

STATEMENT OF SENATOR DENNIS DeCONCINI
NOMINATION HEARING OF CLARENCE THOMAS
AS AN ASSOCIATE SUPREME COURT JUSTICE
SEPTEMBER 10, 1991

I AM PLEASED TO JOIN MY COLLEAGUES ON THE COMMITTEE IN WELCOMING JUDGE THOMAS TO HIS CONFIRMATION HEARINGS. AT A TIME WHEN OUR CONSTITUTION IS SERVING AS THE BLUEPRINT FOR DEMOCRATIC REFORM THROUGHOUT THE WORLD, WE BEGIN, TODAY, THE PROCESS OF ONE OF THE MORE INTEGRAL COMPONENTS OF THAT GREAT CHARTER -- THE SENATE'S DUTY OF "ADVICE AND CONSENT" TO THE PRESIDENT ON JUDICIAL NOMINEES.

THE ADVICE AND CONSENT DUTY OF THE SENATE IS ONE OF THIS BODY'S MOST IMPORTANT CONSTITUTIONAL POWERS. BUT THIS PROVISION PROVIDES NO IMMUTABLE STANDARD FOR SENATORS TO LOOK TO WHEN FACED WITH THE RESPONSIBILITY OF VOTING ON A SUPREME COURT JUSTICE. I HAVE OFTEN STATED AND BELIEVE THAT THE SENATE SHOULD GIVE THE PRESIDENT'S NOMINEE THE BENEFIT OF THE DOUBT. BUT THIS IN NO WAY MEANS THAT WE SHOULD CONFIRM A NOMINEE WITHOUT THOROUGHLY EXAMINING HIS OR HER QUALIFICATIONS. AS THE SENATE DOES NOT EXPECT THE PRESIDENT TO RUBBER STAMP ITS LEGISLATION, THE PRESIDENT SHOULD NOT EXPECT CONGRESS TO RUBBER STAMP HIS NOMINEES.

A SUPREME COURT JUSTICE IS NOT A CABINET MEMBER WHOSE JOB IS TO SERVE THE PRESIDENT. IT IS NOT SUFFICIENT THAT THE PRESIDENT AGREES WITH THE VIEWS OF THE NOMINEE. THE SENATE HAS A RIGHT, INDEED A CONSTITUTIONAL OBLIGATION, TO EXAMINE A NOMINEE'S

COMPETENCE, INTEGRITY, EXPERIENCE, AND YES -- HIS OR HER JUDICIAL PHILOSOPHY. FOR THE SUPREME COURT IS UNDENIABLY A POLICYMAKER. OUR FRAMERS DRAFTED THE CONSTITUTION IN BROADLY-WORDED PRINCIPLES THAT WERE INTENDED TO PROTECT AN EVOLVING SOCIETY. CONSTITUTIONAL INTERPRETATION REQUIRES AN EXERCISE OF DISCRETIONARY JUDGMENT. THUS, WE MUST CAREFULLY CHOOSE THE CONSTITUTION'S MOST IMPORTANT INTERPRETERS.

WE HAVE HEARD FROM VARIOUS GROUPS WHO EITHER OPPOSE THE NOMINATION OF JUDGE THOMAS OR HAVE GRAVE CONCERNS IN PLACING HIM ON THE COUNTRY'S HIGHEST COURT, INCLUDING NATIONAL GROUPS REPRESENTING THE INTERESTS OF WOMEN, HISPANICS, AFRICAN-AMERICANS, AND THE ELDERLY. NO ONE DOUBTS THAT JUDGE THOMAS HAS THROUGHOUT HIS CAREER TAKEN ACTIONS OR ANNOUNCED POSITIONS THAT HAVE INVOKED CRITICISM. BUT I BELIEVE THAT JUDGE THOMAS' OPPONENTS HAVE THE BURDEN IN PERSUADING THIS SENATOR THAT JUDGE THOMAS SHOULD NOT BE CONFIRMED. GROUP POSITIONS MUST BE SUPPORTED BY MORE THAN A BOARD VOTE. THE OPPOSITION TO THIS OR ANY NOMINEE MUST SUBSTANTIATE THEIR CASE THAT THE NOMINEE IS COMMITTED TO IMPOSING HIS OR HER OWN EXTREMIST AGENDA UPON THE COURT.

THE COURT IS GOING THROUGH A TRANSITION PERIOD. IN MANY AREAS OF THE LAW I AGREE WITH THE DIRECTION THAT THE CURRENT COURT HAS MOVED. HOWEVER, THERE ARE CERTAIN AREAS IN WHICH I BELIEVE THE COURT HAS BEEN DEAD WRONG. THAT IS WHY I VOTED IN FAVOR OF THE CIVIL RIGHTS BILL LAST CONGRESS. THE EXCESSES OF THE WARREN COURT IN ONE DIRECTION SHOULD NOT BE REPLACED BY EXCESSES IN ANOTHER DIRECTION. THE COURT LOSES ITS LEGITIMACY AS

AN INSTITUTION IF ITS EDICTS ARE SOLELY DEPENDENT UPON ITS PERSONNEL.

IN JUDGE THOMAS, I HOPE TO FIND A CANDIDATE WHO RESPECTS THE COURT AS AN INSTITUTION. AS AN INDIVIDUAL, HE DESERVES PRAISE FOR HIS NUMEROUS ACCOMPLISHMENTS IN A SHORT PROFESSIONAL CAREER. I AM VERY IMPRESSED BY HIS INTELLECT AND LEGAL ACUMEN. HIS PERSONAL STORY IS ONE THAT SHOULD BE TOLD OVER AND OVER AGAIN. HE LEFT ME WITH A POSITIVE IMPRESSION AFTER HIS OFFICE VISIT EARLIER THIS SUMMER. I FOUND HIM TO BE VERY ENGAGING AND PERSONABLE. AND IMPORTANT IN THIS SENATOR'S MIND IS THE STRONG SUPPORT HE HAS FROM MY DISTINGUISHED COLLEAGUE SENATOR DANFORTH, WHO HAS ATTESTED TO JUDGE THOMAS' SKILL AND INTEGRITY.

OVER THE YEARS JUDGE THOMAS HAS WRITTEN ARTICLES, DELIVERED NUMEROUS SPEECHES, DIRECTED A FEDERAL AGENCY, TESTIFIED BEFORE CONGRESS, AND AUTHORED FEDERAL JUDICIAL OPINIONS. HE HAS A RECORD THAT WE CAN ALL EXAMINE. WE HAVE AN AMPLE BODY OF EVIDENCE ON JUDGE THOMAS'S VIEWS ON VARIOUS IMPORTANT AREAS OF THE LAWS AND HIS CRITIQUE ON SOME MOMENTOUS CONSTITUTIONAL CASES. BUT AS HE STATED AT HIS COURT OF APPEALS NOMINATION HEARING, HE HAS YET TO FORMULATE HIS OWN CONSTITUTIONAL PHILOSOPHY.

AFTER THESE HEARINGS CONCLUDE, THE SENATE AND THE AMERICAN PUBLIC SHOULD HAVE A VISION OF CLARENCE THOMAS' CONSTITUTIONAL PHILOSOPHY. I HOPE TO FIND A JURIST WHO IS RESPECTFUL OF PRECEDENT RATHER THAN A JURIST WHO IS ON A MISSION TO IMPOSE HIS PERSONAL BELIEFS OR HIDDEN AGENDA ON THE COUNTRY THROUGH BROAD SWEEPING OPINIONS. IN RESPONSE TO THE JUDICIARY COMMITTEE'S QUESTIONNAIRE, A RECENT SUPREME COURT NOMINEE CHARACTERIZED

JUDICIAL RESTRAINT AS A JUDGE HONORING "THE DISTINCTION BETWEEN PERSONAL AND JUDICIALLY COGNIZABLE VALUES." I NEED TO BE CONFIDENT THAT JUDGE THOMAS CAN FULFILL THIS DEFINITION OF JUDICIAL RESTRAINT.

NO ONE IN THIS BODY WILL EVER BE SATISFIED WITH EVERY RESPONSE OF A NOMINEE; THAT IS IMPOSSIBLE. I KNOW AND EXPECT THAT JUDGE THOMAS AND I WILL DISAGREE ON PARTICULAR ISSUES. WHAT IS IMPORTANT IS THAT AT THE END OF THE DAY, WHEN ALL IS SAID AND DONE, EACH SENATOR MUST ANSWER ONE QUESTION BEFORE VOTING -- DO YOU FEEL SECURE ENTRUSTING THIS NOMINEE WITH THE TREMENDOUS RESPONSIBILITY OF PROTECTING THE RIGHTS -- WHETHER ENUMERATED OR UNENUMERATED -- IN OUR CONSTITUTION?

ONE FINAL NOTE -- AS OCCURRED WITH HIS NOMINATION TO BE A JUDGE ON THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, QUESTIONS HAVE ARISEN, ONCE AGAIN, CONCERNING JUDGE THOMAS' COMMITMENT TO THE LAW. THE CONCERN STEMS FROM JUDGE THOMAS' CONTROVERSIAL TENURE AS CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS WELL AS RECENT REVELATIONS REGARDING HIS ACTIONS AT THE OFFICE OF CIVIL RIGHTS IN THE DEPARTMENT OF EDUCATION.

I HOPE TO EXPLORE THROUGH THESE HEARINGS WHETHER JUDGE THOMAS WAS ACTING WITHIN HIS ADMINISTRATIVE CAPACITY IN CARRYING OUT THE POLICY OF THE ADMINISTRATION OR WHETHER HE WAS UNWILLING TO ENFORCE LAWS THAT CONFLICTED WITH HIS PERSONAL VIEWS.

IN CLOSING, I JOIN MY COLLEAGUES IN EXTENDING A WARM WELCOME TO YOU, JUDGE THOMAS. I LOOK FORWARD TO THE QUESTIONING AND WITNESSES. AND I LOOK FORWARD TO LEARNING MORE ABOUT YOUR

JUDICIAL PHILOSOPHY AND YOUR THOUGHTS ON THE GREAT CONSTITUTIONAL
ISSUES OF OUR DAY.