I will leave it to you since, as I understand it, you are both representing the Lawyers Committee Under Law. Is that correct?

Mr. BROWN. That is correct.

The CHAIRMAN. You just tell the Chair how you wish to proceed and in what order.

Mr. BROWN. I believe I will make the initial statement on behalf of the Lawyers Committee, followed by Dean Griswold.

The CHAIRMAN. Thank you very much. You go right ahead, Mr. Brown.

STATEMENTS OF A PANEL CONSISTING OF WILLIAM H. BROWN, ON BEHALF OF THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW AND ERWIN N. GRISWOLD, ON BEHALF OF THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Mr. BROWN. Mr. Chairman and Senators, my name is, as has been indicated, William H. Brown III, and I am cochairman of the Lawyers Committee for Civil Rights Under Law.

Dean Erwin N. Griswold and I are here today on behalf of the Lawyers Committee. Ninety members of our board of trustees and 66 directors and trustees of local lawyers committees have submitted a statement urging the members of this committee to oppose Judge Clarence Thomas' appointment as an Associate Justice of the Supreme Court of the United States.

We have also submitted the concurring statement of one board member and three dissenting statements signed by a total of eight board members.

The Lawyers Committee for Civil Rights Under Law is a bipartisan legal organization established in 1963 at the request of President John F. Kennedy to enlist the assistance of the private bar in the enforcement of civil rights.

Judge Thomas has rejected much of the decisional framework on which our Nation's protection of civil rights is based. He has argued for a limitation of the disparate impact principle enacted by Congress in 1964, recognized by Chief Justice Burger for a unanimous Court in *Griggs* v. *Duke Power Company*, and reaffirmed by Congress in enacting the Equal Employment Opportunity Act of 1972. He has disagreed with the legal theories and evidentiary bases necessary to challenge systemic discrimination and has opposed the temporary race- and gender-conscious remedies the courts have often held to be necessary in providing effective relief for systemic discrimination. Regrettably, we have not found the depth of analysis we must expect and the Nation should require of any nominee for the Supreme Court, especially one who proposes a rejection of the hard-won legal foundation for established protections for equality.

In this regard, it is not enough that the nominee has repudiated before this committee so much of the thought and conclusions to which he laid claim prior to his nomination. This committee now has nobody at work on which to base its judgment of the nominee's own judgment. A critical point is that although *Griggs* and even *Wards Cove* agree that an exclusionary practice should not simply be assumed to be proper and that evidence to show its propriety is necessary, Judge Thomas has criticized this requirement as assum-

ing some inherent inferiority of blacks, Hispanics, and other minorities and women by suggesting that they should not be held to the same standard as other people.

His reference to even this remaining common ground between *Griggs* and the later decisions in *Wards Cove* as outside the plain meaning of the term discrimination necessarily raises the question whether he continues to accept this basic premise of *Griggs* or whether he would even go further than *Wards Cove* and abolish the disparate impact standard altogether. Judge Thomas' criticism of *Griggs*, the guidelines, and the proper use of statistical proof represent a radical, unexplained departure from his early endorsement of these tools for approving and remedying discrimination.

On affirmative action, the bottom line with respect to Judge Thomas' alternatives for affirmative action is that they are not alternatives. They reach proven cases of intentional discrimination against identified victims, but much of what is considered to be discrimination today in this country under existing law cannot be proved under that standard or does not constitute that type of discrimination, including most disparate impact employment situations.

There is much legitimate concern, and Judge Thomas expresses such concern, over what are appropriate affirmative action remedies in a particular case of proven discrimination, or in the settlement of discrimination claims, or in legislation providing for minority set-asides. The tailoring of equitable relief in this area must truly be equitable, and that is an enormously difficult task. Judge Thomas' answer is to do away with the remedy entirely, and that strikes at the very heart of established civil rights jurisprudence long recognized by the Congress, successive administrations, and the courts.

Judge Thomas has criticized most of the judicial and statutory building blocks for the protection of civil rights in this country, not only admittedly controversial and difficult court decisions and governmental policies, but also those widely accepted as fundamental to the protection of civil rights for every American. Judge Thomas has also attacked the Court and the Congress for their role in laying down these building blocks, arguing instead for a limited Government that would leave Americans with rights but uncertain remedies or no remedies at all for violation of those rights.

Moreover, we believe that Judge Thomas' changes of position with respect to matters of fundamental importance do not demonstrate the reflection before reaching important conclusions which is essential in a Justice of the Supreme Court. We urge the Senate not to confirm this nomination.

[The prepared statement of Mr. Brown follows:]