

The CHAIRMAN. Thank you very much, professor. I do appreciate it. I realize this is very difficult. You all have so much to offer, and you made such a trip to get here, and then we say, "5 minutes." I apologize to you and all the witnesses to come for the limitation, but I don't know quite else how to do it.

Professor Grey, welcome.

STATEMENT OF THOMAS C. GREY

Mr. GREY. Thank you, Senator.

There is statement here which the three of us have signed, along with a number of other law professors, which really expresses our views in writing, and I hope the Senators will read it.

The CHAIRMAN. It will be placed in the record.

Mr. GREY. I will be short, even shorter.

Frank Michelman said something of what I wanted to say about the role of the Senate, and so I will shorten what I had to say about that.

I just want to point out the Washington Post editorial that Senator Thurmond entered in the record, in which they basically endorsed Judge Thomas' confirmation. There is something said there that I think is wrong. The editorial says,

It is still pretty widely accepted that a President has a right to choose Justices who reflect his own philosophical predisposition, and that if the nominee is to be rejected, it should be on some other grounds, grounds of moral, mental, or professional disqualification.

Now, I think that is not the understanding of the Constitution that most scholars who have studied the nomination and confirmation process have. It is not the one verified by our history, it is not the one backed up by the original intent, as best that can be ascertained, and it has not consistently been the practice of the Senate.

The process is a political one. It does not mean that adjudication is a political process, it means that there is a screen, a political screen placed before the judges become judges and stop being politicians, in which two kinds of politicians, the President on the one hand and the Senate on the other exercise their political judgment as to whether this person should be a Federal judge and, most dramatically, of course, a Supreme Court Justice in the case of appointments to this Court.

As people have pointed out, these judges and this Justice, if confirmed, will serve for a whole generation, the law of the United States for a whole generation is at stake. It seems to me this body has a responsibility equal to that of the President in exercising its independent judgment on whether this person is appropriate for this job.

It does not mean that the Senators necessarily should vote not to confirm any judge they would not have appointed, for that would be an unworkable system. But it does mean, it seems to me, that judges should apply the same criteria as the President applies, and I ask you to consider for yourself what criteria this President has applied in this and other cases.

Then, simply as an analogy, I would suggest that Senators might take essentially the same attitude toward the confirmation vote as they think the President might appropriately take for the question