

with the exception of quotas, he supports many affirmative action remedies, because these remedies are truly necessary and fair.

Both Judge Thomas and I have seen the pernicious effects of quotas. We both know many outstanding, highly trained and capable black American professionals and business people who are frustrated, because they are viewed only as members of a group who got their positions through quotas, rather than because of their qualifications as individuals. Their true achievements are being devalued and obscured.

Like the leaders of the organizations who oppose him, Judge Thomas understands that, unfortunately, many black Americans still suffer race discrimination and other forms of basic unfairness, but he differs with these leaders only as to how to attack the problems that face black Americans. But this difference, I submit, should not affect this body's decision as to whether to confirm Judge Thomas' nomination to the U.S. Supreme Court.

Black Americans need not and should not all think alike, and this diversity of opinion within the black community on how black Americans should advance is deeply rooted in our history and has served black Americans and this Nation well over the years.

Any distinguished American lawyer, with solid public policy experience, especially one like Judge Thomas, with his background, his intellect, his character, and his integrity, is needed not only on the United States Supreme Court, but inside the Court in its deliberations on a variety of issues, and not just on affirmative action.

For these reasons, I respectfully urge you to confirm the nomination of Judge Thomas to the United States Supreme Court.

Thank you.

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

Mr. Kern.

### STATEMENT OF JOHN W. KERN III

Mr. KERN. Mr. Chairman, I am pleased to be here this morning to testify on behalf of myself and not the Judiciary Leadership Development Council, which I serve as President. I am here to attest to Judge Thomas' combination of open-mindedness and an inner strength and a compassion which I have found in working with him in connection with the continuing judicial education efforts of the Judiciary Leadership Development Council.

President Lyndon Johnson appointed me to the District of Columbia Court of Appeals in 1968. In 1984, I took senior status and became the Dean of the National Judicial College, in Reno, NV, and I know a number of Wisconsin judges who came to our college in seeking continual judicial education. I came to have a great interest in the concept of judges continuing to keep open minds and express a willingness to learn new ideas and to pursue continuing judicial education.

I returned to Washington, DC, and I perform judicial services part-time for my court, but I also direct the Judiciary Leadership Development Council in providing continuing education of judges.

Judge Thomas is one of a number of judges, judicial educators, and State court administrators that are on our advisory committee. I have had a number of conversations with him and I have been

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