

Rights Act required proportional representation. And, of course, there were denials to that, but there was that school of thought.

My attitude was that if, indeed, there is proportional representation that that presupposes—I think that is the word I used in that speech—that presupposes that all minorities would vote alike or all minorities thought alike. And that is something that I have—those kinds of stereotypes are matters that I have felt in the past were and continue to feel are objectionable.

Senator SPECTER. Thank you, Judge Thomas.

I know my time is up, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much, Senator.

Our next questioner would be Senator Kennedy, but I understand he is prepared to yield to Senator Metzenbaum because Senator Metzenbaum is also required to be at the Gates hearing and to question there.

Senator METZENBAUM. Thank you, Mr. Chairman, and thank you, Senator Kennedy.

Good morning, Judge Thomas. It is nice to see you again.

Judge Thomas, your testimony before this committee has touched upon the subject of economic rights several times. This is an area of concern because over 50 years ago, the Supreme Court used economic rights arguments to strike down laws that were designed to protect workers' rights and establish a minimum wage.

In a 1987 speech to the Business Law Section of the American Bar Association, you stated that, "The entire Constitution is a Bill of Rights and economic rights are protected as much as any other rights."

You also stated that, "Legislative initiatives such as the minimum wage in Davis-Bacon provided barriers against black Americans entering the labor force." You went on to say, "It is amazing just how little attention has been paid to these outright denials of economic liberties."

Frankly, Judge Thomas, I am amazed to hear you say that legislative initiatives such as the minimum wage provided a barrier against black Americans. I would say percentage-wise in my opinion—I don't have the statistical data, but I would guess that percentage-wise no group of Americans benefited more from the fact that employers could not pay them less than \$3.35 an hour. And, of course, it has gone up since that time.

But, Judge Thomas, in this 1987 speech you characterized the minimum wage as "an outright denial of economic liberty," and you stated that, "Economic rights are as protected as any other rights in the Constitution."

My question to you is: In 1987 did you believe that the minimum wage law violated economic rights which you thought were protected by the Constitution?

Judge THOMAS. No, Senator. And I think I have made myself clear here, and I have discussed it here. I don't have a copy of the speech in front of me.

The point that I was making with respect to minimum wage was a policy point, not a constitutional point. But let me address the constitutional point first.

I have indicated that I believe that the Court's post-*Lochner* decisions are the correct decisions; that those cases were appropriately

decided; that the Court is not a super-legislature to second-guess the very complicated social and economic decisionmaking of the legislative and executive branches.

With respect to the minimum wage, there was an ongoing policy debate concerning what the impact of the minimum wage was on certain minorities, particularly minority teenagers, and there is data to suggest that each time the minimum wage rises, minority teenagers, the unemployment rate increases.

Now, that is not to suggest that the minimum wage itself is not beneficial; indeed, it is. I think we all want everyone to make a decent wage. I certainly believe in that. But I think that there was a legitimate debate as to what are some of the impacts or unintended consequences of it, and that was the basis of that comment.

Senator METZENBAUM. Well, Judge Thomas, as Chairman Biden pointed out on Wednesday, economic rights currently are not entitled to the same degree of protection as other rights, such as due process, equal protection, and free speech. If they did receive that degree of protection, it would be much harder for Congress to pass laws protecting the environment, workers' rights, and the safety of workers in the workplace.

The speech in which you made that statement regarding economic rights was not a speech on political philosophy that you were giving to the Cato Institute. You were talking about the Constitution and economic rights, and you were talking to the Business Law Section of the American Bar Association. These were corporate lawyers. I am sure many of them were delighted to hear what you had to say about economic rights being protected by the Constitution as much as any other rights.

But on Wednesday, in response to a question from Chairman Biden, you stated that in constitutional adjudication, it would not necessarily be the case that the protection of economic rights "would be at the same level that we protect other rights."

Now, based on what you said in 1987 and what you told this committee, it would appear to me that today, as well as in your response to the chairman, that you have changed your views regarding this subject. You didn't make a distinction in your speech between young blacks and older blacks. You were talking about all blacks.

What has prompted you to change your views on this matter of economic rights?

Judge THOMAS. Senator, I have not changed my views. The point that I was making is that we do have rights, property rights, economic rights, within our Constitution. Now, we have other rights in our Constitution. The question becomes in constitutional adjudication at what level of scrutiny can those—or at what level of scrutiny does the Court look at regulation of those rights? They do exist. They are in the Constitution. I don't think there is any disagreement about that. The level of scrutiny for socioeconomic—in this case, the relevant factor for economic rights is rational basis. I have not quibbled with that, and I have made that clear.

In fact, in that very same speech or in one closely related to that, I made the point that the individuals who wanted to revisit the level of scrutiny for economic rights, I disagreed with them—individuals, as Chairman Biden mentioned, such as Macedo. But the

mere fact that you don't review those rights in the same way doesn't mean they don't exist, and it does not mean that they are not important.

However, I think what we do recognize in this society is that there are some rights that we value that are so deeply embedded in our society, at the core of our society, such as our first amendment rights, that we will review with a different standard. But to review it as a different standard in no way says these rights are unimportant. It recognizes our political process.

The CHAIRMAN. Will the Senator yield on my time?

Senator METZENBAUM. Of course.

The CHAIRMAN. Professor Macedo has come up several times. I have raised him. And I would like for the record to read a letter I received from Professor Macedo on Friday afternoon. I am sure he wouldn't mind. And this is his book. He said I kept holding up Epstein's book. I might as well hold up his book. [Laughter.]

It says, "Dear Senator Biden: Many thanks for giving me 15 minutes of fame, as Andy Warhol promised. Quite apart from this, though, it might be hard to profess objectivity now"—that is not relevant.

He said, "I could not agree more that the natural law issue is worth pursuing and have been a bit disappointed by Judge Thomas' vagueness." I might note parenthetically I have been very happy with that.

As a token of my appreciation, I wanted to offer a few pieces of work to you and your staff. The article, "The Right of Privacy: A Constitutional Moral Defense" is pretty clear and straightforward, I think, on the question of why something like natural law is inescapable in constitutional adjudication, as you have said at the hearings. I send along the book.

Then I want to read from just one paragraph of the article he sent along to make sure everything is clear in the record as to why both Senator Metzenbaum and I are pursuing this about Dr. Macedo. This is Steve Macedo's article, "Economic Liberty and the Future of Constitutional Self-government," sent to me Friday by Professor Macedo, and it is Macedo, M-a-c-e-d-o. He says:

The future economic liberty under the Constitution depends on the viability of the double standard—

his words, the double standard—

that has for nearly half a century characterized judicial interpretations of our fundamental law. The modern court applied a searching level of scrutiny to challenge laws that interfere with a list of preferred freedoms, including liberties associated with speech, religion, and privacy, or that involve discrimination against discrete and insular minorities. At the same time, and despite the Constitution's several explicit supports for economic freedom, laws interfering with economic liberties and property rights are typically subjected to a lax test designed to establish only the merest rational basis exists for the law in question. In applying this double standard, as I shall explain at greater length below, the modern court ignores the Constitution's support for economic liberty, disparages close connections between economic and other forms of freedoms, and invests legislators with unwarranted measures of trust, trampling at the core ideal of our constitutional regime the aspiration of reasonable self-government.

Now, the judge knew and I knew and everyone else knew why I asked that question, because Professor Macedo believes that the standard—which I understand you have no quarrel with and

accept, that has been around for half a decade, as he points out, is one that we should continue.

Judge THOMAS. That is right.

The CHAIRMAN. He believes it is one we should jettison. That was the reason for the questions and the reason why I appreciate—whether I agree with it or not—your answer distinguishing the fact that you do not agree with Macedo that we should jettison this double standard, as he called it. Am I correct?

Judge THOMAS. Right.

The CHAIRMAN. I thank the Chair, and I ask unanimous consent that the letter to me be introduced in the record as if read.

[The letter follows:]

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LITTAUER CENTER M-22
CAMBRIDGE, MASSACHUSETTS 02138
September 12, 1991

Senator Joseph Biden
Chairman, Judiciary Committee
SD-224, Dirksen Senate Office Building
United States Capitol
Washington, DC 20511

Dear Senator Biden:

Many thanks for giving me 15 minutes of fame - as Andy Warhol promised.

Quite apart from this - though it might be hard to profess objectivity now - I have been very impressed with your questioning. I could not agree more that the "natural law" issue is worth pursuing, and have been a bit disappointed by Judge Thomas's vagueness.

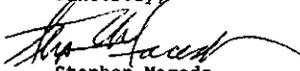
As a token of my appreciation, I wanted to offer a few pieces of work to you and your staff. The article on "The Right to Privacy: A Constitutional and Moral Defense" is pretty clear and straightforward, I think, on the question of why something like natural law is inescapable in constitutional adjudication, as you have said in the hearings.

~~I send along the book, in part, in case you need another prop. It was a good visual effect when you waived the Epstein and Fried books - but I wouldn't want you to wear them out!~~

May I make one humble request? I believe that Warhol's promise has a proviso to the effect that when you get your 15 minutes they've got to spell your name right. Mine seems to have entered the transcript as "Masito," according to the New York Times at least. Since I am not Japanese but Portuguese (like many of your constituents in New Jersey) I wonder if someone could correct the transcript?

Again, many thanks. You are doing an honorable job, and doing it well. Keep up the good work!

Sincerely,



Stephen Macedo
Associate Professor

The CHAIRMAN. I thank the Chair for allowing me—not the Chair.

Senator METZENBAUM. You are the Chair.

The CHAIRMAN. Well, I thank you very much. Sitting next to Senator Thurmond I am never sure what I am. He is always the Chair. But thank you very much for the interruption, but I thought it important to put that in the record. Anyone who wants to look at the book, this is it, "Liberal Virtues."

Senator METZENBAUM. One last question on this matter of the minimum wage. You gave me a rather lengthy answer, but I think this just takes a simple yes or no.

Do you still believe that the minimum wage law is an outright denial of economic liberty for employers?

Judge THOMAS. Senator, I think that I characterized it in the way that I think that I meant it, and that is that it does have unintended consequences of eliminating certain individuals or precluding them from entering the job market. There is data on that. I have—

Senator METZENBAUM. You haven't answered the question, Judge Thomas, I beg to point out to you. You are talking about the impact. I am not asking about the impact. You are saying it does preclude certain individuals from obtaining jobs. My question is: Do you still believe that the minimum wage law is an outright denial of economic liberty? Which is what you had stated, I think it was in 1987?

Judge THOMAS. And I explained, Senator, I think, what I meant by that. It does not allow certain individuals to enter the work force. And I did not intend to suggest, as I have also indicated to you, that this was some sort of constitutional judgment.

If we are talking about constitutional law, liberty in that sense, then the answer is no. That is not what I am saying.

Senator METZENBAUM. One of the most puzzling parts of your testimony to the committee last week is your suggestion that we should discount most of your past statements on legal and policy issues because those were made in your role as a policymaker rather than as a judge. The interesting thing is that your supporters assert that your childhood experience of growing up poor in the segregated South is a very important part of our consideration, and I agree with that. Your supporters argue that your personal history demonstrates that you will bring sensitivity to the bench when considering issues of race and poverty. I am not sure whether I agree with that.

You have basically said the same thing to us. In other words, your argument seems to be that your childhood background is more relevant to assessing your qualifications for the High Court than are a decade of speeches and writings and an 8-year record while head of the EEOC. Frankly, Judge Thomas, I have difficulty with that. Your tenure at EEOC is the major portion of your record. That is what qualified you for the court of appeals. Quite frankly, your tenure on the appellate court has been so brief that it gives us little indication of what kind of Justice you would be on the High Court. By your own admission, you spoke out on a number of issues during your chairmanship at the EEOC.

Judge I start from the assumption that public officials mean what they say. I do not think you were going around the country articulating views and advocating policy positions that you did not believe in. And if you were articulating views or advocating positions that you did not believe in, I think it is incumbent upon you to tell this committee when and why you were doing that.

I have to assume that when you expressed views on legal and policy issues as EEOC Chairman, those were your views. I can accept the idea that your views on certain matters may have changed between now and the time which you expressed yourself on a particular issue. But it is difficult to accept the notion that the moment you put on that judge's robe, all the views and positions which you held prior to going on the bench just magically disappeared. That is not my experience of the way it is in the real world.

If that was the case, then there would be no point in looking at anything beyond the past 16 months of your life. The pre-judicial record and positions of a nominee are usually a good indicator of what kind of judge that nominee will be. That is why we have these hearings—to explore that record and those positions.

You have spoken out a great deal on contemporary social and political issues. I want to ask you about some statements you have made on these issues because so often today's political or social issue becomes tomorrow's legal issue for the Court.

I think it is important for the Senate to have a sense of how you think about these matters. I have copies of speeches I want to ask you about. If you need to refer to those speeches or believe that a quote has been taken out of context, you should say so. I am trying to get a sense of how you think about political and social issues, and it is important that we be accurate.

For example, in an April 1987 speech at the Cato Institute, which has been referred to quite often, you stated that you "agree wholeheartedly" with former Treasury Secretary William Simon's statement that:

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

Now, Judge, this statement frankly does not comport with the reality of American political life in 1987. Why is it that in the seventh year of one of the most conservative administrations in this century you believe that this country was "careening with frightening speed toward a statist, dictatorial system"?

Judge THOMAS. Senator, I think that I have not an opportunity to go back and review that speech in detail. I have looked at it and don't know exactly where that quote appears in it. But the point I think throughout these speeches is a notion that we should be careful about the relationship between the Government and the individual and should be careful that the Government itself does not at some point displace or infringe on the rights of the individual. That is a concern, as I have noted here, that runs throughout my speeches.

In quoting former Secretary of the Treasury Simon, I think I was just underscoring that point.

Senator METZENBAUM. Well, Judge Thomas, if you have the speech in front of you—if you don't, I will send it to you—let me point out to you where it appears because I think that is very significant, and I think you have made a significant point. It is in your windup. "I find myself agreeing wholeheartedly with former Treasury Secretary William F. Simon when he asserts that"—and then I read the whole quote. And then you go on to say, "I can't think of a more appropriate time for truth than the Bicentennial of our Constitution"—thank you. Was there some material in between?

I am informed by my staff that——

Judge THOMAS. Which speech——

Senator METZENBAUM. That was the very end of the speech.

Judge THOMAS. Which speech was that, now, Senator?

Senator METZENBAUM. This was the speech to the Cato Institute on April 23, 1987. My question to you, so we don't lose sight of it, is that this was the seventh year of the Reagan administration, and I am trying to find out from you how you concluded that the country at that time was "careening with frightening speed toward a statist, dictatorial system."

Judge THOMAS. Senator, as I indicated to you and I think as I indicated throughout this speech, the point that I was making is that we were losing sight of the—it was my feeling that we were losing sight of the relationship, the appropriate relationship between the individual and the Government. And in quoting former Treasury Secretary Simon's speech, I think it was simply to underscore that point.

Senator METZENBAUM. And you thought this was happening during the Reagan administration?

Judge THOMAS. I think the relationship—my point was, again, as I indicated, that the concerns seemed to be diminished about the rights of the individual, and I was underscoring that point with that quote.

Senator METZENBAUM. I will go on. In an April 1988 speech at Cal State University, you declared that:

Those who have been excluded from the American dream increasingly are being used by demagogues who hope to harness the anger of the so-called under class for the purpose of advancing a political agenda that resembles the crude totalitarianism of contemporary socialist states much more than it does the democratic constitutionalism of the Founding Fathers.

Now, Judge Thomas, I think most Americans believe that any laws that resemble "the crude totalitarianism of contemporary socialist states"—your quote—would be inconsistent with our Constitution. I think most Americans believe that, if you are confirmed, you would have a duty to strike down any such laws. That is why we need to know what you meant when you used such terms.

In 1988 when you made that statement, what programs and policies did you have in mind when you spoke of "a political agenda that resembles the crude totalitarianism of contemporary socialist states"?

Judge THOMAS. The point that I was making in that particular portion of the speech, again, was this: That there seemed to be some efforts to disenchant or to encourage or to take advantage of disenchantment of certain individuals in order to, I think—and this

was, again, a policy point of view—to enlarge the role of Government. That was a concern of mine, and I think it is consistent with the concern that I expressed to you or that I expressed in the Cato speech.

I think that that was an appropriate concern. Of course, once again there is quite a bit of rhetoric there, but the point is quite simply that the relationship that I felt was getting lost in the shuffle and in the confusion was the relationship of the individual to the Government.

Senator METZENBAUM. That speech was in 1988, and in your speeches in 1987 and 1988, you seem to be talking about running toward this totalitarianism, toward a socialist state. And yet it is in a very conservative President's administration.

I sort of wonder, were you just using words to make a good speech, or did you really believe the things you were saying? Because the facts belie your assertions.

Judge THOMAS. I think, Senator, I also made it a point to bring the same concerns with respect to particularly minority individuals whom I have noted in this speech in its relationship even with the administration, that the administration was not addressing those concerns and certainly were not at that time addressing minorities as individuals. I think that that was one of the reasons and one of the bases of the Heritage speech.

Senator METZENBAUM. Yes, but the concern for the minorities was not being expressed by that administration. It was the reverse, and it wasn't that totalitarian socialist state about which you speak. That wasn't the problem. The problem was to try to prevail upon a conservative Republican administration to be concerned about minorities' problems. It wasn't this other concern about which you speak that was affecting minorities, as I see it.

Let me go on.

You wrote a chapter of a 1988 book entitled "Assessing the Reagan Years," in which you dismissed as an invention the argument that the ninth amendment undergirds the right to privacy. In the article, you expressed concern that the ninth amendment provides judges with a blank check to strike down legislation deemed by the Court to violate certain unenumerated rights. You also state that, "The ninth amendment will likely become an additional weapon for the enemies of freedom."

In 1988, Judge Thomas, who are these enemies of freedom that you were referring to?

Judge THOMAS. Senator, the point, again, that I was making, I have noted what my approach and concern about the ninth amendment itself was. It was the concern that judges would use the ninth amendment without reference to anything more than his or her own predilections, and that the adjudication of the ninth amendment had to be rooted in something other than that, had to be rooted in tradition and history.

With respect to my concern, the larger concern, it was that the efforts would be to enlarge the Government at the expense of the individual, not so much a commentary on the ninth amendment, but it is the overall point that I have made throughout these speeches, the relationship of the Government to the individual.

Senator METZENBAUM. But you didn't answer. Who were these enemies of freedom?

Judge THOMAS. Well, I don't think I named any. I think it was just a general—those who—

Senator METZENBAUM. Did you have anybody in mind?

Judge THOMAS. Not in particular, Senator.

Senator METZENBAUM. In an October 1987 speech at the Cato Institute, you expressed concern that:

Maximization of rights is perfectly compatible with total Government and regulation. Unbound by notions of obligation and justice, the desire to protect rights simply plays into the hands of those who advocate a total state.

It sounds like you had serious misgivings about protecting rights. In 1987, how did you think the protection of rights could lead to a total state?

Judge THOMAS. Senator, I think the point that I made earlier in the hearings is that I wasn't talking about the rights that we consider fundamental, but that one could just simply say that he or she has a particular program and that program then becomes a right, and that it would actually be nothing more than one's preferences, as opposed to the rights protected in the Constitution, and that a proliferation of these rights or policies would actually undermine the value of the rights that we hold near and dear or the rights that are currently protected by our Constitution.

Senator METZENBAUM. But in a 1988 speech at the Pacific Research Institute, you said, "Too great an emphasis on rights can be harmful for democracy." I needn't tell you that if you are confirmed, your job on the Supreme Court will be to protect the rights of Americans.

What made you believe that emphasizing rights can harm democracy?

Judge THOMAS. Senator, as I indicated, the rights that I was talking about there were not constitutional rights but rights that could proliferate simply by name, and these rights are nothing more than programs or policies as opposed to our constitutional rights or our fundamental rights.

Senator METZENBAUM. Let me go to a different subject. During the past 15 years, a number of American companies adopted policies which barred women from certain jobs unless they could prove that they were not capable of bearing children. These so-called fetal protection policies left the working women in the unconscionable position of having to undergo irreversible sterilization if they wanted to keep their jobs. Tragically, that is just what happened to a number of women at companies such as American Cyanamid and Johnson Controls. Six months ago, the Supreme Court completely banned these policies as illegal sex discrimination.

Judge Thomas, as head of the EEOC from 1982 to 1990, you had responsibility for protecting the millions of working women in this country against sex discrimination. Shortly before you took over, the EEOC decided not to resolve allegations of sex discrimination involving these fetal protection policies until it developed a formal position on the issue. In the interim, the sex discrimination charges were investigated in the field and then simply sent to the Commis-

sion's headquarters in Washington where they were held, pending the development of an EEOC position.

But under your leadership, under your command, the EEOC failed to address this intolerable situation, not for 1 week, not for 1 month, not for 1 year, but for over 6 years. During this entire period, dozens of charges of women involving fetal protection policies sat at your headquarters without resolution. The women who filed those charges had rights, but their right became meaningless in the absence of enforcement. And they didn't just lose their rights, Judge Thomas. These working women lost their jobs, their careers, their dignity, and in some cases even their ability to bear children.

Under increasing pressure from a House Education and Labor Committee investigation, the EEOC finally took a position in 1988 and began to resolve these charges in 1989. By that point, over 100 charges had piled up. Your agency couldn't even find many of the women who had filed the charges, so their cases were thrown out. For these women, justice delayed was justice denied.

I am very troubled by the EEOC's complete abdication of its entire enforcement responsibilities in this area. I am particularly disturbed because it appears that you were personally—personally—involved in the Commission's decision not to protect women from these policies. First, a memorandum prepared by the EEOC's Office of Legal Counsel described your personal preference that the EEOC refrain from deciding whether these fetal protection policies could be illegal under any circumstances:

On Chairman Thomas' suggestion, the EEOC staff manual now emphasizes that the Commission has not decided whether an exclusionary policy or practice is or can lead to a violation of Title VII.

In a second memorandum written to you in 1983, one of your own staff aides emphasized the need for the EEOC to decide whether these policies were illegal. "Since the charges, once investigated, will have to"—this is the quote in a memo—"Since the charges, once investigated, will have to be dealt with in some fashion, I recommend that the staff now begin preparing options for handling them. Otherwise, the Commission could end up with an inventory of unresolved and unresolvable charges." That was in 1983.

You responded by writing at the top of the memorandum, "Let's discuss. I have serious problems with this area."

You must, indeed, have had serious problems because you ignored that staffer's warning and left women unprotected for a total of 6 years.

Judge Thomas, why did it take you 6 years to help the women or to take any action to help the women who had filed these charges?

Judge THOMAS. Senator, as you noted, this was as very difficult area. The question for us was if an employer has a policy that says that women will not be allowed in a certain job, because the job itself, the radiation or, I believe in *Johnson Control*, battery acid could lead to harm to the ovaries or to the woman's ability to bear a healthy child or the next generation could have problems such as cancer, et cetera.

Initially, the concern was how do we make a judgment as to these health risks. I think we had extensive coordination or worked

with OSHA. I believe we worked with the EPA, et cetera, to try to make this determination, what standard do we apply and what role do we play. Again, I am basing this on my recollection of the early 1980's.

We subsequently decided to—our normal procedure in that instance is to bring the cases into headquarters until we develop a policy. This was one of the more difficult areas, as we were developing other policies. This was not the only policy.

Ultimately, I think we moved to giving guidance that indicated that the decision would have to be made based on business necessity, which was a strict standard. Finally, the position which we adopted was that if an employer were going to exclude women, it had to be based upon a bona fide occupational qualification, and that is ultimately the standards that the Supreme Court adopted.

Senator METZENBAUM. Mr. Chairman, I have about 10 or 15 minutes more on this one subject, and then I would be concluded. I am perfectly willing to wait my turn and come back for the next round. I just wanted to know if the Chairman desires me to conclude.

The CHAIRMAN. Well, I would think that we should take a break now, in any event, to give the Judge an opportunity to stretch his legs, and we can just huddle here for a second.

I might say right now, Judge, I am trying to figure out the time, because we are going to finish with you today and early, as I said on Friday, even if we have to declare 2 o'clock the lunch hour. It looks as though we have somewhere between 20 minutes or half an hour more on the Republican side, maybe. I am not positive of that. I think that is right. Senator Hatch has a few questions and I do not know whether anybody else has any more questions.

On the Democratic side, my questions, depending on how quickly we go through them, could take anywhere from 20 to 45 minutes, I do not know. It depends on the discussion we get into, if we do get into one. It is mainly recapitulation. I can tell you now I am going to talk to you a little bit about expressive conduct in speech and separation of powers.

Senator Kennedy has around 20 or 30 minutes. The Senator from Ohio has 15 minutes or so. The Senator from Vermont has—

Senator LEAHY. Mr. Chairman, I think I will take my full time. I understand Senator Thurmond stated that the witness misunderstood my question when I asked about cases during the past 20 years. I may want to go back into that, too, now that the question is fully understood. But I also have some other areas of questioning, so I would expect to take my full time.

The CHAIRMAN. The Senator from Alabama has roughly one round, half an hour, is that correct?

Senator HEFLIN. Yes.

The CHAIRMAN. And the Senator from Illinois is about 10 minutes.

Senator SIMON. Less than that.

The CHAIRMAN. Less than that. So, we are down to the wire now. What I would do is ask you, as we break these 10 minutes, to make a judgment as to how we are going to do that, but let us—

Senator THURMOND. Mr. Chairman, in view of Senator Metzbaum's question, Senator Hatch desires some time to answer it.