Mr. Chairman, it is respectfully submitted that Judge Roberts's 25-year record with respect to matters pertaining to civil rights demonstrates an unwavering commitment to equal protection and a comprehensive understanding of our civil rights laws that would make him an outstanding addition to the Supreme Court, particularly in the capacity of Chief Justice.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kirsanow appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Commissioner.

Our next witness and final witness on this panel is Judge Nathaniel Jones, who served as Executive Director of the Fair Employment Practice Commission, was an Assistant U.S. Attorney for the Northern District of Ohio, directed NAACP litigation as general counsel for 10 years, a graduate of Youngstown State University, both Bachelor's and law degrees and served on the Court of Appeals for the Sixth Circuit and is now retired.

Judge Jones, thank you for coming in today and we look forward to your testimony.

STATEMENT OF NATHANIEL JONES, RETIRED JUDGE, U.S. CIRCUIT COURT OF APPEALS TO THE SIXTH CIRCUIT, OF COUNSEL, BLANK ROME LLP, CINCINNATI, OHIO

Judge JONES. Thank you, Mr. Chairman and Senator Leahy and esteemed members of the Committee. I am honored to have this opportunity to appear as a witness today to, I hope, assist you to more effectively evaluate the fitness of John G. Roberts to be confirmed as Chief Justice of the United States by providing a historical perspective.

Mr. Chairman, I ask that my full statement be entered into the record.

Chairman SPECTER. Without objection, Judge Jones, it will be a part of the record.

Judge JONES. Thank you. My acceptance of your invitation to offer testimony was prompted by my conscience and is driven by a profound obligation to introduce into the record a historical perspective, and in doing so, I join with my colleague, John Lewis, whose life is a personification of courage and I wish to add to his description of the struggle for civil remedies and civil rights remedies.

You are confronted here, I suggest, with a serious constitutional and moral responsibility. You are considering under the Constitution's Advice and Consent Clause the fitness of a Supreme Court nominee who has in the past argued against the use of Federal power to eradicate the vestiges of slavery and the badges of servitude. This record triggers serious questions and a vigorous inquiry into the whys.

So much of the nominee's advocacy as a Government lawyer and counselor was in the direction of against the implementation of civil rights remedies. There has been a lack of balance.

While I appear in my own right, more importantly, I am invoking the voices of distinguished legal giants whose voices have been stilled by time: Dean Charles Hamilton Houston, Justice Thurgood Marshall, Judge William H. Hastie, Clarence Mitchell, James A.

Nabrit, Judge Spottswood Robinson, Judge A. Leon Higginbotham, and many others who have my, and I trust your, deep and enduring respect.

These individuals believed in the Constitution and they hoped that government would step up and protect the rights of the minorities and the persons who were victims of majoritarian excesses. They fashioned a strategy for using the law and the courts to attack racial segregation. They set the stage for the development of remedies to remove the stain of racial segregation that law and the courts imposed upon this land.

You may ask why I invoke their names and speak in the voice of these towering legal giants and hold up the contributions they made to advancing civil rights jurisprudence. My reason is twofold. First, my professional and personal experiences qualify me to do so. Second, since he was nominated by the President, serious questions have been raised concerning Judge Roberts's views about the relevance and legality of remedies aimed at ending racial discrimination.

Unfortunately, few Americans know or have focused on or are familiar with the history of the myriad ways the posit of law and legislatures and courts reinforced and perpetuated racial discrimination in America. It is up to this Committee, therefore, to assure that, at the very least, the next Chief Justice of the United States understands that history and, most importantly, why remedial action was and continues to be necessary. Those courageous souls who laid the foundation for overturning decades of legally enforced racial segregation are calling out to you, and I echo their voices, to respect their labors and heed their lessons.

One's fitness to be the Chief Justice transcends stellar academic achievements and acknowledged professional competence. The nominee's views and his documented activist attempts to thwart the Federal court's efforts to dismantle segregation schemes that the courts themselves permitted to be erected and sustained bring into play something much more fundamental than technical skills. The critical question before you is one of values, not competence.

To understand why this is true, one need to only consider the most wretched decision the Supreme Court ever handed down in a case of human rights, *Dred Scott* v. *Sanford*. The author of that decision, Chief Justice Roger Taney, was undoubtedly highly qualified from a technical and professional standpoint, yet faced with the fundamental question of whether a former slave had standing to sue to retain his newly acquired free status, Justice Taney wrote that black people were not persons within the meaning of the Framers of the Constitution.

Similarly, Henry Billings Brown, the author of the 1896 *Plessy* v. *Ferguson* decision, had impressive professional credentials and academic, as well. He was a graduate of both Harvard and Yale, and his prior judicial experience was on the Sixth Circuit Court of Appeals, but he lacked the values that sensitized him to understand why the 13th, 14th, and 15th Amendments had to become a part of the Constitution.

On the other hand, it was Justice John Marshall Harlan, the lone dissenter, a graduate of a much smaller law school, the son

of slave owners, who gave us the final word, and it is his word that has rung through the years.

Gentlemen and lady, I would conclude with this observation. Abraham Lincoln stated in his famous speech in 1862 to the Congress that, fellow citizens, we cannot escape history. And it was George Santayana who said, those who cannot remember the past are condemned to repeat it.

But given the nature of the exchanges that I have observed taking place this week in connection with the hearings, I would leave with you the words of Dr. Martin Luther King. He asked and answered these questions. Cowardice asks the question, is it safe? Expediency asks the question, is it politic? Vanity asks the question, is it popular? But conscience must ask the question, is it right? I leave you with those challenges.

Chairman SPECTER. Thank you very much, Judge Jones.

[The prepared statement of Judge Jones appears as a submission for the record.]

Chairman SPECTER. Our practice in the Committee is to have five-minute rounds. In setting the witness list, we had many, many, many, many requests and we have honored as many as we could with some 30 witnesses, equally divided between Democrats and Republicans. Usually, there is a tilt to the majority, but my decision was to divide them equally. We have a very long road ahead of us. This is the second panel on six. It is my hope that the questions will be abbreviated. We wanted to see you and hear you and have your statements and have your views and look you in the eye.

I personally will have just a few questions which I will want to ask, and let me start, Congressman Lewis, with you, with great appreciation for what you have done.

The Voting Rights Act, which we labored through in 1982, and I was there in Senator Dole's office and Senator Kennedy was deeply involved and so was Senator Leahy, so many of us were to get the effects test instead of the intent test so that we have some realistic enforcement of civil rights. Senator Kennedy and I have already conferred. He came to me and said, let us renew the bill this year, the Act this year, if we can. It is the 40th anniversary. We have a jammed agenda, but we are going to try to do that. It will be renewed. It doesn't expire until 2007. I am very much with you on the objectives and what we have to do.

The memoranda which you referred to, and there are quite a number of them, go back to Judge Roberts's days as a young lawyer and he has testified that he was representing a client and we had real battles with the Reagan administration. There is no doubt about that. I was involved in them, notwithstanding the fact that it was my party.

But Congressman Lewis, I would like your views as to how you regarded what Judge Roberts said in explaining his views at the time, or what the memoranda said, which he said were not necessarily his views, and you have to evaluate that, contrast it with the very close questioning by Senator Kennedy and others where he did not raise objections. He said he did not have an agenda to turn back the clock.