

The CHAIRMAN. Thank you.
Senator Simpson.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S.
SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Thank you, Mr. Chairman.

I see you were trying to throw me off of my usual pattern there. The tenor of my remarks were somewhat dependent upon the commentaries that might emanate from my friend and senior colleague from Ohio.

The CHAIRMAN. It will make it harder for you to attack, before attacked, but give it a shot anyway, Senator.

Senator SIMPSON. Thank you. I was citing there a natural law of the Judiciary Committee. [Laughter.]

Judge Thomas, we welcome you to this important step in this process. Some of my colleagues have already spoken very clearly of your impressive and truly inspiring life story. I will not reiterate those remarkable accomplishments, and yet they certainly do stir one.

I would only point out a clear irony, congratulations, and because of your tremendously successful career to date, you now have the opportunity to be subjected to a very rigorous process that can be unpleasant and sometimes rancorous, but, hopefully, never unfair. I do not believe our Chairman would ever allow that.

Let me emphasize that these hearings can also be, quite clearly, courteous and thoughtful, and I believe that was indeed the case when we heard testimony and comments from Judge Souter and Judge Kennedy, before this committee voted to elevate them to the Supreme Court.

On the other hand, I think Judge Bork might choose to undergo a medieval torture chamber, rather than to be presented again before this committee, and that was a very unfortunate situation in my mind, whether you liked him or whether you didn't.

So, Judge Thomas, unlike some nominees we have faced, and I think, again, in particular, of Justices Kennedy and Souter, you are really not a great mystery to any of us. You have been here before the U.S. Senate four times. No one I can ever imagine would have that type of exposure before this committee.

So, no mystery to us. You have twice been confirmed by the U.S. Senate here on the EEOC, by this very committee, after extensive hearings before the Senate, we confirmed your nomination to the U.S. Court of Appeals for the District of Columbia Circuit. Four times, members of the Senate have voted for or against you, very few in the negative.

What is different now, I suppose will be told to us is being a "higher standard." I think it will be really a higher degree of plain old politics. There is nothing wrong with that, but I think we ought to stay with reality as to what it will be.

There will be some witnesses who will appear after you who will be very critical of you, extremely critical. They certainly have that right to express any type of opinion they may wish. However, for those Americans who are not as familiar with your record as we are in the Senate after four separate hearings, let me emphasize

that some criticisms of you have already been well considered and rejected by the Senate, and I think that is important to keep in mind.

Some groups will be here to criticize your tenure, as Chairman of the EEOC or as Director of the Education Department's Office of Civil Rights. This committee and the full Senate has had all of those criticisms squarely before us on more than several occasions, including one which was not of great record, before the Senate Select Committee on Aging, which was a real rake-around job in ancient days, and not much came of that, either.

So, we rejected all of those previous when we confirmed your nomination to the D.C. Circuit Court by a voice vote. I think there was a quite audible "nay," perhaps from one on the panel who is not a faint-hearted man and who speaks very clearly on the issues.

So, I would hope that this hearing does not simply dwell on all these previously thoroughly debated and already decided issues. That laundry has been well-washed.

Some critics will be here to say and will say here that the ABA found you to be only qualified for the Supreme Court, and that is the American Bar Association. I assume some on that committee apparently would have preferred that you had more experience on the appeals court. But let us clearly remember that most of those in the ABA are of the same critics who opposed the nomination of Robert Bork, even though a majority of the ABA committee had found Judge Bork to be "well-qualified." So much for that.

Let us also recognize the ABA rating for exactly what it is, helpful at times, irrelevant at others, and always subject to political manipulation and pressure of special interest groups within the bar—yes, that does occur.

Some special interest groups will be here to say some pretty harsh and even some very arrogant and patronizing and even nasty things about you, from the testimony I can envision coming from them in some of the material I have seen. You might not even be able to recognize yourself when they are finished portraying you. I know that was the case with Robert Bork.

I do not come back on that to express any unfairness by the Chairman. There are many who feel the other way. That is not even the issue. But what I saw happen, this Senator from Wyoming, was we watched a man who had been on the Federal bench for 5½ years, who had done and written 104 decisions, none of them ever overturned on appeal, and 6 of his dissents became majority opinions of the U.S. Supreme Court, and whether one liked him or not, he was portrayed to this committee and to the U.S. people as a gargoyle, a sexist, a racist, an invader of the bedroom, a sterilizer of women. I sat right here and watched it all happen—a very, very troubling procedure.

So, from what I have come to discern, you will also be portrayed by some as being hostile to privacy rights, as being an apologist for segregated schools, and a promoter of wild, dramatic, and unchecked theories of natural law that will cause the U.S. Constitution to come undone, it seems. One writer, I think who aspires to this Court under some other administration, has said that the Senate cannot avoid sharing the responsibility for the fate of self-government in the United States—pretty dramatic.

I thought, as I heard the discussion, I think you might come to see that natural law will become but a pseudonym for natural opposition or natural partisanship or natural frustration, at having to place an independent, thoughtful, bright conservative on the U.S. Supreme Court. That will become quite evident to the American public.

Now, there is a natural solution for that, elect a natural Democrat as President of the United States. The American public has not chosen recently to do that, but, naturally, they could. [Laughter.]

So, some groups have actually portrayed you as being hostile to civil rights issues, and that is patently absurd and demeaning and arrogant. It is clearly known that you are a powerful supporter of antidiscrimination laws. We also well know that other groups are most afraid of other groups who do not like the fact that you oppose remedies which themselves cause reverse discrimination, when actually most types of reverse discrimination do indeed violate the Constitution and most Americans really do strongly oppose reverse discrimination.

So, I believe these criticisms of you to be inaccurate and off-base, and some writers I think have been in some cases somewhat hysterical. And one can be a fine and strong supporter of civil rights, while being very strongly opposed to unfair preferences, and many here feel that way. I know I fit that category, too.

So, Judge Thomas, there will be a number of us here who listen to seek the truth. If we are here just to hear some of the special interest groups parrot some of the old sale lines of criticism I have just recited, well, we have our opportunity to rebut that.

But for now, I earnestly recommend that you sit back and relax as much as is possible. The Chairman will handle it with equanimity and care and fairness, and allow the American public to come to know you in the same way that many of us on this committee know you. And through tough, hard, serious and, yes, even partisan questions by this committee, I believe all Americans will come to know you for what you are, an uncommonly bright, articulate, and qualified judge, with significant and impressive legal and life experiences, who is ready, fully ready, willing, and able to serve our country on the Nation's highest court.

Let me conclude by saying that not only do I believe you will be good for the Supreme Court, but, Judge Thomas, I think you will also be very good for America on the broader level. You yourself have noted that is some risk, obviously, that there are too many people today giving groups excuses for various things that happened in their lives. I am not even going to comment on that. You can. You have.

But I think the last thing anyone needs right now in this country, white, brown, yellow, or black, is more excuses for everything. Excuse time is over. It is important to run out of scape goats. It is time for all Americans—and that is what we are in this pluralistic society—to focus again on what has made this country great, and we must all reacquaint ourselves, all of us, every race, color and creed, with those distinctly American and, yes, even corny notions of hard work and decency and kindness and fairness to our fellow

humans, and we must strive to provide every single individual with an equal opportunity to realize his or her full potential.

You exemplify what all of us might be able to accomplish, good things if we were to stop making excuses, and I was awfully good at that. I was known as "Alibi Al" in high school, and it worked. I could fake anybody out except myself. Finally, creeping maturity overcame me, and there was some progress.

So, you are an inspiration to us all. Mr. Chairman, I thank you and I sincerely welcome Judge Thomas to our committee, and I thank you for your past and present courtesies.

The CHAIRMAN. Thank you, Senator, for once again not disappointing. I think you will soon find out that Judge Thomas' views are so different from Judge Bork's that you will be surprised to find that this is not about conservatives; rather, this is about how people think.

Senator SIMPSON. I have an opportunity for rebuttal, thank you. [Laughter.]

The CHAIRMAN. Senator Metzenbaum.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

Judge Thomas, this is the fifth Supreme Court vacancy in the Reagan-Bush era. Once Justice Marshall's seat is filled, Presidents Reagan and Bush will have filled a majority of seats on the Supreme Court.

A judicial nominee cannot become a member of the High Court, simply because the President and his advisers are comfortable with that nominee's views and judicial philosophy. The Supreme Court is not an extension of the Presidency. The Constitution makes it clear that the Supreme Court is a separate and independent branch of government. That same Constitution assigned the Senate a role in the confirmation process, to help preserve the independence of the judiciary.

The importance of the Senate's role has grown in recent years, because, quite frankly, Presidents Reagan and Bush have made no bones about using the Court to advance their political and social agenda.

A core element of the Reagan-Bush political program has been reversal of Supreme Court decisions in the areas of abortion, civil rights, individual liberties, and the first amendment. The Reagan and Bush administrations have used the courts to achieve policy outcomes on social issues which they could not obtain through the legislative process.

Make no mistake about it, the Reagan and Bush administrations have succeeded. You only have to look at the Court's astonishing decision last term in the abortion gag rule case, to realize that the Rehnquist court is intent on implementing the Reagan-Bush social agenda.

An omen of things to come from the Rehnquist court was contained in a paragraph in *Payne v. Tennessee*, a 1991 case in which the Court reversed itself on a question of constitutional liberties. The majority in that case stated that adherence to precedent is