It is a dilemma. I understand. I have some sense of both sides of the dilemma, but as you said, in a perfect world we wouldn't need affirmative action, at least not in the context it is used now.

Thank you both very, very much, particularly since you were the crossover panel. You were here, the record should show, until after 10 o'clock last night, and you were here at 9 o'clock this morning. So that goes not only to your interest as public-spirited citizens, but also your physical constitution, to spend so much time with us all. Thank you very, very much.

Mr. PALMER. Mr. Chairman, thank you for the opportunity to return, particularly after the benefit of a good night's sleep.

The CHAIRMAN. Thank you very much.

Now, we will move to what was scheduled to be our first panel: Dr. Benjamin J. Hooks, the executive director of the NAACP; the Reverend Dr. Amos Brown, the National Baptist Convention, U.S.A., Inc.; and Rev. Archie Le Mone, Progressive National Baptist Convention.

Gentlemen, welcome.

Mr. HOOKS. Good morning, Senator.

The CHAIRMAN. Good morning, Mr. Hooks, Reverend Brown, Reverend Le Mone. Are you Reverend Le Mone? We have got to move your nameplate down. Sit over there to make it easier, if that is OK. Or if you would rather sit there, it doesn't matter where you sit, actually. They just had your nametag there.

Why don't we begin, gentlemen, in the order in which you were called. We will begin with you, Mr. Hooks. It is a pleasure to have you back here before this committee.

PANEL CONSISTING OF BENJAMIN L. HOOKS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; REV. DR. AMOS C. BROWN, THE NATIONAL BAPTIST CONVENTION, U.S.A., INC.; AND REV. ARCHIE LE MONE, THE PROGRESSIVE NATIONAL BAPTIST CONVENTION

Mr. HOOKS. Thank you, Senator. Mr. Chairman and members of the committee, I am testifying on behalf of the National Association for the Advancement of Colored People, the Nation's oldest and largest civil rights organization. We oppose the confirmation of Judge Thomas to the Supreme Court. My name is Benjamin Hooks, and I am the executive director and chief executive officer of the NAACP.

In a purely narrow sense, the immediate business before the committee is the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court. But in the broader sweep of our domestic history, there is at hand here a unique, transcendent moment which will significantly define America in our time, what America is, what America can be, what America shall be.

Twenty-five years ago when Justice Marshall became a member of the Supreme Court, our hearts were thrilled and our spirits came alive with renewed hope. We believed then and to this day that out of the bloody trench of collective struggle a fellow child of bondage would help light our future with the glow of progress and to fan the flame of human freedom.

African-Americans for 20 generations have cried vainly for the simple, decent entitlements of the most elemental civil rights, only to be denied. Yet more than any people in this Nation, we fervently believed in the promise that all of us are created equal. Thirty-five years ago, Justice Marshall stood before that Court and prevailed with them, and they, after 150 years, yielded. We thought the long nightmare was over, and yet there were still problems.

We do not speak here of ancient folklore but of a period of time entirely within the lifetime of Judge Thomas, whose nomination to the Supreme Court we must firmly resist. We did not come to this opposition lightly or recently. We opposed Judge Thomas' renomination to the Equal Employment Opportunity Commission, and when he became very hostile to our aspirations, we asked for his resignation. We did not oppose or support him for the appellate court but hoped that he would serve sufficiently long in that position that we might further evaluate his record. But we put it on record then that if he were a nominee for the Supreme Court we would reexamine his record very closely.

We all know affirmative action is a strong, unwavering national policy of inclusion in the vital pursuit of everyday necessities—a home, an education, a job, a promotion. In other words, all that affirmative action requires is a fair break. It is not a quota system nor, in its highest application, a preference system. It guards sharply against a quota system, and we believe that these are the fundamental guarantees of the American Constitution. And yet Judge Thomas has consistently expressed his steadfast opposition.

Now, if the committee pleases, I would like to summarize very briefly our major points of opposition.

First, Judge Thomas in his statements and actions as a Government official has rejected class-based relief as a major element of the solution to both past and present racial discrimination. He has overly emphasized individual relief. We support individual relief, but this is not enough. Does every black have to apply to the police department and be turned down? Does everyone have to be a Rosa Parks and sit on the streetcar and be arrested? Do we have to have a million James Merediths or Arthur Luciuses applying to the University of Alabama or Ole Miss? Or should we have class action relief?

This was a carefully crafted NAACP legal strategy, effectively promulgated by Thurgood Marshall, and we have trouble with the concept that we must get rid of it.

Second, we have trouble with the effects test that he has tried to talk against in the Voting Rights Act because we know that—we believe that without that, the Voting Rights Act was dead.

Third, he has opposed many of the court cases that labored to bring about school desegregation.

Fourth, in 1985, when Executive Order No. 11246 was under attack by Attorney General Meese, Judge Thomas allied himself with Attorney General Meese.

Finally, Judge Thomas' record as a public official at the Department of Education and as Chairman of the Equal Employment Opportunity Commission demonstrate a disrespect for the enforcement of the law. Yes, we appreciate his rise from poverty, but that rise can be exemplified by millions of black Americans. And we be-

lieve that based on the record, we must and we do oppose his confirmation as a Supreme Court Justice.

[The prepared statement of Mr. Hooks follows:]

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 730 • WASHINGTON, D.C. 20005
(202) 638-2269 FAX (202) 638-5936

TESTIMONY

OF

BENJAMIN L. HOOKS
EXECUTIVE DIRECTOR

OF THE

NATIONAL ASSOCIATION

FOR THE

ADVANCEMENT OF COLORED PEOPLE

ON THE

NOMINATION

OF

JUDGE CLARENCE THOMAS

FOR THE

SUPREME COURT

OF THE

UNITED STATES

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

September 20, 1991

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the National Association for the Advancement of Colored People (NAACP) in opposition to the nomination of Judge Clarence Thomas to become an Associate Justice of the Supreme Court of the United States. I am Benjamin L. Hooks, Executive Director of the NAACP.

The National Association for the Advancement of Colored People is the oldest and largest civil rights organization in the nation.[1] The NAACP has over 500,000 members with over 2100 branches in the 50 states, the District of Columbia and abroad. The NAACP is singularly committed to the empowerment and protection of African Americans under the Constitution through principles of equal justice under law for all persons in the United States.

Introduction

The NAACP's decision to oppose the confirmation of Judge Thomas for the Supreme Court has been especially difficult for us because of our belief -- shared among many African Americans -- in the particular importance of having African Americans on the Supreme Court. As Executive Director of the NAACP, I am aware that our decision

[1] The NAACP was organized on February 12, 1909, on the 100th anniversary of President Lincoln's birth, in response to an epidemic of race riots which swept the country in the early 20th century.

to oppose Judge Thomas has sparked a firestorm of controversy. Some rather harsh questions have come both from our predictable detractors, as well as some who are usually our allies.

Some individuals have tried to equate the NAACP's opposition to the confirmation of Judge Thomas with rejection of his avowed "self-help" philosophy. Others have claimed that the NAACP is trying to suppress the views of an African American who disagrees with us, and have asserted that we are betraying the concept of "racial solidarity". Finally, some have argued that we are ignoring the importance of adding the unique perspective of an African American born in poverty to an otherwise all-white, privileged court.

After all, the NAACP has always endorsed self-help initiatives that foster individual achievement among African Americans. But the NAACP cannot support a nominee to the Court who disparages a meaningful role of government in shaping programs that address pervasive discrimination and thus make individual achievement more possible.

The NAACP certainly supports free speech, and we recognize its importance to the fundamental interests of all Americans. We also recognize that there has always been, and should be, a diversity of views among African Americans.

However, we also know that rulings of the Supreme Court have been central to the social, political and economic advancement of African Americans. Therefore, the NAACP has long held the view that race alone cannot be the deciding factor governing our actions on Court appointments.

We are concerned that all of the sound and fury has drowned out discussion of the real basis for our opposition to Judge Thomas -- his public record. The NAACP believed, and we still believe, that the only way to determine whether to support a Supreme Court nominee is to evaluate his or her record of competence and fairness before they are confirmed.

It was this belief which led the NAACP's Board of Directors to examine the public record of Judge Thomas with care and deliberation. Our review included consideration of a thorough report prepared by our staff with input from scholars of law and history.[2] Additionally, we requested and received direct information from the nominee and his supporters, upon which we could assess his views on several issues of concern to us.

We also reviewed the history of the NAACP, recognizing that from its inception, the NAACP has been an organization willing to speak truth to the powerful on behalf of African Americans. After carefully considering Judge Thomas' record and our own history of struggle, the NAACP Board concluded that Judge Thomas not only opposes legal principles that have enabled African Americans to advance, however slowly, toward true equality; he also helped subvert efforts to translate these principles into reality.

Moreover, we have concluded that in many ways, Judge Thomas' opposition to positions of importance to us has been more pronounced and strident than that of previous Supreme Court nominees whom the NAACP also opposed.

---

[2] See Appendix I, "A Report on the Nomination of Judge Clarence Thomas as Associate Justice of the United States Supreme Court", National Association for the Advancement of Colored People, August 15, 1991.

We recognize that many in the African American community know little about Judge Thomas' views on important questions of constitutional law. And unfortunately, the limitations inherent in the confirmation process have meant that Judge Thomas' record has received only limited attention. Those in the African American community who know little of his record often respond to Judge Thomas' nomination with an understandable measure of racial pride that obscures other considerations. We believe that recently announced polls showing support for Judge Thomas among African Americans reveal very little about the level of awareness among African Americans about the nominee's stated views and his record.

Not surprisingly, Judge Thomas has preferred to focus during his testimony before this Committee on his admirable, personal triumph over poverty. However, it is important to note that not even the most ardent supporters of Judge Thomas have attempted to defend their position on the basis of his record. They appear to support him in spite of his record, not because of it. Instead, they have reminded us, time and time again, about the harsh circumstances of his childhood and the strength of his character forged from the difficulties of his early life.

The NAACP also takes pride in the personal accomplishments of Judge Thomas. As an organization, one of whose primary purposes is the collective advancement of African Americans, the NAACP is well aware of the present day to day difficulties faced by our people. The agenda of the NAACP includes litigation, advocacy, and social programs which go to the heart of some of the most pressing problems facing African Americans today.

As an African American growing up in a rigidly segregated society, I have felt the sting of overt and blatant prejudice and segregation. Countless scores of African Americans have lived through the debilitating circumstances of poverty and discrimination, and yet excelled through faith, determination, hard work and help from others.

We are a noble people; we have a proud heritage. We have been loyal to our beloved nation; we have chopped cotton, cropped the tobacco, dug the ditches, plowed the fields, carved highways through mountain ranges, built railroads through swamps. Yet, we have been told again and again that we must wait for equal justice under the law. Our determination has been borne from our respect for our heritage and faith in our struggle. Many have chosen not to abandon the struggle or to become preoccupied with personal achievement over collective group advancement.

Despite Judge Thomas' compelling personal story, the interests of African Americans would not be well served, if after his confirmation to the Court, he dismantled the consensus elements of our nation's civil rights policy. The prospect of this occurrence is heightened by evidence drawn from the record Judge Thomas has amassed over the past decade.

Importance of the Supreme Court

Perhaps it would be useful to frame the discussion of Judge Thomas' confirmation and the NAACP's decision to oppose him in a slightly broader historical context. The history of the NAACP's efforts to advance the interests of African Americans makes us

particularly sensitive to the increasingly important role in American life played by the Supreme Court.

As the final arbiters of the American constitutional system, the Justices of the Supreme Court collectively exercise an influence on the destiny of America unequalled by any other branch of government. When the NAACP was still in its infancy, two important legal victories for the organization had much to do with shaping the Association's institutional view on the importance of the Supreme Court. In 1915, the Supreme Court ruled Oklahoma's "grandfather clause" unconstitutional[3] and two years later, the Court invalidated a Louisville ordinance requiring residential segregation.[4] These victories propelled the NAACP on an aggressive campaign to use the courts and political advocacy to change the dire circumstances of African Americans.

It is not surprising, therefore, that the NAACP has a long historical record of carefully scrutinizing the social and political views of Supreme Court nominees, as well as their judicial philosophies, in determining whether they should be subsequently confirmed by the Senate.[5]

As early as 1912, for example, the NAACP opposed the nomination of Judge Hook to the United States Supreme Court because of his views on race issues and other

---

[3] Guinn v. U.S., 238 U.S. 347 (1915). Under the "grandfather clause", which was a part of a 1910 amendment to the Oklahoma sate constitution, a person could become a registered voter if he had served in the armies of the U.S. or the Confederacy, or was a descendant of such a person, or had the right to vote before 1867. This method of disqualifying black voters was so effective that other southern states inserted the clause in their constitutions as well.

[4] Buchanan v. Warley, 245 U.S. 60 (1917).

[5] The NAACP also opposed the Supreme Court confirmation of Justice Souter, Judge Bork, Justice Scalia, and Chief Justice Rehnquist.

56-272 O - 92 - 2

matters. Based on the NAACP's vigorous opposition, President Taft withdrew Judge Hook's nomination.

In April 1930, when President Herbert Hoover nominated Judge John J. Parker to a vacancy on the Supreme Court, Walter White, acting secretary of the NAACP, ordered a prompt investigation of Judge Parker's record.[6] The inquiry revealed that while running for governor of North Carolina in 1920, Judge Parker had approved of literacy and poll taxes for voters and had also approved of the "grandfather clause" which the Supreme Court had declared unconstitutional in 1915. The NAACP launched a successful national campaign to block Judge Parker's confirmation, which was rejected by the Senate by a vote of 39-41.

Twenty-five years later, after the Supreme Court's landmark decision in Brown v. Board of Education,[7] Judge Parker led the judicial resistance to integration in Briggs v. Elliott in which he wrote:

> It is important that we point out exactly what the Supreme Court has decided and what it has not decided...[A]ll that a state may not deny to any person on account of race the right to attend any school that it maintains...Nothing in the Constitution or in the decisions of the Supreme Court takes away from the people the freedom to choose the schools they attend. *The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation* [emphasis added].[8]

---

[6] Richard Kluger, Simple Justice. (New York: Random House, 1975), pp. 141-142.

[7] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

[8] 132 F. Supp. 776, 777 (D.N.C. 1955).

The Briggs dictum was intended to offer aid and comfort to segregationists and to those who wanted to undermine the mandate of Brown.

Fortunately, in subsequent decisions such as Swann v. Charlotte-Mecklenberg Bd. of Ed.,[9] the Supreme Court went beyond Briggs through holdings which suggested that federal courts could (in limited circumstances) use busing to desegregate formerly de jure segregated school districts. Nonetheless, one must ask whether there would have been the Brown decision if Judge Parker had been elevated to the Supreme Court?

Judge Thomas has criticized the Supreme Court's decision in Brown on the grounds that it was based on "dubious social science" and on an inaccurate premise that separate facilities are inherently unequal.[10] The issue in Brown was not whether attending schools with whites would make black children smarter. The issue was whether racially segregated schools would ever receive the resources and benefits needed to make them equal to the competitive opportunities given to whites. Judge Thomas' rejection of equal protection jurisprudence in Brown is particularly disturbing.

Moreover, Judge Thomas seems to have embraced completely the Briggs dictum and the words of Judge Parker. Judge Thomas has denounced, for example, the entire line of school desegregation decisions implementing Brown as "disastrous."[11] Judge Thomas regards Green v. School Board of New Kent County,[12] one of the pivotal

---

[9] 402 U.S. 1, (1971).

[10] See, Thomas, "The Higher Law Background of the Privilege or Immunities Clause of the Fourteenth Amendment, 12 Harvard Law Journal - Public Policy 63, p.68 (1989).

[11] Thomas, Civil Rights As a Principle Versus Civil Rights as an Interest, in D. Boaz, ed., Assessing the Reagan Years, 391, 393 (1988).

[12] 391 U.S. 430 (1968).

Supreme Court decision implementing the Brown decision, as an unwarranted extension, objecting that in Green "we discovered that Brown not only ended segregation but required school integration."[13]

Ironically, this seemingly obscure remark in effect endorses what was the single most effective tactic of southern segregationists determined to avoid compliance with Brown – the use of so-called "freedom of choice" plans, which were a subterfuge used to perpetuate the maintenance of segregated schools.

There is no question that if Judge Thomas' race were not a positive factor in consideration of his appointment to the Court, the NAACP might have opposed him on this basis alone. The NAACP believes that it was correct in opposing Judge Parker in 1930 and we also believe that our opposition to Judge Thomas today is correct.

Justice Marshall's Replacement

When Thurgood Marshall was nominated to become an Associate Justice of the Supreme Court, he enjoyed the overwhelming support of African Americans. By no means was race the only factor that generated African American's pride in Thurgood Marshall. The NAACP's national publication, The Crisis, set forth the views of many in the African American community:

> "The nomination of Thurgood Marshall to become an Associate Justice of the United States Supreme Court represents an historic breakthrough of transcendent significance. It is not merely that Mr. Marshall is the first Negro to be selected to serve at the summit of the nation's judicial structure. It is also that he achieved

[13] Id. at 391.

> national eminence as the No. 1 civil rights lawyer of our times -- the Special Counsel of the National Association for the Advancement of Colored People and the Director-Counsel of the NAACP Legal Defense and Educational Fund. As such he was in constant battle against entrenched tradition and archaic laws, emerging as victor in 23 of 25 encounters before the Supreme Court..."[14]

Justice Marshall's retirement from the Court would have significance for the nation no matter when it occurred. His departure at this time in our nation's history, however, is especially troubling to many African Americans because it could accelerate the conservative shift in Supreme Court doctrine on civil rights, *habeas corpus*, and individual liberties which has been evident now for the past two terms of the Court.

Last term, Chief Justice William Rehnquist announced the Court's intention to review existing precedents, particularly those decided by close margins over vigorous dissents[15]. When Justice Marshall warned in a dissenting opinion that the Supreme Court's new majority had launched a "far-reaching assault upon the Court's precedents,"[16] it was not only a parting reflection on the term that had just ended, but also a dire prediction about the Court's future.

Areas of Additional Inquiry

The NAACP believes that a thorough examination of the actual record of Judge Thomas would reveal to the public that Clarence Thomas fails to demonstrate a respect

---

[14] "Associate Justice Thurgood Marshall", The Crisis, Vol. 74, No.6, July 1967, p.282.

[15] See Payne v. Tennessee, 59 U.S.L.W. 4814, 4819 (1991). Chief Justice Rehnquist's majority opinion suggested that the Court is not bound by considerations of stare decisis when cases are badly reasoned, particularly in constitutional cases where "correction through legislative action is practically impossible." at p.4819.

[16] Id.

for or commitment to the enforcement of federal laws protecting civil rights and individual liberties. Moreover, in a substantial number of speeches, writings and interviews, Judge Thomas has revealed an hostility to constitutional principles affecting civil rights protections, including the use of meaningful remedies for both past and present discrimination such as "goals and timetables".

Unfortunately, Judge Thomas' confirmation hearings have proven to be a missed opportunity to examine his beliefs on issues of fundamental importance to the nation. Although Judge Thomas has demonstrated intelligence and stamina, the American people no little more about his judicial philosophy today than we did prior to the start of these hearings.

Judge Thomas' nomination has captured the attention of the nation for reasons that go beyond his biography or even his color. He built his career within the Reagan Administration as a social critic who took forceful positions on some of the most divisive issues in the nation -- including affirmative action. After a decade of speaking out fearlessly and receiving much criticism from within the African American community, Judge Thomas seems to be *running from his earlier views. In his moment of destiny*, Judge Thomas has presented himself to this Committee as "a man who didn't really mean it" on many of his most ardently presented beliefs.

We concur with the view of Legal Times columnist Terence Moran, who suggests that Judge Thomas' hearings might have offered a rare opportunity to debate the issues he so passionately articulated.[17] From the perspective of the NAACP, there are

---

[17] Moran, "Lost In The Hearings", The New York Times, September 15, 1991, p.E17.

important and honorable reasons for championing these policies, which we believe appeal to many Americans.

Notwithstanding the conclusion of Judge Thomas' testimony before this Committee, at least two areas which have been discussed extensively by Judge Thomas over the past decade have been only superficially addressed during these confirmation hearings. These issues are too important both to the individual victims of discrimination and to the country as a whole for the Committee to leave unaddressed; they demand further review. We would urge this Committee to consider the following:

I. The Case for Affirmative Action

As a general matter, affirmative action is the conscious use of race, sex or national origin in a active attempt to overcome the effects of both past and present discrimination. During his decade of public life, Judge Thomas has been particularly critical of most forms of affirmative action:

> "I continue to believe that distributing opportunities on the basis of race or gender, whoever the beneficiaries, turns the law against employment discrimination on its head. Class preferences are an affront to the rights and dignity of individuals -- both those individuals who are directly disadvantaged by them, and those who are their supposed beneficiaries."[18]

The goal of affirmative action is not to establish a permanent quota system, but rather to break the cycle of discrimination and to achieve equality which is real and not

---

[18] Thomas, "Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!," 5 Yale Law & Policy Review 402, 403 n.3 (1987).

illusory. As Justice Blackmun has stated, "In order to get beyond racism, we must first take racism into account."[19]

The particular affirmative action measures utilized will vary in different situations. In the school desegregation context, affirmative action may mean taking the race of students and teachers into account in making school assignments. In a broader educational context, it may mean taking race into account in admissions policies, in order to recognize the potential of disadvantaged candidates who do not possess the traditional credentials. In the voting rights area, affirmative action sometimes means taking affirmative steps to register eligible African American voters and to assure that electoral systems and policies do not have a discriminatory effect on their ability to elect representatives of their choice.[20]

In the school and employment contexts, affirmative action does not mean admitting or hiring unqualified or less meritorious candidates. However, it may mean changing over time our narrow definitions of qualifications. Rather than abandonment of merit selection, affirmative action recognizes that we have rarely achieved that ideal. "[I]nstitutions of higher learning...have given conceded preferences to those possessed of athletic skills, to the children of alumni, to the affluent and to those who have connections with celebrities, the famous and the powerful."[21]

---

[19] Regents of the University of California v. Bakke, 438 U.S. 265, 407 (1978).

[20] Statement of Julius LeVonne Chambers, Director-Counsel, NAACP Legal Defense and Educational Fund, Inc. Regarding the Status and Future of Affirmative Action Before the Subcommittee on Civil and Constitutional Rights and Subcommittee on Employment Opportunities; July 11, 1985.

[21] Bakke, 438 U.S. at 404.

In addition to invidious discrimination based on race or other factors, our employment system has always relied upon such non-merit-related criteria as nepotism and cronyism. Reliance on facially-neutral devices such as test scores and paper credentials also may perpetuate the effects of past discrimination without contributing to selection of a qualified workforce. Affirmative action moves the nation closer to a true merit system, by shifting the focus to the job-related qualifications and potential of the individual candidates, whatever their race.

The concept of affirmative action first appeared in the program mandating that government contractors not discriminate in their employment practices. Executive Order 10925, issued by President Kennedy in 1961,[22] required most federal contractors not to discriminate in their employment practices on the grounds of race, color, creed, or national origin, and further required such contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin."

The mandate of nondiscrimination and affirmative action by government contractors was retained when President Johnson strengthened the program in Executive Order 11246, issued in 1965.[23] But the concept was not defined until 1970, when, under President Richard Nixon, a conservative Republican, the Office of Contract Compliance in the Department of Labor issued the following definition:

---

[22] 26 Fed. Reg. 1977, (March 6, 1961).

[23] 30 Fed. Reg. 12319 (September 24, 1965).

> "An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate..."[24]

As now implemented, the Executive Order program requires most non-construction contractors of the federal government to analyze their work forces in light of the availability of qualified minorities and women in the available labor pool, and to devise a plan, including goals and timetables, to correct their under-utilization.

As you know, both the courts[25] and the Congress[26] have repeatedly approved of the use of affirmative action measures, including the use of goals and timetables, for the purpose of remedying the effects of past discrimination and segregation.

Attempt to Gut Executive Order 11246

In August 1985, the Reagan Administration promulgated a draft of a new Executive Order that would have gutted the long-standing principle that the tens of thousands of employers who are awarded contracts by the federal government must take positive steps to include qualified minorities and women in their work forces. The proposed new Order would have prohibited the government from seeking to have

---

[24] "Order No. 4," 35 Fed. Reg. 2586, 2587 (Feb. 5, 1970); 41 CFR Part 60.2.10 (1970).

[25] United Steelworkers of America v. Weber, 443 U.S. 193 (1979); Local 28, Sheet Metal Workers v. EEOC, 478 U.S. 421 (1986); United States v. Paradise, 480 U.S. 149 (1987).

[26] In 1972, for example, while Congress was considering amendments to Title VII of the Civil Rights Act of 1964, there were several unsuccessful attempts to enact legislation ending the use of goals and timetables under the Executive Order. See 118 Cong. Rec. 2276 (1972).

contractors adopt affirmative action plans that include numerical goals and timetables. The Administration's effort was spearheaded by Attorney General Edwin Meese.

The effect of the new Executive Order would have been disastrous for African Americans, who even today, face unacceptably high levels of employment discrimination.[27] The DOL's monitoring of government contractors each year under E.O. 11246 has been the federal government's main weapon in combatting job discrimination.

The Attorney General and his supporters tried to frame the debate over modifications to the Executive Order as a referendum on quotas. They claimed that the Executive Order mandates quotas despite DOL regulations which clearly state that E.O. 11246 is not a quota program. Moreover, they sought to ignore important research, generated within the Administration itself, on the substantial benefits of the Executive Order program.[28]

Fortunately, a successful campaign was waged within the Administration led by Secretary of Labor William Brock, among others; and by an unusual coalition of civil rights organizations, business and labor mobilized to block the changes. Over 240 members of Congress, including Republican leaders such as Senator Robert Dole (KS)

---

[27] See, "The State of Black America 1991," prepared by the National Urban League, "The Glass Ceiling," Study conducted within the Department of Labor, and "Opportunities Denied, Opportunities Diminished: Discrimination on Hiring," a study by the Urban Institute.

[28] Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, A Review of the Effect of Executive Order 11246 and the Federal Contract Compliance Program on Employment Opportunities of Minorities and Women (1983).

and House Minority Leader Robert Michel (IL) sent letters to President Reagan urging him to back away from a new policy.

In the course of the effort to save the Executive Order, a consensus emerged, at least with respect to the benefits of E.O.11246. For example, the National Association of Manufactures stated in its support for the Executive Order:

> "...affirmative action has been, and is, an effective way of ensuring equal opportunity for all persons in the workplace. Minorities and women, once systematically excluded from many professions and companies, are now systematically included."[29]

Judge Thomas on Executive Order 11246

Judge Thomas has been especially critical of most affirmative action initiatives. This has been well documented in his speeches and writings, including his criticism of Executive Order 11246. Last week before this Committee, Judge Thomas suggested that this criticism reflected only his interest in political theory. However, there is much evidence to suggest that Judge Thomas' role in the effort to gut the Executive Order was more proactive than that of a mere political theorist.

Judge Thomas was a member of the Reagan Administration's transition team reviewing the work of the Equal Employment Opportunity Commission. The leader of the transition team was Jay Parker. Here are the findings of the "working document" prepared by the team:

---

[29] William S. McEwen, Director of Equal Opportunity Affairs for Monsanto Company, testifying on behalf of the National Association of Manufacturers before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, and the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, July 10, 1985, p.1-4.

> "The program of "affirmative action" has been used by the EEOC and other government agencies to "implement" the Civil Rights Act of 1964. That act does not contain the phrase "affirmative action," nor does any other piece of legislation. It originates, instead, in Executive Order 11246, signed by President Lyndon Johnson in 1965. The order's original non-discriminatory intent was changed into a weapon to, in effect, endorse discriminatory hiring. Percentage hiring goals, first imposed upon the construction industry in the "Philadelphia Plan" and the "Long Island Plan," spread quickly to racial and sexual quotas in other industrial hiring."[30]

During the 1985 fight to save the Executive Order, the Reagan Administration's leader in the struggle for equal employment opportunity seemed curiously silent on one of the most important policy questions faced by the Administration. In a 1987 interview with reporter Juan Williams in The Atlantic Monthly, the issue of the Executive Order was apparently discussed with Judge Thomas. Williams reports that:

> "With arguments between Thomas and his critics growing louder, the EEOC chairman suddenly found himself warmly received at the Justice Department and the White House. He worked closely with Attorney General Edwin Meese in pushing for a change in an executive order that requires federal contractors to show that they have made efforts to hire minorities and women. Meese and Thomas argued that the order amounted to quotas, because contractors who failed to hire minorities and women were given goals and timetables that had to be met under pain of losing government contracts."[31]

In a subsequent speech in November 1987 at Claremont McKenna College, Judge Thomas presented his rationale for his apparent willingness to repudiate the Executive Order:

---

[30] See, documents accompanying memorandum from Clarence Thomas to Jay Parker dated December 22, 1980, regarding EEOC/Civil Rights Act of 1980.

[31] Williams, "A Question of Fairness", The Atlantic Monthly, February 1987, p.82.

> "The Administration could have put much of the issue of racial preferences behind them by quickly modifying Executive Order 11246, so that it would prohibit racial and gender based preferences in government-funded projects. But it didn't, and hence the fruitless rhetorical war over "affirmative action" continued. (Note, incidentally, how affirmative action always meant preference for blacks – rarely were women or Hispanics included in Administration denunciations.) The term, AA, became a political buzz word, with virtually no substantive meaning. We could have maintained an aggressive enforcement of civil rights statutes, while demonstrating that racial and gender based preference policies in practice simply don't aid those they purport to. This is not to mention the violation of a sense of justice and the assumption of inferiority in racial set-asides policies."[32]

In Judge Thomas' analysis, affirmative action is impermissible under Title VII of the Civil Rights Act of 1964 because the term "affirmative action" never appears in the statute itself. Moreover, he suggests that since the Executive Order 11246 is the only legitimate basis for affirmative action, a modification of the Executive Order like that proposed in 1985 could easily resolve the problem of so-called race and gender-based preferences in the law.

Judge Thomas has embraced the kind of program under which he was admitted to Yale Law School. Judge Thomas has expressed the belief that this program employed a combination of race and socio-economic status as a basis for admission. It is apparent that in attempting to escape the brunt of his own personal attacks on race-conscious remedies or preferences in affirmative action programs, Judge Thomas has misrepresented the character of the Yale Law School program under which he was admitted as a student in 1972.[33] The program was, pure and simple, an express,

---

[32] Remarks at Claremont McKenna College in November 16, 1987, p.5.

[33] See, Thomas Testimony in response to questions posed by Senator Arden Specter on September 13, 1991, p.31-32.

affirmative action program based on taking race into account -- in selecting among students who were deemed qualified -- in order to provide expanded opportunities for Blacks and other minorities disproportionately underrepresented in the student body.[34]

That program (we are advised) was and is consistent with the provisions of Title VI of the Civil Rights Act of 1964, which bans racial discrimination in all institutions receiving Federal financial assistance, including private universities like Yale.

Judge Thomas' record of writings and speeches, as well as his testimony before this Committee, indicates that he opposes on legal grounds such clearly legal forms of affirmative action as the Yale Law School Program. We are distressed by his opposition to this essential and proper form of affirmative action to remedy past and present racial discrimination, as well as its pervasive effects. We are distressed even more by his apparent attempt to conform the truth about the Yale program to fit his convictions.

It should be pointed out that the net effect of Judge Thomas' view would be to literally bar all meaningful forms of affirmative action, including the use of goals and timetables. Moreover, even the most benign of practices like the Yale program would be vulnerable.

Judge Thomas' view on the importance of Executive Order 11246 and his role in seeking its modification, as well as his general view of the constitutionality of affirmative action principles generally should be determined before the vote of this Committee is taken.

---

[34] See, Statements and Supporting Documents submitted to the Washington Bureau of the NAACP in regard to the nomination of Judge Clarence Thomas by Richard Paul Thornell, Professor of Law, Howard University School of Law.

As Professor Charles Ogletree has suggested in his contribution to the NAACP's staff report on Judge Thomas' confirmation, Judge Thomas' writings present a construct that is oblivious to the complex structural factors of racism in America. The theme of self-help is most evident in Judge Thomas' autobiographical recollections. Judge Thomas' commencement speech at Savannah State College bears ample witness to his faith in self-help. Judge Thomas' speech is most eloquent. He exhibits what appears to be genuine humility and speaks movingly about racial discrimination.

However, no acknowledgement is made of the systemic exclusion of blacks from venture capital. No recollection of racist policies which have denied mortgages to blacks. No memory of the debilitating effects of overcrowded and underfunded schools is recalled.

Clarence Thomas' logic is straightforward: he sets up a liberal straw man (blacks have tried to abdicate all responsibility for their own liberation because of prejudice) and then knocks it down by citing some anecdotal evidence of those who survived. He infers, from the few, that everyone can make it.

What is even more disturbing, however, is the way in which this logic leads into blaming the victim. For it follows, if some blacks can make it in the face of discrimination, how does one account for the fact that so many don't make it? The obvious answer is that there is something wrong with them – they just don't work hard enough. The implication as well is that somehow, in reminding the African American community of systemic racism, white and black progressives have disabled the

community. It is not difficult then to extend this logic to a generalized opposition to affirmative action.

The American people have a right to know where Judge Thomas stands on these important questions.

II. Voting Rights

Of all the rights secured by the blood of African Americans, none is more precious than the right to vote. Without question, the Voting Rights Act of 1965 is the single most important piece of remedial legislation to emerge from the great Civil Rights Movement of the 1960's. The Voting Rights Act, in conjunction with the Civil Rights Act of 1964, has been largely responsible for the political empowerment of African Americans over the past twenty-five years.

The NAACP has a vital interest in preserving the right to vote for African Americans. The NAACP has been -- and it presently -- involved in voting rights cases across the United States brought under the Voting Rights Act. The NAACP routinely conducts voter education, voter registration and voter outreach programs designed to empower the African American community.

In 1988 Judge Thomas denounced, without identifying the cases, several Supreme Court decisions applying the Voting Rights Act:

> The Voting Rights Act of 1965 certainly was crucial legislation. It has transformed the politics 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.[35]

Judge Thomas' observations at the Tocqueville Forum are consistent with his statements that the 1982 Voting Rights amendments to Section 2 were "unacceptable."[36] Presumably, the Supreme Court decisions referred to by Judge Thomas include Thornburg v. Gingles[37]. The Gingles decision implemented the 1982 amendments to Section 2 of the Voting Rights Act, which prohibits election laws and practices with a racially discriminatory effect. The most important application of this prohibition is to forbid schemes dilute minority voting strength.

At the hearings last week, Judge Thomas spoke approvingly of the Voting Rights Act. However, he expressed difficulty in accepting the "effects test", which is the heart of meaningful enforcement of the Voting Rights Act.

Further confirmation testimony from the nominee raise troubling questions concerning his understanding of Supreme Court interpretation of the Voting Rights Act. His awkward attempts to clarify statements he has made regarding Supreme Court rulings in the area of voting rights present a flawed account of the law. His testimony in this regard has been quite confusing. Judge Thomas has not made it clear whether his negative discussions about voting rights decisions reveal his belief that the law should be

---

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

[36] Thomas, Speech to the Heritage Foundation, June 18, 1987, p.4; Speech at Suffolk University, March 30, 1988, p.14.

[37] 478 U.S. 30 (1986).

changed or instead reflect his ignorance of the law. African Americans cannot be comforted by his ambivalent responses.

At the time his remarks were made at the Tocqueville Forum it appears that they were crafted to serve a conservative political agenda, the judicial acceptance of which would cripple the Voting Rights Act as an empowerment tool for enabling minorities to elect representatives of their choice. His statements during the confirmation hearings that he was concerned about the promotion of proportional representation for minorities flies in the face of the reality that those concerns had already been resolved in both Congressional legislation and the Supreme Court decision in Thornburg.

Judge Thomas emphasized at his confirmation hearing that his concern about interpretations of the Voting Rights Act rested on his judgment that these rulings presuppose that racial and ethnic groups will inevitably vote in blocs. It is well established in voting rights litigation that racial bloc voting is not presupposed, it must be proven. In Thornburg, the Supreme Court explained that legally significant racial bloc voting occurs only when the voting behavior of a white majority results, in the absence of unusual circumstances, in the defeat of candidates preferred by minority voters.[38] The persistence and pervasiveness of racial bloc voting is established by evidence presented in several voting rights cases.[39] Further legislation extending the Voting Rights Act

---

[38] Thornburg v. Gingles, 106 S.Ct. 2752, 2767 (1986).

[39] See, Book Review, Without Fear and Without Research: Abigail Thernstrom on the Voting Rights Act, by Pamela S. Karlan and Peyton McCrary, in the Spring 1988 issue of the Journal of Law and Politics at p.760.

explicitly says that no group is entitled to legislative seats in numbers equal to their proportion of the population.

The future of voting rights protection for minorities is of extreme importance. Last term the Supreme Court significantly extended the reach of judicial protection under the Voting Rights Act.[40] Moreover, the Department of Justice has objected to legislative redistricting plans in Louisiana and Mississippi on the grounds they would fragment and thereby continue to vitiate the black vote.

Conclusion

The life story of Judge Thomas is, indeed, compelling. But it should not be the principal basis of his confirmation to the Supreme Court. The many contradictions between the record compiled by Judge Thomas before his nomination, and the opinions offered during his testimony before the Senate Judiciary Committee are troubling. We find it difficult to believe the suggestion that he has simply changed his mind on so many issues. As Senator Specter stated on September 16, 1991, the last day of Judge Thomas's testimony "Your writings and your answers are inconsistent; they're at loggerheads....". Other Senators have raised similar concerns about the consistent discrepancies between Judge Thomas's written record and oral testimony before the Judiciary Committee.

Those who have gone beyond their own individualistic concerns to address the broader concerns of all humanity have not gained civil rights victories without a price.

---

[40] See, esp. Chisom v. Roemer 111 S.Ct. 2354 (1991) where the Court held that judicial elections are covered by Section 2 of the Act.

We have learned to mark the counsel of Frederick Douglass, who said, "We may not get everything we pay for, but we shall certainly pay for everything we get."

The NAACP believes:

> Our people who want freedom and justice must take the lead in fighting for it. We must be prepared to die for it, just as our strongest black leaders have done before us. We must not only be smart but smarter. We must not only be wide awake, we must be forever vigilant. We must not only clean up our own backyards, we must insist that America cleans up its act and face up to its misdeeds. We need not be perfect, but we have to be truthful, honest and proud.

We know of no civil rights organization that urges confirmation of Judge Thomas, based on his public record. To ameliorate strong concerns raised by that record, and his statements on civil rights protection, it has become apparent that the nominee has chosen to distance himself from past pronouncements through evasion and skewed logic during these hearings, rather than to defend or to clarify his controversial record. Thus, in Senator Heflin's words, the nominee remains, in part, an enigma.

In the final analysis, we are persuaded that the confirmation testimony presented by Judge Thomas fails to resolve the concerns we have raised about his public record or to reassure us that he is an suitable successor to Justice Marshall.

For these reasons, in the strong interests of all Americans, we have put reason above race, principle above pigmentation, and conscience above color. We urge the members of the United States Senate, to exercise their advise and consent authority by rejecting this nomination.

A REPORT

on the

NOMINATION

of

JUDGE CLARENCE THOMAS

as

ASSOCIATE JUSTICE

of the

UNITED STATES SUPREME COURT

National Association for the
Advancement of Colored People

August 15, 1991

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Introduction

On July 31, 1991 the NAACP announced its opposition to the confirmation of Judge Clarence Thomas to become Associate Justice of the United States Supreme Court.

This decision was difficult for the NAACP because of our belief in the particular importance of having an African American as a successor to Justice Thurgood Marshall. We also recognize, however, that rulings of the Supreme Court have been central to the social, political and economic advancement of African Americans. Therefore, the NAACP has long held the view that race alone should not be the deciding factor governing our actions on Court appointments.

The NAACP opposes Judge Thomas' confirmation to the Supreme Court because his record of performance as Assistant Secretary for Civil Rights in the Department of Education (1981-'82) and as Chairman of the Equal Employment Opportunity Commission (1982-'90) fails to demonstrate a respect for or commitment to the enforcement of federal laws protecting civil rights and individual liberties.

In a substantial number of speeches, writings and interviews, Judge Thomas has revealed a hostility to constitutional principles affecting civil rights protections, including the use of meaningful remedies for both past and present discrimination such as "goals and timetables".

Several of these statements are fundamentally at odds with policy positions taken by the NAACP:

Thomas - Affirmative Action: "[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 your being mugged falls on you ... Before affirmative action, how did I make it?" ["Administration Asks Blacks to Fend for Themselves," The Washington Post, December 5, 1983, p.A1].

Thomas - Goals and Timetables: "[American business] has a vested interest in the predictability of goals and timetables....[It] makes your jobs easy and neat, but

it's wrong, insulting, and sometimes outright racist." [Remarks, March 8, 1985].

The NAACP, of course, has supported both self-help initiatives and affirmative action as remedies against societal discrimination.

Thomas - Bork Nomination: "It is preposterous to think that by spending so much energy in opposing as decent and moderate a man as Judge Robert Bork that this [civil rights] establishment was actually protecting the rights and interests of black Americans." [Remarks, November 16, 1987].

The NAACP opposed the nomination of Judge Robert Bork to the Supreme Court.

Judge Thomas is not a "blank slate"; his public record is known and available for review. In the final analysis, Judge Thomas' inconsistent views on civil rights policy make him an unpredictable element on an increasingly hostile and radical Supreme Court. It is a risk too consequential to take.

Moreover, given the NAACP's past opposition to Judge Bork and Justices Scalia and Souter, and the elevation of Justice Rehnquist to become Chief Justice, our failure to oppose Judge Thomas would appear both inconsistent and race-based. We would be giving Thomas the benefit of our doubts, even though his opposition to positions of importance to us is, in many ways, more strident than that of previous nominees.

The principles of the NAACP, and positions taken on previous nominations, leave us compelled to oppose the confirmation of Judge Thomas.

Personal Philosophy

The doctrine of self-help, which has become an article of faith in Judge Thomas' public statements, has been an important element in the advancement of African Americans and has long been supported by the NAACP. Judge Thomas' nomination to the Court does not involve a debate over the value of self-help initiatives.

The philosophy of self-help is admirable, so long as it encourages initiative and achievement in a society that gives all of its members an opportunity to develop in the manner best suited to their talents. It is not, however, as Judge Thomas apparently presumes, a substitute for society's obligation to deal equitably with all of its members and to promote their general well-being, including equal educational, economic and political opportunity regardless of age, gender or race.

Judge Thomas' conservatism generally favors a government's interest over an individual's. Conservative judges tend to strictly construe the Constitution and federal

statutes, and generally leave to legislators the establishment of new rights or remedies for societal problems. This approach to civil rights law has had profoundly negative implications for the broad political interests of African Americans throughout our history.

Despite his own background, Judge Thomas is hostile to civil rights laws that have opened schoolhouse and workplace doors to millions of African Americans and other minorities. He has attacked as "egregious" and "disastrous" landmark Supreme Court decisions protecting against job discrimination and school segregation.

Moreover, Judge Thomas champions the "property rights" and "economic liberties" of big business, but opposes the minimum wage and other worker protection laws.

The Two Sides of Judge Clarence Thomas

The significance of the Supreme Court in American life, and the critical role played by Justice Thurgood Marshall in protecting the rights of all persons in the United States, make it important to view Judge Thomas' nomination to the Supreme Court in the context of the Court's recent history.

The Supreme Court, which all but destroyed our two most effective employment discrimination statutes in its decisions in Patterson v. McLean Credit Union (1989) and Wards Cove v. Atonio (1989), has already signaled its hostility to African Americans. Justice David Souter's arrival on the Supreme Court seems to have cemented a voting majority, which in the words of Justice Marshall, has launched a "far-reaching assault upon the Court's precedents." This overreaching approach to Supreme Court precedent puts into jeopardy many of the Court's most important modern constitutional cases.

The NAACP is aware that some of Judge Thomas' earlier writings send "mixed signals" on his civil rights views. For example, in his 1982 speech at Savannah State College, Clarence Thomas speaks eloquently about the importance of many of the values that the NAACP supports. However, his writings seem to reflect two distinctly different views on several important constitutional issues.

After his confirmation for a second term at the EEOC, his position on affirmative action shifted dramatically. In fact, the NAACP believed that his positions were so detrimental to the interests of African Americans, that we called for his resignation at that time.

Record at the Department of Education

As Assistant Secretary for Civil Rights at the Department of Education, Clarence Thomas failed to further the cause of higher education for African Americans and to

implement provisions that would have channeled millions of dollars to the historically black colleges. The weakening of civil rights protections during his tenure at the Department of Education represented a flight from the full, fair and faithful execution of laws governing equal educational opportunity and was a disservice to the African American community.

The Office of Civil Rights (OCR) is responsible for insuring that educational institutions do not discriminate on the basis of race, sex, handicap and age. The OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1973. It uses federal financial assistance as a "carrot and stick" to insure equal opportunity for a quality education.

When Clarence Thomas took office as Assistant Secretary, his agency had been under court order since 1970 to implement desegregation and the enhancement of black colleges to make up for their neglect by southern state governments in the past. The court order made clear that institutions which received federal funds must do more than just adopt nondiscriminatory policies; they must take affirmative steps, including eliminating duplicate programs and enhancing black colleges.

During Clarence Thomas' first months at the OCR, he began to undermine enforcement of the Adams order by negotiating with states to accept plans which gave the states free rein to handle desegregation. In accepting these higher education desegregation plans, the OCR waived established guidelines that had the force of law.

The path taken by Thomas led to the increasing budget reductions, admission constraints and other impediments that strangle black public colleges and universities today. Ironically, these decisions are at the heart of the issues in the Mississippi higher education case, Ayers v. Mabus, that the Court will decide in its next term. Clarence Thomas, whose tenure at the OCR helped to erode the leverage the black colleges and universities had gained, could be on the Supreme Court to ratify his neglect of these institutions, should he be confirmed.

Clarence Thomas also deliberately disobeyed a court order, substituting his judgement for the court's, even though as he admitted in federal court, the beneficiaries under the civil rights laws would have been helped by compliance with the court order.

Record at the Equal Employment Opportunity Commission

At EEOC, it appears that Clarence Thomas built on his OCR record of ignoring his responsibilities, complaining about the law he was required to enforce and allowing complaints to go unattended.

During each year of Clarence Thomas' tenure as Chairman of the EEOC, the backlog of cases at the agency increased and the number of complainants who received a hearing

or investigation declined. Between 1983 and 1987 the backlog *doubled* from 31,500 to approximately 62,000 complaints [See, GAO Report HRD-89-11, October 1988].

Judge Thomas also secretly ordered EEOC attorneys to back away from using court-approved remedies, such as goals and timetables, and only reinstated them when Congress discovered his actions and insisted that he enforce the law. In addition, a federal court found that, as a boss himself at the EEOC, Thomas illegally punished an employee who dared to disagree with his anti-civil rights policies.

During Chairman Thomas' tenure, the EEOC failed to process the age discrimination charges of thousands of older workers within the time needed to meet statutory filing requirements under the Age Discrimination in Employment Act (ADEA), leaving these workers without any redress for their claims. Some 13,873 age discrimination claims missed the statutory deadline. Ultimately, Congress had to intervene and enact legislation which reinstated the older workers' claims.

Moreover, Clarence Thomas failed to take affirmative steps to prevent Reagan Administration officials from attempting to overturn Executive Order 11246, a 20 year-old presidential order requiring businesses doing work for the government to employ racial minorities and women. In fact, he encouraged them to proceed with their efforts so that the Administration could move on to other areas of the law involving civil rights. However, because of the efforts of both Democrats and Republicans in Congress, and because of major business organizations, this regressive effort was blocked.

Affirmative Action

In speeches, writings, and interviews, Judge Thomas has left little doubt about his negative views on the uses of affirmative action -- including court-ordered affirmative action -- to address the effects of both past and present discrimination in employment:

> * "I continue to believe that distributing opportunities on the basis of race or gender, whoever the beneficiaries, turns the law against employment discrimination on its head. Class preferences are an affront to the rights and dignity of individuals -- both those individuals who are directly disadvantaged by them, and those who are their supposed beneficiaries." [Thomas, "Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!," 5 Yale Law & Policy Review 402, 403 n.3 (1987)].

> * "I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. Hence, I emphasize black self-help, as opposed

> to racial quotas and other race-conscious legal devices that only further deepen the original problem." [Thomas, Letter to the Editor, Wall Street Journal, p.23, Feb. 20, 1987].

Under Judge Thomas' view, *even* Title VII of the Civil Rights Act of 1964 would make affirmative action unlawful because it prohibits employers from discriminating on the basis of race, color, sex, religion or national origin.

Clarence Thomas' opposition to affirmative action remedies has led to his criticism of several important Supreme Court decisions which were decided by close votes, including United Steelworkers of America v. Weber, 443 U.S. 193 (1979) and Fullilove v. Klutznick, 448 U.S. 448 (1980). The replacement of Justice Marshall by Judge Thomas could lead to the reversal of these cases that have been important to African Americans.

In Weber the Court upheld a private employers' hiring and training program which reserved skilled jobs for African Americans. The Court emphasized the severe under-representation of African Americans in the workforce and the fact that the plan did not unnecessarily ignore the interests of other employees.

In Fullilove, the Court upheld as constitutional a federal public works program which set aside 10% of the federal contracts for minority business enterprises (MBE's). Judge Thomas criticized both the Supreme Court for "reinterpret[ing] civil rights laws to create schemes of racial preference where none was ever contemplated" and the Congress, of which he stated:

> 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? [Thomas, Assessing the Reagan Years, 1988]

Voting Rights[1]

In 1988, Judge Thomas denounced, without identifying the cases, several Supreme Court decisions applying the Voting Rights Act:

> The Voting Rights Act of 1965 certainly was crucial legislation. It has transformed the politics 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

[1] See, "An Analysis of the Views of Judge Clarence Thomas, "NAACP Legal Defense and Educational Fund, Inc., August 13, 1991, p. 4-5.

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

This is consistent with Judge Thomas' statements that the 1982 amendments to section 2 were "unacceptable" [Speech to the Heritage Foundation, June 18, 1987, p. 4; Speech at Suffolk University, Boston, March 30, 1988, p. 14], and his somewhat obscure objection to the Supreme Court's redistricting decisions.

The Supreme Court decisions referred to by Judge Thomas presumably include Thornburg v. Gingles, 478 U.S. 30 (1986). The Gingles decision implemented the 1982 amendments to section 2 of the Voting Rights Act, 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.

Thus, by mischaracterizing what the Court has actually held, Judge Thomas is able to denounce it as focusing on "group" rights and requiring relief in cases where, he asserts, there has been no showing of discrimination against individuals.

School Desegregation

Judge Thomas, who was educated in parochial schools during his childhood, has criticized the Supreme Court's decision in Brown v. Board of Education on the grounds that it was based on "dubious social science" and on an inaccurate premise that separate facilities are inherently unequal. In the Brown decision, a unanimous Supreme Court ruled, based on the equal protection clause of the Fourteenth Amendment, that "separate educational facilities" are inherently unequal.

The issue in Brown was not whether attending schools with whites would make black children smarter. The issue was whether segregated schools would ever receive the resources and benefits needed to make them equal to the competitive opportunities given to whites. Judge Thomas' rejection of equal protection jurisprudence in Brown is disturbing.

Even more disturbing is his criticism of the line of school desegregation cases following Brown. Judge Thomas has referred to such cases, including the critically important cases of Green v. County School Board and Swann v. Charlotte-Mecklenburg Board of Education, as a "disastrous series of cases." Until the Supreme Court rulings in these cases, almost all children in the South attended one-race schools, despite the ruling in Brown 15 years earlier.

Conclusion

Judge Clarence Thomas is not the best qualified successor to Justice Marshall. His confirmation would solidify a regressive majority on the Supreme Court, which would jeopardize a number of civil rights protections that have been established by closely-decided rulings of the Court.

For the foregoing reasons, the NAACP is compelled to oppose the confirmation of Judge Clarence Thomas.

* * * * * * * * * *

Q & A's *[Frequently Asked Questions]*

If the NAACP and others succeed in defeating Judge Thomas' confirmation, won't President Bush simply name another nominee, equally as conservative, perhaps more so, and, assuredly, not an African American?

Certainly, that is a possibility. However, historically, Senate rejection of highly conservative nominees has been followed by approval of more moderate candidates. For example, Senate rejection of President Nixon's nominations of Judges Haynsworth and Carswell to the Court led to the appointment of Justice Blackmun, who has been moderate on the Court and has often joined Thurgood Marshall on civil rights and constitutional issues.

The question is: does Clarence Thomas possess the qualities and philosophy that we believe are essential for a Justice of the Supreme Court? We believe he does not.

Judge Thomas' record is so bad and the damage that he could do to civil rights and liberties on the Court is so severe that he must be opposed as a matter of principle. This is where the NAACP draws the line. The question of "who will come next" can always be raised. Each nomination, however, must be judged on its own merits. If people concerned about civil rights had allowed that question to stop them, we would now have Bork and Haynsworth or Carswell on the Court. Judge Thomas' nomination should be rejected by the Senate.

But don't we need an African American perspective on the Court?

Judge Thomas' views are potentially so devastating to the interests of African Americans that he should be rejected. In fact, precisely because he is an African American, Thomas may be even more effective than a white conservative on the Court in legitimatizing the attack and undermining the civil rights principles critical to African Americans.

The replacement for Thurgood Marshall should be someone who shares Marshall's commitment to civil and constitutional rights. There are many eminent black lawyers and judges who meet this description. We will urge the President to nominate such a person, assuming the Senate rejects Judge Thomas.

Judge Thomas is only 43 years of age. He has many years to serve, if he is confirmed. He might mature into a jurist of whom we can all be proud.

That is possible, of course. However, that would be a triumph of hope. Should we entrust a seat on the High Court to hope? Moreover, Judge Thomas' confirmation may mean that we are even less likely to see the appointment of another African American, so long as Judge Thomas holds his seat on the Court.

I. INTRODUCTION

On July 1, 1991, President George Bush nominated Judge Clarence Thomas as Associate Justice of the Supreme Court following Justice Thurgood Marshall's announcement on June 27, 1991, that he was retiring from the nation's highest court.

In view of the Supreme Court's critical role in guaranteeing constitutional rights, and the towering contributions of Justice Marshall in his 24 years as an Associate Justice, NAACP[2] Chairman Dr. William F. Gibson and Executive Director Dr. Benjamin L. Hooks issued a statement on July 7, 1991, noting "the importance of this appointment and its far-reaching implications in shaping the future of the Court."[3] The NAACP would "proceed at a deliberate pace in formulating our position, taking into full account any matter relating to Judge Thomas' qualifications to sit on the Supreme Court," the statement said.

The statement also noted that the NAACP's National Board of Directors had directed the Washington Bureau to "conduct an exhaustive review of Judge Thomas' record

---

[2] The National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization.

Since its formation in 1909, the NAACP has been the principal vehicle by which African Americans have advanced their claims of legal rights in our nation's political and legal processes. The NAACP has championed the civil rights of women and other minorities, in addition to African Americans, through the courts and legislatures, on a national, state and local level.

[3] The Joint Statement was released by directive of the National Board of Directors on July 7, 1991 at the 82nd Annual National Convention in Houston, Texas.

56-272 O - 93 - 3

in public office." The Washington Bureau's report was presented to the members of the NAACP's National Board of Directors and it was considered at a special meeting of the Board on July 31, 1991. At that time the National Board voted by a margin of 49-1 to oppose Judge Thomas' nomination on the grounds that it "would be inimical to the best interests of the NAACP."

Justice Marshall's Replacement

When Thurgood Marshall was nominated to become an Associate Justice of the Supreme Court, he enjoyed the overwhelming support of African Americans. By no means was race the only factor that generated African American pride in Thurgood Marshall! The NAACP's national publication, The Crisis, set forth the views of many in the African American community:

> "The nomination of Thurgood Marshall to become an Associate Justice of the United States Supreme Court represents an historic breakthrough of transcendent significance. It is not merely that Mr. Marshall is the first Negro to be selected to serve at the summit of the nation's judicial structure. It is also that he achieved national eminence as the No. 1 civil rights lawyer of our times -- the Special Counsel of the National Association for the Advancement of Colored People and the Director-Counsel of the NAACP Legal Defense and Educational Fund. As such he was in constant battle against entrenched tradition and archaic laws, emerging as victor in 23 of 25 encounters before the Supreme Court..."[4]

Justice Marshall's retirement from the Court would have significance for the nation no matter when it occurred. His departure at this time in our nation's history, however, is especially troubling to many African Americans because it could accelerate the conservative shift in Supreme Court doctrine on civil rights, habeas corpus, and individual liberties which has been evident now for the past two terms of the Court.

---

[4] "Associate Justice Thurgood Marshall", The Crisis, Vol. 74, No. 6, July 1967, p.282.

Synopsis of Judge Thomas' Career

Judge Thomas is a 1974 graduate of the Yale Law School. He obtained his undergraduate degree from Holy Cross College. He also spent a year in a Missouri seminary considering the priesthood.

The 43-year old Judge Thomas began his legal career as an assistant attorney general in Missouri under then - Attorney General John Danforth (now the senior Senator from Missouri) where he handled appellate matters on tax and finance issues. He later worked for the Monsanto Co. in St. Louis, Missouri. In 1979, he joined the staff of Senator John Danforth (R-MO) as a legislative aide handling energy and environmental matters.

In May, 1981, Clarence Thomas was appointed by President Ronald Reagan as Assistant Secretary of the United States Department of Education's civil rights division.

In 1982, he was confirmed as Chairman of the Equal Employment Opportunity Commission (EEOC). The NAACP did not then oppose his confirmation. When President Reagan renominated Clarence Thomas to another four-year term in 1986, the nominee faced serious opposition from a number of groups, including the NAACP[5]. Nonetheless, he was confirmed to a second term.

President Bush appointed Clarence Thomas to the United States Court of Appeals for the District of Columbia Circuit in February, 1990. The NAACP neither opposed nor endorsed his appointment to this position.

---

[5] NAACP Resolutions, 77th NAACP Annual National Convention, Baltimore, MD (June 29 - July 3, 1986), Resolution #4 "Call for Resignations". See also, letters dated July 22, 1986 from Althea T. L. Simmons, then Director of the Washington Bureau of the NAACP to members of the United States Senate, urging them to vote against reconfirmation.

Basis for NAACP's Concern

This NAACP report reviews Clarence Thomas' tenure as Assistant Secretary for Civil Rights at the Department of Education, his chairmanship of the Equal Employment Opportunity Commission, his judicial opinions and his speeches and writings. From May 1981 to May 1982, when Judge Thomas held the mantle of responsibility for the Department of Education's Office of Civil Rights, he led a regressive effort to undermine Title VI, Title IX and the policies through which the federal government had strengthened and extended the constitutional guarantees of equal educational opportunity established by Brown v. Board of Education and its progeny.[6] The Thomas tenure left a legacy of initiatives and neglect that threatened to reverse more than a generation of progress toward equal educational opportunity for the nation's youth (See Chapter 5).

Judge Thomas' record of enforcement of existing law, management priorities and policy making pronouncements while he was EEOC Chairman, particularly during his second term, came under attack by members of Congress[7] and civil rights groups. Moreover, Judge Thomas' handling of age discrimination cases while at the EEOC has been sharply criticized[8]. The NAACP found Judge Thomas' record of enforcement at the EEOC especially troubling (See Chapter 4).

---

[6] See, e.g. Griffin v. County School Bd., 377 U.S. 218 (1964); Green v County School Bd., 391 U.S. 430 (1968); Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969); Swann v. Charlotte Mecklenberg Board of Educ., 402 U.S. 1 (1971); Lau v. Nichols, 414 U.S. 563 (1974); Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979); Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979) (Dayton II).

[7] See e.g. Letter to C. Thomas, Chairman, Equal Employment Opportunity Commission from Rep. A. Hawkins, Chairman, Committee on Education and Labor, April 23, 1985.

[8] See Letters to Senator Joseph Biden (D-DE), Chairman, Senate Judiciary Committee, and Senator Strom Thurmond (R-SC), from the American Association of Retired Persons (AARP), January 26, 1990; February 1, 1990; February 16, 1990.

Judge Thomas' brief tenure on the Court of Appeals for the District of Columbia Circuit provides little enlightenment as to his fundamental beliefs on core constitutional questions -- including questions involving principles of equal opportunity or the use of race-based remedies to correct past discrimination. The relatively few opinions he has written or joined while on the bench do not exhibit strong evidence of his ideological persuasion (See Chapter 5).

In speeches, writings and interviews, Judge Thomas has left little doubt about his strongly-held conservative views. Judge Thomas' conservatism, for instance, generally favors a government's interest over an individual's. Conservative judges tend to strictly construe the Constitution and federal statutes, and generally leave to legislators the establishment of new rights or remedies for societal problems. This approach to civil rights law has had profoundly negative implications for the broad political interests of African Americans throughout our history (See Chapter 5).

Judge Thomas' announced positions on remedies for discrimination in education and the uses of affirmative action to remedy the effects of both past and present discrimination in employment are especially troubling. Several of these statements are fundamentally at odds with policy positions taken by the NAACP:

> Affirmative Action
>
> In a two-part NAACP exclusive interview with Clarence Thomas, which was reported in the The Crisis, then-EEOC Chairman Thomas explained his opposition to affirmative action:
>
> "Why am I opposed to affirmative action? The primary reason I am opposed to it is that I don't see where it solves any problems. As a lawyer, I don't legally see how it is going to be supportable as a social policy for a sufficient period to help black people. We have to sit down and think about the effects of it in the employment

arena, when we talk about policies that are *race-conscious, --particularly the quota system*."[9] [emphasis added]

Judge Thomas, as chairman of the Equal Employment Opportunity Commission, said 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 victim back to health.

"Ultimately, the burden of your being mugged falls on you. Now, you don't want it that way, and I don't want it that way. But that's the way it happens....Before affirmative action, how did I make it?" asked Thomas, who is black."[10]

The NAACP, of course, has supported both self-help initiatives and affirmative action as remedies against societal discrimination.

Goals and Timetables

"[American business] has a vested interest in the predictability of goals and timetables....[It] makes your jobs easy and neat, but it's wrong, insulting, and sometimes outright racist."[11]

The NAACP has supported goals and timetables for meaningful remedies.

Bork Nomination

"It is preposterous to think that by spending so much energy in opposing as decent and moderate a man as Judge Robert Bork that this [civil rights] establishment was actually protecting the rights and interests of black Americans."[12]

The NAACP opposed the nomination of Judge Robert Bork to the Supreme Court.

---

[9] "I Am Opposed to Affirmative Action!," Interview with Clarence Thomas, Chairman, EEOC, by Chester A. Higgins, Sr., The Crisis, March, 1983, vol. 90. No. 3 (the first part, "We Are Going to Enforce the Law," was published in the February, 1983 edition of The Crisis.

[10] "Administration Asks Blacks to Fend for Themselves," The Washington Post, December 5, 1983, p.A1, p.A8.

[11] Addressing the EEO Committee of the ABA's Labor and Employment Law Section, Palm Beach Gardens, Florida, March 8, 1985.

[12] Speech: Remarks of Clarence Thomas, Chairman, Equal Employment Opportunity Commission, Claremont McKenna College, Claremont, California, November 16, 1987.

In light of the longstanding principles of the NAACP and our concern for the future of our nation, the final decision on the suitability of any successor to Justice Marshall must be made with care and deliberation.

II. The Importance of Supreme Court Nominations to the NAACP

As the final arbiters of the American constitutional system, the Justices of the Supreme Court collectively exercise an influence on the destiny of America unequalled by any other branch of government.[13] When the NAACP was still in its infancy, two important legal victories in the Supreme Court had much to do with shaping the Association's institutional view on the importance of the Supreme Court. In 1915, the Supreme Court ruled Oklahoma's "grandfather clause" unconstitutional[14] and, two years later, the Court invalidated a Louisville ordinance requiring residential segregation.[15]

---

[13] In a most important sense, the Supreme Court is the nation's balance wheel. As Justice Robert H. Jackson stated:

> In a society in which rapid changes tend to upset all equilibrium, the court, without exceeding its own limited powers, must strive to maintain the great system of balances upon which our free government is based. Whether these balances and checks are essential to liberty elsewhere in the world is beside the point; they are indispensable to the society we know. Chief of these balances are: first, between the Executive and Congress; second, between the central government and the States; third, between state and state; fourth, between authority, be it state or national, and the liberty of the citizen, or between the rule of the majority and the rights of the individual.

[14] Guinn v. U.S., 238 U.S. 347 (1915). Under the "grandfather clause", which was a part of a 1910 amendment to the Oklahoma state constitution, a person could become a registered voter if he had served in the armies of the U.S. or the Confederacy, or was a descendant of such a person, or had the right to vote before 1867. This method of disqualifying blacks was so effective that other southern states inserted the clause in their constitutions as well.

[15] Buchanan v. Warley, 245 U.S.60 (1917). The Louisville ordinance, which became effective in May, 1914, was enacted to restrict minorities to live within certain boundaries.

It is unsurprising, therefore, that the NAACP has a long historical record of carefully scrutinizing the social, political, and economic views of the Justices, as well as their judicial philosophies, in determining whether they should be nominated to the Court and subsequently confirmed by the Senate.[16] As early as 1912, for example, the NAACP opposed the nomination of Judge Hook to the United States Supreme Court because of his views on race issues and other matters. Based on the NAACP's vigorous opposition, President Taft withdrew Judge Hooks' nomination.

In April 1930, when President Herbert Hoover nominated Judge John J. Parker to a vacancy on the Supreme Court, Walter White, acting secretary of the NAACP, ordered a prompt investigation of Judge Parker's record.[17] The inquiry revealed that while running for governor of North Carolina in 1920, Judge Parker had approved of literacy and poll taxes for voters and had also approved of the "grandfather clause" which the Supreme Court had declared unconstitutional in 1915. The NAACP launched a successful national campaign to block Judge Parker's confirmation, which was rejected by the Senate by a vote of 39-41. "The first national demonstration of the Negro's power since Reconstruction days," the Christian Science Monitor said of Parker's defeat.

Twenty-five years later, after the Supreme Court's landmark decision in Brown v. Board of Education[18], Judge Parker led the judicial resistance to integration in Briggs v.

---

[16] See,Olive Taylor, Two Hundred Years, An Issue: Ideology in the Nomination and Confirmation Process of Justices to the Supreme Court of the United States, A Report Prepared for the NAACP Washington Bureau, September 1987, p.2.

[17] Richard Kluger, Simple Justice. (New York: Random House, 1975), pp. 141-142.

[18] Brown v. Board of Education of Topeka, 347 U.S.483 (1954); 349 U.S. 294 (1955).

Elliott in which he wrote:

> It is important that we point out exactly what the Supreme Court has decided and what it has not decided...[A]ll that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decisions of the Supreme Court takes away from the people the freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation.[19]

The Briggs dictum was intended to offer aid and comfort to segregationists and to those who wanted to undermine the mandate of Brown. Fortunately, Brown prevailed over Briggs but if Judge Parker had been elevated to the Supreme Court, would there have been Brown?

More recently, the NAACP opposed the nomination of Judge Robert H. Bork to the Supreme Court because of his previous judicial record and opposition to NAACP policy on civil rights matters.

At the NAACP's 78th Annual Convention, the delegates unanimously adopted a resolution of opposition to Judge Bork, which said in part:

> "...the confirmation of Judge Bork would place on the High Court a justice who does not feel constrained by precedent and who has favored a congressional limit on...school desegregation techniques...[T]he Supreme Court is too important in our thrust for equality and justice to permit us to sit idly by and watch a whole line of civil rights and liberties [cases] be threatened by the appointment of a Justice whose ideological orientation would deprive us of the gains achieved in the last twenty years."

---

[19] 132 F. Supp. 776,777 (D.N.C. 1955).

> Now therefore be it resolved, that the NAACP launch an all-out effort to block the confirmation of Judge Bork."[20]

The NAACP initially took no position on the nomination of Judge Douglas H. Ginsburg to the Court. In a statement issued shortly after Judge Ginsburg's nomination to the Court, Dr. Benjamin Hooks, Executive Director of the NAACP, stated, "At this point, we do not know enough about Judge Ginsburg to make a decision on where we will stand on his nomination. We are researching his record in the same careful way we did with Judge Bork and will do with any nominee to the Court. Only then will we take a position."[21]

The nomination of Judge Anthony Kennedy was handled similarly.[22] Ultimately, the NAACP did not oppose the nomination of Judge Kennedy.

The NAACP took no position initially on the nomination of Judge David Souter to become an Associate Justice on the Supreme Court. Because so little public information was known about Judge Souter, the NAACP decided to withhold judgement, and elected instead to await the outcome of the Senate Judiciary Committee's hearings and to review Judge Souter's public record. The NAACP did argue, however, that Judge Souter "must affirmatively demonstrate an unwavering respect for individual rights, for the progress that

---

[20] Resolutions adopted by the 78th Annual National Convention of the NAACP; New York, New York; July 5-9,1987. Emergency Resolution - Text of Bork Resolution.

[21] Statement by Dr. Benjamin L. Hooks, on the Nomination of Douglas H. Ginsburg to the Supreme Court; October 30, 1987.

[22] Statement of Benjamin L. Hooks, LCCR Chairperson and Ralph G. Neas, LCCR Executive Director, Regarding the Anthony Kennedy Supreme Court Nomination Hearings; November 20, 1987.

has been made, and for the Court as a forward-looking institution."[23]

After a review of Judge Souter's testimony before the Senate Judiciary Committee, the NAACP opposed his nomination to the Supreme Court.[24]

The NAACP also opposed the nomination of Justice William H. Rehnquist to become Chief Justice of the Supreme Court and the nomination of Judge Antonin Scalia to become an Associate Justice of the Court.[25]

Some have asked whether the NAACP's decision to neither endorse nor oppose Clarence Thomas for a seat on the Court of Appeals should somehow preclude us from taking a position on his confirmation to the Supreme Court? The answer, unequivocally, is "no."

The NAACP's decision neither to oppose nor endorse Judge Thomas' Court of Appeals appointment in 1990 was both a reflection of his troubling record at the EEOC -- a record which had prompted an earlier call by the NAACP for his resignation as Chairman of the EEOC[26] -- and a concern about the difficulty and justification for attempting to stop his confirmation to a lower court position based on that record.

Moreover, an individual's suitability for a lower federal court appointment does not automatically qualify him for a seat on the Supreme Court. As the nation's "particular

---

[23] See Letter to Senator Joseph Biden, Chairman, Senate Judiciary Committee, from NAACP, et. al; August 3, 1990.

[24] Statement by Dr. Benjamin L. Hooks, Executive Director, NAACP on Nomination of Judge David Souter to Supreme Court; September 21, 1990.

[25] Resolutions adopted at the 77th Annual National Convention of the NAACP; Baltimore, MD; June 29 - July 3, 1986.

[26] NAACP Resolutions, 77th NAACP Annual National Convention, Baltimore, MD (June 29 - July 3, 1986), Resolution #4 "Call for Resignations".

guardian of the terms of the written constitution,"[27] the Supreme Court has become the most powerful court of the modern world era. It can override the will of the majority expressed in an act of Congress. It can forcefully remind a president that in this nation all persons are subject to the rule of law. It can require the redistribution of political power in every state of the Union. And it can persuade the nation's citizens that the fabric of their society must be rewoven into new patterns.[28]

The significance, range and complexity of the issues which are considered by the Supreme Court, and their potential importance to the resolution of society's most complex problems, makes the Supreme Court appointment distinct.

---

[27] Charles Grove Haines, The American Doctrine of Judicial Supremacy (Berkeley, CA.: University of California Press, 1932; reprint ed., New York: Da Capo Press, 1973), p.23.

[28] The Supreme Court and Its Work, Congressional Quarterly Inc. (Washington, D.C.), 1981., p.1.

III. The Record at the Department of Education

During Clarence Thomas' tenure as Assistant Secretary for Civil Rights at the Department of Education from May 1981 until May 1982,[29] he spearheaded an effort to undermine the Department's compliance with a 1970 federal court order to implement desegregation and assist Black colleges and a 1975 court order to promptly investigate race and sex discrimination complaints and conduct compliance reviews. These actions raise serious questions about his commitment to faithfully execute the laws of the land, particularly on issues that are so central to the NAACP's mission.[30]

---

[29] The civil rights office of the Education Department is responsible for enforcing Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1973. It is responsible for insuring that institutions that discriminate on the basis of race, sex, handicap and age do not receive student aid, Chapter 1 grants and other federal funds. It uses federal financial assistance as a carrot and a stick to insure equal opportunity for a quality education in the 16,000 school systems, 3,200 colleges and universities, 10,000 proprietary institutions (for-profit schools for career preparation) and other types of institutions such as libraries and museums that receive Education Department funds.

[30] For instance, at the 66th Annual NAACP Convention held in the Washington, D.C., between June 30, 1975 and July 9, 1975, convention delegates adopted the following Statement of Policy:

> Access to an equal educational opportunity and quality education are affirmative goals of our Association.
>
> We reaffirm our commitment to integrated education for all children and condemn the current racist attempts by Federal, state, local officials and others to postpone meaningful school desegregation because of negative public opinion. We demand that the scales be balanced on the side of the students who are being denied an education in a desegregated/integrated setting rather than on the side of recalcitrant school officials.

The court orders, which had been promulgated as regulations of the Department of Health, Education and Welfare and published in the Federal Register in 1978, made clear that institutions which received federal funds must do more than just adopt nondiscriminatory policies; they must take affirmative steps, including eliminating duplicate programs and enhancing the resources and programs of Black college.[31] For example, on the basis of the court orders, the Black community in Oklahoma was able to keep Langston University open and to expand its operations despite several state government attempts to close it.

Under Clarence Thomas, however, the Education Department began negotiating with states to accept plans which gave the states free rein to determine whether desegregation had been achieved. For example, the Department settled its case against the state of North Carolina by ignoring requirements of the court order.[32]

In the spring of 1982, women and minority plaintiffs brought contempt proceedings against the Department of Education for refusing to investigate discrimination complaints and perform compliance reviews in a timely manner. The Education Department argued

---

> We therefore direct our branches, youth councils and college chapters to use every legal and/or educational means to accelerate the rate of school desegregation and improve the quality of education.

[See also, NAACP Resolutions Regarding: (A) HEW, Title VI, and Schools in the South (63rd conv. res. 1967); (B) HEW, Title VI, and Schools in the South (59th conv. res. 1968); (C) HEW, Title VI and Public Schools, North and West (63rd conv. res. 1972); (D) Federal Enforcement of Education Legislation (68th conv. res. 1977); and (E) Survival of Public Education (73rd conv. res. 1982).]

[31] Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (prepared pursuant to Second Supplemental Order), Adams v. Califano, 430 F. Supp. 118 (1971).

[32] Letter dated February 12, 1982, from Arthur S. Fleming, Chairman of the U.S. Commission on Civil Rights, writing for the Commissioners, to the Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives, Washington, D.C. p. 7.

that they did not need court supervision.

Clarence Thomas testified that he just did not think investigations could be done in a timely manner as required by the court. He had a study underway but he did not know when it would be completed: "The Adams time frames study, which is designed to ferret out the time frames with the degree of specificity that you are requiring, is incomplete at this time."[33]

He also made the following admissions:

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.

Q: So aren't you, in effect, substituting your judgment 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 you have not imposed a deadline [for an OCR study concerning lack of compliance with the Adams order]; is that correct?

A: I have not imposed a deadline.

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

A: Yes.[34]

Following the Clarence Thomas testimony, Judge Pratt found that the order to

---

[33] Testimony of Clarence Thomas, March 12, 1982, p. 7-8 Deposition of Clarence Thomas in Adams v. Bell March 8, 1982 in Civil Action 3095-70, p. 48.

[34] Testimony of Clarence Thomas, supra.

investigate and engage in compliance reviews speedily "had been violated in many important respects and we are not at all convinced that these violations will be taken care of and eventually eliminated without the coercive power of the Court." Judge Pratt ruled that the order would remain in effect.[35]

Judge Pratt's comments about Clarence Thomas are very instructive. He contrasted Thomas' non-performance with that of his predecessor, David Tatel, saying "I contrasted Mr. Tatel on the one hand, who was sitting in the same position Mr. Thomas was four years ago or four and a half years ago, with Mr. Thomas...and it seems the difference between those two people is the difference between day and night."[36]

Judge Pratt also noted that, prior to the Thomas term, as a result of a lot of hard bargaining, "time frames were temporarily suspended and certain serious efforts were made to eliminate the complaints backlog, and all that type of thing." However, under Clarence Thomas "we have almost come full cycle. It seems to me, Mr. Levie (counsel for the government), we've gotten down to the point of where, with the change of administration, sure we've got Title VI, and these other statutes, 504 and Title IX, but we will carry those out in our own way and according to our own schedule. And that's the problem that I have."

Because of Thomas' inaction, the federal government continued to ignore complaints that students were being excluded from education programs; assigned to "special education" classes inappropriately; and, refused admission, suspended or expelled from school for

---

[35] WEAL v Bell, Civil Action No. 74-1720 March 15, 1982; The Court's Findings of Fact and Conclusions of Law.

[36] WEAL v. Bell, supra.

invidious reasons. In short, the federal funds continued to flow.[37]

As Judge Pratt predicted, Clarence Thomas was just a "bird of passing."[38] By May 1982, he was confirmed as Chair of the Equal Employment Opportunity Commission (EEOC). The weakening of civil rights protections during the Clarence Thomas tenure at the Department of Education,[39] represented a flight from the full, fair and faithful execution of laws governing equal educational opportunity and was a disservice to the African American community. The Thomas tenure left a legacy of initiatives and neglect that threatened to dismantle the crucial federal civil rights effort in education and to reverse more than a generation of progress toward equal educational opportunity for the nation's youth.

Clarence Thomas did nothing to further the cause of higher education for African Americans and he failed to implement provisions that would have funnelled millions of dollars into the historically Black colleges. Indeed, because of steps taken by him and followed by successor appointees of the Reagan Administration, Black colleges and universities have seen their funds from the state governments drastically cut and steps taken to make them noncompetitive in every state in the South.

---

[37] Statements by Judge Pratt in response to Closing Arguments of Defendants, March 15, 1982 Civil Action No 3095-70 in WEAL v. Bell and Adams v. Bell.

[38] Judge Pratt's comments in response to Closing Argument of the Defendant", p.4, WEAL v. Bell and Adams v. Bell.

[39] *Some efforts by the Department of Education to weaken civil rights protections were blocked because the Department of Justice found them to be inconsistent with the law.* The Department of Education tried to exempt from all its civil rights requirements over 3,500 postsecondary institutions assisted by Federal student aid, again to prevent a court ruling that may uphold its enforcement responsibilities [according to a February 12, 1982 letter to the Honorable Thomas P. O'Neill from Arthur S. Fleming, Chairman of the United States Commission on Civil Rights, p, 12].

The path Clarence Thomas trod led inexorably to the increasing budget reductions, admission constraints and other impediments that strangle Black public colleges and universities today. It led to the 1988 announcement by William Bennett (then-Secretary of the Department of Education) that the southern states were all in compliance and had desegregated higher education.

Importantly, these decisions are at the heart of the issues in the Mississippi higher education case that the Supreme Court will decide in its next term.[40] Clarence Thomas, whose tenure at the Education Department helped to erode the leverage the Black colleges and universities had gained, could be on the Supreme Court to ratify his neglect of these institutions, should he be confirmed.

[40] The Supreme Court has agreed to decide whether Mississippi is required by either the United States Constitution or federal civil rights laws to do more than end official segregation in its public universities. (The question of a state's obligation to desegregate its public higher education institutions is also at issue in Alabama, Louisiana, Kentucky and Texas). United States v. Mabus; Ayers v. Mabus; Nos. 90-1205; 90-6588; U. S. Supreme Court, October Term, 1991.

IV. The Record at the Equal Employment Opportunity Commission

In May 1982 Clarence Thomas was confirmed as Chairman of the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for enforcing federal law guaranteeing equal employment opportunity, including provisions remedying age, sex, handicap, religion, national origin and race discrimination.

The EEOC's policy is made by five commissioners who are nominated by the President and confirmed by the Senate. The chair not only is the spokesperson, but is also responsible for the overall management of the agency. There is also a general counsel confirmed by the Senate who is responsible for the litigation program of the agency.

It appears that Clarence Thomas built on his record at the U.S. Department of Education's Office of Civil Rights by ignoring his responsibilities, complaining about the law he was required to enforce, and allowing discrimination complaints to go unattended at the EEOC. The result was an officeholder who seemingly pleased his presidential sponsors who were apparently not interested in strong enforcement policy. Clarence Thomas' record at the EEOC led directly to his nomination to the Court of Appeals and to the United States Supreme Court.

Judge Thomas' management priorities while at the EEOC appear at best strange in view of his repeated emphasis on making individual victims of discrimination whole.[41] As

[41] See, EEOC's Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination (February 5, 1985).

he said in 1985, "In the past the Commission has chosen to concentrate on prospective relief in the form of numerical goals and timetables, rather than full relief for the party actually filing the charge. I find it ironic that anyone would put a policy in place which provided less for those who were actually hurt than for those who may have been hurt as a result of historical events."[42] Despite his protestations, Judge Thomas ill served the interests of individual, identifiable victims of discrimination as well as those who belong to groups who were the victims of both past and present discrimination.

In congressional hearings, Clarence Thomas established a pattern of complaining about his agency not being organized or not having the resources to perform the investigation of complaints and the enforcement it was required to do under law. He noted that he abandoned the "Rapid Charge"[43] processing procedure in use at the agency, citing a 1981 General Accounting Office (GAO) report that wondered whether it might thwart efforts to end discrimination by over-emphasizing settlements. It should be noted, however, that he put no procedure in place that provided more expeditious settlements for the victims of discrimination.

Instead, during each year of Clarence Thomas' tenure, the backlog at the agency increased. In addition, a substantial portion of charges reviewed by the GAO during the Thomas Administration were closed without full investigations.[44]

---

[42] See, Remarks of Clarence Thomas, EEO Law Seminar in Pittsburgh, PA (May 2, 1985).

[43] The Rapid Charge Processing System initiated by Thomas' predecessors encouraged settlement only in small individual cases not suitable for litigation.

[44] "EEOC and State Agencies Did Not Fully Investigate Discrimination Charges," GAO Report/HRD-89-11, October 1988 [hereinafter cited as "GAO Report].

At the beginning of the Reagan administration (1980), 43% of new charges at the EEOC resulted in a settlement. The average benefit was at least $4,600. By November 1982, only one-third of new charges filed resulted in some kind of settlement the average benefit was down to $2,589. The length of time to process an individual charge had also increased from 5.5 months to 9 months -- almost twice as long as the previous year.[45]

Over the years of Clarence Thomas' tenure at the EEOC the complaints backlog grew. Thomas's policy of requiring full investigation of every charge, and an appeal of "no cause" findings from district directors to EEOC headquarters for another review, meant that hardly any of the complaints filed ever got any attention at all. Between 1983 and 1987 the backlog doubled from 31,500 to approximately 62,000 complaints.[46]

As a result of continuing concern in Congress and among civil rights advocates regarding these problems, Chairman Augustus Hawkins (D-CA), Chairman of the House Committee on Education and Labor, subsequently joined by eight other members of Congress, requested in April 1987 that the GAO conduct a comprehensive study of the Agency's enforcement activities and administrative procedures.

After investigating six District offices and five State agencies which were under contract with the EEOC to investigate discrimination charges, the GAO released its report in October 1988.[47] The GAO found that 41-82% of the charges closed by the District EEOC District offices and 40-87% of charges closed by the contract State agencies had not

---

[45] Id.

[46] Id.

[47] Id.

been fully investigated. Moreover, the backlog of charges still to be investigated had increased substantially.

By the end of fiscal year 1984 -- the first full year of Chairman Thomas' alleged policy of full investigation of all charges -- the backlog had increased to 40,000 cases. The number of charges had remained constant over this same period. By the end of fiscal year 1987, the backlog was approximately 62,000 cases with a slightly lower intake than the previous year.[48]

The GAO review was undertaken in large part to determine what impact, if any, Chairman Thomas' philosophical views might have had on compromising EEOC field staff's enforcement activity.

The GAO findings are instructive in this regard. First, the GAO found that large percentages of the charges closed by EEOC District Offices and State Fair Employment Practice Commissions with no-cause determinations "were not fully investigated."[49] In making this determination, the GAO first asked the EEOC to delineate for it the elements of an appropriate charge investigation. Based on the criteria provided to the GAO, the agency determined that critical evidence "was not verified in all 11 of the offices in at least 40% of the charge investigations."[50] As the GAO report noted further:

> "According to EEOC's Director of Program Operations, the verification of evidence is particularly important to determine whether an employer has omitted certain information that might adversely affect its position on the charge. Investigators

---

[48] Id.

[49] Id.

[50] Id.

frequently accepted employer-provided data without verifying its validity."[51]

Second, the GAO noted that the next most common deficiency was the Commission's failure to interview relevant witnesses. As the GAO noted:

> "[I]n all 11 of the EEOC and FEPA offices we reviewed, we found charges that were closed although investigators had not interviewed relevant witnesses who had been identified by the charging party, employer, or investigator."[52]

Third, the GAO found the EEOC frequently failed to obtain information on similarly situated employees which was critical to the investigation of charges alleging disparate treatment. Although almost all of the charges it reviewed were based on this allegation, "in five of the eleven EEOC and FEPA offices we reviewed, we estimate that at least 20% of the disparate treatment charge investigations did not compare the charging party with any similarly situated employees or with all of those who were identified as similarly situated."[53]

Finally, and of particular importance, the GAO specifically noted that EEOC imposed quantitative production goals creating an incentive among its investigators to complete a certain number of cases. As the report stated, "investigative staff in four of the six offices we reviewed said they were still required to meet headquarters-established production goals, or face some adverse action such as a low performance rating." The report noted further that:

---

[51] Id.

[52] Id.

[53] Id.

> "[I]n one EEOC District Office, some supervisors commented that they frequently placed more emphasis on meeting their quantitative goals than adhering to the Compliance Manual requirements for investigations."[54]

The General Accounting Office reported in October 1988 that the Commission's full investigation policy did nothing except create confusion among the staff about when an investigation was complete. In many instances the staff simply closed cases without any settlement.

In response to these and other criticisms, Chairman Thomas labelled the GAO report "a hatchet job." In an interview with the Los Angeles Times, he said that "it's a shame Congress can use GAO as a lap dog to come up with anything it wants...."[55] Most of these negative policies which were disclosed through the GAO study persisted throughout his tenure as Chairman of the EEOC.

Meanwhile, as people complained about not being hired, or promoted or losing their jobs because of discrimination, Chairman Thomas continued blithely to tell the appropriations committees about his satisfaction with the way things were going at EEOC. When the House Appropriations subcommittee asked about the 1988 GAO report, Chairman Thomas criticized the report's "methodology."

He also told the subcommittee in 1989, seven years after he became EEOC chairman, "Never did we say that we could accomplish that overnight and never did we say we were perfect." Chairman Thomas continued, saying, "But I have not seen, even in the GAO report, any effort forthcoming to finance the agency in a way that it can do the things

---

[54] Id. at 31.

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

necessary, improvements in the library, the necessary improvements in personnel, etc."[56] Chairman Thomas' interest in helping individual victims was not evident in his procedures for handling complaints. Large numbers of people who complained to his agency obtained no relief and did not even have their cases investigated.

In policy direction and leadership Clarence Thomas operated consistent with his legal mandate for over a year at EEOC. He supported affirmative action in a 1983 speech.[57] At that time he noted "it is settled that, as a matter of law, affirmative action including the use of numerical goals, may be used in appropriate circumstances."[58]

In testimony before the House Subcommittee on Employment Opportunities on April 15, 1983, Chairman Thomas agreed that affirmative action relief was proper not just for identifiable victims but also as a group remedy in discrimination cases.

Congressman Hawkins asked him:

> Suppose there is a case in which specific discriminatory practices are identified, such as in disparate treatment cases for example, in which women are denied entrance into certain training programs, or in cases where indefensible low numbers of minority employees are promoted to bank officer positions, in such cases the discriminatory practice is clear and overall liability can be assessed. However, it is absolutely impossible to identify the individual victims of discrimination as distinct from the affected classes. Now in such a hypothetical situation, would Title VII of the law recognize formula relief?

Thomas: It is our view that it does Mr. Chairman.

Hawkins: Would you say formula relief would be appropriate for class members?

---

[56] Testimony Before the Subcommittee on Commerce, Justice, State and Judiciary, Committee on Appropriations, 101st Congress, 1st Session (February 21, 1989).

[57] Speech to Personnel/Equal Employment Management Conference, Department of Health and Human Services, November 16, 1983.

[58] Id.

Thomas: I would, again, I am not the judge, but in cases where it is impossible or difficult to determine the precise relief that should go to the individuals, remedies have permitted the use of formula relief. Whether or not the specific case that you outline would be one of those cases, I do not know. But it is available in cases where it would be impractical to provide such individual relief.[59]

Chairman Thomas soon changed his public position on affirmative action in what appeared to be an effort to conform to the views expressed by William Bradford Reynolds, the Assistant Attorney General for Civil Rights, in opposition to affirmative action numerical remedies. By 1984 Chairman Thomas consistently announced his opposition to federal laws and regulations requiring affirmative action remedies. Only when substantial pressure was put on EEOC by the Congress did Thomas and the Commission retreat.

In his EEOC confirmation hearings in 1986 Clarence Thomas agreed to change the nonenforcement policy. He did, however, continue to express his opposition to affirmative action in the Congress, in speeches and in writings.

Chairman Thomas told the Subcommittee on Government Activities and Transportation of the House Committee on Government Operations on July 25, 1984:

> The Chairman of the Endowment, William J. Bennett, in a letter to me but delivered to the Washington Post and me, dated January 16, 1984, explained his opposition to making determinations of under-representation and to setting [employment] goals for fiscal year 1983 by stating that the Department of Justice had declared that the Commission exceeds its authority in seeking such information. He also said that he believes that employment policies should not be influenced by race, ethnicity or gender. My personal views are consistent with Mr. Bennett's on this issue. However, we have viewed our statutory authority and obligations to be at odds with such personal views.[60]

---

[59] Testimony Before House Subcommittee on Employment Opportunities (April 15, 1983).

[60] Hearing before the Subcommittee on Government Activities and Transportation of the House Committee on Government Operations, 98th Congress, 1st Session 19 (July 25, 1984).

In late 1985, the staff at the Committee on Education and Labor conducted an investigation of the effect of the implementation of recent directives relating to goals and timetables and to the overall enforcement posture of the EEOC. The Committee's investigation also reflected concern regarding the status of case processing operations, the use of performance standards in employee evaluations and, as noted above, the impact of the EEOC's reorganization in 1984 on its overall enforcement program.

In the course of its review, Committee staff learned that the Acting General Counsel had also instructed his legal staff not to seek the enforcement of goals and timetables in existing consent decrees as well as in future ones.[61] This policy, although implemented by the Acting General Counsel, was in all respects reflective of Chairman Thomas' position regarding the use of goals and timetables.

A further concern to the Committee was the fact that class action cases and charges which did not identify "actual victims of discrimination" were regarded as unacceptable to the Commission. The staff also learned that the Commission had begun evaluating charges on a new -- higher -- standard of proof than the previously relied upon "reasonable cause to believe" test. The new standard was articulated in a "Statement of Enforcement Policy" dated September 11, 1984, which also created substantial confusion among EEOC staff regarding the circumstances in which they could seek "full relief," such as back pay, retroactive seniority, and in general, placement of a person in the position in which he or she would have been in, but for the unlawful discrimination.

---

[61] "A Report on the Investigation of Civil Rights Enforcement by the Equal Employment Opportunity Commission," the House Committee on Education and Labor, U.S. House of Representatives, 99th Congress, 2nd Session (May 1986), at p.11.

Among the other policy concerns was the Commissions' apparent renunciation of the adverse impact theory traditionally used to prove discrimination and articulated by the U.S. Supreme Court in Griggs v. Duke Power Company.[62] This policy change, like the goals and timetable policy, was issued orally.

Professor Alfred Blumrosen of the Rutgers University School of Law described this process as "government by innuendo, where responsible officials skulk in the corridors of power, hoping that staff will intuit their desires."[63] Moreover, the EEOC has a policy on goals and timetables which includes the use of goals and timetables in court decrees that result from litigation. That policy is expressed in the Affirmative Action Guidelines which were adopted after notice and comment proceedings under the Administrative Procedure Act and which have the force of law.[64]

The congressional staff also investigated a number of administrative and personnel practices which were of concern to the Committee, including a greater emphasis on the rapid closure of cases at the expense of quality investigations, and efforts by some District Directors to "pad" the number of charges processed in order to present more favorable statistics and to disguise the Commission's failure to do complete reviews of the work of state and local Fair Employment Practice Agencies (FEPA).

All of these negative policies and administrative procedures were a result of either

---

[62] 401 U.S. 424 (1971).

[63] Hearing on EEO Enforcement, Subcommittee on Employment Opportunities, Committee on Education and Labor, 99th Congress, 1st Session (March 13, 1985) (Statement of Professor Alfred Blumrosen) [hereinafter cited as "Hearings"].

[64] 29 C.F.R. S1608 (1979).

Chairman Thomas' philosophy or assumptions made by staff regarding what they perceived he expected they do. Thomas, aware of these several problems, either attempted to deny responsibility for them or to explain them away as necessary procedural modifications to improve the Agency's overall enforcement activities. Such improvement never manifested itself in relief to victims of discrimination.

While consistently assuring concerned members of Congress that the agency was not abandoning the use of goals and timetables, the Commission published a resubmission in the Regulatory Program of the United States which stated, with respect to affirmative action:

> "[T]he federal enforcement agencies...turn the statutes on their heads by requiring discrimination in the form of hiring and promotion quotas, so-called goals and timetables, and by using rigid statistical rules to define discrimination without regard to the plain meaning of that term.... As Chairman of the EEOC, I hope to reverse this fundamentally-flawed approach to enforcement of the anti-discrimination statutes."[65]

As a result of these and other disclosures, members of Congress wrote to Chairman Thomas on January 23, 1986 regarding the goals and timetables policy, articulated by Acting General Counsel Butler. On January 31, 1986, the Chairman responded stating his support for the Acting General Counsel's actions. In that letter he stated that the General Counsel "has acted within the scope of statutory authority.... [E]xercise of his litigation authority is not inconsistent with the... Code of Professional Responsibility, Commission policy or the

---

[65] EEOC Resubmission to the Office of Management and Budget in Regulatory Program of the United States Government (April 1, 1985 - March 31, 1986).

Commission guidelines... which permit but do not require the use of goals and timetables."[66]

In a January 11, 1986, Washington Post article he disclosed that the "de facto policy (on goals and timetables) has been in effect for about a year as the Commission considers proposed legal settlements." Thomas told the Post that "should a consent decree with goals and timetables come before the Commission, it doesn't have the votes. They simply don't get approved."[67]

In 1986 Thomas testified before the House Subcommittee on Employment Opportunities in a hearing called over concern about an announcement that the agency would no longer include goals and timetables in the consent decrees negotiated with employers. He told the committee that four years before, which would have been 1982, "the first case in which we had a direct vote on that was the Beecher case, which was similar to the Williams case. At that time, the vote was four to one, as I remember, in favor of goals and timetables."[68]

Representative Martinez asked him:

> Are goals and timetables acceptable now?

Thomas: To me they are not. The way I read Stotts - [the Memphis firefighter's case in which a defeat for the black firefighters was described by Bradford Reynolds as a "slam-dunk" for the Administration], the broad way. I think that goals and timetables, as implemented, wind up eventually or result in the consideration of race or sex, and I think Title VII on its face says that is not to be done.

---

[66] Letter to Congress January 31, 1986 responding to Congressional letter (January 23, 1986).

[67] Washington Post (January 11, 1986)

[68] Hearings, Supra.

Martinez: Then it is definitely your opinion that timetables and goals are not proper to use or a remedy?

Thomas: That is my opinion, although I will not necessarily say that is shared by every Commissioner.

Chairman Thomas continued his public arguments against goals and timetables even after the Supreme Court made clear in 1987 that they were still permissible and his and the Justice Department's interpretation of Stotts was wrong.[69] By 1989 Thomas said in a Cato Institute publication, "Assessing the Reagan Years", that "I am confident it can be shown, and some of my staff are now working on this question, that blacks at any level, especially white collar employees have simply not benefitted from affirmative action policies as they have developed."[70] This statement came from Clarence Thomas who was admitted to Yale Law School as a part of an affirmative action policy and who has had a succession of government jobs in positions that only opened to blacks since affirmative action was instituted.[71]

Chairman Thomas became adept, in his last years at EEOC, at advancing his anti-affirmative action position behind a facade of interest in promoting remedies to employment discrimination. The careless reader might think Thomas' article, "Affirmative Action Goals

---

[69] Judge Thomas has openly and often criticized Supreme Court decisions regarding affirmative action programs and policies. These cases include decisions such as Fullilove v. Klutznick, 448 U.S. 448 (1980), where the Court ruled that Congress has the power to enact remedial legislation. See also, The Cato Institute, "Civil Rights as a Principle Versus Civil Rights as an Interest," Assessing the Reagan Years, at 396 (1989).

[70] Id., at 397.

[71] See letter to the Washington Bureau from Richard P. Thornell, Professor of Law, Howard University School of Law, July 29, 1991 and supplemental statement, dated August 1, 1991, which provide a history and description of the affirmative action plan under which Clarence Thomas was admitted to the Yale Law School. These documents also provide an analysis and a commentary on the anti-affirmative action positions taken by Judge Thomas in relation to the affirmative action efforts that have benefitted him.

and Timetables; Too Tough? Not Tough Enough," was a strong defense of statistical remedies for employment discrimination.[72] But they would be misled. Chairman Thomas admitted the Supreme Court had upheld goals and timetables and other race conscious remedies but insisted "goals and timetables, long a rallying cry among some who claim to be concerned with the right to equal employment opportunity, have become a sideshow in the war on discrimination."[73]

Most complaints filed do not call for goals and timetables, said Thomas, and for those that do, goals and timetables "are fairly easy on employers". In addition to back pay and other already legally permitted relief, he thought there were tougher means of deterrence. "One such approach would be for courts to impose heavy fines and even jail sentences on discriminators who defy court injunctions against further discrimination. To those of us who consider employment discrimination not only unlawful but also a moral abomination, such measures are altogether fitting." He also supported handing "control of an employer's personnel operations to a special master" or requiring family businesses "to eliminate the family member preference" in hiring. All these, Thomas proposes in the article.

Aside from the question as to why Thomas did not propose using these approaches in addition to goals and timetables as possible solutions, his behavior made clear he was not serious about the proposals in the article. Not once in his eight years as EEOC chairman, nor in countless pages of testimony before the House and Senate did Chairman Thomas

---

[72] Yale Law & Policy Review (Spring 1987).

[73] Id.

56-272 O - 93 - 4

ever propose that Congress legislate these proposals. In other words, they seemed to be a smoke screen behind which to hide his personal disagreement with the Court's approval of numerical remedies," and his refusal to implement the law.

He continued, however, to express his objections regarding affirmative action in various newspaper articles as well as in speeches before various organizations. These statements were a continuing concern to members of Congress and to civil rights advocates.

Thomas' affirmative action views and policies also placed the Commission's "Guidelines on Affirmative Action" and the "Uniform Guidelines for Employee Selection Procedures" in question.[74] The Affirmative Action Guidelines specifically approve the use of goals and timetables to encourage voluntary compliance with Title VII.[75] The principles underlying the guidelines were based on Griggs v. Duke Power Company, which barred the use of tests and other employment selection criteria which had a disproportionately adverse impact on women and minorities. Thomas indicated that he believed the guidelines encouraged "too much reliance on statistical disparities as evidence of employment discrimination."[76]

Chairman Thomas frequently criticized the Commission's proceedings, as well as cases in progress. On one occasion, he criticized the merits of a then-pending EEO sex discrimination lawsuit against Sears, Roebuck & Company, stating that it "relies almost exclusively on the statistics." A Sears attorney attempted to depose Thomas because of his

---

[74] The Uniform Guidelines for Employee Selection Procedures, 29 C.F.R. S1607.1 (1985).

[75] See Blumrosen, The Binding Effect of Affirmative Action Guidelines, 1 Labor Lawyer 261 (1985).

[76] New York Times, December 3, 1984, p. 61.

statement. Congressman Hawkins, during hearings, queried whether it was "appropriate for (Thomas) as Chairman of the Commission...to criticize the Commission's own case while the case is still before the Court."[77]

Although the 1972 amendments to Title VII gave the EEOC the mechanism to attack institutionalized patterns and practices of discrimination, the EEOC under Chairman Thomas made little use of this authority. Both individual and systemic charges decreased significantly while he was Chair of the EEOC. At one point in time, the Education and Labor Committee was forced to work with the Appropriations Committee to earmark funds in the EEOC appropriation to be used for the specific purpose of increasing the number of systemic cases being brought by the EEOC. On another occasion, the Committee threatened other cuts in the budget of the Chairman and members of EEOC because of their failure to pursue more systemic charges.

After several news articles about the Commission's policy of focusing on individual, rather than class charges, in March 1985, 43 members of Congress sent a letter to Chairman Thomas expressing "their grave concern" regarding the EEOC's failure to pursue systemic litigation. In the letter they indicated their concern that the new focus on individual charges and individual victims of discrimination "may be a way for the EEOC to avoid pursuing class action cases." Thomas explained that the Commission was not avoiding class actions, but instead was merely attempting to seek "full and effective relief, on behalf of every victim of unlawful discrimination, through individual and class actions, as appropriate."

As the Committee's investigation and report indicated, the new policy was an

---

[77] Despite Class-Action Doubts, EEOC Presses Bias Case, The Washington Post (July 9, 1985), at A1.

immediate and predictable failure in that sufficient resources simply are never available to pursue every valid charge of discrimination filed with the EEOC or a contracting state agency.

If one considers also the significantly negative impact which Commission policies had on the Commission's processing of age discrimination cases and the mishandling of the ADEA cases which occurred in 1987, it is altogether reasonable to conclude that Chairman Thomas did not undertake his duties in good faith nor did he pursue them in a way likely to achieve the goals of Title VII of the Civil Rights Act of 1964.

During Judge Thomas' tenure, the EEOC failed to process the age discrimination charges of thousands of older workers within the time needed to meet statutory filing requirements under the Age Discrimination in Employment Act (ADEA), leaving these workers without any redress for their claims. Some 13,873 age discrimination claims missed the statutory deadline. Ultimately, Congress had to intervene and enact legislation which reinstated the claims, but the issue remains a matter of serious concern.[78]

Clarence Thomas was tied to a philosophy which opposed use of most of the tools which had been effective in achieving non-discrimination for minorities and women. He effectively spent eight years misrepresenting to the Congress a commitment to the full and fair enforcement of these laws.

---

[78] See, Letter from Rep. Edward Roybal, Chairman, House Select Committee on Aging to Senators Joseph Biden and Strom Thurmond expressing "strong opposition" to the nomination of Judge Clarence Thomas (July 16, 1991).

V. Articles and Speeches: An Analysis

Judge Clarence Thomas has a modest record on which to base an evaluation of his judicial opinions and legal writings.

Judge Thomas' previous litigation experience is minimal; his judicial record is scant. At the time of this writing, only two opinions with constitutional issues attributable to Judge Thomas are available: 1) Farrakhan and Stallings v. U.S., 1990 WL 104925 (July 5, 1990) where the court remanded the matter to the district court with instructions to review its decision to exclude Reverend Louis Farrakhan and Reverend George Stallings from attendance at the Marion Barry trial; and 2) Boyd v. Coleman, 906 F.2d 783 (1990), where the court found that entry of summary judgement in a jury trial was a harmless error even though a possible violation of the defendant's Seventh Amendment right to trial by jury.

But what is published in law reviews and court reports is not the only measure by which to assess the quality of a judicial nominee. What follows represents both a digest of and commentary upon a wide variety of documents. These include articles, speeches, and interviews by Clarence Thomas; press accounts and opinion pieces on Thomas' views; and a large amount of biographical data -- most of it drawn from the published statements of Judge Thomas himself.

This part of the assessment is divided into two sections. The first section is entitled "How Clarence Thomas Views Himself and the World." In this section we have tried to

articulate what Judge Thomas has presented as his animating beliefs, his basic world view. We believe that, by far, this is the most significant issue to consider with regard to any Supreme Court nominee. The second section demonstrates the way Judge Thomas -- the student, lawyer, EEOC chairman, and federal judge -- uses institutional roles to realize those convictions.

A. How Clarence Thomas Views Himself and the World

When considering Judge Thomas' views as expressed in the written record, we believe it important to talk both of content and affect. The "intangibles" of Thomas' political faith may be more important than the ideas he has publicly espoused. By way of illustration, we offer Thomas' enshrinement of Oliver North as an example of "the feel" of Thomas' conservative views.[79]

Thomas' world view seems to rest on three intellectual pillars:

(1) Individualism - Thomas embraces a radical individualism ordinarily associated with 19th century laissez faire capitalists. This individualism informs not only Judge Thomas' views on economics and government regulation but, also his understanding of affirmative action, constitutional rights, government assistance to poor people, and national education policy. The individualism of Clarence Thomas does not merely

---

[79] In Assessing the Reagan Years, Thomas wrote:

> The always arduous task of preserving freedom was a simpler task when limited government was respected. The question now becomes, How do we achieve this object? That its defense is still possible was seen in the testimony of Oliver North before the congressional Iran-Contra committee. Partly disarmed by his attorney's insistence on avoiding closed sessions, the committee beat an ignominious retreat before North's direct attack on it and, by extension, on all of Congress. This shows that people, when not presented with distorted reporting by the media, do act on their common sense and good judgment...". (399)

exalt the ability to overcome hardship. It reflects a distrust and devaluation of collective effort, group identity, and communal struggle.

(2) Self-Help - This may be seen as a derivative of Clarence Thomas' commitment to individualism, but because it seems to play such a large role in Judge Thomas' self-understanding, it has its own peculiar aspects and deserves to be treated separately. Clarence Thomas embraces the myth of the self-made man. He seems to believe that he "made it" through hard work and self-discipline, and that therefore, anyone else can do the same. Though Thomas has occasionally shown some sense of indebtedness to the countless African Americans who struggled before him, he demonstrates virtually no appreciation for the sheer luck involved in his success -- i.e. natural genetic endowments, being born into a decent family, getting into a nurturing grade school environment, making the right contacts, etc. Moreover, Thomas displays little loyalty to or appreciation for African American community groups which have long espoused both self-help responsibilities and government assistance.[80]

Judge Thomas appears to have even less appreciation for the irony of his profiting from being an African American conservative. A particularly ironic example of this can be illustrated by remarks Thomas made at a gathering of African American conservatives at the Fairmont conference in December of 1980. Thomas

[80] Thomas' speech to the Heritage Foundation on "Why Black Americans Should Look to Conservative Policies," (June 18, 1987) is an interesting case in point. The speech has an extensive autobiographical introduction in which Thomas speaks about the environment in which he was raised. Though it may be natural for Thomas to attribute his success to his fine upbringing, his complete silence on the social struggles of African Americans is striking. From reading Clarence Thomas one would never gather that a civil rights struggle ever took place in this country.

told an interviewer:

> "If I ever went to work for the EEOC or did anything directly connected with Blacks, my career would be irreparably ruined. The monkey would be on my back again to prove that I didn't have the job because I am black. People meeting me for the first time would automatically dismiss my thinking as second-rate."[61]

Thomas accepted Ronald Reagan's appointment as Assistant Secretary of Education for Civil Rights in 1980, and as Chairman of the EEOC in 1982.

(3) Higher Law - There is no clear consensus as to what extent, if at all, Judge Thomas would rely on his often-quoted theories -- higher law, natural law and natural rights -- in determining the most fundamental privacy rights of individuals. On the other hand, Judge Thomas has stated admiration for a controversial essay authored by Lewis Lehrman, entitled the Declaration of Independence and the Right to Life, which he said provided "a splendid example of applying natural law."[62]

The term "natural law" has a fairly long and generally respected philosophical lineage. Indeed, within the American political tradition, the phrase may evoke thoughts of Thomas Jefferson. But such an association is, it appears, incorrect. The natural law of which Clarence Thomas speaks of has little to do with the secular humanism of Thomas Jefferson, and a great deal to do with the sectarian and highly theological writings of medieval scholastic philosophers like Thomas Aquinas. In the scholastic understanding, natural law is seen as a promulgation and instantiation of

---

[61] See "Wrong Man For The EEOC," Washington Post, Carl Rowan, July 14, 1982, p. A21, col. 4. See also, "A Question of Fairness", The Atlantic Monthly, February 1987, p.75, col.2.

[62] "Why Black Americans Should Look to Conservative Policies," Speech to Heritage Foundation, Clarence Thomas, June 8, 1987.

the divine law. Thomas appears to view it in much simpler terms -- as a principle of adjudication to protect economic rights.

Recently, the issue of natural law came up in a courtesy visit between Judge Thomas and Senator Howard Metzenbaum (D-OH). Senator Metzenbaum asked Judge Thomas to elaborate on his view of natural law. "Well Senator," Thomas reportedly asked, "do you think it's proper for a human being to own another human being?" Senator Metzenbaum said no. "The reason you think that's wrong is because we all have natural rights," Thomas explained. That did not end the subject, however. "What about a human being owning an animal?" the Senator said. "Is that part of natural law?" Judge Thomas said he would have to check his own and other writings on natural law for an answer.[83]

B. How This Worldview Has Played Itself Out In The Life of Clarence Thomas

First, with regard to individualism, Clarence Thomas has consistently used the notion of individual rights to attack affirmative action policies and a broad range of progressive interventions by the judiciary. The word "individual" recurs scores of times in Judge Thomas' syllabus. In Assessing the Reagan Years he expresses his understanding of the purpose of an insulated judiciary in writing: "The judiciary was protected to ensure justice for individuals."[84]

Given this understanding of the judicial role, it should not be difficult to see why

---

[83] Fred Barnes, "Weirdo Alert", The New Republic, August 5, 1991, p.7.

[84] Clarence Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," Assessing the Reagan Years, Cato Institute, p. 394.

Thomas objects so strongly to what he perceives to be judicial protection/recognition of group rights. Writing for the Yale Law & Policy Review Thomas remarks:

> I continue to believe that distributing opportunities on the basis of race or gender, whoever the beneficiaries, turns the law against employment discrimination on its head. Class preferences are an affront to the rights and dignity of individuals both those individuals who are directly disadvantaged by them, and those who are their supposed beneficiaries.[85]

Judge Thomas' understanding of the correct response to discrimination is consistent with his emphasis on individualism. Not surprisingly, Clarence Thomas' tenure at the EEOC was characterized by a dramatic reduction in the number of class action suits. In focusing on individualism, Thomas adopts a tort-like understanding of discrimination. That is to say, a specific individual demonstrates a specific intentional harm by a specific discriminator and a particular remedy is fashioned to meet that individual's needs.

The NAACP has reason to be particularly concerned about this approach to employment discrimination law. African Americans, particularly African American women, have fewer employment options and are particularly vulnerable to downturns in the economy.[86] As reported in a recent Washington Post article:

> "White women have more job mobility because they are more often seen by management as sisters, daughters, or wives, but black women are seen as outsiders. So white women get to be patronized, and black women get nothing."[87]

---

[85] Clarence Thomas, "Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!" Yale Law and Policy Review, Vol. 5: Number 2, 402, 403.

[86] A Common Destiny, National Research Council, (Washington, DC: 1989), p.7.

[87] Carol Kleinman, "Black Women Still Likely to Get Stuck at Low-End Jobs," The Washington Post, July 14, 1991, p.2.

An example of the inherent limitations of an "individualistic, tort-like" approach to employment discrimination law may be gleaned from a review of an EEOC opinion rendered under Chairman Thomas in 1985.[88]

Three female sales clerks filed a Title VII complaint after losing their jobs as clerks in a women's fashion store. Each had been fired after refusing to wear swim attire while at work during a swimsuit promotion. The women charged that unlike other promotional outfits, swimsuit attire would subject them to sexual harassment and leave them vulnerable to unwanted sexual remarks and conduct. They complained that even when dressed in their normal working attire of jeans and a blazer, they were subjected to recurring instances of young men whistling and knocking on the store's windows to get their attention. The women also noted that they regularly had to venture outside the store to use common mall facilities because the store had no restroom or eating facilities of its own.

Almost four years after the women lost their jobs, the EEOC ruled against them. According to the Commissioners' decision, the evidence was not sufficient to support a finding that the outfits would have subjected them to unwelcome sexual conduct or harassment. The EEOC noted, however, that in certain circumstances a requirement that employees wear sexually provocative outfits can violate Title VII.

Inextricably bound to his belief about radical individualism is Clarence Thomas' conception of limited government. Judge Thomas articulates that affirmative action policies, like other forms of government assistance, reduce motivation and foster dependence. In this

---

[88] Equal Employment Opportunity Commission, EEOC Decision No. 85-9, June 11, 1985.

regard, there is a question of whether he will add to the already solid majority on the Court which endorses a theory of government where the "baseline" for government services is zero.

Judge Thomas, however, adds something new: an explicit declaration that the protection of group rights leads to totalitarianism:

> Maximization of rights is perfectly compatible with total government and regulation. Unbounded by notions of obligation and justice, the desire to protect rights, simply plays into the hands of those who advocate a total state.[89]

The theme of self-help is most evident in Judge Thomas' autobiographical recollections where he provides us with his thinking about all government assistance programs to disadvantaged people. Thomas' commencement speech at Savannah State College bears ample witness to Thomas' faith in self-help.[90] Judge Thomas' speech is most eloquent. He exhibits what appears to be genuine humility and speaks movingly about racial discrimination. Judge Thomas sounds the old theme that anyone can overcome discrimination if they work hard enough:

> Over the past 15 years, I have watched as others have jumped quickly at the opportunity to make excuses for black Americans. It is said that blacks cannot start businesses because of discrimination. But I remember businesses on East Broad and West Broad that were run in spite of bigotry. It is said that we can't learn because of bigotry. But I know for a fact that tens of thousands of blacks were educated at historically black colleges, in spite of discrimination. We learned to read in spite of segregated libraries. We built homes in spite of segregated neighborhoods. We learned how to play basketball (and did we ever learn!) even though we couldn't play in the NBA.

---

[89] Assessing the Reagan Years, p. 399.

[90] June 9, 1985 – see New York Times, July 17, 1991, p. A21, col. 2.

Judge Thomas presents a construct that is oblivious to the complex structural factors of racism. No acknowledgement is made of the systemic exclusion of blacks from venture capital. No recollection of racist policies which have denied mortgages to blacks. No memory of the debilitating effects of overcrowded and underfunded schools is recalled. No mention of the organizations -- the communal enterprises against bigotry and oppression -- that African-Americans have formed in their struggle for equal rights.

Clarence Thomas' logic is straightforward: he sets up a liberal straw man (blacks have tried to abdicate all responsibility for their own liberation because of prejudice) and then knocks it down by citing some anecdotal evidence of those who survived. He infers, from the few, that everyone can make it.

What is even more disturbing, however, is the way in which this logic leads into blaming the victim. For it follows, if some blacks made it in the face of discrimination, then surely all blacks can, and if all blacks can make it in the face of discrimination, how does one account for the fact that so many don't make it? The obvious answer is that there is something wrong with them -- they just don't work hard enough. Why don't they work hard enough? Judge Thomas seems to suggest an answer in this autobiographical reflection on his own success:

> In 1964, when I entered the seminary, I was the only black in my class and one of two in the school. A year later, I was the only one in the school. Not a day passed that I was not pricked by prejudice. But I had an advantage over black students and kids today. I had never heard any excuses made. Nor had I seen my role models take comfort in excuses.

The obvious implication is that somehow, in reminding the African American

community of systemic racism, white and black progressives have disabled the community. It is not difficult to extend this logic to a generalized opposition to affirmative action. What may be more difficult to see, but what is critical to the assessment of the NAACP, is Clarence Thomas' subtle but profound message that civil rights organizations are themselves to blame for the disempowerment of black America.

Finally, Judge Thomas' view of Natural Law impacts upon his understanding of the constitution and might form the basis of his opposition to a generalized right of privacy. That Thomas has praised Lewis Lehrman's article on the right to life of a fetus is well known.[91] Lehrman defends an inalienable right to life for the fetus (thus precluding the possibility of any state allowing even therapeutic abortions). In numerous public statements, Thomas has shown hostility toward the two decisions most fundamental to the privacy and reproductive freedoms of Americans: Griswold v. Connecticut, 381 U.S. 479 (1965) (right to use contraception) and Roe v. Wade, 410 U.S. 113 (1973) (right to obtain an abortion). Will this potential future Justice invoke this higher law rather than enforce the law of the land?

Perhaps the best example of Judge Thomas' thinking on the subject is his article "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment" for the Harvard Journal of Law & Public Policy.[92] There, Judge Thomas

---

[91] "Why Black Americans Should Look to Conservative Policies," June 18, 1987, Heritage Foundation. Thomas praised Lehrman's essay as a "splendid example of applying natural law." (p. 8) Defenders of Judge Thomas have dismissed this as nothing more than a rhetorical compliment (Thomas was speaking in the Lehrman auditorium). However, even for those not concerned about a woman's right to choose an abortion, the prospect of Thomas generally applying this method of jurisprudence should still be profoundly troubling.

[92] Vol. 12, Number 1, p.64.

advocates that "Natural rights and higher law arguments are the best defense of liberty and limited government." Thomas uses his discussion to sound a theme to which he frequently returns: praise of Justice Harlan's dissent in Plessy v. Ferguson.

Judge Thomas has become very adept in portraying African American heroes as supporters of his point of view. In this regard he distorts the views of Frederick Douglass to provide support for his arguments against Brown v. Board of Education and other civil rights measures in ways that raise serious doubts about his integrity.

In his 1987 article in the Howard Law Journal, Thomas would have the reader believe that Frederick Douglass and Thomas were intellectual soulmates. According to Thomas, we should regard "...the Constitution to be the fulfillment of the ideals of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it."[93] (emphasis ours)

Frederick Douglass, of course, believed one could argue for the abolition of slavery by claiming that the Constitution was an antislavery document, but imagine his surprise if he knew that for Thomas' purposes he considered the Declaration of Independence to be an antislavery document, as well.[94]

Thomas distorts the view and insults the memory of Frederick Douglass, who hated the Declaration of Independence so much that he refused to speak on the Fourth of July

---

[93]Howard Law Journal on "Toward a 'Plain Reading' of the Constitution - The Declaration of Independence in Constitutional Interpretation", vol. 30, 1987, p. 693.

[94]Douglass' position that the Constitution could be interpreted for abolition was an abolitionist strategy at a time when they had little hope that the Constitution would ever be changed and no idea that there would be a Civil War. Thomas used the position of Douglass, taken out of historical context, to lambast Justice Thurgood Marshall for truthfully saying that the framers of the Constitution put provisions in it to uphold slavery.

and gave his Fourth of July address on the Fifth. "The celebration of the Bicentennial," wrote Thomas, "should remind Black Americans, in particular, of the need to return to Frederick Douglass' 'plain reading' of the Constitution--which puts the fitly spoken words of the Declaration of Independence in the center of the frame formed by of the Constitution."[95]

Here is what Frederick Douglass said about the Declaration of Independence:

> "What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us?...Would to God for your sakes and ours that an affirmative answer could be truthfully returned to those questions!...But such is not the state of the case. I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary! The rich inheritance of justice, liberty, prosperity and independence, bequeath by your fathers, shared by you not by me...This Fourth of July is yours, not mine."

Thomas makes Frederick Douglass, who excoriated the Declaration of Independence because its promises of life, liberty and the pursuit of happiness did not apply to blacks, agree that it did apply to African Americans. Yet, Frederick Douglass cried:

> "What, to the American slave, is your Fourth of July? I answer: a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery. Your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity are, to him, mere bombast, fraud, deception, impiety, and hypocrisy--a thin veil to cover up crimes that would disgrace a nation of savages..."

Douglass begged white Americans to interpret the Constitution in such a way that

---

[95] Howard Law Journal, Ibid., p. 703.

would let them remove the blot on the national escutcheon made by the hypocrisy of the Declaration of Independence. To do as Thomas does and have Frederick Douglass agree with him that "we should put the fitly spoken words of the Declaration of Independence in the center of the frame formed by the Constitution" is to sully the name of Frederick Douglass and to falsify the history of Douglass' fuming speech in 1852.

In summary, though the record of Clarence Thomas' judicial opinions may be slim, there is ample evidence to reconstruct the political philosophy which has animated Judge Thomas' career. Even more importantly, the record demonstrates that Thomas' performs -- whenever he is in an institutional role -- in a manner completely inconsistent with the overall objectives of the NAACP.

VI. CONCLUSION

The National Association for the Advancement of Colored People has been since its formation, the principle advocate for African Americans' struggle to achieve equality. On February 12, 1909, the New York Evening Post reported "The Call" to arms for persons concerned with the protection of human and civil rights. For almost a century, the NAACP, in response to "The Call", has developed aggressive programs of activity to achieve its mission of achieving and preserving equal rights for African Americans.

The NAACP has consistently chosen to be the advocate for African-Americans for equal education, for voting rights, for access to public facilities, for housing and for affirmative action. Equally as consistently, the NAACP has reviewed judicial nominations to determine whether these nominations were inimical to its mission.

This report examines and exhibits the public service record and writings of Judge Clarence Thomas. The examined record is set forward in a manner that provides an analytical and informational framework upon which the National Board of Directors may consider this important and historic nomination in the context of the principles and policies of the Association.

The report provides a detailed review of the institutional roles Clarence Thomas has played and the record he has developed as the Assistant Secretary for the Office of Civil Rights at the United States Department of Education; the Chairman of the Equal

Employment Opportunities Commission; and as Judge for the United States Court of Appeals for the District of Columbia Circuit. Further, the report provides an analysis of the extensive writings and remarks of Judge Thomas. As to each segment of this report, the known legacy and pronounced policy of the NAACP have been highlighted.

Thus, the existing record of Clarence Thomas has been studied in relation to the established aims and goals of the Association. The entirety of this exhaustive exercise has been summarized and set forth in the report.

It is presented to the National Board of Directors of the NAACP, as directed, with the greatest hope that the decision makers who review it will have the essential elements of information and analyses required for thoughtful deliberations on this extraordinary nomination.

VII. EPILOGUE

John Hope Franklin

James B. Duke Professor Emeritus
Department of History
Duke University

When white Americans chose Booker T. Washington as the spokesman and leader of African-Americans in 1895, they launched him on a course of action that had much to do with the founding of the N.A.A.C.P. almost twenty years later. Washington advocated vocational education for his people at a time when the country was already moving on to a much more sophisticated program of mass industrial production. He decried the advocacy of civil and political rights for African-Americans at a time when they were being annually lynched by the hundreds. He upheld racial separation that many whites interpreted not only as accepting an inferior status but conceding to whites the right to determine what African-Americans should be and do.

Washington's preachments and programs, set forth in his speech at the Exposition in Atlanta in 1895, were praised by whites who saw in his agenda a means to achieve sectional peace as well as a formula for establishing a satisfactory economic and social equilibrium between the races. Washington believed that African-Americans, starting with so little, would have to work up gradually through programs of self-help, before they could attain anything resembling power or even respectability. Meanwhile, he enjoyed virtually unlimited

access to centers of political and economic influence throughout the nation.

What disturbed some African-American leaders such as William Monroe Trotter, W.E.B. Du Bois, Ida B. Wells, and Reverdy Ransom was that as Washington made his ascendancy among the influential circles of white America, the general condition of African-Americans deteriorated markedly. Disfranchisement by constitutional means was increasing, lynching statistics were rising sharply, other forms of racist terrorism were rampant, and economic opportunities for blacks were declining. In 1906, some of those active in the Niagara Movement declared that in that year "the work of the Negro hater has flourished in the land. Stripped of verbose subterfuge and in its naked nastiness, the new American creed says: fear to let black men even try to rise lest they become the equal of whites."

While the immediate incident that precipitated the call to organize the N.A.A.C.P. was the 1908 race riot in Springfield, Illinois, the underlying causes were the conditions that existed and the fact that neither their designated leader nor white America was addressing their problems in any manner that looked toward their early and satisfactory solution. Washington declined an invitation to attend the founding conference, fearing that his presence "might restrict freedom of discussion," or "tend to make the conference go in directions which it would not like to go," or that "in the present conditions in the South, it would [hardly] be best for the cause of education." Thus, the person who had promulgated what came to be known as "The Atlanta Compromise" declined to help shape the agenda that would be in the forefront in the struggle for racial equality for the remainder of the century.

The doctrine of self-help so eloquently argued by Washington in 1895 and so

passionately advanced by Judge Clarence Thomas while he chaired the Equal Employment Opportunity Commission, has been described by their supporters as characteristically American and so symbolic of the fulfillment of the American dream. The self-help syndrome has created and perpetuated a myth regarding advancement up the ladder of success in the United States. While Washington was calling on African-Americans to rely on the quite commendable effort of self-reliance, the United States gave away a half-billion acres of public land to speculators and monopolists, making a mockery of the very notion of free land for poverty-stricken settlers. While Judge Thomas and his handlers praised the admirable concept of self-help and urged it as worthy of emulation, Chrysler, Lockheed, and the savings and loan industry, to name a few enterprising groups, were helping themselves at the public trough as the hungry, the homeless, and those in need of health care could merely shake their heads in disbelief.

Self-help is admirable so long as it encourages initiative and achievement in a society that gives all of its members an opportunity to develop in the manner best suited to their talents. It must not be confused with or used as a substitute for society's obligation to deal equitably with all of its members and to assume the responsibility for promoting their general well-being. This surely involves equal educational, economic, and political opportunity regardless of age, gender, or race. Judge Thomas, in failing in his utterances and policies to subscribe to this basic principle, has placed himself in the unseemly position of denying to others the very opportunities and the kind of assistance from public and private quarters that have placed him where he is today.

The position of N.A.A.C.P. has always been clear, for it has consistently adhered to

principle. It has never equivocated on questions of political and civil rights and on matters of economic opportunity and justice. It has adhered to its principles regardless of race or status. It would be unthinkable that it could countenance any course of action in the nomination of Judge Thomas to the United States Supreme Court that would be contrary to the principles by which it has lived since 1909.

July 25, 1991

[redacted]

Legal Periodicals

"Pay Equity and Comparable Worth," Labor Law Journal, vol. 34, January, 1983, pp. 1-12.

"Current Litigation Trends and Goals at the EEOC," Labor Law Journal, vol. 34, April, 1983, pp. 208-14.

"The Equal Employment Opportunity Commission: Reflections on a New Philosophy," Stetson Law Review, Volume XV, nr. 1, 1985, pp. 29-34.

"Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!" Yale Law & Policy Review, vol. V, nr. 2, Spring/Summer 1987.

"Toward a 'Plain Reading' of the Constitution--The Declaration of Independence in Constitutional Interpretation," Howard Law Journal, vol. 30, 1987, pp. 691-783.

"The Higher Law Background of the Privileges and Immunities Clause of the Fourteenth Amendment," Harvard Journal of Law & Public Policy, vol. 12, nr. 1, Winter, 1989, pp. 63-70.

General Periodicals

"Minorities, Youth, and Education," Journal of Labor Research, vol. 3, 1982, pp. 429-53.

"Equal Opportunity and Federal Policy," Commentary - Education Week, June 16, 1982.

"The Conservative at the EEOC," Business Week, August 9, 1982, p. 54-55.

"Discrimination and Its Effects," Integrated Education, January-December 1983, vol. 21, pp. 304-07.

"We Are Going To Enforce The Law!" The Crisis, February, 1983, p. 30.

"I Am Opposed To Affirmative Action!" The Crisis, March 1983, Vol. 90 No. 3, p. 34.

"Job Discrimination Is Still Very, Very Serious," Interview, U.S. News & World Report, March 14, 1983, pp. 67-68.

Participant in symposium, "Black America Under the Reagan Administration," Policy Review, Fall, 1985.

"American Ideals, Policy Dilemmas," Black Voices in American Politics, North Carolina Central University, 1986.

"Improving Federal Work Quality," The Bureaucrat, Summer, 1986.

"Remembering an Island of Hope," The St. Croix Review, December, 1986.

"A Question of Fairness," The Atlantic Monthly, February 1987, p. 71.

"Clarence Thomas," Reason, November 1987.

"Affirmative Action: Cure or Contradiction?" The Center Magazine, November/December 1987.

Interview, Reason, November, 1987, pp. 29-33.

"The Evolution of the EEOC," Management Review, vol. 76, December, 1987, p. 23.

"Reagan's True Color," Letter to the Editor, New Republic, March 7, 1988.

"Thomas Sowell and the Heritage of Lincoln," The Lincoln Review, vol. 8, nr. 2, Winter, 1988, pp. 7-19.

"Freedom should be taught at liberal arts colleges," Buffalo State College Record, column syndicated by the Institute for Educational Affairs, Washington, D.C., a 501(c)3 organization, December 2, 1988.

Congressional Testimony

Alfred W. Blumrosen, Before the Subcommittee on Employment Opportunities, Committee on Education and Labor, March 13, 1986.

Confirmation Hearing on the Nomination of Clarence Thomas to be Chairman of the Equal Employment Opportunity Commission, July 23, 1986. Commenting on the trilogy of Supreme Court cases, issued in May and June 1986, upholding the use of goals and timetables.

Statement before Senate Labor and Human Resources Committee, July 24, 1986, Daily Labor Report.

"Clarence Thomas on Martin Luther King," Congressional Record--Extension of Remarks, February 3, 1987.

Speeches by the Honorable Clarence Thomas

Speech to Associated Industries of Alabama, Inc. and the Birmingham Area Chamber of Commerce, June 7, 1982.

Speech before U. S. Department on Equal Employment Opportunity in the Federal Sector, Hyatt Regency Hotel, Washington, D.C., October 1, 1982.

Speech to Associated Industries of Missouri, St. Louis, Missouri, November 5, 1982.

Speech to the National Urban League, New Orleans, Louisiana, August 2, 1983.

Speech to Personnel/EEO Management Conference, Department of Health and Human Services, November 16, 1983.

Speech at Holy Cross College, Worcester, Massachusetts, March 24, 1984.

Addressing the EEO Committee of the ABA's Labor and Employment Law Section, Palm Beach Gardens, Florida, March 8, 1985.

Speech to Kiwanis Club, Washington, D.C., January 14, 1987.

Speech before U.S. Department of Justice, Dr. Martin Luther King, Jr. Holiday Observance, Washington, D.C., January 16, 1987.

"Why Black Americans Should Look To Conservative Politics," Speech at the Heritage Foundation on June 18, 1987 (with enclosed article by Lewis E. Lehrman, "The Declaration of Independence and the Right to Life," referenced in the Thomas speech).

Interview on CNN "Newsday," Burrelle's: TV Clips, February 13, 1989, 12:00-1:00pm MT.

Newspapers

"Black Conservatives, Center Stage," Washington Post, Juan Williams, December 16, 1980.

"Abandon the rules; they cause injustice," USA Today, Clarence Thomas (An Opposing View), September 5, 1985.

"Pluralism Lives: Blacks Don't All Think Alike," Los Angeles Times, November 11, 1985, p. II:9; reprinted in the Register (New Haven), New Pittsburgh Courier, New Iowa Bystander, (Des Moines), Times (Miami), Call (Allentown), and Milwaukee Sentinel.

"District of Columbia: Women Win," (co-authored with EEOC Commissioner R.G. Silberman), Letter to the Editor, USA Today, July 4, 1986.

The Washington Post, September 22, 1986.

"Now Republicans Can Win Blacks," Chicago Defender, February 21, 1987. Also published in the Washington Informer, February 13, 1987, and as a Letter to the Editor in the St. Louis Sentinel, February 12, 1987.

"Racial perspective from the Kremlin," Washington Times, July 13, 1987, p. D3.

"Discrimination Against the EEOC," St. Louis Post-Dispatch, October 2, 1987.

"Black Americans based claim for freedom on Constitution," San Diego Union, column syndicated by Public Research, Syndicated, a 501(c)3 organization and reprinted in other papers, October 6, 1987. Subsequently reprinted in The New Federalist Papers, edited by J. Jackson Barlow, Dennis J. Mahoney, and John G. West, Jr. (Lanham, MD: University Press of America, 1988), pp. 307-09.

"Rewards belong to those who labor," Washington Times, January 18, 1988, p. F-4.

"D.C.: Make discrimination expensive," USA Today, February 15, 1988.

"King and Lincoln: Martyrs for America," column syndicated by Public Research, Syndicated, Montclair, CA, a 501(c)3 organization, March 29, 1988. Published in the Kershaw News-Era, Kershaw, SC, April 6; and Williams News, April 7, 1987.

"What the Declaration of Independence Offers Conservatives," Winston-Salem Journal, April 16, 1988.

"Work as Educator," column syndicated by Public Research, Syndicated, Montclair, CA, a 501(c)3 organization, reprinted in several newspapers, including The Indianapolis Star, September 5, 1988.

"A Choice to Further Racial Polarization," Baltimore Sun, Carl T. Rowan, July 4, 1991.

"Being Black Doesn't Make Him 'The Best'," Washington Post, Richard Cohen, July 4, 1991.

"Doubting Thomas: Law, Politics and Hypocrisy," Washington Post, Christopher Edley, Jr., July 7, 1991.

"NAACP's Historical Bond Stretched," Washington Post, Lynne Duke (report from NAACP Convention), July 12, 1991.

"Uncle Justice Thomas," Village Voice, Playthell Benjamin, July 16, 1991.

"Mystery Man," Wall Street Journal, Paul Barrett and Stephen Wermiel, July 19, 1991.

Letters to the Editor

Letter to the Editor, Time, December 2, 1985.

"Discrimination and Recriminations," Letter to the Editor, Playboy, June, 1984.

"Unfriendly Slap on the Black," Letter to the Editor, National Review, March 13, 1987, p. 6.

Letter to the Editor, Commentary, April 1987, p. 2.

"Equal Worth [Cont'd.]," Letter to the Editor, Washington Post, July 1, 1984, p. A-14.

"Women's Work [Cont'd.]," Letter to the Editor, Washington Post, July 1, 1984, p. C-4.

Letter to the Editor, Journal (Toledo, Ohio), March 24, 1986.

"Natural Disgust' and Natural Rights," Letter to the Editor, Wall Street Journal, November 31, 1986, p. 33.

"Equality," Letter to the Editor, New York Times, February 1, 1987, p. F-22.

"Colorblindness," Letter to the Editor, Wall Street Journal, February 20, 1987, p. 21.

"Black opportunities editorial missed point," Letter to the Editor, Boca Raton News, February 14, 1987.

"Determining Discrimination," Letter to the Editor, Time, March 9, 1987.

"Blacks in Business," Letter to the Editor, Christian Science Monitor, March 10, 1987, p. 17. Correction noted in Letter to the Editor, April 20, 1987.

"EEOC chief responds to Eagle view," Letter to the Editor, Oklahoma Eagle (Tulsa), March 19, 1987.

"Blame the Educators, not Reagan," Letter to the Editor, Atlanta Journal and Constitution, March 21, 1987.

"Campus Bias," Letter to the Editor, Wall Street Journal, April 20, 1987.

"D.C.: Civil rights record speaks for itself," Letter to the Editor, USA Today, May 5, 1987.

"The Case Against Quotas," Letter to the Editor, Miami Times, May 28, 1987.

"In rebuttal: 'Affirmative Step,'" Letter to the Editor, Miami Herald, June, 1987.

"Hits Hooks on EEOC," Letter to the Editor, Chicago Defender, June 8, 1987.

"EEOC's Funding," Letter to the Editor, Washington Times, July 22, 1987, p. A9.

"Jarrett tantrum," Letter to the Editor, Chicago Sun-Times, August 27, 1987, p. 48.

"Hamilton's Constitutional Vision," Letter to the Editor, Washington Times, September 2, 1987, p. A10.

"Protecting Employees," Letter to the Editor, Christian Science Monitor, February 5, 1988.

"Mishandling of Age Cases," Letter to the Editor, Los Angeles Times, February 20, 1988.

"EEOC is strong," Letter to the Editor, Washington Afro-American, March 12, 1988.

"EEO laws enforced," Letter to the Editor, Richmond Afro-American, April 23, 1988.

"We're not clashing," Letter to the Editor, AARP News Bulletin, November, 1988.

Letters to the Editors of various newspapers concerning GAO report on the EEOC, St. Petersburg Times, November 17; Miami News Weekender, November 19; St. Louis Post-Dispatch, November 19; Denver Post, November 20; Daily Recorder (Sacramento), November 21; Detroit News, November 27; Daily Journal (Los Angeles), December 6; Miami Times, December 22; Palestine Herald-Press (Palestine, TX), December 23; Milwaukee Journal, December 23; Washington Afro-American, December 24, 1988.

Book Reviews

"The Black Experience: Rage and Reality," book review of Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice, Wall Street Journal, October 12, 1987.

"Visionary's blurred view of equality," review of William Julius Wilson, The Truly Disadvantaged, Washington Times, October 19, 1987, p. E8.

Brief review of Thomas Sowell, Ethnic America, Reason, May, 1988.

"A Second Emancipation Proclamation," book review of Clint Bolick, Changing Course, Policy Review, Summer, 1988, pp. 84-85.

General Reference Materials

Reagan Transition Team Memorandum from Clarence Thomas Jay Parker, Re: EEOC/Civil Rights Act of 1964, December 22, 1980.

"Keep Your Eyes on E.E.O.C.," Speech by Dr. J. Clay Smith, Jr., NAACP Emergency Summit Meeting, Washington, D.C., Friday, May 17, 1985.

EEOC Resubmission to the Office of Management and Budget in Regulatory Program of the United States Government, April 1, 1985 - March 31, 1986.

"Two Hundred Years, An Issue: Ideology in the Nomination and Confirmation Process of Justices to the Supreme Court of the United States," Olive Taylor, Department of History, Howard University, September 1987.

"Civil Rights as a Principle Versus Civil Rights as an Interest," Assessing the Reagan Years, January 4, 1989.

Memorandum to Dr. Benjamin L. Hooks from Wade Henderson and Edward A. Hailes, Jr. regarding Nomination of Judge Clarence Thomas to the United States Supreme Court, July, 1991.

Letter to the Washington Bureau from Richard P. Thornell, Professor of Law, Howard University School of Law, July 29, 1991.

Appendix I
NAACP ARCHIVES

HISTORICAL BACKGROUND

The impact of the Supreme Court's decision in Plessy v. Ferguson[96] produced in stark and legal reality the two worlds of race in America – one black and one white. This decision meant that the United States Supreme Court had officially sanctioned governmental separation and segregation of the races, thereby the abdicating the federal government's role as a protector of racial minorities. This process had begun in the 1870's and was completed as America approached the Twentieth Century.[97]

As a result of Plessy v. Ferguson, African Americans were "denied education...labeled like dogs in traveling; refused decent employment...; compelled to pay the highest rent for the poorest homes...; ridiculed in the press, on the platform, and on stage; disfranchised; taxed without representation; denied the right to choose their friends or to be chosen by them; deprived by custom and law of protection for their women; robbed of justice in the courts; and lynched with impunity."[98]

Early in the 20th century an epidemic of race riots which swept the country, arousing great anxiety and fear among the black population. Rioting in the North was as vicious and almost as prevalent as in the South.

The riot that shook the entire country, however, was the Springfield, Illinois riot of August 1908. A meeting was called in 1909 of progressive whites and leaders of the Niagara Movement – including W.E.B. DuBois – to discuss "the present evils" of American society. "The Call" for the meeting was published in the New York Evening Post on February 12, 1909, on the 100th anniversary of President Lincoln's birth. It was a powerful statement – a call to arms for persons concerned with the protection of human and civil rights.

The result of the conference was the formation of the National Association for the Advancement of Colored People.[99]

---

[96] 163 U.S 537 (1896).

[97] Affirmative Action to Open the Doors of Job Opportunity, A Report of the Citizens' Commission on Civil Rights, June 1984; p.31.

[98] Carter G. Woodson and Charles H. Wesley, The Negro in Our History. (Washington, D.C.: The Associated Publishers, Inc., 1972), p.484.

[99] See, Certificate of Incorporation of the National Association for the Advancement of Colored People, in Minutes of the Meetings of the Board of Directors; June 20, 1911.

The incorporators stated their objectives as follows:

"...To promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law."

THE CALL

A Lincoln Emancipation Conference

February 12, 1909

The celebration of the centennial of the birth of Abraham Lincoln widespread and grateful as it may be, will fail to justify itself if it takes no note and makes no recognition of colored men and women to whom the great emancipator labored to assure freedom. Besides a day of rejoicing, Lincoln's birthday in 1909 should be one of taking stock of the nation's progress since 1865. How far has it lived up to the obligations imposed upon it by the Emancipation Proclamation? How far has it gone in assuring to each and every citizen, irrespective of color, the equality of opportunity and equality before the law, which underlie American institutions and are guaranteed by the Constitution?

If Mr. Lincoln could revisit this country he would be disheartened by the nation's failure in this respect. He would learn that on January 1, 1909, Georgia has rounded out a new oligarchy by disfranchising the Negro after the manner of all the other Southern states. He would learn that the Supreme Court of the United States, designed to be a bulwark of American liberties, has failed to meet several opportunities to pass squarely upon this disfranchisement of millions by laws avowedly discriminatory and openly enforced in such manner that white men may vote and black men be without a vote in their government; he would discover, there, that taxation without representation is the lot of millions of wealth-producing American citizens, in whose hands rests the economic progress and welfare of an entire section of the country. He would learn that the Supreme Court, according to the official statement of one of its own judges in the Berea College case, has laid down the principle that if an individual State chooses it may "make it a crime for white and colored persons to frequent the same market place at the same time, or appear in an assemblage of citizens convened to consider questions of a public or political nature in which all citizens, without regard to race, are equally interested." In many States Lincoln would find justice enforced, if at all, by judges elected by one element in a community to pass upon the liberties and lives of another. He would see the black men and women, for whose freedom a hundred thousand soldiers gave their lives, set apart in trains, in which they pay first-class fares for third-class service, in railway stations and in places of entertainment, while State after State declines to do its elementary duty in preparing the Negro through education for the best exercise of citizenship.

Added to this, the spread of lawless attacks upon the Negro, North, South and West--even in the Springfield made famous by Lincoln--often accompanied by revolting brutalities, sparing neither sex, nor age nor youth, could not but shock the author of the sentiment that "government of the people, by the people, for the people shall not perish from the earth."

Silence under these conditions means tacit approval. The indifference of the North is already responsible for more than one assault upon democracy, and every such attach reacts as unfavorably upon whites as upon blacks. Discrimination once permitted cannot be bridled; recent history in the South shows that in forging chains for themselves. "A house divided against itself cannot stand"; this government cannot exist half slave and half free any better to-day than it could in 1861. Hence we call upon all the believers in democracy to join in a national conference for the discussion of present evils, the voicing of protests, and the renewal of the struggle for civil and political liberty.

Miss Jane Addams,
Chicago
Ray Stannard Baker,
New York
Mrs. Ida Wells Barnett,
Chicago
Mrs. Harriet Stanton Blatch,
New York
Mr. Samuel Bowles,
(Springfield Republican)
Prof. W. L. Bulkey,
New York
Miss Kate Claghorn
New York
E. H. Clement,
Boston
Prof. John Dewey,
New York
Miss Mary E. Dreier,
Brooklyn
Prof. W. E. B. Du Bois,
Atlanta
Dr. John L. Elliott,
New York
Mr. William Lloyd Garrison,
Boston
Rev. Francis J. Grimke
Washington, D.C.
Prof. Thomas C. Hall
New York
Rabbi Emil G. Hirsch
Chicago
Rev. John Haynes Holmes,
New York
Hamilton Holt,
New York
William Dean Howells,
New York
Rev. Jenkin Lloyd Jones,
Chicago
Mrs. Florence Kelley,
New York
Rev. Walter Laidlaw,
New York
Rev. Frederick Lynch,
New York
Miss Mary E. McDowell,
Chicago
Miss Helen Marot,
New York
Mr. John E. Milholland,
New York
Dr. Henry Moskovitz,
New York
Miss Leonora O'Reilly,
New York
Miss Mary W. Ovington,
New York
Rev. Charles H. Parkhurst,
New York
Rev. John P. Peters,
New York
J. G. Phelps Stokes,
New York
Louis F. Post,
Chicago
Dr. Jane Robbins,
New York
Charles Edward Russell,
New York
William M. Salter,
Chicago
Joseph Smith,
Boston

Mrs. Anna Garlin Spencer,
New York
Judge Wendell S. Stafford,
Washington, D.C.
Lincoln Steffens,
Boston
Miss Helen Stokes,
New York
Mrs. Mary Church Terrell,
Washington, D.C.
Prof. W. I. Thomas,
Chicago
President Charles F. Thwing,
Western Reserve University

Oswald Garrison Villard,
New York
Mrs. Henry Villard,
New York
Miss Lillian D. Wald,
New York
Dr. J. Milton Waldron,
Washington, D.C.
William English Walling,
New York
Bishop Alexander Walters,
New York
Dr. William H. Ward,
New York
Mrs. Rodman Wharton,
Philadelphia
Miss Susan P. Wharton,
Philadelphia
Horace White,
New York
Mayor Brand Whitlock,
Toledo
Rabbi Stephen S. Wise
New York
President Mary E. Wooley,
Mt. Holyoke College
Rev. N. St. Croix Wright,
New York
Prof. Charles Zueblin
Boston

Appendix II

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

56-272 O - 93 - 5

ACKNOWLEDGEMENTS

The NAACP's Report on the Nomination of Judge Clarence Thomas as Associate Justice of the United States Supreme Court was prepared under the direction of the Washington Bureau of the NAACP. We wish to gratefully acknowledge the contributions of the following individuals, without whose assistance this report would not have been possible: Dr. John Hope Franklin; Dr. Mary Frances Berry; Professor Charles Ogletree; Professor Richard P. Thornell; Cecelie Counts Blakey; Carolyn Johnson; Leesa Richardson; Danielle Bolden; Barbara Washington; Nyisha Shakur, Esq.; Rosalind Gray, Esq.; Cherie Turpin; Dennis Courtland Hayes, Esq.; and Simone Braxton.

Wade Henderson, Esq.
Director

Edward A. Hailes, Jr., Esq.
Bureau Counsel

The CHAIRMAN. Thank you very much, Mr. Hooks.
Reverend Brown.

STATEMENT OF REV. AMOS C. BROWN

Reverend BROWN. Mr. Chairman, members of the committee, in a virtually unanimous vote in independent conventions during the months of August and September, the nomination of Judge Clarence Thomas to the U.S. Supreme Court is opposed by the National Baptist Convention of America, the National Baptist Convention, U.S.A., Inc., and the Progressive National Baptist Convention.

It is significant that this action was taken by bodies that represent constituencies of 14 million people. Our decision was done with deliberation, much thought, debate, and prayer. We took this action based on Judge Thomas' personal record, his speeches, the political ideology that he espouses, and the associates he maintains.

We feel that Judge Thomas must be subjected to the words of St. Paul, that we are all living epistles read of men and women. Judge Thomas has written his epistle, and we have, with compassion, understanding, and a sense of justice, concluded that he is not the man to be chosen for this high position.

We consider it to be unfortunate that his personal beginnings, professional, and academic careers have been so much the focus by the media and even the process of the Senate Judiciary Committee during opening hearings and testimony. The American public has not been given a fair opportunity to get a sense of what the real issues are and the impact of this gentleman's serving on the Court.

Instead, Judge Thomas has used his own background to justify himself, in my estimation, giving the appearance that he has had a more difficult time, when we know he received advantages not extended to the vast majority of African-Americans.

It has been the lay of the land for African-Americans to virtually have to make a way out of no way. We were denied a way not just due to poverty, but we have experienced terror and acts of dehumanization, as I personally witnessed in my childhood in Jackson, MS. At 14, I witnessed the lynching of Emmett Phail. I attended segregated schools where African-American teachers received inferior wages and students were given second- and third-hand textbooks from white schools.

My constitutional rights were further violated when I was refused readmittance to a segregated high school because I went to Cleveland, OH, and testified to the national convention of the NAACP on the low quality of education for African-Americans in Mississippi and low salaries for teachers.

We are further disturbed that when the hearings are over Judge Thomas' epistle records that he has disavowed and disowned all his previous writings and speeches that he had embraced up to the point of being appointed a Federal judge. Now he is trying to give the appearance of being a changed man, saying to the American public that once he puts on his judicial robes he will be singing a different song, talking a different talk, and walking a different walk.

We have no recourse but to feel that he has taken this stance in order to get himself ahead. In his speech entitled "Economic Free-

dom," he has also maintained that the minimum wage was a deterrent for African-Americans, and he considered it a denial of economic freedom. We consider this to be a blatant act of denying economic parity and dignity to African-Americans specifically, who earn 50-percent less than the dominant culture.

Would he say the same for himself regarding the minimum wage when he aspires for his check for $100,000 plus?

Further, we must, as representatives of the Church of Jesus Christ, call him to task for misrepresenting the status of his sister, Emma Mae Martin, when he berated her before a group of black Republicans, indicating she was like most blacks on welfare, not taking initiative, trying to chisel the system, getting angry when the check didn't come on time. We know that, in fact, when this speech was made, Ms. Martin was actually working two minimum-wage jobs, trying to make a way out of no way, as many African-American women have had to do as single parents.

During his testimony before this committee, Judge Thomas said on several occasions that his speeches did not reflect his views but what he believed his audience wanted to hear from an African-American.

Mr. Chairman and members of this committee, what if Dr. Martin Luther King, Jr., had appealed to popularity and not to justice? What is Mr. Justice Thurgood Marshall had appealed to popularity and not to justice?

There is a responsibility to instill justice and a duty to speak for justice, especially when it is not popular. Though we are ministers and people of compassion, we must be sensible. The Scriptures say we shall be wise as serpents and harmless as doves. We must love God with our heart and our mind.

Our mind causes us to question Judge Thomas' legal qualifications. He has not rendered any major judicial opinions. At best, what he has produced is a barrage of speeches and writings in support of the right-wing conservative ideology. Moreover, he has gone around the country making speeches defending Oliver North, a man who obviously violated the Constitution through his actions. He has also fraternized with persons who have embraced the South African apartheid government by serving as lobbyists.

Therefore, we consider it to be disgraceful and an insult to African-Americans, to women, and minorities to ask us to have the heart to trust a man who has not respected his sister, who has advanced a faulty argument regarding the solutions to racial injustice, and prays to and sings the glories of the conservative political religious right that has sought to turn the clock back and dismantle all of the civil rights gains that were won through blood, sweat, and tears.

If I may put it in church and ecclesiastical language, as one of my mentors said, maybe he has converted. But we don't think that you would take a man off the mourner's bench and make him chairman of the deacon board or pastor of the church.

Finally, this Senate Judiciary Committee ought to have in this hour a sense of history and recall that in yesteryears there was one Booker T. Washington—a sincere man, yes; an industrious man, yes; a committed man, yes. But he was so used by our oppressors, so presented as a symbol, that while he was having dinner at the

White House with Theodore Roosevelt, it was common practice that blacks were lynched monthly.

We cannot afford to desecrate our heritage or mar the struggle for freedom by repeating in the 1990's a scenario of lifting up Clarence Thomas as the symbol and embodiment of African-American achievement and being worthy of sitting on this Court at a time when it is more dangerous for an African-American male youth in urban America than it was in combat in Vietnam or the Persian Gulf.

We cannot lift him up as a symbol on a Court that is already stacked, thus rendering his one presence ineffective. We cannot afford to have a symbol devoid of substance at a time when the life expectancy of African-Americans is 6 to 7 years less than the majority culture. We cannot deal with cotton-candy politics that would give us a good taste in our mouths, but keep us with empty stomachs which cause us to have poor nutritional and health lifestyles.

We must have at least one person of African-American descent on the Court who knows what it means to be concerned about all of God's children, who maintains a sensitivity that would cause him to think about the locked out, the left out, the looked over, as he sits in postured halls to render opinions that would impact on the lives of millions.

We need a judge who will do justly, love mercy, and walk humbly with his Maker until the day will come when all of us in this great Nation will find a sense of self-worth and pride and dignity, and be able to say: I am black and I am proud; I am brown and I am sound; I am yellow and I am mellow; I am red and I ain't dead; I am white and I am all right.

Thank you very much.

[The prepared statement of Reverend Brown follows:]

STATEMENT OF REVEREND
DR. AMOS C. BROWN
ON BEHALF OF
THE NATIONAL BAPTIST CONVENTION, USA, INC.

Mr. Chairman and members of the committee, I am Dr. Amos C. Brown, Pastor of the Third Baptist Church in San Francisco, California. Today, I am representing the membership of the National Baptist Convention, USA, Inc., chaired by Reverend Dr. T.J. Jemison of Baton Rouge, Louisiana. I serve as the chairperson of the National Baptist Convention Civil Rights Commission. The National Baptist Convention is an organization of 8.7 million African Americans and we are located in 49 states. Our membership consists of some 33,000 Baptist churches concentrated primarily in the Southern part of these United States. In other words, Mr. Chairman and members of the Committee, the bulk of our membership is located in the deep South. Nearly 100,000 pastors are active members of our organization.

During our recent convention held in Washington, D.C., September 2-8, 1991, our membership voted overwhelmingly, after careful consideration, to oppose the nomination of Judge Clarence Thomas to the United States Supreme Court.* Our action is of particular significance because we are a religious organization that does not usually speak on matters such as these; however, we

*Attached is our Resolution on the Clarence Thomas Nomination to the U.S. Supreme Court.

could not in good conscience remain silent on the nomination of Judge Clarence Thomas.

Why have we taken this position?

First, it is the position of the National Baptist Convention that the successor to Mr. Justice Marshall should also bring to the bar of justice the experiences and aspirations of African Americans who have been locked-out, looked-over and denied respect and equal opportunity in our society. In fact, Mr. Chairman, we have listened to the testimony of Judge Thomas and, despite his general proclamations and utterances, we believe that his approach to constitutional adjudication is one informed by a philosophy that ignores history and today's realities with respect to race discrimination, and would thereby undermine the constitutional and civil rights so important to African Americans.

Secondly, within the past five years, nominees to the Supreme Court confirmed by the Senate have established a majority of the Court and that majority has adopted positions that are antithetical to our interests as African Americans. Judge Thomas would seem to fit well within extreme factions of the Court that have been particularly unsympathetic. We say enough is enough.

We would like to see an African American on the Court, however, in our view Judge Thomas's legal philosophy and his views of the civil rights statutes reflect hostility toward the African American community; thus, his color offers us no solace.

Our national leader Dr. T.J. Jemison has been a champion of human rights and liberties and was a leader of the Montgomery bus

boycott. The National Baptist Convention would do a great disservice to support a nominee who has given every indication of being against the traditional commitment of black churches to the struggle of African Americans for equality, equal rights and justice.

Mr. Thomas has displayed a lack of understanding of the history of the African American Community and the contributions of African American men and women who risked all they had during the civil rights movement. Their sacrifices led to an increase in the opportunities for African Americans and opened the doors of Yale University to Judge Thomas. Yet Judge Thomas would deny similar opportunities to others. From his testimony it appears that he may be able to support as a policy matter some type of affirmative action which recognizes only the economically disadvantaged, but he declines to support affirmative action to address systemic race or sex discrimination.

Mr. Justice Thurgood Marshall's career was a constant rebuke to those who have misrepresented and distorted the civil rights movement. Judge Thomas contends that African Americans should pull themselves up by their own bootstraps, under the guise that this represents a new message rather than using this opportunity to be a witness that African Americans have always been the primary advocates of self-reliance. Justice Thurgood Marshall was an advocate of self-help within the community and he was a man who was willing to organize his people and marshal their efforts to confront lawfully and through the courts racial barriers that

permeate our day-to-day lives. In our view, Mr. Thomas has promoted an ideology that is muddled, confused, misinformed and yields benefits only unto himself.

As leaders in the African American community who constantly interact with millions of African Americans we do not choose to oppose Judge Thomas; however, we are morally called upon to be soldiers of the cross and Judge Thomas's record compels us to oppose him.

Thank you Mr. Chairman.

RESOLUTION ON THE CLARENCE THOMAS NOMINATION TO THE U.S. SUPREME COURT

Whereas, the National Baptist Convention has the moral responsibility to be prophetic in our message, and not turn aside from our witness; and

Whereas, President George Bush now has the authority to nominate and the United States Senate holds the authority to conduct hearings and decide on confirmation on a successor to the distinguished jurist Judge Thurgood Marshall of the Supreme Court of the United States; and

Whereas, Mr. Justice Marshall has been the embodiment of the aspirations of African Americans to secure a place of justice on which to stand firmly in the United States; and

Whereas, the National Baptist Convention concurs that the successor to Mr. Justice Marshall should also bring to the bar of justice the experiences, witness and aspirations of African Americans who have been locked-out, looked-over and not received respect and equal opportunity in our society, and;

Whereas, the Reagan-Bush Administrations have shifted the Supreme Court toward an ideology of the conservative right by packing the bench with ideologues who would rather blame the victims of society than give them the tools that give access to the fruits of our democracy; and

Whereas, the Reagan-Bush Administrations have further created a climate that perpetuates systemic racism that keeps African Americans from access to the training and resources to become first class citizens equal with others in our society, by its failures in education, housing, drug policy, health care, child care and those programs that make a healthy nation; and

Whereas, the Reagan-Bush Administrations have sought to move the American consensus away from justice, inclusion and equal opportunity and return it to an era of divisiveness, distortion and deception within the African American community as well as between the African American community and all Americans; and

Whereas, President Bush has nominated to the Supreme Court of the United States Mr. Clarence Thomas, a man of African American descent whose record includes positions as an aide to a United States Senator, director of the Equal Employment Opportunity Commission, and a federal judge; and

Whereas, Mr. Thomas in carrying out his duties has manifested an ideology that is bemuddled, confused and misinformed; and

Whereas, the National Baptist Convention can not be silent but must be witnesses to the truth by calling attention to the Bible narrative that the greatest opponents of Jesus were the Pharisees and Sadducees who represented a select, conservative and reactionary religious complex and who put our Lord on a cross and rejected a man who was a man for others; and

Whereas, we are morally called upon to be soldiers of the Cross, followers of the Lamb, that we must not fail to own His calls or blush to speak His name as regards this critical issue; and

Whereas, we must rebuff Mr. Thomas' arguments against affirmative action to remedy systemic racism in our society by affirming the fact that as proponents of affirmative action we have never said that unqualified individuals should be given jobs, but instead of called attention and witness to the historical record which reveals that too many with qualifications did not receive job opportunities prior to affirmative action; and

Whereas, Mr. Thomas evidences a failure to understand the history of the African American community which led to the process now creating a new African American middle class and which opened the doors of Yale University to him and others through affirmative action and program support; and

Whereas, Mr. Thomas perpetuates stereotyping, myths and misrepresentation of our achievements as an African American people; and

Whereas, Mr. Thomas contends that African Americans should pull themselves up by their own bootstraps, under the guise that this represents a new message rather than using his opportunity to be a witness that African Americans have always been the primary advocates of self-reliance; and

Whereas, Mr. Thomas' silence on the proud history of the African American community's efforts at self-reliance is an insult and distortion to an historical record that includes the Anna T. Jeanes Foundation schools, the partnership with the Rosenwald Foundation in which African Americans in the darkest years of the post-Civil War era raised the largest share of funds to create schools for our children, the establishment of the Freedman's Bureau which initiated schools, the sacrifices of African Americans who sold land and cattle for seed money to create schools, as well as the African American-led efforts which created such institutions of higher learning as Morehouse, Fisk, and Spellman; and

Whereas, Mr. Thomas in fact has been part of an alliance that has sought to distort and misrepresent the civil rights movement going back to the days of W.E.B. DuBois whose vision and leadership understood the relationship between self-help and the need to confront racism; and

Whereas, Mr. Justice Thurgood Marshall's career was a constant rebuke to those who misrepresented and distorted the civil rights movement, as a product of the oldest African American university, Lincoln University, as a student excluded from the University of Maryland because of his race, as an advocate of self-help within the community and as a man who was willing to confront the barriers placed by a racist society; and

Whereas, Mr. Thomas is a part of this same alliance that has reflected an ideology that the few are to profit at the expense of the many, as reflected in their unwillingness to support such measures as former Congressman Augustus Hawkins' employment bill while at the same time being willing to provide bail-outs for the Savings and Loan industry executives, establish land grant colleges with white-only restrictions with federal intervention, and to recognize the initiative of American farmers by providing additional support through farm bank programs and price supports; and

Whereas, Mr. Thomas has further added fuel to the stereotyping of African Americans by calling public attention to his sister, Emma Mae Martin of Savannah, Georgia, with attacks on her eligibility for public assistance and claiming that she and her children "have no motivation for doing better or getting out of that situation"; and

Whereas, in actual fact Emma Mae Martin was not receiving public assistance at the time of Clarence Thomas' public ridicule of her, but had taken two minimum-wage jobs at the same time in order to better provide for her family, in a manner familiar to many African Americans; and

Whereas, Mr. Clarence Thomas himself was the beneficiary of a private education in Catholic schools which provided him with advocates and intervenors on his behalf; and

Whereas, the national leader Dr. T.J. Jemison has been a champion of human rights and liberties as the progenitor of the Montgomery bus boycott and the National Baptist Convention would do a great disservice to support one who has given every indication of being against the traditional aspirations of African Americans for equality, equal rights and justice; and

Whereas, we are called to speak the truth with courage, and not to be dissuaded from our witness by those who seek to divide African Americans in order to create further gains for a socio-

political leadership that will not confront systemic racism but seeks to benefit from it; and

Whereas, the National Baptist Convention represents eight million African Americans and is the largest organizational body in the nation, who reject the label of special pleading because our only plea is to be a witness to His name as regards this critical issue;

Therefore, Be it Resolved, that the National Baptist Convention go on record calling on all state presidents, district moderators and members to mount immediately a massive lobbying campaign to approach their respective Senators to vote against the confirmation of Clarence Thomas; and

Therefore, Be it Resolved, that our call is for a nominee from the African American community who has a sensitivity to the aspirations of African Americans, the poor and women, unlike the current nominee; and

Therefore, Be it Resolved, that our position will be communicated to the President of the United States, so he will nominate a person that will reflect another judicial and ideological position that would give the U.S. Supreme Court a healthy balance.

Humbly Submitted,

National Baptist USA, Inc.
Civil Rights Commission
Amos C. Brown
Chairman, Amos C. Brown - California
Matthew Johnson - North Carolina
Albert Campbell - Pennsylvania
Timothy Mitchell - New York
Samuel B. McKinney - Seattle, Washington
Dr. T.J. Jemison - National President

The CHAIRMAN. Reverend Brown, I must say that is the most concise, explicit, and damning bill of particulars against Judge Thomas I have heard, and somewhat convincing.

Reverend Le Mone.

STATEMENT OF REV. ARCHIE LE MONE

Reverend. LE MONE. Thank you, Mr. Chairman and members of the Senate Judiciary Committee.

I am officially representing the Progressive National Baptist Convention, which is headquartered here in Washington, DC. My denomination is one of the historic African-American churches. The Progressive National Baptist Convention has just under 2 million members and approximately 2,300 individual congregations throughout the United States. Many of our congregations are located in States with large urban centers and are attempting to meet the needs that impact on the minority population in those centers.

It is not uncommon to find as many as 1,500 to 5,000 people who belong to one of our churches. I think it can be stated that an African-American Baptist church is made up of a variety of people coming from a diverse socioeconomic, educational, and varying regional background.

The church in typical African-American life has been and is a place not only for worship, but serves the real unmet needs of our communities. The church represents a place where the human rights and values are reconfirmed as a counterpoint, even today, to the historical and contemporary indignities that have been a part of our life experiences in this country.

The Progressive Baptist National Convention wishes this testimony to be viewed as speaking analytically, and not critically, concerning the nomination and possible confirmation of Judge Clarence Thomas.

Because of the unique sensitivity surrounding the Thomas nomination, my convention has not taken lightly the position it has officially adopted at its 30th annual session in Pittsburgh, PA, last month. Permit me to read the relevant paragraph of my convention's resolution:

> Be it therefore resolved, that the Progressive National Baptist Convention opposes the nomination of Judge Clarence Thomas to the U.S. Supreme Court, until or unless in his Senate hearings he expresses support for the constitutional rights won in our hard fight and struggle for civil rights.

Subsequent to the above, the convention has concluded that it is not in favor of confirmation, either. There are reasons for this, and I wish to be brief in explaining them. However, I hope that clarity will not be sacrificed on the altar of brevity.

According to public testimony during the course of these hearings, there has been no convincing statement on the part of Judge Thomas that satisfies or satisfied our concerns as expressed in the relevant paragraph as cited by the resolution adopted by the Progressive Baptist Convention in August. Indeed, we have not had answers to questions that are of a paramount importance to us, as a Christian body, a body made up of citizens who are from African ancestry.

We do not and we cannot accept the responses that are cleverly crafted in terms that are just that, responses and not answers. For example, what is the nominee's real position on capital punishment, not his stated willingness to look at the final judgment handed up from lower courts. Is he, like retiring Associate Justice Thurgood Marshall, opposed to capital punishment, or not? Is the nominee radically concerned, as a human being, with not only the question about justice, but the question of human rights, and especially the right to be human?

The nominee has not answered, nor was the question raised about something that goes far beyond personal considerations and values, and that question has to do with ecology. Our world is being systematically eroded, due to improper stewardship of our natural and human resources. The former has to do with the contamination of land, water, and air with toxins, and the latter has to do with the right to earn a decent wage, a fair wage for one's work, and that an employee, whether female or male, should be paid the same salary and enjoy the same benefits for the same jobs performed.

Additionally, those people who have spent their reproductive lives and life earning a living and raising a family should not be discriminated against because they are more expensive to maintain on the job than someone who is much younger and just entering the job market. This is called age discrimination. And it is uncomfortable to know that an overwhelming amount of complaints concerning age discrimination were unattended to during the nominee's tenure as the head of the EEOC. More than that, the statute of limitations has run out and the complainants no longer have any redress or course of action.

It has been said that during his time as a top Government official, Clarence Thomas was ostracized by the established civil rights community. Perhaps this was so, perhaps not. If it is true, the nominee certainly should have gone to the black churches, in order to find a forum in which to express his ideas and views. The black church, especially the Baptist churches, represent a community wherein a wide range of ideas and positions are easily found. He could have, indeed should have, sought out that community in which he would have been welcome, because he is part of that community and he still is.

There are too many critical questions that remain unanswered, repetition for emphasis. Responses are not synonyms for answers to those questions that still linger. When in any human situation, the dialog, the conversation, the debate, or any other exchange takes place, there cannot be more questions at the end than there were at the beginning.

Therefore, in good conscience, even in view of the nominee's singular achievements, his sitting on the U.S. Supreme Court would not be in the best interests of all groups and communities that need progressive jurisprudence, in order to ensure, as well as enhance, an egalitarian society under law.

There are those who claim that if Judge Thomas is not successful in these confirmation hearings, the next nominee may hold regressive views on constitutional rights and liberties. That is not a major concern at this time, nor is it the concern of having another

minority on the Court. Our concern, in reality, is that our needs have to be met as human beings and as citizens, not only of this country, but indeed of the world.

What we need in terms of actualized concern from the bench, whether the High Court or lower appellate courts, is to see that justice indeed is implemented, that justice must serve the poor, the unhappy, the children, and the aging. It has been said and manifested in the form of a statue that justice is blind. For those in this society and world, the blindfolds of justice should be lifted off justice's face, so that justice can see clearly that all isn't well, and the scale in its hands is tilted. The scales of justice need to be balanced, made equal. This can only be arrived at, if justice can see human needs that confront our modern era.

The Progressive Baptist Convention was founded in 1961, over the issue, oddly enough, of civil rights. And in keeping with one of its founders, the Reverend Dr. Martin Luther King, Jr., and in his spirit and memory, our convention maintains a progressive outlook on life through the manifestation and theology of the church. Therefore, we are not convinced, we have no recourse to recall an Associate Justice. There are too many unanswered questions for us to be in support of the confirmation of Judge Thomas at this time.

Mr. Chairman and members of the committee, thank you for your attention.

The CHAIRMAN. Thank you, Reverend Le Mone.

I was going to ask the difference between the National Baptist Convention and the Progressive National Baptist Convention. I think it has just been answered.

Now, let me ask you all this question, beginning with you, Mr. Hooks. Without going into all of what prompted each of your organizations to conclude that Judge Thomas should not sit on the Supreme Court, would you be willing to or able to tell us what one thing about Judge Thomas is it that you find most disturbing, offensive, troublesome, that would be the thing above all else that should keep him off the Court, in your opinion? Pick out one thing, if you can, for me.

Mr. HOOKS. Senator Biden, I would have to repeat what I said, that in his years as a public official, as Assistant Secretary for Civil Rights in the Department of Education and as Chair of the Equal Employment Opportunity Commission, that he showed a disregard for the affirmative action laws. He was opposed to class action, which has been the classic method that has advanced the cause of minorities.

He favored General Meese's attempt to gut Executive Order 11246, promulgated by President Johnson, expanded by President Nixon, and that he has been opposed to the very things of affirmative action that made it possible for him. He climbed up the ladder, and it would seem that he would hand the ladder down. It is his record and his statement, as a public official, that caused the NAACP, very painfully, to have to oppose his nomination.

May I remind you again, sir, that we opposed his nomination as Chair of EEOC and we asked for his resignation after his conduct, so this is not a new thing for us.

The CHAIRMAN. I was going to point that out, that this is not a confirmation conversion on the part of the NAACP. This was the

NAACP's position and, as I recall it, you put it out in a sense in the form of a warning, not warning threat, but a warning to all Members of the Senate and the House that this man did not, in your view, share a point of view that would be beneficial to minority Americans, and I acknowledge that. That has been your position for some time.

Mr. HOOKS. He would not represent the best interests of America at this point in time, a transcendent moment in history. When we are trying to move forward, we think he would move the Supreme Court further back.

The CHAIRMAN. Reverend Brown.

Reverend BROWN. I think that it should be underscored here that the American public ought to take note that three predominantly African-American religious bodies came together. In 1917 and 1919, we split over some internal concerns. In 1960, we split over a question of tenure. But for these bodies to be unanimous in the opposition——

The CHAIRMAN. Now, the three bodies you are talking about the National——

Reverend BROWN. The National Baptist Convention USA, Inc., of which Dr. T.J. Jemison is our national president, and our headquarters is in Nashville, TN, and to my left is the general secretary, Dr. W. Franklin Richardson, of New York City, and also a member of our Civil Rights Commission, Dr. Timothy Mitchell. This is the largest religious body in the world of African-Americans. We represent the masses. We preach to thousands every Sunday morning. I might say parenthetically here that maybe you should be sensitized to that by now, but when election time comes around, basically you politicians will make a beeline to the black church, but not in your white church on Sunday morning.

The CHAIRMAN. Reverend Brown, I have probably spent as much time in your black church as maybe even you have sometimes, on occasion.

Reverend BROWN. Because you know that is where the votes are and that is where the voting population is.

The CHAIRMAN. I am very familiar with your church. Now, what I want to know, though, without giving me political advice on where I should and shouldn't be——

Reverend BROWN. No, I am not giving you advice. I am stating a reality.

The CHAIRMAN [continuing]. I want you to answer the question, if you would, please.

Reverend BROWN. Yes, sir.

The CHAIRMAN. What one thing is the most disturbing about Judge Thomas to you and your church, if you had to single out one thing, one most important reason why you don't want him on the bench, the Supreme Court?

Reverend BROWN. He has forgotten what grandma and granddaddy taught us, to look out for each other, and the Lord has blessed you and you ought to be a blessing to somebody else.

The CHAIRMAN. Now, let me ask the same question of you, Reverend Le Mone, if I may.

Reverend LE MONE. Mr. Chairman, that question is the type of interrogatory that demands prior notice of something like 3 weeks. It is a complex issue. At one time, I would——

The CHAIRMAN. If there is no one issue, then just suggest that.

Reverend LE MONE. Very well. I am a minister and I have to give an example, and I will be brief. I at one time was an unofficial tutor in a law school for black law students, preparing them for moot court examinations during their first year. I asked one of the students, can you give me a layman's working definition of what is the law. The student thought for a moment and said law is life. I would say also that the theology of the church has to do with life here on Earth, not in heaven. We want to enjoy life here on Earth and the benefits of the creation that was made for everybody on this Earth.

Equally, the one thing that disturbs us, as the Progressive National Baptist Convention and our sister convention, the National Baptists and the other National Baptist Convention, numbering over 14 million people, about the nominee is inconsistency.

We are living in a world that is unstable and increasingly becoming so by the day, and I think you know better than I, Mr. Chairman, what I am referring to, because you sit in judgment, economic and political judgment, over the welfare of thousands and millions, if not millions of people around the world.

The world is being constantly destabilized. We must have order, not law and order, but stability. Inconsistency does not lend itself towards stability. That inconsistency profoundly disturbs us.

Finally, Judge Thomas is a man of impeccable credentials. He has studied long and hard and has made a success of himself, but that is not for the individual, that is for the group. There is no self-made man or woman on the face of this Earth. It has to do also with the fact that Judge Thomas may be a good Supreme Court jurist, but not now, and I think it is too much of a risk to have Judge Thomas enjoy OJT, on-the-job training, when there is no recourse. It is much too delicate a situation for us to support his nomination, and certainly not his confirmation.

The CHAIRMAN. I thank you for your answer.

Since my time is up, I yield to my colleague from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

We are glad to have you gentlemen here and appreciate your appearance. I have no questions.

I just want to say, Reverend Brown, that in view of your statement against this nominee here and the manner in which you say it, you sound more like a politician than a preacher.

I have nothing else to say.

Senator KENNEDY. First of all, I want to welcome all of you to the hearing and say how much all of us appreciate the thoughtfulness of your presentation and the seriousness in which we regard these comments.

Mr. Hooks, in your testimony you talk about, on page 22,

Clarence Thomas' logic is straightforward: he sets up a liberal straw man (blacks have tried to abdicate all responsibility for their own liberation because of prejudice) and then knocks it down by citing some anecdotal evidence of those who survived. He infers from the few that everyone can make it.

I think all of us are enormously impressed by the personal qualities of Mr. Thomas—his resoluteness from the earliest of days; his steadfastness, dedication; his hard work; his obvious affection for the members of his family.

And, as I gather, what you are saying there is that you are observing that he was able sort of to make it. All of us admire the qualities which he had in order to be able to make it, and if we were to just interpret it the way that he presented it, it is almost an indictment for those that haven't made it. Somehow, those that have been left out or left behind, it is really because, you know, they haven't had the personal kinds of qualities to be able to emerge.

How real is that in the real world of people of color and women in our society? I think that is really what he is saying, but is that really real world which you are speaking from?

Mr. HOOKS. Senator Kennedy, may I answer by saying that there has been presented testimony here that would indicate affirmative action has only benefited those at the top of the ladder. Nothing could be further from the truth. Adam Clayton Powell came to prominence in this Nation marching and demonstrating in Harlem to get black people jobs as sales clerks, as tellers in banks in Harlem in the 1930's.

When I came along in 1949 and was admitted to the practice of law, there was not a single black in the courthouse except janitors and maids and one messenger. There were no blacks in the banks receiving money or using computers or typewriters, as the case might be. There were no blacks working in the stores downtown.

Affirmative action has benefited America and millions of black people who otherwise would not have those jobs. The paper reported this morning that less than 3 percent of black women now work as domestics, when in the 1950's more than half worked, which meant those were the only jobs available.

Affirmative action has worked; it is necessary now. It is a fact that many black people have still not benefited, but that illustrates the whole dilemma that we face. Judge Thomas is apparently saying that we did not need affirmative action, and we certainly do not need it now since we have come so far.

But the fact that there are still 30 percent of black Americans who have not made it does not indicate to me that it is a lack of personal qualities. It means that we must continue affirmative action and reach the unreached. If, in the last 30 years, 40 percent of black Americans have risen from poverty to above poverty so that 70 percent of blacks—and those of us who love America must admit to its successes as well as its failures, and we have had a large number of blacks—millions of them have risen from poverty to at least living above the level of poverty, and it is due to the changed conditions, particularly the aftereffects and the effects of affirmative action.

Now, to be opposed to those programs now—and I read four things here: 11246, which was important in contracts, promulgated by a Democratic President, expanded by a Republican President. I talked about the effects test in the Voting Rights Act, which we fought, as you know, very well because you were involved in that

fight, to make sure that we dealt with effects and not intent because that is what counted.

When we look at the total record of Judge Thomas, he seems to be saying that the ladder, which not only brought him up, but brought millions of black Americans up, must now be knocked out. We are concerned about those—as Amos Brown put it, the least of the laws, the left out.

And we therefore feel, if the Secretary of Labor in this administration can talk about a glass ceiling, if the New York paper this morning can report that black men still lag far behind in the rate of pay, it means that affirmative action is necessary if we are going to bring in—that does not mean affirmative action is the only answer; other things must be done, but we cannot discount the major importance of affirmative action. Therefore, by any objective test, Judge Thomas fails in the only area which he has any expertise, supposedly in, and that is the field of affirmative action.

Senator KENNEDY. I would have been glad to hear from the others, but my time is up, Mr. Chairman.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Reverend Brown, in your statement you say that Judge Thomas, "ignores history and today's realities with respect to race discrimination," and I would cite an article which Judge Thomas wrote in the Howard Law Journal back in 1987 where he said this: "Major elements of Chief Justice Taney's opinion in *Dred* v. *Scott* continue to provide the basis for the way we think today about slavery, civil rights, ethnicity, as well as the way we think of the nation in general," which is a very strong statement in 1987 for Judge Thomas to say that the tenets of the *Dred Scott* decision remain in America as long as 1987. I think he said that in other of his speeches, and I think that is a factual situation, regrettably, that there is a great deal of discrimination and racism that goes on today.

What we are trying to do is to figure out here what Judge Thomas would do if confirmed, and it is hard to get a picture of him. We have heard a lot about his roots. More important is what he thinks about today. I thought that it was a telling bit of testimony when he commented about sitting in his office in the court of appeals, which overlooks the alley where criminal defendants are brought in, and he commented about African-American young men who were brought in and made a statement on the witness stand that there but for the grace of God goes Clarence Thomas.

And he at one point in his career, in 1983, favored affirmative action with flexible goals and timetables, and then he has turned against it. And a very significant case among many that he was a participant in was the *Lopez* case where he took socioeconomic factors which are supposed to be ruled out, not considered on sentencing, and over the objection of the prosecuting attorney, who said it would open the floodgates, Judge Thomas was a part of a panel which really expanded considerations at sentencing to the background of the young Hispanic who was involved in that case, Lopez.

Now, if we are going to try to predict what he is going to do in the future, aside from a lot of technicalities and case interpretation and whether he is going to provide diversity—and I have heard the

witnesses say that they would rather not have an African-American who doesn't stand for their values than have a non-African-American who does stand for their values.

But we have a projection of a likelihood of having a Republican President for some time in the future and I, for one, think diversity is very important on the Court. That means an African-American on the Court.

Now, in this balance, all these factors in mind, why reject this man who has at least a likelihood, a possibility, of a voice on that Court to tell what it is like as an African-American—the feelings about *Dred Scott* and slavery, and the African-American defendants? Why not go that route?

Reverend BROWN. Well, Senator, at this point I say that he has not given me conclusive evidence that he is freed from the ideology that he has espoused, the political alliances that he has maintained, and he has felt comfortable with this climate that is prevalent in this country today.

Second, one man, as I said in my statement, on that Court, though he may be an African-American, in our estimation, will not make any difference at all. The Court is already stacked, and we all know what has been going on historically for the last 10 years.

And I might say here that our concern is to be right. We are not concerned about winning a battle here. As ministers of the church of Jesus Christ, it is our moral obligation to be right, to do justly, to love mercy, and to walk humbly with our God. And then we must keep in mind that before Justice Marshall went on the Court, though he did do a great, outstanding job, we as African-Americans made it. We were able to make a way out of no way. God is still on our side.

The end will not come if there is not a black on that Court, but we have the moral responsibility to stand up and to speak out as prophets and not as politicians, Senator Thurmond. The prophet speaks, words fall, that justice may roll down like waters and righteousness as a perennial stream.

Senator SPECTER. Well, thank you, Reverend Brown. My time is up. I don't think we can find conclusive evidence on anything. I don't think we can do that, and I would feel a lot more comfortable having somebody in that conference room who understands African America.

Reverend BROWN. Well, he is indicating he doesn't understand. He has misrepresented our history, he has also misrepresented the NAACP's position, suggesting that we were only interested in civil rights, while he hasn't read possibly the works of W.E. DuBois, James Weldon Johnson, Benjamin Elijah Mays, and many others who spoke about taking initiative, who spoke about self-help, but they were not so naive that they did not realize the nature of systemic racism that had to be attacked in a frontal way by governmental intervention, the same as we had governmental intervention when we established these land grant colleges that excluded black people for years. That was the Government intervening.

When we look at the Soil Bank Program, where brother Eastland and Stennis from Mississippi and others have benefited from, that is governmental intervention. The S&L's, that was governmental intervention. So, this is the thing that concerns us greatly, as to

how he comes down as regards solving the problem. He does a good job, a commendable job of defining the problem.

He can do a great job of stating the antithesis of the ugly, nasty situations. He could talk about what the ideal ought to be in this Nation. But when it comes to raising the relevant questions and saying how do you do it, that is where he falls down. It is not an either/or matter, it is both/and, and that has been the position of the NAACP and the black church ever since we have been in this Nation, and he has misrepresented that or permitted his friends to misrepresent him on that point.

The CHAIRMAN. Thank you very much, Reverend.

Reverend LE MONE. Mr. Chairman, might I have a word, please?

The CHAIRMAN. No. I will tell you how you can do it, so we are under the rules and I do not get nailed here. I am going to yield to the Senator from Illinois, and I am sure he will give you a word and you can talk then, otherwise I will not be playing by the rules here.

The Senator from Illinois.

Senator SIMON. Thank you very much.

First of all, I thank all three of you. Judge Hooks, this is a good time to say, as a member of the NAACP, that we are very proud of your courageous and effective leadership.

Mr. HOOKS. Thank you, Senator.

Senator SIMON. I don't know that I have said that in a public forum before, but you have been the kind of a leader in the tradition going back to when I first joined as a student. Walter White was the leader, and you go through that tier of leadership and you bring honor to that position that you hold.

Mr. HOOKS. Thank you.

Senator SIMON. Reverend Brown, one of my colleagues said you sound more like a politician than a preacher. I am sure they said the same thing to the Prophet Amos.

Reverend BROWN. Yes, sir.

Senator SIMON. I remember they said the same thing to Martin Luther King. The church has to be the servant church.

The CHAIRMAN. He has put you in fast company, Reverend Brown. [Laughter.]

Senator SIMON. I might add, I would like to hear you preach sometime on the basis of this little preview we got this morning. But the church was audibly silent in Germany when Hitler rose, when they should have been standing up, and it would be the easiest thing in the world for you to sit back and not say anything. Just as one person—and I am not a member of your organization—I appreciate it.

Reverend Le Mone, in your thoughtful statement, you said something about how you were taking a stand in opposition until or unless you heard statements from the nominee that would convince you to the contrary.

If I could ask all three of you this, have you heard anything in Judge Thomas' testimony that makes you wonder whether you took the right stand or not or has caused you to in any way feel that you might have made a mistake?

Reverend LE MONE. I would like to go first, if you don't mind, Senator Simon.

Senator SIMON. Reverend Le Mone, we will start with you, yes.

Reverend LE MONE. I am sorry Senator Specter has left the room and cannot hear this remark I want to make in response to his question to Reverend Brown. Senator Specter gave a very clear outline of not only affirmative action, but a quota system, by saying he must have an African-American on the Court. That was clearly stated. It is not limitation of language, even though he didn't give the title of affirmative action, that is exactly what the substance of that comment should mean, in terms of its interpretation.

Our position is not to have a minority on the Court, but to have the best possible human being on the Court, male or female, Hispanic, Chicano, Native American, white or black, who understands that justice must serve the interests of all of the people, particularly those who are least in society, that justice indeed must open its eyes and look at what is happening not only to this country, but to the world.

We, as ministers of the gospel, make no apology to the fact that we articulate our ministries from the pulpit and also in the streets, because we are on the side of God and we speak the politics of God. All one has to do is read the 61st chapter of Isaiah or the 4th chapter of Luke, and you understand why we are doing what we are doing.

In direct response to your question, it is really hard to say, but I don't think that we can take the chance in terms of this confirmation going through. It is too risky. Therefore, we are even more resolved, based on the testimony of previous days, that Judge Clarence Thomas should not at this time be a Supreme Court Associate Justice.

Senator SIMON. Reverend Brown.

Reverend BROWN. I say amen.

Senator SIMON. That sounds like a preacher there.

Mr. HOOKS. I would say, Senator Simon, after hearing Judge Thomas in these hearings, we are more convinced than ever that we took the right position, because the only thing that has happened, which is even more disturbing, I think Senator Heflin referred to it as confirmation conversion, that he has in some ways denied that he said what he said or that he meant what he said or that he is starting over again.

We are very convinced that his total record as a public official is of such nature that we cannot support him, and nothing in these hearings has changed our opinion. We believe more firmly now than ever that we were correct.

Senator SIMON. I thank all three of you.

Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

I want to thank our witnesses for coming today. I appreciate how trying and difficult this process has been for you and your willingness to state forthrightly your position. I think it is helpful to this committee.

In trying to get a handle on the differences between your organization and Judge Thomas, I was hoping you could help me with regard to the question of affirmative action. The judge has indicated that he believes in affirmative action, but does not believe in

racial quotas. How would you describe your view of what is appropriate under affirmative action and what would not be?

Mr. HOOKS. Senator Brown, let me say we have always been opposed at the NAACP to quotas because quotas is defined as an artificial goal above which you cannot rise. The courts, however, adopted goals and timetables because where blacks had been excluded wholesale, could not be in the police department, could not be in the State highway patrol, could not be clerks in stores, all the law really was saying is you must take aggressive action to include in those whom you have excluded. This business of preference and reverse discrimination is nothing but lies that have been forced upon the American public. How do you include in those who have been excluded unless you are aggressive about it?

In the *Alabama Highway Patrol* case, the commissioner over a period of months refused to hire any, even though he was under court order. It was the judge who then decided that you are not only dealing with blacks but you are dealing with the dignity of the Federal courts. Therefore, by a certain date, you must have a certain number of black patrolmen.

Goals and timetables came into the equation in order to make the law effective. And, by the way, Judge Thomas, in his first term at EEOC early on, sort of went along with goals and timetables, and then he was opposed to them. That is why we opposed his reconfirmation.

Affirmative action is aggressive action to include in those who are excluded out. It is not and should not be viewed as reverse discrimination. And it has to be class-based. As someone has said here, the difference between wholesale and retail, we could not possibly take care of all of the millions of blacks and women and minorities who have been excluded by taking one case at a time. As I have said earlier, it would have meant that everybody would have had to have been a Rosa Parks, and only those who could sit on the front of the streetcar would be those who had been arrested; or only those could go to school who had gone there with a Federal marshal to take them in.

Affirmative action is necessary, and Judge Thomas' record indicates that he did not favor that remedy, and we are opposed to him, among other reasons, for that.

Senator BROWN. Well, that is helpful to me. I think it clearly defines the differences. And you might want to correct me. Let me see if I am stating it correctly.

The difference isn't that you are advocating racial quotas and that he is not. That is not advocated by either one of you. The difference is a question over the timetables that have been put together. Would that be a fair statement?

Mr. HOOKS. Goals and timetables were mandated by law. The *Griggs* v. *Duke Power* case was perhaps the finest refinement of it. Because if you have a workplace that employed a thousand people in a city where the workforce was 80-percent black, 20-percent white, there were no blacks employed. They then employ one black or two blacks out of a thousand. The question has to be answered at some point: When have you really affirmatively tried to give employment? This necessitates—and we do not back up from it one iota—goals and timetables which are reasonably calculated to show

that affirmative action not only has resulted in some rules and regulations but in some results.

President Johnson stated eloquently that at some point affirmative action must result in equality of results as well as equality of opportunity. This may be a hard pill to swallow, but from the viewpoint of those who have been historically denied—and I don't think we have to define that years of slavery, 244 years, years of second-class citizenship, *Dred Scott, Plessy* v. *Ferguson.* Now we stand on the brink of a breakthrough, and we simply do not need an African-American on the Supreme Court who does not subscribe to the concept that affirmative action must work. The Supreme Court is already bad enough. We do not need an African-American adding sanction to what is being done.

Senator BROWN. So the goals and timetables would be the difference, and I assume that is in an area where you had a showing that they have discriminated in the past or you have a clear impact of discrimination in the past.

Mr. HOOKS. Well, there are cases that indicate that there must be a showing of discrimination, but there are other cases which simply deal with the fact that the statistical results of—let's use that absolute term of no blacks employed in a city where a factory has a work force available to it of 50 or 60 percent or whatever number of blacks, that the mere showing of that can be enough to change the burden of proof, which was the *Griggs* case. It did not mean that the black applicants or plaintiffs won. It simply meant that the company which then had the knowledge of why they were doing what they did had the burden of proof. And it is this type of thing that is very important if we are to continue our progress.

I mentioned earlier that the present Secretary of Labor has indicated in a study that there is a glass ceiling above which women and blacks cannot seemingly advance. And she has said that something must be done.

At West Point, President Bush marveled over the fact that we have now had 1,000 black graduates of West Point, when you and I know when General Davis went there he was given the silent treatment for 4 years.

The man in charge of West Point said it is because of aggressive affirmative action that we have now had 1,000 graduates of West Point. It is necessary to have affirmative action, and to make it work there must be goals and timetables and systematic class-based remedies in order that we will not spend forever all the money in the Treasury trying to do it one case at a time. And that is one of the weaknesses of Judge Thomas' position. He only talks about affirmative action for someone who has proven somehow that they have been the victim of discrimination. But we know that when they did not have blacks in the police department, it was not based on an individual. It was based on the fact that no blacks were going to be employed as a group. And why should an individual have to go there and almost be lynched?

And I want to say very quickly that the time has not passed—the fact that affirmative action has been in existence for some time does not mean that we do not still need it, that we do not still need class-based remedies, and that we still need goals and timetables.

Senator BROWN. If I may, Mr. Chairman—I see the red light—I would like to ask one followup question.

Senator KENNEDY. It is fine with me if Senator Thurmond agrees.

Senator THURMOND. We have to move on, but go ahead this time.

Senator BROWN. Just briefly, putting aside goals and timetables, obviously that is an area of disagreement. My impression of the judge is that he has a heartfelt commitment to civil rights, acknowledging that there is a significant disagreement in your mind over goals and timetables. But aside from that, at least my impression was he had a heartfelt commitment to civil rights.

Would you share that view or do you disagree in that area as well?

Mr. HOOKS. I disagree, sir. Respectfully, I maintain the experiences are neutral. He talks about his experiences, his grandfather being called a boy. He talks about prejudice and discrimination. But those experiences did not leave him with the lessons of how to overcome that. We have yet to hear from the judge in his official actions basically—with one or two exceptions, of course—how he would overcome that.

He went to the right school, the university of hard knocks, the school of discrimination and prejudice, but he learned the wrong lesson. He seemed to be saying that we do not need Government help, we only need self-help.

We maintain, the NAACP and the Baptist Conventions and the great mass of black people, that we need both self-help and Government help. And Judge Thomas seems to always emphasize only self-help, and that bothers us as to a sincere commitment to the eradication of the problems. He understands and enunciates very well the problem, but the question is: How do we get by the problem? That requires some affirmative action, which he seems to disavow.

Senator BROWN. I appreciate that.

Mr. Chairman, thank you for your indulgence.

Senator KENNEDY. Thank you very much.

Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

Gentlemen, in a 1959 article for the Harvard Law Review, William Rehnquist wrote that the Senate has the obligation to "thoroughly inform itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him."

Do you feel that we are thoroughly informed on the philosophy judicially of Clarence Thomas?

Mr. HOOKS. I do not think that his testimony has informed you as to his judicial philosophy, and I would have hoped that in his testimony he would have informed you. But I do not think he has.

I hope I have answered your question.

Reverend LE MONE. Following these hearings, Senator, we have seen or read or heard no indication of understanding the judicial philosophy of Clarence Thomas. We have, at best, had vague, elusive, flexible answers to many key issues. And permit me to add that this issue, this nomination, is not about affirmative action only. It is more complicated and complex and comprehensive than that. That is certainly a key issue, but not the sole issue. We do not

want to be interpreted as being here sitting at this table representing one issue that is supposed to be something concerning minorities and women. That is an issue, but not the issue.

Reverend BROWN. I would respectfully say, Senator, that Judge Thomas, in my estimation, has not been forthright in dealing with the issues. And let me say parenthetically here that we must be careful as to how we accept these polls as being gospel truth regarding the position of African-Americans on Judge Thomas.

I happened to stand in a bank on the day before yesterday, and a man came up to me panhandling, wanting the money. And before I gave him the money, I said to him, "What do you think about Clarence Thomas' nomination to the Supreme Court?" He said, "Well, you know, yeah, a brother ought to be up there; yeah, a brother should be up there." I said, "You mean that if this brother is talking against affirmative action, if he has problems with minimum wage, if he misrepresented his sister's status in terms of her being on welfare, if he is in alliance with a socio-religious-political gang that is attempting to turn back the clock on all of our rights, would you support that man?" He said to me, "Rev, you laid something on my brain. No, I don't think he should be on the Supreme Court."

Senator KOHL. Are you then all saying that it is not that we don't know his philosophy—are you saying that we do know his philosophy and that is why you are advocating that we vote against him?

Reverend BROWN. That is right. Now, on some other technical legal question is not an answer to you——

Senator KOHL. Is that what you are saying, Mr. Hooks?

Mr. HOOKS. I am saying, sir, that we opposed him because we thought his judicial philosophy was not what was the basic broad stream of American thought, and particularly African-American thought; that nothing in this confirmation hearing has changed that. He has not expressed, in my judgment, any judicial philosophy except to simply say he can't give an answer to this, he cannot give an answer to that. So we are convinced that his judicial philosophy is wrong for this time, yes, sir.

Senator KOHL. So that he has one, but it is not acceptable.

Mr. HOOKS. That is our position——

Reverend LE MONE. Or entirely understandable.

Mr. HOOKS. Before he testified, and nothing in his testimony, in my judgment, has changed it.

Senator KOHL. All right. I would like to go on.

In an article in last Sunday's Washington Post, Juan Williams said that when Thomas came to Washington in 1982, he was a far more liberal person, even anxious to talk with civil rights groups, but that they snubbed him. And as a result, Thomas became more conservative, and the groups lost an opportunity to have an influence on his development and growth.

Do you have any comment on that?

Mr. HOOKS. My comment is that snubbing and failure to be included is a two-way street. I have served as a public official in Washington. I met some antagonism when I came here, but I made a conscious effort to associate with all of the leaders so that they

could know who I was and what I stood for. And I think that effort was successful.

If Judge Thomas felt he was snubbed, he was a high-ranking Government official, at one time one of the highest ranking in the administration. And I think he had a right and a duty to seek out. I don't think he did that as he should have, and I think that whether or not he was snubbed or not should not change his basic philosophy if he believed in the things that we have been talking about, that he should not have changed that because he felt personally snubbed.

Reverend LE MONE. Senator, in my testimony, I indicated that if the allegation is true that he was snubbed, then certainly a man born and raised in Georgia would go to a black church where acceptance is the order of the day, no matter what your philosophy. He didn't seek out the black church during that time. Had he done so, he would have been educated and would have been in a position to educate. Why he didn't choose that option I don't know, and I think it is his loss.

Reverend BROWN. If I might put it in some homespun wisdom from Mississippi, and maybe from Pin Point, GA, grandmom and granddaddy said he or she who would have friends must first be a friend.

Senator KOHL. Are you saying that this man has walked away from his roots?

Reverend BROWN. He has not been in touch with those old rich roots.

Senator KENNEDY. I think the time is up, Senator. I think we have to express our appreciation to—oh, excuse me. Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you and I thank the panel. I was listening to your remarks, and I came over and wanted to participate, to try to do that.

It has been dramatic. I think that is what you intended, to be dramatic. I think it is important to say that Mr. Thomas' responses to questions, at least as I heard them here in several days, indicated that he believes in affirmative action in this respect: He believes in reaching out to increase the applicant pool, increasing the applicant pool, then choosing from that pool the best qualified applicant without regard to race. And I think that that is what most Americans view as—you know, their view is they are against racial preference. They are not against affirmative action. And there is a difference. I know the flashwords don't fit well, but there is a difference.

But, Dr. Brown, in your written statement you say the group wants a nominee who has experienced discrimination. You write that his views reflect hostility toward the African-American community. You write that he is against equality, equal rights, and justice. You claim that he doesn't understand the history of the African-American community.

I can tell you, sir, it is most difficult to reconcile your written and your oral testimony with the Clarence Thomas that we or this committee or this country saw and who we questioned and listened to for 5 days, or with the Clarence Thomas described to us over the

past 4 days by persons, mostly African-Americans, who have known him well, some for many, many years.

I don't think anyone I have ever seen has come before this committee with more friends from around the country, by people who really know him. And the harsh and the intemperate and the nasty statements come from people who don't know him at all.

Now, you can't tell me—I don't care what race or color or creed that we are talking about—where there have been more friends and more people respond to a man than this man, Judge Clarence Thomas, without question. Never in my experience in 13 years. I would think that you would feel demeaned to hear white liberals telling blacks how blacks ought to feel. That can't be a very good experience. And the reason there is a huge, huge split and schism in the black community is because this man is splendid but he is a conservative Republican. So why don't we just cut the baloney and lay it out there and just say you don't like him because he is a conservative Republican, and that is what he is. That is his credentials. But the rest of this is really an exercise—and here is a white conservative speaking—is an exercise in why this is just dissembling before your eyes.

You have got a group of people who are on their own in the black community, and you have never had that before. And they are not going to be in locked step. And I heard from the NAACP group in California, and that was a tremendous lady. What a spirited and energetic lady, and, boy, she laid it out in spades as to why they didn't want to join in locked step.

These are the things that stun me, and I don't understand how you can say those things about a fellow Christian—you are a pastor of your flock—as to those things which are just plain not so, after listening to him for 5 days. And I would ask you how you came to that conclusion.

Reverend BROWN. Senator, if you read my text, I said Paul said that we are living epistles read of men and women. Judge Thomas' record speaks for itself.

Senator SIMPSON. It certainly does.

Reverend BROWN. Yes, before. The speeches he has given, the company he has kept. And I think that we are aware enough to know the implications of the political ideology that he espouses.

I don't mean to be too technical here, but when you talk about conservative views, I think we need to put that in perspective. African-Americans, in terms of their religious experience, have tended to be conservative when it comes to biblical truths and some doctrinal questions. We have been conservative as regards respecting our elders, though there appears to be a generation in these urban centers who have gotten away from that.

But when it comes to political conservatism, we have never been conservative. But we know that, taking a page out of the Bible, the pharisees and sadducees of Jesus' day were the political religious conservatives who would rather keep, hoard the blessings of the promise for themselves. Jesus was a man for the people of the land, and for that reason they put Him on the cross.

What we are saying conservatism means, from an African-American vantage point, the few profiting at the expense of the many, the rich getting richer and the poor getting poorer. And I think

that it is high time that we lay down these labels, right wing, left wing. As one brother said, we ought to be concerned about the bird, because if you have just got one wing you ain't going nowhere. You are just going around in circles. And if in this Nation we do not come together and talk to each other and get rid of this kind of rhetoric that has been afoot for the last 10 years—and it has been afoot. We have had these so-called conservatives who would be more concerned about a fetus or an unborn child. And we are concerned about reverence of life. But at the same time we embrace a political philosophy that would deny child care, a decent job, a good education, a spokesman who would even go to South Africa of that bent, where people have been gunned down and dehumanized for years, and called Bishop Tutu a phony.

It is that kind of conservatism that we have seen afoot in this Nation. And what we are saying is it is time that we get on with the business of putting our Nation back to work, of developing our infrastructure, of being involved with each other to keep this a strong nation.

We ought to take a lesson from Russia. Russia went around the world trying to acquire power but did not take care of home. And as the last 10 years have indicated, we have not taken care of home. We have been more concerned about how things——

Senator SIMPSON. I hear those things and they are passionately and sincerely said, but we are talking about Judge Clarence Thomas. That is who we are talking about.

Reverend BROWN. I know what he stands for and who he is with.

Senator SIMPSON. You know, I believe something about that teaching. I think it was about forgiveness and kindness and compassion. That is what it was about, too. Those were the words of Jesus Christ.

Reverend BROWN. I am talking about him, too.

The CHAIRMAN. Thank you very much.

Senator SIMON. Mr. Chairman, one more question, if I may.

The CHAIRMAN. Has Senator Brown asked any questions yet?

Senator BROWN. Yes.

The CHAIRMAN. All right. The Senator from Illinois.

Senator SIMON. Just one more question. In one of his writings, Judge Thomas, in outlining his legal theories, said the Constitution should be colorblind, and we don't argue with that. Then he goes on to denounce what he calls race-conscious legal devices.

One of the things that I helped to develop back when I was in the House, working with the late Dr. Patterson, was Federal aid for historically black colleges. That is clearly a race-conscious legal device. Now, he has not specifically denounced that but has denounced the race-conscious legal devices.

What would be the impact on historically black colleges if we were to have a Supreme Court saying that is unconstitutional to do that?

Mr. HOOKS. Senator Simon, two things, briefly. Justice Blackmun stated very eloquently that the only way we can advance beyond racism is to take racism into account. The only way we can advance beyond color is to take color into account. You can't have veterans' laws unless you recognize there are veterans. You cannot have laws for the disabled unless you recognize there are disabled.

I do not understand this business of not dealing with color when color was the problem. For that reason, as Justice Blackmun said in *Bakke,* we must take it into account.

Second, I think, in direct answer to your question, that the black colleges have been and are now a great cultural repository of help for this Nation. We would be much the poorer if we did not have black colleges. And if we were to adopt that suggestion that you talked about in totality—and that case, by the way, is before the Supreme Court, will be coming up soon—we will destroy historically black colleges.

It was never the intention of the NAACP to destroy black institutions. It was our intent to integrate all institutions. We think that black schools like Fisk have as much right to exist as white schools like Duke. But they must both be integrated. And we have found that black schools have integrated far more rapidly and far more totally than have the white institutions, and we do not want to see them destroyed, and we do not want to see this whole business of the colorblind society aid in the elimination of a great cultural institution which has been of help and is of help.

Finally, Senator Simon, when we look at the totality of the question that we face, it is important that we know we are the watershed, and as has been stated by one of the members of this panel, the present course of the Supreme Court must be reversed. This committee has a chance to reverse it now by not consenting to the confirmation of an African-American who is obviously opposed to that which is good for America and to that for which the great majority of Americans stand.

It has been stated these public opinion polls simply reflect that all African-Americans basically would like to see one on the Bench. If they do not know what he stands for, they favor it. When you ask them, as Reverend Brown has put it, about the reality of it, then it changes. And there has been a change in public opinion polls. A Werthlin poll indicated that not as many blacks were in favor as it first appeared.

So I am saying give the people light and they will find their way. This Senate has the light, and I am sure they are not going to be guided by public opinion polls which do not ask the right questions and therefore come up with the wrong answers.

Thank you, Senator.

The CHAIRMAN. Thank you very much, gentlemen.

Reverend Le Mone, I had not allowed you to continue because time was up, but now on my time was there anything you would like to say.

Reverend LE MONE. Thank you, Senator. With regard to Senator Simpson, I don't think that we speak the same language that was called English. We are not here for the dramatic, nor are we being overly dramatic. We are telling the truth based on history and experience and a crying human need for corporate justice for everybody in this country.

I notice that sometimes language is suggested when different panelists speak. It is very eloquent. It is informed. It is well thought out, et cetera. But the language applied to people of color is always dramatic, entertaining, and so on.

I think we can speak the same language once and only if we all have the same experience. Our position is simply this: We can't take the chance on this confirmation. The relationship between slaves and masters is not to be improved. We want the elimination of the categories in the first place so all people can live their God-given rights as human beings, men and women.

With regard to racism, racism unfortunately is alive and well in this country. About 3 months ago, perhaps a bit more, there were two surveys conducted—one in the city of Chicago, Senator Simon. One black man, qualified experience, same level of education, and his white male counterpart. The white male counterpart prevailed for the job application in terms of a ratio of 7 to 1. That is less than 5 months old.

The CHAIRMAN. Say that again, please.

Reverend LE MONE. The ratio was 7 to 1. The white applicant——

The CHAIRMAN. In the context of the——

Reverend LE MONE. Job applications for the same job requiring the same education——

The CHAIRMAN. A black man and a white man, same educational background.

Reverend LE MONE. And experience.

The CHAIRMAN. And experience.

Reverend LE MONE. And education.

The CHAIRMAN. And they filed a number of applications.

Reverend LE MONE. That is right. It was conducted by a company. Chicago was one site, and here in the District of Columbia was the second site. And the white applications were successful seven times to one time. Even a physical factor was injected into the data, physical factor of height, weight, and so on.

The Washington Post finally produced something of value to us.

The CHAIRMAN. Thank you very much, Reverend.

Are there any more questions for the panel?

[No response.]

The CHAIRMAN. Gentlemen, thank you very, very much for your testimony.

Mr. HOOKS. Thank you.

Reverend BROWN. Thank you.

Reverend LE MONE. Thank you.

[The prepared statement of Rev. Archie Le Mone follows:]

PROGRESSIVE NATIONAL BAPTIST CONVENTION, INC

601 50th Street, N E
Washington, D.C 20019

Rev. Tyrone S Pitts
General Secretary

(202) 396-0650
(202) 396-0655
1-800-876-7622
Fax (202) 398-9098
Rev. Dr. Charles G Adams, President

TESTIMONY AT THE JUDGE CLARENCE THOMAS HEARINGS

September 20, 1991

Russell Senate Building

by

The Progressive National Baptist Convention, Inc.

Mr. Chairman, Members of the Senate Judiciary Committee,

Thank you for the opportunity to testify at today's hearing concerning the nomination of Judge Clarence Thomas. I am officially representing the Progressive National Baptist Convention, Inc., (PNBC). My denomination is one of the historic African-American churches. The Progressive National Baptist Convention has just over 2,000,000 members in approximately 2,300 congregations throughout the United States. Many of our churches are located in states with large urban centers and are attempting to meet the needs that impact on our cities.

It is not uncommon to find as many as 1,500 to 5,000 people who belong to one of our congregations. I think it can be stated that

56-272 O - 93 - 6

an African-American Baptist church is made up of a variety of people coming from diverse socio-economic, educational, and varying regional backgrounds. The church in typical African-American life has been and is a place not only for worship but serves the real, unmet needs of our communities. The church represents a place where our human rights and values are reconfirmed as a counterpoint, even today, to the historical and contemporary indignities that have been part of our life experiences in this country.

The Progressive National Baptist Convention, Inc., wishes this testimony to be viewed as speaking analytically and not critically concerning the nomination and possible confirmation of Judge Clarence Thomas. Because of the unique sensitivity surrounding the Thomas nomination, the Convention has not taken lightly the position it has officially adopted at its 30th Annual Session in Pittsburgh, Pennsylvania, in August of this year. Permit me to read the relevant paragraph of the Convention's resolution:

> "BE IT THEREFORE RESOLVED that the Progressive National Baptist Convention opposes the nomination of Judge Clarence Thomas to the U.S. Supreme Court until or unless in his Senate hearings he expresses support of the Constitutional rights won in our hard fought struggles for civil rights."

Subsequent to the above, the Convention has concluded that it is not in favor of the confirmation. There are reasons for this and I wish to be brief in explaining them. However, I hope that clarity will not be sacrificed on the alter of brevity.

According to public testimony during the course of these hearings, there has been no convincing statement on the part of Judge Thomas that satisfied our concern as expressed in the relevant paragraph as cited from the resolution adopted by the PNBC last month. Indeed, we have not had answers to questions that are of paramount importance to us as a Christian body made up of citizens who are of African ancestry. We do not and can not accept responses that are cleverly crafted in terms that are just that -- responses, not answers. For example, what is the nominee's real position on capital punishment? His willingness to just look at final judgments handed up to the (Supreme) court is insufficient. Is he, like retiring Associate Justice Thurgood Marshall, opposed to capital punishment? Is the nominee radically concerned, as a human being, with not just the question of human rights, but the right to be human?

The nominee has not answered nor was the question raised about something that goes beyond personal considerations and values, and that question has to do with ecology. Our world is being systematically eroded due to improper stewardship of our natural

and human resources. The former has to do with toxic contamination of land, water and air, and the latter with the right to earn a fair and decent wage for one's work; that an employee, whether female or male, should be paid the same salary and enjoy the same benefits for the same job(s).

Additionally, those people who have spent their productive years earning a living and raising families should not be discriminated against because they are more expensive to employ than someone who is much younger and entering the job market for the first time. This is called age discrimination, and it is uncomfortable to know that an overwhelming amount of complaints concerning age discrimination were unattended to during the nominee's tenure as the head of EEOC. More than that, the statue of limitations has run out and the complaintives no longer have any redress or course of action.

It has been said that during his time as a top government official, Clarence Thomas was ostracized by the established civil rights community. Perhaps that was so -- perhaps not. If it was true, the nominee certainly should have gone to the Black church(es) in order to find a forum in which to express his ideas and views. The Black church(es), especially the Baptist church, represent a community wherein a wide range of ideas and positions can be easily

found. He could have, indeed should have, sought out a community in which he would have been welcome because he was a part of that community. He still is.

There are too many critical questions that remain unanswered. Repetition for emphasis, responses are no synonyms for answers to those questions that still linger. That is all we are faced with in these hearings: questions, questions, questions, questions. When in any human situation the dialogue, the conversation, the debate, or when any other interchange takes place, there cannot be more questions at the end than there were at the beginning. Therefore, in good conscience, even in view of the nominee's singular achievements, his sitting on the United States Supreme Court would not be in the best interest of all groups and communities that need progressive jurisprudence in order to ensure, as well as enhance, an egalitarian society under law.

There are those who claim that if Judge Thomas is not successful in these confirmation proceedings, the next nominee may hold regressive views on constitutional rights and liberties. That is not of major concern, neither is the nomination of another minority to the Court a matter of priority. Our concern and the reality that has to be met is that justice must serve the poor, the unhappy, the children, and the aging. It has been said and manifested in a form of a statue that justice is "blind". For those in this society and the world, the blindfold should be lifted

from justice's eyes so it can clearly see that all is not well and the scale in its hand is tilted. That scale needs to be balanced -- made equal. That can only be arrived at if justice can see the human needs that confront our modern era.

The Progressive National Baptist Convention was founded in 1961 over the issue of civil rights in keeping with one of its most widely known pastors, Rev. Dr. Martin Luther King, Jr. It is in his spirit and memory that our Convention maintains a progressive outlook on life.

We are not convinced, there are too many unanswered questions for us to support the confirmation of Judge Clarence Thomas at this time.

Supreme Court justices cannot be recalled.

Thank you Mr. Chairman, and members of the committee.

Statement delivered on behalf of the Progressive National Baptist Convention, Inc., by Rev. Mr. Archie Le Mone.

RESOLUTION ON THE CLARENCE THOMAS NOMINATION TO THE SUPREME COURT

Preamble

1. The U.S. Supreme Court is our nation's highest court. The Justices have been delegated the authority to interpret the laws that affect all citizens.

2. President George Bush's nomination of Judge Clarence Thomas to fill the vacancy of retiring Justice Thurgood Marshall, provides the country a unique opportunity to reflect on our current dilemma in the field of American politics.

3. There is a "conservative trend" sweeping the body politic. The hard won gains of the Civil Rights Movement are being eroded by a series of court decisions.

4. We, the members of the Progressive National Baptist Convention, meeting in Pittsburgh, Pennsylvania, view the nominee, Judge Clarence Thomas, as a product of African American descent. He has seen the injustices that afflict people of color.

5. While we affirm his humanity, believing that God's redeeming grace can transform our brother into a new creature, we must set forth a standard by which the U.S. Senate and citizenry must judge this nominee.

6. America is a multiracial society. Therefore, a justice on the U.S. Supreme Court must be sensitive to human rights and social alienation. We affirm the right of every individual (Black or White) to hold whatsoever view he or she may wish, be it liberal, conservative, or otherwise. Moreover, we recognize that diversity of opinions and points of view are necessary within our community.

7. However, the 21st Century American agenda demands a Judiciary that is not locked into ideological warring factions. The U.S. Supreme Court must provide equal justice under the Laws of the Constitution.

8. The U.S. Senate hearings of September 9, 1991, scheduled for Washington, DC, shall afford the nominee an opportunity to express views on a variety of topics. His record to date leaves many citizens troubled over his basic judicial philosophy.

RESOLUTION

9. WHEREAS, the Progressive National Baptist Convention (PNBC) was born out of a climate and an experience of turmoil and violence, struggling for the rights, freedoms, and liberties of its constituency and all people; and

10. WHEREAS, PNBC is the only such convention that stood forth and championed the cause of Civil Rights, while providing a home and a national platform for one of God's most dynamic servants and our beloved leader and brother, the late Dr. Martin Luther King, Jr.; and

11. WHEREAS, African Americans, other racial minorities, and women have historically been victims of immeasurable crimes of hatred and oppression, discrimination in the labor force and denied access to public and private institutions in the United States for reasons unrelated to their merit and qualifications, but based on race and gender preferences; and

12. WHEREAS, the aforementioned victims of racial hatred and discrimination have appealed to the Supreme Court of the United States for equal protection of their constitutional rights; and

13. WHEREAS, the U.S. Supreme Court is a critical national institution, which should combine scholarly constitutional interpretation with a deep appreciation of the concrete history and social reality of the American people; and

14. WHEREAS, a proper consideration of the nomination of Mr. Thomas to the U.S. Supreme Court requires not only a careful examination of the qualifications, outlook, and history of Mr. Thomas, but also the intent, history, and policy direction of President Bush; and

15. WHEREAS, the Reagan/Bush and the Bush/Quayle administrations have reflected a consistent policy direction with clear and measurable negative impacts on the African American community for over ten years; and

16. WHEREAS, this policy direction includes deregulation and structural unemployment, removal of anti-discrimination protection for historically oppressed minorities, reduction in health care, cutbacks in social assistance for the poor in general, and a major redistribution of wealth away from the middle class and the poor towards the already wealthy and super-rich; and

17. WHEREAS, the political tactics and strategy of Mr. Bush reflect sinister manipulation of race, as in the case of Willie Horton; and

18. WHEREAS, the policy direction of the last ten years has resulted in unprecedented impoverishment of the working poor and the bottom strata of the population, yet at the same time the unprecedented growth of wealth among the upper strata of the population; and

19. WHEREAS, Mr. Thomas has been a part of the conservative trend for the entire ten year period as an aid to Senator Danforth, as EEOC Director, and as a federal circuit court judge; and

20. WHEREAS, we are called to know a tree by the fruit it bears and

21. WHEREAS, the record (fruits) of Mr. Thomas shows a consistent pattern, most clearly reflected in his years as Director of EEOC, of joining the Bush policy direction of removing anti-discrimination protection for African Americans, denying equal pay for equal work for women, and failing to act decisively on age discrimination cases brought before the EEOC; and

22. WHEREAS, the Thomas nomination is part of an accelerated trend of Bush to strengthen the power, prestige, and influence of a network of people, who are more effective in opposing the gains of the Civil Rights Movement and a progressive African American agenda than white conservatives because they appeal to the commendable reluctance of African Americans to not publicly oppose other African Americans; and

23. WHEREAS, the trend to strengthen the prestige, power, and influence of African Americans who (objectively, regardless of personal intent) promote confusion, division, and lay the African American community open to further abuse and exploitation, and is therefore dangerous, short-sighted, and unfaithful to the best tradition of struggle and sacrifice of the African American people; and

24. WHEREAS, the nomination of Mr. Thomas for U.S. Supreme Court Justice should be considered in context and as part of a dangerous trend that does not measure up to the principles on which the PNBC was founded and which has guided its existence; and

25. WHEREAS, we, the PNBC, know that our hope still is in God and never was in a cynical Republican government nor in a luke-warm Democratic government.

26. BE IT THEREFORE RESOLVED that the Progressive National Baptist Convention opposes the nomination of Judge Clarence Thomas for the U.S. Supreme Court until or unless in his Senate hearings he expresses support of the Constitutional rights won in our hard fought struggles for civil rights.

The CHAIRMAN. Our next panel testifying in support of Judge Thomas' nomination includes the following: Sheriff Carl Peed, of Fairfax County, VA; Johnny Hughes is no stranger to this committee and has testified here on a number of occasions, a captain in the Maryland State Police who is testifying on behalf of the National Troopers Coalition; Bob Suthard, former superintendent of the Virginia State Police, who is testifying on behalf of the International Chiefs of Police; James Doyle III, former assistant attorney general of the State of Maryland; Donald Baldwin on behalf of the National Law Enforcement Council and a frequent person before this committee whom we rely on a great deal; and John Collins on behalf of Citizens for Law and Order. Welcome back, Mr. Collins.

Let me say to all the panelists it is a delight to have you here. We have spent a lot of time together. Usually it is on matters relating to law enforcement issues, but it is nonetheless a pleasure to have you here to testify on behalf of Judge Thomas.

Sheriff Peed, would you—unless the panel has——

Mr. BALDWIN. Mr. Chairman, I have got a very brief statement, and I would prefer—and I have discussed it with these gentlemen. If I could just put this in, make this brief statement, and then defer to them. My point is that this is a small segment of the law enforcement community, but I want to state that this represents what I consider the broader aspect and the overwhelming majority. So I will just make this brief statement and then defer, if I might, with your permission.

The CHAIRMAN. Surely. However the panel would like to proceed.

PANEL CONSISTING OF DONALD BALDWIN, NATIONAL LAW ENFORCEMENT COUNCIL; CARL R. PEED, SHERIFF, FAIRFAX COUNTY, VA; JOHNNY HUGHES, NATIONAL TROOPERS COALITION; JAMES DOYLE III, FORMER ASSISTANT ATTORNEY GENERAL, STATE OF MARYLAND; BOB SUTHARD, INTERNATIONAL CHIEFS OF POLICE; AND JOHN COLLINS, CITIZENS FOR LAW AND ORDER

Mr. BALDWIN. Mr. Chairman and members of the Senate Judiciary Committee, I am Donald Baldwin, the executive director of the National Law Enforcement Council. The NLEC is an umbrella group for 14 member organizations. Through these organizations we reach some 500,000 law enforcement officers throughout the country and certainly the overwhelming majority of our law enforcement community.

Now, these gentlemen here will represent the views of their organizations, and I can state that they will represent the views of our member organizations as well.

We have endorsed Judge Thomas for the U.S. Supreme Court because we feel that Judge Thomas will assure that justice will be carried out through the right interpretation of our laws as they have been enacted by our legislative bodies. Judge Thomas in our view will interpret the Constitution as written. Legal scholars have determined that the nominee believes that a Supreme Court Justice, or any other judge, should not use his position as a judge to legislate new laws not already on the books. This is most important