The CHAIRMAN. Well, I say to our colleagues from the other body, welcome. Maybe it is more often from your perspective than you would like to think that you have had to come over here and sit around and just wait, and I appreciate it very much. I hope my colleagues understand that we have not been able to, with great precision, indicate when any one panel would be up.

And I want to thank my Republican friends on the committee because we have been going back and forth, a pro panel, a negative panel, a pro again, et cetera. But understanding the incredible constraints on the time of each of our five colleagues from the House side, our Republican friends have agreed to take out of order in the sense that we would have two pro panels in a row.

And we have a genuine array of talent, and also of power on the House side. It is not often we get you before us like this to have all of you there. We are going to keep you 5 or 6 hours, ask you a lot of questions about things that don't have anything to do with this nomination, and I am going to put Conyers under oath and make sure we find out what we do on some of this stuff. He is the toughest ally and toughest opponent on the Judiciary Committee. I know it is not going anywhere unless I get his agreement before it goes.

But at any rate, testifying are the Honorable John Conyers, Jr., from Detroit, MI, representing the 1st District; the Honorable Louis Stokes from Shaker Heights, OH, representing the 21st District; the Honorable Major Owens from Brooklyn, NY, representing the 12th District of New York; the Honorable Craig A. Washington from Houston, TX, representing the 18th District; and the Honorable John Lewis from Atlanta, GA, representing Georgia's 5th District.

Gentlemen, we are indeed honored to have you here and we know how difficult it is for your time because you have equally as many calls upon your time as any member of this committee. Obviously, it is important to you or you wouldn't be here.

Let me yield to the panel and suggest however you all would like to begin, it is up to you. Do you have any preferred order of who would go first?

Mr. CONYERS. No.

The CHAIRMAN. All right. Congressman Conyers, welcome, and we are anxious to hear what you have to say.

STATEMENTS OF A PANEL CONSISTING OF HON. JOHN CONYERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; HON. LOUIS STOKES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO; HON. MAJOR OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK; HON. CRAIG WASHINGTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; AND HON. JOHN LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA, ON BEHALF OF THE CONGRESSIONAL BLACK CAUCUS

Mr. CONYERS. Thank you very much, Chairman Biden. It is a pleasure and honor for us to appear here today. We represent here, with myself and Louis Stokes and Major Owens, Craig Washington and John Lewis, the Congressional Black Caucus, which was estab-

lished 21 years ago to protect and advance the interests of African-Americans here in Congress.

We have been democratically chosen to represent the views of our constituents for quite a number of years. We chair 5 full committees and 13 subcommittees, and we come here today as a group sorry to report that our assessment of Judge Thomas' stewardship of key agencies administering civil rights laws is that he has flunked the test.

The record is clear. While at EEOC, the Equal Employment Opportunity Commission, Judge Thomas was, in fact, a lawless administrator, failing to enforce civil rights laws and substituting his own vision for civil rights enforcement. This has been documented in his extraordinary 56 appearances before the Congress. Most of these appearances were controversial, and much of the record expressed exasperation of members of House committees with his administration of the law, as documented in the several General Accounting Office reports on his stewardship.

There are several major issues. One is the issue of credibility, and let me get straight to the point. You are confronted with the dilemma of the enigma of Clarence Thomas. Is he the pugnacious conservative who didn't hesitate to espouse his hostility to traditional civil rights remedies, his support for natural law, his opposition to abortion, his contempt for Congress? Or he is really the moderate trying to get confirmed to the Supreme Court who is retreating from virtually every controversial statement that he has ever made?

It is an important issue, this one of credibility. He couldn't remember personally ever engaging in a discussion about *Roe* v. *Wade* since 1972. However, in 1987, in a news article in the Chicago Defender, Judge Thomas stated that there was a tremendous overlap of the conservative Republican agenda and black beliefs on abortion, however incorrect that statement may be.

In the 1989 Harvard Journal of Law on Public Policy, in a critique of judicial activism he wrote that the current case provoking the most protest from conservatives is *Roe* v. *Wade.* Is it credible, then, to believe that he has never discussed this case?

On the issue of the South Africa connection, he told the committee that he was not aware of the representation of South Africa by Mr. Jay Parker, a friend whom he has described as a mentor or hero. But Newsday has reported that in an EEOC staff meeting in 1986, Judge Thomas entered the meeting with a newspaper outlining Parker's relationship with South Africa and discussed for 45 minutes the representation of South Africa by Parker.

In 1987, again, according to the Foreign Agents Registration Act, Judge Thomas attended a dinner for the South African ambassador arranged by Mr. Parker's agency to permit the Ambassador to influence Judge Thomas and other black officials. If Parker was at the dinner, the act requires that Parker inform Thomas that Parker was a paid agent, and I think this issue deserves quite a bit more attention.

There is the whole question of stonewalling before this committee. We have the additional issue of the attack on equal employment opportunity and affirmative action. We are dealing here with a nominee who has literally no private legal experience. He has

only 18 months on the bench, and the most that we have from his record is about 9 years in the executive branch. We ask that our statement be incorporated and reproduced fully into the record.

The CHAIRMAN. Without objection, it will be.

Mr. CONYERS. Thank you. We go to the heart of this matter of his resistance not only before the congressional committees, but even before courts where he was brought for noncompliance. The General Accounting Office has documented very critically many of the acts that he has committed that resist the implementation of law and lead us to conclude that we might not be safe with him as a guardian of those laws that seek enforcement derived from the Constitution.

I close on this point, many have dwelled on the fact that he is an African-American nominee. I would like to point out to you that if, contrary to the views of the Congressional Black Caucus, the Progressive Baptist Church organization, the Convention of Baptist Organizations, the NAACP, State black caucuses of elected officials, the labor movement which includes many African-American leaders—if he were to go on the bench, it is unlikely that any administration within our lifetime would appoint another African-American jurist to this high post.

And so we come here to ask you to apply the same standards that we had to apply. This debate has elevated the critical evaluation of blacks in America about how we choose to support our leaders, and it seems to me that we have made this decision without reference to his race. We come to this conclusion independently, and we urge, as a result of our examination of the record, our experiences with him as members of Congress, that you very definitely reject the nomination of Judge Clarence Thomas.

Thank you very much for this opportunity.

[The prepared statement of Mr. Conyers follows:]

Office of

CONGRESSMAN JOHN CONYERS, JR.

First District, Michigan

FOR RELEASE
1:00 PM, SEPTEMBER 19, 1991

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STATEMENT OF THE HONORABLE JOHN CONYERS, JR.

SENIOR MEMBER, CONGRESSIONAL BLACK CAUCUS

ON THE NOMINATION OF JUDGE CLARENCE THOMAS

AS ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

The Congressional Black Caucus was established twenty-one years ago to protect and advance the interests of African Americans here in Congress. We have been democratically chosen to represent the views of African Americans themselves. As Members of the House we are highly sensitive to the views of our constituents, who get unusually frequent opportunities to inform us of their opinions.

Our members include the chairs of five full committees and the chairs of thirteen subcommittees. We have exercised close oversight over the implementation of civil rights laws. I am sorry to report that our assessment of Judge Thomas's stewardship of key agencies administering these laws, is that Judge Thomas has flunked the test.

The record is clear, while at EEOC Judge Thomas was a lawless administrator, failing to enforce civil rights laws, and substituting his own vision of civil rights enforcement. This has been documented in his extraordinary 56 appearances before Congress. Most of these appearances were controversial and much of the record expressed exasperation of the members of House Committees with his administration of the law, as documented by several GAO reports on his stewardship.

THE CASE OF THE TWO CLARENCES': AN ISSUE OF CREDIBILITY

Let me get straight to the point. The members of this committee are confronted with a dilemma. Clarence Thomas is an enigma. Is he the pugnacious conservative who did not hesitate to espouse his hostility to traditional civil rights remedies, his support for natural law, opposition to abortion and his contempt for Congress? Or is he really the moderate trying to get confirmed to the Supreme Court, who is retreating from virtually every controversial statement he ever made? It is an important issue of credibility.

Clarence Thomas testified that "I cannot remember personally engaging" in any discussion about Roe v. Wade and "I do not have a personal opinion on the outcome in Roe v. Wade." However, in 1987 in the Chicago Defender, Judge Thomas stated that there was "tremendous overlap of the conservative Republican agenda and Black beliefs on abortion". In the 1989 Harvard Journal of Law and Public Policy in a critique of so-called judicial activism, Clarence Thomas wrote that "the current case provoking the most protest from conservatives is Roe v. Wade." Is it credible to believe then that Clarence Thomas never discussed Roe v. Wade?

MORE

Concerning the Griggs decision, Thomas declared:
"We have permitted sociological and demographic realities to be manipulated to the point of surreality by convenient legal theories such as adverse impact."

These are not the comments of a reasoned jurist who happens to have a different point of view on affirmative action. They are the comments of a man whose imprudent remarks could destroy the delicate fabric of racial tolerance we have carefully developed in the country.

ATTACK ON THE VOTING RIGHTS ACT

Clarence Thomas has demonstrated a hostility to the one law which is most responsible for most members of the Congressional Black Caucus, the Voting Rights Act.

Judge Thomas in a fundamental misunderstanding of the law attacked the Voting Rights Act in a speech at the Tocqueville Forum in April 18, 1988, saying:
"Many of the Court's decisions in the area of voting rights have presupposed that blacks, whites, Hispanics, and other ethnic groups will inevitably vote in blocs."

This is simply untrue. As members of this committee know our intent was that the burden is on the plaintiff to demonstrate racial bloc voting does occur, as several cases, most notably Thornburg v. Gingles, have affirmed.

He has also criticized the effects test in the Voting Rights Act as unacceptable. This test has formed the cornerstone of the Voting Rights Act, and is largely responsible for the increase in the number of black elected officials around the country.

FAILURE TO ENFORCE THE LAW AT EEOC

This committee is aware that while Clarence Thomas was chairman of the EEOC over 13,000 age discrimination cases were not investigated within the two year statute of limitations period. As a result, older workers lost their right to pursue their claims in court. I would like to briefly talk about one important episode on this issue since it was investigated by one of the subcommittees of the House Government Operations Committee which I chair.

The head of the St. Louis EEOC office, Lynn Bruner, commented publicly in 1988 that EEOC's failure to investigate age discrimination cases was wide spread, thus allowing these cases to lapse in every EEOC district office.

Ms. Bruner was asked to testify on this issue before the Senate Special Committee on Aging. The night before her testimony, she received a negative performance rating, the first one in her career, and was specifically criticized for making comments to the press which "present Chairman Thomas in a negative light."

Despite this evaluation, Ms. Bruner testified on June 23, 1988 that she had repeatedly alerted EEOC headquarters to the urgent problem of age discrimination charges not being investigated, however, EEOC under Clarence Thomas failed to act. Four days after this testimony, Ms. Bruner was visited by Polly Meade, the Director of Performance Services from EEOC headquarters in Washington, who reported directly to Judge Thomas. According to Ms. Bruner, Ms. Meade spoke disparagingly of her Senate testimony, stated that she was in trouble and intimated that Ms. Bruner would not be in her job much longer.

It was not until two months later, when Judge Thomas was about to be nominated for the Court of Appeals for the District of Columbia, that he phoned one of my subcommittees indicating that he had changed his mind and would withdraw the negative evaluation.

On the issue of South Africa, he told this committee, "I was not aware, again, of the representation of South Africa itself by Jay Parker." However, Newsday has reported that at an EEOC staff meeting in 1986, Clarence Thomas entered the meeting with a newspaper article outlining Parker's relationship with South Africa, and discussed for 45 minutes the representation of South Africa by Parker, according to former Thomas aides. In 1987, according to Foreign Agents Registration Act records, Thomas attended a dinner for the South African ambassador arranged by Jay Parker, apparently to lobby the South African ambassador.

I am not here to suggest that Clarence Thomas was personally involved in representing South Africa. However, it is beyond belief that he was unaware that his close friend and mentor Jay Parker was representing South Africa. What did he think he was doing dining with the South African ambassador? Just shooting the breeze? These are important issues of credibility.

None of us knows which Clarence Thomas we will get on the Supreme Court. But the stakes are too high for the committee to roll the dice when the lives of all racial minorities in this country hangs in the balance. If, as his view suggest, he continues to oppose class action law suits, affirmative action, Roe v. Wade, and the Voting Rights Act, nothing can be done once he is on the Court for life. Now is the only time to act.

Stonewalling Members of the Senate Judiciary Committee

Clarence Thomas's selective stonewalling of this Committee threatens to undermine the integrity of the confirmation process. Clarence Thomas says it would be inappropriate for him to discuss a range of issues, including abortion because these issues may come before the Court one day.

On the other hand, he has freely offered that he has no philosophical objections to school prayer and the death penalty. He cannot have it both ways.

If Judge Thomas is permitted to decide for himself which issues he will address and which issues he will not, then the confirmation process becomes merely window dressing for the politically popular views of the present administration. In addition, every other nominee from this day forward will do exactly the same thing.

ATTACK ON EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Judge Thomas refuses to recognize that civil rights is now a systemic problem that requires systemic solutions like affirmative action. Yet, the most disturbing aspect of Judge Thomas's opposition to affirmative action is that he has challenged the Constitutional authority and the integrity of the Congress to even consider affirmative action and other solutions to remedying the widespread discrimination that continues to exist in this country.

In the Fullilove decision, upholding Congress's effort to provide a remedy for the longstanding exclusion of minorities from opportunities to become government contractors, Thomas said:

> "Not that there is a great deal of principle in Congress itself. What can one expect of a Congress that would pass the ethnic set-aside law the Court upheld in Fullilove v. Klutznick."

Regarding affirmative action generally, Thomas stated:

> "It is just as insane for blacks to expect relief from the Federal government for years of discrimination as it is to expect a mugger to nurse his victims back to health. Ultimately, the burden of being mugged falls on you."

> The Senate Special Committee on Aging Report found that: "The EEOC misled the Congress and the public on the extent to which ADEA charges had been permitted to exceed the statute of limitations."

Senator Pryor, the current Chairman of the Committee, made it clear that the misrepresentations were those of Clarence Thomas, by stating, "I was dismayed to learn about several erroneous statements made by Chairman Thomas...Those statements are certainly misleading..."

Judge Thomas's actions at EEOC illustrate his lack of commitment to First Amendment, to protecting whistleblowers, to protecting victims of age discrimination, and enforcing our equal opportunity laws. The conclusion that we are compelled to reach is that Judge Thomas has failed to carry out the constitutional obligation of members of the Executive Branch to "take care that the laws are faithfully executed" and that he exhibited a pervasive disrespect for Congress and the legislative process.

Finally, let me say that Clarence Thomas's past record and his stated views are threats to the best interests of African Americans. We do not oppose Judge Thomas for any other reason than his record. I opposed Judges Haynsworth, Carswell, Bork, and Kennedy -- not because of their race, but because they espoused a judicial philosophy which if implemented would reverse civil rights progress we have made in this country over the last three decades.

Similarly, you should not support a nominee merely because they are black. The issue is not race but merit. On the merits, Thomas should be rejected.

JC-102-001-009

G:THOMAS.PR

The CHAIRMAN. Thank you very much.
Congressman Stokes.

STATEMENT OF HON. LOUIS STOKES

Mr. STOKES. Mr. Chairman and members of the committee, I also deem it a pleasure and an honor to appear before you this afternoon.

Our appearance here today, while born in necessity, is also born in pain. When Judge Thomas shared with you the touching experience of his boyhood in Pin Point, GA, he evoked in each of us the memory of similar boyhoods in our own families.

While we were not born in Pin Point, we share with him the like and similar circumstances of ill-housing, poverty, mothers who were maids, and grandparents without whom we or our mothers could not have made it.

Not just Judge Thomas and members of the Congressional Black Caucus have shared this common experience. A majority of black Americans who have achieved in this society have shared both the poverty, segregation and the racial indignities which emotionally overcame Judge Thomas when he testified.

The difference between Judge Thomas and most black Americans who have achieved, in spite of poverty, adversity, and racism, is that most of them have not forgotten from whence they have come. Whenever possible, they have used their educations and positions of achievement to help eliminate from our society these barriers to equal opportunity, liberty, and justice. It is almost unheard of to see them utilize their educations and positions to impede the progress of those less fortunate than they.

When Justice Thurgood Marshall retired, Chairman Biden was quoted as saying, and I quote,

> The Supreme Court has lost a historic Justice, a hero for all time. I hope the President will nominate a replacement who is worthy of this great man's place in the Court and in our hearts.

As African-Americans, we not only wanted to see another worthy person replace him; we wanted to see another qualified black American replace him. Justice Thurgood Marshall is a legend in America. As the NAACP's top lawyer, he traveled the length and breadth of this Nation, winning hundreds of civil rights victories in one courtroom after another.

He was America's greatest constitutional lawyer, having won 29 of 32 cases he argued in the U.S. Supreme Court. Each case he won whittled away at some barrier to equality and justice confronting African-Americans. As NAACP lawyer, solicitor general, judge of the court of appeals, and Supreme Court Justice, Thurgood Marshall became a giant in American law.

I said to you earlier that our appearance here, while born in necessity, is also born in pain. We are pained because as much as we would like to see the diversity that another black American would bring to the Court, Judge Thomas is not the man.

Our opposition to Judge Thomas does not derive from his being in a different political party. Indeed, we expect the President to nominate a person from his own party. In fact, a well-respected Republican, Gary Franks, is a member of the Congressional Black Caucus.

We do not believe or expect that ideological conformity or strategic agreement is required of African-Americans in public service. What is required in our fight for justice is a demonstrated commitment to the broad, bipartisan approaches that have been adopted by Republicans, Democrats, blacks, whites, Hispanics, women, and many others alike.

The record of Judge Thomas shows a firm and consistent opposition to many of those things our people need most urgently. We cannot ignore or excuse Clarence Thomas' record, views, and values merely because he is an African-American. His view of constitutional rights, as he has articulated them as jurist, administrator and before the nation's press, are inconsistent with the interests of the people we serve.

Americans, in general, cannot afford to invest their future in the hope that Clarence Thomas will change once he sits on the Supreme Court. We would not be credible if we had a standard built upon the race of the nominee. We believe that the same standard must be applied to Thomas that we applied to Robert Bork when we opposed his nomination.

As Members of Congress, we know Judge Thomas and we know his record. He has testified before congressional committees more than 50 times. Most of his appearances were controversial and much of it expressed the exasperation of House committees with his administration of the law.

How Judge Thomas has viewed his legal responsibilities in the past is the best evidence of how he would perform as a Supreme Court Justice. The conclusion we have reached is that Judge Thomas failed over that period of time to carry out the constitutional obligation of members of the executive branch to take care that the laws are faithfully executed and that he exhibited a pervasive disrespect for Congress and for the legislative process.

Our conclusion, which is amply supported by the evidence, is that his 9 years in the executive branch is almost all of the experience that Clarence Thomas has to offer in support of the proposition that he is qualified to sit on the Supreme Court. Far from assisting his candidacy, the performance of Judge Thomas as a Federal official provides powerful reasons why he should not be confirmed.

In asking you to reject his nomination, we must ask you to hold President Bush to the same standard demonstrated by President Lyndon Banes Johnson, who, when the time came for a black appointee to the Court, nominated the best constitutional lawyer in America. Moreover, his nominee had a demonstrated commitment to the values of this Nation in protecting the less fortunate in our society. Judge Thomas does not meet this criteria.

I thank you.

[The prepared statement of Mr. Stokes follows:]

REMARKS OF

THE HONORABLE LOUIS STOKES (D-OH)

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
CONFIRMATION HEARINGS ON JUDGE CLARENCE THOMAS

SEPTEMBER 19, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I ALSO DEEM IT A PLEASURE TO APPEAR BEFORE YOU THIS AFTERNOON. OUR APPEARANCE HERE TODAY, WHILE BORNE IN NECESSITY, IS ALSO BORNE IN PAIN.

WHEN JUDGE THOMAS SHARED WITH YOU THE TOUCHING EXPERIENCE OF HIS BOYHOOD IN PINPOINT, GEORGIA, HE EVOKED IN EACH OF US THE MEMORY OF SIMILAR BOYHOODS IN OUR OWN FAMILIES. WHILE WE WEREN'T BORN IN PINPOINT, WE SHARE WITH HIM THE LIKE AND SIMILAR CIRCUMSTANCES OF ILL HOUSING, POVERTY, MOTHERS WHO WERE MAIDS, AND GRANDPARENTS WITHOUT WHOM WE AND OUR MOTHERS COULD NOT HAVE MADE IT.

NOT JUST JUDGE THOMAS AND MEMBERS OF THE CONGRESSIONAL BLACK CAUCUS HAVE SHARED THIS COMMON EXPERIENCE. THE MAJORITY OF BLACK AMERICANS WHO HAVE ACHIEVED IN THIS SOCIETY HAVE SHARED

BOTH THE POVERTY, SEGREGATION AND THE RACIAL INDIGNITIES WHICH EMOTIONALLY OVERCAME JUDGE THOMAS WHEN HE TESTIFIED. THE DIFFERENCE BETWEEN JUDGE THOMAS AND MOST BLACK AMERICANS WHO HAVE ACHIEVED IN SPITE OF POVERTY, ADVERSITY AND RACISM IS THAT MOST OF THEM HAVE NOT FORGOTTEN FROM WHENCE THEY HAVE COME.

WHENEVER POSSIBLE, THEY HAVE USED THEIR EDUCATIONS AND POSITIONS OF ACHIEVEMENT TO HELP ELIMINATE FROM OUR SOCIETY THESE BARRIERS TO EQUAL OPPORTUNITY, LIBERTY AND JUSTICE. IT IS ALMOST UNHEARD OF TO SEE THEM UTILIZE THEIR EDUCATIONS AND POSITIONS TO IMPEDE THE PROGRESS OF THOSE LESS FORTUNATE THAN THEY.

WHEN JUSTICE THURGOOD MARSHALL RETIRED, SENATOR BIDEN WAS QUOTED AS SAYING, "THE SUPREME COURT HAS LOST A HISTORIC

JUSTICE -- A HERO FOR ALL TIMES. I HOPE THE PRESIDENT WILL NOMINATE A REPLACEMENT WHO IS WORTHY OF THIS GREAT MAN'S PLACE IN THE COURT AND IN OUR HEARTS."

AS AFRICAN AMERICANS WE NOT ONLY WANTED TO SEE ANOTHER WORTHY PERSON REPLACE HIM, WE WANTED TO SEE ANOTHER QUALIFIED BLACK AMERICAN REPLACE HIM. JUSTICE THURGOOD MARSHALL IS A LEGEND IN AMERICA. AS THE NAACP'S TOP LAWYER, HE TRAVELLED THE LENGTH AND BREADTH OF THIS NATION WINNING HUNDREDS OF CIVIL RIGHTS VICTORIES IN ONE COURTROOM AFTER ANOTHER.

HE WAS AMERICA'S GREATEST CONSTITUTIONAL LAWYER, HAVING WON 29 OF THE 32 CASES HE ARGUED IN THE UNITED STATES SUPREME COURT. EACH CASE HE WON WHITTLED AWAY AT SOME BARRIER TO EQUALITY AND JUSTICE CONFRONTING AFRICAN AMERICANS. AS NAACP

LAWYER, SOLICITOR GENERAL, JUDGE OF THE COURT OF APPEALS, AND SUPREME COURT JUSTICE, THURGOOD MARSHALL BECAME A GIANT IN AMERICAN LAW.

I SAID TO YOU EARLIER THAT OUR APPEARANCE HERE, WHILE BORNE IN NECESSITY, IS ALSO BORNE IN PAIN. WE ARE PAINED BECAUSE AS MUCH AS WE WOULD LIKE TO SEE THE DIVERSITY THAT ANOTHER BLACK AMERICAN WOULD BRING TO THE COURT, JUDGE THOMAS IS NOT THE MAN.

OUR OPPOSITION TO JUDGE THOMAS IS NOT DERIVED FROM HIS BEING IN A DIFFERENT POLITICAL PARTY. INDEED, WE EXPECT THE PRESIDENT TO NOMINATE A PERSON FROM HIS OWN PARTY. IN FACT, A WELL RESPECTED REPUBLICAN, GARY FRANKS, IS A MEMBER OF THE CONGRESSIONAL BLACK CAUCUS.

WE DO NOT BELIEVE OR EXPECT THAT IDEOLOGICAL CONFORMITY OR

STRATEGIC AGREEMENT IS REQUIRED OF AFRICAN AMERICANS IN PUBLIC SERVICE.

WHAT IS REQUIRED IN OUR FIGHT FOR JUSTICE IS A DEMONSTRATED COMMITMENT TO THE BROAD BI-PARTISAN APPROACHES THAT HAVE BEEN ADOPTED BY REPUBLICANS, DEMOCRATS, BLACKS, WHITES, HISPANICS, WOMEN AND MANY OTHERS ALIKE.

THE RECORD OF JUDGE THOMAS SHOWS HIS FIRM AND CONSISTENT OPPOSITION TO MANY OF THOSE THINGS OUR PEOPLE NEED MOST URGENTLY. WE CANNOT IGNORE OR EXCUSE CLARENCE THOMAS' RECORD, VIEWS, AND VALUES MERELY BECAUSE HE IS AN AFRICAN AMERICAN.

HIS VIEW OF CONSTITUTIONAL RIGHTS AS HE HAS ARTICULATED THEM AS JURIST, ADMINISTRATOR AND BEFORE THE NATION'S PRESS ARE INCONSISTENT WITH THE INTERESTS OF THE PEOPLE WE SERVE.

AMERICANS IN GENERAL CANNOT AFFORD TO INVEST THEIR FUTURE IN THE HOPE THAT CLARENCE THOMAS WILL CHANGE ONCE HE SITS ON THE SUPREME COURT.

WE WOULD NOT BE CREDIBLE IF WE HAD A STANDARD BUILT UPON THE RACE OF THE NOMINEE. WE BELIEVE THAT THE SAME STANDARD MUST BE APPLIED TO THOMAS THAT WE APPLIED TO ROBERT BORK WHEN WE OPPOSED HIS NOMINATION.

AS MEMBERS OF CONGRESS, WE KNOW JUDGE THOMAS AND WE KNOW HIS RECORD. HE HAS TESTIFIED BEFORE CONGRESSIONAL COMMITTEES MORE THAN 50 TIMES. MOST OF HIS APPEARANCES WERE CONTROVERSIAL AND MUCH OF IT EXPRESSED THE EXASPERATION OF HOUSE COMMITTEES WITH HIS ADMINISTRATION OF THE LAW. HOW JUDGE THOMAS HAS VIEWED HIS LEGAL RESPONSIBILITIES IN THE PAST IS THE BEST EVIDENCE OF

HOW HE WOULD PERFORM AS A SUPREME COURT JUSTICE.

THE CONCLUSION THAT WE HAVE REACHED IS THAT JUDGE THOMAS FAILED OVER THAT PERIOD OF TIME TO CARRY OUT THE CONSTITUTIONAL OBLIGATION OF MEMBERS OF THE EXECUTIVE BRANCH TO "TAKE CARE THAT THE LAWS ARE FAITHFULLY EXECUTED" AND THAT HE EXHIBITED A PERVASIVE DISRESPECT FOR CONGRESS AND FOR THE LEGISLATIVE PROCESS.

OUR CONCLUSION, WHICH IS AMPLY SUPPORTED BY THE EVIDENCE, IS THAT HIS NINE YEARS IN THE EXECUTIVE BRANCH IS ALMOST ALL OF THE EXPERIENCE THAT CLARENCE THOMAS HAS TO OFFER IN SUPPORT OF THE PROPOSITION THAT HE IS QUALIFIED TO SERVE ON THE SUPREME COURT. FAR FROM ASSISTING HIS CANDIDACY, THE PERFORMANCE OF JUDGE THOMAS AS A FEDERAL OFFICIAL PROVIDES POWERFUL REASONS WHY

HE SHOULD NOT BE CONFIRMED.

IN ASKING YOU TO REJECT HIS NOMINATION, WE MUST ASK YOU TO HOLD PRESIDENT BUSH TO THE SAME STANDARD DEMONSTRATED BY PRESIDENT LYNDON B. JOHNSON WHO WHEN TIME CAME FOR A BLACK APPOINTEE TO THE COURT NOMINATED THE BEST CONSTITUTIONAL LAWYER IN AMERICA. MOREOVER, HIS NOMINEE HAD A DEMONSTRATED COMMITMENT TO THE VALUES OF THIS NATION IN PROTECTING THE LESS FORTUNATE IN OUR SOCIETY. JUDGE THOMAS DOES NOT MEET THIS CRITERIA.

The CHAIRMAN. Thank you very much, Congressman. Congressman Owens.

STATEMENT OF HON. MAJOR OWENS

Mr. OWENS. Mr. Chairman, I also want to thank you for the opportunity to appear before this committee during this set of historic hearings. In the time allotted to me, Mr. Chairman, I want to make two important points. First, Judge Thomas should not be confirmed because as a Federal official of the executive branch of Government, he consistently demonstrated an open contempt for law. For the youth of America and all people of the world who believe in rule by law, Judge Thomas is a monstrous negative role model.

My second point relates to the obligation I feel to communicate to you the deep feelings of my constituents concerning this nominee and the process which led to the placement of his name before this committee.

Judge Clarence Thomas is being rewarded for the loyal and obedient execution of the orders of two Presidents and his political party. In the process of carrying out those orders, Judge Thomas has trampled on certain legal principles which are vital for the survival of our people.

It is important that I place on the record the response of the great majority of African-American people to his behavior and the clever maneuvers of his sponsor, the President.

On the matter of Judge Thomas' contempt for law, let me make it clear that I speak from the experience of direct observation. As a member of the Education and Labor Committee, which has oversight responsibility for the Equal Employment Opportunity Commission, I served on numerous panels which heard testimony from Judge Thomas.

At this point, I would like to state for the record that there is a voluminous set of records of hearings and General Accounting Office reports which comprise a body of evidence too little analyzed or referred to since Judge Thomas was nominated.

Judge Thomas has testified before congressional committees an extraordinary 56 times. This large number of appearances does not simply reflect the judge's long tenure. Very little of Clarence Thomas' congressional oversight testimony was mere reporting or was otherwise routine. Most of it was controversial and much of it expressed the exasperation of House committees with his administration of the law.

In the same vein are 10 GAO reports, an unusual number, and most of them highly critical of the nominee's administration of the laws under his jurisdiction. It is Judge Thomas' actual professional record while serving in the government that should count most to the outcome of these deliberations. How Judge Thomas has viewed his legal responsibilities in the past is the best evidence of how he is likely to discharge them in the future.

The conclusion that we have reached is that Judge Thomas failed over that period of time to carry out the constitutional obligation of members of the executive branch to, quote, "take care that the laws are faithfully executed," end of quote, and that he exhibited a pervasive disrespect for Congress and for the legislative process.

Our conclusion, which is amply supported by the evidence, is all the more damning when it is recognized that his years in the executive branch constitute almost all of the experience that Judge Thomas has to offer in support of the proposition that he is qualified to serve on the Supreme Court.

Far from assisting his candidacy, the performance of Judge Thomas as a Federal official provides powerful reasons why he should not be confirmed. Two years ago, 14 Members of the House of Representatives, including 12 chairs of committees having jurisdiction over the EEOC and 5 members of the Congressional Black Caucus, wrote to President Bush asking that Clarence Thomas not be nominated to the court of appeals.

After reviewing the record, the writers of the letter said that Thomas had, quote, "resisted Congressional oversight and been less than candid with legislators about agency enforcement policies," end of quote. These Members of Congress concluded that Thomas had demonstrated an, quote, "overall disdain of the rule of law."

Time will not permit me to offer more detail on this point. However, pages 4 through 9 of the written statement of the Congressional Black Caucus does provide amplification for this argument.

Like numerous other Reagan administration appointees, Judge Thomas repeatedly displayed great contempt for the law. Although sworn to uphold and implement the law, Judge Thomas repeatedly delayed, sabotaged and blockaded the process of enforcement of the laws entrusted to his administration.

In this pattern of behavior, Judge Thomas was certainly not unique among Reagan administration officials. For 8 years, contempt for the law was part of the style and the strategy of the executive branch of Government. Members of Congress repeatedly encountered this contempt for the law not only in the Equal Employment Opportunity Commission under Judge Thomas, but also in OSHA, EPA, the Department of Justice, and, as the whole world knows, on the National Security Council. Oliver North's separate government in the basement of the White House was the most visible and the most dangerous example of this contempt for law.

What must be recognized, however, by this committee is that the spirit of Oliver North was rampant throughout all of the units of the Reagan administration. As a Member of Congress, I regret very much the helplessness and inability of Congress to curtail and counteract the brazen contempt for law exhibited by so many executives who were sworn to uphold and implement the law. I pray that in the future we will find ways to guarantee that such a widespread hemorrhaging of the integrity of Government will never take place again.

But one giant step to restore respect for law, and thus resuscitate the vital moral authority of our Government, is a step that can be taken immediately by this committee and the Members of the Senate. Let it be clearly stated by this committee and this Senate that a new standard has been established that regardless of the desires of the President to reward the loyal and the obedient, any persons who have, in their public performance at any level of Government, displayed a contempt for the law shall not be sanctioned and confirmed for the Federal judiciary. In other words, the price of obeying orders instead of upholding and implementing the law

should be denial of the privilege of adjudicating and interpreting law.

In addition to his job performance, for example, before the youth of America and the people of the world. The nominee has used what could accurately be labeled as the equivalent of the Fifth Amendment as his run from his own record. What manner of Government are we, to tolerate people in high places who blatantly evade honest questions?

Finally, I would like to briefly convey to you the sentiments of my constituents on this nominee and the nomination process. I represent the 12th Congressional District of New York, which is 90 percent African-American. I have been a public official for more than 23 years, and I know how to read my constituents. The overwhelming reaction to the nomination of Clarence Thomas was one of disbelief and a sense of betrayal, and, among the youth, immediate bitterness.

If you want to truly understand the thoughts and feelings of the overwhelming majority of African-Americans in this country, then try to imagine how the French would have felt, if the collaborator Marshall Petain had been awarded a medal after the liberation of France in World War II, or if in Norway Quisling had been made a high official in the government. Try to put yourself in the place of a soldier in the Continental Army, after Valley Forge and all of the other difficult struggles, try to imagine the feelings of such a soldier, if he was forced to watch a ceremony where Gen. George Washington promoted Benedict Arnold to the level of a general. Imagine the tears in the eyes of those strong men that such an act would have generated.

The masses of black people judge Clarence Thomas as a man who has clearly and consistently stood against those legal principles, philosophies and ideas which are vitally necessary for our survival and continuing progress. The elevation of this man to the Supreme Court would be a gross insult, a cruel slap in the face of all African-Americans.

It is my plea that you and that the Senate should not acquiesce and permit the continuing erosion of the moral foundation of America. The Senate should not acquiesce and participate in the further trivializing of the Supreme Court of our Nation. On the appointment of Judge Clarence Thomas, it is my plea that the vote on confirmation be a clear and decisive no.

Thank you.

[Prepared statement follows:]

TESTIMONY OF CONGRESSMAN MAJOR OWENS BEFORE THE SENATE JUDICIARY COMMITTEE REGARDING THE CONFIRMATION OF JUDGE CLARENCE THOMAS – SEPTEMBER 19, 1991

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE DURING THIS SET OF HISTORIC HEARINGS FOR THE PURPOSE OF CONSIDERING JUDGE CLARENCE THOMAS FOR APPOINTMENT TO THE UNITED STATES SUPREME COURT.

IN THE TIME ALLOTTED TO ME, MR. CHAIRMAN, I WANT TO MAKE TWO IMPORTANT POINTS. FIRST, JUDGE THOMAS SHOULD NOT BE CONFIRMED BECAUSE AS A FEDERAL OFFICIAL OF THE EXECUTIVE BRANCH OF GOVERNMENT HE CONSISTENTLY DEMONSTRATED AN OPEN CONTEMPT FOR THE LAW. FOR THE YOUTH OF AMERICA AND ALL PEOPLE OF THE WORLD WHO BELIEVE IN RULE BY LAW JUDGE THOMAS IS A MONSTROUS NEGATIVE ROLE MODEL.

MY SECOND POINT RELATES TO THE OBLIGATION I FEEL TO COMMUNICATE TO YOU THE DEEP FEELINGS OF MY CONSTITUENTS CONCERNING THIS NOMINEE AND THE PROCESS WHICH LED TO THE PLACEMENT OF HIS NAME BEFORE THIS COMMITTEE. JUDGE CLARENCE THOMAS IS BEING REWARDED FOR THE LOYAL AND OBEDIENT EXECUTION OF THE ORDERS OF TWO PRESIDENTS AND HIS POLITICAL PARTY. IN THE PROCESS OF CARRYING OUT THOSE ORDERS JUDGE THOMAS HAS TRAMPLED ON CERTAIN LEGAL PRINCIPLES WHICH ARE VITALLY NECESSARY FOR THE SURVIVAL OF OUR PEOPLE. IT IS IMPORTANT THAT I PLACE ON THE RECORD THE RESPONSE OF THE GREAT MAJORITY OF AFRICAN AMERICAN PEOPLE TO HIS BEHAVIOR AND THE CLEVER MANEUVERS OF HIS SPONSOR.

ON THE MATTER OF JUDGE THOMAS' CONTEMPT FOR THE LAW LET ME MAKE IT CLEAR THAT I SPEAK FROM THE EXPERIENCE OF DIRECT OBSERVATION. AS A MEMBER OF THE EDUCATION AND LABOR COMMITTEE WHICH HAS OVERSIGHT RESPONSIBILITY FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION I SERVED ON NUMEROUS PANELS WHICH HEARD TESTIMONY FROM JUDGE THOMAS. AT THIS POINT I WOULD LIKE TO STATE FOR THE RECORD THAT THERE IS A VOLUMINOUS SET OF RECORDS OF HEARINGS AND GENERAL ACCOUNTING OFFICE REPORTS WHICH COMPRISE A BODY OF EVIDENCE TOO LITTLE ANALYZED OR REFERRED TO SINCE JUDGE THOMAS WAS NOMINATED.

JUDGE THOMAS HAS TESTIFIED BEFORE CONGRESSIONAL COMMITTEES AN EXTRAORDINARY 56 TIMES (55 PUBLISHED; 1 UNPUBLISHED). THIS LARGE NUMBER OF APPEARANCES DOES NOT SIMPLY REFLECT THE JUDGE'S LONG TENURE. VERY LITTLE OF CLARENCE THOMAS'S CONGRESSIONAL OVERSIGHT TESTIMONY WAS MERE REPORTING OR WAS OTHERWISE ROUTINE. MOST OF IT WAS CONTROVERSIAL AND MUCH OF IT EXPRESSED THE EXASPERATION OF HOUSE COMMITTEES WITH HIS ADMINISTRATION OF THE LAW. IN THE SAME VEIN ARE TEN GAO REPORTS, AN UNUSUAL NUMBER AND MOST OF THEM HIGHLY CRITICAL OF THE NOMINEE'S ADMINISTRATION OF THE LAWS UNDER HIS JURISDICTION. IT IS JUDGE THOMAS' ACTUAL PROFESSIONAL RECORD WHILE SERVING IN THE GOVERNMENT THAT SHOULD COUNT MOST TO THE OUTCOME OF THESE DELIBERATIONS. HOW JUDGE THOMAS HAS VIEWED HIS LEGAL RESPONSIBILITIES IN THE PAST IS THE BEST EVIDENCE OF HOW HE IS LIKELY TO DISCHARGE THEM IN THE FUTURE.

THE CONCLUSION THAT WE HAVE REACHED IS THAT JUDGE THOMAS FAILED

OVER THAT PERIOD OF TIME TO CARRY OUT THE CONSTITUTIONAL OBLIGATION OF MEMBERS OF THE EXECUTIVE BRANCH TO "TAKE CARE THAT THE LAWS ARE FAITHFULLY EXECUTED" AND THAT HE EXHIBITED A PERVASIVE DISRESPECT FOR CONGRESS AND FOR THE LEGISLATIVE PROCESS. OUR CONCLUSION, WHICH IS AMPLY SUPPORTED BY THE EVIDENCE, IS ALL THE MORE DAMNING WHEN IT IS RECOGNIZED THAT HIS YEARS IN THE EXECUTIVE BRANCH CONSTITUTE ALMOST ALL OF THE EXPERIENCE THAT CLARENCE THOMAS HAS TO OFFER IN SUPPORT OF THE PROPOSITION THAT HE IS QUALIFIED TO SERVE ON THE SUPREME COURT. FAR FROM ASSISTING HIS CANDIDACY, THE PERFORMANCE OF JUDGE THOMAS AS A FEDERAL OFFICIAL PROVIDES POWERFUL REASONS WHY HE SHOULD NOT BE CONFIRMED.

TWO YEARS AGO, 14 MEMBERS OF THE HOUSE OF REPRESENTATIVES, INCLUDING 12 CHAIRS OF COMMITTEES HAVING JURISDICTION OVER THE EEOC AND FIVE MEMBERS OF THE CONGRESSIONAL BLACK CAUCUS, WROTE TO PRESIDENT BUSH ASKING THAT CLARENCE THOMAS NOT BE NOMINATED TO THE COURT OF APPEALS. AFTER REVIEWING THE RECORD, THE WRITERS OF THE LETTER SAID THAT THOMAS HAD "RESISTED CONGRESSIONAL OVERSIGHT AND BEEN LESS THAN CANDID WITH LEGISLATORS ABOUT AGENCY ENFORCEMENT POLICIES." THESE MEMBERS OF CONGRESS CONCLUDED THAT THOMAS HAD DEMONSTRATED AN "OVERALL DISDAIN FOR THE RULE OF LAW".

TIME WILL NOT PERMIT ME TO OFFER MORE DETAIL ON THIS POINT; HOWEVER, PAGES 4 THROUGH 9 OF THE WRITTEN STATEMENT OF THE CONGRESSIONAL BLACK CAUCUS DOES PROVIDE AMPLIFICATION FOR THIS ARGUMENT.

AS A REAGAN ADMINISTRATION APPOINTEE JUDGE THOMAS WAS THE MODEL OF LOYALTY AND OBEDIENCE. HE DEFENDED THE ADMINISTRATION'S DEFORMED AND DISTORTED CIVIL RIGHTS AND EEOC POLICIES WITH GREAT ARROGANCE AND PASSION. IT IS PERFECTLY LOGICAL THAT HIS PARTY WOULD SEEK TO REWARD SUCH A DEDICATED TEAM PLAYER. BUT IT IS NEITHER LOGICAL NOR MORAL FOR THE SENATE OF THE UNITED STATES TO PARTICIPATE IN THIS POLITICAL CLUBHOUSE PROMOTION PROCESS.

LIKE NUMEROUS OTHER REAGAN ADMINISTRATION APPOINTEES JUDGE THOMAS REPEATEDLY DISPLAYED GREAT CONTEMPT FOR THE LAW. ALTHOUGH SWORN TO UPHOLD AND IMPLEMENT THE LAW, JUDGE THOMAS REPEATEDLY DELAYED, SABOTAGED AND BLOCKADED THE PROCESS OF ENFORCEMENT OF THE LAWS ENTRUSTED TO HIS ADMINISTRATION. IN THIS PATTERN OF BEHAVIOR JUDGE THOMAS WAS CERTAINLY NOT UNIQUE AMONG REAGAN ADMINISTRATION OFFICIALS. FOR EIGHT YEARS CONTEMPT FOR THE LAW WAS A PART OF THE STYLE AND THE STRATEGY OF THE EXECUTIVE BRANCH OF GOVERNMENT. MEMBERS OF CONGRESS REPEATEDLY ENCOUNTERED THIS CONTEMPT FOR THE LAW NOT ONLY IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION UNDER JUDGE THOMAS, BUT ALSO IN OSHA, IN THE EPA, IN THE DEPARTMENT OF JUSTICE, AND AS THE WHOLE WORLD KNOWS ON THE NATIONAL SECURITY COUNCIL. OLIVER NORTH'S SEPARATE GOVERNMENT IN THE BASEMENT OF THE WHITE HOUSE WAS THE MOST VISIBLE AND THE MOST DANGEROUS EXAMPLE OF THIS CONTEMPT FOR THE LAW.

WHAT MUST BE RECOGNIZED BY THIS COMMITTEE IS THAT THE SPIRIT OF OLIVER NORTH WAS RAMPANT THROUGHOUT ALL OF THE UNITS OF THE REAGAN

ADMINISTRATION. AS A MEMBER OF CONGRESS I REGRET VERY MUCH THE HELPLESSNESS AND INABILITY OF CONGRESS TO CURTAIL AND COUNTERACT THE BRAZEN CONTEMPT FOR LAW EXHIBITED BY SO MANY EXECUTIVES WHO WERE SWORN TO UPHOLD AND IMPLEMENT THE LAW. I PRAY THAT IN THE NEAR FUTURE WE WILL FIND WAYS TO GUARANTEE THAT SUCH A WIDESPREAD HEMORRHAGING OF THE INTEGRITY OF GOVERNMENT WILL NEVER TAKE PLACE AGAIN. ONE GIANT STEP TO RESTORE RESPECT FOR THE LAW AND THUS RESUSCITATE THE VITAL MORAL AUTHORITY OF OUR GOVERNMENT IS A STEP THAT CAN BE TAKEN IMMEDIATELY BY THIS COMMITTEE AND THE MEMBERS OF THE SENATE.

LET IT BE CLEARLY STATED BY THIS COMMITTEE AND THIS SENATE THAT A NEW STANDARD HAS BEEN ESTABLISHED; THAT REGARDLESS OF THE DESIRES OF THE PRESIDENT TO REWARD THE LOYAL AND THE OBEDIENT, ANY PERSONS WHO HAVE IN THEIR PUBLIC PERFORMANCE AT ANY LEVEL OF GOVERNMENT DISPLAYED A CONTEMPT FOR THE LAW SHALL NOT BE SANCTIONED AND CONFIRMED FOR THE FEDERAL JUDICIARY. IN OTHER WORDS THE PRICE OF OBEYING ORDERS INSTEAD OF UPHOLDING AND IMPLEMENTING THE LAW SHOULD BE DENIAL OF THE PRIVILEGE OF ADJUDICATING AND INTERPRETING THE LAW.

TO IGNORE THE PERFORMANCE RECORD OF JUDGE THOMAS OR ANY OTHERS WHO BEHAVED IN A SIMILAR MANNER IS TO CONTRIBUTE GREATLY TO THE POISONING OF THE MORAL ENVIRONMENT OF AMERICA. WHILE OUR DEMOCRATIC POLITICAL SYSTEM MAY AT THIS POINT LEAVE US PARALYZED WITH RESPECT TO OUR ABILITY TO CURTAIL CONTEMPT FOR THE LAW IN THE

EXECUTIVE BRANCH OF GOVERNMENT, I URGE YOU TO PLEASE FULLY UTILIZE THE MECHANISM OF CHECKS AND BALANCES TO SEND THE MESSAGE THAT THOSE WITH A RECORD OF HIGH LEVEL LAWLESSNESS SHALL NOT BE ALLOWED TO ASCEND TO THE HIGHEST COURT OF OUR NATION.

→ IN ADDITION TO HIS JOB PERFORMANCE, JUDGE THOMAS' PERFORMANCE BEFORE THIS COMMITTEE HAS SET A DISMAL EXAMPLE BEFORE THE YOUTH OF AMERICA AND THE PEOPLE OF THE WORLD. THE NOMINEE HAS USED WHAT COULD ACCURATELY BE LABELED AS THE EQUIVALENT OF THE FIFTH AMENDMENT AS HE HAS RUN FROM HIS OWN RECORD. WHAT MANNER OF GOVERNMENT ARE WE TO TOLERATE PEOPLE IN HIGH PLACES WHO BLATANTLY EVADE HONEST QUESTIONS? WHERE IS THE PARENT WHO WOULD TOLERATE SUCH INSULTING BEHAVIOR FROM A TEENAGE SON OR DAUGHTER? A PRECEDENT OF TOLERATING EVASIVE ANSWERS WAS SET WITH JUDGE SOUTER WHICH DISCREDITS THE CONFIRMATION PROCESS. THAT PRECEDENT SHOULD BE STRUCK DOWN NOW. JUST AS MEMBERS OF CONGRESS ARE NOT ALLOWED TO CAST SECRET BALLOTS ON ISSUES, NO PERSON SHOULD BE ALLOWED TO ASSUME A LIFE-TIME SEAT ON THE COURT WITHOUT THE FULLEST POSSIBLE DISCLOSURE OF HIS PHILOSOPHY AND IDEAS.

FINALLY, I WOULD LIKE TO BRIEFLY CONVEY TO YOU THE SENTIMENTS OF MY CONSTITUENTS ON THIS NOMINEE AND THE NOMINATION PROCESS. I REPRESENT THE TWELFTH CONGRESSIONAL DISTRICT IN NEW YORK WHICH IS NINETY PERCENT AFRICAN-AMERICAN. I HAVE BEEN A PUBLIC OFFICIAL FOR MORE THAN TWENTY-THREE YEARS AND I KNOW HOW TO READ MY CONSTITUENTS. THE OVERWHELMING REACTION TO THE NOMINATION OF

CLARENCE THOMAS WAS ONE OF DISBELIEF AND A SENSE OF BETRAYAL -- AND AMONG THE YOUTH IMMEDIATE BITTERNESS.

IF YOU WANT TO TRULY UNDERSTAND THE THOUGHTS AND FEELINGS OF THE OVERWHELMING MAJORITY OF AFRICAN-AMERICANS IN THIS COUNTRY, THEN TRY TO IMAGINE HOW THE FRENCH WOULD HAVE FELT IF THE COLLABORATOR MARSHAL PETAIN HAD BEEN AWARDED A MEDAL AFTER THE LIBERATION OF FRANCE IN WORLD WAR II, OR IF IN NORWAY, QUISLING HAD BEEN MADE A HIGH OFFICIAL IN THE GOVERNMENT. TRY TO PUT YOURSELF IN THE PLACE OF A SOLDIER IN THE CONTINENTAL ARMY AFTER VALLEY FORGE AND ALL OF THE OTHER DIFFICULT STRUGGLES; TRY TO IMAGINE THE FEELINGS OF SUCH A SOLDIER IF HE WAS FORCED TO WATCH A CEREMONY WHERE GENERAL GEORGE WASHINGTON PROMOTED BENEDICT ARNOLD TO THE LEVEL OF A GENERAL. IMAGINE THE TEARS IN THE EYES OF THOSE STRONG MEN THAT SUCH AN ACT WOULD HAVE GENERATED.

FOR THE MASSES OF BLACK PEOPLE JUDGE CLARENCE THOMAS IS A MAN WHO HAS CLEARLY AND CONSISTENTLY STOOD AGAINST THOSE LEGAL PRINCIPLES, PHILOSOPHIES AND IDEAS WHICH ARE VITALLY NECESSARY FOR OUR SURVIVAL AND CONTINUING PROGRESS. THE ELEVATION OF THIS MAN TO THE SUPREME COURT WOULD BE A GROSS INSULT, A CRUEL SLAP "IN THE FACE" OF ALL AFRICAN-AMERICANS.

REMEMBER THAT DANTE, IN THE INFERNO, ASSIGNED THE LOWEST PIT IN HELL TO BRUTUS, THE MOST INTIMATE AND TRUSTED OF ALL TRAITORS. IMAGINE WHAT OTHERS THROUGHOUT HISTORY MIGHT HAVE FELT AS THEY

BEHELD THE ELEVATION OF ONE THEY PERCEIVED TO BE A TRAITOR TO THEIR CAUSE AND YOU WILL UNDERSTAND HOW A CONFIRMATION OF JUDGE THOMAS WILL GIVE BIRTH TO A BOTTOMLESS PIT OF BITTERNESS THAT WILL ENDURE FOR GENERATIONS TO COME.

IT IS MY PLEA TO YOU THAT THE SENATE SHOULD NOT ACQUIESCE AND PERMIT THE CONTINUING EROSION OF THE MORAL FOUNDATION OF AMERICA. THE SENATE SHOULD NOT ACQUIESCE AND PARTICIPATE IN THE FURTHER TRIVIALIZING OF THE SUPREME COURT OF OUR NATION. ON THE APPOINTMENT OF JUDGE CLARENCE THOMAS IT IS MY PLEA THAT YOUR VOTE ON CONFIRMATION BE A CLEAR AND DECISIVE NO!

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The CHAIRMAN. Thank you very much, Congressman.
Congressman Washington.

STATEMENT OF REP. CRAIG A. WASHINGTON

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. Chairman and members, I thank you for the privilege and honor of speaking before you today. We truly appreciate this opportunity to express our views on a vitally important nomination.

I speak in opposition to the nomination of Judge Clarence Thomas. My opposition to Judge Thomas has nothing at all to do with his personal political views. It has nothing at all to do with the politics that resulted in his nomination, but, rather, based upon a scientific, objective, reasoned and calm analysis of Judge Thomas' legal writings, legal opinions, editorial opinions, remarks and speeches. I have concluded at least the following:

Judge Thomas has a disturbingly paradigmatic disdain and disregard for legal precedents and stare decisis. In fact, I don't think he knows what *stare decisis* means. Judge Thomas has shown a previous long-standing disrespect for the civil liberties of groups. Judge Thomas has espoused as a fulcrum of his legal thought the concept of natural law, and Judge Thomas has shown a lack of respect for the rule of law.

We have reached these and other conclusions only after much research and analysis. As you know, it is often difficult to take a stand that would seem to be unpopular. It is our duty, however, as elected officials, to speak against the nomination of Judge Clarence Thomas, based upon the facts.

Our position is clearly based upon just that, the fact that the elevation of Judge Clarence Thomas to the Supreme Court of the United States is dangerous for all Americans. The quintessential underpinning of Anglo-Saxon jurisprudence is that, if you have a case with similar facts, similar evidence and similar legal predicates, you should reach a similar outcome. *Stare decisis,* which in Latin, as you know, means standing by decided matters, is a doctrine of following rules of principles laid down in previous judicial decisions.

The most blatant example of Judge Thomas' disregard for legal precedent came when Judge Thomas was chairman of the Equal Employment Opportunity Commission. As chairman of the EEOC, Judge Thomas spoke out against the Supreme Court's approval of racial and sexually defined employment goals and timetables.

Judge Thomas states that he considered goals and timetables to be a weak and limited weapon against forms of discrimination. There have been at least four Supreme Court decisions on race conscious remedies in which the Supreme Court has approved them. They are, as you know, *United States* v. *Paradise, Local 28 Sheetmetal Workers* v. *EEOC, Local 93 Firefighters* v. *Cleveland,* and *Johnson* v. *Transportation Agency, Santa Clara County, California.*

There are times when we all disagree with the law. Rules and regulations make our society stable. If we all agree that, for better or worse, the rule is that privates salute generals and that we should drive the speed limit as established by the legislatures of our various States, then we should obey those rules and regula-

tions. I might not like the person wearing the uniform of the general, but if I am a private and he or she is a general, I am bound to respect the rank of the general.

Judge Thomas' opinion of *Brown* v. *Board of Education* is simply this: If individual violations of discrimination came to Judge Thomas and complained of discrimination, they would be heard. However, if a group complained and presented evidence of group-wide systemic discrimination, he would not hear such evidence. This notion is in direct contradiction with the fundamental rights that the Constitution was intended to protect.

Moreover, the Bill of Rights and other amendments were intended to protect those who are similarly situated from the tyranny of Government. Natural law has as much to do with judicial opinion as voodoo has to do with the practice of medicine. As an example of the application of natural law would be to take the example I used earlier about driving the speed limit. Under a theory of natural law, the majority of people have agreed that we should drive the speed limit. If one were to adhere to a natural law philosophy, however, one could state, "Since I've paid for my car and I've paid part of the taxes to build this highway, I can drive as fast as I wish. I'm not bound by mere legal opinion, I'm bound only by myself." The logical extension of such a philosophy is that we would have no law, no order, and no rules to govern our society.

During Judge Thomas' tenure as chairman of the EEOC, he refused to process cases of age discrimination, in spite of the fact he had been ordered to do so by several governmental bodies. Instead, Judge Thomas allowed 13,000 age-discrimination cases to expire and go unresolved. It was Judge Thomas' duty to file these case. It did not matter that he disagreed with the law. He, like others, was bound to respect and follow the law, regardless of whether he liked it or not.

I oppose Judge Thomas based upon these aforementioned facts. The choice, based upon my evidence and that of my Congressional Black Caucus colleagues is that Judge Thomas is not a worthy successor to Justice Thurgood Marshall. The difference that we have is Judge Thomas does not stem from reasonable and understandable differences over particular cases or remedies. Rather, Judge Thomas repudiates the fundamental role of the Supreme Court as a guardian of the constitutional freedoms and rejects the legacy of Justice Marshall.

On behalf of 25 of the 26 members of the Congressional Black Caucus, we respectfully urge you to reject the nomination of Judge Clarence Thomas. At the appropriate time, I will be happy to respond to your questions.

Thank you.

The CHAIRMAN. Thank you.

Before we move to Congressman Lewis, Senator Kennedy has a responsibility to be over in the caucus on another matter, but maybe you——

Senator KENNEDY. Thank you, Mr. Chairman.

I just want to join in welcoming our friends from the House and their testimony. We are getting first-hand information, some of our colleagues here, of individuals who had oversight responsibilities that directly related to the work of Judge Thomas, and their pres-

entation and their experience is certainly unique in terms of the kind of presentations that we have had.

We have members who have been leaders, most all of them, but some in particular have been working in civil rights legislation and also in striking down discrimination in employment, so their testimony is particularly valuable.

Our next speaker, John Lewis, who was out there and still bears the bruises of the physical struggles in the late 1950's and early 1960's, was a civil rights leader, not because he named himself one, but because others looked to him for leadership, and we heard some remarks from Judge Thomas in disparagement of many of those that bled and I think even died to eliminate some of the barriers of discrimination.

So, I want to just say, as one member of the committee, how we welcome all of your comments. I think it is enormously valuable to us. I apologize to Congressman Lewis for not hearing the testimony, but look forward to reading it in its entirety.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

I suspect Congressman Lewis would rather see you get the extension of the unemployment compensation, than listen to him, as much as he would like you to listen to him.

Congressman Lewis.

STATEMENT OF HON. JOHN LEWIS

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Chairman and distinguished members of the committee, I am pleased and delighted to be here with you today.

When I was growing up in the rural South in the 1940's and 1950's, I saw for myself the evil system of segregation and discrimination. I was bused long distances over unpaved roads, dusty in summer and muddy in winter, to attend overcrowded, poorly staffed segregated schools. For many blacks, they were not called high schools then, they were called training schools. An evil system, a way of life had been built on a foundation of racism, greed, hatred and a denial of basic human needs and human rights. It was a closed society, and everywhere I turned, I found closed doors.

I saw those signs that said "white men," "colored men," those signs that said "white women," "colored women," those signs that said "white waiting," "colored waiting." I grew up in a family with a mother and a father, six brothers and three sisters. We were very poor. The house in which we lived had no indoor plumbing or electricity. I read by the light of kerosene lamps.

But that does not make me qualified to sit on the highest court of the land! If you are going to vote to confirm Clarence Thomas to sit on the highest court of the land, you must have some reason other than the fact that he grew up poor in Pin Point, GA.

I also come here as one who participated in the civil rights movement of the 1960's, as one who was beaten, arrested and jailed on more than 40 occasions. During the 1960's, as I traveled and worked throughout the South, I saw civil rights workers and many people whom we were trying to help, with their heads cracked open

by nightsticks, lying in the streets, weeping from teargas, calling helplessly for medical aid.

I have seen old women and young children involved in peaceful, nonviolent protests, run down by policemen on horses, beaten back by fire hoses, and chased by police dogs. But also during the 1960's, we saw the Federal Government, and particularly the Supreme Court, as a sympathetic referee in the struggle for civil rights.

I can recall on one occasion when the Supreme Court issued a decision dealing with public transportation, an elderly black woman was heard to say, "God Almighty has spoken from Washington." The Supreme Court was there for the people then. That is no longer the case.

Let us set aside for the moment Thomas' view on abortion, which he won't share with you, his views on affirmative action, on which he has been incredibly unclear, and his views on natural law, which were one thing last year, something different when he was nominated, and still something else at this hearing last week. Let us set aside all of this and see what you have.

What you have is a nominee who wants to destroy the bridge that brought him over troubled waters. He wants to pull down the ladder that he climbed up. You have a nominee who has refused to answer your questions, a nominee who has defied the law, a nominee who has tried to stonewall this committee, a nominee who changes his story to suit the audience, a nominee who is running from his record.

As elected officials, men who have to run, you have come up against men who have to run on their records and others who run from their record. Well, Clarence Thomas is a man who is running from his record!

I ask you again, what reason do you have, other than the fact that he grew up poor in Pin Point, GA, to confirm Clarence Thomas' nomination to the Supreme Court? I know this is a tough decision for you to have to make. It was as tough decision for me to decide to come before you today. I have been advised by some that I should not testify against Clarence Thomas, because he is black. The color of Clarence Thomas' skin is not relevant. The person, his views and his qualifications are.

Leadership demands that we not avoid decisions, just because they are tough. It requires that we be fair, be critical and do what is right, not what may appear to be politically correct. You have information that the masses don't have. You know Clarence Thomas' record. You know the truth.

Mr. Chairman and members of the committee, as a member of the House, I don't want to tell you what to do. I cannot. But I do want to say that you have a mission, a mandate and a moral obligation, not just to our generation, but to unborn generations. The decision you make on the Thomas nomination will affect how we live well into the next century.

You cannot vote to confirm Clarence Thomas, unless you feel confident that Clarence Thomas will not bring his own agenda to the bench and that his decisions will not be burdened with his own preconceived notions about how things are or should be. You must feel confident in your gut that, as he himself put it, Thomas is fair, full of integrity, open-minded and honest.

Look at his record, listen to what he has said to you during this hearing. Hear what he has refused to say. You may have to sail against the current, but that is OK. I urge you to vote against confirmation of Mr. Thomas.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen. I know you all used the phrase this is not easy for you to do. I suspect a lot of people think it was easy. I have some sense, some little sense, of how hard it must be. You have all fought your entire lives to see to it that black women and men are in positions of power, positions of authority, to be able to be role models to a generation of black children, and here you are, walking down that long walk across from the other body to come to this great, majestic room and tell a group of your colleagues on the Senate side not to vote for a man to the Supreme Court who is black, when not a one of you—I don't want to reveal all of your ages—but not a one of you failed to understand at some point in your lives the lash of legal segregation. The notion that 20 years ago, 30 years ago, any one of you would be in this room saying, "don't put any black person on the Supreme Court of the United States," would boggle the mind. And you are here, and as I said, I am confident of what you say when you say it is not an easy decision.

Let me be the devil's advocate with you for a moment, if I may.

Clarence Thomas and those who vociferously support Clarence Thomas say two things about black leadership in America and black leadership in the Congress—and you are the black leadership of the Nation. They say, No. 1, that this really only reflects a difference on affirmative action; that's what this is all about. The only thing you all are concerned about is affirmative action. Clarence Thomas is hostile to affirmative action, apparently—although I acknowledge, John, it is kind of hard to tell—and that's why you are here.

The second thing they say is that any black man who has suffered the indignities and injustices of a legally segregated system as well as a system, in my view, that continues to be segregated, in a much more sophisticated way these days, that that person's instincts have got to be right when they get on the bench; that in the end, whether or not he calls himself a Republican or a Democrat, conservative or liberal, he will do the right thing.

So the two big arguments that have been posited by supporters of Thomas and those who have been detractors of your position are (a) that this is all about affirmative action and a desire for you to maintain a position of black leadership in the Nation, your points of view, and (b) how could any black man with his background not do the right thing when it comes to issues relating to race.

Would any or all of you please comment for the record on both of those assertions that we have heard so many times in this committee?

Congressman Conyers.

Mr. CONYERS. Mr. Chairman, might I comment on that and ask before we begin that all of our individual statements be submitted and reproduced in the record.

The CHAIRMAN. They all will be. Anything beyond what you have said, if you have a statement, will be placed in the record as if read.

Mr. CONYERS. Thank you very much.

Of course, we have pointed out here in all of our testimony that this goes far beyond individual differences of how we approach civil rights; that we are talking about our lack of confidence that whether he will apply fundamental constitutional concepts in a way that is going to satisfy us far beyond affirmative action. We are talking about his conduct in 9 years of public office that required him to come before Congress as many times as you've heard here today.

We are talking about the fact that senior citizens are aggrieved about the way he handled age discrimination cases. We are talking about the women's organizations who are disturbed about where his views on privacy are going to lead. We don't know what is going to happen on natural law.

So I think it is patently obvious that this is not a single issue or some truncated difference of view on one part of the civil rights issue that we take. It would be trivial of us to come forward on that kind of a question.

I also very firmly believe that what happens here in these next few weeks before your body is going to determine whether we ever come forward with an adequate African-American nominee to replace Thurgood Marshall. And I think what we have to continue to watch very carefully is if he is confirmed, we are essentially closed down for Justice Marshall's representative. If he is not confirmed, I think the picture is open. We all know a long list of African-American jurists, male and female, with good constitutional experience and many others coming forward that could leave that picture open.

So I urge that we not accede to any notion that we are trivializing this confirmation process on a very narrow civil rights point.

The CHAIRMAN. Does anyone else wish to speak to either point? Yes, Congressman Stokes.

Mr. STOKES. Mr. Chairman, at the expense of being redundant, I will forego speaking to part (a). I would like to speak to part (b) because I think that troubles many people. I think many people feel that any person born black, subjected to racism and the other indignities that black people have been subjected to in this society, once they get on that Court and once they have that paper that says they have a lifetime appointment, will then feel secure and be able to do the right thing. And I guess I have tried in my own mind to analyze it and try to understand this individual—and let's face it—what I have had to do is try to look at his record.

One of the most poignant things that points up the fears I have about him is in a case called *Moore* v. *City of East Cleveland.* I happened to represent East Cleveland. A 63-year-old grandmother who had taken in one of her grandchildren when he was less than a year old when his other died was charged on an ordinance that defined "family" as being only the parents and their children. In this home, this grandmother had taken in her own son and two grandchildren, one of whom was this 1-year-old child when his mother died. But they were not brothers; they were cousins. And under this particular statute, she was ordered by the municipality to evict

this child because the child did not fit the family definition under the ordinance.

She refused to do so, and she was jailed and fined. The case went up to the U.S. Supreme Court, and the U.S. Supreme Court found that this was an invasion by the municipality of the privacy of family. The Court recognized the fact that in the black family particularly, there is a need for the extension of the family to take in other relatives, so long as it does not break zoning laws and things of that nature. The Court found that this is in the course of American tradition, and that other ethnic groups have had to do this when they came to this country, and so forth.

Clarence Thomas was on a White House Task Force on the Family. They issued a report highly critical of this particular Supreme Court decision, meaning in effect that they would have jailed the grandmother and permitted the fine to stand. When I examined that case and his relation to it and the fact that he signed this report criticizing it, I asked myself how could this man who in your hearings made so much to-do about his grandparents and what they had done for him and his mother and for his family—and in fact I dare say to you that you know more about his grandparents, Mr. Chairman, than you know about him because he talked over and over again about what his grandparents had done—how then, you must say, can this same man then jail or want to have jailed this grandmother who took in her grandchild?

I think when you look at this, you get some answer to whether or not he would really go back to his roots and do the right thing. I don't think he will.

The CHAIRMAN. My time is about up, but I want to give you gentlemen a chance to respond if you'd like.

Mr. OWENS. Just quickly, Mr. Chairman, I would like to say that the record of Clarence Thomas with respect to affirmative action and civil rights is not subtle at all. It is not unclear at all. It is not mysterious at all. It is quite clear where he stands. He had 8 years, and his performance in office at EEOC made it quite clear, and most African-Americans clearly understand this. After they get over the shock of understanding that a person of his education and his position could espouse those ideas, their reaction is we're quite sorry, but—I'll tell you what one lady told me at church. "Let's take the Christian approach," she said. "We want you, Congressman, to go out there and fight as hard as you can to see that this man does not get a place on the Supreme Court. But since the President is powerful, and we know that it is possible you might lose and he might be placed on the Supreme Court, after you get through fighting and you lose, then we'll start praying that he will be born again and will act right when he gets on the court. But we'll fight first, and then we'll pray later."

The CHAIRMAN. Thank you. Mr. Washington.

Mr. WASHINGTON. Very briefly, Mr. Chairman, on the first part of your question, I'd like to rely upon my 20 years' experience as a trial lawyer which I brought to this job. Whenever I was trying a murder case, and I couldn't do much to get over all the facts that the prosecution had assembled against me, I'd try the deceased person. It's an attempt to divert your attention from the issue by talking about all these organizations that have come out in opposi-

tion to him. If our focus were as narrow as a difference of opinion over affirmative action, as a trial lawyer I believe that the true art of cross examination would get to the truth in that, and you'd be able to find it real soon.

We have not talked about our difference of opinion with him on affirmative action. We have talked about things that we think are a lot more important to the function that he is about to ascend to, with your permission.

On the second point, to suggest that a black man who has suffered as much as he has will "do the right thing", I find to be condescending, both condescending and patronizing. If we set that up as a standard, then, the Supreme Court ought to adopt it as a standard, and all these people who are suggesting that it is the right thing to do ought to adopt it as a standard.

That means that any time that a black person who is not qualified goes to apply for a job as a truckdriver, instead of looking at whether he can drive a truck or not, just see what kind of background he came from. If you are applying for a job as a schoolteacher, if you are applying for a job as a U.S. Senator, then you ought to be able to get out and campaign. Well, I'm not as qualified as Senator Grassley, I am not as adroit at the issues as Senator Grassley, but by God I come from humble beginnings, so by God, give the job to me. That's ludicrous. It is ludicrous to suggest it, and it is condescending, and black people don't like it a bit.

Mr. LEWIS. Mr. Chairman, let me just be brief and say as black Members of the Congress and as Members of the Congress, we don't have anything to gain from coming here being against the confirmation of Clarence Thomas.

The CHAIRMAN. Well said.

Senator SIMON. Mr. Chairman, I know it is not my time but I just got word I am supposed to be over on the floor on an amendment that I have there. If I could just take 1 minute.

The CHAIRMAN. Would you all mind if he takes 1 minute out of order?

Senator THURMOND. No. Go ahead.

The CHAIRMAN. All right.

Senator SIMON. First of all, I really appreciate your testimony and your standing up. I served in the House with three of my colleagues here—Congressman Conyers, Congressman Stokes, and Congressman Owens—and while I didn't serve in the House with Congressman Lewis, I have known him for many years.

One other factor, and that is, if I can go back to something that happened in Atlanta many years ago. You had two black leaders—Frederick Douglass, who was an advocate, who said we ought to get the right to vote, we ought to have civil rights; you had another leader who brought himself up from the bootstraps, but who was an accommodator, who said in what has been called the "Atlanta compromise speech", Booker T. Washington said we ought to forget those things, we ought to just do the best job we can wherever we are. And the white majority seized on Booker T. Washington's statement, and it was used not for the benefit of African-Americans.

One of the things that we do here is we elevate someone who up to this point has been an accommodator rather than an advocate. I

mention that in connection with this brief question. One of the arguments used, and I hear it from my friends in the African-American community, is "I don't like Clarence Thomas' views, but if we don't take him, we are going to get somebody with the same views who is white; and we ought to have an African American on the court."

Congressman Conyers has answered that in part by saying this for all practical purposes probably precludes another viewpoint from the African-American community on the court.

I would be interested in how you would answer, and is the Booker T. Washington analogy a fair one or an unfair one?

Mr. CONYERS. It is. DuBois and Washington was the reference you were making to in the "Atlanta compromise", and we hear that—better to take a chance now, and keep your fingers crossed. Will he change? And you know, gentlemen, I have never approached a confirmation process supporting somebody that I didn't agree with and hoping they'd change.

I go back to Haynesworth, Carswell and on down the line, up into Bork, and it makes no sense. And I think your accommodationist parallel that you draw, Senator Simon, has validity. As a matter of fact, we had one of our great historians, John Hope Franklin, draw up comments for us that he submitted in which he went back to that day and made a reference quite similar to the one that you draw at this time.

Mr. STOKES. Senator Simon, I can only say in answer to your question, "If you don't get Thomas, then you probably will not get another black on the Court," that the only way to answer that is to say we will just have to be patient and wait our time. The fact is that if we don't get Thomas at this time, we don't get black at this time, then we will just have to be patient and wait.

It is as bad to have a bad appointee on there who is black as it is to have a bad appointee on there who is white. If Bork was wrong for the Court, Thomas is wrong for the Court, and you have to stand with that. You can't have a separate criteria.

Mr. OWENS. It is hard to believe, Senator, that there would ever be a situation where two blacks would be appointed to the Court, we just don't believe it is going to happen. As long as one is there, we are not likely to have another. It is hard to believe that Judge Thomas will ever change very much, because, as a member of the Reagan administration, he was one of the most outspoken and belligerent of the executive branch team.

He, of course, has been promoted and sponsored by people who are deeply rooted in the conservative philosophy, which is directly opposed to the kind of principles and the kinds of ideas that are necessary for the advancement of African-American people. The likelihood that he is going to change and not be grateful to his sponsors and do something different, we find it hard to believe that is going to happen.

We find it hard to believe that we won't be placed in a position where a member of the Supreme Court, occupying that position, which is quite an exalted one, will not be quoted extensively and used against us. If I was in Moscow or London or some other part of the world, and Judge Thomas made a statement and I made a statement in direct opposition to it, I would expect the people in

London or Moscow or any other part of the world to automatically defer to Judge Thomas and assume that a judge on the Supreme Court, you know, speaks with more authority and has more credibility than a Congressman, and that's the way it is going to be. He is going to be in a position where he can do great harm to the things that we believe in and to the people that we represent.

Mr. WASHINGTON. Senator, let me just say, in chess, as you know, there's a saying that if black moves first, black will most often win, not because of the color, it doesn't matter what the colors are, but the piece that moves first in chess, two similarly situated chess players playing, the person who moves first is more likely to win than the other, which comes to the question, it seems to me, that you raise about Judge Thomas.

I think the question is not whether if the Senate, in its wisdom, rejects this nomination, whether we are likely to get a white person or a Hispanic person or a woman or someone else, the question is whether they are qualified. If you turn that question over, the other side is, if he were a white person, if he were a woman, if he were a Hispanic, if he were anything other than black, with the paucity of qualifications that he brings with him and the grievances that have been unearthed at these hearings and before, is it any question that there would be a good deal of resentment and a good deal of opposition to him.

We have come too far—I don't mean black people, I mean all people, I mean America has come too far since the Civil War, since the 13th, 14th and 15th amendments, we didn't come all the way to here to say, when it comes down to it, that the color of the skin matters more than anything else. If he is not qualified, he is not qualified. If he is not qualified, making him black does not make him qualified.

Mr. LEWIS. Senator Simon, let me just respond by saying this man is very young, and if he is conformed by the Senate, he will be on the Court for many, many years to come. He will emerge as a symbol, as a symbol for hundreds, for thousands and millions of African-Americans. Is this the symbol that we want, as African-Americans?

The Supreme Court, during the 1960's, starting in 1954 and during the 1960's, created a climate, an environment to make this country something different, something better. We don't want to go back.

Senator SIMON. I thank all of you, and I thank Senator Thurmond for yielding.

The CHAIRMAN. Thank you.

Senator Thurmond.

Senator THURMOND. Thank you.

I want to welcome you all today to this hearing, not only as Democratic Congressmen, I believe you all are Democrats, but also as prominent Democratic leaders.

I want to mention one thing about Congressman Stokes regarding the White House report. Judge Thomas testified that he contributed the housing section to this report, but that he did not endorse the whole report. I thought I would mention that for your information. I don't think you distinguished that difference in your statement.

Mr. STOKES. No, Senator, I didn't. What I said was that he was on the White House Task Force on the Family and that he signed the report, which criticized the Supreme Court for its ruling in that case. In criticizing it, I could have said he also criticized Justice Marshall, because Justice Marshall was on the concurring opinion with Justice Brennan, but I knew nothing about the housing section.

I do know that he said he didn't read the report in your hearings here and he said that he just signed it, I do know that.

Senator THURMOND. Well, he testified at the hearings that he did not endorse that whole report. I thought you ought to know that.

Mr. STOKES. Certainly.

Senator THURMOND. Now, I want to mention this to you: You are all Democrats. A great many of the black people now are joining the Republican Party, and I hope you will respect their right to do that. There is a general feeling—whether it is true or not is another question, but there is a general feeling that black Democratic leaders prefer not to support a black for a high position unless he is a Democrat. There is a general feeling out there to that effect, and I just want to pass that along to you.

We are glad to have you here and we thank you for coming.

The CHAIRMAN. Would you all like to say thank you in order? [Laughter.]

Mr. WASHINGTON. I would like to say that I appreciate that, Senator, but I would hope that you would take that with a grain of salt, quite frankly, from those who make those statements. I think you will find, Senator, that we have at least always known that there is as wide a divergence of views and opinions in the black community as there is in any other community. It just happens that most of the vocal leaders in the 1940s and 1950s and 1960s happen to have been associated with the Democratic Party. We recognize that President Lincoln was a Republican. Some of my best friends are Republicans. [Laughter.]

We have been trained, Senator, because most of our lives and most of us are old enough, without telling our ages, for most of our lives we have had to confront racism in many forms. It has become more sophisticated now, but we recognize that—we would be the last people on earth to put people in a group, because prejudice means prejudging based upon group identification. We don't look at Republicans as being Republicans. We look at the character of the individual.

I count among some of my best friends and some of the people I admire the most Republicans who I consider to be champions of civil rights, like Senator Specter. I am not saying that just because he is here. I have been watching him on television. Senator Hatch and I disagree on a lot of things, but I think we consider ourselves friends.

Don't listen to those who tell you that we are trying to keep down the movement. We want many blacks to be involved in the Republican Party. We want every black person to vote. We are not like those who discourage people from going to the polls to vote. We think that the best democracy is one where all people participate.

Senator THURMOND. I hope you will associate more with your Republican friends, they may win you over yet.

Mr. WASHINGTON. They have got their work cut out for them, Senator. [Laughter.]

Senator THURMOND. I want to say this: I think it is to the advantage of the black people of this country to be in both parties.

Mr. WASHINGTON. Yes, sir.

Senator THURMOND. For years and years, the South was solid Democratic. We got no attention from Democrats. They had us in the bag. We got no attention from the Republicans, because they knew they couldn't get us. I think it is to the advantage of your people that you have blacks in both parties and, in that way, I think you will get more attention than ever.

We are glad to have you here.

The CHAIRMAN. Thank you, Senator.

Senator Hatch.

Senator HATCH. Well, I just want to welcome all of you here. I just got back from being out in my home State with the President and just came in, but I at least wanted to come up and say hello.

We are happy to have your testimony. I am a little disappointed that it is not more favorable to Judge Thomas, but each of you is a friend and I have great admiration for you.

I do not have any questions. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Grassley, who has been waiting patiently and kind enough to let everybody else go ahead. Senator Grassley?

Senator GRASSLEY. Thank you.

I welcome two of my former colleagues in the House of Representatives here to the Senate side, and I am glad to become more acquainted with others, although I have known Congressman Lewis for quite a while.

You know, I have never walked in the shoes of African-Americans, and I don't think we work hard enough to understand the problems of race relations in America. We all try, but probably do not try hard enough. So, I am not here to preach. I guess I am here to try to tell you problems that I have, as I measure the testimony of the Congressional Black Caucus and the testimony of other black Americans, I guess I have to measure the testimony of everybody, and that is my responsibility.

I want to tell you that I appreciate your testimony. I suppose that if I were going to be really candid, I would say that I am troubled by the position of what I would say is the elected leadership or the so-called leadership of the black community's national organizations, as well as the Congressional Black Caucus, in opposing Judge Thomas, because we have also had several panels of witnesses who are black Americans, let me say from the grassroots, as opposed to the elected leadership, and who know Clarence Thomas and have spoken eloquently about his commitment and devotion to insuring equal opportunity.

Just yesterday, as an example—and you probably heard it as well as I did—we had this woman from Compton, CA, speaking for herself but also a member of the NAACP chapter there, Ms. Holifield, who laid down the challenge, when she was speaking about the group you represent, the Congressional Black Caucus, she

said—and I think maybe some of you, in the statements just made, probably have indicated to me that you understand this—26 members of the Congressional Black Caucus don't represent 30 million black Americans, any more than 26 white Congressmen could represent 200 million white Americans. That was her opinion.

Besides that, we have polls—and I know we cannot make decisions here in the Congress based upon public opinion polls, and maybe part of the problem with Congress is maybe too often we do, but we have polls showing a majority of black Americans support the confirmation of Judge Thomas to the Supreme Court, and only this week, the ABC News poll showed 58 percent of black Americans support Judge Thomas' confirmation.

I also had an article that I had collected for this hearing that quoted then Lt. Gov. Douglas Wilder, speaking out, espousing what I think are some of the same ideas as Judge Clarence Thomas might advocate, and I would read just a couple of sentences from the Washington Post story in the fall of 1986:

> In speech after speech, Wilder, who surprised many politicians with his November 5th election here, is telling black audiences something that they say white politicians can't suggest—stop making excuses, and take control of your destiny.

And then going on to quote.

> But Wilder, a 55 year-old Richmond lawyer who calls himself a conservative on many issues, is delivering his message with lowkey rhetoric that warns blacks not to expect government to resolve many of their problems.

So I don't feel like I can ask you questions, just kind of give you some idea of some wrestling that goes on as I compare your opinions with those of other black Americans.

I guess I would just close by expressing my view that Judge Thomas shouldn't be condemned because he challenged the status quo in his search for new answers to some old problems. He probably was able to do a better job of that as a policymaker than he is going to be able to do as a Supreme Court Justice, but he will be in a powerful position and will be a leader for these causes, even though it is interpreting law rather than helping to make law.

Well, I appreciate your listening to me, and I also appreciate your testimony.

Mr. CONYERS. Senator Grassley, could I just point out to you that the NAACP had a discussion—as a matter of fact, they met with Judge Thomas—and there was one chapter that decided not to go along with the decision to urge that his nomination be rejected, and that was the chapter in Compton, CA. That was out of approximately 2,200 chapters across the country, and I think it really illustrates the exception rather than the rule.

I might also point out in my own district, I can tell you quite assuredly that there is no majority of people who support Clarence Thomas. What we have is a phenomenon I'd like to just explain that might make you rest a little bit more easily about what seems to be support for Judge Thomas.

When Judge Thomas, African-American, was nominated to succeed Justice Thurgood Marshall, nationally, black America was overjoyed. I would warrant to you that 90-something percent of black America had never heard of Clarence Thomas before. With all due respect to him; he was an inside-the-beltway government bureaucrat. But as we began to reveal the difficulty with his track

record and the reasons that we opposed him, which spread not just from the Congressional Black Caucus but through the church leadership, the civil rights community, the labor community, women's organizations, the understanding of him has completely changed. And I think that you should really understand that dynamic. We were so happy to have a black name that that led to immediate support, regardless of whether we knew him or not.

Mr. STOKES. Senator, if I could just make an additional point here, the lady who spoke to you is absolutely right in the sense that we do not speak for all black Americans, nor do we presume that the 26 of us in the Congressional Black Caucus can speak for all Americans.

First, while many of us represent in our individual congressional districts, majority black constituents, we also represent white Americans. Some of us have congressional districts that are a majority white as opposed to being majority black. And we don't presume that we can speak for all white Americans, either, by virtue of that in our districts.

What we do, I think, claim is this. We are not self-appointed or self-acclaimed leaders. Every 2 years, we do what you have to do in the Senate every 6 years, and that is go back to the people and get elected again. We go back every 2 years. We get elected, and we represent individually 550,000 people. So collectively, there are 26 of us representing 550,000 people, both black and white, who go to the polls and vote for us.

So to that degree, we think we speak for those people to whom we go back every 2 years with a record, and they then vote upon us to return to the Congress based upon that record.

Mr. OWENS. Senator, I don't want to be redundant. I want to say pretty much the same thing. There are a lot of people who trivialize and try to minimize the importance of elected officials, but as one fellow elected official to another, you know what we go through to get elected, and you know that those of us who are in office through this process do represent the majority of the people in our districts. And some of us have been in public office for more than 20 years, so I think we speak not as self-appointed leaders, but we speak with great authority. And if you look across the country at elected officials not only in Congress but in State legislatures and city legislatures, you will find that the overwhelming majority of those elected officials feel the same way we do about the appointment of Clarence Thomas.

Mr. WASHINGTON. Senator, let me only add the point that I was attempting to make earlier and perhaps did not make clear enough. It is unnecessary to attack one person in order to state their point of view, so I would ask you to look with a jaundiced eye upon those, because we are elected, as are the Members of the Senate. The people that you are talking to are either anointed or appointed, but not elected; 25 of the 26 black Americans who have been elected by white, Hispanic, Asian, black, other people to the Congress of the United States have stated our position. That should not subject us to attack; they shouldn't attack the body politic because they disagree with the result.

The CHAIRMAN. Let me point something out, if I may, to my colleagues which I found interesting, I thought insightful, and I think

somewhat illuminating about what still amazes me after so many years of getting less than equal treatment in this country. Black Americans did what I suspect almost no one else would do. Upon the announcement of Mr. Thomas to be the nominee, notwithstanding the fact that he was black, over 60 percent of black Americans had an open mind—over 60 percent, from all the polls I read, said "We're not sure; let's see what he has."

Now, I have not made my judgment on him yet, but I think that is astounding. Everyone likes to assume the point that you made, Congressman Washington, in such an articulate fashion, that you point out is not true—that blacks all think alike. Here, a black man was appointed to the bench, and almost two-thirds of black America said, notwithstanding that, "I am going to withhold judgment until I find out more about him." I thought that was astounding and quite a compliment.

Mr. LEWIS. Let me just add, Mr. Chairman, I think you make the point that as American and as black American—I think as a people—we are very considerate. We are kind, we are compassionate, and we have a great deal of pride. And I think a lot of blacks supported Thomas when they heard that he had been nominated because they were proud of the fact that a black was nominated. And when they got more information, they started looking and moving the other way.

Another point I want to make is that the National Baptist Convention, which came out against Clarence Thomas, represents more than 10 million African Americans. The black church is probably the most powerful, most influential group in the African American community, and this is the largest black religious institution.

The CHAIRMAN. Senator Specter—oh, I'm sorry, I beg your pardon, Senator Grassley. I thought you were finished.

Senator GRASSLEY. I'm done, except I want to make one statement to clarify that the poll I referred to of 58 percent black Americans' support for Thomas was taken the 13th to the 15th, so it was after he had been testifying before us for 4 days. So these people have had an opportunity to view his philosophy as well as just his name and who he is.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I join with my colleagues in welcoming you, our fellow members of Congress, to this hearing. The brief exchange between Senator Thurmond and this caucus, I think, was historical in a sense, and an underlying sense that touched some very, very important feelings.

The issue of affirmative action, I think, is a big one, and I have expressed before my regret that we didn't do more about it substantively, but that's what I would like to discuss with you gentlemen for a few minutes today.

I believe that these hearings have had the benefit of having people focus on a substantive issue, not as much as I would have liked, but Judge Thomas has advocated a position in opposition to affirmative action on the grounds that as to the minorities which it purports to help, that he feels that it is in fact harmful. He feels it fosters a notion that the minorities are disabled, fosters a notion that the minorities are in need of handouts and takes away self-

respect. As to those who are in the majorities who are displaced, there is a sense of resentment, of unfairness, of being displaced by individuals with lesser qualifications. And he articulates a view that there is a significant increase in racial divisiveness.

Now, he has articulated these views in the context of an individual who has pulled himself up by his bootstraps or—perhaps not by his bootstraps, because some say he had no boots—by his kneecaps, who has become a very prominent individual, and perhaps more than any African-American since Justice Thurgood Marshall—aside from athletes, and there is the big concern about whether athletes are too much a role model in our society. But he has thrust himself on the national scene in a way that no African-American has in modern times as a role model and articulating a view of self-help, really sort of rugged self-help.

The comment that I'd like to ask you to make is in response to two questions. One is even if you don't agree with this articulation of opposition to affirmative action, doesn't it have a reasonable basis? And secondly, doesn't Judge Thomas have the potentiality to be a real vibrant role model for African-American youngsters who won't understand the nuances of the *Griggs* case or the *Johnson* case or local 28, or don't know all the things that have happened in this hearing room, but simply see an African-American who has attained tremendous stature by pulling himself up with his own energies?

Congressman Conyers, may we start with you?

Mr. CONYERS. Yes, I am delighted to respond to your question, Senator Specter, because I am sure at this stage of the hearing we must all know that he was a beneficiary of affirmative action as much as anyone has ever been in the country. And what I find ironic is that after Yale University Law School, which used affirmative action and was happy to bring him in, and he succeeded well, that we find now that he doesn't think other people should use that same method.

That seems to me to refer to the kind of character that I'm not really particularly proud of. I didn't like the reference that he made, speaking of how much role model he is going to be, about his sister who worked very hard at a hospital and for one short period of time had to go on public assistance. He held that up as the spectacle of why he didn't like welfare. I was absolutely shocked to hear that.

So you won't hear me agreeing that he is a new role model second only to athletes which you and I rightly agree may be overvalued. I see him, as a matter of fact, doing exactly the wrong thing about the right strategy. When we talk about these legal systems of class action and affirmative action and patterns of practice, looking for result rather than intent, these may be legal theories that may slip unnoticed in the general public, but I think that they stamp him as the wrong guardian of constitutionally derived remedies that we are struggling so hard to get into effect and on the books.

Two of you have worked with us and members of the conference committee on the failed 1990 Civil Rights Act that was vetoed by a President who now threatens to veto yet another civil rights bill that we are toiling with. These kinds of principles to me, when I

think of Judge Thomas being elevated, I see more problem being created. I see us moving backward and not forward. And race won't help him there. A poverty-stricken background is of no use to us in what we think he is going to do based on what he has done in the past.

Senator SPECTER. Congressman Stokes.

Mr. STOKES. Thank you, Senator Specter.

The manner in which you have characterized the positions taken by Judge Thomas is what really frightens me about him. I think that for one who has been the beneficiary of affirmative action to say, "Now, I've got mine; you get yours the best way you can"; "It was okay for me, but you ought not have affirmative action"—that frightens me.

Black Americans and other minorities who are in need of affirmative action aren't really asking for anything special. All they are asking for, Senator Specter, is under our Constitution the guarantee of opportunity and equality that is given to all Americans under our Constitution. That is not asking for a handout. When the person who is discriminated against in the marketplace or in the employment place asks just to have an equal opportunity—not preference, not priority, just an equal opportunity to earn a decent living—that's not a handout.

It is Judge Thomas' attitude toward people who need relief, his attitude when he was head of the EEOC of trying to get away from class actions and reduce it down to individual action with the knowledge that what that did was to hurt the masses of cases—that is disturbing to me in the same way that Congressman Conyers has already mentioned.

A man who had the attitude he had toward his own sister and her children; the references that he made to them publicly before conservative black groups, while he made his points with the President and other conservatives, that this man can attack his own family. And it turns out that he really wasn't telling the truth about his sister. While she was on welfare at that time, and he was referring to the children as learning how to cheat now and so forth, later information came out that all of them really worked when they had an opportunity to do so.

But these are things that frighten me about him. I don't think, in the sense of a role model for black Americans, that a Judge Thomas will ever be the role model that a Thurgood Marshall is.

Senator SPECTER. Congressman Owens?

Mr. OWENS. I think the thinking that you have set forth as being the position of Judge Thomas with respect to affirmative action and blacks not receiving any special treatment is a very backward kind of reasoning, very limited, lacking in compassion, and basically dishonest to any black in America to take that position because there is a cornered reality which blacks in America live through every day.

All Judge Thomas needs to do is take off his suit and his tie and walk through 1 day of life in this city or anywhere else in the country and he will experience some things to let him know that blacks are treated in a very special way.

Prejudice and discrimination are a part of the reality of humankind all over the globe. We have all kinds of conflicts that people

set up or reasons that they set up to discriminate against each other. Often, when both groups are white it is religion or some other ethnic difference, but when you are dealing with blacks, you are dealing with people who are highly visible, and the degree to which discrimination is expressed against us is far greater.

And any black who says that we are just like everybody else and should never expect to have any kind of special treatment in order to overcome certain problems is basically dishonest. They are dishonest because of the current reality; they are dishonest because, as an intellectual, they want to disregard all of history.

Blacks are the descendants of African slaves who were brought here against their will, not like other immigrants. We were, for 300 years, treated as slaves and suddenly set free with very little or nothing to compensate. There was a social experiment called the Freed Man's Bureau. Thank God for that, because it created historically black colleges.

But, basically, nothing happened when the slaves were set free to deal with the problem that they had their labor stolen from them all those years. They had no property, et cetera, et cetera. So the whole concept of reparations has to enter into dealing with the descendants of African slaves today, but we refuse to accept that.

In every group, there is a certain percentage who will overcome and excel no matter what the conditions are, no matter how great their pressure. There is a certain percentage who will overcome. The majority of the people are just normal human beings; they will not be able to overcome without some special help.

We accept the principle of reparations in the case of war. One nation loses a war; they have to pay. We also accepted it in the case of Israel and the Jews under the Nazis. We went one moral step further, and oppressed people who had not won the war were paid reparations by the Germans because of the conditions they subjected those people to during the course of the Nazi period.

I am not asking for reparations in the payment of dollars to individual blacks, but some consideration of what—300 years of slavery, followed by years of de facto discrimination that impact on a people has to be taken into consideration.

Any person, black or white, who is an intellectual and knows history and wants to disregard this totally, I find, you know, either naive or basically dishonest, and I think in the case of Judge Thomas it is basic dishonesty.

Senator SPECTER. Well, my time is up, Mr. Chairman. May the answers continue?

The CHAIRMAN. Yes.

Mr. WASHINGTON. I will be brief in my response, not to say that the others weren't, of course, because they are senior to me.

The first question you asked is about—you ran off a litany of things dealing with—and you arrived at the correct assessment that we are dealing with, unfortunately, a period of more racial divisiveness in this country than any of us would think ordinarily possible in 1991; that we were on a course where things were getting better. Now, it appears that things are either standing still or moving backwards.

And the question you raised, as I understood it, Senator, had to do with Judge Thomas' views about affirmative action vis-a-vis

that, and the question was does his position have a reasonable basis. The answer to that question is no because it misappends, if you will, the very touchstone of what discrimination is.

Judge Thomas' view is that whatever has happened to him, good or bad, has happened to him as an individual. Nothing could be farther from the truth. Prejudice is prejudgment because of group identification. People can't prejudge you if they don't know you, except either you are too tall, Senator Simpson, or you are too short or you are too black or you are too this or you are too that, based upon group identification.

It oversimplifies and overlooks the fact that, as my colleague has said, the prejudice that is visited upon black people or Hispanics or any other group of individuals is born of someone having categorized them as being not as qualified to have the job. So, that is not going to go away.

If you did away with all affirmative action, then there are white people and black people and Hispanic people and all kinds of people who think that the view of the sunset is somehow enhanced if they are standing on somebody else's shoulders. Nothing is going to change about that. There are always going to be white people who think the black guy got the job because he was black rather than because he was qualified.

We as leaders have to ensure that regardless of how we feel about these laws, if these are laws on the books that are bound to be enforced that overcome the vestiges of past discrimination, we can't play political cannon fodder with them, it seems to me. We lend ourselves to that kind of notion when we get out and play politics with notions about job discrimination and the like.

We know that Griggs decided that there would be remedies available to overcome the built-in headwinds as long as the headwinds continue to exist for women or for Hispanics or for—one of these days, it is going to be for white males. A majority of people in this country are not going to be white males forever. Demographers already tell us that. So when you become the minority, then will the built-in headwinds be opposing you? I think so.

In answer to the second part of the question of does he have the potential to be a role model, he has the same potential as in Rudyard Kipling's admonition in the poem, "he travels the fastest who travels alone"—"when by the aid which he has done and the aid his own which he has done, he travels the fastest who travels alone." That is the role model he presents. He presents a role model that if you want to get ahead in life, don't come up through the ranks the same way that you and all the rest of us do; get in the short line.

That is exactly what he has done. He went over, he looked at the line over here on this side, and he said that the line of black people who want to move up is shorter over there, so he got in the short line, and that is the role model that he presents for black Americans, I think.

Mr. LEWIS. Senator, let me just state that in spite of all of the changes, in spite of all of the progress that we have made in this country during the past few years, the scars and stains of racism are still deeply embedded in American society. So there is still a need for affirmative action. I think you have a nominee who would

like to destroy the bridge of affirmative action that brought him across. He is forgetting those that have been left out and left behind.

And on the question of a role model, I think we want someone who is going to be a headlight rather than a taillight when it comes to the issue of simple justice and simple fairness. Is this man the type of role model that we want for our children, someone who is defiant, evasive and inconsistent? It is not a role model I want for my son.

Senator SPECTER. Thank you very much, gentlemen. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I just want to thank my fellow legislators for coming. I appreciate that, and I do understand your terribly deep concern. I am sure that the deliberations within your caucus were very spirited because I know more than several members of your caucus, and quite well, and I enjoy my work with you as legislators. We have been on conference committees together, and panels and forums, and that has been an opportunity for me to know you better.

And so, you know, I know that it was a spirited discussion you had in your caucus. We are going to have another group before us today, black lawyers, where the vote on Clarence Thomas was 113 to 104. That is reality in this one. The black community is split for the first time in my memory here on this panel. It is very real, and I understand that and it is troubling to you.

And the things you talked about, the EEOC and comments about the sister and the affirmative action—all of those things were addressed by the nominee. The sister sat right here with him for 5 days—an example of family affection. The mother, the son—all those things have been covered; all parties have been treated fairly.

No one is going to be shut out, but it seems to me that it is the diversity of thought and philosophy of this man that is the fear, the real fear. That is a terribly presumptuous statement of mine because there is no way I can even identify. But I do think that it is unfortunate to see sometimes a white legislator telling a black person how a black person should feel. I don't like that one. I bet you don't like it either.

So this is not the usual black conservative; that is not who this Clarence Thomas is, and that is why he has got to be a big puzzle to you and somewhat to us. But I don't think he is dishonest. I think he is fair, I think he is compassionate, and I think he is sensitive. I think he is going to be a tremendous addition to the Supreme Court and he is going to surprise everybody.

Craig, I heard what you said about you and I have to buy our shirts in a separate place. We have a wingspread of about 37½ inches. And we are different, but I enjoy you and admire you greatly. John Conyers and I have had some tough words back down the line, and I respect him. We have been on conferences. I know Congressman Stokes somewhat, but Kweisi Mfume and Don Payne, and you have got a lot of wonderful people in your group. And so here we go. We will just try to do our best.

I really don't have any questions, but I can certainly understand the anguish and the heavy concern that you have. I have no questions.

The CHAIRMAN. Thank you, Senator.

I am sure that one thing the five Congressmen and I share in common is that if—if—Clarence Thomas is approved by the Senate and goes on the Court, it will be our sincere hope that he does surprise you. You, personally. We hope when you are on the Court you and the President are having lunch someday, and you will say, Oh, my Lord, what have we wrought. [Laughter.]

Senator SIMPSON. Mr. Chairman, you were gone from the chamber off and on for several minutes, and Orrin and I were going to take over this committee. So think how lucky you were. I can assure you that he will surprise me.

The CHAIRMAN. I am sure that day may come again when you all take over the committee. Hopefully—by that time, I will have no hair, but maybe not. It is going rapidly. I am doing my best.

At any rate, I want to thank you. I think it was Congressman Conyers who mentioned his sister. We will enter in the record—but I think I am not mistaken when I say this—I am not making the comment relative to Thomas himself, but relative to his sister who did sit here the whole time. She is a remarkable woman. As I understand, this woman held down two minimum-wage jobs and had an aunt who was taking care of her children while she could hold these two minimum-wage jobs. The aunt became ill. Only when the aunt became ill did Clarence Thomas' sister—again, I don't care what Clarence Thomas said about it. I am not talking about his comment, but just because her name has been mentioned a number of times.

As I understand it, only when the aunt became ill and could no longer take care of her children during the day while she worked her two minimum-wage jobs did she have to quit, get relief for a period of time until she could rectify the situation and then went back to work at a local hospital and has worked since them. Quite a remarkable woman.

Quite frankly, I have no reason to doubt it. I have heard nothing to controvert what I have just said. I may have one of the details off, but that is the essence of it at a minimum. We will put in the record precisely what the situation is. But I kind of always thought that was the reason why we had public assistance, for people who had no choice.

I don't know many Americans who like working at all. A lot of them would work in that circumstance two minimum-wage jobs. Well, that is not true. There are tens of thousands who do it and have to do it. But at any rate, not just because you mentioned it, John, but her name has been mentioned off and on for the last 7 days, and I just think the record should note she is a remarkable person facing the struggle that tens of thousands of Americans have faced in their lives, black and white.

Mr. CONYERS. Mr. Chairman, on behalf of all us here, we want to thank this committee for the unusual amount of time that has been afforded to us to exchange these views. We are very grateful for that.

The CHAIRMAN. Simply stated, you are important. Simply stated. It is a simple fact of life. And I thank you for all coming over. You have lent a great deal to this deliberation and given us all something to think about. I am just delighted in my very short years of practice before coming to the Senate at age 29 that I was not on the other side of a case in the courtroom with you, Congressman Washington. I now know why you were a successful trial lawyer.

Having said that, let me thank you all again for being here, and we will continue to seek your counsel on many other things. And, John, look over the crime bill.

Mr. CONYERS. Thank you. May we be excused?

The CHAIRMAN. You may be excused. Thank you.

[The prepared statement of the Congressional Black Caucus follows:]

Congressional Black Caucus
Congress of the United States
H2-344 House Annex #2
Washington, D.C. 20515
202 — 226-7790

STATEMENT OF THE CONGRESSIONAL BLACK CAUCUS
ON THE NOMINATION OF JUDGE CLARENCE THOMAS
AS AN ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

September 19, 1991

Introduction

It is a special pleasure to testify before our friends and colleagues on the Senate Judiciary Committee. Representatives of the Congressional Black Caucus have testified at Supreme Court confirmation hearings before, and we truly appreciate this opportunity to once again express our views on a vitally important nomination.

Although as Members of the Congressional Black Caucus we represent substantial numbers of African Americans, as Members of Congress we also represent whites, Hispanics, Asians, Native Americans, older Americans, people with disabilities, and Americans of every stripe. It is on behalf of all Americans that we oppose the nomination of Judge Clarence Thomas for a seat on the United States Supreme Court.

Our members have been chief sponsors of every piece of legislation touching on civil rights and liberties, women's rights, and equal opportunity for a quarter of a century. A large number of our members serve on the House Education and Labor Committee and several others serve on the Judiciary Committee, the two committees which have the major responsibility for overseeing the agencies and laws Judge Thomas was responsible for.

Judge Thomas has testified before Congressional committees 56 times (55 published; 1 unpublished). Yet this extraordinary number of appearances is not reflective of a long tenure in public service or governmental office, and very few of his appearances were routine.

In fact, most of those appearances stemmed from controversies in which he was involved and reflected the exasperation of House Committees with his administration of the law. The publication of an unusual number of General Accounting Office (GAO) reports, most of them highly critical of the nominee's administration of the laws under his jurisdiction, underscore this view.

After carefully examining the Thomas record, we have concluded that during his government service Judge Thomas failed to carry out his constitutional obligation to his oath of office

to enforce the laws of the land. Moreover, Judge Thomas exhibited a pervasive disrespect for Congress and the legislative process. It is our belief that his disregard for legal precedent and the rule of law undermines his privilege to a seat on the Supreme Court.

The Supreme Court belongs to all Americans. More than any other, it is the institution that curbs excesses by other government bodies, that safeguards the rights and liberities of every citizen, and that serves as a unifying force, enabling our nation to survive as a constitutional democracy longer than any other.

Beyond this tie that all citizens have to the Supreme Court, however, the Court has a special significance to African Americans. Throughout our nation's history, the actions of the Supreme Court have had a powerful influence on the lives of African Americans -- for better or worse. During the 19th century, the Supreme Court first decided that African slaves were property with no rights that a white man was bound to respect. Then, after the Civil War, the Supreme Court helped bring an end to Reconstruction, with decisions that gutted original civil rights laws and imposed the judicial invention of "separate but equal."

In contrast, in the latter half of the 20th century, the Supreme Court's interpretations of the Constitution have provided African Americans with long overdue freedom. The Supreme Court's decision in Brown v. Board of Education and subsequent civil rights cases helped rid the nation of the scourge of "Jim Crow". These decisions created conditions in which African Americans could improve their economic, social, and political status. Without the Supreme Court, it is doubtful that most Members of the Congressional Black Caucus would be in Congress, that General Colin Powell would be Chairman of the Joint Chiefs of Staff, or that Judge Clarence Thomas would be a nominee to the Supreme Court.

No one individual is more responsible for the Supreme Court's contemporary role as the guardian for equal rights than Justice Thurgood Marshall. First as an advocate and then as a distinguished jurist, Justice Marshall is responsible for most of the great equal protection decisions of the past 40 years and for the legacy of opportunity that we are struggling to make tangible for millions of Americans. The nation's debt to Justice Marshall is enormous and can never be repaid.

The nominee before you has been offered by President George Bush as a worthy successor to Justice Marshall. As an African American and as someone who overcame humble beginnings, we are told, Judge Thomas will understand the needs of those who face similar struggles. Even if these claims were not made on Judge Thomas' behalf, it is inevitable that Judge Thomas will be assessed as Justice Marshall's successor.

Regrettably, when we examine the nominee's record -- not only his proformance as a government official -- but his writings, speeches, and remarks over the past decade, it is clear that Judge Thomas is not a worthy successor to Justice Marshall. Our differences with the nominee do not stem merely from reasonable and understandable differences over particular cases or remedies. Rather, Judge Thomas repudiates the fundamental role of the Supreme Court as guardian of our Constitutional freedoms and rejects the legacy of Justice Marshall.

On behalf of 25 of the 26 members of the Congressional Black Caucus, we respectfully urge you to reject the nomination of the Judge Clarence Thomas.

CONGRESSIONAL BLACK CAUCUS STATEMENT

I. The Nominee's Failures to Enforce the Law and his Contempt for the Legislative Process

A. Failures at the EEOC

Two years ago, 14 members of the House of Representatives, including 12 chairs of committees having jurisdiction over the EEOC and five members of the Black Caucus, wrote to President Bush asking that Thomas not be nominated to the Court of Appeals.

After reviewing the record, the writers of the letter said that Thomas had "resisted Congressional oversight and been less than candid with legislators about agency enforcement policies." They concluded that he had demonstrated an "overall disdain for the rule of law and that his record as "EEOC Chair sends a clear message to those who have suffered job discrimination that he is insensitive to the injustice they have experienced."

These were harsh conclusions, but they are based on a well-documented record, including the following:

- As Chair of the EEOC, Thomas persistently refused to use the mechanisms provided by law after Congress earmarked funds specifically for this type of enforcement and threatened to cut the budget for the office of the Chair and members of the EEOC. In 1985, 40 members of Congress wrote to Thomas expressing "grave concern" over EEOC's failure to pursue class action cases.[1] This refusal to use the one mechanism that has been essential to the elimination of discrimination flows directly from Judge Thomas's personal view that "group remedies" are inappropriate.

- Also underlying Thomas's refusal to pursue systemic cases was his opposition to the employee selection guidelines. These guidelines were the bases for the Supreme Court's unanimous decision in Griggs v. Duke Power Company in 1971 holding that employer practices that had a disparate impact violated Title VII unless justified by business necessity. The guidelines and Griggs were the bases of great progress in equal job opportunity in the 1970s. When Thomas was thwarted in his effort to repeal the guidelines, he simply refused to enforce them, leaving EEOC to file only the kinds of cases "that employers write off as the cost of doing business."[2]

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[1] See The Washington Post, July 9, 1985, p. A1.

[2] See interview with Michael Middleton, St. Louis Post Dispatch, February 26, 1989, p. 1B.

- Despite a Supreme Court decision specifically endorsing goals and timetables and the failure of a Meese-Thomas effort to repeal the Executive Order authorizing such remedies, Thomas declared in 1986 that EEOC had abandoned the remedy and would no longer approve settlements involving the use of such goals.[3]

- Through indifferent and negligent administration, Thomas allowed some 13,000 claims under the Age Discrimination in Employment Act to lapse without action, requiring special legislation by Congress to restore individual rights.[4]

- As Chairman, Thomas also failed to enforce the age discrimination law in dealing with the obligations of employers to make pension contributions for workers over the age of 65. Thomas dragged his feet, allowing employers to freeze the pension accounts of people who worked beyond the age of 65, even after Congress had clarified the law and a federal court had held that EEOC delays were "entirely unjustified and unlawful, at worst deceptive to the public."[5] Thomas only backed down after further Congressional pressure and objections from the IRS.

- During his years at the EEOC, Thomas failed to challenge gender-based wage discrimination, embracing an analysis by Thomas Sowell that asserts that women prefer jobs that pay less and that black women fare better in the labor force than white women.[6]

B. Failures at the Department of Education

The nominee's record as a lawless administrator at the EEOC is of a piece with his defaults in his previous post - as director of the Office of Civil Rights in the Department of Education.

There, he made startling admissions at a 1982 hearing in federal district court concerning charges that his office had violated court-ordered requirements for processing civil rights cases.

> Q: And aren't you in effect -- But you're going ahead and violating those time frames; isn't that true? You're violating them in compliance reviews on all occasions, practically, and you're violating them on complaints most of the time, or half the time; isn't that true?
>
> A: That's right.

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[3] The Washington Post, July 24, 1986.

[4] See letter from Rep. Edmund Roybal, Chair, House Select Committee on Aging, to Senators Biden and Thurmond, July 16, 1991.

[5] AARP v. EEOC, 655 F. Supp. 228, 229 (D.D.C.), aff'd in part, rev'd in part on other grounds, 823 F2d 600 (D.D.C. 1987).

[6] See Report of the Womens' Legal Defense Fund, pp. 40-42; Thomas "Thomas Sowell and the Heritage of Lincoln; Ethnicity and Individual Freedom," 8 Lincoln Review no. 2 at 15-16. (Winter 1988).

Q: So aren't you, in effect, substituting your judgement as to what the policy should be for what the court order requires? The court order requires you to comply with this 90 day period; isn't that true?

A: That's right.

Q: And meanwhile, you are violating a court order rather grievously, aren't you?

A: Yes.[7]

Following the hearing, Judge Pratt concluded that while there had been some problems in past administrations with compliance, the difference between David Tatel (Thomas's predecessor) and Thomas "is the difference between day and night."[8] Judge Pratt found that the court's order had "been violated in many important respects" and that under Thomas, the view was that "we will carry out [civil rights statutes] in our own way and according to our own schedule."[9] This episode is hardly comforting when we consider that a justice must himself respect and follow the law.

C. The Nominee's Disrespect for the Legislative Process

The failures by Judge Thomas to enforce the civil rights laws he was responsible for administering have been matched by unprecedented expressions of hostility toward Congress for scrutinizing and criticizing his agency's performance.

For example, in its effort to deal with the lapsed complaints under the Age Discrimination Act, Congress was continually frustrated by misrepresentations made by Thomas about the severity of the problem, leading the Senate Special Committee on the Aging to find that:

> "The EEOC misled the Congress and the public on the extent to which ADEA charges had been permitted to exceed the statute of limitations."[10]

Yet, the moral drawn by the nominee from this episode, in which the rights of older people were restored only through painstaking investigation and corrective action by Congress, was that Congress was at fault. He said:

> "My agency will be virtually shut down by a

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[7] Transcript of hearing in WEAL and Adams v. Bell, Civ. Action 3095-70 (D.D.C. March 12, 1982) at 48, 51.

[8] Adams transcript, March 15, 1982.

[9] Id.

[10] Report of the Senate Special Committee on Aging (unpublished), 100th Congress, 2d Sess., 1988, pp. 36-37. Senator Pryor, the current Chairman of the Committee, has made it clear that the misrepresentations were those of Clarence Thomas, stating that "I was dismayed to learn about several erroneous statements made by Chairman Thomas... Those statements are certainly misleading..." Cong. Rec. S 1542 (daily ed. Feb. 22, 1990).

> willful Committee staffer who has succeeded in getting a Senate Committee to subpoena volumes of EEOC records... Thus a single, unelected official can disrupt civil rights enforcement --- and all in the name of protecting rights."[11]

This hostile, unresponsive treatment of any Congressional criticism of his performance was repeated by Mr. Thomas on many occasions. In 1988, the General Accounting Office issued an audit report in response to a request from now retired Congressman Augustus Hawkins, then Chairman of the House Committee on Education and Labor, to look into EEOC's record of investigating and settling complaints. The GAO report set out facts showing a mounting backlog, delays in investigation and a decrease in the average amounts of settlements.[12]

Thomas's reply was to cast doubts on the independence and integrity of the GAO, complaining that the report was a "hatchet job" and adding that:

> "It's a shame Congress can use GAO as a lap dog to come up with anything it wants..."[13]

On other occasions, the nominee has offered the following opinions of Congress and the legislative process:

- Congress has "proven to be an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom."[14]
- "Congress is no longer primarily a deliberative or even a law making body."[15]
- As EEOC Chair, he was "defiant in the face of some petty despots in Congress."[16]

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[11] Speech to the Federalist Society at the University of Virginia, March 5, 1988, p. 13.

[12] GAO Report HRO-89-11 (October 1988).

[13] The Los Angeles Times, October, 11, 1988.

[14] Speech to the Federalist Society at Harvard University, April 7, 1988, p. 13.

[15] Speech at Brandeis University, April 8, 1988, p. 4.

[16] Speech at Harvard University, supra note 14 at p. 13.

- A committee request for semi-annual reports on the EEOC's work was an "intrusion into the deliberations of an administrative agency."[17]

- "As Ollie North made perfectly clear last summer it is Congress that is out of control." [emphasis in original][18]

Our concern is not that Thomas engaged in spirited discussions in public or with members of Congress. We are all accustomed to the rough and tumble of legislative and political debates and we can take it as well as dish it out.

Rather, something of more fundamental importance is at stake here. Faced on many occasions with facts indicating that his agency was not enforcing the law, Clarence Thomas chose neither to promise improved performance nor to engage in a substantive discussion of the legislative and administrative issues. He elected, rather, to challenge the legitimacy of the legislative process and the good faith of those who are a part of it.

Even without more, the Thomas record of disdain for law should be viewed as a disqualifying factor in his quest for a seat on the Supreme Court. His actions and utterances should also set off alarm bells in this Committee about what may be expected of Judge Thomas should he be confirmed. We will discuss these concerns more fully later in this testimony.

II. The Nominee's Repudiation of the Role of the Supreme Court as Guardian of Constitutional Rights and Liberties

Supporters of Clarence Thomas's nomination seek to portray opponents as people who disagree with the nominee about "busing" and "quotas." This caricature of the opposition is both crude and inaccurate. An examination of the nominee's writings and speeches makes it abundantly clear that he quarrels not just with a few decisions or remedies but with the great body of equal protection jurisprudence that has made progress possible in the latter half of the 20th century.

A. The Nominee's Attack on Court Interpretation of the Voting Rights Act. In 1988, Judge Thomas assailed Supreme Court decisions applying the Voting Rights Act, with the following words:

"The Voting Rights Act of 1965 certainly was

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[17] Speech at Harvard University, supra note 14 at p. 13.

[18] Speech to the Federalist Society at the University of Virginia, March 5, 1988, p. 13.

> crucial legislation. It has transformed the policies of the South. Unfortunately, many of the Court's decisions in the area of voting rights have presupposed that blacks, whites, Hispanics, and other ethnic groups will inevitably vote in blocs. Instead of looking at the right to vote as an individual right, the Court has regarded the right as protected when the individual's racial or ethnic group has sufficient clout."[19]

Elsewhere, the nominee has attacked the 1982 amendments to section 2 of the Voting Rights Act on which the court decisions were based as "unacceptable".[20]

The decisions referred to by Judge Thomas presumably are White v. Register, 412 U.S. 755 (1971) and Thornburg v. Gingles, 478 U.S. 30 (1986). The latter decision implemented the 1982 amendments to section 2, which prohibits election laws and practices with a racially discriminatory effect. The most important application of this prohibition is to forbid schemes that dilute minority voting strength. As the NAACP Legal Defense Fund has written:

> "Judge Thomas's criticism of section 2 and the related Supreme Court cases reflects a fundamental misunderstanding of the law. Neither section 2 nor those decisions, assume that whites or minorities vote in racial blocs; in a section 2 case like Gingles the burden is on the plaintiff to adduce evidence proving that racial bloc voting does occur in the jurisdiction at issue. Where that, in fact is the case, the individual's right to vote as well can be rendered meaningless by a system which assures that the candidate supported by black voters has no chance whatsoever of actually being elected."[21]

In 1981 and 1982 we in the Black Caucus worked with many members of this Committee to craft amendments to the Voting Rights Act that would provide a meaningful opportunity for minority citizens to elect candidates of their choosing. At the same time we specifically eschewed in the statute any notion of "proportional representation" or "group rights."

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[19] Speech at the Tocqueville Forum, April 18, 1988, p. 17.

[20] Speech to the Heritage Foundation, June 15, 1987, p. 10; Speech at Suffolk University, Boston, March 30, 1988, p. 17.

[21] NAACP Legal Defense Fund, "An Analysis of the Views of Clarence Thomas," August 13, 1991, p. 5.

Our work is surely not beyond criticism, but for the nominee to caricature both the statute and the Court's interpretation of it as he has, betrays both his failure to understand the issues and his persistent rejection of the role of the judiciary in protecting rights established by the Constitution or the Congress.

B. Equal Employment Opportunity and Affirmative Action

For more than a decade, the Supreme Court has struggled to balance fairly the interests involved in affirmative action cases. While recognizing a need to go beyond formalistic declarations of good intentions by employers, the Court has sought to assure that the interests of already-employed white workers were not "unduly trammeled" by affirmative action policies. While recognizing that race-conscious remedies ordinarily must be based on the need to overcome a history of past racial discrimination or exclusion, the Court has recognized the utility of voluntary agreements that avoid contentious litigation about liability.

Thoughtful observers on all sides of the issue have not been reluctant to criticize the Court for "going too far" or "not going far enough" on a given matter, but their criticism has been tempered by an appreciation of the complexity of the issues, the need to discern legislative intent that is not always evident and the need to be fair and equitable.

That is what one might have expected of Clarence Thomas, given his position at the EEOC and presumed expertise. Instead, Mr. Thomas has approached affirmative action issues with an elephant gun, using overblown rhetoric instead of careful analysis. His attack on affirmative action remedies has been across-the-board and all-encompassing. Unlike some proponents of judicial restraint, he gives no deference to the will of the majority as expressed in Congressional legislation (Fullilove),[22] nor would he permit private employers to act voluntarily to remedy their past practices (Weber and Johnson).[23] And he would restrain the authority of courts to order race-conscious remedies even in the most aggravated cases of discrimination. (Sheet Metal)[24]

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[22] Fullilove v. Klutznick, 448 U.S. 448 (1980).

[23] United Steelworkers v. Weber, 443 U.S. 193 (1979); Johnson v. Transportation Agency, 480 U.S. 616 (1987).

[24] See, e.g. Local 28 Sheet Metal Workers v. EEOC, 478 U.S. 421 (1986).

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The intemperate language used by the nominee in his attacks is instructive. The Weber case involved a voluntary effort to deal with the long-standing exclusion of black workers from the steel industry, and Johnson a voluntary effort to deal with entrenched patterns of gender discrimination in county government.

Yet in Mr. Thomas's lexicon, the facts did not matter. Weber was "the egregious example"[25] of Court misinterpretation of legislative intent. Johnson was "just social engineering and we ought to see it for what it is."[26]

Most disconcerting, if one expects a Supreme Court justice to be committed to the rule of law and to give weight to the doctrine of Stare Decisis, is the nominee's statement that he hoped that the dissent in Johnson:

> "will provide guidance for lower courts and a possible majority in future decisions."[27]

As for the Fullilove decision, upholding Congress's effort to provide a remedy for the long-standing exclusion of minorities from opportunities to become government contractors, Thomas said:

> "Not that there is a great deal of principle in Congress itself. What can one expect of a Congress that would pass the ethnic set-aside law the Court upheld in Fullilove v. Klutznick."[28]

Concerning the Griggs decision, Thomas declared:

> "We have permitted sociological and demographic realities to be manipulated to the point of surreality by convenient legal theories such as

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[25] Speech to Cato Institute, October 2, 1987, p. 7.

[26] The New York Times, March 29, 1987, p. 1.

[27] Cato Speech, supra note 25 at pp. 20-22.

[28] Thomas, "Civil Rights as a Principle versus Civil Rights as an Interest," Assessing the Reagan Years (CATO Instit. 1988) at p. 391, 396.

adverse impact."[29]

His reference of course was to a decision not grounded in abstract theory, but in a practical recognition that minorities would have an opportunity for economic advancement only if barriers to employment that were not related to ability to do the job were removed. This Committee knows as well as we do that the progress that black workers have made in becoming police officers, firefighters, skilled construction workers, and over-the-road truckers, to name but a few, is due to the liberating effects of the Griggs decision that Clarence Thomas scorns.

The blunderbuss approach that the nominee has taken to equal employment and affirmative action decisions and his failure to make fundamental distinctions, created serious problems. After the Supreme Court's 1984 decision in the Stotts case holding that white workers with seniority could not be laid off before less senior minority workers in order to protect an affirmative action plan, Thomas argued that the decision had to be applied to invalidate affirmative action in hiring and promotions as well.[30] He was forced to abandon this transparent rationale when the Court upheld the use of goals and timetables[31] and then reverted to an explanation based on his "personal disagreement" with the Supreme Court's approach.[32]

C. Equal Educational Opportunity. The nominee has challenged the reasoning of the seminal case of Brown v. Board of Education; but far more important, he has criticized as a "disastrous series of cases" the Supreme Court rulings that gave real content to the Brown decision.[33] One decision he has singled out for criticism is Green v. County School Board of New Kent County. In that case, the Court held unanimously that "freedom of choice" plans under which children remained segregated unless black

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[29] Speech to Cascade Employers Association, March 13, 1985, p. 18.

[30] Firefighters v. Stotts, 467 U.S. 561 (1984); Washington Post editorial, "Goals and Timetables and the EEOC," (July 25, 1986).

[31] See, e.g. Local No. 93, Firefighters v. Cleveland, 478 U.S. 501 (1986).

[32] Thomas, "Principle v. Interest," supra note 28 at 397.

[33] Thomas "Principle v. Interest," supra, note 33 at 393.

parents and children risked the consequences of requesting transfer, were inadequate unless actual desegregation occurred.

Thomas complained that Green went too far because it "not only ended segregation but required school integration."[34] In that criticism, offered in 1988, he echoed the views of two other judges, Parker and Haynesworth, who took the position that the Brown case implied no affirmative obligations, but only a duty to cease formal segregation. Those judges (both of whom were rejected at different times by the Senate for a seat on the Supreme Court) spoke many years ago before the Supreme Court had addressed the question of remedy.

Judge Thomas's criticism should be clearly understood. It is not an attack on busing, for in the Green case, desegregation would have brought less busing not more since children were being bused for purposes of segregation. Rather, the Thomas view is that the demands of the Fourteenth Amendment should be considered satisfied by a formal disavowal of segregation, even if no desegregation actually follows. To do more, apparently, would be to validate the idea that separate is inherently unequal, a premise that Thomas disputes.

If the view that Judge Thomas urged in the 1980s had prevailed earlier, Brown might have become little more than a formal exercise and millions of children, who like Mr. Thomas grew up black and poor in the South, would never have had an opportunity to escape the yoke of segregation. This is not a vision that black Members of Congress can accept in a Supreme Court justice.

D. The Nominee's Disdain for the Role of Courts in Protecting the Poor and Disadvantaged. In 1986, Mr. Thomas joined in a report of the White House Working Group on the Family. The report condemned a series of Supreme Court decision as having "crippled the potential of public policy to enforce familial obligations, demand family responsibility, protect family rights or enhance family identity."[35] Among the decisions condemned was that in Moore v. City of East Cleveland.[36] In that decision, the Court overturned the jail sentence of the grandmother who had been prosecuted and jailed for refusing to evict the 10

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[34] Id.

[35] The Family: Preserving America's Future (1986).

[36] 431 U.S. 494 (1977).

year-old grandson for whom she had cared since infancy, when his mother had died. The city insisted that because he shared his grandmother's home with a cousin, the 10 year-old was an "illegal occupant." The presence of two grandchildren in her household violated a local ordinance, which limited the definition of a family to exclude "cousins."

According to the White House Task Force in which Clarence Thomas participated, and whose report he signed, the Court was wrong to interfere with Ms. Moore's eviction and jailing by declaring the eviction unconstitutional. The Report accused the Supreme Court of improperly intruding on the right of the municipality "to define 'family' in a traditional way" in zoning for single-family occupancy. The Report denounces the Moore case as among the Supreme Court decisions that question whether "the family... retains any constitutional standing."[37]

It is clear from Justice Powell's decision in Moore that the opposite is the case -- that the decision is based on the special constitutional status of the family. Indeed, as Justice Brennan noted in a concurring opinion, the ordinance if upheld would have had a devastating impact on many black families.[38]

The emphasis now being placed on the nominee's life story as one of his qualifications for the Court makes his view of the Moore case especially ironic. Having been raised by his grandfather, he nevertheless joined a report that would have resulted in the rending of many extended families. From the evidence it appears that his ideological opposition to the role of the courts in protecting rights and liberties overrides concern about the tragic consequences that may flow from such a commitment. Whatever the reason, the nominee's position on the Moore case should give pause to anyone who believes that once on the Court, Thomas's own experience will make him sensitive to the plight of minorities and the poor.

III. The Impact of the Nominee's Philosophy and Approach on the Public Interest

What emerges from an examination of the nominee's career is a disturbing pattern of disdain for law, disrespect for the legislative process under which he was required to function during his tenure in government, and a sweeping repudiation of

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[37] The Family, supra note 35 at p. 11.

[38] 431, U.S. 494, 508-10, (Brennan J. concurring).

the role of federal courts in protecting the rights and liberties of people from the dangers of government excess.

There are other aspects of Mr. Thomas's judicial philosophy that may bear scrutiny, but we are speaking here of threshold concerns that are of fundamental importance. If a nominee's approach to his judicial duties is not grounded in an understanding and respect for the historic and constitutional roles of the major institutions of government, it is of little consequence whether he styles himself a believer in natural law or of some other theory of rights. He will simply lack the understanding of constitutional processes and the commitment to equality before the law that are central to the job of a justice of the Supreme Court.

These are not abstract matters; they have implications for all of us. Over the course of the last decade, on at least a dozen occasions, we in the Congress have been called upon to correct through legislation the Supreme Court's misinterpretations of civil rights statutes that the Congress had previously enacted. In all of these cases the Court had so narrowly construed the law that rights or remedies we believed we had set out in the legislation were denied by a majority of the justices. In almost all of these cases the legislative effort to restore rights was successful.

But as you know well, these legislative struggles have not been without cost. Each time the issue has arisen we in the Congress and in the nation have been compelled to fight battles that most thought had been settled years ago. The legislative struggles have been attended by a rise in racial tensions and doubt about the nation's continuing commitment to equality of opportunity.

We are engaged in such an effort now with the Civil Rights Act of 1991, designed to restore the rule of Griggs V. Duke Power Company and to undo the harm to equal job opportunity done by several Supreme Court decisions. This has been a bipartisan effort and in 1990 more than 60 percent of the members of each House supported legislation to repair the harm caused by the Supreme Court's decisions. There are differences, of course, among us, but if there is one area of agreement in the Congress it is that once we do enact a law we want the Supreme Court to pay careful attention to the words used in that law, to the legislative intent reflected in our committee reports and to the national commitment to equality of opportunity that gave rise to our action. The Thomas record while in government requires a vote of no confidence that Clarence Thomas as a Supreme Court justice will follow the legislative intent reflected in the laws we enact.

In the first place, we know that Judge Thomas has expressed

strong disagreement with provisions of the Voting Rights Act and with Title VII as interpreted in the Griggs case. Perhaps more important, we know that the nominee has frequently expressed open contempt for the legislative process (speaking on more than one occasion of "run-amok majorities" and a "Congress that is out of control") [39] and that he felt free as an administrator to refuse to enforce laws with which he personally disagreed. What confidence then can we as legislators have that as a Justice he will interpret the laws as the Congress has written them?

Our point should be clearly understood. It will not take a William Brennan or a Thurgood Marshall to meet the needs that are expressed here. Jurists such as Felix Frankfurter and John Harlan, the younger pursued with some consistency a philosophy of "judicial restraint," gave deference to legislative intent even when they disagreed with what the legislatures wished to accomplish. George Bush and his predecessor told us often that they wanted judges who would "adjudicate" not "legislate," but they have persistently nominated people to the Court who were prepared to upset longstanding interpretations of statutory law. From the record, it appears clear that confirmation of Clarence Thomas would continue the trend toward a Court that feels free to act as a super-legislative body in the area of civil rights and in other spheres as well.

The Nation already is paying a heavy price in conflict and disunity from the confrontations that the Court's new majority has provoked with Congress. In considering this nomination, we suggest that confirmation of this nominee may well exacerbate that trend.

IV. CONCLUSION

Finally, Mr. Chairman, as colleagues and friends we ought to be able to speak frankly to one another.

In this hearing you are considering a nominee with a personal history of overcoming poverty and discrimination, one that reflects a classical pattern in our communities, without of course, the opportunities and fruits of success Clarence Thomas has experienced. Despite that history, it is abundantly clear that the nominee lacks a demonstrated commitment to equal justice and an understanding of the role of courts in protecting rights and liberties.

He is a person of limited legal experience and his record in the public offices that provide the bulk of that experience has

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[39] See, e.g., Thomas, "The Higher Law Background and the Privileges and Immunities Clause of the Fourteenth Amendment," Harvard Journal of Law and Policy, p. 63, 64, 69.

been given low marks by those who are most familiar with it. Members of both Houses of Congress who monitor the agencies that the nominee has headed have had to act on a regular basis to repair his defaults in performance and the damage those defaults have done to the lives of citizens whose rights he was sworn to protect. Federal courts that have examined the performance of the nominee at the Office of Civil Rights and the EEOC have found his actions to be contrary to law. Leading members of Congress have questioned the nominee's candor and a federal judge found that the Commission under Thomas's direction "has been no more candid with this Court than with Senate committees and the public."[40]

In other words, those responsible officials who know the nominee's work best have found it grievously wanting. These assessments are the antithesis of the kinds of recommendations one would expect to accompany the nomination of a candidate with a distinguished record of public service.

The record is made worse by the nominee's confrontational style in his writings and speeches, and by his failure to demonstrate a real understanding of the role of major institutions in our society.

Given all this, why should the question of confirmation be a close one? If it is, it is only because questions of race continue to cloud the judgment of otherwise sensible American citizens. The hope of the nominee's supporters as one commentator has said is that "the Senate will judge him less harshly than a white candidate with equally poor qualifications."

Members of this Committee know as well as members of the Caucus that such a judgement would be a perversion of the ideal of affirmative action, that it would ill-serve the needs of the millions of citizens of all races that we have been elected to represent and that it would not promote the larger interest of the nation both in equal justice and domestic tranquillity.

The best way to serve these great purposes would be for the Committee to reject this nomination and to ask the President to send another name to the Senate.

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[40] AARP v. EEOC, supra note 5, at 238.

The CHAIRMAN. Now, because we went out of order to accommodate the schedules of our colleagues on the House side, we are now going to hear from two distinguished panels, both panels supporting, and strongly supporting, Judge Thomas' nomination to the bench.

The first panel is made up of three very distinguished persons: Alphonso Jackson, the director of the Dallas Housing Authority, an authority that is probably as big as some States in the Nation; the Reverend Buster Soires, pastor of the First Baptist Church—it just says First Baptist Church, New Jersey. What city?

Reverend SOIRES. Somerset, NJ.

The CHAIRMAN. Somerset, NJ; and Mr. Robert Woodsen, president of the National Center for Neighborhood Enterprise. It is good to see you. You have been here many days during the hearing, and it is good to have you here, Mr. Woodsen.

Welcome to all of you. I thank you for coming to testify. Unless the panel has concluded otherwise, why don't we begin in the order that I have—well, you begin any way you all this. I can see they are pointing to you, Mr. Woodsen. Why don't you begin?

STATEMENTS OF A PANEL CONSISTING OF ROBERT WOODSEN, PRESIDENT, NATIONAL CENTER FOR NEIGHBORHOOD ENTERPRISE; ALPHONSO JACKSON, DIRECTOR, DALLAS HOUSING AUTHORITY; AND REV. BUSTER SOIRES, PASTOR, FIRST BAPTIST CHURCH, SOMERSET, NJ

Mr. WOODSEN. Thank you, Senator. We are truly delighted to have this opportunity for you to hear from the other side of black America.

As you indicated, 60 percent of black Americans were undecided when Judge Thomas' nomination was first introduced. In recent polls, one conducted by Jet magazine, a black publication, indicated that over 60 percent of black Americans now support him after having heard him present himself.

As a veteran of the struggle for civil rights and having led demonstrations in the 1960's in suburban Philadelphia, I witnessed first hand the sacrifices that were made to end this country's apartheid system. Following the death of Dr. King, I intervened in the confrontation between rioters to restore order and organized a nonviolent means to enable those who had no voice to redress decisionmaking.

Early in that movement, it became quite apparent to me that many of those who struggled most and suffered in the struggle for civil rights did not benefit from the change once the doors of opportunity were open. This was a fact, and the leadership of the civil rights movement, a lot has been made of the position of the leadership. To what extent does it reflect popular black opinion?

Well, let me say to you, as a veteran of the civil rights movement, I can recall when the students at Orangeburg first sat down and engaged in civil disobedience. This strategy was not embraced by the leadership. In fact, they were opposed to it. It was only after it became popular did the leadership embrace it. And when Dr. King entered into Birmingham, he was not embraced by the leadership. Again, when Dr. King wrote his letter from a Birmingham