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 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 growth, the United States can help foster a better future for the long-suffering Salvadoran people.


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

There being no objection, the article was agreed 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 real. In El Salvador, the Government, army and guerrillas all must change more if peace is to prosper. The United States and the international community also face large obligations.

The weakness of the U.N. agreement just signed in El Salvador is that it still leaves the major issues of power, 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 parties, the U.S., 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. Such steps are crucial.

For 40 years of the cold war our nation trained brutal armies and supported corrupt dictators throughout Latin America in a Macaehan 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 Marxism, 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 solid 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 democratic demonstration in El Salvador and the rest of Central America.

This means backing measures that place the United States 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 reorganization 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 fine people, 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 move afer 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 exercises a serious 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 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 government. It is the first ligature by which society is united. We must therefore 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 quality of the Supreme Court Justice that 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 ridiculous fair. Second, courage. The charge 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 returned 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 had shown a rigorous enforcement 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 Department of Housing and Food, describes himself as a moderate liberal Democrat, testified that he found Judge Thomas "to be highly compassionate, sensitive, and you can count on him 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 Department of Housing and Food, describes himself as a moderate 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 confirmed him in 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 remember his own climb and will always insist on fairness and equal justice under the law for those who are still climbing.
November 25, 1991

CONGRESSIONAL RECORD—SENATE

OCTOBER 3, 1991

25257

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, I firmly believe he will decide cases before the Court, so he will never become a sure vote for any group of justices on the Court. ** * [Judge Thomas] has special qualities which he will bring to the Court. ** * I know 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 historically attuned, with an open-minded, valuable hands-on experience in public policy. He possesses keen intellect and strong values. He will serve the Supreme Court 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. 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 [carrving] the hallmarks of competent appellate craftsmanship." Further, the ABA found that his work evidences broad analysis with an open-mindedness.

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. 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, long-standing principles of our Nation.

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, support of the nominee should 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 opposed to the presumption in favor of Judge Thomas has not been overcome.

Mr. President, I believe the circumstances 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 Spalding, said of Judge Thomas, "His background has needed to be open-minded."

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. Without objection, it is so ordered.

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

The PRESIDING OFFICER. The unanimous consent is granted.

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.

In part, these inconsistencies and contradictions between Judge Thomas' prior statements and his well-rehearsed, well-choreographed, and well-rehearsed 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. How can I have his past positions in accord with 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 those 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 consider the effects of our policies on the structural or social justice. 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 accordance with justice for all.

For this reason, I am most disapponted with 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 done more to guide our decision art form than actual constitutional interpretation. 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 skilful side-stepping. 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 ever 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 remained the same. But, 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 recall any moment 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 Thomas, I would not kick out the lad-
October 3, 1991

CONGRESSIONAL RECORD—SENATE

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 exciting 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 months, 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, the way he said a word, 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 we go 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 19 years on the U.S. Court of Appeals. And he had 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

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

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

Mr. DANFORTH, Mr. President. I ask unanimous consent that the order for the quorum 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, I was one of the happiest moments of my life, and I think the happiest moment of my life in the U.S. Senate.

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breath 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 such as 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)

Armstrong, Bond, Boeschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Dasforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Helms, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McMorris, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Wallor, Warner, Wyden (Democrats 46 or 84%)


NAYS (6)

Republicans (44 or 100%)

Armstrong, Bond, Boeschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Dasforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Helms, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McMorris, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Wallor, Warner, Wyden (Democrats 44 or 84%)


NOT VOTING (1)

Republicans (0 to 0%)

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

NOT VOTING (1)

Democrats (0)

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." And it's true. He 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 him. Mr. President, what 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. President, 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 Sam NACP, 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 is, 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 on something? Is it after the first five questions, or 10 or 20, or 50 or 60 or 70?
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 foib off on the American people some personal philosophical point of view?

The judge has a personal opinion, it 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, Sancho Panza is 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 asked 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 well known that we who have this responsibility here of upholding confessions need to have some idea, at least glimpse, some impression as to the trend of the thinking of 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 considered 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 gobbledygook that communism is merely a political party. It 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, does it fit to classify the Communist party as a conspiracy under the Miranda case.

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. 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.

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Justice William Brennan, inquiry from Senator Joseph McCarthy of Wisconsin:
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, I think, 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 is not only 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 relationship 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 pawning 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 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 we say in a political 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 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: "You just got done going 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, as 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 served 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? There is a difference between being a judge and being a politician. There really is something wrong with the process. There is something wrong with the process because, if you have any kind of record, if you have had 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 him because we do not 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 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 out. 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. You say in one context and how you say in another context. 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.

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 of the greatest intellects of the country, nine eminently 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.
October 3, 1991

CONGRESSIONAL RECORD—SENATE

25263

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 of his fighter 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 is 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. 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 despair 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.

If this is strange, it is strange that these strict constructionists may not 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, I believe 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 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. Mr. President, there is no one who has 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. Those are the people who have known Clarence Thomas over the years. Those are the people who feel strongest about him. Where his heart is 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 that purpose call be suspended.

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 hearing 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
This is an evolving matter. When Chief Justice Rehnquist was before the Judiciary Committee for confirmation, he refused 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 Review 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—perhaps, he said, first amendment rights are more important. 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 reprotect 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 cases in the past, with the 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 hear from the nominee 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.

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 important for the Congress, in my 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 I think it is important for the Congress 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, but not a great deal of disdain, 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. "Not so," the majority in accordance with the appropriate standards, which 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 catalytic 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 consumed here
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 inept in handling the American Steel Seizure Case, Youngstown Sheet & Tube Co. versus Sawyer. The case was heard by the Supreme Court, but the outcome was not decided on its facts but that the Constitution was violated. The Court's decision was based on the Due Process Clause of the Fourteenth Amendment and the Fifth Amendment, which guarantees the right to a fair trial. Moreover, the Court's decision was based on the principle that the President had the power to seize the steel mills and to enforce his will on the United Nations.

Harlan refused, suggesting that commenting on the case might prejudice his deliberation on 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 in 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 dispute is whether a nominee's judicial philosophy should be the subject of inquiry during confirmation hearings. Some Senators believe that it is proper to ask a nominee about his views on the role of the Supreme Court in the political process, as well as his philosophical approach to legal issues.

**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 tenures. For example, in 1987 Senator Daniel Patrick Moynihan stated publicly that he had been asked by a nominee 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 Kennedy asked Harlan if he had been asked about "the rubber stamp process" in the steel seizure case earlier in the Senate.
this view has evolved to become the predominant practice of the Judiciary Committees.

Thus, the Founding Fathers in earlier drafts of the Constitution gave the right of confirmation solely to the Senate. In their initial voting, the Constitution both rejected the plan granting advice and consent to 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: "the President, and Senate, shall have power to appoint Judges of the Supreme Court." (Aug. 6, 1787 Report of the Convention, 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. Let one view this change as undermining the Senate's role, and the other view it as giving the Senate a full role in the process:

The 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. 70 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 supply the vacancy, nor can they reject the choice of the President. (No. 66 at 456)

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. 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 the Senate rejected 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 the rejection of his nomination was 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 opposed the Bank.

In this century, ideology has continued to play a role in opposition to some Supreme Court nominations. There was considerable—albeit 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-unification 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 selections of Clement Haynsworth 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. It was Justice Scalia's writing 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 over 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 answer questions regarding his 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 about a nominee 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 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 Chief Justice Marshall, 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 that Justice Scalia's majority opinion wrongly jettisoned the traditional strict scrutiny standard used by the Court for judging State practices which impinged 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.

Justice 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-
ment 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 specifically stated that he accepted the Supreme Court's decisions on the validity of affirmative action. In particular, he said that in his earlier article, he had agreed 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 response to a question about Duke Power Co. versus Atonio, 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; and he stated that 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 Cove Packing Co. versus Atonio a majority of the Supreme Court overturned a unanimous circuit 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 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. Illustration is provided by a letter dated April 8, 1986, in which Judge Thomas said that "it may surprise some but Congress is no longer primarily a deliberative or even a law-making body * * * (T)here is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business." In my questioning of Judge Thomas, I specifically stated my concern that he may defy those who would pigeonhole him in any particular mold. They also show a streak of independence. They also show a solid judicial craftsman with a healthy streak of independence. They also show a solid judicial craftsman with a healthy streak of independence.

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. Lopera, 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
tragic 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 other, 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 that sensitivity 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 of the Judiciary Committee.

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 colleagues 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' schedules on the floor.

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.

Mr. GRASSLEY addressed the Chair.

The PRESIDENT 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 everybody has for one reason or another, we are devoting then 4 days of debate to this consideration.

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 Senate; but also 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 and 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 groups 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.

But having said that, through his testimony, through 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 would 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.

Now a word 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 50 percent 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 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 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 restrain themselves and adhere 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 these opponents towards Thomas' nomination. When the Court hands down decisions whose results they disagree with, they shout "judicial activism," and "no regard for precedent."

When someone disagrees with an outcome, these judges would 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 forth.

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 they present themselves as champions of 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 that the same words will appear during the hearings for Associates 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 activism when 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 before the Senate Committee over the past 2 weeks; I have decided to cast my vote based on that review.

My support is based primarily on the following 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 report 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, it will be that the responsibility for passing judgment on Presidential nominees to the Supreme Court is the last voice that more than 6 million Georgians have on this decision with most Senators.

Mr. KENNEDY. Mr. President, I ask unanimous consent to withdraw the quorum call be rescinded. The PRESIDING OFFICER. The clerk will call the roll.

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 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 her some 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 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 in my question to him, 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 this 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 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 attempt to answer a host of questions, they will see 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
concluded. No Senator should be stam-
peded into voting for this nomination, and, certainly, there is no Senator that should vote for this nomination by reason of loy-
alty 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 matter of loyalty; we have 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 Thom-
mas' record, based on his credentials, based on his testimony before the Judi-
ciary Committee. We owe the Amer-
ican people nothing less before the Sen-
ate 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 not only is qualified 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 an-
swer. 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 pre-
viously 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 elo-
quently promises of the Constitution re-
mained unfulfilled, as the Nation sys-
tematically 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 Constitu-
tion, in which the judicial branch of Government is insulated from the un-
fair pressures that can sometimes be exer-
ted by majority rule. When the leg-
islative and executive branches failed to defend the rights of all Americans, the Supreme Court stepped in to protect those whom our political in-
stitutions had swept aside. The Court made clear that majorities cannot seg-
regate Americans based on the color of

their skin, cannot silence minorities by denying them the right to vote, cannot deny women the right of criminal defendants to due process of law, cannot dictate the most fundamental and most pri-

vate 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 fills the role of criminal defendants 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 se-
cure.

As the full Senate begins its consider-
edation 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 pow-

ers. For the unique and irreplaceable role of the Court defines the test each nomi-

nee must pass.

Will nominees continue the Court's progress? Will they be committed de-
fenders 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, be-
cause their decisions are so final. It is essential therefore for the Senate to in-
sist 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 funda-
mental constitutional rights and freedoms at the heart of our democ-

tacy, they should not be confirmed.

The Constitution is too important, and the appointment of a Justice is too per-
manent, to accept anything less.

The merits of this nomination were not settled by the 1988 election. There is no presumption in favor of the Presi-
dent'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 in-
dividual right to life which cannot be in-
fringed. We therefore reaffirm our support

for a human life amendment to the Constitu-
tion, 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 for the sake of the law and at all levels of the judiciary who respect tradi-
tional family values and the sanctity of in-
nocent human life.

This is the platform upon which Judge Thomas 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 at-
ttempted 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 to stand up for the personal 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 to-
ward the President and his exercise of executive branch authority, the Su-
preme 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 be-
tween 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 Constitu-
tion will not work, and the entire Nation will suffer.

We must fully begin to feel the ef-
effects of such a shift. In several criti-
cally important cases, the Court has adopted absurdly narrow interpreta-
tions of statutes, or has deferred to ex-
ecutive 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 nul-
lified by the Court.

The Senate has already begun to see, however, pales in comparison to the shift that will occur if the Presi-
dent convinces the Supreme Court to recog-
nize a line-item veto power. The Republican Party platform explicitly states that the President has this in-
hand power. Mr. President, we agree: In a 1987 speech, he described the line-
item veto as within a range of con-
cerns 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 shown their respect for 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 that 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 provide Roe versus Wade with 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' record reveals a number of concerns regarding the right to privacy. Judge Thomas is not a nominee to a lower court 

In particular, Judge Thomas' record raises too many concerns regarding the right to privacy. He is not a nominee to a lower court and the Senate should not give its approval to a nominee who refuses to answer questions about specific applications of that right.

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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 some women choose to have babies instead of going to medical school."

In 1988, he commented as "a much needed antidote to cliches about women's earnings and professional status" a discussion of careers and work which incorporated 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 repeatedly rejected objections to the Supreme Court's decisions upholding affirmative action to combat 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, 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 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 community was doing its work. He publicly castigated civil rights leaders who "bitch, bitch, bitch, moan, 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 public and private campaigns to help women and minorities in the workplace 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 Mathias, and ourselves and was bought overwhelmingly by the American people and their representatives in the House and the Senate and was enacted into law. We found out on the important issue of 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 as great 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 of Justice Scalia's dissent, which argued that any law enforcement by officials independent of the executive branch is unconstitutional. Judge Thomas was clearly involved 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 accepted the Supreme Court's decision 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 treatment of the comparable issue.

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 aban-
donced 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 prohibitive. Congress would thereby be ingesting 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: "more than to throw a brick at 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 [Judge] Marshall said, 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 assaults 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." Perhaps, as Judge Thomas' defenders have suggested, he was simply willing to read anything that his rightwing speakers 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, Marshall v. Board of Education; to create the elections commission, among other titles. But these activities overlook (when they do not trivialize) the fundamental purpose of the 13th and 14th amendments." "* * * His condemnation of the conservative black 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.
"I, for one, don't see how the government can be compassionate, only people can be compassionate, and they can use 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 minus 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 Colorado, 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 held hostage to some Scopian schemes, which in fact end in despotism."—Pacific Research Institute, August 10, 1987.

The tragedy of the current state is that there have been no other reason for disenchantment—those who have been excluded from the American dream . . . (increasingly . . . are being used by demagogues who have a certain degree 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 the so-called 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, 1986.

ON THE CIVIL RIGHTS COMMUNITY

"What is the moral basis for racial policies today? I often hear that it is preposterous to make up for a history of deprivation. That's not much of a moral basis: It is mere-ly exercising the same dictatorial system and away from a nation in which individual liberty is sacred."—Cato Institute, April 23, 1987.

"It 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, 1985.

"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 not saving virtue—it's incompetence.'—Cato Institute, April 23, 1987.

"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 citizens to protect our civil rights has weakened us in the eyes of our enemies."—Pacific Research Institute, August 4, 1988.

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

Thomas: No.
Reason: Nonos?
Thomas: I can't think of any.—Interview, Reason Magazine, November 1967.

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 O'NEILL WENDELL HOLLERS

"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 in Holmes, most recently reprinted in the American Bar Association's Keping the Tables: "Mr. Justice Holmes was not cut out to sit on the Supreme Court. He 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 Faurer Faurer 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 10, 1987.

ON JUDGES

"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 mud-slinging cum debate over the Bork nomination."—Pacific Research Institute, August 10, 1987.

"If Bob Bork were 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, October 2, 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 posture than The Bork nominee's. '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 an issue that belongs to the private, not the public, sphere. The decision represented a new peak in interest-group liberalism."—Palm Beach Chamber of Commerce, May 18, 1988.


"The civil rights movement used the machinery of the New Deal and the Great Society to reserve spaces for its adherents. After the New Deal, the government . . . put in place a new apparatus for interest-group liberalism."—Palm Beach Chamber of Commerce, May 18, 1988.

The civil rights community "is effective and has a tendency to sensationalism. All too often, the players in this arena intentionally distort and misinform. The tendency is to exploit issues rather than solve problems."—Pacific Research Institute, August 10, 1987.

"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 citizens to protect our civil rights has weakened us in the eyes of our enemies."—Pacific Research Institute, August 4, 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.—Toquerville Forum, April 18, 1988.

In obscure meetings, [members of Congress] browbeat, threaten, and harass agency heads to follow their lead. Thus Congress operates like a 'fear' Chamber of Commerce, May 18, 1988, and Brandeis University, April 5, 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 you to go to hell, I really would.'—Palm Beach Chamber of Commerce, May 18, 1988.

I commend you to read the full text of President Reagan's last of rights speech... His proposals include protection of intellectual property, education reform, welfare reform, privatization initiatives, and limits on the American Bar Association, August 11, 1987.

ON THE NINTH AMENDMENT

It is not that there is a great deal of principle versus civil rights as an interest... but it is 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, if you don't 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 you 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 social policies that followed, the term 'entitlement' 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 new kind of rights to which 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 political philosophy of the Founding Fathers... [Natural law] law arguments are the best defense of liberty and of limited government... Rather than being a justification of the worst type of judicial activism, as some have argued, they are a defense of individual liberty and the willfulness of both run-amok majorities and run-amok judges...—The

"The higher-law background of the American Constitution, whether explicitly invoked in constitutional questions or not, is a just, wise, and constitutional decision."—"The Higher Law Background"; Federalist Society, University of Virginia, May 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." 


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

"Judges base on political principles [in his dissenting opinion in Plessy v. Ferguson] was not to explicate its own political principles, but to use that political principles to interpret the Constitution,"—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] provides one of our best examples of the right on higher law jurisprudence."—Federalist Society, Harvard University, April 7, 1988, and Federalist Society, University of Virginia, March 5, 1988.


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 would continue 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 qualifications 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 then, and I am now, most concerned about preserving individual civil liberties.

Judges should be at least as concerned about civil liberties as about political correctness. One can only assume that 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. Consider Judge Thomas' record 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.

The Higher Law Background of Privileges or Immunities Clause of the Fourteenth Amendment—Federalist Society, University of Virginia, May 5, 1988.
Cain in the committee because Judge Thomas did answer the issue of abortion. He said:

I have no reason or agenda to prejudice the issue, and I 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 Thomas, 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 quizzed about abortion 67 times. And by that end of the hearings, it was up to around 100 times, which 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 it is inappropriate to simply state that I do not know where he stands on it. I am perfectly willing to accept his statement there.

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, and you went home. Let me go 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 Roe case, 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 recall ever having 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 simply state that it is—for a judge, that 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 versus 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 $350 a month, and I worked all night long so I could do all my law school day to law school and work this 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 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 same matter of adjudication 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, juice 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. So if we do 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.

The hearing went 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 not remember for sure after nearly 20 years.
How many of us even remember the courses we took in law school or college, or that we were ever asked if we were black. I mean, what's so sacred about a sandwich, Jack?" he once asked. He gave a laugh. And then I will yield the floor so that his valuable time can be saved, and then I will come back to my remaining comments afterwards.

The President has often acknowledged the significance of public service to the civil rights movement. 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 the civil rights movement. Whether it was "the founders of the NAACP * * *" or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around their ghetto rafts, or the surge of pride which black folks felt as they huddled around 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rafts, or the surge of pride which black folks felt as they huddled around their gh
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 prefer, wish to make him look ungrateful. But it is a fact that—without question—there is a growing demand for diversity within the federal judiciary.

Mr. HATCH. Moreover, some civil rights leaders began severely criticize 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.

Let us 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 Utah, 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 in some quarters, and 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 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 as a law professor. 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 a legal scholar. Perhaps 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, 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 shown disdain for the proposition that the 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 policy 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 bench is important. But I also believe that such a candidate still must be eminently qualified for the position. It appears to me that this nominee lacks that qualification and that he were 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 he has 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.

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 20 years, and I know 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' 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 Georgia. 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, 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 by his record, with the protection of 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 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 for being a black person or a Hispanic person or a woman, you have suffered a violation of the Constitution and the law.

So it is not enough to say we oppose quotas, we must oppose preferences. Not because the word quota sounds bad. The key here 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.

October 3, 1991

CONGRESSIONAL RECORD—SENATE 25281
If I do not miss my bet, most young people who were raised in the sixties, regardless of the labels that have stuck to them—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 non-discrimination. But in a 1979 decision George Orwell could appreciate, the Weber case, the Court construed Title VII to permit preferences in training, to hiring methods.

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 multiracial 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 whether they are male or female, or black or white or Asian, or Jewish or Catholic, or any other thing that describes, we are not applying quotas or preferences. The 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 to employee applicant pools, 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 demonstrated 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, as Johnson Court of Appeals Judge, 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 policies on 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 and what has become popularly known as reverse discrimination, 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.

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 aspect of any effective action, and 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 here a 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 wish to present a policy perspective 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 less 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 House Appropriations Subcommittee on Labor and Human Resources 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 dismissed 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—mostly leaders, include Republicans. Judge Thomas was subsequently confirmed by this body at least once and sometimes as many as three times after the charges were initially made. "Why didn't 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 annulling 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 lawmaker 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, be bound by them. Apparently, adjudication in the courts is nothing more than a continuation of politics by other means. But 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, and this during the constitutional history of 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 legislatures. 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 excise instead, the consequence would equally be the substitution 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 conmingling 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, that is, when they separate the judiciary from 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 Constitutions committed to the people and their elected representatives. And these judicial activists are limited, as Alexander Hamilton shrewdly noted over 200 years ago, by the Constitution and the judicial branch.
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 criminal defendants, resulting in the strengthening of the criminal forces against the police forces of our country; the Orwellian twisting of the constitutional guaranties 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 rightwring 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 is difficult. But, Judge Thomas, 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 these 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 precedents—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 need for clarity 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 in some manner different from constitutional precedents—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" example 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 disavowed 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 itself, and not what we have said about it. [Gruve 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 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 for Judge Thomas as Associate Justice of the U.S. Supreme Court.

Mr. President, I yield the floor.
November 28, 1991

Mr. CONRAD. I thank the Chair.

The record of Mr. CONRAD pertaining to the introduction of S. 1804 is 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 1922, just 2 months shy of his 61st 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" 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 scholarship were unmistakably legitimate and proper standards. What 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 must 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. True scholarship is the best guarantee we have of a Justice's future performance. All other attributes pale in comparison.

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 19. 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 struggles 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 achieved. His is more the Whitewater here, for what 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 in Roe v. Wade.

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 qualifications 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 opinions 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. "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 constitutional decision-making. 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 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. They also serve to explain 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 words now are the result of efforts to move from the executive branch to the judicial branch that his words then were those of an advocate and his qualification, "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 judicial writings of Judge Thomas. He testified that he had only skimmed the declaration, although he did not see any explanation, political scripts over constitutional system. Despite his disclaimers, his views are disturbing for me.

As a member of the Court he would be charged with faithfully interpreting the constitutional legislative and determining Congress authority in our constitutional system. Despite his disclaimers, his views are disturbing for me.

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 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 find 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 the person is not living in a rural area, it is not 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. So the person in the rural areas when the areas with the least income of anyone in our country, they need that 1-
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 find out what 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 health claim. I think it is so 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 some of the things we 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 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. This letter will 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 system and getting 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 shut 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.

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 this power, and we should not cede 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 have given 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 1789 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 the Court not only requires that we must prove that he should not go to the Court, but also requires the Court to prove that he should not go to the Court. This is a close call, Mr. President. But it is really that I have too many doubts about the judicial philosophy of Judge 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 begins with Judge Justice 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 confirmation of Justice Lewis F. Powell, Jr., 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 of us, the Senate, to have 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 Justice Thomas' case, note that 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 we make. I do not hold this case 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. It is not that I 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 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, complemented 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 translated into law. 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 seem to vindicate the legal 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 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; and the desire to embrace the notion of the desire to limit the Congress' power to pass laws protecting our health, safety, and our environment.

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' response 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 manageable, 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 that of the nominee 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 answer a question. 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 concern 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 was 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. What I was interested in was the 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 the question that will arise at the Court in the future, so we can place 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 from the Court, but for the Supreme Court; or, more specifically, whether Judge Thomas would bring to the Court a fundamentally different approach to interpreting the Constitution, a different approach to economic rights cases; that he had no agenda for the Supreme Court; that he had no distinctions between the branches of the Government; or, otherwise.

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, Mr. President, what came out of his way at the hearing to reassure 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 or 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 will he 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 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 legislative branches, the courts, 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 the office of a judge. 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 rights of individuals, the limits that are 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' writings make it clear that in 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 extent in this speech, these theories 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, admittably 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 it has been for a decade ago, that is 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 conflict 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 political inclination. This 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 he is a very 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. GRAHAM addressed the Chair.

Mr. President, I wish to bring to the attention of the Senate today 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 terminated as of the 1st of October, in fact, 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 toll-free 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 contractors 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 serves 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.

In 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 Moynihan, requesting that the Medicare appropriation level for the Medicare contractor budget be reduced 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 program and the complexity of the program, health care providers need basic support services to help them comply with correct billing procedures.

To date, the most an estimated $2 million annually to maintain. In fiscal year 1990 they serviced 6.2 million calls, for about $4.86 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 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 management system.

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. 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 are identified, the continued operation of the toll-free lines as a priority.

October 3, 1991

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 tell him that my confidence in him 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, whether the willfulness of a 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."

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: the freedom to speak, the freedom to 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 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 to 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 war. They lie long in the antibirth of the natural rights ideologies and resentment and hatred that swept the nation and the Court into enacting and approving segregation laws.

This antibirth ideology was an element in the rise of both fascism 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 20th-century alternatives to natural rights are. And then there are 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 lesson 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 Thom-

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

The PENDING OFFICER. The clerk will call the roll.

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

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

Mr. HELMS. Mr. President, what is the purpose of the pending business?

The PENDING 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 a day in the consideration of the nomination of Clarence Thomas, the Supreme Court nominee.

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

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

Mr. HELMS. I thank the Chair.

(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 THOM-

As, Of Georgia, To Be An Ass-

The Senate continued with the con-

Mr. HELMS addressed the Chair.

The PENDING OFFICER. The Sen-

Mr. COHEN, Mr. President, like his predecessors, President Bush is enti-

Mr. COHEN addressed the Chair.

The PENDING OFFICER. The Sen-

Mr. HELMS, Mr. President, I support Judge Thomas' nomination. I ask unanimous consent that it be recorded that this Senator strongly supports the nomination of Judge Thomas, and his confirmation to the Supreme Court.

Mr. COHEN. Mr. President, like his predecessors, President Bush is entitled to nominate individuals to the Supreme 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 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 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 disappointed by Judge Thomas' 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 give a judgment about the char-

Mr. HELMS. Mr. President, I support Judge Thomas' nomination. I ask unanimous consent that it be recorded that this Senator strongly supports the nomination of Judge Thomas, and his confirmation to the Supreme Court. I think 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.

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he is going to bring to the Supreme Court a perspective and range of experience unlike that of any of the current Justices.

Mr. President, I recall reading in Justice Cardozo'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.

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 thoughtful, 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 constitutional 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 don't like about him, I don't accept 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 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 the federal courts." I am not going to allow that to happen.

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 sugar and caffeine 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 now have 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 are 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 unprecedented 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 misunderstood Clarence Thomas the person.

I would be less 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 merits of his judicial intellect, Judge Thomas' record on 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 he is not the record of an ideologue. One commentator wrote in a book examples of judicial restraint. "We should focus on his moral Constitution and remains in those so-called classifications as they are loosely applied at times. I would do something about a strict liberal or conservative litmus test under a single issue and try to make a determination on the basis of labels about a strict liberal or a strict conservative. I think it 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 gratuitously comment that from now on, and I hope and I do 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 do not 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 am very hopeful that somehow we will be a little more reflective as we think about nominees and how we conduct this process.
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 story.

I am very hopeful that we will act expeditiously and confirm Judge Thomas and get on with 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.
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 2,393rd day that Terry Ander-
son 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 to be 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 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 Senate rests 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 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.

PROCEDURE OF CONSIDERATION

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 a 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 has overcome. I respect 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 for speeches, writings, and statements are now said to be creations 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, 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 subject 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—attempts of this person to be an Associate Justice, but because they are not, to their ‘duty to our 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 during the lifetime 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 known, either because he has none or because the process of inquiry itself is deemed to be illegitimate, then we are in deep trouble. 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.

In my view, the advice and consent clause of Article II, Section 2, of the Constitution is a nivete that is indicated by our own history.

The Constitution requires. I will vote against this nominee, and any nominee, presented this way. I therefore vote no on this nomination. Senator Kerry and Senators from Iowa are recognized. The President, I yield the floor.

Mr. President, yesterday, I expressed misgivings 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 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.

The Senators pointed out in 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.

This 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 20th century or of these political times. At the Constitutional Convention of 1787, James Madison 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, to 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.
as they are being characterized, as extreme positions even if they did justify our consideration.

Judge Thomas's 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 hard truths.

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 those 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's search for a way to revitalize and reinvigorate civil rights policy, he was not looking for 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 espoused, were committed 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 enshrined 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 improper, 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 Constitution, the branch of Government that they only deal with cases and with controversy presented to them.

He said that officials of our Government should be mindful of those fundamental individual liberties. For the rule in a case or controversy and it is very constitutional, fundamental, and it is very constitutional, fundamental to the Constitution, the branch of Government that they only deal with cases and with controversy presented to them.

He said that officials of our Government should be mindful of those fundamental moral philosophies of the judges, the judges who sit on the Supreme Court, the judges who sit on other courts. 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 a judgment of the power of the Supreme Court, it 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 same regime 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 espoused natural rights was no more extreme than the natural rights of individuals, the same regime 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 espoused a broader vision of affirmative action, a broader vision of the damage that is always done by the 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 minority group, not because of some statute or because of a colorblind society. He knew racists and was devoted—and still is devoted—to fighting it. But 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 our system to be colorblind at all. He knew racism and was devoted—and still is devoted—to fighting it. But 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 our system to be colorblind at all. 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 250 years. He said that quotas were not changing the quality of life in the ghettos. All you have to do is travel there and you can find it out for yourselves. Instead, he said, the best remedy for the legacy of slavery and discrimination is better to 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 that are so often 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 pa-

ters of the dependent poor, but Clar-

ence Thomas began in his position as a policymaker espousing posi-

ions that are threatening to the pa-

ers, with the same philosophy, who

They support him because he

years of contemplating civil

ights issues and the failure of estab-

lished 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

erly 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 policy-

maker. 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

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 in-

pretation of that document.

That is what we ought to be judging

Clarence Thomas on: his judicial phi-

losophy 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 state-

ments he made as a member of the ap-

pointee 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 judg-

ing.

Mr. LIEBERMAN addressed the Chair.

THE PRESIDING OFFICER. The Sen-

ator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to speak on the nomina-

tion of The Honorable Clarence

Thomas to be an Associate Justice of the Supreme Court. On this question, I take Judge

Lehrman's article applying principles

natural rights premises and on an ethical in-

terpretation of American origins and his-

ory.

Judge Thomas has explained to my

satisfaction that his praise for Lewis

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

assuming he has passed a White House

litmus test on the issue also have to

assume that the next nominee would

be an Associate Justice of the Supreme Court. In doing so, I want

to say found its origins in my State of

Connecticut. As Justice Thurgood Mar-

shall 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 forbid-

ding 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 in-

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CONGRESSIONAL RECORD—SENATE

October 4, 1991

Mr. President, after much thought, 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 spurn the Bill of Rights enumerated rights they do not agree with, while inventing new 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 laws, not judges who make it, judges who do not

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 circumlocution 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 impressions others who can blame the members of the Judiciary Committee have formed 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 they do.

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 pressed to claim 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 them 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 will 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 1860's who, disturbed by the Court's decision 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 issue decide to labor to confirm 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 so often am, by the good sense he had to say. The good sense 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, or in the case of Senator DAVID D. DURBIN, or in the case of Senator DANFORTH, for whom I 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 unwise in this man to judge 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 spurn the Bill of Rights enumerated rights they do not agree with, while inventing new 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 repugnant way 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 to be tolerated.

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 the Constitution. If they have problems with economic rights, they should direct their grievances to the Congress. If they have problems with the choices made by the American President and conservative nominees do not mean that the constitutional rights have been radically altered. This Senator, for one, is offended by organizations which first attacked 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 to be tolerated.

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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 Thomas that the Supreme Court is the highest court in the land and somehow bootstraps.

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 tests 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 irrelevant 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 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 Chairman Biden in 1979 regarding a liberal appointee.

The Senator from Massachusetts [Mr. Kennedy] echoed these same sentiments during the Senate hearings when he stated: "With an individual who 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 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 difference between Abner Mikva and Clarence Thomas. There is no difference between the Roberts court and the Fordham court. There is no difference between the Bork court and the Bork court. Therefore, 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 serve as a check and balance to the President—to show 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 cost him 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, and must not, 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.

Mr. President, a nominee with a record such as Judge 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 deniled 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 the nomination 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. Without objection, it is so ordered.

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

The PRESIDING OFFICER. The assistant legislative clerk proceeded to call the roll.
actively debate the legal basis for Roe to the point of forming an opinion on its outcome.

One 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.

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 well 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 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. However, the use of natural law has time to fully contemplate a just decision.

In some instances, his views are a challenge to the Court's approach to the separation of powers, which we must protect in our constitutional structure. In one case, Judge Thomas states that he does not believe the Court has resolved the issue of whether the Senate has the power to invoke "moral suasion" in support of an interpretation of the Senate's role in a constitutional setting. Judge Thomas states that he is unwilling to make a decision on the facts of his record. However, since he has been on the bench for over a year, one would expect him to have a clear understanding of the Senate's role in our constitutional structure.

If the Justices of the Supreme Court tilt toward the President instead of strictly adhering to precedents, they can profoundly affect our system of government, which depends on the existence of checks and balances. By adopting absurdly narrow interpretations of constitutional statutes, the Court can effectively deny 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 are not willing to accept the views of Congress, they can be overly concerned about the outcome of a case, and not the process by which the case was disposed of. Judge Thomas has repeatedly expressed his concern that the Supreme Court has overstepped its bounds in interpreting statutes.

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 appears to be 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 hard feelings toward Congress because of past conflicts. He asks us to trust that as a Justice he will set aside his long-held view that he now respects Congress and disregard the plain legislative history of Congress. The Court can effectively deny the legislative branch its constitutional power to make laws. Judge Thomas' record reveals many reasons to believe this is exactly what he will do as a member of the Supreme Court.

In obscure meetings, members of Congress have been an enormous obstacle to the im-
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 in licensing 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, a lower 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 when interpreting statutes because, in his view, committee reports and floor debate can be hard pressed to mention many, or even a few. That certainly is true with regard to the major networks or Fox Broadcasting, but it is not true of either the FCC or Congress when they have been faced with questions about equal rights in this country in recent times. This issue, which 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 major court opinion.

In that case, the employer has 239 professional positions and not one woman professional 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 her applicants, who had scored two points higher on a subjective interview—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 has said 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 accurate 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 are constitutionally fixed. The Constitution clearly states that the President has 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 executive power and the role of Congress in our constitutional structure. No power is more central to the separation of powers and the role of Congress in our constitutional structure."

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 to be included 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 Rehnquist-appointed Chief Justice 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. Judge Thomas has apparently given 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 Senate, 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 the President and the Senate, the Framers ensured that the President and the Senate, the Framers ensured that the President and the Senate could act on their common sense and good judgment—"to the benefit of the separation of powers and the role of Congress be printed in the RECORD."

There being no objection, the analysis was 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.

During Judge Thomas' tenure at the EEOC, the Senate Aging Committee discovered that the EEOC had failed to collect data on employment discrimination and to provide an appropriate analysis of the data. The EEOC had been ordered to print a comprehensive analysis of the data, and Judge Thomas clearly did not rise above ideological considerations when he decided to hold his record there. little doubt that we will be acquiescing in the continued transfer of power away from Congress and into the hands of the President.

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.

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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. Judge Thomas has said 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' view on executive power and the role of Congress will be printed in the RECORD.

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He did, however, admit that he still believes that some oversight efforts go "too far in micro-managing" federal agencies. In addition, although he testified that Congress has no such authority, no matter how serious the allegations of 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 1993 speech, Judge Thomas stated that Judge Thomas' record raises other areas of concern with respect to his view of the separation of powers. Although his position is not entirely clear, he appears to agree that Congress may only enact statutes which control the "general conditions under which departments and agencies ought to operate" and to use such language in the dissenting opinion in a landmark Congress of the judiciary. His position remains that the Court's decision as to whether the independent prosecutor is unconstitutional.

In a number of speeches and articles, Judge Thomas has argued that the independent prosecutor is unconstitutional. He has argued that Congress' transformation from a law-enforcement body into a law-enforcement body is unconstitutional. This is true, he said, because it "is unconstitutional." He has argued that Congress has no such authority, no matter how serious the allegations of criminal activity by Executive branch officials.

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. Although his position is not entirely clear, he appears to agree that Congress may only enact statutes which control the "general conditions under which departments and agencies ought to operate" and to use such language in the dissenting opinion in a landmark Congress of the judiciary. His position remains that the Court's decision as to whether the independent prosecutor is unconstitutional.

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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.

If we are really just about 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 BRING 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. SASSE).

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.

We are identical to those on the other side of the aisle 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 be it, the 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
CONGRESSIONAL RECORD—SENATE

October 4, 1991

States signed into law the identical bill that we are talking about enrolling pending 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 mis-informed, 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 ob-

102.6 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 in-

Therefore, I do not take much comfort in the fact, if we do not do some-
thing 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. Presi-
dent, when I heard some of the state-
ments 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 get back and start all 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 unem-

I am further amazed that some peo-
ple 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 bill that addressed 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 be-

I do 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 $2.6 trillion. If there is any budget-busting allega-
tion 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 bust-
ing the budget?"

I said, "That is the most misunder-
stood 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

I am not saying directly that there is

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 un-
employment benefits extension that the Congress previously acted—act upon?

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Mr. EXON. Mr. President, from my experience as Governor of the State of Nebraska as the appointing official for Superior Court judges and Associate Justices in the U.S. Senate as part of the confirmation process for Federal judges, I have always felt a heavy respon-
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people have overwhelmingly supported the last two Presidents and evidently they are satisfied with the result. I am very much afraid that they 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 my personal meeting with him, I was impressed with his academic credentials, intelligence, determination, and little if any experience as a lawyer, and little if any extensive courtroom or trial experience. It is certainly true that he does not have extensive courtroom or trial experience. The best person has been selected but the committee challenged other Senators to make a statement on another subject. I gathered the distinct conclusion that the committee did not agree that he was approved by the committee but my review of their findings carefully studied conclusions were different 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 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 measure. 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 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.

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Mr. THURMOND. Mr. President, I have already spoken on Judge Thomas. 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, 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 alcohol 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 most desire. 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 to address the problem. The Alcohol 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-
October 4, 1991

CONGRESSIONAL RECORD—SENATE 25613

CONTAINERS. 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; the influence of alcohol on the developing fetus; the possibility of becoming a problem drinker; and the possibility of becoming physically dependent on alcohol.

I believe this measure is both necessary and long overdue, and public opinion supports my conclusion. In surveys conducted by the sponsors of the 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 alcohol may entail serious consequences. The legislation is aimed at providing important health information to the public, not at eliminating legal opportunities to consume alcoholic beverages.

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 United States” 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 UNITED STATES

(From 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 prevalence of alcoholism 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 and a W. N. Johnson Institute study released 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 to see these findings dramatize how much we need to focus on alcohol.”

The study was based on interviews with 43,000 men and women 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 or had a blood relative who is an alcoholic.
- 6 million adults, or 3 percent of the adult population, either grew up in a family with an alcoholic or had a blood relative who is an alcoholic.
- 76 million adults, or 43 percent of the adult population, either grew up in a family with an alcoholic or had a blood relative who is an alcoholic.
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Mr. President, the Senate’s advice 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 and executive nominations. These are legislative and executive nominations, 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 not only on politics, but on ability, temperament, and sincerity.

Mr. President, after watching the hearings, reading numerous materials written 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 expressed 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, temperance, 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 Bagehot which he believed 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 muddleheadedness, at best." Judge Thomas insists that he should be confirmed because the Judiciary Committee saw him, not based on the decade of writings, speeches, and policy positions he has under his 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 judge his views with due consideration to how he cast his 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, which 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 have never 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 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' cordial manner might be personal reputation 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 that was demonstrated so brilliantly 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 lend 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 apprise 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 PRESIDENT 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 fairmindedness. 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 judicial 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 equal opportunity measures that increase opportunities for members of all groups. Judge Thomas has expressed support for the 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 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 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 canons 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 the FCC held that he was "not qualified" to be a radio broadcaster. As an "infringive 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 highly improper, highly unusual, and absolutely wrong.

With respect to this case, now pending before the Court of Appeals for the District of Columbia, 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 will fully submit that the Senate deems 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 preferences—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 professional 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 everyone who opposes him seems 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 things, 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, tending 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, conservative, even-handed position, and that 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 the 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 a 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 sincerely, as was usual.

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 unifying spectacle of well-born white liberals trying to tell Judge Thomas what black life 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 necessary to provide equal opportunities for disadvantaged groups. He never said, for example, that he 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 trouble. In fact, it is not an elected 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? Do they want an unaccountable, unelected men and women who can enact the laws that Congress fails to provide?

Let us be clear on this. We, in the Senate, 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 correct 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, are attempts to provide comfort to 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 variance of the many variances in this 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 raise 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 circumstances, 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 of excess clothing. 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 policymaker 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 critics. For example, as a policymaker, for some of 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. For them, apparently, adjudication in the courts is nothing more than a continuation of politics by other means.

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 explanation.

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 confirmed him twice with overwhelming approval. After his term at 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, Judge Thomas was confirmed to a 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 there are two basic reasons for the opposition to Judge Thomas. Some of his opponents simply cannot bear the thought of an intelligent 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 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 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 reverse 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 beahlenly 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 serves to protect the American people from 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 good conscience, integrity, temperament, good work habits, and good intellectual capacity. I have to tell you Clarence Thomas has all of those going for him.

A body 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 an 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 of 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 over a number 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. Russell). The hour is 4:00 p.m., Senator from South Carolina.

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 rebuttal. Let me specifically address a few:

First, he has been assaulted with an intolerance that he has seldom without cause. 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 "has no moral character and thinks whites act as 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 act.

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 evocation.

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 unhinging group of automatons, with a common set of views, opinions and ideas. Anyone who dares suggest this may notice that attacks on him are 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 else's although they may do just that. The popularity of our views is unimportant; hence, our views are neither needed nor ratified. 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 intellects are controlled entirely by our pigmentation.

Second, Judge Thomas has been accused of opposing basic civil rights with brusque 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 individual is recognized as such. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious, legal devices that only further and deepen the problem.

While Judge Thomas supports affirmative action, he has opposed quotas and preferential treatment. It would be an extraordinary irony to label an enemy of civil rights a person who articulates a personal and political framework that is parallel to that of the American public and defined 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 v. 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 to be responsive to questions such as whether 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 discuss in open court the position taken by most of the American public and defined by figures such as Hubert Humphrey and Martin Luther King, Jr.

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.

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 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 of July 4, 1776, for instance, says that "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; that among these are Life, Liberty, and the pursuit of Happiness."

Individual rights, the American Founders asserted, existed before the act of the act of 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 state of the world 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 main-}

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This principle was invoked to justify the Nuremberg 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 transcendental 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 ethical-moral principles that interpret the meaning of "equal protection" and due process. So the opinions 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 in which 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 the creator for the enjoyment of 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 that "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 moral reasoning. 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 1989 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 William 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 kind 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 philosophy. It is precisely the 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 rights and immunities of which the Declaration affirms a conservative belief in judicial restraint and assert the existence of natural 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. Thus, he is convinced, is the reason that Dred Scott was wrongly decided—because a broad notion of natural rights animates the Declaration 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 intent cannot be understood as sympathetic to 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."

The ideal 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 civil 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 provided by 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 undercuts current judicial doctrine and of limited government.

In short, Thomas proposes an inseparable connection between natural law, individual rights, and limited government—forced in our founding documents. This conception of natural law is not a substitute for the legal 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 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 proceeding 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 ownership of the people. And it accepts the constitutional allocation of authority between the branches of government.

A judge, with these constraints, does not have the warrant to enforce a broad definition of 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.

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 essence, 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 and separation of powers.

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, 1991, "was simply that in understanding 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 commitment to limited government is the higher law political philosophy of the Constitution. * * * More-
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 forsake 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 "philosophical" matter, but unlike many liberals, he does not see natural law as an independent source of rights for judges to discover. * * * Natural law for Thomas is a way of providing moral back-seat for rights that are explicitly listed in the Constitution rather than a license for creative interpretation. 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 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 role. 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 defends."

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 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 indiscriminate 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 reared and tutored, 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 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 words 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 Fourteenth 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. "I'm Tom as 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 and deserve to have an other sitting Supreme Court.

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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 refute the 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 re- sponsibilities. People come to know his manifest qualities, others have a powerful nexus to our lives and times. * * * Long live Justice Thomas * * * and a toast to Clarence Thomas.

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 pos- sibly 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 appointed 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 any new information come to light in 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 done. For public record, I find no public outcry. 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 ex- ample of his abilities and talents. As Chairman of the EEOC, Judge Thomas was able to eliminate much of the or- ganization's case backlog, shorten re- sponse 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 con- troversy, such as taking a single line out of a lengthy speech entitled "Why Blacks Should Look to Conservative Policies" and making it into an encom- passing statement on natural law and its role in constitutional interpreta- tion.

This speech was not about natural law or abortion. It was about race and his experiences as a black conserva- tive. He was speaking to black 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 lit- any of requisities (is) an oddity and (is) to be cut from the herd and attack[ed]." 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 be- lief that one betters himself through family, education, and strength has molded Judge Thomas' philosophy on life. He should be a role model, frankly, for all of us.

Mr. President, in my opinion Su- preme 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 Su- preme Court's role is one of judicial in- terpretation 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 Su- preme Court, by a split decision, legal- ized abortion. Let them introduce the law or 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 legis- late, should not be a judicial activist, should not be a President 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 Judge Thomas. The Senate has decided that 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. If some of my colleagues want to legal- ize 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.

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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 dominated the news. Following is the dramatic showdown between Communist tanks and the citizens of Moscow 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 Baltic 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 being subjected to an 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 tragic events is Serbia's strongman, Slobodan 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 crumble in Eastern Europe, Mr. Milosevic began to step up ethnic tension as a means to hold on to power. First, he turned on the ethnic Albanians in the province of Kosovo 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 there 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 Mesic, 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. I am prepared to propose that 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 am a co-sponsor 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 recognize both of these 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 diplomatic 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 TREASURING 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.

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.

Mr. PRESIDING OFFICER (Mr. Daschle). 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, I say not interesting that we have dealt with the butcher of Belgrade, the butcher of the world, the butcher of the world, the world's people, the bully, the butcher, the tyrant, dictator, Milosevic, the butcher of Belgrade, who encircles this proud city, bombards its ancient churches, its schools, and its civilian population purely for the purpose of conquest. This is nothing more than a last gasp effort to hold onto power, to transform and privilege by the communists.

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 it not ironic 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, Croatsians, or the ethnic Albanians in Kosovo.

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 Kosovo 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 fight if they have the trained 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 power of Slovenia 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 Serbian 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, to demand an end to the terror 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 independence. 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, as do the citizens of Dubrovnik. These people, who 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, witnesses, and a process that, in my opinion, is absolutely necessary in our system of government of checks and balances.

The hearings on the judge ran for a very long time. A record may well have been set for longest. 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 an individual to talk about the court or his philosophy. A sitting judge has certain constraints on his public 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 the process cannot be underestimated. 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, specifically 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
October 4, 1991

CONGRESSIONAL RECORD—SENATE 25625

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 the hearings, I 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 and that record 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 article 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 resided in Virginia, it was also 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 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. I 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 life. 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 that, 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 Senator Hatfield of 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.

One is often faced with a single decision 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 particular 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 is this: that the Senate, by its judgment, in my view as a single issue test: how we predict that individuals who occupy the nine positions on the Supreme Court of the United States, and that we as the President of the United States exercising his authority again under article II of the Constitution, shall exercise their authority. The President makes this appointment.

This is a solemn and important duty.

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 a vote of a Senator on a 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 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 of whom 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 moral 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-
In this connection, I find the recent history of nominations to the Supreme Court by 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 and at the time did so negative 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 before the Senate, has avoided, 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 which has 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 a native of the District of Columbia, 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 qualities 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

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 this, whether we are talking about the Senate or the House. 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 the kind of speculation and hysteresis as to what the nominee might do should not disqualify him from the Supreme Court. After all, no other nominee before has ever been driven from the mainstream. The character of the 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 left with the nomination of David Souter. Let me quote from the report of the Judiciary Committee on that nomination:

We believe that Judge Souter struck an appropriate balance in this testimony; that he demonstrated 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 disrupt the Senate committee process were frustrations which have now 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 and at the time did so negative 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 before the Senate, has avoided, 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 which has 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 a native of the District of Columbia, 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 qualities 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 belongs 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. DOLE. Mr. President, I ask unanimous consent that there be a period of 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 weekend 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 testimony, and the liberal ideological 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.

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.
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 an emergency.

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 1,065 workers this week? American Express, not touched by a luxury tax, laid off 1,700 employees this week.

This economic malaise is all across this country. 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 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. 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 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 competence. 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 basis for 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 independent judgment of the Court.

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. He was asked nearly 30 times 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 if you have not been 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 question of Roe versus Wade when it was decided 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 believe it is going 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 Loida H. Coleman, Jr. She is an attorney. She is the daughter of the former Secretary of Transportation, William Coleman. Se 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 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 hearings and 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. I was pleased 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 judicial decision.

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 dominant feature of these meals was the good natured laughter and wide-open discussion which this self-selected small group of aufteurs 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 topic of discussion in these meetings or in these discussions in sessions or elsewhere. There was several reasons why it is not as likely as you assumed that Roe v. Wade was raised issues that were of particular interest. Roe v. Wade 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 it is the prospect that it may be overruled today.

Second, with very few exceptions, current legal cases tended to be of much less concern to us students than the 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 school admissions, that was much 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 even been to a reporter who frequently covered Watergate 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 highly unlikely that Clarence Thomas would ever discuss Roe v. Wade.

The chairman of the American Bar Association committee that reviewed Clarence's qualifications testified that the litmus test 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 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, 118. Regardless of
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:


Hon. PATRICIA J. LEAHY, Russell Senate Office Building, Washington, D.C.

DEAR SENS. SPEAR LEAHY: I went to law school with Clarence Thomas and he and I have been good friends since that time. I was in particular 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 the subject of abortion 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 of whether Clarence is a liar.

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 room opened at 7 a.m. I vividly recall that the dominant feature of these meals was the good natured laughter and 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.

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 disturbing 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, when Clarence was a newspaper advertiser he 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距你 62 个词的段落 reader 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 convincingly 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.

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's character of tremendous depth and his integrity is unquestionable. No one who knows Clarence has disagreed with this assessment.

I have always, in evaluating Clarence's qualifications for the Supreme Court, one should keep in mind what Justice Blackmun wrote in Roe v. Wade: "Our task, of course, is to receive and interpret this testimony, in 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.

Hon. JOHN C. DANFORTH, U.S. Senate, Washington, D.C.

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 small group of sunrisers shared. Clarence Thomas happens to be one of them.

Mr. President, I ask unanimous consent that these letters be printed in the Record.

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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 particular 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 the subject of abortion 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 of whether Clarence is a liar.

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 room opened at 7 a.m. I vividly recall that the dominant feature of these meals was the good natured laughter and 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.

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Very truly yours, LOVIDA H. COLEMAN, JR.
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 1978 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 Bolcourt, 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 questions about the pro-choice and anti-abortion posture you were taking on some of those issues, while John Ashcroft had enthusiastically supported your position.

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 high 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.
in this country. We are deeply in debt. Our economy is in a decline; 8.8 percent of Americans are out of work; the public debt has reached $3.7 trillion and the GNP is down 2 percent from 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 are not object to humanitarian assistance, provided it can be assured that the aid will get to the people that need it and not to 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 this 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 matter of 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. Hatch). 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. 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 has been more and more 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 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, it is time for us to stop this process—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 an hour before, I would 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 Justice? 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 people’s 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 hope so. Her 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, port 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 presence create some atmosphere? 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 age. 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 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 resign. 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 truth. Once that occurs, it is difficult to un-ring the bell. 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 unwittingly or unwillingly, 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 surfaced of this accusation across three 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 third 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, they 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 these 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, there 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 never do that. I did 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 then I 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 are final and accurate 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 facts by having 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 had any contact 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 chatted 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 equal-

ity, who understands the signs 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, the President.

I yield the floor.

Several Senators addressed the Chair.

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 able to understand, on the basis of 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 Clarence 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 his willingness, he was unable to summarize the basic holdings of key court decisions.

When asked to analyze cases, he was tongue-tied. 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 the 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.

Even 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 an appointment. 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 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 vacillating or, 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 respected 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 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.

Nor did he try. I was stunned at the absence of a quorum. 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 believe 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 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 Keenebunkport—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, espionage or intelligence analysis.

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 complained about him, but I have known Clarence Thomas over the years and have attested to his character.

Of 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 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, elected 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.

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 them and he says they are not true.

I do know that the events complained of allegedly took place between 8 and 11 o'clock one morning. That is true. I do not 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 doubly believe that there may 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.

So 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 process is at issue, as is Clarence Thomas himself. I believe that the character of the Senate is at issue, as well as the character 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 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
CONGRESSIONAL RECORD—SENATE

October 7, 1991

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 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 understood 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 her 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. 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, after all, but democracy. 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 Thomas, Chief Justice Hughes, and Harlan Fiske Stone, 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. Justice 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 party, and what was a reasonable compromise 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, 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; Jimmy Carter nominated Thurgood Marshall; Ronald Reagan nominated 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 committee 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 who has breezed through both the committee and the floor of the Senate.

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 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. The record is not so illustrious. I voted against him when President Reagan nominated him for retention in that post after President Reagan was
The reports show a radical switch in his philosophy, with age discrimination cases. The commission received a letter from a dozen 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 and race issues. A record which we believed raised serious questions about his judgment, respect for the law and general suitability to serve as a justice of the Supreme Court. We urge you to review in more detail his record of resistance at the EEOC. And, we encourage you to consider his defection of the American Civil Liberties Union on behalf of Judge 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,

[Signatures]

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,

[Signatures]
October 7, 1991

CONGRESSIONAL RECORD—SENATE 25669

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 500 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 has passed not one, but two Age Discrimination Claims Adjustment Acts that required the EEOC to send 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 had filed charges 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 hearings in the Senate Judiciary Committee. 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 people who worked, paid their taxes, were getting close to the end of their careers, were deprived of their expectation, they expected 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 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 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 expectations, they were exceptional. 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.

Looking at the 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 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 he did not want 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 disparage 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 it is a right in the Constitution. It does not spell out American citizenship, 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 picked 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 wanted it abolished. 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 had.

He has attacked the Davis-Bacon Act.

And there is another case that came before the U.S. Supreme Court that I think is pretty much of an insight into the 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 anything 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 named Oriswold, 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.

Oriswold, 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.

Senator LEAHY. Judge Thomas, I was a married law student who also worked, but I always had a job at the law school and generally went to work and went home.
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 seeking some advice and helping preparing for this hearing, but I would like to ask you some questions about the process. When you were holding practice sessions, did you try to get any of your 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 preclude 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 beginning of the few months that I was 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 ensure that 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 Kozol 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. It does add 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 is whether 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.

When I talked to him, he mentioned his mother lives in public 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 public housing was not a good thing.

He told me, in response, "I think that we have an obligation, an obligation to help those who are down and out. That is what I am trying 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 black Americans but actually harm 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, Judge 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 Dr. Sowell my 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 else's 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 willingness 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 Lehman seconded 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 where problems persists at home.

The three—Thomas, Clarence Pendleton, Jr., and Steven Rhodes—said they oppose apartheid but gave unqualified support to President Reagan's "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, do you have a person who 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 at 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 newspaper, 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 Paul Simon, Executive Director of TransAfrica, who comments on this.

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


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 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 on Foreign Relations.

You asked Judge Thomas about any knowledge he might have had of the work Jay Parker, one of the more well-known conservatives, performed on behalf of the apartheid regime. In his response Judge Thomas asserted that he learned Mr. Parker's law 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 had 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 itself."

On September 16, Judge Thomas was asked about a Newsday article in which his former assistants confirmed an earlier report that Thomas made a written request for the 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 nominees 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 arrest and detention of Nelson Mandela and the creation of the so-called “homelands” by the apartheid regime itself.

The fact that Judge Thomas supported the color dividend 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 reassure my concerns. While I certainly applaud 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.

The plaintiff, then, 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 him to be aware that his professional standing should be an important factor as Senators evaluate his testimony and decide whether to confirm the nomination of Judge Thomas as 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 I am correct, 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 Ben Carden or, some of the other scholars on the teachers. If 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, but 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 approval opposed the nomination of Judge Thomas.

It is immesot 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 standing that the large majority of blacks do not hold. Their voice and yearning for justice will be silenced.

In his writings and speeches and in his life, Judge Thomas has stressed self-help, which is a belief that has often been harshly criticized another foundation of opportunity in our society: The laws that offer the helping hand sometimes needed by others who strive with less self-sufficiency. 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. The fact that Judge Thomas is 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 voted 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.

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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 I am correct, 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 Ben Carden or, some of the other scholars on the teachers. If 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.

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It is immesot 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.
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. McCluskey had been an accomplice 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. McCluskey alone was executed—on evidence that was illegally obtained, incomplete and questionable. Too little.

Some supporters of the death penalty are outraged that Mr. McCluskey lived so long, surviving through the ingenuity of write-writing lawyers. But many other Americans are more interested in sure justice than in certain death. And they feel outraged by 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 after two former jurors told the Georgia Board of Paroles and Pardons that their votes to sentence Warren McCleskey to death would have been different had they known the informant who would be the government's chief evidence in the case came to symbolize.

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 just then 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 telephoned.

A "CHAOTIC" APPEALS PROCESS

Five minutes later, after Mr. McCluskey had been strapped into the electric chair, electrodes attached to his skull and a final prayer read, prison officials were told that the Supreme Court had rejected a final stay. A minute later the execution began, and he was pronounced dead.

A spokesman for the Georgia Departments of Paroles and Pardons described the process, which began with the parole board's denial of a 48-hour stay to review fully McCleskey's claims, as follows: "Chaotic."

Justice Thurgood Marshall of the Supreme Court, who was one of three dissenters in the Court's last minute stay decision, was considerably more stinging in his dissent. Senate, wrote: "In refusing to grant a stay to review fully McCleskey's claims, the Supreme Court today was not only repeatedly denying Warren Mr. McCleskey his constitutional rights is unacceptable. Executing him is inexcusable."

On Tuesday morning the five-member Georgia Board of Paroles and Pardons turned down Mr. McCluskey's clemency petition, apparently closing off the last obstacle to an execution. In Georgia, only the Board has the authority to commute 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. McCluskey's execution was initially scheduled 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 ending around 11:30 P.M., but he delayed the execution until the morning to allow lawyers to appeal it. At 2:17 A.M. Mr. McCluskey 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.

Mr. McCluskey, who filed repeated appeals over the 13 years between his conviction and his death, has had a long succession of last-minute appeals* and then just before 3 A.M. today, after a similar appeal was rejected by the Court, for another appeal. Their 6-to-3 decisions came after the Justices were telephoned.

The only other evidence that Mr. McCluskey had been an accomplice to the robbery. All four hold-up men were legally responsible for the killing—no matter who pulled the trigger, but Mr. McCluskey alone was executed—on evidence that was illegally obtained, incomplete and questionable. Too little.

Some supporters of the death penalty are outraged that Mr. McCluskey lived so long, surviving through the ingenuity of write-writing lawyers. But many other Americans are more interested in sure justice than in certain death. And they feel outraged by a different reason, and what makes it worse is that they cannot look for relief to the Supreme Court of the United States.

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 Mr. McCluskey 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:


GEORGIA INMATE IS EXECUTED AFTER "CHAOTIC" LEGAL MOVE

(Continued)

ATLANTA, Sept. 26.—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 punishment law, was executed this morning after

the Supreme Court helped define death penalty law. 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 barbaric acts such as the death penalty," he said.

"IS YEARS TO SAY GOODBYE"

Officer Schlatt's daughter said the execution renewed her faith in the justice system. "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 which the jury did not know fundamental things about the case.

The case against Mr. McCluskey was largely circumstantial. Testimony came from one of the other robbers, who named Mr. McCluskey as the gunman. The prosecution's key witness, Officer Evans who told jurors Mr. McCluskey had confessed to him in jail.

Jurors were not told that Mr. Evans was a police officer who was led to believe that his sentence would be shortened if he produced inadmissible evidence against Mr. McCluskey. His lawyers learned of Mr. Evans'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-Dispatch, 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. For this reason, the testimony before the Senate Judiciary Committee by 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.

The primary reason for the Senate’s clear disfavor with a nomination that was far from the start. Judge Thomas was nominated to replace Justice Thurgood Marshall because he is a black man whose political philosophy and most of his professional life match those of the White House. President Bush is looked 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, insensitive to others, rather than worth responding to. All of this is simply to strip him down like a runner and shedding the record that supposedly had been the basis for his selection; in fact, he was running hard—from an 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 to the minds of the senators, what did Judge Thomas have left? He had his lackluster hearing with the Equal Employment Opportunity Commission, where he let aside thousands of grievances about discrimination. He had also his constrained view of affirmative action, of the areas 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 not been for affirmative action at Yale Law School.

Despite his efforts at self-effacing humor and the frequent reference 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. He is, 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 failed to show who Clarence Thomas is and what he stands for his nomination is a mystery.

If the Senate rewards this tactic by confirming him to 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 objection, the material was ordered to be printed in the RECORD, as follows:

CHICAGO COALITION AGAINST THE NOMINATION OF CLARENCE THOMAS MEMBER ORGANIZATIONS.

Amalgamated Clothing & Textile Workers Union—Chicago & Central States.
American Association of University Women.
American Progressives for Democratic Action.
American Federation of State, County, and Municipal Employees.
American 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 Predict Organization.
International Ladies Garment Workers Union.
Lawyers for the Judiciary.
Leadership Conference on Civil Rights.
Mexican American Legal Defense and Educational Fund.
NAACP—Chicago Southside Branch.
National Coalition of American Nuns.
National Council of Jewish Women.
National Lawyers Guild.
National Organization for Women—Chicago.
National Organization for Women—South Suburban.
National Organization for Women—West Suburban.
Older Women’s League.
Political 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 100-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 there the question is: Is it possible that any careful reader of the record will have doubt—where there is doubt, that doubt should be resolved in favor of the people of the United States. Mr. President, I yield the floor.

Mr. BREAX. 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 advisors 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 support and in opposition to Judge Thomas. Then I 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 and get 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 position of head of the Equal Employment Opportunity Commission. 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 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 substantive question 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, not only 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 voting process. 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. 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 Newday 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?

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 I did not respond 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. COCHRAN. Mr. President, when I heard recently from those 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 Newday 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 more complicated than if the Senate was just investigating her.

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 the nominee and see 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. He was a little easier to deal with the situation. I knew that it was decisive for any member of 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 that Congress had authorized it 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 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, in 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
Mr. President, I am proud to be able to support his nomination, because Judge Thomas has always taken regarding every position he has held in both the public and private sectors. He is the consummate professional. These statements and letters make a detailed report of the nominee and are given 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 observations of Professor Calabresi, and I am going to read a few sentences from his statement to the Judiciary Committee. He was talking about Clarence Thomas, the student, when he said:

“Characterized him was that he could not be predicted, that he was always seeking more information in order to decide what he intended to do and that wherever position he took it was his own and was powerful, and independent.”

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 Brandeis, or Justice Holmes, or Justice Cardozo, or Justice Frankfurter—for all his years of teaching constitutional law, on the Court, he has been the consummate professional, not one to move there with him. I find it hard to understand why Mr. 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 found several occasions to contact Judge Thomas—and to convince others that it was decided, 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.

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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 delay 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 eve of 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 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 discuss who wrote it. It says her...

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.

He knows Ms. Hill, the one who is making these allegations and who wants to delay the vote. 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, 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 any 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 and denied it.

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. Not because 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 case to the press but has declined until now.

Senate staffers of some Members who oppose this nomination contacted Ms. Hill. She did not come here first. 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 oppose Judge Thomas. 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 philosophy and that he may no longer be open minded.

Maybe she does not like his philosophy 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 1987. 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 were 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 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. John was the one who hired 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 they not 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 professionalism, the 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. 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.

Resolved, if I may respond just briefly to my colleagues. Second, she said that Judge Thomas might not be occurring. It is fair to say he is still himself, 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.

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, 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 is probably our most 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 perhaps is one of the most important constitutional responsibilities that this body has. We all realize the importance of confirming someone to the Supreme Court or to any court—it is a lifetime position. I believe what 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 is 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 alleviated 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 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 decided to support 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.

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 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.

I repeatedly stated that I 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 rational basis issue.

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 is 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, or others, that it would be 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 why I 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 confirmations. In the Senator's hearing, he was questioned as to 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 fess up. 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 those groups during Judge 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 tenures 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 overcome that stark contradiction 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 beholdning to no particular cause.

Mr. President, at the commencement of the Judiciary Committee hearings on Judge Thomas's 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, 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 integrity. 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, open-mindedness, 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. He said it was not ready but might be ready by the weekend 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 10 or 15 minutes, that we might have had. But Judge Thomas did not make it.

I, of course, disagreed with his explanation. I might add, the public should know that was confidential. Nobody raised the issue.

It is important for judges not to have agendas, to have strong ideology or ideological views.
tion, the day before your nomination vote, someone made an accusation and that the people who had an opportunity to review that, and 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 the nominee, 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 judgment 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 responsibilities 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 serve with distinction on the Supreme Court. 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 support 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 charges. I would like to express my appreciation to 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 nomination of 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 know 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 misjudgments related 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 developed among 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 inquired 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, Mr. 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 allegations 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 my office staff. She un-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 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 fairly 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 problem. This is something that I feel strongly about. It would be well then—and I would ask him since the Senator is here—Does he have any idea, if I might address him through the Chair, where this leak may have come from?
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 that are several people who will buy this book, 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, "You, you know—" that person was left here 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 to leave with 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, anguish 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 the University of Tulsa 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 mist of sensationalism and salacious verbiage that has accompanied this.

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 neglect that in the course of all this.

Facts are something. 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 of Anita Hill in any way, to create a stumbling block to a vote on her, 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 up for the new evening, 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, Sen-ator, 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. And not once with the FBI. We 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 Newsmale 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 of every newspaper. That is a great shunt around here. I have heard that one before. Let us not talk about racism, guilt, emotionalism, and victimization.

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 43, 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 enquired into by the Senate Ethics Committee. I would hope that the chairman of that committee would institute such an investigation. We cannot let 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 breach 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 sneaky activity. That is what it is.

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 attended the 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 years 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, she was a 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 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.

The 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 consider us for this opportunity. We are 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 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.

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 the fourth estate has 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.

Let me pull 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 said anybody, the whole spectrum of his life? Let me tell you that nobody in the range of my self that you are not proud of, and when somebody gets you, you really react in response to that.

Then the spotlight falls 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 investigators 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 accountable. 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. 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.

And then we forgot 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 sources. 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 come forward and say "I would like to ask you why you did that to that person when you knew the 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 do.

And maybe I did not see enough when I came here from Cody, WY, but I practiced law in the real world for 16 years and we did not do that to each other. That is crazy. And that is going to continue. And I am going to get active in enforcing the rules of the Senate, and we will smokesome 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 tonight 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 bringing 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 well. Since 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 there any hint of unacceptable contact 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 products of fantasy.

I urge the Members of the Senate to read this entire statement.

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.

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.

—- 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 appeared from Beirut this morning. His sister, Peggy Say, has remarked how much better he seems at this time than in the photographs 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 for many years. It now 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 will 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, the last year or two. 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 Frenchspeaker. He has taught us how to speak French—not well, but sufficiently. And we have a great deal of news.

And of course we have heard, as John Moynihan has mentioned to you, the voices of our families in recent weeks—Tom's wife, my daughter, my sister, 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 decent. They give us the things we need. The food is not bad, sometimes good. We get medicines when we need them, for minor ailments, for 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 talking with 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 you, he doesn’t think he should be the dean; I think he should be the dean.

I think the efforts of Secretary General de Cuellar are enormously helpful, probably the only thing that could have been helpful in the whole hostage situation. His two meetings with me, and the other hostages I have no contact with, but I think I can say they are extremely grateful for 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 think him, and I hope soon to thank him personally—and of the work that the United Nations is doing, 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, but 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 Senate, what the Senate could do, but I think 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 of the border, I mean all the hostages, 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 again. It's simply time for everyone to cooperate, to do what is necessary to do, what has to be done as soon as possible for 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 know there will have to be cost to yourself, I know, because I'm given 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 Terry and Jerry.

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 continue to encourage us 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.

Love you all, and miss you very much, especially my two daughters. I've heard Peace...
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 Senator Runcile 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 work hard to do whatever they could on this issue, I'm very grateful and more than a little humbled, 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, and much he loves you all, and has every hope of being with you again soon.

And Terry Waite sends his greetings to Lord Runcile, 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. MOTYNIK. 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 asked 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.

Since Senator Byrd's statement 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. Approaching, 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 was really 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 want to tell you that I feel like I'm one of you, and 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 cramped 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 EEOC, and on to the Court of Appeals for the D.C. Circuit.

Now he stands at the portals 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 historic 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 politics—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 150 witnesses, the Senate Judiciary Committee could find no blamish of ethical impropriety, official 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 follow are merely the last vestige 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, and the confirmations are held, direct mail is sent out by the truckload, and spin-doctors appear on the nightly news discussing 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.

But, however, the process is being hijacked by the beltway special interest machine, which clamors for one result or another, depending on which 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 and 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 newspaper clippings—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 code-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 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 the Constitution'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 successful minorities of their rightful sense of proud achievement.

Even though many Americans have not used 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 it's 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.

PIPIELINE SAFETY IMPROVEMENT ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of 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:

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. 1664(a)) is amended—

(1) by striking "and" at the end of paragraph (6);

(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:

(1) 

(2) by striking "and" at the end of paragraph (8):

(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 (9) and inserting in lieu thereof a semicolon; and

(2) by inserting immediately after paragraph (9) the following new paragraphs:

(c) GRANTS-IN-AID.—Section 17(c) of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1664(c)) is amended—

(1) by striking "and" at the end of paragraph (18);

(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:

"(b) "Environmental sensitive areas" shall be as defined by 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 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 every thing 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’s response 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 colleagues—will occur 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-
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 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.

But, Mr. President, in the New York Times today, Phyllis Berry, who worked for Judge Thomas at the EEOC, described Judge Thomas as having 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. This statement reflects how well I knew Anita Hill 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 interject here, that the allegations allegedly occurred in 1981 while Clarence Thomas was the Assistant Secretary for Education. And while he was there, 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.

Later, 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 professionalizing the Office of Congressional Affairs (as it was called at that time).
2. Assist in professionalizing the Office of Public Affairs (as it was called at that time).
3. Assist in reorganizing the Office of Public Affairs once the Commission was organized.

Anita Hill was a member of Clarence Thomas's personal staff when I joined the Commission. J.C. Alvarez, Allison Dunlap, Phyllis was assigned to me, I knew 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.

I understand 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
Mr. Hatch. When you add that to the statement of Armstrong Williams, the managing partner of the Graham Williams Group, dated October 7—1 believe Senator Thurmond read this into the record—Mr. Williams makes the statement that she did not know him and that she did not know her.

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.

Concerning Dr. 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. I understand the political complexities of policy options recommended by his personal staff was part of my responsibilities. 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 October, 1983 and 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 and continued to work with Chairman Thomas to come work with him at the Commission to do three things:

(1) Assist in assessing/organizing his personal staff.
(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).

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(1) Assist in assessing/organizing his personal staff.
(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).

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 moves to the EEOC, that 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.

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October 7, 1991

CONGRESSIONAL RECORD—SENATE 25707

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 today. It may not be true, but 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, 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 detrimen-
al 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 this. 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 abso-
lutely impeccable one and unimpeach-
able, in my opinion, having sat through all five confirmation proceedings and having presided over three of them.

I just wanted to make this clear be-
fore I left this evening. I think it is im-
portant that it be made clear there have been some reprehensible activ-
ties by the Members of the Senate or their staffers, or both, in this matter. There is a violation of the Sen-
ate 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 re-
marks tomorrow because there is even more to bring up. But I do not want to delay the vote or the debate of who has had to wait this long.

So with that, I will yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Sen-
ator 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 Thom-
as to the U.S. Senate for confirmation was somewhat flawed, but in a speech I said that I had had an interview with him. And 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 con-
firmation 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 intel-
lignece, his approach, his openness, all generally. We are involved in matters that 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 thought 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 Sen-
ate on Monday, after having just re-
turned within the last hour or so from home—that it seemed to me at that time, when I 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 Mon-
day night, I have received a lot of in-
formation, a great deal of conflicting information on both sides of this issue. I heard Professor Hill today on television, she was not only a good witness, as I think she has been re-
ferenced 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 vi-
tious against this one Senator felt that she raised the authenticity of the charges and countercharges.

I wondered, after I heard Professor Hill today, what her motives could pos-
ibly have been, because if she is say-
ing what I thought she said, she has not volunteered anything from the be-

ing, 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 un-
derstand 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 them without ever really hearing any of these 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 re-
questing on the floor of the Senate now that this vote be delayed from tomor-
row night at 6 o'clock until sometime next week. It may not be true, but 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, 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 detrimen-
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Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Sen-
ator 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 Thom-
as to the U.S. Senate for confirmation was somewhat flawed, but in a speech I said that I had had an interview with him. And 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 con-
firmation 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 intel-
lignece, his approach, his openness, all generally. We are involved in matters that 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 thought 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 Sen-
ate on Monday, after having just re-
turned within the last hour or so from home—that it seemed to me at that time, when I 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 Mon-
day night, I have received a lot of in-
formation, a great deal of conflicting information on both sides of this issue. I heard Professor Hill today on television, she was not only a good witness, as I think she has been re-
ferenced 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 vi-
tious against this one Senator felt that she raised the authenticity of the charges and countercharges.

I wondered, after I heard Professor Hill today, what her motives could pos-
ibly have been, because if she is say-
ing what I thought she said, she has not volunteered anything from the be-

ing, 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 un-
derstand 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 them without ever really hearing any of these 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.
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 O. 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. DANIELOVIC, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF THE PANAMA CANAL COMMISSION, VICE ANDREW B. 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 defense and foreign affairs. Even regional military units could be set up as long as they are integrated into the overall defense plan.

The next step of this process—in the case it is desired—would be full independence.

The United Nations could accept the general terms of a possible convention on self-determination. This could envisage setting up an international commission or court comparable to the International 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 nothing more than general 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, 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 that of human beings who created them. The life cycle of a State might last for many generations, or it may be annulled much faster. There is no fixed duration. 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 as has been attempted in the past is 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, the future may 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 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 some might not 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 allowed 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 initiatives aimed at the promotion of 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 correct. Under the previous order, the period for morning business has expired.

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

The ACTING PRESIDENT pro tempore. The Senate 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 read 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 wish to make some observations 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 practices 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.

Prof. Hill has stated that Judge Thomas engaged in obscene, vulgar behavior with her, creating a very hostile work environment. She has said she has come forth with pain because reliving this situation has, indeed, been extremely painful for her.

Lieschtenstein 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 initiatives aimed at the promotion of international peace and the respect for human rights and fundamental freedoms.

Thank you, Mr. President.

EXECUTIVE SESSION

CONCLUSION OF MORNING BUSINESS

Mr. MOYNIHAN. Mr. President, has the time for morning business expired?

The ACTING PRESIDENT pro tempore. The Senator is correct. Under the previous order, the period for morning business has expired.

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, the rural poverty of Oklahoma, who goes on to be a scholarship holder, 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 distinctive backgrounds. 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 warrant a full hearing 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 colleagues. 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 unprecedented venom when she was herself talking about being a victim. We owe it to Professor Hill not to attack her on the Senate floor but to submit
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 and intimidating someone? 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 victims 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 Central Intelligence Agency. 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 through a public forum in 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 and an urgency 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 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 what my friend from Nebraska said last evening.

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, 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? What has been so de-creed? 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 American people. The President, would be also helpful to eliminate any coups over the nomination for someone who is about to serve 30 years on the Supreme Court.

Ms. MIKULSKI. Mr. President, reclaiming 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 colleague'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 uniquely dishonorable 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 on the basis of the Professor Hill affidavit. 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 objected to an unanimous-consent request. It was not known to the Senator from Maryland, who nodded in agreement, and who I doubt very much would have given consent, had she known. Again, I see a nod in agreement.

We have a procedure where 17 Senators know something, 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? I believe we may proceed tonight.

Under rule XXII, on the precedenc of motions, it states: One, when a question is pending, no motion shall be received but to adjourn.

Accordingly, Mr. President, I move that the Senate adjourn until Tuesday, October 15, at 10 o'clock. I believe I heard the floor, and I await your ruling.

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

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 colleague 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. Mr. President, I seek 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 bill clerk continued with the call of the roll.

Mr. MOYNIHAN addressed the Chair.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the quorum call be rescinded.

Mr. GRASSLEY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The bill clerk will call the roll.

Mr. MITCHELL. 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. Mr. President, 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-
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. At that meeting, they referred 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 her 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, Friday, Saturday, and Sunday. 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 the matter for morning business until the hour of 12:30 p.m., with senators present, for adjournment is not in any way an expression of view on the subject, 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 made up my mind at this time 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 express his or her views 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. 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 Senator Hill 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 with 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 review 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 allegations. 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 either 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 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 writes:

Mr. President, I think that the FBI 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 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 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 lifetimes and even the lives of the Justices.

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 activity? 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 textbooks, 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 law, I have had occasion to protect a number 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 character 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 some zealous non-understanding of our zeal to stop crime or drugs or dissent, we forget about nuances like due process, privacy, or free speech.

While the diversity in ideology of Congress can sometimesweed 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 free rein to our Federal judiciary 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 judicial temperament. It is clear to me that it also gave the Senate the power and obligation to ensure that executive branch control of the appointing process did not become so great that the Court could no longer serve as a satisfactory arbiter between the executive 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. Acting as brake on the excesses of either branch, and as 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 protect individual rights against the predictable incursions of the state.

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 constitution is clear that although the power to present a candidate for the Court is vested solely in the President, the Senate also should ensure that the Court can currently 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 strictly technical standpoint those nominees are not making or passing fail a test 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 agreement on the basic qualifications 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 Justices 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. Courts 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 456, 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 constructionists. 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 the fact that we will give any indication on critical philosophical positions claiming it would be inappropriate to do outside the context of the facts of a particular case? While this sounds fine on the surface, this approach gives an incredible 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 be sure that the individual to examine the cumulative impact of our actions on the Court.

Although removed from the political fray, the Supreme Court is obviously not unaffected by politics. Where one party dominates over a period of years, nominations to the Court may 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 intentions, the Court did not move 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 Democratic appointee. Lyndon Johnson was the last Democrat to nominate a Court member 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 for the Supreme Court. As Justice Brennan pointed out, 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 executive branch of Government. The President should be given wide latitude in selecting 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 executive 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 political philosophy of the sitting Justices and their years of service are relevant considerations.
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 70s. 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 excursions 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 Supreme Court decisions. Below are but a few examples.

In this case the slim conservative majority interpreted the Age Discrimination in Employment Act (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 initially tried 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.

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 prevent the misinterpretation of the Supreme Court. The Older Workers Benefits Protection Act sends a message of approval to employers who wish to provide older workers with a fully protected retirement option.

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 jurist 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 experience of Judge Bork, Justice Kennedy, or Justice Souter suggest that future candidates will adopt anything but an adversarial, obstructionist stance in their confirmation strategy? I doubt it.

The real work of becoming a bona fide candidate for the Supreme Court

The President 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 another conservative vote on the Court. But in my background, 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 Bork when the only Justice to have occurred since I came to the Senate, and which the Senate as a whole has not applied to any recent candidate.

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The real work of becoming a bona fide candidate for the Supreme Court
should be completed 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 the capital and national performance in other capacities. What were the public deeds and accomplishments of the nominee? How did he or she comport himself or herself in carrying out their public obligations? This is the customary type of yardstick used to determine 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 contempt of court for substituting his own views of the law for those of the court. At the EEOC, where he served in a quasi-judicial role, he made one statement that cannot 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 humble beginnings, poor and black in poor and black in his life, have inspired many. His harshest critics seem dependent on the issue itself, not some standard of judicial rectitude. I will state that it was absolutely clear yesterday, I think we should have insisted on hearing prior to the confirmation table. And yet, I demand a correction or an apology from any colegue who has accused me of violating the trust of Ms. Hill, or the trust of this institution.

The proper forum for this issue was with the Senate Judiciary Committee or the Senate procedures, and I, too, regret that this has spilled out in public. But I demand a correction or an apology from any colleague who has accused me of violating the trust of Ms. Hill, or the trust of this institution.

Mr. METZENBAUM. Mr. President, on my colleague's behalf—what I was trying to do was to engage in scholarly pursuit.

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 decisions. 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 judicial 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 will 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 us to turn our attention to the future of the Supreme Court's role and the force of this Court 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 base our function 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. MT. Before I leave my colleague's behalf—what I was trying to do was to engage in scholarly pursuits.

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' record 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.

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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 issue, essentially blind to the revelations 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 a woman judge. Her two female 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. If we are serious about the integrity of this Senate, we should ask her to testify 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 clause 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 years—and there are many others that I could mention—were bold, courageous, and even visionary. Not all of them were popular 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 resignation means that the Court will be even less responsive to the concerns of minorities, woman, 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 country. Blacks, Hispanics, women, senior citizens, and poor people never had to wonder whether the Supreme Court had their backs 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 vacancy of the Reagan-Bush era. The President 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 advisors 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.

The 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 their judicial appointments to advance their political and social 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 choose 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 some established constitutional liberties are now ripe for reconsideration, thereby inviting—open defiance of our predecessors."

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 Chairmain, thousands of older workers lost their jobs. Judge Thomas in 1986 dismissed a lawsuit brought by elderly workers in Federal 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 cold shoulder from the EEOC. Blacks, Hispanics, and women were hurt by his unrelenting hostility toward effective civil 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 Legal 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 in order to give them the opportunity 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 claims that he is a conservative who would bring a different perspective to the Supreme Court. His speeches and writings on natural law and economic issues demonstrate that, quite frankly, Presidents Reagan and Bush have made no bones about using the Supreme Court to advance their political and social agenda.

A judicial nominee cannot become a member of the High Court simply because the President and his advisors are comfortable with that nominee's views and judicial philosophy. The Supreme Court is not an extension of the Presidency.
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 summarized 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 1986 speech, Judge Thomas severely criticized the Supreme Court's 7-1 decision in Morrison versus Olson, a case which held that the special prosecutor law passed by Congress did not violate the Constitution's separation of powers clause. The law was devised 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 "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 own views about the most important court cases in the last 20 years, he did not include 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 avoid 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 him with an ideologically conservative mindset rather than with the even-tempered and balanced judicialness 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 extreme Left." 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 democracy 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 "the American dream [increasingly are] being used by demagogos 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 communist Russia much more than it does the democratic constitutionalism of the Founding Fathers." There are a significant number of other statements made by Judge Thomas which undoubtedly delighted a conservative audience that they should support a woman's right to choose. But Judge Thomas' explanation of these statements provided little reassurance. When he was asked about his willingness to be candid with the Judiciary Committee that he actually rejected David Souter or Anthony Kennedy, Judge Thomas stated that he praised the Lehrman article entitled "The Decline of the Right to Life." The Lehrman article argued that Roe versus Wade was unconstitutional 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 conservative audience that they should not be fearful about using natural law.

In conclusion, 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, then how certain are we that Judge Thomas was not disavowing the article in order to please the committee?

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 constitutional 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 the committee. A woman’s right to choose is too important to dismiss the fact that he—like other nominees who have gone on to the Court and weakened the right to choose. The report suggested that the Constitution protects a right to privacy without ever formulating an opinion regarding Roe versus Wedge, 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’ 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 absence 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.

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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 posed 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 basic 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 have been discussed at length. In the 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 Senate will have failed to fulfill its obligation to the American people, who have been denied the right to know the views of an individual who will decide the future of abortion law in this country.

Mr. President, if I had reservations about this nomination, I would have voted for the cloture motion. I would not have engaged in a protracted debate over cloture. I wanted to know the views of the nominee on the issues which will rise before the Court. Judge Thomas has failed to meet that responsibility.

I must vote against the nomination of Clarence Thomas.

I yield the floor.
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 country 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 is before this body, I wish 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 be the one who brings down—a young man, but asked us to discount many of his personal qualities. He lias demonstrated that he has the respect and admiration of his many friends.

Mr. President, we ought to delay this vote. Judge Thomas will not 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 American people will not have justice done on their behalf, if we rush to judgment without taking our responsibility to carefully investigate this matter.

I ask unanimous consent that a complete statement setting forth my concerns and reservations 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—such as oral and written communication—are sufficient to elevate him to the Supreme Court. Let me tell you why.

In sum, Judge Thomas has had a full and fair opportunity to demonstrate to the Committee on the Judiciary and the Senate his qualifications to sit upon the Supreme Court. And, as a result, he failed to win the support of his conservative audience. In fact, Judge Thomas said 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."

In contrast, Justice Souter displayed a limitation of legal knowledge. When asked questions of Roe versus Wade, he said very passionately and with great emotion:

"I believe in preferential treatment. But affirmative action 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. And, so, our job is to educate us. 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 action 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.

Mr. President, 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 in the nominating process of 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 constituents 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 process 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 record, somebody who served for 21 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 make up lies, put fictitious things and running political 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 them. That is not the way our 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 when in the Senate 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? This is what they have to look forward to from 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 objectivity in this body. It is time we got back to the comity I heard about when 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 scour this country 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 is right to choose, I felt that way when President Carter was President of this country. He sent up a panel asking us detailed questions and some integrity.

Mr. HATCH. I am happy to hear that.

Mr. METZENBAUM. 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 what 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.

Mr. METZENBAUM. I want to know what I have not, nor has my staff—and I say that professionally—what is going on, how we have set ourselves up as judges of all this 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 them. That is not the way our fellow human beings; savage them; take them apart if you do not like their philosophy.

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 took the lead and 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 can be articulate and we can be on both Republican and Democratic Presidents, I am disturbed at the process 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.

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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 took was the word of 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 be an objective, dispassionate, and professional body.

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 10-day recesses there would 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 issue 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 the nominees in the last decade? If the Court were all 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 instant reaction. I am not the only one who was in town, almost anywhere she wanted. She knew it, and everybody else knew it. And she had a job when she wanted it. And she could have gotten a job almost anywhere she wanted. And she could have a job 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. HATCH. Will the Senator yield for a question?

Mr. KERRY. I will be happy to yield.

Mr. HATCH. 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? Do we not have an obligation 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 those things out, and all 14 members of the committee basically found them out. They have had full access to Judge Thomas.

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 conference and some of the other things that she has said.

Mr. KERRY. Well, I understand that.

Mr. HATCH. Let me finish my remarks. I think the 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 knew it, and everybody else knows it. And she had a job when she wanted it. And she could have gotten a job almost anywhere she wanted. And she could have a job not only here but elsewhere. But she goes to the EEOC with Judge Thomas.

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Mr. KERRY. If I can.

Mr. HATCH. Let me finish my statement that 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 graduate. She did not apply. If she was offended by it, she did not own any time he wanted to point out, not only here but elsewhere. But she goes to the EEOC with Judge Thomas.

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Office 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. His record 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 8 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 came 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 1988, 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 ever alluded to it, much less suggested it was a 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 committee and 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 women 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's whole life. Everybody sat there and watched him in 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 I recalled to myself 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—one of 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 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 come to Tulsa EEOC 727 to speak at an EEOC conference."

October 8, 1986, almost 4 years later, "Please call."

April 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 them is a letter call and ask him to come 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 public complaint at all. Even as a Yale Law School graduate, an attorney, and a woman who has been sexually harassed? And I have anguished, as I have seen these people just torn apart in the public 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 about his son 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 incidents 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 rumors, 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. 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 with the pursuit of 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 look at the floor.

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 Senate, in particular, or the expected actions of somebody who has been accused or has suffered from sexual harassment, I sort of stand here and 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 comments and I will be glad to engage in the dialog.

The PRESIDING OFFICER. (Mr. LEARY.) 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 the national left wing 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 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 those matters, the way you want it. I think the question is, exactly what people are feeling about this woman to be a friend and someone of credibility. I urge the Senate Judiciary Committee to listen to these allegations 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 confirmation hearings. I have seen these tricks 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's 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 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 wondered how her mannerism was something I expressed to Judge Thomas on more than one occasion.

Furthermore, I found her to be very evasive, seeking to delay the expected action of somebody who has been accused or has suffered from sexual harassment, then why did she continue to do that? Does that sound like somebody who has reduced herself to lying.

That is just stuff. I am not prepared to say that. I do not know why she made these allegations. He goes on:

I have to say to the Senate, and waiting until the precise moment to lying. Why did she follow him from the Education Department to the EEOC? Why did she make these allegations. She denied it, if that was a man she should look 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 some 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 to the 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 colleague here who also talks in terms of what went on. It certainly does not confirm Anita Hill's allegations. I have statements that were put in the Record yesterday, including a release by the administration owing on 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 concerned 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 are playing for delay for the sake of delay. 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 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 him well. I do not 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. We want to smears. 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 and we did 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 snap 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 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 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. KERRY. Mr. President, I ask unanimous consent I be able to speak beyond the hour of 12:30.

The PRESIDING OFFICER. Without objection, 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 presentation of the facts. 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 attack on the committee. 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 was able to speak up and say 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 just 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 was able to speak up and say so. She has claimed that she did so out of frustration with her inability to get these facts in front of the committee.

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Now, I have not been here this morning. I just arrived. I
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 minds and do not want to look at the record, come down and cast their vote. They can always cast their vote. But you cannot always 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 entire Senate'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 not having 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 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. We have heard its intensity. 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 confirmation; we will put a stain on the Senate and the nominee, and we will add yet another in an increasing list of actions and inactions of 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 important 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 think 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 the public.

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 return, sit in, and suggest 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 not this incident took place. I do not think it is one of us voting the federal judge 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?

I must say that it is not the accuracy of those accusations that is at issue here, 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 stood up and suggested 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 is at issue. Are we going to listen?

I do not think we can let the Senate be so doctor-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 colleagues whether a few days' delay are too much to ask for a determination of the Senate committee 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's ability to sit, unembarrassed, on the Supreme Court of the United States; and the responsibilities of the position.

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 accusations of liberal versus conservative plots. We do not have to have ameares. We can elevate this thing to a quiet, judicious process, where the committee has that potential, 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 this. There are many, 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 Judiciary Committee have said and 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 away.

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, 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 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 our male interviewer 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 that position to an extreme 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 Senators, an advice and consent 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 regrettable his approach to the confirmation hearings left him saying practically 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 because it was a deliberative body that legislatates 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 American people. The doubts are many. The confidence that no one knows what the real Clarence Thomas is, has become a travesty to start now and start the fast-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 make a decision and stand for this, 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 criticizes 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 39 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; now I want that 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 contact 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. EDEN, 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 begins with the contents 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.

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 of operations in 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 allegations.

"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 no way to go with it unless the nominee has an opportunity to respond.

"In the alternative, an individual can ask that her confidentiality be breached, but that she 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, she provided details to her friend, but explained that Thomas had acted inappropriately and that it caused Hill to doubt her own professional judgment.

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 her concerns about 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 concern by asking 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 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 "skep-
tical" about its utility and thought that if she could think of an alternate route, or another 'op-
tion,' she would contact staff."

On September 23, Professor Hill contacted committee staff, stating that she wanted to go to a different route. Committee staff understood Professor Hill's point:

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 stated that she was "not able to give [her] statement 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."

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 a copy of Professor Hill's statement prior to the committee vote.

The process has been 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 rule out confirmation, 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. I think we can continue this process of naivete 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 body 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, 10 years after the facts, they 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 hold 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 the fact that 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 Judge Thomas is 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 vociferously as they have to Judge Bork's nominations, 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 minorities."

In his address to the Pacific Research Institute in 1998, 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 in the Supreme Court was less inclined to stand up against the pack" in the words of Dean Calabresi.

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In a 1997 speech at the CATO Institute, he stated his wholehearted agreement with the statement that:

"We are careening with frightening speed toward a superstatist, dictatorial system and away from a nation in which individual liberty is sacred."

In a 1968 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 in the American constitution. They have been surrounded 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, the 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 upstanding, upright and judicious person we saw at the confirmation hearing or the immoderate ideology of the eighties.

Finally, I will vote "no" 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 scientifically 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 concern for the people he has had in SBY more DAVIS. It is my greatest hope that, if confirmed, he will dispel the doubts and prove the doubters and live up to the high expectations that so many have for him.

I thank the Chair and 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; 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 document.

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. I do not 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 system that deals with 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 any judicial deadline. Rather, it was an agreement reached by the Members so that we could phase 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 1:33 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 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 President, 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 indigotable, 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 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 between the Government and the individual, 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, indeed almost radical views, which, if implemented in the Supreme Court's decisions, would, in my view, mark a significant transformation of the institution that is the arbiter of power in 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 46 years ago in one way or another. These are the speeches and writings in the mid- and late-1980's when he was holding important official positions and laying out these views which are of such deep concern.

That concern is not allayed but in fact reinforced 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 make a good Supreme Court official. The Supreme Court, 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. His 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 and 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 that should be decided today is 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, 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 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 is. It is not sufficient for Senator Hill, to Judge Thomas, to this institution and, more importantly, to the American people. I yield the floor.

Mr. SASSER addressed the Chair.
Yet, over time, there is progress, as the review the President's nominees to the each generation has had its blind spots. is governed by laws and not individ-uated a paradox in the Supreme Court. The Constitution places a great responsibility on the Senate to assure the independence 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 those confirmation process and be-cause of the airing of the charges that were made over the weekend. I under-stand that. But that has to be bal-anced, Mr. President, against the pain that would be caused by cavalierly dis-missing 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, selfpossessed, 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 col leagues, both Democrat and Republi cans who have announced their deci-sions 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 harass-ment, 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 opportu-nity to vote against 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 a cliff—by the time of next week, 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.

The Senate now stands on the verge of a decision that will shape history for this generation and certainly for our entires 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 superv-isor at both the Equal Employment Opportunity Commission and the Depart-ment of Education represented sexual harassment deserve our most seri-ous attention. Too many Senators have chosen to ignore, or to re-view 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 Thom-"
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 must remember, 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 it should, if we men and women had set about to do the job right this time, 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, then the charge is against 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.

With this in mind, our Chamber can view 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 as a huge 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 or not Judge Thomas is, in fact, innocent of these charges. It is certainly 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 consider and challenge. 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 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 precipitously to obey the procedural mandate of the unanimous-consent request, as honored as those consent requests always are. I simply do not believe that it will take precedent 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' record, 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 I have not reviewed the record here in this body of work. Not because I have not reviewed Professor Hill, but because of the record already ready 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, choices made on such a basis have had a way of backfiring. Instead, I have reviewed 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' judicial philosophy to determine whether it was the servant or the master of the Constitution. I have questioned whether his philosophy will stifle the expression of character and 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.

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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.

When the Supreme Court held in a 7-

I agree that a nominee should not have to comment on cases that are, or could 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. Unfor-

The most troubling aspect of Judge Thomas is that he has not shown a
career opportunities. Specifically, he
carried on, those he
care to public service as Clarence

career, and he has referred to Mar-

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 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 was able to testify at the Senate hearings. His greatest 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' 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 harshly 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, Roe versus Wade.

I find it instructive to consider for a moment who Thurgood Marshall was when he was nominated to the Court. He had appealed to the 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 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,
October 8, 1991

CONGRESSIONAL RECORD—SENATE

25887

coupled with the doubts and moderations expressed before the Senate, dem-

onstrate 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 Su-

preme Court Justice should have a well-considered, well-reasoned and fair juridical 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. 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 di-

vide this Chamber.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Sena-

tor 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 ac-

quired himself or herself in a fairly convincing way, the nominee should be rejected. Senators should feel comfort-

ably certain that a nominee is well quali-

fied, 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 advice and consent role is an ex-

tremely 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 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 hesitancy in defending an aye vote to his nomination, and that mentality proved to be a disaster for the Nation. I voted for Justices Scalia and Ken-

nedy, though their political and social

philosophies were different from mine. But both Scalia and Kennedy had long, distinguished careers as legal scholars, prosecutors, judges, and justices. 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 percent of Pres-

idential nominees are ever confirmed, 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 govern-

ment. 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 Su-

preme Court by increasing its member-

ship to 15 in order to get his legislation declared constitutional. His policies, even in hindsight were imminently cor-

rect, but his means were grossly wrong and Congress correctly repudiated the attempt.

This brings me to a few thoughts about Judge Thomas, his reputation as a lawyer, as a jurist, and his answers to questions by Judiciary Committee mem-

bers.

Judge Thomas graduated from law school in 1974. 17 years ago. Since that time, Judge Thomas has spent a total of 4 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 advoca-

te 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 lack-

ing any extensive practical experience, I am puzzled by how he came to be cho-

sen.

Then there are the unbelievable con-

tradictions 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 in fields 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 Lehman, a former candidate for Judge, as a recognition for his Lehman's application of natural law to the legality of abortion.

Lehman had concluded not only that the Constitution did not permit abortion but that abortion was abso-

lutely prohibited under any circum-

stances. Not prohibited by words in the Constitution but by natural law or higher law. This would mean that if Roe versus Wade were to 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 ver-

sus Wade is going to be reversed, and the President has the right to appoint persons who agree with his stated posi-

tion to do that, but surely that deci-

sion should be dealt with in the con-

text of the Constitution, and not some arcane principle of natural law, pre-

sumably 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 de-

pending 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 particu-

lar partisan or philosophical goal could be reached with decisions based not on the Constitution, but on five persons' arcane philosophy of natural law.

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 dem-

onstrate a remarkable lack of curiosity that in and of itself be disqualifying.

Senator SIMON carefully cataloged a host of other contradictions yesterday between what Judge Thomas had pre-

viously written and said, and what he testified to before the committee regard-

ing Justice Holmes, the natural law, the Lehman essay, and many others. He showed the inability 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 positions that was disquieting. It has become common for nominees to say as little as pos-

sible, and agree to nothing. These care-

fully rehearsed appearances at con-

firmation hearings have effectively al-

tered two centuries of precedents that compelled to vote against him. The bur-

den 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 refuses to answer questions with anything, and wouldn't tell you if he did.

My conclusion is that Judge Thomas should not be confirmed is based on his theory of natural law, his contradic-
 Before the rather sensational allegations were not to support Judge Thomas was made. I don't understand why President Bush nominated Judge Thomas because considering how sophisticated 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.

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concluded 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 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, he has had 5 days of testimony. In those 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 proved 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 which they seek to impose through the courts since the American people, through the Congress and through the President, will not accept it.

I hope that this approach will not work. Their delay, and now this mudslinging, 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.

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 through 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-mindedness on the part of the judges. We owe the nominees 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 his 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 special-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 recent confirmation of Justice Thomas, 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 pretense, the opposition to Judge Thomas is based solely on ideology. And by relying on 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 before he was appointed to the D.C. Circuit, 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 opportunism and political agendas of the special interest groups. Judge Thomas has survived this ordeal. In doing so, his early comments that Congress shows little deliberation, and even less wisdom, that it puts forward 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 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.

But I suspect 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, which 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 which 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 to justify 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 to have continuity 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 I would vote against the nomination of Judge Thomas because he 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 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 observe his demeanor when he is specifically confronted with these allegations.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELSTONE. 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 basis point I made then was that when I went back and reviewed the decisions 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 branch of Government has just tremendously important 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 protection.

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 decision.

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 this Chamber and others 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, that it is a very 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 that 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 confirmation under such cloudy circumstances. But, I say to all of us as a body of people that 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 has clearly 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 do 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.

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: Sometimes early this month, promptly by apparently repeated inquiries from Senate staff, Miss Anita Hill made a written statement making certain alle-
October 8, 1991

CONGRESSIONAL RECORD—SENATE 25891

Legations about Judge Clarence Thomas. Those allegations were subsequently investigated by the Federal Bureau of Investigation.

The investigative report was then delivered to the chairman and to the ranking member of the Judiciary Committee. They, in turn, briefed the majority leader of the Senate. Senator DODEN 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 from the briefings that any 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 contents, it would appear, of an FBI report. That was done the weekend before today's scheduled vote on the Thomas nomination.

I believe that 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 result of a FBI report? If we look at the laws of the American Bar Association convention in August, and at the text that was written.

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 Judiciary 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?

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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. I say Mr. President, delay 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, who would vote 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. MSTRZENBAUM] 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 name comes up 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 they might support or would support 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. 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 in the media, but he was acquitted. That was the American way. Miss 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 ask: what else can this man do other than give us an affidavit? What else can he do? 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 balance, 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, one of the most important, another serious allegation—he shotted 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, 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 know what some of the others 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, distributed, 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 second thoughts but some late reservations, maybe Senator 

DANFORTH, I yield the floor.

Mr. President, I yield the floor.

Mr. SIMON. I yield the floor.

Mr. President, I yield the floor.

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 pieces 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 credit the demands of Judge Thomas' opponents to the 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 as and give an affidavit.

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 23.

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 opportunity to 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 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 want to prevent 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 almost 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 should be given the opportunity to respond to 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 which 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-consent request to hold the 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 at 6 o'clock, and who might change their mind at 7 or 8 or 9.

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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 Professor Hill, and then, you know what, Professor Hill's statements, as, 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'clock 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 to publish his views. Professor Hill has indicated 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 announced 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 conducted by 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 that position.

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 matter. 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 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 acting on this nomination is an unfaithful lute 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 our very best to determine as accurately as possible the truth of this charge.

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 from the Full Committee, that 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 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 Senate'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 to me, Mr. President, that they do not mean by which the Senate can at least see what the Senate thinks the truth is before every Senator casts his or her honest vote predicated upon her or his honest judgment?

Why, the people reject that out of hand, Mr. President. They have a right to expect that the Senate vote here and now on this very important matter that the probabilities are high, may I say to the minority leader and those on that side, that justice 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 we have the right to know the truth. What a cloud this man would be under were we to vote tonight.

I conclude, Mr. President, by saying that we owe it to the Justice who is before us for confirmation, and we owe it to the country, and we owe it to our individual conscience to know, as best we can, the truth. 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
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 my colleagues, 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 rational 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 that a formal request for a 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 powers, 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 point. In my judgment, Judge Thomas has an impressive record of personal achievement. In my conversations 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? Would 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 most 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 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 believes that he was “well qualified” for his 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 in the public’s eyes.

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 church and state. 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 whether 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 display the level 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.

If confirmed by this body in the past, he should pass muster this time as well. This reasoning is flawed. This is not the Senate, and 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 serve there for 30 years, 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 unwashed haste will tarnish the Senate for years to come. Any vote on the merits of this nomination today would be painfully premature, a question of whether the Senate train will run off the track, but whether we can stop the Senate train from running off the track.

No person who fails 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 stereotyping of women and what we can see at a glance that his record 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 for 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 to us all. The Senate cannot sweep it under the rug, or pretend that it is not staring us in the face.

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
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 the 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 DISTINGUISHED GUESTS**

**Mr. SIMPSON.** Let me interrupt, if I may, for a moment, but 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 leaders of this caliber who truly are able graduate of Yale Law School. However, ellas 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 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 exactly what occurred, a leak and a violation of Senate rule 28.6, adopted in 1894—a violation that rules committee discussed this matter this morning ended up in the hands of the media. And one member of that group, perhaps two, decided that they would go public with it.

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 an unfortunate assumption 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 an extra statement, wholly without foundation.

Prof. Anita Hill came 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, 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.

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The investigation was guided by Professor Hill's re-

First, in conversations with full committee staff, Professor Hill has never waived her confidentiality—except to the extent that, on September 19, she stated that she wanted an investigation, and to have her name released to the FBI for further investigation, because she was “skep-
tical,” about its utility, but that if she could think of an alternate route, or another “op-
tunity to respond—through a formal inter-
view.” She stated that:

(1) If an individual seeks confidentiality, such a request for confidentiality will not be breached. Even the nominee, under these circum-
stances, will not be aware of the allegation.

(2) In the alternative, an individual can ask that an allegation be kept confidential, but can agree to allow the nominee an opportu-

ity to respond—through a formal inter-
view.

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 the committee to “recast in-"
statement would be "distributed" or communicated by oral briefing. Otherwise, however, committee staff assured Professor Hill that her concerns would be shared with committee members. She concluded her conversation by stating 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."

One 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. The FBI had requested her consent 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 in 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 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 fashion 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 had done. She will be injured and destroyed and belittled and hounded and harassed—real harassment, different from the sexual kind, just plain old Washington-vary 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 conference report divides the disagreement 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 increase the foreign assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms 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 the following report. I only learned of this slight of hand the day the conference report was filed. I understand other conferences were also unaware of this action until after the fact.

Restrictions on foreign military financing (FMF) are objectionable to the administration. The administration contends 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 $4.4 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 would be maintained, 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 leaked in their hands said, "maybe you will want to say something and follow it up, because if you do not have anything, you won't 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 against any 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.
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. McCONEEL], 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 concerning 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 the United States should be able to help 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.

For this reason, 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 dictators. 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 pro-growth 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:

(Readcall Vote No. 219 Leg.)

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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.

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 extremists in Lebanon, nor did it give a date for a release.

The paper, which often reflects the positions of President Hashemi Rafsanjani of Iran, added that it 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.

He refused to comment on his mission, but officials at United Nations headquarters in New York said Mr. Picco was trying to further negotiations in hostage negotiations, Giandomenico Picco, arrived in Cyprus on his way to Damascus, Syria.

Mr. Picco, an interview with one of the paper's Lebanese correspondents, said a fundamentalist Shiite Muslim group, the Party of God, was pushing for a release on humanitarian grounds, 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 its 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, he newspaper's editor elaborated.

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 condition that 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 long-time 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 children, school lunch is 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 Shawnee Mission Schools in Topeka, Kansas, parents and students receive information on the nutritious 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 hearings. There, the Senate learned that 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.

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, however, is that 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 should 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 not, the result 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...
CONGRESSIONAL RECORD—SENATE

October 15, 1991

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.

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 rises to 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. 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 the nomination—assuming that—Judge Thomas will have the floor today and in this environment.

So I hope as we discuss this issue we will have the intellectual integrity to speak to the issue at hand, and that is: First, 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 do not 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 where, as an element of the Judiciary Committee, proceeded to deal with the Hill charges in private, that would be appropriate, but not 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, in the context of the judicial 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 the strong constitutional argument that would suggest that if press is allowed in to transcribe, why should press not be allowed in to televis—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 cameras broadcast 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, cameras, and microphones, of a 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 wrongdoing, 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 indictment, 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 indictment, until they are proven guilty. All the indictment says is that you must come to court to 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, no accused, no one 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 unbecoming 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 all the history books, 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 this man. If the character impacts upon the ability of that person to perform his duties, which sexual harassment is, 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 simply 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 these are all incredibly difficult jobs that I know I am 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 accustumy by nature. But the job is to try to see to it that justice is done within my lifetime. Fairness in the context of klieg lights, because it is a truism that any controversy will have been damaged, be ruined, 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 and to work. That is my responsibility. 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 listen to all of the testimonies 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 was extremely firm in 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. But he need not prove his innocence. Both of us, as two colleagues in the Senate, find the situation continued 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, that he had repeated 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 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 diligently. And I find it 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people. The 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 that has report to the American people.
meritorious—sex harassment is a seri-
ous charge and there are remedies for
it. It is offensive, intolerable conduct
which requires immediate corrective
action. Under title VII, a Federal em-
ployee 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, I believe a 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 perspec-
tive 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, establish-
ment law firms, and moving up on the
political ladder. But as I considered all of
the testimony—it was extremely offen-
sive and difficult for me to consider—
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 hear-
ing than before.

For example, why did she follow
Judge Thomas from the Department of
Education to the EEOC if he had har-
assed her in the horribly offensive fash-
ion that she claims? And, why did she
not even explore her options for re-
main at the Department of Edu-
cation? 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 rela-
tionship with a man she says tor-
mented 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
class of harassment by her boss. There were no details, no spec-
ifics.

Second was the harassment Professor
Hill told Senate staffers when she re-
quested confidentiality and to the FBI
when she decided she wanted the Sen-
atge to know. She wanted to be close friends, and one asserting a
close professional relationship, were
told by Professor Hill of the ordeal she
experienced. And, Mr. President, we
heard no graphic details from them on Sunday that she told us on
Friday. These people had no specifics
from Professor Hill. They had no first-
hand knowledge of Professor Hill's
claims. And even more significantly,
they offered no advice to their friend
Anita, why did he not see this as a
testimony of her pain and comfort?

But, Mr. President, these were four
highly intelligent, well educated law-
yers, like Professor Hill herself. And
they could think of nothing to say to
to help her remedy this horrible
situation. What does it say about a sys-

tem if it could not recommend she pursue legal remedies
against her harasser? I was particu-
larly struck by Professor Paul, whom
Professor Hill told—in 1987—she left
the EEOC because he was sexually
harassed by a supervisor. Professor
Paul did not have the courage 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 Thom-
as, 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 Clar-
ence Thomas' name to Professor Paul.
Once again, a nonspecific charge with
no one to back him up, unless Judge
Thomas himself went out of his way to tell us he was not opposed to Clarence Thomas's
nomination.

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 char-
acter 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 possi-

lity that Judge Thomas would with-
draw 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
out of the process—ideological differ-
ences on issues from affirmative action to abortion, one's Washing-
ton 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 con-
fidence before the committee she could
make a difference and derail this nomi-

nation. We have some overzealous Sen-
ate staff to thank for planting that
seed in her mind.

Contrast those inconsistencies and
open questions with the unshakable
testimony we had from Clarence Thom-
as, and his former colleagues and
friends. He categorically denied each of
those charges. He never wavered from the
testimony he 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 integ-

rity. He came only to clear his name,
something he said was virtually impos-
tible 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 state-
ments in the record. But these women
would not hear of it. No matter what
the hour, they wanted to appear in per-
son. 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
keeps going on to the last minute, 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 he 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
find so objectionable about Clarence
Thomas? That he dares to challenge the
status quo, and those who oppose him
may lie, cheat, and steal to keep him
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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 oracle—having his name dragged through the mud, his reputation a mess 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 from Delaware, Mr. Byrd, is recognized for as much time as he may consume.

Mr. BYRD. Mr. President, today I rise to indicate my views 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 Judge 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 do not think the Court should attempt to 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 here know, I voted for all conservative nominees.

The committee's work.

In January we participated in the most serious and weighty matter that we as Senators can face, that was 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 President pro tempore, Senator BYRD, is recognized for as much time as he may consume.

Mr. BIDEN. Mr. President, I yield as much time as the Senator from West Virginia [Mr. BYRD] needs.
the Hill who have little or no record at all. Witness Justice David Souter, for whom I voted, and 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—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 this 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 is an innate dignity in each person because of his or her humanity—God-given and antecedent to government’s existence, and not dependent on government’s bestowed.

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 this 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 is an innate dignity in each person because of his or her humanity—God-given and antecedent to government’s existence, and not dependent on government’s bestowed.

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 is based 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, and I 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 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 listen to his experience on the bench, and I believe that 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 by Judge Thomas on my desk, prepared to state today that I was going to vote for Judge Thomas to be an Associate Justice of the Supreme Court.

Mr. President, I watched the hearings at home on my television set. I know what a difference it makes to have a television set, and I have previously said that if we want to improve the education of our young people, we should throw out the television set, 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, and I sat there glued to that television set all day evening, after working in the Appropriations conferences for 2 days.

I taped the testimony of Anita Hill, and 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 Court.

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 believes 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 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 of the Supreme Court.

Mr. President, I watched the hearings at home on my television set. I know what a difference it makes to have a television set, and I have previously said that if we want to improve the education of our young people, we should throw out the television set, 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, and I sat there glued to that television set all day evening, 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 saw their appearances and I 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 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, have been listening about the polling 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 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.

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.

But it does appear that Judge Thomas does not outright reject 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.

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 a better grasp of key Court decisions. I would have preferred a nominee with a better grasp of key Court decisions. I would have preferred a legal experience, legal practice, longer ten-
ment?" One can understand that at the
say, "i have never used poor judg-
ings, and corroborated the fact that
whom had talked about this sev-
eral years ago.

those same persons came forward later in the
Russell Building that day and at that
time. She explained that she had spo-
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 ex-
plained that she had spo-

There have been theories about a
conspiracy, special interest groups got
to her, or she invented this, just some-
thing that she made up. A woman
spurned, a woman scorned. I do not be-
lieve 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
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
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 to say that 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 could the committee do 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. I now have confidence if he was 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 a "high-tech lynching 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 emblazoned with the leak, and he was justified to some state. But, instead, he indicted the whole committee, he indicted the Senate.

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 Senator Bradley, 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 better at the person or persons who leaked whatever it was that he could not make 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.

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 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 duty to the American public, to the process. To the American public, to the process. 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, I can't prove it. But it is one thing. But I have doubts that if Senators did it. I have doubts that it did, or that is, or that 13, 12, or 10, or 8, 6, 4, 3, 2 did. But to condemn and to repudiate and to exorcize the committee, the Senate, and the process went too far.

Leaks are deplorable. They are reprehensible, and I know what we 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 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 we are appointing this man. 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, and 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 shouldn't the committee members be intimidated by that person? If I had presided over the committee, 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 have to help him, the matter of race was not 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. I don't have to think about it. 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 prejudices.

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, 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 court 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. The United States Supreme Court is a Court 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 decision will affect millions of Americans, black, white, minorities, who 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. There is no property 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 to forestall, to mandate 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 country.”

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. 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.

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 lose 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 again 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 there does not clear Judge Thomas’ name.

This is the excellent folly 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 the process on the point that 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 forgiving 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 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 and how I went from supporting Judge Thomas to 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 here. But this 'process' 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 I

[From the Washington Post, Oct. 15, 1991]

THE THOMAS NOMINATION

One over the weekend 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 candidacy were just beginning. And it would 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 reconned to resolve; namely, whether Judge Thomas or Prof. Anita Hill, the woman who 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 are we. 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 not be dispelled. There is some merit to this position: it protects against the worst outcome (Judge Thomas's being confirmed). But he could not conclusively establish the validity of her charges; he could not conclusively disprove them. And there are we. The Senate is scheduled to vote today.

The vote will be in the Record to show the reasons why and how I went from supporting Judge Thomas to 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 here. But this 'process' 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.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

[From the Washington Post, Oct. 15, 1991]

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 believe that it is my country that will be hurt if he is not confirmed. We have labored in this Committee to arrive at a decision which is of enormous importance to 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 heard many people, many women, particularly opposed to him on grounds of philosophy and many you have made 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 raise about Professor Hill's medical records, for example; as to whether they might show some information or raise.

And there is much that, regrettably, we could not do within the timeframe. We have put in long hours trying to come to a conclusion on this very, very complex matter.

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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 raise about Professor Hill's medical records, for example; as to whether they might show some information or raise.
October 15, 1991

CONGRESSIONAL RECORD—SENATE

26283

criminal, 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 assump-

sion, 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 had to find another 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 seri-

ous 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 con-

fronted 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’s secretary said five or six calls. That is the only witness who was present when the calls were made, and there was an enormous number of calls, but it is some signifi-
cant 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 cir-
cumstance. 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 operated within the time constraint. We heard testimony that it is to be expected that there 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 recom-

mendation. One witness, I think, said she had tied her star to him.

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 decision 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 over-
tone of discouraging women from as-

serting their rights by a group of 14 men who are really understand all these ramifications.

But we searched very hard through this record in an effort to treat Profes-
sor Hill in a very polite and profes-

sional way. But it was necessary to ask questions and it was necessary to ask precise and pointed questions.

There was one exchange, Mr. Presi-
dent, 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 seri-

ous charges, that Judge Thomas would withdraw, and it would not be neces-

sary for these very elaborate pro-

ceedings to be undertaken.

When I questioned Professor Hill about that, she denied that there was ever any such conversation in an ex-

tended morning question and answer session. Then in the afternoon, Profes-
sor 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 was known that she could have stayed on.

Overnight the transcript was pre-
pared, and the next day I read the tran-
script and came to the conclusion that

her change in testimony was an inten-
tional 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 credibil-

ity, whether Judge Thomas was correct or whether Professor Hill was correct. I hope that 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 mate-

rial 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 instru-

ment that ‘quietly’ and behind the scenes’ would force him to withdraw his name."

Was USA Today correct on that, attribu-
ting it to a man named Keith Hender-

son, a 10-year friend of Hill and former Sen-

ate Judiciary Committee staffers?

Ms. HILL. I do not recall. I guess—did I say that, Mr. President, 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 staffers, says Hill was advised by Senate staffers that her charge would be kept secret and how he would withdraw and how he would turn this into a big story, Henderson says."

Did anybody ever tell you that, by provid-

ing 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 press or using, this to press anyone.

Senator SPECTER. Do you recall any-thing 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 that he would withdraw.

Senator SPECTER. But was there any sug-gestion, however slight, that the statement with these serious charges would result in a withdraw 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 sub-

ject—about the initiation of this entire mat-
ter 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 any-
thing said to you by the Senate staffers that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instru-

ment that ‘quietly’ and behind the scenes’ would force him to withdraw his name."

I don’t recall anything being said about that.
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 phrases that Mr. Specter, well, said from "quietly and behind the scenes" pressing him to withdraw. So I am going to say that those were 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.

Senator Specter. Well, you started to say, that there might have been some conversation, anything?

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 Mr. Brudney, and I guess I talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking to go to the FBI and getting more information.

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 as I understand it, 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 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 had 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 USA Today report, would be the instrument that would force him to withdraw his name. Now I am not asking you whether it happened. I am asking you now, 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.

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.

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 go back 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, 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 few, for five minutes. You know, my memory is very dramatic and important. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that that would not occur, that it would 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 as I understand it, 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 minute would be—well, let me ask it to you this way.

Ms. Hill. OK.

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Ms. Hill. OK. Thank you.

Senator Specter. Yes, thank you, Mr. Chairman.
Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witnesses 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 the Senate that Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation solicited by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation—

Senator THURMOND. Speak into the microphone, please.

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 that might come in, 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.

Mr. 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. What was one of the possibilities that it would not get to this point?

Senator SPECTER. Professor Hill, 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 hearing"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control the 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: "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 pressuring, using this to pressure 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, 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: Have you ever said 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 staffs 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 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 wouldn't be 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 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."

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' pressuring him to withdraw."

My question: "Well, aside from 'quietly and behind the scenes' pressuring 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 then 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 these conversations."

"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 the 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 respectful of your identity to be known or not necessary for your identity to be known or for you to come forward under circumstances like these?"

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 that conversation. 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 the 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. A mere allegation and pressure 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’; you have not told me 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 resign.’ 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.

But 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, it led to your coming forward that morning?”

“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 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. What it might be that could occur to 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 with the committee.

“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.’

“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, but we have a number of factors that are really hard to evaluate, but some fair indicators of credibility.

“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 asked 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, let me address 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 Kote 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 change his 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 8 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. Let me just say that 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

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 matter was ordered to be printed in the RECORD, as follows:


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 has shed harsh light on the savagery of this era's political battles.

Beyond the passions of the moment lies a constitutional cardinal principle of our system of government, that mavel 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, it was a situation that had ended.

But our political parties have very different policy agendas over control of the Supreme Court. The two opposite parties must be expected to joust over control, spelling out in their platforms the position of the party that the Senate, said Simon, should insist on a "balance" in appointments in order to preserve "the stability of the law."

Are there any ways 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 nominees 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 political 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—ground for their battles.

Enter, first, Chief Justice William Rehnquist, conservative stalwart. Back in 1959, as a lawyer in private practice, Rehnquist wrote in a column in the Washington Post 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, said Rehnquist, should consider views, much as the voters do with regard to candidates for the presidency or the U.S. Senate."

Then, 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 selected justices from 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 who meet those standards, they should say so.

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 look for the dirt, 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, That 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, 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 the prospects of one 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 a moment the balance may have been right, 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 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 anyone would say you were required 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 lying or not 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 this Senate, 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 when 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 right-wing activists.

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 week.

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...
October 15, 1991
CONGRESSIONAL RECORD—SENATE 26289

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.

Over and over, 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. They called 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 use 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 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 going to retreat to the obsolete 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?

Is every American woman in the future going to be treated as if her testimony is irrelevant? Will there be endless grilling of one witness after another?

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 re-tell—only an unsubstantiated guess that someone who suggests that 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 most distressing aspect of the hearings was that Anita Hill is what every woman 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, many of 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." The calculations 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 that may place 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. An individual who has been offended will be a chilling one—suffer in silence or pay a terrible price.

Anita Hill is fantasizing these charges or is mentally unbalanced—and shame on anyone desperate enough to suggest that she is. 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 anguish that she was forced to endure 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 today.

I wonder, in this day and age, whether we 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 work out a fair and balanced vote on the Thomas nomination. Senators have 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 at Harvard. All America. 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 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 Supreme Court who is not under the cloud of another nominee for the Supreme Court.

The Bush administration is urging the Senate to give the benefit of the doubt to the nominee. If this were a normal 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 Supreme Court and the Constitution, not to the American people. The risk of being wrong is too great. Judge Thomas will continue to be a judge, but he should not now be named 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 in record 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. I 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 wishy-washy 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 matter 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 it up 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. What did you say?

Ms. Hill. Well, I am not sure that that is entirely what he said. I think what he was saying, depending on an investigation, a Senator, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process.

Senator Specter. Did you say to Mr. Brudney 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 what 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 would cause the nominee to withdraw.

Senator Specter. Well, what more could you do than make allegations as to what you actually observed?

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 this morning, and what you said earlier on October 15, 1991.
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 the information as such, but about the general idea of speculating that simply alleging this would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns out to be no, and you say that it would not have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward Judge Thomas might withdraw, then 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?

Ms. HILL. 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, Senator Kennedy, let me have your questions.

Ms. HILL. My interpretation.

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL. I believe 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 find out what the information would be used for, 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. Mr. Chairman, 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. 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.


WHITE HOUSE ROLE IN THOMAS DEFENSE

(Washington, October 13—The fierce Republican counterattack on Anita F. Hill's testimony sprang from high-level White House consultations among dispirited officials who concluded that 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 account, 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 loss in time before 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 call apart Professor Hill's case even if this involved 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, the Justice Department, and the Equal Employment Opportunity Commission to amass evidence against Professor Hill with the help of Republican Senate aides.

The vice chairman of the E.E.O.C., Rosalie O. 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 October 11, and the White House legal office had been inundated with letters and phone calls from women saying, alleging that Professor Hill had a flawed character.

"Long Dong Silver"

By Saturday night, the intensity of the Republican attack—coupled with Judge Thomas's accusation that Professor Hill used racist stereotypes against him—seemed to subdue the Democrats on the committee, and initial reviews at the White House were favorable.

"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 reliable reason to change your view," an administration official said today.

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The idea of former prosecutor who said he has to know that nobody can say they committed perjury is really hit a low level.

But if analyzed in legal terms, other aspects of the attack on Professor Hill's character and motivations 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 reliable reason to change your view, an administration official said today.

President Bush's aides were split. But there were also denunciations today of the Republican attack—coupled with Judge Thomas's accusation that Professor Hill used racist stereotypes against him—seemed to subdue the Democrats on the committee, and initial reviews at the White House were favorable.

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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 strategy 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.

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 him that instead of an oration, he deal with the specifics and the evidence. Now it is up to Judge 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 floor, that it is plain that any fair-minded person would say a fair reading of that record was 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 Massachusetts and to others that the way that Professor Hill was treated was shameful; it was shameful. I yield the remainder to my time.

Mr. SIMON. Mr. President, I yield time. One minute to 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 Massachusetts and to others that the way that Professor Hill was treated was shameful; it was shameful. I yield the remainder to my time.

Does the distinguished senior Senator from Massachusetts ask to be recognized?

Mr. SIMON. I yield time. One minute to the Senator from Massachusetts.

Mr. SPECTER. Mr. President, in my belief the evidence, I suggest him that, in second place to no one on that.

The PRESIDENT. Mr. President, I yield time. One minute to the Senator from New Jersey.

Mr. SIMON. Mr. President, I yield 12 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, before the floor of the Senate.

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 Massachusetts and to others that the way that Professor Hill was treated was shameful; it was shameful. I yield the remainder to my time.

The PRESIDENT. The distinguished senior Senator from Massachusetts yields the floor. Who yields time for that purpose?

Mr. SIMON. I yield time. One minute to the Senator from Massachusetts.

Mr. SPECTER. Mr. President, I yield 3 minutes to the distinguished Senator from Pennsylvania.

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October 15, 1991

CONGRESSIONAL RECORD—Senate

26293

ity to equal opportunity for women and minorities will play no role in education or job placements. His tactical use of Clarence Thomas' political philosophy as a means to an end has led to questions about 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 changes 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 make his decisions without 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 solution; that the 10,000 judges 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 President's nominee." 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, the law 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 a chance. 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 function of his reading of the law or his public record, his overall professional experience, or 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 he starred back from the circle 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 courthouse," 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 harshest of the black jaggers felt 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 it would be the best way of working through the consolation of tears." Today, 50 years after Wright penned those words, America can't afford to sentimentalize black life. Significant black contributions to the American community are being devastated and are self-destructing daily. Instead, we must make Wright's "hard and deep" look. To hear Clarence Thomas' personal emotional resurrection 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, a man of the family, a dedicated group of nuns who gave guidance and inspiration, luck (as he says, "someone always came along"), his love for one's job, and some believing attempts by Holy Cross and Yale at specific remedies to discrimination (affirmative action). Clarence Thomas' philosophy of the 1980s 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 love it. Who needs the state at any time in life if all of us can make it on our own? Who needs public health, 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 concept, but it is not 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.

Today, while conservative pretext 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. Given the heightened and proper sensitivity to blackness in the last 25 years in America, the question is Thomas' being that would blossom if he had a lifetime tenure? Would his rigidly, rea-
tionary views, and intolerance be replaced by a more flexible, balanced perspective? 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 about race, gender, and class in general, but this is not what Thomas’ stated positions. But what is the essence of blackness? A common sharing of the experience of oppression? A common network of shared fates and fortunes that 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 assert a right to live free from the tacks, 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 American 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 and a person’s right. Quality and character attach to a person, not to a race.

Clarence Thomas’ paradox is real. The individuality that seems to make him numb to the meaning of shared experience.

Those who call Clarence Thomas the “hope carrier,” who hold him up as a hero in a world of hostile, dangerous racism is the individuality that seems to make him numb to the meaning of shared experience.

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 civility 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 keynoting off-record—although 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 denounced 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. Ne, ne, ne, ne. How can someone in law and character attach to a person, not to a race.

The treatment that the men in the White House delivered to Ms. 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—proves the man did it. What the men in the White House were doing is what 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 understand something was wrong?

The treatment that the men in the White House gave to Professor Hill illustrated 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 conservative views was being accused of sexual harassment, how do it, how can someone else stand up?

Ironically, the man who treated Professor Hill with the greatest respect during the hearings was Clarence Thomas. He was considerate when he spoke of her amidst the anger that he sputed at the committee for his predicament. He refused to offer interpretations of why she had done it. He would have been 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 chose to act 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 for the charges against the nominee. 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, as 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, the moral 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 ———
served 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 Thompson's 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 "Native Son," we 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 the factor in his selection. Maybe he will see that he 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 buttressed by 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 unsubstantiated charges that 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 with great diligence.

We are here today—one long week after 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 to the challenge of the job he was given.

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erogically 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 fact that Judge Thomas is a man of character, courage, and compassion. Even more significantly, prior to this allegation, even those who most bitterly opposed his nomination 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 happened.

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 which was just as compelling. These are women who worked with Judge Thomas and know 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 presented 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 the Department of the Judiciary? Why did she submit 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, a lawyer. She knew quite well there was legal redress available to her if she was being harassed. Especially as an employee of the agency responsible for enforcing civil rights protections, Professor Hill must have been aware of the procedures for bringing such a charge, and for keeping one's job in the process.

Why did she not bring charges against this man if he was harassing her?

After leaveing 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. Doggett'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 for bringing these charges against 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 merely 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 ad hominem 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 personally 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 6 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 Senator from Vermont 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 falsehood, innuendoes, 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.

Professor Hill seemed to have 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 theyrail and harass her for coming forward today.

If anyone needs to know why so many women keep experiences of sexual harassment or rape locked 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 32-year-old woman who was 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 is the only 10 percent of what Anita Hill has said is true, then Clarence Thomas' supporters will use this to challenge his character—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 generations.

Why would Judge Thomas lie? Suppose for the moment that Professor Hill is telling the truth, and it all happened behind closed 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 they misunderstood harmless flirting, or the woman is obviously crazy. Most men caught in sexual harassment do not admit it; they deny it.

So what Shakespeare said about sexual assault 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 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 I do not believe 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; nor for elevation to the Supreme Court; nor for a lifetime appointment which could last into the third decade of the next century; nor 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 as a Supreme Court Justice, he remembers how important the right of privacy is to women in this country.

As system of checks and balances, and all Senators have a chance to exercise their role in that system today. The Senate, 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. Let us not overlook those who are 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 found a telegram and looked over it. 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 Supreme Court to realize that the reputation of the Supreme Court has been diminished because of 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, who are going to to get a 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 a right, and I expect the Democratic party 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.

If the American people don't, 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 is elected and people know 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 election 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 Clarence Thomas to the Supreme Court. I asked for that delay so that the public could consider the veracious 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. And the American public began to be concerned about our filtered 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 ruined 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 victim, 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 hand-picked consultants mask the convictions and obscure the truth. That is important. The Nation is going through a very important teach-in on sexual harassment. That is important. The Nation is going through a very important teach-in on sexual harassment. 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—made 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 advocated 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 certainly 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 who he is. If you do, 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,' is treated as if she were the villain. 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 sexual harassment. I talked with a wife, 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 in those situations 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 they love, to speak out about what it meant to hear their wives and their daughters talk about sexual humiliation and sexual harassment. Even if the women, however they are, to speak out 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 in the local 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 support 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.

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 reasonable people, came across as 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 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 newscast 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, but it has something to do with the process has failed and I am very concerned that the victim who 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."

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No disease on anybody's part that anybody, anybody, has offered one shred of evidence either as it relates to the nominees 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 al is all about is the "lynching of an upstanding 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 stereotypically you. To take an incredibly well-educated black woman and conclude, 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 lynching, 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 the truth is that the truth 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 as it relates to the mental condition 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.

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 the Committee on the Judiciary must make its decision. 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 see the evidence in the hearings. And so I listened very closely yesterday. I listened very closely for Judge Thomas, and made that 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 cannot feel 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, 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 process.

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 the hearings on the Senate floor. More than 99 percent of those called for the nomination were 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 one take a democracy that takes for its purpose what 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 emphasize the 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 harassment 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 against 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.

SUPPORT OF PROFESSOR HILL

A central element of 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 witness whose story that exists must 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 with Judge Thomas, a statement that he should not be confirmed.

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 public service—with the Missouri Attorney General's office, a Senate staffer, with the Department of Education, EEOC, and on the U.S. Circuit Court of Appeals. He has never risen improperly.

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 reconcile 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 consent 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].

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 benefited from these 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 confirms 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 was not. We should make sure that this never happens again. There would be proof 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. That was on 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 evening 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. I speak 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 colleagues, 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 me. 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 are serious, and should be treated with the utmost care and attention. However, the committee’s findings on October 15, 1991
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. 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 unequivalence to the charges. 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 as she remembers it. It is also possible 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, deliberately made the accusation. That is our job. We must establish a standard of proof, some type of standard, 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 life and work. Stories of the way that 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 employees who swore about him.

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 who have the courage to continue to work for the President and for Hill, 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 of the necessity of Professor Hill's delay is that corroborated discussions of this alleged harassment within the last 10 years.

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.

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CONGRESSIONAL RECORD—SENATE

October 15, 1991

trial. It is a basic 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 conclusion. 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 and we would not have just one issue. Is 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 witnesses who proved the amount of misconduct. 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 because 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 clear.

Ms. Berry testified that she knew—she was a friend 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 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 has to be the fact that the doubt has to go in 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 those people for 22 years and not see what we 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 to trial.

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 the victim. If you are not a woman, you cannot fully understand this, you cannot really appreciate it. I agree with Professor Hill that you just cannot reconcile, you cannot reconcile.

The issue here is a power in the workplace, we are told. The issue here is abuse, and the quiet desperation of the victim. 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 victims 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 Act 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 include 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 presentations, according to 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.

Senator BIDEN has 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'll 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 Democratic side, having 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
Mr. SASSER. Mr. President, I thank the distinguished chairman.

Mr. COCHRAN. Mr. President, today I want to take the occasion of the nomination of Judge 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 conducted 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 confirmation will be characterized by fairness to those nominated and to witness 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, people of either sex, from the kind of behavior that will not only be offensive, but which this Nation should handle.

I would have to tell you that I did not, until this morning, have a sexual harassment policy in my office here or in my office in Idaho.

That is now being corrected today. And simply to review 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.

If there were 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 then 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 accuser who has tried to make a case against Judge Clarence Thomas. I am one of those who believe she failed.

I simply do not believe that Anita Hill proved her case against Clarence Thomas. And in this system—although it is not a court of law—our American sense of fair play requires that an accuser has the burden of proving her accusations.

The 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. If the Senate and Senate will do the right thing, I think we will confirm Clarence 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.

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, also, I would also like to join 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 on the committee. In good conscience, I ordered an FBI check—there is 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 had been 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 that report 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, I would have 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 a public hearing. 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 accuser 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 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 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 overlook and we take seriously. And it must be fast tracked. The good things that have 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 grandchildren, and my granddaughters and 12 grandsons. 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 about these matters.

Mr. President, I am extremely concerned about them. And it is good that others are more sensitive. 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 numbers. 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 of his confirmation processes before the Senate, all 5 of them. I presided over one 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 the hearings, and I have seen the 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. I have read 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 the guy who is going to make it very powerful and has a relationship socially with Justice Thomas. It sounds like 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, that were 5, 6, 7 times, not just 11 times, but 5, 6, 7 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 every reason to doubt. I have never seen a person who did not go on and so did the other three witnesses on that panel. They were very powerful witnesses.

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 older 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 when she was on the witness stand, 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, 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, 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?
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 court 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 charges that Professor Hill has leveled against Judge Thomas, but to vilify and denounce what they call “this woman.”

Mr. President, let me make clear 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 actual 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 more disturbing, much more disturbing.

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 said it was 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.

What 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 confirmations and five FBI background investigations. In this context, these charges are understandably suspect. Whatever the actual merits, they
October 15, 1991

CONGRESSIONAL RECORD—SENATE

26309

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, some of my colleagues feel that this time the public must have the opportunity to hear the accusation from Professor Hill or to disbelieve her. This is not a matter of whether Professor Hill was approached and encouraged to come forward or whether she was offered any other deal besides her anonymity. It is, rather, whether her allegations are in any way true.

Second, I find it difficult to begin to contemplate 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 that the new allegations were 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 committee 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 about the motives of those who have come forward, and any theory of 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 was anything but normal. No evidence has been presented 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 that she was harassed, she never agreed to a full-scale investigation of these charges, nor the context of their filing proves or disproves anything. If this is true, I find it difficult to comprehend that the new allegations were intended in the raising of these charges.

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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 some friends who had been 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.

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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 hearings 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 the EEOC's findings, and 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 hopeful that 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. That was understood 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. 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 in favor of Mr. 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 from the 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 we have received in the past week that the process we have witnessed here in Washington has grabbed hold of hearts and minds in every American household—every American workplace.

And, as a Senator from Minnesota, I cannot consider this nomination without understanding 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.

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 constraints and 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. I have received 2,300 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

CONGRESSIONAL RECORD—SENATE October 15, 1991
revolutionary ways, when we share a common experience which changes the way we see things. Guard dogs attacking 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 way we see things. This can 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 still got a long way to go.

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 a genuine leader. The hearing 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 can 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 decades in Judge Thomas' votes and opinions on cases we cannot even imagine at this point in history.

Judge Thomas, with his work, his experience as an 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 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 1960's style informal approach to these matters, and thrust us back into a leadership role. The Committees on Rules and Administration have the authority to address this matter immediately and show us the way. Needless to say, much is at stake.

The vote we all cast in a few minutes is not, however a referendum on sexual harassment. There will be ample opportunity in the very near future of where we stand and what we have learned on that subject. We have work to do right here.

Judge Thomas, if confirmed, would be only the 106th Justice to serve on our Nation's highest Court. 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 and that the Senate's constitutional mandate be respected.

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 flaw 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 qualified to manage the case law, 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 would, in fact, grow into the job. Dean Calabresi expressed a sincere confidence that Judge Thomas would, in fact, grow into the job. Dean Calabresi expressed a sincere confidence that Judge Thomas would, in fact, grow into the job. Dean Calabresi expressed a sincere confidence that Judge Thomas would, in fact, grow into the job.

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 experience 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 televised attention 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 of character could adequately filter 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 passage of time to say that the Constitution and 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 2020. 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 last 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 compelling 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 President Bush's nominations deserve some measure of deference the Senate's constitutionally mandated role of advising 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 the nominations of President Bush's, the past 10 years. I have supported all but one President Reagan's, nominations to the U.S. Supreme Court. Regrettably, Mr. President, in this case, I will not support this nominee.

If I had to paraphrase the remarks that I prepared for this Senator over the past 10 years, I have supported all but one President Reagan's, nominations to the U.S. Supreme Court. Regrettably, Mr. President, in this case, I will not support this nominee.

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October 15, 1991

CONGRESSIONAL RECORD—SENATE

26313

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. He graduated from Yales 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. I think it is 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 overhanded 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 who are forward to express those views or the fact that the universe or the world from which we choose these candidates has such shrunken 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 a vile act involving 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 should be deeply concerned 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 need an outright voice of caution, ifarring 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. I deeply respect the fact that he had the courage to tell me 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 the Senate, 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, devoted to the task of dedicating 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, 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 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 harassment 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 fliced without the tarnished 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 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 he has done nothing to prove him unworthy to serve with the exception of this alleged misconduct.

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 him 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 testified on behalf of Judge Thomas' work 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 cannot be impeached by 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 prove the charge. 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 faith in our Nation'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 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.

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 in mind 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 understand 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 office in favor of Judge Thomas than calls being received in opposition to Judge Thomas. Many feel the leak was inerently unfair and that as a result the charges came 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 concludes 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 puzzled now on all of these subjects, but I regret very much that at one point she was confronted 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 harassment is what goes on inside the mind of a victim, which sometimes leads to a silence about it and an reluctance 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 does 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 closed-ups 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 is a lack of indicia or circumstantial evidence 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 name; she came forward 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 Court in our land. She was determined to undermine 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 psychological 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.

And what 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 charlatan or 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 learn 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 view. 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 hours, 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 colleagues do. 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 extremist in the right wing of his party is saying that it's all personal, it's all political, it's all about the Supreme Court. But President Bush seems determined to overturn Roe versus Wade, one of the most fundamental rights for women, a right to control one's own body, a right to decide how many children to have, when to have them and under what circumstances.

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? Was she, in fact, on the day of the hearing, afraid to participate in that hearing? Was she offered protection by the Judiciary Committee? Was she offered protection by the Senate?

As a nation, we need to begin to understand the problem of sexual harassment in our Armed Forces. Sexual harassment has no place in our military, in Government, or in corporate America.

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 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 96 of my colleagues to review the information made available during these hearings and decide if there is sufficient evidence to conclude that Judge Thomas sexually harassed Professor Hill.

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, with my colleagues—all of us—to one of the most public, painful, and perplexing spectacles ever to befal 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 Judge 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 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 96 of my colleagues to review the information made available during these hearings and decide if there is sufficient evidence to conclude that Judge Thomas sexually harassed Professor Hill.

President Bush 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:
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 the floor?

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 nomination of Judge Thomas. 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 DAWSON 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 though 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 these past few days, 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 major objection is sustained.

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 discussing the support of his 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 protected 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—which is 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 thunder 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 confirmed 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 these charges 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 concerns in a statement on the Senate floor on September 26, which I ask appear at the conclusion of these remarks. (See Exhibit 1, Mr. President.)

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 judicial 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 values and beliefs he would bring to the bench. I feel I need more 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 committee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his election to the Supreme Court. He failed to do that. And, as a result, he failed to win my consent 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 testimony was not the product of 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.
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 was 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 with that said, 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.

If 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.

But if truth was absent from the face—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, she 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 has publicly professed 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 failures 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 per-
Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justice Rehnquist wrote:

"I propose 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 on the record or we do not look at the record at all.

Third, Judge Thomas engages in oratorical opportunism. Judge Thomas crafted policy statements that described him as the greatest orator of our era and a legal scholar of great depth. He has failed to produce the record or we do not look at the record at all.

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 at the time, he had not discussed that decision, either as a lawyer or as an individual, and had no views about it. If we accept that claim, it raises serious doubts about the depth of his interest in legal issues.

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his responses were contradictory—whether involving antitrust, the War Powers Act, freedom of speech, the right to privacy of habeas corpus. In contrast, at his confirmation hearings, Justice Secretary 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 a appellate court judge for less than 2 years and prior to that he was a prosecutor. 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 reasons, 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. As a result of his failure to communicate, he has failed 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 based 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, demonstrate the level of judicial excellence we 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 Judge Thomas has made that burden has not been met. It is a fundamental right 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 speak to the Federalist Society, he said that the natural law back of all of these areas. Judge Thomas lacks this depth of judicial knowledge. When asked questions of law, many of his responses were contradictory—whether involving antitrust, the War Powers Act, freedom of speech, the right to privacy of habeas corpus. In contrast, at his confirmation hearings, Justice Secretary 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 prosecutor. 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.

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job protected under the law, but that Thomas' successor at Education as-
sured 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 con-
tact 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 Thom-
as sack, she later admitted that
they were accurate records of what ac-
tually took place.

Two witnesses testified under oath
that Professor Hill had initiated favor-
able discussions about the Thomas
nomination in August of this year; yet
she fitness to the position.

Given these inconsistencies, and
given the absolute, unequivocal denial
by Judge Thomas that the incidents
ever took place, I believe we must give
weight to his testimony. Judge Thomas'
life has been intensely scruti-
nized by this body four times. He has been confirmed for High Governor
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 Asso-
ciate Justice of the U.S. Supreme
Court.

I remain hopeful that we will find a
way to improve this process so that fu-
ture nominees will not be subject to
this same type of circus and so that
this body can do a better job of fulfill-
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 Is-
land.

The PRESIDING OFFICER. The Sen-
ator 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 rea-
son to change my vote and I will op-
pose 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 seri-
ousness of charges involved, it was ap-
propriate 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 op-
posing the nomination of Clarence
Thomas and my doubt about the
Judge's veracity are much stronger.
I urge my colleagues 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 the hearing for Anita Hill did have
personal knowledge relevant to the
charges.

Two of them testified that Ms. Hill
told them about the alleged sexual har-
assment by Judge Thomas long ago.
Two of them testified that Ms. Hill
told them that her supervisor made
sexual advances. Her detractors sug-
gest 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 sex-
ual 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 state-
mantiment by Miss Jourdain.

There was also 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.

I know 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 com-
plain about sexual harassment you will
be attacked as a liar, a fantasizer, or a
woman scorned.

A greater lack of understanding of a
woman’s reaction to sexual harassment
is on display.

Suppose you are a woman represen-
ting a cause or corporation on Capitol
Hill.

Suppose a Member of Congress sex-
ually harasses you, as does happen.

What do you do?
You have these choices;
First, publicly complain, and get at-
tacked, 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 re-
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-
October 15, 1991

CONGRESSIONAL RECORD—SENATE

26321

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.

Mr. BIDEN. Mr. President, I yield 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, culminated 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.

There was 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 had burden of judgment could 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 charges 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 more doubts. The original doubts have been compounded by the doubts raised in the hearing. I will 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 the antagonist 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 line. 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 to 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 the President, 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 overcome these doubts. A lifetime appointment on the Supreme Court is different from another appointment. 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 and doubts about him have been 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. GRIGGS. Mr. President.

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, laying legal ability and achievement, professional standing within the legal profession of the very highest rank. To settle into 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 back 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 nominees—regardless of race, sex, or ethnic background—must meet the absolute standard of highest professional qualifications unique to the highest court in our land. At age 43, with very limited courtroom experience, Clarence Thomas does not meet this standard.

American Bar Association has a process whereby the most distinguished lawyers in American 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 freedoms 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 showmanship 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 appalled 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 the hearings. A second level should have come as a surprise to anyone in this body or any American. We deal with rights every day on every piece of legislation. Rights—personal, property and human rights—are the very heart of the Constitution.

Is 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 came as well.

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 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 is that things that we discussed in the real confirmation hearings, and then the hearings here, are things that he has understood, that we 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 is a professionally 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 have been 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 STEOM 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 commend 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 anything other than try to get the truth 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 it 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 live to hear me read this because they think I am a lawyer and I'm a lawyer who smashes things up.

"You either let us go with it or we will have to go with it anyway."

But let me 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 prior and crime.

4. It is the duty of the news media to make prompt and complete correction of their errors.

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 chin about this process, they can carp, they can denigrate. It is true, we are not perfect for 200 years and we 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.

If you look at the book, you will find the chairman and ranking member is the master. 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 on the record 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 know how I would have been 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, whoever idea that was that you did not. And I am sure the audience is just as pleased as I was. And I didn't watch it. It would have driven you—

Judge THOMAS. Thank you.

Senator SIMPSON. —in a way I do not think I would have been appropriate. And I am sure 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, we will know to dig into the garbage as we say it 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 that are good and bad. I have got faxes. I have got statements from her former law professors, statements from people that know her, statements from Tulsa, Oklahoma saying, “She did this to us.” 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 text. 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 know, if you did that for a quarter mile. There is not a woman alive who would take the questions you have had to take, would be just repelled by that. That's where the watered is in sexual harassment.

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, we see all this muck 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 hands once more and you go at it with the rules of evidence and you really punch around 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. All his remarks 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 thing as a justice system that 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 what she is, 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 Okla-

oma. 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 seen. I mean, this can both be rehabilitated. I have a couple of questions, if I may, Mr. Chairman.

The CHAIRMAN. Yes.

Senator SIMPSON. Now we 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 legal words, a “confession.” 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. As a faggot?

Senator SIMPSON. As a faggot?

Judge THOMAS. And that is inappropriate. 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 was right.

Senator SIMPSON. That was enough for you?

Judge THOMAS. That was more than enough about. 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 man and woman, dear sir. That is my recollection.

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.

So 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—what’s in a name?” You remember this scene?—“Is the immediate jewel of their souls. Who steals my purse, stealth trash. Tis something, nothing. Twas the very.minute of my band, and makes me poor indeed.”

Well, Mr. Chairman, you know of all us have been through this stuff in life, but never to this degree. I have done my old stuff last, 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.

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Well, Mr. Chairman, you know of all us have been through this stuff in life, but never to this degree. I have done my old stuff last, and shared those old saws.
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 there was "stuff dumped over the transom," let me now dump it over the transom into the CONGRESSIONAL RECORD. Before you hear from 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:

MATTHEWS LAW FIRM, P.C.,

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 transom into the CONGRESSIONAL RECORD.

My personal impression of Anita Hill was that she was a detailed, cold, and calculating person. Students commented to me that she was particularly ineffective in class and was not concerned about improving performance in class. She appeared to recognize her protected position as a black woman in an era of affirmative action and use that protected position for all it was worth—accelerated (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 EtIot. I have been engaged in the private practice of law for 27 years. I live at 1403 McLean 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 & Rose. 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 assignments for the lawyers practicing in that section, including several assignments for me, during a performance evaluation.

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 not sure, but I remember expressing 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 that Wald, Harkrader & Rose was not a firm which treated its lawyers fairly and would assist her, as it would any of its associates, in finding an appropriate legal position and that she should explore other avenues.

6. The performance evaluation 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.

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:

STATEMENT OF HON. HARRY M. SINGLETON, FORMER ASSISTANT 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 before his departure for the Equal Employment Opportunity Commission (EEOC). During the period of time, I met with Judge Thomas 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, was the report made by Ms. Hill on numerous occasions that she followed Judge Thomas as 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 to job."

I submit that this 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 for 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 the lawyers at OCR and to use that protected position as a black woman in an era of affirmative action to best advantage. I was particularly ineffective in class and was not concerned about improving performance in class. She appeared to recognize her protected position as a black woman in an era of affirmative action and use that protected position for all it was worth—accelerated (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,

Harri M. Singleton,
Dallas Fort Worth School of Law.

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, in my opinion, maintained her composure and to feel fully affirmed.

I do not have doubts concerning the honesty and integrity of Judge Thomas and instead 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,

STATEMENT OF DR. FLOYD W. HAYES III

My name is Floyd W. Hayes III, and I am an Associate Professor in the Department of Psychology at the University of Minnesota, St. Paul. I have been studying human behavior, especially in the areas of perception and learning, for over 20 years.

I have known Professor Hill for several years and have had the opportunity to observe her behavior and hear about her work. I believe she is a strong and intelligent woman who is well respected in her field.

As a psychologist, I have studied the effects of stress and anxiety on individuals, and I have found that unconscious repression of feelings can occur in situations where the person feels threatened or vulnerable. When individuals feel this way, they may develop coping mechanisms to deal with the stress.

Professor Hill has described her experiences during her time on the faculty at the University of Oklahoma. She has spoken about her feelings of anxiety and depression, and how she dealt with them in the workplace. I believe she is an example of how individuals can cope with difficult situations and maintain their composure.

I have worked with many individuals who have experienced similar situations, and I have seen how they have coped with the stress of their work. Professor Hill's experience is a good example of how individuals can handle difficult situations and maintain their composure.

I believe that Professor Hill is a strong and competent woman who has been unfairly targeted by some individuals. I urge the Senate to consider her nomination carefully and to give her the opportunity to serve on the United States Supreme Court.
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 as said, you allege that he complimented your appearance and predicted you would date him. (13.)

You also state that you did not react to this remark in any way that Judge Thomas did not follow up on it. (15.) Is that correct?

Yesterday, when you were interviewed by Senate staffers, 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 visited your apartment? (45.)

You also do not remember what time it was when he arrived? (44.-45.)

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 cannot remember any "specific things" about the conversation. (17.)

You saw 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? (43.)

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 cannot remember any "specific things" about the conversation. (17.)

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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 cannot remember any "specific things" about the conversation. (17.)

You also told Phyllie Berry about Judge Thomas' advances towards you in a general way. (22, 24.)

4. Ms. Wright, you say that you may have written a column about Judge Thomas. (22.)

You also do not remember what time it was when he arrived? (44.-45.)

Can you recall why Judge Thomas allegedly visited your apartment? (45.)

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.)

Weren't that comment made, as you later suggest, in the context of your responsibility to report to him (35)?

Ms. Wright, you worked for Congressman Charliss 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 that you might have left his staff?

13. Ms. Wright, you stated many times that you had not sought to make your allegations to the Committee; rather, you were concerned about how Judge Thomas had "controlled" the process so that it would not get to this point. (71.) Didn't 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?

You say you agreed to share this column with us or tell us what you wrote? (57-58.)

When did you start thinking about writing this column? 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 were controlling 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 stepped down? 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 1988. Judge Clarence Thomas was Assistant Secretary at that time. The period June 30, 1988, and May 12, 1992. From October 1988 through March 1989, I was attorney advisor to Deborah Mitchell, the Deputy Assistant Secretary for Operations. The period June 26, 1989, to May 12, 1992, I was attorney advisor to the Deputy Assistant Secretary for Operations, Office for Civil Rights.

(1) I communicated regularly with both individuals in a professional capacity.

(2) Based on my 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 no conversation or conduct directed to Professor Hill or any other employee that could be construed as sexually oriented conduct.

(5) I have 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, very dedicated, serious, and cooperative in the performance of her duties.

(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, that she was不适 from Ms. Hardnett or any of these interns.

(9) Based on my observation of their interactions, I have no reason to believe that Professor Hill was being sexually harassed.

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CHANCELLOR, October 7, 1991.

FORMER COLLEAGUE OF ANITA HILL RECALLS HER PRAISE OF THOMAS

A former teaching colleague of Professor Anita Hill at Regent University has a different recollection of her role in inviting Judge Clarence Thomas to speak at a seminar on employment discrimination in 1983-84.

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's assistant to extend an 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 supported 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 he was the keynote speaker which we obtained Thomas as a speaker."

The Christian Coalition also released a statement from former Oral Roberts University Law School professor James A. Koch, who hired Professor Anita Hill to a teaching position on the recommendation of Judge Thomas in the fall of 1983. Koch corroborated Professor Goldman's recollection of Anita Hill's role in inviting 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 gravity of the charge that Anita Hill may have confronted. We are not privy to the details, but we can make this clear that they have been made public at the eleventh hour."

Christian Coalition is a grassroots citizen action organization that has aired national advertisements on 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.

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Mr. CLARENCE THOMAS, Judge, U.S. Court of Appeals, Washington, DC.

DEAR JUDGE THOMAS: On behalf of the members 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 un-American. We are confident that the background of Ms. Hill—a tenured law school professor—will speak for itself.

For this exploitation of a serious problem in our society—sexual harassment—we are 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 women of all races are behind you 100%. Do not hesitate to call on us if you need us.

Respectfully,

ANGELIQUE WILBUSH, 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 have worked as a Special Assistant to the Chairman at the EEOC from 1985 to 1988. 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 protégés. That simply isn’t true. If you were young, black, female, 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 attractive, young, black, female employee that 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 don’t want to relive the humiliation of pursuit, the quest, the last minute attempt to impugn your character by Mrs. Hardnett, or any of these unpaid attorneys (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 because they will need it to survive and to advance in a very tough world. But the atmosphere of absolute sterile propriety permeated Mr. Thomas’ office. The concern is simply a lie. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt that that dimension in Clarence Thomas’ office. I have told all of this to Senate staff including the Chairman in the weeks following the nomination. But in light of the absence of any response from Senator Thomas (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.

DIANE HOLT.
had been Management Director of the Office for Civil Rights in the Department of Education with direct responsibility for personnel and EEO duties during the time Mr. Clarence Thomas was a member of the staff. 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 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 staff our own responsibilities to act in a professional manner in which would bring credit and respect to the Agency.

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 impressed by Judge 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 staff our own responsibilities to act in a professional manner which would bring credit and respect to the staff.

Any examination of Ms. Hill's rationale for leaving OCR to go to EEOC is based on an allegation that she had been "faggot". The Washington Post A2 (10/11/91.)

Rikki Silberman, a Commissioner at the EEOC recalls Mr. Wright's job performance in terms which were more than sufficient to avoid any staff outbouts.

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.

Viewed from sensitive policy issues, personnel matters, to administrative activities including with direct responsibility for personnel matters, to administrative activities including with respect to Mr. Thomas' performance or leadership of the EEOC.

Ms. Wright was selected to work at EEOC in our conversations, showed no resentment for Mr. Thomas.

After I moved to EEOC to be Financial and Management Director, Ms. Hill again praised Mr. Thomas to me. In several conversations that were held, she expressed high regard for him as a man and as a leader of the EEOC. Ms. Hill told me that she was flattered to be selected by Mr. Thomas to work at EEOC. In our conversation, she expressed no resentment for Mr. Thomas.

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 impressed by Judge Thomas for the opportunities he had given her and that he had always been supportive and encouraging of her career goals.

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October 15, 1991

CONGRESSIONAL RECORD—SENATE
26329

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 make 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 Morton 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 Thom- as' nomination was and how much he deserved it."

Professor Hill and these two senior attorneys then conferred for about 30 minutes, the attorneys testified, discussing the EEOC and Judge Thomas and other matters. During that time, Professor Hill mentioned nothing that she had obtained from any source related to the allegations 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 when it happened.

Mr. President, many allegations and statements have been made in this case—but few have been verified by eyewitnesses. Here is a rare instance when it happened.

Professor Hill was speaking with clear enthusiasm about the nomination of Judge Thomas. Strange behavior indeed.

RESULT OF HEARINGS

The Senate Judiciary Committee has conducted the hearings it promised to hold to hear and see all of 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 earlier 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 supported the initial questions which 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? Second, why did she move with him from the Department of Education to the Senate if he had never before harassed her in the outrageous and disgusting manner she alleged; and third, why did she continue 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 believed he was near 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 truthful. 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 graphic 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—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.

The 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.

For Judge Thomas, I strongly wish he had never had to make these allegations public.

JUDGE THOMAS' TESTIMONY

In addition, Judge Thomas was persuasively firm, adaman and convincing in his denials.

The panel of women coworkers who testified in his favor—J.C. Alvarez, Nancy Pitch, Diane Holt and Phyllis Berry—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 corroboration 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 corrobated 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 having been uncaring or insensitive or cavalier about the grave and 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 dealt with 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 rules and regulations he was appointed to enforce. To yield time to the President, I think 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 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 today begin on behalf of the United States 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 true, then the outcome, in my view, clearly disqualifies Judge Thomas from serving on the Supreme Court, and, indeed, threatens 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 resources 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. Another probability to evaluate concerning Professor Hill—allegedly by Professor Hill, then it would yield 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 by those who worked closely with Judge Thomas, 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 concerning Professor Hill is that Judge Thomas deserves to be elevated to the Supreme Court. 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 expected were beliefs or behavior 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—those of whom were witnesses—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 the 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 associated with him by his backers exist in sufficient measure to merit his ascendency 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 against him two to one. This isn't an 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, I am one of the President's 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 competence and 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 choice 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 competencies of the individuals 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 will 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 concerned, after hearing his testimony, and also talking to people I respect that 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.

I think I have a right to expect of Judge Thomas to 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 he 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 Cardozo'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 experiences, 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; 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 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 probabilistic 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 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 in our future. The near future to produce something more than just rhetoric in combating sex discrimination. I would hope that when the Senate takes up Senator D'ANTONIO'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 sorry 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 the evidence or 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 not even the word "lynching" and reported, directly contradicted the four witnesses, four credible witnesses who, under oath, testified as to what they remember Anita Hill telling them.
two weeks ago, for instance, the White House received advance word of a Congressional Black Caucus news conference, called to denounce Thomas, that day at the White House. The same day, Thomas made several Capitol Hill courtesy calls. His principal Senate supporter, Sen. John C. Danforth, a Republican from Missouri, delivered a Senate floor speech on the nomination.

And to underscore a critical part of the White House strategy—to convince the public that black leaders are divided about Thomas—that has turned to the NAACP and the Leadership Conference on Civil Rights may come out as well, with all of the announcements timed to occur before Congress begins its summer recess at the end of the week.

Just 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 example, in California, where opponents are actively engaging in guerrilla warfare tactics, one White House official has personally been asked to help coordinate the efforts of opposition groups.

Another senior administration official who has said the administration's strategy is to convince the public that Thomas cannot be defeated without overwhelming black opposition at the grassroots 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 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 U.S. Appeals Court. In 1986 and arranging to have the story confirmed immediately that the marijuana use was irrelevant.

**PEER PRESSURE USED**

The White House communications office has even prepared speech inserts praising Thomas' personal qualities. These include his service to the country and his family, his military service, and his work as a civil rights lawyer. The 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.

One White House official, speaking on condition that he not be identified, said: "We're working on the grass-roots level—one of the keys to Bork's downfall. Days before the Black Caucus counterattack, when the 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 U.S. Appeals Court. In 1986 and arranging to have the story confirmed immediately that the marijuana use was irrelevant.

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The White House communications office has even prepared speech inserts praising Thomas' personal qualities. These include his service to the country and his family, his military service, and his work as a civil rights lawyer. The 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.

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It is sexual harassment to pursue a woman's every step, leeching and leering about her, her body and her sex life, and her personal relations with a husband dead almost 30 years. The press has turned Jacqueline Onasiss into a harassed, everwatching prototypical TV housewife. It is the papers, 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 snipping above Elizabeth Taylor's wedding. It is sexual harassment to send reporters peering into windows for a woman charging rape, for the sake of a President's candidate—or to print whether a person is gay to make an "activist" point.

It is sexual harassment for the slavering "reporters" of those premtine "expose" 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 tripped in the news, preventing him, his wife and children, and the public, to know 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 up in a Senator'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 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 "dirty" dailies of New York—are where power, dirt and harassment are where power, power, and power. Some owners have become hostages of power, editors and publishers publishing that a New Yorker of achievement comes from America of one of its brightest and most inanes 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.

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 its first national conservative appointment would be a gift to the American people, much less the nation's highest court. The behavior that Miss Hill alleges is not only inappropriate in the workplace, it is unlawful. Federal statutes enacted in 1986 provide for redress.

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. Was Miss Hill's memory, about the charges that seem to have become more expansive and more precise as time elapsed, about the unsupported charges that Judge Thomas was a sexual pervert, insensitive to the problems of minorities, the list is long and the evidence is short.

Opposing View: The nominee is eminently qualified and a person of outstanding character and integrity.

Answer Should Be "Yes" (By Armstrong Williams)
Mr. DANFORTH. I believe 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.

Mr. President, in this, 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 and the many 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 case of the nominee.

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. I ask the Chair to inform me when 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 Re- publicans 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 demonstrated 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.
basic American standard of decency and fairness, I ask Senators to vote for the confirmation of Clarence Thomas. 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 South Carolina has 15 minutes and 3 seconds.

Mr. THURMOND. How much time does the other side have?

The VICE PRESIDENT. One minute and 49 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. I based my opposition upon his record, his mishandling of age discrimination cases at EEOC, and his failure to define his constitutional philosophy especially by individuals and organizations I have sided with and those I have opposed.

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. The absoluteness of the principles is impossible for me to reconcile, even after watching their testimony. I am resolved to affirm my original judgment and vote for Judge Thomas' confirmation.

This Supreme Court nomination has been a series of battles. The current battleground is sexual harassment. But the hearings that preceded the Judiciary Committee's vote there were other issues. Those issues, like civil and employment 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 the 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 him to reconcile the disadvantaged of all races intriguing and thought-provoking. I must, however, question his commitment to protecting the right to privacy in the most critical decisions we make. Government interference is doubtful.

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 interpret the Constitution 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 policies. 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 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' nomination. The Judge Thomas' witnesses say that what the 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 do not side with Judge Hill. 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-
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 urgent concern.

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 the allegations were treated confidentially and not 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 politics and chicanery 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 and private life. The allegations against him are wholly out of character and beyond belief for any of us who have the privilege of knowing Clarence, and I believe the women who have come forward 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 those 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 of service. 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 Spector 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 realisti 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 15, 1991. Mr. Burke has stated that he was a partner of the firm of Wald, Harkrader and Ross with some 30 years experience. 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 an 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 of the affidavit 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 inconsistency which should be pointed out.

Mr. President, I find it disturbing the Professor Hill was not straight-forward 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.
October 15, 1991

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 have the start of the time?

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 Secretary of Education, as Chairman of the Equal Employment Opportunity Commission, and as a judge on the prestigious U.S. Court of Appeals for the District of Columbia Circuit.

When I announced earlier this year that I would support the nomination of Judge Thomas, I did so because I was convinced that he met the tests of intellect, integrity, and openmindedness.

Now, I am 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 devastating to 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 the 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 incumbent 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 matters. 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 and proficiency? These 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, and it is not something 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 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 do not believe that this case is unique. I do believe that what has happened to Anita Hill can happen to any woman.

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 lack of any strong evidence of a pattern of similar behavior by Clarence Thomas.

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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 protect themselves from 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, regarding 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 true wrenching experience. I know that Judge 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 the specific allegations of sexual harassment. As much as I personally abhor harassment in the workplace, 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 composed primarily of 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's 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 representations of his 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 decision on a nomination. It was notable that the Judiciary Committee, after very extensive confirmation hearings, came to the same conclusion with a 7 to 3 tie vote.

The American Bar Association, following their examination of the Thomas record, gave him only its very minimal endorsement.

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 evaluate all possible nominees, then the chances 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 his or her choices to be voted on by the Senate? 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, Mr. President, in light of the 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 televised hearings and the allegations made by Prof. Anita Hill. During these hearings, I had resolved to listen with an open mind. 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, 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
Mr. CHAFFEE. 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 this subject. I noted that while his thinking may 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, not only by weakening the integrity of the Senate, but by creating 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.

At 3 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 consideration. Too many officials may sincerely believe that the attention such cases receive is less than complete, and more often than not, 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.

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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 judges and other 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 by any form of harassment 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.

Mr. CHAFFEE. 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 this subject. I noted that while his thinking may 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, not only by weakening the integrity of the Senate, but by creating 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.

At 3 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 consideration. Too many officials may sincerely believe that the attention such cases receive is less than complete, and more often than not, 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.

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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 pervasively 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 disturbing ordeal.

The allegations of Professor Hill and the denial 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 this nomination has done precious little to enrich the image of the Senate. Little did I know then the unverified 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 future. The hearings that occurred during the 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 incurably soiled, the damage done is of crude inaudible. 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 children's questions about the explicit sexual matters mentioned. And what do you say?

Few would argue that this confirmation process may have 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 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 man'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 men 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 the often hostile societal environment from which the victimries.

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And our effort to find an end to the injustice of sexual harassment should not be made only for those who have been victimized. 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.

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CONGRESSIONAL RECORD—SENATE

26343

October 15, 1991

LENNIE, of Florida, said...

...while I also believe the allegations... issues of sexual harassment... The media display brought about by an illegal leak of information does more damage than good... The... I urge my colleagues to vote for the confirmation of Judge Clarence Thomas. He will do honor to the Court...

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 public and private life... He has... I agree with Yale Law School dean, Guido Calabresi—certainly no conservative—that Judge Thomas has turned his back on those in need... I urge my colleagues to vote for the confirmation of Judge 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 have used three criteria to evaluate nominees for the Supreme Court... 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... 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 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 Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees... The Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees... The Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees... The Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees... The Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees... The Supreme Court must show that they are not indifferent to the effects of their decisions... One of the threads connecting the nominee's views is the nominees' indifference to the effect of their decisions on peoples' lives... Each of the nominees...
Court shows 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 of color. He has castigated supporters of affirmative action and has expressed favorable 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.

Mr. Pryor. Mr. President, on February 6, the Senate Judiciary Committee held a confirmation hearing for Judge Clarence Thomas. In my role as Chairman of the Senate Special Committee on Aging, 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, we need a Supreme Court that will heal, not wounds are now down to two cases a year.

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These numbers are totally inaccurate and, some would say, border on mendacity. In fact, the EEOC's own figures indicate that the statute of limitations may have lapsed on well over 13,000 ADEA claims from 1986 to 1990. Additionally, 1,500 charges contracted out by the EEOC to the Fair Employment Practice Agencies (FEPA's) have been allowed to expire since 1987.

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 and I met to discuss the problem and to provide him with information on how many ADEA cases had exceeded the 3-year statute of limitations. Although an internal survey of districts did not reveal that the EEOC had allowed at least 900 ADEA charges to lapse, Mr. Thomas chose to redefine cases as charges which had been recommended for litigation, and he told the Aging Committee that 70 cases had expired.

After months of fruitless attempts to obtain additional and accurate information on this matter, the Senate Commerce Committee held a February 1988 subcommittee to Chairman Thomas to provide data on the lapsed charges. Thomas had reported that form 1984 to 1986, 79 charges had exceeded the statute of limitations. Two weeks later, Thomas submitted an EEOC report indicating that 1,500 charges had expired in 1987 alone.

In 1988, Congress passed the Age Discrimination in Employment Act Assistance Act (ADCAA), which extended the statute of limitations 18 months for charges which were filed on or after January 1, 1986 and which expired prior to or on before April 1, 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 3 a year. In fact, EEOC documents submitted to the Judiciary Committee show that over 1,500 ADEA investigations are dismission to State FEPA's for investigation since ADCAA.

Mr. Thomas' response when confronted by Senator Pryor, with whom this fact was twofold, I initially stated that the EEOC has no control over the FEPA's. He further responded by stating that the ADEA statute of limitations is in effect on those charges because they were filed under State anti-discrimination 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 age discrimination claims filed at the State level. While it is true that age discrimination charges lodged with FEPA's are filed under State antidiscrimination laws, they are also, in effect, represented claims under the ADEA. Consequently, EEOC regulations make it clear that charges filed with FEPA's under contract are considered to be filed with the EEOC also.

As a 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 acted upon under State law does not absolve 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. It is intended to give the EEOC an opportunity to restore the rights of the claimant before the expiration of the 3-year statute of limitations to make a decision on litigating the charge or issuing a no cause letter to the claimant. If FEPA's are unable to act on the charges, the EEOC 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 agree that the EEOC has an escapable duty to protect the rights of ADEA claimants. In fact, EEOC documents submitted to the Senate Judiciary Committee show that lapses are now running about 3 a year. Mr. Thomas chose to redefine cases as charges which had been recommended for litigation, and he told the Aging Committee that 70 cases had expired.

After much careful consideration, Mr. President, I have determined that I cannot support the nomination of Clarence Thomas 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 believe he has given me that degree of confidence that I need to vote for his confirmation. I am not trying to enact support against his nomination. But, in my capacity as chairman of the subcommittee in this instance, 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 new Chairman of the EEOC, Evan Kemp, shares my commitment in protecting the rights of older citizens. It is therefore with great hope that I look forward to an improved and productive relationship with the EEOC. It is also 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 Arkansas (Mr. Danforth) for not more than 5 minutes.

Mr. DANTORF. Mr. President, I agree with the Senator from Arkansas only insomuch as he expresses regret for the position he has taken.
I have stated previously this afternoon that it is my intention to take issue with 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 every aspect of his history relating to 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 his predecessor as a member of the bench—not to the EEOC again—so any appearance of favoritism would be illusory. I tell you him 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 considered him to be a 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 serve political or personal agendas 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 sometime using trick design to accomplish some weird personal agenda which was then covered up in some dastardly fashion by some weird personal agenda which was then covered up in some dastardly fashion by some conniving trick designed to accomplish 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.

It 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 faith in the integrity of the man to the job for which he is being considered.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized?

Mr. KOHL. 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. FYOR. Mr. President, there is no one in this body that I have greater admiration for than the great Senator from Missouri, my friend, Danforth. Senator Danforth has an extremely personal relationship with the nominee for a number of years. I know he knows the nominee well; in fact, he is a colleague of many years in the field of social policymaking from the bench.

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. Those who care deeply about the EEOC during the past 8 years is that rather than during Clarence Thomas, the director, running the bureaucracy, the bureaucracy ran him. I think that because Thomas is in 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 very 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 American citizens who had age or race discrimination claims pending 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 these cases were filed in the court of first resort, the EEOC.

What happened to them? The statute of limitations was allowed to run. Had it been 15 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.

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Mr. President, I yield the floor.

Mr. METZENBAUM. Mr. President, I commend the Senator from Arkansas for so succinctly stating the facts 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 EEOC.

I think his remarks also support and make us understand better why 10 chairs of various House committees came out against confirmation. 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 for me to oppose him and seat 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 District of Columbia Circuit. I am concerned about this nomination, however, for some of the reasons outlined by Senator Metzenbaum, and organizations representing elderly Americans, 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 beliefs 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.

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 public scrutiny over the details of their private lives.

As a former aide to Dr. Martin Luther King, Jr., civil 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 concern 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 Thurgood Marshall.

The President selected, as he has done with almost every judicial 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, was riddled with 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 answer some of the questions posed by 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 capacity, 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 a Trial Court and Circuit experience and a 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
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 their dignity and that of 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 matter we need to review.

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 seeing 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.

The Senate is right here, 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 harass 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 all ties to Judge Thomas. Why she did not take action. 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 career. You are a single mother. Your family depends upon you to earn an advanced degree. You have ambitions. You have goals. You have things you want to accomplish for yourself, your people, your country. 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 like the way you are treated, you want to leave your job. You do not think you can possibly challenge him publicly.

All you can see are problems—problems if you try to keep your job by bringing a charge 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. Many 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 they can 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 country 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 motives. And it is not implausible to me that
she did not come forward before this time publicly, or that she maintained professional contacts 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 costly 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 and her daughter, who had been afraid to come forward, were told 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.

It was suggested at the time that the process was slow, and 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 and the proceedings will be a reminder to all of us that the selection of judges by this body and some of the assessment in the workplace has now been reduced to political reasons. Mr. Bush and the American people have gotten to know the story of a man who was raised with little material 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 chosen 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. 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 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 underscored the reason many of us opposed 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 record on that score. Many have criticized 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 deep 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 and deal with it once and for all.

Out of this dialogue, 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 occurs within these halls. And further, I challenge the men and women of this Senate to rethink 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 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.
When allegations of sexual harassment were charged against Judge Thomas, my initial reaction was shock and dismay—shock that an individual who I believed to be of the highest integrity and possessed of the highest moral being have been challenged.

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 and listened to 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 accused is presumed innocent until 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 contract stated 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 the 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 an environment they felt was proper and professional.....
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 of his partners decided 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: 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, was the one that evaluated the work of people in that law firm. 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 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.

Affidavit 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. Tomorrow we will be on something else. Some who were on opposite sides today will be on something else. Some who were a referendum of sexual harassment. It if were a referendum ofsexual harassment, it would probably be over. I think that was the right decision, 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 of Americans. And will it have a lasting impact when he reviews various kinds of cases, including cases of sexual harassment?

Mr. President, in 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 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 the same.

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 Anita 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 over. I think that was the right decision, 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 of Americans. And will it have a lasting impact when he reviews various kinds of cases, including cases of sexual harassment?

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October 15, 1991

CONGRESSIONAL RECORD—SENATE 26351

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 less a famously 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.

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.

Mr. Danforth. Mr. President, how much time do I have?

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 stood by the side of the Senate Judiciary Committee and 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 the chairman of the Senate Judiciary Committee, as 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 a political issue.

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. 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 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 Senator from Missouri is recognized.

Mr. Danforth. Mr. President, how much time do I have?

The Vice President. Mr. Danforth, six minutes.

Mr. Danforth. Mr. President, in those six minutes, I would like to make four brief points.

First, I would like to express my appreciation to so many people who have stood by the side of the Senate Judiciary Committee and 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 the chairman of the Senate Judiciary Committee, as 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.

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It is not true that the ends justify the means. It is not true that any strategy is permissible in order to win. 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.
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 consent 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 nominee for the vacancy created by the resignation of Justice Fortas, 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 President Johnson." 

In the nomination now before us, our Republican colleagues 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, in the Fortas nomination were stormy. Some Senators shouted at the nominee, demanding that he answer questions about specific cases decided by the Supreme Court.

Of course, the opponents did not want a delay. They wanted to defeat the nominee. 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 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. Presidents of both parties have looked to the Senate for confirmation of nominees who agree with them 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.

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So the President has sought candidates who agree with him on abortion but 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 uncommented 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 against 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 choice 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 disagreements, 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 recent views. We should also consider his recent views.

The views of an adult cannot simply be suddenly discarded like a suit of clothing.

The views of each of us develop and change over the course of time and 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 restating 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 may on lower levels.

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 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 willfulness 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 would vote on the issue. In this case it was made by a Supreme Court decision on which he has a decided, 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 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. If 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 has had to overcome racism and poverty is desirable.

No race is 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. The appointment of a superbly qualified African-American, 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 unwilling to say whatever was necessary to win confirmation. It has worked. There will be no 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 is only a footnote to 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 are a woman, 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, not on whether a particular nominee is qualified. A Senate 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 woman have the same weight as the words of men; to a society where the workplace will finally be free of all sexual harassment, and 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 and listen to the debate and debate in the Senate 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. 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    Gore    Nunn
Brown    Graham    Robb
Burns    Grassley    Roth
Chafee    Hatch    Rothman
Coats    Hatfield    Seymour
Cochran    Helms    Shelby
Coburn    Hollings    Simpson
Craig    Johnston    Smith
D'Amato    Kassebaum    Specter
Domenici    Kasich    Stevens
DeConcini    Lott    Symms
Dixon    Lugar    Thurmond
Doles    McKee    Walkow
Domenicis    McCaslin    Warner
Durenberger    McConnell    Wirth
Enos    Moakley

NAYS—48

Adams    Glenn    Mikulski
Akaka    Gore    Mitchell
Beasley    Graham    Moynihan
Bechtel    Harkin    Packwood
Biden    Hastert    Paul
Bingaman    Inouye    Pryor
Brady    Jeffords    Reid
Bryan    Kennedy    Riegel
Bumpers    Kerry    Rockefeller
Burdick    Kerry    Sanford
Byrd    Keating    Sarbanes
Conrad    Lastuska    Sasser
Cranston    Leahy    Simon
Daschle    Lott    Wirth
Dodd    Lieberman    Wollard
Ford

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.

EXECUTIVE 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. 2598, 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 hand.

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 conference 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 quorum call be rescinded.

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

The yeas and nays have been ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that time be set aside for morning business.

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

EXECUTIVE CALENDAR

Mr. BRYAN, Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar No. 318, 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 communicated to the Senate by Mr. McCathra, 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-