

many years, and we are honored and privileged to have him here with us today.

Mr. Kirkland, we would appreciate it if you could summarize your remarks in 5 minutes or as close to 5 minutes as possible.

**STATEMENT OF LANE KIRKLAND, PRESIDENT, AFL-CIO,
ACCOMPANIED BY LAWRENCE GOLD, GENERAL COUNSEL**

Mr. KIRKLAND. Thank you, Mr. Chairman.

I have submitted a full statement for the record. I will give you a summary as briefly as I can. I have with me Lawrence Gold, who is the general counsel of the AFL-CIO, and a frequent practitioner before the Supreme Court and knowledgeable on legal matters that are too esoteric for me.

Mr. Chairman, members of the committee, thank you for the opportunity to testify on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

In early August, the AFL-CIO, acting through its executive council, determined to oppose Judge Thomas. Our determination was based on a careful study of his record as a Government official and as a participant in the ongoing public debate over the future direction of the country. What we found was deeply disturbing from the perspective of the trade union movement and of the working men and women who comprise trade unions.

For most of the past 10 years in his role as EEOC Chairman and as a writer and a speaker on issues of the day, Judge Thomas has fervently championed the ideological agenda of the far right and has done so without deviation. This committee has questioned Judge Thomas regarding his extreme ideological rhetoric and his attacks on the role of Government in defense of the least privileged of its citizens.

You sought the specifics behind his alarm that the Nation is—and I quote—“careening with frightening speed toward collectivism, coercive centralized planning, and a statist-dictatorial system”. You have examined his attacks on such perceived enemies of the right as Franklin Roosevelt and his “later-day political heirs”, and particularly the judge’s scorn for their “attack on property rights”. And you have reviewed with Judge Thomas his writings that expound his view that—quoting again—“the government’s role is to assure a climate in which business can flourish and then stand back and stay out of the way.”

These quotations on their face, and as Judge Thomas has elaborated on their meaning, are sufficient to explain our opposition to his nomination. Judge Thomas quite simply has a misunderstanding, in our view, about America’s historical experience, the role of democratic government in enabling Americans to create a more just and humane civil society, and the value of the social programs designed to meet the legitimate needs of the average working American.

Our child labor laws, environmental laws, securities and banking laws, and product safety and workplace safety laws are examples of the kind of Government action we take for granted today and that Judge Thomas has scorned.

From the building of the intercontinental railroads to the space program, from Social Security to the GI Bill of Rights, and from the Fair Labor Standards Act to the Occupational Safety and Health Act, the truth of the matter is that the Government's role has been to address social and economic problems in a way that ameliorates the abuses and failings of the marketplace and thereby strengthens it, and also recognizes our human needs.

Judge Thomas does not grasp that truth. His public statements and writings assert that this body of legislation is not merely un-sound but repugnant. In his view, these basic statements about reciprocal obligations to each other are "antithetical to freedom".

Judge Thomas' idea that democratic government actions dangerously erode property rights is an absurd and dangerous one in the modern era. Just ask the families of those 25 workers who died behind locked doors a couple of weeks ago in an uninspected North Carolina chicken plant. They don't believe that assuring an employer's unfettered property rights is the answer to all social problems. They just want to know why their Government did not even attempt to protect the basic human rights of their loved ones, particularly their right to life, liberty and the pursuit of happiness.

One of the Supreme Court's primary functions is to interpret the statutory enactments I have just enumerated. It defies reason to believe that Judge Thomas will understand and transmit with full and sympathetic discernment the meaning of the entire body of economic regulation he has so passionately attacked. That, we believe, is a more than sufficient reason for rejecting the nomination.

In light of his recent testimony before this committee, our belief that a person of Judge Thomas' views should not ascend to the Nation's highest court is now matched by a deep concern over the possibility that he will do so without having to discuss or defend those views as part of the Senate confirmation process.

The approach taken by Judge Thomas and the administration threatens to turn these hearings into an empty ritual rather than an integral part of a joint executive branch/legislative branch decision on the composition of the judicial branch.

Judge Thomas has refused either to disavow or accept any of his past hard right rhetoric and has sought to dismiss nearly ten years of his public life as beside the point because he was serving in the executive branch and not in his impartial role as a judge.

I hope it has occurred to more than a few people in this room that Judge Thomas' role as a judge is not the reason he was nominated to the Supreme Court. Eighteen months and 20 opinions do not a justice make.

Rather, Judge Thomas' accomplishments, and we believe the basis upon which he was selected by the President, are as a gladiator in the ideological arena. His pamphleteers' ability to reduce complex questions to caricatures and to belittle those who have a different social vision made him a hero of the right and its candidate for Justice Marshall's seat. But admitting that this was the basis of his selection and will be the basis of his judicial decisions would be a fatal blow to the nomination. Consequently, Judge Thomas' calculated strategy—or that of his "handlers"—is to avoid all responsibility for prior public statements and positions; tell them as little as possible of substance; assert a sweeping and strip-

ping mental expunging of very recent, strongly-expressed views—a most unconvincing display of self-abnegation.

This transparent effort to create an image of moderation and open-mindedness out of a record that demonstrates their very opposites strongly suggests mental reservation and a purpose of evasion.

Such manipulation of the confirmation process debases the public discourse and denies the Senate its constitutional prerogative to advise and consent on Supreme Court nominees.

The AFL-CIO does not believe the Senate should acquiesce to the President in his plan to make the Supreme Court—the nine persons, the highest nonelected office in our land, the nine persons who now have the virtual power by interpretation to rewrite the Constitution for our times—the unchallenged preserve of a narrow and privileged segment of American opinion.

We respectfully ask that the committee reject the nomination of Judge Clarence Thomas.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kirkland follows:]