

The CHAIRMAN. Reverend Brown, I must say that is the most concise, explicit, and damning bill of particulars against Judge Thomas I have heard, and somewhat convincing.

Reverend Le Mone.

STATEMENT OF REV. ARCHIE LE MONE

Reverend. LE MONE. Thank you, Mr. Chairman and members of the Senate Judiciary Committee.

I am officially representing the Progressive National Baptist Convention, which is headquartered here in Washington, DC. My denomination is one of the historic African-American churches. The Progressive National Baptist Convention has just under 2 million members and approximately 2,300 individual congregations throughout the United States. Many of our congregations are located in States with large urban centers and are attempting to meet the needs that impact on the minority population in those centers.

It is not uncommon to find as many as 1,500 to 5,000 people who belong to one of our churches. I think it can be stated that an African-American Baptist church is made up of a variety of people coming from a diverse socioeconomic, educational, and varying regional background.

The church in typical African-American life has been and is a place not only for worship, but serves the real unmet needs of our communities. The church represents a place where the human rights and values are reconfirmed as a counterpoint, even today, to the historical and contemporary indignities that have been a part of our life experiences in this country.

The Progressive National Baptist Convention wishes this testimony to be viewed as speaking analytically, and not critically, concerning the nomination and possible confirmation of Judge Clarence Thomas.

Because of the unique sensitivity surrounding the Thomas nomination, my convention has not taken lightly the position it has officially adopted at its 30th annual session in Pittsburgh, PA, last month. Permit me to read the relevant paragraph of my convention's resolution:

Be it therefore resolved, that the Progressive National Baptist Convention opposes the nomination of Judge Clarence Thomas to the U.S. Supreme Court, until or unless in his Senate hearings he expresses support for the constitutional rights won in our hard fight and struggle for civil rights.

Subsequent to the above, the convention has concluded that it is not in favor of confirmation, either. There are reasons for this, and I wish to be brief in explaining them. However, I hope that clarity will not be sacrificed on the altar of brevity.

According to public testimony during the course of these hearings, there has been no convincing statement on the part of Judge Thomas that satisfies or satisfied our concerns as expressed in the relevant paragraph as cited by the resolution adopted by the Progressive Baptist Convention in August. Indeed, we have not had answers to questions that are of a paramount importance to us, as a Christian body, a body made up of citizens who are from African ancestry.

We do not and we cannot accept the responses that are cleverly crafted in terms that are just that, responses and not answers. For example, what is the nominee's real position on capital punishment, not his stated willingness to look at the final judgment handed up from lower courts. Is he, like retiring Associate Justice Thurgood Marshall, opposed to capital punishment, or not? Is the nominee radically concerned, as a human being, with not only the question about justice, but the question of human rights, and especially the right to be human?

The nominee has not answered, nor was the question raised about something that goes far beyond personal considerations and values, and that question has to do with ecology. Our world is being systematically eroded, due to improper stewardship of our natural and human resources. The former has to do with the contamination of land, water, and air with toxins, and the latter has to do with the right to earn a decent wage, a fair wage for one's work, and that an employee, whether female or male, should be paid the same salary and enjoy the same benefits for the same jobs performed.

Additionally, those people who have spent their reproductive lives and life earning a living and raising a family should not be discriminated against because they are more expensive to maintain on the job than someone who is much younger and just entering the job market. This is called age discrimination. And it is uncomfortable to know that an overwhelming amount of complaints concerning age discrimination were unattended to during the nominee's tenure as the head of the EEOC. More than that, the statute of limitations has run out and the complainants no longer have any redress or course of action.

It has been said that during his time as a top Government official, Clarence Thomas was ostracized by the established civil rights community. Perhaps this was so, perhaps not. If it is true, the nominee certainly should have gone to the black churches, in order to find a forum in which to express his ideas and views. The black church, especially the Baptist churches, represent a community wherein a wide range of ideas and positions are easily found. He could have, indeed should have, sought out that community in which he would have been welcome, because he is part of that community and he still is.

There are too many critical questions that remain unanswered, repetition for emphasis. Responses are not synonyms for answers to those questions that still linger. When in any human situation, the dialog, the conversation, the debate, or any other exchange takes place, there cannot be more questions at the end than there were at the beginning.

Therefore, in good conscience, even in view of the nominee's singular achievements, his sitting on the U.S. Supreme Court would not be in the best interests of all groups and communities that need progressive jurisprudence, in order to ensure, as well as enhance, an egalitarian society under law.

There are those who claim that if Judge Thomas is not successful in these confirmation hearings, the next nominee may hold regressive views on constitutional rights and liberties. That is not a major concern at this time, nor is it the concern of having another

minority on the Court. Our concern, in reality, is that our needs have to be met as human beings and as citizens, not only of this country, but indeed of the world.

What we need in terms of actualized concern from the bench, whether the High Court or lower appellate courts, is to see that justice indeed is implemented, that justice must serve the poor, the unhappy, the children, and the aging. It has been said and manifested in the form of a statue that justice is blind. For those in this society and world, the blindfolds of justice should be lifted off justice's face, so that justice can see clearly that all isn't well, and the scale in its hands is tilted. The scales of justice need to be balanced, made equal. This can only be arrived at, if justice can see human needs that confront our modern era.

The Progressive Baptist Convention was founded in 1961, over the issue, oddly enough, of civil rights. And in keeping with one of its founders, the Reverend Dr. Martin Luther King, Jr., and in his spirit and memory, our convention maintains a progressive outlook on life through the manifestation and theology of the church. Therefore, we are not convinced, we have no recourse to recall an Associate Justice. There are too many unanswered questions for us to be in support of the confirmation of Judge Thomas at this time.

Mr. Chairman and members of the committee, thank you for your attention.

The CHAIRMAN. Thank you, Reverend Le Mone.

I was going to ask the difference between the National Baptist Convention and the Progressive National Baptist Convention. I think it has just been answered.

Now, let me ask you all this question, beginning with you, Mr. Hooks. Without going into all of what prompted each of your organizations to conclude that Judge Thomas should not sit on the Supreme Court, would you be willing to or able to tell us what one thing about Judge Thomas is it that you find most disturbing, offensive, troublesome, that would be the thing above all else that should keep him off the Court, in your opinion? Pick out one thing, if you can, for me.

Mr. Hooks. Senator Biden, I would have to repeat what I said, that in his years as a public official, as Assistant Secretary for Civil Rights in the Department of Education and as Chair of the Equal Employment Opportunity Commission, that he showed a disregard for the affirmative action laws. He was opposed to class action, which has been the classic method that has advanced the cause of minorities.

He favored General Meese's attempt to gut Executive Order 11246, promulgated by President Johnson, expanded by President Nixon, and that he has been opposed to the very things of affirmative action that made it possible for him. He climbed up the ladder, and it would seem that he would hand the ladder down. It is his record and his statement, as a public official, that caused the NAACP, very painfully, to have to oppose his nomination.

May I remind you again, sir, that we opposed his nomination as Chair of EECO and we asked for his resignation after his conduct, so this is not a new thing for us.

The CHAIRMAN. I was going to point that out, that this is not a confirmation conversion on the part of the NAACP. This was the

NAACP's position and, as I recall it, you put it out in a sense in the form of a warning, not warning threat, but a warning to all Members of the Senate and the House that this man did not, in your view, share a point of view that would be beneficial to minority Americans, and I acknowledge that. That has been your position for some time.

Mr. HOOKS. He would not represent the best interests of America at this point in time, a transcendent moment in history. When we are trying to move forward, we think he would move the Supreme Court further back.

The CHAIRMAN. Reverend Brown.

Reverend BROWN. I think that it should be underscored here that the American public ought to take note that three predominantly African-American religious bodies came together. In 1917 and 1919, we split over some internal concerns. In 1960, we split over a question of tenure. But for these bodies to be unanimous in the opposition—

The CHAIRMAN. Now, the three bodies you are talking about the National—

Reverend BROWN. The National Baptist Convention USA, Inc., of which Dr. T.J. Jemison is our national president, and our headquarters is in Nashville, TN, and to my left is the general secretary, Dr. W. Franklin Richardson, of New York City, and also a member of our Civil Rights Commission, Dr. Timothy Mitchell. This is the largest religious body in the world of African-Americans. We represent the masses. We preach to thousands every Sunday morning. I might say parenthetically here that maybe you should be sensitized to that by now, but when election time comes around, basically you politicians will make a beeline to the black church, but not in your white church on Sunday morning.

The CHAIRMAN. Reverend Brown, I have probably spent as much time in your black church as maybe even you have sometimes, on occasion.

Reverend BROWN. Because you know that is where the votes are and that is where the voting population is.

The CHAIRMAN. I am very familiar with your church. Now, what I want to know, though, without giving me political advice on where I should and shouldn't be—

Reverend BROWN. No, I am not giving you advice. I am stating a reality.

The CHAIRMAN [continuing]. I want you to answer the question, if you would, please.

Reverend BROWN. Yes, sir.

The CHAIRMAN. What one thing is the most disturbing about Judge Thomas to you and your church, if you had to single out one thing, one most important reason why you don't want him on the bench, the Supreme Court?

Reverend BROWN. He has forgotten what grandma and granddaddy taught us, to look out for each other, and the Lord has blessed you and you ought to be a blessing to somebody else.

The CHAIRMAN. Now, let me ask the same question of you, Reverend Le Mone, if I may.

Reverend LE MONE. Mr. Chairman, that question is the type of interrogatory that demands prior notice of something like 3 weeks. It is a complex issue. At one time, I would—

The CHAIRMAN. If there is no one issue, then just suggest that.

Reverend LE MONE. Very well. I am a minister and I have to give an example, and I will be brief. I at one time was an unofficial tutor in a law school for black law students, preparing them for moot court examinations during their first year. I asked one of the students, can you give me a layman's working definition of what is the law. The student thought for a moment and said law is life. I would say also that the theology of the church has to do with life here on Earth, not in heaven. We want to enjoy life here on Earth and the benefits of the creation that was made for everybody on this Earth.

Equally, the one thing that disturbs us, as the Progressive National Baptist Convention and our sister convention, the National Baptists and the other National Baptist Convention, numbering over 14 million people, about the nominee is inconsistency.

We are living in a world that is unstable and increasingly becoming so by the day, and I think you know better than I, Mr. Chairman, what I am referring to, because you sit in judgment, economic and political judgment, over the welfare of thousands and millions, if not millions of people around the world.

The world is being constantly destabilized. We must have order, not law and order, but stability. Inconsistency does not lend itself towards stability. That inconsistency profoundly disturbs us.

Finally, Judge Thomas is a man of impeccable credentials. He has studied long and hard and has made a success of himself, but that is not for the individual, that is for the group. There is no self-made man or woman on the face of this Earth. It has to do also with the fact that Judge Thomas may be a good Supreme Court jurist, but not now, and I think it is too much of a risk to have Judge Thomas enjoy OJT, on-the-job training, when there is no recourse. It is much too delicate a situation for us to support his nomination, and certainly not his confirmation.

The CHAIRMAN. I thank you for your answer.

Since my time is up, I yield to my colleague from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

We are glad to have you gentlemen here and appreciate your appearance. I have no questions.

I just want to say, Reverend Brown, that in view of your statement against this nominee here and the manner in which you say it, you sound more like a politician than a preacher.

I have nothing else to say.

Senator KENNEDY. First of all, I want to welcome all of you to the hearing and say how much all of us appreciate the thoughtfulness of your presentation and the seriousness in which we regard these comments.

Mr. Hooks, in your testimony you talk about, on page 22,

Clarence Thomas' logic is straightforward: he sets up a liberal straw man (blacks have tried to abdicate all responsibility for their own liberation because of prejudice) and then knocks it down by citing some anecdotal evidence of those who survived. He infers from the few that everyone can make it.

I think all of us are enormously impressed by the personal qualities of Mr. Thomas—his resoluteness from the earliest of days; his steadfastness, dedication; his hard work; his obvious affection for the members of his family.

And, as I gather, what you are saying there is that you are observing that he was able sort of to make it. All of us admire the qualities which he had in order to be able to make it, and if we were to just interpret it the way that he presented it, it is almost an indictment for those that haven't made it. Somehow, those that have been left out or left behind, it is really because, you know, they haven't had the personal kinds of qualities to be able to emerge.

How real is that in the real world of people of color and women in our society? I think that is really what he is saying, but is that really real world which you are speaking from?

Mr. Hooks. Senator Kennedy, may I answer by saying that there has been presented testimony here that would indicate affirmative action has only benefited those at the top of the ladder. Nothing could be further from the truth. Adam Clayton Powell came to prominence in this Nation marching and demonstrating in Harlem to get black people jobs as sales clerks, as tellers in banks in Harlem in the 1930's.

When I came along in 1949 and was admitted to the practice of law, there was not a single black in the courthouse except janitors and maids and one messenger. There were no blacks in the banks receiving money or using computers or typewriters, as the case might be. There were no blacks working in the stores downtown.

Affirmative action has benefited America and millions of black people who otherwise would not have those jobs. The paper reported this morning that less than 3 percent of black women now work as domestics, when in the 1950's more than half worked, which meant those were the only jobs available.

Affirmative action has worked; it is necessary now. It is a fact that many black people have still not benefited, but that illustrates the whole dilemma that we face. Judge Thomas is apparently saying that we did not need affirmative action, and we certainly do not need it now since we have come so far.

But the fact that there are still 30 percent of black Americans who have not made it does not indicate to me that it is a lack of personal qualities. It means that we must continue affirmative action and reach the unreached. If, in the last 30 years, 40 percent of black Americans have risen from poverty to above poverty so that 70 percent of blacks—and those of us who love America must admit to its successes as well as its failures, and we have had a large number of blacks—millions of them have risen from poverty to at least living above the level of poverty, and it is due to the changed conditions, particularly the aftereffects and the effects of affirmative action.

Now, to be opposed to those programs now—and I read four things here: 11246, which was important in contracts, promulgated by a Democratic President, expanded by a Republican President. I talked about the effects test in the Voting Rights Act, which we fought, as you know, very well because you were involved in that

fight, to make sure that we dealt with effects and not intent because that is what counted.

When we look at the total record of Judge Thomas, he seems to be saying that the ladder, which not only brought him up, but brought millions of black Americans up, must now be knocked out. We are concerned about those—as Amos Brown put it, the least of the laws, the left out.

And we therefore feel, if the Secretary of Labor in this administration can talk about a glass ceiling, if the New York paper this morning can report that black men still lag far behind in the rate of pay, it means that affirmative action is necessary if we are going to bring in—that does not mean affirmative action is the only answer; other things must be done, but we cannot discount the major importance of affirmative action. Therefore, by any objective test, Judge Thomas fails in the only area which he has any expertise, supposedly in, and that is the field of affirmative action.

Senator KENNEDY. I would have been glad to hear from the others, but my time is up, Mr. Chairman.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Reverend Brown, in your statement you say that Judge Thomas, “ignores history and today’s realities with respect to race discrimination,” and I would cite an article which Judge Thomas wrote in the Howard Law Journal back in 1987 where he said this: “Major elements of Chief Justice Taney’s opinion in *Dred v. Scott* continue to provide the basis for the way we think today about slavery, civil rights, ethnicity, as well as the way we think of the nation in general,” which is a very strong statement in 1987 for Judge Thomas to say that the tenets of the *Dred Scott* decision remain in America as long as 1987. I think he said that in other of his speeches, and I think that is a factual situation, regrettably, that there is a great deal of discrimination and racism that goes on today.

What we are trying to do is to figure out here what Judge Thomas would do if confirmed, and it is hard to get a picture of him. We have heard a lot about his roots. More important is what he thinks about today. I thought that it was a telling bit of testimony when he commented about sitting in his office in the court of appeals, which overlooks the alley where criminal defendants are brought in, and he commented about African-American young men who were brought in and made a statement on the witness stand that there but for the grace of God goes Clarence Thomas.

And he at one point in his career, in 1983, favored affirmative action with flexible goals and timetables, and then he has turned against it. And a very significant case among many that he was a participant in was the *Lopez* case where he took socioeconomic factors which are supposed to be ruled out, not considered on sentencing, and over the objection of the prosecuting attorney, who said it would open the floodgates, Judge Thomas was a part of a panel which really expanded considerations at sentencing to the background of the young Hispanic who was involved in that case, *Lopez*.

Now, if we are going to try to predict what he is going to do in the future, aside from a lot of technicalities and case interpretation and whether he is going to provide diversity—and I have heard the

witnesses say that they would rather not have an African-American who doesn't stand for their values than have a non-African-American who does stand for their values.

But we have a projection of a likelihood of having a Republican President for some time in the future and I, for one, think diversity is very important on the Court. That means an African-American on the Court.

Now, in this balance, all these factors in mind, why reject this man who has at least a likelihood, a possibility, of a voice on that Court to tell what it is like as an African-American—the feelings about *Dred Scott* and slavery, and the African-American defendants? Why not go that route?

Reverend BROWN. Well, Senator, at this point I say that he has not given me conclusive evidence that he is freed from the ideology that he has espoused, the political alliances that he has maintained, and he has felt comfortable with this climate that is prevalent in this country today.

Second, one man, as I said in my statement, on that Court, though he may be an African-American, in our estimation, will not make any difference at all. The Court is already stacked, and we all know what has been going on historically for the last 10 years.

And I might say here that our concern is to be right. We are not concerned about winning a battle here. As ministers of the church of Jesus Christ, it is our moral obligation to be right, to do justly, to love mercy, and to walk humbly with our God. And then we must keep in mind that before Justice Marshall went on the Court, though he did do a great, outstanding job, we as African-Americans made it. We were able to make a way out of no way. God is still on our side.

The end will not come if there is not a black on that Court, but we have the moral responsibility to stand up and to speak out as prophets and not as politicians, Senator Thurmond. The prophet speaks, words fall, that justice may roll down like waters and righteousness as a perennial stream.

Senator SPECTER. Well, thank you, Reverend Brown. My time is up. I don't think we can find conclusive evidence on anything. I don't think we can do that, and I would feel a lot more comfortable having somebody in that conference room who understands African America.

Reverend BROWN. Well, he is indicating he doesn't understand. He has misrepresented our history, he has also misrepresented the NAACP's position, suggesting that we were only interested in civil rights, while he hasn't read possibly the works of W.E. DuBois, James Weldon Johnson, Benjamin Elijah Mays, and many others who spoke about taking initiative, who spoke about self-help, but they were not so naive that they did not realize the nature of systemic racism that had to be attacked in a frontal way by governmental intervention, the same as we had governmental intervention when we established these land grant colleges that excluded black people for years. That was the Government intervening.

When we look at the Soil Bank Program, where brother Eastland and Stennis from Mississippi and others have benefited from, that is governmental intervention. The S&L's, that was governmental intervention. So, this is the thing that concerns us greatly, as to

how he comes down as regards solving the problem. He does a good job, a commendable job of defining the problem.

He can do a great job of stating the antithesis of the ugly, nasty situations. He could talk about what the ideal ought to be in this Nation. But when it comes to raising the relevant questions and saying how do you do it, that is where he falls down. It is not an either/or matter, it is both/and, and that has been the position of the NAACP and the black church ever since we have been in this Nation, and he has misrepresented that or permitted his friends to misrepresent him on that point.

The CHAIRMAN. Thank you very much, Reverend.

Reverend LE MONE. Mr. Chairman, might I have a word, please?

The CHAIRMAN. No. I will tell you how you can do it, so we are under the rules and I do not get nailed here. I am going to yield to the Senator from Illinois, and I am sure he will give you a word and you can talk then, otherwise I will not be playing by the rules here.

The Senator from Illinois.

Senator SIMON. Thank you very much.

First of all, I thank all three of you. Judge Hooks, this is a good time to say, as a member of the NAACP, that we are very proud of your courageous and effective leadership.

Mr. Hooks. Thank you, Senator.

Senator SIMON. I don't know that I have said that in a public forum before, but you have been the kind of a leader in the tradition going back to when I first joined as a student. Walter White was the leader, and you go through that tier of leadership and you bring honor to that position that you hold.

Mr. Hooks. Thank you.

Senator SIMON. Reverend Brown, one of my colleagues said you sound more like a politician than a preacher. I am sure they said the same thing to the Prophet Amos.

Reverend BROWN. Yes, sir.

Senator SIMON. I remember they said the same thing to Martin Luther King. The church has to be the servant church.

The CHAIRMAN. He has put you in fast company, Reverend Brown. [Laughter.]

Senator SIMON. I might add, I would like to hear you preach sometime on the basis of this little preview we got this morning. But the church was audibly silent in Germany when Hitler rose, when they should have been standing up, and it would be the easiest thing in the world for you to sit back and not say anything. Just as one person—and I am not a member of your organization—I appreciate it.

Reverend Le Mone, in your thoughtful statement, you said something about how you were taking a stand in opposition until or unless you heard statements from the nominee that would convince you to the contrary.

If I could ask all three of you this, have you heard anything in Judge Thomas' testimony that makes you wonder whether you took the right stand or not or has caused you to in any way feel that you might have made a mistake?

Reverend LE MONE. I would like to go first, if you don't mind, Senator Simon.

Senator SIMON. Reverend Le Mone, we will start with you, yes.

Reverend LE MONE. I am sorry Senator Specter has left the room and cannot hear this remark I want to make in response to his question to Reverend Brown. Senator Specter gave a very clear outline of not only affirmative action, but a quota system, by saying he must have an African-American on the Court. That was clearly stated. It is not limitation of language, even though he didn't give the title of affirmative action, that is exactly what the substance of that comment should mean, in terms of its interpretation.

Our position is not to have a minority on the Court, but to have the best possible human being on the Court, male or female, Hispanic, Chicano, Native American, white or black, who understands that justice must serve the interests of all of the people, particularly those who are least in society, that justice indeed must open its eyes and look at what is happening not only to this country, but to the world.

We, as ministers of the gospel, make no apology to the fact that we articulate our ministries from the pulpit and also in the streets, because we are on the side of God and we speak the politics of God. All one has to do is read the 61st chapter of Isaiah or the 4th chapter of Luke, and you understand why we are doing what we are doing.

In direct response to your question, it is really hard to say, but I don't think that we can take the chance in terms of this confirmation going through. It is too risky. Therefore, we are even more resolved, based on the testimony of previous days, that Judge Clarence Thomas should not at this time be a Supreme Court Associate Justice.

Senator SIMON. Reverend Brown.

Reverend BROWN. I say amen.

Senator SIMON. That sounds like a preacher there.

Mr. HOOKS. I would say, Senator Simon, after hearing Judge Thomas in these hearings, we are more convinced than ever that we took the right position, because the only thing that has happened, which is even more disturbing, I think Senator Heflin referred to it as confirmation conversion, that he has in some ways denied that he said what he said or that he meant what he said or that he is starting over again.

We are very convinced that his total record as a public official is of such nature that we cannot support him, and nothing in these hearings has changed our opinion. We believe more firmly now than ever that we were correct.

Senator SIMON. I thank all three of you.

Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

I want to thank our witnesses for coming today. I appreciate how trying and difficult this process has been for you and your willingness to state forthrightly your position. I think it is helpful to this committee.

In trying to get a handle on the differences between your organization and Judge Thomas, I was hoping you could help me with regard to the question of affirmative action. The judge has indicated that he believes in affirmative action, but does not believe in

racial quotas. How would you describe your view of what is appropriate under affirmative action and what would not be?

Mr. Hooks. Senator Brown, let me say we have always been opposed at the NAACP to quotas because quotas is defined as an artificial goal above which you cannot rise. The courts, however, adopted goals and timetables because where blacks had been excluded wholesale, could not be in the police department, could not be in the State highway patrol, could not be clerks in stores, all the law really was saying is you must take aggressive action to include in those whom you have excluded. This business of preference and reverse discrimination is nothing but lies that have been forced upon the American public. How do you include in those who have been excluded unless you are aggressive about it?

In the *Alabama Highway Patrol* case, the commissioner over a period of months refused to hire any, even though he was under court order. It was the judge who then decided that you are not only dealing with blacks but you are dealing with the dignity of the Federal courts. Therefore, by a certain date, you must have a certain number of black patrolmen.

Goals and timetables came into the equation in order to make the law effective. And, by the way, Judge Thomas, in his first term at EEOC early on, sort of went along with goals and timetables, and then he was opposed to them. That is why we opposed his reconfirmation.

Affirmative action is aggressive action to include in those who are excluded out. It is not and should not be viewed as reverse discrimination. And it has to be class-based. As someone has said here, the difference between wholesale and retail, we could not possibly take care of all of the millions of blacks and women and minorities who have been excluded by taking one case at a time. As I have said earlier, it would have meant that everybody would have had to have been a Rosa Parks, and only those who could sit on the front of the streetcar would be those who had been arrested; or only those could go to school who had gone there with a Federal marshal to take them in.

Affirmative action is necessary, and Judge Thomas' record indicates that he did not favor that remedy, and we are opposed to him, among other reasons, for that.

Senator BROWN. Well, that is helpful to me. I think it clearly defines the differences. And you might want to correct me. Let me see if I am stating it correctly.

The difference isn't that you are advocating racial quotas and that he is not. That is not advocated by either one of you. The difference is a question over the timetables that have been put together. Would that be a fair statement?

Mr. Hooks. Goals and timetables were mandated by law. The *Griggs v. Duke Power* case was perhaps the finest refinement of it. Because if you have a workplace that employed a thousand people in a city where the workforce was 80-percent black, 20-percent white, there were no blacks employed. They then employ one black or two blacks out of a thousand. The question has to be answered at some point: When have you really affirmatively tried to give employment? This necessitates—and we do not back up from it one iota—goals and timetables which are reasonably calculated to show

that affirmative action not only has resulted in some rules and regulations but in some results.

President Johnson stated eloquently that at some point affirmative action must result in equality of results as well as equality of opportunity. This may be a hard pill to swallow, but from the viewpoint of those who have been historically denied—and I don't think we have to define that years of slavery, 244 years, years of second-class citizenship, *Dred Scott*, *Plessy v. Ferguson*. Now we stand on the brink of a breakthrough, and we simply do not need an African-American on the Supreme Court who does not subscribe to the concept that affirmative action must work. The Supreme Court is already bad enough. We do not need an African-American adding sanction to what is being done.

Senator BROWN. So the goals and timetables would be the difference, and I assume that is in an area where you had a showing that they have discriminated in the past or you have a clear impact of discrimination in the past.

Mr. Hooks. Well, there are cases that indicate that there must be a showing of discrimination, but there are other cases which simply deal with the fact that the statistical results of—let's use that absolute term of no blacks employed in a city where a factory has a work force available to it of 50 or 60 percent or whatever number of blacks, that the mere showing of that can be enough to change the burden of proof, which was the *Griggs* case. It did not mean that the black applicants or plaintiffs won. It simply meant that the company which then had the knowledge of why they were doing what they did had the burden of proof. And it is this type of thing that is very important if we are to continue our progress.

I mentioned earlier that the present Secretary of Labor has indicated in a study that there is a glass ceiling above which women and blacks cannot seemingly advance. And she has said that something must be done.

At West Point, President Bush marveled over the fact that we have now had 1,000 black graduates of West Point, when you and I know when General Davis went there he was given the silent treatment for 4 years.

The man in charge of West Point said it is because of aggressive affirmative action that we have now had 1,000 graduates of West Point. It is necessary to have affirmative action, and to make it work there must be goals and timetables and systematic class-based remedies in order that we will not spend forever all the money in the Treasury trying to do it one case at a time. And that is one of the weaknesses of Judge Thomas' position. He only talks about affirmative action for someone who has proven somehow that they have been the victim of discrimination. But we know that when they did not have blacks in the police department, it was not based on an individual. It was based on the fact that no blacks were going to be employed as a group. And why should an individual have to go there and almost be lynched?

And I want to say very quickly that the time has not passed—the fact that affirmative action has been in existence for some time does not mean that we do not still need it, that we do not still need class-based remedies, and that we still need goals and timetables.

Senator BROWN. If I may, Mr. Chairman—I see the red light—I would like to ask one followup question.

Senator KENNEDY. It is fine with me if Senator Thurmond agrees.

Senator THURMOND. We have to move on, but go ahead this time.

Senator BROWN. Just briefly, putting aside goals and timetables, obviously that is an area of disagreement. My impression of the judge is that he has a heartfelt commitment to civil rights, acknowledging that there is a significant disagreement in your mind over goals and timetables. But aside from that, at least my impression was he had a heartfelt commitment to civil rights.

Would you share that view or do you disagree in that area as well?

Mr. HOOKS. I disagree, sir. Respectfully, I maintain the experiences are neutral. He talks about his experiences, his grandfather being called a boy. He talks about prejudice and discrimination. But those experiences did not leave him with the lessons of how to overcome that. We have yet to hear from the judge in his official actions basically—with one or two exceptions, of course—how he would overcome that.

He went to the right school, the university of hard knocks, the school of discrimination and prejudice, but he learned the wrong lesson. He seemed to be saying that we do not need Government help, we only need self-help.

We maintain, the NAACP and the Baptist Conventions and the great mass of black people, that we need both self-help and Government help. And Judge Thomas seems to always emphasize only self-help, and that bothers us as to a sincere commitment to the eradication of the problems. He understands and enunciates very well the problem, but the question is: How do we get by the problem? That requires some affirmative action, which he seems to disavow.

Senator BROWN. I appreciate that.

Mr. Chairman, thank you for your indulgence.

Senator KENNEDY. Thank you very much.

Senator Kohl.

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

Gentlemen, in a 1959 article for the Harvard Law Review, William Rehnquist wrote that the Senate has the obligation to "thoroughly inform itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him."

Do you feel that we are thoroughly informed on the philosophy judicially of Clarence Thomas?

Mr. HOOKS. I do not think that his testimony has informed you as to his judicial philosophy, and I would have hoped that in his testimony he would have informed you. But I do not think he has.

I hope I have answered your question.

Reverend LE MONE. Following these hearings, Senator, we have seen or read or heard no indication of understanding the judicial philosophy of Clarence Thomas. We have, at best, had vague, elusive, flexible answers to many key issues. And permit me to add that this issue, this nomination, is not about affirmative action only. It is more complicated and complex and comprehensive than that. That is certainly a key issue, but not the sole issue. We do not

want to be interpreted as being here sitting at this table representing one issue that is supposed to be something concerning minorities and women. That is an issue, but not the issue.

Reverend BROWN. I would respectfully say, Senator, that Judge Thomas, in my estimation, has not been forthright in dealing with the issues. And let me say parenthetically here that we must be careful as to how we accept these polls as being gospel truth regarding the position of African-Americans on Judge Thomas.

I happened to stand in a bank on the day before yesterday, and a man came up to me panhandling, wanting the money. And before I gave him the money, I said to him, "What do you think about Clarence Thomas' nomination to the Supreme Court?" He said, "Well, you know, yeah, a brother ought to be up there; yeah, a brother should be up there." I said, "You mean that if this brother is talking against affirmative action, if he has problems with minimum wage, if he misrepresented his sister's status in terms of her being on welfare, if he is in alliance with a socio-religious-political gang that is attempting to turn back the clock on all of our rights, would you support that man?" He said to me, "Rev, you laid something on my brain. No, I don't think he should be on the Supreme Court."

Senator KOHL. Are you then all saying that it is not that we don't know his philosophy—are you saying that we do know his philosophy and that is why you are advocating that we vote against him?

Reverend BROWN. That is right. Now, on some other technical legal question is not an answer to you—

Senator KOHL. Is that what you are saying, Mr. Hooks?

Mr. HOOKS. I am saying, sir, that we opposed him because we thought his judicial philosophy was not what was the basic broad stream of American thought, and particularly African-American thought; that nothing in this confirmation hearing has changed that. He has not expressed, in my judgment, any judicial philosophy except to simply say he can't give an answer to this, he cannot give an answer to that. So we are convinced that his judicial philosophy is wrong for this time, yes, sir.

Senator KOHL. So that he has one, but it is not acceptable.

Mr. HOOKS. That is our position—

Reverend LE MONE. Or entirely understandable.

Mr. HOOKS. Before he testified, and nothing in his testimony, in my judgment, has changed it.

Senator KOHL. All right. I would like to go on.

In an article in last Sunday's Washington Post, Juan Williams said that when Thomas came to Washington in 1982, he was a far more liberal person, even anxious to talk with civil rights groups, but that they snubbed him. And as a result, Thomas became more conservative, and the groups lost an opportunity to have an influence on his development and growth.

Do you have any comment on that?

Mr. HOOKS. My comment is that snubbing and failure to be included is a two-way street. I have served as a public official in Washington. I met some antagonism when I came here, but I made a conscious effort to associate with all of the leaders so that they

could know who I was and what I stood for. And I think that effort was successful.

If Judge Thomas felt he was snubbed, he was a high-ranking Government official, at one time one of the highest ranking in the administration. And I think he had a right and a duty to seek out. I don't think he did that as he should have, and I think that whether or not he was snubbed or not should not change his basic philosophy if he believed in the things that we have been talking about, that he should not have changed that because he felt personally snubbed.

Reverend LE MONE. Senator, in my testimony, I indicated that if the allegation is true that he was snubbed, then certainly a man born and raised in Georgia would go to a black church where acceptance is the order of the day, no matter what your philosophy. He didn't seek out the black church during that time. Had he done so, he would have been educated and would have been in a position to educate. Why he didn't choose that option I don't know, and I think it is his loss.

Reverend BROWN. If I might put it in some homespun wisdom from Mississippi, and maybe from Pin Point, GA, grandmom and granddaddy said he or she who would have friends must first be a friend.

Senator KOHL. Are you saying that this man has walked away from his roots?

Reverend BROWN. He has not been in touch with those old rich roots.

Senator KENNEDY. I think the time is up, Senator. I think we have to express our appreciation to—oh, excuse me. Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you and I thank the panel. I was listening to your remarks, and I came over and wanted to participate, to try to do that.

It has been dramatic. I think that is what you intended, to be dramatic. I think it is important to say that Mr. Thomas' responses to questions, at least as I heard them here in several days, indicated that he believes in affirmative action in this respect: He believes in reaching out to increase the applicant pool, increasing the applicant pool, then choosing from that pool the best qualified applicant without regard to race. And I think that that is what most Americans view as—you know, their view is they are against racial preference. They are not against affirmative action. And there is a difference. I know the flashwords don't fit well, but there is a difference.

But, Dr. Brown, in your written statement you say the group wants a nominee who has experienced discrimination. You write that his views reflect hostility toward the African-American community. You write that he is against equality, equal rights, and justice. You claim that he doesn't understand the history of the African-American community.

I can tell you, sir, it is most difficult to reconcile your written and your oral testimony with the Clarence Thomas that we or this committee or this country saw and who we questioned and listened to for 5 days, or with the Clarence Thomas described to us over the

past 4 days by persons, mostly African-Americans, who have known him well, some for many, many years.

I don't think anyone I have ever seen has come before this committee with more friends from around the country, by people who really know him. And the harsh and the intemperate and the nasty statements come from people who don't know him at all.

Now, you can't tell me—I don't care what race or color or creed that we are talking about—where there have been more friends and more people respond to a man than this man, Judge Clarence Thomas, without question. Never in my experience in 13 years. I would think that you would feel demeaned to hear white liberals telling blacks how blacks ought to feel. That can't be a very good experience. And the reason there is a huge, huge split and schism in the black community is because this man is splendid but he is a conservative Republican. So why don't we just cut the baloney and lay it out there and just say you don't like him because he is a conservative Republican, and that is what he is. That is his credentials. But the rest of this is really an exercise—and here is a white conservative speaking—is an exercise in why this is just dissembling before your eyes.

You have got a group of people who are on their own in the black community, and you have never had that before. And they are not going to be in locked step. And I heard from the NAACP group in California, and that was a tremendous lady. What a spirited and energetic lady, and, boy, she laid it out in spades as to why they didn't want to join in locked step.

These are the things that stun me, and I don't understand how you can say those things about a fellow Christian—you are a pastor of your flock—as to those things which are just plain not so, after listening to him for 5 days. And I would ask you how you came to that conclusion.

Reverend BROWN. Senator, if you read my text, I said Paul said that we are living epistles read of men and women. Judge Thomas' record speaks for itself.

Senator SIMPSON. It certainly does.

Reverend BROWN. Yes, before. The speeches he has given, the company he has kept. And I think that we are aware enough to know the implications of the political ideology that he espouses.

I don't mean to be too technical here, but when you talk about conservative views, I think we need to put that in perspective. African-Americans, in terms of their religious experience, have tended to be conservative when it comes to biblical truths and some doctrinal questions. We have been conservative as regards respecting our elders, though there appears to be a generation in these urban centers who have gotten away from that.

But when it comes to political conservatism, we have never been conservative. But we know that, taking a page out of the Bible, the pharisees and sadducees of Jesus' day were the political religious conservatives who would rather keep, hoard the blessings of the promise for themselves. Jesus was a man for the people of the land, and for that reason they put Him on the cross.

What we are saying conservatism means, from an African-American vantage point, the few profiting at the expense of the many, the rich getting richer and the poor getting poorer. And I think

that it is high time that we lay down these labels, right wing, left wing. As one brother said, we ought to be concerned about the bird, because if you have just got one wing you ain't going nowhere. You are just going around in circles. And if in this Nation we do not come together and talk to each other and get rid of this kind of rhetoric that has been afoot for the last 10 years—and it has been afoot. We have had these so-called conservatives who would be more concerned about a fetus or an unborn child. And we are concerned about reverence of life. But at the same time we embrace a political philosophy that would deny child care, a decent job, a good education, a spokesman who would even go to South Africa of that bent, where people have been gunned down and dehumanized for years, and called Bishop Tutu a phony.

It is that kind of conservatism that we have seen afoot in this Nation. And what we are saying is it is time that we get on with the business of putting our Nation back to work, of developing our infrastructure, of being involved with each other to keep this a strong nation.

We ought to take a lesson from Russia. Russia went around the world trying to acquire power but did not take care of home. And as the last 10 years have indicated, we have not taken care of home. We have been more concerned about how things—

Senator SIMPSON. I hear those things and they are passionately and sincerely said, but we are talking about Judge Clarence Thomas. That is who we are talking about.

Reverend BROWN. I know what he stands for and who he is with.

Senator SIMPSON. You know, I believe something about that teaching. I think it was about forgiveness and kindness and compassion. That is what it was about, too. Those were the words of Jesus Christ.

Reverend BROWN. I am talking about him, too.

The CHAIRMAN. Thank you very much.

Senator SIMON. Mr. Chairman, one more question, if I may.

The CHAIRMAN. Has Senator Brown asked any questions yet?

Senator BROWN. Yes.

The CHAIRMAN. All right. The Senator from Illinois.

Senator SIMON. Just one more question. In one of his writings, Judge Thomas, in outlining his legal theories, said the Constitution should be colorblind, and we don't argue with that. Then he goes on to denounce what he calls race-conscious legal devices.

One of the things that I helped to develop back when I was in the House, working with the late Dr. Patterson, was Federal aid for historically black colleges. That is clearly a race-conscious legal device. Now, he has not specifically denounced that but has denounced the race-conscious legal devices.

What would be the impact on historically black colleges if we were to have a Supreme Court saying that is unconstitutional to do that?

Mr. HOOKS. Senator Simon, two things, briefly. Justice Blackmun stated very eloquently that the only way we can advance beyond racism is to take racism into account. The only way we can advance beyond color is to take color into account. You can't have veterans' laws unless you recognize there are veterans. You cannot have laws for the disabled unless you recognize there are disabled.

I do not understand this business of not dealing with color when color was the problem. For that reason, as Justice Blackmun said in *Bakke*, we must take it into account.

Second, I think, in direct answer to your question, that the black colleges have been and are now a great cultural repository of help for this Nation. We would be much the poorer if we did not have black colleges. And if we were to adopt that suggestion that you talked about in totality—and that case, by the way, is before the Supreme Court, will be coming up soon—we will destroy historically black colleges.

It was never the intention of the NAACP to destroy black institutions. It was our intent to integrate all institutions. We think that black schools like Fisk have as much right to exist as white schools like Duke. But they must both be integrated. And we have found that black schools have integrated far more rapidly and far more totally than have the white institutions, and we do not want to see them destroyed, and we do not want to see this whole business of the colorblind society aid in the elimination of a great cultural institution which has been of help and is of help.

Finally, Senator Simon, when we look at the totality of the question that we face, it is important that we know we are the watershed, and as has been stated by one of the members of this panel, the present course of the Supreme Court must be reversed. This committee has a chance to reverse it now by not consenting to the confirmation of an African-American who is obviously opposed to that which is good for America and to that for which the great majority of Americans stand.

It has been stated these public opinion polls simply reflect that all African-Americans basically would like to see one on the Bench. If they do not know what he stands for, they favor it. When you ask them, as Reverend Brown has put it, about the reality of it, then it changes. And there has been a change in public opinion polls. A Werthlin poll indicated that not as many blacks were in favor as it first appeared.

So I am saying give the people light and they will find their way. This Senate has the light, and I am sure they are not going to be guided by public opinion polls which do not ask the right questions and therefore come up with the wrong answers.

Thank you, Senator.

The CHAIRMAN. Thank you very much, gentlemen.

Reverend Le Mone, I had not allowed you to continue because time was up, but now on my time was there anything you would like to say.

Reverend LE MONE. Thank you, Senator. With regard to Senator Simpson, I don't think that we speak the same language that was called English. We are not here for the dramatic, nor are we being overly dramatic. We are telling the truth based on history and experience and a crying human need for corporate justice for everybody in this country.

I notice that sometimes language is suggested when different panelists speak. It is very eloquent. It is informed. It is well thought out, et cetera. But the language applied to people of color is always dramatic, entertaining, and so on.

I think we can speak the same language once and only if we all have the same experience. Our position is simply this: We can't take the chance on this confirmation. The relationship between slaves and masters is not to be improved. We want the elimination of the categories in the first place so all people can live their God-given rights as human beings, men and women.

With regard to racism, racism unfortunately is alive and well in this country. About 3 months ago, perhaps a bit more, there were two surveys conducted—one in the city of Chicago, Senator Simon. One black man, qualified experience, same level of education, and his white male counterpart. The white male counterpart prevailed for the job application in terms of a ratio of 7 to 1. That is less than 5 months old.

The CHAIRMAN. Say that again, please.

Reverend LE MONE. The ratio was 7 to 1. The white applicant—

The CHAIRMAN. In the context of the—

Reverend LE MONE. Job applications for the same job requiring the same education—

The CHAIRMAN. A black man and a white man, same educational background.

Reverend LE MONE. And experience.

The CHAIRMAN. And experience.

Reverend LE MONE. And education.

The CHAIRMAN. And they filed a number of applications.

Reverend LE MONE. That is right. It was conducted by a company. Chicago was one site, and here in the District of Columbia was the second site. And the white applications were successful seven times to one time. Even a physical factor was injected into the data, physical factor of height, weight, and so on.

The Washington Post finally produced something of value to us.

The CHAIRMAN. Thank you very much, Reverend.

Are there any more questions for the panel?

[No response.]

The CHAIRMAN. Gentlemen, thank you very, very much for your testimony.

Mr. HOOKS. Thank you.

Reverend BROWN. Thank you.

Reverend LE MONE. Thank you.

[The prepared statement of Rev. Archie Le Mone follows:]