

very impressed with his open-mindedness, his interest in maintaining readings, discussions, involving himself in the life of the mind, which I think is extremely important, based upon my experience with judges in judicial education.

I have also been struck by his combination of strength and determination that have caused him to rise above the serious obstacles that he faced in his early life and with his sensitivity and his compassion. I have had a number of conversations of an informal nature about life, about education of children, the kinds of things that judges frequently talk about in the cafeteria across the street from the courthouse over coffee and a roll, and I have found him always to be a person of keen intellect, very good humored, very approachable and very open-minded.

In many ways, he reminds me of my own father, who was a State trial judge in Indiana and then a Federal trial judge for almost 35 years. My father was stricken with polio very early in his life, and I found that rising above that early disaffection that occurred to him, he had unusual strength and determination, but he also had unusual sensitivity and compassion. I see that in Judge Thomas and I heartily recommend him for your approval.

Thank you.

Senator KOHL. Thank you very much, Mr. Kern.

Ms. Bracher.

#### STATEMENT OF BARBARA K. BRACHER

Ms. BRACHER. I am honored to speak before the committee on behalf of the confirmation of Judge Clarence Thomas. The report I submitted on Judge Thomas' criminal law and procedure opinions to this committee last week includes a comprehensive review of Judge Thomas' judicial opinions while serving on the D.C. Circuit Court of Appeals. This report was distributed last week to members of this committee, but I would like to request that it be submitted to the record of these hearings.

I want to highlight three major points from the report that I hope will be helpful to this committee in assessing Judge Thomas' judicial philosophy: first, Judge Thomas has demonstrated his strict adherence to the rule of law; second, his observance of controlling precedent and accepted principles of statutory construction; and, third, his faithfulness to prudential limitations on the scope and standard of review of the Court.

I have chosen these three principles because they are premised on the first ideals from the Preamble of our Constitution: to establish justice and ensure domestic tranquility. Judge Thomas' opinions reflect a true understanding of these words.

It is in this context that Judge Thomas faithfully construed the law to preserve the rights of individuals and the rights of society to be safe in their own homes. Judge Thomas interpreted many statutes in his opinions: the Federal Sentencing Guidelines, Rules of Evidence, Rules of Appellate Procedure, Criminal Procedure, among others.

When construing statutes, Judge Thomas utilizes accepted principles of statutory construction as established by Supreme Court precedent to first look to the actual text and the specific terms of

the statute. He has refused to read statutes in a textually awkward manner, interpreting the statutes to rely upon inferences and loose transitive implications.

Judge Thomas reviewed lower court and circuit court precedent to identify prior standards and assure consistency in the criminal laws. Judge Thomas observed the rule of the Court of Appeals in its limited scope of review while mindful of the standard of review imposed upon the particular appeal before the Court.

Judge Thomas has refused to go beyond the issues presented to the Court or to decide issues not brought before the Court of Appeals.

Judge Thomas has a scrupulous regard for the rights of the accused, mindful of the sufficiency of the evidence presented by the Government. In overturning a firearms conviction in the case *Long v. U.S.*, Judge Thomas found that the Government had failed to meet its burden to properly satisfy the elements of the alleged crime.

I want to conclude by saying that it is crucial to look at Judge Thomas' writings since becoming a member of the judicial branch. The review of what Judge Thomas has actually written as a member of the judicial branch reveals that Judge Thomas is a thoughtful jurist with a keen intellect. He interprets statutes as Congress has written and follows controlling precedent, mindful of the role of the Court in its review and the cases before it.

Judge Thomas' criminal law opinions evidence his judicial restraint, his commitment to established rules of law, utilizing traditional tools of statutory construction and thoughtful attention to decide only the issues required in a particular case. These writings affirm that he will be an outstanding addition to the Supreme Court, one who will judge according to the law rather than to his own personal predilections.

Judge Thomas' nomination should receive confirmation by the Senate to serve on the Supreme Court.

[The report prepared by Ms. Bracher follows:]