times article is based demonstrated one thing: Some opponents of this nominee will not even stop at subverting the judicial process itself in order to tear this good man down.

There are those in this body who will make use of such an abuse in order to block the man. No one in the Senate has seen this draft opinion, I might point out.

I respectfully submit that the Senate demeans itself by being a party to this kind of attack on a nominee.

I believe the American people should know that the case involves the lawfulness of the Federal Government's preference for women in the award of the ownership of a radio station license. Make no mistake, this kind of affirmative action is not even remotely aimed at poor or disadvantaged persons. These preferenoes—the Supreme Court has already upheld such preferences for minorities—are only helpful to the very well-off. Only the well-off could hope to afford to own a radio or television station.

Whether the case upholding minority preferences in broadcast licenses, Metro Broadcasting versus FCC, controls the outcome of the pending case is beside the point. These cases are not only about gender and racial preferences, but for such preferences only the well-off in those groups can benefit from them. I think that is important to understand. Finally, had Judge Thomas disclosed his thinking in Lamprecht then, he would have been wrong and he would be violating professionai and judicial ethics.

Finally: We have heard from several Senators opposing Judge Thomas that he has an admirable personal background and an excellent education, a keen intellect, and a fine record of professional achievement. Almost everybody is saying that. The ones who seem to be saying it more than anybody else seem to be the opponents to Judge Thomas. In substance, not because the rest of us do not feel otherwise, those who support him, we know that those things are true, but they say this as though it justifies some of the attacks that they are making.

Judge Thomas' answers to the Judiciary Committee are very similar to the answers that the committee received from then Judges Kennedy and Souter. So it cannot be that his background or his answers to the Judiciary Committee are what are causing the opposition in this case. It appears to me that the answer has to be that Judge Thomas is a black moderate-to-conservative who has been unwilling to heel to the liberal party line. It is Judge Thomas' fierce independence, I would suggest to you, that really sticks in their craw.

Frankly, I think it is very difficult for them to see that a moderate-to-conservative African-American will have the opportunity of sitting on the U.S. Supreme Court and become a role model for people all over this country regardless of race, ethnicity, or gender.

I think that is a tremendous, considerable worry to some. I think there may be just a little bit of thought that they might be able to damage the President of the United States, also, in the process—on the part of some, not all. I know some are very sincere in their opposition to Clarence Thomas, and I have to uphold their right to oppose him in that regard.

I think there is a little bit more involved with some. I do not mean to be cynical, but I have seen it year after year. He is an admirable person with keen intellect, who has come up through poverty and has had an amazing life—prefacing their next set of remarks where they try to tear him down because he, like Justices Souter, Kennedy, and the others answered the questions pretty much the same.

Why is he being treated differently from them? As you all know, they passed through the U.S. Senate pretty readily, under the circumstances.

I am shocked by the cynical distortions some of my friends on the other side of the aisle have engaged in with respect to this nominee.

We have seen during this debate the unedifying spectacle of well-born white liberals try to tell Judge Thomas what being black is supposed to be all about. It is disappointing to see this nomination used to create straw men, knock them over, attack a nominee personally, characterize his family, pander to the most leftward special interest groups in one's electoral strategy, seek the applause of liberal pundits, at the expense of this man, Judge Clarence Thomas.

Judge Thomas has never said Government intervention was not neoessary to help people, as some Senators have said. First, what has this to do with his responsibilities as a Justioe? Beyond that, if Senators were not so intent on finding excuses to vote against this nominee, and on painting a caricature of this man, they might have watched a replay of a 1983 interview of Thomas with Tony Brown on Tony Brown's Journal. Mr. Brown asked Judge Thomas, and I am paraphrasing: Are Government social programs the cornerstones of black progress? The judge replied: No, they are a steppingstone, not a cornerstone. And he has never departed from that view. He has never, to my knowledge, said that there should be no Government social programs.

But what if he had? Again, his views on policy issues are irrelevant to his duties on the Court. And absurd guilt-by-association tactics are used agalnst him to suggest he has an affinity for a point of view which would do away with Social Security or college financial aid, neither of which he would do.

It must be pretty easy to decide to vote against someone on the basis of contrivances and distortions.

One Senator, who I very much respect but who I disagree with, complains that Judge Thomas is not "a person that you would want structuring the legal framework for our children's future."

I agree with him in one sense. I would not want any judge doing that. That is what we are supposed to do here in the Congress. We are elected to do that. Judges are not elected to structure the legal framework for our children's future. We are.

To oppose the nomination of Judge Thomas on this basis reveals such a fundamental misunderstanding of our Nation's legal and constitutional makeup that I hardly know how to rebut it. I do not think it is worth the rebuttal time. We, not an unelected judge, are responsible for "structuring the legal framework of our children's future."

Do these Senators who feel this way propose simply to abandon our duties in this regard, so that nine unaccountable, unelected men and women can enact the laws that Congress fails to provide?

Let us be clear on this. We, in the Senate and House, and our counterparts in the State legislatures, are responsible for structuring this Nation's laws. That is what we do. We pass laws. I have to say that we pass good ones, as well as bad. No judges, however good, are going to correot our failures, and we should not look to the Court to do so.

Some of his opponents claim they followed the hearings, and still they heard only what they wanted to hear. They claim he abandoned most of his views at the hearings. This was not so, as I pointed out yesterday. For example, the judge's discussions of affirmative action with the committee were steadfast. Judge Thomas refused to budge from his stated opposition to racial preferences, articulated as a policymaker in the executive branch.

Much of the opposition to Judge Thomas, in my view, stems from his forthright stand on this very issue. Judge Thomas was and is unequivocal in his support for outreach programs, for making efforts to broaden the scope of employee applicant pools, for making whole the actual victims of discrimination, and for punishing the wrongdoers, rather than innocent third parties.

At the same time, he defended his opposition to race-conscious preferences that do not provide relief to actual victims of discrimination, but rather, provide benefits to members of particular groups solely because of their membership on those particular groups.

His support for educational preferences based on disadvantaged status, regardless of race, is fully consistent with his opposition to racial preferences. He says, let us treat all of the disadvantaged, regardless of race, ethnicity, or gender, the same and help them along.

Frankly, the most astonishing vanishing act during the hearing process was by supporters of racial preferences on the other side of the aisle, who barely raised the issue with the judge. The one time they did ralse it, it was on a misunderstanding of the case they were raising it on. He never implied that his philosophy is like a set of clothes to be changed, depending on the circumstance, as if he has no views, no convictions or commitment to them.

He said that, in his role as a judge, he sheds his policy views, like a runner strips off excess olothing. If some Senators cannot understand the difference between a policymaker and a judge, that is their problem, not an inconsistency in the judge himself.

This distinction between the judge as an interpreter of the written law, and the legislator as the author of the written law, appears to be wholly lost on some of Judge Thomas' critics. They are incredulous that Judge Thomas could, as a policymaker, have taken strong positions, and then, as a judge, forswear any policy agenda. For them, apparently, adjudication in the courts is nothing more than a continuation of politics by other means.

Put more bluntly, some of the critics of Judge Thomas would collapse the distinctly different functions of adjudication and policymaking into an approach that simply reaches a preferred policy result, whatever the violence done to the written law.

I agree with one of his opponents who said we should not sentimentalize black life in America and that significant parts of the black community have some dire problems. But that Judge Thomas does not necessarily share the prescriptions of many of the traditional civil rights leaders for these problems, that Judge Thomas thinks for himself and is independent of some of these leaders and their groups, even though some of his opponents in this body may not be, is no reason to engage in personal attacks on this good judge.

That he disagrees with welfarism as a principal approach to these problems, that he is tough on crime, that he opposes racial preferences, is just to say he espoused another way to address these serious problems.

He told the Judiciary Committee last year that he became a lawyer so that those who do not have access in our society can gain access. He said he may differ with some as to how to achieve access, but access is the goal.

How do these liberals think the conditions in the black community, which they decry, got that way? Racism and its legacy are two important reasons.

No one should minimize them. Judge Thomas does not minimize them. I do not. But it is 1991—racism is not the only explanation. It is just one.

Perhaps some of the do-good policies fostered by those of the more liberal persuasion have had something to do with the plight of disadvantaged blacks in this country—a welfare policy, for example, which encourages the break-up of families.

One of the judge's critics referred to urban schools as "warehouses, rather than places to learn."

I invite my colleagues to support education vouchers and tuition tax credits to widen opportunity and choice for disadvantaged persons. These are not panaceas, nor are they the only answer. They are not self-help. But they are different ways to approach the failures of urban education in this country.

After all who has been in charge of urban education in this country, conservatives? Hardly. Not over the last 50 years. No one has all the answers. Judge Thomas does not claim to have them. His critics certainly do not have them.

But to try to shunt off the debate on these important problems by characterizing this man does not help in stopping the problems. In listening to critics I have tried to determine why are they opposing Judge Thomas.

Is it because of his short tenure on the bench? I do not think that to be the case; 41 of the 105 Supreme Court Justices had no prior judicial experience at all. Some of the greatest Justices in the history of the Court never had a day on a court before they became Supreme Court Justices, another 10 had less than 2 years of judicial experience. Thus Judge Thomas has had as much or more experience than have many of those who served on the Supreme Court.

Is it his record in the executive branch? Is that what is wrong? Following his tenure at the Department of Education, the Senate oonfirmed him twice to the chairmanship of the EEOC. Judge Thomas was confirmed as Assistant Secretary for Civil Rights at the Department of Education, and twice as Chairman of the EEOC, and then once to the second highest court in this country, the U.S. Court of Appeals for the District of Columbia Circuit.

Judge Thomas, the only person I know of in the history of the country confirmed by this august body four times within 9 years, and now all of a sudden he is running into all kinds of roadblocks, now that he has an opportunity to represent all of us on the Supreme Court of the United States of America. This is an opportunity he deserves to have, that he has the integrity to have, and that he has the intellectual capacity to have. It cannot be his record in the executive branch because, like I say, we have confirmed him for positions there three times.

Following his first EEOC term, Judge Thomas was reconfirmed to a second term. Of my colleagues who are criticizing him for his EEOC record, only one of them voted against him. At least he is consistent. But then Judge Thomas was confirmed to the Federal appellate bench. Following the second EEOC term, he was confirmed to that judgeship by this body overwhelmingly.

The Washington Post, in 1987, said that the EEOC was thriving under Judge Thomas. In 1991, U.S. News & World Report said it seemed clear he left the EEOC better off than he found it.

I believe that there are two basic reasons for the opposition to Judge Thomas. Some of his opponents simply cannot bear the thought of an intelligent moderate-to-conservative African-American rising to such a position of prominence that he will be a role model that will cause others to start thinking there may be a better way than what has happened in the past.

The thought of a black American expressing opposition to racial preference in this country is anathema to some of Judge Thomas' opponents. For them Judge Thomas should be shown to the back of the bus. What an irony.

The other reason for opposition I believe is the vanishing liberal hope that the judiciary, under the pretext of interpreting the Constitution, will impose on the American people the very same liberal policies that have been overwhelmingly rejected in five out of the last six Presidential elections.

Mr. President, I have to tell you that the principle of stare decisis, or following prior precedent, has suddenly risen to the forefront with those who oppose Judge Clarence Thomas. They now want all of those liberal decisions handed down by the Warren and Burger courts, maintained intact no matter how wrong they may be.

I have a feeling a number of them will remain intact, in part because Judge Clarence Thomas will be there and because he is not in anybody's pocket. I guarantee to this body that Clarence Thomas is going to disappoint a number of us on this side as well as a number of us on that side from time-to-time because he will not decide the law the way we think he ought to. But that is true of almost every Supreme Court nominee in history.

I have to tell you if we start determining that we cannot vote for anybody who is nominated to the Supreme Court who does not agree with every one of our litmus test positions on issues, there will never be Justices on the Supreme Court, nor will the Court amount to much because it will be thoroughly politicized. And once that happens they will become the superlegislature. And these bodies, the Senate and House, will diminish in importance. The principle of separation of powers that the Constitution has provided, and which has made this country the greatest country in the world and which has served the American people about as well as any constitutional provision possibly could, would then be jeopardized.

Mr. President, I am concerned. I am concerned that to judge him on the few litmus test issues he is being judged on by some who are going to vote against him contributes to a destabilization of government by erosion of the principle of separation of powers.

We simply cannot afford the luxury to reject judicial nominees because they do not agree with us on issues or even two or three issues, with what we think are the right things that ought to be done.

There are literally thousands of issues that can come before that Court, and every issue that does is important to those litigants. And the best we can do in the Congress is to support people of honesty, integrity, good judicial temperament, good work habits, and good intellectual capacity. I have to tell you Clarence Thomas has all of those going for him.

Anybody who watched the hearings has to admit this is a very fine man, of great capacity, who will do a great job on the Court, maybe not one that will please each and every one of us on each and every issue—he is certainly not one who will do that—but nevertheless one who will give it his best, and do a good job and I think be a role model for all of us to follow.

I hope all of our colleagues will give him a better break and really look at the record now, really look at what he stands for, really look at his life, really look at his service in State government and the three branches of the Federal Government, and his tenure in the private sector and give this man the opportunity, as one of only two African Americans ever nominated to the Court, to serve the people of the United States of America and to be example all of us would like him to be. I know he can and I hope that all of us will consider voting for him next Tuesday evening.

It is an important vote. I think it is important that we give him our assurances that we have confidence that he can do the job. I know he has confidence he can. He held one of the toughest positions in the Government and did it well and had the praise of those who philosophically disagreed with him. To have him now being held up because of litmus tests, and darn few at that, I think is the ultimate irony in this Supreme Court confirmation process.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Indiana.

Mr. COATS. Mr. President, I rise in strong, unqualified support for the con-

firmation of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

It has been observed that, "when a man assumes leadership, he forfeits the right to mercy." Clarence Thomas, knowing the interest groups arrayed against him, had no expectation of mercy, but he has every right to demand honesty and fair play, and he has found, in many cases, very little of either.

The tone was set when Florence Kennedy described the National Organization for Women's objective. "We are going to Bork him," she said. "We're going to kill him politically * * * this little creep, where did he come from?"

For groups like these, politics has become nothing more than the systematic organization of hatreds. Civility and integrity are sacrificed to irrational bitterness. They insult and trivialize an important process with shrill nonsense. They have forfeited their moral authority through exaggeration and distortion. But they have succeeded in making the work of the Senate more difficult.

It is our responsibility to ensure that Judge Thomas is fairly treated—to hear the evidence above a din of partisanship. The confirmation process is not properly a political struggle—that struggle was decided in a Presidential election 3 years ago. It is, instead, an impartial consideration of ability, accomplishment, temperament, and respect for constitutional values.

That is our goal. Only by these standards are we worthy to sit in judgment of those who judge.

Some of the specific criticisms leveled at Judge Thomas shout for refutation. Let me specifically address a few:

First, he has been assaulted with an intolerance that I have seldom witnessed in Washington. A nationally syndicated columnist accuses, "if you gave Clarence Thomas a little flour on his face, you'd think you had David Duke talking." Harvard Law Prof. Derrick Bell has pronounced that Thomas "looks black and thinks white" and acts like a slave made an overseer by his white masters. The New York Times felt it was necessary to consult a prominent psychiatrist to find out how an educated black man might actually become a conservative—as though his political beliefs were symptoms of some mental dysfunction.

This reaction encompasses both fear of diversity and a resentment of rival authority. It is a heavy-handed attempt to impose the reign of the politically correct through the intimidation of demeaning invective.

On this issue, Clarence Thomas spoke for himself in 1985 more convincingly than any of his defenders. In the Los Angeles Times he wrote:

> There seems to be an obsession with painting blacks as an unthinking group of automatons, with a common set of views, opinions and ideas. Anyone who dares suggest this may not be the case * * * is immediately cast as attacking the black leadership or as some kind of anti-black renegade.
>
> Many of us accept the ostracism and public mockery in order to have our own ideas, which are not intended to coincide with anyone elses' although they may do just that. The popularity of our views is unimportant; hence, polls and referendums are not needed to sustain or ratify them. Perhaps the most amazing irony is that those who claim to have progressive ideas have very regressive ones about individual freedoms and the attendant freedom to have and express ideas different from theirs.
>
> We certainly cannot claim to have progressed much in this country as long as it is insisted that our intelleots are controlled entirely by our pigmentation.

Second, Judge Thomas has been accused of opposing basic civil rights with brutish insensitivity. Here again, the charge is moral, while the real disagreement is political. Thomas explains:

> I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless the constitutional principle is first established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious, legal devices that only further and deepen the original problem.

While Judge Thomas supports affirmative action, he has opposed quotas and preferential treatment. It would be an extraordinary irony to label as an enemy of civil rights a person who articulates views accepted by most of the American public and defended by figures such as Hubert Humphrey and Martin Luther King, Jr.

Third, Judge Thomas has been charged with being unresponsive to questions by the Judiciary Committee. Here some historical perspective is in order. During Judge Thurgood Marshall's confirmation hearings, he was questioned closely by Senator John McClellan of Arkansas concerning Miranda versus Arizona. Marshall replied:

> On decisions that are certain to be reexamined in the court, it would be improper for me to comment on them in advance. From all the hearings I have read about, it has been considered and recognized as improper for a nominee to a judgeship to comment on a cause he will have to pass on.

That is not a quote from Clarence Thomas. That is a quote from Thurgood Marshall.

But this was not all. Senator Sam Ervin attempted to get Marshall to discuss the case law that led up to Miranda—much like questions asked on the privacy cases that led to Roe versus Wade. But Marshall would not even comment on the words of the fifth amendment concerning self-incrimination. A frustrated Ervin complained that, with the Supreme Court's wide jurisdiction, the nominee would be giving the committee very little specific information. "It is a problem," admitted Marshall. But he added that it was a problem for the committee, not for the nominee. In the end, Marshall would only comment on cases decided long ago which were no longer controversial.

I find it somewhat ironic that many members of the Judiciary Committee complain so long and loud about the response given by this current nominee and the position taken by this nominee was identical to the position taken by his predecessor, who was roundly praised for his judicial integrity, for his openmindedness, and for his objectivity by these very people criticizing Clarence Thomas.

Fourth, Thomas has been opposed because he would upset the ideological alignment of the court. But in that same Marshall confirmation, a response to that objection came from Senator Roman Hruska of Nebraska. He had received a letter claiming that Marshall was too liberal and would upset the balance of the Court. "The nominating power," he argued on the Senate floor, "lies with the President of the United States: If it is his desire to appoint someone he considers a liberal, that is his prerogative. If he wants to nominate someone he considers a conservative, that is also his prerogative. The role of the Senate is to inquire into the integrity, the competence and the record of the man" not his ideology.

Fifth, Judge Thomas' record at the Equal Employment Opportunity Commission has also come under attack. That Commission experienced some difficulties. But the only way we know of those problems is because of the case management and litigation tracking improvements that Thomas himself initiated. The Chicago Tribune concluded in 1988, "everybody makes mistakes. Too few people in public life own up to them, much less pledge uncompromisingly that they will be corrected. Bless you, Mr. Thomas, for straight talk in an age of waffling."

And those problems were corrected. In 1981, before Thomas' tenure, the EEOC recovered less than $30 million in benefits for victims of age discrimination. In 1989, the figure was nearly $61 million. In 1981, 89 lawsuits were filed under the Age Discrimination in Employment Act. In 1989, it was 133. All this was accomplished during a time when manpower was decreased by 10 percent.

Each of these issues has been near the center of controversy in the Thomas nomination. But the most basic, challenging, complex debate has concerned the nominee's conception of natural law. The chairman of the Judiciary Committee told Judge Thomas, "finding out what you mean when you would apply a natural law philosophy to the Constitution is, in my view, the most important tasks of these hearings."

The press has joined in the attempt. Reporters who have seldom darkened the door of a church read Aquinas long

into the night. U.S. News & World Report asks what it considers the ominous question, "would Justice Thomas put God on the bench"? It warns that Thomas would "provoke a firestorm of opposition if he suggests that practices such as birth control * * * are 'unnatural' and, thus, not protected."

Nine constitutional scholars jointly wrote a letter to the Senate Judiciary Committee about Judge Thomas' natural law convictions: "As a matter of constitutional method, natural law is disturbing when invoked to allow supposedly self-evident moral 'truth' to substitute for the hard work of developing principles drawn from the constitutional text and precedent."

The Leadership Conference of Civil Rights argues that Thomas' opinions on natural rights are "radical and place him well outside the judicial mainstream." The National Women's Law Center concludes, "Judge Thomas' theory sets him far outside the mainstream of legal thinking."

But it has been constitutional scholar Lawrence Tribe who has raised the most dramatic concerns. "The power of Congress and of every State and local legislature [hangs] in the balance," he writes. Thomas' view of natural law threatens nothing less than "the fate of self-government in the United States."

Even discounting for hyperbole, this is a serious charge. And I want to take a few moments to examine the issue more closely, and particularly Judge Thomas' opinion on this matter.

At the most abstract level, there should not be much controversy at all. A distinction between natural or higher law and positive or written law is at the root of our national tradition. The Declaration of Independence talks of "certain unalienable rights"—but more than that, it argues "that to secure these rights, governments are instituted among men."

Individual rights, the American Founders asserted, existed before they actually did any founding. These rights, in short, are essential to the nature of things. A just government is created to secure them. Human rights do not come into existence because of some political act. On the contrary, every political act must conform itself to the fact of their existence.

The alternative to a belief in natural law is moral relativism and what is called legal realism or positivism. In this view, there is no higher authority than the law itself. There is no objective justice, only a balance between competing interests. No "law of nature and nature's God" stands in judgment over the actions of government. Jurist Hans Kelsen, who taught at both Harvard and UC-Berkeley, argued that law is only "a system of coercion-imposing norms which are laid down by human acts in accordance with a constitution." They have nothing, in short, to do with morality. "Any content whatsoever can be legal: There is no human behavior which could not function as the content of a legal norm."

Opponents of Judge Thomas may contend for this view; they may attack rival theories; but they may not claim that this view stands in the mainstream of American constitutional interpretation. Randy Burnett, professor at ITT-Kent College of Law, comments, "Americans believe they have rights that the Government didn't create and can't take away. Thomas is right in the mainstream of what people think."

The point of natural law is actually very simple. Constitutions do not create rights. They recognize them because they already exist. And they can never be sacrificed merely because it would be useful or popular. This is the conviction that allows us to condemn slavery, for example, both in ancient Rome and the antebellum South. Moral judgments on basic rights do not change with the flow of history or politics.

Judge Thomas has put himself squarely in this tradition:

> Our political way of life is by the laws of nature and nature's God, and of course, presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and government.

If the nominee did not have such a belief—if his thinking were adrift in relativism and skeptical of man's natural, innate worth—this would be a cause for concern. The upward progress of Western law is the history of extending and applying natural law to a widening circle of inclusion—to blacks, women, the physically and mentally handicapped. University of Chicago law professor Geoffrey Miller asserts that natural law is a theory which has "led to many of the most important and revered events in the history of civil liberties."

A survey of that history is an account of the highlights of American conscience and international justice. The Founders, as law students, would have read William Blackstone, whose writings were standard texts for the ERA:

> The law of nature, dictated by God himself, is binding in all counties and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all force and all their authority from this original.

Alexander Hamilton, steeped in this tradition, argued, "The fundamental source of all errors, sophisms and false reasoning is a total ignornace of the natural rights of mankind."

In the early 19th century, Chief Justice Lemuel Shaw of the Massachusetts Supreme Court called the acquisition of a slave "contrary to natural right." It was this central argument that animated the movement for the abolition of slavery.

This principle was invoked to justify the Nuremburg trials of Nazi war criminals. After the Holocaust, when an international tribunal was assembled, it was concluded that natural law provided a "solid foundation for the establishment of basic human rights for all men, everywhere." These transcendent standards of justice allowed for legal judgment in the absence of positive law.

For the same reason, it is embodied in the Universal Declaration of Human Rights adopted by the United Nations. That document begins, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. * * *"

Belief in natural law informed the civil rights movement in America from its beginnings. Thurgood Marshall, in his brief for Brown versus Board of Education, takes 36 pages to outline the ethico-moral principles that interpret the meaning of "equal protection" and "due process" in the intentions of the men who wrote the 14th amendment. "Their beliefs," Marshall said, "rested upon the basic proposition that all men were endowed with certain natural rights." In his argument, he quoted approvingly from an early opponent of slavery that "the law of nature clearly teaches the natural Republican equality of all mankind."

In the constitutional law textbook he authored, Lawrence Tribe writes that natural rights "have been invoked by more than one justice of the Supreme Court in modern times as a suggested framework for delineating the reach of the liberty clause of the 14th amendment." Among the judges he cites are Justice John Paul Stephens, and retired Justice William Brennan.

In 1976, Justice Stephens joined in a dissent with Justices Brennan and Marshall, wrote: "I had thought it self-evident that all men were endowed by their creator with liberty as one of the cardinal inalienable rights."

Even some major liberal legal theorists have made room for natural law reasoning. Tribe himself testified at the Judiciary Committee hearings for Judge Bork: "I am proud that we have * * * a 200-year tradition establishing that people retain certain unspecified fundamental rights that courts were supposed to discern and defend." Ronald Dworkin, another prominent liberal scholar, concludes, "If any theory which makes the content of law sometimes depend on the correct answer to some moral question, then I am guilty of natural law."

American history is guilty of natural law for the simple reason that it is inseparable from the theory of our founding. But the concept is broad. And a belief in natural rights does not settle the question of who should actually possess them. Professor John Hart Ely

of Stanford Law School wrote in his 1980 book "Democracy and Distrust" that natural law "* * * has been summarized in support of all manner of causes—some worthy, some nefarious—and often on both sides of the same issue." An obvious case was the use of natural law reasoning by both Abraham Lincoln and Senator Calhoun during the debate over slavery.

So even admitting that a belief in natural law is not extreme or bizarre, it is also not, in the end, sufficient to define a legal philosophy. Questions remain. Precisely what portion of natural law are judges in particular entitled or required to enforce? Is it possible to affirm a conservative belief in judicial restraint and assert the existence of natural rights?

On these questions, I believe that Judge Thomas has given us the outlines of a response.

Thomas' argument begins with the question of slavery. His object, according to his writings, is not to seek some grand and unifying philosophic theme. It is to answer one question: Was the practice of slavery unconstitutional even though the Constitution did not actually condemn it? It is a study that led him directly to the Declaration of Independence, history's boldest statement of natural law philosophy: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights * * *."

Thomas contends that the Founders crafted a Constitution that presupposed this earlier statement of purpose in the Declaration. He notes that the Framers excluded the word "slavery" from the text of the Constitution entirely. And he argues that the authors of that document envisioned the eventual abolition of slavery—a day when the promises of the Declaration would be kept. This, he is convinced, is the reason that Dred Scott was wrongly decided—because a broad notion of natural rights animates the Constitution through the Declaration. "The Constitution should be read," Judge Thomas explains, "as Lincoln read it, in light of the moral aspirations toward liberty and equality announced in the Declaration of Independence."

In a Howard Law School Journal article of 1987 he makes a more detailed application: "The jurisprudence of original intention cannot be understood as sympathetic with the Dred Scott reasoning, if we regard the original intention of the Constitution to be the fulfillment of the ideals of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it."

A great deal of the Constitution, of course, can be read without any reference to moral principle—things like age requirements for office and many other portions of the Constitution. But there are morally charged terms in the Constitution. The preamble sets the goal of establishing justice. The ninth amendment talks of unenumerated rights. As a number of scholars have noted, the Constitution seems to make use of the natural-rights language of the Declaration.

More specifically, Judge Thomas believes that the Constitution embodies natural rights in the privileges and immunities clauses of article 4 and the 14th amendment. He is convinced these passages amount, in the words of one commentator, "to an enforceable declaration of civio freedom."

The privileges and immunities clauses of the Constitution have gone unused for some time. Thomas has argued for their revival. He has commented that Brown versus Board of Education was a good opportunity—but a missed opportunity—to reawaken these principles. He has strongly attacked the Slaughterhouse Cases which weakened the privileges and immunities clauses and stripped the Civil War amendments of their power—a development that prepared the way for legal segregation.

All this comes down to a basic point. The centrality of the Declaration requires that the emphasis of Judge Thomas' approach to natural rights be placed on individual liberty and limited government. It cannot be an instrument of intrusion or unchecked power because it must work within the boundaries set by the Constitution, and through it, the Declaration. Thomas explains:

> I would advocate, instead, a true jurisprudence of original intent, one which understood the Constitution in light of the moral and political teachings of human equality in the declaration. * * * Here we find both moral backbone and the strongest defense of individual rights against collectivist schemes, whether by race or over the economy. * * * the natural rights, higher-law understanding of our Constitution is the nonpartisan basis for limited, decent, and free government.

In short, Thomas proposes an inseparable connection between natural law, individual rights, and limited government—forged in our founding documents. This conception of natural law is not a speculation of theology or philosophy. It is an attempt to discern what Thomas calls a true jurisprudence of original intent. At the end of this search is a clear conviction—the natural rights of individuals place limits on government, limits that require a separation of powers and bind each branch, including the courts.

Thomas concludes:

> Here, as Lincoln put it, lies the father of all moral principle in America. Equality means equality of individual rights, an equality resting on the laws of nature and nature's God. * * * because no man is the natural ruler of another, government must proceed by consent. And that, in turn, requires representation, elections and the separation of powers. These are the requirements of free government, and they rest on the moral conception of human worth, based on human nature.

This understanding of natural law, far from being a license for activism, is a demand for restraint. It requires a respect for individual freedom and the sovereignty of the people. And it accepts the constitutional allocation of authority between the branohes of government.

A judge, with these constraints, does not have the warrant to enforoe a broad definition of natural rights as he sees them. The scope of his decisions is set by the vision of natural law contained in the Constitution and interpreted by the Declaration.

This is the reason Judge Thomas could tell a meeting of the Federalist Society in 1988, "A natural rights understanding does not give Justices a right to roam." This is the reason he insisted to the Judiciary Committee that if confirmed he would employ the traditional tools of constitutional interpretation and statutory construction. This is the reason he has claimed, natural rights and higher law arguments are the best defense of liberty and of limited government.

A belief in the existence of natural law does not mean that judges can replace the conception of those principles that informs the Constitution with their own beliefs on the subject. Judge Thomas, in essenoe, has expressed two separate convictions: A belief in higher law, and a judicial philosophy that forbids him from putting his own opinions of that law in place of the Founders' vision.

With this in mind, it is no mystery why Judge Thomas has repeatedly attacked the idea that judges should overturn positive law based on their personal understanding of natural law. The Constitution cannot be interpreted by any individual moral vision. It can only be read through an understanding of the higher law principles of the equality asserted in the Declaration.

Natural law, as Thomas defines it, is a means to understand the Constitution, not a method to supplement its deficiencies. "My point," he told the Judiciary Committee on September 10, "was simply that in understanding overall our constitutional government, that it was important one understood how they believed—or what they believed in natural law or natural rights."

Thomas summarizes his approach carefully:

> The best defense of limited government, of the separation of powers, and of the judicial restraint that flows from the oommitment to limited government is the higher law political philosophy of the Founders. * * * Moreover, without recourse to higher law, we abandon our best defense of judicial review—a judiciary active in defense of the Constitution, but judicious in restraint and moderation. Rather than being a justification for the worst type of judicial activism, higher

law is the only alternative to the willfulness of both run-amok majorities and run-amok judges. * * * To believe that natural rights allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law.

Legal analyst Jeff Rosen, writing in the New Republic, contends:

But in Thomas' case, fears of judicial activism seem to be unfounded. Like many liberals, Thomas believes in natural rights as a philosophic matter, but unlike many liberals, he does not see natural law as an independent source of rights for judges to discover and enforce. * * * Natural law for Thomas is a way of providing moral backbone for rights that are explicitly listed in the Constitution rather than a license for creating ones that aren't.

In the end, this evidence led Michael Moore, professor of legal philosophy at the University of Pennsylvania, to assert:

I take the attack on Thomas' natural-law views as a ploy by those who don't like his values. * * * There's nothing about natural-law theory about how judges should judge that's outside the mainstream.

In looking at Thomas' record and writings, I am convinced there are at least three strong indications that the nominee takes these related commitments to judicial restraint and individual freedom very seriously.

First, his approach to the ninth amendment indicates a keen awareness of a judge's limited roll. He wrote in a 1989 article:

The amendment has great significance in that it reminds us that the Constitution is a document of limited government. But it does not grant the Supreme Court an unlimited power to overturn laws for that would seem to be a blank check.

Second, the 20 opinions he authored on the D.C. Court of Appeals, and the 170 cases he participated in, have been called by one analyst, textbook examples of judicial restraint. In not one instance has he employed a personal conception of natural law to justify a judicial opinion. In fact, the first draft of the Alliance for Justice report making the case against Judge Thomas concluded, "His decisions do not indicate an overly ideological tilt, although they are generally conservative." It is interesting to note that in a later version of that same report, that passage is removed.

Far from being repressive, Judge Thomas has shown himself to be strong defender of free speech, even when it is offensive. He joined with Chief Judge Abner Mikva in striking down a law that imposed a 24-hour ban on indecent television. In another case, Thomas agreed that the loss of first amendment freedom, for even minimal periods of time, may constitute irreparable injury.

Finally, he has laid to rest the charge that his approach to natural rights involves a radical application of economic rights—repudiating arguments patterned on Lochner. In his review of the book changing course by Clint Bolick, Thomas comments, "At times, Bolick's libertarianism goes too far. He even endorses an activist judiciary that would strike down laws regulating the economy * * * at this point, Bolick appears to have lost sight of the higher law background of the rights he zealously seeks to defend."

Thomas has been careful to maintain that the free market, though essential, must be restrained by a belief in human rights and dignity. "Surely the free market," he wrote in 1988, "is the best means for all Americans, in particular those who faced legal discrimination, to acquire wealth. Yet the marketplace guarantees neither justice nor truth. After all, slaves or drugs can be bought or sold. The defense of legal opportunity to compete in a free market is a moral one that is presupposed in the declaration * * * in striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, or rights, or else it becomes part of the problem, instead of part of the solution."

This, I believe, is the record of a principled, moderate, thoughtful legal mind. It reveals a deep commitment to individual liberty. It shows a profound respect for the principles inherent in the founding of our Republic—the promise of the declaration and the words of the Constitution. It is a record in the best tradition of American justice.

There is no cause, or excuse, for the vindictive attacks from interest groups this nominee has been forced to endure in silence. Clarence Thomas has always faced the need to struggle against minds poisoned by hate—as a child in the Segregated South, as a student resented and taunted, and now as a target of raw bigotry and distortion. His ability to transcend these attacks is a testament to his character. The fact they still take place is a shame to our Nation.

The substantive criticism many groups have settled on—natural law—is actually our best defense of human rights and limited governmental power. They use swords that cut their own fingers. Firebrands that burn their own homes.

Perhaps, in conclusion, an answer to the National Organization of Women's shameful question is in order, "Who is this creep?"

Clarence Thomas is a man who turned disadvantage into accomplishment—and now provides an example for others to do the same. U.S. News & World Report comments, "Few Americans have started out with so little and achieved so much as the proud son of unforgiving poverty from Pin Point, GA."

Clarence Thomas is a man who has fresh memories of racial indignity and legal oppression. Thomas recalls seeing his grandfather slowly poring over the Bible so that he could pass the literacy test to vote. He knows first hand the suffering of a segregated America. "Not a day passed," he has explained, "that I was not pricked by prejudice." Experiences like these are never forgotten. And memories like these are valuable on the highest court of the land.

Clarence Thomas is a man who has more experience in law enforcement than Justice Marshall had when confirmed. Who has authored more Law Review articles than Justice Souter. Whose experience would make him the only member of the Supreme Court with a firsthand knowledge of corporate law.

Clarence Thomas is a man whose conception of natural law is shaped by the sting of its denial in his own life. Michael McConnell of the University of Chicago Law School comments:

When he points out the philosophic connections among the Declaration of Independence, the original Constitution, the speeches of Abraham Lincoln, the enactment of the fourtsenth amendment and the civil rights movement of Dr. Martin Luther King, Jr., he speaks from personal experience.

Clarence Thomas is a man who has shown a career of commitment to individual rights. "My conviction," Thomas argues, "is that the most vulnerable unit in our society is the individual. And blacks, in my opinion, being one of the most vulnerable groups, should fight like hell to preserve individual freedoms."

And Clarence Thomas is a man who will also, if this body gives fair and impartial consideration, be the next Associate Justice of the U.S. Supreme Court. It is my honor to support him.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma [Mr. NICKLES].

Mr. NICKLES. Mr. President, I wish to compliment my friend and colleague, Senator COATS, from Indiana, for his well-researched and well-stated statement in support of Clarence Thomas. I compliment him for well-made and well-presented speech. My colleague from Indiana made a very good statement. I hope others will pay heed to his work.

Mr. President, today I rise in support of Judge Clarence Thomas for the U.S. Supreme Court. I commend Judge Thomas for his service to the people of our Nation. He is a proven jurist, author, litigator, and administrator. His rise to this position has been dynamic and deserved. With great courage and will, Clarence Thomas has defeated the odds of an impoverished childhood. He will bring to the bench a range of experience not shared by any other sitting Justice. He should be a role model for all Americans, for he personifies the American dream.

In the September 26 issue of the Oklahoma Eagle, a weekly newspaper published in Tulsa that represents the

views of many black Oklahomans, an editorial states:

We have written frequently in the past three weeks on Justice Designee Clarence Thomas. We are happy to endorse him and rejoice in the sharp debates that reverberate in our community as a consequence of our endorsement. We find that Judge Thomas should be impaneled for a myriad of reasons—some having a simple connection to his manifest qualifications, others have a powerful nexus to our lives and times. * * * Long live Justice Thomas * * * and a toast to a many-faceted black American.

With ringing endorsements such as this, as well as having previously passed the scrutiny of the Senate, it is apparent that many of my colleagues who would rise to oppose the nomination of Judge Clarence Thomas are possibly suffering a mild case of memory loss. Is this not the same Clarence Thomas who was confirmed to the U.S. Court of Criminal Appeals in March 1990 by a voice vote of the Senate, that is, without opposition? Is this not the same Judge Clarence Thomas who was approved by the Senate Judiciary Committee by a vote of 13 to 1 in February 1990?

What has changed over the last year and a half to cause his opposition? Has anything come out during Judge Thomas' most recent confirmation hearing before the Senate Judiciary Committee that would warrant any greater opposition now than what he had in 1990? I think the answer is "no."

We know the facts surrounding Judge Thomas' nomination have not changed over the last year and a half. If anything, he is a better jurist now than he was in March 1990. I take my hat off to him. He stood before the Senate Judiciary Committee and was under intense and extreme scrutiny. I wonder how many of my colleagues in the Senate could undergo such similar scrutiny over anything we have said, every speech we have made, or everything we have written throughout our time in public office. I commend Judge Thomas for his presence, his composure and his demeanor.

Judge Thomas' tenure as Chairman of the Equal Employment Opportunity Commission provides an excellent example of his abilities and talents. As Chairman of the EEOC, Judge Thomas was able to eliminate much of the organization's case backlog, shorten response times for new complaints, and streamline procedures to handle cases more efficiently. Thomas insisted that each case should be decided on its own merits. His understanding of civil rights and the plight of those he dealt with during his time at the EEOC will be a great asset to the highest court in the land.

Those against his nomination have attempted to focus on inflated controversy, such as taking a single line out of a lengthy speech entitled "Why Blacks Should Look to Conservative Policies" and making it into an enoompassing statement on natural law and its role in constitutional interpretation.

This speech was not about natural law or abortion. It was about race and his experiences as a black conservative. Some have tried to convince Members of the Senate that to be black is to be liberal and that conservative blacks are out of touch with other blacks.

As Judge Thomas has said in his speech, "Why Black Americans Should Look to Conservative Politics," the Nation pushes the idea that "any black who deviate(s) from the ideological litany of requisities (is) an oddity and (is) to be cut from the herd and attacked." This is one of Judge Thomas' greatest traits. He has fought against those stereotypes all of his life. And he has been successful. The fundamental belief that one betters himself through family, education, and strength has molded Judge Thomas' philosophy on many issues. He should be a role model, frankly, for all of us.

Mr. President, in my opinion Supreme Court Justices are not supposed to make the law but rather interpret the Constitution. The issue is not whether Judge Thomas will give the Constitution a liberal or conservative interpretation, but if he will give the Constitution a fair interpretation based on the body of law in effect.

Despite what some of my colleagues would like for us to believe, the Supreme Court's role is one of judicial interpretation and not judicial activism. As Members of Congress it is our role to make the law, not the Court's.

Many of our colleagues are opposing Judge Thomas because they think he might overturn Roe versus Wade. Frankly, I am one that hopes that he will. Roe versus Wade is an excellent example of judicial activism. The Supreme Court, by a split decision, legalized abortion.

Mr. President, it is clear in our Constitution where the power to legislate falls. Article 1, section 1 of the Constitution says all legislative powers herein granted shall be vested in Congress.

Congress is supposed to pass the laws, not the Supreme Court. When the Supreme Court legalized abortion, basically they were passing law. That should have been a legislative function. We are elected, and if the people do not like the laws passed, they can change the elected Members of Congress. The Supreme Court, on the other hand, interprets the Constitution. They are an unelected body. They are appointed for life. Their task is not to make laws.

When the Court decided Roe versus Wade, in which abortion was legalized, they threw out State laws that restricted abortion in almost every State, and totally ignored the 10th amendment to the Constitution that says powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people.

Unfortunately many of my colleagues have come to the conclusion that if a Supreme Court nominee would vote to overturn Roe versus Wade, they are not fit to sit on the Supreme Court. In other words, those colleagues are making an argument endorsing judicial activism in which the Court makes law, instead of allowing Congress its constitutional role.

If some my colleagues want to legalize abortion. Let them introduce the legislation and attempt to pass it through Congress. They have never done so. I would encourage them to do so if they happen to take that position on this issue.

But I do not think a person should be disqualified for serving on the Supreme Court because he happens to believe the Supreme Court should not legislate, should not be a judicial activist, should not be a legislator from the bench. Legislation should be done from Congress.

Mr. President, nothing new has come out of this confirmation hearing that should raise any legitimate opposition to the judge's record. Judge Clarence Thomas is worthy and deserving of this office. He will help lead the American judicial system in the 21st century.

I compliment President Bush for his nomination of Clarence Thomas and I support his confirmation.

I urge my colleagues to do so as well.

I ask unanimous consent that a letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NORTH CAROLINA GENERAL ASSEMBLY,
HOUSE OF REPRESENTATIVES,
Raleigh, NC, September 10, 1991.

Re Support for the nomination of Judge Clarence Thomas.

Hon. Jesse Helms,
U.S. Senator, Dirksen State Building, Washington, DC.

DEAR SENATOR HELMS: I am a native of Fayetteville, North Carolina who just happens to be a Black American. For years I have worked at the grass roots level, served two terms on the County Board of Commissioners and presently served our Great State on the North Carolina House of Representatives. As a member of the Judiciary Committee, it is my prayer that Judge Clarence Thomas is confirmed.

It is appalling and sad that groups of all color and kind have lambasted and criticized this most worthy gentleman. However, there are equally as many Black Americans who feel that Judge Thomas is qualified to serve on the Supreme Court of our fair land. I have polled the grass roots community, elected and appointed officials during the past three weeks. Because of the favorable response, a press conference has been planned to verbalize our support. Letter writing campaigns, phone calls to the 800 hundred number and networking with other supporters are the defenses used to counter the ill press which has targeted Judge Thomas. I am a life member of the NAACP. Mr. Gibson nor Mr. Hooks

represent my views nor the views of numerous others.

Should you be given the opportunity, please inform Judge Thomas of our efforts and prayers for his endurance and continued fortitude. Thank you for your indulgence and please know that there are many of us who support and applaud the nomination of Judge Thomas. We are equally prayerfully of his confirmation.

Sincerely,

MARY E. MCALLISTER,
Representative, 17th District (Cumberland County).

ORDER OF PROCEDURE

Mr. NICKLES. Mr. President, I ask unanimous consent to speak for 6 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BALTICS

Mr. NICKLES. Mr. President, for 3 tense days in August an attempt by Communist hardliners to smother infant democracies in the Soviet Union demanded the attention of the world. Finally after the dramatic showdown between Communist tanks and the citizens of Mosoow and other cities, the Communist coup attempt fell apart.

Democracy has not yet fully triumphed in Russia, but there is now a great hope for moving in the right direction.

In addition, the Baltics states of Lithuania, Latvia, and Estonia have now been restored as independent states and retaken their rightful positions in the community of independent nations.

We should not forget, Mr. President, that even as the Communists in the Soviet Union were falling apart, one of Europe's last Communist strongholds, Serbia, was intensifying its attack on democratic institutions in Yugoslavia, particularly against the Republic of Croatia. Communist tanks may have returned to the barracks in the Soviet Union, but in Yugoslavia not only tanks, but military aircraft and artillery have been unleashed against Croatia, resulting in hundreds of deaths, including many civilians.

The civil war in Croatia is indeed a tragedy, but it would be a mistake to think that the war is merely a product of uncontrolled ethnic passions. While ancient ethnic animosities have played a role, I think it is clear that the culprit behind these tragio events is Serbia's strongman, Slobadan Milosevic and his Communist henchmen.

By saying this, I am not blaming the Serbian people or suggesting the Serbian people are incapable of living with the Croats, as they have been successfully doing for years in many parts of Yugoslavia.

Two years ago, as communism began to orumble in Eastern Europe, Mr. Milosevic began to step up ethnic tensions as a means to hold on to power. First, he turned on the ethnic Albanians in the province of Kosova as a means of rallying Serbian nationalists to his side.

Last year he began to stir up ethnic hatred and provided material support for radical Serbs inside Croatia. While the conflict in Poland, Czechoslovakia, and Hungary was between Communist and democratic reformers, in Yugoslavia, Milosevic cleverly substituted ethnic conflict for the struggle for democracy.

Today it is clear that Mr. Milosevic bears special responsibility for bloodshed in Yugoslavia, and that he is continuing his active support and encouragement for the use of force in Croatia both on the part of the Serbian militants and the Yugoslav military.

It is even clearer that thers is effectively no longer any such thing as the Yugoslav Federal Army. Its officer corps, long dominated by Serbians and beset by desertions by Slovenes, Croats, and others, the Federal army has become Milosevic's private army. Senior Yugoslav defense officials and Army officers have repeatedly ignored orders from Yugoslavia's civilian leadership.

Yugoslavia's Federal Prime Minister Ante Markovic, who is referred to in Tuesday's Washington Post as "largely powerless," has accused Milosevic of pursuing civil war with the use of Federal troops.

Last week I met with Stipe Mesio, the President of the Yugoslav Federal Government. Mr. Mesic told me that he was completely powerless to stop the Federal Army.

The war in Yugoslavia has now caused more than 1,000 deaths, and the Federal air force units, also under Serbian control, have bombed over 120 churches. Now we have reports that the Serbian-dominated air force has bombed the centuries old city of Dubrovnik. I saw pictures of this last night and the night before on TV.

Even more ominous are reports that in at least two cases the Federal army has used chemical weapons against Croatia. I have seen pictures of this fact as well.

Something has to be done to stop Milosevic. The international reaction to date, in my opinion, has been far too weak. The reaction of the U.S. Government has been too weak. The attempts at mediating the crisis by the European Community has been far too weak.

It is time to take strong measures against Milosevic's Serbian Government and any part of Yugoslavia that he controls. First, I believe that no United States aid should be provided to any Republic of Yugoslavia which has not held free and fair democratic elections and is engaging in human rights abuses.

In fact, last October, the Senate originally adopted such an aid restriction as part of the fiscal year 1991 foreign operations appropriations bill. I was the author of that amendment and I believe the Congress ought to take similar action again this year.

I understand that the Agency for International Development has suspended its aid program to Yugoslavia, but that action misses the point that there are parts of Yugoslavia which need our help, and there are areas which certainly do not merit any foreign assistance.

Second, we should impose a trade embargo, not on Yugoslavia as a whole but on all those parts of Yugoslavia under Milosevic's control.

That is why I am pleased to cosponsor legislation introduced by my colleague from New York, Senator D'AMATO, to impose a trade embargo on Serbian products.

Third, on the diplomatic front, I think it is time that the United States considered recognizing the governments of Croatia and Slovenia. I note with regret over 30 other countries recognized the Baltic States before the U.S. finally did. I hope this will not be the case here, while democratic Croatia is fighting for its life, and a strong show of support from the United States and the European Community could certainly affect the outcome.

Unfortunately, there is no hope of going back to the status quo of a year ago.

In my opinion, Yugoslavia cannot be put back together. I understand that it is the President's constitutional prerogative to decide which governments to extend diplomatio recognition to, but we should recognize reality—that Yugoslavia has permanently splintered, and we should recognize there are democratic governments and Communist governments in what was previously Yugoslavia. Let us not lump them together. Let us stand by the forces of democracy in Yugoslavia and oppose the forces of tyranny and Communism.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might be permitted to proceed as in morning business.

The PRESIDING OFFICER (Mr. DASHLE). Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, as I stand before you today, the people of Croatia find themselves under siege. Tanks are moving; planes are bombing and artillery is raining down on the innocent citizens of Croatia.

It is rather ironic that at this very moment, the proud and ancient city of Dubrovnik, which is in Croatia, is being bombarded. Dubrovnik is a cultural and historical treasure. One of the last walled cities of the world is being destroyed.

The mayor of Dubrovnik has just called. You could hear the bombs in the background. The radio stations and television stations have been cut off; a massacre is underway. The Yugoslav Federal Army and the Serbian guerrillas, under the total control of the Communists and the killer Milosevic—are on the move.

Why do I say that the bombing of Dubrovnik is ironic? Because, as the Free World sits by, and as the United States fails to exercise the kind of leadership that it can, and should, and must, the forces of oppression, of dictatorship, of enslavement, under the leadership of the killer Milosevic and his cutthroats, guerrillas have undertaken a massacre. Milosevic is the butcher of Belgrade. Is it not interesting that we have dealt with the butcher of Baghdad, and now we have Milosevic, the butcher of Belgrade, who encircles this proud city, bombards its ancient churches, its schools, and it civilian population purely for the purposes of conquest. This is nothing more than a last gasp effort to hold onto power and privilege by the oommunists.

Mr. President, 200 years ago when the United States of America was fighting for its freedom in the Revolutionary War, when we declared our independence, as the Croatian people have declared theirs, a small country, an ancient country located in Croatia, was the first to recognize the United States of America. That country was Dubrovnik.

Is is not ironio that today, as the innocent civilians of Dubrovnik are under bombardment this great Nation has not undertaken the kind of forceful leadership necessary to work with the entire European community and isolate this killer? We must isolate the Serbian Army and its communist leadership, which is on a mission of death and destruction. It is an army responsible for the killing of hundreds, and hundreds, and hundreds of innocent civilians, be they Slovenians, Croatians, or the ethnic Albanians in Kosov.

What do these people, innocent people, want? Their desires are clear. They yearn for freedom, and they yearn to determine their own destiny. Very much like our forefathers, 200-plus years ago, who looked for freedom, and who had to stand up to the forces that would have denied them that opportunity, they now look to the outside world and say, "Will you not come to our assistance?"

I believe, Mr. President, that we have a moral responsibility to take a leadership role in recognizing Croatian people and the independence of Croatia. I believe, Mr. President, that we have a moral responsibility to recognize the independence of Slovenia, and we must recognize that the ethnic community in Kosova must and should be protected.

We must use our leadership in the world community to galvanize the European Community and others to see to it that there is an immediate cutoff of arms. We must immediately cut off all fuel so that those tanks and those planes cannot continue to maraud upon innocent people. These people only want freedom, democracy and the opportunity for self-determination.

This is exactly why Senator DOLE and I introduced legislation Wednesday which calls for the cutoff of all trade with Serbia and all parts of Yugoslavia under Serbian controls, including grants, sales, loans, leases, credits, guarantees and insurance. It also calls upon our country's officials to vote against any multinational assistance to Serbia or parts of Yugoslavia under Serbian control. I ask my colleagues to support this measure.

This is not aimed at the Serbian people. What we are talking about is Communist dictator who has lost control. A dictator who has taken the federal army and used it to suppress the honest freedom of expression, to suppress people who want to determine for themselves their own destiny, to use their own language, to pray as they see fit, and to stop the senseless marauds and bombardment of innocent civilians. Is this too much to ask?

Mr. President, 200-plus years ago, the citizens of a proud and old country, Dubrovnik, and its government stepped forth. It recognized the United States of America and the call for independenoe. Certainly, at this time the great Nation of the United States should not turn aside the cries for help that come from the people of Croatia, Slovenia and Kosova. The 30,000 citizens of Dubrovnik are under bombardment as I speak. Their cries should be heard. Their cries must be heard.

We should heed those cries and move with every diplomatic resource at our command to end this senseless marauding, this senseless slaughter, and recognize the God-given rights of these people to live free from the shackles of any kind of domination, free from communism, free from the oppressive federal army.

I would hope that we would move as expeditiously as possible. We owe nothing less to the people who yearn for freedom. These people who once were the first to stand for freedom for the United States, our great country. Now is an opportunity for us to repay them to demonstrate that we have not forgotten their recognition of our call for help. They now seek our help. We must help.

Mr. President, I suggest the absence of a quorum.

Mr. President, I withdraw.

The PRESIDING OFFICER. The Senator from Virginia.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. WARNER. Mr. President, I rise to give my second statement on the floor on behalf of Judge Thomas, currently circuit judge in the Circuit Court of the District of Columbia.

Mr. President, we are now beginning the final stage of what has been an intense, and most thought-provoking, and certainly a learning experience, for all involved. I say that, for it has indeed, for this Senator, been a learning experience—that is the confirmation process of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

The Senate, under the Constitution, shares with the President the decisions relating to the qualifications for this high post. There is no denying that it is a rigorous process, rigorous for all parties involved—Senators, nominees, and witnesses—but a process that, in my opinion, is absolutely necessary in our system of government of cheoks and balances.

The hearings on the judge ran for a very long time. A record may well have been set for longevity. A record was certainly set for thoroughness and vigorousness by all who participated.

Members of the Senate Judiciary Committee questioned him on every aspect of his past employment, his judicial philosophy, and his thoughts on various legal issues. Judge Thomas' answers, to the extent he could respond, I believe were fair and honest.

It must be clearly understood that a sitting Federal judge is not as free as others in a oomparable situation. A sitting judge has certain constraints on his publio statements be they in the context of a Senate hearing or otherwise.

I welcomed this exchange, however, between the committee and Judge Thomas, as did all other Senators, and I believe as did the majority of Americans.

His judicial demeanor and his firm approach to answering the questions posed to him enables the Senate now to know a great deal more about him, his philosophy, and the approach that he will take to this high office if confirmed.

The importance of ths process cannot be underetated. It allows us, the Senate as well as the American people, the best possible opportunity to have a better knowledge of a nominee who, by law, can sit on the Supreme Court for a life term.

This "advise and consent" power, speoifically granted to this body in article II of the Constitution, is the main check we have on executive nominations. We are now in the final stages of

what I view as a three-stage process. First, the nomination by the President, followed then by the Senate Judiciary Committee hearings before which the nominee appeared and, in this instance, so did a very numerous and wide cross-section of witnesses. Of course, during the course of those hearings we also heard the expressions and opinions of the members of the Senate Judiciary Committee.

The committee then reviews and makes a record and reports to the Senate as a whole. That is followed by the debate which now is taking place on the floor of this Senate preceding the final vote which will take place next Tuesday. At that point it will be my privilege to cast a vote for Judge Thomas, for, in my judgment, Judge Thomas has met the Senate's stringent criteria to sit on the Supreme Court. The Senate will confirm not only Judge Thomas but confirm the judgment of the President of the United States exercising his authority again under artiole II of the Constitution to make this appointment.

He not only receives my vote but my confidence that he will perform responsibly.

Mr. President, I began this process with an open mind. I had met Judge Thomas on several occasions in the past, including the year in which he was nominated to serve on the U.S. Circuit Court for the District of Columbia. Since he resides in Virginia, it was my privilege to join other Members of this body in presenting him to the Judiciary Committee and, indeed, the Senate as a whole.

Mr. President, now after weeks of hearings and Senate deliberation, during which I listened very carefully to the views of my colleagues together with Judge Thomas and the many witnesses who appeared, I know a great deal more about this outstanding American.

I traveled, as part of my responsibility, throughout Virginia, stopping at almost every major metropolitan area, and hosting private meetings with a wide range of Virginians to receive firsthand, and in a confidential manner, their views. I have taken their thoughts, their opinions, and their pleas to heart, both those for and those against Judge Thomas.

Mr. President, Judge Thomas' childhood and upbringing is now common knowledge. It is an extraordinary American chapter of survival of hardships and courage in overcoming those hardships, and his acknowledgment—and I underline his acknowledgment—that his success in life can be attributed to the helping hand of many other individuals. All of that taken together greatly strengthened my opinion of this fine person. He will not, I hope, forget, as he labors on the Court, to help others.

No amount of judicial wisdom or legal knowledge can replace or substitute for those teachings and learning experiences in early live. This upbringing will serve him well on the Court and will lead to his making a fair, compassionate, and thoughtful Justice, as he interprets the laws of our land.

Mr. President, I am pleased that we are now engaging in the last leg of the nomination process. I hope that this debate will be full, fair, objective, and very deliberate. Thus far it has been.

I am confident that Judge Thomas will emerge a more knowledgeable person. I know I am, about him, and about the depth and the sincerity of the fears and the hopes and aspirations of those who were for and against him as expressed to me privately and expressed during the course of this nomination.

Mr. GORTON addressed Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am here this afternoon to join the endorsement of Judge Thomas to the Supreme Court of the United States with my distinguished friend from Virginia and with many other Members of this body during the course of the last 2 days.

This is a solemn and important duty. Some may argue that there are few duties more significant which fall to Members of the U.S. Senate than to confirm or reject nominees to the Supreme Court of the United States. This is particularly true with Judge Thomas who is likely, if confirmed, to serve on the Supreme Court of the United States for a period of time longer than the service here in the Senate of any present Member of this body.

It is, I suspect, for just that reason Justices of the Supreme Court have such a profound influence over the lives of the people of the United States. Because they serve so long, we as Senators have never truly settled on the precise role of Members of this body in this confirmation process.

It is unlike the confirmation of an individual to serve in an executive position at the pleasure of the President, a position in which very few individuals serve beyond the term of the President who has appointed them. It is much more profound than even the confirmation of those who are appointed to serve fixed terms on various of our regulatory agencies. It is more profound than appointments to other Federal courts which are, after all, under the supervision of the Supreme Court of the United States.

As a consequence of the importance of the issues which come before the Supreme Court and the importance of the individuals who occupy the nine positions on that Court, debate over particular appointments has been fierce from the beginning of the Republic to this very day. Some have argued for almost total deference to the selections of a partioular President. Others have argued that the importance of a single Senator is as great as that of the President of the United States and that we have an absolute equal right to substitute our own judgment of what single individual is best qualified for this position, as does the President of the United States himself.

The ultimate answer to that question, of course, is that this is a subjective judgment which each Member must make for himself or herself. How much deference should he or she give to the judgment of the President? How much deference should each of us give to our own predictions of where a judge will come down either with respeot to his general judicial philosophy or on partioular cases?

A number of speeches have been made, both on this floor and off this floor, about the highly inconsistent positions of a number of Members of this body who have served longer than have I and longer than has the present Presiding Officer. The earlier words of Senator KENNEDY, the distinguished senior Senator from Massachusetts, are often quoted against his current position and he has been asked why he will not impose a test no heavier on Judge Thomas than he did many years ago on his predecessor, Justice Marshall. But on this side of the aisle, exactly the same 180-degree turns as to the degree on which individual issues may be considered has marked the progress of several of our senior Members, including the most senior Member on the Republican side on the Committee on the Judiciary. Those illustrate, in my opinion, Mr. President, not so much grounds on which to criticize individual Senators as grounds on which to reflect on the importance of the process in which we are engaged at the present time.

I do feel, however, that there is one element in this debate which is appropriate to say; that certain considerations should not weigh heavily or govern the vote of a Senator on a nomination of this sort. That element is the single-issue test: how we predict that this individual will vote on the future of Roe versus Wade or half a dozen other precedents which have been cited to us in the past.

I must say, Mr. President, that I was particularly impressed in this regard by the remarks of my wonderful friend and counsel, the senior Senator from Oregon, on the floor here yesterday afternoon. All who know him know that Senator HATFIELD is passionately opposed to the death penalty. All who have followed the Supreme Court know that Justice Marshall took that position. Judge Thomas, by contrast, has said that he has no philosophical or constitutional objection to capital punishment.

Senator HATFIELD, in his remarks yesterday afternoon, said that Judge Thomas' position on the death penalty not only was not an inhibition with re-

spect to his support for the nominee, it was simply not a relevant consideration. Rather it is the character and background and thoughtfulness and philosophy of the nominee which is of vital importance, not agreement with the views of the senior Senator from Oregon on one particular issue, no matter how passionately the Senator from Oregon believes in that position.

I am convinced that that is the correct attitude toward a nomination of this sort. I go beyond such agreement or disagreement to cite some of the rules that relate to judicial nominees, and perhaps even to one of the greatest precedents, because of the greatness of the individual who has dealt with it.

Well over a century ago, President Abraham Lincoln observed, under circumstances similar to those with which we are faced today:

> We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it.

We can go beyond President Lincoln, however, and simply reflect on the fact that the reason for that is that what is required of our jurists is an impartial balancing on the scales of justice of the facts and circumstances which come before them. The United States Code in this connection states:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

That is the law. A precise answer to such a question by a nominee would disqualify him from dealing with that question when it came before the Court and, by implication, would raise serious questions as to his qualifications to hold the position at all.

Last year at about this time, the Senate was debating the nomination of David Souter. Let me quote from the report of the Judiciary Committee on that nominee:

> We believe that Judge Souter struck an appropriate balance in this testimony; that his testimony and the record before the committee enabled us fully to discharge our constitutional responsibility of advice and consent; *and that a requirement of greater specificity would gravely compromise the independence of the judiciary and the separation of powers.* Such independence is explicitly mandated by the Constitution, by Federal statute, and by the canons of judicial ethics. (Emphasis supplied.)

No, Mr. President, we must obviously go beyond our prediction of the way in which a judicial nominee may act in a case which may come before him in the future. And we clearly cannot appropriately demand that he precisely answer a question on such a subject.

So where does that lead us? It leads us to what I think is at least an appropriate concern with the general legal, judicial, and constitutional philosophy of a nominee, a consideration which I have always felt to be appropriate in making such a judgment as we debate such a nominee here.

In this connection, I find the recent history of nominations to the Supreme Court of the United States to be particularly frustrating. It was exactly that debate over a general judicial philosophy which so enlightened the people of the United States in connection with the nomination of Judge Robert Bork to the Supreme Court just a very few years ago.

That Judge was more than willing to engage in a philosophical debate with those who backed his nomination and with those who opposed it. He obviously had been very prominent in an academic debate over issues of great importance to the nature of our law and of constitutional interpretation over the years. And his reward for engaging in that philosophical debate was to be savaged in committee, on the floor of the Senate, and in the public press.

I believe it perfectly appropriate to have felt that Judge Bork's judicial philosophy was so inconsistent with that of a given Member of the Senate that that Member of the Senate could not support him. What I found so critical and so negative in that debate, however, was the characterization of his views as being so far out of the mainstream that they could not be considered by any reasonable person. That characterization made a negative vote much easier than would have debate over judicial philosophy itself.

But we now have the inevitable consequences of the nature of that debate over Judge Bork. We now have Justice Souter, who was denominated, perhaps unfairly, the "stealth" nominee. And we have a nominee here today before us who has been very careful to speak in the broadest generalities during the course of his nomination hearings because he had a well-founded, not just fear, but knowledge, that the more specific he was, the more his views would be used against him.

So the frustrations which many have felt with the nature of that nominating process were frustrations which have been created by the very nature of the process itself, and as a consequence leave us with less than many of us would desire in the nature of an intellectual debate and repartee to be found in the records of the Judiciary Committee.

In this connection, and in connection with the refusal of Judge Thomas to make specific commitments on specific issues, I can do little better than to quote from the testimony before the Judiciary Committee of Senior Judge Jack Tanner.

Judge Tanner was the first black individual to be appointed an article 3 Federal judge in the Pacific Northwest. He is now a senior judge in the Western District of Washington and is, I must say in all candor, an individual with whom I have had many disagreements, both political and legal, during the course of his career. But I feel that he made a most impressive presentation before the Judiciary Committee, and I should like to share it with my colleagues.

I am now quoting Judge Tanner:

> [I] am here because of the most intense, unprecedented, and harsh opposition in the history of this country to a nominee to the Supreme Court of the United States. The attacks have now also shifted to Members of the Senate. There is no logic or reason for the attacks, whether it is on the right or the left. They are emotional attacks based solely upon passion and prejudice, neither of which has any relevance to the qualification of fitness of the nominee. * * * The opponents of Judge Thomas' nomination are concerned that he might do this or he might do that or that his confirmation will lead to some ideological shift in the Supreme Court, or that he is somehow outside the mainstream of legal thinking, yes, and political thinking in this country, just because they do not agree with his sense of values of judicial philosophy, whatever it may be. * * * What is certain and known about Judge Thomas is that he is independent and can't be put into a category. He is just where he should be. Speculation and hysteria as to what the nominee might do should not disqualify him from the Supreme Court. After all, no other nominee has ever been disqualified for such reasons. Judge Thomas understands very well the rule of law.

When one goes beyond an examination of general legal and constitutional philosophy, one, I suspect, is then left with the fundamental bedrock of judgment of any individual—whether for a vital position such as Associate Justice of the Supreme Court of the United States or in ordinary life—and that is the character and strength and experience and learning of a particular individual. It is because of my tremendous admiration for Judge Thomas' character and for his experience and for his life that I am so enthusiastically in favor of this nomination.

Judge Thomas, I suspect, almost certainly comes from the most underprivileged background of any person who has been nominated to a position on the Supreme Court of the United States in the more than 200-year history of that body.

Born the grandson of a black sharecropper, growing up in a segregated South, surmounting many of these difficulties because of the love of members of his family, of his teachers, and of his church, Judge Thomas has already come infinitely further than he could have been expected to have come by reason of his birth or that many of his contemporaries have been able to come.

Not only has this been the life history of Judge Thomas, but coupled with the struggle to overcome adversity, it has been his originality of thought and of experience which are not only notable but which have brought some of the opposition with which he is faced here. Judge Thomas almost from the beginning of his life has dared to be different, has dared to

examine and frequently to reject the common philosophy of many of his contemporaries. He has, quite obviously, thought about and examined all of the ideas and ideals upon which this country and its society has been based. He has reached conclusions which differ from many of his contemporaries, and for all practical purposes, from all of his critics.

His is a journey which is not yet complete by any stretch of the imagination, he being only in his early forties. His conduct, his philosophy, his direction as Justice on the Supreme Court is perhaps more difficult to predict than that of previous nominees, many of whose lives on the Court indeed have been difficult to predict. But it is that very background, it is that struggle, it is that willingness to examine all premises, it is that willingness to be different which are not only not a disability in the nomination of Judge Thomas but which are an important part of the reason for his qualifications.

As a consequence, Mr. President, I am not here today to offer different support to this nominee. I am not here today to say that I support him because the President nominated him and we should weigh the President's views very heavily. I am not here to say that although there may be men and women who are better qualified, he is sufficiently qualified and therefore we should go along with this nominee, that a successor nominee might not be as good.

No, Mr. President, I am here speaking for Judge Thomas today because I believe firmly that he has the potential to be a great Justice; that he has grown immensely in the past and has the potential to grow in the future; that he brings to the Court a different background, a different set of experiences, some different attitudes than his predecessors on the Court; that his feeling for people will be deep, profound, and great; that he will not only be an adequate Justice of the Supreme Court but I have every hope and every expectation, a great Justice of the Supreme Court. I believe firmly and enthusiastically that he should be confirmed by this body next Tuesday.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are on the nomination of Clarence Thomas.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there be a period for morning business until 4:30 p.m., with Senators permitting to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, my remarks today will be brief. It is no secret that I think Clarence Thomas should be confirmed and it is no secret that he will be confirmed next Tuesday.

This Senator saw no reason why we could not vote today or Monday. In any event, the vote will fall on Tuesday. We have had 2 days of pretty good debate. We have two more days of debate next week.

There are 4 days in which opponents of Judge Thomas can continue their desperate search for reasons to vote against such a truly outstanding public servant.

And, as the American people saw during the confirmation hearings, the truth is there are no good reasons to oppose Judge Thomas.

Americans saw a man of rare courage, whose character was forged in a childhood of poverty in the segregated South.

They saw a man of intelligence, who has distinguished himself in every branch of Government—legislative, executive, and judicial.

They saw a man of integrity, who, throughout his life, has remembered from where he came, and stood up for what he believed.

They saw a man who will hit the ground running, and make a contribution on the Supreme Court right from the start.

Americans also saw a parade of witnesses testify for and against Judge Thomas. There were the usual cast of characters from the usual liberal special interest groups, giving their usual reason for opposing every nominee who does not march lockstep with their views.

But the most important and telling testimony was from people who actually knew Judge Thomas.

Sometimes it is good to hear from people who knew the nominee, who grew up with the nominee, who knows what he is all about.

Testimony from the nuns and professors who taught him, from the men and women who worked with him, from our distinguished colleague, Senator DANFORTH, who has served as a mentor and guiding light throughout his career.

Each of these witnesses told of a diligent student, a loyal friend, a gifted attorney, a man with an open mind and an ability to understand real life people and their real life problems.

Mr. President, the speeches I heard this morning from a few of my colleagues reminded me of 10 years ago this fall, when the Senate was engaged in a debate over another Presidential nominee.

Then, as now, some of my democratic colleagues rose to tell this body that yes, the nominee was a distinguished and courageous gentleman, but they simply could not support him.

In an impassioned speech delivered on this floor on November 16, 1981, the Senator from Massachusetts [Mr. KENNEDY] declared the nominee had a "total absence of training or experience."

The real reason behind the opposition, however, was that the nominee had, in the past, spoke out against abortion. Senator KENNEDY declared the nominee to be "insensitive to issues affecting women," and someone who would "stand against the effort of women to achieve equal rights."

The Senator from Ohio [Mr. METZENBAUM] rose to agree that the nominee was inexperienced and unfit. But—and listen carefully, because you will be as surprised as I was to hear these words—Senator METZENBAUM declared that the nominee's position on abortion did not influence his opinion.

Indeed, Senator METZENBAUM said—and I quote, because I want to get every word correct, "I believe to judge any person for public office or for confirmation on the basis of a single issue is unfair * * * unintelligent * * * and un-American."

Contrast this statement with Senator METZENBAUM's crusade to pin Judge Thomas down on his views on abortion, and it is clear that while history may repeat itself, the distinguished Senator from Ohio certainly does not.

The nominee, Senator KENNEDY, Senator METZENBAUM, and Senator BIDEN, I might add, opposed as inexperienced—the nominee these Senators opposed as a conservative idealogue—was President Reagan's nominee to be Surgeon General of the United States, Dr. C. Everett Koop.

I may not have agreed with every decision made by Dr. Koop, but no one can deny that he was the most effective and courageous Surgeon General of our time, and no one can deny that he was about as far from a conservative idealogue as you can get.

So the liberals who opposed Dr. Koop's nomination would eventually eat a lot of crow. They were wrong 10 years ago, and they know it.

And they are wrong in opposing the nomination of Clarence Thomas, and they and the American people know it.

WE NEED TO REDEFINE THE MEANING OF CIVIL RIGHTS IN AMERICA

Mr. DOLE. Mr. President, when the Senate turns to the civil rights bill later this month, we will have a lively debate over legal abstractions like "disparate impact," "business necessity," "burden of proof."

That is almost 13 percent of the work force in this country, I say to my friend from Maryland—almost 13 percent. If that is not an emergency, I do not know what is.

Our friend, the minority leader, who was here a moment ago tried to ascribe this economic disaster to a luxury tax—to a luxury tax. Was it a luxury tax that caused the Government of Maryland to lay off 1,700 employees just this week? Was it a luxury tax that caused DuPont to lay off 1,095 workers this week? American Express, not touched by a luxury tax, laid off 1,700 employees this week.

This economio malaise is all across this economy. It is no longer limited to one geographic area. It is no longer limited to any one industry. It is no longer industry specific. It is not just the auto industry. It is not just the steel industry. It is all across this economy. And people cannot find jobs. There is anxiety and fear across this country like we have not seen for a good while.

Mr. President, in the face of this, if the President of the United States this coming Tuesday does not sign this bill to give minimum relief to the long-term unemployed, if he does not hear their cries of anguish, then there is going to be a day of reckoning coming, in my judgment.

Mr. SARBANES. Mr. President, I suggested the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with consideration of the nomination.

Mr. DANFORTH. Mr. President, returning to the issue of the nomination of Clarence Thomas to be Associate Justice of the U.S. Supreme Court, one of the remarkable and very gratifying things that has happened over the past 3-plus months is the number of people who have come forward who have known Clarence Thomas for a very long period of time and who have testified to this person's character and his oompetence. In many ways the battle over the Clarence Thomas nomination is a battle between those who know Clarence Thomas and those who do not know him. It is a battle between lifelong friends on the one hand and interest group lobbyists on the other hand.

Mr. President, those who are opposing Clarence Thomas, many of them, have attempted to make the issue of Roe versus Wade a litmus test of determining whether to vote for a Supreme Court nominee. This I believe is an improper approach to Supreme Court nominations because if we in the Senate attempt to condition our support for a nominee on that nominee's promise to take a specific position on a hypothetical case that might come before the Court, then we are infringing on the independence of the judiciary.

The American people deserve judges and Supreme Court Justices who will determine the law and who will not seek to impose their personal social or political philosophies on the American people.

For 5 days, Clarence Thomas was interrogated in the Judiciary Committee about his position on Roe versus Wade. He was asked the question not once, or twice, or one dozen, or two dozen, or three dozen times.

About halfway through the proceedings, Senator HATCH announced that he had made a count and that as of that time Clarence Thomas had been asked 70 different times to state a position on Roe versus Wade. It seems to me that after the question is asked once or twice, members of a committee might get on with it. But he was asked repeatedly the same question.

At one point in one of the scores and scores of answers that he gave to the question of Roe versus Wade, he stated that he did not have a personal opinion and that he had never even discussed it with anybody. And immediately, of course, his detractors seized on that one answer and said, oh, this cannot be true; this does not ring true; everybody has had to have had discussions on Roe versus Wade.

I think it is a picky point, but, Mr. President, there are those who like picky points, and therefore I have attempted to deal with it.

I do not know how to prove a negative. I do know that the interest groups that are opposing the Clarence Thomas nomination have now taken out newspaper ads asking people to come forward if they have ever discussed Roe versus Wade with Clarence Thomas. I suppose that if nobody comes forward, that will not be adequate proof for his detractors. But I have received a number of letters from people who have known Clarence Thomas very well over a long period of time.

I would like to share some of those letters with Members of the Senate.

The first letter is written by Lovida H. Coleman, Jr. She is an attorney. She is the daughter of the former Secretary of Transportation, William Coleman. She has written a letter to Senator LEAHY and sent me a copy. Here is the letter:

DEAR SENATOR LEAHY: I went to law school with Clarence Thomas and he and I have been good friends since that time. I was in particularly close touch with Clarence when he first came to Washington, DC. I know Clarence well enough to be absolutely certain of his intellectual capabilities, his dedication to public service and his integrity.

I was very pleased for Clarence when he was nominated by President Bush to be a Supreme Court Justice. I have followed the confirmation process carefully and I listened closely to your questions to Clarence. It was quite evident that you gave little credence to Clarence's assertion that he had not discussed Roe v. Wade when it was decided while we were in law school. I am writing to share with you my perspective on this matter which may assist you in making a more informed judgment about Judge Thomas.

I frequently ate breakfast with Clarence in law school as we were among the very few who liked to get an early start when the dining hall first opened at 7 a.m. I vividly recall that the dominate feature of these means was the good natured laughter and wide-open discussion which this self-selected small group of sunrisers shared. Clarence was among the best raconteurs and was frequently a leader in our daybreak meetings.

I do not recall that Roe v. Wade was ever a matter that Clarence discussed in these sessions or elsewhere. There was several reasons why it is not as likely as you assumed that Roe v. Wade raised issues that were of critical interest at that time. First, abortion was legal in twenty states in 1973. Access to a legal abortion was not a problem for my contemporaries. Therefore the decision was not nearly as important then as the prospect that it may be overruled is today.

Second, with very few exceptions, current legal cases tended to be of much less concern to us as law students than the tax, real estate and constitutional law cases we were studying in class. Even in constitutional law courses, we were much mors likely to be reading and discussing turn of the century cases on the interstate commerce clause than current Supreme Court cases. The one exception that I recall was our discussions about the Bakke case, which concerned an affirmative action program in law school admissions, that was much more rslevant to us that Roe v. Wade.

Third, our discussions of current events at that time were almost entirely dominated by one overwhelming issue—Watergate. Indeed, I have spoken to a reporter who normally covered the Supreme Court at that time who said that he did not cover the Roe v. Wade decision because he was at the trial of Dr. Ellsberg. Watergate was of far greater interest to us in 1973 than Roe v. Wade.

Thus Clarence's testimony that he does not recall discussing Roe v. Wade while in law school is entirely consistent with my own recollection and personal experience. Nor do I recall any such discussions after law school. I can assure you that it is highiy unlikely that Clarence Thomas would ever dissemble about such an important issue.

The chairman of the American Bar Association committee that reviewed Clarence's qualifioations testified that the two most significant qualifications for being a great justice on the Supreme Court are character and integrity. Clarence Thomas has character of tremendous depth and his integrity is unquestionable. No one who knows Clarence has disagreed with this assessment.

Finally, in evaluating Clarence Thomas's qualifications for the Supreme Court, one should keep in mind what Justice Blackman wrote in Roe v. Wade: "Our task, of course, is to resolve the [abortion] issue by constitutional measurement, free of emotion and of predilection." 410 U.S. 113, 116. Regardlese of

his personal views on abortion, of which I am not informed, I am confident that Clarence Thomas would address the abortion issue and any other legal issue with constitutional dispassion.

Very truly yours,

LOVIDA H. COLEMAN, Jr.

Then, Mr. President, I have a letter from my former administrative assistant, Alexander V. Netchvolodoff, my life-long friend who served as my administrative assistant, both when I was attorney general, until last March in my Senate office, and during the entire time that Clarence Thomas worked with me, both in Jefferson City and in Washington. Alexander Netchvolodoff was my administrative assistant and he knew Clarence Thomas very well. He has written me the following letter:

DEAR JACK: I have known Clarence Thomas for more than 15 years. I have had thousands of separate conversations with Clarence over that period of time. We have discussed everything from the 18th Century English novel to running a marathon.

One subject that specifically never came up in our discussions was the subject of abortion. I know that some people find that assertion improbable. I find nothing improbable about it at all. The fact is I have thousands of friends and acquaintances with whom I have never discussed the subject of abortion, and Clarence Thomas happens to be one of them.

Then I have a letter from Allen Moore who was my legislative director during the entire time that Clarence Thomas served as a legislative assistant here in Washington.

Allen Moore writes in part—this is just a partial quotation from his letter:

It is also distressing that some of your colleagues, and others, talk in disbelief about the fact that Clarence Thomas doesn't recall ever talking about *Roe* v. *Wade*. Why is that so preposterous? I don't recall ever talking about abortion with him, nor do I remember talking about nuclear war, the Soviet Union, capital punishment, prayer in schools, etc. Yet, I understand that a newspaper advertisement now seeks to identify anyone who ever disoussed abortion with him.

In my experience, Clarence's focus has always been on his job, his family, his friends, and his search for ways to help blacks get ahead in a hostile world. It doesn't seem strange to me that abortion righte would have been low on his personal liet of priority issues. I would guess that the same thing would be true for many blacks whose primary focus is economic issues.

You and your colleagues have long since been forced to state your views on abortion—over and over again with every conceivable nuance. Most Americans are spared that burden. Therefore, how can it be fair to attack a person's integrity or intelligence simply because he doesn't recall expressing a view on the matter?

Finally, I have a letter from Mark Mittleman, a lawyer in St. Louis, who shared an office in Jefferson City when Clarence Thomas was an assistant attorney general. I will not read from the letter, but it is to the same effect that he never had such a discussion with him.

Mr. President, I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DILWORTH, PAXSON,
KALISH & KAUFFMAN,
Washington, DC, October 3, 1991.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: I went to law school with Clarence Thomas and he and I have been good friends since that time. I was in particularly close touch with Clarence when he first came to Washington, D.C. I know Clarence well enough to be absolutely certain of his intellectual capabilities, his dedication to public service and his integrity.

I was very pleased for Clarence when he was nominated by President Bush to be a Supreme Court Justice. I have followed the confirmation process carefully and I listened closely to your questions to Clarence. It was quite evident that you gave little credence to Clarence's assertion that he had not discussed *Roe* v. *Wade* when it was decided while we were in law school. I am writing to share with you my perspective on this matter which may assist you in making a more informed judgment about Judge Thomas.

I frequently ate breakfast with Clarence in law school as we were among the very few who liked to get an early start when the dininghall first opened at 7 a.m. I vividly recall that the dominant feature of these meals was the good natured laughter and wide open discussion which this self-selected small group of sunrisers shared. Clarence was among the best raconteurs and was frequently a leader in our daybreak meetings.

I do not recall that *Roe* v. *Wade* was ever a matter that Clarence discussed in these sessions or elsewhere. There were several reasons why it is not as likely as you assumed that *Roe* v. *Wade* raised issues that were of critical interest at that time. First, abortion was legal in twenty states in 1973. Access to a legal abortion was not a problem for my contemporaries. Therefore the decision was not nearly as important then as the prospect that it may be overruled is today.

Second, with very few exceptions, current legal cases tended to be of much less concern to us as law students than the tax, real estate and constitutional law cases we were studying in class. Even in constitutional law courses, we were much more likely to be reading and discussing turn of the century cases on the interstate commerce clause than current Supreme Court cases. The one exception that I recall was our discussions about the *Bakke* case, which concerned an affirmative action program in law sohool admissions, that was mnch more relevant to us than *Roe* v. *Wade*.

Third, our discussions of current events at that time were almost entirely dominated by one overwhelming issue—Watergate. Indeed, I have spoken to a reporter who normally covered the Supreme Court at that time who said that he did not cover the *Roe* v. *Wade* decision because he was at the trial of Dr. Ellsberg. Watergats was of far greater interest to us in 1973 than *Roe* v. *Wade*.

Thus Clarence's testimony that he does not recall discussing *Roe* v. *Wade* while in law school is entirely consistent with my own recollection and personal experience. Nor do I recall any such discussions after law school. I can assure you that it is highly unlikely that Clarence Thomas would ever dissemble about such an important issue.

The chairman of the American Bar Association committee that reviewed Clarence's qualifications testified that the two most significant qualifications for being a great justice on the Supreme Court are character and integrity. Clarence Thomas has character of tremendous depth and his integrity is unquestionable. No one who knows Clarence has disagreed with this assessment.

Finally, in evaluating Clarence Thomas' qualifications for the Supreme Court, one should keep in mind what Justice Blackmun wrote in *Roe* v. *Wade*: "Our task, of course, is to resolve the [abortion] issue by constitutional measurement, free of emotion and of predilection." 410 U.S. 113, 116. Regardless of his personal views on abortion, of which I am not informed, I am confident that Clarence Thomas would address the abortion issue and any other legal issue with constitutional dispassion.

Very truly yours,

LOVIDA H. COLEMAN, Jr.

OCTOBER 1, 1991.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR JACK: I have known Clarence Thomas for more than 15 years. I have had thousands of separate conversations with Clarence over that period of time. We have discussed everything from the 18th Century English novel to running a marathon.

One subject that specifically never came up in our discussions was the subject of abortion. I know that some people find that assertion improbable. I find nothing improbable about it at all. The fact is I have thousands of friends and acquaintances with whom I have never disoussed the subject of abortion, and Clarence Thomas happens to be one of them.

Sincerely,

ALEXANDER V. NETCHVOLODOFF.

NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION,
Washington, DC, October 3, 1991.

Senator JOHN C. DANFORTH,
United States Senate, Washington, DC.

DEAR JACK: I have been troubled since Clarence's nomination by the fact that people who do not know him, and who have not listened to him, have decided to attack his integrity. Now that we are in the final stages of the confirmation, it is getting ugly.

Whether the charge is "confirmation conversion," or a "lack of being forthright," these are just other ways of calling someone a liar. You and I both know that Clarence would make a lousy liar. Can you imagine trying to get him to do or say something he does not believe in?

Clarence is now accused of rejecting some of his more controversial statements after he put them in context during his hearings. The most extreme interpretations of these statements had been relied upon to discredit him. I find it offensive that his detractors now simply reject his explanation so as to be able to add "liar" to their other charges against him.

It is also distressing that some of your colleagues, and others, talk in disbelief about the fact that Clarence doesn't recall ever talking about *Roe* v. *Wade*. Why is that so preposterous? I don't recall ever talking about abortion with him, nor do I remember talking about nuclear war, the Soviet Union, capital punishment, prayer in schools, etc. Yet, I underetand that a newspaper advertisement now seeks to identify anyone who ever discussed abortion with him.

In my experience, Clarence's focus has always been on his job, his family, his friends,

and his search for ways to help blacks get ahead in a hostile world. It doesn't seem strange to me that abortion rights would have been low on his personal list of priority issues. I would guess that the same thing would be true for many blacks whose primary focus is economic issues.

You and your colleagues have long since been forced to state your views on abortion—over and over again with every conceivable nuance. Most Americans are spared that burden. Therefore, how can it be fair to attack a person's integrity or intelligence simply because he doesn't recall expressing a view on the matter?

Clarence's prospects look good, but the process has gone sour. He and his family do not deserve the personal attack. None of this helps the Court either. I hope you will take the accusers on directly and aggressively. They should put up or shut up.

Good luck,

ALLEN MOORE,
President.

BEACH, BURCKE, MOONEY
AND LAKE, P.C.,
St Louis, MO, October 1, 1991.

Senator JOHN C. DANFORTH,
Russell Building,
Washington, DC.

DEAR JACK: I understand a controversy has arisen in the Senate with regard to Judge Clarence Thomas's statement, in his Supreme Court confirmation hearing testimony, that he had not previously discussed the issue of abortion or the decision in Roe v. Wade.

As you know, Clarence and I, along with John Ashcroft, shared an office from 1974 to 1976 when we were Assistant Attorneys General during your administration as Attorney General of Missouri. We had adjacent desks, worked on many of the same cases for the Department of Revenue, and socialized outside the office. During those years, there was a considerable amount of litigation in the Office of the Attorney General on post-Roe abortion issues. Mike Boicourt, who was one of Clarence's and my closest friends, was actively involved in that litigation, as was Brook Bartlett, the First Assistant. You personally took a lead role in the cases. I am sure you recall that within the Office I had questioned the aggressive anti-Roe posture you were taking on some of those issues, while John Ashcroft had enthusiastically supported your position.

Thus, the subject of abortion certainly came up from time to time in casual conversations I, John, Mike, Brook and others held in Clarence's presence. Yet I can affirm that his Judiciary Committee testimony was true: he did not participate in those discussions. I must have been sufficiently struck by his silence at the time that I remember it today even though there was of course no reason then to believe it would have any later importance. But, if anything, I simply considered his detachment in the face of an issue which so agitated others as one more of the many remarkable and memorable examples of his unconventional thinking. His statement to the Committee therefore is not only credible, but consistent with his unique intellect and personality, which I consider an advantage rather than a demerit as he seeks confirmation by the full Senate to our highest Court.

I will be happy to confirm these observations personally to any Senator who may still have questions on the subject.

Sincerely,

MARK D. MITTLEMAN.

Mr. DANFORTH. Mr. President, I do not know how to prove a negative, Mr. President. I can say to the Senate for 3 months and 1 week I have been attempting to keep up with the various charges that have been made against Clarence Thomas of one thing or another.

The one lesson that I have gotten out of it is that if the President of the United States calls you up and asks you to let yourself be nominated for a position of high public trust, and if you have any kind of track record at all, you better watch out, because the process is going to be grueling, because Members of the Senate and their staffs, and interest groups, and countless lawyers, working for interest groups, and people who take out advertisements in newspapers, are going to be combing through everything you have ever said, everything that you have ever written, in an effort to find something to criticize.

If they do not get the answer the first time on Roe versus Wade, ask it a second time. If not then, ask it a 10th time, a 50th time, a 100th time. Push the same question. Maybe somehow you will get a variation of the answer that you could use in your latest attack or in your latest newspaper ad. You better watch out if you are going to be nominated by the President of the United States.

The gratifying thing is that the people who have been attacking Clarence Thomas have been the interest groups, the inside-the-beltway lobbyists, paid to scurry through the corridors of the Senate, spreading this word here and that word there, hiring their lawyers, looking through the speeches and the law review articles, combing through the footnotes, looking for any suggestion that they can make that there is something wrong here. And against those lobbyists are people who have known Clarence Thomas personally—Lovida Coleman, Alexander Netchvolodoff, Allen Moore, Mark Mittleman, all kinds of people who have come here from Georgia, who have come here from the EEOC, who worked with Clarence Thomas, all kinds of people, simple people who have known Clarence Thomas, and who believe in him, and who believe in his character, and who want to stand up for him.

It was very interesting during the hearing when Clarence Thomas was a witness and all the interest groups were there spin controlling the press, working the media, getting their message out in the most organized way. There, at the same time, was a State senator, Roy Allen, a black Democrat from Georgia, who grew up with Clarence Thomas, and who served as an altar boy with him. There was a nun who was his eighth-grade teacher. And there were all kinds of people from the EEOC who had worked with him, people of various races, people with crippling physical disabilities, who had worked with Clarence Thomas at the EEOC, and who believed in him.

For 3 months and 1 week, the liberal interest groups have ginned up their professionally born messages, and the people who have known Clarence Thomas for years and years, who have taught him in school, who have worked side by side with him, people with a variety of political persuasions, have come forward and they have said: We want you to know about the real Clarence Thomas. We want you to know about the real life human being whom we know, whom we went to school with and we have worked side by side with. We want you to know about the person who, when he opened the doors of the new office building of the EEOC, insisted that it be the most accessible building in the Federal Government to the physically impaired. We want you to know the person who understands what it is like to be poor, and what it is like to be black, and what it is like to struggle, and what it is like to be the little guy. We want you to know the person who does not spend the time talking about the lobbyists, whose heart is with the average citizen, not the powerful, but the average citizen. We want you to know the Clarence Thomas we know.

To see one of the workers in the Senate Commerce Committee, a man who does errands for the committee, stand there at the door of the hearing room to see how his friend Clarence is doing, that is what is really inspirational about this long 3-plus-month ordeal.

The war, of course, is never over until the last shot is fired. I have no doubt that shots are going to be fired in the next 4 days or so. No doubt at all. There are all kinds of interests whose livelihoods depend on attacking the likes of Clarence Thomas. But I know we are going to win it. I know the votes are there now to win it. And I know the American people are going to win. They are going to find on the Supreme Court of the United States a real, live, flesh-and-blood human being, who has been there with them in the worst of times, in the worst of circumstances, who has suffered with the most disadvantaged people in this country, and whose heart is with them. They are going to win, because he is going to serve on the U.S. Supreme Court.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

in this country. We are deeply in debt. Our economy is in a decline; 6.8 percent of Americans are out of work; the public debt has reached $3.7 trillion and the GNP is down 2.8 percent for the first quarter of 1991. We cannot afford new taxes to fund a massive aid program, so any aid must come from something else.

We do not object to humanitarian assistance, provided it can be assured that the aid will get to the people that need it and not the same old Communist Party hacks that created the disastrous system in the first place. And, technical advice is certainly in order. But any significant monetary assistance, whether direct or through organizations like the International Monetary Fund or World Bank, must be conditioned to ensure that taxpayer dollars are not wasted, that goals important to the United States are satisfied. Our interest is in a more democratic, less threatening Soviet Union. We must be convinced that any U.S. assistance will have a reasonable prospect of advancing that goal. Conditions are critical to that assurance.

It has been said that winning freedom is easier than keeping it. We have a stake in helping those who live in what was the Soviet Union keep their newly won freedom. We have an even greater stake in maintaining our own freedom and economic prosperity.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to resume consideration of Executive Calendar No. 318.

The clerk will report.

The legislative clerk read as follows:

The nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

The PRESIDING OFFICER (Mr. REID). The Senator from Utah.

Mr. HATCH. Mr. President, I have been very concerned with the events that happened over the weekend. As a matter of fact, before I left last Friday, I made the prediction that over the weekend, Clarence Thomas would be smeared, and he has been. I have known Clarence Thomas for 11 years. And I can tell you that this is a man of integrity, of unimpeachable integrity and decency.

Mr. President, I want to read a memorandum from the chairman of the Judiciary Committee to me. It is dated today, October 7, 1991.

I want to take this opportunity to correct erroneous news accounts in certain newspapers this morning. Contrary to reports, Anita Hill first contacted the full committee staff of the Senate Judiciary Committee on Thursday, September 12, at which time she was referred to committee investigators, as is the committee's standard practice. Any statements that she was first contacted by investigators for the full committee staff of the Senate Judiciary Committee on September 3, or any other date, are categorically false.

Mr. President, this is a very important memorandum because she was contacted by staff members of one of the Senators in this Senate who were not investigators of the full Judiciary Committee. And I want to talk about that because I think what has gone on here is reprehensible.

First of all, it usually takes 1 day to call up a Supreme Court nominee—even the controversial ones—and a vote at the end of the day. And in the case of Clarence Thomas it should not have taken more than 1 day. Every procedural rule was invoked to make sure that it was carried over after Friday of last week, knowing that we were going to go on recess for 10 days. We were able to work out a unanimous-consent agreement by playing hard-ball behind the scenes, and now we have a vote scheduled for Tuesday at 6—4 days of alleged debate. And we have had 2 of those days, Thursday and Friday, of this last week. And I knew the minute we all got out of town that there would be an October surprise—that is what we call it in politics—a surprise, the Monday before the Tuesday election. Only this happened the Saturday before the Tuesday.

It happened over the weekend while all of us were out of town. And it was just as predictable as that clock is most of the time.

Mr. President, the integrity of the Senate's confirmation process is in a free-fall. I have absolutely no quarrel with Chairman BIDEN's conduct of the hearings. I respect him. He has been very fair to the Republican side during this process and to everybody else. But the process itself has careened out of control. It is becoming totally politicized, buffeted by rule or ruin special interest groups, more and more politicized with each new nomination, targeted in advertising campaigns—and I have to admit there was some advertising for Clarence Thomas he did not want, I did not want, the President did not want, nobody wanted. That was wrong here, just as wrong as what is being done on the other side. This process has been more and more politicized with each new nomination, targeted in advertising campaigns, producing trumped-up charges, distortions, and misrepresentations like mushrooms after a spring rain, which are repeated no matter how completely or how often rebutted.

Where will this process settle? How low will it sink? Apparently, some of the opponents of a Republican President's Supreme Court nominees have yet to show how low they will go in their mean-spirited campaigns to block a particular nominee.

This year, we have learned that some such opponents would subvert the judicial process itself to stop Judge Thomas. They revealed to the media, and perhaps others, what they purported to be the contents of a draft opinion not yet finished in a pending case. That is unethical. Instead of urging condemnation of such a breach, some of my colleagues have used the alleged draft opinion as a basis to question the nominee's veracity as well as evaluate his judicial performance.

The latest spectacle involves an incident or incidents of alleged sexual harassment by Judge Thomas nearly 10 years old. And I say alleged. Let me be clear. I do not minimize sexual harassment on the job if it occurs. And in this case, it did not occur. I feel confident in saying that, having known Judge Thomas for so long and having known his reputation, having watched him in action, having him work with probably thousands of women in the jobs that he has worked in. But, Mr. President, I believe this recent allegation—and that is all that it is—needs to be put in proper perspective.

Let me note that this allegation was before the Judiciary Committee prior to the committee vote. If one person had it an hour before, I cannot speak to that. All I know is I knew about it days before. At the request of the committee, the administration had the FBI look into it. The FBI's report was available prior to the committee vote. Not one member of the committee raised the allegation as a matter bearing on this nomination or sought further investigation of the allegation. Not even those who were speaking out so forcibly right now. And they knew about it. Let me just tell you, they knew about it.

Allegedly, the harassment occurred while the accuser was working for Judge Thomas while he was Assistant Secretary for Civil Rights at the Department of Education. This is a position to which he was appointed back in 1981, 10 years ago. Did the accuser file a complaint with the Department of Education, with the Department's Equal Opportunity Office? No. Did the accuser complain to the Inspector General or the general counsel or to anyone else at the Department? Apparently not.

The individual worked in a civil rights office, after all. She was not working in just any office. She worked in the Office for Civil Rights where peoples' equal rights was the every day work of the people there.

I think she was around 25 years of age at the time, and I believe she was a Yale law graduate. In any event, she was certainly highly educated, presumably working in that Department, working with the top person in that Department; presumably she knew her rights. Did the individual at that time complain to the Equal Opportunity

Employment Commission? No. Did she come forward to disclose this alleged harassment when the judge was nominated to that agency? No. He was nominated to chair the Equal Employment Opportunity Commission, the most important governmental agency dealing with sex discrimination and harassment in the workplace. Did she come forward to disclose this alleged harassment at that time? No.

Instead, she went to the EEOC with Judge Thomas to work for him there. This is clearly after—allegedly—he had sexually harassed her.

Does she claim that he touched her? No. Does she claim that he abused her? No. She claims that the words that he used were sexually harassing and, under the law, if it is as she has explained, that can possibly be sexual harassment, if the truth is being told.

I ask my colleagues, is the behavior of this person, accompanying Judge Thomas to another job, indicative of someone who has been sexually harassed? I think the behavior is inconsistent with the allegation.

I have to say this individual presents herself well. I watched the press conference. There is no question she is extremely intelligent. There is no question that she presents herself well. And I am not going to say anything more on that. But I will say that, long before full committee staff interviewed her, she had been interviewed and talked to by other Senate staff members—not of the formal—according to Senator BIDEN—not of the formal full committee staff of the Judiciary Committee.

I have seen some of them operate and especially some of those who are of the suspected Senators' staffs.

As I understand it, the accuser in this case said she was also harassed at the EEOC. Did she complain to the relevant official there? Apparently not. She then left the EEOC in 1983.

When Judge Thomas was nominated for a second term at the EEOC, did his present accuser come forward? No. By the way, Judge Thomas went through a full confirmation process then for chairman of the very Commission that deals with these issues all over this country. Why did this accuser not come forward then? It seems to me she owed it—if it was true—she owed it to come forward at that point to every other woman in the country if these allegations were true. But she did not.

When Judge Thomas was nominated for his position as judge of the court of appeals, did she come forward then and make this accusation? No. Everybody knew that Judge Thomas was being nominated for the Circuit Court of Appeals for the District of Columbia because everybody knew that Justice Thurgood Marshall was getting up there in years; that he might retire.

Here is a young superlawyer who literally could take his position. Everybody knew that. Everybody knew he was on the fast track. That was the language used by the media and by almost everybody, even my colleagues on the Judiciary Committee, at the time.

Did she raise these issues then? That was the time to raise them. No. She did not raise them until staff, not of the formal, full Judiciary Committee, staff other than the Judiciary Committee's formal staff, came to her. And I am sure they went to everybody who worked with Clarence Thomas in all of these positions, or at least a high percentage of the women who worked with him.

When the judge was nominated to become an Associate Justice of the Supreme Court, did the accuser come forward and testify? No. We heard testimony from 100 individuals but not from this individual. The privately made accusation was then investigated by the FBI. It was an accusation made after other staff of one or more of our Senators came to her and talked to her about this nomination.

The FBI report was available to every Judiciary Committee member before its vote and has been available ever since then. No Senator on the committee or during the 2 full days of floor debate has even alluded to it, much less suggested we should delay consideration of the vote, until somebody, some eminent U.S. Senator, leaked it through staff probably this weekend after we all went home. In fact, I was in Utah when I first heard that it had been leaked to the press. Indeed, no one had asked for further investigation during that entire time. One of the reporters who broke the story told me that it was such a close question whether to even use it, but on balance the reporter had to use it. I cannot blame the reporter. It is a story. It is a story that could ruin a very good person's life, I think two good people's lives because I was impressed with her as well.

I am concerned because I have seen some of the staff operate. Once witnesses make a statement or are pushed into making certain statements—and I am not sure that happened here, but I certainly suspect that this may have occurred—then that person is stuck with the statements.

Now, if we are to credit these charges now, these allegations under these circumstances, the Senate will have effectively surrendered control over its own processes. Anybody will be able to wait indefinitely, and either wittingly or unwittingly, in conjunction with those who have access to confidential committee information, cause calculated disruption in the confirmation process.

In light of the incredible 10-year delay in the surfacing of this accusation across three different and extremely important prior confirmations of the same nominee, does any Member of the Senate believe this episode breaking into the media at this time is about sexual harassment? I am sure some would like to believe it. This leak of confidential committee information appears to be nothing more than an orchestrated ploy by bitter enders up here, the desperate twitching of those engaged in a dying effort to kill the nomination of this decent man and this worthy person. This has all the earmarks of a political campaign which finds itself 20 points down on the weekend of the election.

How low is this process going to sink, Mr. President? I think we have until 6 p.m. tomorrow night to find out. But let me tell you I am really concerned. I am really concerned. The woman who is making these allegations claims that she is not involved in a political ploy, but she clearly is. It may not be of her making, but she clearly is, even if unwittingly. She is approached by staff of some Senator or Senators up here—not the chairman's staff, not the committee's formal staff, but someone else's staff. Her affidavit is leaked to the media. She did not want to go public, according to her, so someone with access to confidential committee material leaked it. She said she never came to the press; the press came to her and read from her affidavit. Now, someone is playing politics and using this individual who would not publicly make this charge and did not want to go public according to what I just saw on television.

Interestingly enough, no one on the committee made this an issue until we all left Friday to go home this last weekend.

Incidentally, how hostile an environment could these alleged, but I repeat alleged, behaviors have created? Like I say, she served with him and went with him to the EEOC as one of his top aides, and now all of a sudden we have these problems. Mr. President, pardon me if I doubt the allegations.

Last but not least, I have known Clarence Thomas for better than 10 years. I have participated in every one of his confirmations. I presided over three of his confirmations as chairman of the Labor and Human Resources Committee. And I am on the Judiciary Committee now participating in the fifth confirmation in 9 years. And I have to tell you I know Clarence Thomas very well. I know his wife. I know his son. And now, since the hearings, I know his mother and sister, and they are fine people. To have a 10-year-old allegation come in here now and try to blow him out of the water on the weekend before the final vote in an October last-ditch, last-second political surprise, I think is reprehensible.

If it was literally a decent approach and somebody felt so strongly about it, then that somebody on the committee should have brought it up during the committee process. But to be honest with you, nobody wanted to do that because they know that anybody can

make these allegations at any time, however sincere and however sincerely wrong, and the poor person against whom the allegations have been made will have to live with those allegations the rest of his life. It is that simple.

On the other hand, if true sexual harassment had occurred, I could never condone it. The fact is these are tough issues, these are tough areas of the law. And although you do not have to have formal, overt physical action to have sexual harassment, I still say that in most cases where people or jurors feel strongly about it, there has been physical contact or the person has been fired from the job, or demoted, or shoved off to the side and not given anything to do, or mistreated or demeaned among her fellow associate workers, or not given an opportunity for promotion.

In this case we have a situation where the woman says, in effect that he talked dirty to her. I have to tell you that I confronted Clarence with this and Clarence said, Senator, I would not have done it. I did not do that. And I do not know why in the world she would be making these statements, and especially at this time, other than the fact that I am up for Supreme Court Justice.

I have to say again that I felt she presented herself well. But I then go back to staff and some of the manipulations that I have seen in the past by staff—I refer, again, to chairman BIDEN's memorandum. "I want to take this opportunity," Senator BIDEN says, "to correct erroneous news accounts in certain newspapers this morning."

"Contrary to reports, Anita Hill first contacted the full committee staff of the Senate Judiciary Committee on Thursday, September 12," 10 years later, by the way, "at which time she was referred to committee investigators, as is the committee standard practice. Any statements that she was first contacted by investigators for the full committee staff or the Senate Judiciary Committee on September 3 or any other date, are categorically false."

I think that says a lot, and I would like to, by implication, indicate that I think it means a lot. I make my judgments in these matters, and we have to, by knowing the people and by watching them. I am not going to find fault with Ms. Hill. She has to live with whatever she said. And I looked at that, and I believe she is probably sincere.

On the other hand, I know Clarence Thomas and I know him well. I have never seen anyone who worked with him—and I talked to all kinds of people at the EEOC who have worked with him—who has not been highly supportive of him and who has not praised him greatly, at least those who worked closely with him.

I think the overwhelming weight is on his side in this matter and I hope, Mr. President, that we will not put this off. Putting it off will not make any difference at this point. We know that it is one person's word against the other.

Frankly, I think under the circumstances the facts just do not line up on the side of Ms. Hill. They just do not line up. Her story just does not make sense in its fullest sense. Although I am willing to say that I liked her and feel that she is trying to present herself in a very good way, I think it is important to acknowledge that there may be other explanations as to why she currently feels the way she does now in the fifth confirmation of Clarence Thomas, and the most important confirmation of all.

Mr. President, I am concerned to have anybody treated this way. I am concerned that Ms. Hill has not been treated properly as well.

But I think we should go forward with our vote. Senators ought to make up their minds. They ought to do what they think is right, and we ought to vote one way or the other. I for one am going to vote for the man that I have known for a long time. I have ohatted with his associates, and all of them have been highly favorable to him and consider him an honest, decent, morally upright good man who has treated them with dignity, respect, and equality, who understands the sting of discrimination, and now understands the sting of accusation.

I just have to say that I think what this has come to is pitiful. It might have had a little more credibility had it been brought up during the appropriate time rather than as an October surprise right before the Tuesday vote over the weekend, while we were all out of town. It might have had just a little more credibility. And even then, the facts are pretty hard to swallow, Mr. President.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, Clarence Thomas, was nominated with an aura, a presumption, of being confirmed.

An African-American, a man born in poverty, an individual who struggled to the top of his profession against overwhelming odds, who sits on the U.S. Court of Appeals, and seems destined to serve on the U.S. Supreme Court.

I accepted George Bush's nominee with an open mind, looking forward to the confirmation hearings as a way to learn about Clarence Thomas and his compelling personal story.

Although I knew from the outset that our views were very different, I had every expectation that I would be won over by his sense of the law, his mastery of the law, and his personal strength of character. But when the votes to confirm Judge Thomas are tallied, presumably tomorrow, mine will not be among them. I will vote against Clarenoe Thomas.

Judge Thomas' performance at his confirmation hearings was a tremendous disappointment. Rather than demonstrate personal integrity, he ran away from his record. Rather than demonstrate legal scholarship, he was unable to summarize the basio holdings of key court decisions.

When asked to analyze cases, he was tonguetied. When asked about legal philosophy, he appeared woefully uninformed.

Throughout this process, the administration has argued that Judge Thomas' childhood—almost alone—justifies his appointment. The cruel irony is that Judge Thomas himself seems to have abandoned Pin Point, GA, many years ago.

As Pat King, an African-American law professor at Georgetown University testified:

> In remembering where I came from, I also remember very bright, young, black people who were not as fortunate as I. * * * Somehow Judge Thomas seems not to remember those he must have encountered along the way.

Sadly, the hearings showed a Clarence Thomas who is an intellectual opportunist, picking up scraps of conservative legal thought to advance his career—not a lawyer of intellectual distinction.

They showed a man who would bring profound mediocrity to the Supreme Court rather than judicial excellence. They showed that—as he has done throughout his administration—George Bush has lowered his standards in an attempt to forward his ideology.

And we in the U.S. Senate are being asked to lower our standards, too, Mr. President.

Dean Irwin Griswold, former Solicitor General of the United States, testified to the awesome risk of confirming someone without intellectual distinction.

Yale law professor, Drew Days, in discussing Judge Thomas' legal skills, said Judge Thomas displayed "a very superficial and sloganistic approach to complex issues."

Stanford law professor, Thomas Gray, characterized Thomas' outlook on legal issues as "wooden." The dean of Clarence Thomas' alma mater, supposedly speaking on Thomas' behalf, could only muster the hope that Thomas may change.

It is unacceptable for the President to ask us to lower our standards to fill this position. The U.S. Supreme Court is the highest Court of our land. Its decisions touch the lives of all Americans, each and every one of us. Whoever is picked for the Supreme Court will, in great likelihood, be there for another two or three or four decades, shaping the future of our people and the kind of country that we will be.

I cannot vote to grant lifetime tenure to an individual who is simply not qualified; who seems to lack basic legal knowledge; who has shown disdain for the enforcement of the law; and whose judicial philosophy is either hesitant and vague or, frankly, at odds with the full exercise of constitutional rights by those on whom he will sit in judgment. We cannot predict whose fate Judge Thomas will determine.

Six months ago I would not have believed that medical professionals in clinics across the country would have their right to speak freely attacked.

Two years ago I could never have imagined that the Supreme Court would take the lead in rolling back 30 agonizing years of civil rights progress. Indeed, the entire right to privacy—the fundamental right of every American to be left alone by their government save for truly compelling circumstances—is under attack.

Whose rights will be threatened next year or 10 years from now—we do not know. But I am not confident that Judge Thomas will defend those rights.

By nominating Judge Thomas, George Bush is doing what he has done throughout his political career, cloaking his true aims in the colorful camouflage of symbol—using Clarence Thomas's race and background to cloak an agenda that threatens the basic constitutional rights of Americans.

Who cannot help but feel a vicarious pride in Clarence Thomas' success? We want to believe that this person's triumph shows that we have begun to put America's ugliest chapter—our history of racism and discrimination—behind us.

But who cannot but fear that his history has become a prop, a tool to wedge apart the U.S. Senate as it attempts to fulfill its constitutional mandate to advise and consent.

We cannot afford to put symbols on the Supreme Court. Too many people are endangered.

And yet, when given the opportunity to demonstrate that he was more than a symbol, Clarence Thomas fell short.

It was disheartening to watch a man—almost line by line—deny his own intellectual history, dismissing writings and thoughts with a wave of his hand. What speech or article from his past is left? Was he wrong? Or merely shallow? In any case, he could not begin to fill the vacuum he created.

Nor did he try. I was stunned at the sight of an overcoached Clarence Thomas sitting before 14 Senators and systematically dodging any question which might allow us to judge him—to get to know who the real Clarence Thomas might be.

Clarence Thomas failed time and again to demonstrate the intellectual distinction compatible with the office of Supreme Court Justice. Some of the great minds in this Nation's history have served on the Supreme Court.

I do not expect every nominee to be a Brandeis or a Holmes, but I expect a basic understanding of constitutional doctrine.

And more to the point, I expect intellectual curiosity from a Supreme Court nominee.

Mr. President, in a city where every intern and aide on Capitol Hill has an opinion on every significant piece of legislation; where every baseball fan can tell you who will win the World Series and why; where every computer programmer can discuss the pros and cons of a hundred different software packages; Clarence Thomas is not engaged enough to form an opinion about Roe versus Wade, the single most controversial case to come before the Supreme Court in the last 20 years.

Judge Thomas' appointment is a retreat from excellence. Another triumph of mediocrity, engineered by George Bush. Another sacrifice of quality to expediency.

I wish I could believe that Clarence Thomas will grow—that in 10 years we will see a mature and respected jurist, with a coherent philosophy and commitment to protecting the individual rights our Constitution has conferred upon us.

If Judge Thomas is confirmed, he will immediately face some of the most challenging issues of the last 10 years: School prayer, limits on free speech, and school desegregation.

What, then, can we expect from this man, who generates no heat and light of his own but like the Moon, reflects only the glow of the stars around him?

I fear that on a conservative bench we can only expect him to join the assault the Rehnquist court has mounted, on free speech, on reproductive rights, on due process, and equal protection.

Judge Thomas' experiences have not given his writings and beliefs a unique tenor. Yes, Judge Thomas brings diversity to the Court through his personal history. Unfortunately, his views appear to be far less distinctive.

I fear, based on his record and testimony, that he is just another in the swelling chorus of activist conservatives dedicated to rolling back the oonstitutional rights of the American people.

Judge Thomas appears to be a fine man with a considerable record of personal achievement. However, a Supreme Court seat is a precious commodity. Mediocrity, inconsistency, opportunism—these are not the currency of Supreme Court nominations.

I demand, and I hope my colleagues will join me in demanding intellectual excellence and commitment to constitutional rights, before I will give my consent to any Supreme Court nominee.

I yield the floor.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, Judge Clarence Thomas is my personal friend. When I was called by the White House on July 1 and told that he would be nominated for the U.S. Supreme Court, that was one of the happiest days of my life.

I have known Clarence Thomas for 17 years. I hired him when he was a law student at Yale and asked him to come to work at my office in Jefferson City when I was State attorney general. He worked for me again in my Senate office. I have kept close touch with him ever since. I know him very well.

It was one of the happiest days of my life because, first, I believed that the Supreme Court was getting a person who was very well qualified for that job. I know that the President said that he was the best qualified person for the job. Of course, the detractors of Clarence Thomas have rushed to attack that particular proposition. But I honestly believed and do believe that he is the best person for the job. I think he is the best person for the job not only because of his ability but because of his humanity, because of his background, because of the experience which he brings to the Supreme Court, and because of his character.

One of the questions that the President asked him at Kennebunkport—Clarence Thomas has related this in a number of discussions since—was can you and our family take what is going to follow?

And Clarence Thomas, without thinking about it very much, answered, "Yes, I can."

My guess is, Mr. President, that if he were to have been asked today whether to submit his name for the Supreme Court, his answer would have been "no."

I just happened to be at a dinner party last night and a member of the Supreme Court was at the dinner party, and I asked this individual whether it was worth it, and this sitting Supreme Court Justice said to me, "If I were asked now to serve on the United States Supreme Court, if I were asked to allow myself to be nominated, my answer would be in the negative."

Mr. President, I would submit that something is very wrong here, something is very wrong with this process, something is very wrong when the President of the United States asks on day 1, "Can you take it?" And something is very wrong when a sitting Supreme Court Justice says that this person would not do it again.

In the Senate Intelligence Committee we are having prolonged hearings. They have extended over a period of weeks into the nomination of Robert Gates to be Director of the Central Intelligence Agency.

It is somewhat the same story there. Here is a person who is a career intelligence officer, and day after day he is pilloried for the great ethical violation of the intelligence community, namely, oooking intelligence analyses.

That is what we do to nominees. That is what has happened to Clarence Thomas, and it has happened right from the beginning. All kinds of awful allegations have been made about him.

I have been told by a high official at the EEOC that the switchboard at the EEOC has been lit up by phone calls to EEOC personnel by various representatives of activist groups trying to, in the words that I have heard to describe these calls, "get the dirt on Clarence Thomas." it is a mission to get the dirt on Clarence Thomas.

But I have known this person for 17 years, and I attest to the man's character. And all kinds of people have come forward who have known Clarence Thomas over the years and have attested to his character.

Those of us who are in elective politics and are used to this, there is a term of art that describes it. The phrase is "October surprise." What is going to be the October surprise to be used in a political campaign?

Every 2 years when we go through an election campaign in this country, the American people express how sick they are about the process, sick about American politics, revolted by political campaigns in this country, revolted by the mud slinging and the personal attacks, the smears, revolted by the 11th hour attacks. That is what the American people say. They say they want to change. And all kinds of ideas come forward almost any of which are approved by the American people—term limitations, get rid of the bums. That is how people feel about politics in America, "the quick attack," "the hit job," carefully timed to nail the candidate immediately before election day.

So those of us who are politicians, eleoted politicians, know that on the weekend before an election, we can expect something dreadful to happen. We know to have our campaign workers tune in the television sets to find out what is being carried on the news or what new commercial is being run in the last days of the campaign when it is too late for us to respond. We politicians expect that—sleazy as it is. That, apparently, is the nature of American politics today.

Now this phenomenon of American politics has been imported into the process of confirming nominees for the Supreme Court.

I do not know anything about these charges, except that Clarence Thomas is my friend and I have asked him about then and he says they are not true.

I do know that the events complained of allegedly took place between 8 and 10 years ago. I understand that no formal complaint was made. Clarence Thomas went through confirmation for the EEOC, no complaint was made; confirmation for the court of appeals for the District of Columbia, no complaint was made; nominated by the President of the United States July 1, 1991, intense interest by the interest groups, combing over this man's record, no complaint was made through July; no complaint was made through August; no complaint was made through the beginning of September.

The hearing begins and a oomplaint is made. It is turned over to the FBI. The FBI investigates it. The FBI makes a report to the chairman and the ranking member of the Judiciary Committee. The members of the committee are briefed. I am told by the chairman that the FBI report is made available to the members of the committee and the members of the committee state that this does not warrant further action, does not warrant further investigation, does not warrant delay. Go on the with the normal process of the nomination.

So, failing any response by the Judiciary Committee, which voted a week ago last Friday, then a week passes, 8 days pass, and then it is in the press. What press? National Public Radio and Newsday. One might ask: Why those two? Parts of the press. I do not know.

The person in question apparently worked for EEOC, having gone to EEOC after working under Clarence Thomas at the Department of Education, after the alleged events occurred. This person apparently, from what I understand—and I have not read the FBI report—but as I understand it, the alleged complained-about events occur, and then this same person goes with Clarence Thomas to EEOC. And the years pass; no complaint.

According to the Washington Post yesterday, she has a lengthy interview in August with the Washington Post. No complaint about sexual harassment. And then, according to the paper this morning, somebody from a Senate staff approaches her. She makes the complaint first to the committee, goes to the FBI, no action, and then before the press, the media. So it is item one on the evening news and front page in the papers, and everybody says "Oh, this nomination is in doubt." I do not think it is. I want to tell you why it is not, Mr. President.

It is not, first of all, because the American people are fair. And, second, because there are 100 members of this body who are going to vote on the nomination, each of whom is an elected politician. Each of them knows what politics is like. Each of them knows what it is like to be attacked. Each of them knows what it is like to have your character put in question in a very publio way. If anybody can commiserate with Clarence Thomas, it is the 100 Members of the U.S. Senate. So I think that there is an understanding of all of this. And I think that there is an ability to put this in perspective in the Senate. And I think that there is a basic fairness in the U.S. Senate.

In fact, I dare believe that there might even be a backlash, that there might even be some Senators who have been leaning against Clarence Thomas who will now say, "We can't have this. We can't have this. We can't have this body known as the trash dump of American politics. We can't have this place be the place where any interest group that wants to will dig up garbage and dump it on our floor. That is not what the Senate is going to be. This whole confirmation procedure has gone totally out of control if that is what happens."

I think that there are some Senators who are going to feel that way, and I believe that Clarence Thomas will be confirmed. I have not noticed any slippage, I might say.

But whether or not he is confirmed does not make it right. Whether or not he is confirmed does not make it right to try to destroy the character of a human being; whether or not he wins confirmation does not heal the wounds, does not heal the destruction that has occurred here.

Mr. President, it cannot be true that in the process of trying to defeat a nominee absolutely anything goes. It cannot be true that the sky is the limit. It cannot be true that we are going to tolerate a situation where anybody who wants to throw the mud gets to throw the mud and, if it stick, that is just wonderful. It cannot be the case.

I believe that our confirmation prooess is at issue, as is Clarence Thomas himself. I believe that the character of the Senate is at issue, as well as the oharacter of Clarence Thomas. I believe that the eyes of the country are focused on us as well as on him, and I believe that the time has come for us as a body to stand up and say "No" to what we have seen this weekend.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Chair recognizes the Senator from Illinois [Mr. SIMON].

Mr. SIMON. Mr. President, I would like to take some time to deal with the Thomas nomination, but I want to take just a couple of minutes at the beginning to deal with the immediate news item and the concerns that have been expressed on the floor.

First, I would like to make clear that I think Senator BIDEN has handled this thing properly, and I may inadvertently have caused some problems. I was

asked by a reporter when I found out about Professor Hill's charge and when I read the FBI report. And I said I thought it was after the committee vote, but I was not sure. I then checked with my staff, and I had known about it before the vote.

The question was raised by someone here, why is this coming up at the 11th hour? And, ideally, that is not how things should happen. After I read the FBI report, I was concerned enough to want to find out is this a credible witness, and I called Professor Hill and talked to her. In the course of the conversation she asked that her statement be distributed to all the Senators but that her name and identification be kept out of it. And I told her that just was not possible. I said she had to make a decision whether she was going to go public with it or not, and I told her very candidly, "Because it is going to have all kinds of repercussions for you, I do not want to advise you one way or another. But that is a decision that you have to make."

It was clear she was agonizing about this, and I understand that. But she is—and some of my colleagues probably saw here on television today—she is a professor of law. She is a credible enough witness that I do not think this should just be dismissed. And as she mentioned in the press conference today, there is one person who corroborates at least in part what she has to say.

The question is not simply the question of sexual harassment and a possible violation of the law by someone who is charged with dealing with that issue for the Federal Government. I think the more fundamental question we ought to deal with is, did the nominee tell the FBI the truth? That is fundamental. And here, clearly, there is a conflict.

My own suggestion has been that we delay the process for just a few days to eliminate this cloud for Judge Thomas, for the U.S. Supreme Court, and for the people of this Nation. We are talking about someone who may have more influence on the future of this Nation than most Presidents of the United States, we ought to bear that responsibility very, very carefully.

It is interesting to me—my staff has just handed me two different Associated Press stories. One is from my colleague from Illinois, in Chicago. "Senator ALAN DIXON said today he would support a delay in the Senate's vote on Clarence Thomas' nomination to the United States Supreme Court in light of sexual harassment allegations against Thomas." The other report: "Two other Democrats who had announced their intention to vote for Thomas' confirmation—SAM NUNN of Georgia and JOSEPH LIEBERMAN of Connecticut—said they wanted to know more about the allegations."

I think we owe, again, Judge Thomas, the U.S. Supreme Court, and the people of this Nation a little more thorough investigation than has taken place up to this point.

Now, let me talk about the issue in general and why I reached the decision that I did. First of all, the question of advice and consent. It is interesting that the Constitution uses the phrase "Advice and Consent." It is not simply "consent." It is not simply rubberstamping. The Constitutional Convention, up until the next-to-the-last day, had the U.S. Senate appointing the Members of the U.S. Supreme Court. But then, in the next-to-the-last day they shifted and said, let the President appoint with the advice and consent of the Senate. The advice part has been followed by some Presidents, not by others.

I think it is a procedure that we would be wise to get back to. It is very interesting that President Herbert Hoover, for example, discussed both with Senator George Norris, of Nebraska, and Senator William Borah, of Idaho, the nominees and whom he was considering. And Senator Borah said Herbert Hoover showed him a list of five names and asked what he thought of the list, and Senator Borah said: "It is a fine list, but the name at the bottom, Benjamin Cardozo, should be at the top." And that, ultimately, is what Herbert Hoover then did, nominated Justice Cardozo.

I mention this simply by way of background. The U.S. Senate was never intended to copy, where we simply did this frivolously, that we just automatically do that. I am not suggesting that we ever do this kind of thing frivolously, but a lot of nominations go through here and we pay very little attention to them. This kind of a case we ought to pay a great deal of attention to. Thurgood Marshall is 83. Judge Thomas is 43. We are talking about someone who may be on that Court for 40 years.

The question: Why did the President nominate him? I think, No. 1, the President wanted to name an African-American to the Court, and I applaud the President for that. Diversity is a healthy thing for the Court. In fact, they talked about diversity in the Constitutional Convention, only they were not talking about diversity in terms of race; they were talking about diversity in terms of geography so we did not end up with too many Virginians or people from some other State on the U.S. Supreme Court. And that is why the Senate was brought into the process, so that we would have that diversity. I applaud the President for that consideration.

The second thing I think the President wanted was someone who was a Republican. And I do not fault that, though it is interesting that eight times in this century Presidents have nominated Supreme Court Justices who have been of the opposite party from the President.

And then I think another factor had to be ideology. He wanted someone who would satisfy the far right in his own political party, and what was a reasonable consideration for the President. I think it is also a reasonable consideration for us in determining whether we are going to consent to the nomination.

It is interesting that historically Presidents have often, at least one time, named a Justice to the U.S. Supreme Court, or nominated one, who differed from the President philosophically. Calvin Coolidge nominated Justice Stone; Herbert Hoover nominated Justice Cardozo; Dwight Eisenhower nominated Earl Warren and William Brennan; Richard Nixon nominated Harry Blackmun; Gerald Ford nominated John Paul Stevens; Harry Truman named a Republican Senator, Harold Burton, to the U.S. Supreme Court; John Kennedy named Byron White, Justice White, to the Court.

So we have had a willingness on the part of Presidents to nominate people who bring some balance to the Court.

So the law is not a pendulum swinging back and forth depending on the philosophical leanings of the President.

The President could have nominated an African-American who was a Republican very easily and come up with someone who was really a stellar performer on the legal scene. Someone like William Coleman, who was Secretary of Transportation under President Ford, highly regarded in the legal community. William Coleman would have breezed through both the oommittee and the floor of the Senate.

What is the record of Judge Thomas? First, it is a remarkable record in terms of his personal achievement. I become a little uncomfortable when I hear the references to people, someone being a self-made man or self-made person. No one is a self-made person either in terms of conception or what you achieve. We all receive help from others. I would not be in the U.S. Senate today but for the help of a majority of people in the State of Illinois. My colleagues would not be on this floor but for the help of a great many others.

Having said that, his personal record is a remarkable one, and it is one we all applaud.

Second, I have every reason to believe that he did an excellent job when our colleague, JOHN DANFORTH, was attorney general of the State of Missouri. Otherwise, JACK DANFORTH would not be pushing him as he is.

The third area where he had responsibility was as Chairman of the Equal Employment Opportunity Commission. There the record is not so illustrious. I voted against him when President Reagan nominated him for retention in that post after President Reagan was

reelected. There, he was, frankly, too often the champion of the powerful and the comfortable.

At the end of Clarence Thomas' 8-year reign as Chairman of the EEOC, it took 10 months to process an employment discrimination charge. Under his predecessor, it took 3 to 6 months.

His supporters say the EEOC did a better job of reviewing claims than in previous years. That may be true, but the facts suggest the average citizen who filed a complaint was not being served that way.

In 1990, the EEOC sent over half, 54 percent, of complaints away with letters of "no cause to find discrimination," as opposed to 28 percent in 1980. Did employment discrimination drop by half during this time when more minorities and women entered the work force? That is not my view of the 1980's.

Those individuals who were fortunate enough to have EEOC take on their case had fewer settlements under Clarence Thomas, 14 percent in 1989, than they did previously, 32 percent in 1980. This is significant: The average monetary award for successful complainants was lower during the Thomas years. In other words, the punishment for violating laws against discrimination diminished during the Clarence Thomas years as Chairman of the EEOC. If we had a nominee up who diminished the punishment for selling drugs or any other thing, we would view skeptically that person's record, and properly so.

One area of particular concern about Clarence Thomas' record at the EEOC relates to how Hispanics, who complained of employment discrimination, fared. Organizations with long track records defending the rights of Hispanics, such as the Mexican-American Legal Defense and Educational Fund, better known as MALDEF, the National Council of La Raza, the League of United Latin American Citizens, known as LULAC, and the Hispanic Bar Association, oppose this nomination.

Even while the Hispanic population dramatically increased throughout the 1980's to 23 million, Hispanic charges never reached 5 percent of all EEOC charges in this time. In terms of litigation actually filed by EEOC, Hispanic cases dropped from 3.8 percent, the overall case load in 1985, to 1.6 percent in 1987, and then back up to 1.9 percent in 1988.

Even when EEOC litigated in behalf of Hispanics, Hispanics obtained less relief than other groups. For single plaintiff lawsuits in 1988, the average Hispanic award was $6,867, the average race award was $10,078, the average gender award was $4,004, and the average religion award was $9,270. In 1989, the average Hispanic award dropped to $4,750. All others increased substantially.

One reason for the continued lack of service to the Hispanic community was the continued lack of Hispanic representation in significant posts at the EEOC. In his 1982 LULAC speech, Clarence Thomas stated:

We are evaluating those areas within the agency where Hispanic representation at both the professional and clerical levels would be critical to providing better services to the Hispanic communities. As far as I am concerned, there is no alternative. To champion the cause of equal employment opportunity everywhere else, without first trying to put our own house in order, would be the ultimate hypocrisy.

Yet, under Thomas' chairmanship, the Hispanic representation at EEOC top levels actually worsened. The percentage of Hispanics at the professional level among district directors within the senior executive service dropped.

As chair of the EEOC, Clarence Thomas also had a controversial record on age discrimination cases. The committee received a letter from a dozen chairs of the relevant committees and subcommittees that have oversight responsibility over employment discrimination issues in the EEOC. They were greatly concerned about its poor record with age discrimination and rights of the elderly, and oppose the nomination.

I ask unanimous consent, Mr. President, to print in the RECORD that letter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,
September 11, 1991.

Hon. JOSEPH R. BIDEN, JR.,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: In 1989, we wrote to President Bush urging him not to appoint Clarence Thomas to the U.S. Court of Appeals for the District of Columbia. We made this recommendation as chairpersons of congressional committees and subcommittees overseeing the Equal Employment Opportunity Commission (EEOC). We were troubled by his record as Chair of that agency—a record which we believed raised serious questions about his judgment, respect for the law and general suitability to serve as a member of the Federal judiciary. We now write to express our strong opposition to his nomination to the United States Supreme Court.

In our letter to the President, we said we believed Chairman Thomas developed policy directives and enforcement strategies which undermined Title VII of the 1964 Civil Rights Act and the Age Discrimination in Employment Act (ADEA). A copy of that letter is enclosed for your review.

Since being nominated several weeks ago, a number of reports on Judge Thomas have been released by civil rights organizations and the press. These reports have analyzed his opinions on issues critical to the elimination of discrimination against minorities, women and the elderly, and his tenure at EEOC and the Department of Education's civil rights office. Our commente are confined to the nominee's conduct as a high-ranking federal official.

The reports show a radical switch in his views on Supreme Court affirmative action decisions, including court ordered affirmative action to remedy past discrimination. Judge Thomas supported a majority of these decisions in his early tenure at EEOC. But in 1985, he challenged the holding in *Griggs* v. *Duke Power* (barring employer use of discriminatory practices that are unrelated to job performance). By 1987, he denounced *Bakke* v. *Regents of University of California* (permitting colleges and universities to consider race to insure diversity in admissions, but prohibiting rigid admission quotas). If a majority of the Court were to join Judge Thomas in rejecting these fundamental principles it would greatly damage the hard fought guarantee of equal opportunity embodied in our Constitution and federal civil rights laws.

Our previous letter offered the following criticisms: "his public statements supporting equal employment opportunity conflict(ed) with his directives to agency staff and he "resisted congressional oversight and (was) less than candid with legislatore about agency enforcement policies."

We urge you to review in more detail his record of resistance at the EEOC. And, we encourage you to consider his defiance of the *Adams* order while Assistant Secretary for Civil Rights at the Department of Education (Legal Times, Week of August 19, 1991).

Two years ago, we concluded Chairman Thomas "demonstrated an overall disdain for the rule of law." More recent, detailed reports reaffirm that conclusion. For that reason we conclude Judge Thomas should not be confirmed as Associate Justice of the United States Supreme Court. His confirmation would be harmful to that court and to the nation.

Sincerely,

Don Edwards, Chairman, Subcommittee on Civil and Constitutional Rights; Edward R. Roybal, Chairman, Select Committee on Aging; John Conyers, Chairman, Committee on Government Operations; William (Bill) Clay, Chairman, Committee on Post Office and Civil Service; Patricia Schroeder, Chairwoman, Armed Services Subcommittee on Military Installations and Facilities; Gerry Sikorski, Chairman, Post Office and Civil Service, Subcommittee on Civil Service; Cardiss Collins, Chairwoman, Energy and Commerce Subcommittee on Commerce, Consumer Protection, and Competitiveness; Matthew G. Martinez, Chairman, Education and Labor Subcommittee on Human Resources; Tom Lantos, Chairman, Government Operations Subcommittee on Employment and Housing; Barbara Boxer, Chairwoman, Government Operations Subcommittee on Government Activities and Transportation; Pat Williams, Chairman, Education and Labor Subcommittee on Labor-Management Relations; Charles A. Hayes, Chairman, Post Office and Civil Service, Subcommittee on Postal Personnel and Modernization.

Mr. SIMON. Mr. President, let me point out it is signed by the following Members of the House: DON EDWARDS—these are all chairs of either committees or subcommittees—JOHN CONYERS, WILLIAM CLAY, PATRICIA SCHROEDER, GERRY SIKORSKI, CARDISS COLLINS, MATTHEW MARTINEZ, TOM LANTOS, BARBARA BOXER, PAT WILLIAMS, and CHARLES HAYES.

Much has already been made of the Thomas record on lapsed Age Discrimination in Employment Act charges. On

reviewing that record, the extraordinary failure of the EEOC under Clarence Thomas is striking, not to be measured merely in the number of cases but in the lives of the individuals who brought those cases.

As Chairman of the EEOC, Clarence Thomas first responded to requests of the Senate Aging Committee in the fall of 1987 for the number of lapsed age discrimination charges. He first reported that around 70 charges had not been resolved prior to the running of the statute of limitations. This figure covered fiscal year 1986 only. He later revised that estimate to 900 age discrimination charges. This revision was based on surveys of pending cases in district offices that would run the statute by September 30, 1987.

Ultimately, Congress had passed not one, but two Age Discrimination Claims Adjustment Acts that required the EEOC to send out notices to individuals who had filed charges between 1984 and 1988 that were close to running the statute of limitations without any agency action under way. Approximately 9,300 notices were sent out to people who complained of age discrimination in employment and justifiably expected the EEOC to investigate and proceed on their complaints.

Senator METZENBAUM inquired at length about these egregious problems during Clarence Thomas' nomination hearing for the court of appeals in 1990. After that hearing, the EEOC found another 4,300 charges that ran the statute after 1988. Three thousand of these additional charges were originally brought during Clarence Thomas' tenure at EEOC. The total number of lapsed age charges attributable to EEOC inaction under Clarence Thomas ran to almost 13,000; 13,000 individuals filed those age discrimination complaints. These are people who worked, paid their taxes, were getting close to the end of their careers. They expected more from a Federal agency that was designated as the lead Federal agency to fight employment discrimination. They did not get it from the EEOC under Clarence Thomas.

After the EEOC, he moved to the court of appeals, and I might add I was one of those on the committee who voted for him for the court of appeals. I voted for him, although at the time, because there were rumors that he might be a nominee for the Supreme Court in the future, I said I was voting for him for the Court of Appeals, but I might have great difficulty in voting for him for the U.S. Supreme Court.

He was put on the court of appeals on March 12, 1990, and the time that he was nominated by the President was roughly 17 months. In that time, frankly, he did not have much of a chance to make a record one way or another. There are those who are critics, those who praise the record. I do not think you can draw many conclusions from that record.

What I do think you can draw a conclusion on from the record overall is that his legal experience is extremely limited.

If you were to say, who are the top 50 lawyers in this country, I do not think anyone would have mentioned Clarence Thomas.

If you were to ask, who are the top 50 judges in this country, I do not think anyone would have mentioned Clarence Thomas.

If you were to ask, who are the top 50 African-American lawyers in this country, I do not think Clarence Thomas' name would have been there.

Well, that is the personal history. Then the question is, Where will he go from here? That is really the more fundamental question we face. Will he be a champion of civil liberties? That is a very basic question for me. The conclusion I have drawn is, not if we judge by the record.

Now, Judge Thomas, before our committee, said I go in with no agenda; I go in with a clean slate. The reality is none of us go anywhere with a completely clean slate. We have our history.

There are two parts to Clarence Thomas' history. One part is that struggle he had as a child and became very successful, and that part is encouraging. The second part is his record in public office, particularly as Chairman of the EEOC and the statements he has made since that time. That part of the record suggests that Clarence Thomas will not be a champion of basic civil liberties.

There are those who say, well, you cannot predict what Justices on the Court will do, and they point to examples. And there have been examples where Justices have turned out very different than was anticipated. But having said that, those Justices who turned out very different from the expectation, they are the exceptions. Generally speaking, you can look at the record of someone who is nominated to the Supreme Court and you know pretty well where they are going philosophically. As you look at the basic record, it is not encouraging.

Let me cite one example—I will mention more than one example—of the Griswold case, the case that grew out of the State of Connecticut, where the Court determined that the right to have contraceptive devices was the right of all Americans, that was a privacy right. He has written—and I am not suggesting that he would want to turn the clock here, but he has written criticizing that decision. And he particularly criticized what he calls, and I am quoting, "The activist judicial use of the ninth amendment."

Now, what is the ninth amendment? The ninth amendment is a little-read amendment in the Constitution that grew out of correspondence between James Madison and Alexander Hamilton. James Madison said we ought to have a Bill of Rights. And Alexander Hamilton wrote back to him and said, if we have a Bill of Rights spelling out the rights of people, some people will say these are the only rights that people have.

And so James Madison, a constituent from the State of Virginia, Mr. President, added this amendment to the Constitution: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparge others retained by the people." That is a basic protection for all Americans.

When the nominee writes attacking "activist judicial use of the ninth amendment" I get concerned. I get concerned.

When I asked him about the privacy issue, he referred not to the ninth amendment, which I think is basic, but to the 14th amendment, suggesting it is a kind of an add-on later on in the Constitution. The right of privacy I think is clear in the Constitution. It does not spell out American citizens have the right of privacy, but it says the Constitution says you cannot come into your home without a search warrant, a very specific search warrant. The Constitution says you cannot have militia placed in your home.

Those are things that suggest they were trying to have a right of privacy. And then when you combine that with the ninth amendment, it seems to me you are talking about something that is very basic in civil liberties. That is one area of concern I have, and it is a very basic concern with the nominee.

Then another question: Will he be a champion of those less fortunate? I am concerned on that issue.

Some people remember where they come from in the struggle, and you can see it in their conduct, in their votes. Some people forget.

There are others, like our colleague from West Virginia, who spoke earlier today, who was born into fortunate economic circumstances but has never forgotten less fortunate Americans and has reached out. But I think we have to distinguish between someone who has lifted himself, with the help of others, out of unfortunate circumstances and remembers that, and the record shows it, and someone who has lifted himself or herself up and has forgotten. Some people climb up the ladder and then push the ladder away.

As you look at the written statements in the record of Judge Thomas, it is overwhelmingly on the side of the privileged. He has attacked the minimum wage law, for example. And he quotes some American mayors as saying they were attacking it. They did not attack the minimum wage law. They did say that the minimum wage law perhaps should not be applied to teenagers; that there ought to be some

accommodation so you encourage youth employment. But they have not attacked the minimum wage law as he has.

He has attacked the Davis-Bacon Act.

And then there is one case that came before the U.S. Supreme Court that I think is pretty much of an insight into this whole area, and that is Johnson versus the Transportation Agency of Santa Clara County, CA. The U.S. Supreme Court upheld their voluntary affirmative action plan.

What happened in Santa Clara County, in their transportation department they had 238 road dispatchers; all 238 were men. They then had an opening. Seven people applied for that opening in oral examinations to three people, and the three people gave grades. This was not a test where you could learn things precisely, but they gave grades. Seven people were determined to be well-qualified amongst those who qualified for the job.

One person, a man by the name of Johnson, got two points more than the woman on the test, but the Santa Clara Transportation Agency decided to employ this woman to break the pattern, to have a voluntary affirmative action program. The man appealed, and the Supreme Court, I am pleased to say, in a 6-to-3 vote, upheld that voluntary affirmative action program. But Judge Thomas—this is before he was a judge—Clarence Thomas said he hoped the case would be overruled and that Justice Scalia's dissent "would provide guidance to lower courts and a possible majority in future decisions."

This is a very fundamental case and its shows I think the attitude of Judge Thomas.

On another occasion, the California State University, he says—and I will be referring to this later in my remarks—"I, for one, do not see how the Government can be compassionate. Only people can be compassionate, and then only with their own money, not that of others."

The clear implication—we should not be using tax money to help the less fortunate.

I do not think anyone can read the writings—and the Presiding Officer knows I have read a lot of the writings of Judge Thomas because we were on an overseas trip together, and I was reading this big, fat notebook coming back. I ended up reading over 800 pages of his writings. I do not think anyone can read that without coming to the conclusion that as a member of the Court he is not likely to be a friend of working men and women and those who are less fortunate.

We have to keep in mind the average citizen of the United States cannot afford to hire high-priced attorneys. We want a Court that is not just going to listen to those who can afford the most able attorneys this Nation has.

Another question: But did he not accept the doctrine of stare decisis, a question that my colleague from South Carolina, asks regularly of nominees to the court, both lower courts and the upper courts?

And the answer is he does accept the doctrine of stare decisis. But let me add, I have never heard a nominee who appears before the committee answering Senator THURMOND'S question who has not accepted the doctrine of stare decisis. But you always find once you get on the Court some reason, or frequently find some reason, for moving away.

I even heard my colleague, for whom I have great respect, Senator HATCH, the other day, say we ought to accept stare decisis, and then in fact I wrote it down, except where the "Court has overreached."

We have different interpretations of that. But in the Johnson case that I just referred to, and where Judge Thomas, where Clarence Thomas, criticized the Supreme Court, and praised Judge Scalia's dissent—Judge Scalia's dissent would have overturned the previous ruling by the U.S. Supreme Court.

Let me just point out when Judge Scalia, now Justice Scalia, was before the Senate Judiciary Committee, he said, "At the Supreme Court that is not quite the situation, as the Supreme Court is bound to its earlier decisions by the doctrine of stare decisis in which I strongly believe." Every candidate for a Federal judgeship strongly believes in stare decisis. The day I hear a judge or a candidate for a judgeship say I do not believe in stare decisis, that will be a rare day, indeed.

The fact is Judge Thomas was praising an overturning of a precedent in this case.

Then the question is, Was he candid with the committee?

I would like to insert into the RECORD at this point an exchange between Senator LEAHY and Judge Thomas on the question of Roe versus Wade. I ask unanimous consent to insert that, Mr. President.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSCRIPT OF THOMAS' STATEMENT ON ROE FROM SEPTEMBER 11

Judge THOMAS. I would accept that it has certainly been one of the more important, as well as one that has been one of the more highly publicized and debated cases.

Senator LEAHY. So, I would assume that it would be safe to assume that when that came down, you were in law school, recent case law is oft discussed, that Roe versus Wade would have been discussed in the law school while you were there?

Judge THOMAS. The case that I remember being discussed most during my early part of law school was I believe in my small group with Thomas Emerson may have been Griswold, since he argued that, and we may have touched on Roe versus Wade at some point and debated that, but let me add one point to that.

Because I was a married student and I worked, I did not spend a lot of time around the law school doing what the other students enjoyed so much, and that is debating all the current cases and all of the slip opinions. My schedule was such that I went to classes and generally went to work and went home.

Senator LEAHY. Judge Thomas, I was a married law student who also worked, but I also found at least between classes that we did discuss some of the law, and I am sure you are not suggesting that there wasn't any discussion at any time of Roe versus Wade?

Judge THOMAS. Senator, I cannot remember personally engaging in those discussions.

Senator LEAHY. Okay.

Judge THOMAS. The groups that I met with at that time during my years in law school were small study groups.

Senator LEAHY. Have you ever had discussion of Roe versus Wade, other than in this room, in the 17 or 18 years it has been there?

Judge THOMAS. Only, I guess, Senator, in the fact in the most general sense that other individuals express concerns one way or the other, and you listen and you try to be thoughtful. If you are asking me whether or not I have ever debated the contents of it, the answer to that is no, Senator.

Senator LEAHY. Have you ever, private gatherings or otherwise, stated whether you felt that it was properly decided or not?

Judge THOMAS. Senator, in trying to recall and reflect on that, I don't recollect commenting one way or the other. * * *

Senator LEAHY. So you don't ever recall stating whether you thought it was properly decided or not?

Judge THOMAS. I can't recall saying one way or the other, Senator.

Mr. SIMON. Mr. President, at one point—this is not part of what I am inserting in the RECORD—Senator LEAHY asked, "What are the major decisions of the Court in the last 20 years?"

He named two. One was Roe versus Wade. And yet when he is asked, "Do you have any thoughts on it? Have you ever discussed it?", he said he had no thoughts on it and he did not recall ever discussing it.

If that is true, he was the only person in the room who had no thoughts on it and had never discussed that important abortion decision.

When you look at other things it is troublesome—that answer. He was on the board of advisers, editorial advisers, for a publication called the Lincoln Review, which I think is pretty badly misnamed. But it is called the Lincoln Review in which they were regularly coming out with antichoice articles in that publication. I think there is at least a serious question whether he was candid with the committee.

Then I would like to also insert in the RECORD—it is part of the document which I just asked to be printed in the RECORD—an exchange between Senator KOHL and Judge Thomas. I ask unanimous consent to have that entered into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEPTEMBER 12 TRANSCRIPT OF SENATOR KOHL AND JUDGE THOMAS

Senator KOHL. All right. Judge, I would like to come back to a question about prepa-

ration. When I was running for the Senate, I worked with people who helped prepare me for debates, so in my mind there is nothing wrong with getting some advice and help in preparing for this hearing, but I would like to ask you some questions about the process.

When you were holding practice sessions, did your advisors ever critique you about responses to questions in the substantive way? Did they say, for example, "You should soften that answer," or "Don't answer that question, just say that you can't prejudge an issue that may come before the Court"?

Judge THOMAS. Senator, the answer to that is unequivocally no. I set down ground rules at the very beginning that they were there simply to ask me and to hear me respond to questions that have been traditionally asked before this committee in other hearings and to determine whether or not my response was clear, just to critique me as to how it sounded to them, not to myself, but not to tell me whether it was right or wrong or too little or too much.

Mr. SIMON. Mr. President, there Senator KOHL says, "When I was in debates, when I was running for the Senate, people advised me and they helped me to shape my answers. Did the White House staff help to shape your answers?

And he says, "No, they did not help to shape my answers."

Well, again, I have a hard time believing that that is the case. But it adds to the credibility factor. Frankly, the case that has been in the news the last 48 hours is another question on that credibility level.

Then let me take a few of his answers, and what he has written, and then his answer before the committee, this quote I gave before.

"I, for one, do not see how the government can be compassionate. Only people can be compassionate, and then only with their own money, their own property, their own effort, not that of others."

When I talked to him, he mentioned his mother lives in publio housing, and that it was an improvement over where she lived before. I asked whether he did not feel that was a good use of tax funds, and taking money from all of us to see that publio housing was not a good thing.

He said, in response, "I think that we have an obligation, an obligation to help those who are down and out. That is what I tried to point out in my opening statement. That is part of our community. I think it is important for us to be willing to pay taxes so the people have a place to live."

Well, there is some inconsistency here. Government programs for the poor: In the past, he has said, "It is preposterous to think that the interests of black Americans are really being served by minimum wage increases, Davis-Bacon laws, any number of measures that impose benefits to lower income Americans but actually harms them."

But when he appeared before the committee, he said "I don't think in all of those quotes that you found there is one word saying that we shouldn't spend money to help people who are poor or downtrodden." It comes very close to saying that.

In commenting on an African-American economist by the name of Thomas Sowell, Clarence Thomas in the past has said Dr. Sowell, not just said, has written—"Dr. Sowell is someone I admire quite a bit. I have read virtually everything he has written and there is very little I disagree with."

On another occasion he said, "I consider him not only an intellectual mentor, but my salvation as far as thinking through these issues. By analyzing all the statistics and examining the role of marriage and wage earning for both men and women, Sowell presents a much-needed antidote to cliches about women's earnings and professional status."

But when he testified before the committee, he said "I did not indicate that, first of all, that I agreed with his conclusions. It is also good to have someone who has a different point of view and have some facts to debate that"—very different perspective.

Natural law, and the Constitution: He said,"Rather than being a justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok judges and the juries."

At another time in the past, he said, "To believe that natural-rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law."

When he appeared before the committee, he said, "At no point did I or do I believe that the approach of natural law or that of natural rights has a role in constitutional adjudication." Clearly, that is a complete reversal in that case.

In the case of an article by Lewis Lehrman, Clarence Thomas wrote:

Heritage Foundation trustee Lewis Lehrman's secret essay in the American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law.

When he appeared before our committee he said: "* * * with respect to those issues, the issues involved or implicated in the issue of abortion, I do not believe that Mr. Lehrman's application of natural law is appropriate."

On the South African question, the Washington Post had an article which said:

Three of the highest ranking blacks in the Reagan administration yesterday criticized U.S. blacks for focusing on South Africa while critical problems persist at home.

The three—Thomas, Clarence Pendleton, Jr., and Steven Rhodes—said they oppose apartheid but gave unqualified support to President Reagan's policy of "constructive engagement" with South Africa. * * *

"All of us who have lived under segregation, a mild form of apartheid, are concerned," said Thomas, "but in terms of the immediate, in terms of priorities, I think we should focus more on what is happening here. * * *"

When I asked him about that article, he said: "I have no recollection of that at all, Senator."

There is a person who he has described as his mentor and close friend. The article on Clarence Thomas said:

A former assistant of Thomas * * * at the Equal Opportunity Commission said in an interview that Thomas talked about Parker's representation of South Africa for 45 minutes at a staff meeting in 1986.

"He said that somebody had to represent the South Africans, and that if sanctions were passed, it would affect the black people more harshly than supporters of apartheid," the former aide said.

When I asked him about this in committee, he said, "I became aware of that * * * through the news media, as you did, about this particular activity * * * I was not aware, again, of the representation of South Africa itself."

I ask unanimous consent to have printed in the RECORD a letter from Randall Robinson of TransAfrica, who comments on this.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TRANSAFRICA,
September 25, 1991.

Sen. PAUL SIMON,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR SIMON: I am writing as the Executive Director of TransAfrica, the African American foreign policy lobby, to express concern about the testimony delivered by Judge Clarence Thomas during Senate hearings on his confirmation as an Associate Justice of the supreme Court. These concerns go not to the question of his competence but of his credibility; and derive from Judge Thomas' response to questions posed by you as Chairman of the Subcommittee on African Affairs for the Senate Committee for Foreign Relations.

You asked Judge Thomas about any knowledge he might have had of the work Jay Parker, one of the more well-known conservative African Americans, performed on behalf of the apartheid regime. In his response Judge Thomas asserted that he learned of Mr. Parker's work as a registered foreign agent for the south African regime only "through the media as you did" during the few months since his nomination. Judge Thomas made this assertion despite acknowledging that Mr. Parker has been his "friend since I worked here on Capitol Hill."

Judge Thomas reiterated this ignorance even after being reminded by you that Mr. Parker had been "quoted at one point as saying he informed you in 1981 about that." Judge Thomas went on to insist "I don't recall it. I knew he represented some of the homelands in South Africa at some point. I think the Mandela family or some individuals in South Africa. I was not aware, again, of the representation of South Africa iteelf."

On September 16, Judge Thomas was asked about a *Newsday* article in which his former assistants confirmed an earlier report that Thomas had discussed Parker's representation of South Africa for 45 minutes during a 1986 EEOC meeting. Judge Thomas' response suggested that perhaps his former assistants had confused the South African government

with the "homelands", and again stated that he gained knowledge of Mr. Parker's representation of South Africa only during the last few months.

These responses simply do not seem credible unless one accepts that Judge Thomas did not know—and had no reason to know—anything about the world-wide outcry over the imprisonment of Nelson Mandela, or the creation of the so-called "homelands" by the apartheid regime itself.

The fact that Judge Thomas supported the complete divestment of Holy Cross stock in 1985 from corporations, in South Africa while serving as a member of that institution's Board of Trustees does little to assuage my concern. While I certainly support the substantive position taken by Judge Thomas during the debate about his alma mater's divestment policy; the fact that he knew enough about South Africa to actively participate in such a debate makes his assertion of ignorance regarding the work of Jay Parker even less credible.

Please understand that I would not expect Judge Thomas to condemn a friend and colleague just because they chose to work as a foreign agent for the apartheid government. I would expect however, that his credibility should be an important factor as Senators evaluate his testimony and decide whether to confirm the nomination of Judge Thomas as an Associate Justice of the United States Supreme Court.

Sincerely,

RANDALL ROBINSON,
Executive Director.

(Mr. DECONCINI assumed the chair.)

Mr. SIMON. I am getting close to the end here.

The question is: Can we approve any nominee, if we turn this one down? As the Presiding Officer, who is now Senator DECONCINI of Arizona, knows, 99 percent of the judges nominated by a President are approved. We approved Justice Kennedy, Justice Scalia and, as I recall, those were unanimous votes. If the President, this time, wanted to nominate an African-American and a Republican and nominated William Coleman or was willing to reach out, as other Presidents and Republican Presidents have done, and nominate someone like Vernon Jordan, or some of the other scholars on the law that have appeared before us, those nominees would have breezed through the committee. The fact that this nominee has some difficulties is because of the nature of the views of the nominees. And if the President nominates another person with the same views, I am going to be back up here speaking against that nominee.

There is precedent for that. President Tyler found five nominees that were not approved by the U.S. Senate. I do not think that would happen. The reality is that—particularly if the President takes into consideration the whole question of balance on the Court and takes into consideration the constitutional admonition, not simply that the Senate consents, but that it also provides advice—I think we can have nominees who are approved.

Then the question—this was raised in the committee—is it not great to have an African-American on the Court? The answer is, of course, that it is great to have an African-American on the Court, but it is important to recognize that the majority of African-American organizations that have taken a stand on this question have opposed the nomination of Judge Thomas.

It is immodest to read something that you have written yourself and stated and used before, but modesty is not a great virtue on the floor of the U.S. Senate.

Mr. SIMON. In my statement before the committee I said:

But two other factors are important to the minority community:

One is the political reality that so long as Clarence Thomas is on the Supreme Court, it is not probable that another black will be named. That means that for three or four decades, the lone person of African heritage will, if judged by his record, be taking stands that the large majority of blacks do not hold. Their voice and yearning for justice will be muted.

In his writings and speeches and in his life, Judge Thomas has stressed self-help, which we all laud. But Judge Thomas also has often harshly criticized another foundation of opportunity in our society: The laws that offer the helping hand sometimes needed by others who are less fortunate and less able. When a nominee comes before us to be elevated to the highest court in the land, I want to know that that nominee is a vigorous champion for the less fortunate and for the powerless. Unfortunately, even the casual comments of a Justice Thomas would be seized by some as an excuse to preserve the status quo. It would be good to have an African-American in this position of great influence, but not if the price is to compromise the future of millions of others less fortunate.

I point out, also, Mr. President, that the majority of us—not all of us—who have led on civil rights are opposing this nomination. And I believe I am correct in saying, without exception, that those who have consistently opposed civil rights legislation are supporting the nominee.

At one hearing, when we were holding a hearing, I spotted in the audience Mrs. Rosa Parks, who, as many people know, was a person who sparked, in a very real sense, the civil rights struggle in this Nation. She is the one who refused to move on the bus in Montgomery, AL. I went to greet her, and she said to me something like: We should not let him use Martin Luther King's name. She feels very strongly that he should not be approved.

I could be wrong in all of this, Mr. President. One of the things that gives me a little glimmer of hops—and I recognize the probability that he is going to be approved—is the fact that Senator DANFORTH is pushing for him so strongly. I have great respect for Senator DANFORTH, and I hope that his instincts are right and that mine are wrong. But the record is not one that suggests that I ought to gamble the future of the Nation on this.

Then, finally, Mr. President, I said in my remarks to the committee that we face a bleak period in the history of the Court, and we should not make it bleaker. There were those who asked questions about that and criticized that statement. I think it is an accurate statement.

Justice Thurgood Marshall, in Payne versus Tennessee, said, "The majority today sends a clear signal that scores of established constitutional liberties are now ripe for reconsideration."

I am afraid that is the reality.

There are a whole host of cases that could be used, but let me just mention two more. One is the recent execution in the State of Georgia of a man by the name of Warren McCleskey.

Mr. President, I ask unanimous consent to print the full New York Times editorial in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

WARREN MCCLESKEY IS DEAD

Warren McCleskey, who died in Georgia's electric chair last week, was no saint or hero. He was a robber, part of a gang that shot and killed an off-duty police officer during a holdup. Thirteen years later, however, a question reverberates: Did Warren McCleskey deserve the chair?

For the question to outlive him is a damning commentary on capital punishment in the United States.

When the Supreme Court upheld the constitutionality of executions in 1976, it held out the promise of punishments determined with fairness and care, under special procedures and guidelines. Death is different, the Court recognized, irretrievable even when the state makes mistakes.

Further, even the most vengeful citizen comes to realize there's a practical limit to capital punishment. Society would find it hard to execute everyone who is technically eligible. With 2,500 killers now on death row, it would take an execution a day for eight years to clear out the backlog.

Warren McCleskey's lawyers proved, in his first trip to the Supreme Court, that Georgia courts condemned blacks who killed whites four times as often as when the victim was black. Yet the Court, by a 5-to-4 vote, ruled in 1987 that this shameful pattern made no difference. To succeed, an accused must prove that racial prejudice animated his judge, his prosecutor or his jury.

Unable to meet that impossible burden, Warren McCleskey's lawyer proceeded to prove something else, also alarming: Georgia prosecutors had obtained the most damaging evidence against him, his alleged admission that he was the triggerman, from a jailhouse informant who was planted by Atlanta police in violation of Mr. McCleskey's rights. The state hid the informant's status for a decade, stonewalling defense attempt to throw out or discredit his testimony.

His lawyers thus spared Warren McCleskey, for the moment. Last April the Supreme Court ruled, 6 to 3, that they had waited too long to raise the claim, even though the lacked the proof—which the state was hiding—at the time they were supposed to raise it. So once again, Warren McCleskey was again soheduled to go to the electric chair.

Then, just days ago, two former jurors told the Georgia Board of Pardons and Paroles that their votes to sentence Warren McCleskey to death would have been dif-

ferent had they known the informant was a police plant, with an incentive to bargain for leniency in his own criminal case. Too late.

The only other evidence that Mr. McCleskey had been the gunman came from an accomplice to the robbery. All four hold-up men were legally responsible for the killing no matter who pulled the trigger, but Mr. McCleskey was the only one executed—on evidence that was illegally obtained, incomplete and questionable. Too little.

Some supporters of the death penalty are outraged that Mr. McCleskey lived so long, surviving through the ingenuity of writ-writing lawyers. But many other Americans are more interssted in sure justice than in certain death. They are left to feel outrage for a different reason, and what makes it worse is that they cannot look for relief to the Supreme Court of the United States.

Mr. SIMON. Let me read just from the last portion of that editorial:

Then, just days ago, two former jurors told the Georgia Board of Pardons and Paroles that their votes to sentence Warren McCleskey to death would have been different had they known the informant was a police plant, with an incentive to bargain for leniency in his own criminal case. Too late.

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In that particular case, Justice Marshall wrote in his dissent:

In refusing to grant a stay to review fully McCleskey's claims, the court values expediency over human life. Repeatedly denying Warren McCleskey his constitutional rights is unacceptable. Executing him is inexcusable.

I ask unanimous consent, Mr. President, to print that full article from the New York Times written by Peter Applebome into the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 26, 1991]

GEORGIA INMATE IS EXECUTED AFTER "CHAOTIC" LEGAL MOVE

(By Peter Applebome)

ATLANTA, Sept. 25.—Warren McCleskey, whose two unsuccessful appeals to the United States Supreme Court helped define death penalty law, was executed this morning after an all-night spasm of legal proceedings that played out like a caricature of the issues his case came to symbolize.

Mr. McCleskey, a black, 44-year-old factory worker who was convicted of killing a white police officer here during an attempted robbery in 1978, was electrocuted at the state prison in Jackson, Ga., after a series of stays issued by a Federal judge was lifted.

But when he died, after declining a last meal and after being strapped into the chair at one point and then unstrapped three minutes later, his execution added a final chapter to his odyssey through the courts.

In a final legal scramble, the Supreme Court twice refused a stay—once at about 10 P.M. on Tuesday, after a state court denied last-minute appeals, and then just before 3 A.M. today, after a similar appeal was rejected by lower Federal courts. The Court's 6-to-3 decisions came after the Justices were polled by telephone.

A "CHAOTIC" APPEALS PROCESS

Five minutes later, after Mr. McCleskey had been strapped into the electric chair, electrodes attached to his skull and a final prayer read, prison officials were told the Supreme Court had rejected a final stay. A minute later the execution began, and he was pronounced dead at 3:13.

A spokesman for the Georgia Departments of Pardons and Paroles desoribed the process, which began with the parole board's denial of a clemency petition on Tuesday, as "chaotic."

Justice Thurgood Marshall of the Supreme Court, who was one of three dissenters in the Court's decision not to halt the execution, was considerably more stinging in his dissent. Senate, wrote: "In refusing to grant a stay to review fully McCleskey's olaims, the Court values expediency over human life. Repeatedly denying Warren Mr. McCleskey his constitutional rights is unacceptable. Executing him is inexcusable."

CLEMENCY PETITION REJECTED

On Tuesday morning the five-member Georgia Board of Pardons and Paroles turned down Mr. McCleskey's clemency petition, apparently closing off the last obstacle to an execution. In Georgia, only the board has the authority to oommute a death sentence. The board acted despite statements from two jurors that information improperly withheld at the trial tainted their sentence, and that they no longer supported an execution.

Mr. McCleskey's execution was initially soheduled for 7 P.M. Tuesday, but shortly before that Federal District Judge J. Owen Forrester agreed to stay the execution, first until 7:30, then until 10 and then until midnight, to hear a last-minute appeal filed in three different courts.

Judge Forrester denied the appeal after a hearing ended around 11:20 P.M., but he stayed the execution until 2 o'clock this morning to allow lawyers to appeal it. At 2:17 A.M. Mr. McCleskey was into the electric chair, only to be taken away three minutes later when officials learned the High Court was still pondering a stay.

He was placed back in the chair at 2:53 A.M. under the assumption that no news from the court meant the execution was still on. Word that the Court had denied a stay came just as the execution was ready to begin at 3:04.

TWO LANDMARK RULINGS

Mr. McCleskey, who filed repeated appeals over the 13 years between his conviction and his death and has had a long succession of lawyers, produced two landmark rulings in death penalty law.

In 1987, in the last major challenge to the constitutionality of the death penalty, the Supreme Court voted, 5 to 4, that the death penalty was legal despite statistics showing that those who kill white people are far more frequently sentenced to die than are those who kill blacks.

Last April the Court voted, 6 to 3, that Mr. McCleskey's claim that his sentence was tainted by information withheld from the jury should be rejected because he failed to make the claim on his first habeas corpus petition. In doing so, the Court spelled out strict new guidelines that sharply curtailed the ability of death row inmates and other state prisoners to pursue multiple Federal court appeals.

Mr. McCleskey was the 155th person to be executed since the Supreme Court cleared the way in 1976 for states to resume capital punishment.

Mr. McCleskey admitted to being one of four men involved in a robbery in which Officer Frank Schlatt was killed, but he denied being the one who shot him. none of the other men received the death sentence.

Before the execution he apologized to Officer Schlatt's family for taking part in the attempted robbery, asked his own family not to be bitter about his death, professed his religious beliefs and decried the use of the death penalty. He neither confessed to being the gunman nor did he say he was innocent of the killing.

"I pray that one day this country, supposedly a civilized society, will abolish barbario aots such as the death penalty," he said.

"13 YEARS TO SAY GOODBYE"

Officer Schlatt's daughter said the execution renewed her faith in the justice system.

"I feel for his family, but he's had 13 years to say goodbye to his family and to make peace with God," said Jodie Schlatt Swanner. "I never got to say goodbye to my father. This has nothing to do with vengeance. It has to do with justice."

But Mr. McCleskey's supporters, who held demonstrations here and in Washington, said Mr. McCleskey's case from beginning to end was a potent argument against the death penalty as it is used in the United States.

"Ten years ago the idea that we would execute someone in violation of the Constitution was so abhorrent no one could imagine it happening," said Stephen Bright, direotor of the Southern Center for Human Rights in Atlanta, which does legal work for the poor. "Now, as a result of the Rehnquist Court, what we're seeing and what we're going to see in case after case is people going to the execution chamber in cases in whioh the jury did not know fundamental things about the case."

The case against Mr. McCleskey was largely oiroumstantial. Testimony came from one of the other robbers, who named Mr. McCleskey as the gunman, and from another prisoner, Offie Evans who told jurors Mr. McCleskey had confessed to him in jail.

Jurors were not told that Mr. Evans was a police informer who was led to believe that his sentenoe would be shortened if he produced incriminating evidence against Mr. McCleskey. His lawyers learned of Mr. Evan's ties to the police after the trial through documents obtained under the Freedom of Information Act.

Mr. SIMON. Mr. President, I ask unanimous consent also to have printed in the RECORD the St. Louis Post Dispatch editorial "Reject Judge Thomas."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the St. Louis Post-Dispatoh, Sept. 18, 1991]

REJECT JUDGE THOMAS

Under the checks-and-balances system in the Constitution, the president names judges to the U.S. Supreme Court, "by and with the advice and consent of the Senate." In the

confirmation process, it is not up to the Senate to show that a nominee is unqualified to serve; it is up to the nominee to show the competence needed for a lifetime appointment. In his testimony before the Senate Judiciary Committee, Clarence Thomas fell far short of proving President Bush's contention that he is "the best man for the position." His nomination should be rejected.

Of course, the president's claim was false from the start. Judge Thomas was nominated to replace Justice Thurgood Marshall because he is a black man whose political philosophy appears to match that of the White House. President Bush is looked in a battle over quotas and hiring, so he could hardly acknowledge the racial factor in the Thomas nomination. But everyone knows it was there.

Unfortunately, Judge Thomas appears to have taken his cue from such cynical denial. When senators questioned him about his lengthy paper trail, he did not feel the need to explain it. For the most part, he simply dismissed it. Writings on natural law became amateur philosophizing, not to be taken seriously; praise for the writer of an anti-abortion article became a mere throwaway line, insincere flattery that was hardly worth remembering. He spoke of stripping himself down like a runner and shedding the record that supposedly had been the basis for his selection; in fact, he was running hard—from any opinion that could endanger his confirmation.

When he was not fleeing from his past, Judge Thomas was bobbing and weaving on abortion. No matter how many times he was asked, in what form, he declined to give his views on a woman's right to choose, saying that he wanted to maintain his impartiality. Of course, he did not seem troubled by answering questions on other topics that are bound to come before the court, such as the death penalty or the separation of church and state. Those issues are not as likely to inspire such heated opposition as abortion; again, his main aim was to play it safe.

After he renounced his record and refused to answer questions on the issue most pressing on the minds of the senators, what did Judge Thomas have left? He had his lackluster tenure as head of the Equal Employment Opportunity Commission, where he let slide thousands of grievances about discrimination. He also had his constricted view of affirmative action—one of the areas where the senators' questioning was disappointingly timid. He refused to acknowledge the need for special consideration for groups that have suffered from past discrimination—even though he himself most likely would never have held any major government post, much less been nominated for the Supreme Court, had it not been for affirmative action at the Yale Law School.

Despite his efforts at self-effacing humor and the frequent references to the homespun wisdom of his grandfather, Judge Thomas failed to come across as the best candidate available for the Supreme Court. No matter what his spin doctors and handlers said, his legal expertise was shallow; his experience is narrow. To be, as Margaret Bush Wilson has called him, "a decent human being" simply is not enough. His performance was masterfully exasperating, but in the end, hearings designed to illuminate who Clarence Thomas is and what he stands for merely made him more of a mystery.

If the Senate rewards this tactic by confirming him for the court, it will only invite more such dissembling in the future. Already, Robert Gates is showing much of the same attitude in his confirmation hearings to become director of central intelligence. The Senate should reject Judge Thomas and force Mr. Bush to come up with a new nominee who is strong enough to defend his record, not simply deny it.

Mr. SIMON. Mr. President, I ask unanimous consent to print in the RECORD a list of members of organizations from the Chicago Coalition Against the Nomination of Clarence Thomas.

There being no objeotion, the material was ordered to be printed in the RECORD, as follows:

CHICAGO COALITION AOAINST THE NOMINATION OF CLARENCE THOMAS MEMBER ORGANIZATIONS

Amalgamated Clothing & Textile Workers Union—Chicago & Central States.
American Association of University Women.
Americans for Democratic Action.
American Federation of State, County, and Municipal Employees.
Chicago Catholic Women.
Chicago Committee to Defend the Bill of Rights.
Chicago Council of Lawyers.
Chicago Democratic Socialists of America.
Chicago Women's Health Center.
Citizens Alert.
Coalition of Black Trade Unionists/Chicago.
Coalition of Labor Union Women.
Cook County Bar Association.
Cook County Democratic Women.
Democratic Party of Evanston.
Gray Panthers.
Illinois NOW.
Illinois Public Action.
Illinois SANE FREEZE.
Illinois State AFL–CIO.
Illinois Women's Political Caucus.
Independent Voters of Illinois-Independent Precinct Organization.
International Ladies Garment Workers Union.
Japanese-American Citizens League.
Lawyers for the Judiciary.
Leadership Conference on Civil Rights.
Mexican American Legal Defense and Educational Fund.
NAACP—Chicago Southside Branch.
National Abortion Rights Action League—Illinois.
National Coalition of American Nuns.
National Council of Jewish Women.
National Lawyers Guild.
National Organization for Women—Chicago.
National Organization for Women—Evanston/North Shore.
National Organization for Women—South Suburban.
National Organization for Women—West Suburban.
Older Women's League.
Patriotic Majority.
People of the American Way Action Fund.
South Suburban Pro-Choice Coalition.
UAW Region 4—Greater Chicago Cap Council.
University Professionals of Illinois, Local 4100–AFT.
Women Employed.
Women United for a Better Chicago.

Mr. SIMON. Mr. President, I know that we like to do something good for someone who makes a good impression on us, whom we like personally, and there is no question that Clarence Thomas is a warm human being. I like him personally. But that is not the question before this body. The question is the heavy, heavy responsibility of who will be placed on the United States Supreme Court for the next 40 years? And where there is doubt—and I suggest any careful reader of the record will have doubt—where there is doubt, that doubt should be resolved in favor of the Supreme Court and in favor of the people of the United States.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I take the floor to address the Clarence Thomas nomination, which has been the subject of words by our colleague from Illinois. I listened intently to what he had to say.

The point I want to raise today before the Senate is the questions that have been raised in all the major news media around the country, both in the Washington Post and, I would imagine, throughout the country. Perhaps the lead story on most of the media outlets this morning was on the question of allegations of "Sexual Harassment Clouds the Vote on Clarence Thomas," leading some of my colleagues to call for a delay on the voting because of this revelation that supposedly has been revealed to Members of the Senate regarding the sexual harassment charges that have been supposedly made against Judge Thomas almost 10 years ago, from some of the dates that I have seen.

I, as a Member of the Senate who is not a member of the Judiciary Committee, in trying to learn more about the nomination from Judge Thomas when he was nominated, asked for a personal visit, which he readily agreed to. He came to my office. I sat down and really had the opportunity to talk with him and, in essence, to interview him about some of the sensitive questions that had been asked and raised following his nomination.

I was even able to ask one of my black friends, constituents, and advisers from Louisiana to sit in on that meeting with me and allow him to ask Judge Thomas questions that were of a sensitive nature about his background and about his beliefs, about where he had come from and what his hopes and aspirations as a potential Justice of the Supreme Court happened to be. Following those meetings I watched with great interest and intent the hearings, the process, the testimony of Judge Thomas before the Judiciary Committee and withheld a decision until I had an opportunity to hear those testify before the committee who are in fact opposed to Judge Thomas' position and his confirmation by the Senate.

After all of that, after my personal meetings, after Judge Thomas' testimony, after questioning by the mem-

bers of the Judiciary Committee, and after the opposition had had the opportunity to, in fact, testify in opposition to Judge Thomas, after the Judiciary Committee, I then listened to those members of the economy who spoke on the floor and spoke in committee and gave their reasons for supporting and in opposition to Judge Thomas. I then came to the conclusion that Judge Thomas was a person who, in my opinion, would remember where he came from, would have a very strong feeling of concern about the less advantaged in this country, would not be able to forget his background and his history and, in fact, would be fair as a future member of the Supreme Court.

I took into consideration that while some had disagreements with Judge Thomas when he served as head of the EEOC in the Reagan administration, I tried to remind them this was a person who, in fact, worked for Ronald Reagan, was not a free agent, was not in a position to be able to have his position as head of the EEOC become the policy of that organization because, after all, he worked for the President and was duty bound to carry out the policies of the President of the United States.

I tried to point out that at that point, as a Supreme Court Justice, he would be a free man, indeed, to carry out his own beliefs and his own interpretations of the Constitution without having to refer to President Bush or President Reagan or to anyone else.

I concluded, after hearing all of that information and having the benefit of all of that information, that this was a person that I would be able to support as a nominee to the Court, and I said so on the floor of this Senate.

Therefore, I am struck by the revelations that we were supposedly receiving this morning in the newspaper. My question is where were these allegations during the confirmation process before the committee? Why do I, as a Member of the U.S. Senate, now have to get my information on a Supreme Court nominee from Newsday, or from national public radio? If these pieces of information that were supposedly contained in FBI files and were known, I would take it, to the members of the committee were important enough for Members to ask for a delay so that the whole process be set aside and delayed, if it was known 2 weeks ago, why was not that information made available to other Members of the Senate, who, in fact, are not on the Judiciary Committee? Why were these supposed allegations not discussed if they were so important as to delay the whole process in the committee hearing process itself? Why did we not hear from one of our colleagues who had access to the sensitive personal information contained in the FBI reports? Why did we not hear any of them come to the floor of the Senate and say there is information that we should not go forward with, there is information that we should vote against the nominee based on these allegations? I heard no one say that this information was of such a nature that would disqualify Judge Thomas to be considered as a nominee to the highest court in the land.

I think it is unfortunate that this information is now made available first through news media publications. How did they get the information? If I as a Member of the U.S. Senate, who is going to have to be called upon to cast a vote on this nominee, did not have this information, because it was not sent to me, did not know that type of information supposedly was sitting there in somebody's file, if we do not have information as a member of the U.S. Senate, why do the news publications have it?

I think there is an interesting question to find out how they got it. Do they subscribe to the FBI reports? Do they get them sent to them in the mail? I mean, this is a serious and a sensitive question that I think needs to be talked about. Maybe I am wrong.

I know that when you release sensitive information, either as a Member of the Senate or as a person who works for the Senate, there is a pretty stiff penalty involved for someone who does that. Did the FBI gratuitously send the information to the news media? How did they get it? Why is it just being made available now to the rest of us in the U.S. Senate with the admonition or the request that all of this process be delayed?

My own feeling on this issue, Mr. President, is that this information was, in fact, available to the Judiciary Committee members. They did have the opportunity, I would presume—because I have not talked to any of them—to look at this information, and make a decision based on the quality or the content of the FBI report that it, in fact, was not of a substantive nature to delay the confirmation process, not of a substantive or provable basis in order to be the basis for voting against this nominee. Because no one said, "I can't vote for him because of some things that are in the FBI files." Not a Member who has expressed opposition up to this point has said that is the basis for saying I cannot vote for him.

I think those of us who relied on the process, who have listened to the public hearings, who have listened to the debate, who have met with the judge, I think that it leads me to conclude that if no one has brought it up until now, it must have been that Members who had access to the information did not think it was important enough to delay the vote or certainly to be the basis for the vote in opposition to the nominee, because I trust that they looked at it and I trust they made a decision which was in keeping with the actions taken by the Judiciary Committee.

So I think it is unfortunate now for us to have to delay, because certainly the committee did not, it seems to this Member, delay the vote based on additional information being required. A vote was taken. Reasons were given why Members supported him and why Members chose not to support him, and I take their reasons at face value. They had some good argument in opposition and good argument in support of Judge Thomas.

I am just concerned, now that a newspaper and a public radio program have revealed the allegations—where they got them, I think is an interesting question which needs to be considered—but now all of the U.S. Senate is going to be influenced because the media now have the information. I just hope that we would come to the conclusion that I have come to: That those Members that have in fact had access to the information have carefully reviewed it and have come to the conclusion that it is not of a substantive nature in order for them to base their decision in opposition to those particular reports.

Mr. President, I yield the floor.

Mr. SIMON. Mr. President, if I may just have the attention of my colleague from Louisiana. I have mentioned part of this on the floor earlier. I learned about this, frankly, from one of our colleagues on the floor. And then I looked at the FBI report and read her statement. Because I felt it was serious enough and it concerned me, I called here. I had the impression that she was someone who could not be lightly disregarded. She is a professor of law. Those of you who may have seen her press conference today I think will agree that she is a credible kind of a person.

I think the question is not simply whether the charges of what took place 10 years ago are accurate or not—and that has not been cleared up—but the question is, did the nominee tell the truth to the FBI? And that I think is important. And before we put someone on the Supreme Court for life who is now 43, my own feeling is we would be wise to have a little more full investigation, either by the FBI or by the committee. And if that means delaying it for a few days, I think the Nation would be well served by delaying it for a few days.

Mr. BREAUX. Will the Senator yield?

Mr. SIMON. I am pleased to yield to my colleague.

Mr. BREAUX. The question I asked is, if we did not have the opportunity to read about these allegations in Newsday magazine, it seems to me that the Senate would have gone ahead and voted tomorrow night. The point I am trying to make is that those of us who have relied on the process knew nothing about this until somebody, somewhere, leaked reports that many Members of the committee had obviously

seen already and apparently had dismissed as being lacking of a substantive nature, because it was never brought out in the committee.

I would ask the distinguished Senator, if the committee had this information, why was it not investigated at the committee level? Or, was it investigated at the committee level and then the decision was made that it was not of a substantive nature to even be discussed in a public forum or delay the committee process?

The committee voted with the information available in the FBI reports and made a decision on this nominee without it ever being talked about in the Judiciary Committee.

Mr. SIMON. Mr. President, I will respond to my colleague. First of all, I think the chairman has handled this thing well. I do not mean for this to be a criticism of the chairman at all. But the reality is that, for example, when I talked to Professor Hill, she at that point wanted a copy of her statement sent to all Members of the Senate, but she wanted her name to be kept confidential and the information to be kept confidential just so the Members of the Senate could have the information.

Well, I told her there is no way of doing that. I said, "For this to become known to the Members of the Senate, you are going to have to make a decision whether you want to go public with this or not."

She did not make that decision, I gather, until over the weekend. And where Newsday or National Public Radio got the information, I do not know.

Let me just add, I happen to be a journalist by background. I particularly avoid being the source for any of these things because you are immediately suspected of having that background. But once she went public, then we ask questions and then it becomes a little easier to deal with the situation. But until she went public, frankly, I did not mention this in the committee hearings, and no one else did, I do not know that it was decisive for any member of the committee. The committee voted 7 to 7 after very intensive hearings. For me, I had made up my mind by the time I read the statement.

Mr. President, I yield the floor.

Mr. COCHRAN. Mr. President, while I have some feelings and views and opinions about the subject to which the Senators from Louisiana and Illinois were addressing themselves just now, I came to the floor not to discuss my observations about weekend events and the tactics or strategies of some of the opponents of Judge Clarence Thomas.

I did come to express my conviction that Judge Thomas, because of his qualifications, his obvious good moral character that he has demonstrated in every job to which he has been assigned or for which he has been employed, and because of his obvious intellectual capacity, his decency and his sense of fairness, would be an outstanding member of the U.S. Supreme Court. And so it is to that issue that I rise today, Mr. President, to give just a few thoughts and observations that I have about why I am led to that conclusion.

First of all, I am not a member of the Judiciary Committee, so I did not have the benefit that Senators had who heard all the testimony, who had a chance to question witnesses and see the responses and listen to the responses of the nominee in committee.

But I have taken a very active interest, as all Senators have, in this process and in this nomination. And I have tried to observe the nominee closely during this process. I have had an opportunity to meet with him in my office.

I recall meetings with him in the past when he served as Chairman of the Equal Employment Opportunity Commission. Based on those observations and my effort to read as much as I could that has been written in articles and listen to observations of others about the nomination, I have come to the conclusion—and I feel very comfortable with my conclusion—that Judge Thomas is a very fine choice for the U.S. Supreme Court, and that he will be an outstanding and distinguished member of that Court after he is confirmed by this body and becomes an Associate Justice of the Supreme Court.

I can remember my first visit with him—the first that I remember—when he was Chairman of the Equal Employment Opportunity Commission. He came to my office to talk about a budget problem. He was concerned that there were Members of this Senate, and some on the Appropriations Committee in particular, who were not prepared to provide the funding that was needed by the Commission to enforce the laws against discrimination and to do the kind of job that that Commission was not only authorized but required by law to do. That was the purpose of his visit.

When I heard recently from those who were criticizing him for not being interested and energized or involved enough in trying to make sure that the EEOC did its job—that he was somehow derelict in his efforts as Chairman of that Commission to see that the laws were carried out—I remembered that first meeting and thought how inconsistent those criticisms, were with my first impressions of him. He had come to see me and asked me to help, as a member of the Appropriations Committee, to see that adequate funding was made available to his Commission.

There were other issues we talked about that day, but my impression of him was that he was very distressed that there were some who were undermining the efforts of the Commission to do its job by denying adequate funding for the Commission. And he was not going to sit still, as Chairman of the Commission, and observe it and do nothing. He was up here, in effect, lobbying the Congress in behalf of the Commission, trying to get the Congress to do what it ought to do—this Senate, to do what it ought to do, and to support the work of the Commission.

I looked at some of the comments that were made during the hearings and after the nomination was submitted to the Senate by those who worked with him at the Commission to see if maybe I had gotten the wrong impression or maybe I had misunderstood what he was about. But I find the more I look at what others have said who worked with him at that time and who observed him from very close range that I as right. My first impressions were right and the critics were wrong.

I do not know why they were wrong or if they know they are wrong. I am sure they are well meaning and are motivated by the highest principles. But it surely is a big chasm of inconsistency between what the critics say about Clarence Thomas as Chairman of the EEOC and what those who were there say they saw and observed. And it is likewise inconsistent with my recollections, too, as I observed him as Chairman of the Commission.

For example, Gaull Silberman—I am quoting from a statement that he made. He was Vice Chairman of the EEOC when Judge Thomas was Chairman. He says:

> This man made the EEOC. He built it into a first-class law enforcement agency. We took three times as many cases, got more relief for more people than any other time in history.

Robert Dowd, who is the presiding judge of the Missouri Court of Appeals observed:

> Mr. Thomas has an outstanding civil rights record and has demonstrated leadership and excellence as Chairman of the Equal Employment Opportunity Commission. He sincerely believed"—he said—"that Mr. Thomas would bring honor, excellence, and scholarship to the appellate court.

There was an analysis written of the tenure of Clarence Thomas as Chairman of the EEOC by Prof. Joseph Broadus, at George Mason University School of Law. It goes into a lot of detail.

In the summary there is one sentence that I will read into the RECORD.

> Clarence Thomas substantially reformed and transformed the EEOC during a critical period in its history, rebuilding the agency's morale, strengthening its law enforcement role, dramatically increasing its volume of successfully processed cases, and restoring its focus on individual justice.

One might observe, too, Mr. President, just as an aside, with the emphasis that the professor placed on individual justice, that the Supreme Court had changed or modified some of the laws that governed the bringing and

prosecution of antidiscrimination cases. It was under the chairmanship of Clarence Thomas that the agency had to adjust to some of those changes—some of the same changes that are now sought to be reversed by legislation that is before this body.

I think some would prefer to suggest and to convince others that it was Chairman Thomas' idea to make these changes in the law. He was not on the court then. He was abiding by the law as interpreted by the Supreme Court and trying to carry out the responsibilities of his office under the changes in the law that were made that shifted the focus from classes that may have suffered from discrimination and how you impose standards on employers or others to those rights that individuals enjoy and that are protected under the Constitution of the United States.

It is an observation that may in some small way explain why there may be a tendency to accept the argument that Judge Thomas somehow was not fulfilling the full responsibility that he had as Chairman. Changes in the law had occurred.

If you look at the statements of those I just quoted, I think it adds credence to the argument that Chairman Thomas when at the EEOC, was dedicated, vigorous, and energetic in getting the job done and in protecting the rights of those that his Commission had the responsibility to protect and to defend.

It was interesting also, Mr. President, in looking at the lineup of witnesses before the Judiciary Committee to see the large number of witnesses who came to testify for and against the confirmation of Judge Thomas. Everybody can remember that. And the committee wrote a long report, including additional views and supplemental views of almost every member of the Judiciary Committee.

And, of course, we were all bombarded—not really, I guess, bombarded—but given the benefits of the thoughts and observations of many interest groups: The National Abortion Rights Action League sent us all a description of their arguments. Another interest group compiled a detailed background report about the nominee and argued in favor of confirmation. Here is a folder full of all of these materials.

I have tried to look at all of them. I read some of them more carefully than others, I will have to admit.

But based on all of this, in trying to dig out of all of this pile of paper what the central themes are that are relevant and what the basic facts are that we ought to consider before we vote, I was drawn to the testimony of Dean Calabresi, the dean of the Yale Law School where Judge Thomas went to law school. Judge Calabresi is identified as the dean and Sterling Professor of Law at the Yale Law School.

In Mississippi, we are very proud of the fact that Myres McDougal, a scholar from our State, once was the Sterling Professor of Law at Yale Law School, and a number of the faculty at the University of Mississippi Law School were educated at Yale, maybe because of Professor McDougal's influence in helping many of the students from my State gain admittance to the Yale Law School.

But I was impressed with the observation that Dean Calabresi made—and I am going to read a few sentences from his statement to the Judiciary Committee. He was talking about Clarance Thomas, the student, when he said:

> What characterized him was that he could not be predicted, that he was always seeking more information in order to decide what made sense to him, and that whatever position he took was his own and was powerfully, and eloquently held.

He then goes on to try to predict what kind of Justice Clarence Thomas would be on the Supreme Court, and he recalled some of the other great Justices of the past, and he says:

> None of the great Justices of the past, not Justice Black, nor Justices Harlan or Stewart, not Justice Holmes nor Justices Brandeis or Cardozo, not even Justice Frankfurter—for all his years of teaching constitutional law—came to the Court fully formed. The Court itself, and the individual cases that came before them, shaped them, even as they shaped the Court. In the end it was the combination of character, ability, willingness to work really hard, and openness to new views that made them great Justices. These qualities, if there truly is openness, matter far more than past positions. I hope and believe that judge Thomas has these qualities, and that is why I am here today.

Those are the words of Dean Calabresi of Yale Law School, Mr. President, and I find them very impressive in the tone and in the sureness of his conviction that Clarence Thomas is the person that he believes him to be, based on his observation of him over a period of time that is much longer, much different than most Senators here have the opportunity to observe Judge Thomas.

The time in which I have had to observe him and see him perform his duties and responsibilities in some of the jobs he has had enables me to say I am convinced also that he is his own man and he is the kind of person who will be an independent voice for fairness and for justice for all when he is confirmed as an Associate Justice of the U.S. Supreme Court.

I am proud to be able to support his confirmation, and I recommend to the Senate that he be confirmed.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I would like to comment on the statement made by Ms. Hill, a former staffer, who worked with Judge Thomas, both at the Department of Education and the Equal Employment Opportunity Commission. Let me say from the start, I am opposed to sexual harassment in the workplace and certainly believe that women are entitled to protection from it.

With any nomination, there are always numerous allegations that are made about the character of a nominee. It is not unusual to have allegations made, that after investigation, are without merit.

When the allegations made by Ms. Hill were brought to the attention of the Judiciary Committee, a full investigation was undertaken by the FBI. The chairman of the committee, Senator BIDEN, and I, as ranking member, requested it. Judge Thomas was interviewed, and I want to get this point clear. He categorically denies the allegations that have been made. After a complete investigation by the FBI, these allegations have been found to be totally lacking in credibility and are without merit.

The allegations made in this case are some 10 years old and are being raised now for the first time. These unfounded allegations, Ms. Hill says, occurred while she worked with Judge Thomas at the Department of Eduoation. When Judge Thomas left the Department of Education to assume the chairmanship of the EEOC, Ms. Hill chose—she herself chose—to move there with him. I find it hard to understand why Ms. Hill would follow Judge Thomas to the EEOC if her statements about what happened at the Department of Education are credible.

Since her departure from the EEOC, Ms. Hill has on several occasions contacted Judge Thomas—once for assistance with an employment award, and as recently as earlier this year to encourage him to accept a speaking engagement. It simply does not make sense for Ms. Hill to contact Judge Thomas and ask for his assistance if she had been harassed by him.

Additionally, Ms. Hill has raised concerns that Judge Thomas has changed his political philosophy from supporting quotas for minorities in employment and believes he may not be openminded. I find this information disturbing. Apparently, Ms. Hill's real problem is with Judge Thomas' political philosophy. And I will take up another reason in a minute.

Mr. President, the Judiciary Committee took testimony from Judge Thomas for some 5 days. He spent 25 hours on the stand. He is the consummate professional. These statements are simply inconsistent with the professional approach that Judge Thomas has taken regarding every position he has held in both the public and private sector.

Mr. President, after a complete and thorough investigation by the FBI, the statements made by a former staffer are totally without merit. These state-

ments were said to have been made over a decade ago. This former staffer left the Department of Education and moved to the EEOC with Judge Thomas. Later, she asked Judge Thomas for assistance after her departure from the EEOC. She claims she was harassed at the Department of Education and also at the EEOC.

Mr. President, I believe there statements have been made in an attempt to derall this nomination at the last minute. We are supposed to vote on it tomorrow. We put it off last week to vote on it tomorrow at 6 o'clock. It is important to note that the staffs of two Senators who oppose Judge Thomas are responsible for originally contacting Ms. Hill and urging her to make this information known. It was not the Judiciary Committee staff as has been stated by Ms. Hill.

I believe those who oppose this nominee are behind raising these allegations on the day before the vote. Judiciary Committee members who oppose Judge Thomas were aware of this matter before casting their vote in the committee, yet they voted for him—7 for him, 7 against him—on September 27. It is, therefore, not appropriate to use these baseless allegations to delay the vote on this nominee.

Mr. President, as this matter has now been raised publicly, I thought it was important to clarify the situation.

Now, Mr. President, a few hours ago today I received a letter from an individual who worked with Judge Thomas at the EEOC. He was there with him for years. I am going to read this letter and disclose who wrote it. It says:

DEAR SENATOR THURMOND: As someone who worked with Judge Clarence Thomas from 1983 to 1986 I also had the opportunity to work with Ms. Anita Hill.

So he knows Ms. Hill, the one who is making these charges.

I must tell you that during that time I was very uncomfortable with Ms. Hill. I often questioned her motives. This concern was something I expressed to Judge Thomas on more than one occasion.

Furthermore, I found her to be untrustworthy, selfish and extremely bitter following a colleague's appointment to head the Office of Legal Council at EEOC. A position that Hill made quite clear she coveted. After she was passed over for the promotion, she was adamant in her desire to leave the agency and discussed this with me privately.

Mr. President, could this be the reason for Ms. Hill's statement at this time? Judge Thomas did not promote her and she became bitter and now she is coming forward? That is what this individual says who worked with Thomas.

I also question her motivation when it comes to her recent allegations. Especially since Ms. Hill discussed with me her admiration for Judge Thomas' commitment to fight for minorities and women, and his fair treatment of women at the agency. I know, personally, that these are the rantings of a disgruntled employee who has reduced herself to lying.

Now, this individual is saying that he has heard Ms. Hill express her commitment and faith in Judge Thomas, and express her opinion that Judge Thomas had a commitment to fight for minorities and women and fair treatment of women. Yet she is now making statements against him. Why did she turn on him? She did not get the promotion she had hoped to get, which Judge Thomas did not give her.

I ask you, if this was a man she should loath for sexual harassment, then why did she maintain contact and continue to communicate with him? Why did she follow him from the Education Department to the EEOC? Why did she only have praise for him in her discussions with me? Furthermore, Judge Thomas believed this woman to be a friend and someone of great intellect and wanted only to assist her as she moved along in her career.

I am sure having had knowledge of the situation prior to this past weekend is evidence that you also question Ms. Hill's accusations and credibility. I urge the Senate Judiciary Committee to listen to these allegations with a grain of salt.

In closing, as I described her ten years ago to Judge Thomas, I do so now. She always had to have the final word and the last laugh. I see now that some people just never change.

I look forward to your confirming the Judge to our nation's highest court.

Respectfully,

ARMSTRONG WILLIAMS,
Managing Partner,
The Graham Williams Group.

This is a man who worked with Judge Thomas, knew this woman well, and that is the letter he wrote to me today.

Now, Mr. President, I just want to say a few more words in closing. I am not going to take but a few minutes.

The sexual harassment allegation by Anita Faye Hill; Judge Thomas categorically denies it. No one else besides Ms. Hill has ever accused Judge Thomas of sexual harassment. He has been in government for 17 years. He has worked with the public for 17 years. And he was worked with many women. No one has ever accused him of anything before—and no one else has accused him of sexual harassment.

Ms. Hill alleges the statements attributed to Judge Thomas were made at the Department of Education in the fall of 1981, yet when Thomas moved to the EEOC in April 1982 Ms. Hill chose to move with him and accept a position with him. If she had been harassed in the Education Department, why did she choose to go with him again and run the risk of being harassed again? She did not have to go there. She had a job at the Education Department and could have stayed there if she wanted. Instead of that, she wanted to go with him and did go with him.

Judge Thomas introduced Ms. Hill to the dean of the Law School at Oral Roberts University and recommended her for the position she obtained there. That is the gratitude she is now showing.

Ms. Hill stated she left the Washington, DC, area in 1983; in the fall of 1984 she visited the EEOC to get a recommendation from Judge Thomas for an award. In the spring of this year, 1991, she again contacted him to encourage him to speak at the University of Oklahoma College of Law. That is where she was teaching. The university had invited him to come out and speak. He was an outstanding jurist and they wanted him to speak there. And she contacted him and encouraged him to take it.

Well, if he is that kind of an individual, guilty of sexually harassing women, why would she encourage him to come out there and speak to students there, men and women in the school? It does not make sense.

Ms. Hill acknowledges she has had numerous opportunities to present her story to the press but had declined until now.

Senate staffers of some Members who oppose this nomination contacted Ms. Hill. She did not come here first. They were Senate staff members. They were not Judiciary full committee investigators either. They were staff members of two Senators, at least two, who contacted Ms. Hill and urged her to come forward. That is the reason she came. Not investigators from the full Judiciary Committee, as Miss Hill had claimed. She claimed they were investigators from the Judiciary Committee. They were not. They were simply staff members of two Senators who are opposed to Judge Thomas, and they have been opposed to him all the time.

In fact, Senator BIDEN issued, I believe, a statement today and said, "Any statements that she was first contacted by investigators for the full committee staff of the Senate Judiciary Committee on September 3 or any other day are categorically false." That comes from the chairman of the committee.

Committee members who oppose Judge Thomas were well aware of these allegations before the committee vote on September 27. The members were aware of it. Nobody was taken by surprise. And if they claim they are not aware of it, it is just not the case. It was available to them.

Ms. Hill has said she is concerned that Judge Thomas has changed his political philosphy and that he may no longer be open minded.

Maybe she does not like his philosphy and this is the motivation for her statement.

Now, the statement Ms. Hill gave to investigators and her written statement contain several inconsistencies. For example, Ms. Hill told investigators that when she left the EEOC, Thomas said if this matter was disclosed he would ruin her; that is, Ms. Hill's career. She said in her written statement that Thomas said if it was disclosed, it would ruin his, Thomas', career.

Who is correct? That statement is given to the FBI. In her statement to the investigators, Ms. Hill said the remarks by Judge Thomas stopped in the spring of 1982. In her written statement to the committee, Ms. Hill said that the remarks continued in the fall or winter of 1982. Which is correct? She is making different statements about the situation.

Two individuals that Ms. Hill implied might be vulnerable to Thomas' alleged improper behavior were interviewed. The FBI went to them. One person was very complimentary about Judge Thomas and said that he was an individual with tremendous respect for the law and was also a good person. The other individual stated that Judge Thomas was the best supervisor she had ever had. That was the name of two people that Ms. Hill gave to them to interview, and that is what they said.

I want to say this. If I did not know Judge Thomas, I think I would be willing to take the word of a man who has worked with him longer than anybody else, and that is Senator DANFORTH. Senator DANFORTH is an ordained preacher in the Episcopal Church. He has been here for a long time. We all know him. He is a man of character, integrity, and high principles, and I think everybody acknowledges that.

Judge Thomas worked for him for 3 years as assistant attorney general. Judge Thomas had a hard time getting a job. Senator DANFORTH, then Attorney General DANFORTH, gave him a job. He worked there for 3 years. Senator DANFORTH had the opportunity to judge him.

Then, when Senator DANFORTH came to Washington as a Senator, he hired him again. He liked his work as an assistant attorney general. Thomas had gone with a private firm, doing well, making money. DANFORTH sent for him, and he came to work for him again as a legislative assistant here in the Senate.

That is 5 years he has worked with Senator DANFORTH, working closely with him, in the same office with him, day after day after day for 5 years. Is not his opinion worth something? Senator DANFORTH says he has the utmost respect for him. He says he is an honest man; he is a hard-working man; he is a very capable man.

Then Judge Thomas, too, has worked for 17 years for the public. He testified 5 days—24 hours—before the committee. The committee investigated him for a total of 8 days. Over the 17 years of public service, from the time he testified before the committee, nobody, nobody brought out anything against him. Why did not they come forward if they had something against him? Why did one person wait until the day before the vote on him, at the last minute, and then raise something that allegedly happened 10 years ago—10 years ago—she charged him with sexual harassment? It just does not make sense.

Mr. President, Judge Thomas has the integrity, he has the professional qualifications, and he has the judicial temperament. That is what the American Bar Association said he had. Those were the qualities they judged him on, and he was outstanding when judged by the American Bar Association.

So the President of the United States appointed him, and he investigated him before he appointed him. The Justice Department investigated him. The American Bar Association investigated him. The Judiciary Committee investigated him. How many more have to investigate him? And to have this individual, after 10 years, come up there and say he sexually harassed her—it just does not make sense. It just does not stand to logic. It will not stand up before the people who, I think, really believe in what is right in this country.

Mr. President, I am not going to take more time. I just want to say from all I have seen on this gentleman, Judge Thomas should be confirmed and he should be confirmed tomorrow afternoon. The vote should not be delayed. Why put it off? He has been investigated over and over again. I say let us vote tomorrow, and let us vote to confirm him.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will speak very briefly, and my colleague from Tennessee is going to be addressing the Senate shortly.

If I may respond just briefly to my colleague from South Carolina—and I do this only on the basis of having watched Professor Hill's press conference, a few facts that she alleges. Again, I am simply repeating so we get a little balance in the picture here.

She said she moved from the Department of Education to the Equal Employment Opportunity Commission because the harassing had stopped sometime before the transfer. And she said, "I was 25 years old and needed a job." And that is the reason for that.

Second, she said that Judge Thomas did not introduce her to the law school dean.

Third, the invitation to the University of Oklahoma was made by the law school dean. She was asked to call. She called the secretary of Judge Thomas.

Then, finally, Senator BIDEN'S statement is correct, but it is also correct that she was contacted first by the Senate, that she did not initiate it. I think there will be another statement by another member of the Judiciary Committee later today that will clarify that.

In response to the final question by Senator THURMOND, why delay it? I think that we have to recognize that we are dealing with something that is a heavy, heavy responsibility by the U.S. Senate. And both for Judge Thomas' sake, for the Court's sake, and for the sake of the people of this country, we ought to take another day or two to look at this thing and make sure we are doing the right thing. In view of the immensity of the cause, it hardly is asking too much that we delay a brief time to more thoroughly investigate this.

Mr. President, I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

ORDER OF PROCEDURE

Mr. GORE. Mr. President, I ask unanimous consent that I might be allowed to speak as if in the morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, I appreciate the indulgence of my colleagues in allowing this speech on arms control. I had intended to make this speech during morning business this morning, but I was chairing a hearing before the Commerce Committee and it lasted longer than anticipated. Consequently, I did not have an opportunity to make the speech at that time. With the indulgence of my colleagues I would like to make these remarks now.

GLOBAL WARMING

Mr. GORE. Mr. President, incidentally, if I might just say 30 seconds' worth on the reason why I missed morning business this morning. At that hearing, the principal and best known skeptic on the subject of global warming, Prof. Richard Lindzen of MIT, formally retracted or withdrew his hypothesis as to why global warming might not be occurring. It is fair to say he is still himself skeptical, but the principal argument he had advanced the scientific community as to why he believed the mechanism upon which global warming relies for most of its impact—that hypothesis he formally withdrew at 11:45 a.m. today, a significant event, I think, because among all the skeptics, he has been probably the most prominent in the scientific community.

NUCLEAR WEAPONS

Mr. GORE. Mr. President, I rise on this occasion to speak about the very dramatic events which have taken place with regard to nuclear weapons, both here in the United States and in the former Soviet Union over the last week.

When things that seem almost immutable change suddenly, there is a tendency for one's understanding to lag behind events, and for the critical faculty to be suspended. The dramatic changes that have taken place over just a week

on nuclear weaponry during morning business but I was unable to do so. I fully realize that I have been shown extreme courtesy in allowing these remarks in the midst of what has been a very intense discussion of the pending matter.

I now yield the floor.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise today to give a statement regarding the nomination of Judge Thomas.

Over the last few days, we have been engaged in what I consider one of the most important constitutional responsibilities that this body has. We all realize the important responsibility of confirming someone to the Supreme Court or to any court—it is a lifetime position. I know of nothing that I feel is more important for a U.S. Senator.

Indeed the Senate's duty of advice and consent to Supreme Court nominees reflects the balance of the power in our Constitution..

In exercising my constitutional duty of advice and consent to judicial nominees, I have always accorded the President's nominee the presumption that they are qualified or they would not be sent here in the first place.

But whether a Senator applies burden of proof standard or a presumption of fitness criterion for confirming a Supreme Court nominee, a Senator still must arrive at the same conclusion in his or her analysis—Are they suited for the job, and are they qualified for the position? Can this individual be entrusted with the tremendous responsibility of protecting the rights embodied in our Constitution?

During the hearings we have heard detractors of the process harken back for the days when nominees were not questioned by the Senate at all. I disagree with that notion.

Five days of insight into a nominee is a small price to pay for someone who will spend the next 40 years, perhaps, interpreting the Constitution. The Senate and the American public have a right to know a Supreme Court nominee's judicial philosophy. It is too important a position, with too much power over our daily lives, to not know what a nominee thinks about the great constitutional issues of our day.

In announcing that he was nominating Clarence Thomas for the Supreme Court, President Bush stated that Judge Thomas was the most qualified person for the position. We all know, I believe, that there are several judges, lawyers, and scholars who are much more qualified to be on the Supreme Court than perhaps Judge Thomas. I made such a suggestion to the White House.

But Judge Thomas need not be the most qualified person for the position.

He must, however, possess the qualities to shoulder the great responsibilities of a Supreme Court Justice. He must exhibit the intellectual capacity, experience, integrity, and temperament to serve on this country's highest court. And not only must the nominee possess those qualities, but the nominee must have the ability to exercise those qualities with restraint. In other words, the nominee must demonstrate to the American public that he or she understands the role of the Court in our governmental system and its duty to interpret, not enact laws.

I began my consideration of Judge Thomas' nomination as I do with any other nomination. I give a presumption in favor of the nominee. Those who oppose must overcome that presumption. During the August recess, I read extensively from Judge Thomas' writings, speeches, and judicial decisions. I reviewed his record at EEOC and at the Department of Education. I read analyses of his record prepared by opponents and proponents. I talked to my constituents in Arizona. I thought a lot about it.

And after this preparation, I was left with some concerns about Judge Thomas. After 5 days of testimony by Judge Thomas and hearing from over 90 witnesses, my concerns were allayed and I came to the conclusion that I could in good conscience support Judge Thomas for the Supreme Court of the United States.

And quite frankly, many of my concerns regarding Judge Thomas were only alleviated through his hearing testimony and his answers to our questions I posed and the questions that other Members posed. Judge Thomas has not been held to any greater scrutiny than the last few Supreme Court nominees. This is a man, who in a short professional career has developed a lengthy record. He has written articles, delivered numerous speeches, directed a Federal agency, testified before congressional committees, and authored Federal judicial opinions. But his record, although well-rounded, is not without controversy.

Many of my colleagues believe that Judge Thomas was less than forthcoming on several direct questions. I do not quarrel with their right to ask those questions. And I recognize their frustration with the process. However, I have no reason to question Judge Thomas' credibility and I believe that his testimony revealed his judicial philosophy.

I believe the record has several examples, and I will outline a few here.

One of the most crucial constitutional issues of our day is the right to privacy.

I believe that right exists in the constitution and that it is fundamental to the liberty and freedom that each American believes the Constitution protects.

Many potential nominees for this position, some of whom were probably on George Bush's short list, might not believe in an unenumerated right to privacy.

But in responding to questioning from Chairman BIDEN on the first day of the hearings, Judge Thomas stated that, and I quote:

> There is a right to privacy in the 14th amendment.

On the second day of hearings, my distinguished colleague, the Senator from Illinois asked Judge Thomas:

> Do you consider the right to privacy a fundamental right?

Judge Thomas responded that:

> There is a right to privacy in the Constitution, and the marital right to privacy, of course, is at the core of that, and the marital right to privacy in my view and certainly the view of the court is a fundamental right.

How clear must one be?

This is a very important point, and I was pleased to hear Judge Thomas' views.

I was also pleased to hear that Judge Thomas agrees that the fundamental right to privacy also extends to nonmarried individuals.

He repeatedly stated that he agreed with the Supreme Court's leading precedent in this area, Eisenstadt versus Baird.

Eisenstadt extended the right to privacy stated in Griswold versus Connecticut to nonmarried individuals.

In response to written questions from Chairman BIDEN, Thomas stated that—

> As I sought to make clear in my testimony, I believe that Eisenstadt was correct on both the privacy and equal protection rationales.

Now, eventually, Judge Thomas drew the line where he determined it would be improper to discuss further his view of the right to privacy.

I have no reason to quarrel with his line-drawing.

I believe that Judge Thomas had already provided the committee with some critical insight into his understanding of the right to privacy. And this Senator was satisfied with his answers on this issue of such fundamental importance to each and every individual in this country.

On another fundamental area of constitutional rights, the equal protection clause, Judge Thomas was, again, rather forthcoming. As we know, the Court has developed a three tier approach to equal protection cases with the most strict scrutiny for racial discrimination and heightened scrutiny for gender discrimination claims.

This is an area of law that I have probed with several nominees including Judge Bork, Judge Kennedy, Judge Souter, and now Judge Thomas. And

from his testimony, Judge Thomas, more so than even Justice Souter, supported heightened scrutiny for discrimination against women.

In my questioning of Judge Thomas, we had the following exchange. I asked him:

Is it fair to say that your philosophical approach, not going to any specific case, that you agree with this statement: If the court were to abandon the heightened scrutiny test as it applied to sex discrimination, gender cases, et cetera, that it would be turning the clock back on equal protection rights of women?

Judge Thomas responded:

Senator, I think that would be an appropriate statement, if you said either abandon or ratchet down.

Mr. President, I do not think there is much more you can ask from a nominee on an area of law than that. Contrast his support of the current equal protection case law with that of Judge Bork. Judge Bork argued that extending the protection of the equal protection clause to women would depart from the original intent of the 14th amendment. I, of course, disagreed with that approach and that is one of the reasons that lead to my vote against Judge Bork.

But unlike Judge Bork, Judge Thomas made it quite clear that he supports the current analysis used by the Court in treating an equal protection case. And this Senator was impressed by Judge Thomas' explanation.

In making my decision to support Judge Thomas, I did not discount Judge Thomas' controversial tenure at the EEOC.

He and I have had our differences regarding the EEOC's treatment of the claims of Hispanics and the elderly. I made this clear to him, both at his court of appeals and his Supreme Court hearings. I do not mean to question what Judge Thomas believes to be a sincere commitment to these two groups. However, it is this Senator's belief that during his tenure at the EEOC, more attention should have been accorded to the civil rights claims of these groups.

I was heartened by Judge Thomas' acknowledgement that he was frustrated by the difficulty of his mission at the EEOC. When I asked him during the hearings about his outreach efforts to Hispanics at EEOC, Thomas stated:

Well, Senator, I was, and I tried to resolve the problems. As all of us know, when you run an agency as spread out as EEOC, and with the difficult mission that we had, you have your frustrations, and I certainly had my share, but I can assure you that I tried to reach out to all the groups.

All I can say is he gave an honest, candid answer. In my judgment he did not do as good a job as I would like to have seen him do in that position. But he did not fuss around. He did not wash over it. He admitted that maybe he could have reached out more. He said he tried. What else can we ask of anybody?

This was very encouraging to hear. Much more could and should have been done for these groups during Thomas' tenure at EEOC. I think that is very clear. It is my sincere belief that Judge Thomas acted within his official capacity at the EEOC—and I add, because I believe it is important—he was earnest in his efforts. It is for these reasons I did not consider his tenure at that agency as a disqualifying factor for the Supreme Court.

I cannot hold out one item that I disagree with somebody on, and use that as the reason to turn someone down, if, indeed, they have excelled in other areas.

During the hearings, we heard from various reputable groups and individuals who opposed the nomination of Judge Thomas, including national groups representing the interests of women, African-Americans, Hispanics, and the elderly. I do believe that the opponents of Judge Thomas had a right to be concerned about his nomination.

Over the years Judge Thomas has written articles and delivered numerous speeches criticizing landmark decisions of the Court, Congress, and the civil rights community.

But I must be quite candid. During the hearings, Judge Thomas alleviated the concerns which I shared with some of his opponents. He demonstrated to me a potential for growth, an ability to recognize the role of the judiciary, and a skill in separating his prior duties with that role. It is my belief that Judge Thomas will be a guardian of the liberties embodied in our Constitution.

Drawing from a remarkable life story, Judge Thomas will bring a perspective to the Court that it is surely lacking today. His story is one of courage—a story of an individual who has risen from the indignity and pain of segregation and poverty to be considered for the Highest Court in the land. It has given him a strength of character that few of us possess.

But Judge Thomas' personal success story does not alone qualify him for the Supreme Court. In addition, he has the diversity of experience, intellectual ability, integrity and judicial temperament to succeed on the Court. I believe that he is an independent thinker beholding to no particular cause.

Mr. President, at the commencement of the Judiciary Committee hearings on Judge Thomas' nomination, I stated that when the hearings end the Senate and the American public should have a vision of Clarence Thomas' approach to the Constitution. We know have a vision of that approach. He will be a conservative jurist—that we know. But he will be conservative by respecting precedent and exercising restraint. And although Judge Thomas will bring vigor to the bench, he will not bring a conservative activist agenda. In his own words to me during the hearing, he stated and I quote:

It is important for judges not to have agendas or to have strong ideology or ideological views.

Throughout the hearings, we heard from several witnesses, who know Clarence Thomas personally and who spoke with passion of his integity. It is for this reason that I believe that Judge Thomas will not act contrary to his sworn testimony before this committee. I also believe that he was sincere in his pledge to this committee that he would "carry with him the values of his heritage: Fairness, integrity, openmindness, honesty, and hard work."

One final note regarding the most recent controversy involving this nomination—the allegations of sexual harassment. As a member of the Senate Judiciary Committee and like every other Democratic member of this committee, I was personally informed by Chairman BIDEN of these allegations.

My information came to me the day before the hearing. The chairman called me, briefed me at some length, and told me about the report. He said it was available and I said I wanted to read it. I could not read it that night but I met next day with the staff of the Judiciary Committee, with the investigator, with the FBI report and reviewed it very carefully, page by page.

Based upon my review of that, I could not conclude that there was enough credibility in the allegations to keep Judge Thomas from being confirmed, or for me not to vote the next day, September 27, on his nomination.

I might add, the public should know the Senate Judiciary Committee has a standing rule that any member—and the distinguished chair remembers from when he sat on it—any member can ask that any nomination, Supreme Court or any other one, be put off by 1 week with no vote, with no objection so exercised. Indeed, no one, on the 27th, who sat there and had knowledge of this, who had read the report, if they wanted to, raised a finger asking for an executive session to take up something that was confidential. Nobody raised the issue.

I remember even discussing it with a couple of members on the Democratic side and nobody said, "Well, let us put this off; let us, all of a sudden, wait another week and discuss this."

So I believe that it was the judgment there, even of those Senators who voted against Judge Thomas, that there was no reason or justification to now forestall or to put this off. The opportunity was there. And now this nominee is faced at the 11th, almost the 12th hour with an allegation.

I do not discredit the seriousness of these allegations and that the person who made them was well-intentioned. But I believe that Judge Thomas is entitled to a better, fairer, process of the nomination than this.

How would you feel, or anybody in this body, if the day before your elec-

tion, the day before your nomination vote, someone made an accusation and that the people who had an opportunity to question that several weeks before did not do it? Now you are stunned by this front-page story of someone who claims sexual harassment. I do not think it is right. I do not think it is fair. I think whoever leaked that information did a disservice to themselves, to this body, and to Judge Thomas.

I do not know how you rectify that because hearings are like a sieve. You cannot tell, really, which hole or portal the water comes out of; it just comes out. We will never, probably, know. As we do not know about other leaks that are distributed to the press, unauthorized, here. but in my judgment the allegations cannot be substantiated, and to put this vote off would be a travesty of justice and of this process.

By my voting in favor of the nominee to the Supreme Court, Judge Thomas, I express—and I think we express, those of us who vote for him—our trust that the nominee will exercise the immense powers of that position, judiciously. I believe that this nominee will not compromise the trust that we will place in him.

Judge Thomas has demonstrated to me that he has the ability to execute the responsibilities of a Supreme Court Justice. It is my sincere belief that Judge Thomas will thoughtfully exercise this ability and serve with distinction on the Supreme Court. And it is for these reasons that I will consent to the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

Mr. President, I particularly want to thank Dennis Burke and Karen Robb and other members of my Judiciary Committee staff, who helped me in the process of this nomination hearing.

Mr. THURMOND. Will the distinguished Senator yield?

Mr. DECONCINI. I will be glad to yield.

Mr. THURMOND. Mr. President, it has been my pleasure to serve with the distinguished Senator on the Judiciary Committee. I want to commend him for his foresight and courage in supporting this nomination as he has done. I just wanted to express my appreciation to him.

Mr. DECONCINI. I thank the Senator.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, tomorrow I intend to address myself fully to my reasons for being opposed to the confirmation of Judge Thomas. Today, Anita Hill held a press conference to make public her charge of sexual harassment against Judge Clarence Thomas while he was head of the EEOC. Her statement and her presentation were powerful. I certainly do not enjoy standing here and talking about the allegation against Judge Thomas.

One of my colleagues described these charges against Judge Thomas as distasteful, and I agree. However, I do not agree with the characterization of these charges as frivolous or petty or unimportant. The allegations against Judge Thomas made by Professor Hill are obviously serious. The issue of sexual harassment in the workplace is serious and very real for thousands of women in America every day.

I knew about Anita Hill's charge prior to the committee vote on Judge Thomas. I read her statement prior to the committee vote. I had not read the FBI statement at that time. In my case, by the time I read her statement, I had already made up my mind about Judge Thomas for a variety of reasons. I was disturbed by the allegations and, frankly, discomfited and unsure as to how to handle them.

We all get involved in this rough and tumble nomination process, but none of us ever forgets, nor should we ever forget, that human beings are caught in the middle. Personal lives and professional careers are on the line. I, for one, am quite comfortable pursuing issues relating to a nominee's professional conduct and judgment or a nominee's view on matters relating to a certain position in Government. I am profoundly uncomfortable, however, when issues cross over into a nominee's personal life.

That does not mean, however, that when we are faced with them, we can pretend that they do not exist or that we can wish them away. In this case, both Judge Thomas and Professor Hill are now caught in that unfortunate situation. It is my understanding that Professor Hill wanted this matter made known to Senators in as discreet and sensitive a way as possible. Unfortunately, that has not been the result.

As a result of her news conference today, some confusion seems to have arisen as to who first contacted Professor Hill and when that contact occurred. It is not very complicated as it was a routine inquiry by my staff. In preparation for the confirmation hearings on the Thomas nomination, several members of my staff made inquiries of literally dozens of former colleagues and individuals who had worked with Clarence Thomas over the years. Some of this work was performed by the staff of my Labor Subcommittee. They had previously been involved in the confirmation process for Mr. Thomas to be chairman of the Equal Employment Opportunity Commission.

Anita Hill was one of three women who worked with Thomas at the EEOC who were contacted by my staff. They were asked about a range of women's issues, including rumors of sexual harassment at the agency. The contact with Professor Hill occurred sometime on September 3 or 4.

I want to emphasize and point out that Ms. Hill did not make an allegation against Mr. Thomas during that September 3rd or 4th conversation. But on September 9, James Brudney, the chief counsel of my Labor Subcommittee, received a message that Anita Hill, who Mr. Brudney knew from having attended Yale Law School with her, wished to speak with him about the Thomas nomination. In response, Mr. Brudney contacted Professor Hill on September 10, and at that time, Ms. Hill first made the allegations against Mr. Thomas. After discussing it with me, the following morning, on September 11, he having talked with her on the night of September 10, I directed my staff to turn the report of the allegation over to the staff of the full committee in accordance with normal committee procedures. I not only made it clear that I felt this issue could only be appropriately addressed by the full committee and, therefore, referred the matter to be pursued in the normal course of the committee's proceedings.

I hope that will clarify any confusion regarding the time and circumstances of when Professor Hill was contacted by committee staff. She may have understandably described this contact with my staff as her first contact with Judiciary Committee staff. I took Ms. Hill's allegations into consideration before we voted in committee, but I had already determined that I would vote against Thomas based on his record, his qualifications, and his statements and his testimony before us.

I did not seek to delay the committee vote nor to raise the issue publicly or with my colleagues because it was my understanding that Ms. Hill wished that only the committee members be notified of her allegations. I believed each member would decide for himself and that Professor Hill's confidentiality needed to be protected.

Mr. President, in response to some inferences made here on the floor and elsewhere, I want to make it very clear that my office had absolutely no involvement in the release of any information dealing with Professor Hill. There is no evidence of this and that is because none exists. It is simply not the case.

Mr. President, I will address myself to the merits of the Thomas confirmation tomorrow and do it rather fully, but I wanted to clarify the facts with respect to certain information. Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I appreciate the remarks of the Senator from Ohio, and yet we have a very serious thing that has occurred here. It would be well then—and I would ask him since the Senator is hers—Does he have any idea, if I might address him through the Chair, where this leak may have come from?

Mr METZENBAUM. Mr. President, I have absolutely no idea where the leak

came from. I know nothing about it by rumor, inferentially, or otherwise. My answer to my colleague from Wyoming is that we had nothing to do with it, and we know nothing about where the leak came from.

Mr. SIMPSON. Mr. President, I appreciate hearing that. We will have to pursue that in the Senate, all of us. I think it is a very serious issue. I have reviewed the entire FBI report and the statements of the various persons interviewed, all of them, and found what others have found in their reviews—that there was nothing of substance to go on. I do not in any way belittle what this anguished person, Anita Hill, is saying. This must be a terrible situation for her—and I could see that as she spoke at her press confersnce. This one will have no end for her the rest of her life.

Mr. METZENBAUM. Will my colleague yield for a brief question?

Mr. SIMPSON. Yes, I yield.

Mr. METZENBAUM. You mentioned that you found nothing of any substance in the FBI report. Did you not learn tbat the FBI had been informed substantially of the same facts as she related them today in her press conference?

Mr. SIMPSON. Mr. President, the FBI was given this charge to perform by the committee when Ms. Hill came forward, and they did so. And the dates of the information in the FBI file are clear, and there were many employees who were interviewed. The principals were interviewed. Mr. Thomas was interviewed; Ms. Hill was interviewed; an associate of hers was interviewed; a law school olassmate was interviewed; and other people were interviewed. It was a case, as I believe it was reported, and it is certainly not my language, that it represented basically "one's word against another's word," and so nothing came of it. That is not my language, that is what was reported as the assessment of the FBI report.

But in the FBI report, there was a mention of the name of a man who is on the staff of the Senator from Ohio as the individual who sought out Ms. Hill, and who had evidently been in school with Ms. Hill. That is in the file. And I think the Senator has addressed that in saying that he had a member of his staff, who was not part of the Judiciary Committee staff, making these inquiries. They were made, and we know that took place.

So it is a sad and demeaning process all around, all around. It will not end tomorrow night at 6 o'clock when I trust we will place Clarence Thomas on the U.S. Supreme Court. How much is a person supposed to go through in these proceedings? Who are the people who drive these issues in the way they are driven? Who has made them the judges of the rest of us? They are often very young; they are often very zealous. They miss a lot of life's rocks and tough shots.

They have missed the judgment calls. They live in a world of black and white, if you will, without the nuances of life and the edges that go with that as to who will eventually get hurt in the process. And in the zeal and enthusiasm there are several people who will be hurt: Clarence Thomas, and Ms. Hill herself. Her life will never be the same—ever, ever.

She could have come forward 10 years ago or 8 years ago. She chose not to do so. Someone lured her forward and said "Go ahead, it's all right!" They left her in this terrible position, and now the refutation of her character, her integrity, will take place.

She worked for Clarence Thomas back in the days when he was with the Education Department. No one challenges that. And then she went with Clarence Thomas when he went to the EEOC. She cited these things. She has told us about them. There was no evidence whatsoever, nor did she suggest it, that he had ever physically intimidated her with sexual advances. I leave the issue of what is sexual harassment and what it entails to someone other than those of us here. I just know that her coming forward is a tough, terrible, anguishing thing she felt she had to do. But nevertheless—nevertheless she worked with Clarence Thomas and continued her association with him.

She knew him socially after the time of these allegations. At the time she left the EEOC she again voluntarily had dinner with him and visited with him once again about things in her life and his. And after that time they continued to have contact with each other down through the years. He visited her when she went to Tulsa. He visited her here. Never any question, never any part of this ever arose. Nothing ever came up until 2 days before the nomination of Judge Clarence Thomas to the Supreme Court.

She even joined in asking him to come to her law school in Norman, OK to be part of a panel. And that letter has been presented to the Senate from persons at the law school saying; Dear Judge Thomas, we are following up the request and the contact you had with Anita Hill. This was just months ago. And he was not able to attend that event.

He has seen her over the years on more than several occasions. I think that is totally lost in this miasma of sensationalism and salacious verbiage that has accompanied this.

So we know what the lead story will be tomorrow. It will be Ms. Hill's allegations against Clarence Thomas. It will be an interesting story, but it will omit certain facts, and that is what I want to mention for a minute.

Facts are very unexciting. Everyone is entitled to their own opinion, but no one is entitled to their own facts. They do not make for good gossip. They do not make for good ridicule. Maybe they do not make for much. But they are the facts.

The fact is that the allegation made by Ms. Anita Hill was investigated by the FBI. Everyone should be aware of that fact by now. I hope they do not forget that in the course of all this.

The fact is that the FBI report on the matter was submitted to the Senate Judiciary Committee and the ranking member and the chairman and various members before the vote. That is a fact. No one chose to place a hold on the nomination, to delay it in any way, to create a stumbling block or an obstacle with it, except—except—I carefully recall the negotiations last week for the unanimous-consent agreement, and it was said that we would start on that Thursday morning, and that we thought we could finish by Friday evening, even if we went late, to which there was objection, unnamed, oddly enough, just to fit the scenario of the Saturday slap and the Sunday slap and the Monday slap. So that when we get to 6 o'clock tomorrow night, it will be a full feeding frenzy.

That does ring in my head as to why we were not able to finish up Friday night, because we knew there would not be much debate, and there has not been. People have come and stated their positions. We all knew that. So there was no difficulty to get that unanimous consent.

We put it until Tuesday at 6. There was a reason for that. I think America knows the reason for that right now. Crank it up, get it all ready. I got a call in my house on Saturday night, 7 o'clock, Newsday. "You, you know"—the guy is breathing so hard he can hardly retain himself—"Oh, oh, Senator, what about this?"

I said, "What about it? I heard those rumors when he was in the EEOC. I heard those rumors before. I am a member of the Judiciary Committee. We have confirmed this man three times in the U.S. Senate and never saw this before, at least out front."

Four times, as my senior colleagues from South Carolina reminds me, four times we have been through some confidential advice-and-consent activity with Clarence Thomas. And not once has this come up. So I think you have to put this in perspective.

Then of course we could just as well name names; or if we were to do what the media do, too, in these situations, which is to say simply that an unnamed source, a highly placed source, who fiercely sought anonymity. That was language in John Tower's FBI report. I do not know how many of us could stand up to many of those unnamed sources who fiercely request anonymity. Nevertheless, that was part of the pitch that there was—and must be anonymity.

But apparently then from Newsday the ping-pong ball went to National Public Radio, and from there in not too

long a period we have it all floating in all America. Something well known to everyone, or at least those who were most intimately connected in the decision, and then of course taking on a life of its own coming from page A6 in one of our major news papers to the front page, right there—and not even an affidavit. I remind my colleagues that an affidavit is a sworn document. A statement is a statement, is a statement. No one has touched upon that.

Again, do not misread one whit about the pain this woman is feeling, or that I am not sensitive to that. That is a great shunt around here. I have heard that one before. Let us not talk about racism, guilt, emotionalism, and victimization. Those of us who speak with clarity and sincerity get tired of that one, too. I do.

So the fact is that not one member of this committee, the Judiciary Committee on which I serve, raised this matter—even not as the slightest reason for their opposition.

There are two more facts I want to mention. Let us get right down to the serious stuff because the rest of this is senseless, salacious, sensational, and demeaning to the process.

The first is that a member of the press was given access to the statement—I do not know who referred to it as an affidavit—that she gave to the FBI.

The second fact is that the statement came from somebody who was an officer or a Member of the U.S. Senate. I think we can be pretty sure of that. Somewhere that is where that came from. And under Senate rules this statement is considered a confidential communication. Not only that, but that is what she asked for—confidentiality.

She said, I do not want that to be known. I want to give it to you because I feel prodded, lured, however you want to define that. We will find that out one day, too.

She said I do not want it to become part of the public record. I just wanted you to have it.

So some gratuitous friend of hers did her in on this one too. But I can tell you that on the desk of the Presiding Officer are the rules of the Senate, and rule XXIX, paragraph 5 of the Senate rules, states explicitly:

Any Senator of officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

It would appear to this Senator that Senate rule XXIX has been violated and that this possible violation should be of great interest to the Senate Ethics Committee. I would hope that the chairman of that committee would institute such an investigation. We cannot do our business this way.

There is another one, Mr. President, that happened in these proceedings which was just as repugnant. That was when somebody on the appeals court staff somewhere, released a draft opinion of the circuit court of appeals. That is unconscionable.

There is not a judge, Democrat or Republican in his origin, or liberal or conservative who condones that—that is an absolute breadth of trust. So here comes a draft opinion that found its way, leaked from the courts by a lure from somebody up here to produce that. That is the cardinal sin of the judiciary—to release a draft opinion of a decision before the principal or the drafter has had a chance to defend his or her argument before his colleagues on a multijudge court—that never yet took place here, it still has not taken place.

One of the judges was on vacation for a long period of time, and another member was gone. Somehow that was to be a sinister, sinister, revelation—that this man made this decision which was different than what he was testifying to when he was under oath before our committee. That release is unconscionable. This place cannot work with that kind of sleazy activity. That is what it is.

At stake here, aside from the reputation of Clarence Thomas, is the reputation of this fine woman, Anita Hill, lured into this process like bearing the role of Sisyphus for the rest of her life, the pushing of the rock uphill, and watching it come back down on her.

What is also at stake is the reputation of the Senate itself. I think that is something we ought to hold in highest order.

So, since we have now come to the battle of the statements, it is like a political campaign. You do not want to do it, and then you get hammered flat by a bunch of people who lie and cheat on you, and tell untruths about your life, or your past, or your family. If you sit still for that, you lose. I have always had a crazy idea that an attack unanswered is an attack believed. Boy, do I believe that one.

There is also another part to it. An attack unanswered is an attack agreed to, if you do not respond, people will think that you agree with the allegation. Not that they believe the allegation, but that you have agreed with it.

So I have never played that game. It has placed me into a lot of fascinating heavy water in public life. But people always said, when the guy was putting the little thing on the doorknobs at night in the mayor's race, that says he kicks his dog, he has done this, and this. And people say, "Nobody pays any attention to it." That is a very lovely idea, but they do pay attention to all that. They look at it, and they say, "I did not hear any denial out of him."

So that is where we are now. And tomorrow night at 6 o'clock we will vote assuredly, because no one is going to be able to avoid that vote.

There is nothing more to be considered. But if we are going to have a great deal of high drama about statements, then I think we ought to add one more to it, since it is statement day. That is the statement of Charles A. Kothe, who is the founding dean of the O.W. Cogburn School of Law, Oral Roberts University. He says in this statement.

In 1976, I conducted a number of seminars as a public relations vehicle during our accreditation process. I had specialized in conducting civil rights seminars from the time I was vice president of the National Association of Manufacturers. During that time, I edited a book called "The Tale of 22 Cities," which was an explanation of the Civil Rights Act of 1964.

On each of the seminars, the Chairman of the EEOC was a featured speaker. And with the exception of Mrs. Norton, all of the Chairman had appeared. I scheduled such a seminar for Oral Roberts University and arranged for the Chairman, Clarence Thomas, to be the luncheon speaker. He recommended Anita Hill for one of the presentations.

I am quoting from this statement now, and I shall continue to do so, unless I notify my colleagues.

In the early fall of 1983, Clarence Thomas and Anita Hill appeared on the Oral Roberts University campus in connection with the seminar. At the luncheon where Clarence Thomas spoke, Anita Hill sat beside me. I learned then that she was from Oklahoma and was a Yale Law School graduate. Having a vacancy for the course in civil rights, I asked her if she would consider a teaching position, and she said that she would.

After the luncheon, I asked Chairman Thomas if it would be acceptable to him for her to be offered a position on our faculty. I asked if he thought she would be a good teacher. He said that it would be agreeable with him, if that was what she would like to do and added that he thought she would be a good teacher.

Immediately thereafter, I arranged for her to complete the paperwork necessary for formal appointment to the faculty. In addition to civil rights, she taught other courses.

Since them, Clarence Thomas has appeared as a speaker in Tulsa at civil rights meetings. On one occasion, Anita Hill attended a dinner meeting with me and my wife, and following that, had breakfast at my home, where Clarence Thomas was our house guest. I believe that it was on that occasion that she drove Thomas to the airport.

About 2 yeare ago, she and I were invited to present a civil rights seminar for a personnel group. She was at that time at the University of Oklahoma. We obtained much information for that occasion from the office of Clarence Thomas. In all of my relationships with her as dean, as participant in seminars, and as guest in my home, never once did she give any hint of any irregularity in her relationship with Clarence Thomas.

At the time of the confirmation hearings for his second appointment to the chairmanship of the EEOC, she made no mention of any discontent with her relationship witb Thomas. At the time of the confirmation hearing for the appointment of the circuit court of appeals, no mention was ever made about her dissatisfaction with Thomas.

He goes on to say:

I understand that she has recently invited Judge Thomas to be a speaker at the University of Oklahoma.

That request is in the RECORD showing that, just a few months ago, she talked to him on the phone and apparently urged him to come, and then there was a letter following that up, saying: "I am following up your contact with Anita Hill. We would like you to come." He was not able to be there.

Now I finish quoting:

I have come to know Clarence Thomas quite intimately over the last 7 years and have observed him in his relationship with members of his staff, as well as his conduct at social gatherings, and never once was thers any hint of unacceptable conduct with respect to women. In fact, I have never heard him make a coarse remark or engage in any off-color conversation.

I find the references to the alleged sexual harassment not only unbelievable, but preposterous. I am convinced that such are the product of fantasy.

That is from the dean of the law school that hired Anita Hill with the support of Clarence Thomas. I would hope that in the course of our dealings with each other, that we will remember one thing that we should never have forgotten when we were practicing law, if any of us did—and I can tell you certainly the fourth estate has forgotten it when something can come out of the ether at 6 o'clock on a Saturday night and suddenly become the front page of the major papers of the United States. I will tell you what it is called: fairness. If we forget that in this country, we are going to have a really tough, long haul.

And then we forgot one other thing that anyone ought to remember that ever practiced and presented themselves before the bar of justice, and that is: there are always two sides—often a lot more than two.

When will we begin to cull these remarkable people here who do our work, who have just been turned loose like dogs to pursue every mumbled phrase of Clarence Thomas, every idiosyncrasy, anything he ever told anybody, the whole spectrum of his life? Let me tell you that nobody in the range of my voice can pass that test. This is hypocrisy of the most sickening variety. There is not a person in this Chamber, in the U.S. Senate, that can pass that kind of a test.

What did you do when you were 20? How did you act? Do you still get a flush in your face from something you said to another woman or another man when you were 30, or 40, or 50? The answer is "yes," unless you are lying to yourself.

So now we have this constant testing ground of unknown testers—I will not continue in this line. That would be an improvement upon me, because I feel very strongly about this one. Nobody could pass these kinds of absurd tests, including these brilliant staff people who are turned loose to pursue the history and background of nominees. They have forgotten all about decent human conduct, and especially human feelings, and are just lost as automatons who march through this place with their own ideas of justice—which is usually tainted with partisanship. That is where justice disappears: through pinheaded partisanship. That happens to both Republicans and Demoorats. I would be quick to admit the frailty, because it is rather human.

So let's get back to the human dimension here; who are you trying to hurt? Why are you trying to hurt him? What is it going to do to his family? I watched Clarence Thomas' mother, whom I spoke to, sitting next to him for 5 days, and she said, "I have not even had time to eat or think, because people have been outside my house for 2 weeks asking me questions."

What is the purpose of that? Is that the public's right to know? Well, put me down with a check mark in the opposite box.

Then going to his sister, he made a statement about his sister and her receipt of public funds. The sister sat right there next to him for 5 days—a lovely, loyal sister. But that was not enough. I have seen that remark all over the place.

Well, go ask her. She was there. And how about the son, the questions he was asked? How about the questions about the wife and racism; who brought that up? The pontifical poops who like to hide that stuff, and they are just as racist as they accuse people of being who are on the other side. That is how that works. You do not like to get caught at the pass in life, because it is usually something you do yourself that you are not proud of, and when somebody gets you, you really react in response to that.

Then to watch the searchlight fall on this man and this family—and I will not belabor it much longer. But I think if we are going to do this in American life then there is another dimension we should pursue, and I really believe this. It does not have anything to do with muzzling the press. I have been through all that stuff, too, nothing ever muzzled, as far as I am concerned; Free rein and let 'er rip. New York Times versus Sullivan held that—I understand it and can read it. I understand public life and understand that case thoroughly.

But, at some point in time should we not be able to ask the inquisitors and interviewers who is the anonymous source? It just might be—I know it is a terrible thing to say—it might be themselves. Is that not shocking? It might just be. In fact, it has been proven to be in a couple of Supreme Court cases that it was they themselves.

So, this remarkable separation of the three branches of Government. All acoountable. Judges are accountable. We are accountable. The President is accountable. But there is one branch of society that is not accountable, and that is the fourth estate, the media. They do not have any ethics committees. A lot of their journalism schools do not even teach it. But I tell you what they really have forgotten that in their zeal and their enthusiasm and their clawing over the top of each other.

They have forgotten the code of professional ethics of their professional society, Sigma Delta Chi.

Then, Mr. President, I will conclude and also say that the word "truth" is used in that code five times and as to the words about "the public's right to know," they seem to have left out two words: It is the public's right to know "the truth," not the public's right to know gossip, hysteria, cruelty, innuendo, and forgetting at every step in the process that there are some pretty battered and abused human beings at the bottom of the pile of rubble when they finish their own idea of God's work. And do not think the American people do not spot it. They do. That is why they hold the media as low as they hold us.

And that is why—to do a favor to a fine craft called journalism and to do a favor to a fine profession called politics—we ought to present ourselves to the public on a common forum and just let the public ask the questions; not debate each other, just let the public oome forward and say "I would like to ask you why you did that to that person when I saw that person's life was ruined." Or, "What was your feeling when you took a picture of the mother with the dead child in her arms? What was the purpose for that? Was anybody hurt in that process?"

What did you think would happen when a bright, thoughtless, zealous staffer lured one of his or her old classmates from a quiet life into a maelstrom that this person may never have known?

But Anita Hill will be known. And now the great ax will start back and forth—sandwiching and steamrolling her life. She deserved better. And she had it better for 8 years, because she knew all these things and never came forward until somebody just several weeks ago said, "Bring it forward; we will keep it in confidence." And then it might even be the same person that leaked it. What hypocrisy. What a disgusting thing to watch.

And maybe I did not see enough when I came here from Cody, WY, but I practiced law in the real world for 18 years and we did not do that to each other. That is sleazy. And if that is going to continue here, then I am going to get aotive in enforcing the rules of the Senate, and we will smoke some of these turkeys out and have them on Thanksgiving.

Thank you.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. SIMPSON. I yield.

Mr. THURMOND. Mr. President, the distinguished Senator from Wyoming is a valuable Member of this body. He not only serves as an outstanding Member here as an assistant Republican leader, but he also serves ably on the Judiciary Committee. And what he has said here this evening I hope will be read by every person in America. It is important that they read his statement.

I especially wish to commend him, too, for presenting the statement by the dean of the Oral Roberts Law School in Tulsa, OK. And in that statement—it is the last paragraph, the last sentence—I remind the Senate what this dean says. And he has been with Clarence Thomas and has been with this lady who has brought these charges here. And I want to just read this last statement again which he brought out. And he knows both well. He has worked with both.

I have come to know Clarence Thomas quite intimately over the last 7 yeare and have observed him in his relationship with members of his staff, as well as his conduct at social gatherings, and never once was there any hint of unacceptable conduct with respect to women. In fact, I have never heard him make a coarse remark or engage in any off-color conversation.

I find the references to the alleged sexual harassment not only unbelievable, but preposterous. I am convinced that such are the product of fantasy.

I urge the Members of the Senate to read this entire statement.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that I might proceed for 4 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator may proceed.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, the Senate will have already learned and want to record our great anticipation of the videotaped statement by Terry Anderson which appearsd from Beirut this morning. His sister, Peggy Say, has remarked how much better he seems at this time than in the photograph released last month. In fact she maintains that the tape contains the second-best news she could hear. That her brother is healthy and in good spirits.

Mr. President, today is Terry Anderson's 2,396th day in captivity. We do not know what will happen next, but we have the greatest hopes and higher expectations and pray for all involved.

We have had a statement every day now for several years and it may be that these are coming to a close. I commend the videotape to my colleagues and ask unanimous consent that the transcript of Terry Anderson's remarks be included in the RECORD at this time.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

TERRY ANDERSON: We have radio, we have magazines, and we have a little bit of television, although most of it is inadequate. Of course, the English movies are rare.

We play chess, two have chess sets, and both Terry Waite and Tom Sutherland come in and play chess—we play every day, which passes a great deal of time.

We read Time, Newsweek, the Economist, U.S. News & World Report.

We talk a lot. We talk about everything—politics, religion, each other, our histories. We spend a great deal of time talking. That's really been our saving, having people to talk to, to share with.

And, of course, we listen to the radio. We listen to the BBC, Voice of America, Radio Monte Carlo, Radio France International. We were lucky that Tom is a fluent French-speaker, and he's taught me to speak French—not well, but sufficiently. And we have a great deal of news.

And of course we have heard, as John McCarthy would have told you, the voices of our families in recent weeks—Tom's wife, my daughter, my sisters, John Waite. We've been very pleased and very grateful by the efforts of the BBC, the Voice of America, the French radios, for the efforts that they've taken to give us messages of cheer and let us know what is going on about our situation.

Our relationships are surprising, under the circumstances fairly good, especially in the last year or two. We are treated with respect. Our guards do the best to make things easier on us. They get us the things we need. The food is not bad, sometimes good. We get medicines when we need them, for minor ailments, colds, toothaches, that kind of thing. They are very quick to give us these things. And on the whole I think we're treated as well as can be expected under these circumstances. We have very few problems with our guards, with our captors.

* * * I can tell you only about the two men that are with me, Dr. Tom Sutherland and Terry Waite. Both are well, physically and mentally, in good spirits. Both of them, as I am, are highly encouraged by the news we've been hearing on the radio, by the statements of everyone concerned looking for a solution to this problem.

I have no information about any other hostages. I know Tom and Terry are looking forward to seeking their families again, of course. Tom is looking forward to getting back to A.U.B., to going to work again as the dean. After six years with him I can tell I don't think he should be the dean; I think he sbould probably be the president.

I think the efforts of Secretary General de Cuellar are enormously helpful, probably the only thing that could have been helpful in these circumstances. I, the other two men with me, and the other hostages I have no contact with, but I think I can say they are extremely grateful to him for his efforts, for his skill in these very, very difficult negotiations and for those of his staff and all the others who are involved. I thank him, and I hope soon to thank him personally—and of course to encourage him to continue just as he has done, to keep working in exactly this line, which I think has proved to be fruitful—the only thing which has proved to be fruitful so far.

Also John McCarthy, who I know, like and admire very much—we heard you, John, on the radio several times since your release. We are grateful for the things you are doing, for the things you are continuing to do—at some cost to yourself, I know, because I'm sure you want to get back to your normal life, to your real life. We are grateful. We think, as you know, that these things do help.

And we ask you, and all the people who are involved with you—the families of the hostages, the friends of the hostages, various groups—to continue to keep this issue alive, to keep it on the forefront and not to let it drag out, not to let it come to a halt again.

We're very grateful to all of you.

I don't know what I could say about specific steps that I could recommend to the secretary general. He seems to be doing quite well by himself without my advice.

I can say I think it is an absolute necessity that everyone involved in this process on both sides, or I might even say on all sides, simply cooperate, that this is no longer the time for bargaining, this is no longer the time for anyone to try to get some small advantage out of each step in the process that might be coming to fruit here. It's simply time for everyone to cooperate, to do what is necessary to do, what has to be done as quickly as possible to free all the hostages. I mean all the hostages, not just the Westerners, Tom and Jerry and myself and the other Americans here, the Germans, but all of the hostages, including those hundreds of Lebanese who are held in Khiam and in Israel, who deserve just as much as we do to be freed, to be returned to their families. And whose freedom is absolutely necessary before this whole problem can be resolved.

I've been told just a little while ago that we can expect some good news very soon. I was not told what that good news would be, simply that it would be good for the families, for our families, and for the families of the Lebanese hostages, that is, the Lebanese in Khiam and in Israel.

I can only hope of couree that it means that someone or more people will be released on both sides. I don't know—they have not given me any specific information, only that it would be good news. We weren't told who might be released, whether it would be me or Tom or Terry or someone else.

I don't think that is terribly important at this moment, which one of us goes free or which two of us or how many Lebanese might be released in this stage of the process.

Yes, I would like to say something to the hostages, the former hostages, those of my friends and brothers who went free. We are grateful for the fact you haven't forgotten us. We've been impressed by the things you've done, the things you have said, by your dignity, conduct—especially I may say of John McCarthy.

And we know—we have heard you say and we believe that you are still concerned about us who remain and that you will do all you can to help bring the situation to an end. Keep up the good work.

I love you all, and miss you very much, especially my two daughters. I've heard Peg

many times on radio, and I can't say how grateful I am, her loyalty and her hard work over the past six and a half years.

I was delighted not too long ago to hear Sulome, her interview on the BBC, and I've seen and heard Judy, and I am more grateful than I can say to all of you.

Also to my friends and colleagues, who worked so hard to do whatever they could on this issue, I'm very grateful and more than a little humble. I can say the same for Tom and Terry. I know Tom has heard Jean, recently he heard his daughter, Kit, and was amazed and impressed—and in fact couldn't stop talking about it for a considerable period of time. I know how much he misses you, how much he loves you all, and has every hope of being with you again soon.

And Terry Waite sends his greetings to Lord Runcie, to Archbishop Carey. We've all heard a number of services in which they have been involved and others have been involved in praying for us and of the work that the Church of England has done. He's grateful and thanks you very much.

Mr. MOYNIHAN. I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. MCCONNELL. Mr. President, I rise today in support of Judge Clarence Thomas.

I will make a brief observation at the outset as someone who is not a member of the Judiciary Committee. I certainly share the view expressed by a number of Senators in the course of the proceedings today about how outrageous it is that confidential documents are being leaked by someone from the Judiciary Committee the weekend before this nomination is to be voted on.

Frankly, it is outrageous that confidential information is ever leaked around here. The fact that it has happened before does not make it any better.

I am not quite certain what the rules of the Senate are in pursuing the source of the leak, but, Mr. President, I certainly hope that every effort will be made by the committee and by the Senate to find out exactly who leaked this information, and whatever the penalty for that may be, in the judgment of this Senator, it ought to be imposed.

Mr. President, as I indicated earlier, I would like to speak for a few minutes in support of the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

A story about the Thomas nomination recently came to my attention, and I would like to repeat it, because I think it says a lot about what is involved with this nomination.

Shortly after the nomination was announced, the Thomases were at home one evening when there was an agitated knock at the door. Mrs. Thomas looked through a window to see an unshaven, dirty young man standing on the porch. Apprehensively, Mrs. Thomas opened the door slightly and asked the man what he wanted at this late hour.

The man responded by saying;

You probably don't remember me, but I sealed your driveway last summer. I used to appreciate how your husband would sit and talk to me. I felt like he really was interested in what I had to say.

A few months ago, my truck broke down, and your husband saw me and stopped. He took me to a gas station and made sure I was taken care of.

I just wanted to tell you that I feel like its him and me going through this together—because Mr. Thomas is one of us.

I relate this story because I think there are a lot of people out there, regardless of the color of their skin or where they came from, who feel that Clarence Thomas is "one of us"—particularly those of us who came from anonymous little towns, like Pin Point, GA—or my own birthplace of Sheffield, AL. We remember the humble beginnings, the scrimped savings, the strong family values, the lessons of hard times, hard work, and high hopes.

Not everyone born in such circumstances fulfills those high hopes, but Clarence Thomas clearly has. Building on the upbringing of his grandparents, and the solid education provided by Franciscan nuns, Thomas went on to Yale Law School, then to the Missouri attorney general's office, then to the EEOC, and on to the Court of Appeals for the D.C. Circuit.

Now he stands at the portals of the highest court in the land—probably exceeding even the highest hopes of his barely literate, but tremendously determined grandfather.

Today, the only thing standing between Clarence Thomas and the prize is this Senate body.

Some have come to this floor saying they will not support the nominee, because he did not reveal how he would vote on sensitive issues likely to come before the Supreme Court. I might say that I, too, would like to know how a Justice Thomas might rule on certain issues I am concerned about.

But I understand how such disclosures could prejudice his approach to specific cases, and I accept his decision not to comment on certain unsettled areas of constitutional law.

Further, I fail to see why we should hold Clarence Thomas to a different standard than we have applied to every other nominee who has been confirmed by this body, ever since I have been a Member of it.

Each of these other nominees flatly refused to comment on unsettled areas of the law—and they were not penalized for it. Yet there are those who want to punish Judge Thomas for taking the very same tack.

Above the front colonnade of the Supreme Court, this motto is etched in stone: "Equal Justice Under Law." If this motto means anything, it means that we do not use different standards for different people, depending on whether we like that person's views, or religion, or national origin, or color. And it seems to me that those who are opposing Judge Thomas, on the basis of his refusal to discuss certain issues, are violating that fundamental rule of equal justice.

Others have come out, perhaps a little more forthrightly, and said that they will oppose Judge Thomas because he is just not liberal enough for them. He does not satisfy their liberal litmus tests on issues like quotas and criminals' rights.

While that kind of approach is at least honest, it reflects a historio debasement of the advice and consent role invested in the Senate by our Constitution.

Back when I was serving as chief legislative assistant to Senator Marlow Cook, I wrote a law review article describing the Senate's advice and consent role in rejecting President Nixon's nominations of Judge Clement Haynsworth and Judge Harrold Carswell to the Supreme Court.

In that article, I noted that even though there were obvious political factors involved in the rejection of both nominees, the Senate went to great lengths to justify its action on the basis of the nominees' qualifications and fitness for the post.

In the confirmation debates, the Senate avoided discussing politios—even though politics played an important role in these proceedings. Instead, it focused on matters of professional qualifications, ethical propriety, and judicial temperament—not on the ideological views of the nominee.

Now, all of that has gone out the window. Judge Thomas is clearly qualified to the post—as was Judge Robert Bork before him. After processing 36,000 pages of documents and listening to about 100 witnesses, the Senate Judiciary Committee could find no blemish of ethical impropriety, offiolal misconduct, or professional incompetence.

So, according to the old advice and consent standard followed by this body, Judge Thomas should be confirmed immediately to the Supreme Court.

Now, however, the nominee's views are the central focus of the advice and consent role—perhaps even more than qualifications, intellect, or experience. And when the nominee has not publicly

expressed his views, or declines to provide them in the confirmation hearings, then the views of the President who chose the nominee become the issue.

If anyone doubts whether political correctness is now more important than qualifications in Supreme Court nominations, just remember Judge Bork.

I believe this is an unfortunate debasement of our solemn advice and consent role. Through no fault of the members of the Judiciary Committee, for whom I have great respect, these confirmation hearings are deteriorating into a special interest circus.

Liberals, who are frustrated because their candidates have not been able to nominate a single Supreme Court Justice for a quarter-century, have taken the role of spoiler—carving up the nominees even before they are out of the starting gate.

This nomination was no exception: As soon as the President announced his choice, the special interest groups lined up their firing squad and vowed to "Bork him"—and to "kill him politically."

The confirmation hearings that followed were merely the lastest vintage of these old sour grapes.

Increasingly, the confirmation process resembles a national Supreme Court election: Polls are taken, millions of dollars are raised, TV ads are run, press conferences are held, direct mail is sent out by the truckload, and spin-doctors appear on the nightly news disoussing who won the latest round.

The only difference between the modern Supreme Court confirmation process and a real election is that average people do not get to vote. That is what the Constitution provides, and I believe it is a wise rule.

Instead, however, the process is being hijacked by the beltway special interest machine, which clamors for one result or another, depending on each group's narrow, self-serving agenda. I do not think that is what the framers of the Constitution envisioned when they drafted the advice and consent clause.

Actually, the modern Supreme Court confirmation process is simply an outgrowth of the tide of political correctness that is suffocating intellectual life at our Nation's colleges an universities.

While even the Soviet Union is dismantling its KGB, in America, the liberal thought-police are poring over old journals, speeches, government documents, and newsclippings—looking for evidence of treason against the liberal doctrine.

If you listened to the testimony given by liberal interest groups against Judge Thomas, you probably noticed that there is a new oode-word for "political correctness"—it is the word "mainstream".

According to these groups—some of which favor racial quotas, criminals' rights, and leniency for child pornographers, Judge Clarence Thomas is not in the mainstream of political ideology. Yet when you find out what these groups really stand for, you realize that the main stream they are talking about is the Potomac River.

For these groups, Thomas's capital offense is that he does not buy into the beltway orthodoxy of government giveaways, victimization, excuses, and rights without responsibilities.

Unlike these groups, Judge Thomas sees life beyond the beltway. He has seen with his own eyes the failure of government handouts. He is a living testament to the importance of education, hard work, discipline, and strong family values. And he knows how quotas and other forms of special treatment rob suocessful minorities of their rightful sense of proud achievement.

Even though many Americans have not endured the incredible life struggle that Judge Thomas has, I expect most people intuitively think the same way he does on these issues. That may be the reason why that workman on the Thomases' porch said what he said that night: "I feel like its him and me going through this together—because Mr. Thomas is one of us."

He does not think like a beltway regular. He did not grow up in privileged circumstances. And he does not forget the importance of everyday people—even the workman sealing his driveway. That kind of outlook is a rare commodity in Washington; and together with his professional qualifications, his distinguished record, his ethical propriety, and his sound judicial temperament, it makes Judge Clarence Thomas an ideal appointment to the U.S. Supreme Court.

For these reasons, I shall vote to support Judge Thomas tomorrow night.

I yield the floor.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PIPELINE SAFETY IMPROVEMENT ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous oonsent that the Senate proceed to the immediate consideration of Calendar No. 226, S. 1583, the Pipeline Safety Improvement Act; that the committee amendments be agreed to; that any statements appear at the appropriate place in the RECORD as if read; that the bill be deemed read three times and passed; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to, as follows:

S. 1583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Pipeline Safety Improvement Act of 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) NATURAL GAS PIPELINE SAFETY.—Section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1684(a)) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by inserting immediately after paragraph (9) the following new paragraphs:

"(10) $5,562,000 for the fiscal year ending September 30, 1992;

"(11) $5,807,000 for the fiscal year ending September 3, *30,* 1993; and

"(12) $6,062,000 for the fiscal year ending September 30, 1994.".

(b) HAZARDOUS LIQUID PIPELINE SAFETY.—Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2013(a)) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by inserting immediately after paragraph (9) the following new paragraphs:

"(10) $1,391,000 for the fiscal year ending September 30, 1992;

"(11) $1,452,000 for the fiscal year ending September 30, 1993; and

"(12) $1,516,000 for the fiscal year ending September 30, 1994.".

(c) GRANTS-IN-AID.—Section 17(c) of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1684(c)) is amended—

(1) by striking "and" immediately after "1990,"; and

(2) by inserting ", $7,000,000 for the fiscal year ending September 30, 1992, $7,280,000 for the fiscal year ending September 30, 1993, and $7,557,000 for the fiscal year ending September 30, 1994" after "1991".

DEFINITIONS

SEC. 3. (a) NATURAL GAS PIPELINE SAFETY.—Section 2 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1671) is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(18) 'Environmentally sensitive areas' shall be as defined hy the Secretary and shall include, at a minimum—

"(A) earthquake zones and areas subject to substantial ground movements such as landslides;

"(B) areas where ground water contamination would be likely in the event of the rupture of a pipeline facility;

"(C) freshwater lakes, rivers, and waterways; and

"(D) river deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined,

except to the extent that the Secretary finds that such inclusion will not contribute sub-

honored for their exceptional contributions to their schools and communities. Notable is the fact that these special individuals are nominated and chosen by their peers within the National Association of Elementary School Principals.

Through her educational philosophy of cohesiveness and involvement, principal Fernandez has promoted the concept of the all-inclusive learning unit. Formal PTA meetings have been replaced by Aloha Picnics. Parents are encouraged to sit through lessons and eat lunch alongside their children.

Francine revamped Kailua's curriculum and initiated innovative efforts in such areas as science and the performing arts. She has accomplished the dream of all educators—the establishment of a committed educational family among staff, parents, students, and the community at large.

I applaud Francine Fernandez for everything she has done to enhance the quality of our children's education. Francine has brought caring, understanding, compassion, and determination to her position. She has been instrumental in bringing a deep sense of pride and achievement to everyone who has been a part of the Kailua Elementary learning experience over the past 6 years.

Mr. President, on behalf of the State of Hawaii, I ask the Senate to join me in commending Ms. Francine C. Fernandez, Hawaii's National distinguished Principal of 1991.●

AWARD FOR MELISSA POE FOR ENVIRONMENTAL WORK

● Mr. GORE. Mr. President, I am pleased to inform my colleagues that a young Tennessean has been recognized for her work in helping to promote the importance of preserving and protecting our environment. Melissa Poe of Nashville has been chosen to receive a "G.I. Joe Real American Hero" award.

Melissa, who became interested in environmental concerns several years ago after watching an episode of "Highway to Heaven" about the effects of pollution on the environment, began a club for young people called Kids for a Clean Environment (Kids FACE). The purpose of her organization is to encourage individuals to become more involved in the protection and preservation of our environment. Melissa has spoken to representatives of the Environmental Protection Agency, as well as the United Nations, about her club's goals and activities. In addition, her group plans to present next year to the U.N. Global Environmental Forum in Brazil a resolution addressing the issue of environmental destruction.

In the last few years, our society has become more concerned about the environmental problems that confront us. I am convinced that we face serious challenges, and for this reason, I introduced legislation which is designed to confront a host of environmental challenges and help prevent future damage in this area. While this is an important initiative which calls upon the Federal Government to develop a plan to promote environmental protection, the individual efforts of people in neighborhoods around the country are important. I believe Melissa has contributed greatly to this effort and commend her for her work in helping protect the natural resources we now enjoy. If we do not wish to leave future generations wondering why we allowed the destruction of our global environment, then we must act now and encourage others to follow the fine example Melissa Poe has set.●

CIVIL RIGHTS ACT OF 1991

Mr. MITCHELL. Mr. President, we are awaiting the distinguished Republican leader, or his consent to proceed to the next matter on the agenda, which is S. 1745, the Civil Rights Act of 1991. I had previously requested consent to enable the Senate to begin consideration of that bill on Tuesday, October 15, when the Senate returns to session. I have been advised that our Republican colleagues refuse to grant that consent. Therefore, we will have to make a motion to proceed to the bill on which we will have to file a cloture motion so as to enable us to proceed to the bill.

That vote, Mr. President, either by the process I just described or by unanimous consent—that will be up to our distinguished colleague—will occur at 2:30 p.m. on next Tuesday, October 15. We are just waiting now to get word on how our colleagues will prefer to proceed in that regard.

UNANIMOUS-CONSENT REQUEST—S. 1745

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 236, S. 1745, the Civil Rights Act of 1991.

Mr. HATCH. Mr. President, on behalf of the Republican leader, I have to object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I now move to proceed to Calendar No. 236, S. 1745, the Civil Rights Act of 1991, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

Mr. HATCH. Mr. President, the same objection stands on behalf of the Republican leader.

The PRESIDING OFFICER. Objection to the motion is not in order, and the clerk will report the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to a close debate on the motion to proceed to the consideration of S. 1745, a bill to amend the Civil Rights Act of 1964.

Paul Simon, Paul Wellstone, Joe Biden, Bob Graham, Claiborne Pell, Wendell Ford, Paul Sarbanes, Richard H. Bryan, Christopher Dodd, Bill Bradley, Joseph Lieberman, Edward M. Kennedy, Don Riegle, Al Gore, Terry Sanford, John D. Rockefeller IV.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The Senator may withdraw the motion.

So the motion was withdrawn.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I have discussed this matter previously with the distinguished Republican leader, and so I will not announce for the information of Senators that there will be a rollcall vote at 2:30 p.m. on Tuesday, October 15, either on this cloture motion on the motion to proceed to the civil rights bill or, if for some reason that is vitiated between now and then, on my motion to instruct the Sergeant at Arms to request the presence of Senators; so that Senators can now anticipate and prepare for a vote at 2:30 p.m. on Tuesday, October 15.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. MITCHELL. Mr. President, I know that my colleagues wish to address the Senate, so I will momentarily seek consent that the Senate stand in recess following their remarks. I would like now to make a brief comment with respect to the Thomas nomination.

All Senators should be aware that the FBI report inquiring into the assertions made by Prof. Anita Hill and the response thereto by Judge Thomas and the results of other interviews, is available to all Senators. Any Senator who wishes to review that report, and in view of the gravity of the matter, both the importance of the position involved and the seriousness of the assertion, I recommend that all Senators avail themselves of that opportunity so they can be as fully informed as possible with respect to this nomination.

Mr. President, there has been a considerable amount of discussion in the past day or so about the process with respect to the nomination and the handling of the assertion by Professor Hill. I want to state at the outset that I be-

lieve the chairman of the Judiciary Committee, Senator BIDEN, to be superbly qualified by intelligence, ability, fairhandedness, to serve in that important position, and he has discharged that responsibility consistent with his past practice of fairness and what I think all will agree is exemplary leadership in this matter.

On the evening of Wednesday, September 25, just a little less than 2 weeks ago, Senator BIDEN and Senator THURMOND, the ranking Republican member of the committee, asked to see Senator DOLE, the Republican leader, and myself, the majority leader.

At that time, Senator BIDEN informed us orally of the nature of the matter, the statements made by Professor Hill and Judge Thomas' response to those statements, and indicted that Professor Hill had requested that the information be made available to members of the committee and, further, that it not be made available to the public because of her desire to retain her anonymity in the matter, although she understood and accepted the fact that the members of the committee would be apprised of her identity.

Senator BIDEN indicated to me that he intended to act in accordance with Professor Hill's wishes and in accordance with what he felt to be the most fair way to proceed, and accordingly advised that he intended to advise all of the Democratic members of the committee but not to make the information available beyond that in accordance with Professor Hill's request.

I am advised subsequently, as recently as today, that Senator BIDEN did in fact notify each of the Democratic members of the committee, and I have been under the assumption that similar action was taken with respect to the Republican members of the committee, but I do not have any knowledge of that specifically.

I know the Senator from Utah is a Republican member of the committee and perhaps he may wish to comment on it. I am not asking him to do so. That was my understanding.

So that subsequently, the matter having been handled in accordance with the request made by Professor Hill and in a manner that Senator BIDEN felt fair and appropriate, a judgment which I shared, this information has become public.

In the interim, prior to it becoming public, in the expectation and belief that the matter had been handled as requested, a unanimous-consent agreement was reached in the Senate last week pursuant to which the vote will be held tomorrow evening following 4 full days of debate.

A number of Senators have asked me today about the possibility of delaying the vote, as have a number of reporters calling with inquiries, and I have informed them that sinoe the vote was set by unanimous consent under the rules of the Senate, it would take unanimous consent to change the vote, that is, each of the 100 Senators having agreed to the setting of the vote, each of the 100 Senators would now have to agree to any change in the setting or the timing of the vote.

It is my belief that is highly unlikely in the current circumstances that all Senators would so agree, and so the matter now rests in that circumstance. A number of Senators who have previously expressed their intention to vote for Judge Thomas have, I am advised, asked for delay in the matter. But I indicated to them, at least those who have spoken to me, that would require unanimous consent, and it is my understanding that unanimous consent would not now be forthcoming. So barring some change in the situation, I anticipate that the vote will therefore by operation of the rules occur at 6 p.m. tomorrow.

I wanted to make that explanation so there can be no misunderstanding about the manner in which this has been handled and to reaffirm my very strong and deeply held feeling of admiration for Senator BIDEN and support for the manner in which he has handled this and all other matters involving this and other nominations before that committee.

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. MITCHELL. Mr. President, I am now going to ask unanimous consent that following remarks to the Senate by the Senator from Utah and the Senator from Nebraska, the Senate then stand in recess as under the order until 9:30 a.m. on Tuesday, October 8.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, therefore, I understand that Senator HATCH will be recognized to address the Senate for such time as he wishes, and then Senator EXON will be recognized to address the Senate for such time as he wishes, following which the Senate will be in recess. Is that correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. MITCHELL. Mr. President, I thank my colleagues for their courtesy, and I now yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. HATCH. Mr. President, I thank the majority leader. I certainly do not want to keep the Senate long. I wish to make a couple of further points with regard to the Thomas nomination.

I hope the majority leader will have this vote tomorrow evening. I understand if Senator BIDEN and Senator THURMOND get together and decide otherwise, that is another matter. I hope the vote will take place. I do not see what difference it is going to make. You have Ms. Hill saying one thing and Clarence Thomas saying another. I think, to be honest with you, it is time to vote and let us do it.

But, Mr. President, in the New York Times today, Phyllis Berry, who worked for Judge Thomas at the EEOC, denied that Judge Thomas had any sexual interest in Anita Hill at all. At her press conference today, Ms. Hill said that she did not know Phyllis Berry and Phyllis Berry did not know her.

Now, I have a statement of today's date from Miss Berry, who is now Phyllis Berry Myers, and here is what she says, dated October 7, 1991:

> This is in response to Anita Hill's statement at a press conference indicating that she did not know me and I did not know her. That is absolutely false. I knew her quite well in a professional context. It was part of my job to know and work with the Chairman's personal staff.
>
> I was employed at the Equal Employment Opportunity——

Keep in mind, I would interpolate here, that the allegations allegedly occurred in 1981 while Clarence Thomas was the Assistant Secretary for Education in charge of civil rights. Ms. Hill continued to work for him there and then moved over as a member of his personal staff to the EEOC where she continued to work with him for 2 more years. Nobody was going to fire her. She indicated in her remarks today that she was afraid she might not have a job.

Well, nobody could fire her. She was an attorney, graduate of Yale Law School. She knew what was going on.

Let me continue with the letter, what Miss Phyllis Berry Myers had to say in contradiction to Anita Hill:

> I was employed at the Equal Employment Opportunity Commission from June of 1982 until February 1987. I was asked by Chairman Thomas to come work with him at the Commission to do three things:
>
> (1) Assist in assessing/organizing his personal staff, scheduling, etc.
>
> (2) Assist in professionalizing the Office of Congressional Affairs (as it was called at that time).
>
> (3) Assist in reorganizing the Office of Public Affairs (as it was called at that time).
>
> Anita Hill was a member of Clarence Thomas's personal staff when I joined the Commission. J.C. Alvarez, Allyson Dunoan, Bill Ng, Carlton Stewart, any of the office directors at that time and many others can attest to that fact and vouch as to what my responsibilities were as they related to his personal staff.
>
> There were staff meetings on Monday mornings. Anita Hill attended those meetings. So did I.
>
> Understanding the political complexities of policy options recommended by his personal staff was part of my responsibilities. That part of my job may not have made me

a popular person, but it certainly did not make me a person you could forget!

It is in that context that I knew Anita Hill, especially if I had to discuss her recommendations to the Chairman on a particular issue.

In December 1983, I was named Director of the Office of Congressional Affairs.

At the Commission, I was Clarence Thomas's political eyes and ears and the meant I knew a great deal about his personal life as well.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OCTOBER 7, 1991.

This is in response to Anita Hill's statement at a press conference indicating that she did not know me and I did not know her. That is absolutely false. I knew her quite well in a professional context. It was part of my job to know and work with the Chairman's personal staff.

I was employed at the Equal Employment Opportunity Commission from June of 1982 until February 1987. I was asked by Chairman Thomas to come work with him at the Commission to do three things:

(1) Assist in assessing/organizing his personal staff, scheduling, etc.

(2) Assist in professionalizing the Office of Congressional Affairs (as it was called at that time).

(3) Assist in reorganizing the Office of Public Affairs (as it was called at that time).

Anita Hill was a member of Clarence Thomas's personal staff when I joined the Commission. J.C. Alvarez, Allyson Duncan, Bill Ng, Carlton Stewart, any of the office directors at that time and many others can attest to that fact and vouch as to what my responsibilities were as they related to his personal staff.

There were staff meetings on Monday mornings. Anita Hill attended those meetings. So did I.

Understanding the political complexities of policy options recommended by his personal staff was part of my responsibilities. That part of my job may not have made me a popular person, but it certainly did not make me a person you could forget!

It is in that context that I knew Anita Hill, especially if I had to discuss her recommendations to the Chairman on a particular issue.

In December 1983, I was named Director of the Office of Congressional Affairs.

At the Commission, I was Clarence Thomas's political eyes and ears and the meant I knew a great deal about his personal life as well.

PHYLLIS BERRY MYERS.

Mr. HATCH. When you add that to the statement of Armstrong Williams, the managing partner of the Graham Williams Group, dated October 7—I believe Senator THURMOND read this into the RECORD, but I think I will read it into the RECORD again following up on Miss Phyllis Berry Myers' statement.

DEAR SENATOR THURMOND: As someone who worked with Judge Clarence Thomas from 1983 to 1986 I also had the opportunity to work with Ms. Anita Hill. I must tell you that during that time I was very uncomfortable with Ms. Hill. I often questioned her motives. This concern was something I expressed to Judge Thomas on more than one occasion.

Furthermore, I found her to be untrustworthy, selfish and extremely bitter following a colleague's appointment to head the Office of Legal Council at EEOC. A position on that Hill made quite clear she coveted. After she was passed over for the promotion, she was adamant in her desire to leave the agency and discussed this with me privately.

I also question her motivation when it comes to her recent allegations. Especially since Ms. Hill discussed with me her admiration for Judge Thomas' commitment to fight for minorities and women, and his fair treatment of women at the agency. I know, personally, that these are the rantings of a disgruntled employee who has reduced herself to lying.

I ask you, if this was a man she should loath for sexual harassment, then why did she maintain contact and continue to communicate with him? Why did she follow him from the Education Department to the EEOC? Why did she only have praise for him in her discussions with me? Furthermore, Judge Thomas bslieved this woman to be a friend and someone of great intellect and wanted only to assist her as she moved along in her career.

I am sure having had knowledge of the situation prior to this past weekend is evidence that you also question Ms. Hill's accusations and credibility. I urge the Senate Judiciary Committee to listen to these allegations with a grain of salt.

That is pretty strong language.

In closing, as I described her ten years ago to Judge Thomas, I do so now. She always had to have the final word and the last laugh. I see now that some people just never change.

I look forward to your confirming the Judge to our nation's highest court.

Mr. President, I am not here to run down Ms. Hill. I am not even here to find particular fault with Ms. Hill. I felt that she presented herself quite well today.

There were some things I could be critical of personally. For all the expressions of wanting not to have publicity and to avoid publicity, I personally felt that she looked as though she enjoyed having the publicity today.

But be that as it may, her story just does not add up. She worked with Clarence Thomas at the Department of Education where she had a career appointment. She did not have to lose that job. She was not about to lose a job. She had a permanent job there. She then, after these alleged occurrences of so-called sexual harassment, then moves to the EEOC, that overviews all of these sexual harassment charges; she moves there on the personal staff of Clarence Thomas, the Chairman of the Commission.

She saw us confirm Clarence Thomas for that job. She saw us reconfirm Clarence Thomas. She stayed there 2 years working with Clarence Thomas. Not one whimper, not one word, not one expression about sexual harassment. She saw two confirmations, both in an area where they overview sexual harassment.

Then Clarence Thomas becomes nominated to the Circuit Court of Appeals for the District of Columbia and she sees that confirmation; not one word out of her. As a matter of fact, he then gets nominated to the Supreme Court of the United States after serving almost 2 years on the circuit court of appeals; not one public word out of her through the hearings.

Then all of a sudden—I suppose because of Senator METZENBAUM's staff who were members of the Labor Committee, not the Judiciary Committee, and others, according to the FBI report, from at least one other Senator's staff—after they contaoted her—she said they contacted her, as I recall. And Senator METZENBAUM sald she contacted them. But after they contacted her, or she contacted them, whichever the case may be, she still did not want to be involved until finally the full committee staff discussed the matter with her after September 13.

Even then she did not want this matter to be made public. I wonder what she thought she was doing. The only way it could have been made public was when a member of that committee, in violation of the rules of the Senate, in flagrant violation, leaked the FBI report. That is what happened.

Is it not amazing that instead of leaking it after the September 3 original investigation by Labor Committee staff members who had nothing to do with the Judiciary Committee, it is leaked after everybody goes home last Friday. I had predicted—I think I did here on the floor—if I did not, I meant to—I certalnly said it in a couple of interviews, that: "You watch, they are going to smear Clarence Thomas over the weekend," and that is what they did. And one of the most scurrilous smear jobs I have seen in a long time.

Frankly, why? If these things are true, then why did she not, as a graduate of Yale Law School, raise them at the Department of Education? If they are true, then why did she not, as a graduate of Yale Law School, raise it at the EEOC? If they are true, then why did she not, after she left the EEOC and no longer had to worry about her job, so to speak—she never had to worry anyway, I have to tell you that—why did not she raise them in the second confirmation hearings?

I presided over those two confirmation hearings. If they are true, why did not she raise them when Clarence Thomas was nominated and confirmed to the Circuit Court of Appeals for the District of Columbia? And if they are true, why did she not raise them to the committee? We had 100 witnesses. One more would not have made any difference. As a matter of fact, it would have been the right thing to do if that is the way things operate in her mind, 10 years after the fact.

I have to say these letters from Ms. Berry Myers and Mr. Williams will cast

grave doubt on what she has said. I also have to tell you in closing one other thing—and I do not mean to hold my colleague up, I apologize to him—but I have had regular chats with Clarence Thomas, Judge Thomas, a man I have great admiration and respect for ever since his nomination. I chatted with him again today. He said, "Senator, that just never happened. That just is not true. I would not do that." He said, "I do not know why she is doing that."

He did say that there were others whose work was preferred over hers, and that may be partially the problem here. There were others who did better analytical and more thoughtful work. But he did not know why she would do this. But he said, "You know, Senator," he said, "this is very detrimental and harmful to my family." He said, "I have never been through anything like this before." I think it is a crying shame that he has to go through it in an October surprise like an election between two cheap politicians, or at least one cheap politician, a few days before the final vote is to take place.

There are enough questions about why this had to be, why this was delayed—and why these particular approaches at this particular moment—that I think anybody has to give Clarence Thomas the benefit of the doubt.

Frankly, his reputation is an absolutely impeccable one and unimpeachable, in my opinion, having sat through all five confirmation proceedings and having presided over three of them.

I just wanted to make this clear before I left this evening. I think it is important that it be made clear there have been some reprehensible activities by the Members of the Senate or their staffers, or both, in this matter. There have been violations of the Senate rules. And they are important rules. I have to say those violations ought to be investigated.

Frankly, I am getting the opinion that some people stop at nothing to get their ideological aims fulfilled, even if it means smearing a very fine man and his family.

Mr. President, I will have more remarks tomorrow because there is even more to bring up. But I do not want to delay my colleague who has had to wait this long.

So with that, I will yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, on Friday, this Senator came on the floor of the U.S. Senate and made a talk about the process that has brought Judge Thomas to the U.S. Senate for confirmation was somewhat flawed, but in a speech I said that I had had an interview with him. I cited the reasons that I intended to support him on the Tuesday night vote. Among them was that I thought he had judicial temperament which, from my experience in appointing many judges as Governor of Nebraska, and having been involved in many confirmation processes here, has to be the key, and always has been, for making a determination. I thought he had that. I still think he has that. I cited his intelligence, his approach, his openness, all of which, to me, convinced me that he should be confirmed as a member of the Supreme Court.

Saturday evening, I received a press call at my home in Lincoln, NE, from an Omaha station wanting to know what I felt about the revelations that had just come out, and I inquired, "What revelations? Then unfolded this story.

I said at that time—and I feel the same way here on the floor of the Senate on Monday, after having just returned within the last hour or so from home—that it seemed to me at that time, when I was first told, this was something that came out of the blue very late in the process and, therefore, I did not place a great deal of credence in it at that time; but I did promise that I thought I had the responsibility to take a look to see what was going on.

Since Saturday night and this Monday night, I have received a lot of information, a great deal of conflicting information on both sides of this issue. I heard Professor Hill today on television. I thought she was not only a good witness, as I think has been referenced on the floor today, but she was very credible, in my opinion, from what she had to say.

We do not yet know the other side of the story. Unfortunately, the way things are working in politics these days, including appointments to high positions, there is a lot of intrigue and counterintrigue which goes on behind the scenes. I deplore that. I have never been a part of personal attacks or vicious, unsubstantiated charges against anyone that I have ever known in politics or outside of politics. But it seems to me that however, this bombshell got into the press, whether it was done correctly or incorrectly, is not the basic question that faces the U.S. Senate.

The question that faces the U.S. Senate, I suggest, Mr. President, is: What is the truth? I am fearful that we are not going to be able to discover the whole, and nothing but the truth, between now and this time tomorrow night when we are scheduled to vote. I was not aware of the fact, until the majority leader just made the statement, that the FBI files would be available to me. There is no way that I could or would vote to confirm Judge Thomas to the Supreme Court without personally having looked at the FBI files. I also feel that after I look at those files, I may have some other questions that I might want to talk to other people about.

Mr. President, it seems to me that, while I do not know whether anybody has suggested this on the floor of the U.S. Senate or not, as a once supporter of Judge Thomas, I am formally requesting on the floor of the Senate now that this vote be delayed from tomorrow night at 6 o'clock until sometime next week. It may be that between now and tomorrow night at 6 o'clock this one Senator could collect enough information and read enough reports to make a final determination, but I announce to all that my statement of last Friday that I intend to vote for Judge Thomas at 6 o'clock on Tuesday evening is not sure as of 7 o'clock this evening, Monday night.

I listened very carefully to my great friend and colleague from the State of Utah, and I listened to the letters that he had read. While those lend some credence to my support for the Thomas nomination, it also whets my appetite to find out a little bit more. I suggest, Mr. President, that I think it would be unwise for any Member of the U.S. Senate, regardless of which side of the aisle we are on—because it is not a political issue—it would be unconscionable, it seems to me—at least I do not know how I could explain to my citizens how I voted one way or the other, given the new information, until at least I had taken the time to study the FBI report in considerable detail and make some further inquiries.

It seems to me, Mr. President, that as unfortunate as this all is—and if it is a political trick, if Professor Hill has become the instrumentation of somebody that wants to do ill for no good reason to Judge Thomas, then that is a sad, sad case indeed. I do not know what the other people of the United States think, or thought, but at least this one Senator felt that she raised some questions and some points that simply cannot be swept up and brushed under the rug, and that we cannot drive ahead with the nomination without at least checking to see the likely authenticity of the charges and countercharges.

I wondered, after I heard Professor Hill today, what her motives could possibly have been, because if she is saying what I thought she said, she has not volunteered anything from the beginning, she has not sought even to give a statement, and she has not even certainly thought about going to the press; that all of her actions, as I understand it, had come about because she was questioned, and she thought she had a responsibility, when she was questioned by proper officials, to tell the truth, as she saw it. Maybe that is not the truth, Mr. President. But I think for the U.S. Senate to dismiss out of hand with one or two or three letters from people that feel far differently about her charges than she does, or her allegations—call them what you will—then I think we would

be rushing to judgment that would not set us in very good sights, as far as the people of the United States are concerned.

I have not made a determination as of now how I would vote on this. If the vote were 7 o'clock tonight, I would not vote to confirm, because I would not have the opportunity to make the study and judgment that I think is necessary that falls on me and my colleagues.

I suppose that this evening I could go up and read the FBI report, and then some people might say: Does that not satisfy you? I have read hundreds of FBI reports since coming to the Senate, as part of the confirmation process from a whole series of suggested nominees. Sometimes those FBI reports raise as many questions as they answer. Therefore, I suspect that even if one Senator, JIM EXON, could be convinced that there was absolutely nothing to this, that this was a smear on a great American, as I believe Judge Thomas to be, I suspect that I would have more questions, and I suspect that not all Members of the U.S. Senate are going to have an opportunity to read that report and talk to some other people before they make judgment.

Indeed, it might well be proper for the Judiciary Committee to call both Professor Hill and Judge Thomas back before the committee sometime between tomorrow, Tuesday, and a week from Tuesday, so that they could ask questions and try and ferret this out.

There may well be an objection to a unanimous-consent request for putting off this vote. I would only say that if as many Senators have questions on their minds as this Senator has right now that might be a rather hasty action by those who are attempting to push the 6 o'clock hour tomorrow evening for the vote.

I call for a delay in the vote to give all of us a chance to better inform ourselves without making any determination whatsoever, because I honestly do not know what my eventual and final decision will be.

I thank the Chair and I yield the floor.

(Earlier, the following occurred and appears at this point in the RECORD by unanimous consent.)

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Tuesday, October 8; that following the prayer, the Journal of proceedings be deemed approved to date; that following the time for the two leaders, there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein; that at 10 a.m., the Senate return to executive session to resume consideration of the Thomas nomination; that on Tuesday, from 12:30 p.m. until 2:15 p.m., the Senate stand in recess in order to accommodate the party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MITCHELL. Mr. President, for the information of Senators, at 5:30 p.m. tomorrow, Tuesday, there will be 2 minutes of debate equally divided on the conference report on H.R. 2508, the foreign aid authorization conference report with a vote on adoption of that conference report occurring when the 2 minutes have been used.

So Senators should be aware that a rollcall vote will occur tomorrow just shortly after 5:30 p.m. on the foreign aid authorization conference report.

RECESS UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. By unanimous consent the Senate stands in recess until 9:30 a.m., Tuesday, October 8, 1991.

Thereupon, the Senate at 6:41 p.m., recessed until Tuesday, October 8, 1991, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1991:

SECURITIES INVESTOR PROTECTION CORPORATION

FRANK G. ZARB, OF NEW YORK, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1992. (REAPPOINTMENT)

NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT

JANELLE BLOCK, OF WISCONSIN, TO BE A MEMBER OF THE NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT FOR A TERM EXPIRING SEPTEMBER 30, 1994, VICE JAMES HARVEY HARRISON, JR., RESIGNED.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ROBERTA PETERS, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1996, VICE TALBOT LELAND MACCARTHY, TERM EXPIRED.

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

LORRAINE MINDY MEIKLEJOHN, OF COLORADO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S. TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 1995, VICE ANITA M. MILLER, TERM EXPIRED.

PANAMA CANAL COMMISSION

JOHN J. DANILOVICH, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF THE PANAMA CANAL COMMISSION, VICE ANDREW E. GIBSON, RESIGNED.

The third degree of autonomy could involve some legislative power. Examples can already be studied in some of the decentralized States. At this stage of autonomy most administrative functions of the central State could be turned over to the region with the exception of defence and foreign affairs. Even regional military units could be set up as long as they are integrated into the overall defence plan.

The next step of this process—in the case it is desired-would be full independence.

Those States which accept the general terms of a possible convention on self-determination could envisage setting up an international commission or court comparable to the European Commission and Court for Human Rights to which all parties concerned could appeal in case of conflicts. Such an approach would offer the possibility to observe how these general guidelines work in reality and to adjust them if necessary. Other States might then be willing to sign the convention too, and perhaps one day those guidelines on self-determination could become generally accepted international law, as other conventions have become.

If we look at human history it seems that humanity does not have many alternatives. In the past and in the future new States have been and will be born, they disappear or their borders change. If we look at longer periods of time we see that States have life cycles similar to the human beings who created them. The life cycle of a State might last for many generations but hardly any member State of the United Nations has existed in its present borders for longer than ten generations. It could be dangerous if one tried to put a hold on these cycles, which have been present throughout human history. To freeze human evolution has in the past often been a futile undertaking and has probably brought more violence than if such a process was controlled peacefully.

Considering the advances in the field of technology, civil wars will become more and more destructive, not only for those directly involved but also for neighbouring States and for our whole environment. The possible destruction of a large nuclear power plant in a civil war is a frightening example. Would it not be much safer to replace the power of weapons by the power of voting even if it means that new States may be born?

Mr. President, Distinguished Delegates, as the representative of the smallest and of one of the youngest member countries, I wish to thank you for having given me the opportunity to express my views on a controversial subject and to present ideas related thereto.

Liechtenstein is proud to be a member of the United Nations, an organization that gives full priority to the respect of international law and to the principles of its Charter. We shall continue to support all United Nations efforts aimed at realizing international peace and the respect for human rights and fundamental freedoms.

Thank you, Mr. President.

CONCLUSION OF MORNING BUSINESS

Mr. MOYNIHAN. Mr. President, has the time for morning business expired?

The ACTING PRESIDENT pro tempore. The Senator is oorrect. Under the previous order, the period for morning business has expired.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. We will return to executive session for the consideration of the nomination of Clarence Thomas to be associate justice of the Supreme Court. The clerk will report the nomination.

The assistant legislative clerk read as follows:

The nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

Ms. MIKULSKI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Maryland [Ms. MIKULSKI].

Ms. MIKULSKI. Thank you, Mr. President. I seek recognition to speak on the Thomas nomination.

Mr. President, I rise to ask my colleagues in the Senate to join me in a call asking for the delay of the vote on Judge Thomas until the Senate can conduct a full and fair hearing on the allegations currently directed to and about Judge Thomas alleging that he engaged in praotices of sexual harassment with an employee.

Mr. President, I do that because I believe there should be no rush to judgment, to either prejudge the charges to be true or not to be true. This requires a full hearing by the U.S. Senate and its appropriate processes to get to the truth.

The consequences of not delaying this vote are far-reaching. They are far-reaching in terms of the actual vote that we are about to take, the lives of two people who are engaged in this situation, and the future of the Supreme Court and the credibility of the U.S. Senate.

Mr. President, where do we find ourselves? We find ourselves in the situation where Prof. Anita Hill has alleged that a nominee for the Supreme Court sexually harassed her.

Mr. President, I do not like the term "sexual harassment" because it does not give the full impact of what that means to the person who must endure this type of abuse. And make no mistake, it is abuse. It is an abusive as a physical blow. I prefer the term "sexual humiliation," because that is what oocurs when someone is subjected to such treatment.

Professor Hill has stated that Judge Thomas engaged in obscene, vulgar behavior with her, creating a very hostile environment. We do not know if those allegations are true.

We have before us two distinguished African-Americans, one from Pin Point, GA, who has made the most of his life, both opportunity and adversity, and who is before the Senate as a nominee to the Supreme Court. On the other side, we have Prof. Anita Hill, who comes from a family of 13 children, out of the rural poverty of Oklahoma, who goes on to be a scholarship winner, a graduate of Yale Law School, and distinguished now in the legal community to the point that she is a professor at Oklahoma University.

Both people come to us with distinguished backgrounds and both people come to us with credibility. We owe it to both of them to resolve this, because only one can be telling the truth, and the consequences for both are far-reaching. That is why I encourage a delay—so that we could pursue a serious investigation of these charges.

But, Mr. President, what disturbs me as much as the allegations themselves is that the Senate appears not to take the charge of sexual harassment seriously. We have indicated that it was not serious enough to be raised as a question in the Judiciary Committee. We did not think it serious enough to apprise Senators themselves that there was this allegation.

I am a Member of the Senate, and I think I work hard and do my homework and so do many of my other ooolleagues. As I have called around the Senate, I find that my own colleagues knew nothing of this until it broke as a media story over the weekend. I am very disturbed about this. I am disturbed because the charges themselves have significant consequences for both Professor Hill and for Judge Thomas. By not taking it seriously, we will place a cloud over these two peoples' lives for the rest of their lives.

If Judge Thomas is confirmed without a full hearing, he will always be the person on the Supreme Court with this cloud of allegations over him. If we do not confirm him in the absence of a hearing, then we have voted without full evidence on his merit to be on the Supreme Court. Either way, by not delaying we do a disservice to Judge Thomas.

Then, we have Prof. Anita Hill, from a background of rural poverty not unlike Judge Thomas himself—one out of Oklahoma, one out of the clay hills of Georgia—who has made these allegations. She has said she has come forth with pain because reliving this situation has, indeed, been extremely painful to her.

If we do not give full airing to this situation, Professor Hill will always be the woman who made these allegations. And now we face the fact that even yesterday Professor Hill was attacked on the Senate floor with unprecedented venom. A woman was attacked on the Senate floor with unpreoedented venom when she was herseif talking about being a victim. We owe it to Professor Hill not to attack her on the Senate floor but to submit

her to a line of questioning about the events that she alleges, to see if in fact they are true.

When Professor Hill returns to her classroom and goes on with her life, she will forever be known as the woman who blew the whistle on Judge Thomas but that it never was resolved. There are very serious consequences for Professor Hill and none of them are very good.

If you talk to victims of abuse the way I have, they will tell you they are often doubly victimized by both the event in which they are abused, and then subsequently by the way the system treats them.

To say these charges could not be taken seriously enough to be brought to our attention has consequences, as I said, for both Professor Hill and for Judge Thomas. But let me tell you about the other consequences to the people of the United States of America. If we do not delay, we will never really be sure about our nominee to the Court, and in addition to that we are now sending a message to the American people that we do not take sexual harassment seriously enough to conduct a full and serious investigation or inquiry into it.

To anybody out there who wants to be a whistle blower, the message is, "Don't blow that whistle because you will be left out there by yourself." To any victim of sexual harassment or sexual abuse or sexual violence, either in the street or even in his or her own home, the message is, "Nobody is going to take you seriously, not in the U.S. Senate." To the private sector, which now has to enforce these laws on sexual harassment, whether we call it sexual humiliation or whether it is overt physical aggression, sexual terrorism, the message to the private sector is, "Cool it. Even the Senate takes a walk on this one."

Mr. President, that belies our laws and regulations. Then what does it say to the community?

Mr. President, I serve on the U.S. Naval Academy Board of Visitors. I love it. It enables me to interact with young people, and make sure that our military are fit for duty for the 21st century. I was charged with the responsibility of being on a board of inquiry where allegations of sexual harassments took place at the Naval Academy. I worked to investigate the individual case. But then we found that there was a pattern of harassment by the male mids to the female mids and looking the other way by top administrative officials at the academy. We have now straightened that mess out with full cooperation of the Secretary of Navy, the commanding officers at the Naval academy, the midshipmen themselves, and the faculty. We have worked very hard to say that sexual harassment is not tolerated by officers and gentlemen.

What does this say if the U.S. Senate cannot delay another few hours? What does it say to the admiral who commands the brigade at the Naval Academy and says an officer and a gentleman never has to look big by making someone look small? An officer and a gentleman of the U.S. Navy never has to prove what kind of guy he is by abusing gals.

We want to support that admiral, and we want to support the private sector. And I want to support the people who are the subject of this abuse.

I do not know who was telling the truth. I do not want to prejudge that. But regardless of who is telling the truth, I want to outline for my colleagues the serious consequences of us not taking it serious enough to delay the proceedings of this Senate to give a full and amplified hearing.

Mr. President, we have models for this. During the advice and consent hearings on John Tower we knew of allegations about personal practices of Senator Tower. They were such a subject of discussion. They were raised with him in a committee hearing so he could give his own defense, his own explanation. We could read the FBI report, but Senator NUNN and Senator WARNER said here are those allegations. We arrived at a judgment.

We are now conducting a hearing on who is going to be the head of the Central Intelligence Agency. There is a great deal of controversy surrounding Mr. Gates. We are talking about the intelligence community. We found a way to get at the facts in an executive session. Also, those who had issues that they wanted to raise with Mr. Gates did so in a public forum of the U.S. Senate. Then Mr. Gates gave a 20-point rebuttal, again subject to question and answer. Mr. President, that is the American way.

We have models for getting at those issues. I can understand why Professor Hill has perhaps wanted not to go public because of what she felt in the alleged victimization. But she could have done this in executive session and then the encouragement of Professor Hill to move to another level, and she is now ready to do that.

So what we have now is a nominee of the Supreme Court saying no, I did not do it. And then we hear nothing more from him.

We have Professor Hill who needs to conduct her side of the story through a press conference. We are now examining this issue through the media rather than doing it through the U.S. Senate.

The media cannot be a substitute for the honorable and traditional proceedings of the U.S. Senate. I salute the media for bringing it to this Senator's attention. It is the only way I would have known about it. I feel they have done their job.

Mr. President, it is now time we do our job, and our job as U.S. Senators gives us the constitutional responsibility to both advise the Senate and to advise the President when he sends us a nominee and consent to that. History, tradition, and the future of this Nation calls forth in us now a passion to see that justice is done.

I strongly encourage my colleagues to join with me in asking for a prudent timely delay in resolving these allegations.

Mr. EXON. Would the Senator yield for a question?

Ms. MIKULSKI. I yield to the Senator from New York.

Mr. MOYNIHAN. Mr. President, can I ask my distinguished friend and learned friend from Maryland to stay on the floor just one-half a minute?

Ms. MIKULSKI. I am delighted to stay.

Mr. MOYNIHAN. I want to agree with her completely. In fact, I agree with what my friend from Nebraska said last evening.

Mr. MOYNIHAN. Mr. President, I have the floor.

Ms. MIKULSKI. I have the floor.

Mr. MOYNIHAN. Would the Senator yield the floor?

Ms. MIKULSKI. After I yield for the question of the Senator from Nebraska, and then I will yield the floor.

Does the Senator from Nebraska have a question?

Mr. EXON. I have a question for my friend and colleague from Maryland. I listened with great interest to her talk today. I listened with great interest to the talks a lot of people have been making on this matter since the revelations of this weekend.

I simply want to say in asking the question that those who have traditionally opposed the nomination obviously are happy and pleased with the recent developments, the category into which this Senator does not fall because I announced my support for the nominee. Indeed, when the final vote is cast, if it is cast sometime other than 6 o'clock tonight, I may support Judge Thomas.

I must say, Mr. President, that what this Senator is trying to get across is some reason for not delaying the vote. May I ask my Senator friend from the great state of Maryland why the rush to judgment? Why is it that we have to vote tonight because it has been so decreed? Is there any reason that my friend from Maryland could think of as to why it would be bad, or cast the Senate in a bad light, if we simply delayed this so that we could find out more, hopefully call the two people before the Senate Judiciary Committee to ask them point blank?

I do not know who is telling the truth. But it is obvious, is not it, that either Judge Thomas is not telling the truth, or Professor Hill is not telling the truth.

Does the Senator see any reason? What possibly could be wrong with de-

laying the vote for a limited amount of time to give everybody a chance, including I think the chance for Judge Thomas to refute this publicly in front of the committee, whioh in my view, Mr. President, would be also helpful to eliminate any ooold over the nomination for someone who is about to serve 30 years on the Supreme Court.

Ms. MIKULSKI. Mr. President, reolaiming my time, I can think of no reason other than parliamentary rules that require unanimous consent. I hope that our leadership can help resolve this issue on both sides of the aisle.

But in responding to my oolleague's question, let me say about those who were going to vote "no" on the Thomas nomination that there is no glee in this; I was going to vote "no," because I felt that Judge Thomas had been silent and evasive on many of the issues, and therefore we could not put him on the Court.

But as I come before the Senate, this is a melancholy situation in which we are letting Judge Thomas down, letting Professor Hill down, but most of all we are letting down the Supreme Court and the American people.

So having said that, I hope that the problem is only our own parliamentary rules, which we can always deal with.

Now I would like to yield to the Senator from New York, who I believe either had a question or wanted to speak in his own right.

Mr. MOYNIHAN addressed the Chair.

Ms. MIKULSKI. I yield the floor, Mr. President.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the Chair and I thank my friend from Maryland for her great courtesy.

I would like to repeat a point which she made.

I have said earlier that I was reading a statement I had meant to give yesterday morning in support of Judge Thomas. But by the time I reached the Senate yesterday morning, I had learned, as all of us had, I suppose, of the statement of Professor Hill. As the day went by, I read the FBI report and the affidavit. I watched Professor Hill. Then, at the close of the day, I learned that this FBI report, the affidavit, was a matter which was known to at least 17 Members of this body before unanimous consent was requested in order to vote tonight at a time certain—6 o'clock. But it was not known to this Senator, who could have objeoted to an unanimous-consent request. It was not known to the Senator from Maryland, who nods in agreement, and who I doubt very much would have given consent, had she known. Again, I see a nod in agreement.

We cannot have a procedure where 17 Senators know something which, if 83 Senators knew, a proceeding of this consequence would not take place. Therefore, Mr. President, with the thought in mind that the Senator from Maryland has had and others have had, how can we work our way out of this?

There is a very simple proposal. Under rule XXII, on the precedence of motions, it states: One, when a question is pending, no motion shall be received but to adjourn.

Aooordingly, Mr. President, I move that the Senate adjourn until Tuesday, October 15, at 10 o'clock. I believe I have the floor, and I await your ruling.

Mr. GRASSLEY addressed the Chair.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from New York has the floor.

The Senator loses the floor upon making the motion.

Mr. CONRAD. Mr. President, parliamentary inquiry.

Mr. MOYNIHAN. Will the Senator allow me to speak?

The motion to adjourn has been made.

May I ask you, Mr. President, will it not be disposed of by a vote?

Mr. GRASSLEY addressed the Chair.

Mr. CONRAD addressed the Chair.

Mr. MOYNIHAN. May I ask my oolleagues to allow the Chair's ruling?

Mr. CONRAD. This Senator would like to make parliamentary inquiry.

My understanding is that the Senator loses his right to the floor after making the motion.

The PRESIDING OFFICER. That is correct. The Senator from New York, after making the motion, loses the floor.

Mr. CONRAD. Mr. President, I seek recognition.

Mr. MOYNIHAN. Mr. President, the motion surely has to be disposed of.

The PRESIDING OFFICER. Is there objection to consideration of the motion?

Mr. GRASSLEY. I object.

Mr. CONRAD. I object.

Mr. MOYNIHAN. I ask for the yeas and nays.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Objection is heard.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair advises the majority leader that a quorum call is in progress.

The assistant legislative clerk continued with the call of the roll.

The PRESIDING OFFICER. Order in the Senate. The press gallery will remain quiet.

The clerk will continue calling the roll.

The assistant legislative olerk continued with the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I raise a parliamentary inquiry.

Is the motion to adjourn as made by the Senator from New York in order?

The PRESIDING OFFICER. It is not in order.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MITCHELL. Mr. President, I understand the quorum call has been requested.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. A quorum call is in progress.

Mr. MOYNIHAN addressed the Chair.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. GRASSLEY. I objeot.

Mr. MITCHELL. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. GRASSLEY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will call the roll.

The bill clerk continued with the call of the roll.

Mr. MOYNIHAN. Mr. President, I request that further proceedings under the quorum call be dispensed with so that we may discuss the situation we are in, and why people do not want to discuss it.

Mr. GRASSLEY. Mr. President, I object.

The PRESIDING OFFICER. There is an objection.

Mr. MOYNIHAN. Mr. President, with great seriousness, in order to proceed with the debate on a matter of profound consequence——

Mr. GRASSLEY. Regular order.

Mr. MOYNIHAN. I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

Mr. MOYNIHAN. Mr. President, in order that discussion of a profoundly serious issue to American women and American men and the Supreme Court may proceed, I ask that further proceedings of the quorum call be dis-

pensed with so that debate might resume.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

The PRESIDING OFFICER. There is objection.

Mr. MOYNIHAN. Mr. President, in the prayerful thought that we have but a limited time on an issue of enormous consequence—this surely cannot disturb the Senator from Iowa that much—I ask that further proceedings of the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

The PRESIDING OFFICER. There is an objection.

Mr. MOYNIHAN. Mr. President, there are Senators here, and the majority leader is on the floor listening to the debate. The Senators wish to continue debate, to make statements, to see how we can work our way out of this situation, and I would ask that, even though the Republican leader is not present, we might dispense with the quorum call.

I have no intention, Mr. President, of offering any other procedural motions, but simply proceeding to discuss the substance of this profoundly important issue.

Mr. MITCHELL. Will the Senator withhold his request?

Mr. MOYNIHAN. I am happy to do so.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business until the hour of 12:30 p.m., with Senators permitted to speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE NOMINATION OF JUDGE THOMAS

Mr. MITCHELL. Mr. President, I wish to make clear that, first, I was not advised by the Senator from New York, prior to his making of the motion to adjourn, of his intention to do so. Second, it is not my desire or intention to prevent any Senator from expressing his or her view on the subject matter before the Senate, or indeed on any other subject at this time, either on the substance of the nomination or on the process being used to consider the nomination, or more specifically, the question of whether or not there should be delay of the vote by the Senate on the nomination.

As I stated last evening, on September 25, 2 weeks ago tomorrow, during the evening, Senator BIDEN, the chairman of the Judiciary Committee, and Senator THURMOND requested a meeting with the minority leader, Senator DOLE, and myself, the majority leader. In that meeting, they described to us the nature of the statement made by Prof. Anita Hill regarding the nominee and the nominee's, Judge Thomas', denial of the assertions of Professor Hill.

We were advised that Professor Hill had requested two things: First, that the information she gave in the form of a sworn statement be made available to members of the Senate Judiciary Committee; and second, that it not be made available to anyone else because of her concern for the protection of her identity.

Senator BIDEN indicated that he intended to comply fully with that request; that he would make the information available to the Democratic members of the committee and would not make it available beyond that, in accordance with Professor Hill's request.

Two days later, the committee voted and recommended that the matter be sent to the Senate, the vote in the committee having been 7 to 7.

Since, to my knowledge at the time, there had been full compliance with Professor Hill's request, both with respect to making the information available to members of the committee and not making it available beyond that, and the committee having acted, as the person responsible for managing the affairs of the Senate, and following extensive discussion with Senator DOLE and many others involved, I proposed to the Senate that there be 4 days for debate on the nomination, those 4 days being last Thursday and Friday, yesterday, and today, and that at 6 p.m. today, the Senate vote on the nomination. That was approved by unanimous consent. That means that each of the 100 Senators agreed to that procedure.

Obviously, the events which intervened over the weekend, specifically the public statements by Professor Hill, have created circumstances in which many Senators believe that there should be a delay in the vote, and many Senators have communicated that desire to me. There are also other Senators who have indicated an unwillingness to delay the vote.

As we all know, but it bears repeating, once the Senate has agreed to set a vote by unanimous consent—that is, with the approval of each of the 100 Senators—the only way that the Senate can agree to change that time is by the assent of all 100 Senators, and a number of Senators have indicated that they will not assent to such a delay.

Through late last evening and throughout this morning, I have been discussing the matter with a number of Senators on both sides of the aisle, and I will be meeting, prior to the respective party caucuses, with the distinguished Republican leader and the chairman of the Judiciary Committee in an effort to determine what the best way to proceed in this matter is.

The allegations made by Professor Hill are serious. I have never met Professor Hill, but I have watched part of her statement on television yesterday and my impression is that of a credible person. It is something which Senators have the perfect right to express themselves on, and it is my expectation now that a number of Senators are going to express themselves on the subject of whether or not there ought to be a delay and perhaps some other aspect of the nomination, and that is entirely appropriate, and I encourage any Senator who wishes to do so to express his or her view publicly or privately to me.

But the question on when the Senate adjourns or when it does not adjourn, the procedure to be used in managing the affairs of the Senate can and must only be a prerogative of the leadership. It is diffioult enough, Mr. President, to conduct the affairs of the Senate given the rules that we have. It would be impossible, it would produoe chaos in the Senate were each Senator to determine for himself or herself the manner in which the Senate will proceed on these matters. So I wish to make it clear that my response to the earlier motion for adjournment is not in any way an expression of view on the subject of whether or not this vote should be delayed. I am in the process of consulting with a number of my colleagues in that regard. I intend to meet and consult, as I always do, with the minority leader in that regard. And I will be expressing a view on that during the day. So, I do not want any impression left that I have acted as I have because I wish to prevent any Senator from expressing his or her view or because I have expressed a view with respect to the timing and circumstance of the vote.

We are going to try to work it out. We are in the process of consulting, trying to figure out the best way to do it. And there are appropriate ways in which to do that. Therefore, I have obtained consent for there to be a period for morning business for the express purpose of permitting any Senator to say anything he or she wants but to preclude the possibility of premature or other actions taken with respect to the manner in which this or any other of the Senate's affairs will be conducted.

Mr. President, I note the presence of the Republican leader on the floor, and I will be pleased to yield to him at this time if he wishes to make a comment.

Mr. DOLE. No. I have been in another meeting. I just wonder if the Senate majority leader would indicate—as I understand, we are not in morning business?

Mr. MITCHELL. Yes.

Mr. DOLE. Would that not preclude someone making a motion to adjourn while in morning business?

Mr. MITCHELL. My understanding is, and I have requested the opportunity here—I have asked the distinguished Senator from New York, and he has advised me he does not intend to make any such motion, nor, I believe, do any of the other Senators. I do not believe that will occur. I have been advised by the Parliamentarian that the motion to adjourn was not in order, and I obtained that ruling from the Chair prior to putting in a quorum call.

It is my expectation that there is now to be merely a period of discussion in which any Senator can express himself or herself on any aspect of the matter, but with respect to which no motion to adjourn will be made.

I now ask my colleagues that no such motion be made at this time, and that I be permitted the opportunity to discuss this matter further will my colleagues and the Republican leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

THE VOTE ON CLARENCE THOMAS

Mr. CONRAD. Mr. President, I have just finished reading the FBI reports that detail the allegations by Professor Hill and the response by Judge Thomas. Mr. President, Professor Hill has made serious allegations to the FBI. Judge Thomas has denied those allegations to the FBI. Clearly, someone is not telling the truth. I point out to my colleagues that it is a Federal crime to lie to a Federal law enforcement officer.

But here we are at this juncture, getting ready to vote tonight and we do not know the truth. In fact, neither of the parties have been put under oath to repeat their statements.

Mr. President, I believe it is dead wrong for the U.S. Senate to vote tonight, before we have taken the time to assess these charges. I believe we have a responsibility to Judge Thomas. We have a responsibility to Professor Hill. We have a responsibility to the U.S. Supreme Court. Most important of all, we have a responsibility to the American people. And I believe a rush to judgment tonight, before we have had an opportunity to assess these charges and determine whether or not they are valid would be a very serious mistake for this body.

I have also been disturbed by statements that I have heard from some of our colleagues, statements that Professor Hill does not have any credibility because she waited 10 years to make these charges. I simply say to my colleagues: Look at what has happened. Since Professor Hill came forward with these statements, she has become the object of an attack. All too often that is what happens to women in this society, and they know it. They know that coming forward with charges of sexual harassment in the workplace can put them in jeopardy.

Again, I want to make clear, I do not know if Professor Hill is telling the truth. I do not know if Judge Thomas is telling the truth. In fairness to Judge Thomas, we ought to have a chance to evaluate these charges and clear him or we ought to have a chance to demonstrate that there is some validity to the charges by Professor Hill. That is only fair to both parties, fair to the Supreme Court, fair to the American people.

Mr. President, I am very concerned. If the U.S. Senate votes tonight, without taking time to review these charges, it will appear that the U.S. Senate does not care about sexual harassment or charges of sexual harassment. That is exactly the message that we are going to send if we do not delay and have a chance to hear both parties. It is going to look, all across America, as though the U.S. Senate cannot be bothered with charges of sexual harassment, because it does not consider them important.

Mr. President, that is the wrong message to send to America. Sexual harassment is wrong, and the U.S. Senate ought to say it is wrong, and the U.S. Senate ought to stand up and say, when charges of this magnitude are leveled, we are going to listen and we are going to have a chance to hear both parties and establish their credibility.

In watching the events of the last 24 hours, I have asked myself the question: Is it any wonder that women do not come forward? Is it any wonder they do not come forward, when they become the object of an attack?

This morning, Mr. President, I received a communication from a woman who is a faculty member at the University of North Dakota law school. She knows Anita Hill, and she thinks her allegations have a great deal of credibility. And, I watched Ms. Hill the other day. She seemed to be a credible witness to me. Again, I have not formed any conclusion because I do not think it is fair to form a conclusion. It is not fair to form a conclusion until we have had a chance to hear both sides of this dispute. It is not fair until we have had a chance to hear both individuals under oath. That is what we ought to be doing, and for the U.S. Senate to go to a vote tonight is wrong. It is dead wrong, and it should not happen. We ought to have a chance to look at these charges and either clear Judge Thomas or make a decision that these charges are credible.

Mr. President, I think what is at stake here is now more than the question of the confirmation of Judge Thomas. It is a question of what kind of message the U.S. Senate sends to the people of America about charges of sexual harassment. And we ought to send a message that these charges are taken seriously; that the U.S. Senate listens and then makes a judgment.

Mr. President, I feel in the strongest terms that this vote must be delayed—must be delayed—and I hope as we move through this day that cooler heads will prevail and this vote will be delayed. I thank the Chair and yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Vermont [Mr. JEFFORDS].

THE JUDGE THOMAS NOMINATION

Mr. JEFFORDS. Mr. President, I am not going to get into a debate of whether or not the vote ought to be delayed, but I do wish to take this time to express to the Senator my views on the nomination of Judge Thomas.

Mr. President, I do not think there are more than one or two duties performed by the Senate that are more important than the consideration and confirmation of nominees to the Supreme Court.

While much of what we do has an impact for a few months or years, the seating of Justice on our highest court will have an impact beyond our own service and even our own lifetimes.

Though the Supreme Court acts without the fanfare of politicians in the other two branches, it is every bit as important in the lives of Americans. It has an impact on every aspect of our lives, from the most intimate, personal decisions, to the most arcane and distant subjects.

Can a Vermont woman be barred from a job if she is of child-bearing age? What actions can Vermont take against an out-of-State polluter? How much can Vermont regulate nuclear energy in its own borders? What damages are allowable for a Vermont company injured by anticompetitive activities? The list goes on and on.

Mr. President, I am the son of a judge. My father was in the Vermont court system for over 20 years and served as a chief justice in his final years. For decades the Vermont Supreme Court was considered both moderate and progressive and was nationally respected. Vermont court decisions often appear in law school text books, a fact that made me quite proud during my law school years. During that period, justices were appointed exclusively from among lower court judges. However, in recent years appointments have been made outside the court system. In the minds of many, this has resulted in too liberal a court. This situation might well disturb me. However, in the areas of constitutional rights it has acted as a protector of Vermonters' rights against the recent overly conservative decisions of the U.S. Supreme Court.

The Founding Fathers recognized the limits of democracy. Though they had thrown off the yoke of a monarchy, they certainly were not sure of their experiment in democracy. They feared the charaoter of elected representatives, who might well succumb to passion and the whims of public opinion.

Their fear was well-founded. All too often, I am afraid, Congress gets so caught up in the cause-of-the-week that it treads dangerously near and sometimes upon individual rights. In our zeal to stop crime or drugs or dissent, we forget about nuisances like due process, privacy, or free speech.

While the diversity in ideology of Congress can sometimes weed out the worst ideas before their adoption, no such check is exerted upon the executive branch, which the Founding Fathers may have feared even more than its legislative counterpart.

I do not believe there was one other part of the Constitution which gave greater conoern to our Founding Fathers than who should be responsible for appointing the Supreme Court. The drafters were split between those who wanted the Senate to elect the members of the Supreme Court and those who thought the President should have sole authority in appointing the Justices. This debate went on for months. The result was a compromise which gives us the current system in which only the President nominates candidates for the Court, but the Senate has the duty to advise and consent on each nominee before that person can become a Justice of the Supreme Court.

It is illogical to presume that it was the intention of this compromise that the Senate's sole duty should be to pass on the nominee's legal qualifications, character, and judioial temperament. It is olear to me that it also gave the Senate the power and obligation to ensure that exeoutive branch oontrol of the appointing process did not become so absolute that the Court could no longer serve as a satisfactory arbiter between the exeoutive and legislative branches. Further, the role of the Senate also should ensure that the Court does not become positioned to execute a philosophical agenda different from the statutory product of the legislative branch.

Their solution was an elegant one. Aoting as brake on the excesses of either branch, and as an arbiter on disputes between the two, the Supreme Court, selected by both and tenured for life, would decide the inevitable knotty questions of statutory and constitutional construction. Finally, and most importantly, the Court would proteot individual rights against the predictable incursions of the state.

Artiole II, section 2 of the Constitution merely provides that the President shall nominate, and "by and with the Advice and Consent of the Senate, shall appoint * * * Judges to the Supreme Court." The text of the oonstitution is clear that although the power to present a candidate for the Court is vested solely in the President, the power of appointment is exercised concurrently with the Senate, which must review the nomination and may reject the President's choice. However, the Constitution does not specify the criteria for the Senate's decision. Therefore, from a striotly technical standpoint, the Senate may reject a nominee for any reason. This "combination of brevity and ambiguity is so characteristic of the Constitution", Ross, "The Functions, Roles, and Duties of the Senate in the Supreme Court Appointment Process," 28 William and Mary Law Review 633, 635 (1987).

The question then is how do we make this tough decision? On what basis do we decide whether a given nominee should be allowed to ascend to the bench of the Supreme Court?

There is little disagreement on the basic quaiifications of a justice—legal excellence, judicial temperament, and character. By and large, the nominees in this century have had outstanding legal qualifications. Thus, for example, the elite law schools of the land, Harvard, Yale, Stanford, and Chicago, are well represented among the current Justices. Further, after completing their schooling, most Justioes have gone on to occupy particularly notable positions in the legal community. Again, for example, Brennan was a State supreme court justice; Marshall, Blackmun, Stevens, and Scalia were judges of the U.S. Courte of Appeals; Marshall had been the Solicitor General of the United States and, at the time of his appointment, had argued more Supreme Court cases than anyone; Scalia taught at several prestigious law schools; Rehnquist served as a deputy U.S. Attorney General; and Powell had been President of the American Bar Association. (See, Ross, supra at 646, n. 66).

Political philosophy is important as well. Some argue that such an inquiry has no place in the nomination or confirmation process—that Justices simply should be neutral, sage construotionists. I disagree. A President has many qualified candidates to choose from. The determining factor in his selection is likely to be the perceived philosophy of a nominee.

It would be naive to believe that the President would not ascertain the political philosophy of his nominee. There is no doubt that his advisers and staff would do a thorough examination of the political philosophy of the nominee as well as personal interviews. What about the Senate? Must we resign ourselves purely to an examination of written works of the potential Justice and face a nominee who refuses to give any indication on critical philosophies by claiming it would be inappropriate to do outside the oontext of the facts of a particular case? While this sounds fine on the surface, this approach gives an inoredible advantage to the President in knowing a great deal more about the nominee than the Senate can ascertain through the confirmation process.

Given this reality, the Senate must look to the philosophy of the nominee as well and must insist on appropriate answers and discussions. Further, I also believe the Senate must look beyond the individual to examine the oumulative impaot of our actions on the Court.

Although removed from the politioal fray, the Supreme Court is obviously not unaffected by politics. Where one party dominates over a period of years, nominations to the Court will obviously be strongly influenced by that party. Roosevelt's frustration with the Supreme Court's resistance to the New Deal caused him to make one of the biggest mistakes of his career when he tried to pack the Court. But despite his impatience, the Court obviously moved to the left during the next 30 years.

In our own time, Republican Presidents have made 13 consecutive nominations, and only one of the eight sitting Justices, Justice White, was a Democratio appointee. Lyndon Johnson was the last Democrat to nominate for the Court when in June of 1968 he raised the name of Homer Thornberry. However, no action was ever taken by the Senate on that nomination because of the fracas surrounding the attempted elevation of Abe Fortas to Chief Justice. Johnson's nomination of Thurgood Marshall in June of 1967 was the last by a Democrat to result in a sitting Justice. The Republican stamp on the current Court is undeniable.

But by no means does a President, even one of my own party, have the right to pick virtually anyone he wants who meets minimal qualifications with respect to character, legal ability, and judicial temperament. This is not a pass-fail test.

In my mind, such a process is entirely proper for appointees to the exeoutive branch of Government. The President should be given wide latitude in seleoting his Cabinet secretaries and key agency personnel. But under the Constitution, such deference is inappropriate in the confirmation of Supreme Court Justices. Their tenure is not limited to the 2 or 4 or 8 years of an exeoutive agency appointment. They are in position to decide upon our collective future for as long as they live. And a lifetime is too long to be wrong.

Consider if you will, Mr. President, the prospects for the Court over the coming years. It seems to me that the ages of the sitting Justices and their years of service are relevant considerations.

Justice	Date of birth	Age	Years on Court	Appointment age
Rehnquist	Oct. 1, 1924	67	20	47
White	June 8, 1917	74	29	45
Blackmun	Nov. 12, 1908	83	21	62
Stevens	Apr. 20, 1920	71	16	55
O'Connor	Mar. 26, 1930	61	10	51
Scalia	Mar. 11, 1936	55	5	50
Kennedy	July 23, 1936	55	3	52
Souter	Sept. 17, 1939	52	1	51

The above listing clearly demonstrates that the political bent of the current members of the Court is decidedly conservative. The two more moderate members are likely to be replaced in the next 6 years. Justice Blackmun is 83 years old and Justice White is 74. In addition, two others will be well into their 70's. Thus, it is likely that two and perhaps four more appointments will occur within the next 6 years. If one presumes that we continue on the present course and strong conservative members are appointed, it could be well over 20 years before the makeup of the Court could even begin to become more moderate.

There is nothing in the recent history of the Presidency, a history which I should say that I have largely supported, to indicate that, absent congressional pressure for the balancing of the Court, any appointments will be made of Justices whose views are more centrist than the current Court.

The current Court is anything but centrist. It is hard to even term it conservative in the traditional sense. For not only does it seem unwilling to view the Constitution as a living document that can and should be interpreted to accommodate the evolution of our society, it seems unable to be faithful to the legislative intent of Congress. With seemingly increasing frequency, the current Court has gone out of its way to arrive at twisted constructions of congressional intent. In fact, it has become almost an unstated policy of the newly emboldened conservative majority on the Court to seek out precedents with which they disagree and reverse them.

Mr. President, the Members of the Senate should be very familiar with the cases which illustrate this growing trend on the Court. The Congress has spent considerable time and effort correcting and attempting to correct these exoursions in judicial activism recently engaged in by the conservative alleged opponents of that philosophy on the Court. Consistently strained interpretations of statutory language and congressional intent have marked many recent and controversial and Supreme Court decisions. Below are but a few examples.

BETTS V. OHIO, 109 S.CT. 256 (1989)

In this case the slim conservative majority interpreted the Age Discrimination in Employment Act of 1967 [ADEA] as providing little or no protection for older workers from discrimination in employee benefit plans. The original intent of the Congress in passing and amending the ADEA was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations. The EEOC under the Reagan administration had vigorously litigated to defend this very interpretation of the act.

The Older Workers Benefit Protection Act—Public Law 101-433—was passed by the Congress and signed into law by President Bush to correct this misinterpretation by the Court.

RUST V. SULLIVAN, 111 S.CT. 1759 (1991)

In another 5-4 conservative majority opinion, the Court held that freedom of speech was not abridged by Federal regulations that prohibit federally funded family planning clinics from providing counseling or referrals regarding abortion. Congress has acted by passing legislation—Title X Pregnancy Counseling Act—which would prohibit the Secretary of HHS from acting in compliance with the Court's decision. Rather, the bill would guarantee that projects receiving title X funds can "offer pregnant women information and counseling concerning all legal and medical options regarding their pregnancies."

Both the House and the Senate have passed bills and the matter is currently in conference. Again, legislative action is necessary to correct a grievous misinterpretation by the Court.

WARDS COVE V. ATONIO, 109 S.CT. 2115 (1989)

The slim conservative majority was again at work in this case. There the Court ruled that in disparate impact cases under title VII, the burden is on the plaintiff to disprove, rather than on the employer to prove, the employer's business necessity defense for a practice with discriminatory effects. Further, the practice need not actually be essential or indispendable in order to pass muster, it only has to serve a legitimate employment goal. In so ruling, the Court reversed 20 years of judicial interpretation and generally accepted practice under title VII.

The efforts of the Congress to enact legislation correcting this and several other clearly wrong-headed 1989 decisions of the Court are well known. The Civil Rights Act of 1990 was vetoed by President Bush and the 1991 version is currently pending with another veto fight appearing likely.

I have cited only some of the cases in which the Court has drastically reversed fields. Similar examples exist in other areas of law. The point is that the Court is no longer reflecting a spectrum of views, but rather appears to be advancing the agenda of those on one end of the political spectrum. Given the extreme tilt existing on the Court as presently composed, the addition of a new Justice who mirrors the positions of the conservative majority will not serve the greater good.

President Bush and others have argued that diversity is an important element on the Court. Several of my Senate colleagues have stated their support for this nominee is based more upon the belief that his different roots will prevent him from becoming just one more predictably conservative vote on the Court. But diversity of backgrounds, in my opinion, is virtually irrelevant. If two Justices are likely to arrive at the same decision on a given case, it matters little that one was born to poverty and one to affluence.

Some may argue that this is a new and perhaps inappropriate standard; that the recent history has been that Presidents are free to appoint nominees reflecting their own view on the important issues of the day. I'm afraid there may be some truth to this. After the rejection of Judge Bork, we did seat Justices Kennedy and Souter without much protest or fanfare. It does concern me that I may be applying here a standard which I did not insist upon in connection with Justice Souter, the only nomination which occurred since I came to the Senate, and which the Senate as a whole has not applied to any recent candidate.

In terms of the direct comparison with Justice Souter, it did strike me that he had solid legal qualifications in his background that are not possessed by Judge Thomas. Further, Justice Souter did not have the extensive history of conflicting and troublesome public statements on the contentious issues of our times to trip up his nomination. Finally, through professional contacts that I had with Justice Souter prior to his nomination, I had come to the opinion that he was an independent sort not likely to be easily swayed in the formulation of his considered judgments.

Having said this, I still must insist that it is not a novel idea that a President should look first to the finest jurists in the land without regard to philosophical or political homogeneity. That is the standard which I think we should apply, here and always. The criticism that we may not have previously lived up to that goal does not constitute a binding commitment that we must continue the error of our ways.

Our process for determining the qualifications of a prospective justice is important and frustrating. A nominee has every incentive to tell the Senators what they want to hear. He or she can study the confirmation performance of his or her predecessors for clues on how to win the battle. Does anything in the confirmation experiences of Judge Bork, Justice Kennedy, or Justice Souter suggest that future candidates will adopt anything but extreme reticence as their confirmation strategy? I doubt it.

The real work of becoming a bona fide candidate for the Supreme Court

should be oompleted before a nominee's name is announced by the President, not at the confirmation table. And yet, if the hearings are of limited utility, where do we turn? Obviously we must look at the published record of a nominee, as well as past decisions and performance in other capacities. What were the publio deeds and accomplishments of the nominee? How did he or she comport himself or herself in carrying out their publio obligations? This is the customary type of yardstick used to measure the qualifications of candidates. Indeed, until recently this was the exclusive means by which nominees were measured.

Against this yardstick, Judge Thomas' record is troubling, and I cannot simply discount it. At the Department of Education's Office of Civil Rights, he was on the verge of being declared in oontempt of court for substituting his own views of the law for those of the court. At the EEOC, where he served in a quasijudicial role, he made one statement after another that can only be characterized as extreme. From privacy to property he espoused views that represented remarkable departures from the legal mainstream—departures in one direction only—right.

To his credit, Judge Thomas has made a remarkable rise from poverty to the threshold of our highest court. He has shown that hard work and discipline pay off, and in doing so, has served as a great model. His rise has not been without missteps, but on the whole has been spectacular. In fact, his humble beginnings, poor and black in the segregated South, have been widely touted as the premier component of his qualifications for the Court.

I worked with Judge Thomas when he was the Chairman of the Equal Employment Opportunity Commission and I served as the ranking member of the House Education and Labor Committee. He inherited an agency with substantial problems and did much to rectify them. His harshest critics seem determined not to credit him with his accomplishments in this regard. He chose, I believe in keeping with the philosophy of the President that appointed him, to place great emphasis on individual case processing at the expense of broader, olass-based remedial actions.

Judge Thomas' tenure on the court of appeals has been extremely brief. Further, the funotion of a lower court is fundamentally different from that of the Supreme Court simply because there is no route of appeal from the latter. The opinions of a Supreme Court Justice have a way of becoming etched-in-stone law more so than do the words of lower oourt jurists. This combination of facts makes it difficult to draw any conclusions relevant to the oonfirmation process from Judge Thomas' experience on the circuit oourt.

Judge Thomas' rise has been meteoric. But it has also been atypical. While all of us would love to hold out his route as the one path for those born to poverty, we know that most people will not or cannot take it. Some will be deserted by husbands, burdened by children, strapped to support family as well as self. We can applaud those that surmount the hurdles of poverty and prejudice, but we cannot forget those that fail to clear the bar.

This, I think, is the fundamental failing of Judge Thomas' judicial philosophy. His view of the role of Government, and particularly the role of Congress in society, is pinched and penurious. The alternative is not profligacy. Rather, it is a Government that is acting aggressively to secure a more just society.

Beyond his philosophy come the more traditional questions of qualifications. With respect to his legal qualifications, I don't think jurists should be held to a publish-or-perish standard any more than academics. I know when I was attorney general, my assistants had no time to muse upon the finer points of the law, and I am sure the same is true of Judge Thomas throughout his career in Government. Running an agency permits precious little time to engage in scholarly pursuits.

But there is little in Judge Thomas' reoord to suggest legal excellence. The bar association's recommendation was tempered, and there is little evidence of distinction. This is not surprising. In a few years, regardless of whether he wins confirmation or not, I am sure we will have a much more complete body of opinions on which to base our judgment. Right now, we simply do not.

Measuring legal qualifications is a relatively objective process compared to the subject of character or judicial temperament. These can only be subjective deoisions. And while hearings are indeed of limited value, they did not provide great reassurance in these areas.

Judge Thomas' answers brushed aside one controversial statement after another. His willingness to discuss issues seemed dependent on the issue itself, not some standard of judioial rectitude. His statements on privacy and abortion were evasive at best, and verged on lacking in credibility.

As I have noted, there are incentives to tell your audience what it wants to hear, be it the Senate Judiciary Committee or the Heritage Foundation. But succumbing to such temptation does not seem the hallmark of the best candidate we can find for the Supreme Court.

Mr. President. Recent Supreme Court decisions and the nomination of Clarence Thomas to fill the vacancy on Justice Thurgood Marshall has caused me to reexamine the role of the Senate in the formation and composition of the Court. In other words, when it appears that the philosophical makeup of the Court has swung so far, one way or the other, that it is at odds with a clear majority of the Congress, can we legitimately, must we appropriately refuse to accept appointments that will further exacerbate that disparity?

I conclude it is not only legitimate and appropriate, but also our duty to do so. To say and do otherwise is to allow the executive branch to wrest control of the judiciary. That result—the veritable hostile takeover of the one branch of Government intended to be the arbiter between the other two—is simply not acceptable.

The outcome, in my mind, is not in doubt. And were my side to prevail, I know the ultimate outcome would be very much in doubt. But I can do nothing but cast my vote based on how I view this nominee, and this Court, at this time. Accordingly, when the Senate meets to consider the issue, I will vote against the confirmation of the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

Mr. METZENBAUM. Mr. President, one of my colleagues, whom I considered a friend, on the other side of the aisle—with absolutely no evidence—is telling reporters that I am responsible for leaking Anita Hill's story to the press. That is wrong. That is untrue. Let me say emphatically again that nothing could be further from the truth. He owes me a publio apology. Professor Hill struggled to make her story known to Senators, and expressed a desire to keep her confidentiality protected—I would not violate that request. I knew full well the impact these charges would have on the lives of both Judge Thomas and Professor Hill, and I would never have so callous a disregard for those consequences—I resent bitterly the suggestion that I would.

The proper forum for this issue was within the confines of the Senate's procedures, and I, too, regret that this has spilled out in public. But I demand a correotion or an apology from any colleague who has accused me of violating the trust of Ms. Hill, or the trust of this institution.

Having heard Professor Hill for the first time yesterday, I think we should have done more to learn about her allegations. I will state that it was absolutely appropriate, and in fact my duty, to report her allegation to the full committee for investigation. I did that, but, in hindsight, it is my opinion that those of us on the committee should have insisted on hearing privately or publicly, from both Judge Thomas and Professor Hill.

Now Judge Thomas' supporters are trying to divert attention from the seriousness of the allegations against Judge Thomas by dwelling for hours on who might have leaked them. They have trivialized what is for thousands

of women a very serious, very difficult, and very intimidating situation.

The very people who are professing outrage over leaks and violation of the process are the very people who are, on this floor selectively leaking portions of the confidential FBI report that only Senators may read. I want to further point out that Judge Thomas' supporters are summoning the vast powers of the White House, the FBI, and the President's party to mount a case against one lone woman. Her two law school deans spoke glowingly of Ms. Hill to National Public Radio but yesterday, Judge Thomas' supporters produced a letter from one of them impugning her integrity. These Senators do not want a full hearing on this issue. They are selectively pulling in statements from whomever they can find to try Professor Hill on the floor of this senate without giving her a chance to speak for herself.

Professor Hill has said she is willing to be questioned by the Judiciary Committee. Judge Thomas should come forward and do the same. We could hold the hearing tomorrow and vote shortly thereafter.

I think that is the procedure that should be followed.

Mr. President, 37 years ago, in 1954, the Supreme Court decided that segregated school were violating the equal protection olause of the Constitution. Three years later, in 1957, the Court held that a criminal defendant, whose liberty is at stake, should not be denied a lawyer simply because he or she cannot afford to pay for one. In the early 1960's, the court rules that the Constitution required States to count each person's vote equally. In 1970, the court decided that poor people could not be cut off from welfare without a hearing. And in 1973, the Court rules that women should be allowed to decide for themselves whether or not to carry a pregnancy to term.

These decisions by the Court in the postwar era—and there are many others that I could mention—were bold, oourageous, and even visionary. Not all of them were popuiar at the time in which they were decided. But history has shown that all of these decisions improved the moral climate of this country by making the principles of equal justice, fundamental fairness, and individual liberty a reality for minorities, woman, and the poor.

It is a sad truth that the current Supreme Court has none of the vision and courage that can be found in the decisions which I mentioned. The Court can no longer be looked upon as a force for equal rights, social justice, and individual liberty.

Unfortunately, Justice Marshall's rssignation means that the Court will be even less responsive to the conoerns of minorities, the poor, and the disadvantaged. Justice Marshall devoted his career, and even risked his life, in the service of equal rights and social justice. He improved the lives of millions of people in this oountry. Blacks, Hispanics, women, senior citizens, and poor people never had to wonder whether Thurgood Marshall was on their side. He was their champion—a dogged and tenacious defender of their rights.

Justice Marshall's resignation from the Supreme Court marks the fifth Supreme Court vaoancy of the Reagan-Bush era. Once his seat is filled, Presidents Reagan and Bush will have filled a majority of seats on the Supreme Court.

A judicial nominee cannot become a member of the High Court simply because the President and his advisers are comfortable with that nominee's views and judicial philosophy. The Supreme Court is not an extension of the Presidency. The Constitution makes it clear that the Supreme Court is a separate and independent branch of Government.

That same Constitution assigned the Senate a role in the confirmation process to help preserve the independence of the judiciary.

The Senate's role has become more important in recent years because, quite frankly, Presidents Reagan and Bush have made no bones about using the Court to advance their political and sociai agenda.

A central part of the Reagan-Bush political program has been reversal of many landmark Supreme Court decisions. Court rulings protecting civil rights, constitutional liberties, and a woman's right to ohoose have been overturned or jeopardized because the Reagan and Bush administrations have made good on their campaign pledge to appoint judges who are hostile to those decisions. As Justice Marshall wrote in his dissent in Payne versus Tennessee—one of his final opinions for the Court—a majority of the Rehnquist court has sent "a clear signal that scores of established constitutional liberties are now ripe for reconsideration, thereby inviting—open defiance of our precedents."

Clarence Thomas' nomination must be viewed against the backdrop of this effort by the Reagan and Bush administrations to remake the Supreme Court in their own image.

In my view Judge Thomas' record at the EEOC is, by itself, sufficient grounds for opposing his nomination to the Supreme Court. While at the EEOC, Judge Thomas pursued policies which undermined legal protections for minorities, women, and the elderly—the very people who are most in need of protection by the Supreme Court. During his tenure as EEOC Chairman, thousands of older workers lost their right to bring age discrimination suits in Federai Court because of the negligence of his agency. Scores of working women who were being discriminated against because of so-called fetal protection policies received a oold shoulder from the EEOC. Blacks, Hispanics, and women were hurt by his unrelenting hostility toward effective oivil rights enforcement tools such as class action suits and affirmative action.

Aside from his record at the EEOC, Judge Thomas' legal credentials are also a matter of concern. He has not, at this stage of his career, compiled the exceptional and distinguished legal credentials which one expects to find in a Supreme Court nominee. The NAACP Legai Defense Fund found that Judge Thomas' legal and judicial credentials fall short of virtually every other nominee placed on the Supreme Court in this century.

Judge Thomas' supporters recognize that his legal and judicial record are not strong reasons to vote in his favor. Instead, they stress his background and extol his capacity for growth. I do not believe that we should put justices on the Supreme Court who need to grow into the job. A Supreme Court seat is not the proper place for on-the-job training; nor is it a reward to be handed out for loyal service to the executive branch. If, as his supporters claim, Judge Thomas has the potential to be a great judge, we should let him remain on the appeals court for a few more years to see if he lives up to that potential.

But President Bush did not want to wait. He rushed to put Clarence Thomas on the Supreme Court. I believe that, contrary to his statements to the American people, President Bush wanted to replace Thurgood Marshall with a minority. But President Bush also wanted to replace Thurgood Marshall with a minority whose record would be acceptable to the right-wing of his party. Clarence Thomas filled the bill.

Judge Thomas has an extensive and controversial record on a wide range of important legal and policy issues. He discussed that record with the committee in a manner that was evasive, unresponsive, implausible and, at times, simply unbelievable. Stated bluntly, Judge Thomas ran from his record.

A number of other Senators already have pointed out the discrepancies between Judge Thomas' speeches and writings on natural law and economio rights, and his testimony before the committee on those subjeots. I aiso have discussed those inconsistencies in the committee report. The bottom line is that his testimony before the committee on those subjects cannot be squared with the statements in his speeches and writings.

Judge Thomas' views regarding Congress should be of particular interest to Senators. Judge Thomas has stated that Congress "is out of control," that "there is not a great deal of principle in Congress," and that "there is little deliberation and even less wisdom in

the manner in which the legislative branch conducts its business." Judge Thomas has stated that through the exercise of its oversight authority, Congress has overstepped its constitutional bounds and improperly intruded upon the province of the executive.

At his confirmation hearing, Judge Thomas dismissed his repeated criticisms of Congress as simply remarks which sometimes surface during the everyday tension between the executive branch and Congress. I believe that Judge Thomas' repeated and vehement criticisms of Congress raise real questions about whether he would defer to congressional intent in statutes which he believes are wrong, or support the aggressive exercise of Congress' oversight power in a dispute between the legislative and the executive branch.

Judge Thomas' legal views regarding the separation of powers doctrine also are disturbing. In a 1988 speech, Judge Thomas severely criticized the Supreme Court's 7-1 decision in Morrison versus Olson, a case whioh held that the special prosecutor law passed by Congress did not violate the Constitution's separation of powers clause. The law was designed to prevent a recurrence of the 1973 "Saturday Night Massacre," in which President Nixon fired Special Prosecutor Archibald Cox because he was doing too good a job pursuing the Watergate defendants.

Judge Thomas stated that Justice Rehnquist's opinion upholding the special prosecutor law "failed not only conservatives, but all Americans." He called Morrison "the most important court case since Brown versus Board of Education." Judge Thomas went on to laud as "remarkable" Justice Scalia's dissent in the Morrison case, which took a very narrow view of congressional power under the separation of powers clause.

At the hearing, Judge Thomas again ran from his previous statements. When he was asked to give his views about the most important court cases in the last 20 years, he did not inolude Morrison on the list. Moreover, he indicated that he never actually believed that Morrison was the most important case since Brown, but said it was in order to persuade his audience that it was significant. In my view such an explanation only raises more questions than it answers. Unfortunately, it is not the only instance in which Judge Thomas has tried to explain away a controversial statement by asserting that he did not really mean what he was saying.

Finally, I questioned Judge Thomas about a number of statements in his speeches and writings. These statements raised questions about whether he will approach issues that come before the Court with an ideologically conservative mindset rather than with the even-tempered and balanced judiciousness required of a Supreme Court Justice.

For example, Judge Thomas has written that the ninth amendment of the Constitution—which has been used to support a woman's right to choose—could become a "weapon for the enemies of freedom." In an April 1987 speech to the Cato Institute, Judge Thomas stated that he "agreed wholeheartedly" with former Treasury Secretary William Simon's statement that "we are careening with frightening speed toward collectivism and away from free individual sovereignty, toward coercive centralized planning and away from free individual choices, toward a statist dictatorial system and away from a nation in which individual liberty is sacred." It is difficult to understand how Judge Thomas could assert that, in the seventh year of the Reagan administration, this country was "careening with frightening speed toward a statist dictatorial system."

In an April 1988 speech at Cal State University, Judge Thomas declared that "those who have been excluded from the American dream [increasingly are] being used by demagogs who hope to harness the anger of the so-called underclass for the purposes of [advancing] a political agenda that resembles the crude totalitarianism of contemporary socialist states much more than it does the democratio constitutionalism of the Founding Fathers."

There are a significant number of other statements made by Judge Thomas which undoubtedly delighted the far right, but which raise real questions about his evenhandedness. Senator KENNEDY placed many of these statements into the RECORD last week.

Judge Thomas' explanation of these statements provided little reassurance. Judge Thomas stated that when he made these remarks, he was only expressing concern about the size of Government and about the relationship between the individual and the Government. At no time did Judge Thomas explain why he employed such extremist and ideological rhetoric in order to make an elementary point about the growth of Government or the relationship between the individual and the state. Indeed, Judge Thomas' assertion that this extremist rhetorio was used only to make uncontroversial points was repeated too often to have any credibility.

Judge Thomas never really engaged in a dialog with the committee about the controversial speeches and articles which he wrote while Chairman of the EEOC. Instead, he simply tried to assert that those statements do not count. Judge Thomas' suggestion that we should give little weight to the speeches and articles which he wrote prior to becoming a judge was a sweeping—and remarkable—attempt to persuade the committee not to Judge him based on his record.

I start from the assumption that public officials mean what they say. Judge Thomas was going around the country and making statements about a number of legal and policy issues. If Judge Thomas was publicly expressing views that he did not believe, then that, in itself, raises doubts about his fitness for the Supreme Court.

I also do not believe that a nominee's views and beliefs magically disappear the moment he or she dons a judge's robe. It is nalve and unrealistic to think otherwise. History tells us that, in most cases, a nominee's speeches and writing provide a good indication of the kind of judge that person will become.

The speeches and writings of Clarence Thomas strongly suggest that he is a nominee who would fit in all too well with the conservative activists on the Supreme Court. His refusal to discuss those speeches and writings in a straightforward manner, suggests that he either does not understand their significance, or that he did not want to engage in a meaningful dialog with the committee about these matters. In my view, either explanation raises doubts about his fitness for the Supreme Court.

Nowhere was Judge Thomas' effort to run from his record more transparent than in the area of abortion. Unlike either David Souter or Anthony Kennedy, Judge Thomas came before the committee with an extensive record on the subject of abortion. Every aspeot of his record relating to abortion strongly suggests that he is opposed to a woman's rights to choose. He was repeatedly asked to explain or elaborate upon those elements of his record which touch on abortion. But Judge Thomas' explanation of his record on the abortion issue only exacerbated concerns about his views on this subject, and about his willingness to be candid with the committee.

Much has been said about Judge Thomas' endorsement of the Lewis Lehrman article entitled "The Declaration of Independence and the Meaning of the Right to Life." The Lehrman article argued that Roe versus Wade must be overruled, that fetuses have constitutionally enforceable rights, and that Congress and the States are barred from enacting laws that protect the right to choose.

In a 1987 speech, Judge Thomas called this article "a splendid example of applying natural law." But last month, Judge Thomas testified to the Judiciary Committee that he actually regarded the Lehrman piece as an inappropriate application of natural law. He stated that he praised the Lehrman article in order to persuade his oonservative audience that they should not be fearful about using natural law. In essence, Judge Thomas told us to discount this statement because he didn't mean what he was saying. Such

an explanation only heightens concern about his nomination. If, in 1987, Judge Thomas was willing to misstate his views about the Lehrman article in order to win over his audience, how can we be certain that Judge Thomas was not disavowing the article in order to please the oommittee?

Judge Thomas also signed onto a 1986 White House working group report that criticized as fatally flawed a whole line of cases concerned with the right to choose. The report suggested that these decisions could ultimately be corrected through "the appointment of new judges and their confirmation by the Senate."

However, when Judge Thomas was questioned about the working group report he tried to disavow it by explaining that he had never read the section of the report which discussed the abortion decisions. Once again, Judge Thomas' explanation of an important and controversial element of his record only raises more questions than it answers.

In a 1988 Cato Institute publication Judge Thomas criticized another of the Supreme Court's decisions on privacy, Griswold versus Connecticut, deriding a key oonstitutional argument supporting the right to abortion.

But Judge Thomas testified to the committee that he views the Constitution as protecting a marital right to privacy. His testimony is troubling for two reasons. First, his testimony to the Judiciary Committee during his Supreme Court confirmation hearing was the first time in which Judge Thomas had ever suggested that he views the Constitution as protecting a right to privacy. Second, Judge Thomas refused to say whether he believes that the right to privacy encompasses a woman's right to terminate her pregnancy. Indeed, Judge Thomas' remarks sound eerily similar to statements made by other nominees who have paid lipservice to the right to privacy and then have gone onto the Court and undermined the abortion right.

Because of his extensive record on the abortion issue, committee members questioned him directly about his views regarding a woman's right to choose. Judge Thomas was not asked how he would rule in a particular case. But committee members hoped to get a sense of how he views the issues raised by abortion.

Despite the fact that Judge Thomas answered questions on a slew of constitutional issues that will most certainly come before the Court, he would not even give us an inkling about how he would approach the legal issues raised by the abortion question.

Indeed, when Judge Thomas was asked whether he had any views about the Roe decision, he made the remarkable statement that he had no opinion on the case and that he had never even had a disoussion about Roe.

This statement is simply not credible. It is hard to believe that any thoughtful attorney or judge has never had a discussion or formulated an opinion about the Roe case. Moreover, Judge Thomas had written an article in which he stated that the Court case "provoking the most protest from conservatives is Roe." It is hard to believe that Judge Thomas would make a statement about Roe in an article he had written without ever having thought about or discussed the decision. In addition, Judge Thomas testified to the committee that he believed that the Constitution protects a right to privacy. It is difficult to believe that Judge Thomas could reach the conclusion that the Constitution protects a right to privacy without ever formulating an opinion regarding Roe versus Wade, the most significant of the privacy cases.

Judge Thomas' supporters defended his silence on the abortion question. They pointed to his statements in support of the right to privacy, even though these statements are quite similar to the statements of other nominees who have gone on to the Court and weakened the abortion right. They also noted that the issue of whether the Constitution protects a woman's right to abortion is unsettled, and is therefore not appropriate for discussion. But they failed to acknowledge that the major reason that a woman's right to abortion is unsettled is that the Reagan and Bush administrations have consistently made good on their campaign promise to appoint Justices who would weaken that right.

To the millions of American women wondering where Judge Thomas stands on this critical issue, his answer was: Trust me, my mind is open, I do not have a position or even an opinion on the issue of abortion.

Judge Thomas' statements regarding the abortion issue are simply not credible. He wants millions of American women to ignore everything he has ever said or done in relation to the issue of abortion. He wants them to dismiss the fact that he—like other nominees who have gone onto the Court and weakened the right to choose—singled out this particular subject for silence during his confirmation hearing. And he wants the women of this country to entrust their fundamental right to choose into the hands of a man who, by his own admission, does not even regard the issue as important enough to merit discussion.

Members of the Senate cannot ignore Judge Thomas' record on abortion. And Members of the Senate who support a woman's right to choose, should not take any solace from the judge's testimony before the committee. A woman's right to choose is too important to be placed into the hands of a man who will not discuss his record on the issue in a candid and straightforward manner.

In my last round of questioning to Judge Thomas, I told him that I would evaluate his nomination based upon his record, and based upon the manner in which he discussed that record with the committee. Judge Thomas' background and life story are impressive and inspiring. But in the end, the question of where Judge Thomas comes from is far less important than the question of where he would take the Court.

Everything in Judge Thomas' record suggests that he will be an active and eager partioipant in the Rehnquist Court's ongoing assault on established Court decisions proteoting civil rights, individual liberties, and the right to choose. Judge Thomas' refusal to discuss that record in a candid, thorough and straightforward manner only confirms my concern that he will move the Court in the wrong direction.

I must vote against the nomination of Clarence Thomas.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. METZENBAUM. Mr. President, I suggest the abeence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Mr. President, 2 weeks ago, I announced my opposition to Judge Thomas on the Senate floor. Since that time, I explained my views in some detail, and I want to simply summarize them now. In stark and simple terms, I decided to vote against Judge Thomas because I was not satisfied with his responses to the questions he was asked by the committee. They did not demonstrate a mastery of legal issues. They failed to reveal a coherent and consistent approach to constitutional interpretation. And they were nonresponsive to legitimate questions about basio values as opposed to future rulings.

Mr. President, those objections and concerns, so carefully considered before I became aware of the allegations regarding sexual harassment, are still valid. They still form the core of my opposition to this nominee. These issues seem to have paled in the last few days, as legal arguments have been overwhelmed by Professor Hill's charges of sexual harassment. I want to comment on these. A cloud now hangs over this confirmation. Whether the nominee is confirmed or rejected, the decision will be tainted by unresolved claims and counterclaims. That is not acceptable. In fact, it ought not to be tolerated.

This whole process has been cheapened, soiled, and made ugly. If we vote today without attempting to find out more, we will have let the oountry down. I am not saying that Professor Hill's allegations are well-founded. I do not know if they are. But that is a tragedy; we should know. And now that this matter has become publio, now that she has agreed to come forward, we should take steps to find out.

I wish, Mr. President, that we could delay this vote. Judge Thomas is not well served by being confirmed or defeated under these circumstances. While I will not vote for him, I do not wish to punish him by sending his nomination disposed of under this cloud of uncertainty. And, similarly, Professor Hill deserves better than an inquisition before the media. She deserves to have her case investigated carefully and objeotively. And the Supreme Court—one of the institutions in which people have the most faith—has been trivialized and weakened.

Mr. President, we ought to delay this vote. Judge Thomas will not be able to do justice on the Supreme Court with this issue hanging over his head. Professor Hill will never get justice, if her claim is not taken seriously. And the Amerioan people will not have justice done on their behalf, if we rush to judgment without taking our responsibility to oarefully investigate this matter.

I ask unanimous consent that a complete statement setting forth my concerns appear in the RECORD at the conclusion of these remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Mr. President, over the past 43 years Judge Thomas has demonstrated many admirable qualities. He has demonstrated that he has the strength to triumph over adversity. He has demonstrated that he has retained his sense of humor, and that he has the respect and admiration of his many friends.

In my judgment, however, he has not shown why his professional qualifications—as opposed to his personal accomplishments—justify his elevation to the Supreme Court. Let me tell you why.

First, Judge Thomas lacked a clear judicial philosophy. Less than 2 years ago, when Judge Thomas was nominated to serve on the appeals court, he told us that he "[did] not have a fully developed constitutional philosophy." That did not disqualify him for a lower oourt. But it would for the Supreme Court, which interprets the Constitution in which we, as a people, place our faith and on which our freedoms, as a nation, rest.

So, it was my hope that at the hearing, Judge Thomas would articulate a clear vision of the Constitution. Unfortunately, after listening to Judge Thomas testify, we were unable to determine what views and values he would bring to the bench.

Seoond, Judge Thomas demonstrated selective recall. He emphasized his experiences as a young man, but asked us to discount many of the views he expressed as an adult. For example, we asked Judge Thomas about his past musings on natural law, his dismissal of almost all forms of affirmative aotion, and his extensive criticism of Congress—an important issue, given that the Court is supposed to be guided by congressional intent. But he dismissed all of his statements, claiming that they would have no impact on his decisions.

Simply put, I cannot accept this approaoh. It is totally nnrealistio to expect that a Justice will not bring his values to the Court. Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justice Rehnquist wrote:

Proof that a Justice's mind at the time he joined the Court was a complete [blank slate] in the area of Constitutional adjudication would be evidence of lack of qualification, not lack of bias.—*Laird v. Tatum*, 409 U.S. 824, 835 (1972) (Chambers opinion of Rehnquist, J.).

I agree with the Chief Justice: Either we judge Clarence Thomas on his complete record or we don't consider his record at all.

Third, Judge Thomas is an oratorical opportunist. Judge Thomas crafted policy statements apparently tallored to win the support of specific audiences—and then later repudiated these very same positions. In a 1987 speech to the Federalist Society, for instance, he said that Lew Lehrman's article arguing for constitutional protection for the fetus was a "splendid example of applying natural law." But at the hearings he indicated that he had made these comments to win the support of his conservative audience. In fact, Judge Thomas said he had only skimmed the Lehrman article, and that he had never actually approved of its content. Mr. President, to paraphrase Abraham Lincoln, "You can only fool some of the people some of the time."

Fourth, Judge Thomas' answers to questions on Roe versus Wade suggest an astonishing lack of legal curiosity. He told the committee that Roe versus Wade was one of the most important Supreme Court decisions of the last 20 years. Yet he also told the oommittee that he had never discussed that decision and had no views about it. By oomparison, at his hearing Justice Sonter told me that "everybody was arguing about" Roe when it came out, and that he "[could] remember not only I but others whom I knew, really switching back and forth, playing devil's advocate on Roe versus Wade."

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his replies were disappointing. In contrast, Justice Souter displayed a wealth of constitutional understanding. Judge Thomas lacks this depth of knowledge, but that is not surprising. For, after all, he has been an appellate court judge for less than 2 years, and prior to that he was a policymaker.

In sum, Judge Thomas had a full and fair opportunity to demonstrate to the committee, the Senate, and the oountry why he should be confirmed. He failed to do that. He failed to discharge his burden of proof. He failed to demonstrate the level of judicial excellenoe which ought to be required on the Supreme Court. And, as a result, he failed to win my vote.

Mr. President, initially, I welcomed Judge Thomas' nomination because I believe that diversity on the Court is desirable. But diversity alone is not sufficient qualification. A high level of legal distinction is also required. In my judgment, though, Judge Thomas did not meet that requirement.

Finally, Mr. President, I still expect that Judge Thomas will win the approval of a majority of my colleagues in the full Senate. Their support for his nomination will, I suspect, be based on the hope that Judge Thomas will continne to grow as a jurist. Though I do not share their vote, I do share their hope—that Judge Thomas, if confirmed, will one day become an outstanding Justice.

Mr. KOHL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GARN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, I rise in support of Clarence Thomas to be an Associate Justice of the Supreme Court.

I concluded this some weeks ago, having had the opportunity to meet Clarence and question him quite at great length.

I asked him about the question of affirmative action, which has been brought up many, many times. As I have read the newspaper accounts about how he is opposed to affirmative action, and I have listened to some of the civil rights leaders oonstantly say that, I think the American people should know that that simply is not true.

When I asked him about this issue, he said very passionately and with great emotion:

Senator, I am a product of affirmative action. I would not have the education I have, I would not be where I am today, had I not had people help me. So I believe in affirmative action. I do not believe in quotas. I do not believe in lowering standards. I do not believe in preferential treatment. But affirmative aotion should be for disadvantaged people, not just minorities—whites, blacks, Hispanics—anyone who has not had equal opportunity, who has not had the educational opportunities. We need programs for them. We need to bring them up. We need to educate them. We need to create opportunities for them.

That certainly is this Senator's definition of affirmative action. I served with Hubert Humphrey. He was a great Senator, not of my political party or my political philosophy, and I had the opportunity on many occasions to discuss with him civil rights. I do not think his definition of affirmative was any different than Clarence Thomas'. As a matter of fact, the Civil Rights Act of 1964 was very clear in trying to create a colorblind society.

And Senator Humphrey certainly talked against quotas and preferential treatment. But he talked, as Clarence Thomas did, about creating opportunity for all. So Clarence Thomas is a product of affirmative action, and I am amazed that we continue to have this dissension over that particular issue.

So I rise in support of Clarence Thomas without any reservations at all. He is an incredibly decent, kind human being, well qualified to sit upon the Supreme Court of the United States.

But what I am more troubled with, after 17 years in the Senate, is what the Senate is becoming. I wonder how many people in this body could pass the test we are now placing upon nominees for both the executive and the judicial branches of Government, a test that I am afraid many of us would fail. As long as we can go out and give speeches, raise millions of dollars to convince our oonstituents that we should be elected, we can stand here and say, "But we are answerable to the people."

As I look at some of the campaigns that are run, I wonder who the real candidates are. If we had to go through the FBI checks, if we had to sit before a panel asking us detailed questions about our personal lives, where in campaigns we can be articulate and we can run our 30-second spots and create images and presentations of what we are that may not be real, it is a very different process.

So in some cases, I think the kettle is calling the pot black. But having served for 17 years and having served under both Republican and Democratic Presidents, I am disturbed at the prooess that is going on, how we have set ourselves up as judges of all this minute detail. And I do not want to indicate in any way that we should not perform our responsibilities of advice and consent—that is under the Constitution—or the nominees should not be asked tough questions.

But when we start to savage people, when we have made up our minds on a nominee for any position, either for or against, before we have heard the evidence, that would be in our judicial system like a jury having already made up their minds before they heard any of the evidence. It seems to me that that is wrong, and that jury would be disqualified. And yet this body, on both sides, many people made up their minds for or against before any hearings and even been held. That is not fair. That is not right to judge somebody innocent or guilty before you have heard the evidence.

Then when we start creating evidence, we do everything we can to savage somebody, there is something so un-Christian, so intellectually dishonest about that. And we have seen it happen more and more. We saw it happen to our colleague, John Tower, with misinformation, actual lies, distortions of reoord, somebody who served for 24 years in this body in a distinguished manner, and we savaged him.

And we took Judge Bork, and undoubtedly no one talked about his lack of qualification to be an Associate Justice of the Supreme Court. But people did not like his philosophy. Well, fine; then vote against him. But you do not have to go around manufacturing things and running politioal campaigns out there. The Founding Fathers, I do not believe, in the advice and consent process, thought that we would run political campaigns for these jobs and groups would go out there and dig in every nook and cranny of the country and try to find something wrong with somebody: Do not care about your fellow human beings; savage them; take them apart if you do not like their philosophy.

So now we are doing the same thing to Clarence Thomas. These latest charges are obviously serious. But where was this woman in his other confirmation processes; where has she been the last 10 years with these charges? It looks to me like part of a plot to get Clarence, delay, and bring her out of the woodwork 10 years later to make some charges that the FBI has already created.

When does it stop? what do we do to this country? Who is going to want to serve? Who wants to be Secretary of Commerce, or a Judge, or Assistant Secretary, or a head of the regulatory agencies, if this is what they have to look forward to: arrogance from the Senate. We do not like their views, so we are going to take them apart. We will hire investigators to go out and find everything we can wrong with them, and then disclose it to the country and smear them.

I think what is more on trial here than Clarence Thomas is the Senate of the United States. It is time we got back to some oivility in this body. It is time we got back to the comity I heard about wben I got here—and I did not say comedy; I said comity—that we got back to that, when there was some decency and interaction between us.

This is supposed to be the greatest deliberative body on Earth. It certainly is not showing it over the last 2 or 3 years. And if we want to deteriorate the quality of Government, then let us just keep it up. When you soour this oountry for Republicans or Democrats for any high offices in this country, they are going to say: No; I am not going to subject myself to that kind of treatment. I am not going to have my family subjected to that kind of treatment.

I would suggest the press start looking at this aspect of it, start looking at the Senate of the United States and see if we are really performing our function as we should, with some honesty and some integrity.

I happen to start from the premise that, unless I can find something terribly wrong with a nominee, I think a President has his right to choose. I felt that way when President Carter was President of this country. He sent up judge nominations that I was not particularly happy with, and yet I did not vote against one of them a single time, because if they were qualified and were men and women of integrity, then I thought the benefit of the doubt should go with the President of the United States.

So I am not up here making a partisan statement in any way whatsoever. I am talking about a process that I think has been totally and completely distorted, and it is time the Senate started behaving like the greatest deliberative body on Earth, started behaving with a little kindness, rather than just this gut politics, that if we do not like someone, rather than just voting against and expressing displeasure and letting the will of the Senate take place, we are going to get them.

There are many days when this Senator is glad I only have a little more than a year left. I hope the Senate will come to its senses, and again I am speaking much more generally than just the issue of Clarence Thomas, to the issue of will we start behaving the way the Amerioan people think we should; when will we start behaving with the responsibility that our oonstituents gave to us when we were elected?

Well, I hope it does not continue. I hope we will come to some reason and stop this kind of behavior, and confirm good people of either party. I will enthusiastically vote this afternoon for Clarence Thomas, and I sincerely hope the games stop, and that we do vote this afternoon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I am happy to have this opportunity to make a few remarks and clarify the record. I know my distingulshed friend from Ohio feels I named him as the person who leaked the information with regard to the FBI report, and that is not true.

I must have been interviewed 50 times on this. I have my suspicions who did, and I do not believe it was any Senator who leaked the report. I do believe it was staff. But I have to say I never said that the distinguished Senator from Ohio did leak the report.

Now, having said that——

Mr. METZENBAUM. Mr. President, will the Senator from Utah yield for 1 minute?

Mr. HATCH. Let me say one other thing. I apologize if that was the implication that the Senator took. It appears to me, in the New York Times today, in an article written by Mr. Wines, a journalist named Wines, that he accused me of saying that I had said that Senator METZENBAUM was the only person who could have done it.

Mr. METZENBAUM. I just want to know that I have not, nor has my staff—and I say that professionally—neither I nor my staff made this story available.

Mr. HATCH. I am happy to hear that. I take the Senator's word on it. But I have to say somebody on somebody's staff did that. I will take the Senator's word that it was not him or his staff.

Mr. METZENBAUM. I thank the Senator.

Mr. HATCH. The Senator is welcome.

Somebody did it because the only people who had access to these materials were U.S. Senators. Now, I am happy to take the word of the distinguished Senator from Ohio that it was not him. The only thing I ever said that I recall was that the Senator from Ohio and the Senator from Massachusetts [Mr. KENNEDY] their staffers from the Labor Committee were the ones who initially contacted Anita Hill and, of course, did the initial investigation on this matter before anybody from the Judiciary Committee staff, which is supposed to do the investigating.

That does not negate the fact that I am highly offended by this October surprise.

Now, let us just go back over the facts. All seven who voted against Judge Thomas on the committee knew about these allegations before the vote took place. None of them were in the dark. All of them knew about it. Any one of them could have asked for a week's delay automatically under the rules. Not one did. Any one of them could have raised the issued at that time. Not one did. And any one of them could have had this matter aired before that vote. Not one did.

One Senator in particular talked about filibustering this matter. I raised the issue during that markup, I said, "can you imagine liberals filibustering one of two nominees in the history of the Court who were African-Americans?" I could not imagine it myself. But then it really began. Every effort was made to invoke the rules and to delay the matter and to try to get it past last Friday, because I guess they presumed that there would be an interim 10-day recess and there would be a full 2 weeks where Judge Thomas could be smeared while all of us were out of town

I am not going to point the finger at any particular Senator, but we know that it had to come from a Senator's staff or a Senator in this body, because nobody else knew about that report. And it is reprehensible.

Mr. President, I believe that if Senators put this October surprise allegation in context, they will not only want the vote to go forward, but they will not feel this recent allegation should bear on the nomination. I understand if sexual harassment occurs, it is a serious thing. I do not condone it in any way. It should not happen. I understand that elected officials need to take it seriously. I think perhaps in this sense the debate has been interesting and perhaps beneficial.

But now I would like to go back and just spend a few minutes talking about the allegations of Miss Hill. Now, what is the context of this recent allegation? Allegedly the harassment occurred while the accuser was working for Judge Thomas while he was Assistant Secretary for Civil Rights at the Department of Education. This was a position to which he was appointed in 1981.

The accuser did not file a complaint with the Department's Equal Opportunity Office. The acouser did not complain to the Inspector General or the general counsel or any one else at the Department. Not one person. The individual did not complain to the Equal Employment Opportunity Commission.

She did not come forward to disclose the alleged harassment when the judge was nominated to chair the EEOC, which, by the way, is the most important Government agency dealing with sex discrimination. And she is not some young high school secretary. She is a Yale law graduate interested in civil righte and these issues and an expert on them. Instead, what did she do? She left the Department of Education with Judge Thomas and went to the Equal Employment Opportunity Commission with Judge Thomas and worked with him for a period of time there.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. I am happy to yield.

Mr. KERRY. As I listened to the Senator going through the chronology here, it seems to underscore to me the fact that is why we are where we are. Indeed, that may be the chronology and that maybe in fact all the facts stack up on the side the Senator is articulating. But the question I ask the Senator is: Does he not sense that because we are where we are, because this has now become public, because Senators outside of the committee were not aware of this, because the full Senate must vote in order to confirm and advise and consent, that because the Nation as a whole and particularly the 50 percent or more of our country made up of women now have a doubt about the process, do we not have an obligation to air the very kinds of arguments the Senator is making in an appropriate way? Should we not act to provide people that sense that there is integrity and a process, so that the facts be put in place, and not simply by the Senator from Utah, who I know speaks with conviction and a sense of faith about it, that he not be the sole voice in this?

Mr. HATCH. I think it is a good question, but I have to point out to the Senator that everybody on the committee knew about that. Part of our job is to screen these things out, and all 14 members of the committee basically found them out. They have had full access to the FBI reports.

We have a disparity. We have Miss Hill alleging that there was sexual harassment and we have Judge Thomas denying it. Now, nothing is going to occur to change those two facts. It is nice to say that and it is nice to talk about that, but we are talking about a Supreme Court Justice nomination, and we are talking about proceeding because he has been smeared over the last 3 days, 4 days, while most of us were out of town and we do not want to see the smear continue. And in all honesty, I am pointing out here right now and I am going to continue to point out the discrepancies in her press conferenoe and some of the other things that she has said.

Mr. KERRY. Well, I understand that.

Mr. HATCH. Let me finish my remarks and I think I will clarify for the Senator what I am saying because I am going to go into some newer things today if I can.

What I am saying is that even though she claims sexual harassment, she leaves the Department of Education and goes right along as one of his top staff people at the EEOC. There she justifies that on the basis that the harassment had stopped and that she did not want to lose her job.

First of all, let us understand something. As a graduate of Yale Law School, a woman graduate of Yale Law School, there is no question in my mind she would have had a job anywhere she wanted, especially in this town, almost anywhere she wanted. She knows it, and everybody else knows it. And she had a job when she wanted it. And she could have gotten a job almost any time she wanted it, not only here but elsewhere. But she goes to the EEOC with Judge Thomas.

Now I ask my colleagues, is that the behavior of someone who has been sexually harassed?

Then she claims that he talked to her again there, that he continued to press her for dates, she said.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. Let me finish my statement then I will be happy to answer any questions.

She says he continually pressed her for dates. And then she claims he talked about sexual matters with her. Well, she is at the Equal Employment Opportunity Commission. She is a Yale law graduate. If she was offended by it, if that is what happened, why did she not make a complaint right then and there? She was not going to lose her job. As a matter of fact, the law says she could not lose her job making that allegation. She knew the law, and she did not complain. And the Yale Law School graduate claims that she feared about getting her next job. Come on.

Now, as I understand it, the accuser says that she was also, as I have said, harassed at the EEOC. She never complained to a relevant official there. She then left the EEOC in 1983. Now, keep in mind, she lived through the second confirmation of Judge Thomas. She went with him after the first time he was confirmed to the EEOC. Then she lived through the second confirmation of Judge Thomas.

That is the third time he was confirmed because he was confirmed to the

Offioe of Civil Rights, as Assistant Secretary of Civil Rights in the Education Department.

So she had been around for two confirmations, which occurred after the alleged sexual harassment. The reason I mention these confirmations is because that is pretty important. These are important positions and he is now in his fourth confirmation period, with no one ever having raised the slightest criticism of his personal conduct, no one until this last weekend while we were all out of town.

Let me tell you, there is no one to my knowledge in the history of this country, who has been confirmed four times in 9 years—no one—confirmed by this very body, with all 100 of us looking at these matters. And I have presided over three of those confirmations and have participated in the other two, including the pending confirmation. Let me tell you, if anybody could have given him a rough time on those other confirmations, they would have; they tried. But not on these types of allegations.

So she never oame forth at the Department of Education and made a complaint or said anything to anybody in authority. She did not come forth in the first confirmation to the EEOC, but came with him and worked at the EEOC. Does that sound like somebody who has been sexually harassed? And then, she did not come forth in, I believe it was 1986, when he was reconfirmed to the EEOC. Nor did she come forth when Judge Thomas was nominated for his position as a judge on the Circuit Court of Appeals for the District of Columbia. She never came forth with this accusation until around September 3, when Labor Committee staffers from Senator METZENBAUM and Senator KENNEDY contacted her.

She says they contacted her. Senator METZENBAUM, as I recall his testimony—I want to be honest about this and frank about it, I think he said she contacted them. I do not know which way it happened.

But she did not come forth when he was nominated to be an Associate Justice on the Supreme Court; not at first. It happened around September 3. And she was not contacted by regular investigators from the committee staff who are supposed to do this type of work. No, we heard testimony from 100 witnesses but none from this individual. This privately made accusation was investigated by the FBI. The FBI report was available to the Judiciary Committee before its vote and of course it has been, since then, available to everybody in the U.S. Senate.

No Senator on the committee or during the 2 full days of floor debate had even alluded to it, much less suggested that we should delay consideration of the vote. Indeed, no one asked for further investigation during the entire time.

That, naturally, has upset a lot of women out there and I thing rightly so. But I just want to get back to that time, because I am personally offended that some staff of our colleagues in this body, according to one press account would criticize the chairman of the Judiciary Committee who conducted this in the most upright, straightforward way I know and went personally to every one of the seven who voted against Judge Thomas, as though he should have done something more.

The fact is, it came down to an allegation by a woman which was rebutted by Judge Thomas and by Judge Thomas' whole life. Everybody sat there and watched him iu one of the longest confirmation proceedings in the history of the Supreme Court.

There are a couple of other things I would like to just say, just to make this entire recent development understood by a lot more people. Something that bothers me is this woman is so upset at Judge Thomas, suddenly, after 10 years and after all these opportunities to tell her story, all of these positions being important positions, all confirmable positions.

I understand that there are phone logs of Judge Thomas from 1984 forward, reflecting quite a few telephone calls from none other than Anita Hill. Let me just give you a sample of telephone messages from her. On January 31, 1984—this is approximately 2 years after she left the EEOC. "Just called to say hello. Sorry she didn't get to see you last week."

That was the handwritten note by the person who took the call for Judge Thomas.

On August 29, 1984, "Needs your advice on getting research grants." From Anita Hill, from Professor Hill. Why is she calling Judge Thomas—then Chairman Thomas, Chairman of the Equal Employment Opportunity Commission—if she was so upset at him? If this really had happened, why would she call him, of all people?

On August 30, 1984, "Anita returned your call." So the judge presumably called her back to try to help her on the research grants, when she called on August 29, 1984.

March 4, 1985, "Please call re research project."

March 4, 1985, a call from Susan Cahall, of the Tulsa EEOC office: "Referred by Anita to see if you would oome to Tulsa on 3/27 to speak at an EEO Conference."

Ootober 8, 1986, almost 4 years later, "Please oall."

August 4, 1987, "In town till 8/15, want to congratulate you on marriage."

What is going on here? Here is a woman who was so offended, on TV, that she is willing to accuse this person, who everybody else knows to be a reasonable, wonderful, upstanding person of integrity and honesty, and she is continually calling him. I could go through the rest. There are some 11 calls over this period of time. One of which was to call and ask him to oome to the University of Oklahoma and speak to the law school.

Does this sound like a victim speaking to her harasser? It does not to me. What is really going on here? For 10 years, no publio complaint at all. Even as a Yale Law School graduate, an attorney, working right in the agency that takes care of these problems.

The reason a lot of us feel it is time to go to a vote and decide what is going to be done here is, let us be fair to the judge and his family. I do not know about other Senators here but I have anguished, as I have seen these people just torn apart in the publio media. I have anguished as I have seen their children suffer.

I happen to like both Clarence Thomas and his wife and I care a great deal for his son, who is a wonderful young man, and his mother. I will never forget right in the middle of the hearings I went down to console his mother after some pretty tough things were said by a couple of our friends on the committee. She is a very humble, wonderful woman. It is easy to see why he is a humble, wonderful man. I put my arm around her and said "Don't let it get to you." She said, "I did not doubt"—she mentioned one Senator—"would treat my son this way. But I really did not think this other one would."

That is what she said to me. This is tearing families apart. And I have to tell you, anybody looking at it would say his accuser acts like she is so offended right now, why did she not do it during the 10 years beforehand? And why the repeated contacts with Judge Thomas? Why keep asking him for his help, which he always seemed to give?

This man was nominated to chair the most important civil rights agency in government, renominated to that position, reconfirmed, nominated to the court of appeals, and at that time he was openly discussed as a potential Supreme Court nominee. Everybody knew he was on the fast track. And still this alleged set of inoidents never surfaces. And, in the meantime she retains a friendly disposition to him.

For over 2 months after his nomination to the Supreme Court, and despite being interviewed by the Washington Post about the judge, still no allegation of harassment. It bothers me.

What happens next? Well, in early September, staff of not even the appropriate committee come to her, from two Senators.

In early September, I guess based on rumor or something—I think it is important to note that one of those staff members was her classmate at Yale Law School.

I think enough said.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. I will be glad to.

Mr. KERRY. I just want to clarify something. When the Senator quoted those telephone call messages, I take it that is new information; is that accurate?

Mr. HATCH. That was said by Senator SIMPSON last night on "Nightline." There were 11 messages since 1984, all of which were cordial, friendly, and asking for various things.

Mr. KERRY. My question simply is that was not before the committee? Those messages, I take it, are new information; is that accurate?

Mr. HATCH. I think that is accurate.

Mr. KERRY. What I am trying to suggest to the Senator respectfully is that just underscores exactly why one ought to have——

Mr. HATCH. I do not think it does.

Mr. KERRY. The Senator has the floor, and let me articulate why. I think the Senator from Utah raises very legitimate questions. I am not doubting the appropriateness of making those kind of judgments, but when the Senator talks about sort of expected actions of somebody who has been acoused or has suffered from sexual harassment, I sort of stand here and I say to myself, how are 98 men in the U.S. Senate going to make a judgment about the expected actions of some woman who has suffered from sexual harassment in the workplace?

Frankly, I do not think 98 of us here know very much about that. That is exactly what people are feeling about this issue all across this country.

What is at stake here, I respectfully suggest to the Senator, is not the veracity of what the Senator has said, not the veracity in this movement of what Professor Hill has said, but the process. Are we going to be so rigidly glued to an expected vote that we just shunt this thing aside——

Mr. HATCH. I would like to interrupt—I would like to take back the floor.

Mr. KERRY. Let me sort of go through my oomments and I will be glad to engage in the dialog.

The PRESIDING OFFICER. (Mr. LEAHY). The Chair advises the Senator from Utah does retain the floor.

Mr. KERRY. I apologize if the Senator has the floor.

Mr. HATCH. No apology is needed. I appreciate what you are saying.

But I just want to interject at this point because we all know that this is a game. We all know that if this is delayed that every leftwing group in the country is going to come out and do to Thomas what they have done to Judge Bork. Every group in the country. They have been doing it all this time.

We all know that the whole game by those who are against him is to delay this and continue to try to shoot at him with innuendo, stuff like this. We all know that we had one of the most extensive committee hearings in history. We all have the FBI report, and in that report you have her statement, you have his statement, or at least his interview with the FBI, you have the interview of Miss Horchner, I think her name is. If you read that carefully, you will find it does not quite match what she said yesterday in public. And we also have other statements that have come as a result of that investigation.

The fact of the matter is, there is a time and a place to put these matters to rest. And I am telling you there is an overwhelming case on the record as it currently exists that this is the time and place.

I have to say this: I understand those who have been against him from the beginning, some for a single litmus test issue, but they are presuming that he is against abortion, even though he said I have not made up my mind yet on that. Some are against him for that sole reason. Others are against him for that reason plus the fact that he has been very forthright in his oomments about quotas and preferences in the law, and he is against them as an African-American believing that they hurt innocent people, which they do. And some do not want him because he is a moderate-to-conservative African-American that they do not want as a role model out there for others to listen to.

We have gone through this now for quite a period of time, and we have been through it on the committee. We have seen smear jobs before. I do not see how any fair person looking at it cannot be concerned about this. Only somebody on the committee or their staff, or someone else who must have gotten it from somebody on the committee or a staff person of a Senator on the committee, could have released this to the press over this weekend after knowing about it before the vote and waiting until the precise moment that everybody is out of town so that they can smear this man.

Once you go through that, and once you see people's lives turned upside down by this type of tactic, which is sleazy politics, like a sleazy political campaign, then you need to say there is a time to look at her comments. She has a four-page statement. Read it. What else is she going to add? And there is a time to look at his comments and make a decision and vote.

I want to add to it that maybe one reason why I am so vociferous about this is because I have been in all of his confirmations, and I have seen these trioks pulled against him in every confirmation. Not as bad as this. It does not get any worse than this.

Let me tell you, the law of sexual harassment is so broad that a person can accuse another at any time and ruin their reputation just by an unfounded allegation. I do not know why Professor Hill has done this. I thought she presented herself well yesterday. I do not know why she has done this. It bothers me greatly. But she has done it, and I do not think there is much basis for believing it if you look at the full record in this matter.

Again, I think it is important to look at a couple of the statements that were made. She denied she knew Phyllis Berry Myers. Phyllis Berry Myers says there is no way she can deny that. She met with her every Monday with other members of Clarence Thomas' small staff after joining the commission.

I thought the most interesting letter I had, at least to me, was from Armstrong Williams, who served with her and with Clarence Thomas, with Phyllis Berry Myers, and others. He says:

As someone who worked with Judge Clarence Thomas from 1983 to 1986 I also had the opportunity to work with Ms. Anita Hill.

I must tell you that during that time I was very uncomfortable with Ms. Hill. I often questioned her motives. This concern was something I expressed to Judge Thomas on more than one occasion.

Furthermore, I found her to be untrustworthy, selfish and extremely bitter following a colleague's appointment to head the Office of Legal Council at EEOC. A position that Hill made quite clear she coveted. After she was passed over for the promotion, she was adamant in her desire to leave the agency and discussed this with me privately.

I also question her motivation when it comes to her recent allegations. Especially since Ms. Hill discussed with me her admiration for Judge Thomas' commitment to fight for minorities and women, and his fair treatment of women at the agency. I know, personally, that these are the rantings of a disgruntled employee who has reduced herself to lying.

That is strong stuff. I am not prepared to say that. I do not know why she made these allegations. He goes on:

I ask you, if this was a man she should loath for sexual harassment, then why did she maintain contact and continue to communicate with him?

Eleven messages since 1984, all friendly. Why did she continue to do that? Does that sound like somebody harassed?

Why did she follow him from the Education Department to the EEOC? Why did she only have praise for him in her discussions with me? Furthermore, Judge Thomas believed this woman to be a friend and someoue of great intelleot and wanted only to assist her as she moved along in her career.

I am sure having had knowledge of the situation prior to this past weekend is evidence that you also question Ms. Hill's accusations and credibility. I urge the Senate Judiciary Committee to listen to these allegations with a grain of salt.

In closing, as I described her ten years ago to Judge Thomas, I do so now. She always had to have the final word and the last laugh. I see now that some people just never change.

I look forward to your confirming the Judge to our nation's highest court.

I think, to answer the Senator even more specifically, there comes a time to vote. There comes a time to stand up and vote one way or another.

We have another former colleague here also who talks in terms of what went on. It certainly does not oonfirm Anita Hill's allegations. I have statements that were put in the RECORD yesterday, including, I believe, the statement of the dean of the Coburn School of Law at Oral Roberts University.

Mr. President, this has been a long process. It has been a detailed process and it has been a hideous process. Frankly, there comes a time to put an end to it. Those who want to vote against Judge Thomas, so be it. Most of them have made up their minds anyway and this does not make one difference to them. Those who want to support him, so be it. I have to admit they have been very ooncerned about these allegations. On the other hand, if you look at the record and you look at the facts, it is pretty hard to see how these allegations stand up to scrutiny.

You have the issue joined. You have Professor Hill saying that he did these things. You have him saying that he did not. And the only reason some like to delay is a very important political reason. They want delay for delay's sake. This is what you call a liberal filibuster. They are unwilling to stand up and do it in a formal filibuster because they know that they would get criticized if they did that. So what they do is they bring up these types of things at the last minute knowing about them weeks before, bring them up at the last minute just to try to get more delay in hopes that all these outside groups will bring up their garbage and savage this man and his family even more. That is precisely what is going on here. It is a big game.

Frankly, I do not know why Miss Hill did this. I do not know why she waited 10 years if it was true. My conclusion is that I question its truthfulness. But I question it on the facts and from a personal knowledge of Judge Thomas. I know that what she said is not true because I know the man personally. I know his wife personally. I know his son personally. I can tell you he is a fine, upstanding person who, in my opinion, has always basically done what is right. Is he perfect? No. But neither is anybody else.

Mr. President, I am very concerned about this type of stuff because we have had far too much of it. I did not think it could get any lower than it got for Judge Bork when I pointed out 99 errors in a full page ad, 99 errors. I have to say the people who did it did not even try to rebut it. They knew that I was right in pointing them out. I pointed out well over 60 errors in two others. They did not care. They wanted to smear Judge Bork, and they did, and they succeeded. A lot of us do not want that to succeed here because we are sick of it. We are ashamed of it. We are ashamed of this kind of allegation being brought to the forefront right at the last minute. I have to tell you I do not think it is justified.

Now, we can ask for time and ask for further investigation all we want. There has been a lot of investigation on it, and we had it before we voted. Everybody knew about it and anybody could have put that over for 1 week, anybody could have asked for more investigation, and now I see Senate staffers of the same party as Senator BIDEN criticizing Senator BIDEN for the way he has handled these committee hearings.

Let me tell you, Senator BIDEN and I differ on whether or not to support Judge Thomas, but I have to say I know that JOE BIDEN did a very good job on these hearings. He was fair. He was straightforward. He gave them the information. He let them know. And he did everything that basically a chairman should have done. To be frank with you, he did a very good job.

I have been in those positions where those who snip at your heels are always trying to find fault. I do not think there is any fault here. I think Senator BIDEN did a great job. This is coming from a Republican who differs with him on the merits of this matter—not this procedural matter, but on the merits of whether or not to vote for or against Judge Thomas. To have him criticized I think is wholly inappropriate and highly unusual. And I am tired of that, too.

I think we are all going to reassess what goes on in these confirmations because these Supreme Court nominations are starting to be run like political campaigns. When you have an October surprise at the last minute, when people knew about it almost a month before—actually a month before—and have an October surprise like that, like a sleazy political campaign, I think it is time for all of us to stand up and say it is time to vote, and it is time to do what is right. I hope, when we do vote today, a good majority will vote for Judge Thomas. He deserves it. I think he deserves this kind of fair treatment.

I also think his family deserves not to be put through this any more. It is really miserable. When he talked to me yesterday, I mentioned it to him, and he just said—I said it yesterday—"This is really harming my family."

It is hard to take.

Mr. President, we can differ on a lot of things and I suppose we have our differences here, but I think there is a right thing to do and the wrong thing, and the wrong thing is to continue to perpetuate this matter in a way that is going to cause even more harm to everybody concerned without giving us any more answers than we have now. I think that is the feeling of a lot of people around here, although I worry about the feeling of some.

Mr. President, I yield the floor.

Mr. KERRY. Mr. President, I ask unanimous consent I be able to speak beyond the hour of 12:30.

The PRESIDING OFFICER. Without objeotion, it is so ordered.

The Senator is so recognized.

Mr. KERRY. Mr. President, I listened to the Senator from Utah suggest that we ought to look at the full record, and that is exactly what this Senator would like to do. But I do not think there is a full record. I think the Senator has even evidenced the fact that there is not a full record by citing telephone calls that are outside of the record that has been supplied by the committee.

Now, the Senator defends the committee and the Senator suggests that somehow what is happening here is an attaok on the committee. I do not agree with that. I do not think this is an attack on the committee. We are where we are. This is burst on the scene because an individual, an American citizen, a law professor, a woman who alleges that she suffered this indignity has stood up publicly and said so. She has claimed that she did so out of frustration with her inability to get these facts in front of the committee.

Now, I am not on the committee. But as an individual Senator called on to vote on a lifetime appointment to the Court, I am having trouble understanding why we cannot find a few days to sort out the veracity of this situation and these charges.

Now, I heard the Senator from Utah use words like, "I don't know why this kind of stuff appears," or "whether this is a trick," and yesterday the word "garbage" was used.

Now, I have not been here this morning. I just arrived. I came in from the airport. I came to floor because I was reading the newspaper and I was listening to people talk about this and hearing reports. Frankly, I just had a personal reaction to what was going on.

Now, I understand there have been some exohanges in the course of the morning here, but it struck me as I looked at this not in Washington, from outside of the beltway, that the Senate is on trial in a sense. Like it or not, we are there. That is where we find ourselves. And the question is whether or not we are going to provide a full record, whether or not we are willing to be temperate and supposedly as deliberative as this body holds itself out to be and make a judgment about what has happened here.

I must say, Mr. President, that I suppose the Senate is going to go through some sort of lurching public agony over what it is going to do. I do not think we ought to struggle very hard with this. I do not think the decision is that complicated.

If indeed, as the Senator from Utah said, most Senators made up their minds, and they are not going to be swayed, what on Earth harm will there be to take a couple of days to make judgments about this issue, so people will feel there is a fair process and a fair hearing?

It seems to me that the simple, straightforward, proper, appropriate, right thing to do in the U.S. Senate is to suggest a few days' delay in order to gather a full record, and let those who come back, who have already made up their mind and do not want to look at the record, come down and cast their vote. They can always oast their vote. But you cannot aiways redress the harm that will be done by not maintaining a sufficient process here.

I just think not to delay would be an extraordinary affront to the average person's sense of right and wrong. Even for Judge Thomas, incidentally. I do not know what is true and what is not true here. It seems to me that Judge Thomas, having nothing to fear, having confidence in his own behavior, recognizing the importance of a position on the Supreme Court, and wanting to go to that Court with the full measure of the confidence of this country, ought to be willing to stand up himself and say: Let this be properly aired. I want to go to that court with the appropriate judgment of the U.S. Senate, not with a stain on my nomination.

Where is Judge Thomas in this process? Many people are answering for him, but he is not on the record answering for himself. It seems to me that one would expect no less from a judge, let alone a judge who expects to go to the Supreme Court of the United States. Let the facts be heard. That is what the jurisprudential process of this country is about.

If we are blocked from having these charges examined because of a lack of consent by some Member of the Senate to have them properly aired, then the entire Senate, I think, will carry responsibility for that, and we will ridicule ourselves; we will ridicule the process of this oonfirmation; we will put a stain on the Senate and the nominee, and we will add yet another in an inoreasing list of actions and inactions that make the Senate just a little less respected, and perhaps a little more irrelevant.

People across America are looking at the Congress of the United States today, and they really wonder about all this. They wonder if we are in touch and capable of making decisions that are so normal and in their interests and with common sense. Here is a chance to prove that we do listen, that we have that measure of common sense, that we do understand, that we do care, and that we have a capacity to be sensitive and not so caught up in our parliamentary ridiculousness that we cannot even act on the real needs and demands of people.

The Senator kept quoting, "How is someone supposed to behave who is sexually harassed?" I do not know fully what that standard is. I suspect that some of the same standards that we have applied in exonerating Judge Thomas' behavior on certain occasions, because of where he came from and how he rose up, ought to properly be applied to Professor Hill. And I think that one can well imagine what it is like for a woman in the workplace—in a male workplace, I might add, by and large—who feels that there is a need to get along and not necessarily cause ripples. It is tough to take on a superior. It is particularly tough to take on a judge. And it is very difficult, under any circumstances, for anyone to stand up and let themselves be exposed to that.

I do not know the veracity. I think the Senator from Utah has raised some very legitimate questions. But, incidentally, he has done so in a way some might consider a countersmear. If indeed there is a smear against Judge Thomas, then what is it about when you read a letter impugning the character of Professor Hill on the floor? She is not here to answer that. That is precisely the process that ought to be put in place.

I am not going to make any judgments about whether or nor this incident took place. I do not think any of us can. I think it is inappropriate for us to vote making that judgment on the basis of an incomplete record. I think it is precisely the absence of the full record that mandates that the Senate look at this. Who knows about the accuracy?

But I must say that it is not the accuracy of those accusations that is at issue there, I submit to the Senator. It is the relationship of 98 men in the U.S. Senate to the majority of the citizens of this Nation—women. And whether or not we are capable of saying that when one woman stands up and suggests this—not because she volunteered it—but because the Senate committee came to her, and she felt they were not listening, whether we are now going to listen. That is what it is about. Are we going to listen?

I do not think we can let the Senate be perceived as—let alone actually be doing it—running roughshod over this process. It seems to me even less so when it involves a nominee to the Supreme Court of the United States.

So I ask my oolleagues whether a few days' delay are too much to ask for a lifetime's ability to sit, untarnished, on the Supreme Court of the United States; are a few days' delay too much to ask to guarantee or simply to fight for the reputation of the U.S. Senate?

In the end, what is at stake here is the integrity of the Senate, its sensitivity, its awareness, and its judgment, its self-respect, if you will.

Maybe, in the end, we should not be surprised that 98 men who presume to make judgments about what women can do with their own bodies, that we are going to have trouble making the correct judgment about what men are permitted to ask women to do with their bodies in the workplace. It might be too much to expect us to do that. But that is exactly the question that is on the table before the Senate right now.

It seems to me that none of this has to be. We do not have to have this contentiousness. We do not have to have this division. We do not have to have doubts about the Senate. We do not have to have acousations of liberal versus conservative plots. We do not have to have smears. We can elevate this thing to a quiet, judicious process, where the committee hears from those, makes a judgment, and submits it to the Senate, and Senators who are interested in finding out exactly what the facts are here can make an appropriate judgment.

Having said that, Mr. President, I hope that the Senate can find a way to do that. There are many reasons.

Incidentally, I did not even decide what I was going to do with respect to Judge Thomas until this weekend. I did that purposefully, because I wanted to read the record. I wanted to examine exactly what my colleagues on the committee had said about it. It is only after looking at that that I came to the conclusion I was going to vote against it—not for this reason, but for a lot of other reasons. And that is a separate speech, I suppose. I had originally come to the floor intending to make that right now.

But what bothers me the most about this nomination is the fact that I genuinely do not know where Judge Thomas stands on a host of fundamental issues—not abortion, but a host of issues of jurisprudence—let alone whether he represents a potentially poor, fair, good, or great Supreme Court Justice. I cannot reach that judgment. I simply cannot reach that judgment, because Judge Thomas has chosen a path that was purposefully designed to deny us essential information that is necessary to make that judgment.

Many of us have remarked in the past on how frustrating the hearing process is today. It is simply impossible to get a sense of who people are, what they really feel about the responsibilities of the position.

I will tell you something. All of us who have had the job interviews cannot imagine hiring somebody who would have answered questions the way Judge Thomas did in those hearings. If all somebody said in response to questions when they walked into our office for a job was, "Well, I do not, I do not recall, I have no idea, I do not have a thought about that," anybody who said that to us in an interview would have been offered the door as fast as one could find it.

But, increasingly, that is all we get from people who come before us for the Supreme Court of the United States. In area after area of the law, Judge Thomas chose not to answer questions from Senators on the Judiciary Committee

with responses that were almost devoid of content or meaning. In an obvious attempt to avoid controversy, he took the position that he could not comment on any issue that might come before the Supreme Court as a case during his tenure. But then he extrapolated and used that as a rationale for not even answering questions about how he felt about cases that are settled law, on matters where stare decisis has set in long ago.

It seems to me that we should not ratify, as Senators, an advice and oonsent process that submits itself to that kind of simplicity or avoidance. The judge suggested that it is important for judges not to have agendas, not to have strong ideology or ideological views, describing them as baggage that a nominee should not take to the Supreme Court.

But the trouble is dozens of previous statements by the judge on a host of critical issues provide exactly the very kind of baggage that he suggested you should not have, and regrettably his approach to the confirmation hearings left him saying praotically nothing that would permit us to understand whether or not that baggage had truly been left behind.

Instead, Senators were answered by Judge Thomas with nonresponses. Let me just give a few. Abortion, obviously, is the famous one, and I do not expect him to tell me what he is going to do on Roe versus Wade; I understand that. But it seems to me there are some fundamentals beyond that which might have been discussed in terms of past cases.

On questions about meetings, positions, and discussions on South Africa and apartheid, Judge Thomas said:

I have no recollection. I simply don't remember.

On a question regarding his past statements that:

Congress was a coalition of elites which failed to be a deliberative body that legislates for the common good of the public interest.

He said:

I can't, Senator, remember the total context of that, but I think I said that and I think I said it in the context of saying that Congress was at its best when it was legislating on great moral issues. Now, I could be wrong.

On a question about the right of privacy and the 14th amendment, Judge Thomas said:

My answer to you is I cannot sit here and decide that. I don't know.

On a question as to whether English-only policies might constitute discrimination, Judge Thomas said:

I don't know the answer to that.

On interpreting antidiscrimination statutes, Judge Thomas said:

Let me answer in this way, Senator, without being evasive. I know that there is pending legislation before this body in that area, and I don't think I should get involved in that debate.

On whether the Korean conflict was in fact a war, Judge Thomas said::

The short answer to that is, from my standpoint, I don't know.

On a recent dissent of Judge Marshall in which Judge Marshall said that:

Power, not reason, is the new currency of this Court's decisionmaking.

Judge Thomas said.

I would refrain from agreeing or disagreeing with that.

He certainly found a lot of ways to say "I do not know" or "I disagree" or "I cannot agree" or "I can't say whether I agree."

The result of these and similar answers to a wide range of questions over 5 days of hearings is that I would like to refrain from agreeing or disagreeing to confirm Clarence Thomas to the Supreme Court, but I am not permitted to do that. I have to make a decision and to vote.

And Judge Thomas has not permitted me to judge his opinions, or what kind of Justice he will really be. I can only judge his performance before the Judiciary Committee and that which he has said previously.

I would like to quote the Chair, Senator LEAHY, who I think stated well the dilemma that has been placed before us. Senator LEAHY said:

As I said when the hearing began, no nominee should be asked to discuss cases pending before the Court. Neither should a nominee feel free to avoid questions about established constitutional doctrine on the ground that a case on that subject eventually will come before the Court. No one could compel Judge Thomas to answer questions. The decisions not to tell us how he thinks * * * was his and his alone. In choosing now to share his vision of the Constitution, Judge Thomas failed to provide what I need as a Senator for informed consent.

I concur with the Senator from Vermont.

I would turn also to a statement made by the distinguished Senator from Alabama, Judge HEFLIN, a conservative who voted for Chief Justice Rehnquist and Justices O'Connor, Scalia, Kenney, and Souter.

After listening to the testimony and trying in vain to obtain from Judge Thomas a further explanation of his positions, Judge HEFLIN said:

I came a way from the hearings with a feeling that no one knows what the real Clarence Thomas is like or what role he would play in the Supreme Court, if confirmed.

The Senate Judiciary Committee hearings have revealed to me many inconsistencies and contradictions between his previous speeches and published writings and the testimony he gave before the committee. * * * Our Nation deserves the best on the highest court in the land and an error in judgment could have long-lasting consequence to the American people. The doubts are many. The Court is too important. I must follow my conscience and the admonition: "When in doubt, don't."

Mr. President, this body is in deep doubt concerning this nomination. I regret there will be a rush to confirm, but I regret even more that I do not have sufficient confidence in the kind of Justice that Judge Thomas would be. I regret that because I really came to this process wanting to vote for him, hoping I could vote for him, looking for a way to vote for him, and held in silence my comments until the end.

But I will vote against confirming him not on the basis of any of his past statements expressing hostility to reproduotive rights or antidiscrimination statutes or minimum wage or congressional oversight. I will vote against him because his unwillingness to answer basic questions has fundamentally stymied the ability of the U.S. Senate to properly give advice and consent.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. If the Senator from Utah could yield just for a moment, the Chair will recognize the distinguished Senator from Utah.

We note we are under an order to recess at 12:30 p.m. Of course, any Member can seek unanimous consent to continue that.

The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I do so seek that unanimous consent, that I be permitted to make a few remarks, and also the distinguished Senator from Michigan to follow me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I have listened with a great deal of interest to the remarks of the distinguished Senator from Massachusetts, and I have to say that the evidence is so slim and so late in the process that it would be a travesty to start now and start the faot-finding process all over again, which is what the Senator seems to be requesting.

If this is like it is at a trial, that shortly before the jury is going to vote, one party springs tainted evidence in an effort to inflame the jury, that would be trial by ambush. I have to say, we would not stand for that in court, and we should not stand for it in the U.S. Senate, especially since there was plenty of time to look into this before the vote was set.

I have to say that one of the questions I would have to ask the Senator from Massachusetts is, when he critioizes Judge Thomas' responses before the committee, how were they any different from those of Justice Kennedy and now Justice Souter? The only difference is, Judge Thomas was asked over 100 questions on abortion compared to then-Judge Souter's 36 questions on abortion. He was asked over and over about matters with respect to abortion. He said: "I do not know where I stand on abortion."

That is an answer. It is a fair answer; maybe one that ought to be followed and listened to.

When the Senator says that he does not have enough information to know

whether or not to vote for or against Judge Thomas because he did not answer enough questions, there is no way he could answer enough questions if we held the committee hearings for 2 years to answer all the questions about law that the distinguished Senator might have, or any other Senator might have.

The fact is, the process was a reasonable process. It was a decent process. It was a good process.

Mr. President, this process has been full; it has been an informative process. I would like to put into the RECORD at this time a chronology of the committee's contacts with Professor Hill. You will note it was extensive.

I ask unanimous consent that we print that in the RECORD at this particular time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR., ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 7, 1991

I am releasing today a chronology of the Committee's contacts with Professor Hill. The chronology provides the complete details of the Full Committee staff's contacts with Professor Hill from the time we were made aware of her charges to the day of the Committee vote.

I want to emphasize two points in conjunction with this matter.

First, throughout, our handling of the investigation was guided by Professor Hill's repeated requests for confidentiality.

Second, Professor Hill's wishes with respect to the disposition of this matter were honored. The Republican leadership and all Democratic members of the Committee were fully briefed of her allegations, and all were shown a copy of her etatement prior to the Committee's vote on tbe Thomas nomination.

FULL JUDICIARY COMMITTEE STAFF CONTACT WITH ANITA HILL

What follows is a chronology of all conversations between Judiciary Committee staff and Professor Anita Hill. Several key points should be mentioned at the outset:

First, in convereations with the full committee staff, Professor Hill has never waived her confidentiality—except to the extent that, on September 19, she stated that she wanted all committee members to know her concerns even if her name were disclosed. Yet it was not until September 23, that she allowed the FBI to interview Judge Thomas about the allegation and to rsspond to her concerns.

Second, Professor Hill has never asked full committee staff to circulate her statement to anyone other than Judiciary Committee members; specifically, she has never requested committee staff to ciroulate her statement to all Senators or any non-committee member.

Third, the committee followed its standard policy and practice in investigating Professor Hill's concerns: Her desire for confidentiality was paramount and initially precluded the committee from conducting a complete investigation—until she chose to have her name released to the FBI for further and full investigation, which—as is customary—includes the nominee's response.

Professor Hill first contacted full committee staff on September 12, 1991. Any contacts Professor Hill had with Senate staff prior to that date were not with full committee staff members. At that time, she began to detail her allegations about Judge Thomas' conduct while she worked with him at the Department of Education and the EEOC. She, however, had to cut the conversation short to attend to her teaching duties. It was agreed that staff would contact her later that night.

In a second conversation, on September 12, full committee staff contacted Professor Hill and explained the committee process. Staff told her:

"If an individual seeks confidentiality, such a request for confidentiality will not be breached. Even the nominee, under those circumstances, will not be aware of the allegation.

"Of course, however, there is little the committee can do when such strict instructions for confidentiality are imposed on the investigative process: The full committee staff will have an allegation, but will have nowbere to go with it unless the nominee has an opportunity to respond.

"In the alternative, an individual can ask that an allegation be kept confidential, but can agree to allow the nominee an opportunity to respond—through a formal interview."

Professor Hill specifically stated that ehe wanted her allegation to be kept completely confidential; she did not want the nominee to know that she had stated her concerns to the committee. Rather, she said that she wanted to share her concerns only with the committee to "remove responsibility" and "take it out of [her] hands."

Professor Hill then did tell committee staff that she had told one friend about her concerns while sbe still worked at the Department of Education and then at the EEOC. Committee staff then explained that the next logical step in the process would be to have Professor Hill's friend contact the committee, if she so chose.

Between September 12 and September 19, full committee staff did not hear from Professor Hill, but received one phone call from Professor Hill's friend—on September 18—who explained that she had one conversation with Professor Hill—in the spring of 1981. During that conversation, Professor Hill provided little details to her friend, but explained that Thomas had acted inappropriately and that it caused Hill to doubt her own professional abilities.

On September 19, Professor Hill contacted full committee staff again. For the first time, she told full committee staff that:

She wanted all members of the committee to know about her concerns; and, if her name needed to be used to achieve that goal, she wanted to know.

She also wanted to be apprised of her "options," because she did not want to "abandon" her concerns.

The next day—September 20—full committee staff contacted Professor Hill to address her "options." Specifically, committee staff again explained that before committee members could be apprised of her concerns, the nominee must be afforded an opportunity to respond: That is both committee policy and practice. It was then proposed that if Professor Hill wanted to proceed, her name would be given to the FBI, the matter would be investigated and the nominee would be interviewed.

At the close of the conversation, Professor Hill stated that while she had "no problems" talking with the FBI, she wanted to think about its "utility." She told committee staff she would call later that day with her decision on whether to proceed.

Late that afternoon—September 20—Professor Hill again spoke with committee staff and explained that she was "not able to give an answer" about whether the matter should be turned over to the FBI. She asked that staff contact her on September 21.

On September 21, full committee staff spoke with Professor Hill for the sixth time. She stated that:

"She did not want to go through with the FBI investigation, because she was 'skeptical,' about its utility, but that if she could think of an alternate route, or another 'option,' she would contact staff."

On September 23, Professor Hill contacted committee staff, stating that she wanted to send a personal statement to the committee, outlining her concerns. Once that information was in committee hands, she felt comfortable proceeding with an FBI investigation. Later that day; she faxed her statement to the committee.

On September 24, Professor Hill contacted full committee staff to state that she had been interviewed by the FBI late on the 23d. Committee staff assured her that, as previously agreed, once the committee had the FBI report, her concerns—and the FBI investigative report—would be made available to committee members.

On September 25, Professor Hill again called committee staff and explained that she was sending a new copy of her statement to the committee: While this new statement did not alter the substance of her concerns, she wanted to correct inadvertent typographical errors contained in her initial statement.

For the first time, she then stated that she wanted the statement "distributed" to committee members. Committee staff explained that while the information would be brought to the attention of committee members, staff could not guarantee how that information would be disseminated—whether her statement would be "distributed" or communicated by oral briefing.

Once again, however, committee staff assured Professor Hill that her concerns would be shared with committee members. She concluded her conversation by stating that she wanted her statement "distributed," and that she would "take on faith that [staff] will do everything that [it] can to abide by [her] wishes."

Every Democratic member of the committee was orally briefed, had access to the FBI report and had a copy of Professor Hill's statement prior to the committee vote.

To continue to comply with her request for confidentiality, committee staff retrieved Professor Hill's written statement immediately after the vote.

Mr. HATCH. Mr. President, I again reiterate that every Senator on the committee had full access to the FBI report and full aocess to the statement of both Professor Hill and Judge Thomas. In all honesty, some of the information that has been brought out since leads to questions about the veracity of some of the statements that have been made by Professor Hill, and I think deserve to be brought out.

The process has become a nasty one. And we could continue it forever. We have been through it before. Every time we get into one of these nasty confrontations, no matter how far extended, somebody else comes up with

another unjust accusation and another unjust smear. Any maybe it is both ways; I do not think so.

The fact of the matter is a lot of us are quite offended by this process. A lot of us are quite offended by the way it has gone on.

A lot of us are quite offended by the breach of the Senate rules. A lot of us are quite offended by the fact that her statements just do not add up. Yet, at the last minute, in a last-ditch attempt to ruin this nomination, 10 years after the facts, 10 years after matters allegedly occurred, Professor Hill suddenly comes forward and says she wants everybody to know about it.

Well, I know Clarence Thomas, and I have to say I know him to be an honorable, upright, good, decent man. And his wife is a decent person, and so is his son. And I have to say they have been through enough. Further hearings, further consideration, further dialog is not going to solve the problem for anybody. All it is going to do is continue this process of nastiness that has been going on. And, frankly, I think you have enough questions that have been raised about the allegations that anybody who looks at it seriously has to say, "How could this have happened in this way and this relationship of friendship continue right on up through years after the so-called allegations took place?" It is pretty darn clear to me. The fact is that the allegations are not true.

Mr. President, I yield the floor.

(Mr. KERRY assumed the chair.)

Mr. LEVIN. Mr. President, for reasons that I will outline in a moment, I will vote against the confirmation of Judge Thomas, separate and apart from the allegations of Professor Hill.

On the question of delaying the vote, I would urge, for the sake of the Supreme Court and the Senate, that time be taken to satisfy the Senate and the country that the allegations of Professor Hill have been addressed by the whole Senate in a manner which reflects their seriousness. The decision on the timing of the final vote was agreed to with 86 Senators having no awareness of Professor Hill's allegations. That is a fact. It is not a criticism of either the committee or of the leadership.

I hope, though, that under those circumstances and because of the seriousness of the allegations and the direct conflict between the statements of the judge and Professor Hill in the FBI report, that Judge Thomas' supporters will realize that it is best to reschedule the vote and to allow the unanimous-consent agreement to be modified.

In the absence of that, the only practical way that I see to delay the vote will be for a number of Senators voting or planning on voting to confirm to insist on such a delay. It is in their power, and probably in their power alone, to obtain such a delay. If an appearance of haste turns enough "aye" votes into "no" votes or if enough "aye" votes are threatened to be withheld and vote "present," then Judge Thomas' confirmation would in fact depend on a delay and, faced with that prospect, I am confident that a reasonable delay would be forthcoming.

As I said, I have decided to vote against the confirmation of Clarence Thomas to be an Associate Justice of the Supreme Court. I have done so despite a number of personal characteristics that appeal to me, including his willingness to swim against the tide, to "stand up against the pack" in the words of Dean Calabresi of Yale University. That positive characteristic is one of a number of reasons that this matter has been so difficult for me to decide. His willingness to take an unpopular stand is, indeed, reflected in parts of the very same speeches which I will refer to in a moment, which speeches are otherwise marked by strident and dogmatic rhetoric.

I also believe that if confirmed, Judge Thomas, more than other recent nominees, would be an unpredictable Justice. That is a factor in his favor on my scorecard.

But on the other side is a decade of extreme and doctrinaire positions and rhetoric which went beyond merely reflecting administration policy.

In Judge Thomas' speech to the Heritage Foundation in 1987, he said that "I, for one, do not see how the Government can be compassionate. * * *"

In his ABA speech in August 1987, he said that the minimum wage is "an outright denial of economic liberty" and that "by objecting as vociferously as they have to Judge Bork's nomination, these special interest groups undermine their own claim to be protected by the Court."

In the Harvard Journal in 1989, he wrote that, "Higher law is the only alternative to the willfulness of both the run-amok majority and run-amok judges."

In his address to the Pacific Research Institute in 1988, he talked about the "spectacle of Senator BIDEN, following the defeat of the Bork nomination, crowing about his belief that his rights were inalienable and came from God, not from a piece of paper" and in the same speech quoted with approval the comment that "No man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach * * * what a people needs in order to govern itself well" than was Justice Holmes.

In a 1987 speech at the CATO Institute, he stated his wholehearted agreement with the statement that:

> We are careening with frightening speed * * * toward a statist, dictatorial system and away from a nation in which individual liberty is sacred."

In a 1988 speech at California State University he stated that:

> Those who have been disillusioned because they have not been allowed a part in the American dream, have been offered no place to go. Increasingly, they are being used by demagogues who hope to harness the anger of the so-called underclass for the purposes of utilizing it as a weapon in their political agenda. Not surprisingly, that agenda resembles the crude totalitarianism of contemporary socialist states much more than it does the democratic constitutionalism of our Founding Fathers.

The constitutional rights of our people and the division of congressional and executive powers require the most judicious hearing by Supreme Court Justices. Judge Thomas' extreme rhetoric for 10 years leaves me in genuine doubt as to whether he has the temperament necessary to weigh complicated constitutional rights of our people and to balance powers between the branches of Government.

Judge Thomas came across as more moderate on a host of questions at his confirmation hearing, and that was welcome. But I was left with the feeling that he was tailoring his answers to his audience. I was left with too much doubt as to whether a Justice Clarence Thomas will be the relatively moderate and judicious person we saw at the confirmation hearing or the immoderate ideology of the eighties.

Finally, I will vote "no" not because he refuses to tell us how he will vote on cases that may come before the Court or because of his views on affirmative action. The Nation is still bedeviled by questions of race and racial politics and Clarence Thomas himself presciently urged conservatives to quit beating the quota drum because of the divisive impact on the country—a message that President Bush might do well to consider. I will vote "no" because the burden of proof has not been carried that the nominee has had a distinguished legal, judicial, or public career and has a judicious temperament and a keen intellect so as to qualify him to sit in highest judgment. Ten years of dogmatic and extreme rhetoric have raised sufficient doubts of his ability to balance competing interests in our society and his confirmation hearing did not adequately put those doubts to rest.

If confirmed, Judge Thomas' burden is not over. No nominee has had an advocate of greater integrity and constancy than he has had in Senator DANFORTH. It is my greatest hope that, if confirmed, he will dispel the doubts and disprove the doubters and live up to the high expectations that so many have for him.

I thank the Chair and I yield the floor.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President I ask unanimous consent that morning business be extended 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, what is really the issue before the Senate today? The calendar says it is the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court. There are some who see the issue as whether a procedural agreement of the U.S. Senate can be overturned. There are those who see the issue as the veracity of Professor Hill, or Justice Thomas. There are even those who see the issue as who leaked which doument.

But Mr. President, the real issue here for the Senate is the truth. And that is what the American people expect us to find out when serious allegations are made about a nominee to a lifetime appointment to the highest court in the land. To settle for less than the truth, instead of a sincere attempt to discover the truth, is to tell the American people that the process is seriously flawed.

There are people who have talked about the potential damage to Justice Thomas' reputation by waiting, as though it were some presumption of guilt, which it is not. I think there is a grave potential for damaged reputations in this process—but the reputation that will be damaged is that of the Senate if we do not wait.

I have heard some people say that this is a "he said she said" situation. Matters of this kind usually are, that's why they need investigation. And the legal rules governing what is impermissible behavior in the context of sexual harassment have changed over the years—as rape laws have changed—to reflect the fact that usually there are not a lot of witnesses to the events. Clarence Thomas, if confirmed, will sit on a court that judges these matters.

But when he says no, and she says yes, we do not know which one of them is closer to the truth. And I believe we have a responsibility to find that out before this vote.

Supporters of Judge Thomas who believe his version should have nothing to fear from waiting for a few days and letting these allegations have a full hearing. With all due respect to the Supreme Court, this country will not be plunged into crisis by waiting a few days to have a ninth justice voted upon. There really is no hurry.

Why does the Senate have to vote this evening? It is not mandated by the Constitution, or by some judicial deadline. Rather, it was an agreement reached by the Members so that we could plan our schedules.

Agreements can be made and agreements can be changed. It is in all of our interests—those who support Judge Thomas, those who oppose Judge Thomas, and those who live in a country where Judge Thomas might sit on our highest court—that we change this agreement, delay the vote, and try to find out what really happened.

RECESS

The PRESIDING OFFICER. The Senate will stand in recess until the hour of 2:16 p.m.

Thereupon, at 1:03 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

MORNING BUSINESS

Mr. SARBANES. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business, with Senators permitted to speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Maryland.

SUPREME COURT NOMINEE CLARENCE THOMAS

Mr. SARBANES. Mr. President, it is difficult, indeed almost impossible, to exaggerate the importance of a Supreme Court appointment. The Supreme Court, as we all well know, stands at the head of the judiciary, the third independent and coequal branch of our Government. Throughout the history of our Nation, the Supreme Court has played an especially significant role in defining the nature of American society and American democracy. It is the Supreme Court's responsibility to expound and interpret the Constitution, which is our basic charter and lies at the very heart of what our Nation stands for and what it represents. Indeed, the Supreme Court, by finding actions of the Congress or the Executive contrary to the Constitution, can overrule the judgments of the legislative and executive branches of our Government. To underscore the authority that rests with the Supreme Court, it can, by finding actions of the Congress or of the Executive contrary to the Constitution, overrule the judgments of the elected representatives of the people, both in the legislative and in the executive branch.

Mr. President, I think the Senate, as it considers judicial nominations submitted to it by the Executive, and particularly as it considers nominations to the Supreme Court, needs to review them from a more independent position than might be the case in considering nominees to the executive branch. Nominees to executive branch positions are there to assist the President in carrying out his responsibilities for that branch of the National Government, the branch for which he is directly responsible.

Even there, I must say, Mr. President, that it is my view that the standard for passing on nominees has deteriorated badly and it has almost reached the point that unless they are mentally certifiable or criminally indictable, people feel an obligation to support the President's nominees. That is not my view. I think nominees for high public office must make the case as to why they should be confirmed. There is not an entitlement to high public office.

With the judicial branch, I would assert that a different standard applies because it is an independent branch. A judicial nominee becomes a member, upon confirmation of the third independent branch of our National Government and becomes a member for life. In the case of the Supreme Court, he or she becomes one of only nine members.

Once confirmed, Justices of the Supreme Court can serve for life. In Judge Thomas' case it could be for 30 or even 40 years. I believe, therefore, we are called upon to make an independent judgment with respect to such nominees, an independent judgment which takes fully into account the Court's role as the arbiter of power in our society, the arbiter of the relationship among the branches of government, and the arbiter of the relationship with respect to the power of the State and the rights of the individual.

There can be no doubt that Judge Thomas has overcome poverty and disadvantage and has shown determination in his rise from a humble background. He graduated from Holy Cross and Yale Law School, was a high-level executive branch official in the 1980's before his appointment in 1990 as a judge on the U.S. Court of Appeals for the District of Columbia.

One of the difficulties with the nominee, however, is his performance in the executive branch positions he has held, first as Assistant Secretary for Civil Rights at the U.S. Department of Education and then as Chairman of the Equal Employment Opportunity Commission. In both instances, his service was marked by intense controversy as to how well he was carrying out his stewardship. Oversight reviews by congressional committees that took place of his activities were extremely critical of his performance.

In fact, the positions he took at the EEOC were seen by many as lessening the national effort against sex, race, and age discrimination. And he came under very sharp criticism for his performance in these fields during the course of holding the important position of Chairman of the Equal Employment Opportunity Commission.

His writings and speeches throughout this period of the 1980's reflected extreme and radical views which, if implemented in the Supreme Court's decisions, would in my view, markedly transform the nature of our society. Indeed, a review of Judge Thomas' writings and speeches during the 1980's is cause for very deep concern.

I want to point out that these are speeches and writings within the our-

rent timeframe. Some have tried to make light of them but these are not speeches or writings 30 or 40 years ago in one's youth. These are the speeches and writings in the mid- and late-1980's when he was holding important offioial positions and laying out these views which are of such deep concern.

That concern is not allayed but in fact oompounded by his testimony before the Judiciary Committee. He either avoided addressing the questions about these past statements as—one witness observed, he was giving responses, not answers—or he disavowed and disowned his previous statements. He was not forthcoming in his testimony to the Senate Judiciary Committee. Much of his testimony contradicted his earlier positions and in a number of important areas, he rejected his earlier expressed or written views and refused to answer committee questions which sought to elicit his current judicial philosophy.

Now, some supporters of the nomination find his fluctuating views on many important issues to be a sign that he would not bring a closed mind to the Court's deliberations. However, I am more concerned that the judicial philosophy that he would develop as a Justice, if he were to go on the Supreme Court, would embrace the extreme views he espoused as a high Government official in recent years, views that suggest a fundamental misunderstanding of the role of Government in our constitutional system, and a failure to appreciate and understand the meaning of individual rights and liberties and how to protect them under our constitutional system.

Just to give one example, Judge Thomas has praised the views of a legal writer who advocates a view of the sanctity of property rights that was abandoned by the Supreme Court over 50 years ago. If that antiquated view were the prevailing doctrine today, many of the advances of the last half century would be at risk. Laws that provide for minimum wages, safety and health protection for workers, laws which are aimed to reduce pollution, as well as laws that prevent discrimination and protect individual rights would be vulnerable to constitutional challenge if the views expressed in Judge Thomas' writings and speeches became constitutional doctrine.

This possibility is all the more likely in Judge Thomas' case because of references in his speeches to the concept of natural law. As Erwin Griswold, former dean of the Harvard Law School and a very distinguished Solicitor General of the United States, pointed out in his testimony to the committee:

> Judge Thomas' present lack of depth seems to me to be demonstrated by his contact with the concept of natural law. He has made several references to natural law in his speeches and writings, though it is quite impossible to find in these any consistent understanding of that concept. This is very disturbing to me because loose use of the idea of natural law can serve as support for almost any desired conolusion, thus making it fairly easy to brush aside any enacted law on the authority of a higher law what Justice Holmes called a "brooding omnipresence in the sky."

It is argued by some of the nominee's supporters that the Senate should ignore the radical views in his speeches and writings because Judge Thomas did not reflect those views during the past year when he was an appellate court judge. This argument fails to appreciate the role of an appellate court judge on a court of appeals within our Federal system because such a judge is obligated to decide cases within the constitutional framework of Supreme Court decisions and not expound his own judicial philosophy. His writings and speeches, on the other hand, were the result of his own thinking and analysis and, in my view, may well be a better indication of the approach he would bring to the Supreme Court.

Mr. President, as I indicated earlier, Justices of the Supreme Court hold positions of unparalleled authority in our constitutional system. Some say they are going to support Judge Thomas out of hope, but I submit to you that the position we are talking about, at the very pinnacle of the judicial system in this country, with the authority to negate actions by the Congress and the Executive—to be preeminent by interpreting the Constitution over any public action taken in this country—is too important a position to base it upon hope.

There are too many unanswered questions, too many serious doubts. These questions and doubts, the implications of Judge Thomas' statements and writings, the shortcomings of his own career in the executive branch of the National Government, lead me to the conclusion to vote against his confirmation to the Supreme Court.

Finally, Mr. President, I want to say that I reached this decision to vote against Judge Thomas' confirmation before the recent allegations against Judge Thomas by Prof. Anita Hill. These allegations are very serious charges, and I believe the vote should be delayed so that there will be an opportunity to fully investigate these charges, and for the committee to hear from Professor Hill, Judge Thomas, and others, with information about these allegations.

As my colleague, Senator MIKULSKI, said this morning in a very powerful statement to the Senate it is imperative that these allegations be fully examined. We have a responsibility, now that Professor Hill has come forward, to find out what the truth of the matter is. It is a responsibility to Professor Hill, to Judge Thomas, to this institution and, more importantly, to the American people.

I yield the floor.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I rise today to urge my colleagues to allow the majority leader to set aside the time certain for a vote on the Thomas nomination this evening. I am advised that at some time later today, efforts will be made to postpone the Thomas vote to allow the full Senate to consider the allegations—very serious allegations, but I must emphasize, just allegations—that have been made against this nominee for the highest Court in the land.

Mr. President, make no mistake about it, we are engaged here today in a test of the integrity of the U.S. Senate. A substantial number of Americans now suspect that we are rushing to judgment on perhaps the most profound responsibility we have as U.S. Senators.

Millions of Americans are just like myself. We learned of this allegation by way of the news media and by watching the press conference of Professor Hill on the television networks just yesterday. And we should take seriously our responsibility to advise and consent on nominations to the highest Court in this land. And I believe my colleagues do take that very seriously.

The question before us now is not even the competence of Judge Thomas to serve on the Supreme Court. The issue now before us is whether or not the Senate will discharge its responsibility to the people of this country to advise and consent in an informed way, in such a way that the oitizens of this Nation will have confidence in the action that we take.

No one has made a credible argument to support the notion that we cannot wait a few days to undertake an investigation to determine where the truth lies in this situation. No one has made a credible case that we should not have time to allow Senators to examine the record fully, to give the nominee himself an opportunity to deny or explain these charges, and to give Professor Hill the opportunity to appear before the Senate and lay out her allegations in detail and be subject to cross-examination by the Senators.

Only in that way can we cast votes based on a full knowledge of the facts. The allegations made here at this late hour—and indeed, it is a late hour—against this nominee are very serious. He is oharged—and I emphasize oharged—with engaging in conduct while holding an offioe where he was responsible for enforcing the law to prevent such conduct. That is a very, very serious charge indeed. It goes to the moral character of this nominee himself.

The simple truth is that a grave charge is hanging over this nominee and, frankly, I say to my colleagues, over the Members of this body. How we got to this point, I believe, now be-

comes irrelevant. What might or might not have been done during the confirmation process is not now the issue.

And I can understand how all Senators involved in the confirmation process were proceeding with due diligence, operating in the way that they thought best. I question no one, either in the operations of those on the minority side of the committee or those on the majority side and, certainly, not the chairman or the ranking member.

But what I am saying now is this: To those 86 of us who are not on that committee, nothing prohibits us now from taking the time necessary to examine these accusations. And these accusations have been made in the clear light of day with tens of millions of our fellow countrymen watching.

I say to my colleagues that if we do anything else, the American people are going to believe that Judge Thomas was railroaded through confirmation, that he passed through this Senate with a wink and a nod, and that he goes to the highest Court in this land for the rest of his natural life, if he chooses to serve there, with a taint that neither we nor he nor the passage of time can wipe away.

I submit, Mr. President, that if we do that, we will have called into question, in one stroke, the judgment of the executive branch in proposing Judge Thomas to the Supreme Court; the fairness of the legislative branch and our examination in fulfilling our responsibility to advise and consent; and lastly, we will cast in doubt the character of the judicial branch.

Mr. President, I submit that at this juncture, the country simply cannot afford that.

I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee [Mr. GORE] is recognized.

Mr. GORE. Mr. President, few decisions we make in this Chamber flow so far into the future as a decision to elevate an American citizen to the Supreme Court. The Constitution places a great responsibility on the Senate to review the President's nominees to the Court to assure the independence and balance of this branch of Government dedicated to preserving the principles of the Constitution and the liberties enshrined in its Bill of Rights.

The Framers of the Constitution created a paradox in the Supreme Court. They endowed nine individuals with powers equal to that of the elected Congress and the President, then required them to rise above their personal and political prejudices to protect the principle that our democracy is governed by laws and not individuals.

It is an imperfect system. The history of constitutional law shows that each generation has had its blind spots. Yet, over time, there is progress, as the Court's vision of the Constitution sharpens and the democratic principles envisioned by the Framers are applied to societies they could not in their day even imagine.

The expansion of rights for individuals and minorities and the increased protection afforded political expression of the past 50 years is not the result so much of a revised Constitution as principally the product of later generations transcending the prejudices and blindness of previous ones.

The Senate now stands on the verge of a decision that will shape history for this generation and certainly for our entire lives. It is a decision that must be thoroughly considered and carefully made.

Allegations brought by Prof. Anita Hill publicized over the weekend that Judge Thomas' behavior as her supervisor at both the Equal Employment Opportunity Commission and the Department of Education represented sexual harassment deserve our most serious attention. Too many Senators have not had the opportunity to see and review these charges until the last 24 hours. I saw them less than 3 hours ago. None of us has had the chance to hear Professor Hill in person to discuss her charges before a committee of the Senate or to hear Clarence Thomas respond to those charges. I cannot judge those charges on the basis of a press conference on one side and speeches by the supporters of Judge Thomas on the other side. We are rushing to judgment.

I will say this, as others have said: The demeanor of Professor Hill and her presence as she presented the facts during her press conference lend even more credibility to what she had to say because she is obviously someone who is very capable to expressing herself, carefully thinking through what she expresses, and giving some considered judgment to the effects of what she says.

What we are confronted with here today is not a need to dispose of this matter on the merits. What I hear from some of the supporters of Judge Thomas is what sounds like a tendency to equate any delay in the procedure as a slap at Judge Thomas. Any effort to hear the facts of this matter is being interpreted by some of Judge Thomas' supporters as conveying the clear implication that he will be turned down as the President's nominee.

I wish to challenge the notion that a decision by this body to take enough time to hear these charges in a proper way and allow them to be responded to in a proper way is somehow an insult to Judge Thomas.

I do understand the point of view that says Judge Thomas and his family have been subjected to a great deal of pain because of the protracted nature of the confirmation process and because of the airing of the charges that were made over the weekend. I understand that. But that has to be balanced, Mr. President, against the pain that would be caused by cavalierly dismissing these charges without even hearing them in a proper fashion. What pain would that decision cause to every woman in this country who has ever had a complaint of sexual harassment and seen it dismissed cavalierly? What pain would it cause to watch as the U.S. Senate is presented with evidence by a law professor who is clearly articulate, forceful, self-possessed, and then to have the charge just cavalierly brushed aside because we do not have time to deal with it?

Mr. President, I hope that all my colleagues, both Democrats and Republicans who have announced their decisions to vote in favor of Judge Thomas, will take the opportunity to perform a service for this country, for Professor Hill, and all of the women who have ever been subjected to sexual harassment, leaving aside the question of whether Professor Hill actually has been subjected to it or not—I do not know—and they will take this opportunity to do a service to Judge Thomas by saying to the Republican leader and to the majority leader that, notwithstanding their decisions to vote in favor of Judge Thomas, if they are forced by this mechanical procedure—which is pushing us like lemmings off the edge of a cliff—to vote this day at 6 o'clock, they will cast a vote in the negative. They should vote for a delay, not with any prejudice to the nominee, but to provide an opportunity to have a hearing on these charges.

After the Senate has had an opportunity to understand the allegations that have been put before us and understand his responses to them, this nominee could be brought before this Chamber for confirmation on a second vote.

In other words, if only 5 or 6 Senators who have announced in favor of Judge Thomas are willing to come forward and say they do not support the principle that blind obeisance to a mechanical process should take precedence over justice and fairness, then they can continue to support Judge Thomas while allowing the Senate to proceed responsibly.

I ask my colleagues who have that power at their disposal to exercise it. Tell this Nation that we are not hamstrung by our well-known procedures that sometimes tie us up in knots so that we are no longer in command of our own destiny here.

We are Americans. We represent Americans. To be an American is to make your own future, and nowhere does this country make its future so permanently as in its decisions on who will serve in lifetime appointments on the Supreme Court.

Under these circumstances, how can the Senate, traditionally referred to as the greatest deliberative body in the world, justify a deadline of 6 o'clock

today to decide whether Judge Thomas should be on the Supreme Court for the rest of his life and ours? Surely this body of 98 men and 2 women ought to have just a little self-doubt about our ability to cavalierly dismiss a charge to which the average woman obviously reacts in a very different fashion than the average man.

We all understand, all of us as Americans understand, that one of the great transitions in our way of thinking about each other in this Nation has been under way for some time now where the relationship between men and women is concerned. Some of the decisions Judge Thomas, if confirmed to the Supreme Court, will participate in address that revolution in thought. Slowly, painfully, men in the United States of America are coming to understand a little bit more about why women view a charge like sexual harassment so differently from men.

Let us indulge in just a little of that self-doubt in this body of 98 men to suppose for just a moment that the initial impulse of the Senate as a whole not to take this charge quite as seriously as a body of 98 women and 2 men might have taken it was a mistake.

After we learn the facts, maybe we will discover that that initial impulse was right. But let us engage in enough self-doubt to at least pause to hear the facts. Why the rush to judgment? Why the fear, that even pausing long enough to listen, and understand what is being said, will automatically be equated with the defeat of Judge Thomas?

We cannot dismiss Professor Hill so cavalierly as that. Doing so would be to dismiss every women we represent, every women who has ever struggled to be heard over a society that too often ignores even their most painful calls for justice. We cannot simply take for granted that when charges are exchanged—in anger or in confidence—that the victim, or the woman, is always wrong is misguided.

This is not about politics, it is about people and their rights. It is about Professor Hill's right to be heard, her right to respect here in this Chamber. It is about every woman's right to be heard. And it is about Judge Thomas' right to present his views directly to the Senate, and about basic human rights that are so vital to our understanding of this Constitution under which we live.

Without a delay to consider and review these charges properly, the Senate places both Judge Thomas and the Nation at risk. If Judge Thomas is innocent of these charges, he should have the chance to refute them before the Senate and the Nation to remove the cloud over his name, the cloud over his career, and the cloud which would lie over the Court.

In my opinion, if the charges were to be proven, then the Senate would owe it to the Nation to reject his nomination for our highest court.

It is certainly premature to reach any judgment whatsoever about whether they are true or not. But it is not premature to reach a judgment that they are worthy of our hearing.

If we do not delay the vote to consider these charges, I simply do not understand how the Senate could possibly claim to have sufficient information to confirm his nomination.

The effort by some to denigrate Professor Hill in absentia cannot substitute for a full airing of these charges before the Senate in a proper fashion. A discussion among 98 men, about how Professor Hill should or should not have responded to the alleged harassment—and how difficult it is for 98 men to understand her position—cannot substitute for giving her a chance to explain her actions and the events about which we she eloquently speaks, herself, in her own words.

I urge my colleagues to choose deliberation over expediency. I cannot believe that this body will rush pellmell to obey the procedural mandate of the unanimous-consent request, as honored as those consent requests always are. I cannot believe that it will take precedence over justice.

Mr. President, there is a saying that goes "if you don't have time to do it right the first time, how are you going to find time to do it over? If we do not make the time to do our job right this time, the Constitution does not allow us to do it over.

There is plenty of information already before the Senate on Judge Thomas' reoord, his qualifications, his views, and his experience. While I believe strongly that the allegations raised in recent days justify a postponement of the Senate vote on this nomination, I must today make clear that when that vote does take place, I will oppose this nomination. Not because of the questions raised by Professor Hill, but because of the record already so closely examined by the Judiciary Committee; more specifically, I make that decision based on the evidence before the entire Senate, on his record and his judicial philosophy.

The following principles guided my consideration of this nomination. First, I believe that a Justice of the Supreme Court should have a well-considered, well-reasoned, and fair judicial philosophy. The history of the drafting of the Constitution and the history of the Senate, in exercising its advise-and-consent role, support my belief that the Senate should and must consider the nominee's general philosophy and its impact on our constitutional freedoms and rights.

Second, a nominee must be competent in the analytical skills essential to his task. Third, he or she should have the highest personal and professional integrity. He or she should complement and enhance the balance of the Court rather than send it careening in one direction or the other. The Court is a living organism whose viability depends on maintaining balance between competing forces.

In judging whether Clarence Thomas possesses the qualities I have listed, I believe I must oonsider only the facts as they appear now rather than any artful predictions about what the future might hold. None of us can afford to play roulette in choosing the members of the Court that protects our dearest liberties.

Clarence Thomas is an impressive man with an astounding background. Even before his nomination to the Supreme Court, he was an inspiration to those who struggled against poverty and racism. He has won the highest praise from his mentor and friend, Senator DANFORTH, for whom I have the highest regard, and the same will be said and has been said many times by every other Member of this body.

Judge Thomas' friends speak of him in a chorus of enthusiasm and respect seldom heard in this political community. His life shows that advereity need not lead to a life of quiet desperation, but can produce a strength of character that is a beacon for all who will follow.

And on this point I would like to add the following. One of my closest friends, from high school days, was a law school classmate of Judge Thomas and has known him for more than 20 years. I respect this friend's judgment greatly. He tells me the same thing about Clarence Thomas as an individual and, incidentally, as a lawyer and jurist. And this is persuasive with me as well on this particular point.

Also, I believe there is no question of Judge Thomas' competence to be a judge. He possesses a quick and incisive intellect. He speaks and writes with precision, power, and persuasiveness. The term "hard-working" cannot begin to describe the habits that have taken him so far in so short a time.

In reviewing Judge Thomas' judicial philosophy, I have not considered whether he is a conservative or a liberal. In the history of the Supreme Court, choices made on such a basis have had a way of backfiring. Instead, I have reviewed Judge Thomas' judioial philosophy to determine whether it will be the servant or the master of the Constitution. I have questioned whether his philosophy will stifle the expression of constitutional rights or amplify them. And I have considered whether his views will strengthen or weaken the checks and balances upon which our democracy depends.

My evaluation of Judge Thomas' philosophy is based on his own speeches and writing which cover a broad array of subjects. Several themes run through this body of work. First, Judge Thomas has expressed often and passionately his belief that natural law should be the guiding principle of constitutional adjudication. There is no

easy way to define what natural law is. I find it best to cite Judge Thomas' own view of it through his comments on legal decisions and principles.

In a speech to the Heritage Foundation, Judge Thomas praised an essay by Lewis Lehrman that took the position that a fetus enjoys constitutional protection from the moment of conception. Thomas stated that he considered the essay "a splendid example of applying natural law."

When the Supreme Court held in a 7-1 opinion that Congress could constitutionally appoint an independent counsel to investigate wrongdoing by high-ranking Federal officials, Thomas embraced Justice Scalia's lone dissent. Scalia used natural law principles to argue that the Congress had no authority to appoint special prosecutors, no matter how serious the criminal allegations against the executive official. Judge Thomas felt so strongly that natural law principles should govern the case, that he criticized Chief Justice Rehnquist for failing all Americans in the most important case since Brown verses Board of Education.

Judge Thomas has embraced the extreme in other areas as well. Rather than engage in accepted norms of political discourse and criticisms, he has referred to Members of Congress as "petty despots." He has ignored Congress, and showed his disdain for thousands of senior citizens, by twice failing to honor statutory deadlines for processing age discrimination claims at the EEOC. And twice Congress was forced to extend statutes so that Thomas' failures would not deprive thousands of senior citizens of their rights under the law.

In regard to gender discrimination, Judge Thomas has chosen to embraoe discredited and disgraceful theories of why women have fewer educational and career opportunities. Specifically, he commended a treatise that argued that women earn less because they choose their occupations with an eye to marriage and motherhood. Nowhere in these statements and endorsements did he recognize the reality of gender discrimination, and in fact, he has opposed even voluntary affirmative action programs in areas where discrimination against women was a proven practice. Does Judge Thomas have a blind spot that led him to break the law in an area of great importance to all Americans, but especially to women?

I do not believe such extreme approaches to the questions before the Supreme Court serve either the Constitution or the Nation well.

While I am alarmed by Thomas' speeches and writings, I have tried to consider them in light of his background, and experience, and in the context of his testimony before the Senate Judiciary Committee.

I looked forward to his appearance before the Senate to see if his strong character could allay my concerns about his strong, and in my opinion, narrow views.

There are those who criticize the confirmation hearings on the grounds that a nominee is damned if he answers forthrightly and damned if he is silent. I do not believe the Senate can fulfill its constitutional obligations without candor from the nominee. A candidate for the Supreme Court who hides his views from the Senate undermines the Constitution.

I agree that a nominee should not have to comment on cases that are, or oould be, pending before the Court. I agree also that no one position should be a litmus test for confirmation. However, I cannot agree that the less we know about a nominee the better.

The hearings afforded Judge Thomas the chance to explain his views. Unfortunately, I feel that he took the opportunity to explain them away instead. Rather than defend his statements as a part of a complete philosophy, he apologized for them by saying that he was a part-time political theorist, or that he was catering to his audience's interests, or in some cases admitting that he had in fact not even read the very work he had so effusively praised.

He recanted his belief in natural law as the only basis for constitutional adjudication. He reversed completely his harsh criticisms of the legacy of Justice Oliver Wendell Holmes. Whereas in a speech he argued that economic rights should enjoy the same high standard of protection as personal rights, in the hearings he argued that he was merely reminding people of the importance of economic right.

Judge Thomas used the occasion of the hearings to tone down his criticisms of Congress and underscore his support for Congress' role in balancing the power of the Executive. But the context of his concessions lead me to question whether his commitment to the Constitution's separation of powers will last longer than the Senate's consideration of his nomination.

The most troubling aspect of Judge Thomas' testimony was his response to inquiries about Roe versus Wade and the reproductive rights of women. When asked about a White House report he signed that harshy criticized Roe versus Wade, Thomas denied he had read that part of the report. He then stretched the imagination of the Senate, if not the Nation, by saying that he neither had an opinion about nor had even discussed with anyone the most controversial case of his generation.

I do not anticipate that President Bush will ever nominate anyone to the Supreme Court who supports Roe versus Wade. However, I believe the Senate has a right to know—and Judge Thomas had the obligation to reveal—the reasoning and depth of conviction behind his public statements on this subject.

Finally, I found Judge Thomas willfully inconsistent in applying his principle of not discussing controversial issues that may come before the Court. Surely the death penalty, the separation of church and state, and the use in court of viotim impact statements are controversial issues that will be before the Court.

I have tried to reconcile Judge Thomas' testimony with his previous statements and writings because of my respect for him as an individual, for his intelligence and his character. I do not expect, nor require, philosophical purity in a person or a Supreme Court Justice. I understand the pressures of having to defend our record under harsh questioning by those who disagree with you. It is something each of us in the Senate does on a daily basis. I also understand that it is possible to have strong feelings on a subject yet still give those who disagree with you a fair hearing and fair consideration.

One way or the other, Judge Thomas has to take responsibility for the contradiction between his professional actions and philosophy and his testimony at the Senate hearings. His harshest critics say that he is running from himself; because of my respect for him, I choose to believe that he has not yet found himself, that he, in fact does not have a well-settled judicial philosophy that will guide his work on the Court should he be confirmed.

I am not troubled that Judge Thomas is still forming his judicial philosophy. I am troubled that he has not shown any caution in the conduct of his public life while he explores his beliefs. He has harshly and vociferously attacked those with whom he disagrees with the passion of a true believer. Yet, when tested, he denies that he is a true believer.

It is difficult for me to express my disappointment that a man as dedicated to public service as Clarence Thomas is, has been thrust toward the Supreme Court before, in my opinion, he has demonstrated he is ready for the job.

I find it instructive to consider for a moment who Thurgood Marshall was when he was nominated to the Court. He had served as a Federal appellate judge and the Solicitor General of the United States. He had argued 32 cases before the Supreme Court and won 29 of them. At great risk to his life, he had traveled the country defending the constitutional rights of minorities. He persuaded the Supreme Court to end the practice of segregated schools in America in Brown versus Board of Education. I am not proposing that Thomas should be rejected because he has not achieved at his age what Marshall had: few ever did or ever will. I am proposing that Thomas has not yet tested his own beliefs either in his brief judicial career or in his own mind. I believe the passion of his public philosophy,

coupled with the doubts and moderations expressed before the Senate, demonstrate that he is searching. For that reason, I feel I know even less about him now than I did before the hearings began.

I stated earlier that I believe a Supreme Court Justice should have a well-considered, well-reasoned and fair judicial philosophy. I also said that I must consider this nomination according to the facts as they stand today. Judge Thomas has the intelligence and dedication to be where he is today on the U.S. Court of Appeals. I do not believe that he has shown the kind of balance and judicial maturity to earn, at this point in his career, a seat on the Supreme Court. While I believe that he may grow into the position if he is confirmed, I cannot honor my responsibility in this matter based on hopes for the future. There is too much at stake.

I will vote against Clarence Thomas' nomination to the Supreme Court. And, I again urge my colleagues to support a postponement of that vote so we may more carefully consider the charges that now so dramatically divide this Chamber.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BUMPERS. Mr. President, every time I have been deeply troubled about the qualifications of a Presidential nominee, I have voted "no." My own rule is that unless a nominee has acquitted himself or herself in a fairly convincing way, the nominee should be rejected. Senators should feel comfortably certain that a nominee is well qualified, and that they would have no hesitancy in defending an aye vote to their constituents. I do not believe this nomination can be defended.

The advise and consent role is an extremely important one for Senators. It is not, or at least should not be, based on the popularity of a nominee, his or her political affiliation, or his or her social philosophy, though it is impossible not to give some consideration to those things. A President has a right to pick, and most do pick, members of their party and philosophical persuasion.

Ronald Reagan didn't much believe in conservation and preservation of our natural resources, and he chose James Watt, of like mind, to be his Secretary of the Interior. I led the fight against James Watt's confirmation, and got 11 votes for my effort. I felt sure, and it was later confirmed, that James Watt had no reverence for our land and water, our environment, or for preserving our natural heritage. But there was a herd instinct sweeping through the Senate in those days to give the President his man, and that mentality proved to be a disaster for the Nation.

I voted for Justices Scalia and Kennedy, though their political and social philosophies were different from mine. But both Scalia and Kennedy had long, distinguished careers as legal scholars, practicing attorneys, and jurists.

Judge Bork was a recognized legal scholar, but he was a cynical view of the law and a crabbed view of the Constitution; so perverse in fact that I felt compelled to vote against him.

No more than 3-4 peroent of Presidential nominees are ever contested, but those contested nominations are almost always the most important ones. And Supreme Court nominations are extremely important because the Court is the third branch of government. Its members are all Presidential appointees, and since the President is the executive branch and nominates all the members of the Judiciary, he wields a tremendous power. President Roosevelt attempted to pack the Supreme Court by increasing its membership to 15 in order to get his legislation declared constitutional. His policies, even in hindsight were imminently correct, but his means were grossly wrong and Congress correctly repudiated the attempt.

This brings me to a few thoughts about Judge Thomas, his experience as a lawyer, as a jurist, and his answers to questions by Judiciary Committee members.

Judge Thomas graduated from law school in 1974, 17 years ago. Since that time, Judge Thomas has spent a total of 6 years dealing with the law, and 5 of those years were narrowly focused: 3 years in the attorney general's office in Missouri, 2 years on the corporate legal staff of Monsanto Co. and 1 year as a judge on the court of appeals. He never tried a case in Federal court, and was apparently never in court as an advocate in the rough and tumble world of the legal profession. I could not find in the record that he had actually ever tried a case at all. There is no evidence that he excelled as a student, and lacking any extensive practical experience, I am puzzled by how he came to be chosen.

Then there are the unbelievable contradictions between Judge Thomas' writings and his repudiation of those writings before the committee. He seemed, at least until his confirmation hearing, to be captivated by some arcane theory of the natural law or higher law. The natural law is a legitimate and useful method of interpreting the Constitution, especially in the field of individual rights, but Judge Thomas seems to envision a much more comprehensive use of a higher law, though it is entirely unclear as to just what he has in mind. He praised an essay by Lewis Lehrman, a former candidate for Governor of New York, for his—Lehrman's—application of natural law to the legality of abortion.

Lehrman had concluded not only that the Constitution did not permit abortion but that abortion was absolutely prohibited under any circumstances. Not prohibited by words in the Constitution but by natural law or a higher law. This would mean that if Roe versus Wade should be reversed, the Congress and the 50 States would all be prohibited from permitting an abortion to save the mother's life or for any other reason.

Mr. President, I feel certain Roe versus Wade is going to be reversed, and the President has the right to appoint persons who agree with his stated position to do that, but surely that decision should be dealt with in the context of the Constitution, and not some arcane principle of natural law, presumably outside the Constitution and understood by a very few persons who believe that natural law transcends the Constitution. Mr. President, this could lead to abrogations and aberrations totally outside the Constitution and depending on the case and the persuasion of a narrow majority of Justices. Such a possibility is absolutely eerie. It opens up the possibility that a particular partisan or philosophical goal could be reached with decisions based not on the Constitution, but on five persons' arcane philosophy of natural law.

Then, Mr. President, there is the credibility question. Judge Thomas told the committee that Roe versus Wade was the most important case to be considered by the Court, yet insisted he had never discussed the case with anyone. It this is true, he is probably the only lawyer in America who could make such a claim. But it would demonstrate a remarkable lack of ouriosity that in and of itself be disqualifying.

Senator SIMON carefully cataloged a host of other contradictions yesterday between what Judge Thomas had previously written and said, and what he testified to before the committee regarding Justice Holmes, the natural law, the Lehrman essay, and many other issues. He seemed to repudiate virtually every position he had ever taken in all his writings.

What is one to make of all this?

The studied and obviously rehearsed strategy of stonewalling the committee, even on settled cases and policies was disquieting. It has become common for nominees to say as little as possible, and agree to nothing. These carefully rehearsed appearances at confirmation hearings have effectively altered two centuries of precedents that always placed the burden on the nominee to prove his fitness for the position for which he was nominated. The burden has now been shifted to the Senate to prove the unfitness of a nominee, a burden it cannot sustain in the absence of extrinsic proof, when the nominee says he neither agrees nor disagrees with anything, and wouldn't tell you if he did.

My conclusion that Judge Thomas should not be confirmed is based on his theory of natural law, his contradic-

tory statements, perhaps most important his lack of experience. Perhaps 10 years hence, Judge Thomas, if he stays on the Court of Appeals bench, would demonstrate the kind of knowledge and understanding of the Constitution that people have a right to expect of a nominee to the Supreme Court.

I don't understand why President Bush felt oompelled to say that Judge Thomas was the best-qualified person in America for this position. All Americans assumed that the nominee would be African-American, and that is entirely proper, but not one person in America believed that statement. There are thousands of learned and scholarly lawyers and jurists in America, black and white, male and female, extremely well qualified for this position. Judge Thomas is not one of them. I tried to find reasons to support Judge Thomas but then I read Federal Paper 76, Alexander Hamilton wrote regarding the advise and consent role of the Senate:

The person ultimately appointed must be the object of his (the President's) preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate conld not be tempted by the preference they might feel to another to reject the one proposed; because they could not assure themselves that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected and might have the appearance of a reflection upon the judgment of the Chief Magistrate, it is not likely that their sanotion would often be refused, where there were not special and strong reasons for the refusal.

Because I found Judge Thomas to be likable, and because I was very much impressed by his upbringing, and the fact that he came from abject poverty to positions of authority and power, and because I think it imperative that an African-American be appointed to replace Justice Marshall, I wanted very much to support his nomination. I even rationalized that I should support him because the next nominee might be even more unacceptable. But a vote to confirm for such reasons in the face of compelling reasons to the contrary would be a gross abdication of my duty in the advise and oonsent process.

My vote obviously is for probably for naught, because Judge Thomas apparently has the required 51 votes necessary. Again, I have a duty to vote against Judge Thomas because of my overwhelming bellef that he is unqualified.

Finally, Mr. President, my decision not to support Judge Thomas was made before the rather sensational allegations were made regarding his conduot toward a former female employee. But because I determined to vote no for other reasons, I do not judge the truth or falsity of these late allegations, serious though they are. Obviously, these allegations should be investigated further, and I will vote for such a delay.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, I had a chance to listen to everything the Senator from Arkansas had to say.

I guess there is only one thing that I would take some exception to, and that is the extent to which he would say the record does not say that Judge Thomas has enough legal experience.

I think to discount Judge Thomas' tenure as chairman of the EEOC—that is a law enforcement agency—is simply wrong. As head of the EEOC, Judge Thomas helped decide what discrimination cases to bring to the courts. He obviously had to review the regulations interpreting and applying the antidiscriminatory laws. I think to discount 8 years, or 7 or 6 years of legal work of that type as head of an important Federal agency is not legal experience is really a ludicrous assertion.

I think we ought to make that point to correct the record, that we are talking about a person here who has had tremendous legal experience. As I pointed out 2 or 3 days ago there have only been four members of the Supreme Court in this century who have had an opportunity of having served in the executive branch, the legislative branch, and the judicial branch of the Federal Government, having also served in both State government and Federal Government—only four members of the Supreme Court this century. This puts Judge Thomas, as far as his experience is concerned, way above the experience and background that most people bring to the Supreme Court of the United States.

But my main purpose, Mr. President, is to address what most Members of this body are addressing, recent developments in the nomination of Judge Clarence Thomas to be an Associate Justioe of the Supreme Court. And they involve all the issues that have been discussed around Professor Hill's accusations.

The events of the past few days have constituted the worst treatment of a nominee that I have seen in my 11 years in the Senate. Mr. President, I think we were observing over the weekend, on Monday, and Tuesday this week what we were told we were going to see way back in July when one of the spokespersons for one of the major groups in opposition to Judge Thomas, when asked how were they going to defeat Judge Thomas, said, we will "Bork him." We will "Bork him." In other words, the same taotics that were used against Judge Bork in 1987 would be the very same ones used against Judge Thomas.

Until last weekend I could not say that would be the case. But we are in a position now where the emotion of the day is stampeding Members of the Senate, stampeding in a fashion not to use judgment that the constitutional process calls for us to use, because this is not a political campaign for the position of Associate Justice of the Supreme Court.

Judge Thomas is not a political candidate for the Supreme Court. He has been selected by the President of the United States for a lifetime position on the Court.

Are we going to let a political campaign through the media accomplish the same goal that was acoomplished in 1987 against Judge Bork?

I did not think that I would see the "Borking" of Judge Thomas, the tactics that were used then, be successful in this instance. And I hope they are not. But I think we should be concerned about it, not because of what it does to Judge Thomas, but what it does to the constitutional process of advice and consent.

It has been since mid-September that the Judiciary Committee has been aware of these allegations against Judge Thomas. These were allegations that were first brought to the committee's attention by Professor Hill only after she was contacted by Senate staff.

Let me repeat, and let me repeat by her own statement. Professor Hill came forward with her charges after Senate staff talked to her and encouraged her. When the chairman of the Judiciary Committee and when the ranking member of the Judiciary Committee learned of these allegations, the FBI was immediately ordered to conduct an investigation. That investigation was completed before the Senate Judiciary Committee voted on Friday, September 27, 1991.

At that point the chairman of the Judiciary Committee, Senator BIDEN, informed the committee Democrats, most of whom opposed Judge Thomas' confirmation, of the investigation results. Yet, none asked for a delay in the vote. Not one asked for further investigation. And none raised these latest allegations as a reason for their vote to oppose Judge Thomas. Why now?

Well, Judge Thomas' opponents have been successful in delaying the vote on the Senate floor until today, and for all I know right at this very hour there could be discussions about whether or not it even ought to be oonducted today.

The time of last Thursday, Friday, the weekend, plus Monday and Tuesday, today, gave opponents more time to publicly smear Judge Thomas. The FBI report was leaked to the media. That in turn caused Professor Hill, who had requested confidentiality, to defend her allegations publicly.

I do not know whether this just happened, because considering how sophis-

ticated the operation is, this process that we call Borking him—and it is very sophisticated—I would like to have people on my side in a campaign, in a political campaign that is that sophisticated.

But their goal was to get these allegations out very publicly, to inflame the emotions and sensibilities, and most importantly do what was so successful 4 years ago against Bork—except there has not been a lot of paid TV time, but there has been a lot of free news time on this—their desire to bypass the constitutional process of advice and consent of the full Senate and the Judiciary Committee.

We had 2 weeks of hearings, including some 100 witnesses testifying for and against Judge Thomas. Not one raised a charge like this one. A charge like this was taken right to the public by those who oppose this nominee, short circuiting the committee procedures.

This is a strategy based upon desperation. It is a last-ditch effort to defeat Judge Thomas because they cannot destroy him on his qualifications and on the merits.

After all, we had 5 days of testimony. In these 5 days of testimony, Judge Thomas showed himself to be thoughtful, to be intelligent, and to be articulate, as an individual, and even in his present position as a judge.

But he also showed himself to be one who espoused a philosophy at odds with the special interest groups who are out here opposing Judge Thomas. These groups know that they need to stop this nomination. They have to do this to validate their social agenda, an agenda whioh they seek to impose through the courts since the American people, through the Congress and through the President, will not accept it.

I hops that this approach will not work. Their delay, and now this mud slinging, are coming to a merciful end, I hope. When we vote today, I hope that they will lose. I believe that they will. Despite the best efforts of the professional liberals who have thrown everything that they could find at this nominee, he still stands tall, and their cause is a losing cause.

In the meantime, there are some excuses that Senators have raised in opposing Judge Thomas that I think should be addressed. Some claim that they cannot vote for Judge Thomas, because he did not reveal his basic views of constitutional interpretation, that he is, consequently, somehow an empty vessel, that his views have vanished. The truth is that Judge Thomas, openly and very candidly, revealed his basic philosophy, and that is a philosophy of judicial restraint; that is what he told us at the confirmation hearings for the D.C. Circuit, and that is what he has practiced as a judge on that circuit court of appeals.

Some have charged that Judge Thomas refused to answer questions forthrightly. This is utter nonsense. He answered literally hundreds of questions.

It is true that he did not answer the dozens and dozens of questions about abortion, but that is an issue that he is going to be voting on and debating. It is highly controversial and will definitely come before him as a Justice of the Supreme Court. It seems to me that instead of challenging him and finding fault, we should praise him for the open mind regarding that issue. We should expect nothing less than an open mind on these controversial issues that are still going to be decided in the near term before this Court. Nominees for the Supreme Court should not make campaign promises to Senators.

Then there are those Senators who demand that nominees tell us in advance how they will vote, and who would oppose Judge Thomas, claiming he has no respect for the separation of powers and will favor the President over Congress. But under the separation of powers, we must respect the independence of the judiciary. We cannot ask judicial nominees how they will vote on unsettled issues that they will decide. We owe the litigants to those cases the open-mindness on the part of the judges. We owe the nominee the right to decide cases as a judge, after hearing legal arguments and the evidence, and not in the vacuum of the confirmation hearings.

Then, of course, Senators have brought up questions about his prior statements, when he was a member of the administrative branch of Government in a policymaking position, using these statements as excuses for voting against Judge Thomas. They have examined every speech he made, every article he wrote, as an executive branch policymaker.

They say that he is deceptive when he says that he will put his views aside as a Supreme Court Justice. The actual fact is that Judge Thomas has not allowed prior political statements to affect his role as a member of the circuit court of appeals.

Perhaps his opponents, particularly those liberal speciai-interest groups, are puzzled because they cannot imagine that judges have any function other than to read their political views into their decisions. But those who, like Judge Thomas, believe in judicial restraint can and do separate their political opinions from their work as a judge.

Finally, in the ultimate of irony, several Senators have adopted Judge Bork's theory of original intent when it comes to the confirmation process. During the 20th century, up until the 1987 Bork nomination, the President and the Senate followed a consistent pattern of confirming the Supreme Court nominations based on their competence and integrity. Now that seems to have changed.

Make no mistake, though, despite and pretext, the opposition to Judge Thomas is based solely on ideology. And in relying upon ideology, Judge Thomas' opponents are trying to return to original intent by claiming the nominee must prove himself worthy of confirmation. It was under those standards that George Washington's nominee for Chief Justice was turned down because he opposed the Jay Treaty, and that five nominees of President Tyler were rejected for ideological reasons.

Mr. President, I hope to see the confirmation of Judge Thomas for many reasons, not the least of which is that it will mean the end of the ironies and hypocrisy that I have discussed. It is not everyone who could keep his composure during unfairness, mean spiritedness, and outright personal attacks deriving from opportunism, particularly the opportunisms and political agendas of the special interest groups. Judge Thomas has survived this ordeal. In doing so, his early oomments that Congress shows little deliberation, and even less wisdom, that it engages in political posturing above anything else, and is beholden to special interest groups, were not only accurate, but unfortunately prophetic.

Mr. President, I look forward to the day when those statements are relics of an era long past, and the confirmation process returns to the purpose that was intended when Alexander Hamilton spoke to that in the Federalist Papers, when he said that it was to see that political hacks were not appointed to the Court, and that it did not become a process by which the President could put his political friends on the Court strictly for political payoff.

I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. SARBANES). The Senator from Nevada.

Mr. BRYAN. Mr. President. on September 24 of this year, I announced my support for Judge Clarence Thomas' nomination to the Supreme Court. I do not serve on the Judiciary Committee, and the charges leveled by Professor Hill over this past weekend were matters of first impression for this Senator.

The charges are serious, and I took the opportunity to carefully review the statement which Professor Hill submitted to the committee. If true—and I emphasize "if true"—they clearly cross the line and constitute, by any reasonable and fair standard, sexual harassment and the type of verbal abuse that no woman in the work force should be subjected to, and the kind of conduct that all of us rightfully ought to deplore.

Only two people really know what happened—Professor Hill and Judge Thomas. To the best of my knowledge, no other witness is available to offer direct evidence on this matter.

There is, however, circumstantial evidence available, evidence as to the conduct of Judge Thomas with respect to other female coworkers, and more recently, this morning, this Senator has been made aware that there is a telephone log which purports to document a conversational trail between Judge Thomas and Professor Hill which extended over a substantial period of time.

I have read the FBI report and I have read it thoroughly. At best, and with the utmost of charity, it can only be said about that report that it is incomplete.

The question is how then shall we proceed to discharge the obligation that we have to this institution, whioh we are a part of, the obligation to Professor Hill, the obligation to Judge Thomas, and most importantly, the obligation that we have to the American people?

Judge Thomas has a cloud hanging over his head. In my view, the only responsible course for us as Members of this body to discharge the constitutional obligation whioh is incumbent upon us is to the best of our ability conduct a thorough examination of these allegations and ascertain as best we can the truth or falsity of those allegations.

I have in the past been critical of the committee process, but I must say, Mr. President, I know of no better vehicle to ascertain the truth or falsity of those charges than for the committee itself to inquire into this evidence and to give Judge Thomas an opportunity to publicly and before the committee under oath to offer testimony in contradiction and in refutation of the allegations made by Professor Hill.

We, in this body, and the American people have a right to see Judge Thomas, to evaluate his demeanor, and to consider his response.

I believe the most efficacious method to do that is through a continuation of the hearing process for a limited time. I do not favor an open-ended or unlimited extension of time, but I do believe that in fairness to Judge Thomas, in fairness to Professor Hill, and in fairness to the American people that we have a right and, indeed, the responsibility to ascertain this information.

It would be my hope that the Senate can agree upon a short delay for a finite or fixed period of time. But I must say that if I am compelled because I know of no other vehicle other than unanimous-consent agreement to vitiate the time certain and to establish it as I would prefer a fixed time, giving the proper opportunity to fully explore this matter, if I do not have the opportunity to do that, then this Senator would regrettably be in a position that he would vote against the nomination of Judge Clarence Thomas because it is the only vehicle available to this Senator to ensure the purpose of the continuation to ascertain these facts.

As I said, Mr. President, I hope that does not become necessary. I believe it is is in the best interest to Judge Thomas, and I hope his sponsors would concur, that he have this opportunity to rebut in a public forum the allegations that have been made against him and those of us in this body who ultimately must make the determination as to whether to vote for or against Judge Thomas have the opportunity to consider his response, his demeanor when he is specifioally confronted with these allegations.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, let me thank Senator BRYAN from Nevada. I have a real appreciation not only for the substance of his remarks but really the way in which he delivered those words which I think are very important at this particular moment on the floor of the U.S. Senate.

Mr. President, the Senator from Iowa [Mr. GRASSLEY], mentioned empty vessel, and since Monday a week ago when I announced my opposition, I talked about empty vessel. I want to once more talk about the basis of my decision.

Friday I was a part of this debate, but it really was Monday a week ago that I had decided—and I decided after a lot of consideration—to vote against Judge Thomas, and the basio point I made then was that when I went back to the Constitutional Convention and the deoisions that were made about the judicial branch of Government and how appointments would be made, it is very clear to me that there was a clear understanding historically, and I think it applies today, that the judicial branoh of Government has just tremendously important power, the power of judicial review, the power to enforce the first amendment rights, the power to guard against usurpation of power by the executive branch or the legislative branch. It is the branch of Government in which each and every individual has equal standing.

And what I found so disappointing about Clarence Thomas' testimony before this Judiciary Committee was that the judge essentially said that his past writings and statements were really no longer to be considered, that he had no view on the basic constitutional and philosophical questions that face us as a society and a country.

And, therefore, my argument was in representing himself as an empty vessel I did not believe that I could give my advice and consent to anyone who would come in and so represent himself or herself. I feel very confident about that deoision.

But now, in the last couple of days, we have had some other developments and first and foremost have been the allegations by Professor Hill, and I think it puts everyone, the people in Minnesota that I spent time with today before I came back, those of us in the Senate, and Clarence Thomas as well, in a very difficult position.

I want to say on the floor of the U.S. Senate that I think every Senator has to be very careful not to in any way, shape, or form discount what Professor Hill has had to say. All too often when women raise questions of sexual harassment, women are ignored. We do not want to let that happen. That cannot and that should not happen any place, any time, anywhere in our country. But, by the same token, we have to remember that Judge Thomas is entitled to a fair hearing. He is not guilty—I mean we have not had a full hearing. He has not really had an opportunity to fully represent himself.

So, what I want to say, Mr. President, in the spirit of, I think, fairness and some balance is that it is very important that we do not decide tonight. I think it is a question of being fair to Professor Hill. I think it is a question of treating Judge Thomas with utmost respect. And I also think, Mr. President, it is a question of institutional integrity. I do not believe that the U.S. Senate can vote tonight on oonfirmation under such cloudy circumstances.

Mr. President, I guess what I would say in what is not a good moment for any of us is that there is no reason to rush to judgment. There is no reason to rush to judgment. When I came back from Minnesota today, I hoped and I still hope that perhaps Clarence Thomas himself would request that we put off this decision. I think it would be best for him. I think it would be best for the U.S. Senate, and most importantly, I think it would be best for all of us as a people in this Nation.

So I do not believe we should rush to judgment. I hope we will not make such a momentous decision tonight, and I hope that all parties concerned will be treated with respect and fairness, and we will move forward and try and make a decision and made a decision at another time under other circumstances when in fact we have the full information before us and we can be fair to Judge Thomas, to Professor hill, and we can make a decision as the U.S. Senate that will be good for our country.

I yield my time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I yield to the Senator from Missouri.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Missouri.

Mr. DANFORTH. Mr. President, the situation before us is as follows: Sometime earlier this month, prompted by apparently repeated inquiries from Senate staff, Miss Anita Hill made a written statement making certain alle-

gations about Judge Clarence Thomas. Those allegations were subsequently investigated by the Federal Bureau of Investigation.

The investigative report was then delivered to the ohairman and to the ranking member of the Judiciary Committee. They, in turn, briefed the majority leader and the minority leader of the Senate. Senator BIDEN tells me that he then briefed each of the Democratic Members of the Senate on the content of that report.

As a result of those briefings—and I am told that during the briefings a copy of the FBI report was present, and that if members did not actually look at it, they had a right to look at it—as a result of those briefings, it was determined by each of the member of the Judiciary Committee that the FBI report did not contain any basis for further action; that no further investigation was necessary; and that no delay was necessary. That was the stated position of the members of the Judiciary Committee.

Having failed to win any response from the Judiciary Committee, having failed to have the vote put off—and incidentally, I am told that it is a matter of right, that any member of the committee could have put off the committee vote for one week—having failed that, someone violated the rules of the Senate. Someone released into the public domain an FBI report, or the contents, selected oontents, it would appear, of an FBI report. That was done the weekend before today's scheduled vote on the Thomas nomination.

It became, as many might have predicted, the lead item on each of the network news programs on Sunday. It became the front-page headline of the newspapers on Monday. It has generated a tremendous rush of activity by various organizations opposed to the Thomas nomination.

I am told, two different times, that various people who work at EEOC have been flooded with phone calls from people who have identified themselves as being with the organization, People for the American Way, asking for the dirt on Clarence Thomas.

This whole conformation process has been turned into the worst kind of sleazy political campaign, with no effort spared to assassinate the character of Clarence Thomas: staff members, interest group representatives fanning out over the country, trying to drum up whatever they can to attack this person's character.

The allegations, of course, have been called into question. Today, Clarence Thomas issued a sworn statement categorically denying the charges that have been made against him. Today, I released, upstairs in the Press Gallery, excerpts from the telephone logs of Clarence Thomas. Those excerpts from the telephone logs of Clarence Thomas indicate that on 11 separate occasions since Miss Hill left the employ of the EEOC, she took the initiative of telephoning Clarence Thomas. The first entry on the telephone logs, January 31, 1984, written in the handwriting of Clarence Thomas' Secretary at EEOC says:

Anita Hill, 11:50. Just called to say hello. Sorry she didn't get to see you last week.

Another one of the entries. This one, August 4, 1987, Anita Hill. And then there is a phone number. Time, 4 o'clock. Message: "In town till 8-14"—presumably, August 15—"wanted to congratulate you on marriage."

Now, these are the phone messages of the person who has accused Clarence Thomas of harassing her on the job.

Then we have the statement of a lawyer and former coworker at EEOC who reported that he had seen Miss Hill at the American Bar Association convention in August, and that she said:

Isn't it great that Clarence has been nominated for the Supreme Court?

And this same person has come forward, and she has made certain statements, and those statements were investigated by the FBI. And that investigation was turned over to the Judiciary Committee, and the Judioiary Committee said: "No basis for action."

And then someone went public.

Now, Mr. President, what is the reason for the secrecy of the FBI reports? What is the reason for Senate rules providing that FBI reports are not supposed to be released to the public? What is the reason why a Senator who releases an FBI report can be expelled from the U.S. Senate?

The reason is that it is manifestly unfair to an individual to release an FBI report. And that is what happened here. And you talk about unfairness. What is more unfair than to have a person's character called into question as the lead item on the network news?

What is more unfair to an individual than to have Senator after Senator go on the floor and say, "Oh, we don't know enough." Why it satisfied the Judiciary Committee—yes, they read the reports and said, "No further action." Let us keep this ball in play; we need to delay. We need more time for the People for the American Way to make their phone calls digging up the dirt. We need the interest groups to have more time to gin up their opposition. There is blood in the water. We need more time for the sharks to gather around the body of Clarence Thomas. Oh, we need a delay. The Judiciary Committee, when they said it does not warrant further action, blew it, it is said. I do not think so at all.

One hundred days ago today Clarence Thomas was nominated for the Supreme Court of the United States. For 100 days the interest groups and their lawyers and various staff members of the Senate have combed over the record of Clarence Thomas. For 100 days they have examined footnotes in Law Review articles to question him about; sentences in articles taken out of context; speeches made in a political context which are then analyzed and critioized before the Judiciary Committee. One hundred days this has gone on and people will say, "Oh, no, wait. We need more time."

That is a tactic, Mr. President. I have been asked by the press today, why not delay? Why not delay? One hundred days is not enough. The Judiciary Committee's word for it is not enough. Why not delay? Why not keep this "circus"—and I use that word in the Roman context—why not keep this circus going? The lions are not satisfied yet. Why not just have a delay?

And my answer throughout the day has been, I do not think there should be a delay because all of the relevant evidence is before us now: the charge of Ms. Hill; the response to the charge by Clarence Thomas denying the allegation of Ms. Hill. It is not as though at some future time after some appropriate hearing the skies will miraculously open, the clouds will dissipate, and will know "the answer" to these charges. I am quite sure that if we have a delay, no matter how long that delay would be, people would say, "We need another delay." Or, "We still have doubts." Or, "She proved her point." Or, "He proved his point." The questions will still exist. People say, "Clear the clouds away. There is a cloud of doubt. We cannot do anything while the cloud of doubt exists."

Mr. President, the cloud of doubt was created by a violation of the rules of U.S. Senate. Think about voting down the nomination of Clarence Thomas solely on the basis of a violation of Senate rules. Think about voting down the nomination of Clarence Thomas solely because an FBI report was distributed to the media illegally. Talk about scandal—that is scandal.

So, Mr. President, I have said to the press and I have said to some of my dear friends in the Senate today, I do not think there should be a delay. This poor guy has been tortured enough. And at the end of the delay they are going to continue at it. And at the end of the delay they are going to say "Wait, there is somebody else. There is something else. Let us have another delay."

I have said in my opinion a delay would serve no purpose whatever. And that is how I feel about it. But, Mr. President, it is not my call. At least in my mind it is not my call. Because a person whom I respect so greatly and a person I love dearly said to me on the phone: "They have taken from me what I have worked 43 years to create. They have taken from me what I have taken 43 years to build—my reputation." And he said, "I want to clear my name."

I do not know that it is possible. I doubt it because I think, as I have said,

that it will just be another delay for the sharks and at the end they will say, "Oh, we need more." Or, "We need a lot of time, a lot of witnesses, a lot of lions."

But Clarence Thomas said to me on the phone, "I have to clear my name. I have to restore what they have taken from me. I have to appear before the appropriate forum and clear my name."

So, for 100 days I have been the spokesman for this person, Clarence Thomas, and on this 100th day I act as a spokesman again, with great pain and great anger at an injustice which is being perpetrated on him. And I ask for a delay. And, Mr. President, not a delay to torture him, a delay I would say of 1 day—some would say you cannot do it in 1 day—2 days, to bring her here, to bring him here, to do whatever else they want to do, and then to have a vote at a time certain, 6 p.m., next Thursday, this coming Thursday, 2 days from now. That is reasonable. I think it is unfair, but it is certainly reasonable from the standpoint of any reasonable person. That is the proposition that I asked to put to the U.S. Senate: 48 hours and a proper forum for Clarence Thomas to try to clear his name.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

NOMINATION OF CLARENCE THOMAS

Mr. DOLE. Mr. President, first I wish to thank my colleague from Missouri, Senator DANFORTH. Second, I would like to state, if my arithmetic is accurate, if there is a vote at 6 o'clock, and that has not been determined yet, notwithstanding the request from Judge Thomas, as I look at it, there are about 41 for Clarence Thomas and 41 against, maybe 18 undecided, maybe 17, maybe 16, depending on who you count.

If all those undecided voted present, we would have one result. If some voted for Clarence Thomas and some voted no, because I want to delay, we would have another result. As we speak on the floor, most of those who favor Clarence Thomas, some who say delay and some who say let us vote tonight are meeting with the distinguished majority leader, Senator MITCHELL.

I would add that Clarence Thomas has agreed to meet with any of these people or anybody else who was still undecided. There is no need to meet with the Senator from Ohio [Mr. METZENBAUM] or some of those. But anybody who might be undecided, anybody who thinks he may have been treated unfairly—somebody will say, oh, we have to open this case because we want to be fair. Fair to whom? The Senator from Missouri said we waited 100 days. I think sooner or later the American people have to understand that even Clarence Thomas has some rights and he has some sensibilities and he has some feelings and he has his limits.

So I ask, what do we mean by delay? Oh, a couple of weeks, next week. Sure, why not. We have gone through that before on this floor where one allegation is made, one FBI report, some close associate releases it to the press, as happened in this case. When that checks out, somebody else throws something else over the transom, you check that out, you leak that and you start again.

What do we mean by delay? How many witnesses? Closed or open session? What do we want to find out from this man that we do not already know? Let us face it, this nomination is very important to a lot of people. Some would do anything to stop it, and some might do anything to get it over the hill. But I believe those 16, 17, or 18 Democrats in this case who have indicated a favorable response to Clarence Thomas are fair-minded people. It was our hope that by having Clarence Thomas sign an affidavit, not a statement, but an affidavit categorically denying any of the allegations, it should satisfy most of those 16, 17, or 18 Senators who have indicated they might support or would support Clarence Thomas. In many cases, some are undecided, but most have said yes.

Then we also thought by releasing the phone logs, it clearly indicates there was a friendly, cordial relationship even after Ms. Hill left EEOC.

I am reminded when Secretary Donovan was acquitted, he said, "Where do I go to get my reputation back?" He took a lot of beatings on this floor, and he took a lot of beatings in the media, but he was acquitted. That was the American way. Not the one that Senator DANFORTH is talking about; that was American justice.

I do not know of any group who gets more criticism than the group of 100 in this body, more allegations, more accusations, more unfounded charges. So I just suggest, there is no doubt about it, on this side of the aisle we have 41 votes. Should we make a judgment to vote at 6 o'clock if we only end up with 47 votes or 48 votes or even 49 votes? Or, should we gamble for another 24 hours or 48 hours and say, well, maybe justice will finally be done and maybe even some of those people who are against Clarence Thomas, on either side of the aisle, might understand that this man has been through the wringer enough, he has told the truth, he deserves my support.

I think it is fair to say the jury is right next door. The jury has gathered in Senator MITCHELL's office and they are going to determine the fate of Clarence Thomas. I heard almost every Senator regardless of his final position on the nomination, say that Clarence Thomas is a man of integrity and honesty. But when it is called into question, I hope they will keep that in mind.

Senator DANFORTH, as he indicated, has been the leader on this side of the aisle. He has known Clarence Thomas for 17 years on an intimate basis. He just talked to Clarence Thomas on the telephone. I was in the room, or the adjoining room. I think Clarence Thomas believes those Democrats in this case that have indicated their support, or probable support, are going to stick with him in the final analysis, some will stick with him today, and there is no reason for delay if he had the votes.

The bottom line in our business on both sides of the aisle is how many votes do you have. In the final analysis, how many votes do you have, and should we close the career of Clarence Thomas knowing we are short of votes? That would make some very happy. They would be dancing in the streets on the left side of the street, all over America.

I appeal to my colleagues who have indicated, my colleagues on the other side of the aisle, that they intend to support Clarence Thomas—and two or three are leaning in that direction—to suggest what else this man can do? What else can he do other than give us an affidavit? What else can he say? What does it take to satisfy, not the 41 who have already announced for Clarence Thomas or indicated their opposition, not the 41 who are for Clarence Thomas, but the 16, 17, or 18 who hold the power, who hold the key, who hold the balance and are going to make this decision, what do you want from Clarence Thomas?

Senator DANFORTH was telling us earlier, and I am certain members of the Judiciary Committee can recall all the allegations they made against Clarence Thomas now—oh, it is important, another serious allegation—he shot them down one at a time.

So I will just say, we have not decided whether there is going to be a delay. I am still hopeful, as one Senator, those who are meeting with Senator MITCHELL are going to suggest we have had enough.

We have read the affidavit. We have looked at the phone logs. He has made a public statement. That was a question by some: Where is his public statement? He has not said anything. He said it through his supporters.

Well, here is his public statement. He has offered to meet with anybody this afternoon. He can be here in 10 minutes. He will meet with anybody who has any question about the affidavit, or any other question about these charges.

Now, somebody has already hinted there are some new allegations out there. There will probably be a lot of new allegations. There will be a lot of allegations.

So I am still hopeful—it is only 4:40—that when those who are undecided,

those who have indicated their support for Clarence Thomas, those who have made statements earlier today, well, based on what I now know I am going to have to vote "no" unless there is a delay—that was prior to the release of the affidavit. That was prior to the release of the telephone logs. And again I invite any of those people to call Clarence Thomas up. Come to my office. We will bring him up to talk to you. We would like to finish this today.

And I know what some on the other side, oh, they would like to have another weekend. I have been around here awhile. I knew last weekend when we did not vote on Friday what was going to happen on Saturday and Sunday, and it did. There is always somebody out there willing to collaborate and to print classified, or go on the radio with classified information, and they did.

So again I would just say to my colleagues, particularly those who had some—I will not say seoond thoughts but some late reservations, maybe Senator DANFORTH is right. Maybe we ought to wait 24 hours. But who is the FBI going to cheok in 24 hours or 48 hours? What is going to happen? Who are you going to check? How many allegations? How many new allegations?

I remember John Tower. We had the whole FBI working on John Tower; allegations were coming so fast and leaking so fast. The press really helped on that one. So sooner or later we have to oome to a conclusion. And I would guess within the hour, between now and 5, we will be able to make that announcement.

So, Mr. President, again I urge my colleagues to take a look at the affidavit, take a look at some of the information Senator THURMOND has, a letter from the dean of the law school, information other Senators on the Judioiary Committee have, affidavits from someone who saw this young lady in August saying, "Isn't it great Clarence was nominated to the Supreme Court."

I have not said one word about the oredibility of Anita Hill, but I am suggesting that it is answered in the affidavit by Clarence Thomas. And we ought to get on with this. We ought to have the vote at 6 o'clock. But I can count, and if the votes are not there at 6 o'clook, then we may have another suggestion.

Mr. President, I yield the floor.

Mr. MOYNIHAN addressed the Chair.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER.

Mr. President, I begin by complimenting my colleague, Senator DANFORTH, for an outstanding statement. And I compliment Judge Thomas for his suggestion of the delay for purposes of clearing his name. I think that the delay is worthwhile, Mr. President, for additional reasons.

I think the series of events have in a sense put the Senate on trial, and in a sense would send to the Supreme Court a cloud, and that it is in the public interest to have these questions resolved in, as Senator DANFORTH has suggested, an additional hearing.

In coming to that conclusion myself, I want to make it plain that I do not oredit the demands of Judge Thomas' opponents on the Senate Judiciary Committee. And earlier today on the early morning shows I had a substantial disagreement with Senator SIMON on the question of whether this material was appropriately before the Judiciary Committee, whether there was not an adequate opportunity for an inquiry at an earlier date.

This information was made available by Professor Hill on September 23 when she agreed to submit a statement and submit to questioning by the FBI. She had been contacted earlier in the month by some staff members of Senators. And she had come forward to the Judiciary Committee on September 12 and was unwilling at that time to submit to questioning or to make the accusations and to identify Judge Thomas and give him a chance to reply.

But that changed on September 23, and on September 23 Professor Hill made the statement, was questioned by the FBI. Judge Thomas made a denial. And and FBI report was filed on September 25.

I learned of it for the first time on September 26, and I took the matter seriously. I sought a meeting with Judge Thomas, and met with him, and confronted him on the charges and listened to his very forceful denial.

Now, it was at that time that Senator SIMON and others had access to the same information, and if there was a question at that time it seems to me that that would have been a timely matter to take up. But I do not believe that whatever the source and whatever the timing with Professor Hill having made the charges and with the question of appropriate diligence by the Senate, they ought to be aired—with the question of a possible cloud on the Supreme Court on a nominee or on a Justice, if he is confirmed, that they ought to be aired.

After listening to Judge Thomas' forceful denial, and after studying the FBI report, I was prepared to vote, and I did vote, at the Judiciary Committee meeting on Friday, September 27. And all of the other Senators on the committee were prepared to vote at that time as well.

I took into account my own analysis the fact that Professor Hill moved from the Department of Education to EEOC with Judge Thomas. It is my understanding that she had a position at the Department of Education where she could have stayed.

I took into account the fact that Professor Hill went with Judge Thomas to Oral Roberts where he made a speech, and that she later had invited him to the University of Oklahoma to make a speech. And I heard her explanation that she did not really want him to come there but had asked him to do so at the request of somebody else.

But when I read those facts in the FBI report, it appeared to me that there was some association. I do not know, Mr. President, what happened between Judge Thomas and Professor Hill, if anything. Now we have the telephone logs as a suggestion of further association.

But I do think that a question has been raised in the minds of the American people by what Professor Hill has said, and I think by 20-20 hindsight, which is always so much preferable, it may well have been better to have pursued the matter back on September 23, or September 24, or September 25 or September 26.

But I do think that it is useful to pursue the issue at this time and have an opportunity for Professor Hill to say whatever she has in mind, to have an opportunity for Judge Thomas to come forward with his statement. Professor Hill wants a resolution of the issue. She says her reputation is at stake; that Thomas wants a resolution of the issue; his reputation is obviously at stake. But it would be my hope that we could proceed with some dispatch.

We have an issue whioh is framed. We have two witnesses, possibly a third corroborating witness, where Professor Hill is said to have told one of her friends nothing, nothing in detail, but to have told about the comments allegedly made by Judge Thomas.

But it would be my hope that we could proceed very promptly on this matter before the Judiciary Committee, and we could hear the witnesses.

We have a unanimous-oonsent request which calls for a vote at 6 o'clock. Our votes in this body are curious things. Nobody is ever really quite sure how they are going to come out until the vote is actually cast. There may be some people who are in doubt. There may be some people who still might stand by what they have said as to Judge Thomas. But if we do vitiate that unanimous-consent agreement, it would be my hope that we would move promptly on Thursday of this week—6 o'clock is a good time or any time. Conceivably, it could even be by the end of the week, so far as I am concerned. But I do not believe that the matter ought to be put over.

But where questions have arisen as to the procedures of the U.S. Senate, I think institutionally this body ought to act so that the public has full confidence in any inquiry or the scope of inquiry or the detail of inquiry which we ought to make.

I think it is very appropriate that we not vote to confirm at a time when the cloud hangs over a nominee—and would for a long period of time—because of the tremendous importance of the deci-

sions to be made by the Supreme Court of the United States, and judgments by that nominee if as and when confirmed.

So my hope is that in the spirit of accommodation, in the spirit of fairness, that we move ahead. Those who were prepared to vote for Judge Thomas but are now in doubt would say, all right, let us have the hearing, let us hear Professor Hill, let us hear Judge Thomas, perhaps the corroborating witness, but let us do it with dispatch, and let us set a time for a unanimous-consent agreement on Thursday at 6 o'olock or at least before this week is ended.

I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. KOHL). The Senator from New York.

Mr. MOYNIHAN. Mr. President, Judge Thomas has asked for the opportunity to clear his name before the Judiciary Committee and the Senate and the public of the United States. Professor Hill has indioated that she feels that her statements have been challenged, and either explicitly or implicitly—the same. I am very much moved by the anguished eloquence, with which Senator DANFORTH sets forth this proposition, a thought to be allowed. Senator SPECTER, the Senator from Pennsylvania, has done the same.

In that spirit, Mr. President, I ask unanimous consent that I might be allowed to withdraw the motion to adjourn which I offered earlier today.

The PRESIDING OFFICER. Is there objection?

Hearing none, without objection, it is so ordered.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, my fellow Senators, a week ago today I announoed my intention to support the nomination of Judge Clarence Thomas to a position on the Supreme Court. I did so, Mr. President, based upon his record as I knew it then, subsequent to the full hearing of the Judiciary Committee, subsequent to the vote of the Judiciary Committee, and subsequent to the examination of that record by this Senator with his staff. And I did so because based on that record, the record that I saw at that time. I believed him to be qualified for elevation to the U.S. Supreme Court.

Having said that, however, I must also say that I strongly believe the Senate must fully examine the sexual harassment charges made against Judge Thomas before voting on his nomination. We owe that to Judge Thomas, and we owe that, Mr. President, to the country. Sexual harassment is a serious mattsr. It deserves to be handled in a serious and fair way. To do otherwise is to do an injustice to both the country and to Judge Thomas.

Let me emphasize that I have not at this point decided to change my view and oppose the Thomas nomination. I have not decided at this point to change my vote. What I have decided is that it would be a major mistake for the Senate to go forward on this nomination tonight at 6 o'clock.

If the Senate votes tonight, I say the Senate is avoiding its responsibilities. If the Senate votes tonight, the Senate would be saying that a charge of sexual harassment is not important enough to fully investigate, fully investigate before acting on this nomination, and if the Senate votes tonight, it would be saying that it does not care if this charge has merit or not.

In the view of this Senator, Mr. President, this is an extremely important charge. It should not be dismissed without hearings. In the view of this Senator, this charge must be fully investigated before acting on this nomination. In the view of this Senator, Mr. President, not investigating fully this charge before we act would be an absolute abdications of our responsibilities.

Investigating a matter of this seriousness before voting is not something that we should be debating at all. It ought to be the unanimous view of the Senate, Mr. President, that we must do this.

I think some Senators are confusing delay and confusing procedural fairness with opposition to this nomination. Not so. That is a mistake. At this very moment I still believe on the basis of what I know, on the basis of what I now know, even though there is confusion, as a consequence of the charge, that the Justice is qualified, the Senate ought not to compound this mistake by voting on this nomination tonight, Mr. President.

Instead, to repeat, the charges should be fully explored. Professor Hill should have a full opportunity to be heard under oath and to be examined under oath. Judge Thomas should have a full opportunity to respond under oath. Any other persons who know anything about this should have that opportunity.

Senators should have an opportunity to be able to consider these charges based on every bit of evidence available in the country, not simply on what may be available at this time.

As everyone knows, an allegation is not the same as a truth. And sexual harassment by its very nature is a very sensitive matter. I understand that. We should therefore neither dismiss the allegations without further review nor should we oppose Judge Thomas' nomination today simply on the grounds of those charges. That is the view of this Senator.

What the Senate should do, what this Senator believes has to be done and must be done, is to put aside today's vote for procedural reasons in order to provide the time necessary to investigate this critical matter absolutely fully. That is what is required, Mr. President. That is what I believe we absolutely must insist upon.

The Senate has to be released from the procedural straitjacket it is under; that has to be the Senats's full priority.

I have been home all weekend. I have been trying to explain to the people that this vote set on a unanimous-consent request that 100 Senators agreed—as you know, Mr. President, we did—to have the vote at 6 o'clock. And that as a consequence of that, it takes unanimous consent to set it aside.

People are understanding people, but they cannot accept that. They say you mean to tell me that there is no method by whioh the Senate oan at least see what the Senate thinks the truth is before every Senator casts his or her honest vote predicated upon his or her honest judgment?

Why, the people reject that out of hand, Mr. President. They have a right to do so. I tell you, as I stand here now, that the probabilities are high, may I say to the minority leader and those on that side, that justioe will still prevail in his quest for this seat. But the truth must be known. Mr. President, this is America, and the people have the right to know.

I find this matter a grievous one, as do my colleagues on both sides. There is not one Senator here who does not. One hundred Senators of different political persuasions and all kinds of philosophical attitudes surely agree that the country has a right to know the truth. What a oloud this man would be under were we to vote tonight.

I oonclude, Mr. President, by saying that we owe it to the Justice who is before us for oonfirmation, and we owe it to the oountry, and we owe it to our individual conscience to know, as best we can know, the truth—before we vote.

I plead for that as a man who remains, at this moment, announced in support of Justice Thomas.

I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I came to this Chamber last Friday morning to announce my support of the nomination of Clarence Thomas as an Associate Justice of the Supreme Court of the United States. I return to the Chamber this afternoon not to withdraw that support, but to join in the call for a reasonable delay to allow us to fully investigate the serious charges that have been made in this case, and to do justice to Judge Thomas, to the woman who has made the charges, to the Court, and to the Senate of the United States itself.

Mr. President, when I spoke last Friday, I expressed my concern that, as we in the Senate agitate over Judge Thomas' nomination and the impact it would have on our general system of

justice, we ought to be careful to treat this individual, this man, this nominee, justly. Recent events, I fear, make that aim all the more difficult to fulfill.

Judge Thomas, fairly or unfairly, stands accused of a very serious charge, and I share the regret of many of my colleagues about the manner and the timing by which this charge was brought to our attention. But that does not diminish the importance of the charge itself, and it does not absolve us in this Chamber of the responsibility we have under the advice and consent clause, as representatives of the people of this country, to inquire into the validity of the charge.

Sexual harassment is a serious offense, and it goes directly to the question of personal character, which is, for me, a vital consideration in making a decision about a Supreme Court nominee.

We cannot dismiss this charge itself out of hand, no matter how late it comes. That is not fair to the judge; that is not fair to the professor who has made the charge; and that is not right for the U.S. Senate, because we would, I fear, unintentionally be sending a message that we disparage, we diminish the significance of a sexual harassment case. As a U.S. Senator, as a father of two daughters, I do not want that message to go out from this Chamber.

Mr. President, we owe it to the American people, to the Supreme Court, to the Senate, and to the nominee, to deal with the charge, to assess its validity, and to make a final, informed judgment about the charge, the person making the charge, and the judge who today stands accused.

I simply do not believe we can do that in the short time that remains before the scheduled vote.

Mr. President, I had an opportunity to review the FBI file, and I think there are more questions to be asked before I, for one, can make a calm and reasonable judgment about this matter. I have contacted associates, women who worked with Judge Thomas during his time at the Department of Education and EEOC. And in the calls that I and my staff made, there has been a universal support for Judge Thomas, and a clear indication by all of the women we spoke to that there was never, certainly not, a case of sexual harassment, and not even a hint of impropriety.

I have spoken to a number of my colleagues about the issue today. Additional facts, including the phone logs of Judge Thomas, have come to light during the day. For all of those reasons, I believe it is important for us to have an opportunity to examine all these facts in an atmosphere of calm deliberation, and not rush to a vote that was scheduled before most of us in this Chamber knew of the allegations that have been made against Judge Thomas.

Mr. President, let me repeat: Last Friday I expressed my support for Clarence Thomas. By asking today for a delay, I do not withdraw my support. I want this process to be deliberative; I want it to be reasonable; I want it to be thorough; I want it to be fair; and I want it to be just to all concerned.

I appreciate very much the statement of our colleague, the Senator from Missouri [Mr. DANFORTH] suggesting and asking for a delay for Judge Thomas to clear his name. I support that request.

I hope that means that, ultimately, all we will discuss in the time remaining between now and 6 p.m., when the vote has been scheduled, is how long the delay will be; that we can join, on a bipartisan basis, those of us who have supported Judge Thomas, and continue to, and those who oppose him in the interest of justice, and the credibility and respect of this Chamber, in asking for the delay that will allow us to reach a reasoned judgment.

That, Mr. President, is in the interest of the honor of the Supreme Court, the credibility of the U.S. Senate, and the personal reputation of Judge Clarence Thomas.

I thank the Chair, and I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, for the past several weeks, I have been reviewing the hearing record and other material on Judge Thomas in preparation for my duty to advise and consent to the President's nominee to the Supreme Court. In my view, this is one of the most solemn responsibilities of any Senator.

Yet, during the past 2 days, the Senate's deliberation on this important matter has been interrupted by new accusations against Judge Thomas. Like many of my colleagues, I was unaware of these charges when a unanimous-consent agreement was reached last week to vote on the nomination this afternoon at 6 p.m.

While the appearance of these charges at this later date is regrettable, they seem to this Senator to be sufficiently serious and credible to warrant further investigation. In order for the Senate to fulfill its constitutional responsibilities, I believe that we must delay the vote until the issue has been resolved.

To vote now, without knowing the facts, is not fair to anyone—certainly not to Judge Thomas or Professor Hill. Furthermore, the issues involved are too serious for the Senate not to proceed deliberately and thoughtfully. We should not be rushed to a premature judgment on so serious a matter.

I do not know what such an investigation will reveal. But I do know that the Senate's credibility is at stake. And I cannot fulfill my responsibilities as a Senator unless I know more about these allegations. So I would urge the leadership, and my colleagues, that a delay in today's vote, and further investigation, are in the best interests of the Senate, the nominee, and the Nation.

A nomination to the Supreme Court imposes on all of us an enormous responsibility. Unlike a nomination to an executive branch post, in which the person generally serves at the pleasure of the President and is part of his policy team, a seat on the Supreme Court is an appointment with lifetime tenure. The nominee, especially if he or she is young, will have an opportunity to influence the protection of our most basic individual rights and liberties for a long time.

More importantly, a nomination to the Supreme Court is a nomination to the third branch of our Government, one that is coequal with the President and the Congress. The Founding Fathers deliberately fashioned this balance of power, in part, to protect the individual against the abuse of the Government. We need Justices who will respect this vital role.

Furthermore, the Supreme Court is the only branch in which the people do not directly participate in the selection of its members. The President nominates an individual. But it is the responsibility of the Senate to see to it that the nominee is one in whom the people can have confidence.

During my service in the Senate, I have developed three basic criteria by which I judge a nominee's suitability to sit on the highest Court in the land. These are: professional competence, personal integrity, and a view of important issues that is within the mainstream of contemporary judicial thought. A nominee must meet each of these criteria before I can consider him or her qualified to become a Justice.

Before I go further, let me make a personal observation about the nominee. Judge Thomas has an impressive record of personal achievement. In my conversation with him just yesterday, it is clear that his grandfather's determination to rise above adversity had a very positive and lasting influence on him.

Judge Thomas himself has encountered, and overcome, adversities that would have stopped a lesser man. His struggles, and successes, should inspire young people to reach for their highest potential. For this alone, he is deserving of our respect and admiration.

But is he deserving of a seat on the Supreme Court? After all, we are not bestowing an Horatio Alger award for a self-made man. We are being asked to consent to his elevation to a position of power and influence over our most cherished rights that few men or women will ever attain.

Is Judge Thomas a worthy custodian of our fundamental rights? Will he be a

stalwart defender of our personal liberties? Will his decisions inspire confidence and command respect? Does he have a solid vision of America and where we need to go?

I must confess that after a review of the Judiciary Committee's report and the testimony of Judge Thomas, and an hour-long personal meeting with him yesterday, I am unconvinced.

Some of his supporters say that since Judge Thomas has been confirmed by this body in the past, he should pass muster this time as well. This reasoning is flawed.

The requirements for his previous posts, and his current position, are exceedingly different from those of a Supreme Court Justice. If confirmed, Judge Thomas will be one of nine individuals who have the last say about the interpretation and application of the Constitution to our must fundamental rights and liberties.

His previous experience as a political appointee gives me little guidance on this matter. Unfortunately, neither does his brief 17-month tenure as a member of the U.S. Court of Appeals for the District of Columbia.

I am further troubled by the fact that while a majority of the American Bar Association review panel rated him as "qualified," two members rated him as "unqualified." And no one on that panel believed that he was "well qualified," its highest rating.

A Supreme Court Justice should be a pillar of his profession. He should be one to whom others can look for inspiration and guidance. This is an important quality, not just for itself, but because it is vital to the credibility of the Court's decisions.

During the hearings last month, Judge Thomas was questioned about specific issues, from his stewardship of the Equal Employment Opportunity Commission, to his views on natural law, the right to privacy, and the separation of powers. These are very important issues. Yet in many cases, I found his previous writings and positions to be bizarre and even extreme.

But more disturbing to me was that in many of his answers, he essentially retracted or disavowed many of his past beliefs. Now we all have the right to change our mind. And in some cases, his change of heart brings him closer to the mainstream view on these issues. But the number and degree of Judge Thomas' reversals have left me wondering where his true beliefs really lie.

Furthermore, the explanations he gave to the Judiciary Committee often demonstrated a lack of scholarship and intellectual curiosity that will ill-serve the Court and the Nation.

The Supreme Court should not be a testing ground for development of one's basic values. Nor should a Justice be seen to require further training. The stakes are too high.

This is not to say that a nominee must mirror my own views of the Constitution to gain my support. He need not. In fact, Judge Thomas seems to believe, as I do, that the proper role of the Supreme Court is to interpret the Constitution, not to engage in legislating from the Bench, be it activist conservatism or doctrinaire liberalism.

But he must demonstrate to me that he has the basic qualifications that entitle him to a seat on the Supreme Court. After a careful review of the evidence, I find that Judge Thomas does not yet exhibit the caliber of judicial competence, wisdom, and experience that I believe must be the hallmark of a Supreme Court Justice.

Appointment to the U.S. Supreme Court should be reserved for only our Nation's best. Judge Thomas, at this time, does not meet that high standard.

I am also troubled by the recent allegations of sexual harassment. If true, and we do not yet know if they are, it would be further evidence of his unsuitability to sit on the Court.

Let me finally say that if Judge Thomas is ultimately confirmed, then I hope that he will grow quickly in his new position and that his decisions will reflect both an intellectual honesty and an unwavering support for our basic freedoms.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in light of the events of the last 3 days, I urge the Senate to defer its vote on Judge Thomas' confirmation. We have a constitutional duty to the Nation, to the Supreme Court, and to the Senate to review Professor Hill's very serious allegations before casting our votes.

If confirmed by the Senate, Judge Thomas will receive a lifetime appointment to the Supreme Court. He may well serve on the Court for the next 30 or 40 years. There is no justification for an unseemly rush to judgment in a few hours, when a delay of a few days can make such an important difference. Serious questions have been raised. A great deal more information can easily be obtained to enable us to make the wise decision we owe the country, the Court, and the Constitution.

I recognize that the Senate entered into a unanimous-consent agreement to vote today. But the Senate will be abdicating its responsibility if we permit this all-important vote to take place without making the additional investigation that cries out to be made.

When the unanimous-consent agreement was reached, many of us were under the impression, correct or incorrect, that Professor Hill wished her name and her allegation to be kept confidential. Now, however, the circumstances are dramatically different. It would be absurd to hide behind the unanimous-consent agreement as an excuse not to consider this new information as fully and fairly as possible. If Members of the Senate ignore Professor Hill's serious charges, if the Senate votes on this nomination without making a serious attempt to resolve this issue, the Senate will bring dishonor on this great body, and our unwise haste will tarnish the Senate for years to oome. Any vote on the merits of this nomination today would be painfully premature. It is not a question of having the Senate train run on time, but whether we can stop the Senate train from running off the track.

No person who falls to respect fundamental individual rights should be confirmed to a lifetime seat on the Nation's highest Court. If Professor Hill's allegations are true, Judge Thomas denied Professor Hill her right to work, free from sexual harassment. This right is protected by the law, and it must be protected if women are ever to achieve the equal opportunity they deserve in the workplace. This issue is of profound importance to us all. The Senate cannot sweep it under the rug, or pretend that it is not staring us in the face.

Nobody who saw Professor Hill speak yesterday can dismiss her allegations out of hand. Anyone who paid attention to Judge Thomas' prior stereotyped statements on women and work can see at a glance that his reoord raises serious questions about his sensitivity to discrimination against women in the workplace.

According to reports, Judge Thomas' supporters have offered to make him available today to selected Senators to respond in closed, private sessions to Professor Hill's allegations. Senators are offering bits of evidence which they believe are relevant to assessing Professor Hill's charges and her credibility. This is not how the Senate should decide a question of such profound importance. We owe it to Professor Hill, to Judge Thomas, and to all Americans to air the facts in a Senate hearing, and to resolve this issue in a way that fairly answers the question now being asked by millions of citizens across this country—Is the U.S. Senate capable of meeting its responsibility and doing what we ought to do?

I urge the Senate to defer the vote on Judge Thomas' nomination.

Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming.

Mr. SIMPSON. Mr. President, obviously we have had a very spirited debate on a very serious issue that confronts the Senate, a very troublesome issue to all of us. There have been words uttered in passion and words uttered in anger and words uttered in sarcasm and words uttered in pain. And

I have been involved in that, both here on this floor and elsewhere.

That is the kind of emotion that is generated by this type of thing because there is so much latent discussion about sexism and racism and guilt, and "if you do this, are you sensitive enough?" It is most appalling to me to see any charge that the Senate or the Judiciary Committee does not take seriously a charge of sexual harassment. That is a very unfortunate statement, wholly without foundation.

Prof. Anita Hill oame forward in recent days to charge that Clarence Thomas, at the time he was her supervisor at the Department of Education and at the EEOC, "asked her for a date on several occasions," and also spoke to her about x-rated movies he had seen. Professor Hill says that she believed her refusal to accept his request for a date put pressure on her in the workplace, and she feared if she quit her job she would not be able to find another.

That is a rather extraordinary statement for a remarkable woman, a fine, able graduate of Yale Law School.

However, Ms. Hill continued to work for Judge Thomas. He highly recommended her for a job at Oral Roberts University. There had been numerous, positive social exchanges between them since—many of those exchanges initiated by her. And I think there is really not much more to say about that.

The record now is clear. The person who maintained Judge Thomas' phone log will be speaking in later days. She will be speaking with clarity about the phone calls he received from Ms. Hill.

On the evening of her last day of work at the EEOC, Professor Hill and Judge Thomas had dinner together. A few months ago she called Judge Thomas at the request of her dean to invite him to come to the Oklahoma School of Law to speak to her students. I can assure you that that was not initiated under pressure, because the phone log will disclose that she made that call many days before the letter went forward. That is part of the record.

The FBI then investigated Ms. Hill's charges, and that came about because she came to the committee at the request of staff persons. All of this is a bit repetitive, but I think it is so critically important. She came before the Senate Judiciary Committee because of pressure from a staff member of a member of the Judiciary Committee—but not a member of the Judiciary Committee staff.

Then, after somebody here leaked this information—and that is exaotly what ocourred, a leak and a violation of Senate rule 29.5, adopted in 1884—a violation of that rule took place and this material then ended up in the hands of the media. And one member of that group, perhaps two, decided that they would go public with it.

You have to remember that the chairman had said to Ms. Hill, "I cannot meet your request." Her request was that her name not be used; what she was saying about Judge Thomas was confidential. And our chairman said what any fine lawyer would say. He said, "We can't do that." So he did not do that.

VISIT TO THE SENATE BY DISTINOUISHED GUESTS

Mr. SIMPSON. Let me interrupt, if I may, for a moment. I know that there are certain liberties, and I do not want to take one that the Senate would not concur with, but I would just say that I would personally welcome the King of Spain who is in the Gallery at this moment, Juan Carlos, and Her Majesty the Queen, Sophia. These are special people.

I am forbidden by the rules of the Senate to recognize where they are and I will observe that, but just let them know that we are deeply proud to have them here.

Welcome to you, sir, and to you, Your Majesty.

I have been very fortunate. I met these fine people in 1980. To have world leaders of this caliber who truly are representing one of our greatest allies is an inspiration to those of us who are of the other branch of Government. Thank you so much.

I thank the Chair for that courtesy.

THE NOMINATION OF CLARENCE THOMAS

Mr. SIMPSON. I realize that others may wish to speak, and so I wanted to get to this issue and conclude it.

We went forward and the FBI responded, because Ms. Hill said she would finally allow that to occur. We have had people who have talked to Ms. Hill, and she has related a great deal herself since this has occurred about the pressure that was put on her by these staff members. In fact, in her own press conference, she said that the release of the information was out of her control—I believe that was her phrase. And in a visit with one of our colleagues, she said that the pressure was continual.

I often think of what responsibility that person will take after Ms. Hill has had her reputation sullied and wrung out. Because, sadly enough, that is exactly what is happening, and what will happen, when you go for the jugular and the beast comes out.

That is what will happen. The Judiciary Committee voted to send the nomination to the floor, having the FBI report before them. Some of my colleagues now come, and some report that the U.S. Senate—especially the Judiciary Committee, consisting of 14 white men—does not have a sensitivity toward women. I think that is a crude and absurd observation when all of us have spouses and daughters and mothers, and try to be exceedingly sensitive to these issues. This is the year 1991. And to say that the chairman, somehow, is not responsive to that is wrong; or the members—that is just plain wrong. We take it very seriously.

The Judiciary Committee took those charges against a Supreme Court nominee extremely seriously. The committee took the most serious and effective course it could possibly take under the circumstances. It turned those charges over to the FBI for investigation. And the FBI investigation included interviewing Professor Hill, Judge Thomas, and all of the possible corroborating witnesses suggested by Professor Hill. These were her suggestions as to who the FBI interviewed. I just think it is very important to bring that into perspective.

Does delaying the vote on this nomination show we take sexual discrimination charges seriously? Is that what the delay will mean?

I can assure you that is not what it will mean. Indeed, a delay will show only that we allow the opponents to this nomination to continue a smear campaign against Clarence Thomas that has been very effective. That we take sexual harassment charges seriously in this body, very seriously, was demonstrated by our request, the chairman's request of a FBI investigation as soon as Professor Hill gave her permission for us to do so, and not one second before or one second after.

Then, finally, some of my colleagues claim that Prof. Anita Hill has been attacked—I heard somebody refer to that—attacked on the Senate floor for alleging sexual harassment by Judge Thomas. Professor Hill is not naive. Professor Hill is obviously an articulate and intelligent woman, a graduate of Yale Law School, and a tenured law professor. She has worked for years in Washington, DC, and she knows better than most how this city works. I have no doubt that Professor Hill, along with most of America, watched the 2 weeks of hearings on the Clarence Thomas nomination.

Professor Hill is well aware as a lawyer and a Washington insider, for her years here—she knew the game—that the time to present evidence on the nominees' suitability was at the hearing. In fact, there were four hearings of Judge Thomas at various points in his public life—four of them since this alleged incident occurred.

So, finally we had the hearing of hearings, 2 weeks and more than 90 witnesses. She knew that her allegations could have been fully explored at those hearings, as are all allegations relating to a nominee's credibility, integrity, and character. And witness after witness testified to Clarence Thomas' character. The chairman's statement is the best one. He said, I challenge not one bit with regard to that issue.

So, Professor Hill wanted the members of the committee to know of her allegations about Judge Thomas, his

conduct. But she insisted, as I say, that those allegations stay completely confidential. It was explained to her by the chairman, and I assume the staff, that to investigate her charges the nominee must be afforded an opportunity to respond. We still do that in the United States of America—a silly little old rule, but one that has saved the bacon of a lot of citizens for lots of years. But she was not willing to go through the FBI investigation, and it was not until a week after the hearings ended that she agreed to a full investigation of her charges. But it was not until 2 days before the committee voted on the Thomas nomination that Professor Hill furnished the committee with her written statement.

Now please hear this. This lady, this woman, is a lawyer, yet she did not furnish an affidavit. An affidavit is something sworn to and then is sealed. She chose to give a statement, a four-page statement. I do not know why that is but I can tell you that is not a sworn document, and I have seen it reported in every single outlet as an affidavit, which it is not; and as a sworn statement, which it is not. Now the time and the great wheel will come around. This remarkable woman will appear before the Judiciary Committee in sworn testimony, and we will sort out the discrepancies between the statement and sworn testimony. That is our duty.

So I would ask, why? Why did this very able and knowledgeable person—who knows Washington well, who is a lawyer with a special interest in this nomination and a special interest in this person as evidenced by her continual unilateral approachment of him during the years when she was no longer connected with him in any way and could not have been harassed or injured in any way—why would she agree to delay an FBI investigation and delay providing a full written statement? And I think Senator BIDEN'S chronological record of that is quite startling, and I ask unanimous consent it be printed and included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR., ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 7, 1991

I am releasing today a chronology of the Committee's contacts with Professor Hill. The chronology provides the complete details of the Full Committee staff's contacts with Professor Hill from the time we were made aware of her charges to the day of the Committee vote.

I want to emphasize two points in conjunction with this matter.

First, throughout, out handling of the investigation was guided by Professor Hill's repeated request for confidentiality.

Second, Professor Hill's wishes with respect to the disposition of this matter were honored. The Republican leadership and all Democratic members of the Committee were fully briefed of her allegations, and all were shown a copy of her statement prior to the Committee's vote on the Thomas nomination.

FULL JUDICIARY COMMITTEE STAFF CONTACT WITH ANITA HILL

What follows is a chronology of all conversations between Judiciary Committee staff and Professor Anita Hill. Several key points should be mentioned at the outset:

First, in conversations with full committee staff, Professor Hill has never waivered her confidentiality—except to the extent that, on September 19, she stated that she wanted all committee members to know her concerns even if her name were disclosed. Yet it was not until September 23, that she allowed the FBI to interview Judge Thomas about the allegation and to respond to her concerns.

Second, Professor Hill has never asked full committee staff to circulate her statement to anyone other than Judiciary Committee members; specifically, she has never requested committee staff to circulate her statement to all Senators or any non-committee member.

Third, the committee followed its standard policy and practice in investigating Professor Hill's concerns: Her desire for confidentiality was paramount and initially precluded the committee from conducting a complete investigation—until she chose to have her name released to the FBI for further and full investigation, which (as is customary) includes the nominee's response.

Professor Hill first contacted full committee staff on September 12, 1991. Any contracts Professor Hill had with Senate staff prior to that date were not with full committee staff members. At that time, she began to detail her allegations about Judge Thomas's conduct while she worked with him at the Department of Education and the EEOC. She, however, had to cut the conversation short to attend to her teaching duties. It was agreed that staff would contact her later that night.

In a second conversation, on September 12, full committee staff contacted Professor Hill and explained the committee process. Staff told her:

(1) If an individual seeks confidentiality, such a request for confidentiality will not be breached. Even the nominee, under those circumstances, will not be aware of the allegation.

Of course, however, there is little the committee can do when such strict instructions for confidentiality are imposed on the investigative process: The full committee staff will have an allegation, but will have nowhere to go with it unless the nominee has an opportunity to respond.

(2) In the alternative, an individual can ask that an allegation be kept confidential, but can agree to allow the nominee an opportunity to respond—through a formal interview.

Professor Hill specifically stated that she wanted her allegation to be kept completely confidential; she did not want the nominee to know that she had stated her concerns to the committee. Rather, she said that she wanted to share her concerns only with the committee to "remove responsibility" and "take it out of [her] hands."

Professor Hill then did tell committee staff that she had told one friend about her concerns while she still worked at the Department of Education and then at the EEOC. Committee staff then explained that the next logical step in the process would be to have Professor Hill's friend contact the committee, if she so chose.

Between September 12 and September 19, full committee staff did not hear from Professor Hill, but received one phone call from Professor Hill's friend—on September 18—who explained that she had one conversation with Professor Hill (in the spring of 1981). During that conversation, Professor Hill provided little details to her friend, but explained that Thomas had acted inappropriately and that it caused Hill to doubt her own professional abilities.

On September 19, Professor Hill contacted full committee staff again. For the first time, she told full committee staff that:

She wanted all members of the committee to know about her concerns; and, if her name needed to be used to achieve that goal, she wanted to know.

She also wanted to be apprised of her "options," because she did not want to "abandon" her concerns.

The next day—September 20—full committee staff contacted Professor Hill to address her "options." Specifically, committee staff again explained that before committee members could be apprised of her concerns, the nominee must be afforded an opportunity to respond: That is both committee policy and practice. It was then proposed that if Professor Hill wanted to proceed, her name would be given to the FBI, the matter would be investigated and the nominee would be interviewed.

At the close of the conversation, Professor Hill stated that while she had "no problems" talking with the FBI, she wanted to think about its "utility." She told committee staff she would call later that day with her decision on whether to proceed.

Late that afternoon—September 20—Professor Hill again spoke with committee staff and explained that she was "not able to give an answer" about whether the matter should be turned over to the FBI. She asked that staff contact her on September 21.

On September 21, full committee staff spoke with Professor Hill for the sixth time. She stated that:

She did not want to go through with the FBI investigation, because she was "skeptical," about its utility, but that if she could think of an alternate route, or another "option," she would contact staff.

On September 23, Professor Hill contacted committee staff, stating that she wanted to send a personal statement to the committee, outlining her concerns. Once that information was in committee hands, she felt comfortable proceeding with an FBI investigation. Later that day, she faxed her statement to the committee.

On September 24, Professor Hill contacted full committee staff to state that she had been interviewed by the FBI late on the 23d. Committee staff assured her that, as previously agreed, once the committee had the FBI report, her concerns—and the FBI investigative report—would be made available to committee members.

On September 25, Professor Hill again called committee staff and explained that she was sending a new copy of her statement to the committee: While this new statement did not alter the substance of her concerns, she wanted to correct inadvertent typographical errors contained in her initial statement.

For the first time, she then stated that she wanted the statement "distributed" to committee members. Committee staff explained that while the information would be brought to the attention of committee members, staff could not guarantee how that information would be disseminated—whether her

statement would be "distributed" or communicated by oral briefing.

Once again, however, committee staff assured Professor Hill that her concerns would be shared with committee members. She concluded her conversation by stating that she wanted her statement "distributed," and that she would "take on faith that [staff] will do everything that [it] can to abide by [her] wishes."

Every Democratic member of the committee was orally briefed, had access to the FBI report and had a copy of Professor Hill's statement prior to the committee vote.

To continue to comply with her request for confidentiality, committee staff retrieved Professor Hill's written statement immediately after the vote.

Mr. SIMPSON. So, she did not provide a full written statement to the committee until after the hearings ended and only 2 days before the committee vote.

To call the pointing out of these facts "an attack on the victim" is what I do not think we have to settle for. Because that is what has happened here. Any comment, any reference, is immediately channeled into the ugliest possible type of commentary: Sexist, racist—whatever it may be. That is a tiresome, tiresome use of debate. Because debate is won by facts, not by simply emotion. Unfortunately emotion will always triumph over reason, but reason will always persist. And so it will here.

There are some huge inconsistencies in her story. And that is not an attack on the victim. That these allegations have now become public after advertisements have appeared around the country requesting people to come forward with information about Judge Thomas with a number to call should cause any thoughtful, realistic, commonsense person to wonder what is going on here and what kind of a sick game is being promoted by those who use those advertisements. These allegations are being used in the most cynical manner by those groups opposed to the nomination.

So we are at the point, in a half hour of a very difficult decision. And I think my leader stated it well. We will see, now, where we go. We will have to now call Judge Thomas and Professor Hill before the committee and question them rather thoroughly under oath. It will not be a pleasant experience—one that I am sure Ms. Hill wished she could have avoided, and she vividly tried to do so.

Ms. Hill went forward because of the urging of unnamed staff—in violation of the rule—together with a very curious type of inducement by one of the media: "We have your statement,"—"affidavit" they called it—and there is a lot of rumor going around the city, and I think you better come forth, and if you do not, it is going to be very hard on you, it is going to be very difficult, it will be uncomfortable for you." That is what Ms. Hill was told, as the persons with the information leaked in their hands said, "maybe you will want to say something and follow it up, because if you do not have anything to say, we are going to come out with it anyway," which is a marvelous thing to do in a society and by a profession—journalism—that is sworn in their code of ethics to protect the dignity and privacy of people whenever that can be done.

I will be glad to debate that at some future time. But what good will it all do? Both have been questioned by the FBI. The FBI followed up on all the leads Professor Hill provided. All they asked for she gave and nothing was found to corroborate her allegations other than a friend who she apparently told some years ago that Judge Thomas had asked her for dates.

So I think it is a cruel thing we are witnessing. It is a harsh thing, a very sad and harsh thing, and Anita Hill will be sucked right into the maw, the very thing she wanted to avoid most. She will be injured and destroyed and belittled and hounded and harassed—real harassment, different from the sexual kind, just plain old Washington-variety harassment, which is pretty demeaning in itself.

I heard the phrase, "the grid iron singes but does not burn," and I never believed that one. Maybe we can ruin them both, leave them both wounded and their families wounded. Maybe in cynical array, they can bring the curtain down on them both and maybe we can get them both to cry. That will be something that people will be trying to do.

It is a tragic situation and very sad to observe.

INTERNATIONAL COOPERATION ACT OF 1991—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now consider the conference report on H.R. 2508. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2508) to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that Act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that Act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes, having met, after full and free conference, have agreed to recommended and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 27, 1991.)

The PRESIDING OFFICER. Debate under the order is limited to 2 minutes, equally divided, followed by a rollcall vote.

Who yields time?

The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, despite repeated warnings from the administration, the House-Senate conference failed to drop the controversial provisions that will cause this legislation to be vetoed. I did my best to make it clear to the Foreign Relations Committee when it marked up this legislation that it would be vetoed and that the committee was wasting its time as long as the Mexico City and the cargo preference provisions were included. I emphasized on the Senate floor that this bill would be vetoed because of these provisions, but Senators proceeded to add a third item that was repugnant to the administration and to the President: Funding the U.N. Populations Fund.

I tried to make clear to the conferees that these three provisions, in any form, would result in the President's vetoing this bill, but Senators decided it was more important to placate the special interest groups. I say to them, mark my words, this bill will be vetoed.

One of the ironies of this process, Mr. President, is that conferees actually agreed to drop the provision that reversed the President's population planning policy—or better known as the Mexico City policy—but somehow it made its way back into the conference report. I only learned of this slight of hand the day the conference report was filed. I understand other conferees were also unaware of this action until after the fact.

Restrictions on foreign military financing [FMF] are objectionable to the administration. The administration claims that the new language would unacceptably hinder the President's flexibility to make FMF allocation decisions. The effect of the new provision would be to eliminate a great number of small FMF country programs. As I understand it, the new provisions move FMF much closer to being an all grant program. Evidently, Senate Democrats believe that the United States is rich enough to give away $4½ billion in military equipment.

The provision that requires funding to be made available to the UNFPA—the United Nations agency whose crown jewel is the Chinese program to force women to have abortions—was only slightly modified, but not modified enough to escape a veto.

The cargo preference requirements were also slightly modified, but AID officials tell me they are going to recommend a veto because the greatly expanded requirements are just not workable.

Senators may be told that most of the controversial provisions have been

In this regard, I would like to publicly thank the managers of this bill for their support and cooperation on the Mack amendment, particularly the Senator from Kentucky [Mr. MCCONNELL], the Senator from Maryland [Mr. SARBANES] and the chairman of the House Foreign Affairs Committee, Congressman DANTE FASCELL.

I am also pleased that the conference report contains an important provision conditioning United States support for Soviet membership in the International Monetary Fund on democratic and free market reforms and all but ending aid to dictatorial regimes like Cuba. This provision would also apply to any successor states or republics seeking IMF membership, except the Baltic States.

While the provision was drafted before the recent failed coup in the Soviet Union, I believe the conference was correct to conclude that it not only remains relevant, but is important to retain in the bill. Congress believes that there should be no rush to aid the Soviet Union's Central Government unless democratic and free market reforms have begun in earnest, defense spending is drastically cut, and aid to failing dictatorships is essentially terminated.

In this regard, I would urge the administration not to exercise the waiver included in this bill of the Byrd and Stevenson limits on lending to the Soviet Union by the Export-Import Bank, until the Soviet Union adheres to the conditions in the Mack amendment concerning Soviet membership in the IMF.

The American people would not understand it if the United States were to lend their tax dollars to the Soviet Union before that Government has ended aid to Cuba. They are right, and the Congress is right to demand that minimal conditions be met before aid goes forward.

The best thing we can do to help reformers in what was the Soviet Union is to hold their leaders to conditions they are seeking to implement—democracy, free markets, cutting defense spending, and ending aid to foreign dictatorships. By holding to these conditions we are not only being true to our own interests and values, but doing the best we can for the cause of democracy and reform in the Soviet Union.

I am also pleased that the conference report includes elements of the Mack Index of Economic Freedom. The idea behind the Index is that the progress of nations toward economic freedom can and should be measured, because that progress is the key to sustainable economic growth and to alleviating poverty.

The conference report requires an annual report by the Agency for International Development describing the progress being made by countries that receive U.S. assistance "in adopting economic policies that foster and enhance the freedom and opportunity of individuals to participate in and promote economic growth in that country. * * *"

The bill also requires AID to develop "a series of factors that provide a common standard by which such progress can be evaluated and compared between countries and over time." In other words, the conference report requires AID to come up with its own Index of Economic Freedom that I hope will be a tremendous tool for the United States to promote and encourage progrowth policies in developing countries.

I thank the managers again for their support and cooperation in including these important provisions. Again, I hope and understand that the abortion related provisions opposed by the administration will be stripped from the bill and that the bill will be sent back to and signed by the President.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the conference report.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. I announce that the Senator from Wyoming [Mr. WALLOP] is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—61

Adams	Gore	Nunn
Akaka	Graham	Packwood
Baucus	Harkin	Pell
Bentsen	Hatfield	Pryor
Biden	Heflin	Reid
Bingaman	Inouye	Riegle
Bradley	Jeffords	Robb
Breaux	Johnston	Rockefeller
Brown	Kassebaum	Rudman
Bryan	Kennedy	Sanford
Bumpers	Kerrey	Sarbanes
Burdick	Kerry	Sasser
Chafee	Lautenberg	Seymour
Cohen	Leahy	Shelby
Cranston	Levin	Simon
Daschle	Lieberman	Specter
Dixon	McConnell	Wellstone
Dodd	Metzenbaum	Wirth
Exon	Mikulski	Wofford
Fowler	Mitchell	
Glenn	Moynihan	

NAYS—38

Bond	Durenberger	Mack
Boren	Ford	McCain
Burns	Garn	Murkowski
Byrd	Gorton	Nickles
Coats	Gramm	Pressler
Cochran	Grassley	Roth
Conrad	Hatch	Simpson
Craig	Helms	Smith
D'Amato	Hollings	Stevens
Danforth	Kasten	Symms
DeConcini	Kohl	Thurmond
Dole	Lott	Warner
Domenici	Lugar	

NOT VOTING—1

Wallop

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote on the conference report.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER. The Senator from Maine is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, Members of the Senate, as I indicated earlier in the day, I have had a number of meetings with the distinguished Republican leader, the chairman and ranking member of the Judiciary Committee, and several other Senators who are involved in the proceedings with respect to the pending Supreme Court nomination.

The discussions are continuing now, and it is my intention shortly, following any brief comments the distinguished Republican leader wishes to make, to suggest the absence of a quorum for the purpose of permitting the chairman and ranking member of the committee, and others involved, to conclude their discussions on the best way to proceed with respect to this matter.

I am pleased to yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, let me reaffirm what the majority leader said. We have not made a judgment whether there will be a vote tonight, whether there will be a delay, or how long the delay might be. That is under discussion. It seems to me that the most exciting thing we could do now is have a quorum call.

Mr. MITCHELL. Mr. President, I regret the inconvenience of Senators who may have other commitments and anticipated the vote would commence precisely at 6. But we will attempt to resolve it as soon as possible one way or the other and make the announcement at the earliest opportunity.

Accordingly, Mr. President, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The English-language Teheran Times did not specify which hostage might be freed by pro-Iranian extremiste in Lebanon, nor did it give a date for a release.

The paper, which often reflects the positions of President Hashemi Rafsanjani of Iran, accurately predicted two earlier releases of hostages.

But it incorrectly reported that an American might be set free shortly after the release of a Briton, Jack Mann, on Sept. 24.

The article, an interview with one of the paper's Lebanon correspondents, said a fundamentalist Shiite Muslim group, the Party of God, was pushing for a release on humanitarian grounds despite what it called Israel's intransigence in releasing Arab prisoners.

"MAYBE AN AMERICAN"

"I'm more optimistic than at any time before that one Western hostage, maybe an American, will be freed," the newspaper quoted ite unidentified correspondent as saying.

"Maybe one American will go home soon if no unforeseen incidents take place as happened earlier," the correspondent was quoted as saying. But he added, "The slightest mistake or provocative statement from any side" could mar efforts by the United Nations and the Iranian Government to free the hostages. The newspaper did not elaborate.

The Party of God, considered to be the umbrella group for the Shiite extremists who are believed to be holding most of the hostages, has linked freedom for the nine Western captives to Israel's release of up to 300 Lebanese Arabs held by Israel or its allied militia in southern Lebanon.

Israel has insisted on receiving information on five Israeli servicemen missing in Lebanon before it releases any more Arab prisoners.

The Iranian report was published on the same day that the special United Nations envoy in hostage negotiations, Giandomenico Picco, arrived in Cyprus on his way to Damascus, Syria.

He refused to comment on his mission, but officials at United Nations headquarters in New York said Mr. Picco was trying to further Secretary General Javier Pérez de Cuéllar's intensified efforts to obtain the release of all hostages and detainees.

NATIONAL SCHOOL LUNCH WEEK

Mr. DOLE. Mr. President, as a longtime member and former chairman of the Senate Subcommittee on Nutrition, I am pleased to join in this week's commemoration of "National School Lunch Week." The National School Lunch Program is our oldest and largest Federal Nutrition Program, serving some 24 million children balanced meals every school day. Sadly for many ohildren, school lunches are the only nutritious meals they get during the week. For all the children who participate, the School Lunch Program helps provide the energy and nutrients they need to get the most out of their school day.

Mr. President, I'd like to use this opportunity to highlight a few of the innovative school food service projects under way in my own State of Kansas. In the Seaman School District in Topeka, Kansas, parents and students receive information on the nutrient content of the foods served in the School Lunch Program. Students in Great Bend schools help plan 95 percent of the menus served in the district as part of the Nutrition Education Program implemented by the District's School Food Service Director. Teachers, parents, and students in Salina schools are participating in a new "snack shack" program to learn about quick and easy nutritious snacks they can prepare after school and for school parties. And in the Shawnee Mission Schools, a flyer is sent to parents early in the school year advising them, among other things, of the availability of modified meals for children with special dietary needs.

I want to extend my thanks to all the food service professionals in Kansas and across the Nation who dedicate themselves to providing school meals. They make an invaluable contribution to the health and well-being of our Nation's children, and they deserve our appreciation and recognition during this special week.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session and resume consideration of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Illinois.

Mr. DIXON. Mr. President, on Tuesday, October 1, I announced my intention to vote for the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. I based my decision on a careful review of the nominee's intellectual capacity, his background and training, and his integrity and reputation.

Five days later, two days before the entire Senate was scheduled to vote on the Thomas nomination, the country was shaken by an allegation of sexual harassment that was leaked from the Judiciary Committee. Regrettably, prior to that time, no Senators outside of the Judiciary Committee, with the possible exception of the majority and minority leaders, had been informed of the allegations.

At that point, the Senate only had one real choice—to delay the vote on the nomination that had been scheduled for last Tuesday in order to provide an opportunity for a fuller investigation of the sexual harassment issue. I was among the first to call for such a delay; it would have been unconscionable for the Senate to have voted without thoroughly reviewing such a serious matter.

Last Friday, the Judiciary Committee began what became 3 long days of public hearings. For those 3 days, the Nation became riveted on the testimony of Judge Thomas, Professor Hill, and the other witnesses, and transfixed on an issue—workplace sexual harassment.

I condemn in the strongest way, as I have throughout my career, any type of sexual harassment. The last week has been a kind of national tragedy, but if the result is that the country becomes more sensitive to sexual harassment, then the dark clouds will have had a valuable silver lining.

Today's vote is not a referendum on sexual harassment; if it were, I would hope and expect the vote in the Senate to be unanimous against it. Today's vote is also not a referendum on the nomination process. If it were, I think the vote would be unanimous that the process has swung out of control, and that it reflects poorly on the Senate.

What today's vote is about is whether Judge Clarence Thomas deserves appointment to the Supreme Court. Part of that calculation now involves the question of whether Judge Thomas sexually harassed Prof. Anita Hill when they worked together at the Education Department and the Equal Employment Opportunity Commission.

The Judiciary Committee tried its best over the weekend to get to the truth of the matter. The unfortunate fact is, however, that Senate hearings are ill-suited to determine the true facts in situations like this one.

Like most Americans, I spent a lot of time watching the hearings. I spent a lot of my career as a trial lawyer. I have seen a lot of witnesses.

What I saw last weekend was two convincing witnesses. Professor Hill's testimony was moving and credible. Judge Thomas' denial was forceful and equally credible. So what shouid the Senate do?

Make no mistake. In the view of this Senator, at least, a charge of sexual harassment, if proven, disqualifies any nominee for a position on the U.S. Supreme Court.

If Professor Hill had been credible, and Judge Thomas had not, the Senate's decision would be simple. If Judge Thomas had been credible, and Professor Hill had not, the Senate's choice would be equally clear. Since both were credible, however, and since it is impossible to get to the bottom of this matter, I think we have to fall back on

our legal system and its presumption of innocence for those accused.

Under our system, the burden falls on those making allegations. Under our system, the person being accused gets the benefit of the doubt. That is not a legal loophole; it is a basic, essential, right of every American. If we are not to become a country where being charged is equivalent to being found guilty, we must preserve and we must protect that presumption.

In this case, that means Judge Thomas is entitled to a presumption of innocence.

Since the Judiciary Committee hearings did not overcome that presumption, that means Professor Hill's allegations cannot be used to justify a vote against Judge Thomas. A decision on this nomination cannot be made on sexual harassment grounds; instead, it must be made on the issues that have been before the Senate for the past 100 days and more.

I will therefore cast my vote as I had announced on October 1 for the confirmation of Judge Clarence Thomas.

I yield the floor.

Mr. BIDEN. Mr. President, I must ask. The time is equally divided between the proponents and the opponents of this nomination. I am under the impression that the senior Republican on the floor when Senator THURMOND is not here will control the time, and the senior Democrat on the floor when I am not here will control time. Is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BIDEN. Mr. President, I will have much more to say today——

Mr. THURMOND. Mr. President, may I propound a question to the distinguished chairman?

Mr. BIDEN. Sure.

Mr. THURMOND. Mr. President, as I understand, the time will be equally divided between the pro and con. Is that correct?

Mr. BIDEN. That is correct.

Mr. THURMOND. They can alternate if they want to, but that is not what is counted. The time each side uses is what will really be counted.

Mr. BIDEN. That is correct.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, I will have much to say before the discussion of this nomination passes from public debate, which will be some time from now.

Today, I expect we are going to hear a great deal about how the process does not work. There is a good deal that can be said about the process working and not working, and that is what I want to address now.

There is also the temptation—when one does not want to take a firm position on the hard subject of whether or not Anita Hill is telling the truth, or the nominee is telling the truth—and it is always safe to attack the Senate. I understand that there is refuge in that, and I understand the political motivation behind such attacks. But this is a very, very serious question as to whether, and if, the process is not working, and if so, how to fix it. And notwithstanding what I suspect I am going to hear today about the Senate and the process, I will resist responding in giving my views for two reasons. One, I think it warrants a very thorough, thoughtful, and precise discussion, which time constraints forbid; and second, I would respectfully suggest is not likely to be able to occur on the floor today and in this environment.

The issue here today is whether or not to confirm a nominee to become an Associate Justice of the Supreme Court of the United States for the rest of his life.

We will hear discussion today, I suspect, about whether or not 100 days is an inordinate amount of time to have this nomination under consideration.

I would point out that if we confirm this nominee, we are talking about 15,000 days—15,000 days—that he will be making decisions that will affect our lives.

So I hope as we discuss this issue we will have the intellectual integrity to speak to the issue at hand, and that is: Should Clarence Thomas be confirmed to be an Associate Justice of the Supreme Court?

Many of us in the committee and out of the committee have already taken positions unrelated to having anything to do with the subject, the specific subject, of the hearings this past weekend.

My view is that Clarence Thomas should not be an Associate Justice of the Supreme Court because the views which Clarence Thomas has on matters of consequence that will shape the future of this Nation are significantly different than ones that I hold, and I believe are significantly different than ones that have been espoused by the Court for the past 40 years in the areas of separation of power, in the areas of the relative weight, the relative strength, the relative protection given to property and personal rights and privacy.

I think that is the legitimate forum within which we should debate whether or not a woman or man should become an Associate Justice of the Supreme Court.

Much of what has happened in the process, Mr. President, is totally beyond the control of the U.S. Senate. We cannot affect whether a rightwing group or a leftwing group, an interest group runs ads that are not true on television; or that is something I have absolutely no impact on. I cannot affect that. The Constitution prevents the Government from affecting that. Whether or not a member of my committee or their staff engages in unethical conduct and releases a confidential memoranda addressed to me by a witness is something I cannot absolutely prevent or control.

Within the rules, one who engages in unethical conduct, must be exposed and then reprimanded, if they can be found out. I can say without any fear of contradiction that there is not a person in this body who has a stronger desire and a keener interest in unearthing the unethical individual or individuals than do I.

But that is not the process' fault, Mr. President, any more than the process of the Presidency does not function because we have had unethical Presidents.

Mr. President, so much is beyond the control of this body that, understandably, in the concern that has been evidenced by something that the public cannot—nor can I—fully fathom happening, having happened. If you picked up the paper last week, you read about how horrible it was that the Senate, the Judiciary Committee, proceeded to deal with the Hill charges in private, without a public hearing. Yet some of the same people, writing a week later, now express how horrible it is that the issue was debated under the rules in public.

Human nature is rife with hypocrisy, Mr. President. But it is understandable. Because I know of no system of Government where, when you add the kerosene of sex, the heated flame of race, and the incendiary of television lights, you are not going to have an explosion. I know of no institution that has been created by mankind that can contain that configuration.

To take another example, we are now debating in America the televising of trials that take place in the Federal court system. There is a hue and cry that the public has a right to know, and they do.

There is a strong constitutional argument that would suggest that if press is allowed in to transcribe, why should press not be allowed in to televise? But mark my words, Mr. President, the first time there is a trial about sexual abuse or rape or harassment where, as an element of the crime, the victim is required under the law to explicitly and in detail state what happened, and the television camera broadcasts that across the public medium of television, there will be a hue and cry to close such a trial, because this is a phenomenon we have yet to encounter and resolve as a nation.

It is no one's fault, Mr. President. It is the nature of technology and our fundamental commitment to our Anglo-American notion of jurisprudence, which says that people in criminal cases are innocent until proven guilty beyond a reasonable doubt. And in civil cases, the defendant is given the benefit of the doubt.

That runs head on against the notion of fairness in the context of klieg lights, because it is a truism that any woman or man accused of a crime that is televised, as opposed to it being held in private or in a Senate hearing room, where there was no accusation of a crime or of wrongdoings, even if the person is totally exonerated, their reputation will have been damaged, because a large percentage of the public will say, "Why would they have been accused if they did not do it?"

We all know that in our criminal system the mere bringing of an indictment is just an indiotment, even though you and I know that it means nothing under our system of law. It has nothing to do with whether or not a man or a woman is innocent or guilty under our system. They are innocent, notwithstanding the indiotment, until they are proven guilty. All the indictment says is that you must come to court and be tried.

But the mere issuing of an indictment in a criminal proceeding—unrelated to the Senate—can ruin a woman's or a man's reputation.

I think that is part of the moral dilemma we are all wrestling with here. No one liked what happened, no matter who is at fault. Assume, for the sake of discussion, that the witness was lying completely; no one still would have liked the proceeding. Assume for the moment that the nominee was lying completely; no one could have enjoyed what has taken place. And the same criticisms would pertain.

Mr. President, we have a serious task, and the task is to decide by this vote that we will cast today, not whether or not Clarence Thomas engaged in sexual harassment, or any conduct unbefitting to a Justice; not whether or not Anita Hill was victimized in any way; but whether or not taking all things into consideration, from the charge to philosophy to judicial temperament—taking everything into consideration—we as an institution, exercising our constitutional responsibility, believe that this man should sit on the Court. This is a vote about the future of America, not just about Clarence Thomas' reputation.

This vote will affect his reputation. If Clarence Thomas were to lose today with 51 votes to 49 votes, the history books would way the reason he lost was because of this. Conversely, if Clarence Thomas wins, the history books will say, I suspect, that Anita Hill was not credible or was less credible.

Mr. President, we are voting the future of the Nation, not just the character of the man. If the character impacts upon the ability of that person to perform his duties, which sexual harassment, in my view, does, so be it.

I have, as we all have, had challenging things to do in my life and I have been confronted by challenging things. And I still am not sure precisely how I am to perform my responsibilities.

On the one hand, as chairman of the committee, I feel it is my absolute obligation to be as fair as humanly possible and have rulings, questions, and statements consistent with that fairness.

But I did not run for the U.S. Senate to become a judge. There are only three things I knew I did not want to be. One was a judge, another was a police officer, and the third was a mayor, because they are all incredibly diffioult jobs that I do not feel myself personally suited for based on how I think.

I became a defense attorney instead of a prosecutor because that is where I find more comfort. I am not accusatory by nature. But the job is to try to see to it that justice is done within my limited capabilities as chairman. But all the while, everybody knows, prior to any of this occurring I was against the nomination of Clarence Thomas based on philosophy. And today, I will essentially, until the end of this process, conduct myself in a former capacity as best I can to see to it that everybody has an opportunity to speak because they are all grown people in this body. All the women and men in this body had a chance now to see essentially what all of us saw. They do not need me to tell them. They do not need me to inform them. They do not need me to convince them. Their judgment about the veracity of the witnesses is equally as sound as mine. So I will speak later, much later, about the process.

I thank the Chair for his indulgence, and I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Chair recognizes the Senator from Iowa. Does the Senator from South Carolina yield time?

Mr. THURMOND. Mr. President, I yield 20 minutes to the distinguished Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask that you notify me when 18 minutes have passed.

Mr. President, when I embarked on a career of public service 33 years ago, I think I was then and still am motivated by a desire to be involved in public policy, to strengthen the people of Iowa and their quality of life as well as to help make their great Nation, this great Nation, an even better place to live, work, and to raise our families. Never, Mr. President, could I have imagined that I would have to sit through a spectacle such as the one that we conducted in the Judiciary Committee this weekend. If it had not been for the fairness of the chairman, it probably would have even been more of a spectacle.

This ordeal was, for me and my colleagues, as well as the participants, one of gargantuan proportions. I was troubled, disturbed, and pained going into the hearing. And I was even confused at times during the hearing. But now after it is all over, I have had the chance to observe and to question witnesses and to consider their testimony. So now I would like to deal with some of the allegations brought against Clarence Thomas and his fitness to serve on the Supreme Court.

At the outset, Mr. President, the entire Judiciary Committee operated from the premise that fairness required Anita Hill to prove her allegations. As you know, she accused Judge Thomas of sexual harassment and she had to establish the truthfulness of these charges. Judge Thomas stands accused, but he need not prove his innocence. And to the extent that any of my colleagues find the situation oontinued to be cloudy, murky, and unclear, Judge Thomas must be given the benefit of the doubt. It is fundamental to our system that any doubts be resolved in favor of the accused. Chairman BIDEN noted this at the beginning of the hearing and he repeated it many times during the hearing. He said that Judge Thomas was entitled to be given the benefit of the doubt. That, Mr. President, was the committee's starting point.

We must take note that this extraordinary hearing resulted from a breakdown in the confirmation process, a leak to the press of a confidential FBI report.

Had this report not become public, the Senate could have handled the matter in confidence. The leak caused irreparable harm to these two individuals, Judge Thomas, and Anita Hill.

The leak was irresponsible, in violation of the Senate rules, and possibly illegal. It was an insult to the many committee members who approached the confirmation process fairly and carefully. And, I find it particularly ironic that in a process designed to find a ninth person to protect the rule of law in this Nation—a ninth person on the Supreme Court—so much disregard for both rules and law was demonstrated. The leak should be investigated and those responsible for it should be punished.

As a result of this leak, the Judiciary Committee was asked to hold hearings to determine whether these allegations had any factual validity. The Senate Judiciary Committee is quite able to investigate legislative facts; information about societal problems and legislation proposed to address them. However, this committee is ill-suited to conduct a trial. Trials are why the judicial branch was created. The American people need to understand that we on the committee cannot make a conclusive determination as to whether or not Professor Hill's allegations are true.

Professor Hill had recourse for deciding whether these allegations were

meritorious—sex harassment is a serious charge and there are remedies for it. It is offensive, intolerable conduct which requires immediate corrective action. Under title VII, a Federal employee has 30 days in which to file a charge of employment discrimination, including sexual harassment.

If Professor Hill was not satisfied with the administrative determination, she could have sued in Federal court. But make no mistake, Professor Hill had a place to go 10 years ago when the harassment she asserts took place.

So what in fact did happen? We will probably never know all the facts. But this was high drama—from the perspective of this Senator from Iowa—this, at times, resembled a soap opera about the elite and aspiring power brokers of Washington, DC. There was plenty of talk about Yale Law School, establishment law firms, and moving up on the political ladder.

But as I considered all of the testimony—much of it was extremely offensive and difficult for me to endure—I have to conclude that, in spite of her sincerity, confidence, and apparent credibility, Professor Hill's story just does not add up. Let me explain the reasons for my conclusion.

Professor Hill's testimony was filled with inconsistencies. Frankly, I was left with more questions after the hearing than before.

For example, why did she follow Judge Thomas from the Department of Education to the EEOC if he had harassed her in the horribly offensive fashion that she claims? And, why did she not even explore her options for remaining at the Department of Education? After all she was a civil service employee, not a political hire. And, why did she make at least 11 phone calls to Judge Thomas between 1983 and 1987, after she left Washington? Why did she want to, in her words, keep up a cordial and professional relationship with a man she says tormented her?

And then, there is the substance of the allegations. As I saw it, Professor Hill had three different stories about the harassment she suffered. First, there was the harassment she told her friends at the time it occurred. To these individuals—Judge Susan Hoershner, Ellen Wells, and John Carr—she described only a general claim of sexual harassment by her boss. There were no details, no specifics.

Second was the harassment Professor Hill told Senate staffers when she requested confidentiality and to the FBI when she decided she wanted the Senate, but still not the public, to know. To them, she said Judge Thomas repeatedly asked her for dates and talked about pornographic movies, but not himself. And the third version of the harassment was the lurid, graphic and offensive stories she told on Friday during her testimony. There can be little doubt, Mr. President, that Professor Hill magnified the allegations for her live testimony on TV.

But one of the most puzzling chapters in this saga was the role her friends played. Three people claiming to be close friends, and one asserting a close professional relationship, were told by Professor Hill of the ordeal she experienced. But, Mr. President, we heard none of the graphic details from them on Sunday that she told us on Friday. These people had no specifics from Professor Hill. They had no firsthand knowledge of Professor Hill's claims. And even more significantly, they offered no advice to their friend Anita Hill. They said they tried to listen and comfort her.

But, Mr. President, these were four highly intelligent, well educated lawyers, like Professor Hill herself. And they could think of nothing to say to her to help her remedy this horrible situation. What does it say about our system, if four lawyers could not recommend she pursue legal remedies against her harasser? I was particularly struck by Professor Paul, whom Professor Hill told—in 1987—she left the EEOC because she was sexually harassed by a supervisor. Professor Paul went out of his way to tell us he was not opposed to Clarence Thomas's nomination.

He repeatedly said he did not sign an anti-Thomas petition a few months ago. But if he knew Anita Hill to be a victim of harassment by Judge Thomas, then why did he not see this as a disqualifying factor? The reason has to be that he did not connect Judge Thomas to Anita Hill's predicament. Professor Hill never mentioned Clarence Thomas' name to Professor Paul. Once again, a nonspecific charge with no supporting facts, not even Judge Thomas' name, to back it up.

These were not, Mr. President, corroborating witnesses; they were collaborating witnesses—collaborating with the special interest groups that pounced on Anita Hill and her story in their effort to assassinate the character and integrity of Clarence Thomas.

And lastly, although there are many more inconsistencies in this sordid affair, is the matter of what she was told by Senate staff. Mr. President, Anita Hill believed there was a distinct possibility that Judge Thomas would withdraw from the confirmation process if she came forward to the committee with her allegations. I do not know why she wants to keep Judge Thomas off the Court—ideological differences on issues from affirmative action to abortion, and a Washington career that did not go quite according to her plan are among the possibilities.

But one thing is very clear—she thought by coming forward, in confidence before the committee she could make a difference and derail this nomination. We have some overzealous Senate staff to thank for planting that seed in her mind.

Contrast those inconsistencies and open questions with the unshakable testimony we had from Clarence Thomas, and his former colleagues and friends. He categorically denied each of these charges. He never wavered from this denial, never made inconsistent statements.

His testimony was consistent with what we learned about him in his real confirmation hearing—a testament to his strength, his character, his integrity. He came only to clear his name, something he said was virtually impossible to do—he has been tarnished with a stain that cannot be removed. The groups who oppose Clarence Thomas may lie, cheat, and steal to keep him off the Supreme Court. But he will not lie, cheat, and steal to be on it.

And finally, look at the eight former colleagues of Clarence Thomas. Women who appeared before us at 1 o'clock in the morning to tell us how Judge Thomas treated women. We were tired; some wanted to introduce their statements in the record. But these women would not hear of it. No matter what the hour, they wanted to appear in person. They knew both individuals and the way Clarence Thomas treated those who worked for him. Additionally, these women knew what was going on in the Office. When activities like this occur in an office the simple truth is—people know about it. Usually, they talk about it. That did just not happen here.

Mr. President, we have been through an astounding process, that I truly hope ends later today with Judge Thomas's confirmation for Associate Justice of the Supreme Court. If it does, he will have shaken off all the mud his opponents could throw at him. Early on, some said he was a Catholic whose religion would interfere with his judging.

Then, they tried to smear him with marijuana use, a youthful indiscretion we knew about when we confirmed him for the Appeals Court. Next, they called him anti-Semitic, when two speeches showed up with throwaway lines on Louis Farakhan. And now, they have tried to tar him with a charge of sexual harassment.

What do the liberal interest groups fear from this man? That he dares to think for himself? That he challenges the establishment? That he offers some new solutions to some old festering problems? He represents a new kind of role model, one that will not walk in lockstep with the established orthodoxy and one that challenges the prominence and the domination that the groups have maintained over the last 25 to 30 years. Clarence Thomas is a challenge to the status quo, and those special interest groups are threatened.

That is what this fight has been about—it has been about much more, for these groups, than a single nomination. And Prof. Anita Hill, tragically, got caught in the middle with her very believable and sincere charges against him.

Mr. President, who better to trust now as a guardian of our precious liberties than Clarence Thomas? Now, he brings not only his intellect, his understanding of our separate branches of Government, his values and upbringing, but also this ordeal—having his name dragged through the mud, his reputation almost ruined. This dimension is not shared by any other member of the Court, and is bound to have an impact on his sensitivity to our sacred liberties.

I hope we never have to go through an ordeal like this again. It has not been the Senate's finest hour, although I do believe the Judiciary Committee under Senator BIDEN's fine leadership did a fair and thorough job, given the constraints and limitations inherent in the way the committee works.

The PRESIDING OFFICER (Mr. ROBB). The Senator asked to be reminded when 18 minutes had elapsed. Eighteen minutes have elapsed at this time.

Mr. GRASSLEY. Mr. President, I said I never expected, in my years upon entering politics, to go through the spectacle we just went through. It now, I hope, brings Judge Thomas to be confirmed.

I hope we never have to go through an ordeal like this again. It has not been the Senate's finest hour, although I do believe the Judiciary Committee under Senator BIDEN's fine leadership did a fair and thorough job, given the constraints and limitations inherent in the committee's work.

In January we participated in the most serious and weighty matter that we are charged with, and that was on the question of taking our country to war. This weekend we discussed things on television that I am uncomfortable discussing behind closed doors. That is a far distance to travel in less than a year.

It has been asserted that this, too, was part of our democratic system. But I hope that there is a way to restore ourselves and the American people the ideals of representative democracy, ideals that brought down the Berlin Wall, that inspired the student revolt in Tiananmen Square, and that sustained Boris Yeltsin in his standoff with the coup plotters.

I believe we can do it, that we must do it, and I urge my colleagues to confirm Judge Thomas as one step in that direction.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. Mr. President, I yield as much time as the Senator from West Virginia [Mr. BYRD] needs.

The PRESIDING OFFICER. The President pro tempore, Senator BYRD, is recognized for as much time as he may consume.

Mr. BYRD. Mr. President, I ask unanimous consent that a speech which I prepared several days ago on this subject be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT IN SUPPORT OF THE CONFIRMATION OF JUDGE CLARENCE THOMAS

Mr. BYRD. Mr. President, today I rise to indicate my views on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

First, let me say that I am going to vote in favor of Judge Thomas's confirmation. I do so because I support a conservative Supreme Court. I supported the confirmation of Judge Sandra Day O'Connor, a conservative judge. I supported the confirmation of William Rehnquist, a very conservative judge, although I did not support his confirmation as Chief Justice. I supported the confirmation of Judge Antonin Scalia, also a very conservative judge. I supported the confirmation of Judge David Souter, a conservative judge.

I am not comfortable with an "activist" Supreme Court, as was the Warren Court. I believe that Supreme Court justices should interpret the law in accordance with the Constitution, and not try to remake the law. That is the prerogative of the legislative branch of our government.

So, as a supporter of a conservative court, I intend to vote for Judge Thomas. But I do not do so unreservedly. And, as many of my colleagues know, I have not always voted for all conservative nominees. I did not support the confirmation of Judge Robert Bork, who was nominated by President Reagan in 1987 to be an Associate Justice of the Supreme Court. Judge Bork was not confirmed by the Senate.

In the process of making my decision about Judge Thomas, I went back and reviewed the nomination of Judge Bork. I wanted to refresh my memory as to why I had opposed Judge Bork's nomination. In doing so, I reconfirmed in my own mind the reasons I had opposed Judge Bork. The process was helpful to concluding that I would not oppose Judge Thomas. At the same time, my review of Judge Bork's nomination and subsequent rejection, and my review of Judge Thomas's nomination and the hearings thereon, have caused me to have some reservations about Judge Thomas.

I admit that I was inclined to view Judge Thomas favorably from the beginning, to a large measure because of his background and his long record of successes. He is to be admired for having overcome the poverty and deprivations of his childhood. He has struggled against adversity, he has done so with diligence and persistence, and he has achieved far more than what might have been predicted at his birth.

But my admiration for his achievements does not blind me to some reservations I have about some of his views. To put these reservations in perspective, let me briefly review why I opposed the confirmation of Judge Bork.

Judge Bork explained his views openly and extensively before a divided Judiciary Committee, of which I was a member at that time. The balance rested with four uncommitted Senators, including myself. I stated at the beginning of the Bork hearings that I favored then—as I do now—the appointment of conservative judges to the Supreme Court.

The commitment of the four Senators could just as easily have swung behind Judge Bork as against him. I was open to persuasion. So were the other three uncommitted Senators. But we were not persuaded. Indeed, all four of the uncommitted Senators swung against him.

Why? The majority of the full committee became unsettled by Judge Bork's overly narrow interpretation of the law. That feeling of unease reflected the unease of many Americans that there was no assurance that Judge Bork would protect their rights. This, I believe, was the central reason for the rejection of Judge Bork's nomination by the full Senate. Judge Bork rejected the view that unexpressed, or unenumerated rights may be protected by the general provisions of the Constitution. He did not believe that it is the responsibility of a judge to apply history, tradition, precedent, and his perception of the community's values to discern and protect those unexpressed or unenumerated rights.

As every student of history knows, the framers of our Constitution did not feel the necessity to include a Bill of Rights because they had not delegated to the soon-to-be-created National Government the authority to infringe the people's rights. But the opposition rhetoric, and the possibility that Government might through use of some delegated powers actually restrict those precious rights, brought Madison and others to the recognition that it was prudent to add a Bill of Rights. And yet, as Madison worried, listing some rights, because it was not possible to list all, might raise the implication that only the listed ones were protected, and that unlisted ones were indeed subject to the mere will of the majority.

No doubt exists as to the response to this concern. The ninth amendment was the response:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

This amendment clearly implies that there are rights in addition to those spelled out in the first eight amendments, and the fact that such additional rights are not equally spelled out there gives the Government no warrant to take them away. The implication is that these other rights must be discerned by our reasoning applied to our history, to our traditions, to the concepts of natural law, and to the consensus of the community with respect to the values we hold dear. No matter how elaborate the procedure that Government uses, there are some aspects of life, liberty, and property that Government simply may not, without due process, take away.

There were several other areas in which I disagreed with Judge Bork, including his views on the right of privacy, congressional standing, and the role of the independent counsel. Some of these are relevant to a discussion of Judge Thomas's views.

On the right of privacy, Judge Bork rejected this "powerful tradition" in our society, which forbids Government to intrude into the relationship between husband and wife, between parents and child, without a compelling reason. Judge Bork, I am sure, likes his privacy as well as the next person. He just did not think it rises to the level of a protected interest.

Now where does Judge Thomas stand on these issues that were raised during Judge Bork's confirmation hearings? I am not really sure. Since the divisive debate over Judge Bork, the White House has adopted a strategy of sending Supreme Court nominees to

the Hill who have little or no record at all. Witness Justice David Souter, for whom I voted, and now Judge Thomas, for whom I intend to vote.

But it does appear that Judge Thomas does not outright reject the concept of unexpressed, or unenumerated rights—which was my chief reason for voting not to confirm Judge Bork. Judge Thomas believes, or at least he did prior to these confirmation hearings, in the concept of natural law: that there are rights residing initially in each person because of his or her humanity—God-given and antecedent to government's existence, and not dependent on government's bestowal of them.

The fact that Judge Thomas endorses natural law principles—in contrast to Judge Bork's rejection of the concept of unexpressed, or unenumerated rights—suggests that he may have a more open mind about his interpretation of the Constitution than did Judge Bork.

Certainly, Thomas is younger, and if his confirmation hearings are any indication, he is less fixed in his beliefs and judicial philosophy. Some have criticized him for being too vague in his judicial philosophy, and I admit that I have reservations about that myself.

It is my hope that the experience of the Court itself will help Judge Thomas to grow and develop as a jurist. Service on the Supreme Court is one of the highest honors in this land, and I hope that Judge Thomas will prove himself worthy of that honor.

I feel great affinity with Judge Thomas's deep personal belief in a view of life and law that places greater emphasis on individual effort, individual responsibility, and the sanctity of law above race. But I do understand the concerns of those who oppose Judge Thomas's nomination because they believe that his opposition to the traditional approach to civil rights and his opposition to affirmative action render him insensitive to those who do not have his personal reservoir of inner strength. I also understand the concerns of those who fear how he might rule on the matter of overturning *Roe* v. *Wade*—and I share this concern—and on how he might rule on other matters pertaining to the rights to privacy.

But I am prepared to give Judge Thomas the benefit of the doubt on these issues. I am prepared to hope that the experience of the Court itself will bring forth the best in him and give him the sensitivity that is needed on such divisive issues. I am even prepared to overlook the grossly intemperate remarks about the Congress that he made when he was a part of the Reagan Administration, although I admit that I find it hard to swallow his praise for Lt. Col. Oliver North.

I have reservations about the nomination of Judge Thomas to be an Associate Justice of the Supreme Court. I would have preferred a more distinguished nominee, with greater legal experience, legal practice, longer tenure as a judge. I would have preferred a nominee with a better grasp of key Court decisions. I would much have preferred a nominee who had not made intemperate remarks about the Congress, and had I remained on the Judiciary Committee, I would have given Judge Thomas the opportunity to review those remarks at some length.

But because I support a conservative Supreme Court and because I hope that the experience of the Court will help Judge Thomas to grow and develop as a jurist—and because I do not believe he poses the threat to the rights of the American people that Judge Bork did—I intend to vote in favor of the confirmation of Judge Thomas.

Mr. BYRD. Mr. President, I do not come to the floor today to debate the confirmation of the nomination of Judge Thomas. I come, rather, to state my viewpoint, believing that I have a responsibility to my constituents, a responsibility to Judge Thomas, a responsibility to my colleagues in the Senate, a responsibility to the people of the United States, and a responsibility to myself, to do so.

I have not previously spoken on this subject. I have indicated from the very beginning to the President and to one or two Senators—Senator DOLE in particular—that it was my inclination to vote for the confirmation of Judge Thomas. And my inclination was based on my support of conservative nominees to the courts.

I believe that if there is to be a liberal body it should be the legislative body. I believe that the courts should be conservative. Several days ago, I was impressed to hear Judge Thomas say, as reported in the newspapers, that he believed his role as a judge to be that of interpreting the Constitution and the laws of the United States, not that of rewriting or remaking the laws. I did not like the Warren court, and have so stated many times on this floor, because, in my view, it sought to fulfill the functions of the legislature instead.

I prepared a statement in support of the confirmation of Judge Thomas. And when I left the Hill on last Thursday evening, after working in the Interior Appropriations conferences for 2 days, I left my speech in support of Judge Thomas on my desk, prepared to state today that I was going to vote for Judge Thomas to be an Associate Justice on the U.S. Supreme Court.

Mr. President, I watched the hearings at home on my television set. I know I have previously said that if we want to improve the education of our young people, we should throw out the television sets, or at least cut down the time that our youngsters view them. But in this instance my daughter asked me what I was going to do with my television set because I sat there glued to that television set all of Friday, into the wee hours of the night Saturday, into the wee hours of the morning. I watched every minute of the hearings with the exception of 15 minutes.

On Sunday Mr. DOLE and Mr. MITCHELL were on one of the programs, and they went over 15 minutes beyond 12 noon, and that was the reason I missed 15 minutes of what was happening in the large caucus room in the Russell Building.

I taped the testimony of Anita Hill, and I taped the testimony of Judge Thomas. I taped their appearances and I have replayed them.

This is a very extraordinary case. I know of no precedents of this kind; nothing similar, certainly on all fours, or even approaching that.

Millions of eyes all over this country have been watching the hearings. Millions of ears have been listening to the hearings. And, in listening to the call-in shows, C-SPAN, I have listened to what the people are saying. They are interested. They are watching. They are listening. And they have been quick to say that they have made up their minds, in most instances, one way or the other. I have read about the polls indicating what the people out beyond the Beltway are thinking.

Mr. President, I have concluded that I shall vote against the nomination of Judge Thomas.

Before going into the reasons, let me compliment JOE BIDEN—Senator BIDEN and Senator THURMOND on the fairness which they demonstrated throughout the televised hearings to the witnesses, to the nominee, and to their colleagues. It was a very difficult position that Senator BIDEN, as chairman of the committee in particular, had to maintain: Fairness, patience under great pressure, and in some cases under provocation. And so I do want to commend the chairman and ranking member.

I was formerly a member of the Judiciary Committee for several years. I am no longer a member. I am concerned about the atrocious, abominable leak that occurred.

It was a detestable thing. I do not know who is responsible, whether it is a Senator or a staff person. That is not my province, to make a judgment in that situation. But it reflected very adversely upon the committee, and I am sorry that it has reflected on the Senate as a whole. I can understand the outrage that has been expressed by committee members and others. I can understand the embittered feelings and expressions by Judge Thomas. It was a reprehensible, underhanded thing to do. And all indications are that it came from the Democratic side. I detest it.

I can understand, as I say, the feelings of astonishment and outrage. But I want to echo what the majority leader said earlier today. If it is an outrage for a leak to occur in the Judiciary Committee; it is also an outrage for a leak to occur in the Ethics Committee. And I must echo the statements, at least as I understood them, by the majority leader. We heard no sense of outrage when they occurred in the Ethics Committee. Two wrongs do not make a right, and one wrong does not make a right. But the outrage should pervade the Chamber on both sides of the aisle and in both cases because, "He who the sword of heaven will bear should be as holy as severe."

Now as to my reasons for the conclusion that I have reached to vote against Judge Thomas. I believe Anita Hill. I believe what she said. I watched her on that screen intensely and I replayed, as I have already said, her appearance and her statement. I did not see on that face the knotted brow of sa-

tanic revenge. I did not see a face that was contorted with hate. I did not hear a voice that was tremulous with passion. I saw the face of a woman, one in thirteen in a family of southern blacks who grew up on a farm and who early in her life belonged to the church, who belongs to the church today, and who was evidently reared by religious parents. We all saw her family as they came into the hearing room—the aging father, the kind mother, hugging their daughter, giving her solace and comfort in her hour of trial.

I saw an individual who did not flinch, who showed no nervousness, who spoke calmly throughout, dispassionately and who answered difficult questions. Some thought there were inconsistencies, but a careful reading of the exact language of the questions that were put to her can, at least in one case, and perhaps in others, explain away the appearance of an inconsistency in what she was saying in response to that question—about which some loose talk was subsequently made about possible perjury.

I will not go into further details here, but it is very easy to charge inconsistencies in answering questions. But I thought that Anita Hill was thoughtful, reflective, and truthful. That was my impression. Granted, let us say, that there may have been a few seeming inconsistencies. Granted, for the sake of those who think there were inconsistencies. That does not mean that she was lying; that does not mean that her charges were not true. Perhaps longer hearings would have given her the opportunity and the committee the opportunity to clarify whatever seeming inconsistencies there may have been, to the satisfaction of all.

She was a reluctant witness. There are those who ask why did she not come forward in the previous confirmation hearings? She simply was not contacted in the previous hearings. They ask, why did she wait 10 years? The fact that she waited 10 years does not negate the truth of her assertions. She explained the reasons why she waited. She explained that she was reluctant to come forward, she explained that she did not want to go forward. She explained that she did not even want to be there in that large chamber in the Russell Building that day and at that time. She explained that she had spoken to other individuals very early on—1981, 1982, 1983, 1987—and those same persons came forward later in the hearings and corroborated the fact that she had, indeed, talked about this several years ago.

Why did she not file a olaim? She stated her reasons. She said that perhaps she used poor judgment. How many in this Chamber have not used poor judgment in the past?

Who can stand in this Chamber and say, "I have never used poor judgment?" One can understand that at the age of 25, an individual might be more vulnerable toward the exercise of poor judgment.

Why, one might ask, did not Procopius write his "Secret History" while the Emperor Justinian was living? Procopius wrote about the profligacy, the dishonesty, the crimes committed by Justinian and Theodora, his harlot wife. He wrote about the same kind of profligacy and harlotry and crimes committed by Antonina, the wife of Belisarius, a great Roman general who served under Justinian. When Procopius wrote his earlier "Histories" when he wrote his work on "Buildings," giving great credit to Justinian for his work on public buildings and great edifices, why did Procopius not then reveal the sensitive secret matters which he knew about, at the very time they were occurring, he having been born around 500 A.D. and having died around 565 A.D., the same year in which both Justinian and Belisarius died.

He knew of what he spoke, but he did not dare, for his own reasons, to publish the secret history. He himself stated that, as long as those responsible for what happened were still alive, it was out of the question to tell the story in the way that it deserved. He knew that he would be subjected to torture and death and the confiscation of his property, perhaps the destruction of his family, had he published those things before Justinian died and before Theodora died and before Belisarius died. Consequently, the "Secret History" by Procopius was not published for centuries after his own death.

So there are reasons for Anita Hill's reluctance to reveal her secrets, and as far as I am concerned, without going into them in detail—everybody has heard what has been said—I will not go into them here.

There has been loose talk about fantasies. The former dean of Oral Roberts University explained that he had regretted the use of the word "fantasy." He had regretted the use of it. It was just a word that he had used on the spur of the moment.

This woman was not fantasizing. As one who has lived a long life and who has had the opportunity to see many people in my life, in all walks of life, I think I have some ability to form an opinion of another person when I listen to that person, when I look into his eyes, to determine in my own view whether he may be fantasizing, whether he is out of his mind, whether he is some kind of nut, whether he is a psychopath. It comes through. None of that came through to me in Anita Hill's statements.

There have been theories about a conspiracy, special interest groups got to her, or she invented this, just something that she made up. A woman spurned, a woman scorned. I do not believe that any reasonable man could carefully look at that woman's face, listen to what she had to say, set in the whole context of the circumstances, and believe that she was inventing her story—suddenly, at the very last moment. She had no knowledge that anyone was going to contact her about this. This came out of the blue.

Truth is a powerful thing, and sometimes it is a strange thing. To those who wish to think of a confirmation hearing as a court case, as having the surroundings and carrying the environment of trial, one may see things perhaps differently. This is not a court case. This is a confirmation hearing. They say, well, there was nobody else who said this; there was no pattern. Would it not be reasonable to believe that there would be a pattern if this man were like this? Would he not be saying this thing to others?

Well, who knows? Perhaps he did. I am not going to say he did. I do not know. But since the flights of imagination seemed to be rampant around here, one might imagine there was somebody else. And even so, if there were no others, is it not possible that this could have happened in this case, that this could have happened just this once? Of course, it is possible.

One may say, well, it was not probable. One does not know about that.

Mr. President, what are my other reasons, aside from believing Anita Hill? I was offended by Judge Thomas' stonewalling the committee. He said he wanted to come back before the committee and clear his name. That is what I heard. He wanted to "clear his name." Well, he was given the opportunity to clear his name, but he did not even listen to the principal witness, the only witness against him. He said he did not listen to her. He was "tired of lies."

What kind of judicial temperament does that demonstrate? He did not even listen to her. What Senator can imagine that, if he were the object of scrutiny in such a situation, he would not have listened to the witness so that he would know how best to respond, how to defend himself, how to clear his name? But, instead, Judge Thomas came back and said he did not even listen. He set up a wall when he did that, because it made it extremely difficult for members of the committee to ask him what he thought about this or that which she said?

He wanted to clear his name, he said. I know that hindsight is great, and I would imagine that most of the Members of that committee now wished they had asked for a week's delay. That should have been done. That opportunity is gone. Perhaps much of this travail could have been avoided with a week's delay and by calling in the two persons—principal persons here—and talking with them in private.

But again, that is water over the dam. We now have only what happened,

the circumstances, to deal with. Judge Thomas asked to come back to clear his name. I was extremely disappointed and astonished, as a matter of fact, when he came back to the committee and said he had not listened—had not listened—to Anita Hill.

By refusing to watch her testimony, he put up a wall between himself and the committee. How could the committee question him? How could the committee learn the truth if the accused refused even to listen to the charges? What does this say about the conduct of a judge? He is a judge now, a circuit court of appeals judge.

What does this say about him, the conduct of a judge, a man whose primary function in his professional life is to listen to the evidence, listen to both sides, whether plaintiff or defendant in a civil case, or a prosecutor and the accused in a criminal case?

I have substantial doubts after this episode about the judicial temperament of Judge Thomas, doubts that I did not have prior to last weekend's hearings. How can we have confidence if he is confirmed that he will be an objective judge, willing to decide cases based on the evidence presented if, in the one case that will matter most to him in his lifetime, he shut his eyes and closed his ears and closed his mind, and did not even bother to watch the sworn testimony of Anita Hill?

She was testifying under oath. He professed to want nothing more than to clear his name. Yet he could not be bothered to even listen to the allegations from the person making the allegations.

Another reason why I shall vote against Judge Thomas: He not only effectively stonewalled the committee; he just, in the main, made speeches before the committee; he managed his own defense by charging that the committee proceeded to "high-tech lynchings of uppity blacks."

Mr. President, in my judgment, that was an attempt to shift ground. That was an attempt to fire the prejudices of race hatred, and shift the debate to a matter involving race.

I frankly was offended by his injection of racism into the hearings. This was a diversionary tactic intended to divert both the committee's and the American public's attention away from the issue at hand, the issue being, which one is telling the truth? I was offended. I thought we were past that stage in this country.

So instead of focusing on the charges and attempting to be helpful to the committee in clearing his name, he invoked racism. Of course, he was embittered by the leak, and he was justified to so state. But, instead, he indicted the whole committee, he indicted the Senate, and he indicted the process. Not everybody in the Senate is guilty of leaking material. I did not leak it; I did not leak anything to the press. But he impugned me. And he impugned you, Senator SASSER; you are not on the committee; he impugned you, Senator PRYOR, and you are not on the committee; and you Senator BRADLEY, and you are not on the committee. He did not make any distinctions. He did not discriminate among us. We were all guilty. He was bitter at the Senate, at the committee, at the process.

He should have been bitter at the person or persons who leaked whatever it was that was leaked, and he could have so stated in the strongest terms. But instead, he lectured the committee. He found fault with the "process." The process is a constitutional process that was determined by our forefathers in Philadelphia in 1787. That is the process.

And it is because of that process that Judge Thomas was given his day to clear his name. It is because of the process that he was able to overcome poverty. It was because of the process that he was able to stay out of prison in this country, that he was able to get that fine education. It was because of the process. It was because of the process that he was heard before the committee and given an opportunity to answer questions, given an opportunity to clear his name. That is the process.

If we are only talking about a leak, then that is something else. But one can condemn leaks without condemning the committee, without condemning the Senate, and without condemning the process.

He tried to shift ground. I think it was blatant intimidation, and, I am sorry to say, I think it worked. I sat there and I wondered: Who is going to ask him some tough questions? Are they afraid of him?

He said to Senator METZENBAUM, "God is my judge; you are not my judge, Senator." Well of course, God is also my judge. I am not God. But I do have a vote. And I have a responsibility to make a determination as to how I shall vote. That kind of talk, that kind of arrogance will never get my vote.

I do not know who—I will say it again—I have no idea, I cannot prove anything; if a particular Senator is responsible for the leak, that is one thing. But I have doubts that 14 Senators did it. I have doubts that 13 did, or that 12, or 10, or 8, 6, 5, 4, 3, or 2 did. But to condemn and to repudiate and to excoriate the committee, the Senate, and the process went too far.

Leaks are deplorable. They are reprehensible, and I know we all are going to say, let us do something about it. But human nature has never changed. It has been the same since God drove Adam and Eve from the Garden and said: In the sweat of thy brow shalt thou eat bread. And He created a serpent. He said: You will bruise the head of that serpent, and it will bruise your heel.

There will always be leaks.

We ought to do whatever we can to prevent them. And if we can find the Senator who, if, let us say, if it was a Senator, and that can be proved, I will be among the first to vote to expel him. If it was a staff member, I cannot vote to expel him. I simply think he ought to be fired.

But there will always be leaks—always. But the unfortunate way in which this information has come to light should not be enough to cause us to disregard the possible relevancy, the possible relevancy and the possible accuracy of a charge which so pertains to the character and the temperament of an individual being considered for this august and powerful position.

Let me say, Mr. President, to my colleagues, this is a powerful position to which he is being appointed, if he is appointed, and I do not have any doubt that the Senate will confirm him. I said I did not come here to debate the matter. I do not think I am going to change anyone's minds. But I am going to make my statement. Judge Thomas made his statements in no uncertain terms. So I am going to make mine.

I want to compliment the chairman. I do not think the chairman was intimidated. I watched him carefully. If a person wants to clear his name, why should the committee members be intimidated by that person? If I had previously said that I would vote for him, I would have changed my position on that committee.

But so many of the Democrats had already said they were against him. They had already voted against him. So they could not help that. They did not realize at the time that this was coming. But to an extent, their previous vote had put them in a difficult position to question because everybody knew where they were coming from. I am sure that must have been their feeling: Everybody knows where I am coming from, they probably thought; I have already said I am against him. So, to that extent, it sort of taints my question. I can suppose they reasoned thusly.

I am very sorry that the matter of race was injected, not in an effort to clear one's name, but in an effort to shift the ground. So that, instead of making an effort to clear his name in the minds of the committee members and in the minds of Senators who were not on the committee, he shifted the blame to the process and to race prejudice.

I think it is preposterous. A black American woman was making the charge against a black American male. Where is the racism? Nonsense; nonsense!

Mr. President, I will get to my final reason for voting against Judge Thomas.

(Mr. PRYOR assumed the chair.)

Mr. BYRD. Mr. President, this question of giving the benefit of the doubt,

I have heard it said, well, if you have a doubt against this—and it is obvious nobody can really say with certitude as to which one is telling the truth, the whole truth, and nothing but the truth, so help him or her God—then you should give the benefit of the doubt to Judge Thomas. He is the nominee.

Mr. President, of all the excuses for voting for Judge Thomas, I think that is the weakest one that I have heard. When are Senators going to learn that this proceeding is not being made in a oourt of law? This is not a civil case; it is not a criminal case wherein there are various standards of doubt, beyond a reasonable doubt, so on and so on; if you have a doubt, it should be given to Thomas.

Why? This is a confirmation process, not a court case. We are talking about someone who was nominated for one of the most powerful positions in this country. Some say, he will only be one of nine men. But suppose it is a divided Court, four to four in a given case. That one man will make the difference. Suppose it is a divided Court and he does not show up for some reason, he does not vote on a matter. A tie is in essence a decision in some cases.

His decision will affect millions of Americans, black, white, minorities, the majority, women, men, children, in all aspects of living, Social Security, workmen's compensation, whatever it might be that might come to the Supreme Court of the United States. That one man in such an instance will have more power than 100 Senators, more power in that instance than the President of the United States. This is not a justice of the peace. This is a man who is being nominated to go on the highest court of the land. Give him the benefit of the doubt? He has no particular right to this seat. No individual has a particular right to a Supreme Court seat. Why give him the benefit of the doubt?

Such an honor of sitting on the Supreme Court of the United States should be reserved for only those who are most qualified and those whose temperament and character best reflect judicial and personal commitments to excellence.

A credible charge of the type that has been leveled at Judge Thomas is enough, in my view, to mandate that we ought to look for a more exemplary nominee. If we are going to give the benefit of the doubt, let us give it to the Court. Let us give it to the country. Judge Thomas professed, "You may kill me, look what you are doing to me," and "what you are doing to my oountry."

So, I will take that on. If Judge Thomas is rejected, he will not lose his life. He will not lose his property. He will not lose his liberty. He will go on being a judge of the appellate court, the youngest judge on the court, driving his car, mowing his grass, going to McDonalds, eating a Big Mac, and living his life, watching his son play football.

Now I do not say any of those things pejoratively, but those are his words. So why should we give the benefit of the doubt to him? He will not have to worry about a job. You cannot take his job away from him except through the impeachment process. He will be a judge for life. And his salary is inviolable. You cannot cut it.

But, he will be on that Court 30 years, if he lives out the psalmist's span of life. He will affect the lives of millions. He will make decisions which will impact on their ability to own a car or even to eat a Big Mac. Their liberty, their lives, their property, will be in his hands.

Now, if there is a cloud of doubt, this is the last chance. He is not running for the U.S. Senate, when there would be another chance in 6 years to pass judgment on him. He is not running for the House of Representatives, wherein there would be another chance in 2 years. He is not even running for office. He has been nominated to the Supreme Court of the United States, and if he is not rejected—I believe he will not be rejected; I think too many have made up their mind, I think too many have been swayed with this argument about the benefit of the doubt—this is the last clear chance, to use a bit of legal terminology, this is it. The country will live with this decision for the next 30 years.

I realize it is possible that in the process a man could have been wronged. If it were a criminal trial, it would be different. That is what it is not.

Now then this final argument that I saw in the Washington Post editorial this morning to the effect that there should be two—I do not have it in front of me, but the gist of it was, as I got it, there needs to be two witnesses or some such. I do not have it. I want to be exact.

I am reading a sentence and at the end of my statement I ask unanimous consent that the entire editorial be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BYRD. It reads:

> It goes against a tradition which holds that the unproven word of a single accuser is not enough to establish guilt.

Well, there we are in the court setting again. This is a confirmation process, not a judicial process.

Under the old English law and the law of our forefathers and our law today, in a case of treason, one witness is not enough. That is a case which, under the English law, was a criminal trial, impeachment, a criminal trial; he could lose his life, he could be banished, he could lost his liberty, he could lose his property, he could lose them all. That was a criminal trial. That was a criminal trial under the old English law.

And so that was transferred into the Statute of Treasons, I believe, in 1352 or thereabouts, and it came down to our Constitution. You have to have two witnesses to a treasonous act. The editorial continues, we have a tradition "which holds that the unproven word of a single accuser is not enough to establish guilt." And the closing sentence, "But in these circumstances history gives us too many reasons not to act on the unproven word of a single accuser." Again, the editorial is confusing a confirmation process with a court setting.

I disagree with the statement, "History does not give us any reasons not to act on the unproven word of a single accuser "in the confirmation of a nominee."

So let us not get all confused about what we are doing. This is a confirmation process. And if there is a doubt, I say resolve it in the interest of our country and its future, and in the interest of the Court. Let us not have a cloud of doubt for someone who is going to go on that court and be there for many years.

Now, Mr. President, I want to close by talking just briefly agaln about the "process," the process in the larger sense.

Judge Thomas sought to blame the process and to avoid the real issue. But it is my judgment that that does not clear Judge Thomas' name.

> This is the excellent foppery of the world, that when we are sick in fortune—often the surfeit of our own behavior—we make guilty of our disasters the sun, the moon, and the stars.

Shakespeare went from "King Lear" to "Julius Caesar," when Cassius said to Brutus:

> The fault, dear Brutus, is not in our stars,
> But in ourselves, that we are underlings.

Judge Thomas sought to blame his troubles on the process, but his problem was of his own making.

So, let us, as was said in the hearings from time to time, let us keep our eye on the ball. We are going to cast a very important vote today. And it is not like sin, in the sense that one may be forgiven for it. But once this vote is cast, there is no recourse for restoration.

I have tried to speak from the head. And, Mr. President, my heart tells me that I am right. I will not attempt to criticize any other Senator's vote. Every Senator has not only the right but also the duty to vote as he sees fit.

In Milton's "Paradise Lost," man is described as having a will. He has the power of the will. Nobody will stand like the Persian monarchs behind their soldiers or behind Senators and lash them into battle or dig trenches behind them to keep them from retreating. It is up to every Senator to decide, and

every Senator can justify his position any way he wishes.

As I say I am not here to debate. I am not here to try to change men's minds or women's minds. I am here to state my own sound views as I see them, through my own lights, and after having carefully weighed this matter; after having gone from being a supporter of Judge Thomas for the reasons I have said—and my previously intended speech will be in the RECORD to show the reasons why I was supporting him—having gone from that position to the position I have stated today. I believe that it is my country that will be hurt in the event Judge Thomas goes on the Court.

Perhaps we need to clean up the process if we can. But the "process" is a constitutional process, and it has done us well for over two centuries. And as far as I am concerned the benefit of the doubt will go to the Court and to my children and to my grandchildren and to my country.

EXHIBIT 1

[From the Washington Post, Oct. 15, 1991]

THE THOMAS NOMINATION

One month ago in this space we said we thought Judge Clarence Thomas should be confirmed to the Supreme Court. Our endorsement was not born of enthusiasm but rather of conviction that "on the strength of what we know of his record and the testimony given so far . . . Clarence Thomas is qualified to sit on the court." That was Sept. 15. Today is Oct. 15, but it seems more as if a century had passed than a month. As seems to be true of practically everyone else, we are not satisfied that the Senate Judiciary Committee hearings over the past weekend disposed of the question they were reconvened to resolve: namely, whether Judge Thomas or Prof. Anita Hill, the woman who has accused him of sexual harassment, is telling the truth. She could not conclusively establish the validity of her charges; he could not conclusively disprove them. And there we are. The Senate is scheduled to vote today.

For us there are really only two options. One is to argue for rejection of Judge Thomas on the ground that even though the charges against him were not proven, there remains a cloud of doubt that has not been and perhaps can never be dispelled. There is some merit to this position: it protects against the worst outcome (Judge Thomas's being found at a later date to have lied about these things). And it will in retrospect be at least understandable and eminently forgivable if the outcome goes the other way. That is, if it should turn out that Prof. Hill was the guilty party and Judge Thomas the victim, well, unfair as it was, people will feel that protecting against the risk to the court was worth the unfairness to him.

We cannot accept this argument. It goes against a tradition which holds that the unproven word of a single accuser is not enough to establish guilt.

The accusation Prof. Hill made is a grave one and would clearly disqualify Clarence Thomas for the Supreme Court if it were proven. We are aware that proof in cases of this kind is very hard to come by especially after so long a time has elapsed. But to say that proof is hard to attain is not to say that it is unnecessary. After three days of extraordinary testimony and procedure, it seemed to us that the weaknesses in the account Prof. Hill set out were not dispelled and sufficient additional support for her position did not materialize. Four witnesses said Prof. Hill had told them years ago that Clarence Thomas had sexually harassed her in the sense of pursuing her against her will. None said she had told them of his alleged obscenities. None seemed to know Judge Thomas or to have ever been privy to their work-place or social relationship. Those witnesses who appeared before the committee and who had been part of Prof. Hill's and Judge Thomas's working life all testified on the other side. The lone voice accusing Judge Thomas in that hearing room remained Anita Hill's. Her accusations, in our view, did not have to be overwhelmingly demonstrated in order to be convincing. But even under this fairly loose standard by which we ourselves were judging the proceedings, they came up short.

So, if the vote is held today, after all, we can only reaffirm our position that Judge Thomas should be confirmed. We say this with the same unhappy sense that others all over the country apparently share that, at this point, no one can be 100 percent certain of which of them is telling the truth. But in these circumstances history gives us too many reasons not to act on the unproven word of a single accuser.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the recess to begin at 12:30 p.m. be vitiated and that the additional time for debate be equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. We have no objection, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, before I yield to my colleague, although we have no absolute agreement that we will alternate, I think it is a good practice if we continue to alternate among those who are for and against the nomination. My calculation is probably off, but I roughly think that we have about 150 minutes left or thereabouts for those who are opposed to the judge. And roughly the same or a little more who are supportive of the process—of the process? Of Judge Thomas.

I might say to my colleagues who are interested in speaking in opposition of Judge Thomas that if I am correct, that I have roughly 150 minutes—120 minutes, I have left, then, I am just told—we already have 10 Members, 9 of whom are asking for 20 minutes to a half-an-hour. So to any Member who wishes to speak on this who is within earshot, it would be useful if they would let the Senator from Delaware know that so we can begin to make sure everyone has an opportunity to speak sometime.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I yield 25 minutes to the distinguished Senator from Pennsylvania [Mr. SPECTER].

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized for 25 minutes.

Mr. SPECTER. I thank the Chair and I thank my distinguished colleague from South Carolina, the ranking member. And I compliment him and Senator BIDEN for their outstanding work.

Mr. President, after the regular hearings concluded I stated my support for Judge Thomas because I found him to be intellectually, educationally, professionally qualified. When Professor Hill presented her statement on October 7, it seemed to me that we should proceed to the hearings which we have just conducted. I think it would have been preferable had we had Professor Hill earlier. By 20/20 hindsight I think we should have then established the hearings which have just been concluded.

Mr. President, they were on a very tight timeframe, and I have concerns about whether we have taken long enough. I was one of two dissenters on the committee when we chose to close the witness list.

But we have responded to the direction of the full Senate the best we could. We have put in long hours trying to come to a conclusion on this very, very complex matter.

Mr. President, I have said at the hearings that I did not regard them as adversarial proceedings and that I did not approach the matter as an advocate. I was asked by Senator THURMOND to do the questioning of Professor Hill and I agreed to do so, realizing that it would not be an easy matter because the underlying issue of sexual harassment is one which is of enormous importance in our country and it is plain that there are tremendous numbers of sexual harassment cases which have gone unreported and unpunished. You have in the overall hearings on Judge Thomas many people who are fervently opposed to him on grounds of philosophy and then you have many of those same people who are very much concerned about women's issues—as, frankly, am I—so that it has been a very, very difficult matter. But we were asked to make a determination as to what happened here and we have done our best to do that.

As I have said, I would have liked to have taken more time. After the hearings were concluded the issue was raised about Professor Hill's medical records, for example; as to whether they might show some information or shed some light on what she had experienced, where some statement might have been made to a physician in the course of medical treatment.

We heard later about a roommate. And there is much that, regrettably, we could not do within the timeframe. But we have to proceed today and I am prepared to do so.

In my judgment, Mr. President, the weight of the evidence supports Judge

Thomas, and I say that because of the underlying evidence that Professor Hill moved with Judge Thomas from the Department of Education to the EEOC after he had made these statements to her, after he had stated his sexual harassment, as she viewed the statements. It seemed to me that one might have expected her not to go to another job when that had occurred. She explained that she went with him because the statements had stopped, because she was interested in civil rights, and because she would not keep her job at the Department of Education.

It turned out that, in fact, she could have retained her job at the Department of Education, and even where the comments had stopped, that was a serious factor in my mind as to judging the underlying issue.

Then there were a series of calls which Professor Hill made to Judge Thomas. She initially denied having made the calls. And then when confronted with the telephone logs, she conceded that, in fact, she had made the calls.

There were 11 calls recorded which came from Professor Hill where Judge Thomas was not present. So, that is written down. There was testimony that there were more calls. Judge Thomas' secretary said five or six calls. That is not necessarily an enormous number of calls, but it is some significant contact and raises a question why, in the face of this sexual harassment, did Professor Hill continue to have this kind of contact?

One of the very difficult issues in this case has been for us to understand the attitude of a woman in this circumstance. The question has been raised that there are 14 men on the committee and we are struggling with this issue. It might have been better had we taken more time to get the woman's point of view. But, again, we operate within the time constraint.

We heard testimony that it is to be expected, that it is not unusual for Professor Hill to have continued to maintain a professional relationship with Judge Thomas because she needed him, she needed letters of recommendation. One witness, I think, said she had tied her star to him.

But then there were some factors as to a personal relationship. Professor Kothe from Oral Roberts Law School testified that they were together in a social setting and wsre seen laughing together and appeared to have a relationship which went far beyond the matter of just a strictly professional relationship which a woman might feel she had to have even if she had been sexually harassed.

When they were together at Professors Kothe's house one day having breakfast, Professor Hill drove Judge Thomas to the airport. All of that raises the question as to whether a woman who had been sexually harassed would maintain that kind of a relationship.

The telephone logs, Mr. President, bear some light on this issue, and Professor Hill explained that many of these calls were for professional reasons and she was calling at the request of somebody else. But there were other calls which appear to be of a personal nature. The log reported on January 30, 1984, after the sexual harassment is supposed to have occurred, in writing: "Just called to say hello. Sorry I didn't get to see you last week", which has the overtone of a personal call.

A call on August 4, 1987, 4 o'clock: "In town till 8/15" and a telephone number of a hotel again raising the inference or suggestion that there is something more than just a professional relationship.

I repeat, Mr. President, the difficulty of evaluating this from a woman's point of view and also the additional difficulty that when you have a sexual harassment charge that the emotions run high and that when you make a finding in favor of the man, in favor of Judge Thomas and against the woman, against Professor Hill, that there is an overtone of discouraging women from coming forward, and there is an overtone of discouraging women from asserting their rights by a group of 14 men who may not really understand all these ramifications.

But we searched very hard through this record in an effort to treat Professor Hill in a very polite and professional way. But it was necessary to ask questions and it was necessary to ask precise and pointed questions.

There was one exchange, Mr. President, which had significant weight in my mind, and that was an exchange which I had with Professor Hill over the story which appeared in USA Today which raised the issue as to whether Professor Hill was contacted by Senate staffers in a context that if she came forward and made these serious charges, that Judge Thomas would withdraw, and it would not be necessary for these very elaborate proceedings to be undertaken.

When I questioned Professor Hill about that, she denied that there was ever any such conversation in an extended morning question and answer session. Then in the afternoon, Professor Hill came back and flatly changed her testimony. I was very disturbed by that, Mr. President, in terms of the credibility of Professor Hill, much more so than her change of testimony that she had not received the calls and then, when confronted with the logs, admitted it and much more so than the issue of leaving the Department of Education because perhaps there she might not have known that she could have stayed on.

Overnight the transcript was prepared, and the next day I read the transcript and came to the conclusion that her change in testimony was an intentional misstatement of fact. I think it is worthwhile to take the time to go through this testimony because the central issue we have here is credibility, whether Judge Thomas was oorrect or whether Professor Hill was correct.

I cannot read everything in the limited time which is available, so I ask unanimous consent, Mr. President, that the full transcript from pages 79 to 85 and from 203 to 208 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Senator SPECTER. Professor Hill, the USA Today reported on October 9,

"Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that 'quietly' and behind the scenes' would force him to withdraw his name."

Was USA Today correct on that, attributing it to a man named Mr. Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer?

Ms. HILL. I do not recall. I guess—did I say that? I don't understand who said what in that quotation.

Senator SPECTER. Well, let me go on. He said,

"Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer, says Hill was advised by Senate staffers that her charge would be kept secret and her name kept from public scrutiny."

"They would," apparently referring again to Mr. Henderson's statement, "they would approach Judge Thomas with the information and he would withdraw and not turn this into a big story, Henderson says."

Did anybody ever tell you that, by providing the statement, that there would be a move to request Judge Thomas to withdraw his nomination?

Ms. HILL. I don't recall any story about pressing, using this to press anyone.

Senator SPECTER. Well, do you recall anything at all about anything related to that?

Ms. HILL. I think that I was told that my statement would be shown to Judge Thomas, and I agreed to that.

Senator SPECTER. But was there any suggestion, however slight, that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known or for you to come forward under circumstances like these?

Ms. HILL. There was—no, not that I recall. I don't recall anything being said about him being pressed to resign.

Senator SPECTER. Well, this would only have happened in the course of the past month or so, because all this started just in early September.

Ms. HILL. I understand.

Senator SPECTER. So that when you say you don't recall, I would ask you to search your memory on this point, and perhaps we might begin—and this is an important subject—about the initiation of this entire matter with respect to the Senate staffers who talked to you. But that is going to be too long for the few minutes that I have left, so I would just ask you once again, and you say you don't recollect, whether there was anything at all said to you by anyone that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instrument

that "quietly and behind the scenes" would force him to withdraw his name. Anything related to that in any way whatsoever?

Ms. HILL. The only thing that I can think of, and if you will check, there were a lot of phone conversations. We were discussing this matter very carefully, and at some point there might have been a conversation about what might happen.

Senator SPECTER. Might have been?

Ms. HILL. There might have been, but that wasn't—I don't remember this specific kind of comment about "quietly and behind the scenes" pressing him to withdraw.

Senator SPECTER. Well, aside from "quietly and behind the scenes" pressing him to withdraw, any suggestion that just the charges themselves, in writing, would result in Judge Thomas withdrawing, going away?

Ms. HILL. No, no. I don't recall that at all, no.

Senator SPECTER. Well, you started to say, that there might have been some conversation, and it seemed to me——

Ms. HILL. There might have been some conversation about what could possibly occur.

Senator SPECTER. Well, tell me about that conversation.

Ms. HILL. Well, I can't really tell you any more than what I have said. I discussed what the alternatives were, what might happen with this affidavit that I submitted. We talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking, going to the FBI and getting more information; some questions from individual Senators, I just, the statement that you are referring to, I really can't verify.

Senator SPECTER. Well, when you talk about the Senate coming back for more information or the FBI coming back for more information or Senators coming back for more information, that has nothing to do at all with Judge Thomas withdrawing, so that when you testified a few moments ago that there might possibly have been a conversation, in response to my question about a possible withdrawal, I would press you on that, Professor Hill, in this context: You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month.

Ms. HILL. And I have done that, Senator, and I don't recall that comment. I do recall that there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be—that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that.

Senator SPECTER. Well, when you say a number of things might occur, what sort of things?

Ms. HILL. May I just add this one thing?

Senator SPECTER. Sure.

Ms. HILL. The nature of that kind of conversation that you are talking about is very different from the nature of the conversation that I recall. The conversations that I recall were much more vivid. They were more explicit. The conversations that I have had with the staff over the last few days in particular have become much more blurry, but these are vivid events that I recall from even eight years ago when they happened, and they are going to stand out much more in my mind than a telephone conversation. They were one-on-one, personal conversations, as a matter of fact, and that adds to why they are much more easily recalled. I am sure that there are some comments that I do not recall the exact nature of from that period, as well, but these that are here are the ones that I do recall.

Senator SPECTER. Well, Professor Hill, I can understand why you say that these comments, alleged comments, would stand out in your mind, and we have gone over those. I don't want to go over them again. But when you talk about the withdrawal of a Supreme Court nominee, you are talking about something that is very, very vivid, stark, and you are talking about something that occurred within the past four or five weeks, and my question goes to a very dramatic and important event. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that that is not something that wouldn't stick in a mind for four or five weeks, if it happened.

Ms. HILL. Well, Senator, I would suggest to you that for me these are more than mere allegations, so that if that comment were made—these are the truth to me, these comments are the truth to me—and if it were made, then I may not respond to it in the same way that you do.

Senator SPECTER. Well, I am not questioning your statement when I use the word "allegation" to refer to 10 years ago. I just don't want to talk about it as a fact because so far that is something we have to decide, so I am not stressing that aspect of the question. I do with respect to the time period, but the point that I would come back to for just 1 more minute would be—well, let me ask it to you this way.

Ms. HILL. OK.

Senator SPECTER. Would you not consider it a matter of real importance if someone said to you, "Professor, you won't have to go public. Your name won't have to be disclosed. You won't have to do anything. Just sign the affidavit and this," as the USA Today report, would be the instrument that "quietly and behind the scenes" would force him to withdraw his name. Now I am not asking you whether it happened. I am asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you, that you would remember in the course of four or five weeks.

Ms. HILL. I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say that.

Senator SPECTER. The sequence with the staffers is very involved, so I am going to move to another subject now, but I want to come back to this. Over the luncheon break, I would ask you to think about it further, if there is any way you can shed any further light on that question, because I think if it is an important one.

Ms. HILL. OK. Thank you.

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Senator SPECTER. Yes, thank you, Mr. Chairman.

When my time expired we were up to the contact you had with Mr. Brudney on September 9. If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to the committee?

Ms. HILL. Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process for bringing information forward to the committee. And in the course of our conversation Mr. Brudney asked me what were specifics about what it was that I had experienced.

In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process.

Senator SPECTER. Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?

Ms. HILL. Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, a Senate, whether the Senate went into closed session and so forth, It might be that he might not wish to continue the process.

Senator SPECTER. So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?

Ms. HILL. Yes.

Senator SPECTER. Isn't that somewhat different from your testimony thie morning?

Ms. HILL. My testimony this morning involved my response to this USA newspaper report and the newspaper report suggested that by making the allegations that that would be enough that the candidats would quietly and somehow withdraw from the process. So, no, I do not believe that it is at variance. We talked about a number of different options. But it was never suggested that just by alleging incidents that that might, that that would cause the nominee to withdraw.

Senator SPECTER. Well, what more could you do than make allegation as to what you said occurred?

Ms. HILL. I could not do any more but this body could.

Senator SPECTER. Well, but I am now looking at you distinguishing what you have just testified to from what you testified to this morning. And this morning I had asked you about just one sentence from the USA Today news, "Anita Hill was told by Senate Staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that quietly and behind the scenes would force him to withdraw his name."

And now you are testifying that Mr. Brudney said that if you came forward and made representations as to what you said happened between you and Judge Thomas, that Judge Thomas might withdraw his nominations?

Ms. HILL. I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate steps in the process. What we were talking about was process. What could happen along the way. What were the possibilities? Would there be a full hearing? Would there be questioning from the FBI? Would there be questioning by some individual members of the Senate?

We were not talking about or even speculating that simply alleging that would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward Judge Thomas might withdraw. That is the essence as to what occurred.

Ms. HILL. No, it is not. I think we differ on our interpretation of what I said.

Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witness speak in her own words, rather than having words put in her mouth?

Senator SPECTER. Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation to what was asked by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation——

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL [continuing]. I understood Mr. Specter's question to be what kinds of conversation did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such a use. We talked about a number of possibilities, but there was never any indication that, by simply making these allegations, the nominee would withdraw from the process. No one ever said that and I did not say that anyone ever said that.

We talked about the form that the statement would come in, we talked about the process that might be undertaken post-statement, and we talked about the possibilities of outcomes, and included in that possibility of outcome was that the committee could decide to review the point and that the nomination, the vote could continue, as it did.

Senator SPECTER. So that, at some point in the process, Judge Thomas might withdraw?

Ms. HILL. Again, I would have to respectfully say that is not what I said. That was one of the possibilities, but it would not come from a simple, my simply making an allegation.

Senator SPECTER. Professor Hill, is that what you meant, when you said earlier, as best I could write it down, that you would control it, so it would not get to this point?

Ms. HILL. Pardon me?

Senator SPECTER. Is that what you meant, when you responded earlier to Senator Biden, that the situation would be controlled "so that it would not get to this point in the hearings"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point.

Senator SPECTER. Thank you very much.

Mr. SPECTER. I thank the Chair.

At page 80, I asked, and I asked nine questions, all of which Professor Hill denied. At page 80:

Question: "Did anybody ever tell you that, by providing the statement, that there would be a move to request Judge Thomas to withdraw his nomination?"

"Ms. Hill: I don't recall any story about pressing, using this to press anyone."

Second question: "Well, do you recall anything at all about being related to that?"

Answer: "I think that I was told my statement would be shown to Judge Thomas, and I agreed to that."

Then the third question: "But was there any suggestion, however slight, that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known or for you to come forward under circumstances like these?"

Answer: "There was—no, not that I recall. I don't recall anything being said about him being pressed to resign."

Question: "Well, this would only have happened in the course of the past month or so, because all this started just in early September."

"Ms. Hill: I understand."

"Senator Specter: So that when you say you don't recall, I would ask you to search your memory on this point, and perhaps we might begin—and this is an important subject—about the initiation of this entire matter with respect to the Senate staffers who talked to you. But that is going to be too long for the few minutes that I have left, so I would just ask you once again, and you say don't recollect, whether there was anything at all said to you by anyone that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instrument that 'quietly and behind the scenes' would force him to withdraw his name. Anything related to that in any way whatsoever?"

"Professor Hill: The only thing that I can think of, and if you will check that were a lot of phone conversations. We were discussing this matter very carefully, and at some point there might have been a conversation about what might happen."

Well, that registered a red light with me, Mr. President, when for the first time Professor Hill said there might have been a conversation.

Then, referring again to the transcript,

My question: "Might have been?"

"Professor Hill: There might have been, but that wasn't—I don't remember this specific kind of comment about 'quietly and behind the scenes' pressing him to withdraw."

My question: "Well, aside from 'quietly and behind the scenes' pressing him to withdraw, any suggestion that just the charges themselves, in writing, would result in Judge Thomas withdrawing, going away?"

"Professor Hill: No, no. I don't recall that at all, no."

And there I point out to you, Mr. President, the flat denial of Professor Hill that any conversation occurred.

Then again, going back to the transcript.

My question: "Well, you started to say that there might have been some conversation, and it seemed to me——"

Professor Hill interjects: "There might have been some conversations about what could possibly occur."

My question: "Well, tell me"—this is the sixth inquiry now—"Well, tell me about that conversation."

"Professor Hill: Well, I can't really tell you any more than what I have said. I discussed what the alternatives were, what might happen with this affidavit that I submitted. We talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking, going to the FBI and getting more information, some questions from individual Senators. I just, the statement you are referring to, I really can't verify."

Then my question: "Well, when you talked about the Senate coming back for more information or the FBI coming back for more information or Senators coming back for more information, that has nothing at all to do with Judge Thomas withdrawing, so that when you testified a few moments ago that there might possibly have been a conversation, in response to my question about a possible withdrawal, I would press you on that. Professor Hill, in this context: You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month."

Professor Hill responds: "And I have done that, Senator, and I don't recall that comment. I do recall that there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be—that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that."

My question: "Well, when you say a number of things might occur, what sort of things?"

"Professor Hill: May I just add one thing?"

"Senator Specter: Sure."

"Professor Hill: The nature of that kind of conversation you are talking about is very different from the nature of the conversation that I recall. The conversations that I recall were much more vivid. They were more explicit. The conversations that I have had with the staff over the last few days in particular have become more blurry, but these are vivid events that I recall from even 8 years ago when they happened, and they are going to stand out much more in my mind than a telephone conversation. They were one-on-one, personal conversations, as a matter of fact, and that adds to why they are much more easily recalled. I am sure that there are some comments that I do not recall the exact nature of from that period, as well, but these that are here are the ones I do recall."

Then my eighth question to her: "Well, Professor Hill, I can understand why you say these that are here are the ones I do recall."

Then my eighth question to her: "Well, Professor Hill, I can understand why you say these comments, alleged comments, would stand out in your

mind, and we have gone over those. I don't want to go over them again. But when you talk about the withdrawal of a Supreme Court nominee, you are talking about something that is very, very vivid, stark, and you are talking about something that occurred within the past 4 or 5 weeks, and my question goes to a very dramatic and important event. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that it is not something that wouldn't stick in your mind for 4 or 5 weeks, if it happened."

"Professor Hill: Well, Senator, I would suggest to you that for me these are more than mere allegations, so that if that comment were made—these are the truth to me, these comments are the truth to me—and if it were made, then I may not respond to it in the same way that you do."

Then my response: "Well, I am not questioning your statement when I use the word 'allegation' to refer to 10 years ago. I just don't want to talk about it as a fact because so far it is something we have to decide, so I am not stressing that aspect of the question. I do with respect to the time period, but the point that I would come back to for just 1 more minute would be—well, let me ask it to you this way."

"Professor Hill: OK."

My question—this is the ninth time: "Would you not consider it a matter of real importance if someone said to you, 'Professor, you won't have to go public. Your name won't have to be disclosed. You won't have to do anything. Just sign the affidavit, just sign the affidavit and this'; as USA Today reported, 'would be the instrument that quietly and behind the scenes would force him to withdraw his name.' Now I am not asking you whether it happened. I am asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you, that you would remember in the course of 4 or 5 weeks."

At that point Professor Hill consulted with her attorney, which she had every right to do. That does not appear in the transcript, but I asked my staff to go back over the tapes because I recollected the consultation occurred right there.

And then Professor Hill says: "I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say that."

Well, the conversation goes on, but my time is just about to run out. I read this at some length to really show a number of things. One is that you have to get right into the specifics of the testimony to understand what she is saying, and a fair reading of nine questions Professor Hill flatly says—I think a fair reading of this is that she says she had no conversation with the Senate staffer that her coming forward might get Judge Thomas to withdraw.

Now, then back in the afternoon session I asked Professor Hill, as it shows on page 203 of the record: "If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to this committee?"

"Professor Hill: Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process of bringing information foreward to the committee. And in the course of our conversations Mr. Brudney asked me what were specifics about what it was that I had experienced.

"In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process."

Mr. President, when I heard that, I was very surprised. And then my next question is: "Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?"

"Professor Hill: Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, the Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process."

And my next question: "So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?"

Professor Hill: "Yes." Flat out, finally, nine questions in the morning, a fair reading, a denial by Professor Hill; then she comes back to it in a way which I have read specifically, which——

Mr. SIMON. Will my colleague yield?

Mr. SPECTER. Absolutely not. I am going to finish this discussion, and then I will be glad to yield.

Mr. THURMOND. On his time.

Mr. SPECTER. I thank Senator THURMOND; on his time and not mine. But I am on an important point. I have been talking to it about 15 minutes. I really want to get to the point without interruption, and then I would like to discuss it with Senator SIMON or anybody else.

I have gone through this, Mr. President, in detail because my colleagues really ought to know the specifics. We have a question of credibility, whether Judge Thomas is correct or whether Professor Hill is correct. And it is not an easy matter, ever, to question anybody about anything. But I would suggest to my colleagues that the questioning of Professor Hill——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. THURMOND. Mr. President, I yield 5 more minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. SPECTER. It is not an easy matter to question anybody about anything, really, at any time. But in the context of this case, this was a very important matter and very difficult, and for nine times the question was raised.

I ask my colleagues to focus on the specifics, taking the time that I am allotted, when there are many, many other important things to say. I have not really finished all of the testimony that goes on. I have asked that the record be inoluded up to 208. I have only gone to 204.

Mr. President, I took a look at the testimony last night. I saw some of it on C–SPAN. I was interested to see the tone of it. I did my best to be polite. I think I was. The New York Times said I was painstakingly polite.

But the substance here is what did she say? In the morning, nine questions responding to the way she answered, but always seeking the critical fact as to whether a Senate staffer said Judge Thomas might withdraw, and she said no. Then in the afternoon, and it comes up in the context read, which might be interpreted to be not really responsive to the subject, but that aside, then she says in response to my question, "So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination if you came forward?" Professor Hill: "Yes."

My sense, Mr. President, I say this to my colleagues, who have to decide this issue, is that we have a tremendously difficult task to decide who is correct; who is telling the truth. We have a number of factors that are really hard to evaluate, but some fair indicators of credibility.

But in the context of this matter, on this kind of an important question, I went back the next morning. I did not come to any conclusions; I tried to maintain an open mind, not as an advocate, but in rereading this testimony it seemed to me that there was an intentional misstatement of fact.

I questioned Judge Thomas in a straightforward, perhaps tough manner on the issue that Senator BYRD discussed, when Judge Thomas said he had not watched the testimony of Professor Hill. I said to Judge Thomas: I think you should have watched it; I find that very disappointing. And I was

concerned that Judge Thomas had not watched that testimony.

I was doing the best that I could in terms of trying to get to the facts; that is what I attempted to do. I believe that this transcript, on this change of testimony, has very significant weight on a decision as to the underlying credibility, and what happened between this man and woman. No one is ever going to know. Only two people were present.

I listened to Professor Hill's four witnesses, where she had talked to them before about the incident. I do not have time to analyze that. I found them to be sincere people. I weighed their credibility very, very carefully.

Mr. President, on the totality of this record, on the movement from Education to EEOC, where she could have stayed at Education, after these statements were supposed to have been made, on the series of telephone calls, on the testimony of Professor Kothe about their laughing and talking together, about her driving him to the airport, all in the context, which is different from where you might expect her to want to maintain a professional relationship, more on the personal level, and then especially with nine questions being asked and a denial of any conversation about trying to get him to withdraw, and that change of testimony, Mr. President, in this very, very difficult proceeding, I come to the judgment that the weight of the evidence supports Judge Thomas.

I will be glad to yield for a question.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 15 minutes.

Mr. SIMON. Mr. President, unfortunately this whole issue and the debate that we have had, not just over the last 3 days, is unnecessary if the process of advise and consent had taken place.

I pointed out last week that we had had at least eight instances in this century where a President has appointed someone of another political party. And in addition, Presidents have appointed people who have differed very substantially in terms of philosophy. I am not going to go into all of the detail, but the Republican Presidents who have done that in recent years have included Calvin Coolidge, Herbert Hoover, Richard Nixon, Dwight Eisenhower, and Gerald Ford. I have suggested that balance is needed.

In a column in Sunday's Washington Post, David Broder wrote:

Let the Senate Democratic majority exercise its constitutional authority to "advise" the president by passing a "sense of the Senate" resolution (not subject to veto) setting forth the professional and policy criteria it will use in deciding whether to confirm future court appointees. If Simon's idea of a "balance" on the court is what the Democrats want, let them say so.

I will be submitting a resolution today, Mr. President, which I hope colleagues on both sides can join in approving, which says:

Whereas the Constitution calls on the Senate to give "advice and consent" to nominations to the United States Supreme Court, and

Whereas in recent times the "advice" portion of this phrase has not been exercised by the Senate,

Therefore, be it resolved by the Senate, that it is the sense of the Senate, that

First, that the President, in determining whom to name to any future Court vacancies, should keep philosophical balance in mind, so that the law is not like a pendulum, swinging back and forth depending upon the philosophy of the President; and,

Second, that before a name is submitted to the Senate there should be informal, bipartisan consultation with some members of the Senate on who is to be named to the Supreme Court before a name is submitted to the Senate.

I ask unanimous consent that both the David Broder column and my resolution be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 13, 1991]

A WAY OUT OF THIS MESS

(By David Broder)

"Advise and Consent" is the title of an Allen Drury novel of Washington scandal, sex and politics that occupied the best seller lists for weeks back in 1959. But nothing Drury imagined holds a candle to the real-life drama we have just seen over Judge Clarence Thomas's nomination to the Supreme Court.

Unfortunately, this is not summer escape entertainment. The furious exchange over sexual harassment charges against Thomas had embittered Senate debate and shed a harsh light on the savagery of this era's political battles.

Beyond the passions of the moment lies a constitutional quandary. Our system of government, that marvel of 18th century invention, is not well-designed to operate in the late 20th century environment of persistent divided government.

We have relatively little historical experience with protracted periods when one party controlled Congress and the other held the White House. When this happened in the 19th century, the federal role was much more limited and the stakes in the battle much smaller.

Twice in the Nixon years and three times now in the Reagan and Bush administrations, we have learned that no one's reputation is safe when the president and the Senate, the Republicans and the Democrats, lock horns for control of the Supreme Court. This is not a situation the Founding Fathers ever imagined.

When Alexander Hamilton in Federalist No. 76 justified the Constitution's language conditioning the president's appointive power on "the advice and consent of the Senate," he assumed that it was "not very probable that his nomination would often be overruled." On the contrary, he said that to require "the cooperation of the Senate . . . would be an efficacious source of stability in the administration" of government. Some cooperation! Some stability!

Is there any way to get some sanity and a degree of political accountability back into the confirmation process? Must all such battles be reduced to artful evasion by the nominee and leaks of personally scurrilous material by his opponents?

Suzanne Garment, the author of the timely new book, "Scandal," remarked the other day that "scandal has become the weapon of choice" in confirmation fights in part because it packs such a wallop and in part because it is a handy surrogate for the real issues.

Let me offer what you might call the Rehnquist-Simon alternative to the scandal-saturated battles we are seeing.

Realistically, a Senate and a president of opposite parties must be expected to joust over control of the Supreme Court. The two parties have very different policy agendas for the court, spelled out in their platforms. Abortion is the flash-point issue, but it is far from the only one.

Yet they are squeamish about admitting that it really is a policy fight. So they find other—more personal and more demeaning—grounds on which to quarrel.

Enter, first, Chief Justice William Rehnquist, conservative stalwart. Back in 1959, as a lawyer in private practice, Rehnquist wrote in the Harvard Law Record that "the Supreme Court has assumed such a powerful role as a policy-maker in the government that the Senate must necessarily be concerned with the views of the prospective justices . . . as they relate to broad issues confronting the American people, and the role of the court in dealing with those issues . . . The Senate, as representatives of the people, is entitled to consider those views, much as the voters do with regard to candidates for the presidency or . . . the U.S. Senate."

Listen, now, to Sen. Paul Simon (D-Ill.), staunch liberal. During the hearings on Judge Thomas, Simon pointed out that "at least eight times in this century, presidents have nominated justices who were of a different political party than the president." Conservatives have appointed liberals and vice versa. The Senate, said Simon, should insist on a "balance" in appointments in order to preserve "the stability of the law."

Here is my suggestion. Let the Senate Democratic majority exercise its constitutional authority to "advise" the president by passing a "sense of the Senate" resolution (not subject to veto) setting forth the professional and policy criteria it will use in deciding whether to confirm future court appointees. If Simon's idea of a "balance" on the court is what the Democrats want, let them say so. If they want only appointees that would agree with them on abortion, let them say that. And let them put the resolution to a vote, so everyone going to the polls in 1992 would know that if they retained the Democratic majority in the Senate, they would be giving it a mandate to reject appointees who did not meet those standards.

If Republicans were to win the Senate, the president presumably would face no such constraints. But if the Democrats retain the majority, they could, in good conscience, examine appointees on those "broad issues" of policy Rehnquist mentioned rather than scurrying through personal histories to find some dirt.

That offers political accountability to the voters and fulfills the intent of the Constitu-

tion, as Rehnquist sets it forth. It also gives some hope of elevating the confirmation process from the gutter into which it has fallen.

S. RES. —

Resolved,

Whereas the Constitution calls on the Senate to give "advice and consent" to nominations to the United States Supreme Court, and

Whereas in recent times the "advice" portion of this phrase has not been exercised by the Senate,

Therefore, be it resolved by the Senate, that it is the sense of the Senate, that

First, that the President, in determining whom to name to any future Court vacancies, should keep philosophical balance in mind, so that the law is not like a pendulum, swinging back and forth depending upon the philosophy of the President; and,

Second, that before a name is submitted to the Senate there should be informal, bipartisan consultation with some members of the Senate on who is to be named to the Supreme Court before a name is submitted to the Senate.

(Mr. DIXON assumed the chair.)

Mr. SIMON. Mr. President, I am concerned about what is being done to a witness who reluctantly came forward, and there is no better example than what my colleague suggested. And I say this while he is here, and we have discussed this on the TV program. There is no better example than to suggest that Professor Hill was committing perjury.

The reality is there is not a single prosecutor in this Nation who, reading her full testimony, would suggest there is any perjury. I think as a matter of fact for 7 hours of testimony she was remarkably consistent in what she had to say.

I agree with the distinguished President pro tempore, Senator BYRD, the "wise old lion" of the Senate, who said he found her testimony thoughtful, reflective, and truthful.

Let me just take for a moment the balance of what happened, and I respect those who come to differing conclusions, including my distinguished colleague from Illinois.

But on the side of the judge, it seems to me, are the continued contacts, 11 phone calls over 7 years, a few other things. But psychiatrists say that is not unusual for someone who has been sexually harassed or sexually abused.

What about on the other side? First of all, you have corroborating witnesses that said she talked to them about the abuses several years ago.

Second, is the question of motivation. Here is a reluctant witness, who has no motivation other than doing her duty to this country, who comes forward.

Third, you have the question of details. She provided a great many details that I do not think someone would just make up. If you were going to make up a story, you would make up a story that included physical abuse, physical contact. That was not there.

Her hospital stay, the only hospital stay she had, was caused by stress on the job, stomach pains. She, and apparently her physician, believed it was stress related.

The lie detector. Now, Mr. President, I am not a great believer in lie detectors, but you cannot have it both ways. But let me just add I do not find very many people who do not tell the truth who volunteer to the FBI that they are willing to take a lie detector test, but the FBI asked her whether she was willing to take a lie detector test. She said she was. She then took a lie detector test given by someone who works for the FBI, and then this same administration that asked her whether she would take a lie detector test attacked her for taking a lie detector test. You cannot have it both ways.

And finally—and I am neither an attorney nor a trial attorney—but Senator BYRD's comments about his failure to listen to her charges. I talked to an old trial lawyer—and I know the Presiding Officer is a former trial lawyer—an old trial lawyer who says, "I can frequently tell whether my clients are innocent or guilty because, if they do not listen to the witnesses that are spelling out details of an attack on them, they tend to be guilty."

Now, all these are straws, but I suggest the straws in the wind come down on the side of Professor Hill as to who is telling the truth.

Then, beyond that, what are the other factors? One, that we should have an African-American on the Court. I favor diversity, but let me just add the majority of African-American organizations that have taken a stand have come out on the other side. This morning I called a distinguished former colleague of the House, Barbara Jordan, and I said, "Barbara, if you were voting, how would you vote? She now teaches law at the University of Texas. And she said, "I would vote no," and she explained why. I do not have the time to go into her explanation. I said, "Can I use that on the floor?" And she said, "Of course."

The reality is this nominee's views are either extreme or unknown, and he failed to give answers where I think there is a serious question of credibility. His votes will not be for working men and women in this Nation. They will be for the privileged, who can afford the finest attorneys. That is the reality. I want someone who is going to sit on the Court who is going to speak up for Americans who cannot afford the high-priced attorneys.

Finally, Mr. President, this whole question of the benefit of the doubt that Senator BYRD referred to, I hear this over and over again. This is not a trial where someone is going to be found innocent or guilty. We are not trying anyone. In that case the benefit of the doubt should go to the accused. In this case the benefit of the doubt should go to the people of this country.

Mr. President, we have taken an oath in this body to protect and defend the Constitution. We have not taken an oath to protect our political hides. We have not taken an oath to do all kinds of other things. We have taken an oath to protect the institutions of this country. And I submit to you there is serious doubt if we approve this nominee that we are protecting the institutions of this country as we should.

Mr. President, I reserve the remainder of my time. If the Senator from South Carolina does not have someone seeking the floor, I should consult with Senator BIDEN's staff how much time does Senator KENNEDY need.

Mr. KENNEDY. Fifteen minutes.

Mr. THURMOND. The Senator has approval.

Mr. SIMON. I yield 15 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The distinguished Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the question before the Senate today is not a referendum on the credibility of Judge Clarence Thomas—or of Prof. Anita Hill. The issue before us is the fate of the Supreme Court and the Constitution, now and for decades to come.

It is no secret that I oppose Judge Thomas' nomination.

The extreme views he expressed before his confirmation hearings demonstrate that he lacks a deep commitment to the fundamental constitutional values at the core of our democracy.

It is hypocritical in the extreme for supporters of Judge Thomas to bitterly criticize the conduct of certain advocacy groups in the controversy over the charges by Professor Hill, when it is clear that Judge Thomas was nominated precisely to advance the agenda of the rightwing.

I oppose any effort by this administration to pack the Supreme Court with Justices who will turn back the clock on issues of vital importance for the future of our Nation and for the kind of country we want America to be.

But over the past 9 days, the debate on this nomination has been transformed—and the Nation has been transfixed—by the charges of sexual harassment made by Prof. Anita Hill, and by the Judiciary Committee's hearings into those charges over the past weekend.

With extraordinary courage and dignity, Professor Hill expressed the pain and anguish experienced by so many women who have been victims of sexual harassment on the job.

She described the suffering and the humiliation that a woman encounters when her career and her livelihood are threatened by a supervisor who fills every workday with anxiety about

when the next offensive action and the next embarrassing incident will occur.

The hearings on Professor Hill's charges were exhaustive, and they were difficult and painful for all of the participants—witnesses and Senators alike. But the hearings educated the country on an issue of great and growing significance.

Overnight, as on perhaps no other issue in our history, the entire country made a giant leap of understanding about sexual harassment. That offensive conduct will never be treated lightly again. All women—and all men too—owe Professor Hill a tremendous debt of gratitude for her willingness to discuss her experience, and for the courage and dignity with which she did so.

The most distressing aspect of the hearings was the eagerness with which many of Judge Thomas' supporters resorted to innuendos and scurrilous attacks on Professor Hill for her testimony about her charges of deeply offensive and humiliating actions by Judge Thomas.

They have charged that Professor Hill's allegations were an effort to play on racial fears and racial stereotypes. But the issue here is sexual oppression, not racial oppression.

I have spent much of my public life fighting against discrimination in all its ugly forms, and I intend to keep on making that fight.

I reject the notion that racism is relevant to this controversy. It involves an African-American man and an African-American woman—and, ultimately, it involves the character of America itself. The struggle for racial justice, in its truest sense, was meant to wipe out all forms of oppression. No one, least of all Judge Thomas, is entitled to invoke one form of oppression to excuse another.

The deliberate, provocative use of a term like lynching is not only wrong in fact; it is a gross misuse of America's most historic tragedy and pain to buy a political advantage.

The Senate today is not passing judgment solely on Judge Thomas or Professor Hill. The Senate is making a fundamental statement about our values and our conscience. Make no mistake about it. We in the Senate are also passing judgment on ourselves.

Are we an old boys' club, insensitive at best, and perhaps something worse? Will we strain to concoct any excuse, to impose any burden, to tolerate any unsubstantiated attack on a woman, in order to rationalize a vote for this nomination?

Will we refuse to heed the rights and claims of the majority of Americans who are women but who are so much a minority in this Chamber? What kind of Senate are we?

Because if we cannot listen and respond to this woman, as credible as she is and with the significant corroboration she offers, then what message are we sending to women across America? What American woman in the future will dare to come forward?

There is no proof that Anita Hill has perjured herself—and shame on anyone who suggests that she has.

There is no proof that any advocacy groups made Anita Hill say what she said or made up a story for her to repeat—and shame on anyone who suggests that this is what happened.

There is no proof, no proof at all that Anita Hill is fantasizing these charges or is mentally unbalanced—and shame on anyone desperate enough to suggest that she is.

The treatment of Anita Hill is what every women fears who thinks of lifting the veil and revealing her sexual harassment. Here in the Senate, and in the Nation, we need to establish a different, better, higher standard.

When confronted with all of the evidence that corroborates Professor Hill's charges, Judge Thomas' supporters abandoned the craven charge that she had concocted the story in recent weeks. Instead, they resorted to the meanest, and most unfounded, cut of all—that this tenured law professor, who testified with such grace and dignity, is delusional, that she somehow fantasized the entire horrible experience. That baseless charge is an insult to Professor Hill, and to the millions of American women who have been the victims of sexual harassment.

For too long, persons accused of sexual harassment have responded by charging their victims with being "sick," with "making the whole thing up," with "living in a fantasy world," or that such allegations "amount to nothing more than women taking a passing word in the wrong way."

Calculated slurs of that kind scare other women into silence.

And the greatest irony of all is that the very same people who are now making that irresponsible charge are those who have criticized Professor Hill for not making her own charges sooner.

If we allow these kinds of vicious attacks on Professor Hill to stand, if we dismiss her charges as fantasy or delusion, the message to women throughout America will be a chilling one—suffer in silence or pay a terrible price.

Sexual harassment is an intensely private offense that rarely occurs in front of witnesses. The EEOC itself ruled in 1983 that a claim of sexual harassment can be based on a woman's word alone, without further corroboration. EEOC guidelines make clear that harassment of one woman can constitute an offense, without the need to demonstrate a pattern of such conduct involving other women. Courts have ruled that in cases involving one woman, evidence of similar acts of harassment involving other women may be inadmissible.

The absence of any intent by the perpetrator to harm the victim does not mean there has been no harm. Words and actions may still turn the workplace into an ordeal for any woman who makes a conscientious decision to stick to her career and who decides that the only practical course is to deal with her harasser without recourse to the law.

And in this case, the person charged by Professor Hill with sexual harassment was not only the head of the agency where she worked, but the Federal official with the chief responsibility for enforcing the laws of the United States against sexual harassment.

Judge Thomas and his supporters have pointed with outrage to the harm that these hearings have done to him. But what about the harm that was done to Professor Hill? And I am not talking only about the Senate proceedings that she was so reluctant to set in motion. I am talking about the 2 years of harm that she endured because of this harassment. I am talking about 8 more years of harm she endured because of the silence she was forced to accept in a society that has been hostile to such claims for so long.

It has never been easy for any woman to bring a charge of sexual harassment.

Attitudes are changing in our society. Our national consciousness has been raised by the events of recent days. And the lesson of these changes should be part of the consciousness of the Supreme Court, too.

I wonder, in this day and age, whether women are prepared to sit still while the U.S. Senate puts Clarence Thomas on the Supreme Court of the United States.

The Senate shot itself in the foot last week. Let us not shoot ourselves in the other foot today. We all know what happened last Monday and Tuesday, when Anita Hill's press conference in Oklahoma launched a tidal wave of anger by women across America.

They were outraged, because the Bush administration and the Republican leadership in the Senate stubbornly persisted in trying to force a vote on the Thomas nomination, without even hearing Professor Hill's serious charges of sexual harassment.

Today, therefore, it will not be easy to vote against Anita Hill. All America has seen her face-to-face in their living rooms. Wives are talking to husbands. Daughters are talking to fathers. Sisters are talking to brothers.

They saw what we saw. They saw a courageous woman who seemed to be speaking for all women, a tenured professor of law with a successful career. She had nothing to gain and everything to lose by coming forward. Under great pressure, she testified with surpassing grace and extraordinary dignity. Her testimony was corroborated by four eloquent and persuasive witnesses. Though there is forceful testi-

mony from Judge Thomas supporters, all of them acknowledged that they had no personal knowledge about whether Professor Hill was telling the truth or not.

I believe Professor Hill. I recognize that most of the country is left with doubts about what really happened, and so are many Senators.

There is no conclusive answer—yet. But the Senate has to vote today, and what is the Senate to do?

In my view, Senators who are unsure about who is telling the truth should vote against this nomination.

The Bush administration is urging the Senate to give the benefit of the doubt to the nominee. If this were a criminal proceeding, or even a civil lawsuit, that assertion would be correct.

But the issue before the Senate today is a proceeding of a very different kind. The question is whether Judge Clarence Thomas should be appointed to the highest court in the land, whether he should be entrusted with the solemn power to have the last word on the meaning of the Constitution and the fundamental rights of all Americans.

Throughout the two centuries of our history, many—if not all—of the most important issues of our democracy have been resolved by the Supreme Court. All Americans—men and women—must have faith in the fairness and the integrity of the members of that Court, in their ability to do justice for every citizen, and in their commitment to doing justice.

On a question of such vast and lasting significance, where the course of our future for years to come is riding on our decision, the Senate should give the benefit of the doubt to the Supreme Court and the Constitution, not to Judge Clarence Thomas.

Perhaps there are some Senators who feel that Judge Thomas has overwhelmingly succeeded in disproving Professor Hill's charges. But few Senators and few Americans who watched the hearings would come to that conclusion. America is divided.

If we make a mistake today, the Supreme Court will be living with it and the Nation will be living with it for the next 30 or 40 years. That is too high a price to pay, too great a risk to take. To give the benefit of the doubt to Judge Thomas is to say that Judge Thomas is more important than the Supreme Court.

Surely, whatever the faults and the flaws of the confirmation process, the President of the United States can find another nominee for the Supreme Court who is not under the cloud of having committed serious acts of sexual harassment.

Most Americans are not lawyers. But in their daily lives, they often make critical decisions about themselves, their families, and their futures. They weigh the risks and the consequences, the likely probabilities, and the reasonable doubts.

Few of us would buy a home in a community near a nuclear waste dump, even though the risk of radiation may be extremely small.

We do not allow cancer-causing pesticides in our food supply, even though the risk of illness is vanishingly small.

None of us would stand under a tree in a thunderstorm, because there is a reasonable doubt we might be struck by lightning.

None of us would board an airplane if we had a reasonable doubt about the competence of the pilot.

We do not take these actions, because the action is not worth the risk if we are wrong. The Senate should apply the same test to the nomination of Judge Clarence Thomas.

The Senate has a constitutional responsibility to the Supreme Court and to the American people. The risk of being wrong is too great. Judge Thomas will continue to be a judge, but he should not be confirmed as a member of the Nation's highest court.

Mr. President, I will ask unanimous consent to have printed at an appropriate place in the RECORD the portion of the hearing record that follows the segment read by the Senator from Pennsylvania, which was not read into the RECORD. I will also ask unanimous consent that an article from yesterday's New York Times be printed in the RECORD. I would urge those who have followed the Senator from Pennsylvania's reading of selected portions of that record to draw their attention to those pages, and to read carefully both the entire exchange and Judge Frankel's assessment of the perjury charge.

As I stated in the hearing itself, it is very clear what Professor Hill was saying to Senator SPECTER. She said that no one on the committee staff had suggested to her that Judge Thomas might withdraw quickly and quietly simply because she made an allegation to the committee.

Later she said that the possibility of withdrawal had come up, but in the context of a very different kind of conversation about the various things that might happen down the road. It was one of a broad range of possible outcomes if Professor Hill reported what happened. There is an obvious distinction between the two statements, and it is preposterous to call it perjury, as Judge Frankel clearly states in the Times article.

I ask unanimous consent the transcript pages and the New York Times article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Senator THURMOND. Senator Specter, do you want to proceed?

Senator SPECTER. Yes, thank you, Mr. Chairman.

When my time expired we were up to the contact you had with Mr. Brudney on September 9. If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to the committee?

Ms. HILL. Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process for bringing information forward to the committee. And in the course of our conversations. Mr. Brudney asked me what were specifics about what it was that I had experienced.

In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process.

Senator SPECTER. Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?

Ms. HILL. Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, a Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process.

Senator SPECTER. So Mr. Brudney did tell yon that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?

Ms. HILL. Yes.

Senator SPECTER. Isn't that some what different from your testimony this morning?

Ms. HILL. My testimony this morning involved my response to this USA newspaper report and the newspaper report suggested that by making the allegations that that would be enough that the candidate would quietly and somehow withdraw from the process. So, no, I do not believe that it is at variance. We talked about a number of different options. But it was never suggested that just by alleging incidents that that might, that that would cause the nominee to withdraw.

Senator SPECTER. Well, what more could you do than make allegations as to what you said occurred?

Ms. HILL. I could not do any more but this body could.

Senator SPECTER. Well, but I am now looking at your distinguishing what you have just testified to from what you testified to this morning. And this morning, I had asked you about just one sentence from the USA Today news, "Anita Hill was told by Senate Staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that quietly and behind the scenes would force him to withdraw his name."

And now you are testifying that Mr. Brudney said that if you came forward and made representations as to what you said happened between you and Judge Thomas, that Judge Thomas might withdraw his nomination?

Ms. HILL. I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate steps in the process. What we were talking about was process. What could happen along the way.

What were the possibilities? Would there be a full hearing? Would there be questioning from the FBI? Would there be questioning by some individual members of the Senate?

We were not talking about or even speculating that simply alleging this would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward Judge Thomas might withdraw. That is the essence as to what occurred.

Ms. HILL. No, it is not. I think we differ on our interpretation of what I said.

Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witness speak in her own words, rather than having words put in her mouth?

Senator SPECTER. Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation to what was asked by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation——

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL [continuing]. I understood Mr. Specter's question to be what kinds of conversation did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such a use. We talked about a number of possibilities, but there was never any indication that, by simply making these allegations, the nominee would withdraw from the process. No one ever said that and I did not say that anyone ever said that.

We talked about the form that the statement would come in, we talked about the process that might be undertaken post-statement, and we talked about the possibilities of outcomes, and included in that possibility of outcome was that the committee could decide to review the point and that the nomination, the vote could continue, as it did.

Senator SPECTER. So that, at some point in the process, Judge Thomas might withdraw?

Ms. HILL. Again, I would have to respectfully say that is not what I said. That was one of the possibilities, but it would not come from a simple, my simply making an allegation.

Senator SPECTER. Professor Hill, is that what you meant, when you said earlier, as best I would write it down, that you would control it, so it would not get to this point?

Ms. HILL. Pardon me?

Senator SPECTER. Is that what you meant, when you responded earlier to Senator Biden, that the situation would be controlled "so that it would not get to this point in the hearings"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point.

Senator SPECTER. Thank you very much.

The CHAIRMAN. Thank you, Senator.

[From the New York Times, Oct. 14, 1991]

WHITE HOUSE ROLE IN THOMAS DEFENSE

(By Andrew Rosenthal)

WASHINGTON, October 13.—The fierce Republican counterattaok on Anita F. Hill's testimony sprang from high-level White House consultations among dispirited officials who concluded as the new hearings unfolded that the only way to save Judge Clarence Thomas's nomination was to cast doubt on Professor Hill's character and motivations.

When the hearings began Friday, the White House avoided urging the Republicans on the Senate Judiciary Committee to attack because President Bush's aides were split.

Among aides who believed Judge Thomas's aocount, some thought the gloves should come off and some feared the political dangers of attacking a black woman's character. There were also some aides who could not make up their minds, and a small group that believed Professor Hill, officials said today.

"NEW LEVEL OF DEPRESSION"

But by Friday afternoon, as Professor Hill's damaging testimony continued, the mood at the White House sank to what an official called "a new level of depression," and some advisers feared that the nomination was doomed. The odds on a lunch time bet between two White House aides were 5-to-1 against confirmation.

At this point, a group of Judge Thomas's friends, led by C. Boyden Gray, the White House counsel, and including J. Michael Luttig, an Assistant Attorney General who has been confirmed as a federal judge but not yet sworn in, decided their only course was to pick apart Professor Hill's case even if this involved a direct attack on her character.

President Bush approved the effort, but it was decided that he needed to stand apart from it, officials said, and the White House assembled a team of lawyers from its own counsel's office, the Justice Department and the Equal Employment Opportunity Commission to amass evidence against Professor Hill with the help of Republican Senate staff aides.

The vice chairman of the E.E.O.C., Rosalie G. Silberman, said tonight that she was part of a group that helped to organize witnesses, who had worked with or for Judge Thomas to testify on his behalf at the Senate hearings.

Recognizing Professor Hill's credibility and the impossibility of finding the unvarnished truth, the idea was simply to raise doubts about her story and her character.

WHITE HOUSE STRATEGY

Once the strategio decision to go after Professor Hill had been reached at the White House, taotics were worked out in conjunction with the two most experienced trial lawyers among the Republicans on the Judiciary Committee, Senators Orrin G. Hatch of Utah and Arlen Specter of Pennsylvania. They led Judge Thomas, the main witness on Saturday, through an assault on his accuser's words that escalated throughout the day.

The key points of their attack consisted of:

Zeroing in on references to pubic hair and the adult movie star Long Dong Silver, two small points in a broad and complex story, and arguing that if the origin of these details could be disputed, then Professor Hill's whole story must have been invented.

Pointing out that Professor Hill had given more details of her charges as the hearings progressed as a way of suggesting that she had embroidered her story, but omitting that the additional information was asked of her under cross-examination.

Accusing her of "perjury," a charge made by Senator Specter on Saturday afternoon on the basis of some variations in her answers on Friday to questions about her contacts with Judiciary Committee investigators.

An official at the Equal Employment Opportunity Commission specializing in sexual harassment cases recalled the reference to "Long Dong Silver," officials said, and the specific case was quickly found in a 10th Circuit Court of Appeals decision through an electronic search.

A lawyer at the Department of Justice mentioned that he had recently read "The Exorcist" and recalled a reference to pubic hair floating in gin.

Other officials, working with Republican Senate aides, began looking for internal inconsistencies in Professor Hill's statemente that were used as the basis for Mr. Specter's oharge of perjury and for the assertion that she had embroidered her story as she went along.

"All of this is not probative, and we know it," an official said. "But the other witnesses on our side will raise particular questions about her motivations and it all fits into the overall pattern we're trying to demonstrate."

Once Senators Specter and Hatch had spent several hours laying down the three main attack lines, Senator Alan K. Simpson, Republican of Wyoming, weighed in with a strongly worded broadside, saying that his office had been inundated with letters and calls from women saying, alleging that Professor Hill had a flawed character.

By Saturday night, the intensity of the Republican attack—coupled with Judge Thomas' accusation that Professor Hill used racist stereotypes against him—seemed to subdue the Demoorate on the committee, and initial reviews at the White House were favorable.

MOOD IS PRETTY GOOD

"We have to see how much impact today's witnesses have, but right now the mood is pretty good in the sense that Clarence has been credible enough and there are enough at least potential difficulties with her story that we can make a strong case to Senators that if you were for Thomas before, you have no credible reason to change your view," an Administration official said today, before the committee heard witnesses who corroborated Professor Hill's statement that she had complained to friends as long as 10 years ago that Judge Thomas was harassing her with unwanted sexual discussions.

But there were also denunciations today of the Republican tactics from feminists and advocacy groupe and from Democrats like Senator Edward M. Kennedy of Massachusetts, who said Senator Specter's perjury charge was so fabricated as to be dishonorable.

An expert on evidence and legal procedure, Marvin E. Frankel, a retired judge of the Federal District Court for the Southern District of New York, said the question of whether Professor Hill had elaborated her story was a legitimate area of inquiry.

But if analyzed in legal terms, other aspects of the attack by Senators Hatch and Specter represent "a fantastic, far-out approach that really has nothing to do with the issues," Judge Frankel said.

He said Senator Specter's perjury accusation "hit a low level."

"The idea of former prosecutor who said he has tried perjury cases taking a supposed difference between what somebody said in the morning and what they said in the afternoon to say they committed perjury is really below the belt. He has to know that nobody would ever begin to place a perjury charge on that sort of testimony."

The attack strategy developed slowly and out of necessity each step along the way, according to White House aides.

Administration officials said today that the White House's course was shaped at first by Judge Thomas's decision to prepare his own defense without Kenneth Duberstein, the former White House chief of staff, and Frederick McClure, the White House Congressional liaison, who had been advising him.

"The nature of the charges required that," an official said. "When Thomas responded to a personal allegation, it had to be his response."

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The senior Senator from Pennsylvania is recognized for 3 minutes.

Mr. SPECTER. Mr. President, when the Senator from Massachusetts seeks to add additional pages to the transcript, if he heard my statement he would know it is unnecessary. I inserted all of the pages of the transcript.

If the Senator from Massachusetts has anything to say about the facts and the evidence, I suggest to him that, instead of an oration, he deal with the specifics and the evidence. Now it is up to the people who will read the evidence to make a determination about what a fair reading of that evidence is. But I suggest that when the Senator from Massachusetts talks about shame, he ought not to direct it to the argument that there was an intentional misstatement of fact.

This Senator spent virtually all of his time going over that in detail to illustrate the complexity of the matter and how you have to get right down to the syllables and the semicolons to see what was said. And I submit on the basis of what I read, and the totality of the record, that it is plain that any fair-minded person would say a fair reading of that record was that Professor Hill at first denied that there had been any statement by a staffer that Judge Thomas might be forced to withdraw, and then flatly changed that testimony.

We do not need characterizations like "shame" in this Chamber from the Senator from Massachusetts.

One other point, Mr. President, and that it that the women of America should not listen to the Senator from Massachusetts who is trying to arouse their passions on the generalized subject of sexual harassment. This Senator and every Senator decries sexual harassment. This proceeding is not a question of whether sexual harassment exists in this country, because it does. And virtually all of it is unreported and unpunished.

But the message should not go out to the women of America that the U.S. Senate is indifferent to sexual harassment and that if a woman comes forward and offers evidence, that it will be disregarded. This Senator has been at the forefront, with the Senator from Massachusetts, in trying to get a civil rights bill which is designed directly to bear on the issue of sexual harassment. I take second place to no one on that subject.

But when the Senator from Massachusetts seeks to terrify the women of America that they cannot step forward because they will not be properly treated, he is wrong. And I suggest that the only issue in this matter is who is correct, Professor Hill or Judge Thomas. Professor Hill was treated courteously, properly, politely—her corroborating witnesses were carefully examined, and the decision which is being made, at least by this Senator, is on the facts with the weight of the evidence in support of Judge Thomas. I am talking about the evidence.

The PRESIDING OFFICER. The time of the Senator has expired.

Does the distinguished senior Senator from Massachusetts ask to be recognized?

Who yields time for that purpose?

Mr. SIMON. I yield time. One minute to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I stand by my rejection of the conclusion made by the Senator from Pennsylvania that Professor Hill was guilty of perjury. I expressed my opinions about that over the course of the hearing. I am not going to take the time to do that during this debate. It is all part of the record. And I reiterate, Mr. President—I reiterate to the Senator from Pennsylvania and to others that the way that Professor Hill was treated was shameful; it was shameful.

I yield the remainder to my time.

The PRESIDING OFFICER. The distinguished senior Senator from Massachusetts yields the floor. Who yields time?

Does the distinguished senior Senator from New Jersey ask time?

The Senator from Illinois.

Mr. SIMON. Mr. President, I yield 12 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The distinguished senior Senator from New Jersey is recognized for 12 minutes.

Mr. BRADLEY. Mr. President, before Prof. Anita Hill's story became known, I declared my opposition to the nomination of Judge Clarence Thomas. I did so on the floor here nearly 2 weeks ago.

I based my opposition on his public record, his professional work, his performance before the Senate Judiciary Committee, and my disagreement with President Bush that he was, in the President's words, "the best person for this position."

Mr. President, I ask unanimous consent my full statement made at that time be printed in this RECORD.

There being no objection, the material was ordered to be printed in RECORD as follows:

FLOOR SPEECH BY SENATOR BILL BRADLEY ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 4, 1991

A friend of mine, Clifford Alexander, told me that one day in 1967 President Lyndon Johnson summoned him to the oval office. When he arrived, LBJ told this 33-year-old, African American, White House staff member that he had decided to appoint Thurgood Marshall to the Supreme Court. LBJ asked him to sit down while he made some calls.

The President called Vice President Huhert Humphrey. He called James Eastland of Mississippi, a plantation owner and the Chairman of the Senate Judiciary Committee. He called A. Phillip Randolph of New York, visionary of the march on Washington. He called Roy Wilkins of the NAACP. He called Senators Everett Dirksen of Illinois, John McClellan of Arkansas, Sam Ervin of North Carolina.

The President told these men that Thurgood Marshall was an extremely talented man, that he was a well-known Federal Appeals Court Judge, that he'd won 14 of 19 Supreme Court cases when he was Solicitor General of the United States, that he'd won 29 of 32 Supreme Court cases when he was General Counsel of the NAACP, that he'd successfully argued *Brown vs. Board of Education* before a distinguished Supreme Court consisting of two former senators, a distinguished law school professor, a former U.S. attorney general, a former state supreme court justice, and a former governor.

He told them the times were changing, that America needed tolerance, that the days of discrimination should end, and that Marshall's appointment would signal *hope* to a generation of black Americans and *progress* to a generation of white Americans. He told them that Marshall rode the crest of a moral wave led by the courageous actions of an oppressed people, that Congress did change laws and courts did interpret those laws but that ultimately the biggest change had to be in people's hearts. He told them that by supporting Marshall people could demonstrate a change in their own hearts—a greater sense of generosity, understanding and a belief that racial barriers would continue to fall.

Johnson knew that Marshall's legal ability and individual character were equal to those Justices who sat on the *Brown vs. Board* court, but he also knew that confirmation could be difficult. He knew that the political stakes were high and that when it came to race, someone in American politics usually shouted the equivalent of "fire" in a crowded theater, even if there were no fire.

LBJ's motivation was above politics; his method was tenacious; his obligation was to a better American future.

In 1991, President George Bush nominated Clarence Thomas to the bench. He held a press conference and denied that race was even a factor in his decision. He mounted no campaign, made no major speech, and rallied no group of Americans. The President uttered only the nonsequitur that "Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court." Virtually, the only reason that George Bush gave in selecting Thomas was that he was "the best person for this position."

Perhaps what the President meant to say was that Thomas is the best person for President Bush's political agenda. After all, he is the President who has been uniquely insensitive to black America, who hae exploited racial division to attract votes more than once in his career, and who has asserted on countless occasions that in *his* America, sensitiv-

ity to equal opportunity for women and minorities will play no role in education or job placements. His tactical use of Clarence Thomas, as with Willie Horton, depends for its effectiveness on the limited ability of all races to see beyond color and as such is a stunning example of political opportunism.

Many subtle and not so subtle messages are contained in Mr. Bush's nomination of Judge Clarence Thomas—messages that blur the meaning of a vote for or against Thomas. The messages say that Clarence Thomas didn't need government intervention, so why should help be extended to others; that white America has no responsibility for the failure of blacks; that tokenism is the only acceptable form of affirmative action; that racism didn't hold back Judge Thomas—why are other blacks always whining about its effect on their lives; and that an administration that nominates a black for the Supreme Court has answered the critics of its racial policies.

Mr. President, I have struggled with the President's words that Clarence Thomas is "the best person for the position." I have struggled with those words. I thought about the 700,000 lawyers in America; I thought about the 10,000 judges; I thought about the law professors; I thought about the 875 black judges and the 200 black law professors. I thought about the ABA's rating of Clarence Thomas. I concluded: To be truthful, I MUST disagree with the President.

But then, Clarence Thomas is as well qualified as some who now serve on the Supreme Court, and as a young man he still has room to grow—so why not give the President his man? After all, Judge Thomas has said in his confirmation hearings that he'd be an impartial judge.

But the skill of a judge is not some mechanical, computer-like, balancing act. Since the Supreme Court dispenses justice, what goes into one's conception of a just society will have an influence on decisions. So will one's reading of American history with its tensions between liberty and obligation; freedom and order; exclusion and participation; the dominant culture and the countless subcultures, and the individual and the community. Where a judge places himself in our historical narrative depends on how thoroughly he learns our past, how insightfully she reads her times, how well she knows herself, how clearly he thinks about his values.

Clarence Thomas has opposed the use of government as a remedy for anything other than individual acts of discrimination against women and minorities, never mind that the poor cannot afford a lawyer. He has asserted that natural law can be applied to cases involving the right to privacy. He has said that natural law or a higher law "provides the only firm basis for a just and wise constitutional decision." In other words, one could invoke higher law to justify virtually any position. He has said, "Economic rights are protected as much as other rights," thus putting economic rights on equal footing with the right to speak your mind freely, or practice your religious faith, or live your life free of the unnecessary government intrusion into your private affairs.

Clarence Thomas took these positions in articles and speeches over a decade of right-wing political activism. For over 10 years he was one of the right wing's star mouthpieces. For over 10 years he was forceful and he was an advocate. Then in less than 10 days before the Judiciary Committee he backtracked or denied many of his past views.

He said that these statements of political philosophy were made when he was in the executive-branch as a politician and that they would not enter into his work as a Justice. In fact, by denying much of what he had long espoused, he implied that, rather than the very fiber of his existence, his political philosophy is like a set of clothes that you can change depending on the impression you want to create.

His chameleon-like behavior before the committee poses a real set of dilemmas in considering his nomination. He presented himself to the Committee, just as President Bush introduced him to the public, by highlighting the personal. He chose to emphasize not his reading of the law or his political philosophy, not his public record, but rather his politically attractive personal journey. When questioned, he constantly referred back to the personal, as if he were a modern candidate repeating his sound bite.

When one hears his story of growing up in Pinpoint, Georgia, a possible reaction is the one the President had after he listened with others to Thomas' opening statement: "I don't think there was a dry eye in the house," he said.

The great African American novelist Richard Wright, in writing about his great book, *Native Son*, gives another view of such tears, "I found I had written a book that even the banker's daughter could read and weep over and feel good about. I swore to myself that if I ever wrote another book no one would weep over it; that it would be so hard and deep that they would have to face it without the consolation of tears." Today, 50 years after Wright penned those words, America can't afford to sentimentalize black life. Significant parts of the African American community are being devastated and are self-destructing daily. Instead, we must take Wright's "hard and deep" look. To hear Clarence Thomas' story as one of solely individual achievement is a dangerous mistake. I don't diminish his personal achievement or discipline. I admire it. But how he chose to share his story leaves out a lot.

On one level it is a story of overcoming odds, of hard work, of tremendous dedication and self-reliance. But it is also a more complex story of an authoritarian grandfather, women who sacrificed themselves for the man of the family, a dedicated group of nuns who gave guidance and inspiration, luck (as he says, "someone always came along"), historical change (Civil Rights movement) and attempts by Holy Cross and Yale at specific remedies to discrimination (affirmative action). Clarence Thomas' philosophy of the 1980's implied that only self-help was necessary, but his own life experience refutes that view. Self-help is necessary, but it is far from sufficient.

Clarence Thomas' self-help story doesn't ring true for those not lucky enough to get even the small breaks. But the conservatives love it. Who needs the state at any time in life if all of us can make it on our own? Who needs social security or college assistance or health care for the poor if everyone can make it on his own? Beneath the exclusive espousal of self-help is the bottom line of "I got mine, you get yours."

Personally, I believe through self-reliance, discipline, and determination a person can overcome virtually any obstacle—achieve any goal. But I also can imagine forces beyond your control—health, violent disaster, sudden economic trauma—that overwhelm your prospects.

Today, while conservatives preach the sufficiency of self-help, urban schools become warehouses rather than places to learn, black infant mortality rates and black unemployment rates skyrocket, and a generation is being lost to violence in the streets. Self-help is an important, individual conduct. And initiative deserves its reward, but the need for equal opportunity in economic, educational, and political matters as well as real progress against poverty and crime require a role for the state.

Above all, those who win and climb up the ladder must never forget where they came from or mock the old culture or those who fell behind. Take Clarence Thomas' story of his sister. He said, "She gets mad when the mailman is late with her welfare check. That is how dependent she is." Put candidly, Clarence Thomas seized on the welfare queen stereotype, even if it exaggerated the facts and even if it was his sister, in order to score conservative points. On one level, the event represents unfairness to a loved one, and on another, insensitivity to women generally. Is it any wonder that he says he has never discussed *Roe vs. Wade*?

As I watched the confirmation process, I became profoundly saddened by the limitations of the process itself and by what it did to Clarence Thomas.

People who have known Clarence Thomas since his college days agree on one thing. One thing stands out about him. No, not Pinpoint, Georgia—there are Pinpoint, Georgia, stories in the lives of millions of Americans, both black and white, who have struggled against the odds, against discrimination, against the deck being stacked by the majority culture or their economic superiors. No, the thing that separated Clarence Thomas from other people and marked his individuality was his point of view. He wore it like a badge—until he backtracked during the confirmation process. In doing what he perceived to be or was told to be necessary to attain one of the most important positions our country offers, he allowed himself to be manipulated into the ultimate indignity—being stripped of his point of view. The circle that began in Pinpoint closed. In the beginning his individuality was denied due to *color*. Today his individuality is denied due to a calculated refusal to assert those views that gave his identity its boldest definition in the first place.

Clarence Thomas may be a good friend with a great sense of humor and someone of high moral character. One can be all that and still not be a person, that you would want structuring the legal framework for our children's future.

For those like me who find his record troubling, his performance before the Judiciary Committee puzzling, and his life experience potentially an important influence on the present court, his nomination poses a fundamental question. Does one make the judgment on the basis of his individuality or his race? Does one vote against him because of his record or for him because, as Maya Angelou has said, "he has been poor, has been nearly suffocated by the acrid odor of racial discrimination, is intelligent, well trained, black and young enough to be won over again."

Mr. President, I believe that individuality is more determinative than race. I believe Clarence Thomas' political philosophy, his public record, his overall professional experience, and his choice of what to show and what to hide in the committee hearing process present obstacles to his confirmation.

Given the heightened and proper sensitivity to blackness in the last 25 years in America, one asks, is there something latent in Thomas' being that would blossom if he had a lifetime tenure? Would his rigidly, reac-

tionary views, and intolerance be replaced by a more flexible, balanced perspeotive?

Some people argue that Thomas is a wild card who might just bite the hand of those who've advanced and promoted him for his conservative views. Blackness, they say, will prevail over individuality. By blackness they presume a set of experiences that lead to views, not necessarily liberal, but different from Thomas' stated positions. But what is the essence of blackness? A common sharing of the experience of oppression? A common network of support to nurture the spirit, mind, and body under assault? A common determination to add to the mosaic of America that which is uniquely African American? A common aspiration that all black Americans can live with dignity free from racist attacks, overt discrimination, sly innuendo, and without fundamental distrust of white Americans? Yes, all of these commonalities, and probably many others I've never even thought of, go into blackness, but can we assume that any or all of them will offset Clarence Thomas' political philosophy and his public record—both of which have run against the common currents of black life. To do so would be irrational. It would deny him the individuality—however we might disagree with its expression—which is God's gift to every human being. Qualities of mind and character attach to a person, not to a race.

Clarence Thomas' paradox is real. The individuality that allowed him survival in a world of hostile, dangerous racism is the individuality that seems to make him numb to the meaning of shared experience.

Those who call Clarence Thomas the "hope candidate" do not mean hope in the transcendent terms of "keep hope alive." Instead, they hope those qualities which have characterized his individuality up to this point can be transformed. I doubt that is possible. I doubt that he can "be won over again." Therefore, it is on the basis of his individuality, as I have been allowed to know it from his public record, his professional work, and his confirmation process, that I will cast my vote against Judge Thomas.

Mr. BRADLEY. Mr. President, has anything transpired that would change my vote or my opposition?

The Nation has watched this drama—charges and countercharges—unfold on TV. And although my perspective is limited by race and gender, the events of the last 4 days reminded me that we need more oivility in public life and that those who serve deserve some privacy, some statute of limitations.

We have witnessed a distasteful and, on some levels, disgusting set of hearings in the Judiciary Committee. But what was offensive was not only the description of lurid sexual details that children should not hear, but also the way the men in the White House and their allies on the committee chose to wage the battle.

The strategy to deal with Professor Hill, designed by the men in the White House and apparently approved by President Bush, was the ultimate in sexual stereotyping and sly innuendo replete with gross and irrelevant references to the modern cliche of witchcraft, "The Exorcist." The men in the White House set out to say that Anita Hill was a liar—even though they could not prove it, even though four people corroborated her story, and even though she passed a lie detector test. The men in the White House set out to say she was unbalanced—that she had fantasized all she said—even though one person who alleged fantasy retracted the characterization and the second revealed himself as a self-promoting man with no special psychiatric knowledge. Finally, they set out to say she was part of a conspiracy of interest groups, the press, and U.S. Senate staff—all coordinating and keying off each other in a blatant smear—even though no one could explain the motive for her stepping forward or the connection between the groups and her powerful words.

After Professor Hill's credible testimony, the men in the White House decided to blame Professor Hill for stepping forward, even though she did so only at the committee's request. They looked to discredit her in surprisingly crude ways. They said she should have taken notes. She should have spoken out. She should have left her job. She should have filed a complaint. Never mind that the Supreme Court did not recognize verbal abuse alone as a cause for action until 1986. Never mind that only 7 percent of the women who report sexual harassment in surveys actually file a formal complaint. Never mind that under current law Professor Hill would have gained no damages and possibly no final resolution for up to 3 years. She would have gained only the reputation of a troublemaker, who in the workplace, would be shunned in a thousand small ways and unable to move on with a positive job recommendation. Never mind that some of the Senators who said she should have filed a compliant voted against the legislation that gave her a right to complain or have fought agalnst efforts to allow damages for intentional sex discrimination. Never mind all that.

What the men in the White House revealed, through the strategy of attacking Professor Hill's character, was colossal insensitivity to victims of alleged sexual harassment, an insensitivity that flows from the same source that sees a battered wife and says—prove the man did it. What the men in the White House were saying is we would have spoken up, we would have left the job, we would have taken notes, we would have filed a complaint. How could anyone have a sense of vulnerability about going into the conflict of a legal proceeding? How could someone absorb the abuse Professor Hill described and not fight back? How could anyone submerge pain? Finally, what men in the White House were saying is, why can she not have been more like us—we're all gunfighters—our way, the man's way, is the best.

The treatment that the men in the White House gave to Professor Hill illustrates better than a thousand psychological studies why women are reluctant to step forward. It is dangerous. Imagine in another circumstance if she were your daughter? How would you feel? If a woman with her credibility and her courage cannot do it, how can someone else stand up?

Ironically, the man who treated Professor Hill with the greatest respeot during the hearings was Clarence Thomas. He was considerate when he spoke of her amidst the anger that he spewed at the committee for his predicament. He refused to offer interpretations of why she had done it. He would not be drawn into character assassination.

On Friday night, Clarence Thomas showed his racial pain and his racial anger for the first time in the confirmation process. It was probably a truer emotion that all the intellectualizing, dodging, and denying that was part of his earlier appearances before the committee. He used his race in a way he had always refused to do. He identified with the shared experience of black suffering and black indignities at the hands of whites. He became stronger and more vulnerable, when his life and reputation were on the line.

Yet he failed to focus his anger. He was right to be outraged about the leak—and whoever is responsible should be punished—but it was Anita Hill, not the U.S. Senate, who made the charges. Should a more thorough investigation have taken place before the committee vote? Yes. Was the leak reprehensible? Yes. Should last week's full hearing have been done in executive session? Probably. But what remains are not issues of process but charges of fact—charges that remain unresolved.

On Saturday, after the Friday night when his racial anger came pouring from his heart, Clarence Thomas offered racial stereotyping as a defense agalnst the charge of sexual harassment. But here he was on thin ice because he had not expressed outrage nor did he even criticize his President's use of the black rapist-murder, Willie Horton, to scare up some white votes in 1988, even though Horton was the ultimate stereotype. Then Clarence Thomas remained strangely silent in a clearly calculated way. "That was just politics," people say. "No big thing—to which I say, everything is politics—including relations between the races and the sexes. And embedded in all politics are moral values to which one cannot be selectively dedicated. In this case, there is the value of recognizing that each distinct human being has a right to his or her own complex individuality and there is the imperative to resist one-dimensional stereotyping as destructive of our common humanity. To be true to your values, you have to speak out wherever you are and whatever the circumstances. You do not as-

sert the moral values only to save your own neck.

During the first confirmation process, Clarence Thomas continually referred back to his politically attractive personal journey from Pinpoint, GA, as if he were a modern candidate repeating his sound bite. President Bush's reaction after listening to the story in Thomas' opening statement was: "I don't think there was a dry eye in the house."

The great African-American novelist Richard Wright, in writing about his great book, "Native Son," gives another view of such tears, "I found I had written a book that even the banker's daughter could read and weep over and feel good about. I swore to myself that if I ever wrote another book no one would weep over it; that it would be so hard and deep that they would have to face it without the consolidation of tears." Today, 50 years after Wright penned those words, America cannot afford to sentimentalize black life. Significant parts of the African-American community are being devastated and are self-destructing daily. Instead, we must take Wright's "hard and deep" look.

Maybe now Clarence Thomas will take the hard and deep look at his potential role in American life. Maybe now he will see that if he is confirmed, it was largely because he asserted a strong racial identity and that he owes nothing to the President, who denied race was even a factor in his selection. Maybe having been tested in the crucible of an excruciatingly painful experience, he will be different. Maybe now he will come home. This is only to say that after this weekend, my doubt that in Maya Angelou's words, "Clarence Thomas is * * * young and can be won over again," is a little less but not sufficiently less to change my vote.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. LEAHY. Mr. President, I have the floor, but I will withhold if he wishes to speak on his time.

Mr. THURMOND. It does not make any difference.

Mr. LEAHY. I yield to the Senator——

Mr. THURMOND. You do not have to yield to me. I will get it on my own.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. THURMOND. Mr. President, in my nearly 37 years as a Member of the U.S. Senate, I have always taken a great deal of pride in both this institution and our duty of "advice and consent," I have thought of the Senate as an edifice of integrity, comity, and deliberation—frequently buffeted by the high winds of politics and personality—but standing firm, entrenched in the bedrock of the Constitution and buttressed by the equity of its rules and procedures.

However, as we arrived at the unprecedented decision to reopen these hearings, I have watched this edifice being profoundly shaken. Waves of base sensationalism, prurience, and vicious political mudslinging have eaten away at the very foundation of the Senate and the confirmation process.

I am outraged and ashamed by the perversion of the process which has occurred, and I am profoundly saddened by the damage that has been done to a man of impeccable character, immense courage, and deep compassion—a man many of us have come to respect and admire. If we are to salvage our constitutional role in this instance, Mr. President, we must strip away the hysteria which has surrounded this whole affair and return to the facts.

Before I go further, Mr. President, I would like to commend our distinguished chairman, Senator BIDEN, for his fairness under extremely difficult circumstances. he has a tough job, but he has done it fairly and with respect for all concerned, ensuring that everyone had an opportunity to be heard. The fact that this vote was delayed is no reflection upon him, and once the decision was made to go forward with the additional hearings, he conducted them in a fair manner.

We are here today—one long week since the original confirmation vote was to occur—because someone broke the rules, and it was not Judge Thomas. Clarence Thomas has always played by the rules—working hard and rising from a childhood of poverty in Pin Point, GA, to being chosen by the President of the United States for an appointment to the highest court in the land. Judge Thomas came before this committee believing in the American dream and trusting that he would be treated fairly and with honor and dignity. Instead, as a result of unfounded allegations, he has been subjected to the most humiliating public spectacle I can recall, and his good name has been dragged through the mud.

Mr. President, what I find most disturbing is that someone with access to confidential information who opposed this nomination generated these unfounded allegations—someone who was simply searching for dirt on Judge Thomas. Since this individual or individuals were unable to cast doubt on his ability and qualifications through the normal hearing process, they sought to find some way to besmirch his moral character.

The allegations made by Professor Hill were fully investigated by the FBI and after reviewing that report, I found the allegation to be totally lacking in merit. I say again—without merit. Ms. Hill's account was not directly corroborated by witnesses. No other credible charges of this nature were made and no evidence was found to indicate that this one was based in fact.

Next, confidential information on the allegation and the FBI investigation was intentionally leaked to the media, a clear cut and egregious violation of both privacy laws and the Senate rules. This information was made public at the 11th hour, the weekend before Judge Thomas would have been confirmed by the full Senate. As a result, all Republican members of the Judiciary Committee have asked for an FBI investigation of this incident.

I ask unanimous consent that a copy of our letter to the Acting Attorney General be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 12, 1991.

Hon. WILLIAM P. BARR,
Acting Attorney General, Washington, DC.

DEAR GENERAL BARR: On September 25, 1991, the Senate Judiciary Committee received a confidential report prepared by the Federal Bureau of Investigation. The report concerned the allegations by Professor Anita Hill against Supreme Court nominee Judge Clarence Thomas. Last weekend, all or a part of the contents of this report were apparently leaked either by a member of the Committee or a member of the Senate staff. We are deeply troubled, indeed we are outraged, that the integrity of Judge Thomas has been impugned as a result of this inexcusable leak.

As you know, legislation will be introduced shortly calling for the appointment of a special counsel to the Senate to investigate whether Senate rules prohibiting the unauthorized disclosure of Senate committee reports may have been violated. We understand that the Majority Leader has given his assurance that this legislation will be brought to the Senate floor soon after the Senate votes on Judge Thomas' confirmation next Tuesday.

Unfortunately, that Senate investigation may be limited to violations of its own rules and may be too late to save the reputations of Judge Thomas and Professor Hill.

Therefore, we believe it would be appropriate for the Department to initiate a separate investigation as soon as possible to determine who is responsible for these leaks and how they occurred. In particular, there is reason to believe that these leaks were unlawful under several sections of the Privacy Act of 1974 (5 USC Sec. 552a), including Section 552a(i)(3) (obtaining confidential material under false pretenses).

In light of the foregoing, we request an expeditious investigation by the FBI to be completed as soon as possible.

Sincerely,

Orrin G. Hatch, Charles E. Grassley, Hank Brown, Strom Thurmond, Alan K. Simpson, Arlen Specter.

Mr. THURMOND. Mr. President, in addition, I believe an Ethics Committee investigation is in order.

Since these scurrilous statements were made, Judge Thomas has cat-

egorically and unequivocally denied them, as have others who have known him and worked with him throughout his career. In fact, a number of these individuals—most of them women—have spoken of his active commitment to eradicating sexual harassment in the workplace, and his intolerance for such behavior among his employees. If he was indulging in sexual harassment, why would he have risked bringing attention to it, especially since he was head of the very Federal agency responsible for dealing with offenses of this nature?

During the original confirmation hearings, several individuals mentioned their belief that Judge Thomas had been actively working toward a Supreme Court nomination for the last 10 or 20 years. If that was the case, why would he have been foolish enough to engage in the kind of conduct which has been alleged? It does not make sense.

As I have already said, this committee has heard witness after witness testify to the faot that Judge Thomas is a man of character, courage, and compassion. Even more significantly, prior to this allegation, even those who most bitterly opposed this nominee had nothing—not one thing—to say against his moral character.

Judge Thomas has been through the Senate confirmation process four times before being nominated to the Supreme Court. Nothing of this nature has ever been alleged before.

Mr. President, experts in the fields of civil rights enforcement and psychology say there is no such thing as an isolated incident of sexual harassment. That is to say, if Judge Thomas sexually harassed Professor Hill, he would have harassed others—there would have been a pattern of this kind of behavior. Yet there is no pattern, and no one has been able to establish that this allegation is based in fact. On the contrary, many women who know Judge Thomas and have worked with him have spoken of his kindness, his professionalism, and his commitment to ensuring that the workplace was comfortable and secure for all employees.

I was most impressed by the strong testimony of Judge Thomas' former employees, who spoke of his character and dignified professional conduct. Pamela Talkin, Judge Thomas' chief of staff at the EEOC, said she had never worked with an individual more committed to establishing a workplace free from discrimination and harassment than Judge Thomas. Other women who had worked closely with Thomas gave testimony whioh was just as compelling. These were women who worked with Judge Thomas and knew him well.

Since his nomination to the Supreme Court, the life of Clarence Thomas has once again been subjected to the most minute scrutiny. The Judiciary Committee has investigated Clarence Thomas thoroughly for over 100 days. The FBI has investigated Judge Thomas. The White House has investigated Judge Thomas, and Judge Thomas has sat through 5 full days of questioning as well as 2 days addressing this particular allegation. He has impressed us all with his intelligence, honor, and dignity. These are the facts on Clarence Thomas.

Now for the facts on Prof. Anita Hill, Mr. President. This is a woman not one of us knows personally and whose background has not been investigated for anywhere close to 100 days. The allegations she has raised are of the most serious kind, and the behavior she described was hateful and disgusting. There is no doubt in my mind that if it was true, it was sexual harassment. Yet her testimony has provided us with many more questions than answers.

If this behavior did take place, why did she wait 10 years—10 years—to bring this charge? Why did she not bring it up to investigators—or even to the media—during Judge Thomas' four previous confirmation hearings? If she was being harassed while working for Clarence Thomas at the Department of Education, why did she follow him to EEOC? Why would she continue to subject herself to these unwelcome advances? Not out of desperation for a job—for, contrary to what she told this committee, she could have kept her job at the Department of Education easily.

In addition, Professor Hill was, and is, an attorney. She must have been well aware there was legal redress available to her if she was being harassed. Especially as an employee of the agency responsible for enforcing civil rights protection, Professor Hill must have been aware of the procedures for bringing such a charge, and for keeping contemporaneous records of such treatment. Why did she not bring charges against this man if he was harassing her?

After leaving the Washington area, why did Professor Hill maintain a cordial relationship with a man who treated her so badly that she had to be hospitalized for stress? Why would she telephone Clarence Thomas "just to say hello," or, even more bizarre, to congratulate him on his marriage? Professor Hill's statements and actions are not congruent. The Judiciary Committee is not capable of discerning a clear motive for Professor Hill to tell an untruth, but I believe that is what has occurred.

It has been suggested that Ms. Hill wished for romantic involvement with Judge Thomas and felt rejected when he was not interested in her. Mr. Dogget's testimony, and that of Mrs. Phyllis Berry Myers, indicates this may be the case.

Some have said that Judge Thomas did not promote Professor Hill to a position she coveted. Perhaps she is being vindictive for what she considers to be a professional slight. In addition, after moving to the EEOC from the Department of Education, she was relegated to a position of less prominence and diminished access to Judge Thomas. Perhaps her ego was bruised.

Professor Hill also told FBI investigators that she had doubts about Judge Thomas' political philosophy, that she felt he had changed his beliefs and that he would not be "open-minded." Perhaps the root of this whole thing is a disagreement over political philosophy. I have been contacted by several psychiatrists, suggesting that it is entirely possible she is suffering from delusions. Perhaps she is living in a fantasy world. Dean Kothe, the founding dean of the school of law at Oral Roberts University, has stated his opinion that Ms. Hill's allegations are not only unbelievable but preposterous and the product of fantasy.

Mr. President, I do not believe any of us can know exactly what Anita Hill's motivation could be for impugning Judge Thomas in this manner. Furthermore, it is not our job to know. It is our job to weigh the testimony presented to us and attempt to discern the truth.

I would like to comment briefly at this point about Ms. Angela Wright, whose name was mentioned in the media after Professor Hill came forward. Ms. Wright freely chose not to appear before the committee to testify, and her statements are worthy of little or no consideration.

Ms. Wright, a former employee at the EEOC, was fired by Judge Thomas for poor work performance and use of derogatory language toward another employee. Previously, she had been fired from another job, and resigned rather than be fired from yet another. Ms. Wright is obviously a disgruntled former employee, and has alleged that another former supervisor was a racist and a fool. Her statements against Judge Thomas are inconsistent and should be totally rejected.

On the one hand, we have Judge Thomas. Many of us know him personally and have great respect for both his ability and his character. He has been exhaustively investigated on a number of occasions and for long periods of time. Prior to this week, he had never been the subject of even a breath of scandal or impropriety. He has been a faithful and energetic public servant, a conscientious and sensitive boss and a loyal friend.

On the other hand, we have Prof. Anita Hill. Professor Hill is not psrsonally known to any of us here on this committee. She has come forward at the last minute with some very serious charges. She has not been fully investigated, and we know nothing of her personal life. Her story is fraught with contradictions. Whom are we to believe? In my view, the evidence is over-

whelmingly on the side of Judge Thomas.

Mr. President, a great injustice has been committed here. The good name of a good man has been tarnished. I do not believe Judge Thomas is capable of the kind of behavior Professor Hill described to this committee, and I do not believe that Professor Hill is telling the truth.

Mr. President, the book of Ecclesiastes in the Bible says every man has three names: One his father and mother gave him, one others call him, and one he acquires himself. Clarence Thomas' parents and grandparents gave him a good strong name, a name he could be proud of. He has earned for himself an honorable name, as a man of integrity and rectitude, and up until this week, that was also the name by which others also knew him.

Now that name, the product of 43 years of hard work and striving for excellence, has been snatched from him and dragged through the mire. We cannot restore it to him in its wholeness. We cannot restore to him his peace of mind or his belief in the fairness of the system. However, we can dismiss these charges against him for what they are—baseless, incredible, inconsistent, and simply unbelievable.

Mr. President, Judge Thomas will be an outstanding member of the U.S. Supreme Court. As I have said on many occasions, his background provides him with the ability to fulfill his responsibilities in an outstanding manner, and he should be confirmed.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Illinois controls 81 minutes; the Senator from South Carolina controls 142 minutes. Who yields time?

Mr. SIMON. Mr. President, I yield 10 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. LEAHY. Mr. President, in the midst of what have been attacks, sloganeering, smears, and innuendoes, many of us during the past few days have tried to make an independent judgment rather than making speeches and waging a political campaign. We were right to do that. We were faced with two diametrically opposed stories.

I keep coming back to the question of what Anita Hill had to gain from making her story known, and the answer is nothing.

Professor Hill presented her disturbing story with dignity, courage, and intelligence, and she maintained an extraordinary grace under the pressure of a political onslaught that was orchestrated by the White House. Thomas' supporters built a case against her on a house of cards made of falsehoods, innuendo, and plain, old-fashioned political smears. She was a perjurer, they said. She might be a spurned woman; she was a bitter bureaucrat passed over for a better job; she was a tool of interest groups who wrote her testimony; her story was concocted at the 11th hour.

Thomas' supporters even did readings from "The Exorcist." They claim that she was perverted, claimed that she was self-deluded, claimed that she might belong in an asylum. The Senators who have described themselves as the defenders of family values came up with every explanation for her testimony except the most obvious—that she was telling the truth.

Professor Hill had nothing to gain in coming to Washington. What she got was a crash course in character assassination. Is it any wonder that she hesitated to come forward—8 years ago or today?

Her experience is an object lesson for women about the risk of speaking out. Her attackers cry out against her for not coming forward 8 years ago, at the same time they maul and harass her for coming forward today.

If anyone needs to know why so many women keep experiences of sexual harassment or rape locked up inside, they need look no further than Anita Hill's 72 hours in Washington.

If the Senate fails to show respect for Professor Hill's testimony, what are we telling the world? What are we telling the 19-year-old waitress who is sexually harassed or the 23-year-old secretary who is sexually harassed by the most powerful man in her company?

If Professor Hill, who is well educated and successful, is treated as though she were mentally ill, what is going to happen to the poor or uneducated victims?

The message will be clear: If you dare to challenge a powerful man, you are going to be crushed. And that is a message that the administration and its supporters should be deeply ashamed to send to this country.

I am saddened that once again race was used as a tool for short-term political gain, with no regard for the destruction that tactic will wreak on our Nation. From Willie Horton to the civil rights bill to Clarence Thomas' claim of lynching, it appears to me that the administration is willing to use race to its advantage time and time again.

Mr. President, I believe Anita Hill. And none of her opponents dared to say directly that Anita Hill was not a very moving and credible person. The corroborative witnesses who testified that Professor Hill told them at the time—at the time—about Clarence Thomas' unwanted sexual advances were unimpeachable, and were not impeached. They had not reason to lie, just as Anita Hill had no reason to lie. Their testimony demolished the White House claim that Professor Hill's story was an 11th-hour fabrication.

Professor Hill testified that Judge Thomas described X-rated movies to her in detail. Judge Thomas and his supporters denied that such conversation was imaginable for a man of his upright character. Dean Kothe, cited just a few minutes ago by the distinguished ranking member of this committee, said Judge Thomas is a man who would only read a book on religion or philosophy. That is the cite that was just used to demonstrate who Judge Thomas is.

But one of Judge Thomas' strongest supporters, Lovida Coleman, admitted to the press last week that Judge Thomas regaled her and other friends with descriptions of pornographic movies while they were students in law school. And we have been presented with no evidence that his willingness to discuss pornographic films was brought to a halt on the day he left law school. If one believes Anita Hill's testimony, as I do, Judge Thomas did not stop disoussing such films when he came to Washington.

What of Clarence Thomas? Even if only 10 percent of what Anita Hill has said is true, then Clarence Thomas' categorical denial to the committee—under oath—is untrue.

Every Senator is going to vote on his nomination according to his or her own conscience. Remember, if Judge Thomas is confirmed, he will serve on the U.S. Supreme Court for decades, for life.

Why would Judge Thomas lie? Suppose for the moment that Professor Hill is telling the truth, and it all happened behind olosed doors, with no witnesses.

Do men who have committed sexual harassment come out and say, "Of course, I did it"? Most men in that position would say one of two things. Either she misunderstood harmless flirting, or the woman is obviously crazy. Most men caught in sexual harassment do not admit it; they deny it.

Senator SIMPSON quoted Shakespeare the other day. Let me paraphrase from Hamlet: Judge Thomas doth protest too much.

In the battle over motives, let us recognize that Judge Thomas has a simple motive. He wants to join the highest court in the land. Senators on the other side have turned cartwheels to invent a reason why Professor Hill would sacrifice all she has just to give false testimony before this body.

The President sent us a nominee who is not prepared for a seat on the Court. He has asked us to confirm Judge Thomas on the basis of his character. This nomination was a political calculation that it would, notwithstanding the lack of his qualifications, be politically difficult to oppose him.

I disagree. I voted against Judge Thomas because, after reviewing his record and listening to his testimony, I was left with too many unanswered

questions. As I have discussed in detail in my previous statements, I was troubled by his lack of expertise in constitutional issues, by his disturbing flight from his record, by his extraordinary comment that he never discussed Roe versus Wade, by his unwillingness to answer legitimate questions, and by his unwillingness to clarify a troubling record on the fundamental right to privacy. Similarly, I am troubled that Judge Thomas did not even watch his accuser's testimony.

I urge my colleagues to go back to September 10 and look at the whole record to put the harassment incident in context.

The fact that Clarence Thomas pulled himself up by his bootstraps and succeeded in a hostile world is not enough; not for elevation to the Supreme Court; not for a lifetime appointment which could last into the third decade of the next century; not to be a final arbiter of our Constitution and our Bill of Rights.

This weekend, Judge Thomas talked about his loss of privacy, of Government intruding into his private life. He said he wanted his privacy back. I only hope that if he is confirmed as a Supreme Court Justice, he remembers how important the right of privacy is to women in this country.

We have a system of checks and balances, and all Senators have a chance to exercise their role in that system today. To protect the Court, the Framers realized that neither the executive body nor the legislative body should have the power to cast the Court in its own image. We in the Senate play an integral role in this process, and we cannot abdicate our responsibility in the face of this political barrage.

Let us say as Senators, that we step aside from the polls of the moment, we step aside from those who might seek short-term political gain, and we stand up as the conscience of this Nation, for the good of the Nation, not just for today, but for the generations that follow long after each and every one of us is gone.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 5 minutes.

Mr. GRAMM. Mr. President, this morning I picked up my mail and telegrams and looked over them. I read one that I think says it all. It is a telegram from Adriana Swanson in Houston, TX. It says in part:

> I was born in Havana, Cuba, but have been a U.S. citizen for over 20 years. The televised Thomas-Hill hearings reminded me more of a Castro show trial than anything I could imagine occurring in a democracy.

Mr. President, the tragedy of this telegram is that most Americans believe that is true. I ask my colleagues. How did it happen? How did the advise-and-consent clause in the Constitution turn into a political referendum about political philosophy?

We have elections to determine the political philosophy of the President. I submit to my colleagues that the people who voted for George Bush in 1988 had every reason to expect that, if he were elected, he would appoint conservative Justices to the Supreme Court. In voting for President Bush, the people determined the philosophy of those who would be appointed to the Supreme Court.

Now what has happened, Mr. President, is that the people who lost that election are using the advise-and-consent clause to try to win what they could not win at the ballot box.

I ask my colleagues who are now searching for ways to repair the reputation of the Senate to realize that the reputation of the Senate has been diminished because, in reality, it deserves diminishing. I say to my colleagues, we ought to be debating about qualifications and about character.

Something is wrong when hundreds of people are sent out, including staff members of Senators and of the committee, not to get a balanced picture of the person, but for no reason except to find something to derail the confirmation—not because of the evidence that is found, but in an effort to deny the President of the United States the ability to appoint people who represent his philosophy, his values, and most importantly, the values of the American people.

I submit that if we should have a Democrat elected President, and I submit that probably will not happen in the lifetime of many in this body, then I would feel the American people have spoken, and I would expect the Democrats to appoint a liberal activist who would legislate hidden beneath judicial robes, without the necessity of being elected. But I would judge that nominee on competence and integrity, not political philosophy, because the American people would have spoken.

I submit that when we get into politics and philosophy, we pervert the process.

We are not going to rebuild the reputation of the Senate until we return to the basic principles that the Founding Fathers intended. The President was elected and people knew when they elected him who he would nominate in terms of philosophy.

It is clear that this process has been perverted in an effort to derail Judge Thomas for the same reason that Judge Bork's nomination was derailed, and that is because people who lost the eleotion do not share the fundamental political values of the President.

We are not going to set this process right until we end the political contest which confirmation has become. I am very concerned that, if Clarence Thomas is not confirmed, every controversial nomination will generate a last-minute political charge—in the best tradition of dirty political campaigns in America—and we are going to repeat this process many times and further diminish the credibility of the Senate.

We can stop this from occurring by confirming Judge Thomas. I intend to cast my vote for him. I hope and trust that he will be confirmed.

Clarence said he has not had a good day since he was nominated. I hope today is the first of many good days to come, for him, for the Senate, and for the American people.

The PRESIDING OFFICER (Mr. ADAMS). The time has expired.

Who yields time?

Mr. BIDEN. Mr. President, I yield 10 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 10 minutes.

Ms. MIKULSKI. Mr. President, a week ago I stood on this floor and called for delaying the confirmation vote on Judge Clarenoe Thomas to the Supreme Court. I asked for that delay so that the Senate could consider the very serious charge of sexual harassment. I said at that time, if the charges of sexual harassment could not be heard and dealt with in the U.S. Senate, there is no forum in the United States where it would be considered seriously and impartially. The majority of my colleagues agreed with me and supported the idea of an open hearing, and I thank them for that.

What we in the Senate agreed to was a hearing. What I hoped to have happen was it would be a public service, but instead it became a public spectacle. What we and the American public began to be subjected to was an orchestrated strategy to discredit and fault unfairly a citizen who came forward to tell the truth. The same people who gave us the worst of racial stereotypes in political campaigns, the Willie Horton ad, have now smeared Anita Hill.

Much is said about the rulned reputation of Clarence Thomas, but what about Anita Hill? At age 35, a professor of law, a Yale graduate goes back to what? There is much said about her mental health, that she had delusions, had fantasies. Maybe she was deluded into the fact that, if she came forth and was a good citizen, she would be protected. Maybe she had fantasies about the fairness of a process she thought she would get in the U.S. Senate. Well, Mr. President, what we saw was not a hearing, but an inquisition, and there were Republican Senators who rushed into the role of a grand inquisitor.

From the very first day of this nomination the administration and their Senators made a decision to treat the nomination of Clarence Thomas as a

political campaign and not a nomination process. We watched White House handlers and spin doctors mask the convictions and obscure the beliefs of Judge Thomas. He himself refused to answer questions, or gave answers that were simply, plainly unbelievable.

That is the wrong way to decide. When I face a Supreme Court nominee I have three questions: Is he or she competent? Does she or he possess the highest personal and professional integrity? And, third, will he or she protect and defend the core constitutional values and guarantees around freedom of speech, religion, equal protection of the law, and the right of privacy.

I cannot tell if Judge Thomas met that criteria. His handlers and front people kept the true nature of the man from me and my colleagues. That was their strategy in the first set of hearings.

But in the second set of hearings, they adopted the strategy of smash and smear to obscure the facts and attack a woman who came forward. That strategy victimized not only Anita Hill, but victimized the confirmation process, black Americans everywhere, including those who came forward to testify regardless of who they were advocating for—and also victimized the women of this country. The Thomas backers and handlers of Judge Thomas, his campaign consultants, were interested in only one goal, and that was winning and winning at all costs. But in this process nobody has won, and oertainly not the American people or the Supreme Court.

The very serious issue before the hearing, the issue of sexual harassment, was of little or no real concern, say the Thomas team. To them it was a problem to be disposed of, not a case to be considered. As a result, a woman was treated in a way that sends a wrong and dangerous message to all women who are subjected to sexual humiliation and want to fight back or think about taking a stand for herself. The message is: Do not accuse anybody no matter what he does or you yourself will become the accused. The message to women is: Our courage in coming forward will be met with suspicion and scorn and with unproven, unsupported charges about your being mentally unbalanced, about your being an opportunist.

Sexual harassment is real, and Professor Hill's reaction to it is typical. Studies indicate that only 1 to 7 percent of women who report sexual harassment ever file those charges. It is common for those women to maintain some contact in order to preserve their careers.

Yes, these hearings have men and women across the country talking and thinking about sexual harassment. That is important. The Nation is going through a very important teach-in on sexual harassment. But I am afraid the Senate is about to flunk the course. I am very concerned that the victim who had the courage to stand up and say, "No, this is not right," has been treated as if she were the villaln. This is where the process has failed and I am quite angry and disappointed about it. If you talk to victims of abuse the way I have, they will tell you they are often doubly victimized. First, they are victimized by the event itself and then victimized by the way the system treats them.

My phone lines have been flooded by phone calls from women who suffered similar experiences and have undergone this great trauma. But, Mr. President, my phone has also been ringing off the hook, and I have been approached personally by men, who tell me what it is like to hear the sorrow of the women they love who themselves have been victimized by sexual harassment. I heard husbands talk to me about what their wives endured at work. I have had fathers share with me, swelling up with anger as they talk about how they tried to give their daughters the best education so they could compete in the world only to be battered through sexual innuendo and harassment. And what do those men tell me, Mr. President? They tell me how powerless they felt to defend the woman they loved, against her harasser, or to defend her against the very system she would have to undergo if she filed charges. Those men have told me that often they said to their wives or to their daughters, "Do not go ahead with it. It is just not worth what will happen to you."

I call upon the men of the United States of America now to speak out on the issue of sexual harassment. This is not a woman's issue; it is an issue that profoundly affects men and women. I call upon the men to claim the power that they have, even though they could not always defend the women that they love, to speak out about what it meant to hear their wives and their daughters talk about sexual humiliation and sexual tyranny. I call for the men, wherever they are, to speak up and challenge the thinking that boys will be boys, or that sexual harassment is a laughing matter. I call upon those men to speak out in the workplace, to speak out in the newspapers, to speak out on the talk shows, to speak out in the gym the way they have spoken to me, and I will say to them, "If you speak out and you speak up, it may be too late to prevent what happened to your wife or your daughter, but you will help other mothers and fathers everywhere."

To the women watching this, do not lose heart, but we will lose ground. I know how you feel the sting of all this, how you feel battered and bullied. Speak up to a friend. We have heard in this hearing the advice that, if you are harassed, take good notes, and when you speak up, make sure you are not alone because there will be few there to protect you.

Mr. President, I feel very strongly about this. And I want to conclude by saying we have an opportunity to send a message to victims everywhere that at last in the United States of America the silence is broken as well as our hearts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me say how important it is for the Senator from Maryland to just have spoken and what she said.

I just want to make one point, and it is this: Reasonable people can disagree after listening to all that was said this weekend before the committee, but there is only one thing that I find reprehensible that is going on in some quarters now and because both witnesses came across as credible, very credible and, becouse Professor Hill came across as so credible, people were left with only one of two choices. She is credible, therefore believe her, or she is credible, therefore say she is crazy.

There is absolutely not one shred of evidence to suggest that Professor Hill is fantasizing; not one shred of evidence to suggest that Professor Hill is not and has not been in total control of all her faculties. There is no shred of evidence for the garbage that I hear—not on the floor, but I have heard in the newscasts floating around—that somehow she thinks she is telling the truth; the only answer we can come up with is she must be fantasizing. I have even heard suggested, one of our colleagues said something to the effect, in holding a paper, saying, "Psychiatrists have a name for it. I cannot think of the name for it, but it happens. It is not unusual, an otherwise truthful woman believing that she is still being truthful engages in oonduct of fantasy and it has a—psychiatrists call it something."

It is true. Some psychiatrists, not referring to Professor Hill, talk about such a disorder. But the same number of psychiatrists have written me saying—which would be equally as reprehensible for me to do—"You know, Judge Thomas seems believable, He should be very credible. But you know, people who otherwise have exemplary lives, men who otherwise have exemplary lives—I cannot think of the name of the disease, but, when they have been deprived of their mother and deprived of a father, they sometime engaged in this behavior."

It has even been suggested—I will not mention the name—a well-respected man, a President of a great university in this oountry, had to recently resign because he engaged in conduct that was so atypical of everything else involved in his whole life. And they say now, "See that is the disease."

No disease on anybody's part that anybody, anybody, has offered one shred of evidence either as it relates to the nominee or as it relates to Professor Hill. So I sincerely hope and pray that we do not spend much time speculating about something of which we know nothing, nothing.

The last point I will make, and I will not speak again today, but it seems appropriate to say it here: I hear and read and remember vividly the phrase of what this is all about is the "lynching of an uppity black man," and this is "a stereotypical attack on a black man."

Well, I think that is preposterous. But if that is true, Mr. President, what are we saying about a black woman, who is as well-educated as the black man in question, who has a better grounding in the law as a tenured professor of the law, what are we saying to her we all acknowledge she sounds incredibly credible? If that is not stereotypical lynching of a black woman, what is? Talk about stereotyping people. To take an incredibly well-educated black woman and conolude, notwithstanding the fact you look at her and listen to her, if you do, and say she appears credible, to say, "But there must be something wrong. She sounds credible. I cannot poke a hole in her story, so there must be something wrong." If that is not stereotypical treatment, I do not know what is. Black women have been on the short end of that for centuries. So I hope we will drop, I hope everyone will drop this stereotypical malarkey.

They are two incredibly accomplished people with significantly divergent stories. It is much more likely that one is not telling the truth than it is that either of them are crazy, or that either of them are victims of racial stereotyping.

I am anxious to hear facts, as I said, and I will yield the floor now. But I hear time and again, I know people on this floor to be reasonable women and men, and reasonable women and men can reach different views.

The American public is divided on who they believe. I am not clairvoyant. I cannot guarantee you who is telling the truth. I formed my opinion based on what I observed. But let us make it clear, Mr. President, let us form our opinion on what we observe, not ridiculous speculation about the mental oondition or capacity of someone when not a shred, not a shred of such evidence has been put before the committee or any place I know.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 2 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. LOTT. Thank you Mr. President, and I thank Senator THURMOND for yielding me this time.

The hour is late, and we do have limited time now and this matter has already gone on too long. So, I must cut right to the heart of the decision I have made.

I have not spoken earlier on the floor of the Senate with regard to this nomination for a variety of reasons, one of them being that others needed to talk longer than I felt the need to. But now I feel I absolutely must make a public announcement in the Senate of my own decision, and that it that I am voting for the confirmation of Judge Clarence Thomas.

I want to go back beyond where we are today and talk a little bit about what transpired before the events of the last week. I did not stake out an early position. I wanted to see what happened in the Judiciary Committee. I wanted to hear the evidence in the hearings. And so I listened very closely. I made up my mind to vote for Judge Thomas, and made that final decision on Thursday before we were supposed to vote originally on Tuesday. I did it for these reasons.

First, I looked at the man's background. I am impressed by that because I feel that what he has experienced in his life, coming from Pin Point, GA, and what he experienced going through life and reaching the point he has achieved now, will clearly be an asset for him on the Supreme Court, and that his voice will be an important one on the Supreme Court. So on his background, I thought clearly he brought something to this nomination and to the appointment to the Supreme Court.

On education, clearly he is qualified by his educational background for this position.

And from his experience, I have watched him in this city for a number of years now and I watched him take on difficult positions with a lot of pressure both in his confirmation and the way he handled his job. I think he always handled those jobs magnificently. He has experience in the executive branch and he is a sitting Federal judge, having been confirmed by this body. So by his experience, clearly he was qualified.

And by his character, I have reached a conclusion that he had the judicial demeanor and the character to do this job and do it properly.

As I watched the hearings over the weekend, I was concerned about the allegations of sexual harassment against Judge Thomas by Prof. Anita Hill. The case has brought the issue of sexual harassment to the forefront of American politics. That may be the only positive thing to come from this episode.

I was impressed with Judge Thomas; with what he had to say; and how he said it. I believed Judge Thomas and shared his outrage about how he has been treated in this prooess.

Now that the hearings are over, we all must make our decisions on the nomination of Judge Clarence Thomas for the U.S. Supreme Court.

Like most of my colleagues, I have been deluged by more than 1,000 calls from the people back home in the past several days. Mississippians, like most Americans, watched these hearings with great interest. More than 90 percent of those who called my offices were convinced that Judge Thomas was telling the truth and many said that they were disgusted with the process.

I would like to quote from a letter that eloquently reflects how many of my constituents have viewed this process. It comes from John T. Larsen of Booneville, MS:

> Gone is sensibility, responsibility, decency, fair play, respect for fellow man and a number of other desirable human and democratic traits. * * * How in the world can the Senate demand standards of others that they themselves would never consider living up to * * * Please confirm Judge Thomas.

Like John Larsen, I am disappointed in the treatment that Judge Thomas has received by the Senate and I urge my colleagues to end this ordeal.

After this vote is over the Senate must review the procedures and process used in confirmation hearings. It is out of control and should be changed. For now though, I urge a "yes" vote.

The PRESIDING OFFICER. The time of the Senator, the 2 minutes, has expired.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Alaska [Mr. MURKOWSKI].

The PRESIDING OFFICER. The Senator from Alaska is recognized for 3 minutes.

Mr. MURKOWSKI. Mr. President, I rise today to express my strong support for the President's nomination of Judge Clarence Thomas to succeed retiring Supreme Court Justice Thurgood Marshall.

While I had previously stated my position in support of Judge Thomas, I did support the delay in the vote on his nomination scheduled for last week. The charges leveled against Judge Thomas by Professor Hill were too serious not to receive a thorough investigation by the Senate.

Mr. President, I have heard from a number of Alaskans and visited with them last week during our recess. Many have gone back and forth during the testimony, but now the hearings are concluded and they are telling me, by a substantial majority, that they favor the confirmation of Judge Thomas by this body.

There have been some positive benefits of this process. It has heightened the awareness of both men and women of the problem of sexual harassment in our society. It is my hope that as a result of these hearings those victimized

by sexual harrassment will be more likely to come forward.

Sexual harassment is a serious problem in our society. I firmly believe that if the charges of sexual harassment agalnst Judge Thomas were true that he should not be confirmed. Having carefully reviewed sworn testimony given over the weekend by Judge Thomas, Professor Hill, and their supporters, I will vote to confirm Judge Thomas for the following reasons.

BURDEN OF PROOF

A central element to our Nation's judicial system is that an accused is innocent until proven guilty. The Judiciary Committee hearings failed to resolve the inconsistencies between the testimony of Professor Hill and Judge Thomas. Under our system of justice the benefit of the doubt must belong to the accused.

I do not know who is telling the truth. The testimony was so contradictory that it seems one of the parties must be lying—fairness dictates that the substantial doubt that exists be resolved in favor of Judge Thomas.

INCONSISTENCIES IN PROFESSOR HILL'S TESTIMONY

As the Nation watched, Professor Hill provided very powerful testimony. However, this testimony could not resolve the several inconsistencies in her story. Professor Hill moved from the Department of Education to EEOC with Judge Thomas in 1983 after the alleged harassment occurred. She maintained personal contact with Judge Thomas after leaving the EEOC. Phone logs show consistent contacts over the last 7 years. Professor Hill waited almost 10 years before making her allegations public. It is also difficult to reconcile with her testimony, a comment Professor Hill made to a colleague at the 1991 American Bar Association meeting that she was pleased that Judge Thomas had been named to the Supreme Court.

JUDGE THOMAS' LIFE HISTORY

Clarence Thomas' life history, his character, and his record are not consistent with the charges made against him. Judge Thomas has had a distinguished career in publio service—with the Missouri Attorney General's office, as a Senate staffer, with the Department of Education, EEOC, and on the U.S. Circuit Court of Appeals. Never has there been a hint of impropriety.

Judge Thomas has overcome tremendous obstacles in his life, rising from poverty in Pin Point, GA, to be a nominee for a seat on our Nation's highest court.

Mr. President, I think we must in conclusion recognize no small element of partisan politics is involved in this process. Why did the Democratic Committee staff not pursue this allegation when it was first presented to the committee but then wait until the 11th hour?

Mr. President, I read the FBI report. The trust and confidentiality of the Senate was breached by the committee because Anita Hill was assured her identity would remain confidential. It is my hope that because of these hearings, women who have been harassed will come forward and initiate the necessary action to bring about corrective solutions in our society.

I cannot help but contrast the Judiciary Committee's hearings with the conduct of the Intelligence Committee with regard to the Gates nomination. We have carefully reviewed every allegation of impropriety in open and closed session. No stone has been left unturned—no allegation unanswered.

Unfortunately we see more attack politics in Washington these days, particularly in the Senate confirmation process. To ignore the politics inherent in this process would be naive. However, what Judge Thomas has endured goes beyond the politicization of the process. The goal for some is not to obtain the facts necessary to make wise decisions. The goal is to win at all costs—even if it means breaking Senate rules, smearing people's reputations, and distorting the truth.

CONCLUSION

Judge Thomas has overcome many obstacles in his life—poverty, racism, bigotry. I am confident that with the love and strength of his family and his faith in God and himself, Clarence Thomas will overcome this ordeal as well. Whether or not the Senate and future nominees will be able to endure this perversion of the Senate's advice and oonsent process, is another question.

I urge my colleagues to support the confirmation of Clarence Thomas to be an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I yield 10 minutes to the distinguished Senator from Colorado [Mr. BROWN].

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 minutes.

Mr. BROWN. Mr. President, the founders of our country provided us with a Government which is unique in history. It is one that is suspicious of concentrations of power. It is one which looks at the nature of men and women and expresses fear about letting any one individual or any one group have too much power. Our Nation has benefitted from those limitations.

Over the last 107 days, we have been reminded why this Nation is so suspicious of concentrations of power. The quest for power can cause some men and women to do things they would never consider under normal circumstances. The mud bath of the Thomas nomination is a prime example.

Today should be a day of joy but it is a day of anguish. A day of anguish for both Anita Hill and Clarence Thomas. To some extent, it is a day of anguish for the American people. The simple fact is this has turned into a campaign of slander—not a quest for confirmation facts.

It is my belief that Professor Hill has been ill-used by this Senate. I want to be specific because that is a serious charge. Professor Hill was contacted by representatives of this Senate in the form of staffers who misrepresented important facts to her.

First, they told her there were widespread rumors about sexual harassment at the EEOC and implied to her those rumors concerned her. In effect, they implied to her that she needed to set the record straight because of what was being said about her. They characterized that situation inaccurately. Professor Hill oonfirms those characterizations were a fundamental factor in her coming forward.

Second, they ill-used Anita Hill by implying to her that if she would simply sign the statement, then it was likely Clarence Thomas would have his nomination withdrawn. That clearly was not correct.

Third, they pledged to Anita Hill that her statement would be held in confidence. It clearly was not. We should make sure that this never happens again to one who would bring forth information that this Senate needs and ought to consider.

The question we answer today is quite simply what kind of person is Clarence Thomas? Is he an individual who would use this kind of language and treat women with the disrespect that is implied by these charges? Each member has looked at the tapes, reviewed the transcripts and will come to their own decision. At least for this member, the last panel the committee heard from provided the greatest information. It happened around 2 a.m. Monday morning. I think their statements bore directly on the facts which are in question here.

Patricia Johnson, Director of Labor Relations at the EEOC, said:

> Then Chairman Thomas became aware I used profanity in some exuberant exchanges with union officials. Clarence Thomas made it clear to me that that was unacceptable conduct which would not be tolerated.

Mr. President, almost everyone we talked to, when they commented on Clarence Thomas, volunteered that he did not use that kind of language. He did not use it in private or public. That even when he was alone with other men, he did not use that kind of language. And that he actively discouraged others from using that kind of language.

Pamela Talkin said:

> Judge Thomas was adamant that women in his office be treated with dignity and respect and his own behavior toward women was scrupulous. There was never a hint of impropriety and I mean a hint.

She is a former chief of staff for Judge Thomas at EEOC.

A former Senate staff colleague of Judge Thomas, Janet Brown said:

I was sexually harassed in the workplace. Other than my immediate family, the one person who was the most outraged, compassionate, caring and sensitive to me was Clarence Thomas. He helped me work through the pain and talked through the options.

For this member who found himself torn by the diversity of testimony, about this candidate, the heartfelt descriptions of the women who worked with him provided a clear answer. The alleged behavior was totally out of character for Clarence Thomas. It was totally inconsistent with the pattern of behavior he displayed, both in public and in private.

In the process of the hearing, Clarence Thomas testified before us for 7 days. The committee learned a great deal about him. After he was divorced and was a bachelor again, he sold his only car to pay for his son's tuition for school. How many bachelors do you know that would do that? It hardly speaks of a man so driven by sexual desires that he couldn't control himself. It speaks of someone, very serious, concerned more about his child and his child's education than his own convenience or perhaps even his own ability to date.

Each Member will make their own judgments about Clarence Thomas but I submit that if you look at this man, look at his life, his lifestyle and look at his history, that you will conclude he is not the kind of individual to have engaged in these activities. I believe you will conclude that the allegations against him are totally inconsistent with the kind of human being that he has been throughout his life.

Mr. President, I shall cast my vote for confirmation and I will also pray that this trial by mud bath will never be repeated.

Mr. THURMOND. I yield 15 minutes to the distinguished Senator from Washington State.

The PRESIDING OFFICER. Was that 15 minutes?

Mr. THURMOND. Fifteen minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for 15 minutes.

Mr. GORTON. Mr. President, this Senator, together with a majority of his oolleagues, announced his support for Judge Thomas' nomination to the Supreme Court before Tuesday last. The events of the last week have presented me with as difficult a reappraisal as it has ever been my duty to make. There is no precedent for the nature and compressed intensity of the debate over the last week in front of the American people or in the minds of 100 Members of this Senate. This situation is unique in that, here, the American people know just as much as we in the Senate know—and have learned it in the same way.

As my colleagues and constituents already know, I had on three occasions spoken in favor of Judge Thomas' nomination to the Supreme Court, most recently on October 4. Professor Hill's allegations that she had been subjected to sexual harassment by Clarence Thomas on a systematic and continued basis, however, forced a thorough and agonizing review of my endorsement, and an analysis of all of the evidence in the most thoughtful and unprejudiced manner of which this Senator is capable.

Standing alone, the allegations, if believed, would almost certainly doom the nomination. The allegations, however, do not stand alone. If Professor Hill's charges are correct, and are known by Judge Thomas to be true, Judge Thomas is guilty of not only of a serious form of sexual harassment, but of perjury as well. Under those circumstances, a belief in the literal truth of the charges carries both the inevitable judgment that his nomination should be rejected, and the conclusion that he should be removed from his present position as well.

With that, let us consider the facts. Those Senators who announced their opposition to Clarence Thomas before these allegations were made had determined to vote against him on other grounds. They need not now decide whether the allegations are true in order to vote against Judge Thomas. But those of us who announced our support for Judge Thomas before these allegations became known must now pass judgment on Professor Hill's charges. The plain truth is that we must make this judgment without the absolute certainty that our judgment is correct.

Ours is an awesome responsibility.

At this point, I believe it vitally important to point out the obvious. This debate is not about the existence of sexual harassment in the workplace, or about its pivotal nature with respect to the workplace and to individual careers. Sexual harassment in the workplace exists. It has always inhibited and demeaned women, and it is perhaps more serious now than ever as women have moved into what were traditionally male occupations, are highly competitive up and down the employment chain, and justly seek to be treated as equals with equal opportunity. But the existence of harassment, in general, is not at issue.

The issue here is whether or not this incident occurred as described by Prof. Hill and, if so, what its consequences should be.

This is not a criminal proceeding; Professor Hill need not convince us as Senators of her version of the truth beyond a reasonable doubt. But neither can we charge Judge Thomas with the burden of proving his innocence beyond a reasonable doubt. Each burden would be impossible to meet, but in the case of Judge Thomas, were we to impose such a burden of proof, we would sentence ourselves never to confirm any nominee who is subjected to a charge of a personal offense which by its nature leaves no clear convincing physical effect. There will always be residual doubt in coming to a decision involving such charge, here in the Senate or in the world outside.

Now, let us oonsider Professor Hill. She, like Judge Thomas, has reached her present distinguished position from a deprived and segregated background. She has overcome real and difficult obstacles through hard work to become the beneficiary of a magnificent education and of a constantly more responsible and important set of positions in the private sector, government, and in the academic world. There is no easily apparent motive for her consciously to have fabricated these allegations.

Professor Hill has charged Clarence Thomas with a number of incidents of verbal sexual harassment over a fairly extended period of time in the early 1980's, while he held a position of authority over her, in meticulous detail. The language which he is alleged to have used is obscene and disgusting and would rightly have traumatized a considerable less sensitive person than Professor Hill.

She is corroborated, in part, by four friends and acquaintances to whom she related incidents of sexual harassment, either contemporaneously or upon first meeting them, in highly generalized, nonspecific terms. None of those four individuals worked with Professor Hill on Clarence Thomas' staff or knew Clarence Thomas.

I am keenly sensitive to the fact that it is hard for me to see the world through the eyes of Professor Hill. It is impossible for me as a 63-year-old male U.S. Senator to understand the professional pressures she faces. As a result, I have spent much of the last week discussing this issue in general, and Professor Hill's charges in particular, with dozens of women, but with three professional women in particular who have a special sensitivity to such harassment: One a friend, one a member of my own staff, and one my own daughter. I will tell you that I have been affected by these discussions. For example, I considered it relevant that Professor Hill, a bright, Yale lawyer would choose voluntarily to transfer with Clarence Thomas from the Department of Education to the EEOC in spite of the fact that she had apparent job security at the Department of Education. I now do not consider this to be highly relevant. Several professional women with whom I have spoken have indicated that a young woman interested in her career might well, even in the face of harassment, make such a move.

I considered it relevant that Professor Hill failed to disclose any sexual harassment charges during the course

of four confirmation hearings of Clarence Thomas—two for his original appointment and reappointment to EEOC, a third when he was nominated to a position on the D.C. Circuit Court of Appeals and finally, for almost 2 months after Judge Thomas' nomination by the President to the Supreme Court of the United States. Here again my view has been changed. Many women in the work force today do not consider Professor Hill's delay strange given the personal and professional trauma inherent in her coming forward.

Clarence Thomas meets these charges with a vehement and categorical denial that any such incident or incidents ever took place.

A significant number of his closest associates, including several females who have themselves been subjected to sexual harassment expressed their unequivocal belief in his denials. They used their own knowledge and experience with Judge Thomas and Professor Hill to state that such actions are totally inconsistent with Judge Thomas' character and behavior. Several of these associates believe that Professor Hill became increasingly resentful of the fact that at the EEOC she lost her close advisory relationship with Judge Thomas, and became just one of several, perhaps not equal, advisers, and was passed over for a promotion for which she felt herself to be highly qualified.

Weighing against Judge Thomas' statement is his obvious motive to deny Professor Hill's charges, even if they were true.

What actually happened?

With the possible exception of the two principals, I doubt that any of us will ever know the truth, the whole truth and nothing but the truth.

But there is a wide range of possibilities.

It is certainly possible that Professor Hill has described what took place precisely and accurately, and that Judge Thomas has perjured himself in order to avoid rejection and humiliation.

It is also clearly possible that Judge Thomas has told the complete and absolute truth, and that Professor Hill, as a result of real or imagined slights, determined to do what she could to undercut his reputation, and then took advantage of an opportunity presented to her by certain Senate staffers, promising anonymity, to destroy a Supreme Court nomination.

It may well be, however, that the truth lies somewhere in between these two extremes. It is certainly conceivable that Clarence Thomas made comments that were taken as offensive by Professor Hill, but this conclusion does not constitute proof that the specific remarks alleged by Professor Hill were made.

In the ultimate analysis, Mr. President, I prefer to believe that both witnesses have told the truth as they perceive it. I cannot, of course, be certain of this conclusion, but, as is the case with each of my colleagues, I must act with full knowledge only that I can never be entirely certain that I am correct.

Because I believe it is more likely than not that the description of Judge Thomas' Department of Education and EEOC presented by those who knew the two parties best falls closer to the truth than does the picture painted by Professor Hill, and because I believe Judge Thomas otherwise to be well qualified for a position on the Supreme Court of the United States, and because I cannot deny him that position on suspicion alone, no matter how troubling, I reaffirm my support for Judge Thomas and will vote in favor of his confirmation.

While this decision must, of neoessity, be my own, I am comforted and supported in reaching it by the fact that most thoughtful Americans and most of my constituents who have followed this affair with riveted attention over the course of the last week appear to have reached the same conclusion. Judge Thomas should be confirmed.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 15 minutes to the distinguished Senator from Arizona [Mr. DECONCINI].

The PRESIDING OFFICER. The Senator from Arizona is recognized for 15 minutes.

Mr. DECONCINI. Mr. President, my thanks to the ranking member for his allocation of time. I could take a lot more than 15 minutes because of the seriousness of this and the time that I have spent on it. We might as well get to the points here that have to be taken up.

We have serious allegations from Professor Hill; they are extremely serious for she alleges that sexual harassment occurred, and the perpetrator, was Judge Clarence Thomas. This harassment, as alleged by Professor Hill, was disgusting, and heinous comments; language that is beyond any bounds of acceptability. Regardless of whether they were said in jest or said to harass Professor Hill. There is no justification for that kind of language, if indeed it occurred.

In my opinion, after witnessing this process, after participating in this process, I believe the results are inconclusive. I do not think anybody can really feel certain, after listening to the testimony, whether one witness is more valid than the other. Claims of sexual harassment are very difficult to prove. As we know in civil law and criminal law, these allegations are extremely oppressive to the individuals, both to the victims and to the accused. They are usually committed only with the two people involved, no witnesses. As a result, its one person's word against the other.

In some sexual harassment cases there may be some physical violence which can be established immediately after the act. We are not talking about physical harassment. We are talking about allegations of verbal sexual harassment made against a judge of the U.S. Court of Appeals.

Most basic in our system is due process. I do not think due process was maintained in the process we went through, whether it was due process for Judge Thomas or due process for Professor Hill.

Professor Hill provided a very compelling and moving description with graphic sexual depictions that would raise no question in anybody's mind regarding the impropriety of the behavior. No. 1, how could somebody forget that or make it up or how could anybody actually say these things to an employee have the courage to continue in life and advance to the EEOC, to the court of appeals, and now to be nominated to the Supreme Court.

Judge Thomas, as we know, categorically denied it. He indicated on Friday and Saturday that this was not the way he ever acted. Persuasive evidence was given by friends of Professor Hill that corroborated discussions of this alleged harassment within the last 10 years.

However, witnesses for Clarence Thomas asserted his decency, his integrity, and his scrupulous standards in the workplace. Scores of former women employees came forward who had day-to-day contact with him and worked with him and said never did he utter a coarse word. As a matter of fact, if anything, they testified he was very sensitive to these issues and fired somebody in one case because a verbal slur was made by that pereon and inappropriate language would not be tolerated in the workplace.

So there is really contradicting evidence on both sides. Mutual accounts of relationships between friends was gone over and over but no clear picture emerged. As a result, you have to make a judgment on the basis of the evidence presented.

My judgment is based on my background as a lawyer. The burden of proof has to be on the person who is making the accusation. That is our system, and it is a fair system. It does not mean you cannot decide the other way, but you have to apply some type of burden of proof, some type of standard toward the accused.

In civil law, a preponderance of the evidence is the standard. A reasonable person, is the standard that is often applied. While this is not a court of law you still must apply a fairness standard in this situation. The burden of proof is clearly on the accuser, and the accuser in this case was Professor Hill, not Judge Thomas.

Clearly Judge Thomas' reputation—and, as he said, his whole life—was on

trial. It is a basio issue of fairness that he be given benefit of the doubt, if doubt exists.

If you can conclude, that it is clear that Judge Thomas' position cannot be sustained and that Ms. Hill's position can be sustained, I will respect that. I could not come to that conolusion. And based on that, it seems to me that any doubts have to be in favor of Judge Thomas.

Some will argue, "Oh, that is fine; we believe in that individual importance and the doubts, but really the doubt has to be in favor of the public." Well, indeed, that is what the doubt is when it is in favor of an individual.

That is what makes this country so different; our system provides that each individual in our society is above the Government, is more important than any group, and this is an individual you are talking about.

The evidence presented was extensive. We had witnesses on both sides to whom I give a great amount of credibility. I was moved by their testimony, whether it was on the side of Professor Hill or on the side of Judge Thomas.

We had people who worked closely with Professor Hill at the EEOC, and we had those same people who worked closely with Judge Thomas who said it could not have happened.

Well, we know it could have happened becouse they were not with Judge Thomas and Professor Hill all the time. However, they were there. They would have seen a pattern. I think a pattern would have emerged here and we would not have just one accuser. Yes, there was another person, who had been fired by Judge Thomas, who came forward with an affidavit. However, she withdrew her request to testify. I will let that rest for whatever it is worth.

Professor Hill testified that she feared that the Department of Education would be abandoned, that there would be no job for her. That was clearly refuted by the fact that she knew when she left her law firm and went to the Department of Education that Ronald Reagan had already been elected. He had made those speeches so it was very clear. Ms. Berry testified that she knew when she took the job at the Department of Education in fact she had a schedule A job, which meant that she had job seourity. Professor Hill could not be removed without cause. So she had every reason to know—she was a lawyer—what her rights were. And yet she chose—to move on with Judge Thomas to the EEOC. But she did it after some horrendous things supposedly had taken place.

We saw the former dean of Oral Roberts Law School, Charles Kothe, come and talk to us of the high regard he had for Professor Hill and how he was employed to do a special assignment for the EEOC Chairman, then Clarenoe Thomas, and how he invited both of them to come to his home for dinner and breakfast and how there was a congeniality here, a friendship here, a "joy" was his actual word. He characterized it as a time of enjoyment, exchanging humor, and stories. Then Professor Hill drove him to the airport, to show off her new car. Professor Hill continued to stay in contact with Judge Thomas. She made numerous calls to him after she left the EEOC.

So these statements represent only to me that there are contradictions here that you just cannot reconcile. I cannot. I cannot reconcile them. I come back to what is a fair standard and to me a fair standard here has to be the fact that the doubt has to go in favor of Judge Thomas.

The committee did, however, hear from witness after witness, friend after friend, and I think anybody here could make a case, for one side or the other.

I questioned whether there was a dark side of Clarence Thomas. Yet, how could he work with all of these people for so many years and not be detected—it is a little unbelievable.

In talking to lawyers who prosecute and defend these cases, if there is a pattern of harassment, they settle the case. If there is not a pattern, then they are prepared to defend the accused and go all the way.

I think that is clear here—that there was no pattern. Clarence Thomas did not have a pattern of this type of language or behavior.

Many women believe that men just don't get it. I have listened to women all my life, to mothers, to daughters, to sisters, to wives, to friends, and to colleagues. I understand, I think, as best as I can—I cannot put myself in the mind of a woman and really feel how they must feel with that kind of abuse, from someone of the opposite sex.

I think it is important that we try our best to be sensitive, and I have done my best in my lifetime to do just that.

The issue here is a power in the workplace, we are told. The issue here is abuse, and the quiet desperation of the victim. If you are not a woman, you cannot fully understand this, you cannot really appreciate it. I agree that men cannot identify with this.

So what do you do? You listen to your mother when she tells you as a young boy, a young man, and as a law student about sexual abuse that occurred to her. When she was 22 years of age, she lost a job. She got a pink slip because she rejected her boss' sexual advances. Is that something you ever forget when your mother tells you that? I know that this Senator will never forget it.

I have had women tell me of these problems when I was the county attorney of Pima County. I set up one of the first national programs to counsel rape viotims before, during, and after trial. I knew very well having talked to rape victims and interviewed them how distraught they were, and how difficult this process was.

On the Senate floor my record has to speak for itself. I have supported women's issues because they are right issues.

The Civil Rights Aot that we will take up later is directed, I believe, primarily toward women. I challenge President Bush to veto it again.

I think for all of us our awareness of sexual harassment has been heightened. That may be the single good thing that comes out of this awful situation. At no time in our Nation have people been so focused on sexual harassment than right now. I hope we will see more hearings, I hope we will see legislation. I would like to see a process, that would inolude Congress, where people could file a complaint where there would be a closed, quiet review of it, and, only if absolutely necessary be made public presentation.

Let me say regarding the distinguished chairman of the Judiciary Committee. No one has stood up for the rights of individuals, in my judgment, any greater in this body than the Senator from Delaware. This allegation against Judge Thomas has been difficult to resolve.

Senator BIDEN has been criticized for not making this allegation public before. However, everyone must understand that Senator BIDEN protected a person's confidentiality, as he should have.

The PRESIDING OFFICER. The time of the Senator from Arizona has expired.

Mr. DECONCINI. I ask for an additional 3 minutes.

Mr. THURMOND. Mr. President, how much time has he used?

The PRESIDING OFFICER. He has taken 15 minutes.

Mr. THURMOND. I yield 3 minutes to the distinguished Senator.

Mr. DECONCINI. I thank Senator THURMOND.

Senator BIDEN said, fine, we will take the information, but we can't investigate this without giving the accused the opportunity to respond to the charge.

The Judiciary Committee did not go out and seek Ms. Hill. She came to us. Senator BIDEN finally concluded that, if you want to give your name, if you are willing to express yourself, yes, I will take it up in a closed manner with those members. She did that. And he did that. He told us all.

We sat there on the 27th of September. Everyone of us, at least on the Democratio side, having had available, and I presume read, the FBI report, having been briefed by a thoughtful chairman who took his time—to go over it at great length with me and answering questions, and giving me his view. Then we all voted. There was not

a single person who stood up and said, let us hold this over so we could discuss it in executive session.

That would have been the time to delay the vote and expand the investigation.

I must say that I accept responsibility for not requesting more time to investigate this matter. However, after extensive hearings, I maintain that the claim cannot still be substantiated. Those who opposed him sat there like I did and did nothing, let it go, indicating, I guess, that they did not find it to be that serious.

When it comes down to the final judgment here, for all of us, I believe that Judge Thomas should be confirmed. He will not have been my choice. But the man does not deserve to be punished for something that is inconclusive, and that is what we would be doing to deny this man this appointment.

I thank the Chair. I thank the Senator from South Carolina.

Mr. BIDEN. Mr. President, I thank the Senator for his nice compliments.

I now yield 7 minutes to my friend from Tennessee.

THE PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I thank the distinguished chairman.

I rise today with no expectation of shedding new light on the ultimate proof of the question that is before us.

The compelling events this past week, I think we would all agree, have reached into the deepest recesses of the human heart. In this bitterly personal matter I do not believe, frankly, that the U.S. Senate can do final justioe by Clarence Thomas, and I do not believe that we can do final justice by Anita Hill. The tools and procedures of this body simply are not delicate enough, or precise enough, to resolve individual human conflict.

We are a policymaking body, established to seek the country's best interests through broad policy decisions. And I would say to my colleagues that is precisely what we must do with this nomination now before us.

Yes, the emotions have been released, but we cannot be governed by them. The Nation has been gripped by deepest passions, but these passions cannot be allowed to control what we do here today. We must decide, in the clear light of day, what is right for our country. That is the question. Then we as U.S. Senators are called upon to answer today in fulfilling our duty and our responsibility.

We are not judging a criminal case. We are not seeking to determine individual guilt or innocence. We are fulfilling our solemn obligation under the Constitution to advise and consent to a nomination to the highest court in this land, a third coequal branoh of the Government of the United States.

I do not need to remind anyone that this is a lifetime appointment we are talking about. There will be no second chance in this case. The standards of judgment that we exercise, must be the very highest that we can impose.

Mr. President, concerning the lurid aspects of this nomination, I think there is little left to say. In fact, far too much has been said already. We have had what I characterize as shoot-from-the-hip charges of perjury. We have had dark allusions to unstated proclivities. We have had ventures into amateur psychology, and I say quite frankly that these are not in the Senate's finest tradition. Frankly, I am relieved to return to a plane of discourse with which we are more familiar and to which I think we are better suited.

With respect to the charges themselves, there is no decisive proof. Some are absolutely certain they knew what went on 10 years ago. Frankly, I can forthrightly say that I do not have any corner on the truth in this matter. But I do have some very profound doubts. I do have some very real fears. There is no certainty in a matter of this magnitude. If we separate out the emotion, if we are honest with ourselves, in the final analysis we simply cannot be sure. We are compelled to construct our judgment on the basis of doubts.

Before the events of last week, many of us had, frankly, serious reservations about the qualifications of Judge Thomas to serve on the Supreme Court at this point in his career. I have been concerned that Judge Thomas does not have broad legal experience, and I speak as one who practiced law for 15 years before coming to this body. I have been ooncerned that he did not exhibit a profound grasp of the complexities of constitutional law. The truth of the matter is that he has engaged only slightly in the private practices of law and has extremely limited courtroom trial experience. He has never taught law. He has never written extensively about the law. He has been on the bench for slightly over 1 year, the youngest member of the U.S. Court of Appeals.

Frankly, the absence of seasoned experience, coupled with an apparent lack of full legal maturity raises doubts in-and-of themselves, Mr. President, about this nominee's fitness for the highest judicial office in this country.

With respect to Judge Thomas' legal philosophy, there is little more than a thin record of contradiction and evasion. Questions were not answered during the confirmation process, I suppose, under the guidance of White House handlers. Judge Thomas backed away from any explicit statement of his previously held opinions. In fact, he distanced himself from virtually all points of view regarding the most contentious legal questions of our day.

Once again, Mr. President, the result is doubt, doubt about the quality of Judge Thomas' legal preparation, and I am sorry to say, doubt about his candor. Judge Thomas has apparently sought once more, with the assistance of the White House, to build his case on character, on his totally admirable struggle to rise from poverty—we all admire that—against great odds, to a distinguished position in this country as a judge on the court of appeals. No one, Mr. President, can take away the nobility of that achievement from Clarence Thomas. The events of last week do not, in my view, toss onto the ash heap a distinguished career in public service. But, Mr. President, when you look at the record, there are real doubts.

Mr. President, we are deciding whether to send Clarence Thomas to a lifetime appointment to the highest bar of justice in this land. There are doubts, doubts about the nominee's legal experience, doubts about his legal maturity, doubts about his legal theory, and now, sadly, doubts about his character.

I ask quite sincerely: Is it in the country's best interest to lay those accumulated doubts aside? My own conclusion is that it is not. I say to my colleagues that, as hard as the judgment is, we have to err here on the side of prudence and caution.

Deep wounds have been opened in this country. I wonder if these wounds can be healed if we allowed a cloud of doubt to hang over the highest court in this land. I simply do not think we can take that risk, and for that reason, Mr. President, I shall cast my vote against Clarence Thomas here today.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield one-half minute to the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, today I will vote in favor of the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. In earlier statements on this subject, I stated the reasons why I thought he was qualified to serve as an Associate Justice of the U.S. Supreme Court. Those reasons have not changed.

I observed some of the testimony of the witnesses at these recent hearings of the Judiciary Committee, and I reviewed the hearing record. I am not sure we will ever know all the facts that are relevant to the accusations that were made by Anita Hill.

It seemed to me that the hearings were not conduoted to ascertain the facts. They were designed and managed to discredit Judge Thomas and to satisfy those who were opposed to his confirmation.

However this vote turns out, I urge the Senate to consider carefully how seriously this institution has been damaged by this episode and resolve to ensure in the future that the process of oonfirmation will be characterized by fairness to those nominated and to witnesses as well.

Mr. THURMOND. Mr. President, I yield 2 minutes to Senator CRAIG.

Mr. CRAIG. Mr. President, like many Americans, I spent a good number of hours last week and this past weekend monitoring the Judiciary Committee proceedings, reviewing the evidence, and trying to decide how to vote on the confirmation of Judge Thomas.

But something else fundamentally important has happened in this country: The beginning of a necessary and important debate about sexual harassment, the protection of employees, policies, if they exist or not, and how this Nation should handle them. I would have to tell you that I did not, until this morning, have a sexual harassment polioy in my office here or in my offices in Idaho.

That is now being corrected today. And in the course of the last 4 days, there has been a rising of national consciousness of tremendous significance. We have learned that sexual harassment is real, that it comes in a variety of forms, and that it has happened to thousands of Americans, men and women alike.

I hope we have learned a few other things, Mr. President. I hope the American people have learned that this is indeed a serious matter, serious enough to stop the U.S. Senate dead in its tracks, to reverse, and to begin to hear again charges and to examine those who are charged and those who are accused. We did that, and for hours that occurred, Mr. President.

Today, we have an aocuser who has tried to make a case agalnst Judge Clarence Thomas. I am one of those who believe she failed.

I simply do not believe that Anita Hill proved her case agalnst Clarence Thomas. And in this system—although it is not a court of law—our American sense of fairness requires that an accuser has the burden of proving her accusations.

This process has not revealed any new reason for me to vote against the confirmation of Judge Thomas—and so I reaffirm my previous support for him. As I have said before, Judge Thomas is an extraordinary man, highly qualified as a member of the bar and bench, and possessing the kind of temperament that will serve America well on the Supreme Court.

In short, I will vote to confirm.

Mr. President, if the Senate does not confirm this nomination, we will have failed the American people—those people who are loudly registering their support for this man.

But I think the Senate will do the right thing. I think we will confirm Clarenoe Thomas. And by our vote, we will be signaling to Judge Thomas and his supporters that he is vindicated of these charges and is entitled to take his seat on the highest court in the land, with all the dignity and honor that office entails.

I must also add my voice to the others who have called for an investigation of the breakdown of the judicial committee system. I commend our majority leader and Senator DOLE for pledging to follow through on this very important matter.

The PRESIDING OFFICER (Mr. SANFORD). Who yields time.

Mr. THURMOND. I yield 20 minutes to the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I appreciate the seriousness of this particular nomination process.

Mr. President, I have been interested in comments about the White House dominating the strategy on this side. Anybody who knows Senator SPECTER knows he does his own legal work and nobody dominates what he does. Does anyone assume that all these battles I had in the past have been dominated by other people?

The fact of the matter is that for anybody who believes that, I know a bridge up in Brooklyn that I will be happy to sell to them with the help of Senator KENNEDY.

Mr. President, I also want to join in the comments of Senator DECONCINI about our chairman. Mr. President, the way these processes work—and the process would work well if there was not so much influence from the outside—is that if an allegation comes in, the chairman then notifies the ranking member. In this case they both agreed to order an FBI check—it was an extensive check, the FBI did a good job—and then they brought it back and they felt they should notify the Members. Senator BIDEN notified everybody on his side. Nobody failed to have an understanding of what was going on. And he did what was right there.

These FBI reports contain raw data. You get everything from enemies to nuts, although in this particular matter it does not appear like that FBI report had any of those factors. They make a value judgment about whether they make the matters public or call an executive session, but that would have been the way to go.

If anybody on that committee before that committee vote had wanted an executive session, they would have gotten it. If anyone who wanted or desired to put this matter over for 1 week he had an absolute right to do it. If anyone had said in that open markup that, "I have read the FBI report" or "I have heard of the FBI report" or "I have been briefed on the FBI report," "and I am concerned about this allegation of sexual harassment; I think we need public hearings," I do not think there would have been any question they would have been listened to.

But there was a judgment made, as there is in many of these things, that a sexual harassment allegation 10 years old with all the difficulties that this case had and especially where the accuser had requested confidentiality.

The value judgment was made, and any Senator could have overturned that judgment.

Senator BIDEN did everything that he should have done, and so did Senator THURMOND. I have to tell you, their decision joined in by the rest of the committee was a valid decision under the circumstances; the alleger did not want her name used.

But someone on that committee breached the rules, waited until after that vote, and then leaked these matters to the press and did great harm to two, I think, basically good people. And both of them have been smeared in the process, and all because of a political motivation—and I do not think anybody could conclude otherwise—of the person who did this in full violation of the rules of ethical responsibility and of just good basic decency and fairness.

And Clarence Thomas has been smeared. And anybody that does not believe that just has not listened to the facts. And, unfortunately, Professor Hill has not come out of it well either.

Mr. President, I just want to tell you that I am very concerned about sexual harassment and those charges. As ranking member of the Labor Committee, former chairman of the Labor Committee, I have to tell you that this issue is something that we overview and we take seriously. And it must be taken seriously. And one of the good things that has come out of this, I think, is that everybody has a heightened awareness and hopefully a heightened sensitivity to these issues.

I have 3 daughters that I love very, very much, and 3 sons, and I have 9 granddaughters and 3 grandsons—12 grandchildren. I do not want any of them to have to face the types of sexual harassment that we have heard alleged since we have started to hear these matters.

Mr. President, I am extremely concerned about them. And it is good that maybe all of us have a heightened sensitivity. I have listened to people all over this country, men and women, express their concerns about this issue.

It is easy for all of us to say that we do not like these things to occur. But, Mr. President, they are occurring. They are occurring in tremendous quantities around the country. Many people are not sensitive to them or have not been up to now.

Mr. President, I have known Clarence Thomas for 11 years or thereabouts. I have personally participated in all five of his confirmation processes before the Senate, all five of them. I presided over three of them, his nomination as Assistant Secretary in the Education Department and both of his nominations to the Equal Employment Opportunity Commission. I saw people raking over everything to try and hurt him then. And they were tough confirmations, at least the latter two.

And then I have sat in on, of course, his confirmation before the Judiciary Committee to the Circuit Court of Appeals for the District of Columbia. And I have sat in on his confirmation throughout this process.

This man's life has been thoroughly scrutinized. He has been watched over, because many people on the far left have hated having him as Chairman of the Equal Employment Opportunity Commission, even though he has done a remarkable job. A job so well done that the Washington Post itself complimented him for it. It was not perfect, but it was darn good, and better than anybody who preceded him.

I am telling you, and everybody in this country and everybody that listens or everybody who sees this or reads this, that Clarence Thomas is a honorable, decent, wonderful man. And I think if you look at the fact that at one point he was so poor he had had a divorce, or was in the midst of divorce, and he sold his only car to help keep his son in school. That does not sound like a man on the prowl, or a person who does not have good values to me.

He has tremendous values and everybody, everybody, who has worked with Clarence Thomas, or knows Clarence Thomas, or has a relationship socially with Clarence Thomas knows he is a good man, everybody, that is, except this one woman and some others, one or two, did not come forth and I think would not come forth and rightly so.

This man is a decent human being whose life has been really wronged and really hurt because of a process that broke down because of at least one dishonest person who sits in this body, the greatest deliberative body in the world of only 100 people.

And his life, though not ruined by any stretch of the imagination, has been severely harmed.

Now it seems to me that all of that lapsed time, and all of that service to the Federal Government, and all the good things he has done should not be swept away because of one unsubstantiated set of allegations that really do not stand up, that were 10 years old, more than 9 years after the statute of limitations expired. We have a statute of limitations in order to stop people from bring up charges years thereafter—so they have to bring them within a reasonable time or eat them; so that they have to live within that statute and get these charges made; so that the problems can be corrected; so that if the individual does not realize that he or she is committing sexual harassment that individual can be informed of it; and so that such actions can be stopped and recompense can be brought. And that is what we all wish had been done here.

But more than 9 years after the statute of limitations expired? Small wonder that Senator BIDEN and Senator THURMOND and virtually everybody on the Committee agreed, well, these are serious, but let us get some credibility to the process.

And they were at the last minute. She did not want her name known. The committee knew about them, and the vote was still 7 to 7. And I do not think one of the seven voted against him because of those allegations at that time.

Mr. President, I would just like to mention a few questions that I think anybody who looks at this will have to ask. I think these questions are serious and I am only mentioning a few. There are others that I think people who have watched this process and have listened to the testimony could come up with.

No. 1, why did she wait 10 years? This was a law graduate from one of the great law schools of this country working in the very area that overviewed these problems in both the Department of Education and the Equal Employment Opportunity Commission. Why did she wait 10 years? And why should it suddenly arise on the weekend before the final vote was to take place?

No. 2, why did she not raise this issue in five confirmations of Judge Thomas—five confirmations here in the Senate? These are important. Everybody knows it. Everybody knew that Clarence Thomas was on the fasttrack when he came up for the Circuit Court of Appeals for the District of Columbia—everybody knew it—the fasttrack to the Supreme Court. Everybody knew that a great Justice was getting elderly and probably would retire and that this man was a likely pick.

No. 3, if Judge Thomas was harassing her at the Department of Education and saying these vulgar, sexually explicit things to her, why did she not complain either to some official at the Department of Education or to some official at the Equal Employment Opportunity Commission, as an attorney, graduate of the Yale Law School? As I watched her comments last night where she said she thought it was her duty to come forth I could not help but ask: Why was it not her duty closer to the time when the alleged facts occurred, if they did occur?

And I am telling you, I do not believe they occurred. I believe she believes they occurred, but I do not believe that they did.

No. 4, if she felt uncomfortable going to the appropriate officials at the Department of Education or the Equal Employment Opportunity Commission, then why did she not confide in Gilbert Hardy of her old law firm who put her in touch with Clarence Thomas to begin with? Why did she not solicit his advice and his assistance?

No. 5, if Judge Thomas was harassing her at the Department of Education, why did she go to the Equal Employment Opportunity Commission with him no more than 2 or 3 months after the alleged harassment took place and possibly only 1 month after she says the last incident occurred?

No. 6, if she was uncertain about her ability to stay at the Department of Education, why did she not make any inquiry with the designated replacement of Thomas who came on board while she was still there? That would be a natural thing anybody would do: "Can I stay? Are you willing to consider me?"

No. 7, if she did not want to talk to that designated replacement, then why did she not call anyone in the personnel office or anywhere else or anyone else to find out what her rights were at the Department of Education?

No. 8, if she left the Department of Education in 1982 because she feared the Department was going to be "abolished," why did she leave a lucrative private sector job just a year earlier to work in the same Department? To the extent there was any risk at Department of Education, was going to be abolished, that risk was greater in 1981 than when she left in 1982.

No. 9, while she was with Judge Thomas at the Equal Employment Opportunity Commission, why did women, really strong, credible women who worked closely with both of them and around the Chairman's suite of offices, testify to the committee that they never saw any signs of distress or discomfort or irritation of the sort that you would expect in Professor Hill? Why did Professor Hill not suggest any concerns to any of her coworkers?

No. 10, why after leaving the Equal Employment Opportunity Commission, did Professor Hill continue to call Judge Thomas seeking assistance in obtaining research, and leaving messages that clearly show a continued interest in cordial, social professional relations with him?

No. 11, why did she call him so many times? Not only the 11 times mentioned in the logs, but 4, 5, or 6 times mentioned by Miss Holt who nobody could doubt. I have never seen a person who testified more forthrightly, and favorably to Professor Hill when she had a chance with regard to their personal friendship and relationship. She was fair to her. She just does not believe her and said basically she knew this did not go on and so did the other three witnesses on that panel. They were very powerful witnesses.

No. 12, if those lurid references to a Coke can and a pornography star, if you want to use that term, occurred, why did she not use those vivid and dramatic conversations in her September 23, 1991 statement to the Judiciary Committee or in her interview with the FBI? She did not. Why is it so circumstantially interesting that one of those references was used in a 1988 case right in the very circuit in which she was teaching law school in the very type of a case she would have been concerned about as a civil rights expert and lawyer? And why was the other

quote so vividly similar to the one in the book?

No. 13, why, when Clarence Thomas years later, years later after she had her own job and was out from under his oontrol, why when he visited Oral Roberts University did Professor Hill socialize with Judge Thomas? Why did she have breakfast with him? Why did she volunteer to take him to the airport? Why was she so friendly to him? The dean said she was tremendously friendly toward him.

I just do not think it makes sense that she would have treated somebody who she alleged treated her with such disdain that she would have treated him as a long lost friend.

No. 14, as Dean Kothe said, how could Professor Hill even think of suggesting Clarence Thomas speak to the university on the issue of sexual harassment if she believed any of her allegations to be true. How could she? Where was her professional obligation then—allow him to come to speak with these students, most of whom were in their twenties.

No. 15, how could Professor Hill, according to two witnesses at the summer ABA convention, say that it was "a good thing" that Judge Thomas was being named to the Supreme Court of the United States of America.

No. 16, why if Judge Thomas said these vile things did Professor Hill not try to distance herself from him? You saw when Professor Fitch said that there were some vile things of a similar nature said to her she got away from the person as quickly as she could. That was really credible testimony by Professor Fitch.

These persons who testified on behalf of Judge Thomas were as good as any witnesses as I have ever seen. You could not have found witnesses in central casting for a movie that were better than those. They were wonderful, honest women and they loved Clarence Thomas as a professional leader.

No. 17, why would Judge Thomas as a African-American male, acutely sensitive to black issues, why would he——

The PRESIDING OFFICER. The Senator's 20 minutes has expired.

Mr. HATCH. May I have just 2 more minutes?

Mr. THURMOND. We are mighty short of time, I say to the Senator. Go ahead.

Mr. HATCH. I will be brief.

Why would Judge Thomas, as an African-American male who was acutely sensitive to black issues, use those antiblack stereotypes, racial stereotypes? To me that was a dramatic part of his testimony. And he testified so credibly. If you read that record and watched him, you knew he did. Why would anybody of his sophistication, his intelligence, and his experience even use that type of language? I do not think it adds up.

I wish I had more time Mr. President. But let me just conclude by saying that even if some people believe that Anita Hill, or that they assume Anita Hill believes what she is now saying, I do not think anyone can ignore these questions. I just do not think they can.

Some may come up with certain explanations to respond to one or some of these questions. But all of them cannot be satisfactorily answered. And cumulatively they raise some very grave doubts about her story.

I do not know why she told this story. I know many believe that she is telling the truth. And I tend to try to understand that.

All I can say is that a very good man, whom many of us know personally, whom we have watched through these 11 years, has been seriously damaged by these allegations by one woman's unsubstantiated allegations that nobody else who worked with him on a continuing basis believes.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. THURMOND. I yield 5 minutes to Mrs. KASSEBAUM, the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, the question now pending before the Senate is, to say the least, extraordinary in the starkly conflicting points of view one can hold. I am sure I have been just as troubled as a majority of my colleagues. Even by the tumultuous standards of recent Supreme Court nominations, this nomination sets new and troubling benchmarks.

Three weeks ago, I rose here to state my support for the confirmation of Judge Clarence Thomas. We now know that at that moment, the FBI was engaged in an investigation of charges of sexual harassment against the judge by a former employee.

Nine days ago, confidential statements by that former employee, Prof. Anita Hill, were leaked to the news media without her approval or the Senate's authorization. From there, as we all know, events took on a life of their own.

Over the past weekend, the Senate Judiciary Committee has attempted to salvage what all of us must consider both a sad and tragic episode in our history. Despite the herculean efforts of the committee's chairman, the Senator from Delaware, and the ranking member, the Senator from South Carolina, and other members, we now know this was not merely a difficult assignment, it was an impossible one.

Even so, the committee's report is before us and the Senate now must vote—a straight yes or no—on whether Judge Clarence Thomas should take a seat on the Supreme Court.

Mr. President, I believe Judge Thomas—or any nominee—deserves a fair, honest, and straightforward decision from the Senate on the merits of his nomination. Judge Thomas will not get that now, regardless of whether he is confirmed or rejected. Instead, he will either advance to our Nation's highest court under a cloud of suspicion he can never fully escape. Or, he will return to the circuit oourt with the equivalent of a guilty verdict stamped on his resume.

Whatever you may think of Judge Thomas, whether you support or oppose his nomination, he deserved better than we now can give him.

Mr. President, there are many things about this whole affair that deeply trouble me, but none disturbs me more than the fact that not only will Judge Thomas not get a fair, honest decision, neither will Anita Hill.

I know it now is expedient for some to attack not only the oharges that Professor Hill has leveled against Judge Thomas, but to vilify and demonize what they call "this woman."

Mr. President, let me make olear that I have no intention of being party to a "high-tech lynching," a phrase I flatly reject as having any validity here. But, I also have no intention of being party to an intellectual witch hunt against Professor Hill.

I see no evidence in the record before us to support any claim that Professor Hill is mentally unstable, is inclined to wild fantasy, or is part of a decade-long conspiracy to get Clarence Thomas. What I do find in this record is much less comforting than these easy and highly speculative theories.

What I find instead are serious charges from a credible witness who has no conclusive evidence to substantiate these allegations. Nothing more than that and nothing less.

Mr. President, I am not a lawyer, and I will leave to others a careful legal analysis of Professor Hill's case, but I want to briefly enumerate the difficulties I have in assessing it.

First, no one disputes that her charges are, by legal standards, ancient history. If this were a trial, which we all have said repeatedly it is not, this case would never even be seriously considered by any court in the Nation because of the time that has elapsed.

The reason for this is both simple and sound—charges of sexual harassment are difficult to prove, and they are extremely difficult to defend against. No man can or should be required to prove he is innocent, certainly not 8 to 10 years after the fact. However, that is essentially the unfair burden that Judge Thomas has faced due to the very fact that this is a political and not a legal arena.

Second, these charges come at the end of a long confirmation process and a long list of other unsubstantiated and unproven allegations against a nominee who has undergone four previous oonfirmations and five FBI background investigations. In this context, these charges are understandably suspect. Whatever the actual merits, they

take on the appearance of a desperate, last-minute effort to destroy Judge Thomas.

While neither the age of the charges nor the context of their filing proves or disproves anything in my mind, they do create a special burden of proof that I do not believe Professor Hill has met.

Third, in the 10 years since these events are alleged to have occurred and in the multiple investigations of Judge Thomas during that time, there is no credible evidence that he has engaged in similar conduct with any other female employee. In fact, dozens of such employees have presented testimony and other affidavits praising Judge Thomas' behavior toward women on his staff. No other woman has come forward with credible, convincing evidence of sexual harassment by the Judge.

While this does not prove that Judge Thomas did not engage in such conduct toward Professor Hill, it is in my mind a gaping hole in the evidence presented against him. It is possible that the judge harassed only Anita Hill or that he harassed others who have not come forward, but there is no evidence to support either theory.

Fourth, there is little if any evidence in this record that Professor Hill's own behavior at the time of the alleged events demonstrates she was being sexually harassed by Judge Thomas. While Professor Hill has presented witnesses to testify very credibly that she complained of harassment many years ago, none of them had firsthand evidence to document the specific events the professor alleges.

In fact, there is no dispute that Professor Hill filed no charges at the time, remained on the judge's staff, and moved with him to a new position without even a cursory effort to find another job. While she told some friends of the alleged harassment, she told no one in her office, not even close friends, and no one there remembers any sign or suggestion that she was being harassed.

By Professor Hill's own account, she maintained a cordial professional relationship with Judge Thomas during and after the alleged events. None of this disproves her allegations, and none of it is necessarily inconsistent with the behavior that might be expected from a woman who faces sexual harassment by a superior. But, taken together, all of this raises reasonable doubts.

Fifth, and in some ways most troubling to me, is the way in which these charges were raised. The record before us is somewhat confused on this point, but apparently Professor Hill was approached and encouraged to come forward by Senate staffers who heard rumors about her allegations from unnamed sources.

Apparently, she agreed to provide a statement under the condition that her name would not be disclosed to the public, to the full Senate or, acoording to some media reports, even Judge Thomas himself. While there is some confusion on what Professor Hill authorized the committee to do, it appears that she never agreed to a full-scale investigation of these charges, which would mean that her name could be used in FBI interviews and committee inquiries with anyone who might know anything about this matter.

If this is true, I find it difficult to comprehend what was intended in the raising of these charges.

Is it possible that Professor Hill, an experienced attorney and law professor, believed that Judge Thomas' appointment could be killed in secret? Was she led to believe the mere raising of these charges could force the judge to withdraw or lead the oommittee to reject his nomination with no explanation to the full Senate or the public?

Mr. President, I find no evidence that Professor Hill is part of some dark conspiracy, but there are real questions now about whether she was used by others in an effort to subvert the Senate's confirmation process. I have no evidence to prove this is so, but the question now hangs in the air around us. If that question is not resolved, it may well be that the darkest cloud of all from this affair will cover the Senate itself.

Let me be clear that I intend no criticism of the Judiciary Committee, or the chairman, or any other member. In fact, I believe Senator BIDEN worked long and hard to see that this nomination was handled in a fair and honest manner.

As I understand it, that chain of events occurred in this way: Professor Hill was encouraged to make an anonymous statement, and she chose to do so. When that was not sufficient for the apparent purpose of forcing the judge's withdrawal, she was asked to agree to a limited FBI investigation, and she did so.

The FBI interviewed Professor Hill, Judge Thomas, and one other witness and provided a report to the committee. A vote was scheduled on the nomination. No member of the committee on either side of the aisle objected and asked for further investigation or a resolution of the charges. The committee then voted, and the nomination was scheduled for a floor vote under a time agreement.

At some point in this process, someone with access to Professor Hill's statement leaked it to the press—apparently without her approval and clearly without the approval of the committee. The rest, as they say, is history.

Mr. President, this evening we must answer the first of two questions that arise from this matter: Whether to oonfirm or rejeot Judge Thomas' nomination. Shortly thereafter we must resolve the other question: What the Senate will do to assure no repetition of this affair.

Three weeks ago, I spoke in support of Judge Thomas' confirmation. In all that has come to light since then, I find no compelling basis to overturn that judgment. In fact, I believe it would be manifestly unfair for the Senate to destroy a Supreme Court nominee on the basis of evidence that finally boils down to the testimony of one person, however credible, against his flat, unequivocal, and equally credible denial.

Mr. President, throughout my years here I have taken pride in the fact that I am a U.S. Senator, not a "woman Senator." When some of my male colleagues have suggested that I know nothing about national defense because I am a woman, I have been offended. In the same vein, I have to assume that many of my male colleagues are offended by the notion that they cannot begin to understand the seriousness of sexual harassment or the anguish of its victims.

On the question before us, some women suggest that I should judge this nomination not as a Senator but as a woman, one of only two women in the Senate. I reject that suggestion.

The issue before me is whether, with all of the ambiguities surrounding this matter, the allegation by Professor Hill has been substantiated to the point that I should change my previous view.

I have reached the oonclusion that it has not and, therefore, I will vote to oonfirm Judge Thomas as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to my friend from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. BIDEN. Mr. President, 30 seconds of my own time. Let me apologize. Every one of our colleagues is prepared to speak in more depth, and much longer, because they feel so strongly on this nomination for and against. Unfortunately because of the unanimous consent we cannot go beyond 6 p.m. I only have 44 minutes left to distribute, and I thank my colleague. I know he has much more to say but I appreciate his taking only 4 minutes.

Mr. GRAHAM. Thank you, Mr. President. In deferrence to the brief time, I will summarize my remarks.

I start this process with the presumption of correctness of the nominee of the President of the United States. I believe that the person elected by the people of America deserves the benefit of the doubt as to the individual whom he selects to serve on the U.S. Supreme Court. As Governor of Florida for 8 years, I had the opportunity to appoint many judges, including four members of our Florida Supreme Court.

The qualities I looked for included intellect, judicial temperament, character, and the ability to grow in the responsibility as a jurist.

I apply those same standards to our current responsibility of confirming nominees of the President.

Mr. President, the nomination of Judge Clarence Thomas to the Supreme Court received my presumption of correctness. During the initial confirmation proceedings of Judge Thomas, I found an erosion of that presumption. I was concerned with several aspects of information developed at that hearing. I was concerned about Judge Thomas' limited experience, concerned about the American Bar Association's qualified recommendation, concerned about actions at the EEOC, particularly as that reflected an insensitivity to discrimination against older Americans, concerned about some of the evasive responses.

But in spite of all of that, in spite of the erosion of the presumption, I still was prepared to vote for Clarence Thomas because I felt that he had demonstrated the ability to grow. And I was hopeful that while he might barely be across the line of acceptability today, that in his service on the U.S. Supreme Court, he would grow in wisdom and judicial quality.

The allegations raised by Professor Hill, in my mind, caused a cessation of that judgment and a turning to two fundamental questions: One, who was telling the truth? And, two, did it make any difference?

On the second question, yes, it does make a difference. The charges that were leveled by Ms. Hill are significant. They go to the issue of integrity and character. They relate not only to events that have occurred in the past, but also to a denial of those events today. In my opinion, if those charges were to be believed, then the presumption of correctness would have been erased.

Who is telling the truth? Mr. President, we will probably never know the ultimate answer to that question, but I approached this issue by asking this question: What should be Ms. Hill's motivation, other than the one she stated, that is, she was called upon, did not volunteer, and felt that it was her responsibility as a citizen to answer truthfully. That is a laudable basis for her action, and I have heard no credible alternative motivation suggested, no motivation which is consistent with the manner in which she made this information initially available.

So I must accept as essentially a factual statement of the circumstances that which was presented by Ms. Hill. With that, the presumption of correctness has evaporated and with that, I cannot vote for Clarence Thomas to be a member of the U.S. Supreme Court.

Mr. President, at a later time, with more opportunity, I wish to talk about some of the concerns that I have about this nomination process, but I would like to add just one thing in conclusion. I listened to these hearings—Mr. President, could I have 1 additional minute?

Mr. BIDEN. I really do not have any more time at all. I really do not.

Mr. GRAHAM. Mr. President, I will withhold that personal experience for a later date, but our country is hurting on this process, and I hope that we will now turn ourselves to healing. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 3 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, it is clear in the more than 13,000 phone calls my office has received in the past week that the process we have witnessed here in Washington has grabbed and held hearts and minds in every American household—in every American workplace.

And, as a Senator from Minnesota, I cannot consider this nomination without trying very hard to understand the context of fear and vulnerability that has helped make this process we are witnessing here much larger and much more important than the confirmation of one justice to the U.S. Supreme Court.

I was reminded last night by a fellow Minnesotan, Mr. President, that the charges we have heard in this matter follow an entire summer in my State of brutal murders, kidnapings, and other cases of physical abuse and criminal conduct directed by men against women and against children.

For many Minnesotans, this proceeding is about Melissa Johnson, brutally murdered just days after she had graduated from St. Cloud State University.

It is about Margaret Marquez, a young child separated briefly from her parents in a busy Minneapolis discount store, her body found at an interstate rest stop several days later.

It is about Jacob Wetterling, still missing 2 years after his gunpoint kidnaping near my hometown in rural Stearns County.

It is about Carin Streufert, sophomore at the University of Minnesota, abducted on her way to a neighborhood business place, then raped and murdered.

It is about Geraldine Steinbuck and her two daughters, Jessica and Ashley, also from St. Cloud, and also brutally murdered in the sanctity of their own home.

The calls coming into my office, Mr. President, are also telling graphic and personal stories of sexual harassment thousands of Minnesotans have seen or experienced in the workplace.

Hundreds of callers have felt the need to tell their own stories, many dredged out of distant memories and many laden with guilt and anger at not being told at the time.

And, hundreds of others—both men and women—have expressed anger that it has taken a televised national hearing to raise the consciousness—and raise the visibility of all Americans—to vulnerabilities they have felt—and indignities they have experienced—for an entire lifetime in the workplace.

Mr. President, there is no way that I can personally understand and appreciate that feeling of anger. But, it is real. It is justified. And, it must motivate each and everyone of us to commit ourselves to using this incredible experience to drive our own future actions—to effectively deal with violence against women and children and to deal with sexual harassment in the workplace—including the workplace represented by the U.S. Senate.

When the Senate last met a week ago, the decision was taken to delay the vote on this nomination while the Judiciary Committee in particular, and all of us in general, sought to get the truth. At a perilously high cost, we have learned that we did not have the means to get the truth in a situation like this.

For 250 years we have been trying to find a fair and objective way to get the truth when an accusation is made. We have developed a system of rules and procedures to prevent injustices from being done. It is called a court of law.

Unfortunately, a Senate Committee cannot act as a court. There are no rules of evidence, no impartial judge or jury. Those who render the final decision are as far from being insulated from public opinion as they can be. They are politicians. There are constant demands for play-by-play commentary, which no judge would allow. There are no advocates for the parties, except the finders of fact themselves.

As wrenching and costly as the hearings were for everyone involved, all we really heard as far as the truth was concerned was an enormous amplification of the original allegation and the categorical denial. No fair person can make a final, objective decision from what took place in the hearings.

But that is not to say that the hearings had no meaning; they were an important event for us all to go through. That is why I have received 13,000 phone calls in my office—that is right, 13,000 and I thank each and every one of these people for getting personally involved in this issue. We should not forget this event; to the contrary, we should make the most of it.

The progress of American values is not an evolutionary process, making slow steady steps forward. Especially in recent times, our values change in

revolutionary ways, when we share a common experience which changes the way we see things. Guard dogs attacking civil rights marchers. The tragic death of Ryan White. Oil-coated birds in Prince William Sound. All changed our values in a radical way.

America has undergone a revolution this week in the way it views the issue of sexual harassment in our society. It has taken a spectacle of this magnitude to penetrate years of ignorance, misunderstanding, and neglect.

But today, America understands what sexual harassment means, it understands how wrong it is and it is ready, I hope, to take the necessary steps to ensure that all people, women and men, receive the respect and dignity they deserve in the workplace. We have still got a long way to go.

That begins, I say to the 97 men and 2 women I serve with, right here. This great institution has slipped a few pegs in the last month, which may be an embarrassment for us personally, but the real tragedy is constitutional.

This body has a unique role to play in this democracy, which we cannot fulfill if people do not trust us.

The American people know that we have difficult problems to solve, and they understand that. But what they cannot tolerate is hypocrisy.

That this Congress would pass a series of laws on civil rights, worker safety and yes, sexual harassment, and then exempt itself is hypocrisy, pure and simple. That was a sense that came through my phone calls, whether people were for Judge Thomas or against him.

Our colleague Senator GRASSLEY has tried to show us the way for years on this. Now we understand what he is talking about.

Let us get our own house in order. Now.

The Civil Rights of Act of 1964. The Fair Labor Standards Act. The Equal Pay Act. The National Labor Relations Act. The Americans with Disability Act. The Age Discrimination Act. The Civil Rights Restoration Act.

The Congress wrote them.

The Congress needs to obey them.

I have a sexual harassment policy in my office. What we need is to see it in the Senate rule book and see us in the Federal statute book.

This institution needs to come out of our 1950's style informal approach to these matters, and thrust us back into a leadership role. The Committees on Rules and Ethics have to address this matter immediately and show us the way. Needless to say, much is at stake.

The vote we will all cast in a few minutes is not, however a referendum on sexual harassment. There will be ample opportunity in the very near future to demonstrate where we stand and what we have learned on that subject. We have work to do right here.

When the tempers have cooled, we need to reexamine the confirmation process. Frustration over divided government, Republicans in the White House and Democrats in the congressional leadership, is inevitably going to find expression in the confirmation process. But there must be limits.

Character is a valid issue, but we cannot allow the precedent to be established that the presence of an unsubstantiated allegation is enough to disqualify a President's choice. If we do, the American people will eventually suffer, because the brightest and the best will end up making money rather than policy.

Mr. President, I will vote for Clarence Thomas because the substance of what I know about him is more compelling than the single character charge I have heard made against him. Those who have been acquainted with him and worked with him for decades, including many women coworkers, say he is a man of character, determination, and courage. The hearings certainly bolstered that impression.

His mentor is our colleague JACK DANFORTH. The strength and character of that relationship over the last 12 years has been exemplary. When put to the ultimate test, that relationship has been remarkable.

Some have argued that the experience Clarence Thomas has gone through is so damaging that he cannot hope to serve effectively after all this. Judge Thomas candidly said that he died last Saturday, and Senator DECONCINI rightly asked how he oan be as good as a justice as he would have been.

My experience tells me the opposite. Pain and tragedy are part of life, and they really show what a person is made of. For people of character a confrontation with mortality makes them a stronger person than they ever were before.

The President of the United States, and not 100 Senators, is the person the Constitution entrusts with the responsibility of nominating justices to the Supreme Court. Advice and consent, in the standard I have consistently applied over 13 years, means making a judgment as to the character, qualification, and temperament of the nominee.

I come to the same judgment today that I did when I met him face to face: That he is a person America should be proud of.

This choice is difficult because of the intense heat of the politics of the moment. Whether this vote turns out to be right or wrong will be decided over three decades in Judge Thomas' votes and opinions on cases we cannot even imagine at this point in history.

I have concluded that Judge Thomas, with his work, his experience as a African-American and his life of triumph over obstacles, has earned the trust required to confirm him for a lifetime appointment to the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. BIDEN. I yield 4 minutes to my friend from Connectiout and apologize it is only 4 minutes.

Mr. DODD. Mr. President, let me thank the distinguished manager and the chairman of the Judiciary Committee.

Mr. President, this debate on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States is the oulmination of several months of Senate consideration. And that is how it should be, because we are talking about the confirmation of a person who would be one of only nine Justices who are the ultimate arbiters of our Constitution. That is an awesome responsibility for him and, in turn, for every Member of the Senate.

Mr. President, again, I have always felt that passing on the qualifications of a nominee to the Federal bench is one of the most important duties that I will ever undertake as a Senator. While I have always felt that Presidential nominations deserve some measure of deference and that in some cases close calls should be decided in favor of the President, I have also always felt that the Senate's constitutionally mandated role of advice and consent is considerably broader than merely rubberstamping the President's choice.

I place this level of importance on this particular decision because of the nature of judicial appointments. Nominees to the Federal bench, if confirmed, are lifetime appointees charged with the awesome responsibility of interpreting and applying the Constitution to all measure and manner of dispute. Appointees to the Supreme Court inevitably affect the course of constitutional law for decades. And so it is with President Bush's current nominee to our Nation's highest Court.

Judge Thomas, if confirmed, would be only the 106th Justice to serve on the Supreme Court of the United States. Unlike any other court, however, this Court is the supreme arbiter of disputes in our land. As such, it is of paramount importance that aspirants to this High Court be of good character, have the highest legal qualifications and possess a genuine commitment to upholding the Constitution.

Mr. President, it is no secret that as of last week I was leaning toward voting to confirm Judge Thomas based on my belief that Judge Thomas would grow into the job and turn out to be a very able member of the Supreme Court. I also believed that Judge Thomas' life experiences would bear great weight on his decisionmaking and that Judge Thomas would bring some measure of diversity to the Court. However, over the course of this past week I have had the opportunity

to reread the record, as well as listen to the testimony of this past weekend's hearings. Many nagging doubts resurfaced. Doubts that I thought I had resolved.

Mr. President, three questions have guided my decision on Judge Thomas' fitness to serve on the Court. First, I asked whether or not Judge Thomas has the legal and technical ability, skill, and experience necessary to serve on the Supreme Court. I have accordingly reviewed the Judges' own writings, transcripts of the Judge's testimony before the Judiciary Committee and the testimony of other interested parties.

While Judge Thomas may not be the most or best qualified nominee for the job, the American Bar Association's assessment of Judge Thomas is qualified. In my own review of the record, I have found nothing in Judge Thomas' background which suggests any legal or technical inability to execute the duties of a Supreme Court Justice.

Second, I have considered whether or not Judge Thomas is capable of, and faithfully committed to, upholding the Constitution of the United States.

The question for me is whether or not Judge Thomas is capable of, and faithfully committed to, upholding the Constitution. Of primary concern is whether Judge Thomas has the proper temperament to decide each case on the basis of the facts presented and in the light of the law previously decided. I have concluded that while Judge Thomas is not the nominee I would have chosen either ideologically or philosophically, then again, neither would I expect the President to select such a nominee. Nevertheless, I have had nagging doubts as to whether Judge Thomas while capable is committed to upholding current constitutional case law.

In an effort to answer these doubts, I have placed great stock in the counsel of such notables as Prof. Guido Calabresi, dean of the Yale Law School, who told me that he felt that Judge Thomas would, in fact, grow into the job. Dean Calabresi expressed a sincere confidence that Judge Thomas would turn out to be a very able member of the Supreme Court.

Many of the people that I have discussed this nomination with have argued that Judge Thomas' life experiences will bear great weight and that he will bring diversity to the Court. We have all been impressed with the story of Judge Thomas and are certainly aware of Judge Thomas' rise from the poverty of Pin Point, GA, and the Jim Crow South to the doorstep of the Supreme Court.

These achievements alone, however, should not and must not be the sole reason to confirm Judge Thomas to a seat on the Supreme Court. I believe that the road that Judge Thomas has traveled and the obstacles that he has had to overcome will, over the course of his judicial career, play a very important role in the shaping and evolution of his judicial philosophy. Few, if any, Members of the Senate can boast of such experience.

Mr. President, finally, I have had to determine whether Judge Thomas has the character to serve on the Supreme Court. I have struggled for many days now trying to come to some determination on Judge Thomas' fitness to serve on the Supreme Court.

In an attempt to answer that question, I have reviewed Judge Thomas' background, listened with interest about his background, and have read the transcripts of this weekend's hearings as well as the many news accounts in an attempt to assess Judge Thomas' character and freedom from conflict.

The revelations of Prof. Anita Hill turned what I thought had been a thorough review of Judge Thomas' character on its head. Like many Americans, I, too, was riveted to the the television all weekend watching the hearings. As I watched, it became increasingly apparent that neither Judge Thomas or Professor Hill were on trial. The Senate was on trial and the issue was whether or not this institution could adequately ferret through the testimony of both the judge and Professor Hill as well as an array of witnesses and find the truth.

The committee was in a very difficult position. It is very easy with the benefit of 20/20 vision to say how the Judiciary Committee should have gone about getting to the truth. But the fact is that the Senate is ill-equipped to act as a court of law or settle disputes between persons. The events that led up to the hearings and the hearings themselves made this point readily apparent.

Mr. President, as I have just stated, hindsight is 20/20. It is easy to say how I would or would not have handled the hearings. I, therefore, do not want to blame the committee as so many others have done. I want to merely point out that the committee might have gotten more information if the committee had elicited the information in executive session. The bright lights of gavel-to-gavel coverage makes good drama but it is simply not the best way to find out the truth. Airing this dispute in public helped little to get to the truth of this matter.

My fear is that we will set a precedent for the airing of these investigations in public, where it is least unlikely that any meaningful information will be secured. The judicial confirmation process is too important to have it trivialized on television. The events of the past week must not be repeated if we are to ensure any measure of integrity in the confirmation process.

Mr. President, I was once told that the Supreme Court of the United States is the only institution of our Government that has as its sole enforcement weapon the power of moral persuasion. The Supreme Court does not have an army, nor can it enforce its decisions at gunpoint. The Court's power is that of moral persuasion. Americans must believe that a true and real understanding of the Constitution flows out of the Court. This belief in our system must never be undermined. The question today is whether Judge Thomas should be confirmed to the highest court in the land.

Over the past week I have had the opportunity to listen to the testimony of Professor Hill and her corroborating witnesses. They were very credible and oompelling witnesses. After a weekend of hearings and reading hundreds of pages of material on this case, I have too many doubts as to who is telling the truth.

Mr. President, to be sure, Judge Thomas' response to the accusations were forceful, believable, and emotional. But categorical denials did not address the questions and doubts I had hoped would be resolved.

Mr. President, I must reiterate that while I have always felt that Presidential nominations deserve some measure of deference the Senate's constitutionally mandated role of advise and consent is considerably broader. As such, it is of paramount importance that aspirants to this High Court be of good character, have the highest legal qualifications and possess a genuine commitment to upholding the Constitution.

Mr. President, it has been said, "if in doubt, don't!" And the fact is that I have far too many doubts about Judge Thomas to say yes.

I am deeply concerned that placing a person on the Court with a cloud over his head undermines moral persuasiveness of the Court.

I have, therefore, concluded that based on my own review of Judge Thomas' background, legal qualifications, and character that I will vote against the confirmation of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

Mr. President, I think, like all of us and many of us here, we begin with a presumption to support Presidential nominees for whatever position, including the U.S. Supreme Court. That has been the case with this Senator over the past 10 years. I have supported all but one of President Reagan's, now President Bush's, nominations to the U.S. Supreme Court. Regretfully, Mr. President, in this case, I will not support this nominee.

If I had to paraphrase the remarks that I prepared, it comes down to the issue of doubt, serious doubt. I certainly, like everyone else, was deeply impressed with the background of Clarence Thomas. It is a compelling story.

There are very few in our generation born of the postwar period who have traveled the distance this man has in the few short years of his life.

Mr. President, I am also impressed with his intellectual and legal background as a graduate of Yale Law School in my home State of Connecticut. But, Mr. President, I was left with doubts, doubts that were reflected in the first series of hearings in which Clarence Thomas testified regarding his appreciation of case law and precedent, his unwillingness, I think now for obvious reasons, to express his own views on some of the important matters that have been before that Court. I regret that Clarence Thomas may have been overhandled by people from the White House and elsewhere to counsel him as to how to respond to questions. In a sense, Mr. President, I blame ourselves in part for that because God help anyone who comes up and expresses a definitive view on one of the hot button issues of our day. So, in a sense, we bear culpability for people unwilling to come forward to express those views or the fact that the universe or the world from which we choose these candidates has so shrunk that anyone who does have any views cannot pass muster in this body.

As were most Americans, I was riveted to the television set this weekend watching the compelling testimony before the Judiciary Committee. I have great admiration for the chairman of that committee and its members. They were put in the terrible position of having to deal with a very, very divisive, a very emotional topic and subject matter, sexual harassment.

Mr. President, I could draw no definitive conclusions from this weekend except, of course, that sexual harassment is an issue that deserves far more attention than has been given over the past number of years in this country.

But I did not leave necessarily with one clear idea of who was guilty of perjury, or guilty of the crime charged. But, Mr. President, I was left with doubts. It was not cleared up for me.

Mr. President, I happen to believe that when voting for a nominee to serve on the highest court of this land, where the only weapon the Court has is moral persuasion; they cannot point a gun at anyone's head; they cannot bring an army together to make sure that their decisions are obeyed by the people of this land; it is only moral persuasion which ultimately allows them to carry the day.

Mr. President, I would be deeply concerned that that moral persuasion, the only weapon of the Court, would somehow be eroded by this nomination. For those reasons I have my doubts. And I happen to believe if doubts are primarily what you have, it seems to me you must err on the side of caution, if erring is going to be the case.

Mr. President, if Judge Thomas is confirmed, I hope to be proven wrong about these doubts. But I cannot take that chance for as much as a four-decade appointment to a Court that will decide many of the compelling issues of our day.

I have great respect for my colleague from Missouri. I spoke with him recently before taking the floor, to tell him personally of my decision. It has not been an easy decision. In fact, I was leaning in favor of this nomination. But because I could not rid my own mind of the doubts that have been gripping me over the past number of weeks, I regretfully have taken the position I have this afternoon and with regret I will vote not to the confirm Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Delaware.

Mr. ROTH. Mr. President, when I was first elected to office, a man I admired greatly—Senator John Williams, who was known as the conscience of the Senate—taught me a lesson I will never forget. On the floor of this Senate, Senator Williams was known as Mr. Integrity. His reputation was absolute, despite the fact that he dedicated his life to exposing corruption in Government. One would think his silver character would tarnish in the process, but Senator Williams remained above reproach. And his lesson was simple.

He told me, "Bill, I will never, ever, go after a person's reputation until I am 125 percent certain that he is engaged in wrongdoing—until I have tangible evidence to support the claim. Because a man's reputation is the most sacred possession he has in life, and once it is even challenged it can never be completely restored."

I believe that after this weekend, all America understands the wisdom of John Williams. The reputation Judge Clarence Thomas—a reputation he spent 43 years to establish—was challenged by a woman who was credible, competent and articulate. The conduct she alleged is both heinous and inexcusable. Like every man and woman in America, I cannot say whether the conduct occurred. But make no mistake about it, sexual harrassment is a vile crime—a serious problem that must be dealt with in no uncertain terms. As a consequence of the allegations leveled against Judge Thomas, the reputations of both he and Professor Hill have been tarnished; they will never be the same again.

The tragedy is that these reputations were sacrificed without tangible evidence on either side that either conclusively confirmed or denied the alleged activity. So as we determine the fitness of Clarence Thomas to sit on the Supreme Court we must do so on what we know to be fact. And these are the facts:

Fact: Clarence Thomas has served our Nation well in increasingly important roles of responsibility, four of which were sustained by this very body, the U.S. Senate.

Fact: Clarence Thomas has been one of the most scrutinized nominees for the Supreme Court in history, and in 43 years of his life has done nothing to prove him unworthy to serve with the exception of this alleged misconduct which took place 10 years ago.

Fact: This alleged sexual harassment that has cast aspersions on Judge Thomas's reputation is not confirmed with persuasive, independent evidence. As the Washington Post said today, of the four witnesses who testified on behalf of Professor Hill, "None said she had told them of his alleged obscenities. None seemed to know Judge Thomas or to have been privy to their workplace or social relationship." On the other hand, "those witnesses who appeared before the committee and who had been part of Professor Hill's and Judge Thomas' working life all testified on the other side."

Mr. President, none of those who knew both Judge Thomas and Professor Hill could even imagine such misconduct was taking place. Such misconduct ran completely contrary to their daily experiences with, and observations of, Clarence Thomas. Likewise, in the 33 years before these allegations were said to take place and in the 10 years since, there has been nothing—not one indication of misconduct.

Though the proceedings over the weekend were not in a court of law, our Nation's deeply held conviction—our sense of fair play—is that individuals are innocent until shown otherwise. Because this is so fundamental to our ethics, it is the burden of the accuser to lay out the evidence. And again, the evidence was not sufficient.

Mr. President, these are the facts. It is a tragedy that the reputations of two very bright, very diligent people were put into question this weekend. It was a tragedy that Americans had to see such a vital and important process of Government being manipulated. The nomination process for the position of Associate Justice on the Supreme Court is no time for political machinations. It is a time to put an intelligent, proven and judicious individual in a most venerable position. I reaffirm my support for Judge Clarence Thomas to serve as an Associate Justice on the Supreme Court.

Unfortunately, the appointment process to the Supreme Court has become politicized because we have lost the original intent of our Government's Founders. In the last half century, people have looked upon the highest court of our land as a means of promoting their political agendas. This

perception of the Supreme Court's role has opened the floodgates of political activism and special interests. Leaks are considered fair game as a means of preventing an individual of the wrong political views from receiving a lifetime appointment.

Mr. President, it is going to be difficult to reform the process of appointing and confirming Supreme Court Justices until the role of the Supreme Court is seen as it was intended to be seen—as the interpreter of the law—the Constitution, statutes and treaties—in specific cases and not as a political body to promote special interests. Mr. President, we must get the process under control. The only remedy is to return to the Constitution.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. Mr. President, I yield 4 minutes to my colleague from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. Speaker, I wish to thank the chairman of the committee for yielding time. I understand, I say on behalf of many of us, the difficult job he has in parceling out time. I had intended to make some lengthy remarks here, but in just the few short minutes that are now being allocated to the Senators to speak, I wish to make just a couple of points briefly.

No. 1, I made my decision on this nomination before all of the events of the past weekend and before the allegations those hearings explored were made. I made my decision to vote against the nomination of Judge Thomas based on the record of the first hearing, based on my analysis of what I regard as the still evolving judicial philosophy and a variety of other issues and concerns which I discussed here on the floor of the Senate last week. I have not changed the conclusion which I reached at that time. I will elaborate on my reasons for the record.

I did wish on this occasion, however, to make a very few remarks about the hearings of the last several days. First of all, I underetand the perception of many in this country that Judge Thomas has been treated by the process unfairly. There are many more telephone calls being received in my offices in favor of Judge Thomas than calls being received in opposition to Judge Thomas. Many feel the leak was inherently unfair and that as a result the charges oame to light at the last minute and this was unfair.

I also would like to say that I think it would be wrong to judge Clarence Thomas as an individual on the basis of one's perception of these allegations even if one ooncludes they are true. He is a very complex individual, as is everyone. I think the testimony of his friends and acquaintances over the years is very powerful.

But, Mr. President, we owe fairness to Prof. Anita Hill also. She did not ask to come forward. She was pulled into this process, also by the leak. She came forward and gave testimony which seemed to me to be extremely honest and credible. I know the country is pulverized now on all of these subjects, but I regret very much that at one point she was charged by a Senator with having perjured herself.

I disagree strongly with that characterization. I thought that everything she said was very logical, and I thought the four corroborating witnesses, who talked about how she had confided in them 10 years ago at the time this took place, were very believable and credible.

I also think, incidentally, that one of the things we have all been learning about on the subject on sexual harasement is what goes on inside the mind of a victim, which sometimes leads that person to keep silent about it and to continue maintaining a facade of friendship and an outward relationship so long as that secret is kept.

But, Mr. President, this discussion of the allegations was in a sense a microcosm of larger questions also involving a large change in our way of thinking about the relationship between men and women.

This Court, if Judge Thomas is confirmed, will be deciding a number of issues that bear directly upon that relationship.

Mr. President, there is no mystery about my view on the nomination of Judge Thomas. I made my opposition clear long before this weekend's hearings opened. And that opposition, based on Judge Thomas' judicial philosophy, on his record and experience, based on the evidence before the Judiciary Committee and Judge Thomas' testimony, that opposition has not been affected by this weekend's hearings. Whether you believe Professor Anita Hill or Clarence Thomas about the allegations of sexual harassment, whether you don't know who to believe about those charges, Judge Thomas' record and views—or lack of—were presented to the committee and convinced me that at this time, because of his still-evolving judicial philosophy, because of his inexperience in dealing with constitutional issues, because of his lack of judicial maturity, Judge Thomas' nomination did not warrant confirmation.

That does not mean that I watched this weekend's hearings as a disinterested observer. I don't know how anyone could have done so. For all of us here in the Senate, for our Nation as a whole, for men and women of every color and heritage it was a painful—though necessary—travail. We watched together, studying the television closeups for clues, searching the eyes of all those who spoke for signs of honesty, for an assurance of integrity and character, for some clear indication of some pristine truth. Yet, as hard as we may have looked, as much as we believed one side or the other, we had to, all of us, acknowledge human limitations. We simply cannot look inside someone's heart; we're unable to see through to the soul. Some questions are left unanswered. We are left to weight the evidence and search our own hearts.

In Judge Thomas' favor, it is significant that there was no pattern of sexual harassment evident through the testimony of women who worked with him, through extensive interviews with women who worked with him. There was no indication that this was routine or that Judge Thomas was insensitive to the women with whom he worked; women he says he promoted and helped throughout their careers.

But the Senate—and quite frankly, our Nation—owes fairness to Professor Hill as well. She stepped forward to clear her conscience; to break a silence long held because she believed so strongly that too much was at stake. She had pushed these memories away through other confirmation hearings when Clarence Thomas came before the Congress. But this time, it was a nomination to the highest oourt in our land, a lifetime appointment that comes with an indelible impact on our future and our society. Anita Hill felt she had to, as she said yesterday, perform her duty as a citizen. She had to speak up.

We owe her fairness, not speculation about nonexistent peychological ailments, not baseless accusations about perjury, not theories about her relationships with men, or her inability to get along with women, not a smear campaign determined to undermine rather than examine her statements. We owe Anita Hill fairness.

Consider the credibility of the witnesses who testified in her behalf during this weekend's hearings. They presented clear, corroborating evidence both of the allegations themselves and of Anita Hill's own temperament and honesty. This is not about a book deal with a movie to follow, as some have tried to paint Anita Hill as a cheap opportunist. This is about a woman already rich in courage determined to speak her mind and follow her convictions.

There are important lessons in this painful episode. To state the obvious, we have learned that sexual harassment is a much bigger issue than we—than most men—had supposed, or could have imagined. But we have also learned that men and women see and feel the meaning of events differently. Men and women have different ways of looking at the same events, different ways of understanding them, different points of outrage. It sounds simple, but its implications are not.

The revolution in thought about relationships between men and women is shaking the Senate and the country.

And there is a gradual recognition by men that women see many things differently, a gradual recognition of the unremedied complaints and unheard frustrations of women who have long fought for answers, for justice, for rights, for a place at the table, and a voice in the decisionmaking.

The hearings this weekend presented us with a microcosm of this revolution. The fact is, most women see issues before the Supreme Court differently than President Bush and his white, male, chief advisers; most women see issues differently than men. And women are stepping forward to express their point of view.

President Bush confronts this revolution in thought with indifference. The extremists in the right wing of his party demand a nominee tc the Supreme Court who will try to move history in reverse, who will not just ignore but try to turn back the women seekiug to be heard. Yet, the majority of women react to this extremism with angry and renewed energy, with a force that cannot be ignored or denied. President Bush knows that, too. So, he nominates a candidate likely to side with the extremists once he's on the Court but who remains enough of a mystery to keep the revolution under wraps.

Think about the evidence presented to this Senate. In the last 10 years, Judge Thomas signed documents calling for the overthrow of cases protecting women's rights. Now he tells us he didn't know what he was signing and besides, he didn't mean it anyway. This, on an issue affecting a woman's most basic, most personal right. We are asked to believe that over 18 years—18 years—this man never discussed Roe versus Wade, one of the most controversial oases ever to be decided by the Supreme Court. Over and over, he stonewalled the committee on this and other critical issues of such major importance.

Again, this weekend's hearings present a microcosm of a much larger debate where we were forced to once agaln address the same issues.

We don't know what happened 10 years ago. What did Clarence Thomas say and do? Was there any wrongdoing at all? What did Anita Hill do? We won't ever know for certain. What we do know now is that a man remembered and saw much differently than a woman remembered and saw.

There are those who questioned how, if anything happened, Anita Hill maintained contact with Clarence Thomas over the years and, more than that, even sought him out when she was in Washington or he was in Oklahoma. How do you explain the phone messages? The trip to the airport? The kind comments at the bar association meeting? It doesn't make sense. Until, of course, you think about different perspective.

Anita Hill was a young woman at the Education Department without high-powered friends or contacts. Clarence Thomas was her contact, clearly advancing in an administration that was offering him rewards. She was his assistant. She moved with him to the EEOC because she thought it was the only option that made sense. She wanted to stay in Government civil rights work and the Department of Education was under attack by the Reagan administration. Over the years, Thomas would remain a well-placed powerful contact who provided an entry to a world she would otherwise be prevented from entering.

Why is it so surprising that a woman would push back to the very recesses of memory such unpleasantness? Why is it so surprising that woman stayed silent rather than move to destroy her still-forming career by taking on a much more powerful and intimidating foe who was clearly a favorite of the White House? Why is it so surprising that a woman decided it made more sense to forget the injustice than try to fight it in a system that seemed weighted against her? Why do victims of other kinds of abuse stay silent for so long? There is, quite simply, a public and a personal truth. Anita Hill did not look for this most public of forums. She did not approach the Senate. She did not seek out the Judiciary Committee. But when the Judiciary Committee approached Professor Hill about her experience with Clarence Thomas, she felt she had to, finally speak out, to state that personal truth publicly, however painful it may be.

The Senate must investigate how Professor Hill's statements became public. Where or who was the source of the leak? What happened? Appropriate steps must be taken. But those statements have been made public and the firestorm they have sparked must force us to confront a new reality.

As a nation, we must begin to understand a little more about why women feel so strongly when men don't, about why there are issues that women view differently than men; about why women feel so strongly about the case law that Clarence Thomas would be making as a member of the Supreme Court.

But President Bush seems determined to do his best to overturn existing laws protecting women's rights and to make new laws restricting those rights.

President Bush, by sending to the Senate someone who might be a good person, certainly a smart and hard-working person, but a person with no clear views and a skimpy judicial record, focused this debate on questions of character. We were asked to judge Clarence Thomas not on his judicial views but on the admirable journey he has made from Pin Point, GA to a Supreme Court nomination.

President Bush wanted off the hot seat. He wanted to turn the debate away from the issues. President Bush failed to see that there are some things important to women that are not important to men.

Mr. THURMOND. Mr. President, I yield 4 minutes to the distinguished Senator from Alabama.

Mr. SHELBY. Mr. President, 2 weeks ago, I stood in this Chamber in support of the nomination of Judge Clarence Thomas. I stand here today, a witness—like all of my colleagues—to one of the most public, painful, and perplexing spectacles ever to befall the U.S. Senate.

I do not think there is a Member of the Senate who was not affected by the process. And clearly both the nominee and Professor Hill suffered under the glare of these hearings.

But, we are not here today to discuss the process and its faults. We are here to decide whether there is sufficient evidence that Clarence Thomas sexually harassed Anita Hill.

I take very seriously charges of sexual harassment and discrimination in the workplace. As a member of the Senate Armed Services Committee, I have been outspoken about the problem of sexual harassment in our Armed Forces. Sexual harassment has no place in our military, in Government, or in corporate America.

I do not take Anita Hill's allegations lightly and I believe that it was not only fair, but appropriate that the Senate acted to hold hearings on this issue. In fact, these hearings will undoubtedly serve to bring an issue out into the open that has for too long been hidden in America's workplaces.

The point is not how bad sexual harassment is. We stand in agreement on this issue. We come back instead to the question that has plagued the committee, the Senate and the American public: Was Professor Hill sexually harassed by Judge Thomas?

This is a question I have been struggling with since learning of the allegations through the media last weekend.

Chairman BIDEN, in his opening remarks, reminded us that our judicial process maintains the presumption of innocence. I have read the FBI report, I have listened to the testimony presented during over 3 days of hearings. I have sifted through reams of additional information submitted during this hearing process.

As a former prosecutor, I know that the onus now is on myself and 99 of my colleagues to review the information made available during these hearings and decide if there is sufficient evidence to oonclude that Judge Thomas sexually harassed Professor Hill.

Both Professor Hill and Judge Thomas were credible, forceful witnesses. But for me, doubts linger, questions remain. I am simply not certain that these allegations have been fully substantiated. I wonder for instance:

Why Professor Hill followed Judge Thomas from the Department of Education to the EEOC even though her job at Education was safe;

Why Professor Hill testifled that she never saw Judge Thomas outside of the office only to have Judge Thomas state under oath that he had been to her home on a couple of occasions—testimony Professor Hill later confirmed;

Why Professor Hill, in a conversation with the Washington Post, qualified the EEOC telephone logs as "garbage" and that she had not called Judge Thomas except to return his calls, only to admit under oath that she did initiate some calls to Judge Thomas; and

Why during four previous Thomas nominations, Anita Hill never came forward with this information.

Although this was not a trial, we have no choice but to look to our established legal traditions and guidelines and decide if the burden of proof has been met.

There are inconsistencies. The testimony is inconclusive. I have weighed the evidence, studied the hearing transcript and have searched my soul during these past several days. Now, the decision is to whom you give the benefit of the doubt. I give it to the man accused—Judge Thomas.

Over the years, the tenet "innocent until proven guilty" has become a cornerstone of America's legal system and in fact, is synonymous with democratic values. To deny this right to Judge Thomas, would be to deny him the same treatment that every American is entitled to.

In announcing my support for Judge Thomas on the first of October, I recognized his life and legal experience as factors that would ultimately serve him well as a Supreme Court Justice. Those beliefs have not changed, in fact they have become even stronger.

Judge Thomas has endured this process with dignity, with courage and with grace. I have no doubt that his service on the Supreme Court will be marked by a reliance on these same characteristics that have served him so well during these past days.

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to restate my opposition to the confirmation of Clarence Thomas to be Associate Justice of the Supreme Court.

One week ago, before the postponement of today's vote, I elaborated at length on my decision to oppose Judge Thomas—so I will not go on at length today. My opposition was based upon his reoord at the EEOC, his lack of ooncern for the rights of the elderly, his legal credentials, the views expressed in his speeches and writings, and his testimony before the committee.

Everything in Judge Thomas' record suggests that he will be an active and eager participant in the current Supreme Court's ongoing assault on established court decisions protecting civil rights, individual liberties, and the right to choose. Judge Thomas' refusal to discuss that record with the committee in a candid and straightforward manner confirms my concern that he will move the Court in the wrong direction.

Mr. President, the past several days have been some of the most difficult that I have experienced as a Member of the U.S. Senate.

The recent hearings into the charges of sexual harassment leveled against Judge Thomas were painful, exhausting, and tortuous for everyone involved in them. I think my colleagues on the committee will agree that one would have to look long and hard to find that anything good resulted from these unprecedented proceedings. This was an ordeal.

However, it is ridiculous even to attempt to compare anyone's suffering in this matter with the horrible and destructive experiences of both Professor Hill and Judge Thomas. And after listening to them both testify—both forceful, both articulats—it is almost impossible for me to fathom how one of these people could be the cause of the other's pain.

When I heard Judge Thomas speak to our committee, he was persuasive—I found myself wanting to believe him.

But when I heard Anita Hill testify to our committee, I was deeply moved. When I heard her, she was calm, sincere, very believable. I cannot imagine that she was telling us anything but the truth.

It was an outrage, Mr. President, that the committee's confidential documents were leaked to the press. In that connection, I have asked for and will support an investigation into that matter.

There is no argument that these hearings will be remembered as unfortunate, unsenatorial, and at times, just plain ugly. Inappropriate things were said and done, allegations and innuendo and malicious charges were tossed about with regard to Professor Hill, those charges were in my opinion unfair.

Issues were raised that had nothing to do with whether or not Anita Hill was telling the truth about Judge Thomas.

On a personal note, I want to say a word about the hearings. If a Senator is to fulfill his responsibility as a member of the Judiciary Committee, he ought to be judicious. At one point in the hearings, I was not. While questioning Mr. Doggett, I unfairly asked him questions about allegations lodged against him. I should not have done that—it was not fair to him—and I apologized by personal letter to him that same day.

Mr. President, I will oppose Judge Thomas for the reasons I have set forth here today, and for the reasons I have stated previously in the committee and here on the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield 3 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The distinguished Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I am going to vote for the confirmation of the nominee of the President. I want to note that Clarence Thomas is perhaps the most investigated nominee to the Supreme Court in America's history. He has had five FBI background investigations inquiring into every conceivable aspect of his life: his character, his education, and his personal behavior under almost all circumstances. He has withstood this, and he has understood the extraordinary inquiry and, in my opinion, he has emerged unscathed. How many of us could say the same, if such an investigation had been conducted of us?

Mr. President, if I were convinced that the charges by Prof. Anita Hill were true, I would vote against the nomination of Clarence Thomas for the Supreme Court. The charges were serious, in my view.

However, the Clarence Thomas described by Anita Hill is not the Clarence Thomas I watched endure the 100-day plus inquiry by the Senate Judiciary Committee. I did not recognize Anita Hill's Clarence Thomas in any aspect from what I personally saw during the hearings. Anita Hill's Clarence Thomas is not the Clarence Thomas the FBI investigated. He is not the Clarence Thomas that Senator DANFORTH had worked closely with over all these years.

Whatever Anita Hill has claimed about Clarence Thomas, no one else who has every known him supports her description, nor believes that he is capable of the actions she has alleged. No one who supported Anita Hill's allegations with any specificity or with any particularity appeared in the Judiciary Committee hearings supporting her notion of him. Even those who declared themselves supporters of Professor Hill know nothing of the alleged particulars. Indeed, no one who has spoken under oath confirms any of the allegations made by Professor Hill.

Some of my colleagues have asked why Professor Hill would make these charges 10 years after the alleged occurrence, after she transferred to a new workplace with the one who allegedly harassed her, and after she had helped the person with confirmation hearings.

I cannot answer that question. Nothing I have seen in the FBI record, and no one I have heard talk of Clarence Thomas, and nothing I saw during the

last 3 days of the Judiciary Committee hearings confirms, in any way, the allegations made by Professor Hill.

Some will say that in the absence of persuasive evidence to the contrary, we should come down against Clarence Thomas. I do not think that is the case. I believe that by his demeanor during this ordeal this past week, he has positively affirmed his qualifications to be an Associate Justice of the Supreme Court. I will vote for him.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I will momentarily propound a unanimous-consent request which has been cleared by the distinguished Republican leader. I ask unanimous consent that the time consumed in my so doing not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that on Wednesday, October 16, at 10:15 a.m., the Senate proceed to the consideration of the veto message on S. 1722, the unemployment benefits bill, and that it be considered under the following time limitations: Two hours for debate, to be equally divided between the two leaders, or their designees, and that at 12:15 p.m., without any intervening action or debate, the Senate vote on the question of the bill's passage, the objections of the President notwithstanding.

Mr. THURMOND. Mr. President, we have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the Senator from Louisiana [Mr. BREAUX].

Mr. BREAUX. Mr. President, the process of confirmation is supposed to be one of advice and consent. In this case, very little advice was sought, which is why now so little consent is being given. This process must change.

I made an initial decision to support Judge Thomas' confirmation after meeting personally with Clarence Thomas, after hearing his testimony, and the testimony of both supporters and also his opponents. I also supported the delay in the vote because of the charges which are serious, and women, in particular, have a right to be proteoted against sexual harassment in their lives. It has no place in America and cannot be tolerated.

Essentially, Mr. President, we now have or are debating the character of Judge Clarence Thomas. Character, Mr. President, is not one incident, nor is it one sentence, nor is it even 1 day in the life of a person. Character is a composite; character is the totality of a person's makeup.

Here we have one person saying something very bad happened, and another saying, no, it did not. No one in this body can, with certainty, say who is right and who is wrong. To help us determine what is right, we need to talk with more than one person; we need to talk to many people who knew Clarence Thomas, who worked with Clarence Thomas, and who socialized with Clarence Thomas.

What do these people tell us? Mr. President, they tell us that Clarence Thomas was a man who treated his colleagues and his coworkers with respect and dignity—both men and women. When men committed sexual harassment, Clarence Thomas came down on them, and he came down on them very hard. He fired them. The people who knew Clarence Thomas, who worked with Clarence Thomas, say he is not the person that would insult and harass anyone.

Others who said that Clarence Thomas was a bad person basically had little or no personal knowledge or personal contact with him. They testified about what Prof. Anita Hill said about Clarence Thomas—hearsay only, no actual knowledge. It is wrong for us to seek and to search for one incident in a person's life, and when we find it, say: aha, we have determined his character, and his character is bad.

All of us have to get back to basics and to look at the total picture, the complete picture, to determine a person's character. Ralph Waldo Emerson said:

> Don't say things. What you are stands over you the while and thunders so that I cannot hear what you say to the contrary.

I now suggest, Mr. President, that years of action and years of performance by Clarence Thomas indicate that we have a man of character, a man who deserves to be oonfirmed by the U.S. Senate.

Mr. President, the search and destroy mission should end; the confirmation should begin.

The PRESIDING OFFICER. Who yields time?

Mr. KOHL. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, the Senate and the country have been considering this nomination for a long time. We would need a good deal longer to understand everything, but the schedule will not allow that. We will vote tonight. So let me share some of my thinking with you.

Three weeks ago, I voted against the confirmation of Clarence Thomas, when the Judiciary Committee considered his nomination. I will do so again today. My opposition then, and now, is based on my belief that he is not qualified, on judicial grounds, to serve on the Supreme Court.

I spelled out my ooncerns in a statement on the Senate floor on September 26, which I ask appear at the conclusion of these remarks. (See Exhibit 1, Mr. KOHL.)

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. In spite of the drama of the last week, we cannot forget that this is more than a vote about Clarence Thomas' guilt or innocence on the charge of sexual harassment, more than a vote about whether he was treated fairly or not. This is a vote about whether or not he is qualified to serve on the Supreme Court.

I do not think he is.

Let me tell you why I voted against him in committee.

Judge Thomas lacked a comprehensive judioial philosophy—he did not articulate a clear vision of the Constitution. After listening to him and reading his statements and speeches, I was unable to determine what views and values he would bring to the benoh. I also expressed concern about his lack of legal curiosity. Judge Thomas told the committee that Roe versus Wade was one of the two most significant decisions in the last 20 years. Yet he also said that he had never discussed that decision with anyone, and had no views about it.

I also noted that Judge Thomas demonstrated a limited level of legal knowledge. When asked questions of law, many of his replies were disappointing. In contrast, Justice Souter displayed a wealth of constitutional understanding at his confirmation hearings.

Judge Thomas had a full opportunity to tell the oommittee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his elevation to the Supreme Court. He failed to do that. And, as a result, he failed to win my oonsent to his confirmation.

But, of course, now the charge of sexual harassment has to be factored into a decision.

After 3 days of hearings, all anyone can know for sure is that someone is lying, flat out lying, lying under oath and lying in front of the American people.

And we do not know who it is.

Judge Thomas vigorously, passionately and categorically denies the charge. The witnesses who testified on his behalf all tell us that it is inconceivable for him to have done the things he is alleged to have done.

Professor Hill is also a most credible witness. Her account is tellingly detailed. Her behavior suggests that her motive was not to advance a political cause, or satisfy some personal need other than to tell the truth as she saw it. And witnesses told us that she spoke of the alleged harassment at the time it was supposed to have occurred, nearly a decade ago.

Both Judge Thomas and Professor Hill tell convincing stories. Yet neither

is fully believable. And in the end, we do not know what actually happened.

But we do know that one of them lied. We do know that one committed perjury. Given that fact, I am frankly amazed that we are going to vote today at 6 p.m. Every objective person must agree that the evidence is inconclusive, the facts are murky, the truth is unknown. There is, then, at least a possibility that we may be placing a man on the Supreme Court who has committed perjury, which is a criminal act.

While we all want to get this over with, in my judgment, we should not be taking that chance.

But we will. We will, Mr. President, because politics, once again, has overcome the search for truth, because the need to win has become more important than the need to serve the best interests of our Nation, because we have a schedule to keep instead of a Nation to govern.

I think we tried to get at the truth in these hearings. But we did not get the whole story. In part, that was because Judge Thomas did not address the issue at hand. Instead, he continually tried to shift attention to complaints about a conspiracy and charges of racism.

Even if those concerns were true—and I do not for one minute believe they are—they do not respond to a charge of sexual harassment. As to conspiracy, I would simply say that, given the fact that Professor Hill told people about these allegations nearly 10 years ago, that is absurd on its face. As one witness told us, ehe would have to be a prophet to come up with a plan like that. And as to racism, that is without merit. Professor Hill has a commitment to conservative causes, she supported the nomination of Robert Bork to serve on the Supreme Court, and she is obviously proud of her heritage as an African-American.

So, Mr. President, here we are, not happily, not enthusiastically, but here, nevertheless, at the point when a decision must be made.

But we are also at a point when the American people will make a decision about the nature of their Government and its credibility. Based on the calls coming into my office, I am afraid of what that verdict will be.

I understand and share their anger. But I do not fully share their conclusion.

I would remind people that initially the Senate Judiciary Committee conducted a serious and dignified debate about Judge Thomas' qualifications, a debate which Judge Thomas himself said was "a very fair one."

Still, having said that, I fully recognize that there were fallures in the process.

Perhaps the hearings on the sexual harassment charges should have been held in closed session—but Judge Thomas never requested that. So the hearing was public. And it was not perfect. In fact, it was often ugly. But not holding hearings would have been even worse. That would have been unfair to Judge Thomas, Professor Hill, and the American people.

But I will tell you this: politics played too big a role. The President failed to nominate the best qualified candidate in order to score political points. The candidate failed to be forthcoming during his confirmation hearings. The Senate failed to approach the nomination in a non-partisan way. A Supreme Court nomination should not be decided on a partisan basis. It should be a decision based solely on the best interests of the country.

Mr. President, a week ago, the votes were there to confirm Judge Thomas. I did not agree with that decision, but I accepted it.

But someone did not.

Someone leaked confidential information. Some person, and some groups, decided that the decision made by Professor Hill, the leadership, and the Senate was not good enough for them. Someone decided to use whatever means necessary to thwart the will of the majority and the rights of an individual, in violation of the Senate rules, in violation of the wishes of Professor Hill, in violation of any sense of decency.

The democratic process did not entirely fail here—some people failed to understand the democratic process.

They acted on a philosophy which is endemic throughout the country: a philosophy that too often fails to respect the integrity of the democratic process, which seeks to short circuit it by financial contributions from special interests, which seeks to circumvent it by seeking special privileges, which condones the notion that we can have everything we want without paying for it.

Mr. President, at some point, if this Government is to have credibility, we must conduct ourselves so that we can serve as leaders of this Nation rather than just as a mirror of its ugliest and least appealing features.

This is not directly relevant to the Thomas nomination, but it is relevant to our ability to have whatever decision we make on that nomination accepted by the American people we have been elected to represent and seek to lead.

Thank you, Mr. President. I yield the floor.

EXHIBIT I

[From Cong. Record, September 26, 1991]

NOMINATION OF CLARENCE THOMAS

Mr. KOHL. Mr. President, when a vacancy develops on the Supreme Court, there is always a flurry of talk about what standards the Senate ought to use as it discharges its advice and consent responsibilities. That theoretical discussion, however, soon submerges when the name of the nominee is announced by the President. Then we forget theory and turn to speculation about what the nominee's record tells us about his or her views and what the prospects are for confirmation.

In my opinion, Mr. President, we would be better served if we engaged in that process from the perspective of some clearly articulated standards of judgment.

The Constitution allows each Senator to apply any standard they wish. My standard is simple: judicial excellence. In my judgment, any nominee to the Supreme Court of the United States—the Court which interprets our Constitution and protects our liberty—must be exceptional.

When a President nominates someone to serve in the executive branch, we owe some deference to his desires. Absent compelling evidence to the contrary, the President is entitled to have the people of his choice serving in his administration and implementing his policies. But the Supreme Court represents a coequal and independent branch of Government. It is not an extension of the executive or the legislative branch. It serves neither; it applies the Constitution to both. Therefore, a President's nominee has no presumption operating in his or her favor; instead, the nominee accepts a burden of proof—a burden to demonstrate to the Senate that he or she ought to sit on the Supreme Court, that he or she deserves a lifetime appointment.

Over the past 43 years, Clarence Thomas has demonstrated many admirable qualities. He has demonstrated that he is a man of great character and courage. He has demonstrated that he has the strength to triumph over adversity. He has demonstrated that he has retained his sense of humor and that he deserves the respect and admiration of his many friends.

In my judgment, however, Judge Thomas has not demonstrated that he ought to sit on the Supreme Court. Let me tell you why.

First, Judge Thomas lacks a clear judicial philosophy. Less than 2 years ago, when Judge Thomas was nominated to serve on the appeals court, he told us that he did not have a fully developed constitutional philosophy. That did not disqualify him for a low court, which is requirsd to follow precedent. But the Supreme Court creates precedent—it interprets the Constitution in which we as a people place our faith, and on which our freedoms as a nation rest. So it was my hope that during the hearings, Judge Thomas would articulate a clear vision of the Constitution—ideally, one that included full safeguards for individuals and minorities, and which also squared with his past positions. Unfortunately, after spending 5 days listening to Judge Thomas testify, I was unable to determine what views and values he would bring to the bench.

Second, Judge Thomas demonstrates selective recall. Judge Thomas asked us to heavily consider his experiences as a young man while at the same time he asked us to discount views he expressed as an adult. He told us that his musings about natural law, his endorsement of treating economic rights on par with individual rights, and his dismissal of almost all forms of affirmative action as a remedy for discrimination were not relevant. These policy positions, he asserted, would have no impact on his decisions on the Court. In fact, he suggested a judge should shed his views just as a runner sheds excess clothing before a race.

This approach troubles me. In my opinion, it is totally unrealistic to expect that a Justice will not bring his values to the Court.

Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justice Rehnquist wrote:

Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa [blank slate] in the area of Constitutional adjudication would be evidence of lack of qualification, not lack of bias.

I agree with the Chief Justice: Either we judge Clarence Thomas on the complete record or we do not look at the record at all.

Third, Judge Thomas engages in oratorical opportunism. Judge Thomas crafted policy statements apparently tailored to win the support of specific audiences—and then later repudiated these very same positions. For example, when speaking to the Federalist Society, he said that the natural law background of the American Constitution provides the only firm basis for a just, wise, and constitutional decision. Yet during the hearings he steadfastly maintained that natural law played no role in constitutional adjudication. He told another audience that Lew Lehrman's article opposing abortion was a splendid application of natural law. Yet at the hearings he said he had only skimmed the article and never endorsed Mr. Lehrman's conclusions. I find this disturbing.

Fourth, Judge Thomas' lack of legal curiosity is troubling. Judge Thomas told the committee that Roe versus Wade was one of the two most significant decisions handed down by the Supreme Court in the last 20 years. Yet he also told the committee that he had never discussed that decision, either as a lawyer or as an individual, and had no views about it. If we accept that claim, it raises unanswered questions about the depth of his interest in legal issues.

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his replies were disappointing—whether involving antitrust, the War Powers Act, freedom of speech, the right to privacy of habeas corpue. In contrast, at his confirmation hearings, Justice Souter displayed a wealth of constitutional understanding in all of these areas. Judge Thomas lacks this depth of judicial knowledge. But that is not surprising for, after all, he has been an appellate court judge for less than 2 years and prior to that he was a policymaker. While his level of expertise is acceptable for an appellate court, it is not sufficient to meet the demands that are made of a Supreme Court Justice.

Frankly, I expected Judge Thomas to resolve my concerns during the hearings. But, for whatever reasone, he was extremely guarded in his appearance before the committee. His answers were less than forthcoming and often not responsive to the questions he was asked. Judge Thomas did not—and should not—tell us how he would rule on Roe or any other case. But he could and should have told us how he would approach those cases. Judge Thomas had a full opportunity to tell the committee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his elevation to the Supreme Court. He falled to do that. He failed to discharge his burden of proof. He failed to demonstrate the level of judicial excellence which ought to be required on the Supreme Court, and as a result, he has falled to win my consent to his confirmation.

However, I expect that he will win the approval of a majority of my colleagues. Their support for his nomination will, I suspect, be hased on the hope that Judge Thomas will continue to grow as a jurist and develop as a person. I may not share their vote, but I do share their hope. Clarence Thomas is a man with the ability to inspire in even those who will not vote for him the hope that he will, if confirmed, become what we all want him to become: an outstanding Justice.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. I yield to the Senator from New York 2 minutes.

The PRESIDING OFFICER. The Senator from South Carolina yields to the Senator from New York 2 minutes.

Mr. D'AMATO. Mr. President, I rise to support the nomination of Clarence Thomas to the Supreme Court. Like most Americans I have tried to determine whether the very grave allegations against Clarence Thomas were true.

I believe that the burden of proof in this case, and in all cases, rests with the accuser, not the accused. And clearly that burden has not been met. It is a fundamental tenet of our system that everyone is innocent until and unless proven guilty.

Before these allegations, I supported Judge Thomas' elevation to the Supreme Court on the merits, and I continue to do so. But I would be lax if I did not take this opportunity to express my dismay with the confirmation process.

Notwithstanding Chairman BIDEN'S efforts to see to it that fairness was afforded to all, the confirmation process has run amok and all of us have become victims. Judge Thomas has been its victim, Professor Hill has been its victim, and we in the Senate have been its victim.

Judge Thomas' testimony when he told us how he lost his reputation after being a target of unsubstantiated allegations hit home with this Senator. More than most, I understand how that feels. Even raising allegations such as these puts the accused through a living hell. Justice Thomas had the opportunity to defend himself, the American public found his defense convincing, but many do not have that ability. I am afrald that we have reached a point where any allegation is deemed proof of guilt, and that is wrong and it is un-American.

I believe that Judge Thomas will be confirmed later today. And I applaud that. But I believe that we in Congress have a duty to see that this process is not repeated. When anyone becomes the victim of unsubstantiated allegations, we are all the victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 1 minute to the distinguished Senator from Missouri.

Mr. BOND. Mr. President, I previously have taken the floor to say that I know Clarence Thomas to be a man of integrity, character, great ability, and great intellect. However, despite the fact that we had hearings, which should not have been held in public, and information was leaked, I felt it was necessary that we have a hearing on the allegations made against him and I reviewed the FBI reports and the testimony.

I find serious inconsistenoies in Professor Hill's statements and testimony. She said she was traumatized, yet she followed him from the Department of Education to the EEOC. She continued to maintain favorable comment and contact with Clarence Thomas and even, according to two sworn witnesses, spoke highly of his nomination in August.

I believe that the charges against Judge Thomas are unsubstantiated. We must not ruin his character.

Mr. President, the events of the past week have been a sad spectacle. A travesty was made of the Senate's confirmation process—one of its most important duties. Hearings and investigations that should have been handled in private, in closed session, were conducted on national television. Instead of the sober review of the facts that we deserved, we instead got a circus.

We arrived at that point—as we all know—because of a leak by someone who works in this body. That, Mr. President, is an outrage. It is an action that diminishes the public perception of this body; and the person responsible must be identified and punished. I was pleased to hear the majority leader this morning say that he intends to pursue the matter.

Despite these reservations about how the Senate got to this point, I approached the hearings, the testimony, and the evidence with an open mind. The allegations, if they were true, would be sufficient for me to oppose the nominee. It has been our duty to review them carefully and fairly. Judge Thomas, Professor Hill, the Supreme Court, and the American people deserve nothing less.

Unfortunately, the weekend hearings did little to advance a conclusive understanding of what actually happened. Still, Senators must make a judgment and they must cast their vote at 6 p.m. today.

After viewing the hearings, reviewing transcripts of the testimony, and reading the classified FBI reports and other materials, I have reached the following conclusions.

I found serious inconsistencies throughout Ms. Hill's testimony that lead me to conclude, relative to the accusations made, that we must find in favor of Judge Thomas.

Just a few examples: She said she followed Judge Thomas from the Department of Education to the EEOC because she was concerned that she would not otherwise have a job. That just does not seem credible given testimony showing that not only was her

job protected under the law, but that Thomas' successor at Education assured that he would keep her on.

Ms. Hill says she was traumatized by the alleged actions of Judge Thomas, yet it is clear that she maintained contact with him over the past several years. According to the testimony of Dean Kothe of Oral Roberts Law School, she was even extremely cordial with Thomas when the three of them were together.

Also, though Ms. Hill first called the phone logs of her calls to Judge Thomas "garbage," she later admitted that they were accurate records of what actually took place.

Two witnesses testified under oath that Professor Hill had initiated favorable discussions about the Thomas nomination in August of this year; yet she testified to the contrary.

Given these inconsistencies, and given the absolute, unequivocal denial by Judge Thomas that the incidents ever took place, I believe we must give greater weight to his testimony. Judge Thomas' life has been intensely scrutinized by this body five times. He has been confirmed for high Government office four times. He is a man that I know to be of the highest integrity. It would be a travesty to destroy him with unsubstantiated charges. That is the way our system works—a person is innocent until proven guilty.

Thus, Mr. President, I intend to cast my vote to confirm Clarence Thomas. I believe he will make an excellent Associate Justice of the U.S. Supreme Court.

I remain hopeful that we will find a way to improve this process so that future nominees will not be subject to this same type of circus and so that this body can do a better job of fulfilling its critical confirmation role.

I ask that my colleagues support the nomination of Judge Clarence Thomas to be an Associate Justice.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Delaware yields 2 minutes to the Senator from Rhode Island.

Mr. PELL. I thank my colleague from Delaware.

On Tuesday, October 3, I announced my decision to oppose the confirmation of Judge Thomas to be an Associate Justice of the U.S. Supreme Court. This was prior to public hearing of Prof. Anita Hill's allegation of sexual harassment.

Today, 10 days later, and after the hearings into this matter, I see no reason to change my vote and I will oppose the confirmation of Judge Thomas when that vote is taken shortly.

Regarding the hearings on the charges of sexual harassment by Judge Thomas, I can only say that having watched the proceedings these past few days I do not know whether Anita Hill or Clarence Thomas is telling the truth. I did believe that, given the seriousness of charges involved, it was appropriate to delay the confirmation vote last Tuesday, to hold hearings. I believe, too, that these hearings were conducted in a fair, judicious manner, and I commend Senator BIDEN and the Judiciary Committee for their work.

However, my original reasons for opposing the nomination of Clarence Thomas—namely, the lack of demonstrated judicial distinction and exteremely conservative philosophy already well represented in the Court—are independent of any determination of Judge Thomas' guilt or innocence regarding this matter.

Accordingly, I see no reason to change my decision, and I speak, too, as one who voted for the confirmation as Justice of every present sitting Justice on the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from Delaware yields 4 minutes to the Senator from California.

Mr. CRANSTON. Mr. President, I was the first Senator to rise in opposition to this nomination. I did so before I ever heard of Anita Hill.

I came out against confirmation because Judge Thomas had no clear or distinguished record on fundamental issues upon which his qualifications could be judged and because he refused to reveal his general philosophy on many of those issues to the committee.

I also came out against Judge Thomas because I doubted his veracity when he declared he never discussed Roe versus Wade with anybody.

I watched the Hill-Thomas hearings on TV and now my opposition to the nomination and my doubt about the judge's veracity are much stronger.

I differ with those who assert that the burden of proof rests on those who charge Judge Thomas with sexual harassment. This is not a criminal case where he faces jail. The burden is on Judge Thomas and his supporters to prove that he is fit to serve on the U.S. Supreme Court.

I urge my oolleagues to consider, as I have, the following facts:

None of Judge Thomas' character witnesses had any personal knowledge relevant to the charges against him, but four witnesses appearing for Anita Hill did have personal knowledge relevant to the charges.

Two of them testified that Miss Hill told them about the alleged sexual harassment by Judge Thomas long ago. Two of them testified that Miss Hill told them that her supervisor made sexual advances. Her detractors suggest she was speaking about somebody else, not about Judge Thomas. But it turns out her only other supervisor was a woman, Alison Duncan.

Angela Wright, like Anita Hill, has accused Judge Thomas of making sexual remarks to her and pressing her for dates. Also like Anita Hill, Miss Wright confided about this to a friend, Rose Jourdain, according to a sworn statement by Miss Jourdain.

Lovida Coleman, Jr., stated that when Judge Thomas was at Yale he discussed with her and others X-rated films he had seen.

Another woman, Sukari Hardnett, a former special assistant to Judge Thomas, has come forward to oomplain about the atmosphere in his regime at EEOC, stating: "If you were young, black, and reasonably attractive, you knew full well that you were being inspected and auditioned as a female."

It is worth noting that the alleged remark by Judge Thomas about hair and coke need not have originated—as suggested by his supporters—in a book he says he never read, "The Exorcist." According to Catherine MacKinnon, an attorney who is an expert on sexual harassment, quoted in the October 4 New York Post, the alleged remark was a clear reference to scenes in pornographio films.

It's also worth noting that another article in the October 12 New York Post indicates that the source of Judge Thomas' alleged remark about one Mr. Silver may not—as has been suggested by the Judge's supporters—have come from a court case but rather could have come from a pornographic film, peep show, or magazine.

Some think that, after all this, there will be greater understanding of sexual harassment and how to cope with it.

I wonder?

The lesson may be that if you complain about sexual harassment you will be attacked as a liar, a fantasizer, or a woman scorned.

A great lack of understanding of a woman's reaction to sexual harassment is on display.

Suppose you are a woman representing a cause or corporation on Capitol Hill.

Suppose a Member of Congress sexually harasses you, as does happen.

What do you do?

You have these choices;

First, publicly complain, and get attacked, as Anita Hill was attacked when she came forward.

Second, avoid having anything to do with the harasser forever after and end your capacity to represent fully the cause or the corporation, and perhaps lose your job.

Third, seek to maintain a cordial relationship with the harasser so you can retain your job. That is the choice Anita Hill made at the time the alleged harassment was occurring. And look at the personal attack she is suffering be-

cause of that choice, now that she has come forward.

These are sorry choices for women to face.

And it is a sorry choice we Senators face today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to my friend from Alabama.

The PRESIDING OFFICER. The Senator from Delaware yields 4 minutes to the Senator from Alabama.

Mr. HEFLIN. Mr. President, the tumultuous events that have just occurred since the first set of hearings were completed, oulminated in the extraordinary last set of hearings before the Senate Judiciary Committee concerning the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court, are a tragic result of unauthorized and unwarranted leaks of a committee investigation.

This is not the first time leaks have occurred, and leaks are not confined to any one particular committee or party—they have occurred on both sides of the aisle. The leaks, in the case at hand should be thoroughly investigated and those found responsible should be held accountable, as well as recent past leaks in the Senate Ethics Committee.

I entered into the first set of hearings on Clarence Thomas with an open mind. I have always approached judicial confirmation hearings as a judge rather than as an advocate. I have endeavored at all times to be fair to the nominee, fair to the President, fair to the nominee's opposition, and fair to the American people. I came away from the first round of hearings with many doubts in my mind about Judge Thomas; and I stated that Judge Thomas' answers and explanation about previous speeches, articles, and positions raised thoughte—and I emphasize thoughts—not findings—of confirmation conversion, of inconsistencies, ambiguities, contradictions, as well as other thoughts.

I listed, in my speech before the Senate in which I announced that I would vote against him, many of those factors that had created doubt in my mind about whether he should be confirmed.

I stated that our Nation deserved the best on the highest court in the land, and an error of judgment oould have long-lasting consequences to the American people. The doubts were too many. The Court is too important. So I said that I would follow the admonition "when in doubt—don't."

At the time that I made my speech on the floor of the Senate announcing my decision to vote against Judge Thomas, I had never heard of Anita Hill and her oharges of sexual harassment. Following my speech I was informed for the first time about Anita Hill. The issue of Anita Hill and her allegations of sexual harassment did not enter into my decision on whether or not to vote against him.

Now the second set of hearings has occurred. I have now more doubts. The original doubts have been compounded by the doubts raised in the hearing. I wlll not attempt to enumerate all of these newly created doubts; but obviously there are doubts about who is telling the truth, doubts about motivation, doubts about psychological defects about both Professor Hill and Judge Thomas.

Throughout both sets of hearings I have tried to be a judge rather than an antagonistic advocate. I think this is the role that an independent-minded member of the Judiciary Committee should assume. I have approached every confirmation hearing that I have participated in from the position that I ought not to be partisan. I do not think I ought to rubberstamp the nominees of the President, and neither do I feel that I ought to blindly follow a partisan allegiance. It has been my position that an independent evaluation of the evidence is the appropriate approach to take. I have endeavored to do so in this case.

My job at the hearings was to get the facts and find the truth the best way I possibly could.

I simply chose to use my time effectively—to ask questions and not give political speeches. My responsibility was to judge—not be a cheerleader for or against Clarence Thomas.

As a result of the first hearing there were many clouds hovering over the process and Clarence Thomas. During the second set of hearings clouds thickened considerably over the Senate, the process, and Clarence Thomas. In addition to this, very thick clouds hover over Anita Hill. In my judgment, clouds should not hover over the Supreme Court. The clouds and doubts should not be transferred to the Supreme Court. The Supreme Court is too important. As I have said before, our Nation deserves the best on the highest court in the land. Some want to give Clarence Thomas the benefit of the doubt. I think that would be very appropriate if he was charged in a criminal setting in a court of law. This is not a criminal trial.

The doubts are many. There is an absence of clear and convincing evidence to remove these doubts. A lifetime appointment on the Supreme Court is different from other appointmente. Unless those doubts are erased, eliminated, or greatly minimized, we should not gamble on the consequences. In my judgment, Clarence Thomas should not be confirmed under the clouds and doubts created. Therefore, my position has not changed. I will vote against his confirmation.

I would also like to say that I fully support a thorough and complete investigation in regard to the leaks in this matter as well as leaks that have occurred in the Senate Ethics Committee. I think the Senate cannot continue to operate under a situation in which there are constant leaks.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield 3 minutes to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator.

The serious charges made by Professor Hill are important and a vital part of this consideration. But this nomination need not rest on a determination of that matter.

The basic issue here is plain and simple legal qualification, and the suitability of this nominee to hold a lifetime appointment to one of the highest offices in our land.

These exalted and rare positions should go to men and women of all races and ethnic backgrounds on one basis and one basis alone, and that is exceptional qualification, towering legal ability and achievement, professional standing within the legal profession of the very highest rank. To settle for less trivializes the Court and threatens to turn it into a privileged sanctuary for persons who lack such qualifications and who may instead have some narrow ideological agenda of their own to pursue.

Clarence Thomas has a record of a decade of bizarre and questionable legal theories and policy positions that he has spoken numerous times, views he suddenly said at his confirmation hearing that he really did not mean or that he no longer believes.

His professional record at the EEOC was erratic and highly controversial and damaging to the rights of thousands of people who brought forth complaints of workplace discrimination. The appearance is that he stepped on the rights of others to please the higher-ups in the Reagan administration and advance himself.

I believe in affirmative action and that people of color should serve our Federal judiciary. But any nominee—regardless of race, sex, or ethnić background—must meet the absolute standard of highest professional qualification unique to the highest court in our land. At age 43, with very limited courtroom experience, Clarence Thomas does not meet this standard.

The American Bar Association has a process whereby the most distinguished lawyers in America carefully evaluate the formal legal credentials and qualifications of Supreme Court nominees. Since 1955, they have assessed now 23 different Supreme Court nominees in that process.

You know where Clarence Thomas ranks among those 23 in legal qualification? He ranks dead last. The lowest rating of any Supreme Court nominee in history. What a sad commentary.

It says volumes about the purpose of the Bush administration when selecting this nominee. The clear appearance here is that the qualification he had was political, not based on his professional qualifications. It appears he was selected despite his lack of professional qualifications because he was a black ultraconservative, young enough to apply that extreme philosophy to the Court's decisions for the next 40 years. And that is going to affect the rights and liberties of every single person in this country perhaps as long as the next four decades.

It is just as simple and as crass as that. And the nomination should be rejected on those grounds.

Mr. BURNS. Mr. President, In my short tenure as a Member of the U.S. Senate, I have never experienced a week such as this last one. I am not sure even the so-called old timers have ever witnessed such a week. I would say all of us have run the full scale of our emotional ladder.

Those of us who do not serve on the Judiciary Committee have watched every minute of the proceedings since last Friday. We have recorded those proceedings on our home VCR's, took notes, watched faces, and agonized with the members of the committee.

I want the RECORD to show how appreciative this Senator is of Senator JOE BIDEN, chairman of the Judiciary Committee. No chairman in my short tenure as a Member of the U.S. Senate has worked in a more charged atmosphere than his committee did in a situation created by unknown forces; and he was remarkable in his fairness. I commend him and thank him.

I think all would agree that the debate on whether Judge Clarence Thomas should or should not be confirmed to the highest Court in this country had been centered around rights prior to this weekend. That should not come as a surprise to anyone in this body or any American. We deal with rights everyday on every piece of legislation. Rights—personal, property and human rights—are the very heart of the Constitution.

Sensitive to rights? You bet we are, or this Senator is. Does it concern me when voting on a person nominated to the Supreme Court of the United States? Even more so.

That is why it is important to point out that as confusing and terrible as the hearings this weekend were, some good has come.

As many have said already, a heightened awareness and discussion of sexual harassment in this country is a good thing.

But it is also a good thing that after what he has gone through, Judge Thomas, if confirmed, will be even more sensitive than before to people's rights.

Let me be clear. Prior to the hearings this weekend, I supported Judge Thomas because I believed he understands the truest meaning of rights.

The belief was reaffirmed for me and for the judge himself through the course of the allegations against him and the hearings that followed. He said himself when asked what he has learned through this experience:

The other thing that I have learned in this process are things that we discussed in the real confirmation hearing, and that is our rights being protected, what rights we have as citizens of this country, what constitutional rights, what is our relationship with our government. And as I sit here on matters such as privacy, matters such as procedures for charges against individuals in a criminal context or a civil context, this has heightened my awareness of the importance of those protections, the importance of something that we discussed in theory—privacy, due process, equal protection, fairness.

Judge Thomas clearly understands the importance of these values now.

And so in fairness to the judge, and under the context of constitutional rights, I will continue to support him.

This weekend was an emotionally charge one, but we must remember that in this country a person is innocent until proven guilty. That is paramount in our judicial system. To change it is to destroy the very foundation of our society.

In my mind, Judge Thomas has not been proven guilty. When the hearings began, the presumption was with Judge Thomas because he was the accused, and the presumption remains with him today because the hearings were inconclusive in my mind and to many Americans.

There is nothing in Judge Thomas's character to indicate that he would behave in the manner described or to indicate that he is insensitive to women in the workplace. To the contrary, he had dozens of women with whom he has worked coming forward to praise his treatment of them.

Judge Thomas will bring to the Court a wealth of what is truly American—an understanding of the opportunities and rights afforded to each of us under the constitution—and I hope that my colleagues will vote to confirm him.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. THURMOND. I yield 8 minutes to the Senator from Wyoming [Mr. SIMPSON].

The PRESIDING OFFICER. The Senator is recognized for 8 minutes.

Mr. SIMPSON. Mr. President, I want to thank Senator JOE BIDEN and Senator STROM THURMOND for their extraordinary work. This has not been an easy task. Obviously, it has not. It has not been pleasant to go through the weekend and miss the things that you miss in a weekend in the fall.

I can tell you they did it with firmness and fairness and they were very patient and extraordinarily attentive to what we were trying to do, and I want to oommend them both for such splendid work.

I am very proud to be a member of the Senate Judiciary Committee. I do not make any apologies for that at all. I do not know what more we could have done with the information which was furnished to us, with the way the principal woman witness furnished it to us, and that is the way it is. You cannot do or say things to other people and then say you want to keep it in confidence. They formed this country to get away from that kind of conduct.

Let us remember how this thing got started. Ms. Anita Hill did not want to provide her name and our chairman and ranking member protected her. And then she finally came forward and said let the committee see the information which she had. She said it does not have anything to do with sexual harassment. It has to do with his "behavior". She said please let the committee see that, but do not let the public see it. And we did that. And then somebody in this place, who surely will suffer some serious penalty, leaked that to the media. And then a member of the media read it to her and said "What do you think of this, it is all over town"—which it was not. And then that person said: "You either let us go with it or we will have to go with it anyway."

What a violation of professional ethics of the craft of journalism. Let me read you from the Code of Professional Journalism. They do not like to hear me read this because they think I am a media basher. I am not. I hear them chuckling. But I tell you what I am: I am like Harry Truman. I don't give them hell, I give them the truth and they think it's hell. That is what is wrong with them.

I have been treated exceedingly fairly by the media—always—in public life. And that goes to this very moment of time. All of my wounds with them are self-inflicted. Whenever I have done anything I did it completely to myself. But let me tell you what their code says.

It says under "Fair Play", page 3:

Journalists at all times will show respect for the dignity, privacy, rights and well-being of people encountered in the course of gathering and presenting the news.

1. The news media should not communicate unofficial charges affecting reputation or moral character without giving the accused a chance to reply.

Do not ask me where I got this. Is this not weird stuff? It is their own Code of Ethics.

I shall continue:

2. The news media must guard against invading a person's right to privacy.

That is their code, not mine. I have not injected it upon them.

3. The media should not pander to morbid curiosity about details of vice and crime.

4. It is the duty of the news media to make prompt and complete correction of their errors.

5. Journalists should be accountable to the public for their reports and the public should

be encouraged to voice its grievances against the media. Open dialog with our readers, viewers and listeners should be fostered.

Do you really believe that?

So, people can chip about this process, they can carp, they can denigrate. It has been working for 203 years. It will continue to work. It is imperfect, assuredly, because we are imperfect. But in the atmosphere of America in these times when positive things are seldom reported upon, I can assure you in this land and as a public servant I am very fortunate to be here. I am privileged. We are lucky to be able to do this work. And for all the people that take the good shots at us—and that goes with the territory, I understand that—or hang us up to dry or use venom and invective, I have finally just come to say to them, "Look, I do the very best I can. The very best I know how."

I have tried to do that here. I think the chairman and ranking member tried to do that here. And I will just keep right on doing that.

It has been a roller-coaster. The critics are out. A critic is a product of creativity not their own. We should always keep that in mind.

So I want to place some material in the RECORD, because I, frankly, have become tired of the issue that somehow I personally am not responsive to the issue of sexual harassment—it is very clear in the hearing record exactly what I said about that. So I want to have printed now in the CONGRESSIONAL RECORD pages 235, 236, and 237 of the Senate Judiciary Committee hearing record of October 11, 12 and 13, concerning the full text of my remarks with regard to sexual harassment. And it will tell you exactly how I felt about that and how the issue had gotten all out of perspective. I said there "I believe it is a terrible thing," and I do. I put in a bill to double the penalty on sexual harassment long before this nomination ever came up.

So I don't have to have that test of purity with regard to that, or take my lumps in some way. I am not involved in that. It is a time of sound bites and snippets. It is interesting to see how that comment was accepted and I ask unanimous consent to print that in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The CHAIRMAN. Senator Simpson?

Senator SIMPSON. Well, it has been a powerful presentation by a powerful person. And I have known you for several years and I have known Ginny before I knew you. I think it is very well that you were not here to hear the testimony of Ms. Hill. That was a good step, whosever idea that was that you did not, of course, you were not here, but you didn't watch it. It would have driven you——

Judge THOMAS. Thank you.

Senator SIMPSON. ——in a way I do not think would have been appropriate. And here we are. You have been before us for 105 days. We have seen everything, known everything, heard every bit of dirt, as you call it so well. And what do we know about Professor Hill? Not very much. I am waiting for 105 days of surveillance of Ms. Hill and then we will see, you know, "who ate the cabbage" as we say out in the Wild West. This is an impossible thing.

And now, I really am getting stuff over the transom about Professor Hill. I have got letters hanging out of my pockets. I have got faxes. I have got statements from her former law professors, statements from people that know her, statements from Tulsa, Oklahoma saying, "watch out for this woman." But nobody has got the guts to say that because it gets all tangled up in this sexual harassment crap.

I believe sexual harassment is a terrible thing. I had a bill in a year ago, doubling the penalties on sexual harassment. I don't need any test. Don't need anybody to give me the saliva test on whether one believes more or less about sexual harassment. It is repugnant, it is disgusting in any form. And the stuff we listened to, I mean, you know, come on—from the moon.

And it is a sexual stereotype. Just like asking you sexual stereotype questions about your personal life, any woman would be offended by that—about your divorce, you did this, you did that. Talk about in reverse. There is not a woman alive who would take the questions you have had to take, would be just repelled by it. That's where the watershed is here.

It is a good thing that this awareness goes up. It is a terrible tragic thing that it should bruise you. And if we really are going to do it right, we are all mumbling about how do you find the truth? I will tell you how you find the truth, you get into an adversarial courtroom and everybody raises their hand once more and you go at it with the rules of evidence and you really punch around in it. And we can't do that. It is impossible for us to do that in this place.

The Chairman knows it and he has been exceedingly fair. And so here we are and we will not get to the truth in this process. But there is a truth out there and that is in the judicial system, Thank God, that there is such a system. It has saved many, many a disillusioned person who was headed for the Stygian pits.

So if we had 105 days to go into Ms. Hill and find out about her character, her background, her proclivities, and all the rest I would feel a lot better about this system. And I am talking about the stuff I am getting from women in America who are sending me things and especially women in Oklahoma. That will all become public. I said, at the time it would be destructive of her and some said, well, isn't that terrible of Simpson, a menacing threat. It was not menacing. It is true.

That she would come forward and she would be destroyed. She will, just as you have been destroyed. I hope you can both be rehabilitated. I have a couple of questions, if I may, Mr. Chairman.

The CHAIRMAN. Yes.

Senator SIMPSON. I have not taken time and I will get to that. Angela Wright will soon be with us, we think, but now we are told that Angela Wright has what we used to call in the legal trade, "cold feet." Now, if Angela Wright doesn't show up to tell her tale of your horrors, what are we to determine about Angela Wright?

Did you fire her and if you did, what for?

Judge THOMAS. I indicated, Senator, I summarily dismissed her, and this is my recollection. She was hired to reinvigorate the public affairs operation at EEOC. I felt her performance was ineffective, and the office was ineffective. And the straw that broke the camel's back was a report to me from one of the members of my staff that she referred to another male member of my staff as a faggot.

Senator SIMPSON. As a faggot?

Judge THOMAS. And that is inappropriate conduct, and that is a slur, and I was not going to have it.

Senator SIMPSON. And so you just summarily discharged her?

Judge THOMAS. That is right.

Senator SIMPSON. That was enough for you?

Judge THOMAS. That was more than enough for me. That is my recollection.

Senator SIMPSON. That is kind of the way you are, isn't it?

Judge THOMAS. That is the way I am with conduct like that, whether it is sex harassment or slurs or anything else. I don't play games.

Senator SIMPSON. And so that was the end of Ms. Wright, who is now going to come and tell us perhaps about more parts of the anatomy. I am sure of that. And a totally discredited and, we had just as well get to the nub of things here, a totally discredited witness who does have "cold feet."

Well, Mr. Chairman, you know all of us have been through this stuff in life, but never to this degree. I have done my old stuff about my past, and shared those old saws.

But I will tell you, I do love Shakespeare, and Shakespeare would love this. This is all Shakespeare. This is about love and hate, and cheating and distrust, and kindness and disgust, and avarice and jealousy and envy, all those things that make that remarkable bard read today.

But boy, I will tell you, one came to my head, and I just went and got it out of the back of the book. Othello, read Othello, and don't ever forget this line: "Good name in man and woman, dear my lord"—do you remember this scene?—"ie the immediate jewel of their souls. Who steals my purse, steals trash. Tis something, nothing. Twas mine, tis his, and has been slave to thousands. But he that filches from me my good name, robs me of that which not enriches him, and makes me poor indeed."

What a tragedy. What a disgusting tragedy.

Mr. SIMPSON. How much time do I have Mr. President?

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. SIMPSON. Mr. President, it is fascinating to hear some of the commentary. I have already spoken on columnists who oriticized our conduct.

One person, a columnist of the Washington Post, Richard Cohen, said I have "done a pretty good imitation of Joe McCarthy. The Wyoming Republican said he had good dirt on Hill and—there was nothing there."

Mr. President, it seems to me that accusing someone else of McCarthyism is really a McCarthyist tactic itself. There were other McCarthys. There was Charlie McCarthy. He was a dummy. I remember that and I will reserve that appellation for any scribe that would label me with that one. That is disgusting.

So I want to add this. If the media is uncomfortable with what happened

about Anita Hill, it is because some in the Washington media are guilty of the broadcasting and publishing to the world of her confidential statement, one she really wanted to hold back.

Finally, let me say that since some have addressed the issue of me saying that there was "stuff dumped over the transom," let me now dump it over the transom into the CONGRESSIONAL RECORD. Because of those cowardly charged headlines and baiting, I want to put it in the RECORD at this point, letters and statements which our committee received over the transom—I or staff have talked to many of these people here—and we did not hear them in person.

I ask unanimous consent that these documents from lawyers in Oklahoma and people around the country be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MATTHIES LAW FIRM, P.C.,
Tulsa, OK, October 12, 1991.

Re Anita Hill background.

SENATE JUDICIARY COMMITTEE,
U.S. Senate,
Washington, DC.

DEAR SIRS: On the afternoon of October 11, 1991, I went to the conference room of another law firm in my office building to watch a portion of the hearings during which Ms. Hill was being questioned. Also present were two or three young women lawyers who had recently graduated from the University of Oklahoma Law School, and who had Ms. Hill as an instructor during the time that they attended law school.

These young women stated that Ms. Hill was a very aggressive and ambitious woman, who was very outspoken with respect to her views. This trait was reportedly present in Ms. Hill to such excess that these women lawyers characterized her as a "bitch". Ms. Hill also reportedly was not a very good teacher, and was not considered to be a person of very high intellect. One of the women lawyers stated that Ms. Hill even had difficulty responding to questions of First Year law students, and commented that "If she could not even answer the questions of First Years, who don't know anything, this should give you a good idea of her abilities".

Ms. Hill also reportedly was considered to be overly ambitious and a vicious in-fighter by these women. They described an incident where there had been a very popular visiting professor (male) who was teaching contracts. Ms. Hill reportedly wanted to teach that course very much, and reportedly did her best to insure that this teacher was not invited to become a part of the permanent law school staff by attacking him both personally and professionally. As a result of Ms. Hill's attacks, this male professor left the University of Oklahoma law school, and Ms. Hill then took over the teaching of the Contracts course which she had wanted to teach.

I am in the process of attempting to contact these women to ascertain if they would be willing to repeat to the Committee what they told me privately yesterday. I swear under penalty of perjury that I have accurately reported their statements, to the best of my knowledge and belief.

MARY CONSTANCE T. MATTHIES.

Irving, TX, October 8, 1991.

Senator STROM THURMOND.

DEAR SENATOR THURMOND: I am currently the Associate Dean for Academic Affairs and an Associate Professor at the Dallas/Fort Worth School of Law. Prior to coming here, I was on the faculty at the University of Oklahoma College of Law. Anita Hill was a colleague of mine in Oklahoma.

My personal impression of Anita Hill was that she is a detailed, cold, and calculating person. Students commented to me that she was particularly ineffective in class and was not concerned about improving her performance. She appeared to recognize her protected position as a black woman in an era of affirmative action and to use that protected position for all it was worth—accellerated (sic) promotions, specially arranged teaching schedules, etc.

My own inclination is to view her interpretation of ten-year old events in light of the impact it will have on her personal interest.

Very truly yours,

DENNIS ALAN OLSON,
Dallas Fort Worth School of Law.

AFFIDAVIT

John L. Burke, Jr., being duly sworn, says:

1. I am the managing partner of the Washington office of the law firm of Foley, Hoag and Eliot. I have been engaged in the private practice of law in Washington, D.C. for 20 years. I live at 1403 McLean Mews Court, McLean, Virginia 22101.

2. From August 1, 1980, until June 15, 1985, I was a partner in the Washington law firm of Wald, Harkrader & Ross. To the best of my recollection, Anita Hill joined that law firm in the fall of 1980.

3. It was the practice of that law firm to evaluate the work performance of its associates approximately every six months, I recall a time, which I believe to be in the late winter or early spring of 1981, when I met with Anita Hill in my office at the law firm to discuss her work performance with her. At that time, I was the partner in charge of coordinating work assignments for the tax, general business and real estate section of that law firm. Anita Hill had performed work assignmente for the lawyers practicing in that section, including several assignments for me.

4. To the best of my recollection, that performance evaluation lasted between 30 minutes and one hour. During the course of that performance evaluation, the specific details of which I am unable to reconstruct, I expressed my concerns and those of some of my partners, that her work was not at the level of her peers nor at the level we would expect from a lawyer with her credentials, even considering the fact that she was a first-year associate.

5. During the course of that performance evaluation, I suggested to Anita Hill that it would be in her best interests to consider seeking employment elsewhere because, based on the evaluations, her prospects at the firm were limited. I also discussed with Anita Hill the fact that Wald, Harkrader & Roes was not a firm which treated its lawyers harshly and would assist her, as it wonld any of its associates, in finding an appropriate legal position and that she should avail herself of that assistance.

6. The performance evalnation meeting was uncomfortable for both Anita Hill and me because I was conveying a very difficult message. Anita Hill discussed with me, and disputed, some of the comments about the quality of her work. Apart from that, there was nothing that I recall to be unusual about her reaction to the evaluation, given the circumstances.

7. It is my personal view that, based on Anita Hill's performance evaluations at Wald, Markrader & Ross, returning to that law firm at the time that Clarence Thomas moved from the Department of Education to the Equal Employment Opportunity Commission was not an available option.

The above statement is given by me voluntarily this 13th day of October, 1991.

JOHN L. BURKE, JR.

Sworn to before me and subscribed in my presence this 13th day of October, 1991.

JUDITH A. HOLLIS,
Notary Public,
District of Columbia.

STATEMENT OF HON. HARRY M. SINGLETON, FORMER ASSISANT SECRETARY OF EDUCATION FOR CIVIL RIGHTS SUBMITTED TO THE U.S. SENATE COMMITTEE ON THE JUDICIARY IN THE MATTER OF THE CONFIRMATION OF HON. CLARENCE THOMAS AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

I immediately succeeded Judge Clarence Thomas as Assistant Secretary of Education for Civil Rights. I was brought on in the capacity of a Deputy Assistant Secretary in the Office for Civil Rights (OCR) as a means of transition to the position of Acting Assistant Secretary pending my confirmation as Assistant Secretary. During that transition period, Judge Thomas and I overlapped at OCR for approximately 4-6 weeks befors his departure for the Equal Employment Opportunity Commission (EEOC). During the period of time, I met Ms. Anita Hill who was serving as an Attorney Advisor to the Assistant Secretary (Judge Thomas) and had an opportunity to observe her and her interaction with Judge Thomas. I worked closely with Judge Thomas during this period. At no time did I observe any conduct on his part remotely resembling that which has been alleged by Ms. Hill nor did I observe any behavior on her part which would have suggested that she was having problems with him, in general, or that she felt intimidated by him, in particular, as one might suspect of someone who was being sexually harassed.

More important, however, and the point upon which I specifically want to comment, is the statement made by Ms. Hill on numerous occasions that she followed Judge Thomas to the EEOC because she would have been without a job had she not done so. In fact, during a recent appearance on the Today Show program she stated, according to the transcript from that program, "[I] didn't have the option of staying at Education, so it would have meant that I would have had no job." I submit that thie is not an accurate statement.

As I recall, Ms. Hill was a Schedule A attorney. As such, she had career rights. If Ms. Hill was being harassed by Judge Thomas and did not feel comfortable continuing to work with him, she could have remained at OCR. Had she approached me, and she did not, to request that she remain at OCR, she certainly would have been accommodated. In fact, I was prepared to retain her as one of my attorney advisors, but it was always made very clear that she was going on to EEOC with Judge Thomas.

HARRY M. SINGLETON.

OCTOBER 10, 1991.

ELIZABETH BRODIE, M.D., PSYCHIATRY,
Houston, TX, October 13, 1991.
Senator JOSEPH R. BIDEN, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: I have been following Judge Clarence Thomas's confirmation hearings with deep interest and concern. During the last few days, it has been painful to watch the agony of Judge Thomas and of everybody on the committee.

I am a psychiatrist, with 28 years of experience in private practice, specializing in personality and behavior problems. I would like to provide some insight into how Professor Anita Hill could be saying what she believes is true and at the same time be presenting a situation which in fact did not occur. Such insight would also lend support to the view that her testimony may not have been politically or ideologically motivated.

The insight I offer is based on the following: fragments I learned about Professor Hill's background, the testimonies concerning her behavioral reactions at work, and my careful observation of her during her testimony.

As members of the committee had the opportunity to observe, Judge Thomas is a person who is obviously well aware of his feelings and expresses them in a clear, mature, and honest way. On the other hand, Professor Hill appears impassive, sounds monotonous, and displays very little obvious feeling. When questioned about her feelings both in the past and in the present regarding her alleged harassment, she responded repetitively only that she felt embarrassed and uncomfortable. At one point she showed a sign of emotion when, attempting to answer what was, to her, a difficult question, she broke out sweating in her face. In addition, it was mentioned that, during the time of the alleged harassment, she had to be admitted to hospital for three weeks because of "stress." This piece of information was not followed up on. A person who is emotionally not well aware and for different serious reasons had to repress strong feelings, can easily develop what is called a "conversion reaction," which makes a person believe that certain emotionally loaded experiences occurred, whereas there may be no realistic foundation for them at all.

Many times in the hearings the question of lying and fantasizing came up with regard to Professor Hill. Fantasizing and lying are activities requiring conscious decision, whereas the conversion process I am referring to is an unconscious process which occurs in the brain and the person experiencing it is unable to recognize that an altered perception has occurred. Therefore, Professor Hill cannot be blamed with either fantasizing or lying, but with presenting a situation which, in her belief, actually happened. The source of the stress which she experienced could thus have come entirely from within her, regardless of her actual relationship with Judge Thomas.

This does not mean that on a professional basis she could not impress people who know her as a "strong person" or that she would not be "forthright and independent" in her apparent behavior.

Concerning the polygraph test she took, I do not wish to comment scientifically on the validity of this examination, but want to point out that unconscious repression of feelings applies to most circumstances in life, including a polygraph test, which does not record anxiety when it is not felt because the person tested has the conviction that she is right.

I would also like to point out that a number of committee members handled questioning Professor Hill with kid gloves, obviously motivated by the fear of some people's reactions. This has helped Professor Hill maintain her composure and to feel fully affirmed.

I do not have doubts concerning the honesty and integrity of Judge Thomas and hope that he will not allow this unfortunate incident to destroy his belief in humanity, but rather increase his understanding of the complexity of human nature, feelings, and behavior.

Sincerely,

ELIZABETH BRODIE, M.D.

PURDUE UNIVERSITY,
October 10, 1991.

STATEMENT OF DR. FLOYD W. HAYES III

My name is Floyd W. Hayes III, and I am an Associate Professor in the Department of Political Science and the African American Studies and Research Center at Purdue University. I am pleased to make a statement on behalf of Judge Clarence Thomas, who has been nominated by President Bush to become an Associate Justice of the United States Supreme Court. From March 1985 to July 1986, I worked as a special assistant to Judge Clarence Thomas when he was the Chairman of the United States Equal Employment Opportunity Commission.

Based on my experience at the Commission, which included attendance at some staff meetings. I viewed Mr. Thomas as an intelligent and effective administrator. He is a sensitive and kind person. Moreover, I can say unequivocally that Mr. Thomas's demeanor toward staff members was at all times professional and courteous. As to his relations with female employees, I assert that Mr. Thomas was always professional and respectful. To my knowledge and recollection, he never behaved in a dishonorable manner toward female employees. During my tenure at the Commission, I never heard any remarks or rumors about Mr. Thomas that even suggested poor conduct toward women. Moreover, in limited personal conversations with him, I never got the impression that he viewed women negatively. Therefore, I am appalled at the recent charge against him. In my judgment, he is a man of distinguished character. I have great respect for Mr. Thomas and his achievements.

On or about Monday, September 23, 1991, I received a telephone call from a man who represented himself as Senator Howard Metzenbaum's Counsel. What bothered me enormously was that he seemed to be interested in finding something negative about Mr. Thomas. Soon after he introduced himself, he asked if I knew of any relationship between Mr. Thomas and Mr. Jay Parker of the Lincoln Institute. He asked a few additional questions on this subject. After I told him that I had no knowledge of this relationship and related matters, Senator Metzenbaum's Council terminated the conversation. I felt very strongly then that the call had been part of an effort to discredit Mr. Thomas. In view of recent events as reported by the news media, I am persuaded that there is a concerted effort to dislodge Mr. Thomas's nomination by assassinating his character. In the process, his family is being humiliated. I want to urge in the strongest way that this matter be investigated.

My sincere hope and expectation is that Mr. Thomas will be cleared of the charges made against him and that he will be confirmed as the next Associate Justice of the United States Supreme Court. Clearly, the situation is a difficult one. Nevertheless, look for justice to prevail and continue to support Judge Thomas's nomination. If confirmed, he will be a great Supreme Court Justice.

FLOYD W. HAYES III, PH.D.

ROGER L. TUTTLE LAW OFFICES,
Richmond, VA, October 8, 1991.
Mr. PETER LIEBORD,
Staff Counsel, Senator Danforth's Office, U.S. Senate, Washington, DC.

To Whom It May Concern: I was a member of the Faculty Recruitment Committee when Anita Hill was first brought to the attention of the O.R.U. Law School. Because of her experience as a member of Judge Thomas' staff at EEOC, we looked on her candidacy with favor and ultimately offered her a position on the faculty.

I was subsequently named Dean of the Law School, and in that capacity I supervised Ms. Hill's work. During this period of time in which I was associated with her she had nothing but the most laudatory comments about Judge Thomas as a fine man and an excellent legal scholar.

During the three years I knew Anita Hill she never made a single derogatory comment about Judge Thomas but always praised him highly. I am now flabbergasted that she would make the allegations she had.

ROGER L. TUTTLE.

I worked for the Office for Civil Rights in the Education Department from the inception of the Department in May, 1980 through September, 1986. I was placed in the position of Executive Assistant to the Assistant Secretary for Civil Rights by Cynthia Brown, President Carter's appointee as first Assistant Secretary for Civil Rights. After Ms. Brown's resignation in January 1981, I worked for the Acting Assistant Secretary for Civil Rights, Frederick Cioffi.

Prior to Clarence Thomas' appointment as Assistant Secretary for Civil Rights, Mr. Cioffi arranged for my reassignment from the Assistant Secretary's immediate staff to the Litigation Division of the Office for Civil Rights. I was completing my law degree in May 1981 at Georgetown University Law Center (evening division) and was interested in working with the legal staff of OCR. I did not wish to remain as Executive Assistant to the Assistant Secretary for a person I did not know because of the personal nature and close working relationship necessary for the position.

When Clarence Thomas was appointed as Assistant Secretary, I was asked by Mr. Cioffi to introduce him to the Office for Civil Rights and its functions. I agreed to work with Mr. Thomas on a transition basis. I considered myself to be apolitical as a civil servant; however, I had no interest in serving as an assistant to a new political appointee.

I met Clarence Thomas in the Spring of 1981 and worked to orient him to the Office for Civil Rights. It was my intention to go to the Litigation Division following the orientation. Mr. Thomas asked me to stay on as his assistant and continue to perform the duties I had under the former Assistant Secretary.

I agreed to work for Mr. Thomas because I felt he was a good person and wanted to help the Office for Civil Rights. I continued as his assistant through his tenure with the Office for Civil Rights. I worked closely with Mr. Thomas on day to day operations of the Office.

When Mr. Thomas hired Anita Hill, I worked with the Department's personnel

staff to effect her appointment. I recall that there was some question about her qualifications for appointment at the requested grade level, but the matter was resolved and I believe she was appointed to an attorney position in the Office for Civil Rights.

Ms. Hill and I had limited interaction in our work, as she worked on policy matters and I worked on management matters. Our offices were contiguous in an area adjacent to the Assistant Secretary's office, and I considered her a work acquaintance. I recall that she went to the EEOC with Mr. Thomas, and later heard that she had decided to leave Washington and had gotten a job as a law professor.

During the time Mr. Thomas was with OCR, I had no reason to believe he would sexually harass any employee. Mr. Thomas appeared to me to be a private person, devoted to his son. His dealings with me were always professional and I grew to respect him for his support of civil rights. I had no reason to believe that any sexual harassment was going on in the office, and observed no tension in his contacts with Ms. Hill nor any indication that they had anything other than a professional relationship.

Mr. Thomas initially asked me to go with him to the EEOC upon his appointment. When his successor was named in OCR, Mr. Thomas asked me to stay in OCR to assist his successor, who was a personal friend of his. I agreed to stay and worked for Mr. Thomas' successor until he left OCR in 1986.

PATRICIA HEALY.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC, February 12, 1985.

MS. ANGELA WRIGHT,
Director, Office of Public Affairs, Washington, DC.

DEAR MS. WRIGHT: This is to notify you that your services with the Equal Employment Opportunity Commission are no longer needed. For this reason, your employment will be terminated close of business on March 1, 1985.

Sincerely,

CLARENCE THOMAS,
Chairman.

JANUARY 20, 1984.

Memo For: Kate Semerad.
From: Angela Wright.
Subject: My resiguation.

Since your arrival in OPA, the atmosphere in this office has been charged with racial tensions. You have embarked on a course of steadily persecuting the minority members of your staff one by one. I fully realize that this springs both from your own prejudice and your total incompetency to function in your job without the lackey-like adoration of those sven less competent than yourself—those who constantly massage your fractured ego. Because of what almost every member of a minority group has had to endure to achieve professional status, they are not easily fooled by your pitiful charade and therefore can not pay the slave-like obeisance you demand as the sole criteria for the performance of a job. It is perhaps because you know how much blacks have to know to get through the door, that they are so threatening to you.

I will not acquiesce to your silliness. You are a fool. I will not demean myself by the servile posture you demand. I do not need to do this I am a skilled and competent professional. You are not, and this is perhaps the reason for your thrust against those more competent, more skilled, and more knowledgeable than you. I will not be your lackey. Therefore, I am tendering my resignation, effective February 3, 1984.

QUESTIONS ON ANGELA WRIGHT

[Note: Ms. Wright was not sworn before giving statement]

1. Ms. Wright, you have alleged that Judge Thomas made some inappropriate comments to you at a banquet in 1984. Although you cannot remember exactly what Judge Thomas said, you allege that he complimented your appearance and predicted you would date him. (13.)

You aleo state that you did not react to this remark, and that Judge Thomas did not follow up on it (15). Is that correct?

Yesterday, when you were interviewed by Senate etaffers, you refused to identify the person you allegedly discussed this incident with. Obviously that makes it difficult for us to investigate your allegations. Are you still unwilling to give us the name of that person? (42.)

2. Let's discuss the time you allege that Judge Thomas visited you at your apartment.

You do not remember precisely when that was? (44.)

You also do not remember what time it was when he arrived? (44–45.)

Can you recall why Judge Thomas allegedly said he was there? Indeed, you told the staffers yesterday that you cannot remember any "specific things" about the conversation? (17.)

You say you don't know how Judge Thomas got your address. You didn't ask him at the time, did you? (43.) You believe it is possible that you yourself told him, isn't that right? (44.)

3. You also stated that Judge Thomas once remarked on the size of your breasts at an EEOC seminar. You told the staffers yesterday that you can't remember what seminar that was, didn't you? (20.) Or where it was? (20.) You can't remember the specific subject of the seminar either, can you? (20.)

4. Ms. Wright, you say that you may have told Phyllis Berry about Judge Thomas' advances towards you in a general way. (22, 24.) You say that she replied: "Well, he's a man, you know, he's always hitting on everybody" (25.)

Are you aware that Ms. Berry has vouched for Judge Thomas' integrity and has defended him against sexual harassment charges? In fact, Ms. Berry has specifically referred to your charges as "totally ludicrous." (Charlotte Observer, 10/11/91, at 13A). Ms. Berry has said: "Nothing like that occurred." (Id.) Do you still believe you complained to Ms. Berry about Judge Thomas?

5. You reported that other women who worked at EEOC allegedly told you that Judge Thomas had asked them to date him (36). Are you aware that 17 women who have worked closely with Judge Thomas have emphatically denied that he did this sort of thing, or that he was the type of person who would or could do this sort of thing? (Washington Post, 10/11/91, at A10).

6. You said during the interview with the Committee's staff that you discussed Judge Thomas' alleged advances towards you with your closest friend at EEOC, but refused to identify that person. (62.) Are you now willing to tell us who that person is?

7. You have stated that you never felt sexually harassed by Judge Thomas, isn't that right? Never felt threatened? Never felt intimidated? (40.)

8. You told the staffers yesterday that you think Clarence Thomas should not be confirmed to the Supreme Court. (53.) But, in your interview with Committee staff, you said that this conclusion was based on certain critical remarks that you say Judge Thomas made about particular EEOC employees. Why would Judge Thomas' expression of criticism of his subordinates disable him from service on the Supreme Court?

You were fired by Judge Thomas, correct?

9. Ms. Wright, do you know Jayne G. Benz? Didn't she serve as a staff assistant for Judge Thomas while you were at EEOC? Didn't she report to you for a period of three months?

Ms. Benz says that she never observed any irregularity between you and Judge Thomas. She says that Judge Thomas fired you solely because of your poor job performance. Do you disagree with that account?

10. Isn't it true that you had received a poor job evaluation when you worked for Judge Thomas at the EEOC? An evaluation that you characterized as a "C" rating? (64.)

R. Gaull Silberman, one of the other commissioners at the EEOC, has said: "I complained about her all the time because I thought she was grossly incompetent." (Charlotte Observer, 10/11/91, at 13A). Do you recall these complaints from Mrs. Silberman?

11. You have stated that you don't believe that Judge Thomas fired you because you had refused his alleged advances, isn't that correct? In fact, you believe that he simply wanted somebody else for the job, isn't that right? (50.)

You have stated that on the day you were dismissed, Judge Thomas criticized you for not wanting to speak to him after work (30). You didn't think that related to Judge Thomas' alleged advances towards you, did you? (30.) Wasn't that comment made, as you later suggest, in the context of your responsibility to report to him (35)?

12. Ms. Wright, you worked for Congressman Charlie Rose from 1976 until 1978, is that correct?

Why did you leave Congressman Rose's staff?

Was there an official explanation for your firing? [Absence without leave from work]

Apart from the official explanation, were there any other reasons that you can think of for your firing?

13. Ms. Wright, you stated many times that you had not sought to make your allegations to the Committee; rather, you were contacted by a staffer, Mark Sohwartz. (57.) Did Mr. Schwartz tell you how he had discovered your name? Were you expecting his call?

You say that Mr. Schwartz told you he had heard of a column you had written about Ms. Hill's allegations. You say this column was not going to be published. (57.) Did Mr. Schwartz tell you how he found out about this column? Do you know?

Are you still unwilling to share this column with us or tell us what you wrote? (57–58.)

When did you start thinking about writing this oolumn? Was it before or after Professor Hill's allegations became public?

14. Has anyone claiming to represent Ms. Hill called you?

Have you ever contacted any members of the media with your story?

You stated that your desire "was never to get to this point" and that you thought you could "control" the process so that it would not get to this point. What did you think would happen after you told the Committee your allegations? What would have happened if you could have "controlled" the process? Would Judge Thomas have been forced to withdraw quietly? Would the Committee have quietly voted down his nomination?

STATEMENT OF SANDRA G. BATTLE SUBMITTED TO THE SENATE JUDICIARY COMMITTEE IN THE MATTER OF THE CONFIRMATION OF SUPREME COURT NOMINEE CLARENCE THOMAS

I, Sandra G. Battle, attorney with the Office for Civil Rights, U.S. Department of Education, respectfully submit the following statement.

I have worked at the U.S. Department of Education since its establishment in May 1980. Judge Clarence Thomas was Assistant Secretary between the period June 30, 1981 and May 12, 1982. From October 1980 through March 1983 I was attorney advisor to Michael Middleton, the Principal Deputy Assistant Secretary for Civil Rights. The Office of the Principal Deputy Assistant Secretary reported directly to the Office of the Assistant Secretary for Civil Rights. In the position as attorney advisor to the Deputy Assistant Secretary, I worked directly with Judge Thomas and Professor Anita Hill, who was the Attorney Advisor to the Assistant Secretary, throughout the period of time that both individuals worked at the U.S. Department of Education, Office for Civil Rights.

(1) I communicated regularly with both individuals in a professional capacity.

(2) Based on my personal knowledge, I have no reason to question the integrity or credibility of either Judge Thomas or Professor Anita Hill.

(3) In my presence, Judge Thomas always acted in a professional manner and treated all employees, including Professor Hill, with the utmost respect.

(4) I observed neither conversation nor conduct directed to Professor Hill or any other employee that could be construed as sexually oriented conduct.

(5) I always observed Professor Hill as a very dedicated, serious, and cooperative employee.

(6) In the presence of Judge Thomas, Professor Hill's demeanor was always cordial and strictly professional.

(7) No conversations were ever held in my presence, between Judge Thomas and Professor Hill, that were not directly related to the mission of the Office for Civil Rights.

(8) Based on my observation there was no indication from the manner in which Professor Hill interacted with Judge Thomas, and he with her, that suggested that either one was having any problems working with each other.

(9) Based on my observation of their interactions I have no reason to believe that Professor Hill was being sexually harassed.

SANDRA G. BATTLE.

CHRISTIAN COALITION,
October 7, 1991.

FORMER COLLEAGUE OF ANITA HILL RECALLS HER PRAISE OF THOMAS

A former teaching colleague of Professor Anita F. Hill at Oral Roberts University has a different recollection of her role in inviting Judge Clarence Thomas to speak at a seminar on employment discrimination in 1983–1984.

Dr. Tom Goldman, former Oral Roberts University professor and currently a professor of law at Regent University in Virginia, recalls that Professor Hill offered to contact Judge Thomas and extend the law school's invitation to address students on the subject of employment discrimination in academic year 1983–84. Professor Hill extended the invitation two years after the alleged incidents of sexual harassment.

"I was asked to put together a seminar on employment discrimination," said Professor Goldman. "In doing that, I arranged for an attorney in California who had written a book on the subject to speak. My recollection is that Professor Hill suggested Judge Thomas as a speaker. She and he appeared to be on a friendly basis while he was on campus. There is no question that she was the means by which we obtained Thomas as a speaker."

The Christian Coalition also released a statement from former Oral Roberts University Law School Dean Charles A. Kothe, who hired Professor Anita Hill to a teaching position on the recommendation of Judge Thomas in the fall of 1983. Kothe corroborated Professor Goldman's recollection of Anita Hill's relationship with Judge Thomas as friendly and professional. "I find the references to the alleged sexual harassment not only unbelievable but preposterous," said Dean Kothe. "I am convinced that such are the product of fantasy."

"We are concerned that Professor Hill's charges, coming so late in the confirmation process, are a last-ditch effort to smear Judge Thomas," said Ralph Reed, executive director of the Christian Coalition. "We question the relevance of Professor Anita Hill's charges given her previous attitude towards him, and the fact that they have been made public at the eleventh hour."

Christian Coalition is a grassroots citizen action organization that has aired nationwide television spots in support of Clarence Thomas. Its members have generated an estimated 100,000 petitions, letters, and phone calls to the Senate in support of Judge Thomas' confirmation to the Supreme Court.

CONGRESS OF RACIAL EQUALITY,
New York, NY, October 10, 1991.

Mr. CLARENCE THOMAS,
Judge, U.S. Court of Appeals, Washington, DC.

DEAR JUDGE THOMAS: On behalf of the women of the staff of the Congress of Racial Equality (CORE) please accept our continued and unshaken support of you in this most trying moment of your life.

Words cannot express the outrage at this last minute attempt to impugn your character. For Anita Hill to give testimony about alleged sexual harassment on the condition that you not be informed is one of the greatest violations of a fundamental concept of American law: that the accuser must be willing to face the accused. This is totally unacceptable from someone with the background of Ms. Hill's—a tenured law school professor.

For this exploitation of a serious problem in our society—sexual harassment—to be allowed to affect your confirmation, is a total travesty of justice.

The women of this organization, the Congress of Racial Equality (CORE) as well as the majority of level headed woman of all races are behind you 100%.

Do not hesitate to call on us if you need us.

Respectfully,

ANGELIQUE WIMBUSH,
Executive Assistant to the National Chairman.

Washington, DC, October 13, 1991.

Members of the Senate Judiciary Committee, *U.S. Senate, Washington, DC.*

DEAR SENATORS: I worked as a Special Assistant to Clarence Thomas at the EEOC from 1985 to 1986. I am writing because I am amazed and outraged at the "fatherly ambience" that he is getting away with projecting as an image of his office. Let me make it clear: I am not claiming that I was the victim of sexual harassment.

Clarence Thomas pretends that his only behavior toward those who worked as his special assistants was as a father to children, and a mentor to proteges. That simply isn't true. If you were young, black, female and reasonably attractive, you knew full well you were being inspected and auditioned as a female. You knew when you were in favor because you were always at his beck and call, being summoned constantly, tracked down wherever you were in the agency and given special deference by others because of his interest. And you knew when you had ceased to be an object of sexual interest—because you were barred from entering his office and treated as an outcast, or worse, a leper with whom contact was taboo. For my own part, I found his attention unpleasant, sought a transfer, was told one "just doesn't do that," insisted nonetheless and paid the price as an outcast for the remainder of my employment at EEOC.

I can understand why some of his special assistants are coming forward to his defense: he is the most powerful black man they know and possibly, the most influential they will ever know. They want to retain contact because they will need it to survive and to advance in a very tough world. But the atmosphere of absolute sterile propriety permeated by loving, nurturing but asexual concern is simply a lie. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt about that dimension in Clarence Thomas' office. I have told all of this to Senate staff including the Chairman's staff in the weeks following the nomination. But in light of the importance which both ambience (in his office) and credibility have now assumed in these hearings, I felt obliged to communicate this in writing in order to put this on the record publicly.

Sincerely,

SUKARI HARDNETT.

My name is Diane Holt. I worked as Clarence Thomas' Secretary from May 1981 to September 1987.

I learned today that Sukari Hardnett is saying that if you were young and attractive you felt under scrutiny in Clarence Thomas' office. Nothing could be further from the truth.

Ms. Hardnett came to work at EEOC in 1985 as a legal intern. Legal interns are hired while in law school to give them an opportunity to gain practical experience. Once out of law school, these interns are given an opportunity to pass the Bar whereupon they are converted to "attorneys." If the individual does not pass the Bar, the appointment expires. Ms. Hardnett did not pass the Bar and was dismissed, in 1987.

Ms. Hardnett occupied a small back office with several other women. At no time did I discern from Ms. Hardnett or any of these other women that Ms. Hardnett felt under sexual scrutiny, felt uncomfortable or was in fact seeking other employment.

Furthermore, in the 6 years I worked directly for Clarence Thomas, there were many, many, very attractive women in his employ, who I'm sure would testify that they were not made uncomfortable by being or feeling under scrutiny.

DIANE HOLT.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, October 10, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: I have been the Managing Director of the Federal Communications Commission for the past two years. I

had been Management Director of the Office for Civil Rights in the Department of Education with direct responsibility for personnel and EEO during the time Mr. Clarence Thomas was Assistant Secretary. I was also Financial and Resources Management Director of EEOC while Mr. Thomas was Chairman. In these capacities, I also knew and worked with Ms. Anita Hill.

I differ with Ms. Hill's statement that she followed Mr. Thomas to EEOC because she would have lost her job at OCR. At no time were any of the employees of OCR at risk of losing their jobs during this period. OCR had a separate budget earmark which was more than sufficient to avoid any staff outbacks. Additionally, no employees were made to feel that their jobs were in jeopardy by Mr. Thomas' departure from OCR. Quite the opposite was true: after Mr. Thomas announced his departure from OCR to go to EEOC, Mr. Thomas made a special point of walking the halls of OCR to introduce Mr. Harry Singleton, his successor, to OCR staff in order to facilitate the continuity of leadership.

Any explanation of Ms. Hill's rationale for leaving OCR to go to EEOC that is founded on her allegation that she would have lost her job at OCR is without basis. Indeed, Ms. Hill told me at the time that she was flattered to be selected by Mr. Thomas to work at EEOC. In our conversation, she also expressed her admiration for Mr. Thomas.

After I moved to EEOC to be Financial and Resource Management Director, Ms. Hill again praised Mr. Thomas to me. In several conversations that were held, she expressed both her respect for him as a man and as a leader of the EEOC.

In fact, Ms. Hill and I also talked after she announced her own departure from EEOC to become a law professor. She told me that she was indebted to Clarence Thomas for the opportunities he had given her and that he had always been supportive and encouraging of her career goals.

I would also like to express that as a career civil servant in the Senior Executive Service, I can state unequivocally that Mr. Thomas repeatedly, consistently and forcefully impressed upon his senior staff our own responsibilities to act in a professional manner in which would bring credit and respect to the offices we held. In particular, he was vocally adamant that the presence of any form of discrimination—and he specifically mentioned sexual harassment—would not be tolerated. At no time during the nearly nine years I worked in organizations headed by him was there ever so much as a "hallway rumor" regarding his own conduct. He was widely viewed as the epitome of a moral and upright man by the staff he supervised.

I would like to add a personal note. I hold a doctorate from Columbia University and have authored articles and two books on sex equity issues, which I believe help to make me sensitive to the issues of sex discrimination and sexual harassment. I am also the husband of a professional woman who found she had no option but to formally charge her Ph.D. advisor of sexual harassment nearly two decades ago. I believe I am as sensitive to the issue of sexual harassment as any man can be. And I will tell you that nothing in Mr. Clarence Thomas' professional or personal demeanor, and nothing in any of my conversations with Ms. Anita Hill, have ever lead me to believe that Mr. Thomas could act in any of the ways in which Ms. Hill has charged.

If I can provide any additional information in regard to Mr. Thomas' performance or conduct at either OCR or EEOC, please let me know.

Sincerely yours,

ANDREW S. FISHEL,
Managing Director.

FACTS ABOUT ANGELA WRIGHT

Judge Thomas has testfied that he summarily dismissed Ms. Wright because she referred to a male member of his staff as a "faggot" [The Washington Post A22 (10/13/91).]

Rikki Silberman, a Commissioner at the EEOC recalls Ms. Wright's job performance as being "poor." Commissioner Silberman recalls, "I complained about her all the time because I thought she was 'grossly incompetent.'" [Quoted in Associated Press, 10/11/91, AM cycle].

Thelma Duggin recalls Ms. Wright as having been fired "because [she] had not made proper preparations for a meeting that was to be attended by various Commissioners." [Duggin FBI Interview, 10/11/91, at 2.]

Prior to her dismissal, Ms. Wright received a poor evaluation for her job performance. Ms. Wright has stated that she "wasn't satisfied" with the evaluation and that she thought that she "deserved a better evaluation." [Tr., Hill Interview, October 10, 1991, at 64.]

Ms. Wright was fired from her job with Rep. Charlie Rose (D–N.C.) in 1978. "I got fired because I got angry and walked off the job," said Ms. Wright. [Quoted in Associated Press, 10/11/91, AM cycle.]

Ms. Wright is "high strung" and "would react without thinking." [Duggin FBI Interview, 10/11/91, at 1.]

Ms. Wright is "a little shaky on the integrity side." [Id.]

Ms. Wright "always complained about her supervisors and had a problem working within a structure and keeping a job." [Id. at 2.]

Ms. Wright "could be described as a 'seductive-type person' * * * who likes to party. * * * Wright would invite sexual advances of a man and then brag about guys hitting on her. * * * Wright enjoyed the attention of men." [Id.]

Ms. Duggin recalls that Ms. Wright stated, referring to Judge Thomas, "'I want to get him back,'" and "also said she 'was pissed that she had fired her,'" [Id.] and that she stated "'she didn't know if she was going to write anything about Thomas but she was looking for a way to get him back.'" [Id. at 3.]

When Kate Semerad began working for the Agency for International Development (AID) in 1983, "she received reports from coworkers that Wright was delinquent in the performance of her job. * * * Wright was having problems with adequately performing her job responsibilities. * * * [Semerad] confronted Wright concerning major problem areas that needed to be improved: (a) Wright's confrontational attitude; (b) Wright's job skills especially in the area of writing and (c) showing up to work on time." [Semerad FBI Interview, 10/11/91, at 1.]

According to Semerad, she received information from Ms. Wright's immediate supervisor that "Wright's management and writing skills were not satisfactory." She received additional information that "Wright was not putting in a full day's work * * * [in that] she would leave work early and take long lunch hours." [Id.]

Semerad "advised Wright that she would have to fire her if her job performance did not improve. * * * [B]efore she could fire Wright she received a letter of resignation from Wright claiming race discrimination on the part of Semerad. * * * [I]f Wright had not resigned she would have been left no choice but to fire her." [Id. at 2.]

Ms. Wright herself has stated that this letter characterized Ms. Semerad as, in her own words, "unfair and racist and insecure and lots of other things." [Tr., Hill Interview, October 10, 1991, at 67.]

Ms. Wright was "overly sensitive about being a young, attractive black woman * * * [and] felt she was not being treated fairly and people were judging her on her appearance instead of her accomplishments." [Semerad FBI Interview, 10/11/91, at 2.]

Ms. Wright's personality is "vengeful, angry, and immature. * * * [Wright] took her letter of resignation claiming unfounded racial discrimination claims to Capitol Hill seeking revenge on Semerad." [Id.]

[Many of Semerad's comments are repeated in a letter from her to Sen. Thurmond, dated October 10, 1991.]

STATEMENT OF CATHERINE D. BLACKNALL

I, Catherine D. Blacknall worked in the Office of the Chairman, at the Equal Employment Opportunity Commission, as a Secretary to the Assistants from May 1983 to September, 1984, at which time I left to attend the Legal Assistant Program at Georgetown University. Chairman Thomas highly encouraged and supported me in my endeavor because he is a strong advocate for education and advancement for individuals in general.

I worked closely with Ms. Hill prior to her leaving the Office to take a position at Oral Roberts University the Summer of 1983. During the time I worked with Ms. Hill, I have never witnessed any hostility or tension between her and Chairman Thomas. Their working relationship appeared to be very professional.

Judge Thomas has never approached me nor have I heard of him approaching any other females within the Agency in a disrespectful or unprofessional manner. Judge Clarence Thomas has always been a gentleman and man of integrity from whom I respect and have high regards for.

CATHERINE D. BLACKNALL.

OCTOBER 10, 1991.

AFFIDAVIT OF BARBARA PARRIS LAWRENCE

I have been employed by the U.S. Equal Employment Opportunity Commission since August 1982. I was hired by Clarence Thomas and worked on his personal staff from August 1982 through November 1988 when I was reassigned at my request to Personnel Management Services. In August 1989 I became Director of the Planning and Evaluation Division of the Commission's Office of Equal Employment Opportunity.

I was initially hired by Judge Thomas as his administrative assistant and two years later my responsibilities expanded to include disability issues and policy/coordination with the Executive Secretariat.

Clarence Thomas was totally professional and treated me both as an individual and as a woman with the utmost respect and dignity. I worked with him on a range of matters from sensitive policy issues, personnel matters, to administrative activities including budget and finance for the Chairman's Office. On all occasions Judge Thomas treated individuals and policies affecting individuals, including all women's rights, with the utmost respect and sensitivity.

Anita Hill was an attorney advisor (special assistant) on Judge Thomas' personal staff when I joined the staff in August 1982. Because the Chairman's personal staff was pri-

marily situated within one large suite, I had numerous occasions to work with and observe the interaction between Judge Thomas and Anita Hill. At no time did I observe any improper behavior or hear any suggestive remarks. Judge Thomas created a professional and enjoyable work environment. His hearty laughter, sense of humor and smile established a friendly place of work. However, that atmosphere could never possibly be construed as unprofessional. Clarence Thomas treated Ms. Hill with the same professionalism, respect and dignity that he has for all employees and individuals.

Since I regard Judge Thomas to be of the highest character and integrity, I find the allegations of sexual harassment by Anita Hill to be totally preposterous.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC, May 31, 1983.

Dean CHARLES A. KOTHE,
O.W. Coburn School of Law, Oral Roberts University, Tulsa, OK.

DEAR DEAN KOTHE: It is my pleasure to write this letter of recommendation for Anita Hill. Miss Hill has been in my employ for approximately two years. During this period, I have had an opportunity to know her work quite well first as my attorney advisor at the Department of Education where I was Assistant Secretary for Civil Rights and currently as my special assistant. When I first interviewed her for the position at the Department of Education, I recognized in her a sincere interest in civil rights and civil rights enforcement. She has maintained that interest and has combined with it the work needed to put many of our ideas in place.

Overall her work product during the past two years has been of high quality. Moreover, the improvement in her work during this period has been exceptional. These comments apply to both her written and analytical skills. Over the course of the past two years, she has written as many as 75 memorandum, articles, speeches and analytical and working papers for my review. The end product is always clear, thorough and useful. Miss Hill's analytical skills have sharpened such that she is now able to focus on the legal problems which confront this agency and fashion solutions to those problems which are legally sufficient and which promote the mission of the Commission. While we have disagreed on the positions to be taken in particular matters, she is able to support her positions and we are able to resolve the disagreements professionally.

I believe that Miss Hill would be a worthwhile addition to your teaching staff. While I would miss her contributions here, I recognize this as a fine professional opportunity for her and encourage her to explore it.

Should you need more information, I would be happy to disouss Miss Hill's work in greater detail.

Sincerely,

CLARENCE THOMAS.

STATEMENT BY JAY F. MORRIS, FORMER DEPUTY ADMINISTRATOR, AID

SUBJECT: ANGELA WRIGHT/EMPLOYMENT HISTORY

This statement is available for public use and attribution. I am willing to be interviewed under oath by any Senate Judiciary Committee member or staff as well as any agent of the FBI if it is deemed necessary.

EMPLOYMENT HISTORY

In the early 1980's as both originally Assistant Administrator for External Affairs and from mid-1982 on as Deputy Administrator for AID I was responsible for all final approvals on the hiring and firing of political appointees below the Presidential level. As I recall, after I became Deputy Administrator and Mrs. Roger Semerad (Kate) became acting head of the Office of External Affairs, it was suggested that we hire Angela Wright as a press officer in our press affairs division. The person making the recommendation was Kate Semerad. I concurred.

A number of months later, perhaps as long as a year to year and a half, Mrs. Semerad came to me and said Ms. Wright's performance was abysmal. She often failed to come to work or came in late. She was difficult to work with in the opinion of her peers and supervisors. Moreover, her work was unprofessional—that is, late, incomplete, and ungrammatical. Her immediate supervisor, Raisa Scriabine, fully endorsed this conclusion. Based on their advice and my own observations I agreed that she should be dismissed and issued the appropriate order.

POST EMPLOYMENT BEHAVIOR

Subsequent to Ms. Wright's dismissal, Mrs. Semerad was nominated by President Reagan to the post of Assistant Administrator for External Affairs. Upon her departure, Ms. Wright had written a letter to AID accusing Mrs. Semerad of racism and incompetence and threatening retaliation. The accusations were ridiculous on their face. Mrs. Semerad is one of the most fair minded people I know. She is also one of the most competent public affairs specialists I have ever met.

I did not pay any attention to the venomous and threatening tone of the note until after Mrs. Semerad had been nominated by the President. Subsequent to her hearing and favorable recommendation to the Senate by the Senate Foreign Relations Committee, however, a "hold" was put on the confirmation floor vote by a member of the Committee. I learned it was due to a staff member who had received charges of racism levelled against Mrs. Semerad by a former employee. That former employee was Ms. Angela Wright.

This staff member wanted to use office space at AID to call in employees and interrogate them. I refused on the grounds that it would be prejudicial and intimidating. I did agree, however, to provide the names and phone numbers of the remainder of Mrs. Semerad's staff so that he might question them by phone or other means if he so chose. After several days and nights of fruitless inquiry the Senator in question released his "hold" and Mrs. Semerad was confirmed, unanimously if I remember correctly. Ironically, the vote took place in a late evening in October at the very moment I was in my office in the State Department still trying to persuade the staff member in question that he was on a witch hunt.

The reason I am offering this statement is that I am struck hy the startling parallels between what Ms. Wright did then and what she is doing now. She vowed vengeance on a former supervisor for dismissal on the basis of incompetence. She seemed incapable of accepting responsibility for her own shortcomings and blamed the episode on external factors. She delayed in making her charges until after the confirmation hearings were concluded. When she made her charges she did so at the 11th hour to a staff member who would be sympathetio because he was "looking for dirt." The entire process suggested a last ditch attempt to stop the advancement of someone she resented. I see the same pattern of behavior today in the case of Judge Thomas.

Respectfully snbmitted,

JAY F. MORRIS.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC, February 12, 1985.

Ms. ANGELA WRIGHT,
Director, Office of Public Affairs, 2401 E Street, N.W., Washington, DC.

DEAR Ms. WRIGHT, this is to notify you that your services with the Equal Employment Opportunity Commission are no longer needed. For this reason, your employment will be terminated close of business on March 1, 1985.

Sincerely,

CLARENCE THOMAS,
Chairman.

JANUARY 20, 1984.

Memo for: Kate Semerad.
From: Angela Wright.
Subject: My resignation.

Since your arrival in OPA, the atmosphere in this office has been charged with racial tensions. You have embarked on a course of steadily persecuting the minority members of your staff one by one. I fully realize that this springs both from your own prejudice and your total incompetenoy to function in your job without the lackey-like adoration of those even less competent than yourself—those who constantly massage your fractured ego. Because of what almost every member of a minority group has had to endure to achieve professional status, they are not easily fooled by your pitiful charade and therefore can not pay the slave-like obeisance you demand as the sole criteria for the performance of a job. It is perhape because you know how much blacks have to know to get through the door, that they are so threatening to you.

I will not acquiesce to your silliness. You are a fool. I will not demean myself by the servile posture you demand. I do not need to do this. I am a skilled and competent professional. You are not, and this is perhaps the reason for your thrust against those more competent, more skilled, and more knowledgeable than you. I will not be your lackey. Therefore, I am tendering my resignation, effective February 3, 1984.

The PRESIDING OFFICER. Does the Senator yield additional time?

Mr. THURMOND. Mr. President, I yield 30 seconds.

The PRESIDING OFFICER. An additional 30 seconds.

Mr. SIMPSON. Mr. President, I think it is plain that I and other committee members had a huge body of information and it did come in "over the transom," and a lot of it was signed and sworn to and did not get into the record. Here is some of it. You can chew on it and see what you think about it. It was not invented.

If some in the fourth estate will be comfortable enough to take the paper bags off their heads in their offices today, perhaps they can read the CONGRESSIONAL RECORD at this point and print some sensible comment about it all.

During the 3 days of the committee hearing on sex harassment charges against Judge Thomas, we heard hours of testimony from more than 20 witnesses.

However, the testimony—whether in support of Judge Thomas or in support of Professor Hill—was uncorroborated. No one was actually a witness to the statements that Judge Thomas was alleged to have made. There were no eyewitnesses for either Thomas or Hill on related statements, either, except for one instance.

In that one instance, two persons were present together when Professor Hill made a very important remark. Two fine lawyers, not practicing together—Stanley Grayson, a partner in a New York law firm, and Carlton Stewart, a partner in an Atlanta law firm—were both present when Professor Hill walked up to them at the American Bar Association Conference this past summer. Now remember that was in August this year in Atlanta. Mr. Stewart stated that Professor Hill told them, "* * * how great Clarence Thomas' nomination was and how much he deserved it."

Professor Hill and these two senior attorneys then conversed for about 30 minutes, the attorneys testified, discussing the EEOC and Judge Thomas and other matters. During that time, Professor Hill mentioned nothing negative whatsoever concerning Judge Thomas.

Mr. President, many allegations and statements have been made in this case—but few have been verified by eyewitnesses. Here is a rare instance where verification is available and it is reliable: Just a few weeks ago Professor Hill was speaking with clear enthusiasm about the nomination of Judge Thomas. Strange behavior indeed.

RESULT OF HEARINOS

The Senate Judiciary Committee has conducted the hearings it promised to hold for the full Senate on the allegations of sex harassment lodged against Judge Thomas by Anita Hill.

America was certainly glued to the proceedings, but the hearings produced what everyone had expected: First, Anita Hill repeated her previous allegations and added much more that she had never before mentioned; and second, Judge Thomas categorically denied he did anything that Hill alleged.

As expected, we observed one person's word against another.

There emerged no fact which substantially answered the initial questions whioh applied to Professor Hill's allegations: First, why did she wait for 10 years to make the allegations—given that her specialty and expertise was in employment discrimination law? Seoond, why did she move with him from the Department of Education to the EEOC if he had been sexually harassing her in the outrageous and disgusting manner she alleged; and third, why did she oontinue to call Judge Thomas and see him after she left his employ?

I believe there was a very good thing that emerged from these hearings: Judge Thomas told the world with passion, anger, and accuracy about the cynical manipulation of the nomination process by the liberal special interest groups.

Judge Thomas told us how he was being lynched for being an uppity black man who dared to defy liberal ideology and think independently.

Judge Thomas gave a personally powerful and utterly convincing denial of any improper behavior on his part. I am pleased the American public had the opportunity to hear and see all of this, I am woefully sorry that Judge Thomas and his dear wife Ginny had to endure and suffer so much personal pain and anguish before sharing the truth in such a moving way with all Americans.

TESTIMONY OF ANITA HILL

Professor Hill certainly gave the appearance of being sincere, honest, and truthfull.

She is an intelligent, articulate, and poised woman.

She herself—like Judge Thomas—has come over a long trail from a disadvantaged rural background to impressive career achievements.

However, after having spent nearly 7 hours listening to her testimony, and comparing that testimony to her earlier statements, I conclude that Professor Hill has not been forthcoming to this committee.

Her initial statement to the committee and the FBI did not contain hardly any of the lurid and obscene pornographic details that she brought forth on national television during the hearings.

Her initial statement to the FBI was truncated and unspecific even though the two FBI agents urged her to be as specific as possible, and even though one of the agents was female and offered to hear the more sexually explicit details without the presence of the male agent.

Professor Hill's "revised statement" to the committee—made before the hearings began—again did not contain the specific, personal pornographic references she made before the committee—references to "Long Dong Silver" or the comment about the pubic hair in the Coke can, or to Judge Thomas' alleged sexual prowess or physical endowment.

In short, after 18 years of practicing law, my experience leads me to seriously question the allegations presented by Professor Hill.

But let us remember: While I doubt her story, I also sympathize with Anita Hill's public predicament.

As for Judge Thomas, I strongly wish Anita Hill had never had to make these allegations public.

JUDGE THOMAS' TESTIMONY

In addition, Judge Thomas was persuasively firm, adamant and convincing in his denials.

The panel of women ooworkers who testified in his favor—J.C. Alvarez, Nancy Fitch, Diane Holt and Phyllis Berry-Myers—made a very strong and telling point: There was no way that Judge Thomas could have done what he did without the rest of the Office finding out about it.

As Senator GRASSLEY put it at the hearings, "once two people know about something in Washington, DC, it is no longer a secret."

If Judge Thomas really did what Anita Hill claimed he did, we would not have the hearsay oorroboration of the witness Susan Hoerchner, instead we would have the factual corroboration of women like J.C. Alvarez or Phyllis Berry—women who had longer, continual and closer personal contact with both Thomas and Professor Hill than did Hoerchner or any other of her witnesses.

Judge Thomas gave very compelling testimony that he did not sexually harass Anita Hill or anyone else, and he was properly and convincingly corroborated by those who worked with him on a daily basis.

SEX HARASSMENT

Let no one be allowed to misinterpret my position on this case to be one of hostility, of being uncaring or insensitive or cavalier about the gravely serious problem of sex harassment in the workplace.

I do know sex harassment exists, I do know it is a serious problem, and I assure you that my commitment to seeing it fully punished is second to none.

However, the fact that sex harassment is a serious problem in society does not mean surely then that every allegation of such harassment is accurate or true or fair.

I simply believe that, in this case, Anita Hill's allegations do not make rational sense.

CONCLUSION

Mr. President, I will not even pretend to know Anita Hill's motivation for saying what she said.

I believe it is possible that she truly believes what she has told us, and that she did not volitionally lie.

However, it is not up to the committee to try to discern the motivation of Professor Hill.

As Chairman BIDEN pointed out, the benefit of the doubt in these proceedings must be given to the nominee.

The opponents of Judge Thomas had the significant burden of proof of establishing the truth of allegations.

Judge Thomas has convinced me that he was not guilty of sex harassment, and Professor Hill did not convince me that he did what she alleged.

So here for us is the bottom line: Let us proceed to confirm Judge Thomas, and let us promise to never again air charges such as these in a Senate or public forum.

If allegations arise for future nominees, it is possible and proper for us to investigate them in executive session—at least in a limited manner.

Neither Judge Thomas nor Professor Hill wished these charges to be public.

These past 3 days of hearings have demonstrated two things: Such charges and counter charges should not be discussed—in this type of a process—on nationwide television ever again, and Judge Thomas deserves to be elevated to the Supreme Court. He has earned it over a lifetime, lived in a truly exemplary way.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield 2 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, 2 weeks ago I announced my decision to vote against Clarence Thomas. When he came to the original confirmation hearing he said that he did not have any articulable judicial philosophy; that he was an empty vessel and that he did not have any positions on the major constitutional questions of our time.

Mr. President, as a U.S. Senator I cannot support a nominee who says he or she has no articulable judicial philosophy.

This past week serious allegations have been raised about sexual harassment by Professor Hill—allegations that Clarence Thomas, while chair of EEOC, violated the very rules and regulations he was appointed to enforce. To be fair, Mr. President, it is really impossible to reach a conclusion one way or another, but I wish to remind all of my colleagues that what has happened in the United States of America this past week amounts to a social earthquake.

The sooner we get serious about dealing with questions of sexual harassment and discrimination against women, the better.

It is with a profound sense of sadness, Mr. President, that I wish to point out on the floor of the U.S. Senate that unfortunately what happened to Professor Hill only proves how difficult it is for women to come forward and what happens to them when they do. The bottom line, Mr. President, is that even beyond this confirmation vote, the Congress must deal, must face up to problems of sexual harassment and discrimination against women, and the sooner we do it, the better. I yield the rest of my time.

The PRESIDING OFFICER. Who yields time?

Mr. COHEN addressed the Chair.

Mr. THURMOND. Mr. President, I yield 4 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, the further hearings on Judge Thomas this past weekend have been quite an astonishing spectacle—one I hope our country does not have to endure again anytime soon.

Before Professor Hill's allegations came to light, I had indicated that I would support the confirmation of Judge Clarence Thomas to the Supreme Court. Frankly, that decision was made with some reluctance, given my strong support for a woman's right to choose and affirmative action and civil rights legislation, subjects on which Judge Thomas' views are either noncommittal or nonsupportive. But I was persuaded that Judge Thomas is a gifted person capable of growth and moderation and openmindedness, and I also have considerable faith in the judgment of my friend and colleague Senator DANFORTH, whose strong advocacy of Judge Thomas has impressed us all.

All during this chaotic weekend, I have been wrestling with the charges and countercharges and trying to determine as best I can whether, in my judgment, Judge Thomas continues to merit my support. If the specific charges made by Professor Hill were proven to be true, then that would, in my view, clearly disqualify Judge Thomas from serving on the Supreme Court, and, indeed, threaten his present position to the U.S. Circuit Court of Appeals.

Regardless of the outcome of tonight's vote on Judge Thomas, I believe our society will ultimately be well served by a heightened awareness of the problem of sexual harassment. As the coauthor with Senator JOSEPH BIDEN of the Violence Against Women Act of 1991 and a supporter of Senator DANFORTH's civil rights compromise which expands damages available to women who are victims of sexual harassment or discrimination, I have long been active in efforts to toughen laws addressing the victimization of women. Sexual harassment has always been a firing offense within my office. If men become more sensitive to this issue and women who have been harassed are encouraged to take advantage of the legal recourses available to them, then that may be the one positive aspect of this unsavory episode.

But the Senate is not being asked to rule on the scope of sexual harassment in America today. We are being asked to make a judgment on the completely divergent testimony presented by Judge Thomas and Professor Hill. Both individuals have made impassioned statements, both appear credible, but each leaves no room for ambiguity, nuance, or an explicable interpretation of a possibly misunderstood personal or professional relationship. Accusation and denial are each branded a lie.

The hearings conducted by the Senate Judiciary Committee provided no clear-cut resolution to the fundamental dispute. The central question has been how to resolve the issue of doubt—in favor of Clarence Thomas or against him.

To resolve it in his favor immediately opens one to the charge of callous disregard of an issue of immense importance to the women of this country. To resolve it against him rejects a notion of fundamental fairness that the accuser bears the burden of proof in our society.

In trying to resolve how to tip the scales of judgment in this case, I have done my best to sift through the conflicting testimony in an effort to weigh the probabilities.

If, in fact, Judge Thomas engaged in the lewd and disgusting behavior alleged by Professor Hill, then it would seem to me to more likely indicate a chronic character flaw, not an aberrant episode of obscene behavior. If that is true, it seems improbable that his sexual aggressiveness would not have been displayed toward other women in the work environment and that his behavior would not have been reported or, at the very least, noted by others. But the overwhelming volume of testimony of those who worked closely with Judge Thomas—most of whom were women—was clear and convincing on this issue; he behaved with courtesy, kindness, generosity, and complete professionalism at all times.

Another probability to evaluate concerns Professor Hill's actions. According to the sworn and unrebutted testimony of those who worked closely with Judge Thomas and Professor Hill, there was no evidence of any tension, hostility, or dissonance between the two that might reasonably be expeoted given the behavior alleged by Professor Hill. To the contrary, the evidence seems clear that she sought and maintained cordial relations with Judge Thomas long after she left Washington. Again, it is possible that she buried Judge Thomas' offensive conduct deep within her soul and chose to maintain a friendly relationship in order to protect and further her professional career.

The proceedings conducted by the Judiciary Committee were said not to be a trial, but of course everyone was on trial before the court of world opinion—accuser, accused, and the Senate as well. It is clear to all that a Senate committee, limited by time, constrained by the number of members, and titled by political allegiances could not effectively resolve the doubts raised by the charge of sexual harassment. Procedural and evidentiary protections provided in a judicial proceeding were inapplicable; sharp and tough cross-examinations before the blazing lights and television cameras were neither feasible nor politically acceptable.

So we are left at the end of the hearings as we were at the time they were reopened—uncertain where the truth lies. Although there clearly is doubt, I intend to resolve that doubt in favor of Judge Thomas.

It has been argued by some, principally by Judge Thomas' opponents, that as long as a shadow of a doubt falls across a Supreme Court nominee's

integrity, that nominee must be rejected. But if we allow doubt itself sown by a single individual to be a reason for rejecting an individual, we have set in motion a process which holds the potential for undermining or destroying any nominee for any public office.

There is one further concern I want to express. Judge Thomas clearly feels that he has been the victim of mob action, and he is angry. It is my fervent hope that he will allow his anger and bitterness to subside and that he will continue to open his mind and heart to the issues of privacy and civil rights and maintain a deep concern for those who are victims of harassment and discrimination in our society. By doing so, he will demonstrate that the positive qualities of grace and charity ascribed to him by his backers exist in sufficient measure to merit his ascendancy to this Nation's highest court.

Mr. President, if the phone calls in my State are any indication, the popular vote for me would be to vote against Judge Thomas. The calls are running heavily against him. So the easy thing and the popular thing for me to do would be to vote "no." History might show it might be the right thing to do. Mr. President, I do not believe it is the fair thing to do under these circumstances. For that reason, I intend to support his nomination.

Mr. President, like his predecessors, President Bush is entitled to nominate individuals to the Court who he believes share his philosophical views. It is my personal opinion that should we reject the President's nominee, the Senate must be convinced that his choice is so lacking in intelligence, personal or professional integrity, or judicial competence that the nominee's confirmation will result in a great disservice to the Court and to the Nation.

This is not to say that the Senate should simply act as a rubber stamp, deferring to the President's wishes on each and every occasion. Indeed, I think the Senate's role in the appointment of Supreme Court Justices is one of its most important and critical functions. In fulfilling its constitutional responsibility and duty of giving advice and consent, I believe the Senate does, in fact, share with the President the responsibility for shaping the quality of the Federal judiciary and thus the quality of justice in our Nation.

In order to meet the responsibility imposed by the Constitution, each one of us has an obligation to very carefully evaluate the qualifications and competence of the individuals who are nominated by the President. A considerable amount of time has been spent reviewing the background of Judge Thomas, his academic credentials as well as his years of public service.

Having carefully reviewed Judge Thomas' qualifications, his writings, and his testimony before the Judiciary Committee, I believe he should be confirmed for a seat on the U.S. Supreme Court. I say this despite the fact that I am confident that Judge Thomas does not share my views on a number of key issues and despite the uncertainty on how Judge Thomas will rule on issues of considerable importance, such as a woman's right to choose to have an abortion.

I must say that I am troubled by Judge Thomas' testimony before the Judiciary Committee that he has no personal view on this issue of abortion, that he has not discussed the issue or the decision of Roe versus Wade. I personally can think of no other decision that has generated as much controversy and ongoing public and private debate during the past decade as Roe versus Wade.

As a strong supporter of a woman's right to choose, I share the concerns of pro-choice individuals and organizations about how Judge Thomas is going to rule on challenges to Roe. But I am also convinced after hearing his testimony, and also talking to people I respect who are strongly in support of his nomination, that Judge Thomas brings no personal agenda to the Court.

I am referring specifically to Senator DANFORTH of Missouri. I do not know of any other individual in this Chamber that I have more personal regard for in terms of the high standards that he demands not only of himself but of the people who work with him.

In large measure I have turned to JACK DANFORTH to tell me about the character of Judge Thomas. He knows him well. He has worked with him. Judge Thomas, in fact, worked with Senator DANFORTH over a long period of time. I think he is in a good position to make a judgment about the character of Judge Thomas, and he has assured me that Judge Thomas has no personal or hidden agenda, and that he will be open minded on the Court.

Therefore, I feel confident that Judge Thomas will meet the responsibility imposed by the Constitution and that he will, in fact, keep a fair and open mind as the abortion issue and other difficult issues come before the Court in the months ahead.

The American Bar Association Standing Committee on the Federal Judiciary concluded that Clarence Thomas "possesses integrity, character, and general reputation of the highest order."

I think he is clearly an intelligent and thoughtful man, an independent thinker, and a competent jurist. He has overcome poverty, segregation, and deep-seated racism in this country—and there is still deep-seated racism in this country—and has achieved a position as a Federal judge, a position of great public trust and respect. I think he is going to bring to the Supreme Court a perspective and range of experience unlike that of any of the current or previous Justices.

Mr. President, I recall reading in Justice Cardoza's book, "The Nature of the Judicial Process," that "In the long run there is no guarantee of justice except for the personality of the judge." That may come as a shook to many people, but I think a truth is revealed in that particular aphorism.

I have looked long and hard at the personality of Judge Thomas and I believe a man of his experience, while not fully developed in terms of his constitutional theories, nonetheless has the capacity for growth, moderation, and flexibility. I believe that he has the same capacity that we have witnessed in Justices such as Hugo Black, Earl Warren, and others, to become a truly outstanding member of the Supreme Court. For that reason, I intend to support his nomination when we have an opportunity to vote.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. I yield 2 minutes to the distinguished Senator from Georgia.

The VICE PRESIDENT. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I believe we must try to lower our voices and to seek understanding if anything good is going to come out of this ordeal.

First, the only clear and unmistakable wrongdoing and injustice in this case is the unauthorized leak of Professor Hill's allegations to the news media. In my opinion, this action overrode the rights of both the accuser and the accused and virtually guaranteed the dispassionate analysis of the charges would be impossible. I will support any steps to get to the bottom of this and all other leaks which have recently plagued the Senate, including the imposition of appropriate penalties on the wrongdoer.

Second, the nomination and confirmation process in this case has been flawed from the outset, and it has been thoroughly political at every step of the way. The failure to give adequate attention to Professor Hill's charges in a timely fashion is only one of the last in a series of failures, in both the executive and the legislative branches, which do no honor to any of us.

Third, unlike some of my colleagues, I found nothing in the testimony to disprove Anita Hill's allegations. I heard from too many women verification that Professor Hill's behavior in this case is entirely consistent with that of a victim of sexual harassment. However, there was nothing to prove the charges either and, therefore, on the central question of the confirmation of Clarence Thomas, the weekend hearings were inconclusive, in my opinion, and will not change my earlier decision to vote for the confirmation of Judge Thomas to the Supreme Court.

Fourth, whatever our votes on Judge Thomas, and whatever the outcome of

the confirmation vote, we owe—we owe—something more to the women of America than to leave it at that.

May I have 2 more minutes?

Mr. BIDEN. I yield another 2 minutes.

The VICE PRESIDENT. The Senator is recognized for an additional 2 minutes.

Mr. FOWLER. Mr. President, we should not and must not send the message that victims of sexual harassment have good reason to fear for their reputations and their livelihoods if ever they come forward to seek redress of their grievances. The most distressing news to come out of the weekend hearings was the inadequacy of our existing systems for dealing with cases of sexual harassment. The lack of confidence that many women feel in these systems should call all American institutions, that includes the U.S. Senate, to reexamine and reform our mechanisms for handling such cases.

We will also have the opportunity in the near future to produce something more than just rhetoric in combating sex discrimination. I would hope that when the Senate takes up Senator DANFORTH's civil rights bill in the near future, we will treat sex discrimination equally with all other forms of discrimination.

Finally, Mr. President, it is my fervent hope that the U.S. Senate and the President of the United States have also learned something from this sordid affair. The continued politicization of the judicial nominating process threatens the very future of our Republic and its democratic institutions whether judicial, executive, or legislative. In order to maintain the integrity of the American judicial system, we must find a way to transcend the purely political battleground upon which Presidents and Senators appear to have become so comfortable.

I thank the Chair.

The VICE PRESIDENT. Who yields time?

Mr. BIDEN. Mr. President, I yield 2 minutes to my friend from Massachusetts, who should be yielded 30 minutes in light of his patience. I am sorry, that is all I have.

The VICE PRESIDENT. The Senator from Massachusetts is recognized for 2 minutes.

Mr. KERRY. Mr. President, I am interested to hear my colleagues talk about the state of the evidence and the doubt. The fact is, in this case, the sum total of all the evidence on behalf of Judge Thomas is his denial, and witnesses who are friends who have offered a stubborn denial that there friend and their candidate for the Supreme Court could have done what he was accused of. But none of their statements, and none of what they saw and reported, directly contradicted the four witnesses, four credible witnesses who, under oath, testified as to what they remember Anita Hill telling them.

The one exception we have to the hearsay rule in cases of sexual transgression is called a fresh complaint, and a fresh complaint was made, Mr. President, I can remember trying rape cases in which people were sent to jail on the basis of the testimony of a victim and corroborating witnesses. People go to jail all across America on testimony such as was presented before the Judiciary Committee.

It may well be that some people cannot draw or do not want to draw a conclusion from it, but you cannot dismiss the weight of Anita Hill's testimony. You cannot dismiss the credibility of her motive or her actions. She did not seek out the FBI. She sought to keep this confidential. She has taken a lie detector test, which is a tool we use in law enforcement all the time. Each and every one of her witnesses came before the Judiciary Committee with independent memory, independent corroboration of the sexual harassment she recounts.

One cannot ignore the reality of how people behave in the case of sexual harassment. Indeed, I believe Anita Hill succumbed to ambition, and there is part of this story that is untold but that does not contradict her claim of what happened.

In the end, Mr. President, we are not called upon here to make a courtroom judgment about whether or not someone should go to jail. That is precisely the point. The standard for the Supreme Court is not whether the nominee can avoid going to jail or be found not guilty of a felony. It is whether the nominee meets the high standards demanded for the Supreme Court of the United States.

I previously have spoken in this Chamber about whether the nominee meets the highest standards. I said I did not believe so. But in the course of this weekend, I believe Judge Thomas confirmed that.

I believe that the judge's insertion of racism into these proceedings was a tragic and dangerous act. I believe his use of the word "lynching" was inflammatory, unscrupulous, and intemperate. The judge himself asked for a delay in the Senate vote so that the charges against him could be considered and the air cleared. Must we ask if that was a false request? A charge of sexual harassment by a black woman against a black man is not a lynching.

Judge Thomas knew that the chairman of the committee and the committee itself received harsh criticism for trying to keep the charge confidential as Professor Hill had insisted. Judge Thomas' efforts to have it both ways, and the callous expediency of his charge, will be felt for a long time to come. Such judgment does not belong on the Supreme Court.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. Mr. President, we are expecting Senator ROBB momentarily and Senator NUNN and Senator DANFORTH.

Mr. BIDEN. Mr. President, how much time does the Senator from Delaware still have?

The VICE PRESIDENT. The Senator from Delaware has 1 minute 46 seconds remaining.

Mr. BIDEN. I thank the Chair very much.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. How much time do we have?

The VICE PRESIDENT. The Senator from South Carolina has 25 minutes and 30 seconds.

Who yields time?

Mr. SIMPSON. Mr. President, I would yield to myself 30 seconds of the time on this side of the aisle—30 seconds.

The VICE PRESIDENT. The Senator from Wyoming is recognized for 30 seconds.

Mr. SIMPSON. Mr. President, I would place into the RECORD an article from the Boston Globe of July 28, 1991, telling us what would happen in this situation as the groups began to crank up on this particular nomination, a very remarkable relation. And then if I may enter into the RECORD a remarkable column from this morning's New York Times by A.M. Rosenthal, who has a deep affinity for the clarity and the reputation of the New York Times, entitled "Harassment by Press," which is a fascinating document that I think most Americans would be very interested in seeing.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Boston Globe, July 28, 1991]

WHITE HOUSE READYING CAMPAIGN FOR THOMAS

(By Walter V. Robinson)

WASHINGTON.—When some of the country's principal civil rights and civil liberties groups declare their opposition this week to Clarence Thomas, President Bush's Supreme Court nominee, his supporters will not be sitting idly by.

Instead, key members of the US Senate will receive visits from some poor black Georgians who were Thomas' neighbors during his boyhood. They will here to underscore his hardscrabble origins and plead with the senators for their votes to confirm him—with the visit recorded by television news crews and paid for by a conservative lobbying group.

To blunt any impression of strong black opposition to Thomas, his black supporters, including some dissident NAACP members, will counter with expressions of support. And last week, the White House and the Justice Department were preparing point-by-point rebuttals to the case Thomas' opponents will probably offer against his confirmation.

This is no replay of the Robert Bork nomination battle of 1987.

Then, opposition groups successfully brought all the sophistication of modern grass-roots politics and public relations to bear against Bork. President Reagan's White House, so convinced that Bork's intellect and legal scholarship made him a cinch for confirmation, did virtually nothing.

This time, the White House, using many of the techniques that Republicans used to win the presidency in five of the last six elections, is stage-managing a coordinated effort to boost Thomas' stock with the Senate and the public and turn aside attacks on his qualifications from the opposition.

"If this is going to be a political fight, there has to be an effort to defend the nominee that is at least as sophisticated as the effort that is being made to defeat him," said Gary L. Bauer, a White House veteran of the Bork battle who is president of the conservative Family Research Council.

This week, the Alliance for Justice, People for the American Way and the Women's Legal Defense Fund, are expected to announce their opposition to Thomas. The NAACP and the Leadership Conference on Civil Rights may come out as well, with all of the announcementa timed to ocour before Congress begins ite summer recess at the end of the week.

Juet in case the opposition gains any momentum from the week's events, an ad hoc group with ties to the White House, the Citizens Committee to Confirm Clarence Thomas, is already raising money from conservatives around the country to pay for pro-Thomas television ads in states whose senators are critical to Thomas' chances.

For the moment, the administration's counteroffeneive has left many of Thomas' opponents dispirited.

"The White House has run a pretty successful political campaign—so far," said John Gomperts, the legislative counsel for People for the American Way, a liberal constitutional rights group that is expected to oppose Thomas.

But Gomperts said, "So far, we have been dealing with peripheral issues, like his use of marijuana and the federal tax lien against him. Once the central issues become the order of the day, issues like his commitment to civil rights, the White House will have a much more difficult time."

And while Thomas' opponents said it is obvious that the administration has learned from its mistakes in the Bork battle, so too, they say, have they.

"Learning doesn't just occur on one side," said Harrison Hickman, a Democratic consultant and pollster who was involved in the battle to defeat Bork. "We were a step ahead of the Reagan White House in the Bork fight. We know how we can be even more powerful this time—if that's what is needed. The opposition this time is smarter and swifter too."

The mastermind of the White House effort is Kenneth M. Duberstein, a lobbyist and former chief of staff to President Reagan who performed similar chores during last year's successful battle to win Senate confirmation for Justice David H. Souter.

According to White House and administration officials, Duberstein presides over almost daily strategy sessions involving officials from the White House and the Justice Department. The officials fine-tune the day's strategy. And with an eye toward the days and weeks ahead, they review polling data that has been provided by Robert Teeter, the president's pollster.

"It's very much like a presidential campaign with a message of the day. And it's worked quite well," said one White House official who was involved in the 1988 presidential campaign.

SUPPORTERS LAUNCH COUNTERATTACK

The White House strategiste also try to anticipate opposition moves and seek to neutralize them, according to the officials.

Two weeks ago, for instance, the White House received advance word of a Congressional Black Caucus news conference, called to detail ite reasons for opposing Thomas. The same day, Thomas made several Capitol Hill courtesy calls. His prinoipal Senate supporter, Sen. John. C. Danforth, a Republican from Missouri, delivered a Senate floor speech on his behalf.

And to underscore a critical part of the White House strategy—to convince the public that black leaders are divided about Thomas—the one dissenting Black Caucus member, Rep. Gary Franks, a Connecticut Republican, held his own news conference to praise Thomas. And another group of black conservatives held a separate press conference to urge Thomas' confirmation.

Administration officials believe that Thomas cannot be defeated without overwhelming black opposition at the grass-roots level—one of the keys to Bork's downfall. Last week, a Gallup Poll suggested that the White House has been having some success, at least so far, in preventing black movement away from Thomas. Among blacks, the poll showed, the nomination was supported by 57 percent, with 18 percent against.

Days before the Black Caucus counterattack, when the morning Washington Post disclosed that Thomas had tried marijuana while still a student, the White House responded immediately, pointing out that he had disclosed the use when he was nominated for the US Appeals Court in 1989 and arranging to have several senators say immediately that the marijuana use was irrelevant.

PEER PRESSURE USED

The White House communications office has even prepared speech inserts praising Thomas that have been given to hundreds of administration officials and state and local Republican officials around the country for use in addresses they deliver to various groups. The office has also helped Thomas' supporters draft op-ed articles that have already appeared in hundreds of newspapers.

One senior administration official who has attended a number of meetings on the issue said Cabinet agencies are constantly reminded about instances in which other officials have praised Thomas in their speeches. "It's peer pressure," she said.

Referring to the overall effort, she added: "It's almost overkill."

What is more, she said, principal officials within the administration have been assigned "lialson" roles with important opinion leaders who are thought to be undecided about Thomas.

One principal target of this lobbying effort has been Benjamin Hooks, president of the NAACP, according to administration officials. With the NAACP's board scheduled to decide this week whether to oppose Thomas, Hooks was described last week as "wavering." According to sources, Hooks told associates that Thomas has some good qualities and that, if he is defeated, Bush will nominate a "white Genghis Khan."

WAR CHEST AMASSED

Bauer, the former White House official, formed the Citizens Committee within a week of Thomas' nomination. While much of ite fund-raising will be used to amass a war chest to produce and place television and radio ads, Bauer said it will pay other coste, too. For instance, he said, "we will pay the travel costs to Washington for the humble, low-income folks who are coming up from Clarence Thomas' hometown."

Across the fence, Thomas' opponents have no Duberstein figure. But their activities may be no less coordinated.

So far, with few organizations yet recorded in opposition, much of the anti-Thomas effort has involved guerrilla warfare tactics. The formal opposition and grass-roots organizing and fund-raising have barely begun.

In the meantime, the major civil rights and civil liberties organizations, many of them led by veterans of the Bork battle, are sharing research and coordinating strategy.

"There is a lot of planning about when the various groups will come out in opposition, with a goal of achieving some continuity on message and some momentum," said an official of one of the organizations.

OPPONENTS WITHHOLD INFORMATION

"One thing we learned from the Bork battle is to keep things very quiet, not to announce or telegraph our strategy," said the director of one of the opposition groups. "We are going to be much better organized this time, more disciplined and coordinated. And there will be no leaks to the press about what we plan to do."

The official said, for instance, that opposition groups have been withholding some damaging information about Thomas' record, and will time ita release to achieve maximum impact.

The White House effort iteelf, some think, could become an issue. Like others, Bauer sought to downplay the White House role in the outside lobbying effort, saying it had been overetated. "It shouldn't look like the White House has turned this into a political campaign," he said.

Duberstein, the architect, has been avoiding reporters, and other White House officials said they have been cautioned to downplay the extent of the White House role.

"We do not need articles about the coordinated White House campaign," one White House official, speaking on condition that he not be identified, said last week. "It looks manipulative and does not help. It leaves an impression of Clarence Thomas as a weak sister, someone who needs a campaign to put him over the top."

HARASSMENT BY PRESS

[From the New York Times, Oct. 15, 1991]

(By A. M. Rosenthal)

Every day in the newspapers and every hour on the hour on TV, the American press tells the country that not only the judge and his accuser are on trial in the harassment hearings but also the Senate, the nomination process, all men and the oharacter of American society.

True enough, but missing from the list of defendants on the harassment charge is the institution that is shaking its finger at the nation. The American press itself belongs on that list.

So often and so casually that it hardly even notices anymore, the press now practices a wide variety of harassments—based on sex, politics, occupation, prominence, vendetta or even personal tragedy.

I am not dealing with ths coverage of the story. It was the hearings, specifically the bravery of witnesses on both sides in risking attack, even their jobs, by speaking their minds and hearts, that made this column pop out of my own mind and heart.

For years I have thought of speaking plain about harassment by press. I did not because of reluctance to seem self-eerving since The New York Times is not often an offender, and hecause of fear—of again making my family the victim of harassment based on blood or marriage.

But now, liberated by and grateful for the courage of the witnesses in the hearings—to it.

It is sexual harassment to pursue a woman's every step, leeching and leering about her, her clothes, her children, her friends and her personal relations with a husband dead almost 30 years. The press has turned Jacqueline Onassis into a harassed, everlasting profit center for factoficto TV and for newspapers, magazines and book publishers. Three decades now we pursue her because she is the widow of a murdered American—in other words, because she is a woman.

It is sexual harassment to send helicopters snooping above Elizabeth Taylor's wedding. It is sexual harassment to send reporters peering into windows of a woman charging rape, or the windows of a Presidential candidate—or to print whether a person is gay to make an "activist" point.

It is sexual harassment for the slavering "reporters" of those primetime "exposé" shows to invade schools, trying to "interview" teachers about the sex lives of other teachers. I wonder how much they have to pay a reporter to do that; maybe not much at all, maybe they just like that line of work.

I say it is loathsome political and personal harassment for detachments of reporters and camera people to camp outside the house of Judge Clarence Thomas, or anybody else trapped in the news, preventing him, his wife and children from coming and going in the peace that every non-criminal is supposed to enjoy in the name of civic decency.

Is it not loathsome harassment to stick a camera and a mike into a mother's face and ask her how she really feels about the shooting of her child, still lying in a drawer in some hospital morgue?

The harassing garbage pail journalism that once existed on the disreputable fringes, in journalism's red light districts, is now a treasured feature of many papers—the daily "dirt pages" of rumor and scandal.

A slick, respected national monthly—no names because so many publications are harassers—quotes an anonymous source as saying that a New Yorker of achievement comes from the "gutter." That is harassment with a mugger's mask, more degrading to magazine than victim.

The garbage pail publications still exist, of interest only to their victims and their publishers, who use them for social entree and profit. Some owners have become hostages of fear to their own staffs.

But what does count is that so many "mainstream" editors and publishers publicize and glamorize the garbage-sprayers. They give them unearned power by running titteringly admiring stories about them, hiring them as "contributing editors," taking them into their clubs and inviting them to parties. The Mugger Who Came to Dinner.

That sends a clear message to their own staffs—dirt and harassment are where power, money and glamour can be found, so dig.

Spare me the First Amendment lecture. I know harassment by press is within the law. I agree the Constitution is worth the price.

So we have freedom of press. Now all that journalists need is freedom of conscience.

Mr. THURMOND. Mr. President, I ask unanimous consent to place in the RECORD from USA Today a statement by Armstrong Williams.

Also from the Charleston Post and Courier "Senate should confirm Thomas."

Also a petition from the EEOC backing Clarence Thomas.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

[From The Charleston Post and Courier, Oct. 15, 1991]

SENATE SHOULD CONFORM THOMAS

A week ago, as Judge Clarence Thomas' nomination to the U.S. Supreme Court was nearing a vote on the floor of the Senate, at issue was whether he was intellectually and philosophically suited for the high court. All that has changed. When the Senate convenes late today to pass judgment, the question on the minds of most Americans will be whether Judge Thomas is morally fit to sit on *any* court in the United States, much less the nation's highest tribunal.

After five tumultuous days of stunning allegations, marathon hearings before the Senate Judiciary Committee, and impassioned denials by the accused, it all boils down to one question: Who is telling the truth? Is it Judge Thomas, the former head of the Equal Employment Opportunity Commission (EEOC) and a judge on the federal court of appeals? Or is it Anita Hill, a former employee of Judge Thomas' at two separate federal agencies?

There is no question that this has been, as a number of Judiciary Committee members from both sides of the aisle have said, a calamity for Judge Thomas and Miss Hill personally, and the confirmation process in general. It would not have come to this had not someone with access to committee documents leaked Miss Hill's confidential statement to the FBI claiming sexually explicit remarks by Judge Thomas 10 years ago. The leak was certainly unethical and likely illegal, and Sen. JOSEPH BIDEN, D-Del., the committee chairman, has vowed to find the source and deal with the person or persons responsible. He must keep that promise.

Meanwhile, some have sought to use the uproar caused by the nature of the allegations to transform the hearings into a referendum on sexual harassment in the workplace. Senators have a duty to resist such egregious tactics. The behavior that Miss Hill alleges is not only inappropriate in the workplace, it is unlawful. Federal statutes enacted in 1986 provide for redress.

Nevertheless, it raises the question of whether Judge Thomas is the kind of man who would engage in lewd and suggestive language. Nothing in the scrutiny of his professional and personal lives during the 102 days between his nomination and last Tuesday's scheduled vote, including a particularly gruelling inquiry by Democratic members of the Judiciary Committee, suggested anything of the kind. It was only at the eleventh hour that Miss Hill's statement to the FBI was leaked.

To support the claim, four persons appeared before the committee on Sunday in attempt to corroborate Miss Hill's allegations. Their testimony was less than compelling. At the most, they could say only that Miss Hill seemed disturbed at times, told them she was being sexually harassed, but offered no real details. Surprisingly, for conversations purportedly involving friends, no advice was sought and none was offered.

More persuasive in Judge Thomas' defense was an EEOC telephone log proving that Miss Hill called him a minimum of 11 times after leaving his employ. His secretary further testified that the log represented only those calls that Judge Thomas did not take immediatsly, including one wishing him well in his new marriage.

Equally persuasive—or damming, depending on one's vantage—was Miss Hill's decision to follow Judge Thomas from the Department of Education to the EEOC. This could not be considered a reasonable decision if one were truly a victim of grossly inappropriate behavior. And, further, there were the occasions when Miss Hill voluntarily put herself in Judge Thomas' company following her departure from government work, including driving him to the airport in Tulsa, Okla.

Even though the rules of evidence didn't apply in these unprecedented proceedings, to his credit Sen. Biden drew the line on the admission of a last-minute polygraph test. The operator concluded Miss Hill was telling the truth. Polygraph tests are not admissible in the courtroom because of their unreliability nor routinely used in the workplace. The polygraph cannot detect with any degree of certainty the clever or deluded liar or the nervous innocent.

That takes us back to the initial question of whom to believe. The charges are so sensational, and the denial so emphatic, that the only conclusion is that one of the parties is an outrageous liar.

It's important to remember that Judge Thomas is the nominee, not Miss Hill. Has he been proved so horribly flawed beyond any reasonable doubt?

Clearly, he has not. There are too many unanswered questions about Miss Hill's memory, about the charges that seem to have become more expansive and more precise as time elapsed, about the unsupported accusations that Judge Thomas was a martinet, insensitive to the problems of minorities. The list is long and the evidence is short.

Sen Biden observed throughout the hearings that in the absence of compelling evidence to the contrary, the benefit of the doubt *must* go to Judge Thomas. The Senate should vote to confirm.

[From the USA Today, Oct. 15, 1991]

ANSWER SHOULD BE "YES"

(By Armstrong Williams)

Opposing View: The nominee is eminently qualified and a person of outstanding character and integrity.

Judge Clarence Thomas has been subjected to the longest and most savage confirmation proceeding in history. Nevertheless, his qualifications and good name have stood up under the most scurrilous attacks to which any nominee for the Supreme Court has been subjected.

From the beginning, it was clear that ideology was the basis for the onslaught on Thomas. Because the Supreme Court now has a conservative majority, liberal interest groups were determined that not one additional conservative appointment would be made.

Since Thomas' opponents could not kill his nomination on the issues, they attacked him on character.

However, three panels of witnesses testified that Thomas is a decent person of integrity who showed kindness, sensitivity and caring for all his employees.

Despite his ordeal, Thomas found a positive outcome. He said he had acquired a deeper understanding of the need for privacy and due process protections for the accused.

Tragically, the attackers hoped to deprive America of one of its brightest and most inquiring minds. The unintended result, though, was to reveal the granite-like determination of a righteous man who declared under fire that only God is his judge.

Thomas emerged as a man whom Americans of all races and backgrounds have come to admire.

The U.S. Senate should confirm Thomas to the Supreme Court because he is eminently

qualified and a person of outstanding character and integrity.

As his former confidential assistant, I can say without equivocation that no finer person could be found for the position than Clarence Thomas.

We the undersigned women of the United States Equal Employment Opportunity Commission's Headquarters Office would like to reiterate our strong support for Judge Clarence Thomas' confirmation as a Justice to the Supreme Court of the United States of America. We take this action in light of the recent allegations of sexual harassment.

(Willie King, financial manager and 14 others.)

WE SUPPORT JUDGE CLARENCE THOMAS

We the women of the Equal Employment Opportunity Commission feel compelled to write in response to a recurring question: Why should women support the nomination of Judge Clarence Thomas when his writings and speeches suggest he opposes the very policies which promote opportunities for women and minorities?

Each of the signatories was either hired or promoted into a position of responsibility by Clarence Thomas during his tenure as Chairman of the EEOC. He took a chance on each one of us and provided each of us with a significant career opportunity. Furthermore, we the women of EEOC represent a mosaic of ethnicity, socio-economic backgrounds, educational levels, work experiences, religious beliefs and political affiliations. We are the career women who believe that Judge Thomas' actions speak louder than his words which are so often taken out of context.

(Willie King, financial manager and 76 others.)

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. Mr. President, I yield Senator DANFORTH 10 minutes.

The VICE PRESIDENT. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I ask the Chair to inform me when I have 2 minutes remaining.

Mr. President, let me start by thanking my colleagues on both sides of this debate for their tolerance during the past 3½ months. I know that I have been something of a pest hounding Republicans and Democrats alike, asking for support of Clarence Thomas, and fortunately for one and all that time is now drawing to a close until we get to the civil rights bill, of course.

Mr. President, when the President named Clarence Thomas to be his nominee for the Supreme Court, he described the nominee to be the best person in the United States for the job. Many people poked fun at that description, but this Senator believes that description was well founded.

I believe that Clarence Thomas is what America is all about. He captures in himself the American spirit, the tradition of being able to make the most of your life, and apply yourself, and to contribute something with your life.

Mr. DOMENICI. Mr. President, may we have order, please.

The VICE PRESIDENT. The Senate will come to order.

Mr. DANFORTH. I believed on July 1 that he was an outstanding choice, and I believe that even more today. During the past few weeks especially, Judge Thomas has demonstrated a strength of character which I think is extraordinary. He has endured, particularly over the last 10 days, the agonies of hell. I believe that as a result of that, Clarence Thomas is more sensitive to constitutional rights, to the necessity of legal protection of the people of this country, than most people who could conceivably be nominated for the U.S. Supreme Court.

In a way, Mr. President, this is a debate between those who know Clarence Thomas and those who do not.

What has been striking throughout the past 3½ months is the number of people who have known him very well, who are friends of Clarence Thomas, who have come forward.

Last week, a group of 18 women who had worked with him in various jobs here in Washington held a press conference and described, with tears streaming down their faces, the Clarence Thomas they knew and the concern they had with what was going on in the confirmation process.

I remember very well, Mr. President, the joy last July 1 when I was told by the White House of the Clarence Thomas nomination, and I remember talking to Judge Thomas on the night of July 1. I remember exactly where I was during that phone conversation. I was in the manager's office of the Shrine Club of Kirksville, MO, and I can remember the tremendous joy both in Clarence Thomas' voice and in my own as we visited over the telephone.

But, Mr. President, joy has long since left both Clarence Thomas and JACK DANFORTH and the many friends of Clarence Thomas. There is no joy in these proceedings and, no matter how the vote turns out, no joy is possible.

The joy that we experienced 3½ months ago has turned to pain, and the best that can be said is that in approximately another hour there will be a feeling of relief at the determination one way or another.

Clarence Thomas, especially in the last week, was liberated because he said to me that he does not need this job of being on the Supreme Court of the United States. He can survive without being an Associate Justice of the Supreme Court. Mr. President, very candidly, so can the country.

But what cannot survive, in the opinion of this Senator, is the values that we hold so dear as a country. I do not believe that our values as Americans can long survive the process that we have witnessed particularly during the last 10 days.

Mr. President, 10 days ago, this nomination had been won. The confirmation battle had been won. We believed that we had 60 to 65 votes in favor of Judge Thomas' confirmation. That was after the FBI report had been written. That was after the FBI report had been reviewed by members of the Judiciary Committee. That was after the members of the Judiciary Committee decided to a person that no further action was required, that no further study was necessary.

That was up to 10 days ago. And then, 10 days ago, the confidential document, and apparently details from the FBI report itself, were leaked to the press. And on Sunday, a week ago, this story went public. It was carried as the lead item on the network news and the headline item in the newspaper. That was the beginning of the process that culminated with the hearings before the Senate Judiciary Committee.

Mr. President, it is the position of this Senator that the process that we have just seen is clearly wrong. It is wrong for Clarence Thomas, and it is wrong for the United States. It must be stopped.

The business of interest groups fanning out through the country digging up dirt on a nominee, the business of leaks, of confidential documents, put out to members of the press, the idea that absolutely anything goes if necessary to stop a nominee from the Supreme Court of the United States, this whole process must be ended.

We in the Senate have the power to encourage the process, or we have the power to stop it. We have the power by the vote that we are about to cast to say to our country that the strategy of digging up dirt, the strategy of throwing dirt, the strategy of leaking confidential reports does not work.

Mr. President, I speak to those Senators who find the choice before us to be a difficult choice, who find it to be a close call whether to vote for or against the nomination of Clarence Thomas.

The VICE PRESIDENT. The Chair informs the Senator that he has 2 minutes remaining.

Mr. DANFORTH. I thank the Chair.

The New York Times today took the position that in the case of a close call it should be resolved against the nominee. I believe that if that is the rule that we follow, that the burden of proof shifts to the nominee where charges are made, then the result of that will be to encourage just such a situation to be replicated again and again and again in the future.

The reason the burden against the accuser must be very heavy in a case such as this is to discourage exactly the kind of process that we have seen particularly during the last 10 days.

Mr. President, Clarence Thomas can survive without confirmation by the U.S. Senate. But if we vote against Clarence Thomas we reward a process which is clearly wrong. And for that reason, not for the sake of Clarence Thomas, not for the sake of the Supreme Court, but for the sake of the

basic American standard of decency and fairness, I ask Senators to vote for the confirmation of Clarence Thomas.

Mr. ADAMS addressed the Chair.

The VICE PRESIDENT. Who yields time?

Mr. ADAMS. Mr. President, the manager has asked me to yield time at this point to myself. He will shortly return.

Mr. THURMOND. Mr. President, how much time remains on each side?

The VICE PRESIDENT. The Senator from South Carolina has 15 minutes and 3 seconds.

Mr. THURMOND. How much time does the other side have?

The VICE PRESIDENT. One minute and nine seconds.

Mr. ADAMS. Mr. President, I announce my intention to oppose Clarence Thomas' nomination to the Supreme Court based on his public record, and on the Judiciary Committee's first hearings. I did this back in September, and I urged my colleagues to reject the nomination of Judge Thomas based upon his record, his mishandling of age discrimination cases at EEOC, and his failure to define his constitutional philosophy especially on the right of women to choose. The nominee was willing to express his views on the death penalty and other issues, but refused to admit even having a view on choice.

About Judge Clarence Thomas it can be clearly said there are more questions than answers. His lack of judicial experience is undeniable. His judicial philosophy remains a mystery. And his commitment to protecting the right to privacy in the most critical decisions women must be allowed to make free of Government interference is doubtful.

I heard Prof. Anita Hill's allegations to the public media at the same time it was learned by the American people. I was concerned at that time that these serious allegations had not been considered by the committee, and joined many of my colleagues in pressing for delay in the vote.

I watched this weekend's extended Judiciary Committee hearings in Seattle, along with the rest of America. And like many of my constituents who called my office to express their views, I found the experience troubling and inconclusive. I believe the procedures through which we carry out our constitutional responsibilities must be reevaluated and improved.

I would also hope that the President will look to his own selection process for Supreme Court nominees. That process, as well as ours, clearly needs improvement.

In urging my colleagues to reject the nomination of Judge Clarence Thomas, I suggest they consider the background, experience, and career of the man he is nominated to replace.

My advice to the President would be that he start sending us nominees who truly are the best, rather than well-packaged but undistinguished nominees who fill a rightwing agenda. My consent on this nominee is withheld.

Mr. THURMOND. Mr. President, I yield 12 minutes to the distinguished Senator from Virginia [Mr. ROBB] and if Senator NUNN is not on the floor at this time, I yield the rest of the time to him.

The VICE PRESIDENT. The Senator from Virginia is recognized for 12 minutes.

Mr. ROBB. Thank you, Mr. President.

Mr. President, I had tentatively concluded, prior to urging a delay in this vote, that I would vote in favor of Judge Thomas' nomination. That tentative conclusion was based on my sense of the man and my perception of his convictions, his inner strength, and his core values.

I did not and do not believe that he has any specific ideological agenda, and I do believe that he is prepared to interpret the Constitution and laws of the United States as fairly as possible.

This Supreme Court nomination has been a series of battles. The current battleground is sexual harassment. But in the hearings that preceded the Judiciary Committee's vote there were other issues. Those issues, like civil rights and choice, and their importance should not get lost in the current firestorm.

Judge Thomas and I have discussed affirmative action and quotas at some length. I found in Clarence Thomas a man who understood both the strengths and the weaknesses of the types of remedies our society has constructed to attempt to strike the right balance in improving opportunity for all of our citizens.

Judge Thomas has told me that he supports certain types of affirmative action but that he does not believe that his own son deserves preferential treatment over a poor white child from Appalachia. I find his views on the need to move to class-based remedies to help the disadvantaged of all races intriguing and thoughtful.

The other issue is choice. I have discussed choice and the women's fundamental right to choose with Judge Thomas, and he told me that he had never taken a formal position on Roe versus Wade and believed it was inappropriate to do so in the context of the confirmation process.

I take him at his word. I am concerned that too often nominees are evaluated in the light of a single issue, and I continue to caution against single-issue politics. Concerns about these specific issues have been raised passionately and effectively by individuals and organizations I have sided with much more often than I have opposed.

But I must confess I have also been equally troubled by the view, implicit in much of the articulated opposition to Judge Thomas, that he is less entitled to his own opinions because of his color; that because of his color he must advocate specific means to ends that I believe he and his detractors agree on.

I cannot countenance that restriction on individual freedom any more than I could countenance racism. This is not to say, however, that I would have handled this nomination as it has been handled.

Would I have preferred a nominee who was more forthcoming in his answers on philosophical issues? Yes.

Do I agree with all of Judge Thomas' writings and speeches? No. Would I have preferred a nominee with greater experience on the bench and at the bar? Yes. But, as Governor, I myself appointed an even younger man to the Virginia supreme court, and he conducted himself with distinction.

That was my thinking before last weekend's hearings, and those hearings did not change my instincts on who the man was and what his beliefs are. The hearings clearly challenged my instinct, but after watching all of the witnesses and struggling with their testimony, I am resolved to affirm my original judgment and vote for Judge Thomas' confirmation.

The case presented against Judge Thomas with respect to sexual harassment was compelling. Professor Hill is a credible and serious witness. But Judge Thomas' statements in his own defense were equally strong and compelling. Although some were more persuasive than others, the witnesses who appeared on behalf of both principles were credible. The absoluteness of the differences between the statements of the two principles is impossible for me to reconcile, even after watching their testimony and that of their witnesses.

I am not prepared to rule out the possibility that they both believe they are telling the truth as they remember it. I was struck that it would have been very much out of character for either of the principal witnesses to engage in, condone, or encourage sexual harassment of any kind, and equally out of character for either of them to lie. But I cannot reconcile their individual statements. In the end, I must evaluate the testimony made on their behalf. Professor Hill's witnesses corroborate the fact that they had indeed raised the issue long before Judge Thomas was nominated for either court. Judge Thomas' witnesses say that what she alleged is totally out of character for the judge. At the bottom, I am swayed by the fact that witnesses who testified on Judge Thomas' behalf know both the judge and Professor Hill, and they have sided with Judge Thomas.

There is no question in my mind that all of the individuals and groups whose knowledge of Clarence Thomas comes principally from his speeches, his writings, and the information presented during the confirmation process, those who feel most passionately about his nomination are overwhelm-

ingly opposed, and that includes most of those with whom I have been aligned politically over the years, and they will be understandably disappointed with my vote.

On the other hand, I am equally convinced that all of those whose knowledge of Clarence Thomas is based on actually working with or for him, or on some other regular, personal, or professional basis—in other words those who know Clarence Thomas best—uniformly confirm my own impressions of the man and his capabilities. I have talked to someone in this latter category by telephone late last evening as I was concluding the agonizingly difficult process that all of my colleagues have gone through. That person that I spoke with is someone I have known and respected for over 15 years. That person happens to be a lawyer, an Afro-American, and a woman who takes allegations of sexual harassment seriously, who describes herself as a liberal, and is adamantly pro choioe. She also happens to have been a law school classmate of Judge Thomas and probably knows him as well as or better than anyone who testified for or against him. And she supports him to the hilt.

She believes, as I believe, that Clarence Thomas has qualities that are not as apparent to those primarily concerned with ideology. It is with a combination of visceral instinct about his core values, an acknowledgment that those who know him best are his most ardent supporters, and hope that he will ultimately surprise many of those most concerned about his ability to fulfill the legacy of Thurgood Marshall, that I will vote for Clarence Thomas for the Supreme Court of the United States.

I yield the time remalning.

Mr. THURMOND. How much time do we have?

The VICE PRESIDENT. Six minutes, 43 seconds.

Mr. THURMOND. Mr. President, I yield a half minute to Senator SYMMS.

Mr. SYMMS. Mr. President, prior to this weekend's 3-day hearing in the Judiciary Committee, I spoke on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court and indicated my intention to vote for Judge Thomas' confirmation. I made my decision based on the record of Judge Thomas' qualifications, as established in the Judiciary Committee hearings, and on the basis of my 10-year acquaintance with Clarence Thomas.

I will not reiterate those qualifications here but will say again the overwhelming weight of evidence indicates that Judge Clarenoe Thomas has the intellect, legal background and experience, and the quality of character to make a superb Assooiate Justice of the Supreme Court.

Since my original remarks, however, the Nation has become embroiled in the allegations brought against Judge Thomas by Anita Hill, and we have been subjected to 3 days of scandalous charges presented in lurid detail before a committee of 14 men and a viewing audience of millions. I, like thousands of my constituents in Idaho and millions of people across the country, have watched and listened to the committee proceedings with great interest and a very sad heart.

I am sad, in part, for Anita Hill. Though I found her story unconvincing and totally uncorroborated by the witnesses who appeared on her behalf, I know her life will not be the same hereafter and she will know many difficult days and months ahead.

I am also sad because of the way those hearings and this controversy have reflected on the Senate as an institution. I believe Chairman BIDEN and Senator THURMOND handled this matter properly from the beginning, given Professor Hill's insistence that her allegations be treated confidentially and made known only to the members of the Judiciary Committee.

But I think the American people perceive justifiably that these charges, coming as they did at the 11th hour, are too basely political, and the Senate has allowed itself to be caught up in the whirlwind of slander intended solely to impugn the character of the nominee.

But most of all, I am sad for my friend, Clarence Thomas, and his family, whose anguish and justifiable anger were so apparent to those who watched the proceedings. I have known Clarence Thomas for 10 years. Without doubt, he is one of the most honorable and decent men I have known in public or private life. The allegations against him are wholly out of oharacter and beyond belief for any of us who have the privilege of knowing Clarence, and I believe the women who worked longest and most closely with him attested convincingly to that fact during the weekend hearings.

Mr. President, when the Senate last week delayed the vote on the Thomas nomination in order that these hearings might be held, Senator DOLE said, this will be a test of Judge Thomas, a test of his character. Indeed, it was just such a test; a test the likes of which most of us in this body would be hard-pressed to pass because of the demeaning, degrading slanders made against a reputation built over 40 years. In my judgment, Clarence Thomas passed that test with flying colors. His fortitude in the face of this inquisition, more than any other factor, convinces me of his fitness for service on the High Court.

I am pleased and proud to support the confirmation of Clarence Thomas, and I wish him well during his lifetime of service there.

Mr. THURMOND. Mr. President, I would like to follow up on one point that Senator SPECTER made earlier regarding Ms. Hill's credibility.

Prior to her joining Judge Thomas at the Department of Education, Ms. Hill was employed with the Washington law firm of Wald, Harkrader and Ross.

Ms. Hill testified that, "It was never suggested to [her] at the firm that [she] should leave the law firm in any way. * * *" She further stated: "Well, I left the law firm because I wanted to pursue other practice."

Ms. Hill was questioned about her employment options when Judge Thomas was to become the Chairman of the EEOC. She stated that, "She faced the realistio fact that she had no alternative job. While [she] might have gone back to private practice perhaps in [her] old firm."

Mr. President, I have received a copy of an affidavit from Mr. John L. Burke, Jr., dated October 13, 1991. Mr. Burke has stated that he was a partner with the firm of Wald, Harkrader and Ross when Ms. Hill worked there. In fact, Mr. Burke evaluated Ms. Hill's work and has stated that, "I expressed my concerns and those of some of my partners, that her work was not at the level of her peers nor at the level we would expect from a lawyer with her credentials, even considering the fact that she was a first-year associate. * * * I suggested to Anita Hill that it would be in her best interests to consider seeking employment elsewhere because, based on the evaluations, her prospects at the firm were limited * * * based on Anita Hill's performance evaluations at Wald, Harkrader and Ross, returning to that law firm at the time Clarence Thomas moved from the Department of Education to the Equal Employment Opportunity Commission was not an available option."

Mr. President, clearly the statement by Professor Hill is in direct contradiction with the statement made by Mr. Burke, a former partner of the Wald law firm who evaluated her performance. I find Professor Hill's testimony to be an inoonsistency which should be pointed out.

Mr. President, I find it disturbing that Professor Hill was not straightforward with the committee about this matter. Clearly, she knew that there was dissatisfaction with her performance at the Wald law firm. Her testimony about her employment there was clearly misleading and inaccurate. This point should be made and bears on her credibility in relation to the rest of her testimony.

Mr. CRANSTON. Will the Senator yield?

Mr. THURMOND. On your own time.

Mr. CRANSTON. I would like to mention another affidavit that is contrary to what the Senator has said.

Mr. THURMOND. Mr. President, I have not yielded the floor.

The VICE PRESIDENT. The Senator has not yielded the floor.

Mr. THURMOND. Has Senator NUNN come in yet?

Mr. CRANSTON. Will the Senator yield briefly, if nobody wishes to speak?

Mr. THURMOND. I yield to Senator SIMPSON the remainder of the time.

The VICE PRESIDENT. The Senator from Wyoming is recognized.

Mr. KENNEDY addressed the Chair.

The VICE PRESIDENT. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, may we review the time situation?

The VICE PRESIDENT. The Senator from Wyoming is now recognized for 2 minutes, 30 seconds. That is the remainder of the time, and there is no time remaining on the other side, prior to 5:30.

Mr. SIMPSON. I would like to recognize my friend from California or my friend from Massachusetts, but I must yield the remainder of the time to Senator NUNN of Georgia.

Mr. KENNEDY. Will the Senator yield?

The VICE PRESIDENT. The Senator from Georgia is recognized.

Mr. THURMOND. We yield the remainder of the time to Senator NUNN.

Mr. NUNN. Mr. President, I will vote to confirm Judge Thomas.

The remarkable story of Judge Thomas' rise from poverty to prominence is by now well known. A native of Georgia, a graduate of the Yale Law School, he has had a distinguished career in Government as an Assistant Seoretary of Education, as Chairman of the Equal Employment Opportunity Commission, and as a judge on the prestigious U.S. Court of Appeals for the Distriot of Columbia Circuit.

When I announced earlier this year that I would support the nomination of Judge Thomas, I did so because I was oonvinced that he met the tests of intellect, integrity, and openmindedness.

Now we are faced with a different set of circumstances, an allegation that in his official capacity as Assistant Secretary of Education and as Chairman of the Equal Employment Opportunity Commission, he sexually harassed a subordinate. This is a grave charge, because it goes to the integrity of the nominee.

Moreover, in light of the unprecedented proceedings of the last week, many have come to view Professor Hill as "Everywoman" who has ever suffered the injustice of sexual abuse and Judge Thomas as "Everyman" who has ever abused a subordinate.

Sexual harassment, in any form, is simply unacceptable. As chairman of the Committee on Armed Services, I have followed very closely the challenges that our military forces have faced during the period of greatly inoreased opportunities for women in the armed forces. I am keenly aware of the devastating impact of sexual harassment on women, the harm that it causes to the work environment, and the actions taken by the armed forces to combat sexual harassment by superiors against subordinates.

It is important to remember, however, that we are not today voting on the question of whether we should send a message to the country on the issue of sexual harassment by "convicting" Judge Thomas. Nor are we voting on the issues of whether sexual harassment exists in this country, whether we regard it as serious, or whether it should be considered as a vital factor in this or any other nomination. It does exist. It is serious. And an allegation of sexual harassment must be given the most serious consideration in the nomination of any person for high Government office.

Because this is a nomination, it is inoumbent upon us to treat the issue with the degree of care and responsibility that is appropriate for a confirmation proceeding. This is not a trial. The allegations have not been restricted to the normal 30- and 180-day statutes of limitations that apply to such equal employment opportunity complaints. The issues have been developed in a forum unguided by rules of evidence or relevancy, and without the type of cross-examination by lawyers for the parties that would normally take place in a courtroom.

Our constitutional responsibility is to vote on whether the Senate will give its advice and consent to the President's nomination. There are numerous theories as to what the appropriate standard should be, but in the end, each Senator must exercise his or her own judgment. The standard which I have consistently applied has two parts: First, does the nominee have the requisite training and experience to be qualified for the position? And second, does the nominee have requisite character and integrity to demonstrate fitness for high public office? Those are the tests—qualifications and fitness.

As chairman of the Armed Services Committee, I have had the opportunity to review FBI files on hundreds of nominees, and military files on numerous military nominations. It comes as no surprise to me that after the lengthy hearings of the past week we are largely in the same position as when the week began.

Professor Hill has made her allegations, and Judge Thomas has denied them. Despite the media attention, this is not a TV show, and there is no script writer to give us the satisfying conclusion we have come to expect through many episodes of Perry Mason. Instead, we have information—the same type of information we routinely review in FBI files and closed hearings, upon which we must make a decision.

FBI files and testimony in closed hearings often closely resemble the type of information we have heard in open session in the last week. A responsible, credible citizen presents information about a nominee on a matter of personal behavior, of which there are no direct witnesses and little direct corroborating evidence. The nominee denies the allegation. But because there is no direct evidence on the matter other than the testimony of the two individuals concerned, the FBI files and the closed hearing do not definitively resolve the matter.

In such a case, I look closely at the individual's background and the FBI files to determine whether there are patterns of habits or behavior that would make it more or less likely that the individual behaved in the offending manner.

In this case, I have carefully reviewed all of the evidence that is before us regarding the allegations made by Anita Hill. In my final analysis, I believe the weight of the evidence supports Clarence Thomas, including: his unambiguous denial under oath of the charge; his credibility as a witness, his record of untarnished public service, and his reputation for truthfulness; the testimony of his fair and professional treatment of female subordinates; Anita Hill's decision to follow him to the EEOC after the alleged harassment had begun and her continued contact with him, though, according to both Hill and Thomas, for professional reasons, after she left the EEOC; and the lack of any strong evidence of a pattern of similar behavior by Clarence Thomas.

I do not, however, join those who believe that Anita Hill's testimony is incredible or even unbelievable. There is much that lends weight to her testimony and demands that her testimony be strongly considered.

I have talked to too many women who have experienced sexual harassment in silence and without complaint. I know that some of my colleagues conclude that this could not have happened the way Anita Hill has described. I believe that it ooould have—but I do not believe the weight of evidence sustains the conclusion that it did.

I am convinced that much weight must be given to the fact that there is, in this case, no substantial evidence of any pattern of similar behavior by Clarence Thomas. While I recognize that a pattern of similar behavior does not always accompany an incident of sexual harassment, I believe that in close cases such as this, the presence or absence of a pattern is very important.

In the record before us, I find no credible evidence of a pattern of similar behavior. On the contrary there is considerable and significant evidence of his exemplary treatment of women.

In casting my vote, I want to make a number of things clear. I believe that this whole case has underscored the need for men in this country to do some serious soul searching about their behavior toward their female col-

leagues in the workplace—whether it be direct sexual advances, the casual use of offensive language, or telling jokes with sexual overtones that women may find particularly offensive. Sexual harassment does exist—it is a real and continuing problem that men need to recognize and be increasingly sensitive to.

While women in this country have a right to demand that men be sensitive to this issue, they also have a corresponding obligation to make every effort to report in timely ways claims of sexual harassment. While I can understand that delay or silence may seem like a rational alternative to many women in these kinds of situations, we must recognize that timeliness is essential to a fair and accurate resolution of these types of claims. Even in cases where women choose not to file a legal claim, employers must encourage them to let their male colleagues know when their behavior, however unintentionally, is offensive.

The confirmation process we have witnessed over the last week has been a truly wrenching experience for Clarence Thomas, for Anita Hill, and, I believe, for all Americans. I hope that, if nothing else, it brings all Americans, both men and women, a little closer to understanding each other's needs for fairness, decency, and respect in the workplace.

Mr. GLENN. Mr. President, I rise to reiterate my position in opposition to the nomination of Judge Clarence Thomas to be an Associate Justice on the U.S. Supreme Court.

I would like to state first that my decision to oppose the nominee is not based on recent developments regarding allegations of sexual harassment. As much as I personally abhor harassment in the workplaoe, I feel that neither guilt nor innocence was, or could be, determined by last weekend's proceedings. Therefore, I have not included that in my decisionmaking process.

The advice-and-consent role of the Senate, under our constitutional system of separation of powers, is never more important than in considering a nomination to the Supreme Court. Our third branch of government is comprised of only nine persons, and those persons are appointed for life. That fact makes the Senate's role in the confirmation process a highly important duty—one with which we cannot afford to take chances.

Judge Thomas' nomination, at age 43, is particularly important since he could serve for at least the next third of a century.

Judge Thomas' rise from poverty and a disadvantaged childhood is indeed a shining example of what is possible in America, particularly in the last few decades.

But laudable as those accomplishments are, there are other considerations for a Supreme Court nominee, specific qualifications which we should expect in a nominee for the very highest court in the land.

While he is a graduate of the prestigious Yale Law School, Judge Thomas has had relatively little experience on the bench, having served only 18 months. Moreover, he had comparatively little courtroom experience before that.

Perhaps even more important than his lack of experience is Judge Thomas' absence of a clearly stated judicial philosophy.

By judicial philosophy, I mean the approach that the nominee would bring to the Court in deciding how to interpret the U.S. Constitution. Evidence of a nominee's judicial philosophy can be determined through an examination of his or her past actions and stated positions, and through a nominee's answers to direct questions from the Senate.

But during his confirmation hearings, Judge Thomas in effect asked the committee not to judge him by his earlier statements, either his own or those expressed in support of administration policies he was carrying out. At the same time, he gave the impression of either not having, or not wanting to share, his longer term views on the application of constitutional law.

That leaves little on which to base a knowledgeable opinion of his nomination. It was notable that the Judiciary Committee, after very extensive confirmation hearings, came to the same conclusion with a 7 to 7 tie vote.

The American Bar Association, following their examination of the Thomas record, gave him only its very minimal approval rating.

By nominating Judge Thomas, the President allowed Congress an opportunity to perform only one-half of its constitutional role. That is, we were allowed to consent to the President's nominee. If Congress had been permitted to also advise the President on possible nominees, then the ohances are great that Judge Thomas would not have been nominated.

Congress, as a bipartisan institution, is more inclined than a President to provide for a balanced Court. I am inclined to believe that Congress would have followed the example set by President Eisenhower and would have made some attempt to balance the Court so as to make it more representative of the comprehensive views of the American public. What is wrong with a President requesting and receiving a list of possible candidates from the congressional leadership, thereby letting Congress fulfill its advice as well as its consent role?

This Nation has many experienced constitutional scholars, lawyers and jurists from among which a Supreme Court justice could have been nominated—nominations which would carry far, far less uncertainty than that of Judge Thomas. I urge the President to make such a nomination.

I regret very much that I must come to this conclusion because I am a true admirer of Judge Thomas' rise against odds. However, for the reasons stated, I cannot in clear conscienoe support this nominee. I will vote against confirmation.

Mr. NICKLES. Mr. President, today I rise to reaffirm my support of Judge Clarence Thomas for the U.S. Supreme Court.

Eleven days ago, I stood before the Senate and expressed my support for Judge Clarence Thomas to become an Associate Member of the U.S. Supreme Court. At that time, there were numerous reasons for which my support was given. I was impressed with Judge Thomas' demeanor under the intense scrutiny of the Senate Judiciary Committee. At that time, I believed he conducted himself extremely well as Chairman of the Equal Employment Opportunity Commission. He had been confirmed by the U.S. Senate and its Judiciary and Labor Committees four times in the past 10 years. I noted his dynamic rise to his position on the Circuit Court of Appeals for the District of Columbia. In light of the strenuous assaults on him, I questioned the motives of his opponents reminding them that less than a year and a half ago this nominee had been confirmed by an uncontested vote of this Senate. I asked, "What has changed over the last year and half to cause more opposition now than in the past." I asserted that nothing had changed during the time of what I thought was the end of his confirmation process. I had no doubts about my intention to vote to confirm Judge Thomas to the Supreme Court.

Obviously, much has happened since my first floor statement on Judge Thomas' nomination to the Supreme Court. Over the past week, like the rest of the Nation, I watched the extended hearings involving the 11th-hour allegations made by Prof. Anita Hill. During these hearings, I had resolved to listen with an openmind. This is what I did and found that Professor Hill made a good presentation of her allegations. Such allegations are serious and need to be investigated. If these charges were proven to be true, it is clear in my mind that no one guilty of sexual harassment should be seated on the highest court in the land. After reviewing approximately 30 hours of testimony, in which both sides diametrically opposed each other, I found no conclusive evidence supporting her allegations. Judge Thomas categorically denied every allegation that Professor Hill made. Further, Ms. Hill's witnesses could not corroborate the specific allegations she made as pointed out in questioning by Senator SPECTER. While these allegations intensified my scrutiny of the nominee, I remain firm in my support for Judge Clarence

Thomas. Every aspect of his life has been an openbook before our Nation for the last 100 days and most certainly in the last week.

Let me stress to my colleagues, this is not a vote for or against Anita Hill. The hearing results were inconclusive—no one came away with a olear finding. Therefore, even as some opponents of Judge Thomas have stated, that the vote today is on Judge Thomas' ability to serve on the U.S. Supreme Court and not on any perceived findings from these extended hearings.

Even though the weekend's hearings were emotional and dramatic, I must voice my concern and criticism of the handling of this matter. It is my opinion that certain members of the committee have acted outside the legal bounds, thus skewing the process for future confirmation hearings. Both Professor Hill and Judge Thomas are unfortunate victims of this process. Professor Hill called for oonfidentiality of her sworn FBI affidavit and it was illegally disclosed. This was a olear injustice to her and Clarence Thomas. Confidentiality of such statements is paramount in the execution for our demooratic principles. For this reason, an investigation should commence, and those responsible for divulging the statement punished. Much must be done to correct our nomination process to prevent this travesty from ever happening again.

Mr. THURMOND. Mr. President, I want to first thank all of those who supported Judge Thomas for a position on the Supreme Court. I want to thank Senator BIDEN for the commendable, fair way that he handled this nomination process especially the difficult situation of the past week. I also congratulate Senator DANFORTH for the diligent, sincere efforts he undertook on behalf of Judge Thomas. I want to express my appreciation to Senator SPECTER and Senator HATCH for the role they played, especially during the last 3 days of the Judiciary Committee hearings on this matter. Additionally, I thank the other Republican members of the Senate Judiciary Committee for the long hours and effort they contributed to this difficult process.

I also want to thank members of my staff for the long hours and dedication they displayed since Judge Thomas was nominated by President Bush. I commend the diligent, able efforts of my chief of staff, Duke Short. I also want to express my gratitude to Terry Wooten, minority chief counsel and staff director of the Judiciary Committee, and Melissa Riley, chief investigator for the Judiciary Committee, for the long hours and dedicated efforts each contributed and undertook since Judge Thomas was nominated. I thank Thad Strom, general counsel for the committee, and John Grady, counsel to the committee, for their assistance in this matter.

Mr. CHAFEE. Mr. President, I would like to take a moment to discuss the upcoming vote on the nomination of Judge Thomas.

Nearly 3 weeks ago I outlined my thoughts on the judge. I noted that while his thinking may best be described as conservative, the judge, in my view, would be an independent voice on the Court. And thus I stated my support for his nomination.

Then, over the weekend, a confidential FBI report detailing allegations of sexual harassment was made public. I do not want to spend too much time on the how's, why's, or wherefore's of that public disclosure. But I will say that something is terribly wrong when that is how business is done, in the Senate or in any other body. We have in this country a deep-rooted allegiance to fairness—to a constitutional process that protects individual rights—unlike that of any other nation in the world. The leaking of the raw information of an FBI report to the media directly subverts that process in a dangerous way: it results in a trial by publicity in a court of public opinion. Leaking the report may further the cause of the public's right to know, but it is bitterly, bitterly unfair to both the alleged victim and the alleged perpetrator. I hope that this situation never occurs again in this body.

At 2 a.m. yesterday morning, the Senate Judiciary Committee concluded 3 lengthy days of hearings on the sexual harassment allegations made by Prof. Anita Hill against Judge Clarence Thomas. Testimony from 23 witnesses was heard over the course of 32 hours.

The issue of sexual harassment is a serious one, and never before has it been discussed in such a public forum. Sexual harassment of women is an ugly fact of life. It is an issue that too often is not given enough credence by too many. Certainly the attention such cases receive is less than complete, and more often than not skeptical. Cases are quite often dismissed with a comment that women are too sensitive, or that they misconstrue a friendly but harmless word or gesturs. But sexual harassment need not be a pinch or a squeeze; it can be a look, a comment, or anything that creates an intimidating, hostile or offensive working environment. It is a terrible problem that I doubt many of us in this body can personally understand. We have a long way to go.

Given the general attitude toward sexual harassment, it is not surprising that many women do not report violations. A recent New York Times telephone poll revealed that more than one-third of the women interviewed have suffered some form of harassment; only a handful reported the problem. I believe this is true.

So this matter is serious, and it is one on which emotions run high. But to consider fairly the allegations that have been made we must put aside both emotions and politics, both of which are prevalent at the moment. Right now, this body is not just debating the allegation against Judge Thomas and that subject alone. Given the strong reactions to an allegation of sexual harassment, we now are debating the treatment of women in the workplace.

Such a path can be dangerous. We must give the allegation serious and careful consideration, but we also must keep in mind that it is an allegation; and that no matter how justified the anger felt about the generally cavalier attention given sexual harassment charges, we must focus on the facts and evidence as we know them in this case.

The difficulty of determining what happened in sexual harassment cases is great. There is no one single pattern of behavior for harassment cases. Thus, in some cases it is common that the concrete evidence consists solely of one person's testimony versus another's, and it quite often comes down to a question of integrity. To my view, that is what has happened here.

I have watched a substantial portion of the hearings; I have heard witnesses on both sides. But the truth in this difficult case has not become self-evident.

It is still my decision to vote in favor of Judge Thomas. I will not do so because I think the charges or the issue are frivolous. I will do so because I cannot reconcile the Judge Thomas described in the allegation with the Judge Thomas that his employees, colleagues, and friends have described. It seems inconsistent with his life, his beliefs, his actions, and indeed, with his very identity.

By all accounts Judge Thomas has spent his life fighting bias and prejudice, and he feels fiercely, intensely, and vehemently that any kind of discrimination in any shape, size, or form is wrong. While there may be considerable disagreement with the policies he might adopt to fight discrimination, I think there was no dispute about the integrity or character of the judge—until this charge.

Judge Thomas seems to have an identity that is inextricably bound up in a belief in fairness. He seems to have treated all he met on the basis of this belief. And according to several dozen women who worked with and under him at EEOC, he extended that treatment to all in the workplace, including women. It appears, too, that he brooked no violations of discrimination guidelines under his tenure at EEOC, whether the violations were based on gender, race, origin, or even sexual preference.

I come back time and time again to the life and times of Judge Thomas. It is not a matter of disbelieving one witness over another. I just cannot reoncile the man described in the allegations with the man described by friends and colleagues—both men and women.

And without more than one accuser, no matter how credible, I cannot in good faith conclude that he is guilty of this behavior.

This has been a painful time not only for the individuals involved, but for the Senate as an institution. Some say that at the very least, as a result of this public airing, the people—particularly men—in this country have become far more aware of how terrible sexual harassment is. It is important that that understanding be furthered. But in this case, the costs have been heavy for both Judge Thomas and Professor Hill. It has been a dirty unpleasant fight, with character assassinations galore, and I am truly saddened by the pain this has caused both of them.

Mr. HATFIELD. Mr. President, these past few days have been perversely riveting. Like many Americans, I spent much of last weekend immersed in the hearings on the nomination of Judge Clarence Thomas to the Supreme Court, and it is apparent to all that the Nation is now suffering through a most tragic and troubling time.

The allegations of Professor Hill and the denials by Judge Thomas have presented this body with a set of extremely complicated circumstances. Each individual has exemplary career and personal backgrounds, each individual is supported by character witnesses who speak for their veracity. And each of them took an oath before the Judiciary Committee to speak the truth. Yet, they both cannot be telling the truth.

Mr. President, 10 days ago, I came to this floor and announced my support for Judge Clarence Thomas. My support for Judge Thomas, as with other nominees, is based primarily on his character and fitness. As I stated then: Clarence Thomas is well qualified to sit as an Associate Justice on the U.S. Supreme Court. I also emphasized my opinion that the confirmation process has done precious little to enrich the image of the Senate. Little did I know then the unrivaled confirmation spectacle that would very soon be showcased on national television.

Four days after I spoke in favor of Clarence Thomas, new and disturbing allegations were made against the nominee by Professor Hill. Professor Hill's charges reflect directly upon the character and fitness of Judge Thomas, and are therefore of great concern to me.

Like many of my colleagues, I took the time to carefully review the report prepared by the Federal Bureau of Investigation. I was also thoroughly briefed on the matter by the chief investigator for the Senate Judiciary Committee. After this thorough review of all the available information, I determined that I could not support a delay. In this position, I did not prevail, and the hearings commenced.

It was clear to me that a delay and hearing for this matter would resolve very little while bringing out the very worst in the Senate's public confirmation process. And that is exactly what happened. By all accounts, virtually nothing positive has come from this spectacle. The cost of a delay for this full-blown public hearing has not been at all worth the benefits—benefits for which I continue to search.

But, Mr. President, let us talk about the costs, because the casualties of the Senate confirmation process continue to pile up like so many casualties of war. Nominees and witnesses alike wither under the white hot glare of the media spotlight and the searching beam of secret background checks. Once sterling reputations are clumsily smudged with the dingy tarnish of crude innuendo. This body must take action to stop what is now becoming commonplace in our confirmation process. We must have no more political casualties in the judicial confirmation process.

Over the last week alone, Judge Thomas, Professor Hill, and others have permanently lost part of their professional standing and dignity. And for what? For the sake of a process that has turned on them and abused them very badly. We must know that future nominees and future witnesses will certainly think long and hard before subjecting themselves to this political bloodsport.

Another cost was clearly demonstrated to me last night as I reviewed the flood of calls my office received over the weekend. An angry father took the time to call my office for a little advice. His family had watched the confirmation hearings. This father wanted to know just how he was to answer his childrens' questions about the explicit sexual matters mentioned. And what do you say?

Few would argue that this confirmation spectacle has enhanced the standing of the Senate. The many polls that have been run over the last several weeks show that Americans have been confused by many things throughout these proceedings. There is, however, nearly universal condemnation of the Senate's handling of this matter.

And, of course, no one is more disappointed in the leak of this sensitive, confidential information than am I, and I support the calls to investigate this improper conduct. Leaks of any confidential material must not be tolerated.

But process aside, the Senate is nevertheless called upon to render a decision on this nomination. To the best of my ability and using the most credible information available to me, I have made my decision to support Judge Thomas. Judging another person's character is never easy—one cannot get inside a person's mind to know every thought, nor can one follow every second of that person's life to have an idea of their behavior in all circumstances. But the Senate is charged with making a judgment and in observing what is known of Judge Clarence Thomas. I have come to the conclusion that he is fit to serve.

Yet, I am also troubled that, for many, the Senate's vote to confirm or not confirm Judge Thomas has taken on another meaning. Like it or not, some will view this vote as a national referendum on a woman's ability to stand up against harassment. A vote on whether this country is prepared to clearly signal to every woman in this country—old, young, rich, poor, educated or illiterate—that she has the right to her dignity and the right to seek redress from abuse.

I cannot fully gauge the impact these past few days have had upon our Nation, but I can tell you how they have impacted me. I now have a much greater knowledge of and appreciation for the problem of sexual harassment. Over the past days, I have heard so many painful stories from friends, from relatives, from constituents who either experienced harassment themselves or knew someone who had.

Sexual harassment is a detestable problem and it can wound women deeply. The personal pain brought on by such harassment is only compounded by an often hostile societal environment. Continued punishment is often heaped upon the victim for exhibiting the courage to demand that the harassment stop.

This is wrong. The victim—any victim—should not have to pay twice. This whole episode has shown our Nation that we need to rethink just how far we have come, or perhaps not come, in our efforts to achieve equality and fairness for everyone regardless of color, religion, or gender.

But our effort to find an end to the injustice of sexual harassment should not begin by sacrificing justice for one individual. No matter how hard some are attempting to paint this vote as a referendum on women's rights or to somehow force a kind of penance for all of the tens of thousands of cases of sexual harassment—this is still a vote to confirm an Associate Justice of the Supreme Court.

The Senate is now considering a number of bills that deal directly with the issues of violence against women, sexual harassment, and sex discrimination in the workplace. I support and am a cosponsor of legislation in each of these areas. And these are subjects upon which the Senate is expected to act very soon.

So, let us be clear: we are here to vote on the confirmation of a Supreme Court nominee. We have before us a nominee who has served ably in public service for half his life—after living the first half of his life knowing both the wretched want of poverty and the chal-

lenge of being a member of a racial minority.

Clarence Thomas, the person, is made complete by his career and personal history. This Senate has heard that history and had significant opportunity to question him on the greatest possible range of matters. What has happened to him and to his family over this past week is tragic and I do not blame him when he says that he would never again choose to endure such a callous process.

But the bottom line here is that Judge Thomas is qualified. Nothing which took place at the hearings of these past few days has convinced me otherwise. I therefore continue to support his nomination and will cast my vote to confirm him.

Mr. KASTEN. Mr. President, I support Judge Thomas for confirmation because I believe he is uniquely qualified to serve on the Supreme Court. His intellect, education, and experience in both the private and public sectors will stand him in good stead on the Court.

His personal experiences, from childhood to the present, will provide the Court with a different viewpoint. He has seen the power of Government wrongfully oppress minorities. No one else on the committee shares this life experience.

I agree with Yale Law School dean, Guido Calabresi—certainly no conservative—that Judge Thomas has not turned his back on those in need, particularly African-Americans, and his awareness of their needs keeps him open to argument as a Justice should be.

Such charges as those made by Professor Hill certainly merit concern. These allegations concerning conduct 10 years ago were in the record of the Judiciary Committee, the FBI investigated them, but they were not found to merit further consideration.

An illegal leak thrust this issue into the limelight and much of America witnessed the hearings over the weekend. It is a basic tenant of American law, based on fairness, that one is innocent until proven guilty. While anyone can make allegations, an accuser must bear the burden of proof.

I do not believe that burden has been met, and in fact believe that there is reason to doubt these allegations. Professor Hill followed Judge Thomas from the Department of Education to the EEOC, continued to stay in friendly contact, and the specifics of the allegations seem to have grown over time.

I am also greatly disturbed by the possibility that Professor Hill thought that Judge Thomas might have withdrawn if she came forward. This calls into doubt the real reason for which she came forward.

There was very convincing evidence by those familiar with the working relationship between Judge Thomas and Professor Hill that such conduct as she alleged was totally out of character with Clarence Thomas. The charges were not proven, the presumption must remain with Judge Thomas.

In arriving at my position, I am very aware that some see a white, male Senate passing judgment on the real problem of sexual harassment. But as Chairman BIDEN so aptly stated during the hearings, the hearings were not a referendum on the terrible problem of sexual harassment. They were to determine whether it occurred in this instance. I do not believe that the burden of proof was met by the accusers.

Finally, Mr. President, with the conformation of Clarence Thomas we will have a first-rate Associate Justice on the Supreme Court. Judge Thomas' accomplishments and humanity could not be denied even by an enormous political campaign to defeat him, or recent personal attacks.

The media display brought about by an illegal leak of information does mean that the process, and this leak in particular, must be investigated. But, that is for another day.

I urge my colleagues to vote for the confirmation of Clarence Thomas. He will do honor to the Court.

Mr. DASCHLE. Mr. President, I made my decision to vote against the confirmation of Judge Clarence Thomas on Friday, October 4, before it was revealed that former employees of Judge Thomas had made charges of misconduct against him involving sexual harassment. I made my decision after carefully reviewing Judge Thomas' record, his past statements and writings, and his testimony before the Judiciary Committee.

My reasons for voting against Judge Thomas' confirmation are the same today as they were on October 4. I cannot support Judge Thomas because there are people of greater distinction and more experience who are better qualified than Judge Thomas to serve on the Supreme Court. Even more important, I cannot support Judge Thomas because he has left too many unanswered questions about his judicial philosophy. Because of these unanswered questions—and because of my doubts about the sincerity of his responses to the Judiciary Committee regarding his philosophy—I cannot turn over to Judge Thomas the enormous power of a position on the Supreme Court.

The hearings over the weekend did not change my mind. Having reached the conclusion that I would vote against Judge Thomas before I learned of the serious charges of sexual harrassment against him, and after having carefully reviewed the testimony from the hearings this weekend, I must state that the hearings, including Judge Thomas' testimony, did not lead me to believe that he is any more qualified for the Court than I thought before. If anything, the hearings raise even more questions.

Because I want to present clearly the thinking that went into this important decision to vote against Judge Thomas' nomination for one of the most powerful positions in our Government, I ask that I be permitted to submit the following statement prepared October 4.

THE CONFIRMATION OF JUDGE CLARENCE THOMAS

(Prepared October 4, 1991)

Mr. DASCHLE. Mr. President, a position on the Supreme Court is one of the most powerful positions in our government. The Court's decisions affect the lives of millions of Americans. These decisions reach into the most intimate aspects of people's lives. If we vote to confirm Judge Clarence Thomas as an associate justice we are voting to hand him enormous power. This step should not be taken lightly. Because of the importance of this step, we must search deeply into the nominee's mind and heart to make sure the nominee is a fair, thoughtful and decent person.

I have used three criteria to evaluate nominees for the Supreme Court. First, I want to know that the candidate has the proper moral character to sit in judgment of others; second, I want to be sure that the nominee has demonstrated intellectual achievement and distinction that mark him as one of the leading persons in his field; and, third, I want to be sure that the nominee has developed a judicial philosophy that fits within the mainstream of American legal thinking, not a philosophy that is radical or extreme.

I have too many doubts about Judge Thomas to support his nomination. Questions have been raised by several renowned legal scholars about his intellectual achievement and distinction. There are people with greater legal standing and conservative philosophies who would be better for this job than Judge Thomas. But, for me, the most important questions concern Judge Thomas' judicial philosophy. Does he hold a judicial philosophy that is outside the mainstream?

I do not oppose Judge Thomas because he has been a called a conservative. I believe that the President has the right to nominate judges for the Supreme Court that share his philosophy. I have voted to confirm the nominations of conservative judges, including Judges Kennedy and Souter. The question is whether the nominee holds a judicial philosophy that is extreme.

The Supreme Court is not a laboratory to experiment with legal theories. I will not support a nominee who is on a crusade to rewrite the law because the nominee has found interesting new legal theories. The cases that come before the Court involve real people. The decisions in these cases reach beyond these people to affect the lives of millions of Americans. Nominees to the Supreme Court must show that they are not indifferent to the effects of their decisions.

One of the threads connecting the nominees of Presidents Reagan and Bush is the nominees' indifference to the effect of their decision on peoples' lives. Each of the nominees, in some part of their legal careers, expressed skepticism or outright hostility to the principle that the Constitution protects a persons's privacy. Each, to a greater or lesser degree, showed an eagerness to extend the state into the most intimate aspects of peoples' lives. Judge Thomas, however, has expresed views that are more extreme than most other nominees.

Judge Thomas' writings and statemente prior to his nomination to the Supreme

Court show a high degree of indifference to the effect of the law on peoples' lives and an attraction to legal theories that are radical and extreme. He has made insensitive remarks in public regarding his family and people who are less fortunate. He has spoken favorably of legal theories that would strike down laws to protect public health and safety, including laws providing for federal inspection of food and meat products.

I began this process planning to vote for Judge Thomas's nomination to the Court. I hoped that Judge Thomas's background as a person who worked hard to raise himself from poverty would make him more sensitive, and less indifferent, to the problems of those people in our country who are still struggling for their fair share of the American dream. I hoped that in his past Judge Thomas had harbored more progressive views than those reflected in his writings and statements. But I was concerned, based on his writings and statements, that he had forgotten his background, or that his success had made him callous to people who have not enjoyed the same success. I had hoped that the hearings would clear up my doubts about his philosophy.

But after five days of his testimony, I am disappointed that the record is not clearer. Rather, as Senator Heflin said, the record is less clear. I am disturbed by the contradictions between his past statements and his testimony. These contradictions raise serious questions about Judge Thomas. They do not give me confidence in him. If he was attracted to radical ideas in the past, it is likely that he will be attracted to these ideas in the future. If he has been indifferent in past, it is likely that he will be indifferent on the Court.

We have seen two Clarence Thomases. The old Clarence Thomas showed insensitivity and indifference to others less fortunate than himself. The old Clarence Thomas expressed approval for radical legal theories. The new Clarence Thomas uses his personal story to shield himself from his past statement and writings. The new Clarence Thomas uses the right words, but does he mean them? We don't know.

The Judge Thomas I see is a philosophical chameleon. He spoke and wrote favorably of extreme legal theories to win the approval of the radical-conservative community in hopes of obtaining a Supreme Court nomination. Now, with the nomination in hand, he tries to jettison these past statements to win confirmation. Like a chameleon, which changes color to match the surrounding environment, Judge Thomas has changed his philosophy to gain the approval he needs. Are we voting for the old Clarence Thomas, or the new Clarence Thomas? His testimony provides no answers.

My children will live most of their lives under a Supreme Court with Judge Thomas sitting as a justice. Can I trust this man to be thoughtful and fair-minded in making decisions that will affect my children's lives, and the lives of millions of other Americans of my children's gsneration? I cannot. I am afraid that Judge Thomas's testimony has not overcome my doubts or earned by trust. Instead, his testimony has increased my doubts and weakened my trust.

This experience has revealed the weaknesses in the confirmation process. Negative politics—with all its cheap shots and character attacks—has spilled over to stain the process of confirming Supreme Court nominees. All the parties involved share blame for this development. The Senate, however, should make no apologies for conducting thorough hearings into Judge Thomas's background and philosophy. As one of my colleagues said, five days of hearings is a small price to pay for the right to serve on the Supreme Court for 40 years. Because of the power justices hold, their nominations deserve the highest level of scrutiny.

Ths President, however, has used this process in his campaign to divide the American people. Sadly, he seeks to irritate the wounds in our society rather than to heal them. The President's aldes used a strategy to shield Judge Thomas from our scrutiny. I believe this strategy was unfortunate because it hurt Clarence Thomas. We were kept from knowing the real Clarence Thomas. Because we were denied the opportunity to see the real Clarence Thomas, there are lingering questions about his character and his intellect. But most important, there are too many unanswered questions about his philosophy. These unanswered questions leave too many serious doubts in mind. Because of these doubts, I cannot vote to put Judge Thomas on the Supreme Court.

Mr. PRYOR. Mr. President, my opposition to Clarence Thomas predates Ms. Hill's allegations and even predates his nomination to the Supreme Court. I was one of only two Senators to oppose Clarence Thomas' nomination to the D.C. Circuit Court of Appeals in 1990. At the conclusion of my remarks I will insert into the RECORD two statements I made in 1990, which explained my opposition to Clarence Thomas' nomination to the D.C. Circuit Court. At the time, I felt Mr. Thomas' tenure as head of the EEOC, during which as many as 13,000 age discrimination cases were allowed to lapse, raised serious questions about his qualifications for higher office. Nothing since then has changed my mind about that.

Relative to the recent allegations of harassment and misconduct by Judge Thomas, I personally found the hearings to be inconclusive. I am sorry that today's vote will be interpreted by many as a referendum on whether we believe Judge Thomas or Prof. Anita Hill. This is not the case and my decision on this nominee was made several days before the charges agalnst Judge Thomas surfaced.

I am proud to have cast votes in recent years in favor of Justices O'Connor, Scalia, Kennedy, and Souter, all of whom were nominated by Republican Presidents and widely considered to be conservative of philosophy. In my opinion, these were individuals who unite the country rather than divide it. Such is not the case with Judge Thomas.

I ask unanimous consent that the statements to which I referred be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

[From the Congressional Record, February 22, 1990]

NOMINATION OP CLARENCE THOMAS

Mr. PRYOR. Mr. President, on February 6, the Senate Judiciary Committee held a confirmation hearing on the nomination of Clarence Thomas as a U.S. circuit judge for the District of Columbia Circuit. During this hearing, a number of statements were made by Mr. Thomas that I find troubling.

Before I outline my concerns, I would like to acknowledge that there is much to admire and respect about Clarence Thomas. He is truly a self-made man, having advanced from very humble beginnings to Chairman of the Equal Employment Opportunity Commission [EEOC]. Along the way he attended law school at Yale University, served as assistant attorney general for the State of Missouri, and was appointed Assistant Secretary for Civil Rights at the U.S. Department of Education. These are significant achievemente that should be taken into account when considering Mr. Thomas' fitness to serve on what is often described as the second most important court in the land.

What must be taken as an equally important indication of Mr. Thomas' ability to serve effectively on the District of Columbia Circuit, however, is his track record in his most recent position as Chairman of the EEOC. In that vein, I would like to take this opportunity to briefly explain my understanding of his performance in that capacity.

As chairman of the Senate Special Committee on Aging, I am particularly concerned about, and committed to, strong and effective enforcement of the Age Discrimination in Employment Act [ADEA]. With this in mind, I was dismayed to learn about several erroneous statements made by Chairman Thomas and his supporters regarding his role in enforcing ADEA.

At the hearing Mr. Thomas was praised by some for his 8-year tenure in which he took the EEOC "in shambles" and eliminated the case backlog, installed a new computer system for tracking cases, and managed the Commission's funds more wisely. Such comments give the impression that Clarence Thomas saved the EEOC from certain demise. I believe that the several thousand age discrimination claimants who, during Chairman Thomas' watch, lost their rights largely due to EEOC neglect and mismanagement would differ with this rosecolored view of the past 8 years.

According to documents obtained by the staff of the Special Committee on Aging during an investigation of the EEOC by former Chairman John Melcher, the EEOC's inventory backlog of 33,000 in 1982 rose to over 61,000 in 1987. During that same period, the number of unprocessed charges 300 days old or older increased some 2,200 percent, from 727 to 15,428. Therefore, far from eliminating its backlog, the EEOC was actually adding to it.

In addition, words of praise for Chairman Thomas for modernization of the EEOC must be taken with a grain of salt. The Aging Committee's investigation of EEOC found evidence that during Chairman Thomas' tenure the Commission spent millions of dollars in a highly unreliable computer system that eventually had to be replaced. Only recently has the EEOC's new Charge Data System begun to function properly and provide a reliable national data base.

Mr. Thomas' performance under questioning by members of the Judiciary Committee regarding EEOC's enforcement of the ADEA raised a number of concerns. Many of his responses appeared to be shaky attempte at revisionist history. Under questioning from Senator HATCH, Mr. Thomas stated that the EEOC had at one time allowed the statute of limitations for filing a case in Federal court lapse on 900 ADEA cases. He claimed, however, that the situation has been corrected and that lapses are now down to two cases a year.

These numbers are totally inaccurate and, some would say, border on misrepresentation. In fact, the EEOC's own figures indicate that the statute of limitations may have lapsed on well over 13,000 ADEA claims from 1984 to 1988. Additionally, over 1,500 charges contracted out by the EEOC to State Fair Employment Practice Agencies [FEPA's] have been allowed to expire since 1988.

In 1987 Chairman Melcher, acting on a number of complaints, began an investigation into ADEA claims that the EEOC had allowed to lapse. In early September, Chairman Melcher requested that the EEOC provide him with information on how many ADEA cases had exceeded the 2-year statute of limitations. Although an internal survey of district offices showed that the EEOC had let at least 900 ADEA charges lapse, Mr. Thomas chose to redefine cases as charges which had been recommended for litigation, and he told the Aging Committee that 70 such cases had expired.

After months of fruitless attempts to obtain additional and accurate information on this matter, the Aging Committee issued a February 1988 subpoena to Chairman Thomas to provide data on the lapsed charges. Thomas reported that form 1984 to 1987, 779 charges had exceeded the statute of limitations. Two weeks later Thomas received an internal EEOC report indicating that 1,200 charges had expired in 1987 alone.

Later in 1988, Congress passed the Age Discrimination Claims Assistance Act [ADCAA], which extended the statute of limitations 18 months for charges which were filed on or after January 1, 1984 and which expired on or before April 7, 1988. In complying with reporting requirements under ADCAA, the EEOC has admitted that it has mailed out more than 13,000 notices to older workers whose claims may have been allowed to expire during that period.

As mentioned, Mr. Thomas proclaimed to the Judiciary Committee that the problem of lapsed ADEA charges has been corrected and that lapses are now running about 2 a year. In fact, EEOC documents submitted to the Judiciary Committee show that over 1,500 ADEA charges contracted out by the Commission to State FEPA's for investigation have lapsed since ADCAA.

Mr. Thomas' response when confronted by Senator METZENBAUM with this fact was twofold. He initially stated that the EEOC has no control over the FEPA's. He further responded by stating that the ADEA statute of limitations did not matter on those charges because they were filed under State antidiscrimination laws, which have no such limitations. These statements are certainly misleading, and raise serious questions about the nominee's appropriateness for the Federal bench.

The EEOC contracts with FEPA's to investigate a range of employment discrimination cases filed at the State level. While it is true that age discrimination charges lodged with FEPA's are filed under State antidiscrimination laws, they also represent claims under the ADEA. Indeed, EEOC regulations make it clear that charges filed with FEPA's under contract are considered to be filed with the EEOC also.

As the Federal entity charged with the enforcement of the ADEA, the EEOC has an inescapable duty to protect the rights of ADEA claimants. The fact that a lapsed charge may still be valid under State law does not relieve the Commission of its fundamental responsibility.

The contracts between the EEOC and FEPA's require that a charge be investigated and sent to the EEOC within 18 months of the date the charge is filed. This is intended to give the EEOC time before the expiration of the 2 year statute of limitations to make a decision on litigating the charge or issuing a no cause letter to the claimant. If FEPA's violate this time frame, they don't get paid. In addition, the EEOC can discontinue ite relationship with poorly performing FEPA's. Most importantly, with its new computer system, ths EEOC has the ability to track charges filed with FEPA's, and has the contractual right to take from the State agencies those charges found to be in danger of lapsing.

In conclusion, there should be little dispute that thousands of ADEA claimants have unfairly and unacceptably lost their rights during Chairman Thomas' 8-year tenure. We all agree that the massive lapses of ADEA charges prior to 1988 should have never happened. Likewise, we must recognize the tragedy and irony that even as Congress was acting to restore the rights of those who lose claims during that period, hundreds more cases were lapsing.

Mr. President, the qualifications and experiences of any person nominated to fill such an important post as a judgeship on the D.C. Circuit must be closely scrutinized. There are few things I respect more than an individual who has made a success of him or herself in the face of hardships. Indeed, Mr. Thomas' accomplishments are to be applauded; however, the concerns I have outlined above should not be dismissed as irrelevant to the confirmation process.

I have not decided how I will vote on Mr. Thomas' nomination; however, I will make my decision based on the scope of my knowledge about the nominee and his qualifications. It is my hope that all my colleagues will do the same. I look forward to reviewing the Senate Judiciary's report and recommendation on Mr. Thomas, as well as to any discussion which may occur on the floor regarding his nomination.

[From the Congressional Record, March 5, 1990]

Mr. PRYOR. Mr. President, those who are managing this particular nomination should be on notice that my speech should not take more than about 4 minutes maximum.

Mr. President, this nominee's fate, I believe has already been determined. There is no question about that. My vote against this nominee will not change the fact, and certainly I do not expect it to, that Clarence Thomas will be confirmed by this body as U.S. circuit judge for the D.C. Circuit. Frankly, I wish him nothing but the very best as he takes on this new challenge.

On February 22, I outlined to my colleagues in the Senate not only my admiration for, but also my doubts regarding, Mr. Thomas. I see no need to repeat them at great length today. Whether through mismanagsment or through disdain for the Age Discrimination in Employment Act [ADEA] Clarence Thomas, as Chairman of the Equal Employment Opportunity Commission [EEOC] for the past 8 years, has been responsible for allowing thousands of age discrimination claims to lapse the statute of limitations.

From 1984 through 1988, as many as 13,000 ADEA claimants may have lost their rights to bring suit in Federal court. Since that time over 1,500 additional age discrimination claims have been allowed to lapse. Throughout congressional investigation into these lapses, Mr. Thomas has vigorously resisted oversight, and he has consistently, whether he knew it or not, misstated his record as chairman of the EEOC.

In 1988, Mr. Thomas was very, very uncooperative to the extent that former Senate Aging Committee Chairman John Melcher was forced to issue subpoenas to the EEOC in order to discover that Mr. Thomas had substantially understated the number of lapsed ADEA claims to the committee. But chairman Melcher's experience with this nominee was not unique. On July 18, 1989, the chairperson of 12 separate House committees and subcommittees with jurisdiction over the EEOC wrote to the President expressing the same frustrations, and urging that Mr. Thomas not be nominated for this judgeship.

As I stated to my colleagues in the Senate on February 22, I feel that the nominee has once again been far less than candid with a congressional committee—in this instance the Senate Judiciary Committee—regarding his record as Chairman of the EEOC. I am also astonished by his apparent lack of knowledge regarding the EEOC's contractual relationships with State fair employment practices agencies [FEPA's]. Hundreds of ADEA charges contracted out by the EEOC to the FEPA's on the local level have lapsed since 1988, and Mr. Thomas flatly denies any responsibility for them. I hope that my colleagues will refer to my previous statement when I attempted to straighten out the record for a more thorough discussion of the FEPA issue.

After much careful consideration, Mr. President, I have determinsd that I have significant and unanswered concerns regarding this nominee's sensitivity to the rights of older individuals and his commitment to protecting those very particular and specific rights.

Mr. President, strong and fair enforcement of the ADEA is just as important as enforcement of any other law that protecte our citizens from discrimination. As Senators, we must have confidence that the judges we confirm to fill what is often described as the second most important court in the land will uphold the laws that embody the rights of those most vulnerable in our country and in our society.

Based upon his record as the Chairman of the EEOC, I cannot say that Mr. Thomas has given me that degree of confidence that I need to vote for his confirmation. I am not trying to enlist support against his nomination. But, in my capacity as chairman of the Senate Special Committee on Aging, I cannot ignore my concerns about Mr. Thomas in this area and, as a result, I will not vote for his confirmation.

If my vote on the Thomas nomination can achieve only one outcome, Mr. President, it is my hope that it signals that enforcement of the ADEA must be a high priority. I am pleased to say that I believe that the new Chairman of the EEOC, Evan Kemp, shares my commitment in protecting the rights of older citizens. It is therefore with great hope and expectation that I look forward to an improved and productive relationship with the EEOC. It is also to my great sorrow that I cannot support the nomination of Clarence Thomas to this particular position.

Mr. President. I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized?

The Chair recognizes the Senator from Missouri [Mr. Danforth] for not more than 6 minutes.

Mr. DANFORTH. Mr. President, I agree with the Senator from Arkansas only insofar as he expresses regret for the position he has taken.

I have stated previously this afternoon that I do not know either the law or the facts relating to these cases dealing with the aging. I do know that I was present in the Judiciary Committee when Clarence Thomas assumed the responsibility personally for everything that happened on his watch, including these cases. I can say to the Senator from Arkansas that, having known Clarence Thomas for 16 years in a collegial capacity, both when I was State attorney general and as a Senator, Clarence Thomas is a totally candid person. What you see is what you get. He is not going to pull a fast one on anyone. As a matter of fact, one of the real characteristics of Clarence Thomas is that he will tell you or me or anybody else exactly what he thinks at any time. I have no doubt that there was no effort on his part to pull the wool over anybody's eyes.

It is well known, I think, that when Senator Melcher was chairman of the Aging Committee there was a very severe difference of opinion—it may have even been a difference of personality—between Senator Melcher and Clarence Thomas. I know on numerous occasions Clarence Thomas expressed concern about this to me because I consider myself to be his personal friend. But one thing he does not do, I am sure has not done, and I know will not do—I will be surprised if he does it as a Federal appellate judge—is to somehow twist or tailor the law in order to meet some personal agenda of his own. He would not do that.

If the statute of limitations ran, it was from some fault of the system. It was not some conniving trick designed to accomplish some weird personal agenda which was then covered up in some dastardly fashion by Clarence Thomas. That is just not the way the man works.

I think some people might say, well, if he is a judge he will not engage in new frontiers of social policymaking from the bench. Undoubtedly that is the case. He is a person who is a believer in the concept of restraint. But he is also a person who believes in enforcing the law. I am confident, knowing the person as well as I do, that that is exactly what he attempted to do as Chairman of the EEOC, and that is exactly what he would attempt to do on the court of appeals.

Mr. President, I yield back whatever remaining time I might have.

The PRESIDING OFFICER. Who wishes to be recognized?

Mr. PRYOR. Mr. President, I wonder if it might be permissible for me to respond to the distinguished Senator from Missouri for not to exceed 5 minutes?

The PRESIDING OFFICER. The Senator is recognized.

Mr. PRYOR. Mr. President, there is no one in this body that I have greater admiration for than the great Senator from Missouri, my friend, Mr. Danforth. And I know Senator Danforth has had an extremely personal relationship with the nominee for a number of years. I know he knows the nominee well; in fact, much better than I do.

Mr. President, I say this out of great respect to the Senator from Missouri and out of all respect to the distinguished career of the nominee in this case, Mr. Clarence Thomas. What I think happened at EEOC during the past 8 years is that rather than Clarence Thomas, the direotor, running the bureaucracy, the bureaucracy ran him. I think the bureaucracy ran him to a very dangerous extent, so that Clarence Thomas decided no longer to look at what was happening in that agency.

This is not the first time this has happened in a bureaucracy. It happens many times. All of us in this body have seen bureaucracies or agencies or entities of government being taken over by those who are not in command. We also see what we might call the tail wagging the dog.

Clarence Thomas is not a bad man. In fact, he is a good man. His intentions are not bad. In fact, his intentions are good. But he allowed this to happen, and it happened on his watch. As a result, for some 15,000 individual Americans who had age discrimination claims, appealing to the court of first resort, the EEOC, those claims might as well have been sent to Beijing. They might as well have been sent to Bulgaria or Romania. But they were filed in the court of first resort, EEOC.

What happened to them? The statute of limitations was allowed to run. Had it been 10 cases or 20 cases, that might have been something different. But there were 15,000 charges which may have lapsed, Mr. President. These 15,000 charges representing the rights of American citizens were denied and snuffed out, literally snuffed out, by a bureaucracy that was run by Clarence Thomas.

That is too much for me to overlook. I cannot say, well, he was a good man, but I am sorry he did not do better and I will vote for him.

In this case, the instances were too many, the warnings were too often, and the consequences were too great for me to have that degree of confidence to promote this fine man to the job for which he is being considered.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized? The Senator from Ohio has 2 minutes.

Mr. METZENBAUM. Mr. President, I commend the Senator from Arkansas for so succinctly stating the facte concerning the operation of EEOC under Chairman Thomas. I think his remarks very much indicate the reason that the National Council on Aging came out in opposition to Mr. Thomas' confirmation, and I think it is the reason that the AARP wrote a 15-page letter. They take no position, but make it very clear about their unhappiness with respect to his conduct as Chairman of the EEOC.

I think his remarks also support and make us understand better why 10 chairs of various House committees came out against confirmation of Mr. Thomas. I think his remarks help us to understand also why 19 members of the Congressional Black Caucus came out in opposition, and not one member of the Black Caucus came out in support of Mr. Thomas' confirmation.

So I think Mr. President, although I said earlier I expect that Judge Thomas will be confirmed, there are some strong and persuasive reasons why he should not be confirmed and seated as a member of the Circuit Court of Appeals.

Mr. KOHL. Mr. President, I will vote to confirm Mr. Clarence Thomas to the U.S. Court of Appeals for the D.C. Circuit. I am concerned about this nomination, however, for soms of the reasons outlined by Senator Metzenbaum, and organizations representing elderly Americans—namely, that Mr. Thomas did not zealously protect the rights of a vulnerable segment of our society when he was head of the EEOC. I also have some concerns that Mr. Thomas' strong ideology could interfere with his performance as a judge.

Still, Mr. Thomas has been nominated to the bench—not to the EEOC again—so any managerial mistakes are not a bar. Moreover, he repeatedly assured us during the Judiciary Committee hearing that he would put aside his own political believes and be an impartial judge. I take him at his word. He also very clearly vowed to follow Supreme Court precedent even if he disagrees with it. This, too, was reassuring.

Consequently, Mr. President, I am going to vote in favor of Mr. Thomas. For this position on the D.C. Circuit—where he must follow Supreme Court precedent—he is qualified and deserving of confirmation.

Mr. WOFFORD. Mr. President, this has been a painful week for Judge Clarence Thomas, for Prof. Anita Hill, for their families and friends, colleagues and classmates, and also for the country. No one can be happy about the spectacle of seeing such accomplished and impressive individuals put in the hot glare of publio scrutiny over the details of their private lives.

As a former aide to Dr. Martin Luther King, Jr., oivil rights adviser to President Kennedy, Notre Dame law professor, and president of a leading women's college, I've had special feelings for the powerful and conflicting passions aroused by this nomination.

I want an African-American to be on the Supreme Court because issues of equal opportunity for minorities will remain a vital conoern for the highest court in our land. President Bush did reach out to a black American, but he did not select someone in the tradition of Justice Thurgood Marshall. The President selected, as he has done with almost every judioial nomination, someone who reflects his own political and legal agenda.

I have been especially disappointed to witness a nomination and confirmation process which, from the very outset, elevated politics over qualifications.

After the first hearings in September, I was concerned that Judge Thomas—a man who has clearly wrestled with many legal, philosophical and moral questions—steadfastly refused to clarify and defend his views on several key issues. A Supreme Court nominee can be more forthcoming without prejudging particular cases that may come before the Court.

In addition, I remain concerned that as a person who has spent the bulk of his career in administrative and bureaucratic posts, Clarence Thomas does not have the courtroom experience and constitutional expertise that we should expect in the Justice who replaces Thurgood Marshall.

Like most Americans, I was deeply impressed by the facts of Judge Thomas' successful struggle against a legacy of racial discrimination and poverty. But as Congressman JOHN LEWIS, my colleague of many years in the field of civil rights put it in his testimony, these facts do not make a sufficient case for a lifetime appointment on the Nation's highest court.

Unlike Senators and Members of Congress who must return to the people periodically for their mandate, Supreme

Court Justices do not. Lifetime appointments demand the highest level of experience and qualifications, as Justice Marshall demonstrated so well.

Therefore, after reviewing the public record and soliciting the thoughts of my constituents in Pennsylvania, I have decided to vote against this nomination.

Mr. LAUTENBERG. Mr. President, the Senate is about to exercise one of its most important duties in voting to confirm or rejeot a candidate for the U.S. Supreme Court. A confirmation of a nominee can have a lasting impact on our citizens' lives, their freedoms, and their access to justice.

Shortly after the Senate Judiciary Committee vote more than 2 weeks ago to report the nomination of Judge Clarence Thomas, I stated my intention to vote against the nomination on the basis of the judge's record and views on constitutional rights.

Judge Thomas is clearly an extremely intelligent man. A man who overcame marked disadvantages to achieve significant educational and professional accomplishments. However, I did not feel that Judge Thomas would be a dependable guardian of the fundamental rights Americans have come to expect. I did not feel he viewed the Constitution as a dynamic document, that must grow with our society over time.

I have not ohanged my views. I believe Judge Thomas would apply a strict, cramped interpretation of our Constitution. I remain concerned that Judge Thomas would challenge, instead of support, a modern understanding of liberty. As I said then, I feared he would be two more hands on the rope pulling us backward. I still feel that way and I will vote against his confirmation.

Mr. President, to earn oonfirmation by the Senate, a nominee should meet the highest personal and professional standards. In judging a candidate, principal questions include: Is the person learned and experienced in the law? Will the nominee approach the interpretation and application of our laws with the appropriate dedication to our Constitution, its values, and the protection of our freedoms? Does the person have the integrity, the character, and the temperament, to serve on the highest court?

This nomination comes before the Senate at a time of major change on the Court, a change I do not welcome. Presidents Reagan and Bush have sought to impose a lasting stamp on the Court which will result in the loss of liberties and freedoms that Americans have come to take for granted. I fear the cumulative effects of these appointments will restrict our constitutional rights in a fundamental and deleterious way.

So, Mr. President, I have not changed my mind on this confirmation vote. I will vote against Judge Thomas' nomination to the Supreme Court.

However, I would like to make some observations about what was transpired in the Senate over the past days and weeks.

It has been a difficult time for the Senate and for the country. Fundamental questions about integrity, racism, sexism, character, and justice have been raised. Many of my constituents, along with many Americans, have been outraged about the manner in which this controversy developed:

Outraged that serious and credible charges of sexual harassment were not investigated earlier and that the Senate almost went to a vote on the nomination without considering them;

Outraged at the apparent inability of Members of the Senate to understand what a woman goes through who has been subjected to sexual harassment;

Outraged that Senate rules were broken and that confidential documents were leaked to the press in a manner that was unfair to both Professor Hill and Judge Thomas;

Outraged that one or both of these individuals were subjected to a public pillorying, which demeaned both of them and, some feel, the Senate and the entire confirmation process.

Mr. President, this has been an extraordinary ordeal. It was uncomfortable. It was excruciating at times. A significant segment of the public seems repulsed by it. I can understand that and it is a matter we need to review.

But, Mr. President, stepping back from the discomfort of the weekend, we must remember that the Senate had a duty to investigate a serious, credible charge that was directly relevant to Judge Thomas' fitness to serve on the Court.

How else we could have done it, I am not sure. If it had been done in private, the public would have been robbed of its ability to make a judgment about this matter, which has been of enormous interest to many Americans. Many would have charged the Senate with a cover up. So, it's a complicated question how we should have undertaken this investigation, or what we should do in the future, but review it we must to search out the culprits, if any, who were responsible for leakage of any privileged documents.

What is clear, however, Mr. President, is that the Senate had an absolute responsibility to investigate Professor Hill's charges. What is clear, is that too many women in this country suffer the searing indignity and abuse of sexual harassment, mostly in silence. What is clear is that the overwhelming majority of women who suffer sexual harassment never take action against those who harass them, much less tell their stories beyond a close circle of friends.

They suffer in silence, because they fear the ramifications to their careers, to their ability to make a living, if they try to challenge supervisors or others in a position to harm them professionally.

Mr. President, to me it is these realities of harassment in the workplace that many Senators seem unable to comprehend. In seeking to attack Professor Hill's credibility, and buttress support for the Thomas nomination, Senators have questioned her actions. They ask why she did not come forward. Why she did not leave her job. Why she did not out off all ties to Judge Thomas. Why she did not take aotion. Why she waited 10 years.

To me, Mr. President, these questions are a powerful reflection of the ability of influential men to intimidate and harass women in the workplace.

Let us forget Clarence Thomas and Anita Hill for the moment. Just picture this. You are 25 years old. You are just starting your oareer. You are a black woman, the first in your family to earn an advanced degree. You have ambitions. You have goals. You have things you want to accomplish for yourself, your people, your oountry. You view your job as a major step along a career path.

Suddenly, you are faced with inappropriate and unwanted behavior by your boss, your mentor, the employer who gave you your first chance and holds your future in his hands. He expresses interest in you. You indicate you are not interested. He persists, getting more offensive. You do not want to leave your job. You do not think you can possibly ohallenge him publicly. All you can see are problems—problems if you try to keep your job by bringing a oharge of sexual harassment and problems if you do nothing. All you want is to keep your job and for the behavior to stop.

I can understand that perfectly, Mr. President. I understand it clearly. Many men in this country are also treated in an offensive and demeaning manner by their bosses, but they do not leave their jobs, as the chairman of the Judiciary Committee pointed out. They do not insult their bosses publicly, or appeal their behavior to a higher supervisor. Why not? Because they need their job. They need their paycheck. So, they put up with it and do the best they can to perform their jobs and advance forward in their company. We all understand that. So, why the blind spot when it comes to sexual harassment?

Mr. President, I feel strongly on that issue. I think the Senate and the oountry received a startling education on what women have suffered through in the workplace. I hope it will make a difference in the future.

Mr. President, to me Professor Hill was persuasive. She was credible. She was dignified in the face of persistent attacks on her character and motives. And it is not implausible to me that

she did not come forward before this time publicly, or that she maintained professional oontacts with Judge Thomas. As one witness said, Judge Thomas was the most powerful boss Anita Hill ever had and was still in a position of power in the years after she left his employ. It would have been a oostly bridge to burn. All Ms. Hill wanted, this witness stated, was for the behavior to stop.

I do not know why Professor Hill would have put herself through the pain of the last few weeks, and invite the scars she will suffer from for the rest of her life, if she were not speaking the truth. She had nothing to gain, except to provide the Senate and the public with important and relevant information about a person who seeks confirmation to the Court. But she had much to lose—her privacy, her reputation, and her peace of mind.

We should remember, Mr. President, that Professor Hill was an unwilling witness. She did not come forward until questioned by representatives of the Senate and by the FBI. At that point, she felt it was her duty as a citizen to come forward with information that was directly relevant to Judge Thomas' fitness to serve on the Supreme Court. She felt she should not lie or stay silent, having been approached by law enforcement officials.

At points during the proceedings it was suggested that Professor Hill's charges were a last minute, October surprise—an effort to derail the Thomas nomination for political reasons. But, testimony before the committee tells us otherwise.

A distinguished panel of witnesses, each of whom came forward voluntarily, recounted under oath that Professor Hill shared the painful realities of sexual harassment with them years ago, when she would have had no such motives, nor any expectation that these private conversations would become relevant to a Supreme Court nomination.

Mr. President, the Senate will vote tonight on this nomination. The rest will be for history to decide. If Judge Thomas is confirmed as a Supreme Court Justice, I hope this experience will deepen his sensitivities about issues of discrimination, race, sexism, and fairness.

Mr. McCAIN. Mr. President, the recent controversy over the allegations made against president Bush's nominee to the Supreme Court of the United States, Judge Clarence Thomas, has caused a furor over an individual who has, in every respect, demonstrated an exemplary ability to serve as an honorable, sensitive, hard-working, and fiercely independent jurist.

The allegation of sexual harassment is extremely serious. Sexual harassment in the workplace, and elsewhere, must not be tolerated under any circumstances. Such harassment is threatening, demeaning, and utterly reprehensive. For this reason, we have administrative and legal remedies available for the purposes of punishing those who are proven guilty of this transgression.

I monitored the 3 days of hearings on these allegations very closely. I paid very close attention to the witness' testimony. I also paid close attention to the testimony of the nominee, and I hope that the other Members of the Senate, and the Nation, did so as well.

Judge Thomas flatly denied the allegations made against him. His accuser repeated the allegations, but was unable to prove their veracity. I believe that the burden of proof remained with the accuser, as occurs in all other proceedings. Instead, the proceeding was oonducted in such a manner that the burden of proof fell upon the accused.

That is not the premise upon which our society is based. These hearings were supposed to be neither a judioial proceeding, nor an adversarial proceeding. Yet, they were nothing short of a trial, a trial where none of the legal evidentiary standards applied, and a trial where the burden of proof fell on the nominee to disprove the charges.

The presumption of guilt is unjust, and the statements made in relation to the allegations, without proof, are unjust.

Less than 2 weeks ago, I expressed my support for the nomination of Judge Thomas to the Supreme Court before the full Senate, and I reiterate my unwavering support today.

Since his nomination, the American people have gotten to know the story of a man who was raised with little materiai benefits, but was rich with the love and encouragement of family, and the dedication of teachers. Above all, Judge Thomas was raised with the belief that hard work brings its own rewards. His career stands as testimony to the truth behind this principle.

I have been, and continue to be, a strong supporter of Clarence Thomas' nomination. I say this with great pride and without reluctance. The hearings over the weekend served to emphasize Judge Thomas' integrity as a jurist, and the overwhelming loyalty demonstrated by the vast majority of his colleagues and former employees.

This is the kind of jurist who will serve the people of this country with fairness, sensitivity, and intellectual fortitude. This is the jurist that I will vote to confirm to serve on the Supreme Court of the United States.

Mr. HARKIN. Mr. President, I rise to again express my opposition to the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

On September 26, I stood on the floor to announce my opposition to this nomination. I oppose this nominee based on Judge Thomas's failure to affirm his unequivocal support for individual rights, especially the fundamental right to privacy. I oppose this nominee because he failed to articulate a coherent understanding of the Constitution, which we should expect from a prospective Supreme Court Justice. And I oppose this nominee because I cannot believe his statement that he never discussed Roe versus Wade in any but the most general sense, and has no opinion at all in this case.

Prof. Anita Hill's allegations and Judge Thomas' performance at the hearings over the weekend have only deepened my doubts about Judge Thomas. Enough has been said about the question of who was or was not telling the truth during the Clarence Thomas hearings. I do not intend to add to the reoord on that score. Many have oriticized the process of confirmation of judges by this body and some of that criticism may be justified. I think that it is safe to say that most people will not regard these hearings as the Senate's finest hour.

Several points must be made before we vote. First, the issue of sexual harassment in the workplace has now been placed squarely on the American agenda as a result of these hearings. That is a very good result, although inadvertent, from the confirmation process. Sexual discrimination and sexual harassment are deeply pervasive problems in the American workplace. This is a problem that leaves over one-half of our work force feeling empty and second class. It is time that we face up to this problem forthrightly and deal with it once and for all.

Out of this dialog, challenges emerge for all of us. In the Senate, all of us, as individual employers, should reexamine our own attitudes and practices to ensure that none of what was alleged in the hearings ocours within these halls. And, further, I challenge the men of America to take time to examine their attitudes about their female coworkers to determine whether they are contributing to this serious problem.

This is 1991. It is deeply troubling that we should even have to address this problem. But it is there and we must put an end to it. All of us here assembled have mothers. Many of us have wives, daughters and sisters. Let us think about them and the kind of working world they have had to face, and the kind of working world we would want them to face. There is no place in the working world of today and beyond for sexual harassment and sexual discrimination.

The second challenge goes out to George Bush and the Republicans. I challenge you to stop playing a cynical and dishonest game with judicial appointments by sending barely or unqualified candidates to us for confirmation. Mr. Bush and the American people know that Clarence Thomas is not the best qualified candidate to be a Supreme Court Justice.

My final challenge goes to the American public. We might not be in this situation today, and not have experienced the agony of these hearings, if the Senate had more women Members, if the House of Representatives had more women Members, if there were more women judges, more women in the executive branch, more women officials at all levels of government. To more effectively handle problems like these, and hopefully end them, the views of all Americans, men and women alike, need to be better represented. And that will happen only when there are more women representatives in government.

As we vividly saw over the weekend, both the nominee and Professor Hill have their reputations in the balance. Judge Thomas has a right to vindicate his name in the courts, if he should so desire. But our duty is not to either of them; it is instead to the reputation of the Supreme Court, and to the Constitution of our country. The benefit of the doubt does not rest with either the accused or the accuser in this case; it rests instead with the Constitution. As the Senator from Alabama, Senator HEFLIN, said when he announced his opposition to Judge Thomas: "When in doubt, don't!" For the protection of the Constitution, we should vote not to consent to this nomination.

Mr. President, I will therefore vote no on this nominee.

Mr. MACK. Mr. President, Clarence Thomas' courageous struggle to excel in life has impressed many of us. His allegiance to the ideas of economic freedom, self-reliance, and self-discipline provided him the inspiration for his journey. Determination instilled in him by his grandfather and his teachers, framed a value system repeatedly tested and challenged. Thomas' grandfather honed that determination constantly encouraging him to "work hard * * * and then * * * work harder, be self-reliant * * * be faithful to your vision of personal achievement * * *." Clarence Thomas has certainly been faithful to that vision, turning once distant and seemingly unreachable goals into a series of impressive acoomplishments.

Clarence Thomas has provided all of us with a unique look at the opportunities which should be afforded to all Americans. His experiences demonstrate clearly that opportunities, while sometimes elusive, must be sought after with diligence and determination.

And yet, Mr. President, everything that Clarence Thomas has strived for, everything he believed about America being the land of opportunity, is in jeopardy. His reputation, his integrity, his moral being have been challenged.

Several weeks ago, I announced my support for Clarence Thomas. My decision was based upon his exemplary legal record as a lawyer and as a judge. When allegations of sexual harassment were charged against Judge Thomas, my initial reaotion was shock and dismay—shock that an individual who I believe to be so highly regarded, was the subject of such serious allegations.

Over the past week, I have had the opportunity to give a great deal of thought to the allegations brought against Clarence Thomas. Like many people in this country, I was glued to the TV all weekend watching the hearings and judging for myself the circumstances surrounding this disturbing matter. After listening to the testimony of both Clarence Thomas and Anita Hill as well as the testimony of the other witnesses, I believe the evidence supports Clarence Thomas.

In our country, the acoused is presumed innocent untll proven guilty. The fact remains that Anita Hill produced no firsthand witnesses or evidence to support her claims. I found her story to be replete with inconsistencies and contradictions. Anita Hill, stated that she followed Clarence Thomas to the EEOC because she needed the job and was afraid she would lose her job at the Department of Education. This was after many humiliating and repulsive statements had been allegedly made by Clarence Thomas. First, the evidence shows that Anita Hill could have retained her job at the Department of Education and, indeed, could only have lost her job for cause. Anita Hill is a lawyer and should have known her employment rights. In addition, I found her statement that she needed the EEOC job because she could get no other job to be suspect. Anita Hill was a graduate of one of the country's top law schools and she had a reputation of being very competent. I cannot believe that Ms. Hill would have had any trouble finding a great job.

It is perplexing to me that Anita Hill waited over 10 years and four confirmations to bring up these allegations. She was working for the very agency charged with the responsibility of enforcing laws against sexual harassment, racism, or other unfair treatment. As a lawyer at the EEOC, Anita Hill should have been aware of the rights of individuals who wished to bring a sexual harassment complaint.

Even after leaving the EEOC, Anita Hill remained in contact with Clarence Thomas. She called him at least 11 times—a number of these calls being personal in nature. Anita Hill continued a personal relationship with Clarence Thomas who she claims degraded her and humiliated her. It just doesn't make sense.

It is difficult for me to put myself in the shoes of one who has been sexually harassed. This is why I took a great interest in the testimony of a number of females who had either worked for or with Judge Thomas. Each described Thomas in glowing terms. A number of these women had been sexually harassed while associated with other employers. In response to their own experiences of being sexually harassed, each of them described responses completely inconsistent with those of Anita Hill. One woman stated the following: "Let me assure you that the last thing I would ever have done is follow the man who did this to a new job, call him on the phone or voluntarily share the same airspace ever again." Another woman testified she found "Anita Hill's behavior inconsistent with these charges." Instead, this woman commented that the last thing she wanted to do "was to call either of the two men who had sexually harassed her to say hello or to see if they wanted to get together."

Clarence Thomas in no uncertain terms has categorically denied the sexual harassment claims. I know Clarence Thomas and I know him to be a man of outstanding character and of the highest integrity. I believe him and I support him.

Clarence Thomas represents in all of us the belief that we can achieve great things. Everything Clarence Thomas has worked for has been under the microscope of the Senate Judiciary Committee for several days now. This deliberate scrutiny has only confirmed my belief in who Clarence Thomas is and what Clarence Thomas stands for. Clarence Thomas' belief, like that of many Americans, is that an individual should determine one's destiny in life, not family roots or government quota programs. Given opportunities and the economic freedom to seize those opportunities, we as Americans can reap many benefits from our Nation.

The message Clarence Thomas brings to all Americans is not just applicable to the downtrodden and oppressed. People from all walks of life are affected by the principles of self-reliance and personal freedom which must be at the core of the Supreme Court's reasoning. By placing the responsibility for self-improvement and economic advancement upon each individual, we will also be allowing for the greatest possible degree of individual liberty.

Through Thomas' dedication to the ideals of values, hard work and self-discipline, Clarence Thomas has accomplished many personal achievements and has compiled an outstanding professional and legal record. Clarence Thomas will represent our country well on the U.S. Supreme Court, just as he has demonstrated his abilities in the past. In recognition of Clarence's outstanding efforts as Chairman of the EEOC, his employees named the EEOC headquarters building after him, dedicating the building to him as follows:

Clarence Thomas, Chairman of the U.S. Equal Employment Opportunity Commission, May 17, 1982-March 1990, is honored here by the Commission and its employees with this expression of our respect and profound appreciation for his dedicated leadership exemplified by his personal integrity

and unwavering commitment to freedom, justice, equality of opportunity and to the highest standards of Government service.

Clarence Thomas, in protecting our rights to achieve as individuals, will bring a breadth of experience to the Supreme Court. He will continue to stand for individual freedom and opportunity.

In closing, if these recent proceedings have done any good at all, it is that attention has been focused on the issue of sexual harassment. However, in this particular case, I believe the evidence strongly supports Judge Thomas and I remain steadfast in my support for him.

The VICE PRESIDENT. Under the previous order, the Republican leader is recognized from 5:30 to 5:45; the majority leader from 5:45 to 6.

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from California, Senator CRANSTON.

Mr. CRANSTON. Mr. President, I appreciate the minority leader's courtesy. I rose a bit ago seeking to correct the RECORD after the Senator from South Carolina had read an affidavit stating that one John Burke stated that Ms. Hill did not work at the level of her peers, nor at the level we expect, and that it would be in her best interest to seek employment elsewhere.

An attorney from the same firm has issued an affidavit stating that is not true.

Her performance was not held to be unsatisfactory by the Wald firm. She was not asked by the partnership to leave the firm.

He said:

I have been told that today a former partner in the Wald firm has stated that the Wald firm asked Ms. Hill to leave the firm because of her allegedly inadequate performance. This is not correct.

I will read the affidavit in full:

AFFIDAVIT OF DONALD H. GREEN

Donald H. Green, being first duly sworn, deposes and says: 1. I am a member of the bars of the District of Columbia, New York, and Florida. Upon graduation from Harvard Law School and after service in the United States Marine Corps, I served as an attorney with the United States Department of Justice. I have been a partner in the law firm of Pepper, Hamilton & Scheetz in Washington, D.C. since June 1987. For 21 years prior to that time, I was a partner in the law firm of Wald, Harkrader & Ross (the "Wald firm"), also in Washington, D.C.

2. Ms. Anita Hill was a summer associate at Wald, Harkrader & Ross in the summer of 1979. Based upon her performance that summer, she received an invitation to return to our firm as a full-time associate upon her graduation from Yale Law School in 1980. She accepted that invitation, and started with the Wald firm a few months after her graduation. Although I did not work directly with her, I knew her as an associate in the Wald firm.

3. One of my roles in the Wald firm at the time that Ms. Hill was with the firm was to serve as Chairman of the Associate Development Committee. This Committee's function, among others, was to evaluate associates' performance. The Committee monitored the professional progress of associates in the firm, prepared the evaluations of the associates for review at semi-annual partner meetings, reported on associate performance at the partner meetings, and met with associates individually to inform them of the partnership's collective evaluation after such partners' meetings. If the Wald firm partners decided that an associate should no longer be employed by the firm, or should be advised to look for a position elsewhere, it was the function of the Associate Development Committee to convey that message.

4. In the spring of 1981, the performance of Ms. Hill was routinely evaluated, along with all other associates. It is my recollection that her evaluation was typical of many of our starting associates. Her performance was not held to be unsatisfactory by the Wald firm. She was not asked by the partnership to leave the firm.

5. So far as I am aware, Ms. Hill left the Wald firm of her own volition, freely choosing an alternative professional path, which is not uncommon among young associates. I am aware of no pressure upon her to leave. I am confident that the Wald firm did not ask or press her to leave. Certainly, the Associate Development Committee, which I chaired, did not ask or press her to leave. That is my clear memory and I have recently contacted the other two members of the Committee and they confirm any recollection.

6. I have been told that today a former partner in the Wald firm has stated that the Wald firm asked Ms. Hill to leave the firm because of her allegedly inadequate performance. This is not correct. I have prepared and executed this affidavit, and submitted it to the Committee on the Judiciary of the United States Senate, because I believe it is important that the Committee and the Senate as a whole have the accurate facts about this matter.

The foregoing is true and correct to the best of my knowledge, information, and belief.

DONALD H. GREEN.

Subscribed and sworn to before me, a Notary Public of the District of Columbia, on this 14th day of October, 1991.—Deborah L. Kutch, Notary Public.

I want to add that this attorney, Donald Green, in the affidavit I am reading stated that he, not the other attorney, was the one that evaluated the work of people in that law firm.

The VICE PRESIDENT. The Republican leader is recognized.

Mr. DOLE. Mr. President, I have 14 minutes.

Mr. President, I want to indicate the Senate is not going to fall apart over this vote. There has been a lot of talk about the process, a lot of talk about the Senate, a lot of talk about perception about the Senate. Tomorrow we will be on something else. Some who were on opposite sides today will be on the same side tomorrow or next week. I wanted the RECORD to at last indicate that generally we try to accommodate one another here.

This is a very vital vote. It seems to me that we now have the votes, which I could not have said last Tuesday at this time. I indicated at that time there were about 41 "for" votes, 41 against Thomas, a pool of about 18 undecided. Some Senators said before they could vote for Thomas they would have to have a delay to check into these allegations.

I think that was the right decision from the standpoint of the future of Clarence Thomas. Had we not had the delay and had we had the vote last Tuesday, in my view his nomination would have been defeated.

It seems to me now there have been hardly any defections. So despite all the dramatic events of the weekend, as I look at my little score sheet and try to count votes, the pool we had last week is pretty much intact.

The Senator from West Virginia indicated he was voting "no," but he was not in the pool. Other Senators who indicated they were voting against Judge Thomas were not in the pool we were looking at as potential Thomas supporters.

So I would suggest that after all is said and done, all the drama and all the things that happened over the weekend—some of us watched every moment of the proceedings, except maybe 10, 15, or 20 minutes—it seems to me we are now in a position to make a judgment having had the delay, having had the additional information from Professor Hill, from Judge Thomas, and from supporting witnesses on each side.

It also seems to me it boils down to a question of credibility. This is not a referendum on sexual harassment. If it were a referendum of sexual harassment, the vote would probably be or should be 100 to 0. This is a referendum of Clarence Thomas and his nomination to the Supreme Court by President Bush.

We will have plenty of opportunities in the future to address the issue of sexual harassment in the workplace or any place else for that matter. I believe that you will find most Senators, regardless of party, regardless of philosophy, are going to be supporting the appropriate position in those cases.

We are back now where we were a week ago, when a majority of us, Republicans and Democrats, were prepared to say that Judge Thomas was qualified to be an Associate Justice of the Supreme Court. I guess the one question that I have is how much of a burden we placed on Clarence Thomas? How much of a burden will he carry for the next month, a year, 6 weeks, who knows how long, with the last-minute allegations fully aired to millions and millions and millions of Americans. And will it have a lasting impact when he reviews various kinds of cases, including cases of sexual harassment?

Mr. President, in my view this will make Judge Thomas even a better judge, a stronger judge, than earlier indicated. Having gone through another test of his strength and his character, in my view he is in a stronger position.

Let me also take time to pay tribute to my colleagues on the Senate Judiciary Committee. It was something they

did not ask for. We agreed on the delay and anybody could have objected by unanimous consent. And once we agreed on the delay we had a couple of courses to follow. We could have had executive committee hearings, could have called Judge Thomas and Professor Hill before an executive committee without staff, members only, without press. That might have been the preferable route to go. But once the decision was made by the distinguished chairman of the committee and the ranking member, Senator THURMOND, the Judiciary Committee, in my view, proceeded the only way they could.

And I commend the chairman of the committee, Senator BIDEN, the ranking Republican member, the leading Republican member, Senator THURMOND; and particularly thank my colleagues, Senator SPECTER and Senator HATCH who had the lead role on the Republican side on making the case for Clarence Thomas and looking at the credibility of Professor Hill.

Having said that, let me just suggest that in the final minute I have, I want to yield the last 5 minutes I have to the Senator from Missouri, Senator DANFORTH. I particularly thank Senator DANFORTH for his steadfastness and his loyalty. Around this town loyalty means a great deal. I am prepared to say on this floor, at this time, had it not been for the steadfastness and the intensity of Senator DANFORTH's support for Clarence Thomas, there might be a different outcome after the vote today.

At noon today the Republican Members paid tribute to Senator DANFORTH with a standing ovation, because of his stalwart support of someone he knows better than anyone else in this body. I would think a number of Members are prepared to take Senator DANFORTH's word if they have any doubt at this point.

Finally, I want to make one final point. I remember the eloquent statement by the chairman, Senator BIDEN, Saturday night when he said if there is any doubt, the benefit of the doubt should go to the nominee, Clarence Thomas. I would just ask my colleagues the three or four or five still undecided out there, maybe have not made up their minds, maybe will do this on the way to the floor, keep in mind that following the ohairman's advice, if there is any doubt you give the benefit of the doubt to Clarence Thomas.

A great majority of the American people do not have any doubt, according to polls. The great majority of the people calling my office do not have any doubt. People from Kansas and/or places around the country are about 3 or 4 to 1 for Clarence Thomas. There is still some doubt, not much doubt. But I think we ought to give the benefit of the doubt to the nominee Clarence Thomas who for 107 days has been hanging out there twisting in the wind while every effort conceivable, every effort ever known to man was used to discredit him and defeat his nomination.

He has withstood the test. He is a stronger person because of it, and he will prevail, and he should prevail.

I urge my colleagues—if you still have not made up your mind, you are on your way to the floor, you are having one last thought about Clarence Thomas—give him the benefit of the doubt. He deserves that much and more.

Mr. President, I yield the remainder of my time to my friend and colleague from Missouri, Senator DANFORTH.

The VICE PRESIDENT. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, how much time do I have?

The VICE PRESIDENT. Six minutes.

Mr. DANFORTH. Mr. President, in those 6 minutes, I would like to make four brief points.

First, I would like to express my appreciation to so many people who have done an extraordinary job on behalf of this nomination, particularly the members of the Senate Judiciary Committee, particularly Chairman BIDEN, who, although he is on the other side of this vote, has been most fair and most diligent in pursuing his responsibilities as chairman; Senator THURMOND our ranking member; and especially the highly professional, extraordinary job done by Senator HATCH and Senator SPECTER, who on short notice prepared the case in favor of the nominee during the weekend session of the Judiciary Committee.

My second point, Mr. President, is that this is not a vote on the issue of sexual harassment or what to do about sexual harassment; 100 Members of the Senate are concerned about it. The visibility of the issue clearly has been raised.

But the way to fix the problem of sexual harassment is not to sacrifice up Clarence Thomas. The way to fix sexual harassment is to add remedies that do not now exist in the law for women who have been harassed and abused in the workplace. That is an issue which we will be facing when the civil rights bill comes to the floor of the Senate in the very near future.

Third, Mr. President, no one, no human being ever should have to go through what Clarence Thomas has gone through for the last 100-plus days, and particularly for the last 10 days. It is not right. It is terribly, terribly wrong.

It is not true that the ends justify the means. It is not true that any strategy is permissible in order to win a political point. It is not true that in order to further a political agenda it is all right to destroy a human being. That is not what our country is all about.

We have developed a legal system in America to protect individuals. It is not worth any political objective to destroy an individual. That is what was attempted with respect to Thomas nomination.

Clarence Thomas will survive because he is an enormously strong person of very deep religious faith. But many people could not have endured this. Many people's lives literally would be in jeopardy if forced to endure the kind of thing that Clarence Thomas went through.

We must get our acts together. We, meaning the Senate and the various interest groups and the staff people here in the Senate, cannot permit ourselves to go through this again. It is wrong. And the one healthy thing that is happening is that the American people are speaking out and they are saying that it is wrong.

Fourth, and finally, Mr. President, the one really heartening thing, I think, from the standpoint of Clarence Thomas, is the number of people who have known him for a very long time who have felt so deeply about this nomination. This has been the case ever since last July. People who knew him in Missouri, who worked with him in the attorney general's office; people like his friend Larry Thompson from Atlanta, GA, who came up here and spent time helping Clarence and working with him because they had known each other working at Monsanto in St. Louis; people like Janet Brown, and Nancy Altman, and Alan Moore, and so many others who had worked with him in high office here in Washington; people at the EEOC, black, white, physically disabled, with tears in their eyes supporting Clarence Thomas. That is the heartening thing.

One thing that happens in the nomination process is that the enemies of a nominee tend to portray the nominee as some kind of a monster, and the great way to offset that is for people who know the nominee to come forward. And that is what has happened with respect to Clarence Thomas, and it is very gratifying.

Mr. President, Clarence Thomas is going to surprise many people on the U.S. Supreme Court. He is going to be a good, competent, decent, and fair Justice. He is going to be the people's Justice on the U.S. Supreme Court. In my opinion, it is a great moment for our country to confirm the nomination of Clarence Thomas.

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader is recognized.

Mr. MITCHELL. Mr. President, and Members of the Senate, this year marks the 200th anniversary of the Bill of Rights, the most eloquent and compelling statement of the limits on government and the rights of individuals against the power of government ever devised, adopted, or enforced.

As elected officials, Members of the Senate are sworn to uphold the Constitution, of which those rights are an integral part. Ultimately, however, in our system it is the Supreme Court which is the arbiter of the Constitution. That is why one of our most important responsibilities is to advise and oonsent on those nominated by the President to serve on the Supreme Court.

It has been said often in recent weeks, including today, that a high level of controversy over Supreme Court nominees is new to our history. But that is not true. Nominations to the Supreme Court have often been contentious. In June 1968, the last time a Democratic President nominated someone to the Supreme Court, President Johnson nominated Associate Justice Fortas to be Chief Justice of the Supreme Court.

On the very same day that the nomination was made, 19 Republican Senators issued the following statement:

It is the strongly held view of the undersigned that the next Chief Justice of the United States, and any nominees for the vacancies on the Supreme Court should be selected by the newly elected President of the United States, after the people have expressed themselves in November's elections.

We will, therefore, because of the above principle, and with absolutely no reflection on any individuals involved, vote against confirming any Supreme Court nominations of the inoumbent President.

In the nomination now before us, our Republican oolleagues have repeatedly said that 100 days to consider it is too long. But the last time the situation was reversed, they wanted a delay of 7 months to even begin consideration of the nomination.

The hearings on the Fortas nomination were stormy. Some Senators shouted at the nominee, demanding that he answer questions about specifio cases decided by the Supreme Court.

Of course, the opponents did not want a delay. They wanted to defeat the nomination. And they did, even though a majority of Senators favored the nomination.

A minority of Senators defeated the nomination by a filibuster, for a reason that had nothing to do with the nominee's qualifications.

In the process, as they searched for ammunition to use against the nominee, they uncovered some financial dealings which ultimately led to his resignation from the Supreme Court.

I cite this history to put the current issue into some perspective, and to rebut the view, repeated so often in recent days, that controversy over Supreme Court nominees is a recent phenomenon. It is not.

That does not justify the process in this or any other case. Just the opposite. The fact that it has been going on for so long is more, not less, reason to review the whole process.

How can we responsibly consider those nominated by the President, and do it in a way that is both perceived as and is in fact fair—fair to our obligation under the Constitution and fair to those involved in the process? We must confront and respond to that question in a way better than we have in the past.

In 1980, the Republican National Convention adopted a platform which called for the appointment of judges committed to the pro-life position on abortion.

Since 1980, in honoring that commitment, Presidents Reagan and Bush have established as a litmus test for a potential nominee to the Supreme Court that person's position on abortion.

The President opposes a woman's right of choice. In order to have any hope of being nominated to the Supreme Court, so must any potential nominee.

The President selects nominees because of their views, not despite them. That is his privilege. It is the reward of election to the Presidency. He is answerable for the quality of his choices only to the voters and history.

By the same token, the Senate is not required to rubber stamp a nomination simply because it has been made by a President.

It is illogical and untenable to suggest that the President has the right to select someone because of that person's views and then to say the Senate has no right to reject that person because of those very same views.

President Bush has exercised his right to nominate a candidate for his views on abortion, even though the nominee refuses to discuss those views publicly.

The President's current position on the issue of abortion is the minority view in the United States. A majority of Americans disagree with the President on abortion. So do a majority of Senators. As a result, it is widely believed that a nominee who agrees with the President on abortion and is willing to say so cannot be confirmed.

So the President has sought candidates who agree with him on abortion but whose views are now known or who will deny having a view. With each nomination, the process has become more elaborate and less informative.

For that reason and others, the confirmation process has become uncomfortable and demeaning for all concerned. It has taken on the trappings of a political campaign. Indeed, in the eyes of many Americans, the process has become confused with electoral politics. It must be changed.

Recently, while I was in Maine, a woman came up to me and said, with great emotion, "please vote agalnst Judge Thomas because, if he's confirmed, the right of choice will be lost."

I told her that the right of choice was lost when George Bush was elected President. Judge Thomas will be confirmed and will soon be sitting on the Supreme Court. There he will vote to restrict the right of ohoice by women.

But even if Judge Thomas were not to be confirmed by the Senate, there is no possibility that another nominee will have a different view on abortion.

In the past, despite frequent political disagreement, Presidents of both parties searched for excellence in making nominations to the Supreme Court. Not always, of course. Presidents sought nominees who combined excellence with views compatible with those of the President.

The harsh reality is that the politics of abortion now dominate the process of filling vacancies on the Supreme Court. That's sad, unfortunate, and wrong for all concerned.

Throughout the hearings, Judge Thomas repeatedly invoked his personal background of deprivation and segregation as a reason why he should be confirmed.

Personal background and personal achievement undoubtedly say a great deal about character. They should be given great weight in the confirmation process.

But while invoking his early personal life as a reason for his confirmation, Judge Thomas repeatedly asked the Committee to ignore much of what he said and wrote in the more than 10 years of his adult life in public service. He said that in preparing for service on the Court, he would be like a runner stripping down for a race.

He asks us to believe that his early experience shaped him but that much of his recent experience left him untouched.

Every nominee who comes to the Senate with a record will face questions about earlier statements and writings that may be inconsistent with more recent views.

There is nothing unusual about that. The views of anyone in public life evolve, and statements made a decade ago may not reflect a current belief.

But this is the first nominee I can recall who asks just the opposite: That we consider his early experiences but ignore his recent views. We should consider his early experiences. We should also consider his recent views.

The views of an adult cannot simply be suddenly discarded like a sult of clothing.

The views of each of us develops and talks and writes about over the course of our lives influence how we see our world and how we discharge our duties.

Indeed, Judge Thomas' supporters, who repeatedly suggest he will grow in office, are resting their case on precisely that claim. They, too, suggest that opinions cannot be put on and taken off at will.

The nominee himself suggests the opposite. And we must look to his words, not those of his supporters.

At his confirmation hearing for the court of appeals in 1990, Judge Thomas said that he did not have a well-developed philosophy of constitutional adjudication and that he saw his duty on that court as applying the precedents and the law to the cases before him. On that basis, he was confirmed by the Senate.

But today he's being considered for the Supreme Court. On the Supreme Court, precedent is a guide, but precedent does not control the outcome as it must at the appellate level.

Yet today, if the evidence of the hearings is to be taken into account, he has no more developed an understanding of the Constitution and its adjudication than he brought to the appellate court in 1990.

Before appointment to the court of appeals, Judge Thomas supported the theory of natural law in interpreting the Constitution.

He wrote that natural law or higher law is the appropriate basis for "just, wise, and constitutional" adjudication. He wrote that on the basis of natural or higher law we can find the "only firm basis" for constitutional adjudication, and that this higher law is "the only alternative to the wilfulness of both run-amok majorities and run-amok judges."

Yet, at his confirmation hearing, he denied ever having suggested that higher law should be a basis for constitutional adjudication.

It is on the issue of abortion that Judge Thomas made his least believable claim.

He declined even to indicate how he evaluates the competing right of privacy of a woman and what the legitimate interests of government are, and when they come into play.

No one asked Judge Thomas to announce in advance how he will vote on a specific case. He was asked about his general views of the issue.

Judge Thomas not only failed to explain his general views. He went much further. He asked the committee to accept his claim that he never discussed the contents of the decision in Roe versus Wade, even privately, throughout an active career of speaking and writing about civil rights, individual liberties, the interests of government, economic rights, and a host of related subjects.

This contention is the more unbelievable because he used the decision in a footnote in one of his articles.

Judge Thomas is asking us to believe that he used as a reference in an article a Supreme Court decision on which he has no view and the content of which he has never discussed. That is impossible to accept. The only reason to footnote or reference anything is to illustrate or explain a related point in the main body of a text.

It defies logic and common sense for a writer to explain a point with something on which he has no opinion.

In another instance, Judge Thomas says he made a reference during a speech to an article written to defend a pro-life viewpoint in order to ingratiate himself with a conservative audience. In the speech, he called the article "a splendid example" of applying natural law.

But at the hearing he claimed not to have read the article with any care at all, not to have endorsed its conclusion, not to agree with its content.

In summary, over and over again, Judge Thomas denied, repudiated, abandoned his thoughts, his words, his views of the past decade. Over and over again, he now says he did not mean what he said, he did not mean what he wrote in the 10 years he served the Reagan and Bush administrations.

So we are faced with a nominee who has an extensive public record but who has run from his own record; a nominee who has asked the Senate to make a leap of faith that defies common sense and reason.

Of all the things that have been said about this nominee, the least believable was President Bush's statement that race was not a factor at all in the nomination and that Judge Thomas is the best qualified person in America to be on the Supreme Court. Both statements are obviously untrue.

Race clearly was a factor in the nomination. That is no reason to reject the nomination. Diversity on the Court is desirable. And in an institution which so directly affects the lives of Americans, having someone who had to overcome racism and poverty is desirable. No, race is not the issue.

Qualification is. Specifically, the nominee's lack of qualification.

Judge Thomas is not the best qualified person in America to be on the Supreme Court, as claimed by the President.

Judge Thomas is not the best qualified African-American to be on the Supreme Court. There are many, many superbly qualified African-Americans, men and women, who could serve with distinction on the Supreme Court.

A recent analysis by the Alliance for Justice indicates that Judge Thomas received the lowest rating by the American Bar Association of the last 23 nominees to the Supreme Court, going all the way back to 1955.

The hearing revealed a nominee willing to say whatever was necessary to win confirmation. It has worked. There will be the votes to confirm him to the Supreme Court. But mine will not be among them.

In the past week attention has focused almost entirely on the issue of sexual harassment. Important as the issue is, grave as the charges are, this was not the decisive factor for me. It added to my doubts about the nominee but it was not the basis for my decision.

Sexual harassment is a serious charge. In this case it was made by a credible person. The deep, emotional, and very personal reactions of millions of American women reflect how widespread sexual harassment is and how ineffective our male-dominated society has been in responding to it.

Typical, and tragic, was the response to Professor Hill. According to yesterday's New York Times and last night's NBC News, the President approved an effort, organized and orchestrated by White House aides, to attack and discredit Professor Hill, as a way of holding support for Judge Thomas. Fantasies were concocted about her in the name of accusing her of fantasy.

Under the circumstances, it was fair and appropriate to subject Professor Hill to careful, rigorous, even skeptical questioning. But what took place went beyond that. For some it became, not a search for truth, but a search and destroy mission. No doubt Judge Thomas and his supporters would make the same argument in reverse.

But what happened to Professor Hill unfortunately sent a clear and chilling message to women everywhere: If you complain about sexual harassment, you may be doubly victimized. We must not let that message stand unchallenged. Victims of illegal sexual harassment must know that they have the force of law and the support of society behind them just as much as victims of rape or any other violation of human dignity.

What happened to Professor Hill showed that our society has a long way to go before an attack on a woman's integrity and reputation are treated as seriously as one on a man's.

Obviously, the making of a charge of sexual harassment does not by itself prove that it occurred. The rights of the accused are as important as those of the accuser and must be respected.

A Senate hearing is intended to focus on legislation and broad issues of policy. That is what they usually do. But a hearing is not a good place to protect anyone's rights, or to deal at all with matters of such sensitivity. Hearings are poorly suited to determining specific questions of fact, of truth, or falsehood.

Perhaps something good may yet come from this terrible episode if the national debate which it has generated leads to changed attitudes; leads to a process where serious charges can be evaluated in a more fair and less controversial way; to a society where the words of women have the same weight as the words of men; to a society where the workplace will finally be free of all discrimination, whether by race, by sex, or in any other form.

Mr. President, I ask the Members of the Senate to remain in their seats during the vote in accordance with the rules of the Senate. This is an important vote, and I ask that decorum be maintained.

Mr. President, I request the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. Before the question is put to the Senate, the Chair will remind the galleries that expressions of approval or disapproval are prohibited.

The question is, will the Senate advise and consent to the nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the U.S. Supreme Court?

The yeas and nays have been ordered.

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. Mr. President, I want to inform Members of the Senate that this will be the last vote this evening. Under a unanimous-consent agreement previously obtained, there will be a vote tomorrow on the veto override on the unemployment compensation bill and possibly other votes on appropriations conference reports. Those remain to be worked out.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 220 Ex.]

YEAS—52

Bond	Fowler	Nickles
Boren	Garn	Nunn
Breaux	Gorton	Pressler
Brown	Gramm	Robb
Burns	Grassley	Roth
Chafee	Hatch	Rudman
Coats	Hatfield	Seymour
Cochran	Helms	Shelby
Cohen	Hollings	Simpson
Craig	Johnston	Smith
D'Amato	Kassebaum	Specter
Danforth	Kasten	Stevens
DeConcini	Lott	Symms
Dixon	Lugar	Thurmond
Dole	Mack	Wallop
Domenici	McCain	Warner
Durenberger	McConnell	
Exon	Murkowski	

NAYS—48

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Baucus	Graham	Moynihan
Bentsen	Harkin	Packwood
Biden	Heflin	Pell
Bingaman	Inouye	Pryor
Bradley	Jeffords	Reid
Bryan	Kennedy	Riegle
Bumpers	Kerrey	Rockefeller
Burdick	Kerry	Sanford
Byrd	Kohl	Sarbanes
Conrad	Lautenberg	Sasser
Cranston	Leahy	Simon
Daschle	Levin	Wellstone
Dodd	Lieberman	Wirth
Ford	Metzenbaum	Wofford

The VICE PRESIDENT. The nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the U.S. Supreme Court is hereby confirmed.

Mr. DOLE. I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll. The Sergeant at Arms will ensure order.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SIMON). Without objection, it is so ordered.

LEGISLATIVE SESSION

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that immediately following the disposition of the override vote on the President's veto of S. 1722, the unemployment compensation extension bill on tomorrow at 12:15 p.m., the Senate proceed to the consideration of the conference reports to accompany the following appropriations bills in the order listed: H.R. 2426, military construction appropriations; H.R. 2698, agriculture appropriations; H.R. 2942, transportation appropriations; that there be no amendments to any amendment in disagreement; that there be no time for floor debate on either conference reports or on disposition of amendments in disagreement; and that following the disposition of each conference report or amendment in disagreement, the Senate proceed without intervening action or debate to the disposition of the next conference report.

I further ask unanimous consent that the statements with respect to any of these conference reports may be inserted in the RECORD at the appropriate place as if read; and that it now be in order to ask for the yeas and nays on the adoption of the conference reports with one show of second.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I now ask for the yeas and nays on the adoption of the three oonference reports that I have just listed.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BRYAN. Mr. President, I ask unanimous consent that time be set aside for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar No. 319, Arthur J. Rothkopf to be General Counsel of the Department of Transportation.

I further ask unanimous consent that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination, considered and confirmed, is as follows:

DEPARTMENT OF TRANSPORTATION

Arthur J. Rothkopf, of the District of Columbia, to be General Counsel of the Department of Transportation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were oommunicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

VETO OF S. 1722—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 84

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 11, 1991, during the recess of the Senate, received the following message from the President of the United States:

To the Senate of the United States:

I am returning herewith without my approval S. 1722, the "Emergency Un-