

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

Mr. Kirkland, in 1988 when the committee was considering the nomination of Justice Kennedy, you wrote Chairman Biden of your organization's concerns with the nomination. You said at that time, and I quote: "In a number of areas of critical concern to working people, Judge Kennedy's record on the United States Court of Appeals for the Ninth Circuit is quite troubling, and his record is only somewhat reassuring in other areas." You went on to say that "he has shown only a limited appreciation of the legitimate needs and aspirations of women, of minorities, and of the other members of this society who over the years have been denied equal rights and opportunities." And yet in that statement you urged that Justice Kennedy be confirmed.

So what are the differences this time?

Mr. KIRKLAND. The differences this time, Mr. Chairman, are matters to some extent of degree. We had differences, of course, with the positions that typified Justice Kennedy's history, but we must acknowledge that those differences still left him within the spectrum of differences of a variety that don't dictate or urge us or compel us to oppose his nomination.

We believe that Judge Thomas' record is outside of that spectrum. And I think the fact that we did not oppose and in fact supported the confirmation of Justice Kennedy demonstrates quite fully that we do not go into taking such a position casually or without considerable concern and study and reluctance.

I think it demonstrates that our forbearance in these matters is very considerable, and perhaps in the light of Justice Kennedy's subsequent position on the court, perhaps that forbearance was misguided. We do not always do those things that we ought to have done; we sometimes do those things we ought not to have done, being human.

Senator KOHL. Thank you very much.

Senator Thurmond.

Senator THURMOND. Mr. Kirkland, we are glad to have you here. I have no questions. Thank you.

Mr. KIRKLAND. Thank you, Senator.

Senator KOHL. Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman.

I too want to join in welcoming Lane Kirkland, who speaks for working men and women all over this country. We are fortunate to have a leader of working men and women prepared to take positions on many of the important issues of our time that affect working men and women.

I am interested in why you think that the interests or the rights of working men and women might be threatened with Judge Thomas on the court. Is it perhaps the way that he views various statutes and construes them in an apparently extremely narrow way? I won't ask you about his statements opposing minimum wage or Davis-Bacon or parental leave, or his recommendation actually for the abolition of the Labor Department, the Agriculture Department—an agriculture department that looks after a number of different programs, but certainly health and safety issues, in terms of food supply, obviously, and a wide range of different issues including occupational health and safety.

Do you draw from the range of different comments on a wide variety of different economic issues that Judge Thomas would not provide the kinds of protections for working men and women that you think should be at least evidenced by a nominee to the highest court of the land?

Mr. KIRKLAND. His record, as we have found it on the record over a significant period of time and up until very recently, has been one of consistent expressed and strongly expressed hostility to the pattern of laws and social and economic programs that have been developed in this country through experience and after considerable sacrifice, and after disasters have occurred and proven their necessity. His record in that regard has been consistent, and I have no reason to believe that they do not represent his deeply-held views.

I cannot believe that they were simply opportunistic expressions designed for a particular audience.

Senator KENNEDY. So you think that his expressions about entitlements, for example, his opposition to the economic interests of working men and women, and his expressions about, as you point out, hostility in terms of a wide range of different legislative initiatives to try and provide some degree of economic justice, you think that the correct interpretation of those statutes—not so much with regard to this particular question about the constitutionality of them—most of them obviously have been upheld from the constitutional point of view—but there are going to be many statutes that affect working men and women that are going to be interpreted by the court over the period of the next 10 or 15 years, and it is difficult for me to read the past statements that he has made in terms of the economic rights that would protect working men and women and not feel that his construction of those particular statutes that are passed to protect the economic interests of working men and women would not be threatened.

I have no further questions. I thank the chair.

Senator KOHL. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Kirkland, one of the questioning areas that I pursued with Judge Thomas involved a bitterly contested dispute with a labor union in New York City, Local 28 trade union. It was a case which arose back in 1964 when the New York Human Relations Commission complained about discriminatory practices in hiring with the union. They went through a series of court tests with the district court, finding the union discriminating and then in contempt and being upheld by the court of appeals, and more contempt citations, and finally more than 20 years later, getting to the U.S. Supreme Court. The EEOC during the period of chairmanship of Judge Thomas came in on behalf of the union in that case, and the record is not clear whether that was the solicitor's view or whether it was the view of the commission. But EEOC came in on behalf of the union, contending that there ought not to be a remedy which would correct discrimination other than against the specific individuals who were discriminated against, and it should not be directed to put the class in a position that it would have been but for historical discrimination.