The CHAIRMAN. Thank you very much, Doctor.
Mr. Moffit.

STATEMENT OF WILLIAM B. MOFFITT

Mr. MOFFITT. Senator Biden, I am here today representing the National Association of Criminal Defense Lawyers. We have submitted a report and ask that that report be made a part of the record.

The CHAIRMAN. The entire report will be placed in the record.

Mr. MOFFITT. Senator, we are the people who day-by-day live in the courtrooms of this country. It is the goal of our profession to see that the lofty notions of natural law and constitutional rights and duties are applied at the lowest level of our judicial process.

For us, liberty is not an abstraction; it is at issue every time a criminal lawyer, along with a client, steps before the bar of the court. Perhaps more importantly in this era of an expanded death penalty, we are confronted with situations where the life of the client is at issue before the court.

Today, hopefully, I speak not only for the attorneys who work in the vineyards of justice but for our clients, those who are accused of crime, who are presumed innocent, who seek merely the justice that the Constitution guarantees, and who are seldom, if ever, heard in these corridors.

It is not easy today to practice criminal law. The conventional wisdom is that society has been too lenient, and thus the process by which we adjudicate guilt and innocence has been radically altered in the past 10 years, resulting in a stream of convictions and incarceration unprecedented in our history.

This is particularly true when we consider the plight of young African-American males, one-quarter of whom between the ages of 19 and 27 are incarcerated or under some form of court-ordered supervision.

Recent studies indicate that young African-Americans are being incarcerated at rates higher than their South African counterparts.

Despite these astounding statistics with regard to the rate of incarceration, the assault on judicial precedent which forms the basis of our criminal jurisprudence continues. Such well-established precedent as *Miranda* and *Boyd* are presently under attack. Last term, in what can only be called the end-of-the-term massacre, criminal precedent was cast aside like derelicts floating on the sea of the law. Stare decisis was redefined, and any 5-to-4 Supreme Court decision was held to be of questionable validity. Coerced confessions can now be introduced and convictions sustained on the basis of harmless error.

Against this backdrop, Senator, we are treated on the evening news to the brutal beating of Rodney King and other citizens accused of crime by the forces of authority.

At this crucial moment in the history of our country, the one individual on the Supreme Court who knew what it meant to represent a citizen accused of a crime, or a citizen denied franchise, or a citizen despised by the community because of his color or political belief, has removed himself from the field of battle and retired to a much-deserved rest.

It is in this context that the nomination of Clarence Thomas must be viewed. Simply put, Senator, when the door to the conference room at the Supreme Court is closed, what does Clarence Thomas bring to the table? Most, if not all, of the justices currently on the court bring to the conference room their well-developed theories of constitutional law. What will this man—who has stated that he has no fixed constitutional concepts, who has repudiated many of his prior statements and writings—do when confronted with the strongly held consitutional views of other justices? Will the color of his skin and the deprivation of his youth be sufficient to withstand such a challenge?

His supporters say yes. His testimony says "Trust me." Where constitutional rights and fundamental liberties are at stake, the risks are simply too great to trust him.

And what of his legal experience? Where will he reach beyond the color of his skin and the deprivation of his early life to develop a constitutional vision that will compete with those of the other justices—a man who can name only two Supreme Court decisions of the last 20 years which he considers important; a man who has never discussed *Roe* v. *Wade,* a decision, incidentally, which he considers important; and a man who dismisses his own public remarks as the musings of an amateur political scientist?

As practicing lawyers who represent living human beings, we do not seek an advocate for the court. We seek a person who simply understand what it is to represent the poor, the deprived, and the despised, and to walk into an American courtroom questioning whether the process will treat your client fairly. The many days of hearings before this committee have failed to establish that understanding in this nominee. The hearings have left more questions than answers, and certainly nothing other than his race has surfaced to indicate the type of understanding and the depth of experience that commends one to a seat on the Supreme Court. Clarence Thomas is simply not the man for this time.

Finally, sir, I ask you to use the criteria that Clarence Thomas urges to be used in evaluating others for employment. Under that criteria, the race and economic background of the applicant are not by themselves sufficient to qualify the person for the job. This committee is entitled to judge Clarence Thomas by his own criteria. We believe that if so judged, he cannot be confirmed.

[The prepared statement of Mr. Moffitt follows:]