

Senators take advocates to task

WASHINGTON (CNS) — Two senators who often support abortion-rights legislation chastised four abortion-rights advocates who urged rejection of Supreme Court nominee Judge Clarence Thomas.

The senators said the panelists, who testified Sept. 19, were overdramatizing the importance of abortion in the confirmation process.

On the seventh day of Senate Judiciary Committee hearings, Thomas' nomination was vehemently opposed by representatives from Planned Parenthood and the National Abortion Rights Action League, former Vermont Gov. Madeline Kunin, and Sarah Weddington, the attorney who brought the original *Roe vs. Wade* case. That case led to legalized abortion in the United States.

All four witnesses said they thought Thomas would rule to overturn *Roe vs. Wade*. In response to a question from Sen. Herb Kohl, D-Wis., all four said no nominee to the high court should be confirmed without clearly stating support for the right to legal abortion.

None of the major pro-life organizations

was scheduled to testify at the hearings. Spokeswomen for National Right to Life and Americans United For Life said their organizations did not ask to testify.

"We don't think his views on abortion are relevant," said Americans United For Life spokeswoman Wendy Stone. "The other side is the one with the litmus test on this issue."

Committee chairman Sen. Joseph Biden, D-Del., took issue with NARAL executive director Kate Michelman's characterization of Thomas' views as extremist. Biden acknowledged that some of Thomas' statements were ambiguous. But he said the nominee had not endorsed the view that a natural law interpretation of the Constitution would protect all life from the moment of conception.

Biden, who had questioned Thomas on the subject at great length, said panelists were reading too much into a 1987 quote from Thomas. In a civil-rights speech to the conservative Heritage Foundation, Thomas said an article by foundation founder Lewis Lehrman included "a splendid example of the application of natural law."

Biden said the comment did not amount to an endorsement of the theory, only the use of an example.

"I could make the same exact statement and it would be consistent with my views," he said. "No responsible person would draw the conclusion that I support natural law."

Panelists argued that Thomas' use of the word "splendid" constituted support for Lehrman's thesis.

Moments later Sen. Alan Simpson, R-Wyo., another committee member who also often supports abortion-rights legislation, cited polls showing that most Americans do not think abortion should be a deciding factor in the Thomas nomination.

Simpson said the panelists — as well as some people who oppose legalized abortion — have turned the issue into "high drama," insisting that the abortion question is "the end of the earth."

"These things are a disservice to the debate" that continues among legislative bodies, he said.

Despite a widely held assumption that the majority of the court's current mem-



AP/Wide World Photos
Supreme Court nominee Clarence Thomas greets his former eighth-grade teacher, Sister Virgilius Reidy, as she arrived on Capitol Hill Sept. 16 to attend Thomas' confirmation hearings before the Senate Judiciary Committee.

bers would be willing to overturn *Roe*, Michelman said, Thomas would be "the final nail in the cross."

"That is overly dramatic and untrue, based on his testimony," Simpson replied.

Hearings focus attention on principles of natural law

By Julie Asher
Catholic News Service

WASHINGTON — Senate confirmation hearings on Supreme Court nominee Clarence Thomas put the spotlight on the concept of natural law and its proper role in interpreting the U.S. Constitution.

Simply put, natural law is the philosophy that individuals have certain basic human rights that are based on universal moral principles or on "a higher law" that is not limited by the letter of the law.

St. Thomas Aquinas, a Dominican teacher and writer on virtually the whole range of philosophy and theology, is most often identified as one of the first proponents of natural law, which has roots in the writings of Aristotle.

For Aquinas, "Natural law is nothing other than the participation of eternal laws in rational creatures." He saw it as "the imprint of God's providential plan on man's natural reason."

To explain its place in civil lawmaking, adherents of natural law in the United States point to the clause in the Declaration of Independence stating, "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."

Adherents of natural law would argue that these fundamental rights must be protected by civil laws.

Two other approaches to interpreting the Constitution are "positivism" and "conventionalism." Positivism holds that the only basis for law is the will of the sovereign, which in the United States would be interpreted to mean the Constitution or the actions of elected officials. Conventionalism maintains that judicial interpretation should reflect the community's moral judgment.

Natural law is seen as moral norms corresponding to the nature of humanity. By

these norms, human beings order their conduct toward God, neighbor, society and themselves. The Catholic Church draws on natural law precepts to develop its moral principles.

According to the *New Catholic Encyclopedia*: "This law, which is rooted in human nature, is of divine origin, can be known by the use of reason, and binds all men having the use of reason. The Ten Commandments are declarations and amplifications of natural law. The primary precepts of natural law, to do good and to avoid evil, are universally recognized, despite differences with respect to understanding and application resulting from different philosophies of good and evil."

Those differences in philosophies of good and evil seem to give rise to tensions between conservatives and liberals over the role natural law has in constitutional interpretations.

At the Supreme Court level natural law

principles have been:

- Invoked to both justify and castigate slavery.
- Seen as both synonymous and antithetical to civil rights and civil liberties.
- Used to demand equal rights for women and also to deny them.
- Employed both by the Supreme Court's "liberal stalwart" Justice William J. Brennan Jr. and conservative politician Lewis Lehrman. Supreme Court Justice Thurgood Marshall called upon natural law in his 1954 decision in *Brown vs. the Board of Education*. That decision mandated school desegregation. Thomas, nominated to succeed Marshall on the high court, has also made reference to natural law.

One school of thought would use natural law to defend the right to life of the unborn and another to defend economic rights. In an early opinion the Supreme Court used natural law to exalt property rights to the detriment of basic human rights.

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