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McGroarty/Nix
October 18, 1991
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[THOMAS]

PRESIDENTIAL REMARKS: SWEARING-IN OF JUSTICE CLARENCE THOMAS
THE SOUTH LAWN
OCTOBER 18, 1991
2:00 PM

Welcome to the White House. / First a warm welcome to the members of the Supreme Court -- Barbara and I join with you and the nation mourning the loss of Nan Rehnquist, the wife of the Chief Justice. // [[IF CHIEF JUSTICE REHNQUIST IS IN

ATTENDANCE: Mr. Chief Justice, may I say that Barbara and I and our entire nation are thinking of you and your family as we mourn the loss of your beloved^o wife, Nan.]] //

Let me also welcome the many Members of Congress and my Cabinet. / Friends of Clarence Thomas, who have worked with him here in Washington -- and let me single out Senator Jack Danforth, a man every American would be proud to call friend. / The many members of Clarence Thomas's^g family here today: his wife Ginnie and son Jamal. Clarence's mother, Mrs. Leola Williams. His sister, Emma Mae Martin, and brother, Myers. His cousins -- whether they're first, second, third or fourth -- all the aunts and uncles and friends, some of whom drove all the way up from Pin Point, Georgia to be here this afternoon. 600 long miles -- but they would have driven 6000 miles to share this proud day. //

People from far and wide -- from all walks of life, all levels of education and income -- have come here today in testament to the character of Clarence Thomas. / But what

brought you here is also something more: the power of the American ideal -- the values of faith and family, of hard work and opportunity. These are the values that unite us all -- that give America meaning. //

America is the first nation in history founded on an idea: on the unshakable certainty that all men are created equal. / When we ask our Justices to swear allegiance -- to uphold the supreme law of the land, we entrust to them not mere words on parchment, but the living soul of a Nation. / Clarence Thomas joins the distinguished ranks of jurists to whom we entrust this sacred task -- who, in the stark and simple phrase of Chief Justice Marshall,  tell us "what the law is." //

I said when I nominated Clarence Thomas that this man is "a fiercely independent thinker, with an excellent legal mind, who believes passionately in equal opportunity for all Americans." Since then, the whole nation has learned that the passion and the intellect and the independence of mind all spring from a single source: an inner strength stamped on his character long ago, when he walked the dirt roads of Pin Point. //

Clarence Thomas comes to the Supreme Court having worked in the private sector -- having served in state government, and in every branch of federal government. / Each position will serve him well on the Court -- sharpening his vantage point on the many questions that come before him. //

These are the man's qualifications. They are not the same as his experience. //

Clarence Thomas knows first-hand the searing hate and sting of segregation. He knows the cold face of indifference -- the unthinking cruelty that tells some men and women that society expects little of them -- and offers even less.

But Clarence Thomas would not be here today if there were not more to his story. He has known his share of the joys of life: The love of family, / the devotion of friends, / the kind gestures from people committed to decency and fairness, to justice and the American Dream. //

Clarence Thomas has endured America at its worst -- and he has answered with America at its best. // He brings that hard-won experience to the High Court -- and America will be better for it. //

So let me say to everyone here: Don't be overawed by the solemnity of this moment. / Celebrate this day. See what this son of Pin Point has made of himself. See how he makes us proud of America -- proud of all that is best in us. ///

In just a few moments, we will bear witness as the oath of office is administered to our Nation's newest Supreme Court Justice. Before we do, let me say on a personal level: America is blessed to have a man of such character serve on its Highest Court. //

Clarence Thomas -- Mr. Justice Thomas: congratulations. / I now ask Justice Byron White to administer the oath.

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MEDIA COVERAGE OF THOMAS NOMINATION

*C. Thomas*WIRES

1. Frustrated Democrats Press Thomas On Position Changes (AP)
2. (continued)
3. Thomas Says It's 'Irrelevant' Whether He Has Opinion On Abortion (AP)
4. (continued)
5. Taking Sides: Trying To Get The Best Spin (AP)
6. (continued)
7. Nominee Says Past Views Won't Guide Future Judgments (AP)
8. (continued)
9. Thomas 'Pained' By Back-Alley Abortion (AP)
10. (continued)
11. Thomas Faces Toughest Questioning Yet In Senate Hearings (Reuter)
12. (continued)

TELEVISION

13. Thursday discussion with Nina Totenberg and Paul Duke
14. Wednesday evening network news
15. (continued)

NEWSPAPERS

Thursday, Sept. 12

Chicago Tribune

16. Senators Question Thomas' Inconsistency

Los Angeles Times

17. Column -- A Thomas Idea Could Energize Liberal Engine (by Timothy S. Bishop)

Chicago Sun-Times

18. Column -- The Long And Short Of Thomas Hearing (by Raymond R. Coffey)

19. Senators Dispute Thomas' Denial Of Abortion View

Hartford Courant

20. Thomas Controversy Echoes Debate On Bork

Philadelphia Inquirer

21. Column -- Our 'Aristocracy Of The Robe' Includes Many Horatio Algiers (by Howard G. Schneiderman)
22. Column -- PC Brigades Are On The Defensive (by Ronald James)
23. Thomas Holds Firm On Abortion, Denies Revising His Views

New York Post

24. Column -- Judge Thomas Deserves Sympathy, But... (by Jeff Greenfield)
25. Column -- Nominee Knows The Pain Of Poverty And Bigotry (by Pete Hamill)

26. Thomas Ducks 'Yes' Or 'No' On Abortion

27. Poll: Most Minority Women Pro-Choice

Christian Science Monitor

28. Column -- Judge Thomas Is Locked In To Laissez Faire (by James Boyle)
29. Column -- Background And Ability Qualify Thomas For Court (by Stephen M. Shapiro)

30. (continued)

Baltimore Sun

31. Thomas Refuses To Discuss Constitutionality Of Abortion
32. Some Blacks In Congress Concede Post To Thomas

USA Today

33. Column -- The Thomas View Of 'Women's Work' (by Julianne Malveaux)
34. Thomas Silent On Abortion
35. Focus Shifts To Record At Civil Rights Agency
36. Nominee Hits His Stride On Day 2
37. Lobbying Not As Heavy As In Bork Case
38. Friends Glued To TV In Pin Point, Ga.
39. Outside The Hearing Room, The Battle Of The Sound Bite
40. Thomas Rules In 'Redskins vs. Cowboys'

Washington Times

41. Editorial -- The Opponents Of Judge Thomas
42. Column -- Bridging The Racial Divide (by Cal Thomas)
43. Senators Press On Abortion
44. Panel Tries To Catch Thomas Shifting On Issues
45. Nominee Wins Fans Beyond Beltway

Wall Street Journal

- 46. Editorial -- Biden Meets Epstein
- 47. Democrats Accuse Thomas Of Changing Positions To Win Confirmation As Justice

New York Times

- 48. Editorial -- Natural Law, Then And Now
- 49. Thomas Undergoes Tough Questioning On Past Remarks
- 50. (continued)
- 51. Sticking To The Script
- 52. Specter Dons Mantle Of Republican Maverick At Senate Hearing
- 53. Sizing Up The Tal Of 'Natural Law': Many Ideologies Discover A Precept

Washington Post

- 54. Column -- The Modest Significance Of The Modern Court (by George Will)
- 55. Thomas Refuses To State View On Abortion Issue
- 56. (continued)
- 57. For Committee Democrats, Nominee's Lack Of Views Can Be A Target Too
- 58. Natural Law Places Focus On Flexibility

Wednesday, Sept. 11

Dallas Morning News

- 59. Thomas Tries To Ease Fears At Hearing

Chicago Sun-Times

- 60. Thomas Backs Privacy Rights, Mum On Abortion

Chicago Tribune

- 61. Column -- Grandpa Followed His Natural Law (by Mike Royko)
- 62. Thomas Supports A Right To Privacy

Hartford Courant

- 63. Thomas Sees Privacy Right Guaranteed
- 64. (continued)

Miami Herald

- 65. Thomas Skirts Abortion Issue
- 66. Hearing A Tough Job Interview For Thomas

Detroit News

- 67. Editorial -- Joe Biden's Little Confession
- 68. Column -- In Senate Minefield, Nominee Sidesteps Loaded Questions (by James P. Gannon)
- 69. Thomas Can Expect More Questions

St. Louis Post-Dispatch

- 70. Thomas Backs Privacy Rights
- 71. Thomas Scores Points In First Round Of Confirmation Hearings

Boston Globe

- 72. Thomas Disavows Old Stance
- 73. (continued)
- 74. For Thomas, A Choice Between Popularity And Principle
- 75. In Privileged Setting, Panel Hears Of Life Of Poverty

Newsday

- 76. Thomas Tones Down Themes Of His Speeches

Cleveland Plain Dealer

- 77. Court Nominee Avoids Issue Of Abortion

Baltimore Evening Sun

- 78. Mfuné Has Doubts On Thomas

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Frustrated Democrats Press Thomas on Position Changes
By JAMES ROWLEY
Associated Press Writer

WASHINGTON (AP) — Frustrated Democrats accused Supreme Court nominee Clarence Thomas Thursday of evading questions about his retreat from past positions and unreasonably refusing to say how he would approach future cases.

"That's the most inartful dodge I've ever heard," Thomas was told at one point by Sen. Joseph R. Biden, the Judiciary Committee chairman, after the nominee said he "could not sit here and decide" whether unmarried couples had a right to privacy.

Thomas eventually said sexual relations and childbearing by unmarried couples were protected by a privacy right, but not before Biden said: "It's getting more like a debate to get information."

Despite such complaints — and questions by several Democrats whether Thomas had undergone a "confirmation conversion" and was disavowing previous statements to win votes — there did not appear to be a solid opposition to the nomination.

Thomas continued to turn aside questions about his views on abortion, finally telling Sen. Herb Kohl, D-Wis., "Whether or not I have a view is irrelevant."

On the subject of changing positions, Kohl asked Thomas, "Why is it inappropriate for us to make an evaluation of your career based on all of what you have written and said?"

Kohl suggested that Thomas was telling the committee "Just view me on what I am saying this week," and the senator asked if that was the right way for the panel to make its confirmation decision.

Republicans on the committee came to his defense, as did President Bush who said at the White House that Thomas was "doing a beautiful job up there."

Bush, asked at a news conference about the credibility of Thomas' claim not to have an opinion on the landmark 1973 court decision legalizing abortion, said simply, "That's a question for the Senate to decide."

Sen. Orrin Hatch, R-Utah, complained that Thomas had been asked about abortion 70 times, compared to the 36 questions about the issue that were asked last year at David Souter's confirmation hearing. Souter was confirmed despite his refusal to answer such questions.

"I don't understand why you are being treated any differently than these other confirmable people," Hatch said.

A federal appeals judge since last year, Thomas, 43, was nominated this summer to replace resigning Justice Thurgood Marshall. Both men are black, but Thomas has a strongly conservative record opposed to Marshall's liberalism.

Biden, D-Del., expressed exasperation at Thomas' insistence during three days of hearings that he espoused "natural law principles" only as political theory, not as a political philosophy.

"That strikes me as something different that what you said" in many previous speeches, Biden told Thomas.

In a 1988 speech, Thomas, then chairman of the Equal Employment Opportunity Commission, had said "the higher law background of the American government, whether explicitly appealed to or not, provides the only firm basis for a just, wise and constitutional decision."

Biden reminded Thomas that during another speech that year, he had praised Justice Antonin Scalia's "remarkable dissent" from a Supreme Court decision as showing how "we might relate natural rights to democratic self-government and thus protect a regime of individual rights."

During the break, Danforth said Thomas had laid to rest fears "that he had in mind an extra body of law ... that he was going to apply in unexpected and unpredictable ways."

Danforth said Thomas' understanding of constitutional law "is a very centrist position, it is not ossified, it is not locked in time or what the judge has popping out of his head."

Sen. Edward M. Kennedy, D-Mass., pressed Thomas to tell him what standard he would use in deciding an abortion case, noting that Thomas had already testified in support of a test used to decide school prayer disputes, including one the high court will consider this fall.

Thomas refused to give such an analysis "in this setting."

Outside the U.S. Capitol, black civil rights and religious groups staged a rally to urge the Senate to reject the nomination and "send him back to Pin Point, Ga.," his hometown.

Black groups that oppose Thomas accused him of trying to obscure his record by focusing attention on his poverty-stricken childhood in the rural, segregated South.

AP-DS-09-12-91 1559EDT

3

Thomas Says It 'Irrelevant' Whether He Has Opinion on Abortion
By RICHARD CARELLI
Associated Press Writer

WASHINGTON (AP) — Supreme Court nominee Clarence Thomas told the Senate Judiciary Committee today it is "irrelevant" whether he holds any personal opinion on abortion, spurring new frustration among the committee's Democrats.

But as the hearings' third day got under way, no groundswell of opposition to his confirmation seemed to be emerging.

Asked several times by Sen. Herb Kohl, D-Wis., about women's right to end their pregnancies, Thomas said, "Whether or not I have a view is irrelevant."

President Bush, asked at a news conference whether Thomas' claim not to have an opinion on abortion is credible, answered, "That's a question for the Senate to decide."

"He's handling himself very well," the president said. "I think he's doing a beautiful job up there. I feel more confident than ever that he will be confirmed."

Thomas' answers have frustrated the committee's Democrats, who say he is an evasive witness. They also have voiced skepticism about his backing away from stands he took in past writings and speeches.

Committee Chairman Joseph Biden, D-Del., began to show signs of exasperation today during spirited questioning about the nominee's views on "natural law," a theory that certain rights exist independent of written law.

At one point, Biden accused Thomas of using "tortuous logic." Later, he referred to one of Thomas' replies as "the most unartful dodge I've heard." After still another Thomas answer, Biden said, "That's not the question I asked you, judge."

Republicans tried to deflect criticism over Thomas' refusal to answer questions from the Democrats.

"It is, in my view, inappropriate to keep this up," said Sen. Orrin Hatch, R-Utah. He said Thomas had been asked more than 70 questions about his abortion views even though Justice David H. Souter was asked only 36 such questions during his confirmation hearings last year.

"What are we going to have? Sixty-four thousand questions on abortion before we're done with this approach? Hatched asked. "Enough is enough."

Thomas said Senate confirmation of his nomination would give him "an opportunity to serve and give back" and to "bring something different to the court."

"I can walk in the shoes of the people who are affected by what the court does," Thomas said.

Several senators were openly skeptical Wednesday over Thomas' insistence that he has no opinion on the 1973 Supreme Court decision legalizing abortion.

If that's so, said Sen. Paul Simon, D-Ill., "he's the only person gathered in the room who does not have an opinion." Kohl added, "I'm concerned about his candor, his willingness to be forthcoming."

Today, Kohl asked the nominee, "Is it fair of you to say to us, for the most part, just view me on what I'm saying here this week?"

Kohl asked the black federal judge whether he was offended by published comments calling his appointment by President Bush a "quota."

"That would trouble anyone," Thomas said, adding, "I don't think it's accurate." He said Bush assured him he was picked because he was the best qualified of those potential nominees considered.

Thomas is expected to continue testifying through Friday. The committee next week will hear from other witnesses.

Two pivotal members of the 14-member committee — Howell Heflin, D-Ala., and Arlen Specter, R-Pa. — also voiced concern about Thomas' answers. But the panel's traditional third swing vote, Dennis DeConcini, D-Ariz., said Thomas was doing well.

Heflin cited the "appearance of a confirmation conversion" and said it may raise questions of Thomas' "integrity and temperament."

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But Heflin added, "I am not at this time of any firm opinion one way or the other" on whether Thomas should be confirmed. And Simon said Thomas' performance thus far "has neither helped him nor hurt him."

Specter blamed fellow committee members more than Thomas in concluding, "We really haven't moved very far in the process."

Thomas' opponents believe Republicans Strom Thurmond of South Carolina, Orrin Hatch of Utah, Charles Grassley of Iowa, Alan Simpson of Wyoming and Hank Brown of Colorado are solid Thomas backers.

But they hope Sens. Edward M. Kennedy, D-Mass., and Howard Metzenbaum, D-Ohio, will be joined by the three swing-vote senators and Biden, Leahy, Simon and Kohl in voting against the nominee.

Biden and Kennedy declined comment Wednesday on their leanings.

Metzenbaum said Thomas' refusal to give direct answers "makes it more difficult to vote for him."

AP-DS-09-12-91 1449EDT

5

Taking Sides: Trying to Get the Best Spin
By JAMES H. RUBIN
Associated Press Writer

WASHINGTON (AP) — "Is there a line here?" asked Sen. John Danforth as he approached a bank of microphones and television cameras outside the room where Supreme Court nominee Clarence Thomas is undergoing Senate confirmation hearings.

Assured by a clutch of reporters that senators outrank interest groups when it comes to placing their spin on the day's events, the Missouri Republican introduced two Thomas backers and stepped aside to let them give their testimonials.

The public relations battle spilled onto the lawn near the U.S. Capitol on Thursday, as civil rights groups staged a mini-rally urging the Senate to reject the nomination and "send him back to Pin Point, Ga.," Thomas' hometown.

Not to be outdone, Thomas backers wearing T-shirts proclaiming their support distributed buttons that said: "Tell Our Children. Dreams Can Come True. Support Clarence Thomas."

The events are typical of a process that increasingly is taking on the trappings of a full-fledged political campaign.

While inside an ornate Capitol Hill hearing room Thomas is pressed for his views on the law, there is a flurry of activity in jammed corridor outside to influence the public, the news media and ultimately the senators who will decide the nominee's fate. "We have a civic and moral responsibility to get the message out," said Ralph Neas, head of the Leadership Conference on Civil Rights. "This is an appropriate way to celebrate the bicentennial of the Bill of Rights."

Neas' organization, a coalition of liberal groups opposed to Thomas, is being matched news conference for news conference by supporters of the conservative black judge.

Among the most prominent backers is Danforth, Thomas' boss when the nominee was an assistant attorney general in Missouri and later a member of the senator's staff. The moderate Republican senator, well liked and respected by his colleagues, is taking a leading role in shepherding Thomas' appointment through the Senate. The rough-and-tumble politics surrounding the Thomas confirmation fight is an updated, institutionalized version of a process that began to flower when Robert H. Bork lost his battle to be confirmed to the high court in 1987.

Republicans and conservatives have accused liberal interest groups of ruining Bork's chances to become a justice by distorting his record.

This week, they say, they're not taking any chances that the public's view of the proceedings will be one-sided.

"We've got to participate," said Thomas Jipping of the conservative Coalitions for America. "This is an opportunity for the nominee to speak for himself. We've got to let the American public know he's telling the truth."

Jipping was a guest Wednesday on a pre-dawn radio talk show in Denver and is taking other steps to line up support for Thomas.

"We're trying to get 75,000 phone calls to senators in the next two weeks" to demonstrate backing for Thomas, he said. Liberal groups are taking similar steps — keeping their followers updated on the latest developments, distributing flurries of news releases to reporters and sponsoring newspaper advertisements.

"Americans clearly have a right to know what Clarence Thomas stands for," says a full-page ad paid for by Planned Parenthood, a group opposing the nominee. "We must get the answers ... before we discover that Mr. Thomas is one more vote against a woman's right to decide about abortion."

"Call your senators and tell them to demand answers," the ad urges. "Do it today."

Outside the hearing room, the so-called "spin doctors" who buttonhole reporters to analyze the day's proceedings are focusing on Thomas' strategy of backing away from controversial statements he made in the past.

Liberal groups called it a confirmation conversion, an expedient repudiation by Thomas of his record aimed at assuring him a seat on the high court. Conservatives said it demonstrates his impartiality and open-mindedness.

Thomas' "attempts to repackage his views (are) insulting to the intelligence of the senators and the women of this country," said Patricia Ireland of the National Organization for Women.

"Judge Thomas today treated women as second-class citizens" by refusing to discuss abortion rights, said Judith Lichtman of the Women's Legal Defense Fund.

Conservative groups said Thomas' opponents were desperate because they lacked grounds on which to attack the nominee successfully.

"All the other side has is the possibility of a misstep" by Thomas, said Jipping.

"You've got 'em," Sen. Alan Simpson, R-Wyo., told Thomas. "They're very frustrated by you."

AP-DS-09-12-91 1447EDT

7

WALTER MEARS: Nominee Says Past Views Won't Guide Future Judgments
An AP News Analysis
By WALTER R. MEARS
AP Special Correspondent

WASHINGTON (AP) — This judge had been as talkative as the last one was taciturn. But Clarence Thomas said not to worry about his 138 speeches, telling skeptical senators those views won't guide his judgments on the Supreme Court anyhow.

It's a variation on the blank-slate confirmation of Justice David H. Souter in 1990. Thomas came to his nomination with a full slate of speeches and writings, but testified that he's erased them, setting aside ideological and personal preferences in order to be a fair and impartial federal judge.

So far, the strategy seems to be holding. There is no sign that liberal opponents are going to be able to rally more than token opposition to Senate approval of Thomas, 43, a black conservative.

"You've got 'em," applauded Sen. Alan Simpson, R-Wyo.

"They're very frustrated by you."

Thomas called his old speeches the musings of "a part-time political theorist" in the policymaking job he used to hold, not of the judge he is now.

Souter's critics couldn't find a paper trail because he had said and written so little on national issues before his Supreme Court nomination.

There's no such shortage with Thomas. The speeches are among 36,000 pages of documents — 10 cartons full — supplied to the Senate Judiciary Committee for his confirmation hearings.

But Thomas said repeatedly that they no longer count.

He said ideological mindsets are part of the baggage a fair, impartial judge cannot carry. "You start putting the speeches away," he said. "You start putting the policy statements away. ... You want to be stripped down like a runner. So I have no agenda."

Like Souter, confirmed a year ago, Thomas is a relatively junior judge on the U.S. Court of Appeals. But in contrast to Souter's silence, Thomas had spent nearly a decade in administration posts, speaking, writing and ruling in equal employment cases.

"My wife said to me that to the extent Justice Souter was a stealth nominee, I am Bigfoot," Thomas said.

But he's no less elusive as a target of Democrats who suspect that once on the court, he will cement conservative dominance that will outlast any of them. Again and again, he told critical questioners that his earlier pronouncements were in circumstances and for purposes different from those required of a judge.

Some he simply disavowed.

That's one route out of the quandary Robert H. Bork described after the Senate rejected his Supreme Court nomination in 1987, following combative hearings on his extensive writings on the law.

"A president who wants to avoid a battle like mine, and most presidents would prefer to, is likely to nominate men and women who have not written much, and certainly nothing that could be regarded as controversial by left-leaning senators and groups," Bork said in his book, "The Tempting of America."

That was Souter. That is not Thomas.

But Bork, in his confirmation hearings, debated and defended some of his controversial, conservative positions. Thomas muted his.

"Your complete repudiation of your past record makes our job very difficult," complained Sen. Howard Metzenbaum, D-Ohio. The job for Thomas and the administration team lobbying for him is to win confirmation, and the lament of a Democratic critic points to their headway.

Like Souter, Thomas wouldn't say whether he believes in a constitutional right to abortion, saying that would prejudice a question the court will be facing.

Unlike Souter, Thomas had taken public positions that appeared to mark him an opponent of abortion rights. But he said he didn't mean it.

For example, he said his praise in 1987 for an essay on the right to life was "a throwaway line" in a speech seeking conservative support for civil rights. He said he signed a 1986 White House working paper without reading anti-abortion statements that would have concerned him because his only interest at the time was in dealing with problems of low-income families.

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There is a double message. Civil rights and the problems of poor families are not abstract issues to a black man raised in poverty in the segregated South. The bootstrap success story that puts him at the threshold of the Supreme Court is one his sponsors want told and retold.

Thomas recounted it as he went before the committee, said he would carry to the court basic values of people who coped with segregation and "believed so very deeply in this country in spite of all the contradictions."

In all his thousands of words as a witness, none were more compelling than when he adopted the Deep South drawl of Pin Point, Ga.:

"I can still hear my grandfather: 'Y'all goin' to have mo' of a chance than me.' And he was right."

That's difficult to counter, to the frustration of Thomas opponents.

"If he's on that Supreme Court, he will confirm in my judgment what the white conservatives already are saying," Benjamin Hooks, executive director of the NAACP, said in a CNN television interview. "And they will then be able to say that it's all right because Clarence the black man says it's all right."

Opponents of the Thomas nomination will testify later.

Unless there's a surprise setback in the balance of Thomas' own testimony, they'll probably be too late, with too little, to change the outcome.

EDITOR'S NOTE Walter R. Mears, vice president and columnist for The Associated Press, has reported on Washington and national politics for more than 25 years.

AP-DS-09-12-91 0141EDT

9

Thomas: 'Pained' by Back-Alley Abortion; Open Mind as Justice By
JAMES ROWLEY
Associated Press Writer

WASHINGTON (AP) — Supreme Court nominee Clarence Thomas said Wednesday he was "very, very pained" by the thought of back-alley abortions and insisted he would have an open mind as a justice about keeping medically safe abortion legal.

However, he declined under persistent questioning to say whether he believed the Constitution protected a woman's right to end her pregnancy.

On the second day of his Senate Judiciary Committee confirmation hearings, Thomas was immediately confronted on the issue by Sen. Howard Metzenbaum, D-Ohio.

Over and over, Metzenbaum pressed for his view. Over and over, Thomas refused to say how he would vote on challenges to the 1973 Supreme Court decision legalizing abortion.

To answer that question "would undermine my ability to sit in an impartial way on such an important case," he said.

"I have no reason or agenda to prejudge the issue ... or a predilection to rule one way or another on the issue of abortion," he added.

Thomas did offer fuller comment when asked about another hot issue before the high court — prayer in public schools.

When Sen. Paul Simon, D-Ill., discussed the feelings decades ago of a Jewish elementary school boy who left the room each day while his classmates recited a prayer, Thomas said, "Any policy of exclusion should be considered inappropriate."

Thomas, who if confirmed to replace Thurgood Marshall would become only the second black justice in history, was also asked why he had criticized Supreme Court decisions upholding affirmative action programs to remedy discrimination.

Sen. Arlen Specter, R-Pa., expressed concern about whether Thomas would respect the intent of Congress while interpreting civil rights laws that have long been regarded as requiring affirmative action hiring.

Thomas said he would follow the intentions of lawmakers and added that his criticisms of Congress and of Supreme Court decisions were made when he chaired the Equal Employment Opportunity Commission.

"I advocated as an advocate, and now I will rule as a judge," Thomas said.

But it was Thomas's views on individual privacy and abortion that most interested his Democratic questioners.

Thomas recalled that during the era when abortions were barred by law "you heard the hushed whispers about illegal abortions and the individuals who performed them in a less-than-safe environment."

"If a women is subjected to an environment like that, on a personal level, certainly, I am very, very pained by that," Thomas said. "I think any of us would be. I wouldn't want to see people subjected to torture of that nature."

Sen. Patrick Leahy, D-Vt., expressed surprise at Thomas' insistence that he had no opinion on the landmark 1973 abortion decision even though he had cited the case in several speeches and articles.

"I can't believe that all of this was done in a vacuum, in the absence of any clear consideration of Roe vs. Wade," Leahy told Thomas.

Outside the hearing room, Leahy said, "I'm not satisfied with the answers," adding that he intended to ask follow-up questions.

Sen. Herb Kohl, D-Wis., said he was frustrated by a dearth of direct answers from Thomas. "I'm concerned about his candor, his willingness to be forthcoming."

Metzenbaum, who opposed Thomas when the Senate confirmed him as a federal judge last year, told reporters that Thomas' refusal to answer the abortion question "makes it more difficult to vote for him."

But Sen. Dennis DeConcini, D-Ariz., said he thought Thomas "handled the privacy questions very well" without taking a stand on abortion. "I don't see how you could ask him to do anything more."

Thomas was also pressed on whether he had undergone what Metzenbaum called a "confirmation conversion" when on the first day of his hearings he disavowed his earlier advocacy of using natural, or higher, law principles to interpret the Constitution.

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Opponents say such a "natural law" theory could be invoked to outlaw abortion.

"We don't know if the Judge Thomas who has been speaking and writing throughout his adult life is the same man who is up before us for confirmation," Metzenbaum said. "Frankly it gives me a concern."

Thomas said that his writings about natural law were part of an attempt to "ask the basic question of how do you get rid of slavery" and rally conservatives to a more aggressive civil rights stance.

"The issue of civil rights is something that has affected my entire life," said Thomas, referring as he had on Tuesday to his upbringing in a poor black family in the segregated South.

"I was looking at natural law not as an effort to undermine or destroy individual freedoms on our society," he told Sen. Alan Simpson, R-Wyo.

Since moving from the EEOC to the federal bench, Thomas said he has "put away the speeches, put away the policy positions" and no longer talks about natural law or any other public issue.

"I have no agenda," Thomas said. "I don't have an ideology to take to the court to do all sorts of things."

On civil rights, Thomas said, "we all have to do as much as possible to include members of my race in society. At the same time, you don't want to discriminate against others."

Simpson disputed the notion that Thomas had undergone a change of thinking just in time for the confirmation hearing, saying such a charge by liberal groups was "an act of desperation"

"You've got 'em, they're very frustrated by you," Simpson told the nominee.

Simpson said the repeated questions about natural law were an attempt to "elevate this rather peripheral issue to a central issue in confirmation."

"It has been selected as an issue to confound people," Simpson said.

President Bush, meanwhile, praised Thomas's performance. "He's doing a superb job, he knows exactly how to handle himself and that's what's coming through," the president said.

AP-DS-09-11-91 1810EDT

THOMAS FACES TOUGHEST QUESTIONING YET IN SENATE HEARINGS
By Jacqueline Frank

WASHINGTON, Reuter - Supreme Court nominee Clarence Thomas Thursday faced the toughest questioning of his confirmation hearings when Senate Judiciary Committee chairman Joseph Biden pressed him repeatedly on his views of the Constitution.

Biden, a Delaware Democrat, accused Thomas of "tortuous" reasoning and complained he was dodging questions.

Other Democratic senators questioned whether he had changed his mind on a number of issues just to please the committee, a so-called "confirmation conversion."

At least one Democrat, Howell Heflin of Alabama, said Thomas seemed to be moving in the right direction.

"He's moved toward the center at least," Heflin told Public Television in a broadcast of the hearing. He said Thomas had said he supported the right to privacy, the minimum wage law and intended to hold the Constitution as the highest law -- all of which are not conservative views.

"Many of the extreme right win may be worried about him now. He may be a closet liberal," Heflin said.

Thomas, a black federal judge who has served in Republican administrations, is opposed by many liberals and black organizations who fear his views would give conservatives on the high court more power to roll back liberal rulings.

In July President Bush nominated Thomas, 43, to succeed one of the court's leading liberals, Justice Thurgood Marshall, who is retiring this year. Marshall, 83, is the only black to have served on the high court.

Bush Thursday praised Thomas' performance at the hearings, saying: "I think he is handling himself very, very well." Through three days of intense questioning Thomas has kept his temper and has maintained a calm, monotone voice.

He said Thomas was correctly following the lead of past nominees who have refused to stake out positions in advance on sensitive issues that might reach the court.

The Supreme Court rules on whether U.S. laws are valid under the standards of the Constitution on issues ranging from abortion to flag-burning and the rights of accused criminals. For the third day, Thomas refused to answer questions on whether he believes a woman's right to abort a pregnancy is guaranteed under the Constitution, saying that to state an opinion would prevent him from being impartial if the issue comes before the court.

"I understand the concerns on both sides of the issue. Whether or not I have (a personal opinion) I think is irrelevant," he said.

Sen. Orrin Hatch, R-Utah, said in his defense that it was unfair to ask him more than 70 times in three days his views on the abortion issue. "I think there is a time when enough is enough," he said.

He pointed out that Justice David Souter was approved by the committee last year on a 13-1 vote without answering the abortion question. "I think the burden is on those asking questions to tell the American people why you are being treated any differently than Judge Souter," he said.

But Thomas did say he supported the Supreme Court decision upholding a ban on prayer in schools, a decision conservatives have also sought to overturn.

The longest and most contentious exchange was with Biden, who said he was dissatisfied with Thomas' answer on the arcane issue of "natural law."

"I don't know why you are so afraid to deal with the natural law thing," Biden said. He threatened that the fourth day of hearings might be devoted entirely to this topic.

Natural law theorists hold that people by virtue of their existence have natural rights that should take precedence over any constitutional rights or laws written by governments.

Liberals are concerned that Thomas might apply natural law to limit the role of government in regulation of business or use it to justify cast the deciding vote to overturn the 1973 Roe versus Wade decision that legalized abortion.

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Biden said Thomas appeared to be giving the panel a different impression of his view of natural law than he had expressed in speeches and writings during his 10 years in Republican administrations.

"I want to come away with a better understanding of the method you would use to interpret the very difficult phrases of the constitution" such as liberty and equality, Biden said. Thomas replied that the concepts of liberty, equality and other rights guaranteed in the Constitution were grounded in natural rights as viewed by the framers but were not limited to what those writers of the document intended 200 years ago.

"It's not frozen in time. Our notion of what liberty means evolves with the country, it moves with our history and our traditions," Thomas said.

He said he agreed with past court decisions that guaranteed the right of reproductive privacy to married persons, but he tangled with Biden when he declined to say whether he thought single persons had this right.

"The courts have never said. I cannot sit here and decide that," Thomas said.

"That is the most unartful dodge I have heard," Biden replied.

None of the eight Democrats and six Republicans on the committee has stated how he will vote. The hearings will continue next week with testimony from groups pro and con.

REUTER

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NPR's NINA TOTENBERG and PBS's PAUL DUKE discuss the morning session of Thursday, September 12:

DUKE: ...We again had this morning quite a bit of exchange between some of the Democratic senators trying to pin down Judge Thomas on the abortion issue and other areas of disagreement. We had a few intellectual minuets between the Democrats and Judge Thomas this morning. And at the very end we saw Sen. Kennedy bore in with some tough questioning, trying once more to pin down Judge Thomas on the issue of where he stands on Roe v. Wade. And the final question that was put to him by Sen. Kennedy was, would he specifically vote to overturn or to uphold Roe v. Wade, and to nobody's surprise, I'm sure, especially not to Sen. Kennedy's surprise, the Judge decided to sidestep the issue again and to explain, as he has in the past, that he has no agenda and that he wants to go on the Supreme Court as an impartial arbiter.

TOTENBERG: We saw an interesting little byplay there. Just before Sen. Kennedy concluded his questioning, Ken Duberstein, who is the lobbyist and coach for this event brought in by the White House to help shepherd the Thomas nomination through, held up two fingers, noting that there were two minutes left in the time period for the Kennedy questioning.

And that of course followed his rather contentious session of questioning this morning with Sen. Biden very aggressively questioning the nominee about natural law and about whether the right of privacy extends to single people's desires for...privacy and procreation rights. And it got very hot and heavy with the nominee seeming to evade the answers to the Senator's questions quite a bit.

And Sen. Biden clearly went over his time by nine or 10 minutes. Sen. Danforth, the nominee's chief sponsor, got quite exercised. The members of the committee, Sen. Simpson, Sen. Thurmond on the Republican side, butted in to try to save their guy and Biden said, well, if you think your fella's in trouble, okay, I'll quit. And then afterwards everybody obviously is pretty upset and we could see Sen. Biden going over and trying to make peace with Sen. Danforth. I think all is peaceful in the world.

But if you look back at that exchange between Sen. Biden and Judge Thomas, you see that Sen. Biden was using some pretty tough language. He accused the nominee of using "tortuous logic," of "the most artful dodge I've ever heard." He said at one point, "Your answer doesn't jibe." This sounds to me like a Senator who is seriously contemplating voting no on this nomination based on the answers he's getting.

DUKE: Well, from what we know now there are maybe four or five members on the Democratic side who could wind up voting against confirmation of Judge Thomas, even though the hearings still have another week to go after this week.

From the standpoint of Judge Thomas, though, he is sticking religiously to his position. He's not deviating very much from the explanations that he's offered on natural law, and certainly he's not going any further in clarifying his position on abortion. There has been an assumption on the part of members of some of the women's organizations that he would be a vote to overturn Roe v. Wade. But Judge Thomas is just not going to enlighten us any further on that.

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NETWORK NEWS

(Wednesday evening, Sept. 11)

THOMAS NOMINATION

ABC's Peter Jennings: This is the second day of confirmation hearings for Judge Clarence Thomas to the Supreme Court. It's been another day of Democratic senators trying and failing to pin him down as to what he feels about the question of abortion. One of the only things Judge Thomas would be specific about today was his favorite football team.

ABC's Tim O'Brien: It was to be a tough morning for the Supreme Court nominee, with the committee's most liberal member continuing to press him for an answer on abortion rights.

(Sen. Metzenbaum: "I want to ask you once again, appealing to your sense of compassion, to whether or not you believe the Constitution protects a woman's right to abortion?"

Thomas: "I think that to take a position would undermine my ability to be impartial."

Metzenbaum: "I'm just asking you whether you believe that the Constitution protects a woman's right to choose to terminate a pregnancy."

Thomas: "I believe the Constitution protects the right to privacy, and I have no reason or agenda to prejudge the issue.")

Sen. Metzenbaum accused Thomas of changing his positions to win Senate approval. In the past, Thomas had suggested that under a theory called natural law, a natural right to life might prohibit abortion. But yesterday, Thomas testified that court rulings should not be based on natural law. Metzenbaum called that a confirmation conversion.

(Metzenbaum: "We don't know if the Judge Thomas who has been speaking and writing throughout his adult life is the same man up for confirmation before us today."

Thomas: "I understand your concern that people come here and they might tell you A and then do B. But I have no agenda.")

Thomas succeeded in being extraordinarily non-committal. His bravest concession may have been a light-hearted one. When it comes to pro football, he prefers the Dallas Cowboys to the Washington Redskins.

(Sen. Simpson: "To have you in this nest of Redskin fans to be a Dallas Cowboy fan certainly discloses a degree of independence which will serve you very well on the court.")

Rooting for Dallas in Washington may be as brave as Thomas needs to get. The committee has never rejected a nominee solely because of his failure to disclose how he would vote on abortion or any other single issue. Thomas and his backers are betting it won't start here. (ABC-4)

NBC's Tom Brokaw: In the Capitol, in a Senate hearing room, the subject was the power of the U.S. Supreme Court. Nominee Clarence Thomas was answering questions about women's rights, including the right to abortion.

NBC's Andrea Mitchell: Clarence Thomas suggested today that women may need more legal protection against discrimination, but said he has no opinion on whether they have a right to an abortion. Thomas appeared more at ease when he arrived and seemed to gain confidence throughout the day, even when pressed hard about abortion. Sen. Metzenbaum asked him the same question 12 times.

(Metzenbaum: "I'm not asking you to prejudge the case. I'm just asking you whether you believe that the Constitution protects a woman's rights to choose to terminate a pregnancy."

Thomas: "I think that to take a position would undermine my ability to be impartial.")

Metzenbaum said if the courts forbid legal abortions, women would again be forced into back alleys.

(Thomas: "On a personal level, certainly I am very, very pained by that. I think any of us would be. I wouldn't want to see people subjected to torture of that nature.")

Other senators tried to pin him down. Had he ever discussed Roe v. Wade? He mentioned it twice in articles. Doesn't he have an opinion on it?

(Thomas: "Do I have this day an opinion, a personal opinion, on the outcome in Roe v. Wade? And my answer to you is that I do not."

Sen. Leahy: "With all due respect, Judge, I have some difficulty with your answer.")

Women's groups opposing Thomas stood vigil in the hallway.

(Kate Michelman, National Abortion Rights Action League: "He has stonewalled every question, refusing to answer on the question of whether there is a constitutional right to choose.")

Thomas was also challenged by Sen. Specter, a Republican, for his past opposition to court-ordered affirmative action. Today, he said the courts might need to give women more protection against discrimination. Sen. Heflin accused him of moderating his views to get confirmed.

(Sen. Heflin: "It has entered into my mind an appearance of confirmation conversion.")

Thomas said he has been consistent. His refusal to discuss abortion rights follows the practice of previous nominees. The senators can be annoyed, but there's not much they can do about it. (NBC-2)

CBS's Dan Rather: Second day of Senate confirmation hearings for Supreme Court nominee Clarence Thomas. No letup in questions about his abortion views and no letup in his refusal to say where he stands.

CBS's Rita Braver: Clarence Thomas came to his first full day of questioning prepared for battle. He was immediately launched into a war of wills with Sen. Metzenbaum. Again and again, Metzenbaum tried to get him to say whether the Constitution guarantees a woman the right to abortion. Again and again, Thomas refused to answer.

(Metzenbaum: "You certainly can express an opinion as to whether or not you believe that a woman has a right to choose to terminate her pregnancy, without indicating how you would expect to vote in any particular case, and I'm asking you to do that."

Thomas: "Senator, I think that to do that would seriously compromise my ability to sit on a case of that importance and involving that important issue.")

Thomas also insisted he has no opinion on whether the Supreme Court's decision was correct in Roe v. Wade. But he was willing to discuss another controversial subject -- civil rights -- and his opposition to the idea of making up for past discrimination through affirmative-action programs that grant special preferences to minorities.

(Specter: "Why is it that you come down so strongly against any group action to try to put minorities or African-Americans in the position that they would have been in as a group but for the discrimination?")

Thomas replied he wants to eliminate any form of racism or discrimination against minorities, but --

(Thomas: "I think that you have a tension. You want to do that, but at the same time, you don't want to discriminate against others. The line that I drew was a line that said that we shouldn't have preferences or goals or timetables or quotas.")

Some senators complained that Thomas has undergone a last-minute confirmation conversion. For example, refusing to accept previous statements that he made on how the law should be interpreted. Thomas maintains he's been consistent all along, and he is expected still to be confirmed easily. (CBS-7)

Chicago Tribune

September 12, 1991

3

Senators question Thomas' consistency

By Linda P. Campbell
Chicago Tribune

WASHINGTON—Judge Clarence Thomas frustrated Democrats' efforts to pin down his views on abortion rights Wednesday, but President Bush's Supreme Court nominee said he was troubled by the "torture" women would suffer from illegal abortions.

During his second day of testimony before the Senate Judiciary Committee, Thomas also endorsed the Supreme Court's approach to sex discrimination cases, saying he might in some cases even consider a stricter standard for workplace gender bias.

Several Democrats on the committee told Thomas they were concerned that he appeared on Tuesday to be backing away from statements he made in speeches and writings while chairing the Equal Employment Opportunity Commission during the 1980s.

"Your complete repudiation of your past record makes our job very difficult," said Sen. Howard Metzenbaum (D-Ohio), who last year voted against confirming Thomas to the U.S. Circuit Court of Appeals in Washington.

"We don't know if the Judge Thomas who has been speaking and writing throughout his adult life is the same man up for confirmation today."

Thomas said repeatedly that he believed his positions were consistent with past statements.

He acknowledged, however, that his prolific pen was causing him some difficulties.

"My wife said to me that to the extent that Justice Souter was a Stealth nominee, I am Bigfoot," he said, referring to the sparse written record Justice David Souter brought to confirmation hearings in 1990.

Sen. Arlen Specter (R-Pa.) asked Thomas about his views on affirmative action hiring under civil rights laws. Thomas has frequently expressed opposition to some affirmative action programs.

Thomas said Wednesday that as a justice he would respect the intent of Congress on affirmative action cases. He said his criticisms of Congress and of Supreme Court decisions were made when he headed the EEOC.

"I advocated as an advocate, and now I will rule as a judge," Thomas said.

Thomas rebuffed persistent efforts to elicit his views on the constitutionality of a woman's right to terminate a pregnancy. He went so far as to say he has never debated whether *Roe vs. Wade*, the 1973 Supreme Court ruling declaring a fundamental right to abortion, was correctly decided, even though one of his first-year law professors was Thomas Emerson, who argued the privacy case on which *Roe* was based.

"I have not made, senator, a decision one way or the other with respect to that important decision," Thomas told Sen. Patrick Leahy (D-Vt.).

Thomas earlier had said that, "on a personal level, certainly, I am very, very

pained" by the notion of women having to undergo the "agony" of unsafe, illegal abortions.

"I wouldn't want to see people subjected to torture of that nature," Thomas said.

But he insisted that commenting on abortion would "undermine my ability to sit in an impartial way" on a Supreme Court case on the issue.

Sen. Paul Simon (D-Ill.) said after the hearing: "My guess is that the answers that we have heard so far are about the answers that we're going to get. ... I would be surprised if we get much more."

Thomas did comment more broadly on another controversial area, school prayer. When Simon related the anecdote of a Jewish congressman having to leave the classroom as a schoolboy when his classmates said their daily prayer, Thomas said, "Any policy that endorses exclusion should be considered inappropriate."

Thomas appeared less tentative Wednesday than when the hearings opened. He repeatedly tried to convince committee members that he would be a fair and open-minded justice.

A serious weight lifter and a Dallas Cowboys football fan, he resorted to sports analogies several times for elucidation.

When policymakers become judges, he said, they must "start putting the speeches away. You start putting the policy statements away. You begin to decline forming opinions in important areas that could come before your court because you want to be stripped down like a runner."

He said a friend once told him "that I was worthless as a conversationalist now" because he would express no views on issues he had discussed while a Reagan administration official.

Thomas tempered his earlier praise for an article by conservative economist Thomas Sowell that said inequities in pay and promotion for women stem from their own career choices.

Thomas said that he had referred to Sowell to argue that discrimination may not be the only cause for statistical disparities between men and women in the workplace, and a closer look at the numbers is needed.

"To say that women brought discrimination on themselves or lower pay on themselves is going too far," he said.

He also distinguished himself from Justice Antonin Scalia, the court's most outspoken conservative, in at least one area—the means for interpreting laws written by Congress. Scalia, a former Justice Department lawyer and law professor, frowns on reading congressional reports and debate transcripts to determine what lawmakers intended when they wrote a statute that turns out to be unclear.

But Thomas said, "I don't know how one can go about ... the process of interpreting ambiguous statutes without looking to legislative history."

COLUMN LEFT/
TIMOTHY S. BISHOP

A Thomas Idea Could Energize Liberal Engine

■ His expansive view of one clause in the Bill of Rights may work against conservatives.

Liberals prepared to take the long view of the Supreme Court's development of constitutional protection for individual rights can find one bright side to the nomination of Clarence Thomas. To be sure, if Judge Thomas is confirmed, his rulings will predictably continue the court's conservative trend. But that would be true of anyone on the Administration's short list of candidates. What makes Thomas different is that he will try to take the court's interpretation of the Bill of Rights in a new direction, one that in the long run may hold more promise for liberals than for conservatives.

For more than 30 years, the modus operandi of liberal jurists has been to give expansive interpretations to two vague, open-ended clauses of the 14th Amendment that guarantee "due process" and "equal protection of the laws." The language of these clauses is so broad that they invite use by judges seeking new ways to justify expanding individual rights. Judges appointed by Presidents Reagan and Bush have shut down this method of expanding the scope of individual rights, largely by tying the clauses to the meanings they supposedly had when drafted in 1866.

Having finally curtailed new developments under these clauses, the last thing traditional conservatives want to see is a push to open up another equally vague provision of the Constitution that could be used by those who think it must change with the times.

That just such a move is required is a central tenet of Thomas' jurisprudence. He has made plain in his writings that he believes a little-noticed clause of the Bill of Rights that prohibits states from violating the "privileges or immunities" of American citizens is the centerpiece of the Constitution's protection of individual rights. To say that this view is unfashionable is an understatement: The potential importance of a re-energized privileges or immunities clause should not be underestimated.

A great many of the Warren Court's opinions expanding individual rights under due process and equal protection could just as easily have been decided under the privileges or immunities clause. A woman's decision on whether to abort a fetus could as readily be called a privilege of citizenship as a right of privacy, and Thomas himself has written that *Brown vs. Board of Education*, the great school desegregation case, should have been based on the clause.

Moreover, the development of the privileges or immunities clause would be hard

**It is the clause's 'malleability
. . . that attracted Thomas.'**

to contain. Those who drafted it never provided a list of privileges or immunities nor a means whereby they might be identified. A more inviting tool for a liberal jurist looking for a source of new individual rights is difficult to imagine.

Indeed, it is precisely this malleability—the clause's ability to take on the meanings that an interpreter wants to ascribe to it—that has attracted Thomas.

He has an old-fashioned belief in "natural law." Thomas has written, and his testimony before the Senate committee confirms, that he believes that there is a set of moral rights and principles that existed before the Constitution and forms its "higher-law background." Thomas insists that these natural rights were "given to man by his Creator, and did not simply come from a piece of paper." Looking for a place to locate these God-given natural rights in the Constitution so that he can use them to adjudicate constitutional cases, Thomas found a receptive spot, the privileges or immunities clause.

Liberals, of course, cannot ignore the damage that a Justice Thomas would likely do to their vision of a Constitution that protects a broad range of individual rights, like abortion and equality through affirmative action. Thomas' claim of a divine source for individual rights must be profoundly troubling to anyone who believes in the separation of church and state.

Moreover, Thomas' writings show that he has a very narrow conception of what rights we have, and that they consist almost entirely of negative rights to be let alone rather than positive rights to government assistance.

This will distress those who believe that the Warren Court's expansion of rights made the United States a better society. Nevertheless, if a Justice Thomas could persuade the court to reinvigorate the privileges or immunities clause, it could eventually, in liberal hands, prove a powerful engine for the development of new individual rights.

After all, J. Harvie Wilkinson, a Reagan appointee to the federal bench, wrote that the clause "holds special hazards" for conservatives and encouraged his fellow judges to leave it dormant, rather than "engaging in a disruptive roll of the dice."

Chicago Sun-Times

SEPTEMBER 12, 1991

49

The long and short of Thomas hearing

Whatever else you may think about Clarence Thomas and whether he belongs on the U.S. Supreme Court, you sure have to admire his attention span.

I have been following dutifully the Senate Judiciary Committee hearings on the Thomas nomination and if there's ever been anyone who can ask a longer question than Sen. Joseph R. Biden (D-Del.), I hope I never run into him.

Chairman Biden's first question to Thomas ran to 312 words in the transcript. Whew! How are they going to turn that into a TV sound bite, I wondered.

But then only an acre or so farther along in the transcript, Biden picked up the pace and packed 433 words into another question. Really impressive. Got his second wind, I guess.

Thomas' responses were, by the way, respectively 87 and 55 words long—or (relatively I suppose you might say) short.

These hearings are, obviously, appropriate and important, though the questions being put to Thomas so far seem to have more to do with politics and ideology than with the suitability of his intellectual and professional qualifications.

What seems most to concern the liberal Democrats on the committee is that Thomas—can you believe it?—is not a liberal or a Democrat?

I wish I could rerun here the two Biden questions cited above, but obviously I don't get the space he does. So, and I know you're going to be sorry about this, I'll just do the first. To wit:

"Judge, as Sen. Danforth said, he hopes we have read your speeches. I assure you I have read all your speeches, and I have read them in their entirety. And, as I indicated in my opening statement, what I want to talk about a little bit is one of the things you mention repeatedly in your speeches so that I can be better informed by what you mean by it.

"Whether you are speaking in the speech you

delivered on the occasion of Martin Luther King's birthday, a national holiday and whether it should be one, to a conservative audience, making the point that he should be looked to with more reverence or whether or not it was your speech to the Pacific Institute or whether or not it is the Harvard Journal, whatever it is, you repeatedly invoke the phrase 'natural rights' or 'natural law.' And, as I said at the outset, here is good natural law, if you will, and bad natural law in terms of informing the Constitution, and there is a whole new school of thought in

America that would like very much to use natural law to lower the protections for individuals in the zone of personal privacy, and I will speak to those later, and who want to heighten the protection for businesses and corporations.

"Now, one of those people is a Professor Mesito, a fine first-class scholar at Harvard University. Another is Mr. Epstein, a professor at the University of Chicago. And in the speech you gave in 1987 to the Pacific Research Institute you said and I quote: 'I find attractive the arguments of scholars such as Stephen Mesito who defend an activist Supreme Court that would—not could, would—strike down laws restricting property rights.'

"My question is a very simple one, Judge. What exactly do you find attractive about the arguments of Professor Mesito and other scholars like him?"

That's a "very simple" question? Is that even a coherent question? Biden proceeded to complain that he was "not quite sure" he understood Thomas' answer. I don't understand how Thomas understood the question.

Along with a remarkable attention span, Thomas would seem to possess a laudable tolerance for putting up with pretentious windbagery.

Raymond R. Coffey is the editor of the Chicago Sun-Times editorial pages.



Raymond R. Coffey

By Michael Briggs

Washington Bureau / Chicago Sun-Times

WASHINGTON—Supreme Court nominee Clarence Thomas told skeptical senators Wednesday that he has no opinion on the 1973 Roe vs. Wade decision affirming a woman's right to an abortion.

"I did not, and do not, have a position on the outcome," he said.

Sen. Paul Simon (D-Ill.) doubted that. "If that's true, he's the only person in that room who does not have an opinion," Simon said outside the crowded hearing room where Thomas' nomination is being considered. "I'd feel more comfortable if he said, 'I have an opinion, but I'm not going to express it.'"

Sen. Patrick J. Leahy (D-Vt.) also was unconvinced. He reminded the 43-year-old Thomas that he was a student at Yale Law School when the landmark case was decided by the high court, and recounted speeches and articles by Thomas that referred to the issue. "I can't believe that all of this was done in a vacuum," Leahy said.

On the second day of hearings before the Senate Judiciary Committee, Leahy and other Democrats repeatedly pressed Thomas for his legal view on abortion and he repeatedly declined to answer. "To do that would seriously compromise my ability to sit on a case of that importance involving that important issue," Thomas told Sen. Howard M. Metzenbaum (D-Ohio), who voted last year against confirmation of Thomas to be a judge on the federal appeals court in the District of Columbia.

Metzenbaum said he was "terrified" that if the Supreme Court reversed Roe vs. Wade, "women will once again be forced to resort to brutal and illegal abortions."

Thomas sympathized: "As a kid,

we heard the hushed whispers about illegal abortions and individuals performing them in less-than-safe environments. . . . On a personal level, I am very, very pained by that. I think any of us would be. I wouldn't want to see people subjected to torture of that nature."

However, Thomas said it would compromise his impartiality as a justice if he took sides on the underlying legal issue, which is sure to come up before the high court again.

Thomas talked more openly, critics noted, about other legal issues that also could come before the court.

Thomas told Simon, for example, that he accepted the legal standard the court uses to decide disputes over separation of church and state, a perennial issue already on the court's calendar for the coming term.

Simon had recounted the experience of a Jewish congressman who as a youngster in Kansas felt singled out when he was excused from saying prayers—later banned by the court—at his public school.

"I'm sensitive to our desire in this country to keep government and religion separated," Thomas said. "When someone feels that he or she is excluded because of certain practices, such as those religious practices, I think we need to question whether or not government is involved."

Thomas also said he had supported scholarships for minorities. Without directly saying how he would rule if such scholarships are challenged as illegal race discrimination, he said he set up a minority scholarship program when he headed the Equal Employment Opportunity Commission.

A black nominated to replace the retiring Justice Thurgood Marshall, Thomas was questioned about his criticism of racial quotas

to help minorities overcome discrimination.

"We all have to do as much as possible to include members of my race in society," Thomas said. "At the same time, you don't want to discriminate against others." He also stood by his view that quotas stigmatize minorities they are designed to help.

He assured Sen. Arlen Specter (R-Pa.), however, that as a justice he would respect the intent of Congress in ruling on civil rights law cases. "I advocated as an advocate, and now I will rule as a judge," Thomas told Specter.

Thomas also drew a distinction between his previous role as a policymaker and the role of the courts as he came under renewed questioning about whether he has shifted his views on "natural law."

Sen. Howell Heflin (D-Ala.), a crucial swing vote on the committee, wondered whether Thomas had undergone a "confirmation conversion" to win Senate support

for his nomination.

"I have been consistent," Thomas said.

Thomas said he was interested in the concept of natural law as a

He's biased—for the Cowboys

WASHINGTON—Supreme Court nominee Clarence Thomas didn't hesitate to take sides on one issue at his confirmation hearings Wednesday. He is a Dallas Cowboys fan.

Thomas brought up football to illustrate that judges have to seem unbiased.

"My Dallas Cowboys played the Redskins Monday night. I am totally convinced that every referee in those games is a Redskins fan, but none would admit to it," Thomas said.

"We want to feel that the referees—and judges are, to a

large extent, referees—are fair and impartial, even when we don't agree with the calls."

Senate Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.) said he appreciated Thomas' candor about his pro football loyalties: "Thank you very much. We got a solid answer."

Sen. Alan K. Simpson (R-Wyo.) said Thomas' allegiance to the Cowboys "in this nest of Redskin fans . . . discloses a degree of independence which will serve you very well on the court."

—Michael Briggs

"political theory" when he was in the administration of President Ronald Reagan but has not relied on the notion as a judge to decide cases.

The Hartford Courant

Thursday, September 12, 1991

A12

Thomas controversy echoes debate on Bork

By MIRANDA S. SPIVACK
Courant Staff Writer

WASHINGTON — The nominee has written volumes and made controversial speeches. He is questioned about his views on privacy and abortion. His commitment to civil rights has been challenged. There is talk of "confirmation conversion."

It may sound like the 1987 confirmation hearings for Supreme Court nominee Robert H. Bork, a former Yale Law School professor. But it's 1991, and the judge on the hot seat in the Senate Judiciary Committee is Clarence Thomas, a Yale Law School graduate.

Although the comparison is not a perfect one, the first two days of the Thomas hearings often have borne an eerie resemblance to Bork's. And while no one is predicting that Thomas will be defeated, as Bork was, the same controversies that swirled around Bork are now encircling Thomas.

"The issues are essentially the same," says Thomas L. Jipping, a lawyer with the conservative Coalitions for America, which is supporting the Thomas nomination. "Abortion, privacy, equal rights. And both have non-judicial writings."

In addition, the Bork nomination left the Senate Judiciary Committee awash in dispute over its proper role in the Supreme Court nomination process — also a concern during the Thomas hearings.

Writings and speeches by Bork before he became a federal appeals court judge seemed to derail his Supreme Court nomination. He had written critically on issues ranging from integrating lunch counters in the South to privacy provisions in *Griswold vs. Connecticut*, a 1965 landmark case on the right of married couples to use contraceptives.

Quizzed extensively by members of the Senate Judiciary Committee, Bork failed to persuade them that his prior work either was a purely academic undertaking or that, in some instances, his views had evolved.

Last year's Supreme Court nominee, David H. Souter, managed to avoid similar controversy, largely because he had such a skimpy record

off the bench that he was dubbed the "stealth candidate." And unlike the often contentious Bork, Souter was restrained in his discussions with judiciary committee members. Thomas has followed Souter's example.

But some Democratic senators are expressing skepticism about Thomas. Although most of the panel's eight Democrats haven't said how they'll vote on the nomination, some are pressing Thomas to spell out his positions on controversial legal issues, noting that he hadn't shied away from doing so while head of the Equal Employment Opportunity Commission during the Reagan administration.

Thomas has been a federal appeals court judge for 18 months. He said this week that, as a policy maker, he advocated certain views, but that as a federal judge, he has an open mind.

Citing Thomas' participation in a Reagan administration group that criticized the 1973 *Roe vs. Wade* Supreme Court ruling that legalized abortion, and pointing to a speech in which Thomas praised an article by Lewis Lehrman, a prominent conservative who once ran for governor of New York, that was critical of the abortion ruling, Sen. Patrick J. Leahy, D-Vt., said during Wednesday's hearing, "I can't believe all of that was done in a vacuum."

Replied Thomas: "I do not have a position" on the abortion ruling. Leahy later said, "You've gone on the bench. You haven't gone into a monastery."

Jipping and other supporters of Thomas complain that such exchanges are unfair.

"It's not that [Thomas] has changed. It's the first time he has had the chance to talk," Jipping said. "This is no confirmation conversion. Thomas is distancing himself from [opponents'] caricature of his record."

Armstrong Williams, a former assistant to Thomas at the Equal Employment Opportunity Commission, said Thomas can't be pigeonholed. "You can't stereotype him. He never

has had a preconceived idea about an issue."

But Kate Michelman, head of the National Abortion Rights Action League, which opposes the Thomas nomination, is not so sure. Thomas, like Bork, is suffering from a credi-

bility problem, she said.

"Thomas has spent the last two days converting his record to fit the times," she said. "As a nominee he is saying thing very different from what he said for the past five to 10 years. I don't think you change overnight as a judge."

The verbal pushing and pulling in the Thomas nomination is also evident within the ranks of the 14-member judiciary committee. Members of the panel still seem to be smarting over the contentious Bork hearings and struggling to define their role in the confirmation process.

Many have alluded to the Bork hearings, or made outright comparisons.

Strom Thurmond, the 88-year-old South Carolinian who is the top-ranking Republican on the committee, was among the first to issue a reminder of the Bork hearings, urging senators not to probe Thomas' views as deeply as they did Bork's.

"The issue of judicial philosophy, or ideology, has often been raised in relation to recent nominees to the Supreme Court... If a philosophical 'litmus test' can be applied to defeat a nominee, then the independence of the federal judiciary would be undermined."

Sen. Howell Heflin, an Alabama Democrat and former state supreme court justice, brought a different perspective. "I will be looking to see if you intend to bring a rigidly ideological agenda to the court. I will want to know if you respect the principles of *stare decisis* [abiding by precedent] and judicial restraint, and most importantly, if you intend to turn the clock back on almost 30 years of racial progress and harmony..."

Sen. Edward M. Kennedy, D-Mass., one of Bork's most vocal opponents, took a low-keyed approach to Thomas' nomination. But he appeared to be countering criticism that the committee went too far in quizzing Bork.

"The president makes the nomination, but it is a shared responsibility [with the Senate]. Any fair reading of the Constitutional Convention shows that it is a shared responsibility," he said.

The Philadelphia Inquirer

September 12, 1991 A15

Our 'aristocracy of the robe' includes many Horatio Algers

By HOWARD G.
SCHNEIDERMAN

Do racism and poverty determine one's fate? Liberals generally say yes. But not so Judge Clarence Thomas, a black, conservative Republican, President Bush's nominee to sit on the U.S. Supreme Court.

The story of Judge Thomas' rise from abject poverty to his nomination to the Supreme Court could have come straight from the pen of Horatio Alger. If, however, this rags-to-robos story is a conservative's democratic daydream, the thought of this conservative grandson of a black sharecropper sitting on the bench seems to be a liberal's nightmare.

But the Supreme Court, about which few Americans know much, has always been a peculiar American institution where democratic daydreams and nightmares often meet head-on. The great irony about the court, and perhaps its greatest strength, is that, in the midst of our democracy, it is nothing less than aristocratic in nature — a virtual aristocracy of the robe. The justices, appointed for life by the president with the advice and consent of the Senate, are responsible only to their personal and professional consciences. These justices, many of whom lived, like Judge Thomas, rags-to-robos stories, are uniquely positioned, as institutional aristocrats, to balance the leveling and all too short-term values of democracy.

"If I were asked where I placed the American aristocracy," wrote Tocqueville in *Democracy in Amer-*

*If Thomas is
approved, he won't be
the first son of
poverty on the bench.*

ica, "I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and bar," institutions that Tocqueville said "form the most powerful, if not the only, counterpoise to the democratic element . . . to neutralize the vices inherent in popular government."

How does Clarence Thomas fit into this aristocracy of the robe? In a recent study, "From Rags to Robes," published in the May-June issue of *Society* magazine, E. Digby Baltzell, of the University of Pennsylvania, and I showed that contrary to conventional thinking, Horatio Alger stories are far more applicable to the appointed members of the Supreme Court than one might expect. In fact, over the course of American history, the appointed and aloof justices are far less likely to have been born to privilege than have the presidents who appointed them.

We ranked the first 96 Supreme Court justices by social origin and grouped them into three social class levels: upper, upper-middle and, as a single category, middle and lower. For the purposes of our study, justices ranked in both the upper and the upper-middle classes were con-

sidered to be of privileged origins, while those coming from middle- and lower-class backgrounds were regarded as unprivileged (but not necessarily underprivileged).

If approved by the Senate, Judge Thomas would join about one-third of all the justices in the court's history who have risen from similarly unprivileged origins to become aristocrats of the robe.

About half of the 32 justices with a middle and lower ranking came from solid middle-class farming or small-town families. Others in this category, even less privileged, ranged from the sons of poor farmers and lower-status small-town residents to the two most underprivileged, Abe Fortas and Thurgood Marshall, when ranked against their court peers.

Fortas, the son of immigrant Orthodox Jews, grew up in the ghetto of Memphis, Tenn. His father, a cabinet-maker, taught himself English, but his mother remained illiterate.

Marshall grew up in a black ghetto in Baltimore. His father was a servant at the exclusive Gibson Island Club, and his mother taught at an all-black elementary school — which placed him in the black middle class of that era.

In contrast to the appointed justices, far more of the popularly elected presidents have come from privileged origins than might be expected from the "log cabin myth." The justices were more than twice as likely as the presidents to have originated in the middle and lower classes. Of the 40 presidents from George Washington to George Bush, only 17 percent were of unprivileged origins, while 83 percent were of either upper or upper-middle class backgrounds.

And, throughout American history the proportion of justices of middle- and lower-class origins has been steadily increasing: 16 percent in the period 1789-1850; 23 percent in 1850-1901; 47 percent in 1901-53; 78 percent after 1953. That many of these justices of unprivileged origins have been conservatives, like Judge Thomas, and George Sutherland and James F. Byrnes before him, gives further testimony to the fact that class is not destiny.

In fact, many of the white liberal Democratic senators now relentlessly questioning Judge Thomas are themselves products of very privileged backgrounds, far more privileged than the black conservative Republican sitting before them hoping to turn his nightmare beginnings into the American dream, and go from the lowest of social classes to the highest court in the land.

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September 12, 1991 A15

PC brigades are on the defensive

By RONALD JAMES

For the battle-scarred veterans of the political correctness wars, it's been quite a year. This time last year, the "McCarthyites of the left," who — while ignored by most Americans, are still taken seriously in education and the media — were proceeding unscathed toward establishing an orthodoxy of thought that they hoped to foist on the rest of us.

On college campuses, we saw the now familiar speech codes prohibiting any utterance that might offend the officially certified victims of the "white, male, heterosexual hegemony." In both the college and public school curriculums, we saw the emergence of "multiculturalism" and "Afrocentrism," which Princeton historian Bernard Lewis called "a few scraps of truth

*They will all be out for the
Clarence Thomas
nomination.*

amidst a great deal of nonsense."

We also saw gestapo-style squads of "students" and their faculty sponsors threatening and harassing teachers who dared to diverge from the dogma, as in the case of the Harvard professor who used the words *Indian* (rather than Native American) and *Oriental* (rather than Asian). In New York, we saw a committee appointed by the state education secretary recommend a change in the school curriculum to reflect the "fact" that Western civilization has destroyed and co-opted the achievements of non-Western civilizations.

But now the PCers are somewhat on the defensive. From their perspective, the dark day was Dec. 24, when the Newsweek cover story on political correctness hit the stands. The story gave about equal space to both sides, but the cover with "Thought Police" in bold letters stunned the self-anointed guardians of certified victims and emboldened those trying to work up enough courage to oppose them.

The Newsweek article was followed by an issue of The New Republic devoted to the subject of "race on campus" and then by the publication of Dinesh D'Souza's *Illiberal Education*, which fully described and documented the new McCarthyism on college campuses. While D'Souza could be dismissed as a man of the political right, his book brought forth favorable reviews and articles by eminent academic liberals like C. Vann Woodward of Yale and Eugene Genovese, the highly regarded Marxist historian.

In his review, Genovese submitted his "First Law of College Teaching: Any professor who, subject to the restraints of common sense and common decency, does not seize every opportunity to offend the sensibilities of his students is insulting and cheating them, and is no college professor at all." Genovese focused his fury on "the cowardly administrators and their complicit faculty."

Arthur Schlesinger Jr., liberal prize-winning historian, dissented from the New York state multi-

cultural curriculum, which deplores the West's "eradication of many varieties of traditional culture and knowledge." Schlesinger asked: "Like infanticide? slavery? polygamy? subjugation of women? suttee? veil-wearing? clitorectomies?"

Schlesinger noted that the curriculum says nothing about "the influence of European ideas of democracy, human rights, self-government, rule of law." Of course the ideologically orthodox have dismissed all that as the rantings of soon-to-be-dead white European males threatened by the victims' revolution.

Still, the counterattack has had its effect. The Temple University Faculty Senate, in the spring, worked up the courage to "table" the demand made by the previous spring's demonstrators that a race sensitivity course be required for all students. One professor was even willing to go on record as saying that for the faculty to approve such a requirement would be giving in to the forces of political correctness. And around the country many colleges and universities are toning down their orientation-week sensitivity sessions and withdrawing or limiting speech codes.

Still, we should not underestimate the influence of leftist political orthodoxy. The problem is institutional — the fashionable left has always dominated the media and academia, for those not of the left tend to be attracted to the more lucrative professions (law and medicine)

and business. Probably, there will never be true diversity of political opinion either on college faculties or in media newsrooms.

Then there are the Judge Clarence Thomas Supreme Court confirmation hearings, which should prove to be a festival of political correctness. Expect Harvard law professor Derrick Bell to repeat the slur that Thomas is "black on the outside and white on the inside." Expect a rhetorical deluge of civil rights orthodoxy like that expressed on this page by Temple law professor Henry Richardson who described Thomas' nomination as the "promotion of synthetic opinion" meant "to destabilize genuine (my emphasis) black political organizations."

Expect to hear "self-loathing black man" thrown around. All of this is will be an attempt to marginalize the nominee as an Uncle Tom and thus not an authentic, legitimate Black American.

What we have is not a debate over issues, but rather an attempt to limit the range of ideas open for public discussion. In the '30s right-wingers cast those on the left as "un-American" and thus beyond the pale of legitimate participation in the democratic process. Now we have the same thing from the other side of the political road. The battle has been joined, but it is far from over.

The Philadelphia Inquirer

September 12, 1991 A1

23

Thomas holds firm on abortion, denies revising his views

By Aaron Epstein
Inquirer Washington Bureau

WASHINGTON — Supreme Court nominee Clarence Thomas denied at his confirmation hearing yesterday that his testimony appeared to conflict with — or retreat from — his previous statements on abortion and other topics.

He also asserted that he had no ideology or agenda and had never discussed the Supreme Court's landmark *Roe v. Wade* abortion-rights ruling.

Despite persistent questioning by Sen. Howard M. Metzenbaum (D., Ohio) and other committee members, Thomas adamantly refused to say whether women have a constitutional right to terminate a pregnancy.

"To take a position would undermine my ability to be impartial," Thomas said. "... I am not predisposed one way or the other on the issue of abortion."

Some Democrats on the Judiciary Committee, which is conducting the hearings, criticized Thomas for being less than candid with members of the panel and for distancing himself from his own provocative comments from the past.

Thomas has voiced provocative, conservative opinions in speeches and articles on subjects such as abortion, working women, welfare, affirmative action and the minimum wage. But rather than defend those opinions at his confirmation hearings, Thomas said some earlier views of his would have no effect on his decisions as a judge.

For example, he said that as chairman of the Equal Employment Opportunity Commission from 1982 to 1990, he freely took policy positions. But as a federal appeals judge for the last 17 months and a Supreme Court nominee now, "I think it important to remain neutral in these policy matters," he said.

"I advocated as an advocate, and now I will rule as a judge," he added.

Sen. Howell Heflin (D., Ala.) told Thomas that he perceived "an appearance of confirmation conversion." That phrase (See THOMAS on 4-A)

suggests that a nominee deliberately changes his or her views in order to win Senate approval.

Sen. Herb Kohl (D., Wis.) said he was concerned about Thomas' "candor, his willingness to be forthcoming." The senator added, "He is telling us to just disregard his past record."

But Thomas' chief Senate backer, John C. Danforth (R., Mo.), who has been sitting behind the nominee throughout the first two days of hearings, said that committee members were asking "whether caricatures of his earlier statements are correct and he says they are not. That's hardly a confirmation conversion."

During some of the six hours of committee questioning yesterday, Thomas was confronted with addressing the issue of abortion.

He recalled that when abortions were barred by law in many states, "you heard the hushed whispers about illegal abortions and the individuals who performed them in a less-than-safe environment. ..."

"If a woman is subjected to an environment like that, on a personal level, certainly, I am very, very pained by that. I think any of us would be. I wouldn't want to see people subjected to torture of that nature."

But, he said, "as difficult as it is for me to anticipate ... that kind of illegal activity, I think it would undermine my ability to sit in an impartial way on an important case like that."

At another point, Thomas said he had never discussed *Roe v. Wade*, a 1973 decision that Thomas described as "one of the more important, as well as one that has been one of the more highly publicized and debated cases."

Thomas said he was married during his law school days when the ruling was issued and too busy to think about the topic or discuss the ruling with friends or classmates.

"I went to class, I went to work and then I went home," he said.

In the years since the ruling, Thomas said, his only experience in discussing the case was "in the most general sense that other individuals express concerns one way or the other and you listen and you try to be thoughtful. If you are asking me whether or not I have ever debated the contents of it, the answer to that is no."

Committee members, however, were clearly skeptical.

"If that is true, he is the only adult in the room who doesn't have an opinion on it," said Sen. Paul Simon

(D., Ill.).

In another area, Thomas also repudiated his previous endorsement of a controversial 1987 article by conservative Lewis Lehrman calling abortion a "holocaust" and insisting that the Constitution gave fetuses a "right to life."

Though in 1987 he called Lehrman's article a "splendid example of applying natural law," he said during the first day of hearings that he did not agree with its conclusions. Yesterday, he went even further, asserting that he did not read the article in 1987 and has not read it recently, even though it has been cited repeatedly by his critics in recent weeks.

Thomas said that he praised the article only to persuade conservatives that they should support "more aggressive enforcement of civil rights."

Toward the close of the session yesterday, Thomas separated himself from some conservative justices by saying that he had "no personal disagreement" with the Supreme Court's tough 20-year-old test for judging whether government actions violate the principle of separation of church and state.

Moreover, he said it was appropriate to use Thomas Jefferson's metaphor of a "wall of separation" between government and religion. Chief Justice William H. Rehnquist, among others, has criticized that fig-

ure of speech in endorsing greater government accommodation of religion.

Commenting on school prayer, Thomas expressed compassion for the feelings of a Jewish elementary school boy who, Simon said, had to leave his classroom each day while his classmates recited a prayer.

"Any policy of exclusion should be considered inappropriate," Thomas said.

Inquirer wire services contributed to this article.

NEW YORK POST

SEPTEMBER 12, 1991

27

If you watched Clarence Thomas tell the story of his early life and didn't feel a catch in your throat, then you have a problem. If that story becomes the reason for his confirmation, then we have a problem.

His vividly painted portrait of growing up poor and black in the apartheid South of the 1950s was touching and enraging. We will not soon forget the image of two small boys, with all their belongings in shopping bags, being sent to live with their grandparents because their mother could not afford to raise them.

I have absolutely no doubt about the authenticity of Judge Thomas' memories, or the force those memories have on his life. I have a great deal of doubt, however, about whether any of this

Judge Thomas deserves sympathy, but . . .



**JEFF
GREENFIELD**

tells us anything about whether he should become

COMMENTARY

Justice Thomas.

When the time came for questioning, Thomas appeared decidedly uncomfortable with some of the probes Sen. Joe Biden sent his way.

Why did he praise a published "natural law" theory that would forbid all abortions? It was, he said, a "throwaway" line, a murmur of politeness to the author whose large checkbook had underwritten conservative causes. It was a way to get conservatives to look kindly on civil rights.

What did he mean by suggesting that "economic rights" needed to be elevated

to a higher level of constitutional respect? Nothing much; under the gentle prodding of Orrin Hatch, Judge Thomas assured the committee he had no intention of going back to the pre-New Deal days of striking down government regulation of the economy.

Is there a constitutional right to privacy? Yes, but Judge Thomas would not sketch out even a hint of what that might mean — that would, he said, affect his impartiality in future cases.

But when Sen. Strom Thurmond read, apparently uncomprehendingly, a long list

of questions about recent court decisions, Thomas seemed almost eager to give his views on them.

The point is that Clarence Thomas has some tough, legitimate questions to answer, and those questions have to do with his sense of what the Constitution means. They are not questions that can be answered by a resort to the venerable political tradition of pointing to the log cabin you were born in to prove your link to ordinary folks.

Because the nominating process has indeed become "political" in recent years, both sides have resorted to tactics once thought unimaginable in confirmation proceedings.

Television ads are one sign; the recruitment of Washington consultant Kenneth Duberstein to organize a public relations campaign and to "prep" nominees for their Senate appearances is another.

It's understandable, given the fate of Robert Bork, that the White House has sought to "sell" this latest nominee as if he were running for office. And it is true that some of Thomas' likely opponents are prepared to use just about any club they can find with which to belabor him.

These excesses, however, seem to have spawned the idea that if Thomas can present himself as an inspiring success story, which he surely is, that alone will prove he belongs on the highest court in the land. It doesn't — and it shouldn't.

Nominee knows the pain of poverty and bigotry

ONE image was enough for me, a memory so deeply felt that even now it brings a visible ache to Clarence Thomas. In 1955, his mother was earning only \$10 a week as a domestic in Savannah, Ga., and could not feed her children. She was forced to deliver Thomas and his brother to their grandfather.

"Imagine," he said to this panel of pampered white men in Washington, "two little boys with all their belongings in two grocery bags..."

All the rest, the discussion of natural law and prejudgment of cases, was just talk. The man who remembered a lost morning

when he stood with his brother, their belongings packed in grocery bags, is not a man who will add to the hurt of the world.

"Our grandparents were two great and wonderful people who loved us dearly," he said. "I wish they were sitting here today. Sitting here, so they could see that all their efforts, their hard work, were not in vain. And so that they could see that hard work and strong values can make for a better life."

This was not some exercise in legal abstraction, nor should it have been; human beings must interpret our laws, not computers. And Clarence Thomas is a

man out of Pin Point, Ga., who truly learned to be judged on the content of his character, not the color of his skin. It was not easy.

He is, after all, a black man in a nation poisoned from its beginnings by the crime of slavery. The bloodiest, most violent war in American history was fought, in part, to end that crime. But the Civil War left the criminals

in power. For a century, the poison of racism was used to maintain power in the South and divide working people in the North. For years, decent people believed that the only antidote to this poison was the law. We have learned the bitter lesson, from East L.A. to Crown Heights, that the law was not enough. A perfect world seldom follows the signing of a piece of paper.

Now comes Clarence Thomas before the Senate Judiciary Committee as a nominee to serve on the Supreme Court of the United States. That is, to speak for the law. He is to succeed a great American liberal,

but he wears the label of conservative. He hasn't really told the story of his passage from the man who placed a portrait of Malcolm X on his wall at college to a man who served Ronald Reagan. That journey is worthy of a novel. But it would be a terrible mistake to dismiss Thomas as a man who has fled his own heritage for a chance to enter the white man's country club. He refuses to deny his origins; his presence before the committee can only be seen as a celebration of them.

"So many others gave their lives, their blood, their talents,"

See HAMILL on Page 24

HAMILL from Page 4

he said of the American blacks who came before him. "But for them, I would not be here. Justice Marshall, whose seat I have been nominated to fill, is one of those who had the courage and the intellect. He is one of the great architects of the legal battles to open doors that seemed so hopelessly and permanently sealed, and to knock down barriers that seemed so insurmountable to those of us in the Pin Point, Georgias, of the world."

He cited Martin King and Fannie Lou Hamer, Roy Wilkins and Whitney Young, Rosa Parks and Dorothy Height; liberals, not conservatives. "But for them, there would have been no road to travel." He remembered seeing his grandfather, Myers Anderson, working hard, struggling, saving to educate his grandchildren, sending Clarence to a school run by Catholic nuns. Remembers Anderson saying to them: "Yawl goin' have mo' of a chance than me." Adding: "And he was right." Remembers Anderson saying to him: "Old Man 'Can't' is dead; I helped bury him."

And he remembers that although Anderson was right, Anderson was strong, Anderson (who was illiterate) worked all those hours to buy books to add to the meager belongings that arrived in those grocery bags, he was still black. He was a great (if anonymous) American and Clarence still heard him called "boy" by his inferiors. And God-fearing, upright, flag-waving white men still denied his wife the use of a public bathroom.

We know these things because Clarence Thomas told them to

us; that means he has not forgotten them. And we can be sure that he will remember them for the rest of his life.

The worries of American women (and many men) that Thomas might help overturn the laws on abortion are obviously legitimate. As a father of daughters and a citizen who remembers the bad old days of back-alley abortionists, I never want to see us go back, and Thomas has answered questions on abortion with gobs of legalistic mush. Thomas also might cast an important vote in the growing battle over affirmative action. He could become part of the continuing Republican war against American working people. He might embrace that hyper-orthodox form of conservatism (espoused by Robert Bork, among others) that places the interests of the state over those of individuals.

But the Supreme Court already has a conservative majority that will last for the remainder of my days and for the lives of most adult Americans. If the majority chooses to do so, it can accomplish most of the above without Clarence Thomas. But if he is rejected, he probably would be replaced by another intellectual cipher like David Souter, devoid of history or a record.

I'd rather have a man on that court who remembers that there are people in this country who can fit all of their possessions into a grocery bag. Some are white. Some are black. Some speak Spanish. Some speak other languages. All live under the Constitution. It's hard to believe that this man will harm them.

NEW YORK POST

SEPTEMBER 12, 1991 4

THOMAS DUCKS 'YES' OR 'NO' ON ABORTION

By MARILYN RAUBER *Post* Correspondent

WASHINGTON — U.S. Supreme Court nominee Clarence Thomas yesterday described the days of back-alley abortions as "torture" for women — but said he hasn't decided whether abortion should be legal.

Thomas, under pressure from Senate Democrats to show his hand on the controversial issue, said that "on a personal level, I am very, very pained" by the idea of women undergoing the "agony" of risky, illegal abortions.

"I wouldn't want to see people subjected to torture of that nature," he said — recalling the "hushed whispers about illegal abortions in less-than-safe environments" in his hometown of Pin Point, Ga.

But when pressed again and again, Thomas insisted: "I have not made a decision one way or the other" on whether the high court ruled correctly in 1973 that women have a constitutional right to abortion.

"I have no reason or agenda to pre-judge the issue . . . or a predilection to rule one way or the other on abortion," the federal judge said on the second day of Senate Judiciary Committee hearings into his nomination.

President Bush yester-

day declared that Thomas was "doing a superb job" under "tough" questioning and added: "I am more confident than ever that I made the right nomination."

But at least two committee Democrats sounded unhappy with his performance — suggesting Thomas is tailoring his answers to placate the senators who will vote whether or not to put him on the Supreme Court.

Sen. Howard Metzenbaum (D-Ohio) said Thomas' refusal to answer the abortion question makes it "more difficult to vote for him."

Even conservative Democrat Howell Heflin, one of the panel's swing votes, accused Thomas of seeming to "give answers that won't hurt him."

Earlier, Sen. Alan Simpson (R-Wyo.), a Thomas ally, dismissed such accusations as "an act of desperation" by special-interest groups opposed to Thomas.

Thomas himself blamed the inconsistencies on his past candor — when he touted his opinions as a Republican "policy-maker."

On civil rights, Thomas did not back down on his longstanding opposition to hiring quotas and bristled at suggestions that he was admitted to Yale law school through a race-based recruitment scale.

"I have not during my adult life been a part of any quota," Thomas said, describing the Yale program as merely an informal effort to "reach out and open its doors to minorities."

Poll: Most minority women pro-choice

WASHINGTON (UPI) — As black Supreme Court nominee Clarence Thomas dodges Senate questions on his views on abortion, a new survey shows a strong majority of black and other minority women want the procedure kept legal.

At the same time, the poll also revealed that many of those same women would not seek an abortion themselves — because of their personal values or religious beliefs.

The poll was one of the first to center on minority women's attitudes on reproductive issues.

"About three-fourths of those surveyed agreed that the decision to have an abortion is one that every woman must make for herself," said Mary Frances Winters, president of The Winters Group, the Rochester, N.Y., research organization that conducted the poll.

"Only 19 percent think that abortion should be illegal under

any circumstances."

But 38 percent said they thought it would be difficult to obtain an abortion, according to the poll. Winters said "the primary obstacles" were their personal religious beliefs and values.

Luz Alvarez Martinez, director of the National Latina Health Organization, said that the poll showed 55 percent of Hispanic women feel that it is up to a woman to decide whether she

has an abortion.

As women's income and education levels rise, there is a significant increase in support for a legal right to an abortion, she added.

"We are not all Catholic," she said. "We do use birth control. We do get abortions."

"Some of us who were Catholic left the church over these issues. Some of us who remain Catholic continue to use birth control and get abortions in spite of the

teachings of the church."

Women responding to the survey had little sympathy with the militant tactics of Operation Rescue and its blockading of clinic facilities.

The survey of 1,157 black, Hispanic, Asian-American and Native American women was conducted for the National Council of Negro Women and the Communications Consortium Media Center.

THE CHRISTIAN SCIENCE MONITOR

SEPTEMBER 12, 1991 18

Judge Thomas Is Locked in to Laissez Faire

By James Boyle

AS Judge Clarence Thomas's confirmation hearings proceed, some senators will object to scrutiny of his beliefs. After all, they will say, this is a judge. His job is to apply the law, not make it. The Senate should be concerned with his competence, not his empathy for the powerless or his view of the world.

There is an answer to this objection. Ironically, it comes from another controversial conservative nominee to the Supreme Court, Judge Robert Bork. "It is naive to suppose that the [Supreme] Court's present ills could be cured by appointing justices determined to give the Constitution 'its true meaning,' to work at 'finding the law' instead of reforming society. The possibility implied by these comforting phrases does not exist.... The question ... is not whether courts should make the law, but how and from what materials."

Judge Bork wrote these words in 1968. Then, it seemed obvious to him that the vagaries of language and history made it impossible for a judge simply to "apply" the law. Things are clearer to him now. He says he has no difficulty in "finding" the

law. I think he was right in 1968 and that his words have some profound implications for Judge Thomas.

All judges have an ideology, a set of values and criteria that they use to "illuminate" the meaning of the law. For some, the intent of the framers is what counts; for others it is economic efficiency. Some judges think the words of the law alone will decide the case; others think that you must look to its purpose, or to some general set of principles underlying our social order. This issue cuts across party lines. Conservatives habitually browbeat liberals with charges of "judicial legislation," but they, too, cannot agree among themselves on the right way to interpret the law. (Judge Bork, for example, has at one time or another believed each of the above views to be "undeniably" correct.)

Judge Thomas apparently favors natural-law philosophy and laissez faire political theory as his guides to the meaning of the law. Should this disqualify him from confirmation? Not at all. But if all judges have an ideology, then the Senate should reconsider the questions it wants to ask.

One important question is whether this particular judge would ever modify his creed because of compassion or contrary evidence, or whether it shapes his perceptions so strongly that contrary evidence will be explained away, compassion pre-

empted. How is this question to be answered about Judge Thomas?

In comments that have often been quoted since his nomination to the Supreme Court, Judge Thomas once portrayed his sister, Emma Mae Martin, as welfare-dependent, trapped in a cycle of weakness and reliance on the government. This is the picture that his laissez faire philosophy tells him "must" be there. But as Joel Handler pointed out in a letter to the New York Times, the reality is entirely different.

IN fact, Ms. Martin's story is that of a woman who, unlike her brother, was not sent to live with their businessman grandfather. Instead, she finished high school, married, had children, and worked hard to support her family at a variety of grueling minimum-wage jobs, a task made all the more difficult after her husband left her. She went on welfare for a time only to take care of a sick relative. Ms. Martin is now working as a cook. Of her three children, one is employed, one has been laid off, and the third is in school.

Professor Handler concludes that this story is not one of welfare dependency, but of courage in the face of racism, structural poverty, sexism, and lousy health care — all problems to which Judge

Thomas seems remarkably indifferent.

The nicest thing one could say about these comments is that Judge Thomas's philosophy is so ingrained that he insists on it even when it is contradicted by the facts, even when Horatio Alger could not have overcome the structural barriers involved. Even when it is his own sister. Can we doubt he would do the same thing as a Supreme Court justice when the people whose lives depended on his decisions were strangers?

Twenty years ago, Robert Bork told us that the question was not whether judges would have to make law, but how. The greatest judges have made law with reverence, with an understanding for the powerless that illuminates the legal materials. They have had a skepticism about power — all forms of power, whether governmental or corporate or entrenched in a community. They have had a respect for unruly facts and a willingness to doubt. Thurgood Marshall was such a justice. The record indicates that Mr. Thomas is not. The confirmation hearings should ask whether he falls below not only the standard of greatness, but the standard of the acceptable.

■ James Boyle is a Visiting Professor of Law at Boston University Law School.

SEPTEMBER 12, 1991

Background and Ability Qualify Thomas for Court

As Clarence Thomas's Senate confirmation hearings enter their third day, who will emerge – a judge fitted for the nation's highest bench, or a conservative ideologue?

By Stephen M. Shapiro

THE Supreme Court's work extends to every facet of life in the United States. Each year the high court considers more than 4,000 applications for review and renders decisions in approximately 160 cases. Plainly, a Supreme Court nominee's qualifications must be considered against the broad range of issues that the justice will confront, not only this year but for many years to come.

Because of these realities, the Senate confirmation hearings on Clarence Thomas should not be focused exclusively on abortion

or racial quotas. They should explore Judge Thomas's judicial fitness, measured by his independence, integrity, ability, and life experience. Evaluated under these traditional standards, Clarence Thomas is an excellent choice for the Supreme Court.

Diversity of experience is an important qualification for a judge on any court. Thomas's story is an impressive one. Raised in an environment of discrimination and deprivation, but educated by family members and teachers committed to the values of discipline and scholarship, he attended Holy Cross and Yale Law School. In a course on federal taxation – among the most daunting courses a law student faces – Thomas's examination answers

were held up by the professor as a model for the rest of the students.

After law school, Thomas worked as a lawyer in the private sector, served as an assistant attorney general in Missouri, joined Sen. John Danforth's staff in Washington, and served as assistant secretary in the Department of Education. As chairman of the Equal Employment Opportunity Commission (EEOC), Thomas rehabilitated an agency that had earned harsh criticism from the General Accounting Office, boosting both the efficiency and morale of his staff.

Perhaps the best measure of Thomas's judicial fitness is his record as a judge on the Court of Appeals for the District of Colum-

bia Circuit, second in importance only to the Supreme Court. Although he has served for only one year, Thomas has participated in deciding more than 100 appeals and has written majority opinions in more than 20 cases.

His opinions are concise and clear, written with recognition that the public is entitled to practical guidance from appellate judges.

At a time when the war against drugs and violent street crime are of nationwide concern, it is reassuring to see Judge Thomas's mastery of criminal law. His opinions show a reluctance to reverse criminal convictions on legal technicalities, but a readiness to set aside convictions that are unsupported by the evidence. Judge Thomas has dealt sternly with drug dealers in several opinions,

including his affirmance of a conviction of drug traffickers plying their wares in an "open air drug bazaar" in the nation's capital (US v. Rogers). A judge who is tough on crime but alert to unfairness in the criminal justice system will not appear outside the mainstream of American opinion.

The Supreme Court sits atop a pyramid of agencies and bureaus that regulate the private enterprise system, and it makes law in business disputes under a host of constitutional and statutory provisions. Because its jurisdiction as a business regulator is nationwide and its word final, the Supreme Court has much to do with the competitiveness and prosperity of our economy. Thomas has delivered a series of thoughtful opinions in business cases. In one widely publicized antitrust case (US v. Baker Hughes Inc.), he thoroughly refuted the Bush administration's economic analysis.

Some critics have found troubling Thomas's scholarly writing on constitutional interpretation, including his references to "natural-law" reasoning, a legacy of the framers of the Declaration of Independence, who believed certain fundamental principles of liberty and equality to be self-evident.

Thomas's sympathy for natural-law reasoning derives from the founders of the Constitution and the writings of Abraham Lincoln. If special-interest advocates are uneasy about this tradition, it is a reflection of their own distance from the American mainstream.

Thomas's sharpest opposition comes from certain leaders of the civil rights movement who have criticized his views on quotas and racial preferences. But this difference over one facet of the civil rights agenda should not obscure Thomas's accomplishments as a crusader for racial justice. As he explained in one of his prior Senate confirmation hearings: "The reason I became a lawyer was to make sure that minorities, individuals who did not have access to the society, gained access."

Those who know him best, such as the liberal dean of the Yale Law School, Guido Calabresi, and Margaret Bush Wilson, former national chair of the NAACP, predict that Thomas's confirmation will advance the cause of civil rights. In Dean Calabresi's words, "He is a decent human being, who cares profoundly for his fellows.... [He] does know the deep need of the poor and especially of poor blacks, and wants to help."

As chairman of the EEOC, Clarence Thomas went to court on behalf of victims of racial discrimination far more often than his predecessors. He adopted a new policy of bringing every meritorious case to litigation and insisted on tough new sanctions for violators. During his tenure as EEOC

chairman, he collected nearly \$1 billion on behalf of American workers. And he chastised the Reagan administration for what he believed to be tardiness in pursuing voting rights reform.

Significantly, Thomas's own experience with racial discrimination is not confined to abstract theory. As he explained in a recent interview: "I've showed up in some of the nicest places in this city [Washington, D.C.]. You walk in one of the top-of-the-line restaurants, people look at you like you're out of your mind.... In my own neighborhood, I used to get stopped by the cops." Experiences such as these are not likely to be forgotten by a newly appointed Supreme Court justice, nor are they likely to be duplicated by another nominee if Thomas is rejected.

Thomas's opposition to quotas and racial preferences arises not from a reluctance to challenge discrimination, but from an honest disagreement over the best means to achieve racial equality. Racial preferences, in his view, result in unfair reverse discrimination, while perpetuating dependence upon a welfare state.

Only the most rigid advocates of racial quotas and preferences would suggest that Thomas's views are disqualifying for a position on the Supreme Court. Most Americans, who support the goal of a color-blind legal system, agree with his assessment.

PERSONAL attacks on Judge Thomas, voiced in the press in recent weeks, do little to advance the search for the nominee's judicial qualifications. Florence Kennedy, a pro-choice advocate, is quoted as stating that "we're going to Bork him. We're going to kill him politically."

Thomas himself appears to be braced for the worst. As he commented in a recent interview, "When you're up before those confirmation hearings, it's like going through Dante's Inferno. ... When you get up there, you just hope that you don't get destroyed so that even if you don't make it, you can go on with your life." Lobbyists who fuel this inferno may well do more harm to their own credibility than to the nominee.

Clarence Thomas's career as a public servant and his personal triumph over poverty and discrimination make it impossible to credibly characterize him as a reactionary jurist insensitive to racial justice.

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SEPTEMBER 12, 1991

A1

Thomas refuses to discuss constitutionality of abortion

By Lyle Denniston

Washington Bureau of The Sun

WASHINGTON — Supreme Court nominee Clarence Thomas put one constitutional issue — abortion — totally out of bounds yesterday as he discussed with senators his views on a lengthening list of disputes that now rage among the justices.

In a day of sometimes tense sparring with both Democrats and Re-

publicans on the Senate Judiciary Committee, federal appeals Judge Thomas took positions on the kind of privacy that the Constitution protects most, on the way to protect religion from government interference, on the way to judge inequality under the Constitution and on the court's power to overrule civil rights rulings.

But when asked, as he was nearly a score of times, about whether he thinks the Constitution includes a

woman's right to seek an abortion, he said every time that it would compromise his "impartiality" to answer.

The most he would say was that he was not "predisposed to rule one way or the other on the issue of abortion, which is a difficult issue."

In his second day in the committee witness chair, Judge Thomas went even further than he had the day before to dismiss most of his past criticism of modern court rul-

ings as mere policy commentary and said repeatedly that he would not carry those views with him if the Senate approved him for the court.

In tones that at times almost seemed pleading, Judge Thomas said

See **THOMAS**, 5, Col. 3

Some in Black Caucus, which opposes Thomas, predict confirmation. **5A**

that he had left all those views behind when he became a federal judge last year and likened himself to a "runner" who has to "strip down" in order to perform successfully.

It was unclear what impact the nominee's testimony was having on the 14 senators on the committee. After yesterday's session, Sen. Paul Simon, D-Ill., said of the day's developments: "I don't think any votes were changed, one way or the other."

But the wide distance Judge Thomas was placing between his policy expressions of the past and the things that he said he now would consider as a judge left two members of the committee openly skeptical.

Sen. Herb Kohl, whose turn to question the judge comes this morning, told reporters at the close of yesterday's session: "He took major parts of his past and said, 'Forget it.' He is saying that we are to 'disregard major parts of what I've done.'"

The Wisconsin Democrat said that that "will be a factor" for some senators when they decide how to vote. Judge Thomas "needs to explain himself more fully. He needs to give more careful, more candid explanations," Mr. Kohl said.

Sen. Howell Heflin, D-Ala., wondered aloud whether the nominee was undergoing a "confirmation conversion." He told Judge Thomas: "That can affect the evaluation of

members of the committee as to integrity and temperament."

Outside the room, Mr. Heflin visibly bristled at a reporter's suggestion that he had only been joking.

One of the nominee's key GOP supporters on the committee, speaking on condition of anonymity, said that Judge Thomas would suffer as a result of seeming departures from his earlier views only if senators were convinced that those were "clear deceptions." The senator said they were not of that character.

Although Judge Thomas succeeded throughout the day in avoiding any hint of his views on abortion as a constitutional question, he did offer a "personal" commentary about it at one point.

When Sen. Howard M. Metzenbaum, D-Ohio, expressed worry over a return to "brutal and illegal abortions," should the court overrule *Roe vs. Wade*, the 1973 decision establishing an abortion right, Judge Thomas expressed concern for women who might face such a prospect.

Recalling that as a child he had heard "hushed whispers" about unsafe and illegal abortions, the nominee remarked: "If a woman had [been] subjected to the agony of an environment like that, on a personal level certainly I am very, very pained by that. I think any of us would be."

He repeated that "it would undermine my ability to sit in an impartial way" if he discussed abortion as a

constitutional matter with the panel.

Mr. Metzenbaum and Sen. Patrick J. Leahy, D-Vt., made the most sustained effort to draw him out on the question. The nominee told Mr. Leahy that he had never debated the *Roe* decision with any acquaintance, did not remember discussing it in any way as a law student and had no present position at all on it.

Mr. Leahy also pressed him on whether fetuses have a constitutional right to life, as conservative theorist Lewis Lehrman suggested in a magazine article that Judge Thomas once praised in a speech. Waiting an unusually long time before answering, the nominee said: "I can't think of any cases that have held that."

In discussing other constitutional disputes that currently divide the Supreme Court, Judge Thomas said:

□ He believes the Constitution protects "marital privacy" as a "fundamental right" — a position at least two current justices expressly reject.

□ He had no difficulty with varying levels of protection for equality that the court has spelled out: the greatest for minorities, somewhat less for women, even less for others — a position that at least one of the current justices thinks is wrong.

□ He disagreed with a six-justice majority position declared at the end of last term: that the court should feel freer to overrule civil rights decisions than it should those involving economic and property rights.

Some blacks in Congress concede post to Thomas

By Arch Parsons
Washington Bureau of The Sun

WASHINGTON — Some key members of the Congressional Black Caucus, an early opponent of the appointment of Judge Clarence Thomas to the Supreme Court, acknowledged yesterday that President Bush's nominee is likely to be confirmed by the Senate.

As an estimated 20,000 politically minded black Americans began arriving here for the caucus's annual "legislative weekend," Representative John Conyers Jr., D-Mich., senior member of the caucus, said Judge Thomas would win Senate confirmation unless there is a "surprise" during the current hearing "or he shoots himself in the foot."

Another Democratic member of the caucus respected for his political astuteness, speaking on the basis of anonymity, said flatly that Judge Thomas would be confirmed.

The caucus consists of all 25 black Democratic members of the House and a lone black Republican, conservative Gary Franks of Connecticut, who has stood against his Democratic colleagues and favored confirmation of Judge Thomas since Mr. Bush nominated him in July.

The caucus will have on hand this weekend a potential army of lobbyists to press for Senate rejection of Judge Thomas, but it is expected to make only cursory use of it. Only a relatively small number are expected to be called upon to lobby their senators against Judge Thomas' confirmation.

Participants in the "legislative weekend," which is formally sponsored by the non-profit Congressional Black Caucus Fund, philanthropic arm of the House members' organization, will devote most of four days to forums and workshops. The focus, according to Representative Mike Espy, D-Miss., chairman of the weekend program, will be on black Americans' "tragedies, dreams and hopes."

Representative John Conyers Jr., D-Mich., said Judge Thomas would win Senate confirmation unless there is a "surprise" during the current hearing.

The weekend will also include a fashion show and prayer breakfast.

Mr. Espy announced that Supreme Court Justice Thurgood Marshall, who is retiring after 24 years as the first and only black to serve on the court, will be honored at an awards dinner — and plans to attend it. Justice Marshall, 83, was released from the hospital on Saturday after surgery to implant a heart pacemaker.

Mr. Espy said the "galleries" at the Senate Judiciary Committee hearing, where Judge Thomas is testifying, will be "full of our people" today and tomorrow. But no demonstration is planned.

Mr. Conyers is to chair a meeting this afternoon on "opposition to the Clarence Thomas nomination." But Mr. Conyers said the session would be essentially "cerebral."

The workshop will be held against the background of a New York Times/CBS Poll that found that as of last week, while only 23 percent of the nation's blacks favored Judge Thomas' confirmation, only 15 percent opposed it and a huge 63 percent responded that they "can't say."

The purpose of the workshop, Mr. Conyers said, will be "to explain the opposition of the CBC and the civil rights community" to the nomination of Judge Thomas.

SEPTEMBER 12, 1991 13A

The Thomas view of 'women's work'

**If a man holds his sister up to ridicule,
how will he treat the rest of us?**

"She gets mad when the mailman is late with her welfare check, that's how dependent she is," said Clarence Thomas of his sister, Emma Mae, in a 1980 speech that he delivered to a group of black conservatives.

That speech marked his induction into the Hall of Shame, the group of men who cross women's backs to gain a place of prominence.

Republicans took note of Thomas after he skewered his sister in public, but the rest of us should take note, too, of the way this man fails to understand the way gender affects life chances and opportunities.

One might argue that had Emma Mae been a man she, too, would have had the benefit of the Catholic education that Myers Anderson provided grandsons Clarence and Myers. Girl that she was, she remained home with her mother and started a career of low-wage work.

Indeed, the record may well show that Emma Mae is the firmer believer in responsibility and self-help than her male siblings. It was she, after all, who provided care for an aging aunt, and it was she whose path away from public assistance was paved by two part-time jobs.

Emma Mae Martin seems to be as hard a worker as her brother, but women's work has always been less well remunerated than that of men. While Clarence Thomas earns more than \$110,000 as a federal judge, most hospital aides like his sister earn less than \$5 an hour.

Instead of holding a hard-working woman up for ridicule, Thomas might try practicing some of the self-help he preaches by offering some of the same assistance to his sister that his grandfather once offered him.

Some say the Clarence Thomas story is one of hard work and bootstrap pulling. From where I sit, though, this is a story of the way gender shapes opportunities within families. Judge Thomas cannot help the fact that, as the male offspring of the grandfather he revered, he had advantages that his sister missed. But it is disappointing that he seems insensitive to the gender basis of his advantages.

His supporters speak of his hard work, but did his mother or sister work less hard? Or was their work merely less well rewarded?

Economic reality dictates most women's workforce participation, but the absence of family- and medical-leave policies in our society depends on women's unpaid work.

Women are often pressed to drop out of the labor force when a family member — a parent, older relative or child — needs care. For providing that kind of support in her family, Emma Mae Martin earned her brother's public scorn. What can the rest of us women expect from Supreme Court Justice Clarence Thomas as issues of pay equity and family policy come before this court?



By Julianne Malveaux, an economist and lecturer and King Features columnist.



34

SEPTEMBER 12, 1991 1A

Thomas silent on abortion

By Tony Mauro
USA TODAY

Supreme Court nominee Clarence Thomas refused again Wednesday to reveal his views on abortion in a second day of sometimes-hostile questioning by Senate Democrats.

The only glimpse he offered of his abortion views came in an exchange with a frustrated Sen. Howard Metzenbaum, D-Ohio, who asked him the abortion question 11 different ways.

Metzenbaum asked how he felt about back-alley abortions that might proliferate if the procedure is outlawed.

"As a kid we heard the hushed whispers about illegal abortions," Thomas said.

"If a woman is subjected to the agony of an environment like that, on a personal level, certainly, I am very, very pained. ... I would not want to see people subjected to torture of that nature."

Thomas, shedding his case of first-day jitters, gave a thumbs-up sign and testified with more confidence, telling senators that to reveal his abortion views would compromise his impartiality as a judge.

"There is no room in judging for personal predilections."

He said many of his controversial past writings were irrelevant, now that he is an appeals court judge and a Supreme Court nominee:

"I advocated as an advocate, and now I will rule as a judge."

On another hot issue, Thomas voiced concerns about prayer in public schools. Told by Sen. Paul Simon, D-Ill., of Jewish students who used to leave classrooms when prayers were recited, Thomas said, "Any policy of exclusion should be considered inappropriate."

Liberal opposition mounted:

► Planned Parenthood Federation of America announced its opposition to Thomas. "The American people deserve to have an answer," said president Faye Wattleton.

► Black religious and civil rights groups — two representing 12 million black Baptists — rallied at the Capitol to voice their anger at his testimony.

Defenders said Thomas shouldn't be held to account for every musing of his public life. "No one can pass that test," said Sen. Alan Simpson, R-Wyo.

President Bush praised Thomas: "He's doing a superb job, he knows exactly how to handle himself."

Today, Thomas is expected to be grilled on his record as chairman of the Equal Employment Opportunity Commission and opposition to affirmative action.

SEPTEMBER 12, 1991 13A

Focus shifts to record at civil rights agency

By Judi Hasson
USA TODAY

While most attention at Clarence Thomas' confirmation hearing has been focused on "natural law" and abortion, his eight-year tenure as head of the Equal Employment Opportunity Commission is coming under similar scrutiny.

On Wednesday, Thomas told his Senate confirmation hearing he's always been opposed to discrimination and carried that philosophy to the civil rights agency he headed from 1982 to March 1990.

"I made it clear during my tenure as the Chairman of EEOC that it had to be eliminated, and I did everything within my power," he said.

To some Thomas-watchers, the Supreme Court nominee was a brilliant bureaucrat who cleaned up the EEOC. To others, he was a civil rights obstructionist.

Critics say cases stalled under Thomas, including as many as 13,000 age discrimination complaints, which piled up and then expired. Congress had to pass a special law to make sure age discrimination cases could be filed past a specific deadline.

Said Sen. Howard Metzenbaum, D-Ohio, "During his tenure as chairman of EEOC, Judge Thomas failed to fulfill his duty to protect the legal rights of older workers."

Other opponents say he avoided class action cases designed to fix discrimination against groups of victims, instead of individuals, and opposed affirmative action.

"He transformed the EEOC into a nickel-and-dime claims adjustment agency" says Nan Aron of the Alliance for Justice, which opposes Thomas.

During his tenure, critics say, the number of class action cases dropped to 129 in 1989 from 218 in 1980.

"He decided you could eliminate discrimination in this country on a case-by-case basis," says Nancy Kreiter, research director of the Chicago-based Women Employed Institute. "From our viewpoint,



By Shawn Spence, USA TODAY

METZENBAUM: Thomas 'failed' to protect older workers

you will never eliminate discrimination unless you attack it on a large-scale class action."

Backers counter that Thomas' record is being distorted.

Pamela Talkin, his chief-of-staff at EEOC, estimates 2,200 age discrimination cases expired because of district office problems, not Thomas.

She cites statistics showing the number of cases filed increased from 51,000 in 1982 to 58,000 in 1988, but so did the number of cases completed — from 67,000 in 1982 to 70,000 in 1988. "The backlog didn't increase. There wasn't anything horrendous about it," she says.

"This is all political. He

didn't sit on cases," says Deborah Graham, Thomas' communications director at EEOC.

"I can remember being over there (at the EEOC) and helping look for members of a class," she recalls. "It may have been a difference in approach ... but it had nothing to do with commitment against class actions."

In fact, says Talkin, in 1983, Thomas signed a \$42.5 million settlement with General Motors, resolving hundreds of discrimination claims. Among conditions: GM agreed to provide \$10 million to universities for minority students.

Willie King, the EEOC's financial manager who once worked with Martin Luther King (she's no relation) also defends Thomas' record.

"We were apprehensive because he was a black man appointed by Reagan to take over EEOC. There was some skepticism here," says King, who is black.

"But one of the things that struck me about Thomas' respect for the civil rights movement was that he called it 'the movement.' He would bring young proteges to my office and say, 'Tell them about the movement, tell them about EEOC being born.'"

SEPTEMBER 12, 1991 1A

Nominee hits his stride on Day 2

If 'Justice Souter was a stealth nominee, I am Bigfoot,' quips Thomas

By Tony Mauro
USA TODAY

Sen. Patrick Leahy leaned forward and asked Supreme Court nominee Clarence Thomas the direct question others had danced around.

"Does a fetus have a constitutional status as a person?"

Thomas paused for a long time, pondering the answer that could hold the key to his

views on abortion. "I can't think of any cases that have held that, senator," Thomas said finally. It was not the answer the Vermont Democrat was looking for. It revealed nothing about Thomas's personal views.

But it was an answer. The tension in the air eased. Thomas had survived another exchange, cleared another hurdle in his effort to calm the concerns of Senate Democrats who are struggling to decide whether he should be confirmed for a seat on the nation's highest court.

Please see COVER STORY next page ►

It was a dramatic moment Wednesday in the second day of Thomas' hearing before the Senate Judiciary Committee, a slightly better day for Thomas than his first go-round with senators on Tuesday.

If the hearing were a play then the first act introduced Thomas as the black protagonist with a poignant past, roughed up by the passionless panel of all-white senators.

Thomas was halting and nervous the first day, awkwardly invoking his family whenever cornered. But on the second day he hit his stride, still mentioning his grandfather and his past, but more in control.

"To the extent that Justice Souter was a 'stealth nominee,' " he quipped, "I am Bigfoot."

Senators remained skeptical, however, angered that Thomas side-stepped tough questions and seemed to be disavowing large chunks of his controversial past statements and writings. While their frustration may foreshadow a tragic final fall for Thomas, there could still be a happy ending, from his point of view.

"I don't do round-by-round assessments," said Sen. Howell Heflin, D-Ala., one of the uncommitted senators. "I'll wait till the fight's over."

What is clear after two days is Thomas has committed no blunders that make his defeat certain.

His friends are predicting he'll be confirmed. Hearings end next week.

"There's an ebb and flow to these things, and you have to get into the pattern and syncopation of it," said Harry Singleton, a longtime friend of Thomas who has been at the hearings throughout. "Now he's getting into it. I think he's doing very well."

Sen. Alan Simpson, R-Wyo., told Thomas Wednesday, "You've got 'em. They're very frustrated by you."

Why the frustration?

Thomas' strategy during the hearings is one that works well for lawyers arguing before the Supreme Court — but may not work before the senators. He drives home one theme per session, and one point only, resisting efforts by his inquisitors to derail him.

And he delivers his answers in a deep, flat voice that has become an odd asset. Friends say he has a hearty laugh, but it has not been apparent. His unshakable monotone envelops and sucks the air out of the senators' rhetoric, a punching bag that absorbs a left hook. No matter what is thrown at him, the voice and the message are the same.

Wednesday's theme: Judges should be impartial arbiters, leaving ideological baggage at home and

staying out of issues best left to Congress or the president.

"We are the least democratic branch," Thomas said at one point, referring to the fact that federal judges are appointed, not elected. "We have to restrain ourselves, so we don't become super-legislators."

Sen. Howard Metzenbaum, D-Ohio, tried 11 times to pry an answer out of Thomas on abortion. An aide furiously handed Metzenbaum notes to help him fashion the next question, but finally Metzenbaum gave up: "Let's move on."

But Metzenbaum also ticked off a half-dozen areas in which Thomas' statements at the hearing appeared to contradict his past statements — setting the stage for a "confirmation conversion" strategy like the one that sank Robert Bork in 1987.

"Yesterday I thought we would finally get some answers about your views," said Metzenbaum. "Instead of explaining your views, though, you actually ran from them and disavowed them."

Highlights of Metzenbaum's litany of contradictions:

► In 1987 Thomas said, "Economic rights are as protected as any other rights in the Constitution." Yet on Tuesday Thomas said, "The Supreme Court cases that decided that economic rights have lesser protection were correctly decided."

► Thomas labeled an anti-abortion article as "a splendid example of applying natural law." On Tuesday, he disavowed it.

► In 1987, Thomas was part of a White House working group on the family whose report criticized the court's pro-abortion rights rulings as "fatally flawed." At the hearing, he said he'd never read the full report.

The unexpected trouble Thomas finds himself in adds a new dimen-

sion to what's become a familiar scenario. The fourth Supreme Court confirmation in five years feels like summer stock theater gone stale: All the players know their parts.

In the front of the soaring Senate Caucus Room are the senators, most of them scripted by their staff, many of them strangely inept at asking follow-up questions — a fact that Thomas, veteran of more than 50 congressional hearings, must surely know.

In the middle of the room sit reporters, playing their part as conveyors of the substance, the atmospherics and the spin of the proceedings — even though watching it on TV gives a better view. Senators and White House staffers chat with reporters during breaks. Senators aides' whisper, "Wasn't my guy great today?"

And then in the back and outside are the "spin doctors," the pro- and anti-Thomas forces who give the media their take on Thomas' latest answers. Rikki Silberman, vice-chairman of the Equal Employment Opportunity Commission, works the room in tireless support of Thomas. Thomas friend Singleton has staked out a Corinthian column near the press section as a place to lean — and dispense Thomas lore.

For the Thomas opposition, the National Abortion Rights Action League churned out a near-hourly press release on Wednesday. On Tuesday, Ralph Neas of the Leadership Conference on Civil Rights burst out of the hearing room and told a reporter, "He's running from his record." Within minutes, other anti-Thomas leaders were telling reporters, "He's running from his record."

By month's end, the denouement will be known. And on the first Monday in October, the Supreme Court begins its fall term — with or without Clarence Thomas.



SEPTEMBER 12, 1991 2A

Lobbying not as heavy as in Bork case

By Judi Hasson
USA TODAY

The confirmation hearing for Supreme Court nominee Clarence Thomas is testing whether senators really listen when a lobbyist comes to call.

The National Abortion Rights Action League has sent 600,000 hot pink and hot green anti-Thomas postcards to members of the Senate.

In support of Thomas, the Christian Coalition, founded by TV evangelist Pat Robertson, began making 75,000 telephone calls urging its members to call and write their senators.

So far, it's no comparison to the intensive campaign four years ago by liberal groups against nominee Robert Bork, who was defeated.

And senators are divided

over what impact a special interest lobby has on their vote.

"I've gotten a good number of letters, but not nearly what Bork was," said Sen. Howell Heflin, D-Ala., an undecided committee member who could prove to be a crucial vote on the nomination. Heflin, a highly respected former judge, could sway other undecided Southern Democrats.

Even the office of Sen. Joseph Biden Jr., D-Del., the committee chairman, hasn't received the volume of calls it logged in past hearings.

In the first day-and-a-half of the Thomas hearing, his office counted 177 calls supporting Thomas and 353 opposed.

But lobbyists vow they are working hard to put pressure on the senators to scrutinize Thomas' record. How they vote

THOMAS HEARINGS

- ▶ Latest news, 1A
- ▶ Hearing excerpts, 13A
- ▶ The EEOC flap, 13A

could affect future funding by special interests.

"They are getting bombarded by calls, letters and postcards... a huge grass-roots effort," says NARAL's Kate Michelman, a Thomas foe.

Sen. Dennis DeConcini, D-Ariz., who's undecided, says he's met with Thomas supporters and opponents and plans to meet next week with a Hispanic group opposed to Thomas.

Can they have influence?

"It really depends on how they present it," says DeConcini, a swing vote on the commit-

tee. "Yes, if they really bring you something new and are willing to share it, it makes a difference, but if it's a single issue agenda, not as much."

Sen. Arlen Specter, R-Pa., another undecided and crucial vote, says he listens to what lobbyists have to say. But "You have to weigh a constituent's view in terms of the complexity of the issue."

During the Bork battle, Specter said he found himself working to convince constituents that Bork should be defeated.

This time, abortion rights supporters in his home state are hoping he'll listen to them.

"We've taken on the challenge to let him know we're out here," says Carol Silvestre, NARAL's Pittsburgh, Pa. organizer, who is orchestrating lobbying efforts around the state.

Friends glued to TV in Pin Point, Ga.

By Mark Mayfield
USA TODAY

PIN POINT, Ga. — The sounds of the U.S. Senate echo through the stately, moss-draped oak trees here.

In simple, wood-frame houses, cable TV has become as essential as electricity while the Judiciary Committee grills native son Clarence Thomas live on C-SPAN.

"It makes me sick the way they're treating him. I don't like their tone," says Viola Martin, 42, Thomas' cousin and childhood playmate. "But he's answering them very well. ... He's going to make a great Supreme Court justice. Just wait."

Support for Thomas — who left Pin Point as a child but has a sister still living here — is as overwhelming as the humidity.

Says one resident, Gail Smith, 33, "He's been dragged in the mud and slung around. To see him handle it so well is wonderful. He's still holding his head up. If it was me, I'd be down their throats."

Here, in a humble town 250 miles southeast of Atlanta,

Thomas is bigger news than even the pennant drive of baseball's Atlanta Braves.

The hearing made front-page headlines in the *Savannah Evening Press* and drowned out nearly everything else in the black-owned *Savannah Tribune*. The weekly, out Wednesday, carried five front-page photos of Thomas and trumpeted: "The Tribune Family Salutes Judge Thomas."

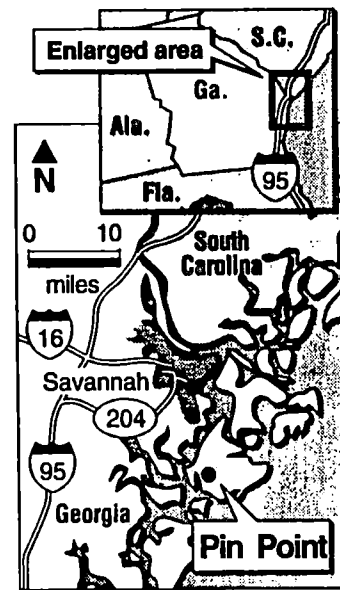
Thomas has been criticized for forgetting his roots.

"As one who participated in the civil rights struggle, I find that his record is not one that I'm proud of," U.S. Rep. John Lewis, D-Ga., says.

But in the town where his mother still returns for Sunday church services, Thomas is a point of pride. Folks say Thomas, like Pin Point's other children, learned the value of hard work in the marshes where most worked at a now-closed crab processing plant.

"We all grew up family," says Adelle Anderson, 58, who raised seven children here and sent five of them off to college.

Sitting in her living room



USA TODAY

and watching Thomas on C-SPAN, the cable system of public affairs networks, she reflects on the old values.

"We were taught — and we taught our children — manners and respect," Anderson says. "We try to walk the right road. That's what makes him so good, his background. A

background where you help people and you help yourself."

That feeling was evoked even at Savannah High.

An aspiring lawyer, 16-year-old Antecia Thomas (no relation to the nominee), criticizes the civil rights leaders who have condemned Thomas' nomination. "They should back him 100%," she says.

But she has questions of her own, especially on abortion: "I don't want the court making decisions for the women of this

country. On that issue alone, I'd vote against him."

Clarence Thomas refused during the hearings to express his views on abortion, saying it "would undermine my ability to sit in an impartial way on a case like that."

Students in an 11th-grade constitutional law class discarded books for a riveting lesson, live and in color.

They watched Thomas, dignified and well-spoken, with his mother, Leola Williams, and

sister, Emma Mae Martin, sitting behind him at the hearing.

And they cut him no slack when it came to the stern questions posed by the committee.

"He'll have tough cases when he gets to the Supreme Court," says Tanisha Williams, 15, "so he should get tough questions now."

Adds Moriah McCrossin, 17: "If he's going to be a Supreme Court justice, it's important we have an opportunity to know about him."



SEPTEMBER 12, 1991 2A



SEPTEMBER 12, 1991 2A

Outside the hearing room, the battle of the sound bite

By Judi Hasson
USA TODAY

The White House fought back Wednesday in the battle for media attention at Clarence Thomas' Supreme Court confirmation hearings.

Spokeswoman Judy Smith was dispatched to play traffic cop outside the confirmation hearing room for reporters seeking information.

And a half dozen high-level administration officials showed up to offer their opinions about the nominee for dozens of microphones and TV cameras.

"Groups are working really hard to get into the media," said Sen. Orrin Hatch, R-Utah.

On Tuesday, the first day of

the hearings, Thomas' opponents had the microphones virtually to themselves.

But Wednesday, both sides angled to get on-camera.

At a midday break, Sen. John Danforth, R-Mo., raced to the microphones and cameras to defend Thomas' refusal to state his views on abortion, a key issue at the hearings.

Right behind him, Faye Wattleton, president of Planned Parenthood, stood ready to announce the organization's opposition to Thomas.

Moments after she was finished, Constance Newman, director of the Office of Personnel Management, pushed through the crowd of reporters to speak in support of Thomas.

Fred McClure, the White



By Tim Dillon, USA TODAY

HATCH: 'Groups working really hard to get into the media.'

House chief lobbyist, who's guided Thomas' relations with Congress since he was nominated in July, said he thinks the hearings are helping Thomas to win confirmation.

"We are hoping that senators are watching the tube," he said.



SEPTEMBER 12, 1991 2A

Thomas rules in 'Redskins vs. Cowboys'

By Tony Mauro
USA TODAY

The most controversial confession made by Supreme Court nominee Clarence Thomas Wednesday has nothing to do with the law: He is a Dallas Cowboys fan.

Thomas let the fact slip as he was explaining to the Senate Judiciary Committee how it is possible for judges to hold strong opinions privately, yet still rule impartially.

"My Dallas Cowboys, for example, played the Redskins on Monday night, and I am totally convinced that every referee in (the game) is a Redskins fan," said Thomas. "But none would admit to it."

Sen. Alan Simpson, R-Wyo., applauded Thomas for his independence. "To have you in this nest of Redskin fans, to be a Dallas Cowboy fan certainly discloses a degree of independence which will serve you very well on the court."

He later told reporters that he was first drawn to the Cowboys after the franchise recruited former Olympian and world record sprinter Bob Hayes as a split end in 1964.

The Washington Times

SEPTEMBER 12, 1991 62

The opponents of Judge Thomas

As Clarence Thomas finishes testifying before the august panel of lawgivers who will decide whether to lift him to the nation's highest court, it might be instructive to look at the list of his opponents. Why, one might ask, do they oppose Judge Thomas? Well, for much the same reason they opposed Robert Bork, Antonin Scalia, William Rehnquist, David Souter and Anthony Kennedy — which they did. The nominees are conservative, the opponents are liberal.

The Congressional Quarterly ran a pretty comprehensive list of those who oppose Judge Thomas: the National Association for the Advancement of Colored People, the Leadership Conference on Civil Rights, the AFL-CIO, the Alliance for Justice, People for the American Way, the National Abortion Rights Action League, the Congressional Black Caucus, American Federation of State, County and Municipal Employees and the American Federation of Teachers.

But take a look back through the files, and guess who shows up in opposition to Mr. Bork? The same collection of groups. And Mr. Rehnquist, when he was up for chief justice? The NAACP, the National Organization for Women, the National Women's Political Caucus, the Americans for Democratic Action, etc., etc., etc. Admittedly, they came up with two ancillary rea-

sons to oppose Mr. Rehnquist — something about a restrictive covenant in the deed to his house as well as some other unsupported charge about challenging voters at polling stations — but in truth they opposed him on grounds of political ideology.

When Mr. Souter showed up for confirmation, the Leadership Conference merely wanted the Judiciary Committee to "recall" him to explain some of his positions more thoroughly, but the other groups — PAW, Alliance for Justice, NOW, NARAL, NAACP — came down against him.

Move back to Mr. Scalia, and you find the usual suspects: the Leadership Conference on Civil Rights, Americans for Democratic Action and NOW.

Anthony Kennedy was the one guy they couldn't do much with, although the Leadership Conference put a 24-man team of lawyers into action checking his background. Mr. Kennedy, you see, was the Reagan administration's choice after the left got through with Mr. Bork, and the Leadership Conference, NAACP and NOW knew its friends on the Judiciary Committee couldn't get away with murder twice. So Mr. Kennedy slipped by.

Fact is, these groups oppose Judge Thomas for one reason, and it has nothing to do with his qualifications.

Bridging the racial divide

From violence in the Crown Heights section of the Bronx to heated debates over a civil rights bill in Congress, it is clear that the distance between the races is widening.

The confirmation hearings for Judge Clarence Thomas present a rare opportunity for conservative Americans to take the initiative to bridge the racial divide. Leadership from this unlikely quarter could produce dynamic social and political benefits unique in black-white relations.

Judge Thomas represents values that most conservatives cherish: hard working, self-sufficient, personally accountable.

If there are to be many more Clarence Thomases, it is up to those who admire what he has done to show the way for others to emulate his accomplishments.

Across a wide chasm of misunderstanding, whites and blacks have hurled their ideological and political mortars. Much of America's black leadership has practiced the politics of grievance. They say whites owe them because of slavery, and that quotas, affirmative action and other

Cal Thomas is a nationally syndicated columnist.

legal gimmicks are necessary to overcome past and present discrimination.

Some whites have countered that they are not responsible for what happened a century ago, and that blacks want to reverse the discrimination process in their favor by denying whites jobs and promotions.

The twain shall never meet — unless there is another way.

The answer, I think, lies with black children who have, like Clarence Thomas, demonstrated motivation but lack the means to make their dreams come true. With these young people, conservatives have an opportunity to produce a whole generation of Clarence Thomases if they seize the moment now.

A private national campaign should be launched by conservatives, apart from other programs, to raise college scholarship money for black students in need of financial assistance. In addition, conservatives should become personally involved in the lives of these young people, particularly young black

If there are to be many more Clarence Thomases, it is up to those who admire what he has done to show the way for others to emulate his accomplishments.

men, serving as mentors and role models. The personal relationship factor is critical to the success of such a project because it offers enrichment that is often denied to poor children, many of whom come from broken families and suffer other social and environmental hardships.

A foundation with specific by-laws and tight controls should be



Clarence Thomas

created to find scholarship beneficiaries and regulate the flow of funds to protect the program's integrity. Criteria would need to be well defined. Not only good students would be helped, but anyone with the desire and potential to succeed might qualify.

To fund such a program, corporations and conservative political

groups would contribute money, time and expertise. The program's foundation would be a "domestic World Vision," patterned after World Vision International, a humanitarian organization that assists poor children around the world through sponsors who donate money every month.

Ideally sponsors would be linked to poor black American children in their city or region and would remain in close touch with their "adopted" children by telephone, letters and personal visits.

Corporations could provide for selected young people short courses on how businesses are run, economic independence through self-help, cultural appreciation and academic tutoring. Perhaps a child who had been sponsored by a corporation or business would have an inside track on a job after graduation and a relationship with his or her mentor that would serve both well.

The personal, cultural and political benefits of such a program are potentially enormous. Personal relationships on a new level would be

established between individual whites and blacks. A ripple effect could touch entire families, even whole neighborhoods. The racial animosity so prevalent today would be markedly diminished.

The political benefits might also be considerable. Conservatives could break the hold liberals have had on the "black" vote for the last half-century. This is not the highest motivation for involvement in such a project, but if that's what it takes for some conservatives to act, they can grow from the bottom motivation up.

In an address to the conservative Heritage Foundation in 1987, Clarence Thomas said, "Conservatives must open the door and lay out the welcome mat if there is ever going to be a chance of attracting black Americans. There need be no ideological concessions, just a major attitudinal change. Conservatives must show that they care."

Closing the gap between black and white, between poor and non-poor in America is a job that can begin with the initiative of conservatives reaching out to the children of poor blacks to help them become self-sufficient. The potential to transform black America is great. The potential to transform white America may be even greater.

Thomas holds firm on 'impartiality'

Senators press on abortion

By Dawn Ceol
THE WASHINGTON TIMES

Supreme Court nominee Clarence Thomas yesterday deflected repeated attempts by Senate liberals to force him to reveal his views on abortion, insisting that he had "not made a decision" on the issue and would keep an open mind.

"As a kid we heard the hushed whispers about illegal abortions, and individuals performing them in less-than-safe environments," Judge Thomas told the Senate Judiciary Committee. "If a woman had been subjected to the agony of an environment like that, on a personal level certainly I am very, very pained by that."

But divulging an opinion on abortion "would undermine my ability to sit in an impartial way on an important case like that," the nominee said.

Judge Thomas' second day of testimony covered a variety of topics he had treated in numerous speeches during his career, including affirmative action and judicial restraint.

Pressed by Sen. Paul Simon, Illinois Democrat, for his views on school prayer, Judge Thomas said he was "sensitive to our desire in this country to keep government and religion separated."

But the testiest exchanges involved the abortion question and Judge Thomas' refusal to state his position.

Sen. Howard Metzenbaum, Ohio Democrat, used his half-hour of questioning to press the black conservative nominee at least 10 times for his views on Roe vs. Wade, the 1973 decision that recognized a constitutional right to abortion.

"Frankly, I'm terrified that if we turn the clock back on legal abortion services, women will once again be forced to resort to brutal and illegal abortions, the kinds of abortions where coat hangers substitute for surgical instruments," Mr. Metzenbaum said.

"I fear that you, like other nominees before the committee, could assure us that you support a fundamental right to privacy but could also decline to find that a woman's right to choose is protected by the Constitution."

Sen. Patrick Leahy, Vermont Democrat, continued that theme, quizzing Judge Thomas about whether he had discussed the Roe decision, or even thought about it, in the 18 years since his graduation from Yale law school.

Judge Thomas, 43, said he had discussed abortion "only in the most general sense, that other individuals express concerns one way or the other and you listen and you try to be thoughtful."

"If you're asking me whether or not I've ever debated the contents of it, the answer to that is no, Senator," said Judge Thomas, a member of the

see THOMAS, page A7

THOMAS

From page A1

U.S. Court of Appeals for the District of Columbia.

"Have you made any decision in your mind whether you feel Roe vs. Wade was properly decided... without stating what that decision is?" Mr. Leahy asked.

"I have not made, Senator, a decision one way or the other with respect to that important decision," the judge responded.

Sen. Dennis DeConcini, an Arizona Democrat and a swing vote in the closely contested nomination battles, said Judge Thomas "handled the privacy questions very well."

"I don't see how you could ask him to do anything more," Mr. DeConcini said.

Sen. John Danforth, a Missouri Republican and Judge Thomas' strongest Senate supporter, chastised his colleagues for a "litmus test" approach.

"It really is wrong to say that we are only going to confirm people who are going to vote our way on any issue, whether it's Roe v. Wade or anything else?" Mr. Danforth said.

"Continually, people bark up the same tree: Will Clarence Thomas prejudge the abortion issue? He says no, he will not," he said. "Does he have a view of abortion that pre-determines how he would vote on the Supreme Court? No, he does not. Won't he please tell us how he would prejudge abortion? No, he won't."

"And no matter how many times the same question comes up, I think his answer is appropriate."

Mr. Metzenbaum said that he would not continue to press Judge Thomas on the abortion question but that his reluctance to reveal his position "certainly makes it more difficult to vote for him."

Sen. Herb Kohl, Wisconsin Democrat, said he was bothered by Judge Thomas' testimony: "I'm concerned about his candor, his willingness to be forthcoming."

Mr. Metzenbaum, who had voted to confirm Justice David Souter last year despite his refusal to answer questions on abortion, denied that liberals were applying a different standard to Judge Thomas, former chairman of the Equal Employment Opportunity Commission.

"Souter had not written or made as many speeches as has Judge Thomas," he said. "Judge Thomas has spoken and talked about the subject of a woman's right to choose, although not in those quite specific words. But he certainly has much more of a record than did have Souter."

Liberals had used as proof of Judge Thomas' pro-life views on abortion his praise of an article by conservative businessman Lewis Lehrman attacking the Roe decision as "a splendid example of the application of natural law."

Discussions on "natural law," a philosophy that holds certain rights to be above governmental interference, also played a leading role in yesterday's session.

"At no time did I adopt or endorse the substance of the [Lehrman] article," Judge Thomas said, adding that he had praised it during a speech at the Heritage Foundation to illustrate to conservatives that natural law was a good reason "to be more re-

ceptive... and to be more aggressive" on civil rights enforcement.

Mr. Metzenbaum said he was not satisfied with Judge Thomas' testimony that his earlier writings on natural law were mere philosophical musings that he would not apply on the bench and charged the nominee with tailoring his answers to ensure confirmation.

"We don't know if the Judge Thomas who has been speaking and writing throughout his adult life is the same man up for confirmation before us today, and I must tell you it gives me a great deal of concern," Mr. Metzenbaum said.

Sen. Alan Simpson, Wyoming Republican, quoted passages from Judge Thomas' 1990 hearings for a seat on the federal appeals court in which the nominee said: "Recognizing that natural rights is a philosophical, historical context of the Constitution is not to say that I have abandoned the methodology of constitutional interpretation used by the Supreme Court."

Mr. Simpson dismissed charges of a "confirmation conversion" on the

Judge Thomas said he had discussed abortion "only in the most general sense."

natural law issue as "a bit of an over-reaction... an act of desperation, if you will."

Several times during the day, Judge Thomas repeated his belief that judges should divorce themselves from opinions on contentious issues.

He assured Sen. Arlen Specter, Pennsylvania Republican, that although he had criticized race-conscious policies while EEOC chairman, he had put those opinions aside in his role as a judge. In one exchange about the correct role of judges, the nominee used football to illustrate his contention that judges must be impartial in all things.

"My Dallas Cowboys, for example, played the Redskins this Monday night. And I am totally convinced that every referee in those games is a Redskins fan, but none would admit to it," the nominee said.

"I think that in something as simple as that, even though we have strong views about who should win... we'd want to feel that the referees — and judges are, to a large extent, referees — are fair and impartial, even when we don't agree with the calls."

Noting the judge's admission that he had been a Cowboys fan for 25 years, Mr. Simpson said: "I think that will create more concern than anything thus far. To have you in this nest of Redskin fans to be a Dallas Cowboy fan certainly discloses a degree of independence which will serve you very well on the court."

The full Senate will vote on confirmation after the committee has made its recommendation on President Bush's choice to succeed retiring Justice Thurgood Marshall, the only black member in the high court's history.

"He's doing a superb job; he knows exactly how to handle himself and that's what's coming through," Mr. Bush said of Judge Thomas' performance.

Panel tries to catch Thomas shifting on issues

By Ronald A. Taylor
THE WASHINGTON TIMES

Supreme Court nominee Clarence Thomas faced intense queries yesterday as members of the Senate Judiciary Committee probed to see whether President Bush nominated an inconsistent, possibly opportunistic replacement for Justice Thurgood Marshall.

The black conservative had to handle pointed questions about apparent inconsistencies in his current positions and previously expressed attitudes about privacy, abortion rights, natural law, anti-discrimination remedies and Congress' ability to spell out its legislative intentions.

Sen. Howell Heflin, Alabama Democrat, said Judge Thomas gives the "appearance of confirmation conversion," using a phrase coined by Sen. Patrick Leahy, Vermont Democrat, during 1987 hearings for Judge Robert Bork.

So far, Judge Thomas appears "to change his mind or give answers that won't hurt him in regards to the confirmation," Mr. Heflin said.

"I'm concerned about his candor, his willingness to be forthcoming," said Sen. Herb Kohl, Wisconsin Democrat.

Sen. Alan Simpson, Wyoming Republican, dismissed such remarks as "an act of desperation" by liberals worried that Judge Thomas will be confirmed.

"You've got 'em," Mr. Simpson told the nominee. "They're very frustrated by you."

Some of the most pointed questions came from Sen. Howard Metzenbaum, Ohio Democrat, and Mr. Leahy on the abortion and natural-law issues.

"Judge, does a fetus have a constitutional status as a person?" Mr. Leahy asked.

"I can't think of any cases that have held that," Judge Thomas responded.

During questioning by Mr. Leahy on whether Judge Thomas embraces the idea of natural law as a basis for judicial rulings, Judge Thomas said he had only skimmed an article by conservative Lewis

Lehrman before praising it as a "splendid example" of the use of natural law.

"Sometime between now and the next go-around, could you please find the time to read it, and if you get crammed with too many things between now and then when I get my next turnaround, I'll just stop and give you time to read it right then," Mr. Leahy said.

"Do not count me as one of your detractors because I ask you tough questions," said committee Chairman Joseph Biden Jr., Delaware Democrat. He noted that definitions of the concept of natural law are at best elusive.

Defining and applying that idea "may confound the people... but not

a single legal scholar in America, and I hope you meet that test or you shouldn't be on the Supreme Court," Mr. Biden said.

Mr. Leahy expressed surprise at Judge Thomas' assertion that he had not discussed the celebrated Roe vs. Wade abortion ruling.

"I have never heard anybody who does know him here that they have heard him state a position on Roe v. Wade, and I think he's very truthful in saying that," said Sen. John C. Danforth, Missouri Republican and the judge's chief sponsor. "I think that there are, believe it or not, a lot of people in the country who don't go around spending their time talking about Supreme Court cases, even

one as controversial as Roe v. Wade." There were occasional points won by the questioners.

Sen. Arlen Specter, Pennsylvania Republican, cited two decades of foot-dragging by a union to avoid a court order to end racial discrimination. Citing the nominee's stated aversion to race-based hiring remedies, he asked the judge to explain why the Equal Employment Opportunity Commission argued against penalizing the union for contempt of court.

"It was a point well taken," Judge Thomas said of the senator's observation. "There should be... the same kind of fines that are available in antitrust litigation."

Nominee wins fans beyond the Beltway

By Joyce Price
THE WASHINGTON TIMES

Clarence Thomas may not be drawing Middle America to its TV sets like Norman Schwarzkopf — or even Robert Bork — but the conservative black Supreme Court nominee seems to have made a good impression on many outside the Beltway who have been following his confirmation hearings.

"I think he has done extremely well, and I'm an ultra liberal," Jim Buist, owner of Buist's Barbershop in Kalamazoo, Mich., said in a telephone interview yesterday.

Judge Thomas also won good ratings from viewers in Pin Point, Ga., his hometown, mixed reviews in

Pine Bluff, Ark., and Peoria, Ill., and negatives in Detroit for his conservative record. Elsewhere, a random telephone survey found, the Senate Judiciary Committee hearings were making little headway against the soaps, talk shows and other daytime television standards.

Keith Winn, an employee at Mac's Bar and Grill in Oakland, Calif., laughed when asked if any of the televisions in the place were tuned to the hearings. "Washington, D.C., is the only place I can think of where they'd have the Clarence Thomas hearings on in a bar," he said.

"My customers really aren't talking about the Clarence Thomas

see REACTION, page A7

hearings," said John Pierorazio, owner of Uncle Eddie's restaurant in Essex, a blue-collar community east of Baltimore. "The Supreme Court really is too esoteric for most people, I think."

Mr. Pierorazio said he could not watch the hearings even if he wanted to, because his establishment does not have cable TV. But he said he's seen some news clips of Judge Thomas at the hearings and commented, "Overall, I think he's avoiding the issues pretty well."

Mr. Buist, who has been catching the hearings between customers in his barbershop, had critical words for Judge Thomas' questioners.

"I was sorry to hear [Sen. Howard] Metzenbaum [Ohio Democrat] grinding him today on his philosophical and ideological positions," he said. "They have to look at his qualifications . . . but are way out in left field [in their approach]."

His customers have had little to say about Judge Thomas, he said. The nomination has "not been a particularly big issue here," Mr. Buist said. "It hasn't caught hold or grabbed the conscience of the populace to any extent at all."

He added: "But there was some discussion about those ads the conservatives ran, including the one on [Sen. Edward] Kennedy [Massachusetts Democrat]. I think the ad gave people a more negative impression of him, along with those events" in Florida.

Interest in the Thomas hearings seems to be a little keener in Pine Bluff, a city whose population is 55 percent black. Clyde N. Toney, a

black businessman who owns a furniture store in Pine Bluff, said he's been watching the hearings on a TV in his store.

"Quite a few customers have paused and watched the hearings and made comments," he said. "The general feeling is that he's done fairly well. All of us could relate to what he was saying with regard to his background and experiences."

But Mr. Toney said he's unhappy Judge Thomas has not answered questions about abortion. "I would hope he'd give his views on abortion, rather than evade the issue," he said.

Public opinion on the nomination in Pine Bluff is mixed, he said. "Some feel he'll be confirmed. Others feel he shouldn't be confirmed. It's about 50-50."

In Peoria, customers at George's Shoeshine and Hattery downtown also are split down the middle on the nomination. "It was much worse during the Bork hearings," said George Manias, who has been shining shoes at that spot for 45 years. "Everybody was against Bork."

Customers at Steve's Barbershop, across the street from the Peoria City Hall, have had little to say about the Thomas hearings, owner Steve Bainter said. Those who have commented, he said, "feel he's going to be confirmed and that these hearings are just a formality."

One community that has been paying understandably close attention to the hearings is Pin Point, a town of about 175 residents just south of Savannah.

SEPTEMBER 12, 1991

A18

Biden Meets Epstein

The main lesson so far of the hearings for Clarence Thomas is that the World's Greatest Deliberative Body knows no limits when it comes to hypocrisy. The stubborn fact of Judge Thomas's impressive qualifications for the job forces his opponents to say some of the most amazing things.

There's the hypocrisy of Howard Metzenbaum's litmus test that Judge Thomas must agree to vote to uphold *Roe v. Wade* after accusing President Bush of having the opposite litmus. But probably the most hilarious hypocrisy is this running-joke discussion about "natural law," a phrase that no Senator can define.

The unseriousness of the natural-law issue is clear by remembering the accolades liberals gave Justices Brennan and Marshall when they advanced their common political agenda by ditching original intent and instead invoking "the constitutional ideal of human dignity" to find new rights hiding in the penumbras and shadows. Maybe liberals worry that a conservative nominee could cite natural law to make opposing arguments from the same playbook, but they also know that Judge Thomas was selected for his adherence to judicial restraint.

When Senator Biden asked Judge Thomas if he would use ambiguous natural law instead of applying the written Constitution, Judge Thomas gave the answer liberals supposedly wanted to hear. He said he would not, that his interest in natural law was limited to political arguments he could use when he ran the EEOC to broaden the inalienable rights of minorities. Does Mr. Biden wish Judge Thomas still counted as only three-fifths of an American?

Whatever the reason, Mr. Biden has now decided he doesn't like Judge Thomas's answer and chooses not to believe it. This is despite the fact that not one of Judge Thomas's opinions for the federal appeals court in Washington mentions natural law. So expect more newfound high dudgeon about the dangers of judicial activism.

This criticism of what Judge Thomas does not believe would be benign nonsense except for a danger that should worry people who are more serious than the Members of the Judiciary Committee. We have in mind Mr. Biden's attempt to ostracize proponents of economic liberties.

He asked Judge Thomas whether he thought there was a natural right to property and contracts. John Locke and John Stuart Mill would say yes, but there is no reason for a judge in this country to reach for natural-law

philosophy to protect these rights.

Mr. Biden unintentionally did the country a service by waving around a copy of University of Chicago Law Prof. Richard Epstein's "Takings" (Harvard University Press, 1985). He asked incredulously if Judge Thomas believed in this economic-liberty talk. "There's a whole new school of thought," Mr. Biden intoned, "that up until about five years ago only spoke to one another that is now receiving wider credence and credibility."

Well, the Founding Fathers memorialized economic rights in the Constitution itself. The Fifth Amendment says the government can take private property only for a "public purpose" and only if "just compensation" is paid. The Contracts Clause bars any "law impairing the obligation of contracts." The Fifth and Fourteenth Amendments protect due process for life, liberty and property. Judge Thomas reminded Mr. Biden, "there is a Takings Clause in the Constitution and there's also a reference to property in our Constitution."

These rights, which are explicit and require no invocation of natural rights or penumbras, have gone largely unprotected since FDR told the Justices he'd pack their court if they interfered with the New Deal. The failure to protect the property right to the product of one's work, incidentally, made Jim Crow possible. As Judge Thomas said, segregation laws "did not allow my grandfather to enjoy the fruits of his labor."

By now, the failure to enforce the Takings Clause is an epidemic. Expropriation by rent control and abusive zoning is common. Environmental regulations in particular routinely amount to takings. Wetlands rules turn valuable property into land that can't be developed. Timber companies unlucky enough to own trees that attract Spotted Owls have had their business outlawed. Congress can pass these regulations, but the Takings Clause was supposed to require compensation. This is about more than fairness. The Founders also insisted on the Takings Clause as a limit on the amount of government regulation by making sure taxpayers would bear the costs of regulations that hurt property values.

Mr. Biden is right; there is a "whole new school of thought" on the proper relationship between the state and private property. We know that Mr. Biden possesses a copy of Richard Epstein's "Takings." When he's done waving it, we recommend that he open it and read it.

SEPTEMBER 12, 1991

A2D

Democrats Accuse Thomas of Changing Positions to Win Confirmation as Justice

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — Some Senate Democrats began to focus on Clarence Thomas's integrity, accusing the Supreme Court nominee of trying to get confirmed by repudiating his past positions on such topics as the right to privacy and natural law.

Judge Thomas, in his second day of testimony before the Senate Judiciary Committee, insisted he hadn't changed his views and also resisted Democrats' continued efforts to elicit his opinion on *Roe vs. Wade*, the landmark 1973 Supreme Court decision that recognized a constitutional right to abortion.

Under sharp questioning by Sen. Patrick Leahy (D., Vt.), the nominee said he has never formed an opinion of any kind about *Roe vs. Wade* and couldn't even recall discussing the controversial case in the 18 years since he graduated from law school. Judge Thomas, who sits on the federal appeals court here, reiterated that, in any case, he wouldn't comment directly on the abortion-rights issue because it would "undermine" his impartiality as a judge.

He did say that, if confirmed, he would keep an open mind on abortion cases and would rely on precedent and medical science in deciding them.

Continued Questioning on Abortion

Expressing skepticism, Sen. Leahy indicated that he would continue to press the nominee on the issue. Republicans, meanwhile, charged that Judge Thomas was being held to a tougher standard than Justice David Souter, who was easily confirmed last year despite his refusal to discuss *Roe vs. Wade*.

Overall, Judge Thomas maintained a calm demeanor under Democratic fire, and at least one influential committee member, Sen. Dennis DeConcini (D., Ariz.), said he was "pleased" with his testimony on some issues. Committee Chairman Joseph Biden of Delaware told the nominee, "Do not count me as one of your detractors because I ask you tough questions."

Even the nominee's staunchest liberal opponents conceded that he went into the hearings a strong favorite to be confirmed and probably could be defeated only if he blundered badly at the witness table. So far, at least, he hasn't.

Responding to questions on abortion, for example, he acknowledged the potential human toll of making the procedure illegal, as many of his conservative allies advocate. He recalled that as a child he had heard "hushed whispers" about illegal abortions performed under unsafe conditions. "On a personal level," he added, "I wouldn't want to see people subjected to torture of that nature."

Aside from his own performance, Judge Thomas has benefited from the difficult position in which his nomination has put liberals. Among his most controversial positions is the steadfast opposition to most forms of racial preferences, which he turned into federal policy as chairman of the Equal Employment Opportunity Commission during the 1980s. But Democrats have hesitated to raise race relations, apparently because they don't relish criticizing a black man who overcame segregation and poverty and bases his self-help philosophy on those compelling experiences.

It was a Republican, Arlen Specter of Pennsylvania, who persistently questioned Judge Thomas yesterday on why he doesn't favor broad affirmative-action poli-

cies to help move large numbers of blacks into the work force. The nominee responded that such policies lead to reverse discrimination against whites and other racial groups and also "undermine the dignity" of those who are helped.

Judge Thomas instead stressed that individual cases of discrimination deserved government attention and that employers found guilty of purposeful bias should face tougher punishment, including potential jail terms and multimillion-dollar criminal fines.

In an earlier exchange with Sen. DeConcini, the nominee said somewhat enigmatically that for some types of discrimination, he might endorse a "more exacting" level of analysis than is now employed by the Supreme Court. Judge Thomas didn't elaborate on when he would consider such a "ratcheting up" of the high court's discrimination test, making it easier to prove illegal bias.

Responding to questions from Sen. Paul Simon (D., Ill.), Judge Thomas made his first comments on another issue that comes before the Supreme Court frequently, prayer in school. The nominee said that a policy that resulted in a student's being excluded from any activity because of religion "should be considered inappropriate."

The issue Democrats pursued with enthusiasm was whether Judge Thomas has been conveniently disavowing past statements and positions to improve his chances of being confirmed. Sen. Howell Heflin (D., Ala.) noted "an appearance of confirmation conversion," a clear reference to the 1987 defeat Robert Bork, a Supreme Court nominee of former President Reagan. Some Democrats charged four years ago that Mr. Bork had undergone such a conversion when he tried to temper some of his controversial views, and the accusation helped doom his nomination.

Sen. Heflin, who provided a key vote against Mr. Bork, said a confirmation conversion raised the issue of a nominee's "integrity and temperament" to sit on the Supreme Court.

Focus on Natural Law

Specifically, the Alabama lawmaker questioned whether Judge Thomas had backed off his earlier endorsements of natural law. This somewhat esoteric legal philosophy, which has become a central issue in the Thomas hearings, assumes the existence of certain fundamental rights, such as liberty and equality, regardless of whether those rights are included in written laws.

In response to questions from several Democrats, Judge Thomas has tried to soften and clarify some of his natural-law beliefs. For example, he has distanced himself from natural-law thinkers who would declare abortion unconstitutional or assert property rights as a means of rolling back government regulation of business. But the nominee insisted yesterday that he wasn't abandoning natural law altogether; instead, he stressed that he views it as more of a political theory than a basis for deciding constitutional cases.

It wasn't clear whether this answer completely satisfied Sen. Heflin. But the lawmaker eventually qualified his attack by acknowledging that Judge Thomas's past pronouncements on natural law were "subject to interpretation." Sen. Heflin also said he hadn't decided how he would vote on the nomination.

—Raquel Santiago contributed to this article.

The New York Times

SEPTEMBER 12, 1991

A24

Natural Law, Then and Now

Clarence Thomas, the Supreme Court nominee, has not so far been credible in his Senate testimony on a point of considerable concern. Judge Thomas is trying to minimize speeches in which he extolled natural law, sometimes described as a "higher law" than the Constitution.

He characterizes those speeches now merely as musings in political theory that had nothing to do with his view of how a judge should decide hard constitutional cases.

Examination of those speeches, whose views are likely to have attracted him to the Bush Administration, shows this explanation to be inadequate. Unless the Senate Judiciary Committee can elicit better answers, it may be forced to conclude that he harbors a view of judging that is wide of what most lawyers and citizens regard as the mainstream of American law.

Natural law, a concept of inherent rights that animated the Revolution, still has respected adherents who argue for a moral basis for American law. But the concept is nevertheless vague and subjective. It has been used both to defend and oppose slavery, sex discrimination and other evils now banned by positively enacted constitutional amendments and statutes.

Judge Thomas's speeches on the subject have raised pointed questions about which brand of higher law he favors. Now, in his answers to the Senate Judiciary Committee, he seeks to distance himself from those speeches. He disavows reliance on anything but the Constitution and laws, but several senators rightly complain that his new disclaimers fall short.

The nominee, who has sat for only a matter of months on the United States Court of Appeals in Washington D.C., refuses to discuss issues of abortion, citing the need to remain publicly impartial. It's generally important to guard against public prejudice, and the Senate usually honors a nominee's reticence.

But Judge Thomas's speeches about natural law and abortion strongly suggest a predilection for

overruling *Roe v. Wade*, the landmark abortion decision, and they surely open him to broad committee questioning.

In one 1987 speech to an audience hostile to *Roe*, he praised an article by Lewis Lehrman that called the decision an illegitimate violation of a fetus's right to life under the author's view of natural law. Mr. Thomas called the article "a splendid example of applying natural law."

He now tells the Senate that he never endorsed the article and in fact disagrees with it. Natural law, he maintains, is only a political theory and he rejects it as a judicial tool to help decide constitutional cases.

Yet he told a law school audience in 1988: "Without recourse to higher law, we abandon our best defense of a Court that is active in defending the Constitution but judicious in its restraint and moderation. Higher law is the only alternative to the willfulness of both runamok majorities and runamok judges."

In the same year he praised a strong, lone judicial dissent by Justice Antonin Scalia from the Supreme Court's upholding of the statute establishing Federal independent counsels. He said Justice Scalia's opinion — which was delivered from the bench and not in a political science seminar — "indicates how again we might relate natural rights to democratic self-government and thus protect a regime of individual rights."

Those remarks and a host of others were about judicial decision-making, not political science or political philosophy. Judge Thomas's answers are so far unpersuasive.

What gives skeptical senators, mostly Democrats, even stronger grounds for hesitation is the belief that President Bush knows, if only from these speeches, that his nominee satisfies the Republican platform's demand for pro-life judges.

Inspired by a natural or higher law or not, Judge Thomas has the burden of explaining better when his expressed philosophy raises serious questions. The doubting senators are right to persist, and they are entitled to hold his non-answers against him.

THOMAS UNDERGOES TOUGH QUESTIONING ON PAST REMARKS

OPENNESS IS CHALLENGED

Committee Democrats Express Concern That the Nominee Is Tailoring Testimony

By NEIL A. LEWIS
Special to The New York Times

WASHINGTON, Sept. 11 — Judge Clarence Thomas faced stiff questioning today in his second day of testimony before the Senate Judiciary Committee, with some Democratic Senators questioning whether he was tailoring his comments and repudiating his earlier writings and speeches to win a seat on the Supreme Court.

Senator Howell Heflin, an Alabama Democrat whose support to Judge Thomas's nomination is crucial, told the nominee he was concerned that "there appears to be a conflict between what you've said in the past and what you've told us here."

He said this gave the appearance that Judge Thomas was undergoing a "confirmation conversion" and said such an approach could raise questions about the nominee's integrity and temperament.

Speeches and Writings

At issue are Judge Thomas's statements on Tuesday before the committee, in which he sought to dismiss the significance of a series of speeches and writings over the years. Opponents have argued that the writings and speeches demonstrate Judge Thomas has a strong conservative agenda.

Judge Thomas insisted on both days that he would bring no ideological agenda to the court and said he believed that a judge should approach a case by shedding all his preconceptions the way a runner strips down for a race. [Excerpts, page A20.]

Contentious Tone

The contentious tone of the hearing was set in today's opening colloquy with Senator Howard Metzenbaum, an Ohio Democrat, the only committee member to have voted against Judge Thomas's confirmation to the United States Court of Appeals for the District of Columbia Circuit last year.

Mr. Metzenbaum said he was greatly concerned about Judge Thomas's explanations on Tuesday of his earlier speeches and writings. "Your complete repudiation of your past record makes

our job very difficult," he said.

Over the next half hour, Mr. Metzenbaum asked Judge Thomas 13 times, and in as many ways, to indicate whether he believed there was any constitutional right of privacy that would give a woman a right to abortion. Each time Judge Thomas responded it would be inappropriate to answer because it would compromise his ability to sit on a Supreme Court that is certain to consider the issue.

"I don't have an ideology to take to the Court to do all sorts of things," Judge Thomas said. "I'm there to take the cases that come before me and to do the fairest, most open-minded, decent job I can as a judge."

President Bush, who nominated Judge Thomas to replace Thurgood Marshall on the Supreme Court, said he chose the 43-year-old jurist without regard to his views on *Roe v. Wade*, the 1973 ruling that established a constitutional right to abortion.

Judge Thomas today repeated that he believed the Constitution provides for some right of privacy but would not say whether that meant a constitutional right to an abortion because that would "leave the impression that I've prejudged the case."

All he would say about his personal views about abortion in response to a question was that he was "very, very pained" by the thought of back-alley abortions which resulted in the death and disfigurement of women. "I wouldn't want to see people subjected to that kind of torture," he said but again declined to say if that influenced his constitutional view of abortion.

Several of the committee's Republican members were clearly uncomfortable with the aggressive questioning of Judge Thomas. Senator Strom Thurmond of South Carolina, the committee's ranking Republican, broke into Mr. Metzenbaum's questioning to defend Judge Thomas against a complaint that he was willing to answer questions on other cases that might come before the Court but not abortion because that would harm his chances of confirmation.

Despite the tough questions and the annoyance Judge Thomas's answers produced among some members, it remains unclear whether his chances at winning confirmation will be seriously affected. But the contest is clearly not over; by the second day of hearings last year on the nomination of Judge David H. Souter to the Supreme Court, any opposition on the committee had evaporated. Members were referring to him respectfully as "Justice-to-be" and recommending what he do with his vacation time when he joined the Court.

A Record of Comments

But unlike Judge Souter who had not written or spoken publicly much, Judge Thomas has an extensive record of comments suggesting, some highly critical of Congress and certain Supreme Court opinions.

Judge Thomas said today that his wife had remarked that if Judge Souter was known as the "stealth" nominee, he should be known as "Bigfoot."

Republican strategists said that despite the skepticism that his answers produced among some committee members he performed well and gave no cause for any momentum to oppose him. One said that he and his advisers were willing to have him "take his lumps" over whether his answers were annoyingly repetitive or even implausible.

The alternative, the strategist said, was for him to engage in an open-ended debate that could prove perilous.

Still, there was anxiety over the charge that in explaining away his past comments he was tailoring his remarks to win confirmation. The charge of a confirmation conversion had proved devastating in 1987 to Judge Robert H. Bork who was rejected for a Supreme Court seat after a bruising political fight.

Affirmative Action Opponent

Although Judge Thomas has gained a reputation as an outspoken opponent of affirmative action, the subject has been little discussed so far. Today he told Senator Hank Brown, a Colorado Republican, that he opposed timetables, preferences or quotas but said he supported efforts to seek out and enlist fully qualified minorities. Under such a program, he said, he was able to attend Yale Law School.

"The effort on the part of Yale during my years there was to reach out and open its doors to minorities whom it felt were qualified, and I took them at their word on that," he said. "And I have advocated that very kind of affirmative action."

While Judge Thomas sat alone at a green-baize table in the Senate Caucus room with nothing before him on Tuesday, today he fingered a pocket-sized booklet of the Constitution. And by the

Questions over the appearance of a 'confirmation conversion.'

end of the day, the table held copies of several of the Judge's articles and speeches; copies delivered to him by Senators, who were pressing him to read his own words and be prepared to answer further questions about them.

Judge Thomas is expected to testify through Friday. Next week will be devoted to hearing witnesses for and against the nomination.

Senator Joseph R. Biden Jr. of Delaware, the committee chairman, is expected to schedule a vote sometime later in the month.

After Mr. Metzenbaum's persistent questions about abortions led off the hearing, the same issue was sharply pressed in the afternoon by Senator Patrick J. Leahy, Democrat of Vermont. The Senator sought to question Judge Thomas again on what he meant in 1987 when he briefly but pointedly praised an article that argued Roe v. Wade was immoral and a violation of natural law. Judge Thomas's writings in support of natural law, the concept that there is a higher, more fundamental law that transcends any written law, has been the focus of much questioning.

Mr. Leahy seemed annoyed when Judge Thomas said for the first time today that he may never have read the article by Lewis Lehrman, a New York businessman and patron of conservative causes. In his 1987 speech entitled, "Why Black Americans Should Look to Conservative Policies," he praised the Lehrman article "on the meaning of the right to life is a splendid example of applying natural law."

Judge Thomas said he might have only skimmed the piece before he spoke and had not looked at it in years. Judge Thomas said he disavowed the message in the article insofar as it meant that natural law should be a basis for a court's ruling.

When Mr. Leahy asked Judge Thomas if a fetus has any constitutional rights, he paused for several seconds before saying that he did not believe there were any cases that took that view but he would have to check. In fact, Roe v. Wade explicitly holds that a fetus does not have constitutional rights.

Under repeated questioning from Mr. Leahy, Judge Thomas said that he did not believe he had ever expressed an opinion about Roe even in private; nor had he ever formulated a personal opinion on the case in the 18 years since it was decided.

In Roe, the Court held that a right of privacy could be found in the 14th Amendment, the post-Civil War amendment that guarantees citizens of all the states a range of liberties, including due process.

Sticking to the Script

Confirmation Process Lets Judge Say
As Much, or as Little, as He Chooses

By LINDA GREENHOUSE

Special to The New York Times

WASHINGTON, Sept. 11 — Judge Clarence Thomas's second day before the Senate Judiciary Committee offered a graphic display of the limits of the modern Supreme Court confirmation process.

As part of the Senate's constitutional role of advice and consent, the committee can summon nominees, sit them down before the glare of television lights, probe their records and pepper them with questions. The one thing the committee cannot do is make nominees provide substantive answers.

Judge Thomas stuck doggedly to his script today, a script that called for him to refuse to discuss abortion on the ground that he did not want to compromise his ability to decide an abortion case impartially.

Questioned Repeatedly

Questioned repeatedly about his many speeches and articles advocating that the Constitution be understood in light of the framers' belief in a higher or "natural" law, he insisted he had been speaking only about a political theory and not as a judge who would actually decide cases by reference to natural law.

Democratic Senators who found these answers either uninformative or inconsistent with the written record

The unrehearsed
moments hint
that Thomas
might be
unpredictable.

were left writhing in frustration. Senator Patrick J. Leahy of Vermont was openly incredulous in the face of Judge Thomas's assertion that in the 18 years since the Supreme Court established a constitutional right to abortion in the *Roe v. Wade* decision he had never expressed a view, even in conversation, about the case.

Yet as a practical matter, the options are fairly limited for Senators who believe they are not getting the full story from the nominee.

They could call him a liar, an unpalatable option that would involve not only a breach of protocol but also a credibility contest that the Senators would have no assurance of winning.

An Unattractive Option

Or they could credit his sincerity but challenge his competence, on the ground that he must not have understood the implications of what he was saying in his past speeches and articles if he now believes that he was not advocating the use of natural law as a tool for deciding constitutional cases.

That, too, is an unattractive option in the case of a nominee whom the Senate

overwhelmingly confirmed to an important Federal appeals court just last year and who has been found "qualified" by the American Bar Association to sit on the Supreme Court.

Or the Senators could simply refuse to confirm him on the ground that he has not been forthcoming enough for them to make a judgment. That is a difficult option because a number of other recent Supreme Court nominees have been permitted by the Senate to say almost nothing of substance. Antonin Scalia was confirmed unanimously in 1986 despite refusing to give his views on *Marbury v. Madison*, the decision, nearly 200 years old, that established the basis for the Supreme Court's exercise of the power of judicial review.

And a year ago, David H. Souter was confirmed to the Supreme Court despite his refusal to give his views on abortion and other pressing subjects. Several of Judge Thomas's supporters, including his principal patron, Senator John C. Danforth of Missouri, have hinted that for the Senate to hold this nominee to a higher standard might give an appearance of racism.

Strict Constructionist Approach

Judge Thomas took a strict constructionist approach to his own writings and speeches, ascribing narrow meanings to statements that sounded sweeping when Senators read them aloud in the hearing room. For example, Senator Howell Heflin, Democrat of Alabama, read from a 1988 speech in which Judge Thomas had declared that "the higher law background of the Constitution, whether explicitly appealed to or not, provides the only firm basis for a just, wise, and constitutional decision."

The nominee insisted, with reference to this and other similar passages, that he had been speaking as a "part-time political theorist" who was trying to help conservative audiences become more receptive to aggressive civil rights enforcement. He said he had hoped that conservatives would understand that natural law was the basis for the opposition to slavery.

"I'm not saying it worked," he remarked to Senator Heflin about those efforts. He added: "I certainly never thought I'd be having this discussion."

Judge Thomas's adherence to his strategy of refusing to discuss abortion on the ground that he would otherwise compromise his impartiality led him to make the surprising suggestion that sitting Justices who had written opinions on abortion might not be impartial enough to decide future abortion cases.

That suggestion came in answer to a question from Senator Leahy, who noted that Justice Scalia has expressed opposition to *Roe v. Wade*, while Justice Harry A. Blackmun, the opinion's author, has expressed his continued support for it. Should those Justices be disqualified from sitting in future abortion cases, Senator Leahy asked.

"Each of them has to determine in his mind at what point they have compromised their objectivity or their ability to sit fairly on those cases," Judge Thomas replied.

For Senators who
want detailed
answers, there
are few options.

The relative handful of unscripted, unrehearsed moments during today's proceeding offered a hint that if he is confirmed Judge Thomas might not necessarily be as predictable as some of his conservative supporters might hope.

One example was his discussion with Senator Hank Brown, Republican of Colorado, of the role of precedent in the Court's decision-making process. Precedent was "important," Judge Thomas said, not surprisingly.

Might some types of precedents be more important than others, Senator Brown asked.

Judge Thomas replied that he had "read somewhere" that the Court should treat precedents governing commercial relationships as more stable than those dealing with individual rights. He did not understand that approach and did not agree with it, he said, adding that he would give equal weight to precedents concerning individual rights and commercial relationships.

The "somewhere" in which the contrary view appeared was the Court's majority opinion last June in *Payne v. Tennessee*, written by Chief Justice William H. Rehnquist. Over a vigorous dissent by Justice Thurgood Marshall, whose seat Judge Thomas would fill, Chief Justice Rehnquist essentially set out guidelines for overturning existing precedents, with cases on individual rights among the most vulnerable.

That decision was evidently not covered during Judge Thomas's preparation sessions for his confirmation hearing. His spontaneous response to Senator Brown's question perhaps said more about his judicial instincts than his carefully crafted and repetitively delivered answers to the questions he and his team did expect. More such spontaneity during the remainder of the proceedings would be enlightening. But, given the way the confirmation process has evolved, it is not particularly likely.

SEPTEMBER 12, 1991

A21

Specter Dons Mantle of Republican Maverick at Senate Hearing

By RICHARD L. BERKE
Special to The New York Times

WASHINGTON, Sept. 11 — While his cross-examination of Judge Clarence Thomas today was by no means harsh, Senator Arlen Specter sounded like the grand inquisitor compared with other Republicans on the Senate Judiciary Committee.

Polite yet insistent, Mr. Specter put the Supreme Court nominee on notice that he had problems with aspects of his record, particularly his view of the role and performance of Congress.

"You have repeatedly, over such a long period of time, expressed a very strong view as to Congressional ineptitude," Mr. Specter told the nominee.

With moderates like Charles McC. Mathias Jr. of Maryland now retired, Mr. Specter is the only Republican on the committee who is viewed as a possible swing vote on the Thomas nomination.

The role of Republican maverick is not new for the onetime prosecutor from Pennsylvania.

In 1987, after a tense 90-minute colloquy with Judge Robert H. Bork, Mr. Specter was the sole Republican on the panel who voted against his confirmation to the High Court. That vote helped set off the burst of opposition that spelled Judge Bork's spectacular defeat and turned the national spotlight on Mr. Specter.

It is a vote that Mr. Specter could never forget — even though it often seems as if he wants to.

"There's been hardly a day since the Bork hearings that I have not heard about it," Mr. Specter said in an interview today. "Judge Bork was more than just another nominee. He was a philosophical standard-bearer."

No Regrets on Bork Vote

His daily reminders about Judge Bork are usually not complimentary. Many Republicans are still infuriated with Mr. Specter's vote, and the Senator says he expects conservative Republicans who plan to run against him in next year's primary election to make the Bork vote a centerpiece of their campaigns.

Mr. Specter insists that he does not regret his vote against Judge Bork, but acknowledges that it wounded him politically. How much? "I'll let you know after 1992," he said.

But the 61-year-old Senator, a one-time Democrat who was first elected in 1980, says he can already envision the attacks in commercials on his vote on Judge Bork. He has a ready response. "I'm going to say that Judge Bork had the most extreme views of anyone ever nominated to the Court," he said.

In part because of the continued fallout on the Bork vote, and because he faces re-election, it is perhaps improbable that Mr. Specter will ultimately oppose Judge Thomas. Letters to his office are overwhelmingly in favor of confirmation, his aides say, but the telephone calls are overwhelmingly against it.

Mr. Specter, whose staff members say a scheduling conflict prevented

him from voting on Judge Thomas's confirmation last year to the United States Court of Appeals for the District of Columbia Circuit, insists that he has not decided.

"I'm really not leaning," he said. "I'm here to listen."

But Mr. Specter is known less as a listener than as a legal pontificator. His questions today for Judge Thomas were a lot longer than most of the answers. And they tended to ramble.

To his credit, Mr. Specter is widely respected for his knowledge of Constitutional issues. As in the Bork case, he has immersed himself in Judge Thomas's writings and rulings. Even during a vacation at the beach last month, his aides said, they delivered materials on Judge Thomas to the Senator every day. And he returned to Washington a week early to prepare for the hearings.

But his detractors say that Mr. Specter is more of a show horse than many of his colleagues, and that his demeanor sometimes borders on arrogant.

Still, Mr. Specter wins plaudits from people who are often at odds with Republican lawmakers.

"Senator Specter always plays an important role with respect to championing civil rights," said Ralph Neas, executive director of the Leadership Conference on Civil Rights, which opposed Judge Bork in 1987 and is now lobbying against Judge Thomas.

Senator Dennis DeConcini of Arizona, considered a possible swing vote on Judge Thomas on the Democratic side, described Mr. Specter as one of the most conscientious members of the panel.

"We all have the propensity to want to listen to ourselves," Mr. DeConcini said. "Maybe he takes a little longer to get his questions out. But I think he's a very thoughtful guy. Some of my Republican colleagues feel they have to go with the President, whoever is sent up here. Life would be much easier for him if he were an Alan Simpson and just went along with everyone they sent up here."

Gary Bauer, chairman of the Citizens Committee to Confirm Clarence Thomas and a former Reagan Administration official, called Mr. Specter's vote on Judge Bork "irritating at best."

"But," he said, "the good thing about Washington is you get other chances. And he's got a chance now to redeem himself on Judge Thomas."

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SEPTEMBER 12, 1991
A22

Sizing Up the Talk of 'Natural Law': Many Ideologies Discover a Precept

By DAVID MARGOLICK

In constitutional law, as in politics, terms that are ostensibly value-free can become buzzwords.

What has happened to such politically neutral phrases as "law and order" and "states' rights" has arguably happened to "natural law." It has been captured by the conservatives to buttress rights not articulated in the Constitution — just as liberals seem to have captured "human rights" and "the right to privacy."

So these days, when the phrase "natural law" is mentioned, as it has been repeatedly in the hearings on Judge Clarence Thomas's nomination to the Supreme Court, it conjures up an image of invasive, repressive jurisprudence — doctrines exalting corporate power over individual rights, invalidating laws regulating wages and hours or remedial environmental legislation or restricting nonconforming life styles.

That is why civil libertarians have cowered with Judge Thomas's every use of the term, and why Senators Joseph R. Biden Jr. and Howell Heflin, among others, have grilled him on his philosophy.

A Pantheon of Values

Used in its broadest sense, natural law could join the pantheon of values, including truth, justice and the American Way, to which most citizens subscribe. Nearly everyone, religious and non-religious people alike, would agree that certain precepts, like life, liberty and the pursuit of happiness, form the foundation of the values encoded in the Constitution.

But the term "natural law," while ringing, can also be squishy and elastic. Over the years, it has been seen as both synonymous with, and antithetical to, civil rights and civil liberties, and has been used not only by those who justify slavery, but by those who castigate it. The concept is broad enough to be invoked by the Rev. Martin Luther King Jr. and by Chief Justice Roger Taney, author of the Dred Scott case; by both the High Court's liberal stalwart, Justice William J. Brennan Jr. and Lewis Lehrman, the conservative politician; by Judge Clarence Thomas and the man he would succeed, Justice Thurgood Marshall, who is retiring.

Natural law has most often been cited in making the kind of sweeping, authoritative-sounding pronouncements that can appear either immortal or primitive years later. For every glorious judicial paean to life and liberty there is a reminder that posterity can deal harshly with those, like Justice Joseph Bradley, who paint their views as timeless principles, but whose arguments ultimately came to sound ridiculous. It was he who wrote the Supreme Court's 1872 decision upholding a state's right to bar women from practicing law.

"Civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman," he wrote. "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Judith Resnik of the University of Southern California Law Center, said:

"Natural law is not per se good or bad; all of us have some sense of intrinsic, inalienable rights. Unfortunately, Judge Thomas plucks from here and there in natural law to follow an agenda that is relentlessly conservative."

But she said that in Judge Thomas's first two days of testimony he had downplayed his reliance on natural law theory so repeatedly that it was hard to know where he stood. "He's said different things at different times, and his only leitmotif is pleasing the audience," she said.

Ms. Resnik is one of nine constitutional scholars who wrote to the Senate Judiciary Committee last week expressing concerns that Judge Thom-

A concept used to defend and uphold slavery.

as's views on natural law masked both sloppy reasoning and a substantive, conservative political agenda.

"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 American Constitutional text and precedent," they wrote.

More substantively, they said, his philosophy threatened precedents establishing the constitutional right of privacy, and therefore of abortion and contraception. Other signers include Sylvia Law of New York University, Thomas Grey and Barbara Babcock of Stanford University and Frank Michelman and Christopher F. Edley Jr. of Harvard University.

But Richard Epstein, a law professor at the University of Chicago whose views that various industrial and environmental legislation violates natural law have been mentioned in the hearings, said the idea that Judge Thomas believed in natural law hardly made him either extreme or suspect. For all their other differences, he noted, John Locke, Thomas Jefferson, James Madison and Abraham Lincoln did.

What Judge Thomas's critics were harping on, Mr. Epstein added, was less his adherence to principles of natural law than disagreements over the direction he might go with them. But one way or another, he added, the whole issue was "a tempest in a teapot." "It's an example of how the protracted confirmation struggles in an era of divided government have led people to overemphasize irrelevancies," he said. "All this is done at such a level of abstraction that it gives no information."

At one time or another, particularly in post-Revolutionary days when the American legal system was still largely inchoate, judges often invoked natural law to support their arguments. In the early 19th century, for example, Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court called the acquisition of a slave "contrary to natural law."

Though the Supreme Court cited natural law to strike down wage-and-hour regulations, notably in the landmark 1905 case of *Lochner v. New York*, this tendency generally waned as constitutional doctrine and precedents proliferated.

'All Manner of Causes

In his 1980 book "Democracy and Distrust," John Hart Ely of Stanford Law School called the doctrine "discredited." "You can invoke natural law to support anything you want," he wrote. "Natural law has been summoned in support all manner of causes in this country — some worthy, others nefarious — and often on both sides of the same issue."

Natural law was nonetheless invoked to justify the Nuremberg Trials and the Civil Rights movement. And natural law language continued to appear from both sides of the Court's political spectrum. In 1976, Justice John Paul Stevens, joined in dissent by Justices Brennan and Marshall wrote: "I had thought it self-evident that all men were endowed by their creator with liberty as one of the cardinal unalienable rights." A decade later, Chief Justice Warren Burger referred to "Judeo-Christian moral and ethical standards" in an opinion upholding state anti-sodomy laws.

Still, such references have been increasingly rare. While liberals tended to favor terms free of theological overtones like "human rights" to describe their version of higher law, natural law became, according to Thomas Grey of Stanford Law School, the province of three conservative groups. The first were Catholic theologians, who cited natural law to justify the church's moral teachings. The second were followers of Leo Strauss, a University of Chicago political theorist who believed governments could invoke natural law to oppose a broad range of phenomena they deemed decadent, including homosexuality and pornography. The third used natural law to justify unbundled property rights and free enterprise.

"The fact that Judge Thomas believes in natural law is fine; most Americans do," said Cass Sunstein of the University of Chicago Law School. "But if he actually believes it, that's something to ask a lot of questions about."

The Washington Post

SEPTEMBER 12, 1991

A23

George F. Will

The Modest Significance of the Modern Court

The Clarence Thomas contretemps inaugurates the post-civil rights era. The primary significance of the Thomas nomination is its merely modest significance: it does not matter mightily to the course of the Supreme Court, and the court matters decreasingly to the solution of serious social problems.

Never before has there been such a disproportion between the controversy surrounding a judicial nominee and the probable consequences of his confirmation. Of the Supreme Court's 64 decisions last term involving substantial written opinions, only 11 were by 5-4 votes. Justice Marshall, whom Thomas will replace, voted with the four-person liberal minority in six. Replacing him with a liberal rather than Thomas would not alter the pattern of liberal defeats in this era when 5-4 liberal victories are rare.

When Robert Bork was nominated in 1987 to replace Justice Powell, who often was a swing vote in crucial decisions of the closely divided court, the court's composition hung in the balance, and Democrats could hope that the conservative era in presidential politics would end when the Reagan administration did. Today, however, political probabilities indicate five more years of a Republican administration, and actuarial tables indicate that the administration will have an opportunity to make additional conservative nominations. The court's shape is set for the foreseeable future.

Why, then, the sound and fury against Thomas? What does it signify about him and these times? One answer is that liberals, impotent in presi-

dential politics, have been reduced to a merely blocking agenda, and to ideological grandstanding against the judicial consequences of their protracted irrelevancy in presidential politics.

But the primary reason for fierce liberal opposition to Thomas is that his nomination comes at a moment when the intellectual balance of American politics regarding social reform generally, and race in particular, is changing. The focus of thoughtful people is shifting away from the strategy of establishing new individual and group rights by litigation and judicial fiat, and toward the political process of creating social settings that nurture character.

Never before has a Supreme Court nominee been so much defined by his persona—by his biography more than his philosophy. Some previous nominees have carried powerful symbolic significance—Marshall, nominated in 1966, was the first black; Louis Brandeis, in 1916, was the first Jew. Thomas's nomination is highly charged with symbolic meaning because of the relationship between what he is and what he thinks.

He is a product of remarkable upward mobility. He thinks there is only modest potential for judicial remedy of social ills, because courts are instruments of limited utility, and because judges' powers, properly understood, are more narrow than many recent justices have thought.

The civil rights era, accurately described, featured attacks on legal impediments to black participation in the nation's civic and economic life. The

era featured enactment of legislation opening access to schools, voting booths, workplaces and public accommodations. The defining principle of the era was that blacks and whites should be treated alike and as equals.

The moral and intellectual decline of the civil rights impulse was signaled in 1968 when the Kerner Commission, appointed in response to the urban riots, declared that blacks, unlike the immigrants who prospered in earlier times, could not achieve unassisted upward mobility because entry-level jobs were disappearing. That false prognosis bred a disastrous moral stance.

The prognosis was refuted, as Michael Barone of U.S. News & World Report notes, by the most prodigious job creation in world history. In the 20 years after the Kerner Commission, the number of American jobs increased 50 percent and waves of Asian and Hispanic immigrants began rising through entry-level jobs.

The Kerner Commission's moral stance was, implicitly, that blacks should be treated as a crippled community, as dependent wards of a government dispensing racial preferences and other group rights and entitlements. Today's civil rights lobby, which is leading the charge against Thomas, is composed of people comfortably situated as brokers of these benefits.

Whatever the reason why a majority of black babies are born to single women, the reason is not the economy's failure to produce jobs. And whatever the cure for this crisis of family decomposition might be, the



ASSOCIATED PRESS

cure is not more litigation about individual rights.

Laws can contribute to the creation of the complex social ecology of nurturing families and civic habitation. But that is primarily the business of political policy, and of persuasion, not of the

adversarial clash of competing claims to rights, resulting in judicial fiat.

The fierce contention about Thomas' confirmation reflects the unwholesome centrality of courts in America's recent governance. The importance of Thomas is that he knows better.

SEPTEMBER 12, 1991

A1

Thomas Refuses to State View on Abortion Issue

Nominee Steadfast Amid Senators' Questions

By Ruth Marcus
Washington Post Staff Writer

Supreme Court nominee Clarence Thomas yesterday said he had no opinion on whether the Constitution protects the right to abortion and had not discussed the issue, even in a private setting, in the 18 years since the court decided it.

Elaborating on his views on the right to privacy, the legal underpinning for the court's recognition of a constitutional guarantee to abortion, Thomas said he believed the right to privacy for married couples is a fundamental constitutional right, meaning that government can interfere with it only in extreme cases.

But he did not say whether that right extends beyond the marital setting. He steadfastly refused attempts to pin him down on the abortion issue, despite complaints by frustrated Democrats that he was discussing other cases and constitutional doctrines likely to come before the court.

Four of the five Democratic senators who questioned Thomas on the second day of his confirmation hearings before the Senate Judiciary Committee expressed varying degrees of concern that the nominee was backtracking from or contradicting earlier statements, primarily about the role of natural law in interpreting the Constitution.

Sen. Howell T. Heflin (D-Ala.), a swing vote on the committee, told Thomas that there was "an appearance of a confirmation conversion," an issue, Heflin pointedly noted, "that can affect the evaluation that members of the committee may give as to integrity and temperament." Heflin devoted his entire half-hour of questioning to asking the nominee to square his previous statements with his current position that natural law plays no role in constitutional adjudication.

"What I read is somewhat different from the tone" of earlier remarks, said Sen. Paul Simon (D-Ill.).

Sen. Arlen Specter (R-Pa.) also said that Thomas, before the confirmation hearings, had "shifted" position several times on the legality of minority preference programs and set-asides.

Thomas, backed by Republicans on the committee, sought to defuse that concern, saying he had been

See THOMAS, A4, Col. 1

"consistent on this issue of natural law" and pointing repeatedly to a statement at his confirmation hearings for the federal appeals court in February 1990 at which he suggested he would follow a more traditional approach to constitutional interpretation.

He also distinguished between his roles as administration policymaker and jurist. "I advocated as an advocate, and now I will rule as a judge," he said.

Sen. Alan K. Simpson (R-Wyo.) said suggestions of a confirmation conversion were "an act of desperation" by groups opposed to Thomas and that natural law "has been selected as an issue to try to confound people because natural law is an inherently vague concept."

Thomas tangled with Sens. Howard M. Metzenbaum (D-Ohio) and Patrick J. Leahy (D-Vt.) over his refusal to discuss the issue of abortion rights. Thomas—comparing his situation to that of a football referee—insisted it would violate his impartiality as a sitting federal judge.

When Metzenbaum invoked the specter that American women "will once again be forced to resort to brutal and illegal abortions" if the *Roe v. Wade* abortion ruling is overturned, Thomas came closest to expressing some thoughts on the question.

"I guess as a kid we heard the hushed whispers about illegal abortions and individuals performing them in less than safe environments, but they were whispers," he said. "... Of course, if a woman is subjected to the agony of an environment like that, on a personal level, certainly, I am very, very pained by that. I think any of us would be. I would not want to see people subjected to torture of that nature."

But, he said, "as difficult as it is for me to anticipate or to want to see that kind of illegal activity, I think it would undermine my ability to sit in an impartial way on an important case like that."

Later, in an exchange with Leahy, Thomas said he had never discussed *Roe v. Wade*, a decision that Thomas described as "one of the more important, as well as one that has been one of the more highly publicized and debated cases."

Thomas said that when the case was decided in 1973, he was a married law student who was also working, and "I did not spend a lot of

time around the law school doing what all the other students enjoyed so much, and that is debating all the current cases."

"Judge Thomas, I was a married law student who also worked, but I also found at least between classes that we did discuss some of the law," Leahy responded.

In the years since the ruling, Thomas told Leahy, his only experience in discussing the case was "in the most general sense that other individuals express concerns one way or the other and you listen and you try to be thoughtful. If you are asking me whether or not I have ever debated the contents of it, the answer to that is no, senator."

Leahy pointed out that Thomas had participated in a White House report on the family that criticized *Roe*, cited the case in a footnote to a law review article, mentioned the abortion issue in a reference to an article about natural law and a fetal right to life and discussed black voters' views on abortion in a newspaper article.

"I cannot believe that all of this was done in a vacuum, absent some very clear considerations of *Roe v. Wade*," said Leahy, who promised to "revisit this subject a tad more."

Asked whether the fetus is a person protected by the Constitution, Thomas, following a lengthy pause, said the Supreme Court had never found such protection, adding, "I would have to go back and rethink that." The court in *Roe* held that "the word 'person,' as used in the 14th Amendment, does not include the unborn."

At various points in his testimony, Thomas said he had not read the White House report on the family, even after it surfaced as an issue in news reports concerning his nomination this summer. He said his only interest in the White House working group on policy had been on the issue of low-income families.

He said he had only "skimmed" the article on natural law and the fetus's right to life before praising it in a 1987 speech as a "splendid example" of applying natural law, and had not reread the article, written by conservative businessman Lewis Lehrman, since being nominated. The article has been a central part of the debate about Thomas's nomination.

Leahy and Metzenbaum both contrasted Thomas's reticence on the subject of abortion with his willingness to discuss other legal issues.

For example, Thomas, in answering questions Tuesday from Sen. Strom Thurmond (R-S.C.), talked about habeas corpus reform to expedite handling of death row cases; commented on a Supreme Court decision in June protecting victims' rights; and discussed the good-faith exception to the rule excluding illegally seized evidence from use in criminal trials.

He also said he thought the Supreme Court was correct during the New Deal when it abandoned its practice of striking down social welfare legislation as violative of economic rights, and he stated his flat agreement with a 1977 case, *Moore v. East Cleveland*, invalidating a city zoning ordinance that defined families because it barred a grandmother from living with her two grandsons, who were first cousins.

Thomas and his defenders said his comments involved either settled areas of the law, such as the right to privacy or the post-New Deal cases, or situations in which he simply offered his comments on issues without stating how he would come down on them.

Thomas also invoked his status as a sitting federal judge, contrasting it to his freedom to comment on issues while he was an official of the executive branch.

"I think it is important that when one becomes a member of the judiciary that one ceases to accumulate strong viewpoints . . . and to maintain and secure that level of impartiality and objectivity necessary for judging cases," he said.

Toward the close of the session yesterday, Thomas commented extensively on the proper test to be used in cases involving the separation of church and state, an issue that the court has agreed to decide in the coming term and on which the justices are closely divided. Thomas said he had no "personal disagreement" with the current test the court uses, although he noted it had been difficult to apply. The Bush administration is backing the side in the case that has asked the court to adopt a new test.

Simon asked about the childhood experience of Rep. Dan Glickman (D-Kan.), who is Jewish. As a boy, Glickman was escorted from his fourth-grade class each day while his Christian schoolmates prayed. In response, Thomas noted his own feelings of exclusion when white southern classmates had talked about the Civil War, and he said, "My concern would be with someone like Danny Glickman that . . . we understand the effects of the government's perceived endorsement of one religion over another," suggesting his potential agreement with a middle-ground standard adopted by Justice Sandra Day O'Connor.

In other testimony and comments yesterday:

■ Thomas told Sen. Dennis DeConcini (D-Ariz.) he "had no reason to question or to disagree with" the approach the court currently uses in protecting women from sex discrimination.

DeConcini said he was troubled by Thomas's record with regard to Hispanics while head of the Equal Employment Opportunity Commission. "The feeling I have is you really were not paying attention to

Hispanics," said DeConcini, another potential swing vote on the committee. "I get that feeling, and from the opposition that has come forward from the Hispanic community, you certainly didn't leave them with any great impression you were interested in their problems, Judge."

By yesterday evening, the White House had provided DeConcini with a list he had requested of the meetings Thomas held with Hispanic groups while at the EEOC.

■ Thomas expressed a view on the importance of upholding Supreme Court precedents that appeared different from that endorsed by a majority of the justices on the last day of the term this year. The court said it would be more reluctant to overturn precedents in property rights and other economic rights cases than in those concerning individual rights.

The standard for overturning precedents "should be as uniform as possible," Thomas said, not "less for individual rights than for commercial cases." He said it "seems to me the cases in the individual rights area deserve the greatest protection."

For Committee Democrats, Nominee's Lack of Views Can Be a Target Too



JUDGE CLARENCE THOMAS
... views on "natural law" contrasted

By Fred Barbash
Washington Post Staff Writer

Unable to make an effective issue so far of Clarence Thomas's views, Democrats on the Senate Judiciary Committee tried yesterday to focus attention on his professed lack of opinion.

After repeatedly asserting—in response to at least 30 questions on whether a woman has a constitutional right to terminate a pregnancy—that he could not answer lest he compromise his impartiality, Thomas told an incredulous Sen. Patrick J. Leahy (D-Vt.) that, in fact, he hadn't really formed an opinion on the matter.

"With all due respect, Judge, I have some difficulty with your answer," said Leahy, pointing out that Thomas had been immersed in a wide variety of conservative policy debates over the past 18 years and had on one occasion cited *Roe v. Wade*—the 1973 Supreme Court

decision on abortion—in a footnote to a scholarly paper.

On those issues about which the Supreme Court nominee's views seemed to be an undeniable matter of record in speeches and writings, the Democratic senators implied that Thomas had had some sudden, politically expedient changes of opinion.

In particular, they contrasted his previously expressed views on the subject of "natural law," indicating he thought it was a good basis for making judicial decisions, with his repeated insistence during a day and a half of hearings that he thought it was not.

Perhaps Thomas had undergone a "confirmation conversion," Sen. Howell T. Heflin (D-Ala.) suggested, indicating such a strategy could "raise issues that can affect the evaluation that [we] may give as to integrity and temperament."

The question thus far—or at least the question that the Democrats would like to see become cen-

tral to the confirmation hearings—is whether Thomas's disinclination to claim controversial views, or any views at all on a subject like abortion, is disturbingly disingenuous.

The Democrats are picking their issues carefully. Although Thomas is expected to be before the committee at least into Friday, they so far have asked relatively few questions on subjects that could be politically controversial for them, as well as for the nominee. Although Thomas has been most outspoken during his career on affirmative action programs and the use of hiring quotas, those issues have barely come up.

Instead they have pounded away at natural law—a juridical theory that most constituents know little about and care about even less—and, most repetitively, at abortion.

Abortion is relatively easy for the Democrats, most of whom are on record with one position or another, and potentially dangerous territory for Thomas.

Despite attempts to make him appear less than candid, Thomas doubtless knows that expressing an opinion on *Roe v. Wade*—if, indeed, he has one—could cost him the confirmation by alienating one side or the other. Not surprisingly, he chose—as have most recent nominees—to decline to answer.

It was too much for Sen. Howard M. Metzenbaum (D-Ohio), who pointed out that both on Tuesday and yesterday, Thomas showed little hesitation in answering questions about currently hot judicial issues such as sex discrimination, church-state relations, victim impact statements and capital punishment appeals.

"Senator," Thomas said, "... I do not believe that I either indicated that I agreed with the outcome in those cases ... or not."

Thomas sought to make a virtue of a lack of strong opinions. "One of the justices once spoke of having to strip down like a runner to eliminate agendas, to eliminate ideology. When one

becomes a judge, that's what one starts doing. ... I think it's important for judges not to have strong ideological views."

Republicans on the committee, for the most part, tried to make sure Thomas stayed stripped down yesterday. Sen. Alan K. Simpson (R-Wyo.) talked for most of his allotted half hour of question time.

Sen. Hank Brown (R-Colo.) questioned Thomas about such hot-button items as the computer system and database he had installed as chairman of the Equal Employment Opportunity Commission.

Sen. Charles E. Grassley (R-Iowa) complimented Thomas on his fine family, gave readings from the Federalist Papers and Thomas's last confirmation hearing (to be a federal appeals court judge), and quoted the late Justice Harlan Fiske Stone before turning Thomas's attention to an Interstate Commerce Commission case he had voted on recently concerning ferry operators on Long Island.

Natural Law Places Focus On Flexibility

Concept Embodies Non-Written Rules

By Ruth Marcus
Washington Post Staff Writer

The concept of natural law, which has emerged as a central if somewhat confusing focus of the Clarence Thomas confirmation hearings, is that there is a fixed set of principles that transcend the written law.

Depending on the perspective of the individual who espouses the natural law view, these principles may derive from a religious source or simply from general moral truths.

Most important, natural law—also called “higher law”—is an elastic concept that can be employed on both sides of some arguments and that has been adopted by both conservative and liberal legal thinkers. Both abolitionists and pro-slavery advocates made natural law arguments, and in modern times, so have those on both sides of the abortion debate.

In taking on Supreme Court nominee Robert H. Bork in 1987, for example, Senate Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.) insisted that he possessed rights not only because the Constitution stated them, but because they were given to him by God.

But Biden has expressed concerns about whether Thomas subscribes to various schools of natural law thinking that have been endorsed in recent years by some conservatives.

One school would use natural law to protect economic rights and strike down various state regulations and zoning restrictions. Although he said in a 1987 speech that he found that approach “attractive,” Thomas at the hearings has abjured any interest in returning to the pre-New Deal era in which the court struck down social legislation, such as protection for workers.

Another school would find natural rights protections for various moral precepts, such as the protection for the right to life of the fetus, an application of natural law in an article by conservative businessman Lewis Lehrman.

Thomas has written and spoken extensively on the subject, concentrating on the question of slavery and segregation in particular and civil rights in general, but also talking about such issues as the “liberation of commerce.” He asserted that considering the framers’ conception of higher law, as embodied in the Declaration of Independence, is critical to a proper understanding of the Constitution.

Although natural law is an ancient notion, with roots in the writings of Aristotle and the philosophy of St. Thomas Aquinas, it has not been a central feature of modern constitutional adjudication.

Some of those who are concerned about Thomas’s view on natural law point to an 1873 case in which natural law arguments about the “natural and proper timidity” of females were used to deny women the right to practice law. Thomas yesterday

swiftly repudiated any such views.

Among those who dispute the natural law approach are a number of modern legal conservatives who insist that the Constitution protects only those rights that are specified in the text of the document.

Adherents of the competing school, known as legal positivists, disdain the notion that, as Justice Oliver Wendell Holmes phrased it, the law is handed down from some “brooding omnipresence in the sky” whose content can be determined apart from reference to the written law.

Thomas tries to ease fears at hearing

By Steve McGonigle

Washington Bureau of The Dallas Morning News

WASHINGTON — Supreme Court nominee Clarence Thomas tried Tuesday to convince the Senate Judiciary Committee that he is not the ultraconservative ideologue that his critics have portrayed.

The black jurist spoke emotionally about his roots in segregated Georgia, praised civil rights

■ Excerpts from Thomas' comments. 22A

leaders and repeatedly denied that he would apply the controversial concept of "natural law" in interpreting the Constitution.

He also acknowledged during the first day of confirmation hearings that there is a constitutional right to privacy but refused to discuss whether abortion rights are protected.

"I do not think I could maintain my impartiality and comment on that specific case," Judge Thomas replied to a question from Sen. Joseph Biden, D-Del., the committee's chairman.

President Bush nominated Judge Thomas to succeed Justice Thurgood Marshall, who is retiring from the Supreme Court because of poor health. Judge Thomas, an avowed conservative, has expressed views that differ sharply from those of his liberal predecessor and would be most likely to strengthen the court's conserva-

Continued from Page 1A.
tive majority.

Judge Thomas will resume his testimony Wednesday. The hearings are expected to last at least a week and will include testimony from several of the dozens of interest groups that have taken a position on the nomination.

Opponents promptly accused the 43-year-old federal appeals court judge of trying to revise the lengthy public record he accumulated during eight years as chairman of the U.S. Equal Employment Opportunity Commission.

Sen. Howard Metzenbaum, D-Ohio, said the nominee's continued refusal to answer questions about abortion rights could very well be fatal. He said Judge Thomas could expect further inquiries on privacy issues.

The nominee's supporters insisted that his statements were consistent and that he had revealed himself to committee members as a mainstream thinker.

"In my view, it was a 20-run first inning, but the game is not over," said Sen. John Danforth, R-Mo., a primary sponsor for Judge Thomas.

"I think that what people heard today has to set the minds of the Senate and the American people at rest," Mr. Danforth said outside the hearing room. "This is not somebody who wants to turn the clock back."

Judge Thomas began his testimony with a 13-minute statement sprinkled with references to his upbringing in rural Pin Point, Ga. His voice nearly broke at one point when he recalled his grandparents, who had raised him.

"I watched as my grandfather was called 'boy.' I watched as my grandmother suffered the indignity of being denied the use of a bathroom. And through it all, they remained fair and decent and good people," he said.

Seated behind Judge Thomas as he spoke were his wife, teen-age son, sister and mother. His grandparents died several years ago.

Also nearby were Mr. Danforth, White House congressional liaison Fred McClure and former White House Chief of Staff Ken Duberstein, who have helped prepare Judge Thomas for the Senate hearings.

Judge Thomas was introduced to the committee by the six senators from the three states he has called home: Georgia, Missouri and Virginia. Three of the senators are among the Southern Democrats considered key to his confirmation.

The nominee spoke deliberately in a deep baritone. He smiled rarely and appeared nervous, perspiring and often resting his chin in his left hand.

One of the few light moments occurred early on when he responded to a question about his age by saying, "I've aged over the last 10 weeks."

The remarks from committee members were mostly non-confrontational and uniformly admiring of Judge Thomas' life story. Still, several Democrats noted that they would press him closely on issues such as privacy rights.

Sen. Patrick Leahy, D-Vt., said he was troubled by several opinions that the nominee had expressed in his writings and speeches.

"Your words strike me as the views of a combative, hard-line ideologue," Mr. Leahy said, referring to a statement chiding Congress. "The last thing I seek in a Supreme Court justice is ideology."

Republican committee members dismissed the ideological criticisms of Judge Thomas, insisting that he had demonstrated that he would be fair-minded.

"Those who have known Judge

Thomas over the years know that Judge Thomas is a man of fierce independence," said Sen. Orrin Hatch, R-Utah. "When he is confirmed, he will be nobody's man but his own."

Many of the questions Judge Thomas fielded from Mr. Biden and Sen. Edward Kennedy, D-Mass., involved his admitted interest in natural law, a philosophy built on a proposition that some rights are God-given.

The two Democrats voiced particular concern over a 1987 speech in which the judge praised an anti-abortion article by conservative politician Lewis Lehrman as "a splendid example of applying natural law."

Judge Thomas replied that he was attempting to use a conservative role model's words to inspire others to pursue the aggressive enforcement of civil rights laws. He denied that he was endorsing the Lehrman article's premise that abortion rights are unconstitutional.

He insisted that his interest in natural law was that of a policymaker in a political theory, not as a judge looking for a legal philosophy.

"I did not feel that natural rights, or natural law, has a role or has a basis in constitutional adjudication," he said.

He also attempted to distance himself from a 1986 White House study group's report that advocated replacing members of the Supreme Court who supported the 1973 Roe vs. Wade decision, which legalized abortion.

Although he acknowledged that he was a part of the study group, Judge Thomas said he read only his portion on problems of low-income families. "To this day, I have not read that report," he said.

Mr. Hatch contended that Judge Thomas' positions were being distorted. He said after the hearing recessed that Judge Thomas had been forthcoming.

"I think he hit a bunch of home-run balls, and I don't think anybody should pay attention to the argument he's done a judicial conversion," Mr. Hatch told reporters.

"The fact of the matter is, this is a man who believes the way he does very strongly, and, I think, will do what's right."

Thomas backs privacy rights, mum on abortion

By Michael Briggs

Washington Bureau / Chicago Sun-Times

WASHINGTON—Supreme Court nominee Clarence Thomas told the Senate Judiciary Committee on Tuesday that privacy rights are protected by the Constitution, but he refused to be pinned down on whether a woman's decision to have an abortion is protected.

Thomas also backed away from past statements about "natural law"—a kind of "higher law" that some argue justifies a ban on abortion. His comments on natural law, he said, were merely the musings of a "part-time political theorist."

And Thomas said he never has read parts of a 1986 White House report that he helped compile, which advocated overturning *Roe vs. Wade*, the landmark 1973 abortion-rights ruling. Thomas said he contributed only a section, on low-income families, to it. "To this day, I have not read that report," he said.

On the first day of his confirmation hearings, Thomas "was running, if not sprinting, away from his record," said Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, a coalition of minority, labor and women's groups opposed to Thomas's confirmation.

His most ardent supporter, Sen. John C. Danforth (R-Mo.), said Thomas did not retreat from past stands. "Clarence Thomas has put in perspective his views on natural law; that it is not some scary thing, that he is not going to the Supreme Court with an agenda."

Thomas brought up *Roe vs. Wade*, but only to say he wouldn't talk about the abortion ruling directly. "I do not think that at this time that I could maintain my impartiality as a member of the judiciary and comment on that specific case," he said.

He adopted the practice of previous nominees, who avoided talking about specific issues that might come before the Supreme Court, and replied in generalities when asked if the Constitution protects the right of women to end their pregnancies. "My view is that there is a right to privacy in the 14th Amendment," he said. "The Supreme Court has made clear that the issue of marital privacy is protected, that the state cannot infringe on that without a compelling interest."

Outside the hearing room, Kate Michelman, executive director of the National Abortion Rights Action League, called Thomas' statement insignificant. "They all acknowledge some right to privacy," she said of even the most conservative Supreme Court justices.

Thomas was pressed on abortion and natural law by Sen. Joseph R. Biden Jr. (D-Del.), the committee chairman.

Biden asked about a 1987 speech in which Thomas praised an article that said fetuses have an "inalienable right to life" and called *Roe vs. Wade* "a 'coup' against the Constitution." Thomas also called the article a "splendid example of applying natural law."

Thomas said he had dabbled in the theory "part time" and was interested in it as a "political philosophy," not a way to decide cases. "I don't see a role for the use of natural law in constitutional adjudication," Thomas said.



Associated Press

Supreme Court nominee Clarence Thomas is escorted into his confirmation hearing Tuesday by Sen. Strom Thurmond (R-S.C.), second from right. At left is Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.); at right is Sen. John C. Danforth (R-Mo.)

Basic battleground: 'natural law'

Reuters

WASHINGTON—One topic arose immediately Tuesday at Clarence Thomas' Supreme Court nomination hearing, otherwise expected to be dominated by such issues as civil rights and abortion.

It is Thomas' views on "natural law"—the belief that individuals have certain basic rights above those granted by written laws.

The idea is identified with the 13th century Roman Catholic theologian Thomas Aquinas.

Those who support natural law point to the first section of the U.S. Declaration of Independence for support.

It states: "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."

Critics say Thomas' views on natural law are based on religious beliefs and put him outside the mainstream of U.S. law. They fear that he might draw on natural law to justify a vote to abolish abortion rights, for example, by concluding fetuses have a "right to life."

Thomas and his supporters say his philosophy, on the contrary, stems from the mainstream of legal thought.

Sen. Joseph R. Biden Jr. (D-Del.), the chairman of the Senate Judiciary Committee conducting the confirmation hearings, said clarification of Thomas' views on natural law was the most important question before the committee in judging his fitness to sit on the Supreme Court.

"My interest in exploring natural law and natural rights was purely in the context of political theory. I pursued that on a part-time basis."

Thomas said his interest in natural law sprang from his studies of slavery and the abolition movement. He said he was attempting in the 1987 speech to make a conservative audience more sensitive to civil rights concerns by bringing up the "natural rights" argument made by Lewis E. Lehrman, "one of their own," in an article on abortion in the *American Spectator* magazine. Lehrman is a conservative businessman who ran for governor of New York in 1982.

"I was speaking in the Lew Lehrman Auditorium of the Heritage Foundation," Thomas said. "I thought that, if I demonstrated that one of

their own accepted at least the concept of natural rights, that they would be more apt to accept that concept as an underlying principle for being more aggressive on civil rights."

Biden was unconvinced by Thomas' attempt to distance himself from natural law. The chairman said he would catalogue other instances when Thomas linked the concept of "natural law" to specific court cases and constitutional issues. "There's pages of them," Biden said.

Thomas did not touch on sensitive legal issues in his opening statement to the committee, an emotional recounting of his upbringing in the segregated South. He was educated at segregated parochial schools and reared by his grandparents because his mother could not support her children.

Chicago Tribune

September 11, 1991 3

By Mike Rayko

Grandpa followed his natural laws

Listening to Judge Clarence Thomas talk so movingly about the old-fashioned values he learned from his hard-working grandfather, I thought back to my childhood and my grandfather and some of the things he taught me.

I couldn't have been more than 5 or 6 years old when he swiveled on his bar stool and said: "Listen to me. Never trust a Russian."

Because of my youth, I didn't know what a Russian was. So I asked him.

He said: "A Russian is no good."

I asked him why a Russian was no good.

He said: "Never mind. Drink your ginger ale."

But I never forgot his admonition. Especially since he told me the same thing every Saturday, when he would come over and take me for a walk.

We never walked far. Only one block up Wolcott Avenue to the nearest tavern on Division Street, which in those days was known as Polish Broadway.

In two or three years, I knew what a Russian was. And that confused me because World War II had begun and the Russians were our heroic allies.

When I asked him about that, he shook his head and said: "Never trust a Russian."

When I asked my mother why my grandfather said that, she explained: "He doesn't like Russians."

I asked her why, and she said: "He doesn't trust them."

Then the war ended, and the Russians became the Evil Empire, and it turned out my grandfather had been right. At least for almost 50 years. And who can be sure about tomorrow?

It was only one of many valuable things he taught me.

As he sat in the tavern drinking his Saturday steins of beer, he would always say: "Tell your mother we went to Wicker Park."

The first time he said that I asked him why.

He said: "Because she told me to take you to Wicker Park."

I asked him why we didn't go to Wicker Park.

"Because I don't like Wicker Park. Too many flies and bugs. This is better."

So I would tell my mother that we had gone to Wicker Park, and that seemed to please her. And not going to Wicker Park pleased my grandfather. It also pleased me since I preferred drinking ginger ale in the cool bar. That meant that all three of us were pleased. But if we had gone to Wicker Park, my grandfather and I wouldn't have been as pleased. So I learned that freedom of choice and movement is what makes people happy. And I didn't like bugs, either.

He would also say: "Always take care of your brushes."

Few children get that advice from their grandfathers today. Modern grandfathers are more likely to say: "Why don't you see what's on the other channel?" or "Can't you turn that music down?" or "Did I tell you I shot an 89 with a double bogey on the last hole?" There probably isn't a child in America whose grandfather says: "Always take care of your brushes."

He said that because he was a professional painter. Not pictures, houses. Fine brushes, in all sizes, with wood handles and animal-hair fibers, were costly. And the paint of those days couldn't be washed off with water. The brushes had to be soaked and washed in some chemical that today's youths would sniff.

"If you don't take care of your brushes, you won't get work and you'll be a bum. You don't want to be like the Swede."

As he later explained, when I was old enough to understand, the Swede had been his regular partner. But the Swede drank while working. He said it immunized him against the fumes from the paint. So he often became so immunized that he failed to take care of his brushes. Then he had to buy new brushes and had less profit, and his wife rebuked him. And this caused him to brood, as Swedes are inclined to do, and he drank even more while working. And it became a vicious circle, ruined brushes, paint dripping in his eyes and finally disaster. He staggered off a scaffold and broke both legs.

Being a true friend, my grandfather went to the bed-ridden Swede's house and said: "You're out of work and you need money. Here, take this."

And he put \$250 cash in the Swede's hand, a hefty sum in those days, and bought the Swede's car, for which the Swede had paid \$400 three months earlier.

"I wouldn't have done that for a Russian," my grandfather said.

And that taught me about private enterprise and the free-market system.

Anyway, these memories came back as I listened to Judge Thomas remember his grandfather.

And when Sen. Ted Kennedy began grilling Judge Thomas on his social views, I thought about what my grandfather might have said to the senator.

Probably something like: "Stay off scaffolds."

September 11, 1991

Thomas supports a right to privacy Reply surprises Democrats; judge won't discuss abortion

By Linda P. Campbell
Chicago Tribune

WASHINGTON—Supreme Court nominee Clarence Thomas said Tuesday he believes the Constitution protects a right to marital privacy but declined to say whether that includes a woman's right to choose abortion.

The answer, coming on the first day of confirmation hearings before the Senate Judiciary Committee, surprised Democrats on the panel. But it did little to stem the opposition from women's and civil rights groups fighting Thomas' confirmation to replace retiring Justice Thurgood Marshall.

"There is a right to privacy in the 14th Amendment," Thomas said during questioning by committee Chairman Joseph Biden (D-Del.). "I think that the Supreme Court has made clear that the issue of marital privacy is protected."

But, as for *Roe vs. Wade*, the 1973 decision extending privacy rights to abortion, Thomas said, "I do not think at this time I could maintain my impartiality as a member of the judiciary and comment on that specific case."

Later he said, referring to abortion, "I think it's inappropriate for any judge who is worth his or her salt to prejudge any issue or sit on a case in which he or she has such strong views that he or she cannot be impartial."

After the hearing, Sen. Howell Heflin (D-Ala.), a Judiciary Committee member, said Thomas' answer "rather surprised us." Critics of Thomas have predicted he would vote to overturn *Roe* because he has criticized it and a previous decision, *Griswold vs. Connecticut*, on which the right to privacy is based.

Thomas' answer was almost identical to statements given a year ago by David Souter, who replaced retired Justice William Brennan on the high court. But it contrasted with the last highly controversial Supreme Court nominee, Robert Bork, who was defeated by the Senate in 1987 partly because he rejected the notion that the Constitution protects rights such as privacy even though it does not spell them out.

Much of Tuesday's questioning focused on a concept known as "natural law," a theory holding that individuals have some rights beyond what is written in statutes or constitutions.

Abortion-rights groups argue that Thomas' repeated references to natural law in speeches and articles indicate that he would cut back on privacy and abortion rights, particularly since he once praised an article by conservative writer Lewis Lehrman saying that natural law protects a fetus' right to life.

Thomas testified that he dabbled in natural-law philosophy as a "political theory" while he was chairman of the Equal Employment Opportunity Commission but said it should not play a role in constitutional interpretation.

He said he disagreed with Lehrman's article but used it to make an argument about civil rights more palatable to a conservative audience.

"I thought that, if I demonstrated that one of their own accepted at least the concept of natural rights, that they would be more apt to accept that concept as an underlying principle for being more aggressive on civil rights," Thomas said.

He also distanced himself from a Reagan administration report critical of the Supreme Court's privacy rulings over the last 20 years, including a Supreme Court decision striking down a city ordinance that prohibited "non-traditional" families from sharing the same house.

"The notion of family is one of the most personal and most private relationships that we have in our country," said Thomas, who was raised by his grandparents. "I could easily have been zoned out of my neighborhood should approaches like that take place."

After the hearing, civil rights leaders opposing Thomas said he had disavowed his previous statements on natural law and therefore undermined his credibility.

"There's no question that that was the earliest 'confirmation conversion' we've witnessed," said Ralph Neas, executive director of the Leadership Conference on Civil Rights, an umbrella organization of civil rights groups.

But Sen. John Danforth (R-Mo.), Thomas' key supporter, said he believed Thomas had allayed some concerns raised about him. "I really believe Clarence Thomas has put in perspective his view of natural law, and it is not

a scary thing. He is not going to the Supreme Court with an agenda," Danforth said.

Thomas, dressed in a dark gray suit, white shirt and red tie, appeared calm during the 3½ hours

he spent fielding senators' questions while his wife, Virginia; his mother, Leola Williams; his sister, Emma Mae Martin, and his son, Jamal, watched in the Senate Caucus Room.

After being introduced by six senators, including Danforth, Thomas delivered a moving account of his rise from being a poor child catching fiddler crabs in the rural Georgia marshes to being nominated for the high court. His voice broke noticeably when he talked of the "crucible of unfairness" faced by his grandparents.

"I watched as my grandfather was called 'boy,'" he said. "I watched as my grandmother suffered the indignity of being denied the use of a bathroom, but above it all they remained fair and decent people."

"They never lost sight of a better tomorrow," Thomas continued. "I have followed in their footsteps and I have always tried to give back."

He also acknowledged the struggle of civil rights leaders, including Justice Marshall. "Only by standing on their shoulders could I be here," he said.

Democrats on the committee tried to deflect attention from Thomas' background, applauding his accomplishments but saying they wanted to focus on his record.

In 2½ hours of opening statements, senators made clear they intended to press Thomas on privacy and other issues as the hearings continue through this week.

Sen. Patrick Leahy (D-Vt.) complained that "the Senate and the nation have been frustrated by polite, albeit respectful, stonewalling" on abortion.

Sen. Paul Simon (D-Ill.) said Thomas "has the basic ability to make a good justice" and would bring diversity to the court. But Simon questioned whether Thomas would add to the imbalance of a court that is "shifting from its role of being the champion of the less fortunate."

However, Sen. Orrin Hatch (R-Utah), the nominee's staunchest defender on the committee, said Thomas' critics "wish to punish him" for opposing affirmative action programs involving racial preferences.

During his questioning, Biden noted Thomas' youth, saying he could be writing decisions well into the next century, and asked Thomas how old he was.

"I've aged over the last 10 weeks" since the nomination, said Thomas to laughter from the packed hearing room, "but [I'm] 43."

SEPTEMBER 11, 1991

A1

Thomas sees privacy right guaranteed

Court nominee makes no comment on abortion

By MIRANDA S. SPIVACK
Courant Staff Writer

WASHINGTON — Supreme Court nominee Clarence Thomas, distancing himself from his most controversial writings, endorsed a constitutional right of privacy Tuesday but would not say how far it extends.

"My view is that there is a right to privacy in the 14th Amendment," said the 43-year-old appeals court judge and Yale Law School graduate on the first day of his Senate confirmation hearings.

"I think that the Supreme Court has made clear that the issue of marital privacy is protected . . . The Supreme Court . . . has found a fundamental interest in a woman's right to terminate a pregnancy," Thomas told the 14-member Senate Judiciary Committee.

But when pressed by committee Chairman Joseph R. Biden Jr., D-Del., Thomas refused to say which privacy rights, such as abortion, should be maintained.

"I do not think at this time that I could maintain my impartiality as a

judge and comment on a specific case."

Thomas was attempting to quell concern that he would use his role as a high court justice to advocate "natural law" — the idea that there are rights outside the Constitution that are given to people by a higher order or deity. He has written and spoken extensively about his interest in natural law.

Thomas, nominated by President Bush to replace Thurgood Marshall, the first black justice, took the witness stand in mid-afternoon. Panel members had spent the morning outlining their hopes and concerns about his nomination.

Thomas was introduced by several senators, but the most compelling statements were made by Sen. John C. Danforth, the Missouri Republican for whom Thomas had worked.

Danforth, considered a moderate in the Senate and one of its best conciliators, said Thomas is bright, unpretentious and would defy all predictions. "He will never become a sure vote for any group of justices

Please see Thomas, Page A14

Thomas acknowledges right to privacy, but will not discuss abortion

Continued from Page 1

on the court," Danforth said. "... He is his own person."

Thomas' rise from abject poverty in Pin Point, Ga., to Yale and ultimately to his high court nomination have been well-chronicled. But his own rendition of the story during his opening statement provided the most poignant moments of the day.

Flanked by his mother, sister, wife and son, Thomas appeared at times overcome with emotion as he spoke of his childhood. He described the legacy of his grandparents, who helped raise him when his mother could not afford to.

"Their sense of fairness was molded in the crucible of unfairness. I watched as my grandfather was called 'boy.' I watched as my grandmother suffered the indignity of being denied the use of a bathroom."

But throughout their travails in the segregated South, Thomas said, his grandparents remained hard-working and conscientious, and instilled those values in him.

"It is my hope, when these hearings are done, that this committee will conclude that I am an honest, decent and fair person."

Biden quickly responded that Thomas' integrity would not be the issue. But in the weeks before the confirmation hearings, several civil rights and abortion rights groups expressed misgivings about Thomas' nomination, stressing that his extensive writings about natural law conflict with his assertions that he has an open mind as a judge.

Thomas' opponents suggest he is rigidly anti-abortion and against equal rights.

Thomas, who headed the Equal Employment Opportunity Commission during the Reagan administra-

Excerpts from Clarence Thomas' statement

Mr. Chairman, Senator Thurmond, members of the committee, I am humbled and honored to have been nominated by President Bush to be an associate justice of the Supreme Court of the United States.

Much has been written about my family and me over the past 10 weeks. Through all that has happened throughout our lives and through all adversity, we've grown closer and our love for each other has grown stronger and deeper. I hope these hearings will help to show more clearly who this person Clarence Thomas is and what really makes me tick.

My earliest memories, as alluded to earlier, are those of Pinpoint, Georgia, a life far removed in space and time from this room, this day and this moment...

In 1955, my brother and I went to live with my mother in Savannah. We lived in one room in a tenement, we shared a kitchen with other tenants, and we had a common bathroom in the backyard which was unworkable and unusable. It was hard, but it was all we had and all there was.

Our mother only earned \$20 ev-



ery two weeks as a maid, not enough to take care of us, so she arranged for us to live with our grandparents later in 1955. Imagine, if you will, two little boys with

all their belongings in two grocery bags. Our grandparents were two great and wonderful people who loved us dearly. I wish they were sitting here today, sitting here so that they could see that all their efforts, their hard work were not in vain, and so that they could see that hard work and strong values can make for a better life...

I attended segregated parochial schools and later attended a seminary near Savannah. The nuns gave us hope and belief in ourselves when society didn't. They reinforced the importance of religious beliefs in our personal lives. Sister Mary Virgilius, my eighth-grade teacher and the other nuns were unyielding in their expectations that we use all of our talents, no matter what the rest of the world said or did.

After high school, I left Savannah and attended Immaculate Conception Seminary, then Holy Cross College.

I attended Yale Law School. Yale had opened its doors, its heart, its conscience to recruit and admit minority students. I benefited from this effort...

But for the efforts of so many others who have gone before me, I

would not be here today. It would be unimaginable. Only by standing on their shoulders could I be here. At each turn in my life, each obstacle confronted, each fork in the road, someone came along to help...

Justice Marshall, whose seat I've been nominated to fill, is one of those who had the courage and the intellect.

The civil rights movement — Reverend Martin Luther King and the SCLC, Roy Wilkins and the NAACP, Whitney Young and the Urban League, Fannie Lou Hamer, Rosa Parks and Dorothy Height. They changed society and made it reach out and affirmatively help. I have benefited greatly from their efforts. But for them, there would have been no road to travel...

It is my hope that when these hearings are completed, that this committee will conclude that I am an honest, decent, fair person.

If confirmed by the Senate, I pledge that I will preserve and protect our Constitution and carry with me the values of my heritage, fairness, integrity, open mindedness, honesty and hard work.

Thank you, Mr. Chairman.

uses natural law for constitutional adjudication or a moral code."

Before Thomas spoke, committee members outlined their views.

"Finding out what you mean when you say you would apply a natural-law philosophy to the Constitution is, in my view, the most important task of these hearings," Biden said.

Kennedy said he was worried about Thomas' views of efforts to end discrimination against women and minorities, as well as his outlook on the role of government in ensuring workplace safety and the role of Congress as a check against the executive and judicial branches.

Most of the senators' opening statements appeared to divide along party lines, although one Republican, Arlen Specter of Pennsylvania, said he was worried that some of Thomas' writings suggested he favored an activist role for the Supreme Court as a kind of "super legislature trying to establish policy."

Thomas won praise from Sen. Strom Thurmond, R-S.C., the top Republican on the Judiciary Committee, who called him a true believer in "civil rights of the individual and a commitment to the principles of fairness and equality... An examination of the professional record of Judge Thomas provides no valid reason to believe he would seek to diminish the rights of any American citizen."

Sen. Orrin G. Hatch, R-Utah, said Thomas is a man "of fierce independence. When he is confirmed, he will be nobody's man but his own."

Thomas is expected to testify at least two more days. After his testimony, the committee will hear from the American Bar Association and various advocacy groups favoring and opposing Thomas' nomination.

ested in political theory."

"These were some sort of philosophic musings?" Biden asked.

"That's exactly what it was," Thomas said.

In a 1988 article in the Harvard Journal of Law and Public Policy, among other articles, Thomas said

the natural-law background of the Constitution "provides the only firm basis for a just, wise and constitutional decision."

In a discussion with Sen. Edward M. Kennedy, D-Mass., Thomas said he did not endorse a widely circulated article by Lewis Lehrman that

used natural law as a basis for opposing abortion.

Thomas had described the article in a speech as a "splendid" example of applying natural law.

In a carefully worded reply, Thomas told Kennedy he disagreed with the article "to the extent that he

Thomas skirts abortion issue

Recounts childhood of racism, poverty

■ A TOUGH JOB INTERVIEW, 11A
■ HEARING EXCERPTS, 11A

By AARON EPSTEIN
Herald Washington Bureau

WASHINGTON — Supreme Court nominee Clarence Thomas broke a two-month silence Tuesday by poignantly recalling the pain of poverty and racism, saying he had not made up his mind about abortion, and distancing himself from the controversial theory of natural law.

At one point in the opening of his Senate confirmation hearings, Thomas' deep, firm voice broke as he remembered: "I watched as my grandfather was called 'boy.' I watched as my grandmother suffered the indignity of being denied the use of a bathroom."

It was "a moving statement," said committee Chairman Joseph Biden, D-Del.

But if Thomas' powerful emotional recollections impressed committee members and a nationwide television audience, his subsequent intellectual efforts to dispel charges that he is a foe of abortion rights and an advocate of natural law were less successful.

In fact, they appeared to have raised a new issue among his critics — his credibility.

Biden, who interrogated Thomas for a half-hour, said he was not satisfied with the nominee's responses.

"Quite frankly," he told the nominee, "at this point, you leave me with more questions than answers."

"I thought he really hurt himself by running away from his record," said Ralph Neas, executive director of a coalition of more than 150 anti-Thomas civil rights groups and a leading lobbyist in the successful campaign against the Supreme

PLEASE SEE THOMAS, 11A

THOMAS, FROM 1A

Court nomination of Robert Bork four years ago.

Still, it was early in the hearings and, in the view of most observers, Thomas, 43, remained likely to win Senate approval.

Committee members concentrated on Thomas' controversial views of privacy, abortion and natural law, a flexible theory asserting that certain rights are inherent in human beings and exist outside the written law.

Thomas told Biden that "there is a right to privacy in the Fourteenth Amendment. . . . I think that the Supreme Court has made it clear that . . . marital privacy is protected . . . and . . . in the case of Roe vs. Wade, has found an interest in the woman's right . . . to terminate a pregnancy."

But Thomas, a federal appeals judge, added: "I do not think that at this time that I could maintain my impartiality as a member of the judiciary and comment on that specific case."

Souter-like statement

Later, when Sen. Orrin Hatch, R-Utah, asked him whether he had an opinion on abortion rights, Thomas replied: "I think it inappropriate for any judge worth his salt to prejudice any issue."

It was a statement that echoed those of David Souter, President Bush's easily confirmed 1990 nominee to the Supreme Court.

Thomas' views of privacy and abortion are critical because the Supreme Court is closely divided on abortion rights, has narrowed the meaning of Roe vs. Wade in recent years and could decide the constitutionality of strict state restrictions on abortion as early as next year.

In a June 1987 speech to the Heritage Foundation, a conservative research organization, Thomas praised an essay by a foundation trustee, Lewis Lehrman, as "a splendid example of applying natural law."

Controversial essay

The essay, titled *The Declaration of Independence and the Right to Life*, argued that the right to abortion established in Roe vs. Wade was "a spurious right born of judicial supremacy with not a single trace of lawful authority . . . in the actual text or history of the Constitution itself."

Thomas said his praise of Lehrman's essay was not an endorsement of Lehrman's anti-abortion views, but an attempt to convince conservatives that strong civil rights enforcement protects the natural right of human equality.

"I thought that if I demonstrated that one of their own accepted at least the concept of natural rights, that they would be more apt to accept that concept as an underlying principle for being more aggressive on civil rights," Thomas said.

And he added: "My interest in

natural rights is strictly from the political theory point of view. . . . I do not think natural law or natural rights has a proper use in constitutional adjudication."

That last statement appeared to contradict several public statements made by Thomas in recent years. For instance, in a 1988 speech, he said: "The higher law background of the American Constitution, whether explicitly appealed to or not, provides the only firm basis for a just, wise and constitutional decision."

'Changed' tune

"He's changed his tune," said Nan Aron, director of the liberal Alliance for Justice, which opposes the Thomas nomination. "He has completely disavowed his association with natural law. It's unbelievable."

Thomas also drew criticism from his liberal critics for disassociating himself from a 1986 White House report on the family, which criticized several Supreme Court decisions expanding the right of privacy.

Thomas was a member of the "working group" that issued the report but he said his only interest in it was a section on low-income families.

"To this day, I have not read that report," Thomas said.

He said, however, that he did not agree with the report's attack on a Supreme Court ruling that struck down an East Cleveland, Ohio, zoning law that prevented a grandmother from living with two of her grandchildren.

"If I had known that that section was in the report before it became final, of course I would have expressed my concerns. That [attack on the East Cleveland ruling] would have had direct implications on my own family. . . . I could easily have been zoned out of my neighborhood. . . ."

The Miami Herald

SEPTEMBER 11, 1991 *AM*

Hearing a tough job interview for Thomas

By **CHRISTOPHER SCANLAN**
Herald Washington Bureau

WASHINGTON — Imagine a job interview that lasts days. Picture one that takes place under the glare of television lights and is beamed instantly to an audience of millions.

NEWS ANALYSIS

Conjure one that features not one hard-eyed questioner eager to plumb your talents but 14 inquisitors ready to pounce on your every word.

You've just put yourself in Clarence Thomas' shoes.

After two months of partisan battling, endless speeches and counter speeches over President Bush's nominee to the U.S. Supreme Court, it all comes down to this: a man sitting alone before a microphone pleading his case for a job.

Surrounded by his family, friends and his political foes, Thomas took a seat Tuesday morning in the historic U.S. Senate Caucus Room for what has to be the toughest job interview in America.

"If you are confirmed this will be the only such conversation the American people will ever have with you," noted Sen. Herb Kohl, a Wisconsin Democrat who sits on the Judiciary Committee that will judge Thomas' fitness.

Like any savvy applicant, Thomas led with his strengths.

In a low deep voice, he delivered what may be the most important speech of his life; a brief but affecting rendition of the inspirational tale of his boyhood rise from the world of Jim Crow segregation in Pin Point, Ga., to the highest ranks of the federal judiciary.

Thomas recalled the grandparents who taught him "a sense of fairness [that] was molded in a crucible of unfairness."

Given the stakes, the tension and the standing-room only crowd in the marble-columned, high-ceilinged Caucus Room was understandable.

If Thomas felt the drama he kept it well-masked.

But a painful memory pierced his impassive veil for one brief moment. His voice broke as he choked back a

sob at the memory of watching "as my grandfather was called 'boy' [and] as my grandmother suffered the indignity of being denied the use of a bathroom."

His family — wife, mother, sister and son — lined up behind him but a more recent — and perhaps more important influence sat in the same row: Kenneth Duberstein, the former White House aide who signed on to coach him.

Thomas, who has been opposed

by most civil rights organizations, paid politically correct homage to civil rights legends, including Thurgood Marshall, the liberal black justice he hopes to replace, and to Roy Wilkins of the NAACP, which has opposed his confirmation. And, he assured the senators, he cares about "the little guy."

He concluded his 10-minute opening statement with a naked pitch: "It is my hope that when these hearings are completed that this com-

mittee will conclude that I am an honest, decent, fair person."

And no sooner had Thomas given his first answers about the politically charged abortion issue than supporters of abortion rights began muttering in the audience. Faye Wattleton of Planned Parenthood and Kate Michelman of the National Abortions Rights Action League whispered furiously. Moments later, the first skirmishes began as opponents darted outside the Cau-

cus Room, trailed by reporters.

"He goes back to that grandfather story," said Michelman, who conceded that the account of his upbringing is "very powerful."

But, she fumed, "his responses today are totally contradictory to the record."

Inside the hearing room, Sen. Joseph Biden, D-Del., finished his first round of questions equally dissatisfied. "You've left me with more questions than answers," he told Thomas.

The Detroit News

SEPTEMBER 11, 1991

A12

Joe Biden's Little Confession

On the first day of Clarence Thomas's confirmation hearings for the Supreme Court, Democratic members of the Senate Judiciary Committee made clear they consider his belief in "natural law" to be a key sticking point. They say belief in a higher law could lead to "radical" decisions that are out of the mainstream of American thinking.

What they really object to, however, is that Judge Thomas' views of natural law may differ from their own. Sen. Joseph Biden of Delaware made that clear when he confessed that he, too, believes that there is a higher law than even the U.S. Constitution.

In doing so, he exposed a basic hypocrisy in the attack on Judge Thomas. For much of the 1960s and 1970s, the same Democrats registered no complaints when a liberal majority on the court regularly substituted its own view of what was right and wrong for what the Constitution had to say. Now that the shoe is on the other foot, natural law is suddenly found to be a "radical" notion.

Presumably those who object to Judge Thomas would also object to Thomas Jefferson's formulation in the Declaration of Independence that certain truths, such as the fact that all men are created equal and are entitled to life, liberty and the pursuit of happiness, were "self-evident," needing no

further justification. Or perhaps they wish to quarrel with the American civil rights movement of the 1960s, which frequently justified its civil disobedience in terms of the need to realize a higher law.

Judge Thomas has argued, correctly we think, that just because he believes in a higher law doesn't mean he thinks judges can impose their views willy-nilly. Indeed, precisely because there is so much disagreement on what higher law is, he has emphasized that settling such disputes should be left to the democratic process. Judges should exercise great restraint in dealing with essentially moral, as opposed to legal, questions.

The latitude of judges to substitute their judgment for that of elected legislatures is a fair question. Indeed, a straight-up debate on that issue in the context of the Thomas nomination would be welcome.

Liberals hate to raise the subject directly, however, for fear that their basic mistrust of the people will become apparent. What they have been unable to obtain at the polls they have tried to obtain through the courts. So they seek to scare the public with vague chatter about strange-sounding concepts like natural law. Yesterday's confession by Joe Biden should make that a little tougher to do.

The Detroit News

SEPTEMBER 11, 1991 A1

In Senate minefield, nominee sidesteps loaded questions

WASHINGTON — A calm and controlled Clarence Thomas tiptoed through the minefield of his first day on the Senate witness stand without touching off any explosion that could blow up his chance to sit on the Supreme Court.

Deftly sidestepping the most dangerous questions posed by liberal Democrats and capitalizing on support from helpful Republicans, the 43-year-old jurist effectively used humility, humor and heartfelt sincerity in his debut before the Senate Judiciary Committee.

Thomas' opening-day performance didn't clinch his seat on the Supreme Court, as the tough questioning of his critics pointed toward some hard days ahead. But if there is a fatal blow in the offing, it was not evident Tuesday as Thomas deflected liberal attacks and defused some issues that threaten his chances of being confirmed by the Senate.

In a historic Senate chamber that's been the scene of hearings on disasters and scandals ranging from the sinking of the Titanic to Watergate, a black man up from the poverty of Pin-

Please see Gannon, 7A

point, Ga., held his own before a jury of white men well practiced in the political art of humbling the mighty.

But unlike some ill-fated nominees who came before him, notably the combative Robert Bork in 1987, Thomas approached the bench of the honorable senators without a trace of arrogance, offering a mix of reassuring replies and polite demurring on the views he would bring to the nation's highest court.

The committee's Democratic liberals, including chairman Joseph Biden of Delaware and Edward Kennedy of Massachusetts, tried to nail Thomas with his conservative writings and statements from the Reagan years, but it was like trying to nail Jello to the wall. Some of Thomas' replies were a bit wobbly but nothing really ugly stuck to him.

"He's the Teflon candidate," Sen. Orrin Hatch, R-Utah, one of Thomas' staunchest supporters, exulted after the hearing.

"It was a 20-run first inning, but the game isn't over," Sen. John Danforth, R-Mo., Thomas' chief Senate sponsor, added as the nominee's Senate allies rushed to TV cameras to put the most favorable post-hearing "spin" on the day's developments.



JAMES P.
GANNON

In truth, Thomas didn't overwhelm the committee. But he advanced his cause with a moving if brief recounting of his early life, and his calm, low-keyed responses to questions both hostile and friendly.

In an effective opening statement that ran barely 12 minutes, the nominee spoke movingly of growing up poor and black in the segregated South. With an emotional catch in his rich baritone voice, Thomas told senators he had "watched as my grandfather was called 'boy'" and as his grandmother was "denied the dignity of using a bathroom."

He paid tribute to black heroes and civil rights leaders, including Thurgood Marshall, whom he would replace on the court, and Martin Luther King Jr. and Detroit's Rosa Parks.

"They changed society. . . . I have benefited greatly by their efforts," he

said. "Only by standing on their shoulders could I be here."

Thomas said he hoped the hearings would prove he is a decent, fair, open-minded man, a judge who does not bring any personal agenda or ideological mind-set to the task of administering justice.

Biden, Kennedy and other committee skeptics raised many doubts and questions about that view of Thomas, who is a conservative veteran of the Reagan administration with a trail of speeches, writings and interviews suggesting a clear ideological bent to the right.

"The theme of this hearing could be entitled, 'Doubting Thomas,'" said Sen. Howell Heflin, D-Ala., who is considered one of the key swing votes on the panel.

"You are not the doubter," Heflin told the nominee. "It is we in the Senate who are the doubters."

The doubts about Thomas center on his views on abortion, civil rights, affirmative action, and a somewhat fuzzy concept of natural law that Thomas has frequently invoked in speeches and writings.

Tuesday's hearing gave Thomas a chance to reassure his critics on several of these key questions.

The nominee affirmed that there is a right to privacy embedded in the Constitution — the legal underpinning for the right to abortion enunciated in the Supreme Court's landmark *Roe vs Wade* decision — but he ducked questions on how he would rule on any abortion cases before the court.

A judge must "never prejudice any issue" before hearing the arguments of the case, he said, taking a position

that won't satisfy liberal demands for a clear-cut declaration on abortion — but one that isn't easy to attack.

Overruling previous Supreme Court decisions, such as *Roe vs. Wade*, is "a very serious matter" Thomas said, adding that merely disagreeing with the decision may not be sufficient grounds for a justice to vote to reverse it.

On natural law, which liberals fear Thomas might use to impose a conservative moral code from the Court, the nominee said his past comments merely reflected an "interest" in the idea as a political philosophy.

"I don't see a role for the use of natural law" in deciding constitutional issues, he said.

Thomas brushed off many of his conservative utterances of the 1980s as statements made by a Reagan appointee taking an advocate's position in the day's policy debates. He promised such views would have no bearing on his rulings as a justice.

"My job is to uphold the Constitution of the United States, not a personal philosophy or a political theory," he told Hatch, who ended the day's questioning by carefully drawing out reassuring responses to sticky issues raised earlier by the nominee's critics.

When it was over, Thomas brought his beaming smile to the front of the room, pumping the hands of the senators and throwing his head back in laughter at their unheard comments.

He had the look of the man saying thanks to the hangmen, after the rope broke on the gallows.

■ James P. Gannon is the Detroit News' Washington Bureau Chief.

The Detroit News

SEPTEMBER 11, 1991 *Ab*

Thomas can expect more questions

By Richard Willing

NEWS WASHINGTON BUREAU

WASHINGTON — Liberal senators plan more tough questioning of Supreme Court nominee Clarence Thomas today following an opening-day confirmation hearing that raised but didn't settle the abortion issue.

Sen. Howard Metzenbaum, D-Ohio, said after Tuesday's session that Thomas was "evasive." Thomas, said Metzenbaum, "didn't seem to mind" answering questions about capital punishment, prisoner appeals and other subjects likely to come before the Court, but he ducked on abortion.

Metzenbaum promised to press Thomas on abortion as the hearings go on, even if "I have to twist his arm behind his back."

Sen. Patrick Leahy, D-Vt., criticized the "polite stonewalling" of previous nominees and said he also intends to press Thomas. "In recent years, we have danced around the question of where nominees stand on a woman's fundamental right to an abortion," Leahy told the nominee. "I will expect forthright answers from you."

Though they avoided the subject Tuesday, Democratic senators are likely to question Thomas' hostility to employment timetables and other affirmative-action plans during his 1982-1990 tenure as chairman of the federal Equal Employment Opportunity Commission.

The first day's session featured praise for Thomas from friends, pointed questions from liberal committee members and a brief but emotional summary by Thomas of his rise from poverty and discrimination to become the second black nominated to the nation's highest court.

Despite some rough spots, as he struggled to explain his support for controversial "natural law," the consensus was that Thomas had said little Tuesday to hurt his chances. "He showed us what we want in a

justice," said Sen. Alan Simpson, R-Wyo.

Early in the questioning, Thomas struggled to clarify — his opponents would say fudge — his views on "natural law," a murky subject open to both liberal and conservative interpretations.

Referring to a 1987 Thomas speech, Sen. Joseph R. Biden Jr., D-Del., the committee chairman, asked why Thomas endorsed a view of natural law that would outlaw government regulation of industry.

Referring to another 1987 speech, Sen. Edward M. Kennedy, D-Mass., questioned why Thomas had called a magazine article that described abortion as a "holocaust" to be a "splendid example" of applying natural law.

Thomas fumbled with his initial answers, causing Metzenbaum to say later: "He's not the authority on the subject we've been led to believe."

But with the help of some leading questions from a friendly committee member, Sen. Orrin Hatch, R-Utah, Thomas produced this explanation: Some of his remarks had been taken out of context, and others applied

only to natural law as the underpinning for "civil rights."

"I don't see a role for natural law, or natural rights, in constitutional adjudication," Thomas said.

On other points, the nominee who appeared Tuesday was much as his supporters had billed him. Earnest, sincere, capable of showing emotion — sadness more than anger — as he recalled watching his "fair and decent" grandparents mistreated in the segregated South of his youth.

"I watched as my grandfather was called 'boy,'" Thomas told the committee, his voice catching with emotion.

"I watched as my grandmother suffered the indignity of being denied

the use of a bathroom, but through it all they remained fair and decent and good people."

Thomas surprised some observers by refusing to hew a strict conservative line. Sen. Strom Thurmond, R-S.C., sought Thomas' views on sentencing violent criminals, lengthy criminal appeals and similar matters, clearly hoping for a hard-line response. In each case, Thomas charted a middle course, working his concern for prisoners' rights into his answer.

"I've been saying he's his own man," said Sen. John Danforth, R-Mo., a friend of 17 years. "I think that came through loud and clear."

Thomas Backs Privacy Rights

By William H. Freivogel

Post-Dispatch Washington Bureau

WASHINGTON — Judge Clarence Thomas testified Tuesday that he recognizes a constitutional right to privacy, has an open mind on abortion, would uphold economic regulations and would not apply his "natural rights" philosophy to deciding Supreme Court cases.

Foes of Thomas' nomination to the Supreme Court charged immediately that Thomas had undergone a "confirmation conversion."

"Clarence Thomas seems to be running, if not sprinting, away from his views," said Ralph Neas, director of the Leadership Conference on Civil Rights. "He was flatly contradicting important statements on natural law that he had made over the last five years."

But Sen. John C. Danforth, R-Mo. — who introduced Thomas to the committee in a highly personal tribute — said that Thomas was not backing away from earlier positions.

"That has been his view and has always been his view," Danforth said

See THOMAS, Page 12

after the first day of hearings. "He has been waiting for two months" to set the record straight, said Danforth.

Danforth described the first day of Thomas' testimony as a "20-run first inning." But Neas said Thomas had clearly hurt himself by appearing disingenuous.

The highlights of two hours of questioning by Senate Judiciary Committee members were:

■ Thomas said he would not use his belief in "natural rights" as a means of interpreting the Constitution. The natural rights philosophy holds that men and women are born with inherent rights such as life and liberty.

Thomas said he had developed his natural rights view as a "political theory" to explain why segregation and racial discrimination were wrong. But he said, "I do not feel that natural law has a basis in constitutional adjudication."

■ Thomas said he now disagreed with an anti-abortion tract that he had once praised as "a splendid example of applying natural law." The article argued that a fetus has a natural right to life and that states could not permit abortions.

Thomas said he praised the article because he was talking to a conservative audience.

■ Thomas said he has never read the 1986 report of the White House Working Group on the Family that advocated that Supreme Court decisions on abortion and privacy be overturned. Thomas had been a member of the group, but he said he had not read the report then or more recently as he prepared for the hearing.

■ Thomas does not agree with all of Thomas Sowell's explanations for why women earn less than men. Thomas said in 1984 that the conservative economist's work was a "much-needed antidote to clichés about women's earnings. . . ." Sowell suggested that pay disparity resulted from such factors as pregnancy, childbirth and an unwillingness to work overtime.

But Thomas said Tuesday that "it is obvious that there is sex discrimination."

■ Thomas said that he did not want to turn back the clock to the early 20th-century era when protection of economic rights resulted in Supreme Court decisions overturning social welfare legislation such as wage and hour laws. Some of his speeches have suggested that property rights deserved higher constitutional protection than they now get.

The dramatic high points of the first day of the hearings were the statements by Thomas and Danforth. The ornate Senate Caucus room was absolutely still as the wealthy senator from Missouri told of his personal friendship with the man who had escaped the poverty and segregation of rural Georgia.

Danforth said that from the moment he met him at Yale Law School, Thomas was "his own person . . . Clarence Thomas . . . will never become a sure vote for any group of justices on the court."

Danforth said it was important that Thomas laughs — "the loudest laugh I have ever heard. . . . To me, it is important because laughter is the antidote to the dread disease, federalitis."

Danforth also lauded Thomas' "seriousness," saying, "It is not anger . . . it is not bitterness that eats away at him. But it is profound, and it forms the person he is. . . ."

Then it was finally Thomas' turn to speak. Seated behind him were his wife, Virginia Lamp Thomas; son, Jamal; mother, Leola Williams; and sister, Emma Mae Martin.

Thomas told about playing in the creeks of Pin Point, Ga., being sent to live with his grandparents as a boy, being prodded on by the nuns at the Catholic schools he attended.

His voice cracked and he cleared his throat as he recalled how "I watched as my grandfather was called 'boy.' I watched as my grandmother suffered the indignity of being denied the use of a bathroom, and through it all they remained fair and decent and good people."

Thomas acknowledged that he benefited from Yale Law School's recruitment of minority students and said it was "only by standing on the shoulders" of "so many others who have gone before me" that he succeeded.

He singled out Margaret Bush Wilson of St. Louis, the former chairwoman of the National Association for the Advancement of Colored People, who once gave him room and board for a summer in St. Louis as he studied for the bar exam. Thomas recalled that instead of accepting payment, Wilson asked him, "just along the way help someone who is in your position."

Thomas said, "I have tried to live by my promise to her to help others."

Thomas said he would take to the court "the life, the people, the values of my youth, the values of my grandparents . . . who believed so very deeply in this country in spite of all the contradictions."

But he said he would not bring "the baggage of preconceived notions, of ideology, and certainly not an agenda."

Judiciary Committee Chairman Joseph R. Biden Jr., focused the first round of questions on what he considers the hearing's most important issue — Thomas' higher law-natural rights philosophy.

But Thomas said: "I was interested in the political theory standpoint. I was not interested in constitutional adjudication. . . . My interest in this area started with the notion . . . how do you end slavery? . . . At no point did I or do I believe that the approach of natural law . . . has a role in constitutional adjudication."

After the hearing, groups opposing

Thomas drew attention to a law journal article in 1988 that they believe contradicts Thomas' testimony. "The higher-law background of the American Constitution . . . provides the only firm basis for a just, wise and constitutional decision," Thomas wrote then.

The abortion tract, which Thomas had called a "splendid example of applying natural law," was written by Lewis Lehrman, a trustee of the Heritage Foundation.

Thomas said Tuesday that he "did not endorse the article" but inserted it in a speech about civil rights at the Heritage Foundation, "as something to . . . convince my audience."

A12

Thomas Scores Points In First Round Of Confirmation Hearings

By Fred Barbash

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WASHINGTON — It was, for a time, bait and switch: They baited, and he switched.

The senator asked about property rights. The Supreme Court nominee talked about his grandfather. The senator asked about entitlements. The nominee talked about the housing project in Savannah where his mother had lived. For her, "it was a move up in the world," Clarence Thomas told the senator, "a steppingstone . . . before she could move to something better."

Natural law? It was a theory, said the nominee, and merely a theory,

one that could tell us how "my grandfather could enjoy the fruits of his own labor. . . . You had people who had to work for \$3 a day. I told you what my mother's income was. By what theory do you protect that?"

"I have pages and pages of quotes where you where you talk about natural law," said Sen. Joseph R. Biden Jr., D-Del., delicately, and "not in the context of your grandfather, not in the context of race, not in the context of equality, but you talk about it in the context of commerce. . . ."

Well, Thomas said as Biden pressed him, "my interest in this area started with a simple question: By what theory do you end slavery and after you

NEWS ANALYSIS

end slavery, by what theory . . . do you protect the rights of someone who was a former slave or someone like my grandfather, for example . . . ?"

The first round: If it was a battle of sound bites, Thomas won it. If it was about symbols, he may have won that, too.

Throughout Tuesday's first session of his confirmation hearings, Thomas and his backers on the Judiciary Committee played his strongest suit — his personal background — for all it was worth.

It was, indeed, probably the most intensely personalized confirmation

hearing since the modern turnover began at the court with the retirement of the late Justice Potter Stewart in 1981.

If the mission of the opponents was to trip Thomas up on his law, they failed. Sherbert vs. Verner. He had it. Moore vs. East Cleveland — the one in which the court said a grandmother couldn't be thrown out of her home because she was housing her grandchildren — he had that, too.

As a matter of fact, commented Thomas, "that would have had direct implications on my own family. . . ."

He obviously had boned up on the case law. Not so, apparently, on some of the controversial writings — his

own and others' — that liberal senators wanted to question him about. There, on occasion, his memory failed. He couldn't remember a particular book, or a particular speech in its entirety, he said. He was sure nonetheless that he hadn't spoken approvingly of everything in it — just parts of it.

And, in hindsight, he interpreted some of his earlier pronouncements differently than they sounded. Sen. Edward M. Kennedy, D-Mass., pressed him on comments he once made saying there was no need for a Department of Labor or a Department of Agriculture or for other regulatory agencies.

Thomas responded that he actually meant that "in a perfect world" there would be no such need. "But this is not a perfect world."

Thomas's opening statement said virtually nothing about his judicial philosophy.

It was mostly about his impoverished early life in Pin Point, Ga., and Savannah.

As is often the case, the nominee himself chose to answer some case-related questions and declined to answer others.

While the senators, in their opening statements, sought to frame the ground rules for questioning, Thomas ultimately set his own.

SEPTEMBER 11, 1991 A1

Thomas disavows old stance

Rules out natural law to interpret Constitution

By Walter V. Robinson
GLOBE STAFF

WASHINGTON — After delivering an emotional paean to the values that freed him from the snare of poverty, Judge Clarence Thomas yesterday confronted skeptical senators and promptly disavowed earlier controversial statements that a higher "natural law" ought to be a guiding influence in interpreting the Constitution.

Thomas, seeking to reassure Democrats who are fearful he will bring radical principles to the Supreme Court, acknowledged as well that he believes the Constitution guarantees a right to privacy. But he stopped well short of saying that such a right also justifies a right to abortion.

Faced with senators' questions about his beliefs, the high court nominee, as expected, refused to say how he would rule when the issue of abortion comes before the high court, declaring that to prejudge any issue "would totally undermine and compromise my capacity as a judge."

After 10 weeks of Thomas' enforced silence, the committee's members listened intently when he finally spoke. His remarks came after several hours during which the senators repeatedly underscored the importance of their task. Sen. Herb Kohl, Democrat of Wisconsin, declared that Thomas will probably "shape the nature of our country" for decades to come.

Much of the questioning of Thomas dealt with his extensive references to natural law, the notion

THOMAS, Page 14

■ THOMAS

Continued from Page 1

that a higher, or moral, law forms the basis for many of the rights enumerated in the Constitution and the Declaration of Independence. Some, Thomas among them, have argued for the use of such law in interpreting the Constitution.

Under questioning by Sen. Edward M. Kennedy, Thomas repudiated the one statement that, more than any other, has convinced abortion rights advocates that Thomas is cer-

tain to vote to overturn Roe v. Wade, the 1973 court decision that recognized a constitutional right to abortion.

Asked about a 1987 statement in which he praised as a "splendid example of applying natural law" an article by conservative Lewis Lehrman saying that abortion should be outlawed and fetal rights recognized, Thomas said he did not intend to endorse Lehrman's position.

In a lengthy, sometimes tortured explanation that left Kennedy openly

skeptical and the committee chairman, Sen. Joseph R. Biden Jr., evidently dissatisfied, Thomas said he praised the Lehrman article's focus on natural law because he wanted his conservative audience to accept his view that natural law formed a basis for constitutional principles underlying civil rights.

As for the Lehrman article, which described abortion as a "holocaust" that must be outlawed without exception, Thomas said: "I do disagree with the article ... to the extent that" Lehrman "uses natural law to make a constitutional adjudication, in that sense, or to provide a moral code of some sort."

Natural law issue addressed

Biden, suggesting that Thomas agreed with some radical thinkers who believe that natural law can be used to prevent government from regulating business and to restrict individual rights, including the right to privacy — and therefore abortion — sought to draw Thomas out on the natural law issue.

Immediately, Thomas retreated from some of his past statements, saying that he never believed that natural law should be used to interpret the Constitution. What he had to say on the issue, he said, was nothing more than "political theory," advanced by a "part-time political theorist."

"I don't see a role for the use of natural law in interpreting the Constitution," Thomas insisted.

"Was it just philosophic musing?" Biden, a Delaware Democrat, wanted to know, his skepticism evident in the flash of his trademark full-toothed grin.

"That's exactly what it was," Thomas answered.

Puzzled, Biden frowned, declaring: "At this point, you leave me with more questions than answers."

Sen. John C. Danforth, Republican of Missouri, Thomas' patron, former employer and principal Senate supporter, pronounced the natural law issue dead at day's end, saying Thomas had "put those concerns totally to rest."

Outside the hearing room, though, Thomas' opponents thought

Cont.

"He is sprinting away from his record, and has done damage to his chances for confirmation today," said Ralph Neas, the executive director of the Leadership Conference on Civil Rights.

Indeed, Thomas appeared to contradict several of his earlier statements about natural-law application. In one 1988 speech, for instance, he said: "The higher law background of the American Constitution, whether explicitly appealed to or not, provides the only firm basis for a just, wise and constitutional decision."

That issue aside, the stage was set for the days ahead, with Thomas and the committee's six Republicans using every opportunity to talk about his background, and Thomas, always deferential, sidestepping some questions and at times saying he had not recently reread speeches that senators wanted to ask him about.

At one point, when Biden asked about natural law, Thomas began talking about his grandfather's job. And when Biden and Kennedy questioned him closely on some of his speeches, he began many of his explanations with such phrases as: "What I meant to say," "Let me attempt to clarify" and "I was trying to make a distinction."

On one crucial issue, his contribution to a White House paper on families that recommended that Supreme Court privacy protections that underpin legalized abortion be overturned, Thomas said his input was limited to a passage on low-income families.

"To this day, I have not read that report," he insisted.

Sen. Howell Heflin, Democrat of Alabama, a conservative not counted as a likely opposition vote, said in an interview on Cable News Network that Thomas' testimony "raises the issue of whether or not there is some confirmation conversion taking place here." Heflin, though, said it was too early to say if Thomas had been hurt by the day's events.

Upbringing recounted

In an often moving speech, deliv-

ered from notes scrawled on legal paper, Thomas recounted his upbringing in rural Georgia poverty, praised the grandparents who raised him when his mother could no longer afford to, and genuflected repeatedly to civil rights pioneers whose efforts, he said, made possible his journey to the brink of a Supreme Court confirmation.

Acknowledging some of his critics, who have challenged his opposition to affirmative action when he himself benefited from it, Thomas noted that he was a beneficiary of just such a program in his admission to Yale Law School.

He praised such civil rights figures as Martin Luther King Jr. and Thurgood Marshall, the retiring justice whose seat he has been nominated to fill.

But the mood in the ornate Senate Caucus Room, so still as he recounted his upbringing, shifted abruptly when Biden took the microphone, and sought to shift the focus from background to beliefs.

"I for one do not doubt your honesty, your decency or your fairness," Biden said, adding that he would make the same stipulation about two of his colleagues, Sen. Orrin Hatch, a conservative Utah Republican, and Sen. Howard M. Metzenbaum, a liberal Ohio Democrat.

"But I sure have a choice of which one I would put on the bench," Biden said.

Danforth, one of several senators to introduce Thomas before his testimony began, said he has been flabbergasted at all the predictions from Thomas' opponents that he would be a certain right-wing vote to reverse many of the constitutional protections that have been ordained by the court in the last generation.

"Other than the nominee himself, I know Clarence Thomas better than anyone who will appear before the committee," Danforth said. Thomas is so fiercely independent and so much his own man, Danforth assured his colleagues, that "he will never become a sure vote for any group of justices on the court."

The 14 committee members — eight Democrats and six Republicans — are expected to listen to two weeks of testimony before voting on the nomination and sending it to the full Senate. Absent yesterday was Sen. Dennis DeConcini, Democrat of Arizona.

SEPTEMBER 11, 1991 A 15

For Thomas, a choice between popularity and principle

By John Aloysius Farrell
GLOBE STAFF

WASHINGTON — From their very first questions about “natural law” yesterday, his Democratic antagonists sought to force Clarence Thomas to choose between his popularity and his principles.

To some extent, they succeeded. Thomas abandoned his infatuation with new and untested right-wing applications of natural law — the belief that people have inalienable rights beyond those granted by law or governments — to avoid looking like an extremist, à la Robert Bork.

But in fleeing his past, his opponents said, Thomas raised questions about his intellectual honesty and the facility with which he gave up his beliefs.

“Quite frankly, I find it hard to square your speeches with what you are telling me today,” said Sen. Jo-

seph Biden, the Delaware Democrat who is chairman of the Senate Judiciary Committee, in his first exchange with Thomas. “I find it hard to understand how you can say that.”

After the hearing, other critics expanded on the theme.

“I think he did an incredibly poor job of responding to the natural law question and it has created some obvious contradictions between his current testimony and many of his prior speeches and writings,” said Charles Ogletree, a professor of law at Harvard University.

“If he makes excessive references to the past, and gives no sense of what he’s thinking about the Constitution today, or about other important issues, he is likely to leave considerable doubt in the minds of the senators about whether he understands all the principles in the Constitution or, secondly, holds them true,” Ogletree continued.

Thomas and his supporters, however, remain confident that the pow-

‘I don’t think people will be as enamored of his background tomorrow.’

CHARLES OGLETREE
Harvard University law professor

erful story of his rise from a sharecropper’s cabin to the federal bench — and the tactical advantages afforded by his unique status as only the second man of color to be nominated to the Supreme Court — will carry the day.

Under cross-examination by Biden and Sen. Edward M. Kennedy, Thomas sought to turn their questions around, portraying himself as a civil rights champion who has had to overcome obstacles they never faced. Nowhere was that clearer, said Thomas, than in the discussion of natural law.

Thomas Jefferson and other Founding Fathers used natural law

as the legal and philosophic basis for the American Revolution: the belief that all men are born equal with rights beyond those granted by English kings.

The principle, said Thomas, was then used by abolitionists in their crusade against slavery and by enlightened jurists and legislators in this century’s long struggle against legal segregation.

When Kennedy complained that Thomas had complimented contemporary conservative theorists for their work in applying natural law on behalf of property owners and business, and against a woman’s right to

choose an abortion, the judge said he was simply trying to show the right wing that it shared “a unifying theme” with the civil rights movement, not that he favored such extreme applications.

As Kennedy noted, Thomas has praised conservative Lewis Lehrman for a “splendid” essay that argued that natural law affords an inalienable right to life to a fetus.

But the Massachusetts senator failed to mention that Thomas did so in a 9-page speech that otherwise was devoted to persuading conservatives to be more aggressive on the issue of civil rights, a fact that Thomas and his Republican allies soon pointed out.

“All of his thinking had to be seen in the context of equality. . . . What he was searching for was a philosophy of desegregation,” said Sen. John Danforth, a Republican from Missouri who has served as a mentor and sponsor for Thomas, after the hearing was over. “What he

has said today is perfectly consistent.”

Civil rights lawyer William Taylor said President Bush’s appointment of a black conservative like Thomas was a “cynical” ploy designed to put liberals like Kennedy and Biden off-balance, and that the administration’s strategy to use the issue of race would backfire over time.

Ogletree agreed. Thomas will only be able to deflect tough questions for a short while, he said.

“He still has to answer very clear questions about affirmative action, civil rights, privacy and other issues,” said Ogletree.

“He can try to talk about personal experiences and family and see if that strategy works, but I think it’s a very dangerous strategy when the public has had several days of it. I don’t think people will be as enamored of his background tomorrow. I think they will want some answers to the questions.”

SEPTEMBER 11, 1991 A1

In privileged setting, panel hears of life of poverty

By Walter V. Robinson
GLOBE STAFF

WASHINGTON — For 12 minutes yesterday, raw emotions supplanted dry legal principles as 13 prosperous white senators, members of the world's most exclusive club, listened intently to Clarence Thomas recall how his grandfather was called "boy," and how his grandmother was denied the use of a bath-

room because of the color of her skin.

Before his grandparents took him in, he said, his voice choking with emotion as his audience sat silent, he and his mother and brother lived in a one-room tenement, shared a kitchen and relieved themselves in a broken-down backyard privy.

It was, he said, "a life far removed in space and time from this room, this day and this moment ...

It was a world so vastly different from all this."

Ultimately, many believe, it is that stark contrast in class, race and background that will make it difficult for many Democratic senators to cast a vote against Thomas.

Under the same ornate, gilded ceiling in the Senate Caucus Room, Sen. Joseph McCarthy once berated witnesses about Communist leanings, the Teapot Dome scandal re-

ceived its odoriferous public airing, and John Dean implicated President Nixon in the Watergate scandal — events that had little in common, save the power and privilege of the participants.

High drama visited the historic chamber again yesterday, and high emotion came with it.

The Supreme Court nominee's voice choked as he spoke. His wife,

SCENE, Page 16

Virginia Lamp Thomas, sat behind her husband, tears welling in her eyes and her lip quivering, with Jamal, his 19-year-old son by his first marriage, beside her. In the public gallery to the rear, her mother, Marjorie Lamp, dabbed at her eyes with a handkerchief.

Only Thomas' sister, Emma Mae Martin, a former welfare recipient criticized publicly by her brother for indolence, appeared unmoved, staring straight ahead as he spoke.

When he and his brother were separated from Emma Mae, Thomas recalled, they left the tenement with all their belongings in two paper sacks.

The upbringing with his grandparents, he said, gave him the tools he needed to excel.

"I can still hear my grandfather: 'Y'all goin' to have mo' of a chance than me,'" Thomas said. "And he was right. He felt that if others sacrificed and created opportunities for us, we had an obligation to work hard, to be decent citizens, to be fair and good people. And he was right."

"You see, Mr. Chairman," he said, addressing Sen. Joseph R. Biden Jr., head of the Senate Judiciary Committee, only one of whose members was absent, "my grandparents grew up and lived their lives in an era of blatant segregation and overt discrimination. Their sense of fairness was molded in a crucible of unfairness."

Sen. John C. Danforth, Republican of Missouri and heir to the Ralston-Purina fortune, who introduced Thomas to the committee, helped delineate the gulf between their past lives and Thomas'.

"I hope that sometime in the days ahead ... someone will ask him not about unenumerated rights or the establishment clause, but about himself. What was it like to grow up under segregation? What was it like to be there when your grandfather was humiliated before your eyes? What was it like to be laughed at by seminarians because you are black?"

Danforth concluded: "Everyone in the Senate knows something about the legal issues before the Supreme Court. Not a single member of the Senate knows about being poor and black in America."

Blurring a Hard Line

Thomas tones down themes of his speeches

By Timothy M. Phelps

WASHINGTON BUREAU

Washington — The nation yesterday saw a different Clarence Thomas from the hard-line conservative portrayed by 10 years of his own speeches and interviews.

Speaking out publicly for the first time since he was nominated by President George Bush to the Supreme Court, Thomas took great pains to praise the leaders of the civil-rights movement he has criticized.

And he moved during the first day of confirmation hearings before the Senate Judiciary Committee to distance himself from controversial philosophies, such as the concept of "God-given natural law," which he has praised in his speeches in the past.

Thomas, as expected, refused to say how he would vote on abortion, but he did say that he thought there is a constitutional right of privacy. He did not elaborate, but Supreme Court decisions legalizing abortion and birth control are based on this right, first cited by the court under Chief Justice Earl Warren in the 1960s.

The 43-year-old federal appeals court judge and former chairman of the Equal Employment Opportunity Commission admitted under persistent questioning from committee Chairman Joseph R. Biden (D-Del.) that he had never read the controversial White House Report on the Family that came out in 1986, with his and 21 other names on it. That report attacked court decisions finding a right of privacy in family affairs.

His sometimes faltering and sometimes contradictory responses on the first day of two weeks of committee hearings seemed to puzzle Biden, who each time Thomas disowned such concepts as natural law would refer to speeches in which he had praised it.

"Quite frankly, I find it hard to square your speeches with what you are telling me today," Biden said.

Biden and later Sen. Edward M. Kennedy (D-

Mass.) pressed Thomas on assertions in many of his speeches that the concept of a higher or natural law existing beyond the written laws of man brings particular protections to the rights of property.

Such assertions, Biden charged, were used by the court to strike down New Deal economic regulation in the 1920s and '30s, and are currently gaining new acceptance. Biden cited a speech in which Thomas had said these new ideas were "attractive."

Thomas said he was interested in such ideas only as experiments in political theory, not as constitutional concepts to be applied in the courts.

"I don't see a role for the use of natural law in constitutional adjudication," he said.

Raising his arms in frustration, Biden asked Thomas if his often repeated thoughts on natural

THOMAS from Page 5

law "was just some sort of philosophical musing?"

"Well, that's exactly what it was," Thomas replied.

Clint Bolick, a conservative Washington lawyer and friend and former colleague of Thomas' said after the hearing: "I thought the nominee totally held his own. I think the nomination is solidly moving ahead. I don't think the opposition scored any points today."

Bolick indicated however, that Thomas had not gone into more detail about his natural law beliefs.

John Gomperts of People for The American Way, a liberal lobbying group that opposes Thomas, accused the judge of backpedaling.

"He was backpedaling as fast as he could. He wasn't backing away from his record, he was running away from his record," Gomperts said. "At some point it simply is not credible."

In a brief opening statement with his mother, sister (whom he had once criticized for living on welfare), son and

wife behind him, Thomas spoke lyrically and at times tearfully of his impoverished past, a history that critics charge is being used by Thomas and his supporters to divert attention from his conservative views.

"We lived in one room in a tenement," said Thomas. "We shared a kitchen with other tenants and we had a common bathroom in the backyard, which was unworkable and unusable."

Thomas, who has repeatedly attacked traditional concepts of affirmative action, admitted that he benefited from it at Yale Law School. And he went out of his way to praise the leaders of the civil-rights movement, particularly the man he hopes to succeed on the Supreme Court, Thurgood Marshall.

"They changed society and made it reach out and affirmatively help," he said. "I have benefited greatly from their efforts. But for them, there would have been no road to travel."

He said he would not bring to the Supreme Court "the baggage of preconceived notions, of ideology, and certainly not an agenda."

Thomas got his chance to speak only after the 13 members of the 14-man committee — Sen. Dennis DeConcini (D-Ariz.) was absent — gave opening statements that for the most part broke predictably along party and ideological lines. The committee has eight Democrats and six Republicans.

But Sen. Arlen Specter (R-Pa.) put Thomas on notice that he cannot necessarily expect automatic support from all the six Republicans on the committee.

Thomas showed no sign of emotion even when Sen. Patrick Leahy (D-Vt.), not previously one of Thomas' greatest critics, told him that "your words strike me as the views of a combative, hard-line ideologue. The last thing I seek in a Supreme Court justice is ideology."

But Thomas got strong boosts from two Democrats not on the committee — Sam Nunn and Wyche Fowler Jr., from his home state of Georgia.

With support from southern Democrats such as Nunn and Fowler, it would be difficult for Thomas to lose, according to liberal and conservative observers alike.

Court nominee Court avoids issue of abortion

By KEITH C. EPSTEIN
PLAIN DEALER BUREAU

WASHINGTON — Supreme Court nominee Clarence Thomas, in the first day of confirmation hearings, refused to say whether the constitutional right to privacy includes a woman's right to terminate her pregnancy.

"There is a right to privacy," Thomas testified yesterday. "The issue of marital privacy is protected," but "I do not think I could maintain my impartiality and comment" on abortion.

Thomas, whose views have made him the most controversial choice for the nation's highest court since Robert H. Bork, emphasized his personal story rather than opinions or judicial

attitudes.

His testimony under sharp questioning was often vague, and sometimes seemed to contradict previous statements, fueling hopes among opponents that they might be able to stop him from being confirmed.

"He seemed to be sprinting from his record," said Ralph Neas, director of the Leadership Conference on Civil Rights. "I now believe there's a chance to stop this nomination."

Thomas' handlers, meanwhile, were upbeat. "Things went very well," said White House aide Ken Duberstein. Added Sen. John Danforth, R-Mo.: "It's now clear he's not some scary guy with his own agenda."

Even liberals had to acknowledge

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the political and personal power of Thomas' opening statement, in which he played to his strong suit, describing what it was like growing up poor and black in Georgia.

"I watched as my grandfather was called 'boy,'" said Thomas, his voice cracking. "I watched as my grandmother suffered the indignity of being denied the use of a bathroom."

Seated behind him, his wife, Virginia, was in tears. It was a performance which none of the senators — mostly wealthy and all white — could challenge.

"Let's just stipulate," said Senate Judiciary Committee Chairman Joseph Biden, D-Del., "that you're honest, decent and fair."

Instead, liberals targeted Thomas' judicial philosophy, primarily his belief in "natural law," the notion that a higher moral code of right and wrong can transcend written laws.

Opponents fear his advocacy of such higher laws that transcend the Bill of Rights and Constitution could be used to outlaw abortion. Thomas promised to stick to written laws and precedents.

"I don't think natural law has an appropriate use in constitutional adjudication," including the question of abortion, he said.

However, opponents seized on his



CLARENCE THOMAS: "I watched as my grandfather was called 'boy.'"

apparent backpedaling over several previous speeches and articles, including an endorsement of a scholar's argument against abortion, to raise questions about his credibility.

The apparent contradictions between his record and his testimony, and the mystery of Thomas' judicial philosophy, fueled concerns of liberals on the committee.

Sen. Howard M. Metzenbaum, D-

O., called Thomas' testimony "quite inconsistent." Biden told Thomas: "You leave me with more questions than answers."

Sen. Howell Heflin, D-Ala., dubbed the hearings the "doubting Thomas" hearings. "We are the doubters," he told Thomas.

Several senators — including Metzenbaum — have said their votes to confirm or reject Thomas depend primarily on how he addresses the abortion issue.

"We've danced around the question" for years, said Sen. Patrick Leahy, D-Vt. It is "one of the burning social issues of our time ... the single issue about which this committee and the American people most urgently wish to know the nominee's views."

But Thomas insisted his advocacy of "natural law" had been nothing more than "philosophical musings."

He said he recognized the constitutional right to marital privacy that underlies Roe vs. Wade, but he refused to say what position he would take on abortion.

He said he couldn't comment and also maintain his impartiality. But he did say: "I don't think a judge's personal opinions should play a role in deciding cases."

Specifically, Thomas said that when he praised as "splendid" a conservative scholar's use of natural law to argue against abortion, he had only been playing to his audience, a group of conservatives. He said he

hoped to convince the conservatives at the Heritage Foundation to use the same kind of reasoning to bolster laws protecting civil rights of minorities.

"I used their themes ... to serve the purposes" of promoting better civil rights laws, he said.

Some critics thought that sounded like dissembling.

"He's changed his tune, completely denounced his philosophy of the last decade," said Nan Aron, director of a liberal group, the Alliance for Justice. "The key problem he faces now is credibility."

In his opening statement, Thomas sought to defuse some of the criticism against him.

He acknowledged his debt to Rosa Parks, civil rights leaders, and he even praised Thurgood Marshall, whom he would replace, as "one of the great architects of legal battles to open doors" for minorities.

The hearings are to continue for several weeks.

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A10

Mfume has doubts on Thomas

■ Hopes nominee will answer the tough questions.

By John Fairhall
Evening Sun Staff

WASHINGTON — Like many Americans who are curious about Supreme Court nominee Clarence Thomas, Maryland Rep. Kweisi Mfume is looking for clues in the Senate confirmation hearing.

Mfume, D-7th, is neutral on Thomas' nomination. Although the majority of the Congressional Black Caucus voted to oppose the nomination, Mfume did not vote, despite

reservations about Thomas.

"Now I have some very serious problems," Mfume said yesterday, listing concerns about Thomas' views on abortion, affirmative action and the 1954 Supreme Court case that led to school desegregation.

Mfume said he hopes the hearing will bring out information on Thomas' past performance as head of the Equal Employment Opportunity Commission and his current role as a federal appellate court judge.

"I think many people have been neutral in this because Clarence Thomas has been a question mark to many people."

Some black leaders have been

willing to support Thomas, despite misgivings, because he is black.

Mfume said Thomas' views, not his race, are the issue that concerns him.

Mfume's background is not unlike Thomas' in that both men overcame poverty and other obstacles. Acknowledging this, Mfume questioned whether Thomas recognizes the sacrifices of previous generations.

"They laid down their bodies, made their bodies a bridge so we could run across," Mfume said.

"I haven't forgotten that and I don't know if Clarence Thomas has or not."