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# Coalitions for America

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## JUDICIAL NOMINATION FACT SHEET Clarence Thomas' Background

Clarence Thomas was born on June 23, 1948 with the help of a midwife in a small house in Pinpoint, Georgia. His father left when Clarence was a toddler and he lived with his mother, her aunt and uncle, together with his older sister and younger brother for six and half years. They had no indoor plumbing, sharing an outhouse with several neighbors. They carried water in buckets from a common pump. Everyone worked.

Clarence started the first grade at the segregated Haven Home School in 1954, the same year the Supreme Court ruled segregation unconstitutional in *Brown v. Board of Education*. Midway through the school year, Clarence and his brother moved with their mother to Savannah. They lived in one room of a tenement and used a common kitchen and common toilet. Their mother worked long hours as a maid for \$20 every two weeks. Clarence completed the first grade at the Florance Street School. His attendance was poor and he often wandered the streets of Savannah.

In the summer of 1955, Clarence and his brother went to live with their maternal grandparents, Myers and Christine Anderson. She had a sixth grade education and he had attended the third grade. A proud, disciplined man, Myers Anderson believed that everyone who could work should work. He had never known his father and his mother died when he was nine. He lived with his grandmother, who he said was freed from slavery as a young girl. Myers Anderson's own hard life, without mother, father, or education in an era of segregation and Jim Crow laws determined how he would raise his grandsons. They had to work and to survive, no matter what happened in the world around them.

The world of Clarence's youth was the world of segregated Georgia. Schools, lunch counters, libraries, water fountains, movies, and public restrooms were segregated. Once when they were traveling, Clarence's grandfather stopped for gas. When the attendant said there was no "colored" restroom, Myers Anderson said if his wife could not use their restroom, he could not use their gas.

Clarence and his brother had to be ready to work at 3:00 every day, 30 minutes after school let out. They helped their grandfather build a house on some farm land and then began farming the land. Their grandfather taught them that the sun should never catch anyone still in bed. If they ever slept until 7 or 8 a.m., he would say that they must have thought they were rich since no poor man could afford to sleep that late.

Clarence's grandparents were honest, hardworking, and deeply religious. They believed hard work and decency were indispensable. The boys could never refuse to do an errand for a neighbor, could never debate an adult, and had to address adults with respect.

Their grandfather warned that if they did not work they did not eat and constantly reminded them of his intention to "raise them right" and teach them "to do for yourselves."

Clarence and his brother were enrolled in St. Benedict's Grammar School, a segregated Catholic school, and taught by Franciscan nuns. They missed one-half day of school during the time they lived with their grandparents. Myers Anderson felt Catholic schools were better because they utilized corporal punishment, discipline, and uniforms. At St. Benedict's Catholic Church, as well as at home and in schools, Clarence learned the value of hard work, the inherent equality of all people, and the need to excel. He attended St. Pius X High School, also segregated, for two years and in 1964 transferred to St. John Vianney Minor Seminary. He repeated the 10th grade to take three years of Latin and graduated as the only black student in his class in 1987. His classmates placed the following under his yearbook picture: "Blew that exam, only got a 98."

Clarence attended Immaculate Conception Seminary in Missouri for his college freshman year. He transferred to Holy Cross College in Worcester, Massachusetts and graduated with honors in 1971. At Holy Cross, he helped found the Black Students Union and served as an officer for three years, worked in the Free Breakfast Program, and tutored in the Worcester community. From 1971-74, Clarence attended Yale Law School in New Haven, Connecticut, and worked for New Haven Legal Assistance during school and the summers of 1971 and 1972. While interviewing for a job with law firms, he once again confronted discrimination through insulting and condescending interviews that probed his performance in college, high school, and even grammar school.

John C. Danforth, then Attorney General of Missouri, hired Clarence as his assistant in 1974. During that summer, he stayed at the home of Margaret Bush-Wilson, later the Chairman of the Board of the NAACP. Three days after being sworn in as a member of the Missouri bar, Clarence argued his first case before the Supreme Court of Missouri. He represented the state before all levels of the state court system in matters ranging from criminal law to taxation.

After two years in private practice with the Monsanto Company, Clarence moved to Washington and joined now-Senator John Danforth's staff as a legislative assistant. He was responsible for issues including energy, environment, federal lands, and public works. President Ronald Reagan nominated him in 1981 to be Assistant Secretary of Education for Civil Rights and a year later to be Chairman of the Equal Employment Opportunity Commission. He was sworn in on May 17, 1982, and was renominated and reconfirmed to that post in 1986. He was the eighth and longest serving chairman of that agency.

Clarence's first marriage ended in divorce and he spent most of his tenure as EEOC Chairman as a single parent, having received custody of his son Jamal. He married the former Virginia Bess Lamp in May 1987. Mrs. Thomas is a Deputy Assistant Secretary of Labor. They reside in northern Virginia.

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## JUDICIAL NOMINATION FACT SHEET Chairman Clarence Thomas' Record at the Equal Employment Opportunity Commission

The Equal employment Opportunity Commission receives and evaluates charges of employment discrimination and enforces the equal employment opportunity laws. Clarence Thomas began service as the eighth Chairman of the EEOC on May 17, 1982. He inherited an agency in deep trouble; he left it completely transformed. Today, there hangs in the lobby of the agency's sparkling new building named after Chairman Thomas a plaque in his honor. By it, the Commission and its employees honor Clarence Thomas for "his dedicated leadership exemplified by his personal integrity and unwavering commitment to freedom, justice and equality of opportunity and the highest standards of government service."

### A. Financial Management

The day Chairman Thomas took office, the General Accounting Office exposed serious management problems that impeded EEOC's ability to carry out its mandate. The agency's financial records were in shambles. It was virtually unable to account for its funds. The GAO report stated that "EEOC faces a formidable task in correcting the operational deficiencies that allowed the unreliable records to develop. The task must be accomplished, however, because the current accounting system can have a devastating effect on the agency's operations in future years."

Two years later, under Chairman Thomas, the GAO approved EEOC's accounting system and by the end of his tenure, it had been completely automated; the agency now obligates over 99% of its appropriation. All of its accounting records are now accurate, timely, and reliable. Yet EEOC never received appropriations to rebuild any aspect of the agency. Chairman Thomas did it through better and more efficient management.

### B. Personnel

After auditing EEOC's management, the Office of Personnel Management issued a report the same month Chairman Thomas took office. OPM audited 60 jobs in EEOC's Office of Administration to determine whether the employee's performance matched the grade of the job. OPM reduced or downgraded 53 of them.

In addition, the report said that "there has been no cataloging of books in the library for the past three years because of staff shortages; and the mail operation has been so poorly supervised and operated that the agency is considering contracting out the function." An employee who once had improperly received \$4000 in overtime pay by personally falsifying her time and attendance records was later promoted and given a cash award for

producing the agency's telephone directory. The agency considered this a remarkable achievement because it was the first time in two years that anyone could get the various offices to provide their telephone numbers! Prior to Chairman Thomas' arrival in May 1982, there had never even been an accurate count of the agency's employees.

The agency's manual personnel system and its payroll system were totally separate and data errors were so pervasive the employees learned to expect them. Under Chairman Thomas, **without additional resources**, the personnel system became fully automated, linked directly with the payroll system, and the error rate dropped to .01 percent. He implemented programs to upgrade and train existing employees, recruit superior new ones, and assure quality. EEOC's Director of Personnel Management Services completed an assessment that concluded that "we have managed to regroup, redirect our efforts and establish a very credible personnel organization--which is now routinely commended and consulted by other small agencies and OPM itself for our excellent personnel practices."

### C. Law Enforcement

The previous EEOC administration believed that discrimination charges should be processed as quickly as possible. Under this "rapid charge" system, EEOC brought the charging party and employer together prior to any investigation to reach a "negotiated settlement" that produced a "no fault settlement agreement." Some 50% of EEOC's charges were thus settled with no investigation of the merits and no finding of discrimination.

This was **not enforcement at all** because no attempt was made to determine the merits of the discrimination charge. Frivolous and meritorious charges received the same treatment. Employers who discriminated and those who did not were treated the same. A letter from the Office of Management and Budget dated December 8, 1980, stated the result that "the rapid charge process allows the settlement of the individual charges **without modifications to employment policies**." This approach generated a high number of settlements but few, if any, cases were actually investigated and decided on the merits. Shoveling cases out the door, paying little attention to them, does nothing to enforce the equal employment opportunity laws. In fact, the investigative staff rarely left the office and had never been trained to investigate, only to crank out settlement statistics. A high number of closed cases was in reality a measure of the discrimination charges that were never investigated, the instances of discrimination never determined, and the number of discrimination victims never adequately compensated.

Under Chairman Thomas, each charge was investigated and, if necessary, litigated. He effected a fundamental change of enforcement philosophy, indeed, of agency culture. He changed it from a machine generating "good numbers" to one that actually enforced the law. The Commission unanimously adopted a series of policies to effect this change in agency culture. The 1984 *Enforcement Policy* stated that all charges that failed conciliation were to be forwarded to the full Commission along with the General Counsel's recommendation about litigation. The number of cases considered for litigation authorization doubled during Chairman Thomas' tenure and the number of cases authorized for litigation more than doubled. The 1985 *Remedies Policy* stated that EEOC would seek the maximum remedy available under the statutes it enforced. The 1987 *No Cause Review Policy* gave charging parties receiving a determination that no cause existed for litigation the right to an independent review of that decision.

The statistics speak for themselves.

<u>Fiscal Year</u>	<u>Total Resolutions</u>	<u>Merit Resolutions<sup>1</sup></u>	<u>Resolutions After Full Investigations<sup>2</sup></u>
1980	57,327	17,300	15,533 (27%)
1981	71,690	26,507	23,596
1982	67,052	21,675	25,432 (38%)
1983	74,441	22,039	33,135
1984	55,034	13,588	27,803 (51%)
1985	63,567	10,935	37,092
1986	63,446	9,613	38,877 (61%)
1987	53,482	8,114	30,990
1988	70,749	10,641	37,086

#### D. Litigation

Under the "rapid charge" approach, of course, very few cases actually went to litigation. Under Chairman Thomas, the General Counsel brought more lawsuits than at any time in the agency's history. Again, the numbers speak for themselves.

<u>Fiscal Year</u>	<u>Suits Filed</u>
1980	358
1981	444
1982	241
1983	195
1984	310
1985	411
1986	526
1987	527
1988	555

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<sup>1</sup> Merit resolutions include settlements, withdrawals with benefits, and both successful and unsuccessful conciliations.

<sup>2</sup> This category includes only those cases closed after a determination on the merits - cause or no cause cases. Many other fully investigated cases are not included because they were either settled or withdrawn before an official determination was made.

The civil rights establishment criticized the initial decline in the litigation statistics but never applauded the dramatic rise thereafter. Rather, the establishment then criticized EEOC for supposedly retreating from class actions and systemic cases. However, **no one has ever produced evidence** on the number of past EEOC class actions (the management system was in such shambles it could not have kept statistics if they did exist) and no program for bringing systemic cases existed when Chairman Thomas took office! In fact, the previous "rapid charge" system did not permit developing a viable approach to class actions. By contrast, under Chairman Thomas' leadership EEOC began publicly disclosing an annotated list of all cases filed, together with the docket numbers.

Chairman Thomas took an opportunity to refute the charge "that the EEOC is timid about filing class-action suits" in a letter to the editor of *Management Review* (April 1988, p.8). He wrote: "Class actions have proven to be very effective and make up almost one-half of the Commission's suits filed since 1982." He went on to describe two major class-action victories, one against Goodyear and another against AT&T.

Each year, some voice from the liberal community writes an opinion article claiming the EEOC is lax in enforcing the equal employment opportunity laws. Eleanor Holmes Norton, who chaired the EEOC before Clarence Thomas, has participated in this annual ritual. In December 1985, for example, she claimed that there had been a 50% drop in the number of discrimination cases filed. Chairman Thomas set the record straight in a letter to the editor (*Toledo Journal*, 3/26/86). During fiscal year 1985, the Commission filed 411 court actions, the second highest annual tally in the agency's history, and recovered a record amount of monetary relief for victims of job discrimination. He wrote: "This Commission's commitment to eradicating discrimination in the work place is resulting in more thorough investigations, improved court cases, more vigorous litigation and far better remedies for victims than ever before."

Again, in February 1987, Norton claimed "declining federal enforcement...at the [EEOC]." Again, Chairman Thomas had to set the record straight. Again, the facts speak for themselves. He wrote (*Washington Post*, February 27, 1987) that in fiscal year 1986 "EEOC filed 526 court actions to enforce equal opportunity laws. That's the highest number of legal actions filed in this agency's 21-year history. EEOC secured more than \$46.3 million in relief for victims of job discrimination through litigation in fiscal 1986."

The January 1988 installment was made by another writer who again claimed the EEOC was not aggressively enforcing the law. Chairman Thomas again had to write (*Washington Afro-America*, 3/12/1988) that if the writer had "bothered to check his facts, he might have foregone such a blanket accusation." He wrote: "Court actions filed by EEOC numbered 526 and 523 for fiscal years 1986 and 1987 respectively--the highest annual number of legal actions filed in the agency's 23-year history."

Another critic did the job in 1989. Chairman Thomas responded again with the facts (*Miami Herald*, March 22, 1989). "In fiscal year 1988 the agency filed a record 554 court actions." From 1982 to 1988, "the agency garnered over \$865.4 million in monetary benefits." Finally, "At the end of fiscal 1988, the EEOC had reduced its inventory by 8,630 cases from fiscal 1987."

Chairman Thomas summarized the agency's record under his leadership in the *California Lawyer* (May 1989): "This commission's record stands on its own merits. We have investigated more charges, filed more lawsuits and obtained more tangible benefits for victims of unlawful discrimination than any previous commission. We have buttressed our strengths. We have acknowledged our weaknesses and taken steps to correct them. Our program is working."

#### E. Conclusion

Under Clarence Thomas, EEOC changed both qualitatively and quantitatively. An agency that could not manage its own finances, could not perform basic functions, and could only close cases quickly without investigation and with only nominal relief became a streamlined and efficient agency focused on credible and effective law enforcement. This was accomplished without additional funds. The *Washington Post* (5/17/87) said that while other civil rights agencies languished, "things are markedly different at the Equal Employment Opportunity Commission." The liberal paper went on to praise "the quiet but persistent leadership of Chairman Clarence Thomas."

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## JUDICIAL NOMINATION FACT SHEET Judge Clarence Thomas' Record at the U.S. Court of Appeals for the D.C. Circuit

Judge Thomas' nomination to the U.S. Court of Appeals was endorsed by conservative leaders such as Paul Weyrich, National Chairman of Coalitions for America, and liberal leaders such as William Coleman, Board Chairman of the NAACP Legal Defense Fund. Recognizing Judge Thomas' outstanding record at the EEOC, the International Association of Official Human Rights Agencies, representing more than 160 agencies involved in hands-on civil rights law enforcement, stated that "we believe that Chairman Clarence Thomas would bring to the Federal judiciary a sense of fairness, a passion for fundamental commitment to the rule of law, and a temperament that could bring great credit to our system of justice." Judge Thomas has exceeded IAOHRA's expectations.

As of July 18, 1991, Judge Thomas has participated on three-judge panels in 157 cases; 87 of these produced written opinions. This total does not include *per curiam* decisions. He has participated in cases with each of his 11 circuit colleagues, both liberals and conservatives. He has written 17 majority opinions, 2 concurrences, and 1 dissent. Those opinions are thorough, well-written, and well-organized. Judge Thomas consciously maintains an appropriately modest view of the appellate court's role. Gordon Crovitz (*Wall Street Journal*, 7/3/91, p.A7) writes that "the best way to predict how Justice Clarence Thomas would rule is to review how Judge Clarence Thomas has ruled....His political enemies won't find much grist in these rulings, which are textbook examples of judicial restraint." Even the leftist Alliance for Justice, which fought unsuccessfully to defeat Clarence Thomas' first judicial nomination, concluded that "[h]is decisions overall do not indicate an overly ideological [sic] tilt, although they generally are conservative, especially his criminal law and procedure decisions." Summaries follow.

### A. Criminal Law

*United States v. Whoie*  
925 F.2d 1481 (D.C. Cir. 1991)  
Panel: Thomas, Buckley, Williams  
Vote: Unanimous Affirmance of Conviction

A convicted drug dealer claimed entrapment. Judge Thomas noted that "the Supreme Court has stressed that the [entrapment] defense centers on...a person's predisposition to commit a crime, not on the government's conduct." Even though the district court in this case had not made it clear that the government has the burden of proving predisposition, this did not rise to the level of "plain error." In this opinion, Judge Thomas carefully noted the standard of review and avoided addressing unnecessary issues.

*United States v. Rogers*  
918 F.2d 207 (D.C. Cir. 1990)  
Panel: Thomas, Wald, R.B. Ginsburg  
Vote: Unanimous Affirmance of Conviction

An individual convicted of possessing crack with intent to distribute within 1,000 feet of a school claimed the trial court improperly admitted evidence of his prior crack distribution and possession of a beeper. Judge Thomas rejected this argument, concluding that the conviction evidence had not been admitted to prove character. He found that drug dealers often use beepers, and the relevance of that evidence outweighed any possible prejudice. Judge Thomas used "traditional tools" to construe the Federal Rules of Evidence and began, "as we do with any statute, with the language of the rules themselves." He refused to stretch them beyond their intended scope. In ruling that sufficient evidence supported the conviction, he again refused to decide unnecessary issues.

*United States v. Poston*  
902 F.2d 90 (D.C. Cir. 1990)  
Panel: Thomas, R.B. Ginsburg, Silberman  
Vote: Unanimous Affirmance of Conviction

Judge Thomas addressed several statutory, evidentiary, and constitutional issues before affirming this conviction for aiding and abetting possession of PCP. He carefully noted the limited nature of an appellate court's role and refused to contort a criminal statute to achieve a certain result the law would not allow. In a particularly careful, exhaustive opinion, Judge Thomas rejected the argument that the defendant had been denied effective assistance of counsel since he had selected new counsel one day before trial and counsel had stated he was prepared. Judge Thomas ruled that sufficient evidence existed to support the conviction and rejected the contention that a promise by police to "put in a good word" about the defendant's cooperation did not amount to a promise that the prosecution would request reduction in his sentence.

*United States v. Long*  
905 F.2d 1572 (D.C. Cir. 1990)  
Panel: Thomas, Silberman, Sentelle  
Vote: Unanimous Reversal/Affirmance of Convictions

Judge Thomas refused to consider one appeal because the notice of appeal was filed one day late, depriving the court of jurisdiction. He remanded the case to the district court to determine whether she should receive an extension. He outlined the limited role of an appellate court and reversed Long's conviction for using a firearm in the commission of a drug offense "because the government failed to adduce *any* evidence suggesting that Long actually or constructively possessed the revolver." After a careful analysis, he gave the word "use" a concrete and logical definition rather than a "loose, transitive one." He affirmed Long's conviction for possessing cocaine with intent to distribute. He also ruled that a telephone call received during the search and arrest asking whether Long "still had any stuff" and wanted to buy "a fifty" was not hearsay because it was not intended as an assertion about Long's drug distribution. Judge Silberman wrote a concurring opinion.

*United States v. Harrison*  
No.89-3152 (April 19, 1991)  
*United States v. Black*  
No.89-3153 (April 19, 1991)  
*United States v. Butler*  
No.89-3154 (April 19, 1991)  
Panel: Thomas, Mikva, Edwards  
Vote: Unanimous Affirmance of Convictions

Three defendants were tried together and convicted of possessing and intending to distribute cocaine and of using or carrying a firearm during a drug trafficking offense. Harrison challenged the district court's refusal to try him separately. Refusing to "lightly disturb a district court's decision to deny severance," Judge Thomas applied the appropriate standard, carefully distinguishing seemingly analogous decisions from several other jurisdictions, and concluded that "[b]ecause Harrison has not demonstrated that he failed to receive a fair trial, we find no abuse of discretion in the district court's denial of his motion for severance."

Black asserted that his right against self-incrimination was violated when Harrison's lawyer called him to testify knowing that he would claim this Fifth Amendment right and refuse to do so. The trial judge did not require Black to assert this privilege on the witness stand before the jury but settled the issue in a private conference with the lawyers. Judge Thomas held that since Black had not preserved the right to appeal this issue, the court would apply only a "plain error" standard. Since the "case against Black was particularly strong," Judge Thomas concluded that "[w]hatever error might have occurred is far too insubstantial to permit reversal under a claim not properly preserved."

Butler challenged the sufficiency of the evidence underlying his conviction on the firearms charge. Judge Thomas relied on his own opinion in *United States v. Long*, holding that to establish that a defendant used or carried a firearm, the government must prove that he "actually or constructively possessed it." Since Butler had not actually possessed a firearm, the question was whether "the jury could reasonably have found that Butler constructively" possessed it. Judge Thomas found that they had.

*United States v. Halliman*  
923 F.2d 873 (D.C. Cir. 1991)  
Panel: Thomas, R.B. Ginsburg, Sentelle  
Vote: Unanimous Affirmance of Conviction

In this search and seizure case, Judge Thomas held that exigent circumstances justified a warrantless search of a hotel room, that officers had properly seized drugs and other evidence even though a defendant's consent to search was invalid, and that improper admission of drugs as evidence at trial against a second defendant did not unfairly prejudice that defendant. This case involved multiple defendants, complicated facts, and narrow points of law regarding search and seizure as well as joinder of parties and severance of actions. During his careful analysis, Judge Thomas avoided answering unnecessary questions and distinguished seemingly applicable law from other jurisdictions.

*United States v. Shabazz*  
No.90-3244 (May 28, 1991)  
Panel: Thomas, Sentelle, Henderson  
Vote:

Two individuals pleaded guilty to drug offenses involving the drug dilaudid, a prescription drug, which contains hydromorphone, a controlled substance. Their sentences were calculated under the federal sentencing guidelines by the gross weight of the former, not the net weight of the latter. The guidelines say that, for purposes of sentence calculation, the weight of a controlled substance is the "entire weight of any mixture or substance containing a detectable amount of the controlled substance" unless otherwise specified. Judge Thomas noted attempts by other jurisdictions to define "mixture or substance." Since one of those attempts, by the 7th Circuit, had been accepted for review by the Supreme Court, Judge Thomas limited his analysis by concluding that the criteria of either approach were met in the case before him. "[W]e have no doubt that a 'mixture' is present." He also rejected the argument that another provision of the sentencing guidelines required an approach different than that employed by the district court since that reading "is textually awkward and produces absurd results." This is another example of how Judge Thomas employs traditional canons of statutory construction. He began with the text of the guidelines and the most natural reading of that text.

The appellant argued that the particular guideline under which he was sentenced violated its own underlying sentencing statute. Judge Thomas used an appropriately deferential standard: "We may set aside the guideline, therefore, only if it contravenes an 'unambiguously expressed intent of Congress' or is unreasonable." He upheld it.

B. Administrative Law

*Int'l Union, United Mine Workers v. Federal Mine Safety & Health Admin.*  
931 F.2d 908 (1991)  
Panel: Thomas, Buckley, Williams  
Vote:

The Federal Mine Safety and Health Administration granted a mine operator's petition to modify a mandatory safety standard banning the use of high-voltage electrical cables within 150 feet of a mine's working face. An administrative law judge and the Assistant Secretary of Labor approved the decision. Applying the "arbitrary and capricious" standard, Judge Thomas carefully reviewed the Assistant Secretary's decisionmaking process and concluded that his opinion "[t]hough cryptic...was not arbitrary and capricious" and that the decision was supported by substantial evidence.

*Buogiorno v. Sullivan*  
912 F.2d 504 (1990)  
Panel: Thomas, D.H. Ginsburg, Sentelle  
Vote: Unanimous Reversal of Invalidation of HHS Rule

The National Health Service Corps provides scholarships to pay for medical education in exchange for a commitment by recipients to work after graduation in medically understaffed areas. The Secretary of Health and Human Services can waive this obligation

under certain circumstances. In this case, a recipient of more than \$38,000 in scholarship assistance assigned to practice in Arizona or Oklahoma sought a waiver, citing his wife's medical condition and the hardship relocation would impose. The Corps denied the waiver and the recipient brought suit, challenging the rule on its face and as applied. The district court held that the regulation was facially invalid. Judge Thomas reversed, holding that the district court should have deferred to the agency's reasonable construction of the rule. He applied traditional canons of construction to determine reasonableness, looking first to the words of the rule itself, concluding that "we must uphold the agency's challenged rule unless the rule is arbitrary, capricious, or manifestly contrary to the statute."

*Citizens Against Burlington, Inc. v. Busey*

No.90-1373 (June 14, 1991)

Panel: Thomas, Buckley, Williams

Vote: 2-1 Approval of Agency Action

Citizens challenged the Federal Aviation Administration's approval of Toledo's planned airport expansion. The agency defined its goal as helping to launch a new cargo hub in Toledo and, therefore, only considered two of five alternatives outlined in the environmental impact statement filed by the Toledo-Lucas County Port Authority: approving the expansion as proposed or taking no action at all. The petitioners argued this gave insufficient consideration to alternative sites. Judge Thomas, joined by Judge Williams, held that "the FAA acted reasonably in defining the purpose of its action, in eliminating alternatives that would not achieve it, and in discussing (with the required do-nothing option) the proposal that would. The agency has there complied with NEPA [the National Environmental Policy Act]." He held that this statute "commands agencies to imbue their decisionmaking, through the use of certain procedures, with our country's commitment to environmental salubrity....[It] does not mandate particular consequences....[F]ederal judges correspondingly enforce the statute by ensuring that agencies comply with [its] procedures, and not by trying to coax agency decisionmakers to reach certain results." Judge Thomas also held that the FAA's action was valid under the Department of Transportation Act, the Airport and Airway Improvement Act, and all but one of the regulations promulgated by the Council on Environmental Quality.

Judge Buckley dissented in part, concluding that the agency was required to inquire into the feasibility of alternative sites and, by failing to do so, "the agency sidestepped its obligation" under NEPA.

*Doe v. Sullivan*

No.91-5019 (July 16, 1991)

Panel: R.B. Ginsburg, Wald, Thomas

Vote: Affirms district court dismissal of complaint 2-1

On December 21, 1990, the Food and Drug Administration issued a regulation permitting the FDA Commissioner to authorize the use by the Department of Defense (DOD) of unapproved, investigational drugs on military personnel in certain combat-related situations, without first obtaining informed consent. DOD sought and obtained informed consent waivers for two investigational drugs considered important for countering a chemical and biological weapons attack. A serviceman stationed in Saudi Arabia during

Operation Desert Shield and his wife challenged the regulation on its face and as-allied on January 11, 1991. Operation Desert Shield became Operation Desert Storm on January 15, the district court dismissed the complaint on January 31, President Bush announced a ceasefire on February 27, and DOD notified FDA that its need for using the two drugs without informed consent had ended on March 15. Neither FDA nor DOD seek withdrawal of the regulation itself. The United States moved to dismiss as moot the appeal of the district court's decision. Judge Ginsburg, joined by Judge Wald, rejected this argument since the controversy is "capable of repetition, yet evading review." The majority proceeded to affirm the order dismissing the complaint.

Judge Thomas dissented on the mootness question. He contended that the lawsuit "grew directly and solely out of the events leading up to, and culminating in, the allied nations' recent victory over Iraq in Operation Desert Storm. Now that the war has ended, the Does' dispute with the defendants is purely hypothetical." He wrote further: "The rule is no longer in play. Doe thus will not be subjected to the rule, and he retains no live, personal stake in the outcome of this suit that challenges it....Because I believe that we have no power to decide this lawsuit, I express no view of the merits." Judge Thomas believed the case was moot because there was no reasonable likelihood that the appellant would ever again be subjected to the challenged rule. He wrote that "it is not enough that a war involving chemical weapons may occur at some time in the future."

*A/S Ivarans Rederi v. United States*

No.90-1169 (July 16, 1991)

Panel: Thomas, Edwards, Randolph

Vote: Unanimous Denial of Petition to Review Agency Decision

Article 21(a) of the Atlantic Agreement, which governs shipping between the United States and Brazil, states that disputes "which cannot be resolved by signators of this Agreement...shall be placed in arbitration." The court had previously held that the Federal Maritime Commission retained power to ultimately decide such disputes. In this case, Judge Thomas concluded that, when interpretation of the Agreement itself was an issue,, the Commission could decide a case in the first instance. He found that provision in the Agreement were "at least silent, and perhaps internally inconsistent" on an important point and held: "This is where our job ends and the agency's begins. Once we determine that a filed contract is silent or ambiguous on a particular question, we must defer to the agency's reasonable construction of the contract's terms." Applying this standard, Judge Thomas found the agency's interpretation on the point in question to be reasonable.

*Tennessee Gas Pipeline Company v. Federal Energy Regulatory Commission*

926 F.2d 1206 (1991)

Panel: Williams, Wald, Thomas

Vote: Unanimous Reversal of Agency Decision

The "rate of return on equity" is a component of cost-of-service ratemaking. A gas company filed for a rate increase. The Federal Energy Regulatory Commission chose a 15.1% figure by including information from an irrelevant prior time period. The D.C. Circuit found this arbitrary and capricious, reversed and remanded to the agency. FERC again chose 15.1% and in this case the court, in an opinion by Judge Stephen Williams, again found the approach arbitrary and capricious and again reversed and remanded.

Judge Thomas agreed that FERC had been arbitrary and capricious and concurred "only reluctantly in the final disposition," but felt this case almost required the court to dictate the decision to the agency. He felt that the agency sought "not just a second, but a third bite at the apple." He wrote: "The issue, then, is not whether this court may set a rate of return in the first instance when FERC has repeatedly failed to justify the rate it selects; rather, the issue is whether this court may order FERC to set the rate of return *compelled by its own precedents* when FERC has repeatedly failed to justify a deviation from those precedents."

*Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission*

No.90-1053 (May 10, 1991)

Panel: Mikva, Williams, Thomas

Vote: 2-1 Upholding Agency Action

The Interstate Commerce Act states that transportation "by a ferry" is exempt from the Commission's jurisdiction. A shipping company had received temporary authority to transport passengers in Long Island Sound but asked the Commission to dismiss its application for a permanent license based on this exemption. It agreed. On review, the D.C. Circuit could not determine the Commission's interpretation and remanded for more explanation. The Commission explained further, reaffirmed its decision, and decided it need not comply with the environmental review procedures under two environmental statutes. In an opinion by Chief Judge Abner Mikva, the court affirmed.

Judge Thomas agreed that the Commission lacked jurisdiction. He dissented on the remaining issues, however, because he believed the court had no jurisdiction to consider those claims. He argued that the party challenging the claimed exemption lacked standing. "Conspicuous in its absence from the national transportation policy is any allusion to our nation's environmental needs, and the Commission would be hard pressed to fit environmental concerns as such within the language of the statute." That is, a party properly raising one claim does not necessarily qualify to raise the other; the Interstate Commerce Commission could redress the one, but not the other.

C. Labor Relations

*Otis Elevator Co. v. Secretary of Labor*

921 F.2d 1285 (D.C. Cir. 1990)

Panel: Thomas, Wald, Sentelle

Vote: Unanimous Affirmance of Agency Citation for Safety Violations

This opinion is a model of judicial restraint. A company servicing the elevators of two mining companies challenged safety violation citations from the Mine Safety and Health Administration. In this complicated case, Judge Thomas avoided addressing unnecessary issues, sorted through difficult questions concerning application of canons of statutory construction, distinguished inapplicable precedents from other jurisdictions, and declined the invitation to decide the case on purely policy grounds. He determined that the elevator company was an "operator" within the meaning of the Federal Mine Safety and Health Act. He affirmed one citation since the Administrative Law Judge's finding was supported by substantial evidence. He refused to address the second citation because the elevator company had failed to pursue proper procedures for contesting it earlier.

D. Civil Procedure

*National Treasury Employees Union v. United States*

927 F.2d 1253 (D.C. Cir. 1991)

Panel: Thomas Mikva, Sentelle

Vote: Unanimous Affirmance of Denial of Preliminary Injunction

Federal employees argued that a statutory ban on honoraria violated their First Amendment rights. Judge Thomas ruled that the district court properly found that the employees would not suffer irreparable harm by complying with the ban and that, therefore, the constitutional challenge to the ban should continue. An activist judge would likely have gone on to address the substantive constitutional questions as well, but Judge Thomas deemed his task complete by ruling on the propriety of the injunction.

*Western Maryland Railway Co. v. Harbor Insurance Co.*

910 F.2d 960 (D.C. Cir. 1990)

Panel: Thomas, Edwards, Sentelle

Vote: Unanimous Reversal of Dismissal

In this case, the district court dismissed two lawsuits by railroads against their insurers for failure of each plaintiff to join the other as an indispensable party. Judge Thomas held that the railroads were not indispensable parties in each other's lawsuits since failure to join would not subject them to a substantial risk of inconsistent obligations. Therefore, their actions should not have been dismissed.

E. Antitrust

*United States v. Baker Hughes, Inc.*

908 F.2d 981 (D.C. Cir. 1990)

Panel: Thomas, R.B. Ginsburg, Sentelle

Vote: Unanimous Affirmance of Denial of Injunction Against Acquisition

A Finnish manufacturer of hardrock hydraulic underground drilling rigs sought to acquire a French manufacturer of such rigs. The United States challenged the proposed acquisition and sought an injunction, charging it would lessen competition in violation of section 7 of the Clayton Act. The district court denied the injunction and Judge Thomas affirmed. In doing so, he soundly rejected the legal standard urged by the government. Noting that the district court had not articulated the legal standard it employed, Judge Thomas held that it had "effectively applied a standard faithful to section 7" and concluded that the district court's application of this legal standard was not clearly erroneous.

## F. Trade Regulation

### *Alpo Petfoods, Inc. v. Ralston Purina Co.*

913 F.2d 958 (D.C. Cir. 1990)

Panel: Thomas, Edwards, Sentelle

Vote: Unanimous Affirmance on Liability/Reversal on Damages

In this case, Alpo charged that Ralston falsely claimed that its Puppy Chow products can lessen the severity of a crippling joint condition in dogs. Ralston charged that Alpo falsely claimed its Puppy Food contains the formula preferred by vets "two to one over the leading puppy food." After a lengthy bench trial, the district court found that both companies' claims violated the Lanham Act, enjoined such claims, and ordered the companies to issue corrective statements. It further awarded Alpo \$10.4 million in damages, plus costs and attorneys' fees, by doubling the amount Ralston spent on its ad campaign. Judge Thomas found that the district court properly applied the Lanham Act to factual findings that were not clearly erroneous.

Judge Thomas vacated and remanded the district court's judgment with respect to remedies. Since Ralston's conduct did not amount to "willful, targeted wrongdoing," a monetary award should be based on actual damages to Alpo, not on profits to Ralston. Further, Judge Thomas held that Ralston was entitled to actual damages that the company could prove. Since attorneys' fees are only available in cases of willful or bad-faith conduct, he reversed the district court's decision on that issue.

## G. Agency

### *Mayeske v. International Assoc. of Firefighters*

905 F.2d 1548 (1990)

Panel: Thomas, Wald, R.B. Ginsburg

Vote: Unanimous Reversal of Summary Judgment for Union

A union established an education program for its members, funded with grants from the Federal Emergency Management Agency. Its director and staff were considered "grant employees" and not covered by the the union's pension plan. In 1985, the union's officers became concerned that its plan might violate an Internal Revenue Code antidiscrimination provision by covering an insufficient percentage of employees. Federal law provided that employees whose pension benefits are included in a collective bargaining agreement could be excluded from the calculation under the IRS's antidiscrimination provision. The union unsuccessfully sought to persuade another union to represent the education program staff for the purpose of bargaining over pension benefits. The union then asked the education program staff to form a separate association for that purpose. They refused. The union later eliminated the learning program and the director lost her job.

Judge Thomas began his discussion by noting the district court's "flawed premise: that Mayeske was not the [union's] employee." He avoided addressing other points raised by the district court because they too rested on the premise that Mayeske was not an employee.

## CONCLUSION

Judge Thomas' judicial opinions are the best way to assess what he will do as an associate justice on the Supreme Court. They are the best indicator of how views expressed as a private citizen or an executive branch official, no matter how provocative or strongly urged, carry over into his judicial performance. Some individuals may not know how to distinguish personal opinions from judicial performance, but Clarence Thomas does. It is certainly tempting, for purposes of the political battle surrounding the nomination, simply to insist that his academic writings or speeches represent the views or positions he will force on his future colleagues on the Supreme Court. Yet this is, of course, not true at all and reading his judicial decisions proves the point well.

Judge Thomas' judicial opinions evidence his essential devotion to judicial restraint in several ways. First, he adheres to precedent. In *United States v. Halliman*, for example, he outlined his own circuit's rule on an important issue differed from that in several other circuits and applied the relevant precedent. In a 1991 decision by Chief Judge Abner Mikva, the court struck down the 24-hour ban on indecency imposed by the Federal Communications Commission. Judge Thomas joined the opinion. That court had held just three years before that a reasonable period of time during which indecency could be broadcast was constitutionally mandated. Therefore, the court had no choice in the later case but to adhere to its own precedent. Though this decision's result, on the one hand, troubles some conservatives, Judge Thomas' clear devotion to the rule of law, on the other hand, pleases conservatives who believe that law and not politics should guide judges.

Second, Judge Thomas avoids answering questions or addressing issues unnecessary for deciding the particular case before the court. In *Otis Elevator Co. v. Secretary of Labor*, he resisted three opportunities to answer such questions or to apply rules to circumstances outside the facts of that case. In *United States v. Halliman*, Judge Thomas wrote that "we need not decide whether the district court erred in predicating its probable cause determination on the collective knowledge of the police force as a whole."

Third, Judge Thomas has declined the invitation to decide cases on purely policy grounds. Also in *Otis Elevator*, after sorting through difficult questions concerning application of canons of statutory construction and distinguishing inapplicable precedents from other jurisdictions, Judge Thomas refused to depart from the law and to decide the case on nothing but policy grounds. He wrote: "This court is ill-equipped to make the kind of expert policy judgment necessary to evaluate the relative merit of these competing accounts."

Fourth, Judge Thomas has paid close attention to issues affecting the court's jurisdiction. In *United States v. Long*, he held that late filing of a notice of appeal deprived the court of jurisdiction. In *Doe v. Sullivan*, he wrote in dissent that the controversy before the court was moot and, therefore, "[b]ecause I believe that we have no power to decide this lawsuit, I express no view of the merits." In *Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission*, Judge Thomas dissented and argued that the plaintiff lacked standing to challenge an agency decision.

Fifth, Judge Thomas emphasizes a narrow role for an appellate court. In *United States v. Poston*, for example, he wrote that "[t]his court's role in assessing a sufficiency of the evidence claim on appeal is sharply circumscribed." In the same case, he noted that "[a] trial judge enjoys great discretion in ruling on a motion for a continuance....an appellate court's role is limited to determining whether the judge 'clearly abused' his discretion." Likewise, in *United States v. Long*, Judge Thomas wrote that "[o]verturning a jury's determination of guilt on the ground of insufficient evidence is not a task we undertake lightly. As an appellate court, we owe tremendous deference to a jury verdict." And in *United States v. Harrison*, he wrote: "When we review a criminal conviction for sufficiency of evidence, of course, we do so very deferentially."

Sixth, Judge Thomas utilizes traditional standards of interpretation construction. In *United States v. Rogers*, he construed the Federal Rules of Evidence using "traditional tools" of statutory construction and began his analysis, "as we do with any statute, with the language of the rules themselves." Similarly, in *Buogiorno v. Sullivan*, in determining whether an agency's interpretation of a rule was reasonable, Judge Thomas began with the words of the rule itself. In *United States v. Shabazz*, his guiding principle in reviewing a provision of the federal sentencing guidelines was the intent of Congress.

Both conservatives and liberals have concluded that, no matter what their opinion of views he expressed in speeches or articles, he applies the law in his capacity as a judge. Legal analyst Gordon Crovitz wrote that Judge Thomas' opinions "are textbook examples of judicial restraint." The leftist Alliance for Justice examined his opinions and had to conclude that "[h]is decisions overall do not indicate an overly ideological [sic] tilt." These opinions are the most important part of Clarence Thomas' overall record and the constitutional process for selecting Supreme Court justices must focus on what that part of his record has to offer.

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## JUDICIAL NOMINATION FACT SHEET Clarence Thomas' Articles, Interviews and Speeches

Clarence Thomas has a long public record; dissatisfaction at the dearth of writings by any past Supreme Court nominees cannot find repetition this time around. He has expressed his views on a variety of subjects and provided candid insights into his personal character. As one reporter put it, "Judge Thomas has left an extensive paper trail" (*Washington Times*, 7/2/91, p.A1).

That trail now includes both a judicial and a non-judicial record. Of course, different source materials have different relevance to an individual's judicial philosophy. If personal opinions or intellectual musings expressed in an article or speech carried as much weight for a judge as existing law and the facts of actual cases, such an activist could not enjoy the citizens' support and has no place on the bench. Clarence Thomas has demonstrated, through his personal and professional expressions, a more restrained view. He has, for example, said that while he personally opposes numerically based remedies to discrimination such as goals or timetables, his agency continued to implement and enforce them because the Supreme Court had approved such measures.

Clarence Thomas listed 71 items in the bibliography he submitted to the Senate Judiciary Committee at the time of his nomination to the U.S. Court of Appeals. Following a brief index are, in chronological order, summaries of 30 of these items, plus a book chapter and a speech delivered at the Heritage Foundation not listed in that bibliography. This fact sheet is intended as a guide to Judge Thomas' non-judicial writings; a separate fact sheet available from Coalitions for America summarizes his judicial opinions.

Certain themes and topics are prominent throughout Judge Thomas' writings. He believes passionately in the inherent worth and equality of every individual person. His personal experiences while growing up - a hostile social and political structure in the segregated South, but a loving yet disciplined set of family and friends - shape how he understands the problems facing minorities and the prescriptions for change. He believes in the inherent utility of traditional values such as hard work, discipline, honesty, and character. No one who reads his writings and studies his career can claim he follows the dictates of any party or any employer. *Time* magazine (7/15/91, p.18) titled its article on his nomination "Marching to a Different Drummer."

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1.

*"Discrimination and Its Effects"*  
21 *Integrated Education* 204 (1983)

This article is an edited version of a speech by EEOC Chairman Thomas before the "New Coalition" in Chicago on August 17, 1983. He did three things in this speech. First, he began with reference to his upbringing and the experience of his grandparents - cited here as "perfect examples of what discrimination can do." Second, he repeated his unequivocal position that "the federal government has the primary responsibility to protect the civil and constitutional rights of all citizens. This responsibility must not be abdicated and cannot be delegated." Third, he rejected cliches and outdated thinking. The political, social, and economic world has changed and the "problem of discrimination also has changed." Therefore, "solutions are not always as clear-cut or easy....[S]hort-term resolution may not be in our long-term interest: to transform a national ideal into an enduring reality."

He urged his professional audience: "I want here to urge you that you insist on your intellectual freedom--that you not permit the rigidity of [the current political] orthodoxy to straightjacket your thinking." He also expressed his views of affirmative action: "In light of real world facts of life, there should be no reasoned disagreement over the underlying premise of affirmative action: that is, that we simply must do more than just stop discriminating if we are ever going to stop the effects of a history of discrimination. But, we must have the courage to recognize that there is room to question the effectiveness and legality of certain affirmative action programs and policies."

He concluded with these words: "You must not be afraid of being disliked and must resist functioning in lockstep with others simply because doing so is more convenient. We cannot accept the implications of the new orthodoxy which exists in America today--an orthodoxy which says that we must be intellectual clones. We fought too long and too hard to make people stop saying Blacks looked alike--but I say it is a far greater evil that many say Blacks think alike."

2.

*"Interview with Clarence Thomas"*  
U.S. News & World Report, March 14, 1983, p.67

On discrimination in hiring: "It's fair to say that job discrimination is still very, very serious, although it is not nearly as blatant and obvious as it was 20 years ago."

On perception of Reagan Administration record on civil rights: "Although I believe the perception is unwarranted, we made some mistakes in this administration that may have fostered the perception that attacking discrimination is not a top priority. One is the Bob Jones University fiasco, in which the administration argued that the [IRS] does not have the power to revoke that institution's tax-exempt statute, despite the school's ban on interracial dating."

On the EEOC's performance: "The number of cases we are handling is actually slightly higher than during the Carter administration. And, incidentally, we've kept our budget pretty much intact at a time when many agencies have suffered reductions."

On "reverse discrimination": "Also, you should remember that there really isn't any such thing as reverse discrimination. Title VII and the other statutes designed to prevent discrimination apply to all individuals--not just to women or blacks or Hispanics or the handicapped. They apply to whites as well. So whites who feel that they are discriminated against because of race have the same cause of action under Title VII as other groups do. It is straight-out discrimination--not reverse discrimination."

On affirmative action: "We can't dismiss the fact that there was and is discrimination in this society. As a result of that discrimination, certain groups have not been permitted to take advantage of all society has to offer.... You just can't push that aside casually and say that from now on we will just play fair or compete equally because something has occurred in the past that precludes us from being equal and being able to compete equally. So we still must work at correcting some of the problems that have resulted from past discrimination."

On quotas: "I personally am not in favor of them.... I also have problems with any system that says that we are going to hire you or give you an advantage specifically because you are one color or another. That kind of system worked against minorities in the past."

On employers' excuse of too few qualified minorities: "I simply don't buy those kinds of excuses. Growing up in a segregated society, I have known too many people who were bright, well qualified and willing to work who could not land the position they deserved. I will admit, though, that we have some very serious problems with the education of minorities in this country."

On the need for the EEOC: "[W]e're going to need an EEOC for a very long time to come. Protecting the civil rights of citizens, in my view, is a prime responsibility of government."

3. *"Current Litigation Trends and Goals at the EEOC"*  
34 Labor Law Journal 208 (April 1983)

Two aspects of this article are important. First, Clarence Thomas articulated "the fundamental principles which we all share...in the area of civil rights." Those are:

One of the essential functions of the federal government is to ensure that the civil rights of all Americans be protected.... Under our statutes and the Constitution, every individual is entitled to be judged on the basis of individual merit without consideration of group characteristics such as race, sex, national origin, or religion.

Second, he noted that while "[n]o one in his right mind seriously questions the legal and moral bankruptcy of discrimination[, the] same unanimity of opinion does not exist for affirmative action." He wrote: "The starting point in defining affirmative action is the recognition that it is a further remedy designed to place a class, not specific victims of past discrimination, in the place where it theoretically would have been but for discrimination." As he would continue to do during his career, Thomas distinguished between affirmative action and quotas. "Of course, any remedy which overemphasizes actual success, as opposed to good faith efforts or intent, can be criticized as a quota. Much of the heated debate and public confusion over affirmative action, in fact, stems from the confusion between flexible goals and inflexible quotas, and the use of these two distinct terms interchangeably."

4. *"The Equal Employment Opportunity Commission:  
Reflections on a New Philosophy"*  
15 Stetson Law Review 29 (1985)

This article was adapted from an address by EEOC Chairman Thomas at an April 1985 conference on employment law sponsored by Stetson University College of Law and the Florida bar. He described both the form and substance of the agency he inherited. On the former, he said: "One of the first gifts I received was a report from the General Accounting Office, which found, as so many others had, that our agency was an administrative and managerial disaster....We had an automated payroll system and a manual personnel system, which meant that we often paid dead people and former employees."

Chairman Thomas then went into detail about the shift in enforcement philosophy from a system emphasizing quick disposition of cases. He criticized that system as "unfair to both the charging party and the employer....[making] a sham of the notion that our ultimate goal was, and is, to address and remedy discrimination. Finally, this approach totally destroyed any hope of an effective litigation program, because such a program relies on fully investigated cases." He described the new approach toward remedies: "The bottom line is that we intend to obtain the maximum relief available under the statute to make the charging party whole and to eradicate the discriminatory conduct."

He countered the opposition: "Those who insist on arguing that the principal of equal opportunity, the cornerstone of civil rights, means preferences for certain groups have relinquished their roles as moral and ethical leaders in this area. I bristle at the thought, for example, that it is morally proper to protest against minority racial preferences in South Africa while arguing for such preferences here."

He concluded: "I would also make it clear that discrimination does not explain *all* the problems of minorities, women, or anyone else in our society. No one has all the answers, regardless of how much he claims to know. My goal is to take reality into account while enforcing the law."

5. *"Black America Under the Reagan Administration:  
A Symposium of Black Conservatives"*  
Policy Review, Fall 1985

On the Reagan Administration's record: "Certainly the administration made some mistakes. A lot of us were really depressed over that Bob Jones fiasco....We knew that the appearance of what we were trying to do with the Voting Rights Act would be trotted out."

On school prayer: "[M]y mother says that when they took God out of the schools, the schools went to hell. She may be right. Religion is certainly a source of positive values, and we need as many positive values in the schools as we can get."

On the welfare state's impact on the family: "It doesn't offer any incentives for families to stay together. And it certainly accommodates the disintegration of the family....I was always taught that you should be responsible for your offspring. The government didn't have a...thing to do with it. No government policy prevented me from having kids out of wedlock. These were values I learned. Now, it seems, we have a free-for-all society where everything is all right as long as it makes you feel good."

On set-asides of government contracts for minority firms: "I don't think we should have set-asides, I don't think we should have any policies based on race....So I would favor wiping out set-asides, but only, to use an analogy of Walter Williams', if we beat away all the other pigs at the government trough."

On racism in America: "But the most devastating form of racism is the feeling that blacks are inferior, so let's help them. What we had in Georgia under Jim Crow was not as bad as this. This racism based on sympathy says that because of your race, we will give you excuses for not preparing yourself and not being as good as can be. White parents tell their kids to study hard and get into college, and black kids are told they don't have to worry about their SAT scores. That's wrong."

6. *"Abandon the Rules; They Cause Injustice"*  
USA Today, September 5, 1985, p.8A

In this opinion piece, Clarence Thomas drew a clear distinction between group preferences and non-discrimination. "Moreover, the notion that blacks must be given preferences in order to succeed and should not be judged by the same standards as other people is founded upon the racist assumption that blacks are inherently inferior. No matter what the benefits might be, conceding this assumption is far too great a price to pay."

He also distinguished between affirmative action and quotas, goals, timetables, and other types of group preferences. Failing to draw this distinction, he wrote "we will fail to address the real issues and condemn the most disadvantaged individuals in our midst to an even bleaker future."

7. *"Pluralism Lives: Blacks Don't All Think Alike"*  
Los Angeles Times, November 15, 1985

In this opinion piece, Clarence Thomas sounded another theme he has often repeated since: there is a substantial gulf between black leaders and the average black American on a wide range of issues. He wrote that "the real issue is why, unlike other individuals in this country, black individuals are not entitled to have and express points of view that differ from the collective hodgepodge of ideas that we supposedly share because we are members of the same race. There seems to be an obsession with painting blacks as an unthinking group of automatons, with a common set of views, opinions and ideas....By insisting on one point of view, this new orthodoxy stifles serious debate and the possibility of any meaningful discussion of the countless problems facing blacks today."

8. *"Remembering an Island of Hope"*  
19 The St. Croix Review 7 (December 1986)

In these remarks that first appeared in the *Lincoln Review* (Spring 1986), Clarence Thomas shared a great deal of personal reflections that provide insight into him as a person. He began by insisting upon "what we need now, at a bare minimum--as an indispensable starting point: God, values, morality, and of course, education."

Remembering his education in Catholic schools, he continued: "There were strict rules, discipline, and demanding teachers. There was a great emphasis on learning what was right--then doing it. Very few if any of us liked it then. I would dare say *all* of us want it for our children today in this confused and confusing world."

He praised the self-sacrifice and dedication of the nuns who taught him and related that to the prevailing thinking about helping blacks. "There is no doubt in my mind that the teaching achievements of our nuns are infinitely more compassionate than mere sympathy or pity. If you don't believe me, look at our city today. Look at the condition of blacks in America. After all the touching television programs--after all the not-so-well thought out governmental programs--just look at our condition....Have sympathy and pity worked, have the promises of instant cures and quick fixes worked?"

He shared more insights into his character. "I have often been accused of being controversial. In many ways, our nuns are responsible for this. They have given me confidence in my intellect and my judgment. They have taught me to *believe* in God and the word of God. For man, they taught me that understanding and comprehension are necessary....But my training by the nuns and my grandparents paid off. I decided, then, at the ripe old age of 16, that it was better to be respected than liked. Popularity is unpredictable and vacillating. *Respect* is a constant and may lead to popularity but it is not dependent upon it....So I give credit where credit is due and lay the responsibility for *me*

at the doorstep of our nuns. They have taught me to be unsubmissive and unyielding in my beliefs....They made us respect each other, respect them, respect ourselves. They set a moral, ethical, and spiritual tone that permeated our lives. They set a standard of life and a standard for living, against which we are measured and against which we can continue to measure ourselves and strive toward....My friends, I have tried with *every breath* of my body, with all my strength to live up to what I believe in."

"I have been called a conservative, because I feel strongly that without education, blacks don't have a prayer; because I believe values and morality have at least as much to do with babies having babies as anything else; that hard work and discipline do play a significant role in whether a person is successful or not. Based on what they try to make me believe, the manner in which they try to destroy me in the press, other blacks don't believe these things. Well, I could have sworn my grandparents and our nuns all but beat these kinds of values and beliefs into me. And, applying these and familiar values in my life has as much or more to do with my personal achievements as anything else."

"But no matter where we wind up--no matter what job we take or what position we hold, all hope of opportunity starts with sound education and sound values....It has been said that I would turn the clock back. That's true--I would turn it back *in time* but forward in progress....I come before you to state my terms. I will live as I believe--as I have been taught. That is my memorial to those who gave their lives to prepare me--to raise me. I do not care to exist under any other terms....I will have no part of this *orgy of self indulgence* that is running rampant in our society. I will not be deluded into thinking that grand promises and snake oil remedies will provide overnight solutions."

9. ***"Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!"***  
5 Yale Law & Policy Review 402 (1987)

Chairman Thomas began this article in a way that evidenced both his commitment to the rule of law and his practical, no-nonsense style. Noting that the Supreme Court had recently approved various forms of race-conscious relief including goals and timetables, he said: "The vast majority of all charges of employment discrimination now filed with the EEOC involve violations for which goals and timetables are not appropriate as a form of relief....Despite my personal disagreement with the Court's approval of numerical remedies, as Chairman of the EEOC, I am nevertheless grateful that the legal debate over goals and timetables has been resolved so that attention can be focused on the facts and the real issues in the EEOC's battle against employment discrimination."

He outlined the Commission's shift from an approach geared toward making "quick statistical progress" through class action suits to "a new stage in its enforcement work...Now, for the first time, the Commission has the luxury and freedom to fight to vindicate the Title VII rights of every individual victim of discrimination. The Commission has committed itself to a policy of seeking full relief for every victim of discrimination who files a charge."

Describing goals and timetables as "at best a relatively weak and limited weapon against existing forms of discrimination," Chairman Thomas pointed out that "although group-defined numerical relief is a somewhat imaginative extension of Title VII principles, these remedies are fairly easy on *employers*." Employers themselves push for numerical goals in a settlement agreement since "[g]iving back pay to each actual victim can be quite expensive, but the cost of agreeing to hire a certain number of blacks or women is generally *deminimis*....There is, in other words, an economic incentive for an employer to settle the case before it becomes necessary to identify actual victims." Prospective numerical goals simply do not address past instances of discrimination. "The use of affirmative action, rather than a victim-specific form of relief, effectively allows employers to shift the cost of the remedy from themselves to the actual victims of their past discrimination, who never receive the back pay and jobs to which they are entitled, and to the qualified persons who will be deprived of an employment opportunity because someone else was given a preference under the remedial plan."

He called "dubious" the assumption that "absent discrimination workforce representation of all groups would precisely mirror their availability in the workforce." Further, he cautioned that "[r]eliance on numerical targets to determine whether a past discriminatory employer has foresworn illegal practices will sometimes lead us to overlook continuing discrimination." He urged other "tougher means of deterrence." These include "heavy fines and even jail sentences on discriminators who defy court injunctions against further discrimination" and appointing a special master to oversee an employer's personnel operations.

He concluded by repeating his view that "numerically based affirmative action is the easy, but rarely the best, solution" because it is easy on the employer and tough on actual victims of discrimination, precisely the wrong ordering of priorities.

10.

*"Toward a 'Plain Reading' of the Constitution--The  
Declaration of Independence in Constitutional Interpretation"*  
30 Howard Law Journal 691 (1987)

In the year of the bicentennial of the Constitution, Chairman Thomas asked: "What do Black Americans have to celebrate?" And in this article, he examined "which principles dictate the policy of action towards Black Americans," those found in "the founding documents themselves--in particular the link between the Constitution and the Declaration of Independence." He accomplished this task by examining the Supreme Court's decision in *Dred Scott v. Sandford*.

Abraham Lincoln, "the most profound critic of *Dred Scott*," believed that "equality led to the principle of government by consent, limited government, majority rule, and separation of powers....Lincoln's case against slavery insisted on the principle of equality as fundamental for America."

Thomas continued: "But 'the jurisprudence of original intention' cannot be understood as sympathetic with the *Dred Scott* reasoning, if we regard the 'original intention' of the Constitution to be the fulfillment of the ideals of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it. Such an understanding of original intention will keep it from deteriorating into a defense of constitutional sideshows such as 'states' rights.'"

"It is of absolute importance to preserve what is strongest in the original Civil Rights movement: its insistence that what it demanded is what America had always promised; the logic of American ideals *required* Civil Rights legislation." This means appreciating the "higher law background" of the Constitution.

"Justice and conformity to the Constitution, not 'sensitivity,' should be the object in race relations." Thomas criticized the Supreme Court's decision in *Brown v. Board of Education* for relying on sensitivity rather than constitutional principles. "*Brown* was a missed opportunity" because it rested on sentiment, sensitivity, and dependence rather than reason, justice, and freedom. It should have been based on "moral and political principles, as established in the Constitution and the Declaration of Independence, rather than on feelings."

"But what is the ultimate American principle but that contained in the Declaration of Independence: that all men are created equal....The principle of equality is contained within the republican principle of self-government....The first principles of equality and liberty should inspire our political and constitutional thinking....Such a principled jurisprudence would pose a major alternative to the cynical rejection of 'the laws of nature and of nature's God' from jurisprudence, and esoteric hermeneutics rationalizing expansive powers for the government especially the judiciary."

11. *"Address by the Honorable Clarence Thomas...on the Occasion of the Martin Luther King, Jr., Holiday"*  
Delivered January 16, 1987 at the U.S. Department of Justice

In this address, Chairman Thomas discussed why we should honor Dr. King and what could unite us rather than divide us. In doing so, he discussed "another controversial figure who also brought about for us unity on the highest basis--Abraham Lincoln." He used Dr. King's June 1961 commencement address at Lincoln University and his 1963 Lincoln Memorial speech during the march on Washington to tie these two great men together. He emphasized "Dr. King's confidence in America" and "the greatest resource the civil rights movement and its successors have--the fundamental decency of the American people."

12.

*"A Question of Fairness"* by Juan Williams  
The Atlantic Monthly, February 1987, p.71

This wide-ranging article was based on interviews over several years and discusses the author's perception of Clarence Thomas the man and Clarence Thomas the EEOC Chairman. It attempts, largely with success, to weave a path through slogans and stereotypes toward describing a very independent man.

So much of what motivates Clarence Thomas comes from his growing up under his grandfather's guidance in segregation Georgia poverty. He is fiercely independent, self-reliant, and he insists on focusing on individuals - real people with real problems, but real people with real possibilities. Thus he takes nothing for granted, he never assumes, and he never accepts anything without candidly assessing its validity. "Thomas is an opponent of busing, arguing that black children gain nothing from simply sitting next to whites and can do quite well in their own schools....Affirmative action, believes, has primarily meant for money for a few qualified blacks, usually the scions of the already well-to-do....Lowering standards on tests, he says, may help a few blacks get a few good jobs, but is also puts the federal imprimatur on the idea that educated blacks can't compete, and therefore lends credence to it--a loss that isn't worth the gain."

In the ongoing debate, symbolized by the argument between Booker T. Washington and W.E.B. DuBois, between self-help and integration, Clarence Thomas is in the first tradition. "Like Booker T. Washington, Thomas puts his faith in the ability of black people to use their minds and their muscles to do for themselves."

"Above all--and perhaps this is the main reason why he is regarded with such disdain by so many blacks, and so many Hispanics and women as well--Thomas refuses to see civil rights as a matter of corporate struggle and *group* equity." Quotas, set-asides, and other approaches based on group membership rather than individual discrimination are based on assumptions of racial inferiority and do not end up helping the people who really need the help. Fiercely independent, Clarence Thomas demanded the chance to prove himself.

As Assistant Secretary of Education for Civil Rights, and later as EEOC Chairman, he pushed for approaches that provided this chance for others. This led him into conflict with the Reagan Administration. "[H]e set out rather quickly to overturn the government's policy of pressing southern states to unify their separate white and black college systems, arguing that an end to the so-called dual system would mean an end to the historically black colleges that had educated a majority of the nation's black professionals." Later, he opposed the government's refusal to comply with a law requiring agencies to submit statistics on the racial breakdown of their workforce.

"Clarence Thomas has resolved to play by the rules....Thomas is consistent." The author here quotes Thomas as saying: "My view is that the most vulnerable unit in our society is the individual. And blacks, in my opinion being one of the most vulnerable groups, should fight like hell to preserve individual freedoms so people can't gang up on us."

In his 1961 Lincoln University address, Dr. King had said that the substance of the American dream, as yet unfulfilled, is best expressed "in these sublime words, words lifted to cosmic proportions 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.'" Consent by the governed, expressed through representative institutions, and broad suffrage naturally result.

Chairman Thomas said of Dr. King's 1963 speech that "despite the bad check America had written black Americans, he refused to believe that the 'bank of justice' was bankrupt." America must be held to the high standards of the Declaration and the Constitution.

He continued: "This theme of a higher law behind the positive law is one that we today, we lawyers, we citizens who believe in the rule of law, and we who honor Martin Luther King need to take more seriously. For, as he maintained, American politics and the American Constitution are unintelligible without the Declaration of Independence, and the Declaration is unintelligible without the notion of a higher law by which we fallible men and women can take our bearings. So when we use the standard of 'original intention,' we must take this to mean the Constitution in light of the Declaration....Those of us who are attorneys and all of us who deal with the law as professionals...must keep in mind that all the technical training we have is in the service of those ideals."

He commented further on political theory: "But majorities can themselves abuse power; they are legitimate majorities only insofar as they comply with the higher law background of the Constitution."

Chairman Thomas then addressed "my fellow conservatives, many of whom have deep reservations about honoring Dr. King." He urged them to renew their understanding of the "natural law foundations of our Constitution" and said that "conservatives can learn a lesson from Dr. King." He said that conservative thought is deficient when it insists on an entirely free market: "After all, slaves or drugs can be bought and sold." He said that "[c]onservatives need the Declaration's high standards to give them perspective, to make them approach politics with the proper idealism and the necessary humility....In striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, of natural rights, or else it becomes part of the problem instead of part of the solution....A nation that is not based on race, that takes its bearings by standards that transcend race and apply to all humanity is what our fundamental ideals demand."

Finally, Chairman Thomas argued for a "color-blind reading of the Constitution." He brought all of this to relate to his efforts at the EEOC: "Vigorous protection of individual rights does not require the imposition of quotas or racial preference or the creation of group rights. But a rejection of group classifications and remedies does not mean shrinking from zealous enforcement of the law. This approach to enforcement has its foundation in the Declaration and follows in the tradition of Dr. King."

15.

*"American Blacks"*  
Commentary, April 1987, p.2

In this letter, Clarence Thomas linked themes he has often expressed: that the "civil-rights establishment" today differs from the ideals laid down by Dr. Martin Luther King and that "the American dream Dr. King was referring to was the Declaration of Independence." He urged "a sober reexamination of our fundamental documents....A nation that is not based on race, that takes its bearings by standards that transcend race and apply to all humanity, is what our fundamental ideals demand....In this year of the bicentennial it would be the greatest misfortune for the successors of the civil-rights movement not to draw on the strongest resource, the Constitution and the higher law inspiring it."

16.

*"The Case Against Quotas"*  
The Miami Times, May 28, 1987, p.5

Here, Clarence Thomas provided a succinct statement of his opposition to racial preferences. "I have repeatedly stated...that employers can hide behind the number of minorities employed without ever truly providing equal employment opportunities for individuals to be hired and rise through the ranks on their own merit. This is the basic drawback of affirmative action plans implementing goals and timetables--the employer can hide discrimination by showing a good bottom line. Aside from perpetuating the perception that minorities and women need preferential treatment to get ahead, hiring to meet a quota does not allow talented minorities and women to compete on an equal basis for promotions and pay increases. The preoccupation with numbers as the remedy of discrimination has the potential to undermine the ultimate goal of Title VII of the Civil Rights Act: equal employment opportunity regardless of race, color, religion, sex or national origin."

17.

*"Why Black Americans Should Look to Conservative Policies"*  
The Heritage Lectures No.119  
Delivered at The Heritage Foundation on June 18, 1987

To hear the National Abortion Rights Action League tell it, this speech was a rallying cry to pro-life activists. Not so. The portion that NARAL and the National Organization for Women point to "with alarm" (*Washington Post*, 7/6/91, p.A5) constitutes just one sentence in a nine-page speech! Yet he never mentioned abortion, privacy, or otherwise discussed constitutional issues.

The author points out that Chairman Thomas was very suspicious of attempts to "prove" discrimination with statistics. This necessarily means leaving the individual behind and rests on faulty assumptions. These include the notion that unlawful discrimination is the only explanation for variations in hiring or promotions among people of different races and the assumption that blacks are inherently inferior and should not be held to the same standards as others.

The author concludes by describing the nature of the opposition to Chairman Thomas' nomination to a second term as EEOC Chairman in a way that may predict the outcome of his current nomination to the Supreme Court: "The civil-rights groups seemed reluctant to demand that Thomas be replaced even as they listed his faults. Their hesitancy carried the day and helped to assure Thomas's confirmation."

13.

*"Colorblindness"*

The Wall Street Journal, February 20, 1987, p.21

Anyone who gets to know Clarence Thomas, reads what he has written, and really listens to what he has said first learns that he is more complex and thoughtful than the sound-bite media or lowest-common-denominator politicians attempt to portray him. In this short letter to the editor, he makes a crucial distinction between a colorblind Constitution and a colorblind society - a distinction central to law and government, but almost totally foreign to the public debate. He wrote:

I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious legal devices that only further and deepen the original problem.

14.

*"EEOC Chief Responds to Eagle View"*

Muskogee-Okmulgee Eagle, March 19, 1987

Clarence Thomas repeated his view of colorblindness and self-help in this letter to the editor. "I have ever insisted that the Constitution be interpreted as colorblind, so that society may someday become colorblind. Since we are some way from that ideal, I have always looked with favor on black self-help programs as one means of giving some black Americans the chance to lift themselves up."

accepted within the conservative ranks and to be treated with some degree of acceptance, a black was required to become a caricature of sorts, providing sideshows of anti-black quips and attacks....It is not surprising, with these attitudes, that there was a general refusal to listen to the opinions of black conservatives. In fact, it appeared often that our white counterparts actually hid from our advice."

**Liberal Hostility.** He also described the hostility to black conservatives by those on the left and in the Democratic Party. He said: "I find it intriguing that there has been a recent chorus of pleas by many of the same people who castigated us, for open-mindedness toward those black Democrats who have been accused of illegalities or improprieties. This open-mindedness was certainly not available when it came to accusing and attacking black conservatives, who merely had different ideas about what was good for black Americans and themselves."

Chairman Thomas told of when he first arrived at the Department of Education as the civil rights chief and a white reporter asked whether he had had a very rough life. He responded "that I did not; that I did indeed come from very modest circumstances but that I had lived the American dream; and that I was attempting to secure this dream for all Americans, especially those Americans of my race who had been left out of the American dream. Needless to say, [the reporter] wrote nothing."

**Looking to the Future.** He then turned to the prescription for the future: "It appears that [black Americans] are welcomed by those who dangled the lure of the wrong approach and we are discouraged by those who, in my view, have the right approach. But conservatives must open the door and lay out the welcome mat if there is ever going to be a chance of attracting black Americans. There need be no ideological concessions, just a major attitudinal change. Conservatives must show that they care." Rejecting an approach that treats blacks as just another interest, he called for an approach based on vision and principles, not vexation and polls. "We must start by articulating principles of government and standards of goodness. I suggest that we begin the search for standards and principles with the self-evident truths of the Declaration of Independence."

Insisting that "a connection exists between natural law standards and constitutional government," he referenced President Abraham Lincoln's speeches opposing the Supreme Court's infamous *Dred Scott* decision. Equality of rights derives from the essential and inherent equality of all human beings. Only this "offer[s] the opportunity to be free, and self-governing." He noted a long tradition of examining the natural law, or higher moral principles that provide "the key to how men ought to run their lives," from St. Thomas Aquinas to John Quincy Adams, from Martin Luther King to a recent article by Heritage Foundation trustee Lewis Lehrman in *The American Spectator*. Chairman Thomas argued that "[a]ccording to our higher law tradition, men must acknowledge each other's freedom, and govern only by the consent of others. All our political institutions presuppose this truth. Natural law of this form is indispensable to decent politics....This approach allows us to reassert the primacy of the individual, and establishes our inherent equality as a God-given right. This inherent equality is the basis for aggressive enforcement of civil rights laws and equal employment opportunity laws designed to protect individual rights....The primacy of individual rights demands that conservatives be the first to protect them."

Rather, in this provocative speech, EEOC Chairman Thomas addressed the problem of race in America, the search for enduring principles and standards, and the question of "why so many blacks think right and vote left." **Everyone should read this speech**, because it contains insight into Clarence Thomas the person, Clarence Thomas the independent thinker, and Clarence Thomas the conservative.

**"Family Policy."** Typically modest, Chairman Thomas said that "I have only my experiences and modest observations to offer." He described the "family policy" followed by the grandparents who raised him: "God was central. School, discipline, hard work, and knowing right from wrong were of the highest priority. Crime, welfare, slothfulness, and alcohol were enemies. But these were not issues to be debated by keen intellectuals, bellowed about by rousing orators, or dissected by pollsters and researchers. They were a way of life; they marked the path of survival and the escape route from squalor."

**A Change in Thinking.** Chairman Thomas used this speech to describe the beginning of a change in thinking among and about black Americans. He spoke repeatedly about "the prospects of black Americans with different ideas receiving exposure," "blacks who were interested in approaching the problems of minorities in our society in a different way," "my hope that we would espouse principles and policies which by their sheer force would preempt welfare and race-conscious policies," and his hope "for an opportunity to expand the thinking of and about black Americans."

**Criticizing Conservatives.** One would think that liberal interest groups would applaud this speech, for it roundly criticized how the Reagan Administration and conservatives treat blacks; instead, those interest groups cite, and the media report, just a single sentence. He said: "I am of the view that black Americans will move inexorably and naturally toward conservatism when we stop discouraging them; when they are treated as a diverse group with differing interests; and when conservatives stand for what they believe in rather than stand against blacks. This is not a prescription for success, but rather an assertion that black Americans know what they want, and it is not timidity and condescension."

Assessing his six-year tenure in the Reagan Administration, he said that "I was insulted by the initial contact about the position [of Asst. Secretary of Education for Civil Rights] as well as my current position....I always found it curious that, even though my background was in energy, taxation, and general corporate regulatory matters, I was not seriously sought after to move into one of those areas." He called the approach of arguing against affirmative action and "the welfare mentality," positions with which he nonetheless agreed, "unnecessarily negative."

He further criticized the Reagan Administration for "failing to get out early and positively in front of the effort to extend the [Voting Rights] Act." He also criticized "the appearance within the conservative ranks that blacks were to be tolerated but not necessarily welcomed. There appeared to be a presumption, albeit rebuttable, that blacks could not be conservative....Unfortunately, I would have to characterize the general attitude of conservatives toward black conservatives as indifference....It often seemed that to be

18.

*"Jarrett Tantrum"*

Chicago Sun-Times, August 27, 1987, p.48

In this short letter, Clarence Thomas repeated his view that blacks must first be viewed as individual human beings. He wrote: "Emphasizing race consciousness above human rights has been historically the enemy of black Americans."

19.

*"Hamilton's Constitutional Vision"*

Washington Times, September 2, 1987, p.A10

Clarence Thomas not only spoke here of his view on the issue of economic liberties but also demonstrated his independence of thought. While many in the media today try to place him and other "black conservatives" such as Professor Walter Williams in exactly the same box, in this letter EEOC Chairman Thomas objected to Dr. Williams' view that America's founding fathers did not guarantee economic freedoms. "Here Mr. Williams sounds too much like Justice Thurgood Marshall in denigrating the wisdom of the Founders." He wrote further: "Now we have come to the sad point that 'rights' have proliferated to make their original sense meaningless, and many believe that (noble) Bill of Rights to be something apart from the (dull) Constitution." That Constitution, Thomas wrote, is "intended to protect individual rights--the full indivisible range, economic and civil."

20.

*"Justice Marshall's Assault on the Constitution 'Exasperating'"*

Savannah Morning News, Sept. 18, 1987, p.6A

In this opinion piece, Chairman Thomas accomplished two things. First, he applauded the higher law, or enduring truth, underlying the Constitution and American political institutions. He wrote: "Fortunately, we know the Constitution and Declaration rest on 'the laws of nature and of nature's God' and the self-evident truths of equality and liberty that follow....Bigots might persecute, the overwhelming majority could be indifferent, but blacks could still point to the fundamental law of the land, and demand justice. As slow as justice was, could it have been approximated without the Constitution to appeal to?"

Second, he said that "I find exasperating and incomprehensible the assault on the Bicentennial, the Founding, and the Constitution itself by Justice Thurgood Marshall." Marshall had argued that the principles the Founders embodied in the Constitution were outdated and that, in Thomas' words, "the 14th Amendment had become the heart and soul of the Constitution." He countered that "quite to the contrary of Martin Luther King, Justice Marshall pits blacks, along with women and all other Americans other than defenders of the Confederacy, against the Founders. As we have seen, Justice Marshall's understanding of blacks and the Constitution stands in stark contrast to that of notable Americans, from Frederick Douglass and Abraham Lincoln to Dr. King."

21.

*"The Black Experience: Rage and Reality"*  
Wall Street Journal, October 12, 1987

In this article, Clarence Thomas reviewed *And We Are Not Saved: The Elusive Quest for Racial Justice*, a book by black Harvard law professor Derrick Bell. In his review, he repeated a few themes that dominate his writings. First, he distinguished between a colorblind Constitution and a colorblind society. "Much of the current thinking on civil rights has been crippled by the confusion between a 'colorblind society' and a 'colorblind Constitution.' The Constitution, by protecting the rights of individuals, is colorblind. But a society cannot be colorblind." Second, he emphasized that blacks must be viewed as individuals, not as members of an interest group. "But justice must focus on the rational defense of individual freedoms, including the property rights Mr. Bell is so contemptuous of...To be more explicit, black Americans must not fear to express their diversity as individual citizens and as members of society. The tragedy of the civil rights movement is that as blacks achieved the full exercise of their rights as citizens, government expanded, and blacks became an interest group in a coalition supporting expanded government....In my mind, uniting black Americans means giving them the security to be diverse."

22.

*"Visionary's Blurred View of Equality"*  
Washington Times, October 19, 1987, p.E8

In this article, Clarence Thomas reviewed *The Truly Disadvantaged: The Inner City, the Underclass and Public Policy* by University of Chicago sociology professor William Julius Wilson. He labels Wilson's prescription--composed of income redistribution and other socialist-oriented programs--"less a work of scholarship than a political tract with some charts and references thrown in." Chairman Thomas took the opportunity to stress the theme of self-help:

Mr. Wilson does not hesitate to scorn the modest but concrete victories of self-help in favor of a government-controlled economy. Yet it is precisely through self-help, with attention to both cultural and class traits of the underclass, that the most reliable progress can be made. In his zeal to save some families, Mr. Wilson would allow the family to have no effect at all, which would lead to its destruction.

Those of us who have ascended from the ranks of 'the truly disadvantaged' through the strength of those who raised us would have been crippled by the program Mr. Wilson sets forth. When has socialism's concentration of power--for this is what he advocates--helped a 'truly disadvantaged' minority?"

23.

*"Clarence Thomas"*  
Interview in Reason, November 1987, p.29

*Reason* magazine prefaced this interview by calling Clarence Thomas a "Washington rarity: a genuinely independent thinker." Similar to some comments now in the press, it said that "[t]he liberal and conservative establishments have never quite known what to make of the man."

Clarence Thomas said his professional career is "a vindication of the way I was raised." He also told a little of the struggle for civil rights: "My grandfather was very active: he put his property up to bail the protesters out. And all of us were members of the NAACP--the *local* NAACP."

On priorities for public policy: "To the extent that you should have any kind of efforts, it should be for those individuals who are on the bottom. Help the people who need help most, and don't just feed them this pablum of welfare and leave them in neighborhoods that are riddled with crime, where nobody would start a business or would go to try to live."

On the civil rights establishment: "I think it's out of touch with reality....It really bugs me that someone will tell me, after I spent 20 years being educated, how I'm supposed to think. That is offensive to me."

On whether he is a libertarian: "I certainly have some very strong libertarian leanings, yes."

On Malcolm X: "I was also partial to the Black Muslims, primarily because of their belief in self-help....I've been very partial to Malcolm X, particularly his self-help teachings....There is too much sometimes of the antiwhite rhetoric. There is a lot of good in what he says, and I go through it for the good."

On whether he is a black nationalist: "Nah....I'm not a nationalist. I have been angry enough in my life, and there are some points where I'm sure my attitudes approached black nationalism."

On whether the civil rights establishment, the NAACP, is doing good work: "I can't think of any. I'm the wrong person to ask, because of the malice with which they have treated me....You've got a situation recently where the president of the NAACP or one of his spokespersons is defending a kid who punched out a teacher. Give me a break!...You've got to have some standards of morality, some strong positive statements about expectations--and those organizations could do that. Instead, they spend their time telling minority kids that it is hopeless out there....They should be telling these kids that freedom carries not only benefits, it carries responsibilities."

On how the Republican Party treats blacks: "The Republican Party and the conservatives have shown very little interest in black Americans and have actually done things to leave the impression among blacks that they are antagonistic to their interests. Even as someone who's labeled a conservative--I'm a Republican, I'm black, I'm heading up this organization in the Reagan administration--I can say that conservatives don't exactly break their necks to tell blacks that they're welcome."

24. *"Civil Rights as a Principle Versus Civil Rights as an Interest"*  
Chapter 28 in *Assessing the Reagan Years* (Cato Institute, 1988)

In this piece based in Chairman Thomas' experience in the Reagan Administration, he tells how he once thought "great strides could be made on behalf of individual liberty" but how "several relatively modest but significant reforms" resulted. He wrote: "I am still amazed that the *Washington Post*, of all sources, praised the Equal Employment Opportunity Commission (EEOC) in a recent editorial." He sought here to explain the administration's "failures to enunciate a principled understanding of what we were about and to articulate the meaning of individuals rights and how we might best defend them."

For him, "the core of the civil rights debate today" is over whether "the principle of freedom and dignity" should be applied "to groups, rather than to individuals." Clarence Thomas comes down in favor of the individual. He criticized "the failure of the Supreme Court to deal adequately with race-related issues" in that even *Brown v. Board of Education* did not rest on an "adequate principle" based on "simple justice" but rather was based on "[p]sychological evidence, compassion, and a failure to connect segregation with the evil of slavery." The Court's later decisions requiring integration and busing seemed "more concerned with meeting the demands of groups than with protecting the rights of individuals."

He drew a distinction between the function of Congress and the Supreme Court. Congress has "the principal task of general lawmaking" and is "the only place where a reasonable attempt can be made to reconcile public and private interests with a view toward the common good. In fact, no other institution can bring about the kind of consensus that occurs when majorities are created in support of particular measures." As to the role of the Court, he said: "But the founders purposely insulated the courts from popular pressures, on the assumption that they should not make policy decisions. The judiciary was protected to ensure justice for individuals. This required insulating judges from other groups or interests in society, even the interests of a majority. However, it was unthinkable that courts would take the side of particular groups in the policymaking arena." Relating this to the nomination process, he asked rhetorically: "By turning Supreme Court nominations into power struggles, they transform the Court into another majoritarian institution. How, then, can it protect the rights of politically unpopular minorities?"

"Despite the supposed neutrality of the courts, few people would suggest that judges' training makes them better suited than elected officials to make *political*--as opposed to judicial--decisions. The dignity of the judiciary is not enhanced by its politicization." He

criticized "rather creative interpretations" that ignore statutory language. He criticized the Supreme Court's re-interpretation of the 1964 Civil Rights Act to create a scheme of racial preferences and Congress' devising of laws justifying racial set-asides. This, he argued, rendered irrelevant the constitutional principle of equal protection.

He asserted that "what is known as affirmative action" in the form of set-aside, racial preferences, and quotas have simply not helped blacks. "No one in this country should be made the fall guy for some other person's easy way of solving problems. And this resentment is what hiring-by-the-numbers policies have produced." He contrasted this with eliminating "artificial barriers to hiring someone you want....That is the sort of affirmative action I practice at my agency." He urged "reducing barriers to employment, instead of trying to get 'good numbers.'"

Thus blurring the separation of powers, and equating the Supreme Court with Congress as just another political branch, will "miss the point. Quick-fix solutions, such as the appointment of another justice with the right views, are not enough to ensure protection of our freedoms."

He discussed the Ninth Amendment ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people") in terms of the political compromise that brought it into the Constitution. He called the notion that the Ninth Amendment was an independent source of power for the Court to invalidate legislation "a blank check. The Court could designate something to be a right and then strike down any law it thought violated that right." Perhaps anticipating the debate sparked by the later case of "judicial taxation" in *Missouri v. Jenkins*, he speculated that if the Court were to discover some "right" in the Ninth Amendment, it could possibly require Congress to raise taxes to enforce the right. The "problem with using the Ninth Amendment" in "a nutshell" is that politicians can blame it on the Court, the Court can blame it on the Constitution, and individuals are left with no one to blame: "Far from being a protection, the Ninth Amendment will likely become an additional weapon for the enemies of freedom."

Thomas identified the Declaration of Independence as the first proclamation of the "desire for self-government." "Equality means equality of individual rights, an equality resting on the laws of nature and of nature's God. Among those rights are life, liberty, and the pursuit of happiness."

He concluded: "A civil rights policy based on principle, replacing the one based on interest-group advantages, would be a blessing not only for black Americans but for all Americans. That is what I have been working for as chairman of the EEOC. Partisans of freedom should be alert to seizing the opportunities as well as warning of obstacles awaiting them."

25.

*"Rewards Belong to Those Who Labor"*  
Washington Times, January 18, 1988

Clarence Thomas opened this provocative essay commemorating the Martin Luther King holiday this way: "The most important challenge facing black Americans is how best to take advantage of the blessings of freedom Dr. Martin Luther King Jr. helped obtain for us." In order to put freedom in proper perspective for himself, he wrote, "I need to recall a different America, one that I knew until the beginning of my adult life. This was a world of racially segregated schools, libraries, public buildings, restaurants and movie theaters." Thomas wrote that his grandfather was able to "make a better life for his family" this way: "[H]e had to be free to produce and to keep what he produced. By being self-sufficient, he protected himself from some of the effects of bigotry....Intuitively, my grandparents always knew they would make it. They knew we were inherently equal under God's law--the higher law--and that the way we were treated was a crime against God even if no laws of man were violated."

Thomas identified "intellect, energy and dedication" as the sources of wealth. When liberal intellectuals and their political operatives attack property rights and the wealthy, he insisted, they attack those qualities. Invoking James Madison, Friedrich Hayek, Alexis de Tocqueville, Winston Churchill, Abraham Lincoln, and Booker T. Washington, Thomas decried the slide from viewing rights as "the freedom to *do* something" to "the legal claim to *demand and receive* some benefit which someone else is obligated to provide." In the end, he asked: "My grandfather made full use of such rights as were permitted him under segregation. How could anyone today who does not labor under my grandfather's burdens, do any less?...Blacks today are in a better position to improve themselves than at any other time in history."

26.

*"King and Lincoln: Martyrs for America"*  
The New Federalist Papers, March 29, 1988

Marking the 20th anniversary of the assassination of Martin Luther King, Clarence Thomas sought to focus on the aims of King and Abraham Lincoln. Both of these leaders were devoted to the "original political principles" of the Declaration of Independence: "For each of the statesmen, the political problem was *enforcement* of inherent and inalienable rights....Both strove to vindicate America before a higher law." As a prescription for the future, he wrote: "Isn't the bulk of racial problems rather a question of expanding opportunities, reducing barriers, and providing education? These are policy or administrative matters, which we are free to deal with in a variety of ways: through government, charitable institutions, and, above all, the free market economy. We cannot expect overnight results, but rather apply ourselves to steady policies inspired by the words and deeds of Lincoln and King....The old civil rights movement is over. The old civil rights establishment is irrelevant."

29. *"Thomas Sowell and the Heritage of Lincoln:  
Ethnicity and Individual Freedom"*  
8 Lincoln Review 7 (Winter 1988)

In this article, Clarence Thomas called for "a persuasive case for individual rights and its complement, the right to be judged as an individual." Citing Abraham Lincoln's response to the Supreme Court's *Dred Scott* decision, and a later Lincoln speech on the development of civilization, he sought to advance the thesis that ignoring the "principle of equality" would "deny the uniqueness of the American mission, and make America not a land of individual rights and freedom but rather another collection of tribes and nations, such as all other nations have been." Only "a regime based on individual freedom which transcend[s] race" can accomplish this." Thomas praised the works of black scholar Thomas Sowell, works that were influential in Thomas' own thinking: "He is a Lincolnian in that he perceives the problems of black and some other ethnic Americans not as an opportunity to expand bureaucratic powers and thus to jeopardize everyone's freedom; he realizes, rather, that freedom, whether in 1860 or 1988, cannot prefer some Americans, or it will eventually be lost to all. It would be the greatest disaster possible for black Americans to claim their freedom at the expense of the freedom of others."

30. *"Work As Educator: A Labor Day Reflection"*  
The New Federalist Papers, August 25, 1988

In this piece, Clarence Thomas developed his broad view of education. He insists that education, in terms of book learning, can complete "what a decent upbringing has begun--but it is no substitute for wisdom gained by experience. That is why work is so important. Work is an educator and one of the greatest shapers of character. It teaches us by example and practice about universal truths of human nature and the human good." Thomas points to three principles work teaches: "the common sense of the free market," "the equal natural right to earn from one's labor," and "the dignity of labor." As he does so often, Thomas used his grandfather as an example: "He vividly understood...the moral dimension of work."

31. *"The Higher Law Background of the Privileges or Immunities Clause  
of the Fourteenth Amendment"*  
12 Harvard Journal of Law & Public Policy 63 (1989)

Chairman Thomas delivered an address at the seventh annual national symposium of the Federal Society for Law and Public Policy Studies. Its theme was unenumerated constitutional rights. Other speakers included Supreme Court Justice Antonin Scalia, U.S. Circuit Judge J. Harvie Wilkinson, and Professors Lilian BeVier, Sanford Levinson, Jules Gerard, and Norman Redlich. Addresses by the participants were published in the *Harvard Journal of Law & Public Policy*.

27.

*"What the Declaration Offers Conservatives"*  
Winston-Salem Journal, April 18, 1988, p.11

In this opinion piece, Clarence Thomas again stressed that "American politics and the American Constitution are unintelligible without the Declaration of Independence, and the Declaration is unintelligible without the notion of a higher law by which we fallible men and women can take our bearings." Urging that "conservatives...more than those of other political persuasions, have far more to offer Americans of all colors," he cautioned that "the Declaration's high standards" are necessary to give perspective to conservative policies. An example: "Surely the free market is the best means for all Americans, in particular those who have faced legal discrimination, to acquire wealth. Yet the marketplace guaranteed neither justice nor truth. After all, slaves or drugs can be bought and sold. The defense of equal opportunity to compete in a free market is a moral one that presupposed the Declaration....In striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, of rights, or else it becomes part of the problem instead of part of the solution."

28.

*"A Second Emancipation Proclamation"*  
Policy Review, Summer 1988

In this review of *Changing Course: Civil Rights at the Crossroads* by Clint Bolick, Clarence Thomas describes the book's aim as "steal[ing] civil rights as an issue from political and racial collectivists, and [reorienting] is on libertarian and conservative terms." Bolick asserts that economic liberties are the fundamental civil rights of all Americans. Thomas praises Bolick's prescriptions because they "use the strengths of ingenuity, persistence, and character that black people have always relied on for survival." Not surprisingly, Thomas agrees that "[r]acial (and gender) preferences are simply manifestations of widespread denigration of individual rights and recognition of only groups." Thomas gives further insight into his own views in this revealing paragraph:

"At times Bolick's libertarianism goes too far. He decries statutes against 'victimless crimes' such as anti-drug laws....He even endorses an activist judiciary that would strike laws regulating the economy. (But he may well be correct in seeking revitalization of the privileges or immunities clause of the Fourteenth Amendment....) He reaches such conclusions because he sees the American notion of rights as 'negative,' that is, independent of a notion of what is truly good for men and women. In properly denying to government the power to establish that good, Bolick appears to make such a good a matter of individual taste or whim--an indifference tantamount to nihilism. At this point Bolick appears to have lost sight of the higher law background of the right he zealously seeks to defend. To be free from slavery is not the same as exercising freedom."

This speech provides real insight into Clarence Thomas' judicial philosophy. Aligning himself with "the higher law political philosophy of the Founding Fathers," he said that "natural rights and higher law arguments are the best defense of liberty and of limited government. Moreover, without recourse to higher law, we abandon our best defense of judicial review--a judiciary active in defending the Constitution, by judicious in its restraint and moderation. Rather than being a justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok majorities and run-amok judges."

The Constitution, he wrote, "is a logical extension of the principles of the Declaration of Independence." Otherwise, "important parts of the Constitution are inexplicable." To those who immediately equate this view with judicial activism, he responded: "To believe that natural rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law...The higher law background of the Constitution reminds us that our political arrangements are not mere mechanical contrivances, but rather have a purpose." He insisted that reliance on such political principles in Supreme Court opinions should be implicit rather than explicit. "The higher-law background of the American Constitution, whether explicitly invoked or not, provides the only firm basis for a just, wise, and *constitutional* decision."

He cited Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*, the 1896 case declaring constitutional the "separate but equal" doctrine, as "one of our best examples of natural rights or higher law jurisprudence." He goes on to say that the Court's decision in *Brown v. Board of Education*, which repudiated the "separate but equal" doctrine, could have been even stronger by relying on such enduring political principles rather than on "dubious social science."

In a footnote, Judge Thomas wrote: "Was it not telling when, following the defeat of the Robert Bork nomination to the Supreme Court, Senator Joseph Biden was able to proclaim, 'I have certain inalienable rights because I exist, [not]...because my government confers them on me.'"

In another footnote, he referenced another article (item 24 above) in which he "elaborate[d] on my misgivings about activist judicial use of the Ninth Amendment." The Supreme Court must share that view, since it has never ruled that the Ninth Amendment is a source of unenumerated constitutional rights.

Judge Thomas concluded: "The conservatism I know has appeal because it reflects a belief in the good sense and decency of the American people and, hence, in freedom as the main source of all that is good politically. And what can be more conservative than the revolutionary principle that America was founded on--that all men are created equal?"

32.

*"Clarence Thomas: Protecting People's Rights"*  
Interview in *Minorities & Women in Business*, Sept./Oct. 1989, p.24

This interview was conducted in early 1989, before Clarence Thomas was nominated to the U.S. Court of Appeals.

On the best thing he did for EEOC. "I set a direction for the agency. I have tried to recognize the problems that we have, recognize the goals we have wanted to achieve, and to stick to my guns and go on when others were saying that we should be doing things differently. As a result, I was able to achieve some results that are very, very positive."

On the criticism of not enough class action suits. "That's ludicrous....But no one—you can check the literature to date—no one has come up with any numbers....The criticisms are usually very general. When someone said, 'EEOC doesn't do enough of this or that,' no one—I haven't seen one reporter yet ask them, 'How many were done in the past?' and 'How many are they doing now?'....We've done—as a percentage of our work load and in numbers—more class actions than we can find that anybody has ever done."

On changes he made at EEOC. "We focused on investigating cases....But our policy was to investigate cases and if we couldn't resolve them, if we found there was discrimination, we'd litigate. So that you knew that if EEOC can't resolve this, then they'll take it to court for you."

On affirmative action. "I believe in affirmative action; my problem is with 'preferential treatment' because in there it assumes that I am not the equal of someone else, and if I'm not the equal, then I'm inferior."

On his own character. "I am what they see. I don't change, and I don't vacillate. I've got things to do, and I try to get them done....It's important from my standpoint to do things in a principled way. Just because you get pressure and someone threatens to take something away from you or just because someone threatens to hurt you, I don't think you can give up on principle....I've been satisfied every day that I've gone home for the last seven years that I've given it my all....I am very satisfied that I have been honest in what I have done. I have been serious; I have done it in the best interest of advancing the law and protecting people's rights."

On his life experiences. "This job is important to me. I'm one of the last generations of kids who grew up under segregation....You learn some things under segregation about freedom that you don't learn when you have freedoms. Those people who have been denied freedoms, who haven't had it all their lives, feel more strongly about freedom than those people who have had freedom all their lives. That's why I feel so strongly about my convictions in this job."

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## JUDICIAL NOMINATION BRIEFING MEMO Clarence Thomas and Affirmative Action July 24, 1991

The latest chapter in the opposition's "Chinese water torture" approach to the Thomas nomination is the suggestion that the nominee is hypocritical because, on the one hand, he has benefitted from affirmative action and, on the other, he has criticized racially discriminatory public policies. This suggestion is another red herring that ignores Clarence Thomas' record.

Left-wing activists such as Nan Aron of the Alliance for Justice have begun saying that "Clarence Thomas spurns the very affirmative action policies that are responsible for his rise" (*Los Angeles Daily Journal*, 7/16/91). Similarly, Jesse Jackson has said Judge Thomas is criticizing the very policies that helped get him to where he is today (*USA Today*, 7/24/91). These false statements cynically play on the public's confusion between affirmative action and quotas. Clarence Thomas has benefitted from the former, not the latter. He has criticized the latter, not the former.

For example, the Martin Luther King scholarship Clarence Thomas received at Holy Cross College was, as the *Daily Journal* acknowledges, "a grant earmarked for black students that is based on financial need." According to Holy Cross' president, the college had an aggressive program to recruit black students, but no numerical quotas. Likewise, Yale Law School had "a semiformal affirmative action program" but, again, no quotas.

Judge Thomas' opponents ignore his record. On August 17, 1983, while Chairman of the Equal Employment Opportunity Commission, he gave a speech in Chicago later published as an article in the journal *Integrated Education*. Nearly a decade ago, he drew the same distinction that he and an increasing number of black leaders and scholars continue to draw. He stated: "In light of real world facts of life, there should be no reasoned disagreement over the underlying premise of affirmative action: that is, that we simply must do more than just stop discriminating if we are ever going to stop the effect of a history of discrimination. But, we must have the courage to recognize that there is room to question the effectiveness and legality of certain affirmative action programs and policies." He told his audience: "Many of us have walked through doors opened by the civil rights leaders; now you must see that others do the same. As individuals who have received the benefit of an education which was probably denied your fathers, you must devise a plan for a civil rights movement for the 1980s."

In an April 1983 article in the *Labor Law Journal*, Chairman Thomas stated: "Much of the heated debate and public confusion over affirmative action, in fact, stems from the confusion between flexible goals and inflexible quotas, and the use of these two distinct terms interchangeably."

Similarly, in a *USA Today* (9/5/85, p.8A) opinion piece, Chairman Thomas distinguished between affirmative action and quotas. Failing to draw this distinction, he wrote, "we will fail to address the real issues and condemn the most disadvantaged individuals in our midst to an even bleaker future."

Again, in a chapter in a 1988 book titled *Assessing the Reagan Years*, he distinguished between "affirmative action policies as they have developed" in the form of set-asides, racial preferences, and eliminating "the artificial barriers to hiring someone you want." He spoke of "reducing barriers to employment, instead of trying to get 'good numbers.'"

More recently, in a 1989 interview (*Minorities & Women in Business*, Sept./Oct. 1989, p.26), Chairman Thomas was even clearer. He said: "I believe in affirmative action; my problem is with 'preferential treatment' because in there it assumes that I am not the equal of someone else, and if I'm not the equal, then I'm inferior....I know what it feels like. I'm not a white male out there telling you that it ought to feel that way and it ought to do this and that. I'm telling you how it actually felt to me."

When Senator Sam Nunn (D-GA) announced on July 16, 1991 that he would introduce Clarence Thomas to the Judiciary Committee at the September nomination hearing, he noted that in their private meeting Judge Thomas continued to draw this same distinction "between affirmative action, which he supports, and the affirmative action quota type that he doesn't support.'...Mr. Nunn...said Judge Thomas' 'overall approach is very similar to the one I have, and that is the fact that someone in a racial group does not per se deserve special consideration because he's a member of a race" (*Washington Times*, 7/17/91).

The opposition knows there is a distinction between affirmative action and racially discriminatory public policies like quotas. The public supports the first, opposes the second. Therefore, Judge Thomas' opponents try to blur the distinction, confuse the public, and create a reason for criticism out of thin air. Once again, the facts prove his opponents wrong.

The bottom line is that Clarence Thomas does not read from the liberal political script. He had the appropriate response back in 1983 when he said in that Chicago speech: "You must not be afraid of being disliked and must resist functioning in lockstep with others simply because doing so is more convenient. We cannot accept the implications of the new orthodoxy which exists in America today--an orthodoxy which says that we must be intellectual clones. We fought too long and too hard to make people stop saying Blacks looked alike--but I say it is a far greater evil that many say Blacks think alike."

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## RESPONSE TO STATEMENT OF THE ALLIANCE FOR JUSTICE ON THE NOMINATION OF CLARENCE THOMAS TO THE SUPREME COURT OF THE UNITED STATES July 30, 1991

On July 29, 1991, the Alliance for Justice announced its opposition to the nomination of Judge Clarence Thomas to the Supreme Court. This fact was certainly not surprising in itself. The Alliance had attempted to scuttle Clarence Thomas' nomination to the Court of Appeals. It sought, for example, to undermine the nominee's American Bar Association rating through a September 22, 1989 memorandum to the ABA's controversial Standing Committee on the Federal Judiciary.

The Alliance's new effort, by itself, was so predictable as to lack significance. Yet the group's new report ignores so much, and distorts so much of what it addresses, that it cannot stand unchallenged. The bottom line, behind all of the outrageous charges and after the smoke has cleared, is the recurring fact that Judge Thomas is not likely to do the Alliance's bidding. All of its talk of "a judicial philosophy that threatens to undermine Constitutional protections" or "disrespect for the rule of law" and its amazing first-ever call for "moderation" is a not-so-veiled call for judges who will implement its political agenda.

The Alliance report refers exclusively to Clarence Thomas' record during his tenure as Chairman of the Equal Employment Opportunity Commission (1982-90), his articles, and his speeches. Just a single sentence in its six-page report acknowledges that the nominee is, in fact, a sitting federal judge who has actually authored judicial opinions: "Judge Thomas' brief tenure on the Court of Appeals has done nothing to alleviate our concerns." Anyone who has actually read Judge Thomas' opinions readily appreciates why the Alliance would choose to ignore them. Those opinions are, in the words of one legal analyst "textbook examples of judicial restraint."<sup>1</sup> They are not manipulable, they cannot be read several ways, and their relevance to his judicial views, as opposed to his personal views, is undisputed. Yet they do remain the best evidence of how Clarence Thomas brings his views about the courts or judicial in general, and his views about other subjects in particular, to bear in the act of judging.

Actually, the Alliance itself has already explained why the group simply will not even refer to Judge Thomas' judicial opinions in developing its charges against him. On July 29, 1991, the Alliance released four documents. One of them was titled "Alliance for Justice Preliminary Report on Clarence Thomas," dated July 1, 1991. Curiously, it differed

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<sup>1</sup> Crovitz, "The Views of Justice Thomas, According to Judge Thomas," *Wall Street Journal*, July 3, 1991, at A7.

substantially from another document, also titled "Alliance for Justice Preliminary Report on Clarence Thomas," and also dated July 1, 1991. The most significant change was that the second July 1 report did not include a positive evaluative statement about Judge Thomas' judicial opinions that appeared in the first July 1 report. That statement read:

**"His decisions overall do not indicate an overly ideological [sic] tilt, although they generally are conservative, especially his criminal law and procedure decisions."**

The Alliance owes everyone an explanation. Which report is the real July 1 report? The origin of the first July 1 report is even in doubt, since it summarizes a decision rendered on July 5, 1991. Why did the Alliance delete its favorable conclusion when it finally decided to publicly oppose the nomination? Do Judge Thomas' opinions suddenly tilt because the Alliance does? This approach resembles turning the odometer back on a used car and raises serious questions about the Alliance's credibility and other attempts at analyzing the issues raised by the Thomas nomination.

But this sleight-of-hand does prove one thing - the Alliance has no use for Judge Thomas' judicial opinions because those opinions do not provide grist for its propaganda mill. Yet the Alliance claims to "prove," by reference to Judge Thomas' views and statements off the bench, his expected views and statements on the bench! It is for this purpose that Judge Thomas' existing judicial record **must** be examined.

### **I. EEOC Tenure - Settlement vs. Litigation**

During the Alliance's July 29 press conference, its Executive Director called the EEOC under Chairman Clarence Thomas "a nickel and dime settlement agency." The facts about enforcement and litigation statistics under Chairman Thomas' leadership are so plainly a matter of public record that this statement approaches a deliberate untruth. The previous administration had aggressively pursued the "rapid charge" approach which sought to settle, rather than investigate and litigate, charges of discrimination. Some 50% of EEOC's charges were processed this way. A letter from the Office of Management and Budget dated December 8, 1980, stated that this "rapid charge process allows the settlement of the individual charges **without modifications to employment policies.**" Indeed, discriminating employers preferred this system because it did not affix blame, did not identify victims, and did not cost much to remedy.

Chairman Thomas sought to shift the agency's enforcement philosophy from "rapid charge" and settlement processing to full investigation and, if necessary, litigation. The Commission adopted an enforcement policy in 1984 requiring that all discrimination charges failing conciliation were to be forwarded to the Commission for possible litigation. The Commission adopted a remedies policy the following year requiring that the maximum of available relief would be sought in each case.

This new enforcement philosophy, emphasizing investigation, litigation, and maximum remedies, changed the enforcement statistics. The percentage of resolutions after full investigations **more than doubled** during his tenure. The number of lawsuits filed on behalf of victims of discrimination rose to record levels. And the level of benefits obtained more than doubled.

The record could not be clearer. If the Alliance for Justice somehow opposes the approach of investigating the merits of discrimination charges, litigating those with merit, and obtaining the maximum remedy for discrimination victims, let the group argue that position up front. Claiming that the EEOC under Chairman Thomas was a "nickel and dime settlement agency" is ludicrous name-calling lacking any connection with reality.

## II. Who is Out of the Mainstream?

The Alliance next claims that "Judge Thomas also displays a strong adherence toward 'natural law' theory, which he says stems from a belief in 'the laws of nature and of nature's God.' (Speech to the Pacific Research Institute)." Why did the Alliance cite this speech as the source for the quoted phrase? Why did the Alliance not cite the Declaration of Independence? Or Martin Luther King? Clarence Thomas does. He also cites those who framed and ratified the Constitution, Frederick Douglass, Abraham Lincoln, and Justice John Marshall Harlan, who dissented in the *Plessy v. Ferguson* decision and argued that the Constitution does not countenance the "separate but equal" doctrine.

If the Alliance truly wants to repudiate the entire American constitutional tradition, reject the Declaration of Independence, and claim that James Madison, Abraham Lincoln, and Martin Luther King are "out of the mainstream," then let them do so up front. But this facile attempt at describing the whole of Judge Thomas' views on this matter in a single paragraph just will not do the trick. Believing that the Constitution, in implementing the sweeping principles of the Declaration, recognizes rights that human beings possess outside of what their government confers upon them simply does not address what a judge will do in the name of judicial review.

In its "the sky is falling" approach to analyzing this nominee's views, the Alliance refuses to look at the whole record. Judge Thomas has clearly stated that his embrace of the natural law tradition is a matter of political philosophy, not judicial review. But let us let the nominee speak for himself:

"The best defense of limited government, of the separation of powers, and of the judicial restraint that flows from the commitment to limited government, is the higher law political philosophy of the Founding Fathers....Moreover, without recourse to higher law, we abandon our best defense of judicial review--a judiciary active in defending the Constitution, but judicious in its restraint and moderation. Rather than being a justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok majorities and run-amok judges."

"To believe that natural rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law."<sup>2</sup>

The Alliance takes the simplistic view, at least for purposes of its report, that being willing to "overturn Supreme Court precedent on Constitutional issues" automatically makes one an "activist." Just when the Alliance came to decry judicial activism is perhaps the subject of another analysis. And we will all wait in vain for the group to denounce the Warren Court and its upsetting the precedential applecart. But the Supreme Court itself provides the appropriate response to this rhetorical flourish. It has repeatedly held that the doctrine of *stare decisis* is least persuasive in constitutional cases. Overruling a precedent does not automatically warrant the "activist" label - it would seem that liberals would press this point even more than conservatives.

### III. Compassion = Don't Criticize ?

The Alliance claims Judge Thomas' sometimes harsh criticism of the civil rights establishment shows an "animosity to views different from his own." Since when has disagreement or independent thinking become "animosity"? Is fealty to the establishment's party line now the litmus test for an acceptable Supreme Court nominee? It is instructive to note that Arthur Fletcher, Chairman of the U.S. Commission on Civil Rights, and a dean of the civil rights/affirmative action establishment if every there was one, endorsed Judge Thomas' nomination on July 26, 1991. He stated:

"If anything should occur to diminish the effectiveness or eliminate opportunities in either [education or employment], I would have as much, if not more, to lose than anyone....I am convinced that in his heart of hearts, [Judge Thomas] knows that he has benefited from the fallout of the Brown Decision, and that he also has benefited from the dramatically improved opportunities environment created by the employment affirmative actions enforcement movement; that he has ridden it all the way to the top....I support the nomination."

Judge Thomas told the Senate Judiciary Committee: "The reason I became a lawyer was to make sure that minorities, individuals who did not have access to this society, gained access. Now, I may differ with others as to how best to do that, but the objective has always been to include those who have been excluded." That is precisely the right set of priorities.

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<sup>2</sup> Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,63-64,66 (1989).

#### IV. The "Rule of Law"

For some, the "rule of law" means nothing more than "our agenda." Thus it is with the Alliance for Justice. As it did without success during Clarence Thomas' nomination to the U.S. Court of Appeals, here the Alliance suddenly acts as if Clarence Thomas was a one-man EEOC, "imposing his personal views" upon a group of submissive and compliant commissioners, even "contrary to...the traditions of the agency itself."

Of course, this does not explain why the EEOC's new building in Washington is now named after its longest serving chairman, Clarence Thomas. It does not explain the large plaque in the lobby, placed by the Commission and its employees to honor Clarence Thomas for "his dedicated leadership exemplified by his personal integrity and unwavering commitment to freedom, justice and equality of opportunity and the highest standards of government service."

No matter what his personal views, Clarence Thomas could not have imposed anything on a five-member commission even if he had wanted to. In fact, he always followed proper administrative procedures for considering new policies. This demonstrates a commitment to, rather than a disregard for, the rule of law. And his support for new policies that strengthened the EEOC's ability to actually enforce the law demonstrates his commitment to equal opportunity for all Americans.

The Alliance rips off charge after charge without documentation, facts, or even extended discussion. Chairman Thomas allegedly believed that employers had the better evidence in "several" age discrimination cases, despite "overwhelming" evidence of discrimination. What was this evidence? How many age discrimination cases does the EEOC process each year? Is siding with an employer necessarily a disregard for the rule of law? This lays bare the Alliance's raw bias - a judge who lets plaintiffs win is restrained by the rule of law, a judge who ever sides with an employer is an activist derelict in his judicial duties.

The Alliance claims the EEOC "allowed possibly over 13,000 age discrimination complaints to lapse." The group should come forward with the proof for this figure. They fail to distinguish between discrimination **charges**, handled at the local level, and discrimination **cases**, handled at the Commission level. They fail entirely to point out that it was Chairman Thomas who first brought the problem of lapsing age discrimination cases to the public's attention in December 1987. The *Chicago Tribune* (1/30/88) praised his candid testimony before the House Select Committee on Aging: "No excuses, no bellyaching about the other guy, no flabby claim that it's difficult--or impossible, as bureaucrats and elected officials increasingly bleat in sticky situations--to assess blame. Everybody makes mistakes. Too few people in public life own up to them, much less pledge uncompromisingly that they will be corrected."

The Alliance does not mention that between 1981 and 1989, under Chairman Thomas' leadership, the amount of monetary benefits recovered by the EEOC for persons claiming age discrimination more than doubled, the number of charges under the Age Discrimination in Employment Act handled by the agency rose by more than 55%, and the

number of ADEA lawsuits filed rose by nearly 50%. During that same period, the EEOC staff actually declined by 10% and, in all but one year, Congress refused to grant the agency as much money as President Reagan had requested.

The Alliance notes that Clarence Thomas has resisted group-based approaches, including "goals and timetables," to equal employment opportunity enforcement. When the Supreme Court endorsed such approaches, Chairman Thomas enforced them. This is a commitment to, not a repudiation of, the rule of law, even above his own personal views.

The Alliance repeatedly uses the label "affirmative action" to include both flexible or individualized approaches and group-based racial preferences such as quotas. Yet Judge Thomas has repeatedly distinguished between the two. Again, his own expressions get in the way of the Alliance's rhetoric and have to take a back seat. In an August 1983 speech in Chicago, he stated: "In light of real world facts of life, there should be no reasoned disagreement over the underlying premise of affirmative action: that is, that we simply must do more than just stop discriminating if we are ever going to stop the effect of a history of discrimination. But, we must have the courage to recognize that there is room to question the effectiveness and legality of certain affirmative action programs and policies."

In an April 1983 article in the *Labor Law Journal*, he stated: "Much of the heated debate and public confusion over affirmative action, in fact, stems from the confusion between flexible goals and inflexible quotas, and the use of these two distinct terms interchangeably." In a *USA Today* (9/5/85) opinion piece, Chairman Thomas again distinguished between affirmative action and quotas. Failing to draw this distinction, he wrote, "we will fail to address the real issues and condemn the most disadvantaged individuals in our midst to an even bleaker future." More recently, in a 1989 interview (*Minorities & Women in Business*, Sept./Oct. 1989), Chairman Thomas was even clearer. He said: "I believe in affirmative action; my problem is with 'preferential treatment.'"

When Senator Sam Nunn (D-GA) announced on July 16, 1991 that he would introduce Judge Thomas to the Senate Judiciary Committee when it begins considering the nomination on September 10, he noted, as reported in the *Washington Times* the next day, that in their private meeting Judge Thomas continued to draw this same distinction "'between affirmative action, which he supports, and the affirmative action quota type that he doesn't support.'...Mr. Nunn...said Judge Thomas' 'overall approach is very similar to the one I have, and that is the fact that someone in a racial group does not per se deserve special consideration because he's a member of a race.'"

The Alliance, rather than honestly confronting the nominee's record, prefers cynically to promote the existing confusion in the public's lexicon between these two very different concepts. But the fact remains that Judge Thomas supports affirmative action designed to eliminate barriers to individual opportunity. He continues to oppose racial preferences requiring nothing more than membership in a group for persons to receive benefits.

## V. Moderation?

The Alliance concludes with an amazing call for moderation. It calls for a Court that reflects "the rich texture and complexity of American society itself." It defies the imagination how **any** group of nine individuals can reflect the "texture" even of a society much smaller and less diverse than America. That minor problem aside, the Alliance here shifts tactics in its drive for a liberal activist Court. Since it cannot simply call for that, it demands that the Court be an institution reflecting "the diversity of viewpoints representative of American society."

The Founding Fathers created a governmental structure with three branches, two of which would be political and reflect textured diversity, and the third which would be insulated from politics. It would be guided by law, not passion or public opinion. It would protect the rights even of minorities against majorities - that is, it would buck the political tide when the law required it. That is, as long as one continues believing in the distinction between law and politics.

The Alliance would trash that distinction. But it cannot have it both ways. The Alliance cannot, on the one hand, condemn Judge Thomas for embracing a notion of "higher law" while it goes down the amorphous textured path of diversified complexity. It cannot insist upon a Court that protects the rights of minorities, while demanding that the Court be a representative - and hence majoritarian - institution.

## VI. Conclusion

The Alliance for Justice's latest tirade cannot stand the test of fact, the test of logic, the test of argument. While little in this latest report is new, it is just as unfounded and selective as the group's past attempts to undermine President Bush's effort to place a respected, brilliant, and open-minded jurist in the service of America. It did not work in 1990 and it will not work this year.

# 3 of 4 groups favor Thomas for court

By Dawn Ceol  
THE WASHINGTON TIMES

The battle over Clarence Thomas' Supreme Court nomination intensified yesterday as two influential liberal groups vowed to defeat it and a bipartisan coalition of women pledged him their support.

The Women's Legal Defense Fund and People for the American Way, which oppose the nomination, and a newly formed group called Women for Judge Thomas joined more than 75 groups that have taken a stance.

About three-fourths of those groups support the nominee.

Also yesterday, a busload of residents from Judge Thomas' hometown of rural Pin Point, Ga., arrived in Washington with plans to spend today on Capitol Hill urging senators to vote for the nominee.

During back-to-back press conferences at the National Press Club, the Defense Fund and PAW issued hefty reports characterizing Judge Thomas as insensitive to women and minorities and outside the mainstream of judicial thinking.

"The prism through which Judge Thomas views the legal claims of women, including women of color, and disadvantaged people is clouded by an ideology that misinterprets, ignores and restricts legal principles of the greatest importance," said Defense Fund President Judith L. Lichtman.

"Our review of Judge Thomas' record on constitutional protections against gender discrimination, reproductive freedom and the right to privacy and equal employment opportunity exposed a disturbing pattern of disregard for each of these principles," Ms. Lichtman said.

Across the hall, Women for Thomas held its own media event to dispute that claim.

"The fact that Clarence Thomas has lived his life as a minority certainly has sensitized him to many of the issues he and women both face," said Labor Secretary Lynn Martin, a former Republican congresswoman and head of the 176-member coalition.

Women for Thomas includes professors, corporate officials, lawyers, black sororities and some government officials. The officials include Lynne Cheney, chairman of the National Endowment for the Humanities; Gwendolyn S. King, commissioner of the Social Security Administration; and R. Gaull Silberman, vice-chairman of the Equal Employment Opportunity Commission.

PAW President Arthur J. Kropp said a key reason for his group's opposition was Judge Thomas' resistance to sweeping race-based remedies while head of the EEOC during the Reagan administration.

"When we examine Judge Thomas' record, we discover a man with a singular disrespect for the rule of law, an apparent indifference to fundamental civil liberties, contempt for Congress and the judiciary, and a painfully cramped view of government's role in repairing the damage of discrimination," Mr. Kropp said.

Critics have accused Judge Thomas of laxity in pursuing discrimination claims, a charge that Heather Gradison, former chairman of the Interstate Commerce Commission and a member of Women for Thomas, vehe-

## CHOOSING SIDES

How a variety of groups line up regarding President Bush's nomination of Judge Clarence Thomas to the Supreme Court.

### In favor

American Conservative Union  
American Family Association  
Association of Retired Americans  
Coalitions for America  
Concerned Women for America  
Congress on Racial Equality  
Conservative Caucus  
Eagle Forum  
Family Research Council  
Landmark Center for Civil Rights  
Lincoln Legal Foundation  
National Catholic Education Association  
National Center for Neighborhood Enterprise  
National District Attorneys Association  
National Federation of Independent Businesses  
Religious Roundtable  
Republican National Hispanic Assembly  
Rutherford Institute  
Traditional Values Coalition  
U.S. Business and Industrial Council  
U.S. Chamber of Commerce  
Washington Legal Foundation  
Washington Policy Group  
Women for Thomas  
Young Americans for Freedom

### Against

Alliance for Justice  
American Association of University Women  
American Federation of State, County & Municipal Employees  
Americans for Democratic Action  
Congressional Black Caucus  
Equal Rights Advocates  
League of United Latin American Citizens  
National Abortion Rights Action League  
National Council of Black Lawyers  
National Council of Jewish Women  
National Council of Senior Citizens  
National Federation of Business and Professional Womens' Clubs  
National Organization for Women  
National Womens' Political Caucus  
People for the American Way  
Service Employees International Union  
United Church of Christ  
Women's Legal Defense Fund

### Undecided

AFL-CIO  
American Civil Liberties Union  
Leadership Conference on Civil Rights  
NAACP  
NAACP Legal Defense and Educational Fund

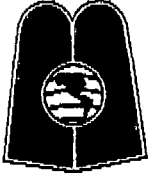
### Remaining neutral

National Urban League

The Washington Times

mently denies.

"We know that Judge Thomas is a man of admirable independence," Ms. Gradison said. "Under immense pressure he has stood for the principle that no man or woman should be the victim of discrimination because of group membership, and that no group, whether racial, gender-based, religious or ideological, should be allowed to dictate the individual conscience of the men and women who belong to it."



Agudath  
Israel  
of America  
אגודת ישראל באמריקה

F A X M E S S A G E

Please deliver this message to the below referenced immediately upon receipt.

DATE:	JULY 30, 1991
DELIVER TO:	HONORABLE JOHN H. SUNUNU
COMPANY:	CHIEF OF STAFF TO THE PRESIDENT
RECEIVER'S FAX #:	(202) 456-2883
FROM:	DAVID ZWIEBEL, ESQ.
SENDER'S TEL. #:	(212) 797-7385

We are transmitting from a Toshiba 3750 (G3) telecopier. Please call the sender immediately if the fax you receive is incomplete or illegible.

Our Fax Number Is:

212-269-2843

Number of pages including this cover page: 2

Thank you.

THOUGHT YOU WOULD BE INTERESTED IN THE ENCLOSED STORY



JULY 29, 1991

-4-

DAILY NEWS BULLETIN

## CONCERN OVER COURT NOMINEE'S FARRAKHAN SPEECH IS SUBSIDING

By David Friedman

WASHINGTON, July 28 (JTA) -- Concern appears to be lessening among Jewish organizations that Clarence Thomas, the black conservative nominated by President Bush to take over Thurgood Marshall's seat on the U.S. Supreme Court, is a supporter of the anti-Semitic views of Black Muslim leader Louis Farrakhan.

This concern was raised when it was revealed earlier this month that Thomas, in a 1983 speech, had praised Farrakhan for his espousal of black economic self-help.

Henry Siegman, executive director of the American Jewish Congress, said at the time that if Thomas had expressed admiration for Farrakhan "he has disqualified himself from service on the Supreme Court."

But Siegman said Thursday that he has since received numerous letters from Jews who have worked with Thomas and speak very warmly about him and his opposition to Farrakhan.

They have said that he is sensitive to the issue and is the last person to condone anti-Semitism or any other bigotry, Siegman said, adding that while the AJCongress is still concerned about Thomas' views on many issues, the testimonies to his lack of anti-Semitism are "reassuring."

Other Jewish organizations have reportedly been receiving similar assurances from Jews who know Thomas.

Agudath Israel of America, the only national Jewish organization to have endorsed Thomas so far, also said that it was reassured by Jews who worked with Thomas that he does not share Farrakhan's anti-Semitism.

When his 1983 remarks on Farrakhan were revealed, Thomas immediately issued a statement declaring that "I am, and always have been, unalterably and adamantly opposed to anti-Semitism and bigotry of any kind, including by Louis Farrakhan."

Supporters of Thomas, argued that Farrakhan's anti-Semitism was not as well-known in 1983 as it became in 1984, when the Black Muslim leader received national attention during the Rev. Jesse Jackson's first campaign for the presidency.

But some Jewish leaders maintained that Farrakhan's diatribes against Israel, Jews and Judaism were known for more than a decade.

### Compared Farrakhan To Skinheads

Thomas' supporters point to a 1989 interview in a national Catholic weekly in which the nominee compared Farrakhan to neo-Nazi groups like the Skinheads.

"You never want to have hate groups in

"It will scare me when people begin to say, 'Well, I can understand where the Skinheads are coming from,' when they begin to get some moral sanction from our legal institutions," he added.

Thomas also said that while there are still individuals who are as racist as others were in the past, "the difference is now they don't have the overall moral sanction of society."

The Senate Judiciary Committee will begin confirmation hearings for Thomas on Sept. 10. He is expected to be questioned closely on his views about Farrakhan, affirmative action, abortion, and his record as chairman of the U.S. Equal Employment Opportunity Commission from 1982 to 1989.

In his 1989 interview, Thomas said the commission for the three prior years had filed 500 cases annually, more than any previous commission. He said that during his tenure, the commission also collected a billion dollars in relief for persons claiming discrimination.

But he charged that the commission was "hampered by Congress which, every year, guts the budget for EEOC" proposed by the president.

"They just don't want the EEOC to be successful during a Republican administration," Thomas said.

Thomas also said that he did not believe the civil rights movement will grow because the issues today are tougher and harder to dramatize than desegregating a lunch counter.

"The issues today are much harder," Thomas said.

## IRAQ HOSTED INTERNATIONAL COLLECTION OF JEW-HATERS

By Michel Di Paz

PARIS, July 28 (JTA) -- Iraq played host to a gaggle of French neo-Nazis and Holocaust revisionists from several countries, according to a July 24 interview published in the daily Liberation here.

Michel Faci, 35, who says he was secretary general of an extreme right-wing anti-Semitic group at the time, boasts that he and about 20 others were invited to Iraq by a government-sponsored organization called "Friendship, Peace and Solidarity with Iraq."

He described the "thrill" of being able to walk around in a "genuine" SS uniform in the Al Aras tourist city about five miles from Baghdad.

According to Faci, the French neo-Nazis were received by the Iraqi information minister, Abdel Lateef Jassem, who was surprised that the "Protocols of the Elders of Zion" is outlawed in France.

The 19th-century anti-Semitic forgery that originated in Czarist Russia is a best-seller in Iraq, Faci claimed.

He said the Holocaust deniers on the plane

"You never want to have hate groups in your society, whether it is Farrakhan or the Skinheads," Thomas told the Los Angeles-based Catholic Twin Circle.

Thomas was responding to a question about the Skinheads, and it was he who injected the comparison with Farrakhan.

The interview is being reprinted in the newspaper's July 28 edition because of the new interest in Thomas, said Lori Sayer, the newspaper's editor, who made a copy available to the Jewish Telegraphic Agency.

In his remarks on the Skinheads, Thomas played down their importance. "You don't see any politicians embracing Skinheads and surviving," he said.

He said the broadcast to Iraq included an American, William Brown, who was personally received by Saddam Hussein, and Michel Sergent, a Frenchman whom the Iraqis employed as a lecturer at Baghdad University.

"In the streets of Baghdad, we saw in a newspaper stand the portrait of Uncle Adolf (Hitler) with a swastika. The Iraqis are fiercely anti-Zionist," Faci was quoted as saying. "They agree Hitler was right to fight against the Jews in World War II. To them, Israel is really the incarnation of the devil."

Faci said that after doing propaganda work on Iraqi television, he and his companions left on the last plane to Jordan in mid-January -- following the first night of Allied bombing of Baghdad.



# Republican National Hispanic Assembly

## Press Release

For immediate release

July 19, 1991  
Contact: Alvaro Pereira  
(202) 662-1355

The Republican National Hispanic Assembly, (RNHA), the official Hispanic auxiliary of the RNC, commends President George Bush on his decision to nominate Judge Clarence Thomas to the United States Supreme Court.

"The RNHA is dismayed to see that a few Black and Hispanic organizations are attempting to dictate that for minorities to be appointed to positions of significant rank in government, they must be liberal and not conservative. This is a clear act of discrimination against Judge Thomas, based on political ideology", stated RNHA National Chairman Jose Manuel Casanova.

This nomination is not dictated by Judge Thomas' race, it is not dictated by his ideology, it is dictated by his first-hand intellect, his varied legal experiences his outstanding character and his commitment to the Constitution and individual rights. The U.S. Senate has already confirmed Judge Thomas four separate times: as Assistant Secretary for Civil Rights at the Department of Education in 1981, Vice Chairman of the EEOC in 1982 and 1986, and most recently as U.S. Court of Appeals Judge for the District of Columbia in 1990. He graduated from Holy Cross College with honors in 1971 and Yale Law School in 1974. He surely has already passed through the most sensitive investigation and review process of government and of the Senate, on several occasions.

The President nominated him for his fidelity to the Constitution and rule of law. These qualities, coupled with his education and experience, will make him an exemplary Justice of the Supreme Court.

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THE WHITE HOUSE

WASHINGTON

July 29, 1991

MEMORANDUM FOR:

✓ Governor Sununu  
Judy Smith  
Ken Duberstein  
Fred McClure  
Ron Kaufman  
Leigh Anne Metzger  
Gary Andres  
Lee Liberman  
John Mackey  
Dorrance Smith

Andy Card  
Ed Rogers  
Bobbie Kilberg  
David Demarest  
Steve Hart  
Mike Luttig  
Bill Kristol  
Jim Dyer  
Deb Amend

FROM:

EDE HOLIDAY 

SUBJECT:

Clarence Thomas

Please see the attached copy of an op-ed by Secretary Sullivan which appeared in the Atlanta Journal & Constitution last Friday.

# Senate should OK 'exemplary' Thomas

By Louis W. Sullivan  
Special to The Atlanta Constitution

Dr. Sullivan is secretary of Health and Human Services.

WASHINGTON — The appointment of a Supreme Court justice is one of the most important appointments a president makes. Judgeships are for life and the Supreme Court's role in resolving some of our most crucial issues of law and policy is pivotal.

In nominating Judge Clarence Thomas, the president has assured that resolution of these crucial matters will remain in the province of highly competent, fair and distinguished jurists of impeccable character and integrity. It is a nomination that deserves broad and quick support in the Senate.

Judge Thomas's qualifications for this high office are now well-known and not in doubt. His integrity and character, subjected daily to intense scrutiny, have remained unblemished.

Absent any reasonable basis for questioning the president's nomination on the bases of competence and character (the most relevant grounds on which to evaluate Supreme Court appointments), discussion about Judge Thomas now centers on his judicial philosophy and his views on social policy.



Clarence Thomas

There are even some who would attempt to question the strength of his racial identity. But, even based on these attenuated considerations, Judge Thomas should be confirmed for the Supreme Court with enthusiasm by an overwhelming majority of the Senate.

Regarding his judicial philosophy, perhaps the trouble some have is that Judge Thomas is a fiercely independent thinker and, thus, defies easy labeling. While, for some, this may be a troublesome characteristic, to me it is an important asset.

Our media- and computer-oriented culture needs neat categories for easy sorting and compartmentalizing. But what is gained in uniformity and predictability is lost in creativity.

I believe that we, as a society, are enriched by diversity born of independent thought. Therefore, what some would see as a matter of concern about Judge Thomas, I see as a compelling strength that will enhance the court.

Judge Thomas's views on social policy have been widely expressed, but less thoroughly read. When the full text of his writings and speeches (rather than selective quotes) are read, however, they reveal a man sensitive to the needs of the dis-

liberty, committed to fundamental fairness and thoughtfully suspicious of government.

These are neither extreme nor offensive views on social policy. In fact, they comport rather well with those of the president. And, it is a well-established practice and long-recognized tradition in our political system that a president is entitled to reflect in his appointments the views and philosophy that carried him to victory.

In Judge Thomas, the president has appropriately sought to have his philosophy reflected on the Supreme Court, just as he has with nominations for other positions.

But the most unfair of all the things being said about this nominee are the whispers and innuendo about his sense of identity. No one who knows Clarence Thomas or even spends a brief time in his presence questions who he is or who he thinks he is.

I know Judge Thomas. I have looked him in the eye, into the core of who he is. I see a man on whose soul the ravages of America's segregated past and the harsh burdens of poverty are indelibly written.

I see a man of character and courage who has drawn from these challenges the strength to endure and the compassion to remember. He seeks a better future for the least of us and for all Americans who still suffer from discrimination and bias.

The members of the Liberty County branch of the National Association for the Advancement of Colored People, his home NAACP chapter, agree and have given Judge Thomas their qualified support.

Judge Thomas's identification with his past and his passion for improving the future has been lifelong. His words, taken in context, speak clearly and have been long expressed:

■ On civil rights laws — "These new laws changed the entire way of life for many Americans. They continue to do so. And they are basic to many Americans. They continue to do so. And they are basic to the very functioning of our system of government."

■ On the role of the government in protecting civil rights — "The federal government must continue to pave the way in civil rights. The federal government has always had both a profound moral obligation and constitutional duty to protect individual rights;" and, "Many of us have walked through doors opened by the civil rights leaders, now you must see that others do the same."

In nominating Judge Thomas to the Supreme Court, the president has chosen a proven jurist, a man of exemplary integrity, an independent thinker, a champion of liberty and a compassionate defender of the vulnerable.

Judge Thomas comes to the confirmation hearings as an exemplary story of personal success and with the potential to be an outstanding justice for all the people. □

Danfath statement

~~SECRET~~  
1082

I have been authorized by Judge Clarence Thomas to release the attached statement.

Judge Thomas has told me that the statement about Louis Farrakhan was written by a speech writer at EEOC, and may not have been delivered. Judge Thomas was adamant in telling me that he absolutely repudiates anti-Semitism by Louis Farrakhan or by anyone else. He told me that anti-Semitism is totally contrary to everything he has believed in and worked for.

I can say on the basis of 17 years of knowing Clarence Thomas, that there has never been any hint of prejudice expressed by him against any group in our society. As a victim of prejudice, himself, he feels most strongly that it is morally wrong and he has committed much of his professional life to combating it.

Statement of Judge Clarence Thomas  
July 12, 1991

"I cannot leave standing any suggestion that I am anti-Semitic. I am and have always been unalterably and adamantly opposed to anti-Semitism and bigotry of any kind, including by Louis Farrakhan. I repudiate the anti-Semitism of Louis Farrakhan or anyone else. While I support the concept of economic self-help, I have never supported or tolerated bigotry of any kind."

8/5/91 (rev.)

**ASSOCIATION AND ORGANIZATION ENDORSEMENTS  
FOR JUDGE CLARENCE THOMAS**

Accuracy in Academia  
Agudath Israel of America  
Alabama Family Advocates  
American Conservative Union  
American Family Association  
Americans for a Balanced Budget  
Americans for Tax Reform  
Association of Christian Schools International  
Catholic Golden Age  
Central State University  
Citizens for Educational Freedom  
Coalitions for America  
College Republican National Committee  
Concerned Citizens of Florida  
Concerned Women for America  
Congress on Racial Equality  
Conservative Caucus  
Conservative Victory Committee  
Council of 100  
Cuban American National Foundation  
Eagle Forum  
Family Research Council  
Freedom Alliance  
Landmark Center for Civil Rights  
Lincoln Legal Foundation  
Michigan Family Forum  
National Catholic Education Association  
National Center for Neighborhood Enterprise  
National Center for Public Policy Research  
National Coalition for Self-Reliance  
National District Attorneys Association  
National Family Foundation  
National Family Institute  
National Tax Limitation Committee  
Pennsylvania Parents Commission  
Polish American Congress  
Prairie View A & M University  
Religious Roundtable  
Republican National Lawyers Association  
Republican National Hispanic Assembly  
Rutherford Institute  
Save America's Youth  
Save Our Schools

**Students for America**  
**Teenage Republicans**  
**Traditional Values Coalition**  
**United Conservatives of America**  
**United Families of America**  
**United Seniors**  
**U.S. Business and Industrial Council**  
**U.S. Chamber of Commerce**  
**U.S. Hispanic Chamber of Commerce**  
**U.S.-Mexico Foundation**  
**Washington Legal Foundation**  
**Washington Policy Group**  
**Women for Judge Thomas**  
**Young Americans for Freedom**  
**Zeta Phi Beta Sorority**

7/24/91

**U.S. Supreme Court Nominee Judge Clarence Thomas  
Association and Organization Endorsements**

*Black Republican Group Endorses Clarence Thomas Nomination  
(7/2/91)*

"The Council of 100, a national organization of Black Republicans announced its support of President Bush's nomination of Clarence Thomas for Associate Justice of the Supreme Court. An early supporter of Thomas, the Council sent a letter to President Bush prior to the public announcement requesting Bush to consider Thomas for the nomination to the nation's highest court."

"Mr. Thomas is a legal scholar who having recently passed Senate confirmation before his current appointment, is already well known to the Administration. Most importantly, he has the moral turpitude, the breadth of experience, and regard for conservative construction of constitutional issues needed for a Supreme Court Justice."

*Students for America Statement of Support for Judge Clarence Thomas  
(7/12/91)*

"We...state our support for the nomination of Judge Clarence Thomas to serve as the 106th Associate Justice of the United States Supreme Court.

"Judge Thomas has served the United States with distinction for over 17 years, as a Federal Appellate Justice, Chairman of the U.S. Equal Employment Commission and as U.S. District Attorney in Missouri.

"Judge Thomas embodies the values that many young Americans believe so strongly in, and the traditional American values that our forefathers embedded into the foundation of this great country. With Judge Thomas on the bench we can be assured that the Court will not legislate its decisions, but will interpret the Constitution as it is written."

*The National Tax Limitation Committee Endorses Judge Clarence Thomas for the  
Supreme Court  
(7/15/91)*

"The NTLC normally does not endorse Judicial nominees. However, in the wake of the Missouri vs. Jenkins decision last year, when, on a 5-4 vote, the Court decreed that federal judges could order local governments to impose taxes, it has become clear that taxpayers have a decided interest in the Judiciary.

"On that and other issues...we believe the Court will be finer, fairer and more sensitive to the rights of individuals, including taxpayers, if Clarence Thomas has the opportunity to serve."

*Catholic Golden Age Endorses Thomas as Next Supreme Court Justice*  
(7/15/91)

"The Board of Directors of Catholic Golden Age, the national non-profit organization of Catholics over 50, fully endorses Judge Clarence Thomas as the next U.S. Supreme Court Justice.

"We have no doubt about Judge Thomas' commitment to civil rights or his ability to serve on the highest court in the land."

*The National District Attorney's Association Supports Thomas*  
(7/16/91)

"Be it resolved that the National District Attorneys Association urges the Senate Judiciary Committee and the United States Senate to confirm without delay, President Bush's nomination of Judge Clarence Thomas to the United States Supreme Court."

*Agudath Israel to Support Bush Supreme Court Nomination*  
(7/17/91)

Agudath Israel of America, the nation's largest grassroots Orthodox Jewish movement, today announced its intention to support President Bush's nomination of Judge Clarence Thomas for the U.S. Supreme Court.

"Judge Thomas has impressive credentials, both professionally and personally. He has compiled a strong record of distinguished service -- as a judge in the U.S. Court of Appeals for the D.C. Circuit, and, prior to that, as the chairman of the Equal Employment Opportunity Commission. He has displayed great sensitivity to the cause of religious liberty. He has articulated a vision of equal opportunity for all Americans that will help move the U.S. toward a society in which people are judged on the basis of their qualifications rather than their race, gender, religion or any other extraneous characteristic. He has overcome personal adversity and discrimination in his own life through his steadfast commitment to such basic principles as hard work and intellectual integrity."

*The Republican National Hispanic Assembly Endorses Thomas*  
(7/19/91)

The Republican National Hispanic Assembly (RNHA), the official Hispanic auxiliary of the RNC, commends President George Bush on his decision to nominate Judge Clarence Thomas to the U.S. Supreme Court.

"This nomination is not dictated by Judge Thomas' race, it is not dictated by his ideology, it is dictated by his first-hand intellect, his varied legal experiences his outstanding character and his commitment to the Constitution and individual rights."

Page 3 Thomas Endorsements

"The President nominated him for his fidelity to the Constitution and rule of law. These qualities, coupled with his education and experience, will make him an exemplary Justice of the Supreme Court."

*The National Catholic Educational Association Endorses Thomas  
(7/22/91)*

"...It can not be denied that he [Clarence Thomas] embodies the best and brightest of the American dream. Against all odds, he overcame a disadvantaged and challenging youth to attain a distinguished education; to reach high public office and to gain the respect and gratitude of the leaders of our country.

"We believe Mr. Thomas has the qualifications to serve on the Supreme Court and are confident that his accomplishment in achieving this post will stand as an incentive to all young people in America that -- despite all odds -- they have a chance at a better life through learning and self-initiative."

*The U.S. Hispanic Chamber of Commerce Endorses Thomas  
(7/22/91)*

The board of directors of the U.S. Hispanic Chamber of Commerce (USHCC) today unanimously voted in favor of supporting Judge Clarence Thomas' nomination to the U.S. Supreme Court.

"The USHCC is a business advocate group concerned with economic rights. As such, we strive to make the market place an even playing field for Hispanic businesses and minority enterprise at large. We believe in economic empowerment of individuals, justice and equal opportunities for all Americans. We value hard work, discipline, moral courage, self-reliance and entrepreneurship. For all these reasons, we support Thomas's nomination."

THE WHITE HOUSE  
WASHINGTON

July 24, 1991

MEMORANDUM TO:

Governor Sununu

Judy Smith  
Ken Duberstein  
Fred McClure  
Ron Kaufman  
Leigh Anne Metzger  
Gary Andres  
Lee Liberman  
John Mackey

Andy Card  
Ed Rogers  
David Demarest  
Steve Hart  
Mike Luttig  
Bill Kristol  
Jim Dyer  
Deb Amend

FROM:

Dorrance Smith *DS*  
Assistant to the President for Media Affairs

SUBJECT:

Clarence Thomas

Attached are additional talking points on Clarence Thomas. Please distribute as you see appropriate.

07/24/91

## BUSINESS ISSUES

### SUPREME COURT NOMINATION OF JUDGE CLARENCE THOMAS

- o Judge Clarence Thomas is a firm believer in the benefits of our free enterprise system. As he has said, "individual rights and the free enterprise system go hand in hand. This system enables individuals to advance themselves through their own efforts and permits private -- as opposed to government -- decision-making to take place."
- o Judge Thomas served for several years as corporate counsel for Monsanto Company, where he was involved in matters relating to contracts, antitrust law, and product liability. He would bring to the bench a fresh understanding of business issues and business concerns.
- o As Chairman of the Equal Employment Opportunity Commission (EEOC), Judge Thomas changed the organization's relationship with American businesses from adversarial to cooperative. He established a voluntary assistance program to provide technical guidance and educational support to help employers comply with EEOC laws. His actions showed sensitivity to the plight of businesses who want to comply with the law, but need help navigating complex technical employment regulations.
- o Judge Thomas reorganized the EEOC, which was described by the General Accounting Office as being in "complete chaos" before he assumed chairmanship. His management of this agency, which employs 2,850 people and has an annual budget of \$202 million, was commended by the Office of Management and Budget for improved management quality.
- o On announcing the U.S. Hispanic Chamber of Commerce's endorsement of Judge Thomas' nomination, Jose Nino, USHCC president, noted that "The U.S. Hispanic Chamber of Commerce is a business advocate group concerned with economic rights. As such, we strive to make the marketplace an even playing field for Hispanic businesses and minority enterprise at large. We believe in economic empowerment of individuals, justice and equal opportunities for all Americans. We value hard work, discipline, moral courage, self-reliance and entrepreneurship. For all these reasons, we support Thomas's nomination."

JUDGE THOMAS  
BUSINESS ISSUES  
PAGE TWO

- o Judge Thomas' opinions from the bench demonstrate a grasp of business realities and an understanding of commercial details. A lawyer who argued a case before Judge Thomas, said that he asks "real-world" questions. His opinion in that case protected a corporation's right to free speech.
- o In business-related issues before the court, Judge Thomas has approved government agency decisions favoring deregulation and free market determinations.
- o Clarence Thomas is a man who understands the value of hard work in American business. While in grade school, he worked for his grandfather's company delivering ice and fuel oil. His grandfather taught him the value of hard work and discipline -- lessons he has applied throughout his life.
- o The U.S. Senate has already confirmed Judge Thomas four separate times: as Assistant Secretary for Civil Rights at the Department of Education in 1981, twice as Chairman of the EEOC in 1982 and 1986, and most recently as U.S. Court of Appeals Judge for the District of Columbia in 1990. He graduated from Holy Cross College with honors in 1971 and Yale Law School in 1974.

Judge Clarence Thomas was born June 23, 1948, in Pinpoint, a rural community near Savannah, Georgia. His father left the family when Thomas was still a small child. For the first years of his life, Thomas lived in a house with no indoor plumbing, moving at one point to a cramped tenement in Savannah.

At the age of seven, Thomas went to live with his maternal grandparents, Myers and Christine Anderson. His grandfather, though barely literate, owned and managed an ice and fuel oil delivery business, in which Thomas worked after school. Anderson was also active in the local chapter of the NAACP. It was largely from his grandparents that Thomas learned the importance of hard work and discipline -- lessons that he has applied throughout his life.

The Andersons sent Thomas to all-black schools in Savannah, where he was taught by Franciscan nuns. The educational standards were very high. Thomas has said of the nuns: "They most assuredly taught us Christian values, but they taught us to be self-sufficient individuals first." The nuns underscored his grandparents' teaching about the importance of education.

In 1964, Thomas transferred to St. John Vianney Minor Seminary near Savannah, where for most of the next three years he was the only black student in his class. He excelled in his studies and was quarterback of the football team.

At this point in his life, Thomas intended to become a priest. However, after spending several months at Immaculate Conception Seminary in Missouri, he changed his mind and transferred to Holy Cross College in Massachusetts. He supported his education through a combination of scholarships, loans, and jobs. He worked in the Free Breakfast Program and tutored in the local community. He graduated with honors in 1971.

Thomas then went to Yale Law School. While a law student, he worked summers for New Haven Legal Assistance and for a small law firm in Savannah. He graduated from law school in 1974.

Throughout his life, Thomas has seized opportunities that the American system offers. As Judge Thomas said on being nominated by President Bush, "Only in America could this have been possible", for a child born in poverty and segregation to be nominated to the Supreme Court. In the President's words, Thomas defines "the endless possibilities of the American dream." Georgia State Senator Roy Allen, a classmate, said that Thomas "represents the dream that African-Americans want to achieve."

Thomas' legal career contributes to his long record of accomplishment. Much of that career has been dedicated to service of the nation. In 1974, John C. Danforth, then the Attorney General of Missouri, hired Thomas as an Assistant Attorney General. Thomas practiced principally in the areas of criminal and tax law, arguing several cases before the Missouri Supreme Court. In 1977, he joined the legal staff of the Monsanto Company, where he was involved in matters relating to contracts, antitrust law, and products liability. In 1979, he became a legislative assistant to Senator Danforth.

Four times the United States Senate has confirmed Judge Thomas' appointment to high-ranking government positions. In 1981, Thomas was appointed Assistant Secretary for Civil Rights in the United States Department of Education. One year later, he was appointed Chairman of the Equal Employment Opportunity Commission; he was reappointed in 1986. The EEOC, an agency that employs 3,100 persons and has an annual budget of \$180 million, enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex, or national origin. The EEOC also enforces laws against discrimination based on age or disability. Thomas' tenure as chairman was the longest in the history of the Commission, and the Commission's new headquarters building is named after him.

On April 30, 1990, Thomas assumed his present position as a judge on the United States Court of Appeals for the District of Columbia, to which he was appointed by President Bush. During his time on the bench, he has written opinions in criminal law, antitrust law and trade regulation, constitutional law, and administrative law.

Throughout his distinguished career, Thomas has championed the principle that individuals should be judged on the basis of abilities and character, not on skin color. He believes that every American should have the same opportunity to stand up and be judged on his or her own merits. He has lucidly explained his views on a variety of issues, legal and otherwise, in his judicial decisions and in articles and speeches. He has been described in the press as smart, tough, a man who "speaks powerfully about overcoming racism and poverty in the deep South" and who "embodies the ideal of personal achievement rather than reliance on government programs for a leg up." As Senator Hatch has observed, Thomas "came up the hard way" and "understands the sting of oppression." Senator Danforth made a similar point when he observed that Thomas "is a person who knows discrimination. He has a real commitment to fighting injustice."

In announcing his nomination of Judge Thomas to the Supreme Court, President Bush described him as "a delightful and warm, intelligent person who has great empathy and a wonderful sense of humor." The President observed that Judge Thomas is a "fiercely independent thinker with an excellent legal mind, who believes passionately in equal opportunity for all Americans."

Senator Bob Dole applauded the nomination, citing Thomas' "impeccable credentials" and calling Thomas "a man whose very life exemplifies the American dream." Senator Danforth has described Thomas as "outstanding in every respect" and observed that Thomas is "a compassionate kind of conservative, not rigid or ideological in his views. . . . In a very real way, he'll be the people's justice."

In 1987, Thomas married Virginia Lamp, an official at the Department of Labor. His son from his first marriage, Jamal, lives with the family in Alexandria, Virginia. Thomas occasionally jogs, lifts weights, and enjoys country music.

# Gary A. Franks

Congressman  
5th District, Connecticut



NEWS RELEASE

FOR IMMEDIATE RELEASE  
CONTACT: CHRIS HEALY 225-7865

## FRANKS SUPPORTS THOMAS DESPITE CBC VOTE

WASHINGTON - U.S. Rep. Gary A. Franks, R-CT, Thursday, dissented with members of the Congressional Black Caucus in their denunciation of Supreme Court candidate, Federal Appeals Court Judge Clarence Thomas.

"I respectfully disagree with my colleagues on their opinion of Judge Thomas," said Franks. "Judge Thomas is a qualified, fair jurist who will be a tremendous addition to the highest court in the land."

Franks said Judge Thomas readily appreciates protecting individual liberties and rights and brings a wealth of public sector experience to this position.

"He has an impressive resume and a deep conviction for fairness," said Franks. "I am confident Judge Thomas he will be a great Associate Justice."

-30-

### CONNECTICUT OFFICES

135 Grand Street, Suite 210  
Waterbury, CT 06702-1911  
(203) 573-1418

30 Main Street  
Danbury, CT 06810-3003  
(203) 790-1263

### WASHINGTON OFFICE

1609 Longworth Building  
Washington, D.C. 20515-0705  
(202) 225-3622

# Withdrawal/Redaction Sheet

## (George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Clayton Yeutter to Peggy Noonan Re: Wall Street Journal Article on Clarence Thomas (1 pp.)	7/12/91	<del>P-2, P-5</del>	

**Collection:**

**Record Group:** Bush Presidential Records  
**Office:** Chief of Staff, White House Office of  
**Series:** Sununu, John, Files  
**Subseries:** Issues Files  
**WHORM Cat.:**  
**File Location:** Clarence Thomas Nomination [2]

**Open on Expiration of PRA**  
**(Document Follows)**  
 By JP (NLGB) on 10/28/05

<b>Date Closed:</b> 1/5/2005	<b>OA/ID Number:</b> 29172-007
<b>FOIA/SYS Case #:</b> 1998-0004-F[2]	<b>Appeal Case #:</b>
<b>Re-review Case #:</b> 2005-0426-S	<b>Appeal Disposition:</b>
<b>P-2/P-5 Review Case #:</b>	<b>Disposition Date:</b>
<b>AR Case #:</b>	<b>MR Case #:</b>
<b>AR Disposition:</b>	<b>MR Disposition:</b>
<b>AR Disposition Date:</b>	<b>MR Disposition Date:</b>

### RESTRICTION CODES

**Presidential Records Act - [44 U.S.C. 2204(a)]**

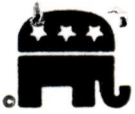
- P-1 National Security Classified Information [(a)(1) of the PRA]
- P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P-3 Release would violate a Federal statute [(a)(3) of the PRA]
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

- (b)(1) National security classified information [(b)(1) of the FOIA]
- (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- (b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- (b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- (b)(9) Release would disclose geological or geophysical information



Republican  
National  
Committee

Clayton Yeutter  
Chairman

July 12, 1991

MEMORANDUM

TO: PEGGY NOONAN

FROM: CLAYTON YEUTTER

---

Peggy, I just wanted you to know how much I enjoyed and appreciated your recent Wall Street Journal article, "Clarence Thomas: To Be Young, Gifted and Black." It was outstanding. Coming from someone of your talent, that was not surprising, but was it ever welcome. A good offense is important to his candidacy at the moment, and you certainly helped provide it.

Many thanks for a fine contribution to the cause.

bc:

J. Austin  
M. Matalin  
B. J. Cooper

R. Kaufman  
F. McClure  
J. Sununu

# Withdrawal/Redaction Sheet

## (George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Note	From Katie Winklejohn to John Sununu Re: Ed Koch and Clarence Thomas (1 pp.)	n.d.	<del>P-2, P-5</del>	

**Collection:**

**Record Group:** Bush Presidential Records  
**Office:** Chief of Staff, White House Office of  
**Series:** Sununu, John, Files  
**Subseries:** Issues Files  
**WHORM Cat.:**  
**File Location:** Clarence Thomas Nomination [2]

Open on Expiration of PRA  
 (Document Follows)  
 By JP (NLGB) on 10/28/05

<b>Date Closed:</b> 1/5/2005	<b>OA/ID Number:</b> 29172-007
<b>FOIA/SYS Case #:</b> 1998-0004-F[2]	<b>Appeal Case #:</b>
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<b>AR Case #:</b>	<b>MR Case #:</b>
<b>AR Disposition:</b>	<b>MR Disposition:</b>
<b>AR Disposition Date:</b>	<b>MR Disposition Date:</b>

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P-1 National Security Classified Information [(a)(1) of the PRA]
- P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- (b)(9) Release would disclose geological or geophysical information

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

**THE WHITE HOUSE  
WASHINGTON**

Friday, 7:00pm

BOBBIE KILBERG called.

She had just talked with Ed Koch and he "blasted" her on the Clarence Thomas nomination. Even though he had a positive column in today's paper, he spent the entire day making it clear to the media that it is not enough for him to denounce Farrakhan's statements, he must denounce Farrakhan (basically the same message as the ADL).

He is now withholding his support of the nomination.

FYI.

Katie

# NEW YORK POST

36

FRIDAY, JULY 12, 1991

To: GOVERNOR SUNUNU  
Fax 2397

pg. 2

## D KOCH



IT'S a shame we will have to wait all summer for the Senate confirmation hearings on Judge Clarence Thomas, President Bush's nominee to fill Thurgood Marshall's Supreme Court seat.

As the New York Post said in an editorial last week, "It will be fun to watch white, wealthy liberal senators like Biden, Metzenbaum and Kennedy demand that Thomas — a black who's experienced the pain of discrimination firsthand — 'explain himself.'" It won't be easy for them. What can you do about a man whose life is the epitome of the American dream?

### Judge Thomas is posing dilemma

From what Howard Metzenbaum and others have been saying in the news media, it would seem that psychologically they are finding it difficult to let Thomas off the plantation. They just don't trust a black who doesn't want to take whites on a guilt trip.

At the hearings, Thomas will have to deal with Ted Kennedy, who is quite familiar with the intricacies of the law — judges, juries and coroners — and Metzenbaum, that pillar of olive rectitude, the only member of the Senate Judiciary Committee who voted against Thomas last year when the nominee was confirmed for his current spot on the Washington, D.C., Circuit Court of Appeals.

Metzenbaum is the senator who came under fire for taking \$250,000 for making two phone calls to complete a real-estate deal while acting as a real-estate broker without a license. He later returned the money under pressure.

Much of the debate that has the liberals gnashing their teeth centers upon two crucial issues: Thomas' opposition to quotas and his position on abortion. I agree with him on the first and disagree with him on the second. But his views are mainstream, supported by millions of Americans and deserving of respect. Shall we impose the "politically correct" views now sweeping our universities upon the courts as well?

Throughout history, presidents have nominated candidates for the Supreme Court whose views reflect their own — there's nothing remarkable about that. Sometimes presidents discover to their surprise that their perceptions were incorrect.

### Wealthy liberals' moral slip is showing

President Eisenhower undoubtedly felt he was nominating a moderate when he selected Republican Earl Warren. Warren ended up being the most liberal chief justice of the most liberal Supreme Court of modern times. Even judges are not predictable and that injects vigor into our judicial system.

As to President Bush, when he flatly stated that Judge Thomas' race had nothing to do with his choice, I hope he

had his fingers crossed. There is nothing wrong with the president wanting to provide diversity on the court. Diversity is not the same as a quota. Most people do not feel there should be a black, female, Jewish or any other kind of "set-aside" seat. On the other hand, it is no longer reasonable for the Supreme Court to be comprised only of white Protestant males.

When Judge Thomas was designated to the Circuit Court of Appeals, some senators said he would face tougher grilling if he were nominated to the Supreme Court. When Metzenbaum says he will investigate Judge Thomas' record on abortion, presumably basing his vote solely on this one issue, he is perverting the purpose of the Senate hearings. Is Metzenbaum saying only those who support "choice" may sit on the court?

If Ted Kennedy, Joe Biden and Howard Metzenbaum want to nominate Supreme Court justices, they should run for president. If the Democrats want Supreme Court candidates to reflect the philosophy of the Democratic Party, they've got to elect Democrats to the presidency.

Are only the best judicial minds being appointed to the U.S. Supreme Court? No, but that has never been the criterion.

In the modern era, Oliver Wendell Holmes, Benjamin Cardozo, Louis Brandeis and William Brennan can be described as brilliant legal scholars, but very few others. It is not a denigration of Earl Warren or Thurgood Marshall to say they were able and effective, but not brilliant. They deserved to be on the Supreme Court and should be praised for having made extraordinary contributions to our country.

Now it's time to hear what Judge Thomas has to say.

**JUSTIN DART, JR.**

907 6TH STREET, S.W., APT. 516C  
WASHINGTON, D.C. 20024  
202-488-7684 (H)  
202-653-5044 (W)

Washington, DC  
July 18, 1991

For Immediate Release

I support the confirmation of Judge Clarence Thomas as a Justice of the United States Supreme Court.

I am not an attorney, and am not familiar with the details of his record on every issue. However, in my capacity as Chairman of the President's Committee on Employment of People with Disabilities, I have known Judge Thomas as a person who supports disability rights. I have heard him publicly endorse the civil rights of people with disabilities well before the introduction in Congress of the Americans with Disabilities Act. More importantly, I believe Judge Thomas to be a person of strong conscience and integrity, who believes in the fundamental rights of human beings.

Finally, I believe that our democracy is more effective when the President of the United States is supported in his choices from among fully qualified candidates for judgeships.

Justin Dart

THE WHITE HOUSE

WASHINGTON

Talking Points / Hispanic Bar Assoc. Meeting

- Thank you for meeting with me today to discuss the nomination of Judge Clarence Thomas to the Supreme Court.
- We would like your support.
- Under Judge Thomas's leadership the EEOC established important legal protection for Hispanics.
  - \* Striking down English - only rules (Salvation Army)
  - \* Establishing that Title VII protects undocumented workers from illegal employment discrimination (Hacienda Hotels)
  - \* Securing millions of dollars for Hispanic workers in numerous class action and individual cases
  - \* Following the passage of IRCA the EEOC took the lead in making the government and the public aware of the potential for national origin discrimination that IRCA's enforcement presented.
- We have set up a meeting for you at EEOC with Chairman Kemp and Ricky Silberman, Vice Chairman, to discuss your concerns about the National Council of La Raza's report regarding Civil Rights enforcement and Hispanics.
- I'd like to hear your thoughts about Judge Thomas and hopefully our counsel, Boyden Gray, Ricky Silberman, and I can answer any questions that you may have.

Governor,

FYI: President Bush has nominated 94 U.S. District & Court of Appeals Judges. (approximately 80 are to District Court) 5 are Hispanic:

2 to Court of Appeals  
3 to District Court (1 pending confirmation)

District Court appointments are effectively controlled by home state Senators.



# THE JEWISH PRESS

Week of July 26 to August 1, 1991

15 Av 5751

## Agudath Israel Supports Bush's Supreme Court Nominee

Agudath Israel of America, the nation's largest grassroots Orthodox Jewish movement, announced its intention to support President Bush's nomination of Judge Clarence Thomas for the United States Supreme Court.

In its announcement, the 69-year-old national Jewish organization emphasized Judge Thomas' credentials for the high court, including such factors as his strong support for religious liberty and his commitment to principles of equal opportunity for all Americans.

Responding to the controversy generated by the recent report concerning the speech prepared for Judge Thomas in 1983 in which a favorable reference was made to Louis Farrakhan and his views concerning "economic self-help," the Agudath Israel statement cites Judge Thomas' own public statements and information it has received from reliable independent sources that Judge Thomas had not been aware of Farrakhan's anti-Semitism in 1983, and that he would not have made any positive references to Farrakhan had he been aware of Farrakhan's anti-Jewish bigotry.

The Agudath Israel announcement reflected the decision of its national Board reached at a meeting on Tuesday, July 16 at Agudath Israel's national headquarters in New York City. The full text of the Agudath Israel announcement follows:

"Agudath Israel of America warmly greets President Bush's nomination of Judge Clarence Thomas to serve as Associate Justice of the United States Supreme Court. Based on a careful review of information currently available about Judge Thomas, we are convinced that he will prove to be an outstanding member of the high court.

"Judge Thomas has impressive credentials, both professionally and personally. He has compiled a strong record of distinguished service — as judge in

the U.S. Court of Appeals for the D.C. Circuit, and, prior to that, as the chairman of the Equal Employment Opportunity Commission. He has displayed great sensitivity to the cause of religious liberty. He has articulated a vision of equal opportunity for all Americans that will help move the United States toward a society in which people are judged on the basis of their qualifications rather than their race, gender, religion or any other extraneous characteristic. He has overcome personal adversity and discrimination in his own life through his steadfast commitment to such basic principles as hard work and intellectual integrity.

"Agudath Israel has carefully considered the circumstances surrounding the speech prepared for delivery by Judge Thomas in 1983 in which a favorable reference was made to Louis Farrakhan and his views concerning 'economic self-help.' Based on Judge Thomas' own public statements, and on the information we have received from several extremely reliable independent sources, we currently believe that Judge Thomas — like most Americans — was not aware of Farrakhan's anti-Semitism in 1983; that had he been so aware, he would never have said anything positive about Farrakhan; and that he is of the view that Farrakhan's poisonous message of hatred and bigotry infects all of Farrakhan's messages and renders Farrakhan totally beyond the pale of positive discourse, let alone admiration. We are firmly persuaded that Judge Thomas personally abhors anti-Semitism and is totally dedicated to eradicating it and all other forms of bigotry in the United States.

"We intend to communicate our support for Judge Thomas' nomination when the Senate Judiciary Committee holds hearings on the nomination later this year."

THE JEWISH PRESS  
BROOKLYN, NY  
7/26/91

## Supporting Judge Thomas

By Senator JOHN DANFORTH (R-Missouri)

I regret to say that the Congressional Black Caucus held a meeting in which it voted to oppose formally the nomination of Clarence Thomas to the U.S. Supreme Court. And it is my understanding that at that meeting it was further decided that the Congressional Black Caucus would attempt to mount a sort of political campaign throughout the country against the Thomas nomination. The effort would be made, as I understand it, to communicate with black political leaders throughout America and urge them to weigh in against the Thomas nomination.

I regret their decision for several reasons. One, because it was really a rush to judgment. No effort was made to find out the facts. It was even decided not even to try to review Judge Thomas' record before making the decision.

But there are a couple more reasons that cause me even more concern. The first is that I am concerned that we are seeing a rerun of what happened with the Bork proceedings. At that time there was an effort by opponents of Judge Bork to in effect go over the head of the Senate, particularly during the summer recess at that time, and to whip up various interest groups by creating the impression that Judge Bork was something of an ogre, a villain, and by so creating that impression frighten various groups to in turn weigh in with their Senators, and make appeals with their Senators particularly during the recess.

I do not think that confirmation proceedings should be conducted in that way. I do not believe that confirmation proceedings for the U.S. Supreme Court should be political campaigns designed to build blocks of interest groups to oppose a Supreme Court nominee. For that reason, I am very concerned about this development. I can see it coming all over again: The politicization of the confirmation process, as though it was a political campaign as though it was a campaign for President or the Senate.

Mr. President, there is another reason why I am particularly concerned, and this, to me, is the greatest reason why we should be aware of what I am afraid is going on. The worst threat to this country is nothing that happens abroad. The worst threat to this country, in the opinion of this Senator, is not the deficit and the budget, or anything relating to the economy. The worst threat to this country is divisiveness on the basis of race. That is the great threat to America.

The great challenge to America is how to hold our country together as one people, regardless of race; how to draw us together and hold us together. So the great threat is the politics of race. And it is a very attractive political tool. It has been used by Republicans; it has

been used very recently by Republicans, and it has been advocated by Republicans: Let us play the race card.

But it is no less playing the race card for members of the Congressional Black Caucus to organize black politicians around the country to oppose a black judge who has been nominated for the Supreme Court on the basis that he does not have the right ideology. That is racial politics. That is divisive. And that is at least equally as dangerous as anything that is done with respect to the quota card.

The reason I have been trying to work on a civil rights compromise is to get race out of partisan politics and to get it into partisan politics, no matter what the source, is something that threatens the very fabric of this country.

Mr. President, I hope that Americans — white and black — all over America will say: We just do not want this to happen; we do not want it to happen in the context of the civil rights legislation; we do not want to have it happen in the context of the Thomas nomination. That is a thing of the past. That is a thing of the days of Theodore Bilbo and the Ku Klux Klan. That is not America of 1991.

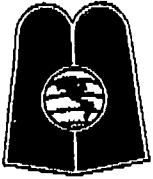
The American people are going to be appealed to, apparently, as members of interest groups or racial groups, on the Thomas nomination. What Clarence Thomas stands for is that a person can be black, and he can think anything he wants and say anything he wants.

What Clarence Thomas said today when he was visiting one of the Senators was that he hoped that his nomination could further healing in this country along racial lines. We are going to have to ask ourselves whether we want healing, or whether we want more division; whether we want Americans to say no to this racial divisiveness, or whether we are going to fall for it yet again.

Whatever the decision, Mr. President, this Senator is going to do his best to point out what is happening in this debate. Let us have it all in the open — not just 40 phone calls; not just little letter-writing campaigns and an order to make people afraid of Clarence Thomas. Put it out in the open; call attention to it; put it in the spotlight of public attention, and let the American people respond.

I think the American people will say about Clarence Thomas: This is a decent person, and this is a qualified person, and this is the kind of person we want on the Supreme Court of the United States. And we are not going to be frightened and divided. We are going to support him, or we are going to oppose him on the basis of his human qualities or on the basis of his judicial policies, and not on the basis of some effort ripped up on the basis of race.

*(This statement was read by the Senator and entered into the Congressional Record.)*



Agudath  
Israel  
of America  
אגודת ישראל באמריקה

F A X M E S S A G E

Please deliver this message to the below referenced immediately upon receipt.

DATE: JULY 17, 1991

DELIVER TO: HONORABLE JOHN H. SUNUNU

COMPANY: CHIEF OF STAFF TO THE PRESIDENT

RECEIVER'S FAX #: (202) 456-2883

FROM: DAVID ZWIEBEL, ESQ.

SENDER'S TEL. #: (212) 797-7385

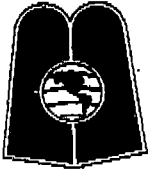
We are transmitting from a Toshiba 3750 (G3) telecopier. Please call the sender immediately if the fax you receive is incomplete or illegible.

Our Fax Number Is:

212-269-2843

Number of pages including this cover page: 3

Thank you.

**NEWS FROM ...**

**Agudath  
Israel  
of America**

אגודת ישראל באמריקה

*Agudath Israel of America, founded in 1922, is a broadly based Orthodox Jewish movement with chapters in major communities throughout the United States and Canada. It sponsors a broad range of constructive projects in the fields of religion, education, children's welfare and social action affecting the lives of young and old in far-flung parts of the Americas, Israel, Europe, and elsewhere.*

**FOR IMMEDIATE RELEASE:**

July 17, 1991

**AGUDATH ISRAEL TO SUPPORT  
BUSH SUPREME COURT NOMINATION**

Agudath Israel of America, the nation's largest grassroots Orthodox Jewish movement, today announced its intention to support President Bush's nomination of Judge Clarence Thomas for the United States Supreme Court.

In its announcement, the 69-year old national Jewish organization emphasized Judge Thomas' credentials for the high court, including such factors as his strong support for religious liberty and his commitment to principles of equal opportunity for all Americans.

Responding to the controversy generated by the recent report concerning the speech prepared for Judge Thomas in 1983 in which a favorable reference was made to Louis Farrakhan and his views concerning "economic self-help," the Agudath Israel statement cites Judge Thomas' own public statements and information it has received from reliable independent sources that Judge Thomas had not been aware of Farrakhan's anti-semitism in 1983, and that he would not have made any positive references to Farrakhan had he been aware of Farrakhan's anti-Jewish bigotry.

The Agudath Israel announcement reflected the decision of its national Board reached at a meeting last night (Tuesday, July 16) at Agudath Israel's national headquarters in New York City. The full text of the Agudath Israel statement follows:

"Agudath Israel of America warmly greets President Bush's nomination of Judge Clarence Thomas to serve as Associate Justice of the United States Supreme Court.

**AGUDATH ISRAEL TO SUPPORT . . .**

July 17, 1991

Page Two

Based on a careful review of information currently available about Judge Thomas, we are convinced that he will prove to be an outstanding member of the high court.

"Judge Thomas has impressive credentials, both professionally and personally. He has compiled a strong record of distinguished service -- as a judge in the U.S. Court of Appeals for the D.C. Circuit; and, prior to that, as the chairman of the Equal Employment Opportunity Commission. He has displayed great sensitivity to the cause of religious liberty. He has articulated a vision of equal opportunity for all Americans that will help move the United States toward a society in which people are judged on the basis of their qualifications rather than their race, gender, religion or any other extraneous characteristic. He has overcome personal adversity and discrimination in his own life through his steadfast commitment to such basic principles as hard work and intellectual integrity.

"Agudath Israel has carefully considered the circumstances surrounding the speech prepared for delivery by Judge Thomas in 1983 in which a favorable reference was made to Louis Farrakhan and his views concerning "economic self-help." Based on Judge Thomas' own public statements, and on the information we have received from several extremely reliable independent sources, we currently believe that Judge Thomas -- like most Americans -- was not aware of Farrakhan's anti-semitism in 1983; that had he been so aware, he would never have said anything positive about Farrakhan; and that he is of the view that Farrakhan's poisonous message of hatred and bigotry infects all of Farrakhan's messages and renders Farrakhan totally beyond the pale of positive discourse, let alone admiration. We are firmly persuaded that Judge Thomas personally abhors anti-semitism and is totally dedicated to eradicating it and all other forms of bigotry in the United States.

"We intend to communicate our support for Judge Thomas' nomination when the Senate Judiciary Committee holds hearings on the nomination later this year."



JUDGE CLARENCE THOMAS  
CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**"The EEOC is Thriving"**

**"Under the quiet but persistent leadership of Chairman Clarence Thomas, the number of cases processed has gone from 50,935 in fiscal 1982 to 66,305 last year."**

**-- Washington Post Editorial  
August 1, 1987**

- o In 1982 Clarence Thomas was appointed Chairman of the Equal Employment Opportunity Commission (EEOC); he was reappointed in 1986 and led the agency until he was named to the federal bench in 1990.
- o The EEOC, an agency that employs 2,850 people and has an annual budget of \$202 million, enforces Title VII of the Civil Rights act of 1964, which prohibits discrimination based on race, color, religion, sex, or national origin; the Equal Pay Act; the Age Discrimination in Employment Act; and the Americans with Disabilities Act.
- o Judge Thomas compiled an outstanding record at the EEOC. He revitalized the agency, emphasizing its law enforcement mission. Thomas sought tougher penalties against discriminatory businesses and instituted policies that protect the rights of American workers and expand opportunities for women, older Americans and minorities.
- o Under Thomas, the EEOC vigorously enforced laws against religious discrimination. Thomas' efforts were recognized with the Union of Orthodox Jewish Congregations of America's annual Humanitarian Award for his "commitment to the rights of all Americans to live free from discrimination based on race, religion, or national origin."
- o The EEOC achieved a remarkable record under the leadership of Judge Clarence Thomas. Under Thomas, the Commission:
  - secured over a billion dollars in relief for victims of discrimination;
  - filed more than 3,000 legal actions in U.S. District Courts during his tenure. In 1983, the Commission filed 195 lawsuits, by 1990 that annual figure had more than tripled to 640;
  - instituted policies to ensure that every charge filed is fully investigated and litigated with full relief sought for victims of discrimination;

- restructured the systemic/pattern and practice program. In 1981 the Commission had only a handful of broad pattern and practice cases in litigation; in 1988, 103 cases were investigated and 16 were in active litigation. Of the \$131 million in relief obtained in FY 1988, over \$48 million was awarded in large class action/pattern practice cases;
  - established outreach programs for previously underserved areas and for small and medium-sized employers;
  - professionalized the agency and established a management infrastructure by taking a finance system the General Accounting Office had reported was in shambles and implemented a sound financial management system that in 1984, met GAO's standards for the first time;
  - transformed a work environment the Office of Personnel Management described as "beset by acrimony, improper employee conduct, poor performance and favoritism" and a case processing system that GAO concluded was in a state of "complete chaos" to an agency which the Office of Management and Budget commended for improved management quality.
- o Under Clarence Thomas' leadership the EEOC vigorously enforced the Age Discrimination in Employment Act (ADEA). Under Thomas the EEOC championed the rights of older workers by:
- fully investigating and prosecuting charges of age discrimination;
  - securing a total of \$389.7 million in benefits under the ADEA from 1982 - 1990;
  - filing 781 ADEA lawsuits from 1982 - 1990;
  - filing pattern and practice/class action lawsuits that represented annually between one-third and three-fourths total ADEA lawsuits; and
  - approving policies to mandate pension accrual for employees working past normal retirement age; and establishing standards to protect older workers who wished to waive their ADEA rights in return for enhanced (often collectively bargained) separation benefits. That rule was suspended by the Congress, but ultimately codified in the Older Workers Protection Act.

# My friendship with Thomas tells me he is a good choice



**ALPHONSO JACKSON**

While thumbing through newspapers and listening to television since President Bush nominated Clarence Thomas to the U.S. Supreme Court, I have been quite offended by the unwarranted labeling,

outrageous charges and ludicrous judgments made against the appeals court judge.

The Clarence Thomas I know is a self-made man who has worked enormously hard to get where he is today. He will serve the Supreme Court well. Not through "Uncle Toming," buying his way to the top or being a "token," as some have suggested; but through his own strength of character, perseverance and strong belief in the American dream. I should know — I have known him for

almost 28 years.

Clarence and I were introduced in the early 70s by John C. Danforth, then the Missouri attorney general and now the state's senior U.S. senator. Since that time, he and I have become good friends. Most of our earlier moments together were spent in St. Louis with our good friend Larry Thompson, now a partner at King & Spalding in Atlanta.

Later, our political careers took us to Washington, where Clarence became chairman of the federal Equal Employment Opportunity Commission and I headed the district's Department of Public and Assisted Housing. There we spent countless hours debating politics and disagreeing on issues; but, through the years, we remained loyal friends and philosophically in tune.

That is why I am convinced the allegations being made against Clarence Thomas are merely quick and simplistic judgments of the real man behind the

robe and gavel, and oversimplified speculations of what he might do once in office.

Some are saying Mr. Thomas has allowed himself to be used as an instrument to push African-Americans back from the fight for racial justice; I say, never. The Clarence Thomas I know remembers the pain of discrimination.

From our many private and public discussions, I recall him saying, "I can never forget the agony of discrimination — the humiliation of prejudice. Through summer work at the New Haven Legal Assistance Clinic, under a grant from the Law Students' Civil Rights Research Council, I did not forget. Through Holy Cross and Yale, I did not forget. As assistant attorney general and assistant secretary, I did not forget. As chairman of the EEOC, I cannot and will not forget."

Others are saying Mr. Thomas opposes affirmative action and does not support civil rights. I say the Clarence Thomas I

know strongly supports civil rights. In an appearance at Holy Cross College, I was proud to hear him say:

"My grandparents, who raised me, are perfect examples of what discrimination can do. No matter what efforts they made, race was a roadblock to taking full advantage of the benefits of this country. As a result of living through this experience and other experiences, I have strong views about civil rights. Many of us have walked through doors opened by the civil rights leaders; now you must see that others do the same."

While some in the civil rights movement contend that they are not convinced that Mr. Thomas is the right choice, I say he is. I think the main issues should be his ability to interpret the law fairly, follow it through and judge with compassion. There is no doubt in my mind that Clarence Thomas will be a fair and equitable Supreme Court justice.

President Bush could not have made a

more sound decision than to nominate Clarence Thomas for the next Supreme Court justice. Mr. Thomas is a man who believes that justice must be colorblind, just as the late Dr. Martin Luther King believed when he, during the march on Washington in 1964, stated that one day, he hoped that his children would be judged by the content of their character, not the color of their skin.

The Clarence Thomas I know is capable, competent and compassionate. His credentials speak for themselves and are above reproach. I firmly believe he will be capable of recognizing racism when it comes before him on the Supreme Court, competent to fairly judge critical issues and compassionate to rule on each case according to facts, not politics.

Isn't that what we really want from a Supreme Court justice?

*Alphonso Jackson is executive director of the Dallas Housing Authority.*

Allen Moore

## The Clarence Thomas I Know

I have been reading and hearing a lot about Clarence Thomas these days. Some of it makes me wonder: Can this be the same Clarence Thomas who worked for me in Jack Danforth's office 12 years ago and has been my friend ever since?

The man I read about has been called an "arch-conservative" who has "forgotten where he came from," who believes "affirmative action is as heroic" whose seven years as chairman of the Equal Employment Opportunity Commission are "the most retrograde in its history," whose "marriage ended in a messy divorce that deserves scrutiny," whose "opposition to abortion" could be examined, whose actions are "guided by political calculation," and who is "harbly egalitarian and self-righteous rather than compassionate and empathetic."

The Clarence Thomas I know is a caring, honest, bright, good-humored, modest and thoughtful father, husband and public servant who has already come farther in 43 years than most of us will in a lifetime.

The president did his nominee no favor when he said race was not a factor in the nomination. Of course it was, and Thomas readily admits it, as he acknowledges that race played a role in

his selection for other jobs along the way. He has never denied his indebtedness to, or admiration for, those, such as Justice Thurgood Marshall, who helped open such doors. He does not blindly oppose the notion of taking race into consideration for hiring, promotion or admissions decisions. What he does oppose are rigid numerical goals and quotas, which he considers divisive and unfair.

When he gets a chance to fully explain his views in Senate hearings, he will challenge his listeners to think beyond platitudes and conventional orthodoxy. Clarence Thomas has always supported the idea of giving preferential treatment to the truly disadvantaged, especially minorities, rather than to those from middle- or upper middle-class backgrounds who happen to be members of a targeted minority group. To do otherwise risks stigmatizing those favored—to make it appear as if they are incapable of competing fairly. It also can put the unprepared in situations where they are destined to fail. "God helps those who help themselves," Clarence might say, encouraging self-help and self-reliance. Martin Luther King Jr., Malcolm X and Jesse Jackson have stressed such themes.

Regarding his feelings about the pope, I believe Clarence stopped being a practicing Catholic

when he left the seminary almost 25 years ago. In recent years, he has attended a Methodist church, a Christian church and, most recently, an Episcopal church.

I don't know how he feels about abortion, but I would be very surprised if he didn't have an open mind on *Roe v. Wade*. Many liberals and conservatives on both sides of the abortion issue acknowledge the vulnerability of that decision on purely legal grounds, but I personally wouldn't bet the ranch on how he would come down on the issue.

I know something about Thomas's first marriage because I spent many hours talking with him as it broke apart. He was tormented both about breaking his wedding vows and about the impact of the divorce on his young son. He sought me out for advice because I was a divorced father with two well-adjusted children. His divorce was handled amicably, with Clarence given undisputed primary custody of his son. Both parents have played a major role in his upbringing, and all parties have great respect for each other.

Clarence's record as EEOC chairman deserves close scrutiny, just as it did when he was renominated and reconfirmed for a second term

as chairman, and just as it did when he was nominated and confirmed to his seat on the D.C. Circuit Court of Appeals. The record will speak for itself, but someone should also look inside the agency to find out how people feel about Thomas the man and the leader.

Evan Kemp, his successor as chairman, marvels at what Thomas did with a historically underfunded agency that saw its budget cut nine out of 10 times in the 1980s. (Usually Congress cut the president's request, then beats up the agency for its budget-related shortcomings.) Clarence Thomas inherited a poorly managed, dispirited agency whose employees were embarrassed to admit where they worked. His legacy, according to Kemp, is that employees are now proud to work at the EEOC and even named the new headquarters building after him. Nonetheless, says Kemp, "Clarence won't get the credit that is his due; I will." People throughout the agency sing Thomas's praises—his dedication, his professional standards, his extraordinary sensitivity to and support of the "little people," and his inspiration to employees at all levels.

The suggestion that his actions have been politically motivated is laughable. This is not a political animal. His passions, behind-the-scenes

battles with the White House and Justice Department conservatives during the Reagan years were hardly politic. In addition, several times through the years, I strongly advised him to approach his detractors both on and off the Hill. "They attacked me without knowing the facts," he would say, "and it would be hypocritical to approach them." This is a man who advanced in a political environment in spite of, not because of, his political skills.

Perhaps the most absurd charge leveled at Thomas is that "he forgot where he came from." Thomas's professional and personal life, not to mention his conscience, wouldn't permit him to forget his roots if he wanted to. Neither would the world around him. After lunch a few weeks ago, he and I were strolling around downtown Washington. He suddenly realized he was late for an appointment and asked me (I'm white) to hail him a cab.

"I have trouble getting a cab downtown, and it's virtually impossible in Georgetown," he said, jumping into the taxi I had flagged down as the driver snouted an obscenity in my direction.

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*The writer was principal policy adviser to Sen. John C. Danforth (R-Mo.) for 11 years.*


THE WHITE HOUSE

WASHINGTON

July 19, 1991

MEMORANDUM TO: **Governor Sununu**  
Judi Smith  
Ede Holiday  
Ken Duberstein  
Fred McClure  
Ron Kaufman  
Leigh Anne Metzger  
Gary Andres  
Lee Liberman  
John Mackey

Andy Card  
Ed Rogers  
Bobbie Kilberg  
David Demarest  
Steve Hart  
Mike Luttig  
Bill Kristol  
Jim Dyer  
Deb Amend

FROM: Dorrance Smith   
Assistant to the President for Media Affairs

SUBJECT: Clarence Thomas

Attached is additional material in support of Judge Thomas. Please distribute as you see appropriate.

## COMMENTS IN SUPPORT OF JUDGE CLARENCE THOMAS

"We have a sense he is somebody we can be very comfortable with," said William Rapfogel, director of the Institute for Public Affairs of the Union of Orthodox Jewish Congregations of America.

"Rapfogel said that Thomas displayed an 'incredible sensitivity to the Jewish people' while at the EEOC [Equal Employment Opportunity Commission]. In 1986, the organization presented him with its Humanitarian Award."

"Thomas has 'a very strong streak of independence, which has been honed by being very much an outsider within the black leadership group,' said Murray Friedman of Philadelphia, Middle Atlantic states director of the AJCommittee.

"Friedman, who served as vice chairman of the U.S. Civil Rights Commission from 1986 to 1989, said he has enormous respect for Thomas.

"I have never seen a more towering intelligence," he said.

"Friedman said that while Marshall ably represented the black community in its fight for civil rights, the struggle today is for 'empowerment,' which calls for different kinds of strategies. He believes Thomas will be more suited for today's agenda."

Article by David Friedman,  
Jewish Exponent, July 5, 1991

"At a Holy Cross alumni gathering on June 8, the college's basketball coach, George Blaney, was chatting with a prominent alumnus, Connecticut Supreme Court Justice Angelo Santaniello, when U.S. Court of Appeals Judge Clarence Thomas walked into the room."

"We've known each other since he entered Yale Law School in 1971," Santaniello said. 'At the time, Father John Brooks, the president of Holy Cross, asked me to look Clarence up and say hello. I did, and we've been friends ever since. At his [Thomas's] request, I swore him in as chairman of the Equal Employment Opportunity Commission in 1982.'

"How would I describe him? He's a very warm person. Humble, personable, intense, straightforward with no airs. Clarence Thomas is a real fair guy. He shouldn't be stereotyped, because he won't walk a stereotyped line. Clarence calls it as he sees it, not as someone wants him to see it."

"Coach Blaney of Holy Cross commented the other day, 'Clarence is a very solid person, no fanfare, always up-front, always ready to help. We have a lot of Holy Cross friends in common. Clarence has all kinds of friends.'"

Bill Reel,  
Newsday, July 17, 1991

# Seeking a handle on Thomas

By DAVID FRIEDMAN  
Jewish Telegraphic Agency

WASHINGTON — Jewish organizations are preparing to take a close look at the record of Clarence Thomas, the 43-year-old black conservative President Bush has nominated to the U.S. Supreme Court.

Bush named Thomas to succeed Justice Thurgood Marshall, the only black to have served on the court. Marshall announced his retirement on June 27.

Thomas frequently expressed his opposition to minority hiring quotas or to any type of racial preference during the time he was chairman of the U.S. Equal Employment Opportunity Commission from 1982 to 1989.

But his views on other issues important to the Jewish community — such as abortion and the separation of church and state — are largely unknown. Thomas has not dealt with any of these issues since becoming a judge on the U.S. Court of Appeals for the District of Columbia in 1989.

During a news conference Monday outside Bush's summer home in Kennebunkport, Maine, Thomas refused to answer specific questions until his confirmation hearing before the Senate Judiciary Committee.

But he did note that his remarks on quotas were made when he was in a "policy-making role," and he has not yet had to deal with the issue as a judge.

Jewish groups rarely take stands on Supreme Court nominees and, in this case, are reserving judgment until they know more about Thomas' positions. Some are submitting suggested questions for Thomas to the Senate Judiciary Committee.

But one organization, the American Jewish Congress, has already expressed strong reservations about the nomination, though it has not decided whether to oppose it.

Henry Siegman, the group's executive director, called Bush's choice "a disappointing one."

In nominating Thomas, the president "seems to have deliberately, with malice aforethought, nominated a man who has been a thorn in the side of the entire civil rights community," Siegman said.

"It is an ungracious act at best, and one that does not honor the legacy of Thurgood Marshall," he added.

The American Jewish Committee was more reserved in its

reaction.

"We expected the president to nominate a man or woman who was basically conservative," said Samuel Rabinove, the agency's legal director.

But Rabinove said Thomas should be closely questioned



JUDGE CLARENCE THOMAS  
RNS Photo

*Jewish groups are withholding judgment on President Bush's nominee to the Supreme Court. But at least one is very dismayed.*

like any other nominee for the high court. "His being black should not insulate him from critical scrutiny," he said.

AJCommittee and Thomas agree on their opposition to numerical quotas. But AJCommittee supports "realistic goals and timetables," while Thomas believes these are de facto quotas, Rabinove said.

Sammie Moshenberg, Washington representatives of the National Council of Jewish Women, expressed concern that Thomas had no record on such issues as the right of privacy and the separation of church and state.

She also said the NCJW is "dismayed" by the record Thomas did have at the EEOC, where he displayed a lack of sympathy about attaining equal pay for women. She said the organization is also troubled that during his tenure Thomas left 13,000 age-discrimination charges lapse without acting on them.

The B'nai B'rith Anti-Defamation League said in a statement that it shares Thomas's opposition to racial preferences and quotas. But "it is important that his views on

See **COURT** page 49

JEWISH EXPONENT  
JULY 5, 1991

WEDNESDAY, JULY 17, 1991

**BILL REEL**

## It's Clarence Thomas vs. the Media

**A**T A HOLY CROSS alumni gathering on June 8, the college's basketball coach, George Blaney, was chatting with a prominent alumnus, Connecticut Supreme Court Justice Angelo Santaniello, when U.S. Court of Appeals Judge Clarence Thomas walked into the room.

Thomas, 43, spotted Santaniello, 67, embraced him and exclaimed, "My friend!" They exchanged greetings, then turned to Blaney to talk their favorite sport, basketball.

That scene was recalled by Santaniello in his chambers in New London this week as he spoke glowingly about Thomas, who, three weeks after their get-together at Holy Cross, was nominated by President George Bush for the U.S. Supreme Court.

"We've known each other since he entered Yale Law School in 1971," Santaniello said. "At the time, Father John Brooks, the president of Holy Cross, asked me to look Clarence up and say hello. I did, and we've been friends ever since. At his request, I swore him in as chairman of the Equal Employment Opportunity Commission in 1982.

"How would I describe him? He's a very warm person. Humble, personable, intense, straightforward, with no airs. Clarence Thomas is a real fair guy. He shouldn't be stereotyped, because he won't walk a stereotyped line. Clarence calls it as he sees it, not as someone wants him to see it."

A few good words from an old friend seem appropriate to balance the bias against Thomas that prevails in the media. For example, in a typically snide swipe, a New York Times op-ed columnist wrote last week that the revelation that he smoked pot a couple of times in college "is the most humanizing thing I have heard about Judge Thomas so far."

Really? This is the man who, after Bush introduced him as his nominee for the Supreme Court, struggled to hold back tears when he thanked the loving grandparents who raised him and the devoted nuns who taught him as a boy. That was as human a moment as America has seen lately.

Thomas is believed to be at least skeptical of abortion and possibly a foe of it. Abortion was anathema to civilized Americans for most of the nation's history, but the killing of unborn babies has come to be fervently championed as an absolute right by media opinion makers.

Thomas is at the media's mercy, and the bashing is merciless. A Page 1 story in last Sunday's Times suggested that he was admitted to Yale Law School on his color and not his qualifications. "Under the program, which was adopted in 1971, the year Judge Thomas applied, blacks and some Hispanic

applicants were evaluated differently from whites," said the story.

The piece went on at great length to imply insidiously that Yale let Thomas in because he was black. Then, in the 25th paragraph of a 26-paragraph story, appeared the line:

"He was in the top 7 percent of his class at Holy Cross."

This telling fact, of course, refutes the premise that Thomas benefited from a quota system. His very high class rank at Holy Cross clearly qualified him for Yale Law School without help from any affirmative action policy.

Was this story a deliberate attempt to diminish Thomas? Sure looks that way. How else can such a sneer be explained?

Is the man qualified to serve on the United States Supreme Court? That's the real question, of course, and it will be decided by the United States Senate, where Clarence Thomas will be judged by the likes of Teddy Kennedy. How reassuring.

Coach Blaney of Holy Cross commented the other day, "Clarence is a very solid person, no fanfare, always up-front, always ready to help. We have a lot of Holy Cross friends in common. Clarence has all kinds of friends."

May his friends console him as his enemies attack.



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# The White House Office of Public Affairs Administration Wire

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July 17, 1991

## Supreme Court Nominee Judge Clarence Thomas

*Excerpts from remarks by EPA Administrator William Reilly to the National Association of Counties on July 16, 1991*

"This nominee has a life story that has provided him with a distinctive perspective on our history, its problems and its possibilities. He has a philosophy which is serious and considered and deserves a hearing by the open-minded.

"And he has character that shows fiercely in his public recognition of the role others have played in his success. You know, if ever there was an individual who might reasonably have been expected to lay claim to the title, "self-made man," it is Clarence Thomas.

"But he does not claim to have made it alone. He recognizes his grand parents, his mother and his teachers for having shaped his values, instilled discipline and taught him the value of hard work.

"Now, as he is pilloried for his philosophy and even for his religion, it strikes me that there is a rush to judgement that preempts the confirmation process. One wonders whether there will be an open mind anywhere when the Senate finally gets around to asking detailed questions of Clarence Thomas.

"The President, Judge Thomas and the country all deserve better."

*Excerpts from remarks by Transportation Secretary Samuel K. Skinner to the Federal Bar Association on July 12, 1991*

"As lawyers, the issue most on our lips today is the vacancy on the Supreme Court left by the retirement of Thurgood Marshall."

"Judge Thomas came up the hard way. He was born and raised in a house that didn't have electricity or indoor plumbing. He spent much of his youth working on his grandfather's farm, and on an oil truck. His father left home when young Clarence was just a toddler. Fortunately for Clarence, his grandfather scraped together enough money to enroll him in a Catholic school, and he went on to graduate from Holy Cross and Yale Law School."

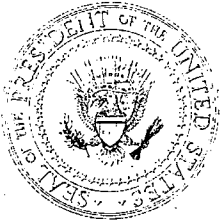
"When Judge Thomas was a child, segregation was sanctioned in Georgia, and he experienced all the indignities that came with it: separate lunch counters, separate bathrooms, separate schools, even separate libraries."

Administration Wire  
July 17, 1991  
Page 2

"...I did not originally intend to discuss judicial philosophy, but I can't help but mention that Judge Thomas is being criticized because he won't be a judicial activist in the tradition of Justice Marshall, and for believing in judicial restraint. What's wrong with that?"

"...I believe strongly, as does the President, that the founding Fathers reserved political activism for Congress and the political process. Judge Thomas is a strict constructionist, and as such, I believe his political view, whatever they may be, will not influence his judicial decisions. We cannot know, and should not predict, how Justice Thomas will rule on arguments brought before the Court. If the judge were to ask my advice on how to handle questions about his philosophy -- which he hasn't -- I would encourage him to repeat something Abraham Lincoln once wrote: 'I have no eyes but constitutional eyes.'"

For more information, please contact the Office of Public Affairs at 202/456-2483.



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# The White House Office of Public Affairs Administration Wire

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July 19, 1991

Statement by  
**Secretary LOUIS W. SULLIVAN, M.D.**  
at the  
Annual Convention of the NAACP

July 8, 1991

"I am aware of the Joint Statement issued today by the Chairman and Executive Director of the NAACP. I fully support and encourage this review of Judge Thomas' record, for I am confident that the NAACP will come to the same conclusion that I have -- that Judge Thomas is an outstanding jurist and an outstanding choice for the court. He is a man of integrity, vision and scholarship. He embodies values that all of us respect and honor -- a belief in hard work, education, family and self reliance. His life has been a testament that poverty and lack of opportunity can be overcome. He is committed to fairness, to justice and to equal opportunity for all Americans including our minority citizens.

"His nomination reflects an acknowledgement of the immense diversity in the Black community. In that diversity, the richness, the strength and the depth of the Black community in economics, in politics, and in all phases of our lives is shown to the whole nation.

"I have had a productive conversation with Dr. Hooks, and look forward to working with other members of the NAACP on behalf of Judge Thomas as the NAACP conducts their review."

\* \* \*

Speech Excerpts by  
**SBA Administrator PAT SAIKI**  
to the  
National Training Symposium

July 17, 1991

". . .I refer to a courageous man who climbed out of poverty in the rural South, where he lived in a house with no indoor plumbing. . .he made it through college with a combination of scholarships, loans and jobs. . .he worked hard for a noteworthy career and has been nominated to fill the current vacancy on the Supreme Court.

ADMINISTRATION WIRE  
JULY 19, 1991  
PAGE 2

"I know from personal experience the trials Judge Clarence Thomas endured. As a minority woman making her way through a career and then in politics, there were struggles, but there was never any doubt in my mind about the outcome. You, too, have been along this road. We all have so much in common. . ."

\* \* \*

Speech Excerpts by  
**OPM Director CONSTANCE B. NEWMAN**  
to the  
Federally Employed Women  
National Training Program

*July 17, 1991*

". . .With regard to leadership, I would like to take a moment to talk about the nominee for the United States Supreme Court. I have known Judge Thomas for over a decade and have had many occasions to talk with him about women in the work force. I have had the opportunity to see him translate words into deeds - - when at the EEOC, his chief of staff was a woman, the director of his congressional and public affairs was a woman, the director of hearings and appeals was a woman. I could go on. My point is that the rights of women in the work force are protected by three branches of government. You should be comfortable that work force issues would be treated by Judge Thomas with openness, with fairness and with sensitivity that recognizes that we still have a long way to go to be equal. His confirmation should be supported by women concerned with women in the work force issues. . ."

For more information please contact the Office of Public Affairs at 202/456-2483.

OFFICE OF THE VICE PRESIDENT

Delivered Wednesday, July 17, 1991 -- Manchester, New Hampshire

EXCERPTS FROM PREPARED REMARKS BY THE VICE PRESIDENT

GREATER MANCHESTER CHAMBER OF COMMERCE BREAKFAST

HOLIDAY INN, MANCHESTER, NEW HAMPSHIRE

... All of us know the value of education. And I'll bet everybody in this room remembers the teachers that really got to them -- the teachers that changed their lives.

Remember who Judge Clarence Thomas thanked? The nuns at his school. They cared, and they helped give him a direction in life. I believe Judge Thomas is a living example of the value of education -- and the American dream. He's our next Supreme Court Justice -- President George Bush's second outstanding nominee. The first was Justice David Souter, of Weare, New Hampshire.

In the past year, Justice Souter has shown himself to be a very able and distinguished member of the Court -- sensible and even-handed. But you'll remember that some special interest groups lined up to oppose him. It was politics then, and it's politics now. You have some people lining up against Judge Thomas without even looking at his credentials, his character, and his experiences in life. Instead, because they don't believe he shares their political views, they've set out to attack him personally.

I am proud to say that I know Judge Thomas, and have for some years. In fact, he was in my office the day before yesterday. He gave me a copy of a recent edition of JET, a popular magazine that he remembers his grandparents reading years ago. And he was very touched by the warm article about his lifetime of achievement.

Judge Thomas was equally touched by the recent poll results in USA Today, which showed that more than half of all black Americans support him. They're proud of him, and they share his values: faith, compassion, hard work, and self-reliance.

Today Judge Thomas sits on America's second highest court -- the U.S. Court of Appeals for the District of Columbia Circuit. He was confirmed last year -- with only two senators in opposition. And he was confirmed three other times in the 1980s for positions in the executive branch. That's four Senate confirmations -- but, sadly, that doesn't matter to those lining up against him. And they've got their long knives ready.

In recent days we've gotten a preview of the way the critics

want to fight this nomination. Columnist Carl Rowan said that "if you gave Thomas a little flour on his face, you'd think you had David Duke talking." One Congressman said that "a black conservative is a contradiction in terms." A leader of the National Organization for Women said, "We're going to 'Bork' him. We need to kill him politically."

Even some people at distinguished law schools have gone overboard in fighting Judge Thomas. That's especially true at a certain university over in Massachusetts. Professor Laurence Tribe suggested in Monday's New York Times that Judge Thomas might not believe women have any legal rights. How's that for hysteria? And Tribe's colleague Derrick Bell said that Judge Thomas "looks black" but "thinks white."

Another professor from Washington argued the other day that "blackness" means more than just being black. According to this professor, it means you have to think a certain way -- and Clarence Thomas apparently doesn't measure up.

There is an assumption in some quarters that black Americans shouldn't be allowed to think for themselves. But I think Clarence Thomas's mother refuted this best: "Black people don't have to think alike, they don't have to look alike, they don't have to talk alike. And that Clarence, he always did have a mind of his own."

And so do all Americans. They have minds of their own, and they are fair. I served in the Senate for eight years; I believe my former colleagues will be fair to Judge Thomas. But some others are not being fair. And I believe the attacks, the insults, and the attempts to impose "racially correct thinking" ought to be rejected and denounced by every single Senator.

The confirmation process won't be easy for Judge Thomas. But he's been through tough times before. Remember: he started at the very, very bottom in the segregated South.

Some years back, Judge Thomas considered resigning as Chairman of the EEOC when his opponents were attacking him. He went to his grandfather for advice. And his grandfather answered: "Stick up for what you believe in." I know that's something that sounds familiar to you, because it's a way of life here in New Hampshire. And there's no better motto for every American.

# # #

CLARENCE THOMAS AT THE EEOC

Mr. President, I am sure that in the next two months much attention will be focused on Clarence Thomas's chairmanship of the EEOC. Because Judge Thomas spent eight years in that office, his stewardship deserves careful attention. Surely, each of us should take the time to learn about the Thomas era at the EEOC. What kind of chairman was he? What was the Commission like before he took office, and what is it like today? What do its employees say about his chairmanship, and what does his tenure at the EEOC tell us about Clarence Thomas as a person?

In order to learn the answers to these questions, I decided to find out for myself. I went to the EEOC headquarters, met with people who had worked with Clarence Thomas, walked the corridors and formed a clear impression of Clarence Thomas, the Chairman. Today, I would like to share my observations with the Senate, and to suggest that other interested Senators do what I did--go to the EEOC headquarters and see for yourselves.

While at the headquarters, I had the opportunity to speak with a wide variety of individuals. They were male and female, black, white and Hispanic, able-bodied and visibly

disabled. Most held managerial or professional responsibilities. One was a maintenance man in green overalls. One worked as a driver for the Commission. They shared a common commitment to the mission of their agency: to ensure equal employment opportunities for all Americans. All had worked with Clarence Thomas. Some had served at the Commission years before the beginning of the Thomas era.

The clear message of those I visited was that Clarence Thomas had transformed the EEOC from the dregs of the federal bureaucracy to an efficiently operating agency which was effectively performing the duties Congress had assigned to it. The present Chairman, Evan Kemp, said that until Clarence Thomas took over, the agency was generally considered to be, in his word, a "joke," and that Thomas had transformed it into a first-class agency, equal to two others where he had worked, the Internal Revenue Service and the Securities and Exchange Commission.

This observation was shared by others at the Commission. A white male attorney who has been with the EEOC since 1974, told me that Clarence Thomas "brought us from an also ran agency to the first tier." He said that in the old days, management of the Commission was not always held accountable. He added that in the Thomas regime, "When I made hard decisions, judgments were made on the merits. Politics did not enter in." A woman, with the Commission since 1979 said, "Today, people respect the EEOC. . . . (Thomas) worked very hard to improve the quality of the staff."

A black woman told me that under Clarence Thomas, "Computers started appearing all over the agency." She said that on days when employees had to work until 2:00 a.m., Clarence Thomas would be there with them.

The financial management system of the Commission before the Thomas regime was described as "a mess" before Clarence Thomas arrived. Clarence Thomas cleaned up the mess, according to a black female manager.

One of the most telling statements was made by a 51-year-old white male manager who had been with the EEOC for 21 years. He described himself as "a liberal, life-long Democrat who had never voted for a Republican in my life." He said, "Clarence Thomas brought the agency into the modern age. At the time he came, we couldn't tell you what cases we had. He put in place a tracking system. We increased the number of cases, and reduced the time for them. I never had interference with how I handled cases. He made us proud to work here."

I specifically inquired about age discrimination that had lapsed because the statute of limitations had run. I was told that these cases amounted to about .2 to .3 of 1 percent of the case load, that they never would have been discovered but for the computer program installed by Chairman Thomas, and that when Mr. Thomas heard that age discriminations cases had lapsed, he "saw red." One employee said that, "the suggestion that the lapse was intended has no basis in fact."

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A blind attorney, with the EEOC, who now heads the litigation program, said, "I feel personally offended at the unfounded criticism" of Chairman Thomas.

The esprit de corps of the agency was described by an attorney with the Commission, a black woman recruited by Chairman Thomas in 1985. "He told me he wanted to move the agency forward, to attract really good people. He had the highest integrity. He had a high tolerance for disagreement."

Even more illuminating than accounts of the Thomas management of EEOC were the statements made about the personal qualities of the Chairman. Several employees said that the Chairman was personally involved in making the Commission's new headquarters building accessible to the disabled. One person said that Clarence Thomas learned enough sign language so that he could encourage the hearing impaired. Another said that when her son was injured in a football accident, the Chairman came to her office to find out how he was doing, and gave her the name of his own physician. He later "kept coming down" to inquire about his condition.

A long-term black employee who had worked for Martin Luther King said that Chairman Thomas would bring young employees to see her, and would say, "Willie, tell them about Dr. King."

When I asked about the charges some have made that Clarence Thomas has lost sight of his own experience with

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segregation, and that he lacked feeling for those who came after him, a black maintenance man expressed his feelings most eloquently, and without words. He simply looked at me. Then slowly, deliberately, he turned both thumbs down.

A number of employees of the EEOC thought it important to describe Clarence Thomas's last day as Commission Chairman. They told of hundreds of employees standing in the lobby in tears to say good-bye. When he walked out the door, one middle-aged woman followed him outside, tears streaming down her face.

The headquarters building of the EEOC has since been named the Clarence Thomas Building. A plaque honoring him is fixed to the lobby wall, its words composed, not by the members of the Commission, but by the employees:

"Clarence Thomas, Chairman of the U. S. Equal Employment Opportunity Commission, May 17, 1982 -- March, 1990, is honored here by the Commission and its employees with this expression of our respect and profound appreciation for his dedicated leadership exemplified by his personal integrity and unwavering commitment to freedom, justice, equality of opportunity and to the highest standards of government service."

THE WHITE HOUSE

WASHINGTON

July 16, 1991

MEMORANDUM FOR: Governor Sununu                    Andy Card  
                  Judi Smith                                Ed Rogers  
                  Ken Duberstein                                Bobbie Kilberg  
                  Fred McClure                                    David Demarest  
                  Ron Kaufman                                        Steve Hart  
                  Leigh Anne Metzger                                Mike Luttig  
                  Gary Andres                                        Bill Kristol  
                  Lee Liberman                                        Jim Dyer  
                  John Mackey                                        Deb Amend  
                  Dorrance Smith

FROM:                    Ede Holiday *EAH*

SUBJECT:                Clarence Thomas

Attached are speeches given recently by Bill Reilly and Sam Skinner in support of Judge Thomas.

Attachments

REMARKS PREPARED FOR DELIVERY BY  
SECRETARY OF TRANSPORTATION SAMUEL K. SKINNER  
FEDERAL BAR ASSOCIATION  
CHICAGO, ILLINOIS  
JULY 12, 1991

Thank you for that kind introduction. It's hard to believe that it has been almost three years since the President selected me to be Secretary of Transportation, and I moved to Washington.

Even though I've been away, my love for Chicago is stronger than ever. It is really true that absence makes the heart grow fonder.

Washington and Chicago are both great cities. Both are large cities of great tradition and history. But the biggest difference is that Washington is a city of transplants. The leaders of our federal government in Washington are almost always transplants from somewhere else.

Some, however, don't return, choosing to make Washington their home. And if you're in Washington too long, you can forget sometimes what this country is all about, what makes it great, and sometimes that varies from moment to moment. We get wrapped up in what's going on in Washington, forgetting the significance of our decisions and their impact on America. For that reason, trips like this are so very important to me. Thank you again for inviting me.

As lawyers, the issue most on our lips today is the vacancy on the Supreme Court left by the retirement of Thurgood Marshall. I thought it would be appropriate to share some observations not only from inside Washington's beltway, but how I think the President's candidate to fill that vacancy relates to us in Illinois and one of the most important national leaders our state has ever produced: Abraham Lincoln. Lincoln is revered almost as highly in Washington as he is in Illinois; he occupies a position second only to George Washington.

People measure Presidents against the standard of Abraham Lincoln. When I began to focus on Judge Thomas as the next justice, I was struck by the similarities with Abraham Lincoln. Let me share with you my thoughts.

First, as you all know one of the greatest parts of Lincoln's legacy is the impression he made on other people. That's why in preparing for my trip here today, I thought it was important to talk to few people who know the nominee well. Let me share with you what they had to say . . . (Extemporaneous)

But let me return to my original question: How does Judge Thomas measure up to the standard of Lincoln? Judge Thomas has an enormous intellect. Abraham

Lincoln's intellect was evident early when he was a brilliant trial lawyer and debater.

Judge Thomas came up the hard way. He was born and raised in a house that didn't have electricity or indoor plumbing. He spent much of his youth working on his grandfather's farm, and on an oil truck. His father left home when young Clarence was just a toddler. Fortunately for Clarence, his grandfather scrapped together enough money to enroll him in a Catholic school, and he went on to graduate from Holy Cross and Yale Law School.

At best, Abraham Lincoln had only one year of formal education. Abraham Lincoln was born in a log cabin on the Kentucky frontier, and his mother died when he was a youngster. He lost two sons, including one while he was President, trying to save the union. In the case of both, a background of hardship shaped and formed their character.

Both Lincoln and Thomas experienced discrimination first hand. It didn't involve race in Lincoln's case, but his appearance. His gangly, gawky appearance was repeatedly made fun of by his opponents. At the 1860 Republican Convention at which he was nominated, his opponents called him a baboon, an ape and even worse. When Judge Thomas was a child, segregation was

sanctioned in Georgia, and he experienced all the indignities that came with it: separate lunch counters, separate bathrooms, separate schools, even separate libraries.

Why is that important? Because Lincoln's and Thomas's life experiences gave them perhaps their greatest quality: Empathy. President Lincoln was often criticized because he spent so much time, as President, listening to petitions from average citizens; what congressmen call casework. It made him a better President. It will make Judge Thomas an outstanding justice.

Another important and often overlooked item in thinking about Lincoln is humor. Judge Thomas, they tell me, has a great sense of humor. He was asked once if he sometimes refuses to toe the line. "I'm a Dallas Cowboys fan," he said. "I love unpopular causes." Given the past couple of seasons, I might add that you need a sense of humor to be a Chicago Bears fan. When asked how the media would react to him, he said: "Here's a strange black. Let's go see if he has two heads and a tail." Lincoln had a great sense of humor. Why is that important? Because it is important in keeping one's balance. People who can poke fun, especially at themselves, show they have a good sense of who they

are and the ability to put things in perspective. That's important in a justice of the Supreme Court?

What about experience in government office? Judge Thomas was a Senate legislative assistant for a year and a half; assistant attorney general of Missouri for two years; and assistant secretary in the Department of Education for almost two years; chairman of the Equal Employment Opportunity Commission for seven years; and more than a year on the D. C. Federal Circuit Court of Appeals.

What about Abraham Lincoln? He spent two years in Congress, four years in the Illinois General Assembly, and a couple of years in the Illinois militia. I might add that Judge Thomas has more experience in the federal judiciary than at least three Supreme Court Justices prior to their confirmation: Earl Warren, Hugo Black and Sandra Day O'Connor.

I do not mean to suggest that Clarence Thomas is another Abraham Lincoln. He isn't. No one is. But the qualities Lincoln possessed led him to the history books as one of our great Presidents during our nation's darkest hour. He accomplished great things as President, but it was his background and his experiences that shaped him and propelled him to achieve what he

did, and they make an effective yardstick by which to measure others.

I did not originally intend to discuss judicial philosophy, but I can't help but mention that Judge Thomas is being criticized because he won't be a judicial activist in the tradition of Justice Marshall, and for believing in judicial restraint. What's wrong with that? George Bush's belief in judicial restraint, and his intent to apply that belief in the nomination of federal judges, was well known when the American people elected him as President.

I thought one of the most important moments in Justice O'Connor's conformation ten years ago came when she was asked by Senator Strom Thurmond to discuss her philosophy and voting record as an Arizona State Senator on matters relating to abortion. Here's part of what she said: "Issues that come before the Court should be resolved based on the facts of that particular case or matter and on the law applicable to those facts. They should not be based on the personal views and ideology of the judge with regard to that particular matter or issue."

That's the essence of judicial restraint. As a great respecter of the Constitution's separation of powers, I believe strongly, as does the President, that the

founding Fathers reserved political activism for Congress and the political process. Judge Thomas is a strict constructionist, and as such, I believe his political views, whatever they may be, will not influence his judicial decisions. We cannot know, and should not predict, how Justice Thomas will rule on arguments brought before the Court. If the judge were to ask my advice on how to handle questions about his philosophy -- which he hasn't -- I would encourage him to repeat something Abraham Lincoln once wrote: "I have no eyes but constitutional eyes . . ."

I believe Judge Thomas will be confirmed. He certainly deserves to be confirmed. By the standard of Lincoln, he measures up. He has the intellect. He has the background. He understands hardship. He understands discrimination. He has a sense of humor. And he has the experience.

Thank you again for asking me out here today. I'd be happy now to take a few questions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
THE ADMINISTRATOR

FACT AND FICTION IN WETLANDS REGULATION

Address: By

WILLIAM K. REILLY

Administrator

U.S. Environmental Protection Agency

NATIONAL ASSOCIATION OF COUNTIES

July 16, 1991  
Salt Lake City, Utah

Thank you, Michael (Stewart, President, National Association of Counties, and Commissioner, Salt Lake County, Utah). I am pleased and honored to be here today. I have long respected and admired NACO officials for the front line public service you perform. For 16 of the last 21 years, I took a special interest as a private conservationist in local issues of land conservation and development. And in the five years I served in government, I acquired a different vantage point on what you do. Now I see you as fellow victims of unrealistic expectations. Now I, too, am the object of conflicting requirements and insistent demands. I, too, get more responsibilities placed on my agency than authority or resources to carry them out. The only advantage I have over you is that after I make a contentious decision affecting a landfill or an incinerator, I don't have to go before the voters and get reelected. I serve at the pleasure of someone who aspires to be the environmental president, and that makes a whole lot of difference.

In a moment, I will discuss some issues that concern both of us and that pose special problems for the Environmental Protection Agency and also for local officials. But let me first signal a matter that is deeply important to President Bush and to our Administration, and that is the confirmation of Judge Clarence Thomas to the United States Supreme Court. I hope we have. This nominee has a life history that has provided him with a distinctive perspective on our country, its problems and its possibilities. He has a philosophy which is serious and considered and deserves a hearing by the open-minded. And he has

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character that shows fiercely in his public recognition of the role others have played in his success. You know, if ever there was an individual who might reasonably have been expected to lay claim to the title, "self-made man," it is Clarence Thomas. But he does not claim to have made it alone. He recognizes his grandparents, his mother and his teachers for having shaped his values, instilled discipline and taught him the value of hard work. Now as he is pilloried for his philosophy and even for his religion, it strikes me that there is a rush to judgment that preempts the confirmation process. One wonders whether there will be an open mind anywhere when the Senate finally gets around to asking detailed questions of Clarence Thomas. The President, Judge Thomas and the country all deserve better!

So from the storm over Judge Thomas, let me turn to stormwater. Some of you may know that stormwater is a significant source of pollution to our nation's waters. Some of you may even have heard that EPA has issued a proposed stormwater rule.

Well, I'm being facetious. Judging by comments I have received, a great many of you know a good deal about stormwater and don't like our rule very much - or what you've heard about it or fear it will mean. We have heard your concerns. I hope we have understood you. In response to your views, we expect to issue a proposal in the next few weeks for a general permit which EPA regions and states can use as a model to cover stormwater associated with industrial activity, for which some of you may