

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

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

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

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

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

JUDGE THOMAS HAS TESTIFIED BEFORE CONGRESSIONAL COMMITTEES AN EXTRAORDINARY 56 TIMES (55 PUBLISHED; 1 UNPUBLISHED).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

THE CONCLUSION THAT WE HAVE REACHED IS THAT JUDGE THOMAS FAILED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF REP. CRAIG A. WASHINGTON

Mr. WASHINGTON. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

The CHAIRMAN. Thank you.

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

Senator KENNEDY. Thank you, Mr. Chairman.

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

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

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

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

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

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

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

Congressman Lewis.

STATEMENT OF HON. JOHN LEWIS

Mr. LEWIS. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. Chairman.

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

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

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

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

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

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

Congressman Conyers.

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

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

Mr. CONYERS. Thank you very much.

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

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

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

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

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

The CHAIRMAN. Does anyone else wish to speak to either point?

Yes, Congressman Stokes.

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

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

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

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

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

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

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

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

The CHAIRMAN. Thank you. Mr. Washington.

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

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

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

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

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

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

The CHAIRMAN. Well said.

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

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

Senator THURMOND. No. Go ahead.

The CHAIRMAN. All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. Thank you.

Senator Thurmond.

Senator THURMOND. Thank you.

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

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

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

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

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

Mr. STOKES. Certainly.

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

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

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

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

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

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

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

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

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

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

Mr. WASHINGTON. Yes, sir.

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

We are glad to have you here.

The CHAIRMAN. Thank you, Senator.

Senator Hatch.

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

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

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

The CHAIRMAN. Thank you very much.

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

Senator GRASSLEY. Thank you.

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

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

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

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

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

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

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

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

And then going on to quote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

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

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

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

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

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

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

Congressman Conyers, may we start with you?

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

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

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

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

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

Senator SPECTER. Congressman Stokes.

Mr. STOKES. Thank you, Senator Specter.

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

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

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

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

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

Senator SPECTER. Congressman Owens?

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

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. Thank you.

Senator Simpson.

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

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

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

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

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

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

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

The CHAIRMAN. Thank you, Senator.

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. You may be excused. Thank you.

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