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7/9/91

EXCELLENCE AND QUALIFICATIONS

(A) o In an editorial on July 2, 1991, the Wall Street Journal stated: "Judge Thomas is precisely the kind of jurist President Bush assured voters he would select. He would take the Constitution seriously and apply the laws equally. We eagerly await the beginning of many years of service by Justice Clarence Thomas."

o In nominating Judge Thomas to be an Associate Justice on the Supreme Court, President Bush stated: "Judge Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court." The President observed that Judge Thomas "has excelled in everything that he has attempted," and described him as "a fiercely independent thinker with an excellent legal mind, who believes passionately in equal opportunity for all Americans."

o Senator Danforth said of Judge Thomas, "I know him to be an absolutely first rate lawyer, and beyond that, I know him to be a first-rate human being." WT, 7/3/91.

o Senator Dole said that Judge Thomas is "a man whose very life exemplifies the American dream." WP, 7/2/91.

o Senator Hatch said, "This man understands the difficulties of life. He has had a tough life but he's made it all the way. Anybody who takes him on in the area of civil rights is taking on the grandson of a sharecropper." NYT, 7/2/91.

o According to Lovida Coleman, a Washington Lawyer, friend, and classmate from Yale (and the daughter of William Coleman), "[h]e made it strictly on the merits, and he resents the notion that he's ever gotten anywhere because he's black." NYT, 7/2/91.

o R. Gaull Silberman, Vice Chairman of the EEOC when Thomas was Chairman, said, "This man made the EEOC. He built it into a first-class law enforcement agency. We took three times as many cases, got more relief for more people than any other time in history." WT, 7/4/91. She added that "[h]e is uniquely qualified in terms of character and intellect, and he has the courage of a lion. What else do you need?" Id.

o She also said of Thomas, "He is dignified, reflective, direct, careful, courageous. . . ." LAT, 7/7/91.

(B) o The Washington Post stated in an editorial that "even those who have disagreed with him on policy grounds will concede that his life, which began in extreme poverty, has been one of accomplishment. If confirmed, he would bring to the court a range of experience not shared by any other sitting justice." WP, 7/2/91.

- o Alan Keyes wrote recently that, on the basis of the nominee's constitutional philosophy and his character, "it would have been difficult for Mr. Bush to find anyone more qualified than Judge Thomas. Throughout his public career, he has displayed the intellectual honesty, integrity and moral courage that are the crucial but all too rare ingredients of great public service." WT, 7/8/91.
- o Judge Karen Henderson said of Judge Thomas, "He is, to me, the living embodiment of the American dream fulfilled. He's accomplished so much, and he has come from a background of deprivation and poverty and discrimination, and he has just triumphed." Legal Times of Washington, 7/8/91.
- o According to Judge Stephen Williams, Judge Thomas' "great concern is to get things right." Legal Times of Washington, 7/8/91.
- o Virginia Governor Douglas Wilder has said that Judge Thomas is "eminently qualified" to sit on the Supreme Court. USA Today, 7/8/91.
- o Georgia State Senator Roy Allen, a friend from school, said that while Judge Thomas' upbringing could be called conservative, "to me, he represents the dream that African-Americans want to achieve. I don't know if you can dissect that into labels -- conservative, liberal or whatever. He's a guy who has principles." WT, 7/2/91.
- o Senator Danforth has said that Judge Thomas is "a compassionate kind of conservative," "the people's nominee for the Supreme Court, the best of America." US News & World Report, 7/15/91, at 25.
- o "Thomas does not walk away from disadvantaged blacks; indeed, he has invested years trying to help them." Id. at 84.
- o Senator Heflin said that, while he is keeping an open mind about Judge Thomas' nomination, Thomas has "all the tools of craftsmanship" for a good justice. Huntsville Times, 7/5/91.
- o John Jacobs, Executive Director of the National Urban League, said that "[w]hat Judge Thomas brings to the nomination is a background of poverty and minority status. While he is conservative, he cannot deny what he has been in life." WT, 7/2/91.
- o Thomas Jipping of the Coalitions for America, a conservative group, said that Judge Thomas has "a ton of merit." Associated Press, 7/5/91.

o According to Father John E. Brooks, President of Holy Cross College, "[h]e's obviously not a flaming liberal, but he's no knee-jerk conservative either. He wants to do his own thinking. He's not following a crowd." NYT, 7/3/91.

o Tom O'Brien, a close friend, characterizes Thomas as "honest" and "courageous" and says "I can't imagine him belying his own system of beliefs for anything." NYT, 7/3/91.

o When Judge Thomas was nominated to the District of Columbia Circuit, William T. Coleman, Jr., the former Secretary of Transportation, said that "this is a fine appointment and . . . Mr. Thomas will add further luster and judicial ability to the Court." He added that "he had met every challenge placed before him. He is equal to and has the courage to decide legal issues according to the statutes and the precedents. . . . To these talents he adds the drive and understanding of human frailties which those who have not always had it easy had to have to reach important positions of public service."

o At the time of his nomination to the District of Columbia Circuit, Congressman Jim Kolbe of Arizona wrote that he found Clarence Thomas "a man of intelligence, integrity and supreme ability. He is singularly responsible for the success the Commission has had in recent years." He also wrote that Thomas "has been an aggressive and effective advocate for the work of the Commission. . . ."

o When Thomas was nominated to the court of appeals, Robert G. Dowd, the Presiding Judge of the Missouri Court of Appeals, wrote that "Mr. Thomas has an outstanding civil rights record and has demonstrated leadership and excellence as Chairman of the Equal Employment Opportunity Commission." He added that he "sincerely believe[d] that Mr. Thomas would bring honor, excellen[ce], and scholarship to the appellate court."

o In support of Judge Thomas' nomination to the court of appeals, Congressman Dick Armey wrote: "Mr. Thomas has served in an exemplary manner as Chairman of the Equal Employment Opportunity Commission . . . and is an outstanding candidate for appointment to the court. . . . Consistent with the purpose of the EEOC, Mr. Thomas has played a vital role in ensuring that older Americans and minorities have access to a fair and equitable means of redress."

o In October 1989, the President of the International Association of Official Human Rights Agencies wrote this in support of Clarence Thomas' nomination for the D.C. Circuit: "Throughout Clarence Thomas' tenure as Chairman of the [EEOC], he has demonstrated fairness, objectivity, clarity of expression, and receptivity to new ideas." He added that 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 would bring great credit to our system of justice."

o In support of Clarence Thomas' nomination for a seat on the D.C. Circuit, Thomas L. Jipping of Save America's Youth wrote: "Clarence Thomas' credentials and performance are exemplary. So is his character, integrity, and temperament." In a press release, Save America's Youth declared that Thomas "is truly an outstanding example for America's youth."

o Claudia Woods, General Counsel for Save America's Youth and a black American, wrote in October 1989 to thank President Bush for nominating Thomas for the D.C. Circuit: "While Mr. Thomas' outstanding and remarkable credentials alone make him a superb choice for the judgeship, his sensitivity and personal experiences make him an even greater choice to serve on the federal court known to decide some of the most important civil rights and constitutional questions of our country."

o At the time of Judge Thomas' nomination to fill a vacancy on the D.C. Circuit, former EEOC colleague Fred W. Alvarez wrote: "He will take to the bench the same qualities he brought to EEOC: a reverence and respect for people and their rights, a fundamental understanding of struggle, arbitrary barriers and the value of hard work, and a stubborn commitment to law and to legal precedent."

o At the time of his nomination to the court of appeals, the Heritage Foundation wrote of Thomas that he "has been an effective Director of the EEOC, and he is a brilliant legal scholar."

o The Coalitions for America, in support of Thomas' nomination for the court of appeals, wrote that Thomas "demonstrated superb management ability" and that he had led the agency "out of the doldrums in which it had languished."

o The President recently said that Judge Thomas "offers what I think is a very stirring testament to what people can do when they refuse to take no for an answer, when through sheer determination they overcome the obstacles that others have placed in their way." WP, 7/9/91.

o Senator Dole said that Thomas is an "outstanding nominee." WP, 7/9/91.

7/9/91

Fairness and Sensitivity

o Judge Thomas has a deep and abiding respect for the law. In his confirmation hearing for his nomination to the Court of Appeals, Judge Thomas stated, "I have always taken my oath extremely seriously. And even when I had significant personal differences, I have given . . . priority to the law."

o Judge Thomas told the Senate Judiciary Committee: "[T]he 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."

o John Jacobs, Executive Director of the National Urban League, said that "[w]hat Judge Thomas brings to the nomination is a background of poverty and minority status. While he is conservative, he cannot deny what he has been in life." WT, 7/2/91.

o Senator Danforth called Judge Thomas "conservative, but a compassionate kind of conservative, not rigid or ideological in his views. His every motive is that he empathizes with ordinary people, he's one of them." WP, 7/2/91.

o Orian Douglass, a lawyer in Brunswick, Georgia, who is a friend of Judge Thomas, said that "[h]e's going to hold himself spiritually accountable for his decisions. He's not going to rule one way or the other because of pressure. He came up the rough side of the mountain, and I know he's not going to be insensitive." NYT, 7/3/91.

o President Bush has said that he told Judge Thomas "to do like the umpire: call 'em as you see 'em." The President added that Judge Thomas will "approach the cases that come before the Court with a commitment to deciding them fairly, as the facts and the law require." NYT, 7/2/91.

o A law school classmate and former Carter Administration official describes Judge Thomas this way: "We are talking about a person who understands what it's like to be black and poor in this country and to face the worst kinds of prejudice. The kind of experiences he's had, he will not block those from his thinking." WP, 7/2/91.

o Circuit Judge Damon Keith, a Carter appointee often described as a judicial liberal, has this to say about Judge Thomas: "If I or a member of my family were in trouble, he is the kind of person I'd like to appear before. Our judicial philosophy may not be the same, but he is a bright and reflective man who believes passionately in fairness. I say this without

man who believes passionately in fairness. I say this without reservation, and in full knowledge of all the people who complain about him." WSJ, 7/2/91.

Withdrawal/Redaction Sheet (George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Deb Amend to Dorrance Smith Re: Clarence Thomas OP/EDS (3 pp.)	07/10/91	P-2, P-5	

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- 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]

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THE WHITE HOUSE
WASHINGTON

JULY 10, 1991

MEMORANDUM FOR DORRANCE SMITH

FROM:

DEB AMEND *DA*

RE:

CLARENCE THOMAS OP/EDS

Confirmed OP/EDs

The following people are currently working on OP/EDs about Judge Thomas for placement as soon as possible in the papers indicated:

- 1.) Senator John Danforth, the Washington Post.
- 2.) Fred Alvarez, the San Francisco Chronicle.
- 3.) Rev. John Brooks, the New York Times.
- 4.) Rufus Cormier, the Houston Post.
- 5.) Willie King, the Atlanta Constitution.
- 6.) Alphonso Jackson, the Dallas Morning News (this Sunday).
- 7.) Professor Shelby Steele, the San Jose Mercury News.
- 8.) Dr. Keith Butler, the Detroit Free Press.
- 9.) Richard Leon, the Chicago Sun Times.

The people on this list will be writing and placing their own pieces based on their personal relationships with the Judge.

OP/EDs in the Works:

Additionally, we have contacted these people about OP/EDs and have some projects in the works, but not nailed down:

- 1.) Ricky Silberman. Her OP/ED appeared in Sunday's LA Times.

A9

*{ Roy Allen
Thelma Wiggan
Dick Williams }*

4 times

Additionally, Ricky Silberman is working on senior issues related to the EEOC and will have an article in next month's "Vintage Times", the magazine of the American Association of Retired Persons. Because "Vintage Times" has a modest circulation, we have asked "Modern Maturity", the magazine of the AARP with a significantly higher circulation, to consider a piece by an administration surrogate and they are sort of receptive to the idea. They may do a point/counter-point style thing should they decide to editorialize against Judge Thomas.

2.) David Brown. Monsanto has two plants in Illinois and they will see what they can do about a piece for the Chicago Tribune. David suggests that Monsanto General Counsel, Dick Dusenberg, would be a better name on the OP/ED, and will see if he can't make this happen.

3.) Professor Stephen Carter of Yale University will do a legal/constitutional piece for publication closer to the hearing for the Wall Street Journal. He was on the list to sound out and he is supportive.

4.) Pam Talkin has submitted a piece to the White House legal counsel's office and we need to figure out how and where to place it. We should have this nailed down tomorrow.

5.) Sister Vigilus. I talked to USA Today about doing some sort of interview with this 70 year old nun and mentor of Judge Thomas. I think she would make a great guest columnist or featured guest in the OP/ED page's Q&A section. The editorial page editor was "intrigued". They do not plan to run an editorial package until the hearings. If the Sister is willing, we'll nail this down tomorrow.

6.) Alan Moore and Alex Netchvolodoff are working with Margaret Bush Wilson on a piece for the St. Louis Post Dispatch. We are working with them.

7.) Governor Ashcroft is also doing a piece for the St. Louis Post Dispatch. Alex Netchvolodoff has been asked to write a piece for the St. Louis Post Dispatch. I believe this is overkill and we will sort it out tomorrow.

8.) Senator Danforth's office is also working on a generic OP/ED for distribution nation wide. This will go out after the Washington Post article is completed.

Additionally:

- 1.) Professor Lucian Barker is going to stay out of the debate. He was on the list to sound out and would not be willing to endorse publicly.
- 2.) Harriet Erlich -- can't track her down anywhere.
- 3.) Professor Randall Kennedy -- trading phone calls.

Specialty Press:

1. Black press. We have been asked by the American Newspaper Association for a special package and are preparing a mailing for distribution ASAP.
2. Catholic Press. We are working on catholic surrogates for major catholic newspapers.

And Finally:

At this stage, with so many op/eds up in the air, it is critical that when we talk to people about writing OP/EDs we coordinate our efforts. No doubt some of these pieces will be rejected for one reason or another, and we will need to keep track of placement, fall back newspapers, progress, etc.

We need additional surrogates for the regional press, Georgia, Arizona and Virginia in particular. I've asked Senator Danforth's office to help on this front as well.

Since Danforth is one of our most effective surrogates for the Administration on this, we've arranged for routine contact with the Senator's press office to coordinate our efforts.

We are working on a system to respond to all negative editorials and should have the first batch out the door tomorrow.

We are working on radio call-in programs, especially for black surrogates on black call-in programs, per Judy Smith recommendation.

QUOTES FROM CLARENCE THOMAS

On Civil Rights:

I wasn't alone. There are those of you here today who have my memories -- who knew the same hurt, and who have shared the same satisfaction in seeing the changes brought about by the Civil Rights movement.

That movement has brought about enormous societal changes in the United States. To name just a few, there has been a host of civil rights laws, including the Civil Rights Act of 1964; dual public school systems were eliminated; fair housing laws were passed; colleges and universities once closed to minorities opened their doors; and equal employment laws were passed. In short, measures affecting every one of the fundamental aspects of daily life -- housing, jobs, education, the right to participate in a democratic government -- were enacted.

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

I believe in the vigorous enforcement of civil rights laws and have pledged to do everything I can to pursue such enforcement by the EEOC. There are some who claim that this administration has turned its back on civil rights enforcement, that it has no civil rights policy, that it is satisfied to watch the clock get turned back in civil rights areas. Those who make this claim are wrong. I will have no part in turning back the clock, or in seeing past progress undermined by current laxness.

June 3, 1982
D.C. Chapter of the Industrial
Relations Research Association

On the NAACP:

The NAACP has a history of which we can all be proud. From its inception in 1909 til today, the work this organization has done in the area of civil rights is unmatched by any other such group. At each turn in the development of blacks in this country, the NAACP has been there to meet the many challenges. In the past, those challenges ranged from voter registration drives to fighting injustices in the legal system. In each situation the NAACP has fought hard and has won many battles. But the battles are not over. There are many still to be fought and hopefully many will be won. But winning these battles will require new strategies and creative thinking on your part. The name "The Crisis", selected as the name of the official publication of the NAACP, was taken from a poem "The Present Crisis", written by James Russell Lowell. The words are as applicable to the problems of today as they were in 1909. Three lines from that poem are especially appropriate today:

New occasions teach new duties: Time makes ancient
good uncouth;

They must upward still, and onward, who would keep
abreast of truth;

Lo before us gleam her camp-fires! We ourselves
must Pilgrims be.

At the EEOC, we recognize our "new duties" and we are beginning to develop these new strategies and to truly fulfill our role as protectors of the rights of all. Our role is that of federal enforcer. The role of the NAACP, of course, is that of advocate. I realize, that as an advocate for our race, our efforts have been unsurpassed. As a true advocate, it is imperative that you carry the same energy you have used in the past into the 1980's to meet the new challenges. However, the new challenges require more than the energy of the past. The new challenges require you to be "Pilgrims" as you face the future. While the NAACP's history is one of countless accomplishments, you can not afford to rest on that history.

October 23, 1982
Maryland Conference of NAACP

On Civil Rights:

It has been nearly nineteen years since Title VII was incorporated in the Civil Rights Act of 1964, since equal employment opportunity became the law of the land. Since those days when we, who had been locked out of the American dream for centuries, rejoiced, knowing hope, at last, was on the way.

And, the federal government must continue to pave the way in civil rights. The federal government has always had both a profound moral obligation and a constitutional duty to protect individual rights. Increasingly that ideal has gained the force of the law. But, in the words of Frederick Douglass, "Power concedes nothing without a demand." And, even the government did not move decisively until the thunderous demand of protest against injustice could, no longer, be ignored.

For in one of the most compelling and glorious events in this nation's history, a vast cross-section of this nation's population was on the march -- a march for justice -- a march to turn this nation from its schizophrenic posture between its stated beliefs, the ideals on which it was founded, and the reality of its existence. A nation, founded on the principles of liberty and justice, began to see that its anthems and credos had a hollow ring. A nation which had averted its eyes by playing hide and seek with the stranger knocking at the door. And, as the poet Dylan says, "He was wearing the clothes that you once wore."

A nation long deaf to the pleas of the impoverished heard the sound of marching feet, marching to Birmingham, to Selma, to Jackson. It heard that the bank of liberty had, as Dr. Martin Luther King, Jr. said, "insufficient funds" to right the wrongs America had heaped upon its minority citizens.

The eyes of the world turned on America. No longer could the champion of freedom and justice abroad continue to be the bastion of separate but equal at home. No longer could people who, for 300 years, had contributed mightily to the development of this nation be denied a full partnership in its destiny. No longer would this country be allowed to turn its back on so many among us who had suffered so long from the denial of the American dream.

The spirit of the Declaration of Independence, reborn in the civil rights movement, became embodied in the laws of the land. And the Equal Employment Opportunity Commission was created to make certain these laws would be enforced.

December 6, 1983
EEOC Seminar
Pittsburgh, PA

On Civil Rights:

My grandparents, who raised me, are perfect examples of what discrimination can do ... Early in life, as I watched them toil away, I realized that their efforts would be seriously impeded by something beyond their control -- racial discrimination. They had overcome the lack of formal education, the Great Depression and an assortment of other adversities. But, 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. As individuals who have received the benefit of an education which was probably denied your fathers and mothers, and in some cases sisters and brothers, you must devise a plan for a civil rights movement for the 1980s.

1983

Integrated Education

Volume 21

So again I find myself challenging you. This time with the words of Dr. Martin Luther King, Jr. "It is time for the Negro 'haves' to join hands with the 'have-nots' and, with compassion, journey into the other country of hurt and denial. It is time for the Negro middle class to rise up from its stool of indifference, to retreat from its flight into unreality and to bring its full resources - - its heart, its mind and its checkbook -- to the aid of the less fortunate brother."

August 5, 1983

Inroads, Inc.

Knoxville, TN.

On Discrimination:

Through my radical days, through my days at New Haven Legal Assistance, through the summer working under a grant from the Law Student's 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. I can never forget the agony of discrimination -- the humiliation of prejudice.

Like many blacks, I have lived without indoor plumbing; without electricity; without adequate heating. I have eaten Kelloggs Corn Flakes with water and Pet Milk. I have eaten the edges trimmed from breads used to make "hors d'oeuvres" for white people. I was born and raised in a segregated society -- separate libraries, movies, water fountains, separate parks.

I have mowed lawns, plowed, and cut hay, stripped fodder, cleaned sewers, ground sugar cane and made syrup. These were things my grandfather told me I had to learn to survive. But he also imparted values which I retain to this day. Among them is honesty. Another is personal integrity. I have no intention of sacrificing my principles to accommodate others or because it would be expedient.

I am an American -- a black American. Nothing hurts me so much as the sufferings of my race. I firmly believe that the sufferings and the problems we face are so great that all who recognize them must look for solutions. We need new ideas in our arsenal of weapons to fight discrimination. At no time must we allow ourselves to believe that we must agree on every issue. We are not robots -- we are a creative, resilient race. Just as we are different we have different ideas and different opinions.

We cannot -- no, we must not believe that we must all think alike anymore than we believe we all look alike. And we must not give up the struggle.

March 24, 1984
Holy Cross College

On Brown v. Board of Education:

It has now been thirty years since the Supreme Court, for the first time since Reconstruction, began to transfer into reality the creed of our Declaration of Independence. It has been thirty years since the Supreme Court took that first brave but fragile step into making America truly one nation -- a nation bound and governed by one set of laws for all. It has been thirty years since the much heralded soul of this nation, first crept from beneath the veneer of hypocrisy. Three decades ago, nine men of the law moved to make the creed of America reality for all.

Although the Brown decision over-turned the Plessy v. Ferguson doctrine of "separate but equal" in the area of education only, it marked the beginning of an era of at least an overt consensus that segregation and racial injustice were illegal and morally wrong - a consensus that opened the floodgates to an era of reform considered by many to be the second Reconstruction.

April 23, 1984
Temple University
School of Law

On Segregation:

Was it the great migration with its sudden concentration of blacks in the urban North and the new beginning of black political awareness that had begotten a change in the name of the political game?

Or the surge of pride which black folks felt as they huddled around their ghetto radios to hear Joe Louis preaching equality with his fists, or hear Jesse Owens humbling Hitler with his feet?

Was it A. Phillip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941 -- and FDR hurriedly signing Executive Order 8802 banning discrimination in war industries and apprenticeship programs?

Or the 99th Pursuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy? or black soldiers storming up beaches called Anzio and Normandy?

Was it Rosa Parks who said "No" she wouldn't move; and Daisy Bates who said "Yes", black children would go to Central High School?

Or the arrival of black leaders at the United Nations building in New York and on Embassy Row in Washington -- men like Kwame N'Krumah and Sekou Toure -- who blew forever the myth of Mumbo Jumbo, King of the Congo?

Or the three men who had been the black man's embodiment of Blitzkrieg -- the most phenomenal legal brains ever combined in one century for the onslaught against injustice -- Charles Houston, William Hastie, Thurgood Marshall?

Was it Martin Luther King and Malcolm X who posed the question of evolution or revolution?

Or a group of students who said, "We've had enough. I mean, what's so sacred about a sandwich, Jack?"

Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Rights and believed?

But whatever -- it was on -- in the streets, at the lunch counters, on the buses. And though the North tried hard to keep attention focused on the South, it was as plain as a ghetto that Messrs. Mason and Dixon had not defined the boundaries of ugliness and injustice.

Brown marked the turn in the tide. If segregation in education was unlawful, was it legal in public accommodations, in employment, in housing? The world waited to hear America's answer.

White America, for the first time since the Republican domination of Reconstruction was being forced to deal with the unjust plight of its "invisible" race. Blacks and their often newly-found white allies stormed the Jericho of segregation -- and the walls came tumbling down.

April 7 1984
Yale Law School
Black Law Students
Association Conference

On Dr. Martin Luther King, Jr.:

Last month, we celebrated the birthday of a man who articulated and dramatized what my day-to-day heroes taught us. Holidays such as Dr. King's birthday should be occasions when we can see what we have in common with each other, rather than dwell on what divides us.

Martin Luther King, the man who spoke of having a dream, reflected that the Declaration of Independence speaks of not some men, but of all men.

Dr. King described the Declaration of Independence and the Constitution as "a promissory note to which every American was to fall heir." But despite the bad check America had written black Americans, Dr. King refused to believe that the "Bank of Justice" was bankrupt. He knew that the resources of America were great. He imagined a nation where his children would be judged not "by the color of their skin but by the content of their character" and that this was "deeply rooted in the American dream."

I still believe that today. And the Equal Employment Opportunity Commission strives to bring our reality closer to that dream.

March 1, 1988
Presidential Classroom for
Young Americans

7/9/91

Judge Thomas on the Civil Rights Movement

o Judge Thomas has seen the effects of discrimination and has acknowledged the great debt that Afro-Americans have to the civil rights leaders:

My grandparents, who raised me, are perfect examples of what discrimination can do. . . . Early in life, as I watched them toil away, I realized that their efforts would be seriously impeded by something beyond their control -- racial discrimination. They had overcome the lack of formal education, the Great Depression and an assortment of other adversities. But, 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. As individuals who have received the benefit of an education which was probably denied your fathers and mothers, and in some cases sisters and brothers, you must devise a plan for a civil rights movement for the 1980s.

Thomas, "Discrimination and Its Effects," Integrated Education, vol. 21, (1983).

o Referring to his grandfather's experience with racism, Judge Thomas has said:

My grandfather knew why his business wasn't more successful, but that didn't stop him from getting up at two in the morning to carry ice, wood and fuel oil. Sure he knew it was bad. They all knew too well that they were held back by prejudice. But they weren't pinned down by it. They fought against discrimination under the leadership of W.W. Law and the NAACP.

o Judge Thomas has praised Martin Luther King for his leadership of the civil rights movement and has credited Dr. King with being the last great advocate for the view that the worth of individual human beings is derived from principles of natural law:

Martin Luther King was the last prominent American political figure to appeal to [natural law]. . . . Without such a notion of natural law, the entire American political tradition, from Washington to Lincoln, from Jefferson to Martin Luther King, would be unintelligible.

Thomas, Why Black Americans Should Look to Conservative Policies, The Heritage Lectures (June 18, 1987).

- o Judge Thomas has characterized the work of Martin Luther King as follows:

The awesome task facing Dr. King was to erase the blatant contradiction in our society, in which those who were inherently equal were treated unequally. A contradiction we recognized as students in segregated schools saying the pledge of allegiance and singing about the land of the free -- when we were not free!

Speech given January 14, 1987 before the Kiwanis Club in Washington, D.C.

- o Judge Thomas has been critical of the failure of some conservatives to recognize the importance of the contribution of Martin Luther King. Speaking at the Department of Justice' commemoration of Martin Luther King Day in 1987, he said:

[C]onservatives can learn a lesson from Dr. King. To give some examples: 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 guarantees 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 presupposes the Declaration [of Independence]. And Dr. Martin Luther King, Jr. was fighting for that goal.

- o Judge Thomas has also said of Dr. King that:

men and women of all parties should appreciate his great achievement of challenging Americans to live up to the higher law of America. 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.

Thomas, Letter to the Editor, Commentary (April, 1987).

- o Judge Thomas has also praised the many others who partook of the great struggle for equality:

In one of the most compelling and glorious events in this nation's history, a vast cross-section of this nation's population was on the march -- a march for justice -- a march to turn this nation from its schizophrenic posture between its stated beliefs, the ideals on which it was founded, and the reality of its existence. . . . A nation long deaf to the pleas of the impoverished heard the sound of marching feet, marching to Birmingham, to Selma, to Jackson.

Speech given Dec. 6, 1983, before an EEOC seminar in Pittsburgh, PA.

o Reflecting on the history of that struggle, Judge Thomas has said:

Was it the great migration with its sudden concentration of blacks in the urban north and the new beginning of political awareness that had begotten a change in the name of the political game?

Or the surge of pride which black folks felt as they huddled around their radios to hear Joe Louis preaching equality with his fists, or to hear Jesse Owens humbling Hitler with his feet?

Was it A. Phillip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941 -- and FDR hurriedly signing executive order 8802 banning discrimination in war industries and apprenticeship programs?

Or the 99th Pursuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy? Or black soldiers storming up beaches called Anzio and Normandy?

Was it Rosa Parks who said "no" we wouldn't move; and Daisy Bates who said "yes," black children would go to Central High School?

. . . .

Or the three men who had been the black man's embodiment of Blitzkrieg -- the most phenomenal legal brains ever combined in one century for the onslaught against injustice -- Charles Houston, William Hastie, Thurgood Marshall?

Was it Martin Luther King and Malcolm X who polarized the issues of black survival in America and posed the question: By evolution or revolution?

Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Rights and believed?

Or a group of students who said, "We've had enough. I mean, what's so sacred about a sandwich, Jack?"

But whatever -- it was on -- in the streets, at the lunch counters, on the buses. And though the North tried hard to keep attention focused on the South, it was as plain as a

ghetto that Messrs. Mason and Dixon did not define the boundaries of ugliness and injustice.

Speech given May 30, 1984 before the Quad Council Training Conference, Oakland, CA.

o Finally, in a speech given in 1983 at a Black History Month celebration, Judge Thomas gave his views on the lessons of the civil rights movement for Afro-Americans and, indeed, for all Americans:

We dare not forget all we have gone through and what we have become. And America cannot afford for us to do so either. These men and women who fell, and stumbled only to walk straight again were our forbearers. Out of this human material came freedom fighters Gabriel Prusser, Sojourner Truth, Harriet Tubman, Nat Turner, Daniel Vesey, men and women who forged initiatives to end their servitude and gain freedom -- all the time revering God; journalists Mary Ann Shadd Cary, Dr. Martin Robinson Delany, Frederick Douglass, Gertrude Bustill Mussell, William Monroe Trotter -- the first black recipient of a Harvard University Phi Beta Kappa Key; creative scientists, inventors and medical researchers Benjamin Banneker, Edward A. Bouchet -- the first Afro-American to receive a PHD in science (physics) in 1876, Dr. Lloyd Hall, Lewis Latimer, Garrett Morgan, Elbert C. Robertson, Dr. Ernest Everett Just -- biologist and first recipient of the NAACP's Spingarn Medal; and in the crafts and the arts: Thomas Day -- freeborn North Carolinian cabinetmaker and furniture merchant, Meta Warrick Fuller -- sculptor, and Joshua Johnson or Johnston -- the correct spelling of his name is one of the lost facts. He was, however, America's first black portrait painter.

Out of these people came the vanguard of the human rights and civil rights movements in this country and the spirit for those movements abroad. When "we shall overcome" is sung in Ireland, Poland, Japan, South Africa, and England, those who sing it know they sing an American freedom song -- specifically an Afro-American song. And no one can sing it without having vivid images of Dr. Martin Luther King, Jr. marching down America's main streets and highways challenging America to be what she says she is -- "One nation . . . indivisible." It has become the international anthem of a world yet to be born where all people are free to realize their potential.

The Afro-American has also been a model for other minority efforts to coax America into realizing the ideals of a democratic society. The Afro-American experience has been an instructive one. The prophets of the future tell us we are moving from a product-oriented economy to one that is

information-saturated. The revolution in communications and information is already here and it is as significant an occurrence as the introduction of movable type which lit up the dark ages. The word, the idea, the book must be the Afro-American revolution as well. And if knowledge of the truth will be the power which keeps the Afro-American surging forward, it will provide the context that keeps America on course toward justice and equity. The history of her vision is to be found in those lost chapters.

Speech given February 18, 1983 at Black History Month Celebration, United States Department of Labor, Washington, D.C.

7/9/91

Quotas

o Judge Thomas has made clear that he will not consider race in his constitutional adjudication: "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." Wall St. Journal, 1987 (quoted in Washinton Post, p. A7 (July 2, 1991)).

o Judge Thomas believes that the use of racial quotas in the job hiring process is bad public policy. He has stated, for example, that "America was founded on a philosophy of individual rights, not group rights," and that racial quotas "only further and deepen the original problem [of race discrimination]." Wall St. Journal, p. A12 (July 2, 1991); Letter to the Editor, Wall St. Journal (Feb. 20, 1987)

o Nor, in Judge Thomas' view, do racial quotas redress the wrongs at which they are supposedly directed: "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." Thomas, Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!, 5 Yale Law & Policy Review, 402, 406-07 (1987).

o These policy views of Judge Thomas reflect the feelings of the vast majority of the American people. As Senator Dole has succinctly explained: "Quotas are anti-equal opportunity, anti-individual merit, and in case you have not noticed, about as popular with the American people these days as Saddam Hussein." 137 Cong. Rec. S8676 (June 26, 1991). Indeed, an NBC News/Wall Street Journal poll released June 28 showed that 78% of the public opposes racial preferences in hiring. New York Times, p. 12 (June 30, 1991). And a recent poll of black Americans showed that, by a margin of 47% to 39%, they agree with Judge Thomas' view on quotas. USA Today, p. 1 (July 5, 1991).

o Judge Thomas' opposition to the imposition of quotas as a matter of public policy is consistent not only with the position of President Bush, but with the views expressed by leading Senate Democrats during debates in the 101st and 102nd Congresses.

-- Senator Biden, the Chairman of the Judiciary Committee, declared that "eliminating quotas is correct. I do not support

quotas. I have not supported quotas." 137 Cong. Rec. S8676 (June 26, 1991).

-- In connection with proposed civil rights legislation pending in Congress, Senator Simon has explained that "Congress has no intention of requiring employers to resort to quota hiring." 136 Cong. Rec. S10084 (July 19, 1990).

-- Senator Kennedy has disavowed any intent to require employers to hire according to racial quotas, and he has offered legislation providing that nothing in his proposed civil rights act "shall be construed to require an employer to adopt hiring or promotional quotas on the basis of race." 136 Cong. Rec. S9931, S9945 (July 18, 1990).

-- Senator Mikulski opposes quotas, because she, like Judge Thomas, "believes that quotas do not solve anything." 136 Cong. Rec. S9845 (July 17, 1990).

-- Senator Levin has declared his opposition to hiring quotas. 136 Cong. Rec. S9961 (July 18, 1990).

-- In short, as Republican Senator Specter aptly summarized, "[e]verybody agrees we do not want quotas." 136 Cong. Rec. S9828 (July 17, 1990).

7/9/91

Law and Order

o Judge Thomas is a tough, anti-crime judge. He takes a common-sense approach to questions of criminal law and procedure, and has recognized the practical problems that law enforcement officers face in combatting crime on the streets.

o Commenting in 1985 on what should be done to solve the problems faced by America's inner cities, Judge Thomas remarked: "The first priority is to control the crime. The sections where the poorest people live aren't really livable. If people can't go to school, or rear their families, or go to church without being mugged, how much progress can you expect in a community? Would you do business in a community that looks like an armed camp, where the only people who inhabit the streets after dark are the criminals?" Black America Under the Reagan Administration: A Symposium of Black Conservatives, The Heritage Foundation Policy Review (Fall 1985).

o In another context Judge Thomas asserted: "We should be at least as incensed about the totalitarianism of drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern bloc countries." Why Black Americans Should Look to Conservative Politics, Heritage Foundation Reports (June 18, 1987).

o Judge Thomas' opinions in the field of criminal law demonstrate a deep understanding of the community's interest in deterring crime. He has resisted efforts to impose unreasonably burdensome requirements on the police and prosecutors or to overturn criminal convictions on technicalities not required by the Constitution, while guarding against infringements of the fundamental rights of criminal defendants.

o Judge Thomas has affirmed judgments of conviction in all but one of the seven criminal appeals for which he wrote opinions while on the Court of Appeals. Of the eighteen additional criminal appeals considered by Judge Thomas, he joined the majority in upholding sixteen criminal convictions and/or sentences.

o Judge Thomas has rejected the argument that a conviction for aiding and abetting narcotics distribution should be reversed because the defendant's involvement was limited to giving a drug dealer a ride to the site of the illegal transaction. (United States v. Poston, 902 F.2d 90 (D.C. Cir. 1990)).

o Judge Thomas has rejected arguments that a trial judge erred in admitting police testimony as to the contents of a telephone call, answered by police during a search of a defendant's apartment, which tended to show that the defendant was dealing in narcotics. (United States v. Long, 905 F.2d 1572 (D.C. Cir.), cert. denied, 111 S. Ct. 365 (1990)). Similarly, he has upheld

the admission at trial of evidence of a defendant's prior drug-dealing activity. (United States v. Rogers, 918 F.2d 207 (D.C. Cir. 1990)).

o In a case involving narcotics dealers who conducted their illegal trade out of several rooms in a hotel, Judge Thomas rejected the argument that police had seized evidence against them in violation of the Fourth Amendment. In response to the contention that the warrantless search of one of the rooms was unlawful, Judge Thomas held that it was justified by exigent circumstances, and noted that, although "the police carefully investigated the suspicious hotel guests for more than a week and sought warrants for all the rooms that they could link to [defendant]," the defendant "tried to frustrate the warrant process by hopping from room to room." Following recent Supreme Court precedent, he further ruled that evidence seen by the police during an unlawful search was nonetheless admissible at trial on the grounds that it was subsequently acquired on the basis of an independent and lawfully procured search warrant. (United States v. Halliman, 923 F.2d 873 (D.C. Cir. 1991)).

o Judge Thomas ruled against a defendant who argued that, at his trial, the judge had improperly instructed the jury as to his entrapment defense. In so holding, Judge Thomas observed that "the government [had] introduced overwhelming evidence of [defendant's] eagerness to sell crack, enough, we are certain, for the government to have carried the burden of proof it needed to defeat [defendant's] entrapment defense." (United States v. Whoie, 925 F.2d 1481 (D.C. Cir. 1991)).

o Judge Thomas is not, however, excessively deferential to the prosecution at the expense of fairness toward criminal defendants. In United States v. Miller, 904 F.2d 65 (D.C. Cir. 1990), Judge Thomas joined an opinion by Judge Silberman overturning defendants' conviction for wire fraud on the ground that the trial court had excluded admissible exculpatory evidence.

7/9/91

Judicial Restraint

o When interpreting statutes, Judge Thomas does not substitute his judgment for that of the legislature. In his confirmation hearings for his present position, he stated that "the ultimate goal should always be to apply the will of Congress, the will of the legislature." "I don't think," Thomas said, "that it's ever appropriate for a judge to replace the intent of the legislature with his or her own intent."

o He has followed this view on the bench. Thus where Congress prescribed that an agency was to consider environmental factors but left the ultimate decision up to the agency, Judge Thomas rejected the notion that it was the court's role to "coax agency decisionmakers to reach certain results." Citizens Against Burlington, Inc. v. Busey, 1991 U.S. App. LEXIS 12036 (D.C. Cir. June 14, 1991).

o Judge Thomas also recognizes that appellate courts must respect the roles of juries and trial courts. In ALPO Petfoods, Inc. v. Ralston Purina Co., 913 F.2d 958, 964 (D.C. Cir. 1990), Judge Thomas noted that in reviewing the trial court's findings the court of appeals had "no authority to weigh the evidence anew." Similarly, on several occasions Judge Thomas has recognized the "tremendous deference" owed to a jury verdict. United States v. Long, 905 F.2d 1572, 1576 (D.C. Cir. 1990). See also United States v. Poston, 902 F.2d 90, 92 (D.C. Cir. 1990). Yet this is balanced by a willingness to overturn a verdict that is wholly unsupported by the evidence. Long, 905 F.2d at 1576.

o Dissenting in a case on the ground that the plaintiffs lacked standing, Judge Thomas stated: "Federal courts are courts of limited jurisdiction. When federal jurisdiction does not exist, federal judges have no authority to exercise it, even if everyone -- judges, parties, members of the public -- wants the dispute resolved." Cross-Sound Ferry Services, Inc. v. ICC, 1991 U.S. App. LEXIS 8977, *38 (D.C. Cir. May 10, 1991) (Thomas, J., dissenting).

o Where Congress prohibited the use of collusive joinder to establish federal court jurisdiction on the basis of a federal question, but not to establish jurisdiction on the basis of diversity of citizenship, Thomas wrote that the courts did not have the authority to prohibit the latter, regardless of the burden such actions placed on the court's docket. Western Maryland Ry. v. Harbor Ins. Co., 910 F.2d 960, 964 (D.C. Cir. 1990).

7/9/91

Proper Scope of Questioning

o One of the distinguishing characteristics of our system of government is the independence of the judiciary. If judges are compelled to give their views on issues in advance of their consideration of a case, that independence is jeopardized. To see the danger, one need only ask oneself: "What confidence would I have in the impartiality of a judge who had already stated his opposition to my case?"

o It has been universally recognized that questioning a judicial nominee about specific cases or issues that might come before him or her in a judicial capacity is improper.

o As Judge Thomas is both a nominee for a seat on the Supreme Court and a sitting federal judge, he must refrain from comment both about issues that might come before the Supreme Court or before the Court of Appeals for the District of Columbia Circuit.

o As Chairman Biden explained in statements prior to the confirmation hearings of Justice Souter, the Senate hearings must not "trespass" on the impartiality of judicial officers, Opening Statement, Tr. at 7, and for this reason three lines of investigation are improper:

1. Asking the nominee for "promises," "assurances" or "commitments as to how [he or she] would vote on any specific case." 136 Cong. Rec. S12780 (daily ed. Sept. 11, 1990); Opening Statement, Tr. at 4.

2. Asking questions "so as to apply a litmus test or a checklist as to the views of the nominee." 136 Cong. Rec. S12780 (daily ed. Sept. 11, 1990).

3. Asking questions that would "pry into [the nominee's] personal views on publicly debated issues." Opening Statement, Tr. at 4.

o Senator Specter also recognized that the independence of the judiciary is the principle reason for exercising restraint in questioning:

Retention of an independent judiciary requires restraint by the public and Senators in asking the nominee's ultimate views. By not asking such questions, the Senate will be reinforcing the basic doctrine of separation of powers. 136 Cong. Rec. S12777 (daily ed. Sept. 11, 1990).

o Thus Senator Specter "urged" his colleagues that "it is not appropriate to ask the ultimate question as to what Judge Souter will do on reversing or sustaining Roe versus Wade." 136 Cong. Rec. at S12777 (daily ed. Sept. 11, 1990).

o Senator Simon recently commented that asking a nominee to state a position on the disposition of a particular case is "inappropriate." "You shouldn't have a justice on the bench, hearing a case, wondering what he told a Senate judiciary committee at some time in the past," Senator Simon stated. "Friends, foes hunting Thomas' 'paper trail,'" Chicago Tribune 1:1 (July 4, 1991).

o In his confirmation hearings, Justice Marshall repeatedly refused to answer questions asked by Senator McCellan regarding Miranda v. Arizona and Escobedo v. Illinois, which were, of course, two important and controversial 5-4 decisions that had just been rendered by a narrowly and deeply divided Supreme Court. Hearings before the Committee on the Judiciary, United States Senate, on the Nomination of Thurgood Marshall, of New York, to be an Associate Justice of the Supreme Court of the United States, 90th Cong., 1st Sess. at 8-14 (1967). In response to a direct question concerning Miranda, Justice Marshall replied: "I am not saying whether I disagree with [Miranda] or not, because I am going to be called to pass upon it. There is no question about it, Senator. These cases are coming to the Supreme Court." Id. at 9.

o Later, after he repeatedly refused to answer questions posed by Senator Ervin regarding the Fifth Amendment, Justice Marshall asserted: "I do not think you want me to be in the position of giving you a statement on the fifth amendment, and then, if I am confirmed and sit on the Court, when a fifth amendment case comes up, I will have to disqualify myself. . . . But I think it would be wrong for me to give that opinion at this time. When the case comes before the Court, that will be the time." Id. at 53.

o Justice Marshall summarized his position thus: "My position is, which in every hearing I have gone over is the same, that a person who is up for confirmation for Justice of the Supreme Court deems it inappropriate to comment on matters which will come before him as a Justice." Id. at 55.

o Justice Brennan also resisted answering questions posed by Senator McCarthy concerning whether communism was a political party or a conspiracy, stating that he had "an obligation not to discuss any issues that are touched upon in cases before the Court." Hearings before the Committee on the Judiciary, United States Senate, on the Nomination of William Joseph Brennan, Junior, of New Jersey, to be Associate Justice of the Supreme Court of the United States, 85th Cong., 1st Sess. at 20 (1957). [NOTE: At the time of his confirmation hearings, Justice Brennan

was already sitting as a Justice on the Court by virtue of a recess appointment.]

o A federal statute requires a judge or justice to recuse himself or herself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The statute further requires the judge or justice to recuse "[w]here he has . . . expressed an opinion concerning the merits of the particular case in controversy." 28 U.S.C. § 455(b)(3).

o Canon 5(A)(3) of the ABA's Code of Judicial Conduct provides:

A candidate for judicial office:

* * *

(d) shall not:

* * *

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.

The commentary to this section makes clear that it "applies to any statement made in the process of securing judicial office, such as statements to . . . legislative bodies confirming appointment."

o Speaking at the ABA's annual convention in August of 1990, Justice Stevens warned that the Senate confirmation process could erode judicial independence if nominees are asked how they would vote on specific issues. Justice Stevens commented: "You really wouldn't want a judge who would say in advance how he or she would vote. Very important values are at stake in maintaining the independence of the nominee as he or she goes through the confirmation process." Reported in Newsday, p.13 (Aug. 8, 1990).

o Former Chief Justice Burger has commented: "To expect a nominee to make commitments, or even to engage in substantive discussion of a case yet unseen, borders on the preposterous." Parade Magazine (Sept. 16, 1990), quoted in PR Newswire (Sept. 13, 1990).

o Lloyd N. Cutler, former Counsel to President Carter, has asserted that "it is vital to the integrity of the process that neither they [the President and the Senate] nor the rest of us insist on knowing in advance how a new justice is going to vote in a particular case." "In Justices, Mystery Is Essential . . .", Washington Post A31 (August 2, 1990). Mr. Cutler also cited President Lincoln, who wrote in a letter to a friend: "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it." [NOTE: The next sentence in Lincoln's letter is: "Therefore, we must take a man whose opinions are known." Lincoln was not speaking in

hypothetical terms. The Supreme Court was preparing to hear the Legal Tender Cases, which would decide the constitutionality of a civil war statute authorizing the Treasury to print paper money. The statute was immensely important to the financing of the war. Lincoln eventually picked his Secretary of the Treasury, Salmon P. Chase, who had drafted the statute and urged Congress to enact it. After his confirmation, Justice Chase cast the deciding vote and wrote the opinion striking down the Legal Tender Act as unconstitutional.]

o Governor Cuomo has also recognized: "It is not appropriate to ask a judge or a candidate for the judgeship to tell you in advance how he's going to decide a case." "Souter and Senate: How Far Should Questions Go?", New York Times A16, col. 1 (July 26, 1990).

o The Washington Times has commented: "Judge Thomas is likely to refrain, as is only proper, from commenting on his personal and religious views and on cases likely to come before the Supreme Court." "The personal views of Clarence Thomas," Washington Times G2 (July 9, 1991).

7/9/91

Qualified for the Court: Judge Thomas and His Predecessors

Judge Clarence Thomas is highly qualified to serve on the United States Supreme Court. His personal achievement in the face of adversity is an embodiment of the American dream. Even more importantly, his professional career has fully prepared him to serve on the Supreme Court. As explained below, his academic and career record compare favorably with those of many past members of the Court at the time of their nomination.

Judge Thomas' academic record is impressive. He graduated from Holy Cross College in 1971, and from Yale Law School in 1974. In addition to excelling academically during his college and law school days, Judge Thomas evinced an early commitment to public service. While at Holy Cross, he ran a free breakfast program for black schoolchildren and tutored in the local schools. During two of his summers at Yale, Judge Thomas worked for New Haven Legal Assistance to provide legal aid to the disadvantaged.

Since his graduation from Yale Law School, Judge Thomas has proven his legal skills in a variety of positions in government and the private sector. In his first year out of law school, he managed an extensive litigation practice as an Assistant Attorney General in Missouri. During his 2-1/2 years in that position, Judge Thomas was responsible for several hundred court cases at

both the trial and appellate levels. His excellent performance in this office quickly earned him the respect and friendship of his boss, then-Attorney General John Danforth.

Upon leaving the Missouri Attorney General's office, Judge Thomas took a position as counsel to the Monsanto Company. In that capacity, he advised corporate managers on a variety of issues, with a particular emphasis on environmental matters.

In 1979, John Danforth prevailed on Clarence Thomas to join him, this time as a member of Danforth's Senate staff. Judge Thomas was given responsibility for matters involving the environment, energy, public works, and the Department of Interior.

In 1981, President Reagan appointed Clarence Thomas to be Assistant Secretary for Civil Rights at the Department of Education. In that position, he supervised the office that is responsible for enforcing the anti-discrimination laws in educational institutions which receive federal financial assistance.

Judge Thomas' second presidential appointment came barely a year later, when President Reagan nominated him to be the Chairman of the Equal Employment Opportunity Commission, the agency charged with enforcing federal laws against discrimination

in the workplace. Judge Thomas' record during his eight years of service at the EEOC was widely praised. Frank Quevado, former Chairman of the Mexican-American Legal Defense and Education Fund, testified in 1990 that Judge Thomas "worked hard to rebuild an agency which, though possessing strong moral leadership historically, had suffered from an inability to effectively carry out its responsibilities to individual victims of discrimination" The Vice Chair of the EEOC, R. Gaull Silberman, has observed that "[u]nder Clarence's leadership, the agency found its mission as a law enforcement agency and it attained a credibility that it had never had before." In 1987, the Washington Post editorialized that "[u]nder 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 [in 1986]." In short, as Fred W. Alvarez, a San Francisco labor attorney who worked under Judge Thomas at the EEOC, put it, "[h]e totally turned around the management and reputation [of] EEOC"

Judge Thomas' third Presidential appointment came in 1990 when President Bush appointed him to be a judge of the United States Court of Appeals for the District of Columbia Circuit. Judge Thomas has participated in over 140 decisions and has authored opinions on such diverse issues as criminal procedure, antitrust law, and the powers of federal agencies. His work on that court has been widely praised.

Perhaps no evaluation is more accurate than that of his judicial colleagues on the D.C. Circuit. Judge Abner Mikva says "[h]e's been a very good colleague. I have nothing but praise for his collegiality -- in conference, in social relationships, and in all the things that judges do." Another judge on the court says Thomas "has very directed questions at oral argument, and he has very directed, focused questions in conference." This judge also reported that Thomas is "extremely well prepared" for argument and conference. Other judicial colleagues have said that he is "a wonderful person to deal with," "very open," "not pretentious," and "warm and personable." Upon learning of Judge Thomas' nomination, Judge Karen LeCraft Henderson said: "I'm so excited, so very happy for Judge Thomas, for the Supreme Court, and for the country. He is, to me, the living embodiment of the American dream fulfilled. He's accomplished so much, and he has come from a background of deprivation and poverty and discrimination, and he has just triumphed."

Judge Thomas' experience clearly qualifies him for a seat on the Supreme Court. The high level of his qualifications may be illustrated by comparing his professional background with that of many who have served as Justices of the Supreme Court in this century and earlier. At age 43, seventeen years after his graduation from Yale Law School, Judge Thomas is in the prime of his career. Not surprisingly, a number of previous nominees to

the Supreme Court have been selected at approximately the same stage in their lives. Justice William O. Douglas, for example, was nominated to the Court by President Roosevelt at the age of 40, when he was only fourteen years out of law school. Justice Douglas' professional career consisted principally of six years as a law school professor and five years in public service as a member of the Securities and Exchange Commission. Justice Byron R. White was appointed to the Court by President Kennedy at the age of 44, sixteen years after his graduation from Yale Law School. Justice Potter Stewart was also 44 years old at the time of his nomination. One of the greatest Justices in our Nation's history, Joseph Story, was appointed to the Court at the age of 32, only ten years after he was admitted to the Massachusetts bar.

Having served on what many regard as the second highest court in the land, the United States Court of Appeals for the District of Columbia Circuit, Judge Thomas has ample judicial experience to prepare him for the Court. As noted above, Judge Thomas has already participated in over 140 decisions in the Court of Appeals on a wide range of issues. Moreover, prior judicial service is hardly a prerequisite for appointment to the Supreme Court. Two members of the current Court, Chief Justice William Rehnquist and Justice Byron White, had no judicial experience before joining the Court. The same can be said of a number of other Justices who served with distinction in this

century, including Chief Justices Warren, Stone, and Hughes, and Justices Brandeis, Douglas, Frankfurter, and Powell. Even the great Chief Justice, John Marshall, had no judicial experience before joining the Supreme Court at age 45.

Few Justices of the Supreme Court have had governmental experience -- at both the state and federal level -- equal to that of Judge Thomas. During his career, Judge Thomas has spent two years in state government in Missouri and eight years in the Executive Branch of the federal government. In a day and age where a great number of cases to come before the Supreme Court involve challenges to the actions of state or federal governments, insight into the operation of government gained through such experience is invaluable for a Justice of the Supreme Court.

There obviously is no single appropriate resume for a nominee to the United States Supreme Court. Past Justices have displayed an array of professional backgrounds, ranging from extensive private practice of law to substantial service in the public sector. When viewed in relation to his predecessors, there should be no doubt that Judge Thomas possesses the professional experience required for service on the Supreme Court. Judge Thomas' career to date reflects an excellence and diversity that qualify him to take a seat on our highest Court.

7/9/91

Environmental Law

o While sitting on the Court of Appeals, Judge Thomas enforced the environmental protection laws but refused to create additional procedures that would serve only to generate meaningless red tape and curtail economic efficiency.

o In Citizens Against Burlington, Inc. v. Busey, 1991 U.S. App. LEXIS 12036 (June 14, 1991), Judge Thomas required an agency to follow the regulations of the Council on Environmental Quality. A contractor for the agency had prepared an environmental impact statement without executing a disclosure form designed to detect potentially disqualifying conflicts of interest. The agency assured the petitioners in the case that the contractor "does not have an undisclosed stake in the project that would potentially disqualify it." Id. at *38. Judge Thomas stated that such "ipse dixit does not reassure us" and ordered the agency to have the contractor execute the disclosure form and to take "prompt[]" remedial measures if a conflict appeared. Id. at *38-*39.

o Judge Thomas recognizes the scope that Congress has chosen for the environmental statutes and enforces the statutes within that scope. For example, while some commentators have hailed the NEPA as "an environmentalist Magna Carta," Judge Thomas has observed with respect to the NEPA's purpose:

[I]nstead of ordering, say, that deforested land be reforested, Congress chose to make the NEPA procedural. . . . Just as NEPA is not a green Magna Carta, federal judges are not the barons at Runnymede. Because the statute directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another, federal judges correspondingly enforce the statute by ensuring that agencies comply with the NEPA's procedures, and not by trying to coax agency decisionmakers to reach certain results.

Citizens Against Burlington, 1991 U.S. App. LEXIS 12036 at *9.

o Judge Thomas will not overrule an agency on a matter within the agency's expertise where the agency has "thought hard about [the] appropriate factors." Citizens Against Burlington, 1991 U.S. App. LEXIS 12036 at *23. Thus, in Citizens Against Burlington, he refused to overturn the FAA's reasonable judgment as to the scope of alternatives to the FAA's approving a proposed airport expansion. The National Environmental Policy Act of 1969 (NEPA) requires agencies to consider "alternatives to the proposed action," but to determine such alternatives, "[s]omeone has to define the purpose of the agency action." Id. at *27. This choice was left in the first instance to the agency itself, subject to a reasonableness review by the federal court.

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On Civil Rights:

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I believe in the vigorous enforcement of civil rights laws and have pledged to do everything I can to pursue such enforcement by the EEOC. There are some who claim that this administration has turned its back on civil rights enforcement, that it has no civil rights policy, that it is satisfied to watch the clock get turned back in civil rights areas. Those who make this claim are wrong. I will have no part in turning back the clock, or in seeing past progress undermined by current laxness.

June 3, 1982
D.C. Chapter of the Industrial
Relations Research Association

REVISED 7-10-91

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And, the federal government must continue to pave the way in civil rights. The federal government has always had both a profound moral obligation and a constitutional duty to protect individual rights. Increasingly that ideal has gained the force of the law. But, in the words of Frederick Douglass, "Power concedes nothing without a demand." And, even the government did not move decisively until the thunderous demand of protest against injustice could, no longer, be ignored.

For in one of the most compelling and glorious events in this nation's history, a vast cross-section of this nation's population was on the march -- a march for justice -- a march to turn this nation from its schizophrenic posture between its stated beliefs, the ideals on which it was founded, and the reality of its existence. A nation, founded on the principles of liberty and justice, began to see that its anthems and credos had a hollow ring. A nation which had averted its eyes by playing hide and seek with the stranger knocking at the door. And, as the poet Dylan says, "He was wearing the clothes that you once wore."

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March 1, 1988
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THE WHITE HOUSE
WASHINGTON

CLARENCE THOMAS SURROGATES

- ✓ Senator Jack Danforth - Republican, MO
- ✓ Griffin Bell -
- ✓ State Senator Ray Allen - Georgia
- ✓ Larry Thompson - Attorney -
(Griffin Bell law firm) *Attended -*
- Rufus Cormier - Houston
(Baker Botts) *f - ①*
- Alphonso Jackson - Dallas Housing Authority *② BLACK*
- Pam Talkin - Federal Labor Relations Board
(working on Op Ed - to be placed)
Worked with Clarence at EEOC
- Fred Alvarez - Worked with Clarence at EEOC
Now - Pillsbury Madison - San Francisco /
- Alex Netchvolodoff - Now at Cox Broadcasting *✱*
Formerly - EEOC
- Alan Moore - Waste Management Inc. *✱*
Formerly EEOC
- Dick Leon - Classmate at Holy Cross
Now Baker Hostetler
- Ricky Silberman - Vice Chairman - EEOC - *Lee h.*
- Harriet Erlich - EEOC *}*
- Willie King - EEOC *}*
- Father Brooks - Holy Cross, President *✱*
- David Brown - */ Monsanto /*
- Judge Reggie Walton *(1)*

July 9, 1991

THE WHITE HOUSE
WASHINGTON

POSSIBLE CLARENCE THOMAS SURROGATES

Professor Stephen Carter - Yale Law School ✓
Moderate black - Appeared on "Brinkley"

Professor Shelby Steele - English Professor - San Jose State ✓
Extremely articulate
Needs to be sounded out
Best selling author - The Content of our Character

Professor Lucian Barker - Washington University - *St. Louis*
School of Public Law & Diplomacy
Needs to be sounded out

Professor Randy Kennedy - Harvard Law School
Needs to be sounded out
617-495-0907

July 9, 1991

7/9/91

Abortion

- o Judge Thomas has not articulated his views on the right to privacy or abortion. Suggestions by pro-choice groups to the contrary are based on very slim evidence.
- o Pro-choice groups have pointed to Judge Thomas' 1987 speech before the Heritage Foundation as a "revelation" of his opposition to the right to privacy. That speech called on African-Americans to consider conservatism in a new light. In one part of the speech, he endorsed the use of natural law for the more aggressive enforcement of civil rights laws.
- In setting forth his views on that issue, Judge Thomas made a passing reference to an article by Lewis Lehrman in which Lehrman had used natural law to address the issue of abortion. The reference was a single sentence: "But Heritage Foundation Trustee Lewis Lehrman's recent essay in the American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."
- Judge Thomas was invoking natural law only to address the issue of equal opportunity.
- Judge Thomas made no comment at all on the issue of abortion, and did not intend to. He was merely embracing one particular use of natural law (i.e., in the enforcement of civil rights).
- Neutral observers have recognized that the pro-choice movement's reliance on the citation of Mr. Lehrman's article is a reed too thin to support a conclusion on his views of Roe or opposition to his nomination. Thus, for example, William Schneider has written in the Los Angeles Times that "[o]ne sentence of praise for someone else's article is not much of a legal doctrine."
- Newsweek has written that "the mere endorsement of an article is not proof positive," and acknowledged the view that "Thomas was being polite, since he was delivering his address in an auditorium named after Lehrman."
- Paul Gigot of the Wall Street Journal wrote that nothing in Judge Thomas' citation of Lehrman suggested that Judge Thomas would vote to overturn Roe.
- o Pro-choice groups have also focused on a footnote in an article on the "higher law" background of the Privileges and Immunities Clause. That footnote simply cannot be read as taking a position on the merits of the abortion issue.

- In the footnote, Judge Thomas merely alludes to, but does not take any position on, the Roe decision.
- He accurately characterizes the holding in Roe: A woman's decision to end her pregnancy is protected by her right to privacy established by the Court in Griswold. He then accurately characterizes the holding in Griswold by quoting from Justice Douglas' opinion for the Court in that case.
- Judge Thomas then states that he has "elaborate[d] on my misgivings about activist judicial misuse of the Ninth Amendment in" another article. No one disputes that vague constitutional provisions can be abused. He expressed no views on the meaning of the Ninth Amendment.
- Moreover, Judge Thomas' statement cannot be taken as opposition to the Court's holding in either Roe or Griswold because in neither case does the Court's holding rest on the Ninth Amendment.
- In Roe, Justice Blackmun's opinion for the Court explicitly rejected the Ninth Amendment in favor of the Due Process Clause of the Fourteenth Amendment: "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S. at 153.
- In Griswold, Justice Douglas' opinion for the Court stated that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." 381 U.S. at 484. He then went on to list a number of provisions of the Bill of Rights, concluding with the Ninth Amendment. The Ninth Amendment, however, is not a "specific" guarantee in Justice Douglas' terms because, unlike the First and Fourth Amendments, it does not protect any particular right. The Ninth Amendment was the subject of Justice Goldberg's concurrence, not the Court's opinion. The Court in Roe relied heavily on Griswold; Roe's rejection of the Ninth Amendment in favor of the Due Process Clause is inconsistent with the claim that Griswold rested on the Ninth Amendment.

7/15 Mon.

9:45 am.

INTERNAL THOMAS GROUP

✓ Ken Duberstein 4-21-44	(Annie 728-1100)
— Andy Card	(Linda x2533)
— Ede Holiday	(Shirley x2174)
— David Demarest	(Sharon x7620)
Ron Kaufman	(Barbara x2135)
Leann Metzger	(x7142)
Dorrance Smith	(Janet x1660)
Lee Liberman	(Claire x6257)
	Boyden Gray (Marilyn x2632)
Judy Smith	(Lynn x2100)
	Marlin Fitzwater (Natalie x2100)
Ed Rogers	(Mia x6594)
Bobbie Kilberg	(Helen x7900)
Mike Luttig	(Alice 514-2041)
John Mackey 6-29-42	(514-3844)
Bill Kristol	(Jennifer/Kathleen x6606)
Fred	
Steve Hart	
Jim Dyer	
Gary (?)	

WHITE HOUSE STAFFING MEMORANDUM

DATE: 07/10/91 ACTION/CONCURRENCE/COMMENT DUE BY: NOON 07/11

SUBJECT: TALKING POINTS/SUPREME COURT NOMINATION OF JUDGE CLARENCE THOMAS

	ACTION FYI			ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PETERSMEYER	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGICH	<input type="checkbox"/>	<input type="checkbox"/>
BRADY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROMLEY	<input type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	AMEND	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOLIDAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any comments directly to Deb Amend, Rm. 121, x7150, by NOON on Thursday, 07/11, with a copy to this office. Thanks.

RESPONSE:

PHILLIP D. BRADY
Assistant to the President
and Staff Secretary
Ext. 2702

TALKING POINTS

SUPREME COURT NOMINATION OF JUDGE CLARENCE THOMAS 9 JUL 19 10 PM 7:05

**"Judge Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court."
President Bush nominating Judge Thomas
July 1, 1991**

- o Judge Thomas was chosen because of his fidelity to the Constitution and the rule of law. These qualities, coupled with his education and experience, will make him an exemplary Justice of the Supreme Court.
- o As 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."
- o Judge Thomas was appointed by President Bush in 1989 to the United States Court of Appeals for the District of Columbia. Prior to that he served under President Reagan as the Chairman of the Equal Employment Opportunity Commission from 1982 to 1986. He also served as Assistant Secretary for Civil Rights at the Department of Education in 1981. He was graduated from Holy Cross College with honors in 1971 and Yale Law School in 1974.
- o According to Alan Keyes, on the basis of Thomas' constitutional philosophy and his character, "it would have been difficult for Mr. Bush to find anyone more qualified than Judge Thomas. Throughout his public career, he has displayed the intellectual honesty, integrity and moral courage that are crucial but all too rare ingredients of great public service."
- o Senator Danforth has called Judge Thomas "conservative, but a compassionate kind of conservative, not rigid or ideological in his views. His every motive is that he empathizes with ordinary people, he's one of them."
- o He believes firmly in the rights of the individual: that government's role is to protect the rights of the individual without advancing the interests of any particular lobbying group.
- o Thomas would bring to the Court a wealth of experience in government.

- o He compiled an outstanding record at EEOC: while seeking tougher penalties against discriminatory businesses, he pushed the Reagan administration to work toward improved voting rights and a strong civil rights agenda.
- o His emphasis at the EEOC was on prosecuting cases rather than burdening employers with new regulations. Actions filed against discriminators rose from less than 250,000 a year in 1982 to over 560,000 a year under Judge Thomas. In a two-year period before he took over the commission (1980-1982), the EEOC collected \$320 million in fines from employers who were involved in racial discrimination. From 1984 to 1986, the EEOC under Judge Thomas brought that figure up to \$381 million.
- o R. Gaull Silberman, Vice Chairman of the EEOC when Thomas was Chairman, said, "This man made the EEOC. He built it into a first-class law enforcement agency. We took three times as many cases, got more relief for more people than any other time in history."
- o When Thomas was nominated to the court of appeals, Robert G. Dowd, the Presiding Judge of the Missouri Court of Appeals, wrote that "Mr. Thomas has an outstanding civil rights record and has demonstrated leadership and excellence as Chairman of the Equal Employment Opportunity Commission. He added that he "sincerely believed that Mr. Thomas would bring honor, excellence, and scholarship to the appellate court."
- o The nomination is not dictated by Judge Thomas' race; it is not dictated by his ideology; it is dictated by his outstanding scholarship and his commitment to the Constitution and individual rights.
- o The President recently said that Judge Thomas "offers what I think is a very stirring testament to what people can do when they refuse to take no for an answer, when through sheer determination they overcome the obstacles that others have placed in their way."

JUDGE CLARENCE THOMAS - QUALIFICATIONS

Holy Cross College - Class of 1971

- Ran free breakfast program for black school children
- Tutored in local schools

Yale Law School - Class of 1974

- Also worked New Haven Legal Assistance providing legal aid to disadvantaged

Assistant Attorney General - Missouri (1974 - 1977)

- Responsible for several hundred court cases at the trial and appellate level.

Monsanto Company - Counsel (1977 - 1979)

- Advised corporate managers on issues; special emphasis on environment

Legislative Assistant to Senator John Danforth - 1979

Assistant Secretary for Civil Rights - Department of Education (1981)

- Supervised office that is responsible for enforcing anti-discrimination laws in educational institutions which receive federal funds.

Chairman of Equal Employment Opportunity Commission (1982 - 1990)

- Enforcing federal laws against discrimination in the workplace.

**Judge - United States Court of Appeals
for District of Columbia Circuit (1990 - Present)**

- Confirmed by Senate in an overwhelming majority
- Participated in over 140 decisions

Clarence Thomas the Man

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.

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In 1964, Thomas transferred to St. John Vianney Minor Seminary near Savannah, where for most of the succeeding three years he was the only black student in his class. He excelled in his studies and was also 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 the opportunities that the American system offers to all. 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 is a long record of accomplishment. Much of that career has been dedicated to service to 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.

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On April 30, 1990, Thomas assumed his present position as a judge on the United States Court of Appeals for the District of Columbia Circuit, to which he was appointed by President Bush.

During his time on the bench, he has written opinions in such areas as 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, and 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 efforts. 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."

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QUOTES FROM CLARENCE THOMAS

On Civil Rights:

I wasn't alone. There are those of you here today who have my memories -- who knew the same hurt, and who have shared the same satisfaction in seeing the changes brought about by the Civil Rights movement.

That movement has brought about enormous societal changes in the United States. To name just a few, there has been a host of civil rights laws, including the Civil Rights Act of 1964; dual public school systems were eliminated; fair housing laws were passed; colleges and universities once closed to minorities opened their doors; and equal employment laws were passed. In short, measures affecting every one of the fundamental aspects of daily life -- housing, jobs, education, the right to participate in a democratic government -- were enacted.

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

I believe in the vigorous enforcement of civil rights laws and have pledged to do everything I can to pursue such enforcement by the EEOC. There are some who claim that this administration has turned its back on civil rights enforcement, that it has no civil rights policy, that it is satisfied to watch the clock get turned back in civil rights areas. Those who make this claim are wrong. I will have no part in turning back the clock, or in seeing past progress undermined by current laxness.

June 3, 1982

D.C. Chapter of the Industrial
Relations Research Association

On the NAACP:

The NAACP has a history of which we can all be proud. From its inception in 1909 til today, the work this organization has done in the area of civil rights is unmatched by any other such group. At each turn in the development of blacks in this country, the NAACP has been there to meet the many challenges. In the past, those challenges ranged from voter registration drives to fighting injustices in the legal system. In each situation the NAACP has fought hard and has won many battles. But the battles are not over. There are many still to be fought and hopefully many will be won. But winning these battles will require new strategies and creative thinking on your part. The name "The Crisis", selected as the name of the official publication of the NAACP, was taken from a poem "The Present Crisis", written by James Russell Lowell. The words are as applicable to the problems of today as they were in 1909. Three lines from that poem are especially appropriate today:

New occasions teach new duties: Time makes ancient
good uncouth;

They must upward still, and onward, who would keep
abreast of truth;

Lo before us gleam her camp-fires! We ourselves
must Pilgrims be.

At the EEOC, we recognize our "new duties" and we are beginning to develop these new strategies and to truly fulfill our role as protectors of the rights of all. Our role is that of federal enforcer. The role of the NAACP, of course, is that of advocate. I realize, that as an advocate for our race, our efforts have been unsurpassed. As a true advocate, it is imperative that you carry the same energy you have used in the past into the 1980's to meet the new challenges. However, the new challenges require more than the energy of the past. The new challenges require you to be "Pilgrims" as you face the future. While the NAACP's history is one of countless accomplishments, you can not afford to rest on that history.

October 23, 1982
Maryland Conference of NAACP

On Civil Rights:

It has been nearly nineteen years since Title VII was incorporated in the Civil Rights Act of 1964, since equal employment opportunity became the law of the land. Since those days when we, who had been locked out of the American dream for centuries, rejoiced, knowing hope, at last, was on the way.

And, the federal government must continue to pave the way in civil rights. The federal government has always had both a profound moral obligation and a constitutional duty to protect individual rights. Increasingly that ideal has gained the force of the law. But, in the words of Frederick Douglass, "Power concedes nothing without a demand." And, even the government did not move decisively until the thunderous demand of protest against injustice could, no longer, be ignored.

For in one of the most compelling and glorious events in this nation's history, a vast cross-section of this nation's population was on the march -- a march for justice -- a march to turn this nation from its schizophrenic posture between its stated beliefs, the ideals on which it was founded, and the reality of its existence. A nation, founded on the principles of liberty and justice, began to see that its anthems and credos had a hollow ring. A nation which had averted its eyes by playing hide and seek with the stranger knocking at the door. And, as the poet Dylan says, "He was wearing the clothes that you once wore."

A nation long deaf to the pleas of the impoverished heard the sound of marching feet, marching to Birmingham, to Selma, to Jackson. It heard that the bank of liberty had, as Dr. Martin Luther King, Jr. said, "insufficient funds" to right the wrongs America had heaped upon its minority citizens.

The eyes of the world turned on America. No longer could the champion of freedom and justice abroad continue to be the bastion of separate but equal at home. No longer could people who, for 300 years, had contributed mightily to the development of this nation be denied a full partnership in its destiny. No longer would this country be allowed to turn its back on so many among us who had suffered so long from the denial of the American dream.

The spirit of the Declaration of Independence, reborn in the civil rights movement, became embodied in the laws of the land. And the Equal Employment Opportunity Commission was created to make certain these laws would be enforced.

December 6, 1983
EEOC Seminar
Pittsburgh, PA

On Civil Rights:

My grandparents, who raised me, are perfect examples of what discrimination can do ... Early in life, as I watched them toil away, I realized that their efforts would be seriously impeded by something beyond their control -- racial discrimination. They had overcome the lack of formal education, the Great Depression and an assortment of other adversities. But, 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. As individuals who have received the benefit of an education which was probably denied your fathers and mothers, and in some cases sisters and brothers, you must devise a plan for a civil rights movement for the 1980s.

1983

Integrated Education

Volume 21

So again I find myself challenging you. This time with the words of Dr. Martin Luther King, Jr. "It is time for the Negro 'haves' to join hands with the 'have-nots' and, with compassion, journey into the other country of hurt and denial. It is time for the Negro middle class to rise up from its stool of indifference, to retreat from its flight into unreality and to bring its full resources - - its heart, its mind and its checkbook -- to the aid of the less fortunate brother."

August 5, 1983

Inroads, Inc.

Knoxville, TN.

On Discrimination:

Through my radical days, through my days at New Haven Legal Assistance, through the summer working under a grant from the Law Student's 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. I can never forget the agony of discrimination -- the humiliation of prejudice.

Like many blacks, I have lived without indoor plumbing; without electricity; without adequate heating. I have eaten Kelloggs Corn Flakes with water and Pet Milk. I have eaten the edges trimmed from breads used to make "hors d'oeuvres" for white people. I was born and raised in a segregated society -- separate libraries, movies, water fountains, separate parks.

I have mowed lawns, plowed, and cut hay, stripped fodder, cleaned sewers, ground sugar cane and made syrup. These were things my grandfather told me I had to learn to survive. But he also imparted values which I retain to this day. Among them is honesty. Another is personal integrity. I have no intention of sacrificing my principles to accommodate others or because it would be expedient.

I am an American -- a black American. Nothing hurts me so much as the sufferings of my race. I firmly believe that the sufferings and the problems we face are so great that all who recognize them must look for solutions. We need new ideas in our arsenal of weapons to fight discrimination. At no time must we allow ourselves to believe that we must agree on every issue. We are not robots -- we are a creative, resilient race. Just as we are different we have different ideas and different opinions.

We cannot -- no, we must not believe that we must all think alike anymore than we believe we all look alike. And we must not give up the struggle.

March 24, 1984
Holy Cross College

On Brown v. Board of Education:

It has now been thirty years since the Supreme Court, for the first time since Reconstruction, began to transfer into reality the creed of our Declaration of Independence. It has been thirty years since the Supreme Court took that first brave but fragile step into making America truly one nation -- a nation bound and governed by one set of laws for all. It has been thirty years since the much heralded soul of this nation, first crept from beneath the veneer of hypocrisy. Three decades ago, nine men of the law moved to make the creed of America reality for all.

Although the Brown decision over-turned the Plessy v. Ferguson doctrine of "separate but equal" in the area of education only, it marked the beginning of an era of at least an overt consensus that segregation and racial injustice were illegal and morally wrong - a consensus that opened the floodgates to an era of reform considered by many to be the second Reconstruction.

April 23, 1984
Temple University
School of Law

On Segregation:

Was it the great migration with its sudden concentration of blacks in the urban North and the new beginning of black political awareness that had begotten a change in the name of the political game?

Or the surge of pride which black folks felt as they huddled around their ghetto radios to hear Joe Louis preaching equality with his fists, or hear Jesse Owens humbling Hitler with his feet?

Was it A. Phillip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941 -- and FDR hurriedly signing Executive Order 8802 banning discrimination in war industries and apprenticeship programs?

Or the 99th Pursuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy? or black soldiers storming up beaches called Anzio and Normandy?

Was it Rosa Parks who said "No" she wouldn't move; and Daisy Bates who said "Yes", black children would go to Central High School?

Or the arrival of black leaders at the United Nations building in New York and on Embassy Row in Washington -- men like Kwame N'Krumah and Sekou Toure -- who blew forever the myth of Mumbo Jumbo, King of the Congo?

Or the three men who had been the black man's embodiment of Blitzkrieg -- the most phenomenal legal brains ever combined in one century for the onslaught against injustice -- Charles Houston, William Hastie, Thurgood Marshall?

Was it Martin Luther King and Malcolm X who posed the question of evolution or revolution?

Or a group of students who said, "We've had enough. I mean, what's so sacred about a sandwich, Jack?"

Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Rights and believed?

But whatever -- it was on -- in the streets, at the lunch counters, on the buses. And though the North tried hard to keep attention focused on the South, it was as plain as a ghetto that Messrs. Mason and Dixon had not defined the boundaries of ugliness and injustice.

Brown marked the turn in the tide. If segregation in education was unlawful, was it legal in public accommodations, in employment, in housing? The world waited to hear America's answer.

White America, for the first time since the Republican domination of Reconstruction was being forced to deal with the unjust plight of its "invisible" race. Blacks and their often newly-found white allies stormed the Jericho of segregation -- and the walls came tumbling down.

April 7 1984
Yale Law School
Black Law Students
Association Conference

On Dr. Martin Luther King, Jr.:

Last month, we celebrated the birthday of a man who articulated and dramatized what my day-to-day heroes taught us. Holidays such as Dr. King's birthday should be occasions when we can see what we have in common with each other, rather than dwell on what divides us.

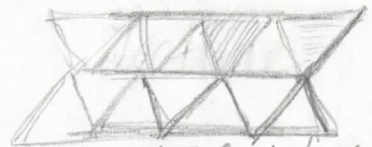
Martin Luther King, the man who spoke of having a dream, reflected that the Declaration of Independence speaks of not some men, but of all men.

Dr. King described the Declaration of Independence and the Constitution as "a promissory note to which every American was to fall heir." But despite the bad check America had written black Americans, Dr. King refused to believe that the "Bank of Justice" was bankrupt. He knew that the resources of America were great. He imagined a nation where his children would be judged not "by the color of their skin but by the content of their character" and that this was "deeply rooted in the American dream."

I still believe that today. And the Equal Employment Opportunity Commission strives to bring our reality closer to that dream.

March 1, 1988
Presidential Classroom for
Young Americans

DRAFT 7/9/91 - to be reviewed with nominee



ABC World News
Pat Roddy All
100%

Clarence Thomas the Man

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7/9/91

Qualified for the Court: Judge Thomas and His Predecessors

Judge Clarence Thomas is highly qualified to serve on the United States Supreme Court. His personal achievement in the face of adversity is an embodiment of the American dream. Even more importantly, his professional career has fully prepared him to serve on the Supreme Court. As explained below, his academic and career record compare favorably with those of many past members of the Court at the time of their nomination.

Judge Thomas' academic record is impressive. He graduated from Holy Cross College in 1971, and from Yale Law School in 1974. In addition to excelling academically during his college and law school days, Judge Thomas evinced an early commitment to public service. While at Holy Cross, he ran a free breakfast program for black schoolchildren and tutored in the local schools. During two of his summers at Yale, Judge Thomas worked for New Haven Legal Assistance to provide legal aid to the disadvantaged.

Since his graduation from Yale Law School, Judge Thomas has proven his legal skills in a variety of positions in government and the private sector. In his first year out of law school, he managed an extensive litigation practice as an Assistant Attorney General in Missouri. During his 2-1/2 years in that position, Judge Thomas was responsible for several hundred court cases at

both the trial and appellate levels. His excellent performance in this office quickly earned him the respect and friendship of his boss, then-Attorney General John Danforth.

Upon leaving the Missouri Attorney General's office, Judge Thomas took a position as counsel to the Monsanto Company. In that capacity, he advised corporate managers on a variety of issues, with a particular emphasis on environmental matters.

In 1979, John Danforth prevailed on Clarence Thomas to join him, this time as a member of Danforth's Senate staff. Judge Thomas was given responsibility for matters involving the environment, energy, public works, and the Department of Interior.

In 1981, President Reagan appointed Clarence Thomas to be Assistant Secretary for Civil Rights at the Department of Education. In that position, he supervised the office that is responsible for enforcing the anti-discrimination laws in educational institutions which receive federal financial assistance.

Judge Thomas' second presidential appointment came barely a year later, when President Reagan nominated him to be the Chairman of the Equal Employment Opportunity Commission, the agency charged with enforcing federal laws against discrimination

in the workplace. Judge Thomas' record during his eight years of service at the EEOC was widely praised. Frank Quevado, former Chairman of the Mexican-American Legal Defense and Education Fund, testified in 1990 that Judge Thomas "worked hard to rebuild an agency which, though possessing strong moral leadership historically, had suffered from an inability to effectively carry out its responsibilities to individual victims of discrimination" The Vice Chair of the EEOC, R. Gaull Silberman, has observed that "[u]nder Clarence's leadership, the agency found its mission as a law enforcement agency and it attained a credibility that it had never had before." In 1987, the Washington Post editorialized that "[u]nder 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 [in 1986]." In short, as Fred W. Alvarez, a San Francisco labor attorney who worked under Judge Thomas at the EEOC, put it, "[h]e totally turned around the management and reputation [of] EEOC"

Judge Thomas' third Presidential appointment came in 1990 when President Bush appointed him to be a judge of the United States Court of Appeals for the District of Columbia Circuit. Judge Thomas has participated in over 140 decisions and has authored opinions on such diverse issues as criminal procedure, antitrust law, and the powers of federal agencies. His work on that court has been widely praised.

Perhaps no evaluation is more accurate than that of his judicial colleagues on the D.C. Circuit. Judge Abner Mikva says "[h]e's been a very good colleague. I have nothing but praise for his collegiality -- in conference, in social relationships, and in all the things that judges do." Another judge on the court says Thomas "has very directed questions at oral argument, and he has very directed, focused questions in conference." This judge also reported that Thomas is "extremely well prepared" for argument and conference. Other judicial colleagues have said that he is "a wonderful person to deal with," "very open," "not pretentious," and "warm and personable." Upon learning of Judge Thomas' nomination, Judge Karen LeCraft Henderson said: "I'm so excited, so very happy for Judge Thomas, for the Supreme Court, and for the country. He is, to me, the living embodiment of the American dream fulfilled. He's accomplished so much, and he has come from a background of deprivation and poverty and discrimination, and he has just triumphed."

Judge Thomas' experience clearly qualifies him for a seat on the Supreme Court. The high level of his qualifications may be illustrated by comparing his professional background with that of many who have served as Justices of the Supreme Court in this century and earlier. At age 43, seventeen years after his graduation from Yale Law School, Judge Thomas is in the prime of his career. Not surprisingly, a number of previous nominees to

the Supreme Court have been selected at approximately the same stage in their lives. Justice William O. Douglas, for example, was nominated to the Court by President Roosevelt at the age of 40, when he was only fourteen years out of law school. Justice Douglas' professional career consisted principally of six years as a law school professor and five years in public service as a member of the Securities and Exchange Commission. Justice Byron R. White was appointed to the Court by President Kennedy at the age of 44, sixteen years after his graduation from Yale Law School. Justice Potter Stewart was also 44 years old at the time of his nomination. One of the greatest Justices in our Nation's history, Joseph Story, was appointed to the Court at the age of 32, only ten years after he was admitted to the Massachusetts bar.

Having served on what many regard as the second highest court in the land, the United States Court of Appeals for the District of Columbia Circuit, Judge Thomas has ample judicial experience to prepare him for the Court. As noted above, Judge Thomas has already participated in over 140 decisions in the Court of Appeals on a wide range of issues. Moreover, prior judicial service is hardly a prerequisite for appointment to the Supreme Court. Two members of the current Court, Chief Justice William Rehnquist and Justice Byron White, had no judicial experience before joining the Court. The same can be said of a number of other Justices who served with distinction in this

century, including Chief Justices Warren, Stone, and Hughes, and Justices Brandeis, Douglas, Frankfurter, and Powell. Even the great Chief Justice, John Marshall, had no judicial experience before joining the Supreme Court at age 45.

Few Justices of the Supreme Court have had governmental experience -- at both the state and federal level -- equal to that of Judge Thomas. During his career, Judge Thomas has spent two years in state government in Missouri and eight years in the Executive Branch of the federal government. In a day and age where a great number of cases to come before the Supreme Court involve challenges to the actions of state or federal governments, insight into the operation of government gained through such experience is invaluable for a Justice of the Supreme Court.

There obviously is no single appropriate resume for a nominee to the United States Supreme Court. Past Justices have displayed an array of professional backgrounds, ranging from extensive private practice of law to substantial service in the public sector. When viewed in relation to his predecessors, there should be no doubt that Judge Thomas possesses the professional experience required for service on the Supreme Court. Judge Thomas' career to date reflects an excellence and diversity that qualify him to take a seat on our highest Court.

7/9/91

Fairness and Sensitivity

o Judge Thomas has a deep and abiding respect for the law. In his confirmation hearing for his nomination to the Court of Appeals, Judge Thomas stated, "I have always taken my oath extremely seriously. And even when I had significant personal differences, I have given . . . priority to the law."

o Judge Thomas told the Senate Judiciary Committee: "[T]he 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."

o John Jacobs, Executive Director of the National Urban League, said that "[w]hat Judge Thomas brings to the nomination is a background of poverty and minority status. While he is conservative, he cannot deny what he has been in life." WT, 7/2/91.

o Senator Danforth called Judge Thomas "conservative, but a compassionate kind of conservative, not rigid or ideological in his views. His every motive is that he empathizes with ordinary people, he's one of them." WP, 7/2/91.

o Orian Douglass, a lawyer in Brunswick, Georgia, who is a friend of Judge Thomas, said that "[h]e's going to hold himself spiritually accountable for his decisions. He's not going to rule one way or the other because of pressure. He came up the rough side of the mountain, and I know he's not going to be insensitive." NYT, 7/3/91.

o President Bush has said that he told Judge Thomas "to do like the umpire: call 'em as you see 'em." The President added that Judge Thomas will "approach the cases that come before the Court with a commitment to deciding them fairly, as the facts and the law require." NYT, 7/2/91.

o A law school classmate and former Carter Administration official describes Judge Thomas this way: "We are talking about a person who understands what it's like to be black and poor in this country and to face the worst kinds of prejudice. The kind of experiences he's had, he will not block those from his thinking." WP, 7/2/91.

o Circuit Judge Damon Keith, a Carter appointee often described as a judicial liberal, has this to say about Judge Thomas: "If I or a member of my family were in trouble, he is the kind of person I'd like to appear before. Our judicial philosophy may not be the same, but he is a bright and reflective man who believes passionately in fairness. I say this without

man who believes passionately in fairness. I say this without reservation, and in full knowledge of all the people who complain about him." WSJ, 7/2/91.

7/9/91

EXCELLENCE AND QUALIFICATIONS

- o In an editorial on July 2, 1991, the Wall Street Journal stated: "Judge Thomas is precisely the kind of jurist President Bush assured voters he would select. He would take the Constitution seriously and apply the laws equally. We eagerly await the beginning of many years of service by Justice Clarence Thomas."
- o In nominating Judge Thomas to be an Associate Justice on the Supreme Court, President Bush stated: "Judge Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court." The President observed that Judge Thomas "has excelled in everything that he has attempted," and described him as "a fiercely independent thinker with an excellent legal mind, who believes passionately in equal opportunity for all Americans."
- o Senator Danforth said of Judge Thomas, "I know him to be an absolutely first rate lawyer, and beyond that, I know him to be a first-rate human being." WT, 7/3/91.
- o Senator Dole said that Judge Thomas is "a man whose very life exemplifies the American dream." WP, 7/2/91.
- o Senator Hatch said, "This man understands the difficulties of life. He has had a tough life but he's made it all the way. Anybody who takes him on in the area of civil rights is taking on the grandson of a sharecropper." NYT, 7/2/91.
- o According to Lovida Coleman, a Washington Lawyer, friend, and classmate from Yale (and the daughter of William Coleman), "[h]e made it strictly on the merits, and he resents the notion that he's ever gotten anywhere because he's black." NYT, 7/2/91.
- o R. Gault Silberman, Vice Chairman of the EEOC when Thomas was Chairman, said, "This man made the EEOC. He built it into a first-class law enforcement agency. We took three times as many cases, got more relief for more people than any other time in history." WT, 7/4/91. She added that "[h]e is uniquely qualified in terms of character and intellect, and he has the courage of a lion. What else do you need?" Id.
- o She also said of Thomas, "He is dignified, reflective, direct, careful, courageous. . . ." LAT, 7/7/91.
- o The Washington Post stated in an editorial that "even those who have disagreed with him on policy grounds will concede that his life, which began in extreme poverty, has been one of accomplishment. If confirmed, he would bring to the court a range of experience not shared by any other sitting justice." WP, 7/2/91.

- o Alan Keyes wrote recently that, on the basis of the nominee's constitutional philosophy and his character, "it would have been difficult for Mr. Bush to find anyone more qualified than Judge Thomas. Throughout his public career, he has displayed the intellectual honesty, integrity and moral courage that are the crucial but all too rare ingredients of great public service." WT, 7/8/91.
- o Judge Karen Henderson said of Judge Thomas, "He is, to me, the living embodiment of the American dream fulfilled. He's accomplished so much, and he has come from a background of deprivation and poverty and discrimination, and he has just triumphed." Legal Times of Washington, 7/8/91.
- o According to Judge Stephen Williams, Judge Thomas' "great concern is to get things right." Legal Times of Washington, 7/8/91.
- o Virginia Governor Douglas Wilder has said that Judge Thomas is "eminently qualified" to sit on the Supreme Court. USA Today, 7/8/91.
- o Georgia State Senator Roy Allen, a friend from school, said that while Judge Thomas' upbringing could be called conservative, "to me, he represents the dream that African-Americans want to achieve. I don't know if you can dissect that into labels -- conservative, liberal or whatever. He's a guy who has principles." WT, 7/2/91.
- o Senator Danforth has said that Judge Thomas is "a compassionate kind of conservative," "the people's nominee for the Supreme Court, the best of America." US News & World Report, 7/15/91, at 25.
- o "Thomas does not walk away from disadvantaged blacks; indeed, he has invested years trying to help them." Id. at 84.
- o Senator Heflin said that, while he is keeping an open mind about Judge Thomas' nomination, Thomas has "all the tools of craftsmanship" for a good justice. Huntsville Times, 7/5/91.
- o John Jacobs, Executive Director of the National Urban League, said that "[w]hat Judge Thomas brings to the nomination is a background of poverty and minority status. While he is conservative, he cannot deny what he has been in life." WT, 7/2/91.
- o Thomas Jipping of the Coalitions for America, a conservative group, said that Judge Thomas has "a ton of merit." Associated Press, 7/5/91.

o According to Father John E. Brooks, President of Holy Cross College, "[h]e's obviously not a flaming liberal, but he's no knee-jerk conservative either. He wants to do his own thinking. He's not following a crowd." NYT, 7/3/91.

o Tom O'Brien, a close friend, characterizes Thomas as "honest" and "courageous" and says "I can't imagine him belying his own system of beliefs for anything." NYT, 7/3/91.

o When Judge Thomas was nominated to the District of Columbia Circuit, William T. Coleman, Jr., the former Secretary of Transportation, said that "this is a fine appointment and . . . Mr. Thomas will add further luster and judicial ability to the Court." He added that "he had met every challenge placed before him. He is equal to and has the courage to decide legal issues according to the statutes and the precedents. . . . To these talents he adds the drive and understanding of human frailties which those who have not always had it easy had to have to reach important positions of public service."

o At the time of his nomination to the District of Columbia Circuit, Congressman Jim Kolbe of Arizona wrote that he found Clarence Thomas "a man of intelligence, integrity and supreme ability. He is singularly responsible for the success the Commission has had in recent years." He also wrote that Thomas "has been an aggressive and effective advocate for the work of the Commission. . . ."

o When Thomas was nominated to the court of appeals, Robert G. Dowd, the Presiding Judge of the Missouri Court of Appeals, wrote that "Mr. Thomas has an outstanding civil rights record and has demonstrated leadership and excellence as Chairman of the Equal Employment Opportunity Commission." He added that he "sincerely believe[d] that Mr. Thomas would bring honor, excellen[ce], and scholarship to the appellate court."

o In support of Judge Thomas' nomination to the court of appeals, Congressman Dick Armey wrote: "Mr. Thomas has served in an exemplary manner as Chairman of the Equal Employment Opportunity Commission . . . and is an outstanding candidate for appointment to the court. . . . Consistent with the purpose of the EEOC, Mr. Thomas has played a vital role in ensuring that older Americans and minorities have access to a fair and equitable means of redress."

o In October 1989, the President of the International Association of Official Human Rights Agencies wrote this in support of Clarence Thomas' nomination for the D.C. Circuit: "Throughout Clarence Thomas' tenure as Chairman of the [EEOC], he has demonstrated fairness, objectivity, clarity of expression, and receptivity to new ideas." He added that 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 would bring great credit to our system of justice."

o In support of Clarence Thomas' nomination for a seat on the D.C. Circuit, Thomas L. Jipping of Save America's Youth wrote: "Clarence Thomas' credentials and performance are exemplary. So is his character, integrity, and temperament." In a press release, Save America's Youth declared that Thomas "is truly an outstanding example for America's youth."

o Claudia Woods, General Counsel for Save America's Youth and a black American, wrote in October 1989 to thank President Bush for nominating Thomas for the D.C. Circuit: "While Mr. Thomas' outstanding and remarkable credentials alone make him a superb choice for the judgeship, his sensitivity and personal experiences make him an even greater choice to serve on the federal court known to decide some of the most important civil rights and constitutional questions of our country."

o At the time of Judge Thomas' nomination to fill a vacancy on the D.C. Circuit, former EEOC colleague Fred W. Alvarez wrote: "He will take to the bench the same qualities he brought to EEOC: a reverence and respect for people and their rights, a fundamental understanding of struggle, arbitrary barriers and the value of hard work, and a stubborn commitment to law and to legal precedent."

o At the time of his nomination to the court of appeals, the Heritage Foundation wrote of Thomas that he "has been an effective Director of the EEOC, and he is a brilliant legal scholar."

o The Coalitions for America, in support of Thomas' nomination for the court of appeals, wrote that Thomas "demonstrated superb management ability" and that he had led the agency "out of the doldrums in which it had languished."

o The President recently said that Judge Thomas "offers what I think is a very stirring testament to what people can do when they refuse to take no for an answer, when through sheer determination they overcome the obstacles that others have placed in their way." WP, 7/9/91.

o Senator Dole said that Thomas is an "outstanding nominee." WP, 7/9/91.

7/9/91

Judge Thomas on the Civil Rights Movement

o Judge Thomas has seen the effects of discrimination and has acknowledged the great debt that Afro-Americans have to the civil rights leaders:

My grandparents, who raised me, are perfect examples of what discrimination can do. . . . Early in life, as I watched them toil away, I realized that their efforts would be seriously impeded by something beyond their control -- racial discrimination. They had overcome the lack of formal education, the Great Depression and an assortment of other adversities. But, 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. As individuals who have received the benefit of an education which was probably denied your fathers and mothers, and in some cases sisters and brothers, you must devise a plan for a civil rights movement for the 1980s.

Thomas, "Discrimination and Its Effects," Integrated Education, vol. 21, (1983).

o Referring to his grandfather's experience with racism, Judge Thomas has said:

My grandfather knew why his business wasn't more successful, but that didn't stop him from getting up at two in the morning to carry ice, wood and fuel oil. Sure he knew it was bad. They all knew too well that they were held back by prejudice. But they weren't pinned down by it. They fought against discrimination under the leadership of W.W. Law and the NAACP.

o Judge Thomas has praised Martin Luther King for his leadership of the civil rights movement and has credited Dr. King with being the last great advocate for the view that the worth of individual human beings is derived from principles of natural law:

Martin Luther King was the last prominent American political figure to appeal to [natural law]. . . . Without such a notion of natural law, the entire American political tradition, from Washington to Lincoln, from Jefferson to Martin Luther King, would be unintelligible.

Thomas, Why Black Americans Should Look to Conservative Policies, The Heritage Lectures (June 18, 1987).

o Judge Thomas has characterized the work of Martin Luther King as follows:

The awesome task facing Dr. King was to erase the blatant contradiction in our society, in which those who were inherently equal were treated unequally. A contradiction we recognized as students in segregated schools saying the pledge of allegiance and singing about the land of the free -- when we were not free!

Speech given January 14, 1987 before the Kiwanis Club in Washington, D.C.

o Judge Thomas has been critical of the failure of some conservatives to recognize the importance of the contribution of Martin Luther King. Speaking at the Department of Justice' commemoration of Martin Luther King Day in 1987, he said:

[C]onservatives can learn a lesson from Dr. King. To give some examples: 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 guarantees 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 presupposes the Declaration [of Independence]. And Dr. Martin Luther King, Jr. was fighting for that goal.

o Judge Thomas has also said of Dr. King that:

men and women of all parties should appreciate his great achievement of challenging Americans to live up to the higher law of America. 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.

Thomas, Letter to the Editor, Commentary (April, 1987).

o Judge Thomas has also praised the many others who partook of the great struggle for equality:

In one of the most compelling and glorious events in this nation's history, a vast cross-section of this nation's population was on the march -- a march for justice -- a march to turn this nation from its schizophrenic posture between its stated beliefs, the ideals on which it was founded, and the reality of its existence. . . . A nation long deaf to the pleas of the impoverished heard the sound of marching feet, marching to Birmingham, to Selma, to Jackson.

Speech given Dec. 6, 1983, before an EEOC seminar in Pittsburgh, PA.

o Reflecting on the history of that struggle, Judge Thomas has said:

Was it the great migration with its sudden concentration of blacks in the urban north and the new beginning of political awareness that had begotten a change in the name of the political game?

Or the surge of pride which black folks felt as they huddled around their radios to hear Joe Louis preaching equality with his fists, or to hear Jesse Owens humbling Hitler with his feet?

Was it A. Phillip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941 -- and FDR hurriedly signing executive order 8802 banning discrimination in war industries and apprenticeship programs?

Or the 99th Pursuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy? Or black soldiers storming up beaches called Anzio and Normandy?

Was it Rosa Parks who said "no" we wouldn't move; and Daisy Bates who said "yes," black children would go to Central High School?

. . . .

Or the three men who had been the black man's embodiment of Blitzkrieg -- the most phenomenal legal brains ever combined in one century for the onslaught against injustice -- Charles Houston, William Hastie, Thurgood Marshall?

Was it Martin Luther King and Malcolm X who polarized the issues of black survival in America and posed the question: By evolution or revolution?

Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Rights and believed?

Or a group of students who said, "We've had enough. I mean, what's so sacred about a sandwich, Jack?"

But whatever -- it was on -- in the streets, at the lunch counters, on the buses. And though the North tried hard to keep attention focused on the South, it was as plain as a

ghetto that Messrs. Mason and Dixon did not define the boundaries of ugliness and injustice.

Speech given May 30, 1984 before the Quad Council Training Conference, Oakland, CA.

o Finally, in a speech given in 1983 at a Black History Month celebration, Judge Thomas gave his views on the lessons of the civil rights movement for Afro-Americans and, indeed, for all Americans:

We dare not forget all we have gone through and what we have become. And America cannot afford for us to do so either. These men and women who fell, and stumbled only to walk straight again were our forbearers. Out of this human material came freedom fighters Gabriel Prusser, Sojourner Truth, Harriet Tubman, Nat Turner, Daniel Vesey, men and women who forged initiatives to end their servitude and gain freedom -- all the time revering God; journalists Mary Ann Shadd Cary, Dr. Martin Robinson Delany, Frederick Douglass, Gertrude Bustill Mussell, William Monroe Trotter -- the first black recipient of a Harvard University Phi Beta Kappa Key; creative scientists, inventors and medical researchers Benjamin Banneker, Edward A. Bouchet -- the first Afro-American to receive a PHD in science (physics) in 1876, Dr. Lloyd Hall, Lewis Latimer, Garrett Morgan, Elbert C. Robertson, Dr. Ernest Everett Just -- biologist and first recipient of the NAACP's Spingarn Medal; and in the crafts and the arts: Thomas Day -- freeborn North Carolinian cabinetmaker and furniture merchant, Meta Warrick Fuller -- sculptor, and Joshua Johnson or Johnston -- the correct spelling of his name is one of the lost facts. He was, however, America's first black portrait painter.

Out of these people came the vanguard of the human rights and civil rights movements in this country and the spirit for those movements abroad. When "we shall overcome" is sung in Ireland, Poland, Japan, South Africa, and England, those who sing it know they sing an American freedom song -- specifically an Afro-American song. And no one can sing it without having vivid images of Dr. Martin Luther King, Jr. marching down America's main streets and highways challenging America to be what she says she is -- "One nation . . . indivisible." It has become the international anthem of a world yet to be born where all people are free to realize their potential.

The Afro-American has also been a model for other minority efforts to coax America into realizing the ideals of a democratic society. The Afro-American experience has been an instructive one. The prophets of the future tell us we are moving from a product-oriented economy to one that is

information-saturated. The revolution in communications and information is already here and it is as significant an occurrence as the introduction of movable type which lit up the dark ages. The word, the idea, the book must be the Afro-American revolution as well. And if knowledge of the truth will be the power which keeps the Afro-American surging forward, it will provide the context that keeps America on course toward justice and equity. The history of her vision is to be found in those lost chapters.

Speech given February 18, 1983 at Black History Month Celebration, United States Department of Labor, Washington, D.C.

7/9/91

Law and Order

- o Judge Thomas is a tough, anti-crime judge. He takes a common-sense approach to questions of criminal law and procedure, and has recognized the practical problems that law enforcement officers face in combatting crime on the streets.
- o Commenting in 1985 on what should be done to solve the problems faced by America's inner cities, Judge Thomas remarked: "The first priority is to control the crime. The sections where the poorest people live aren't really livable. If people can't go to school, or rear their families, or go to church without being mugged, how much progress can you expect in a community? Would you do business in a community that looks like an armed camp, where the only people who inhabit the streets after dark are the criminals?" Black America Under the Reagan Administration: A Symposium of Black Conservatives, The Heritage Foundation Policy Review (Fall 1985).
- o In another context Judge Thomas asserted: "We should be at least as incensed about the totalitarianism of drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern bloc countries." Why Black Americans Should Look to Conservative Politics, Heritage Foundation Reports (June 18, 1987).
- o Judge Thomas' opinions in the field of criminal law demonstrate a deep understanding of the community's interest in deterring crime. He has resisted efforts to impose unreasonably burdensome requirements on the police and prosecutors or to overturn criminal convictions on technicalities not required by the Constitution, while guarding against infringements of the fundamental rights of criminal defendants.
- o Judge Thomas has affirmed judgments of conviction in all but one of the seven criminal appeals for which he wrote opinions while on the Court of Appeals. Of the eighteen additional criminal appeals considered by Judge Thomas, he joined the majority in upholding sixteen criminal convictions and/or sentences.
- o Judge Thomas has rejected the argument that a conviction for aiding and abetting narcotics distribution should be reversed because the defendant's involvement was limited to giving a drug dealer a ride to the site of the illegal transaction. (United States v. Poston, 902 F.2d 90 (D.C. Cir. 1990)).
- o Judge Thomas has rejected arguments that a trial judge erred in admitting police testimony as to the contents of a telephone call, answered by police during a search of a defendant's apartment, which tended to show that the defendant was dealing in narcotics. (United States v. Long, 905 F.2d 1572 (D.C. Cir.), cert. denied, 111 S. Ct. 365 (1990)). Similarly, he has upheld

the admission at trial of evidence of a defendant's prior drug-dealing activity. (United States v. Rogers, 918 F.2d 207 (D.C. Cir. 1990)).

o In a case involving narcotics dealers who conducted their illegal trade out of several rooms in a hotel, Judge Thomas rejected the argument that police had seized evidence against them in violation of the Fourth Amendment. In response to the contention that the warrantless search of one of the rooms was unlawful, Judge Thomas held that it was justified by exigent circumstances, and noted that, although "the police carefully investigated the suspicious hotel guests for more than a week and sought warrants for all the rooms that they could link to [defendant]," the defendant "tried to frustrate the warrant process by hopping from room to room." Following recent Supreme Court precedent, he further ruled that evidence seen by the police during an unlawful search was nonetheless admissible at trial on the grounds that it was subsequently acquired on the basis of an independent and lawfully procured search warrant. (United States v. Halliman, 923 F.2d 873 (D.C. Cir. 1991)).

o Judge Thomas ruled against a defendant who argued that, at his trial, the judge had improperly instructed the jury as to his entrapment defense. In so holding, Judge Thomas observed that "the government [had] introduced overwhelming evidence of [defendant's] eagerness to sell crack, enough, we are certain, for the government to have carried the burden of proof it needed to defeat [defendant's] entrapment defense." (United States v. Whoie, 925 F.2d 1481 (D.C. Cir. 1991)).

o Judge Thomas is not, however, excessively deferential to the prosecution at the expense of fairness toward criminal defendants. In United States v. Miller, 904 F.2d 65 (D.C. Cir. 1990), Judge Thomas joined an opinion by Judge Silberman overturning defendants' conviction for wire fraud on the ground that the trial court had excluded admissible exculpatory evidence.

7/9/91

Quotas

o Judge Thomas has made clear that he will not consider race in his constitutional adjudication: "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." Wall St. Journal, 1987 (quoted in Washinton Post, p. A7 (July 2, 1991)).

o Judge Thomas believes that the use of racial quotas in the job hiring process is bad public policy. He has stated, for example, that "America was founded on a philosophy of individual rights, not group rights," and that racial quotas "only further and deepen the original problem [of race discrimination]." Wall St. Journal, p. A12 (July 2, 1991); Letter to the Editor, Wall St. Journal (Feb. 20, 1987)

o Nor, in Judge Thomas' view, do racial quotas redress the wrongs at which they are supposedly directed: "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." Thomas, Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!, 5 Yale Law & Policy Review, 402, 406-07 (1987).

o These policy views of Judge Thomas reflect the feelings of the vast majority of the American people. As Senator Dole has succinctly explained: "Quotas are anti-equal opportunity, anti-individual merit, and in case you have not noticed, about as popular with the American people these days as Saddam Hussein." 137 Cong. Rec. S8676 (June 26, 1991). Indeed, an NBC News/Wall Street Journal poll released June 28 showed that 78% of the public opposes racial preferences in hiring. New York Times, p. 12 (June 30, 1991). And a recent poll of black Americans showed that, by a margin of 47% to 39%, they agree with Judge Thomas' view on quotas. USA Today, p. 1 (July 5, 1991).

o Judge Thomas' opposition to the imposition of quotas as a matter of public policy is consistent not only with the position of President Bush, but with the views expressed by leading Senate Democrats during debates in the 101st and 102nd Congresses.

-- Senator Biden, the Chairman of the Judiciary Committee, declared that "eliminating quotas is correct. I do not support

quotas. I have not supported quotas." 137 Cong. Rec. S8676 (June 26, 1991).

-- In connection with proposed civil rights legislation pending in Congress, Senator Simon has explained that "Congress has no intention of requiring employers to resort to quota hiring." 136 Cong. Rec. S10084 (July 19, 1990).

-- Senator Kennedy has disavowed any intent to require employers to hire according to racial quotas, and he has offered legislation providing that nothing in his proposed civil rights act "shall be construed to require an employer to adopt hiring or promotional quotas on the basis of race." 136 Cong. Rec. S9931, S9945 (July 18, 1990).

-- Senator Mikulski opposes quotas, because she, like Judge Thomas, "believes that quotas do not solve anything." 136 Cong. Rec. S9845 (July 17, 1990).

-- Senator Levin has declared his opposition to hiring quotas. 136 Cong. Rec. S9961 (July 18, 1990).

-- In short, as Republican Senator Specter aptly summarized, "[e]verybody agrees we do not want quotas." 136 Cong. Rec. S9828 (July 17, 1990).

7/9/91

Abortion

- o Judge Thomas has not articulated his views on the right to privacy or abortion. Suggestions by pro-choice groups to the contrary are based on very slim evidence.
- o Pro-choice groups have pointed to Judge Thomas' 1987 speech before the Heritage Foundation as a "revelation" of his opposition to the right to privacy. That speech called on African-Americans to consider conservatism in a new light. In one part of the speech, he endorsed the use of natural law for the more aggressive enforcement of civil rights laws.
- In setting forth his views on that issue, Judge Thomas made a passing reference to an article by Lewis Lehrman in which Lehrman had used natural law to address the issue of abortion. The reference was a single sentence: "But Heritage Foundation Trustee Lewis Lehrman's recent essay in the American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."
- Judge Thomas was invoking natural law only to address the issue of equal opportunity.
- Judge Thomas made no comment at all on the issue of abortion, and did not intend to. He was merely embracing one particular use of natural law (i.e., in the enforcement of civil rights).
- Neutral observers have recognized that the pro-choice movement's reliance on the citation of Mr. Lehrman's article is a reed too thin to support a conclusion on his views of Roe or opposition to his nomination. Thus, for example, William Schneider has written in the Los Angeles Times that "[o]ne sentence of praise for someone else's article is not much of a legal doctrine."
- Newsweek has written that "the mere endorsement of an article is not proof positive," and acknowledged the view that "Thomas was being polite, since he was delivering his address in an auditorium named after Lehrman."
- Paul Gigot of the Wall Street Journal wrote that nothing in Judge Thomas' citation of Lehrman suggested that Judge Thomas would vote to overturn Roe.
- o Pro-choice groups have also focused on a footnote in an article on the "higher law" background of the Privileges and Immunities Clause. That footnote simply cannot be read as taking a position on the merits of the abortion issue.

- In the footnote, Judge Thomas merely alludes to, but does not take any position on, the Roe decision.
- He accurately characterizes the holding in Roe: A woman's decision to end her pregnancy is protected by her right to privacy established by the Court in Griswold. He then accurately characterizes the holding in Griswold by quoting from Justice Douglas' opinion for the Court in that case.
- Judge Thomas then states that he has "elaborate[d] on my misgivings about activist judicial misuse of the Ninth Amendment in" another article. No one disputes that vague constitutional provisions can be abused. He expressed no views on the meaning of the Ninth Amendment.
- Moreover, Judge Thomas' statement cannot be taken as opposition to the Court's holding in either Roe or Griswold because in neither case does the Court's holding rest on the Ninth Amendment.
- In Roe, Justice Blackmun's opinion for the Court explicitly rejected the Ninth Amendment in favor of the Due Process Clause of the Fourteenth Amendment: "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S. at 153.
- In Griswold, Justice Douglas' opinion for the Court stated that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." 381 U.S. at 484. He then went on to list a number of provisions of the Bill of Rights, concluding with the Ninth Amendment. The Ninth Amendment, however, is not a "specific" guarantee in Justice Douglas' terms because, unlike the First and Fourth Amendments, it does not protect any particular right. The Ninth Amendment was the subject of Justice Goldberg's concurrence, not the Court's opinion. The Court in Roe relied heavily on Griswold; Roe's rejection of the Ninth Amendment in favor of the Due Process Clause is inconsistent with the claim that Griswold rested on the Ninth Amendment.

7/9/91

Judicial Restraint

o When interpreting statutes, Judge Thomas does not substitute his judgment for that of the legislature. In his confirmation hearings for his present position, he stated that "the ultimate goal should always be to apply the will of Congress, the will of the legislature." "I don't think," Thomas said, "that it's ever appropriate for a judge to replace the intent of the legislature with his or her own intent."

o He has followed this view on the bench. Thus where Congress prescribed that an agency was to consider environmental factors but left the ultimate decision up to the agency, Judge Thomas rejected the notion that it was the court's role to "coax agency decisionmakers to reach certain results." Citizens Against Burlington, Inc. v. Busey, 1991 U.S. App. LEXIS 12036 (D.C. Cir. June 14, 1991).

o Judge Thomas also recognizes that appellate courts must respect the roles of juries and trial courts. In ALPO Petfoods, Inc. v. Ralston Purina Co., 913 F.2d 958, 964 (D.C. Cir. 1990), Judge Thomas noted that in reviewing the trial court's findings the court of appeals had "no authority to weigh the evidence anew." Similarly, on several occasions Judge Thomas has recognized the "tremendous deference" owed to a jury verdict. United States v. Long, 905 F.2d 1572, 1576 (D.C. Cir. 1990). See also United States v. Poston, 902 F.2d 90, 92 (D.C. Cir. 1990). Yet this is balanced by a willingness to overturn a verdict that is wholly unsupported by the evidence. Long, 905 F.2d at 1576.

o Dissenting in a case on the ground that the plaintiffs lacked standing, Judge Thomas stated: "Federal courts are courts of limited jurisdiction. When federal jurisdiction does not exist, federal judges have no authority to exercise it, even if everyone -- judges, parties, members of the public -- wants the dispute resolved." Cross-Sound Ferry Services, Inc. v. ICC, 1991 U.S. App. LEXIS 8977, *38 (D.C. Cir. May 10, 1991) (Thomas, J., dissenting).

o Where Congress prohibited the use of collusive joinder to establish federal court jurisdiction on the basis of a federal question, but not to establish jurisdiction on the basis of diversity of citizenship, Thomas wrote that the courts did not have the authority to prohibit the latter, regardless of the burden such actions placed on the court's docket. Western Maryland Ry. v. Harbor Ins. Co., 910 F.2d 960, 964 (D.C. Cir. 1990).

7/9/91

Environmental Law

- o While sitting on the Court of Appeals, Judge Thomas enforced the environmental protection laws but refused to create additional procedures that would serve only to generate meaningless red tape and curtail economic efficiency.
- o In Citizens Against Burlington, Inc. v. Busey, 1991 U.S. App. LEXIS 12036 (June 14, 1991), Judge Thomas required an agency to follow the regulations of the Council on Environmental Quality. A contractor for the agency had prepared an environmental impact statement without executing a disclosure form designed to detect potentially disqualifying conflicts of interest. The agency assured the petitioners in the case that the contractor "does not have an undisclosed stake in the project that would potentially disqualify it." Id. at *38. Judge Thomas stated that such "ipse dixit does not reassure us" and ordered the agency to have the contractor execute the disclosure form and to take "prompt[]" remedial measures if a conflict appeared. Id. at *38-*39.
- o Judge Thomas recognizes the scope that Congress has chosen for the environmental statutes and enforces the statutes within that scope. For example, while some commentators have hailed the NEPA as "an environmentalist Magna Carta," Judge Thomas has observed with respect to the NEPA's purpose:

[I]nstead of ordering, say, that deforested land be reforested, Congress chose to make the NEPA procedural. . . . Just as NEPA is not a green Magna Carta, federal judges are not the barons at Runnymede. Because the statute directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another, federal judges correspondingly enforce the statute by ensuring that agencies comply with the NEPA's procedures, and not by trying to coax agency decisionmakers to reach certain results.

Citizens Against Burlington, 1991 U.S. App. LEXIS 12036 at *9.

- o Judge Thomas will not overrule an agency on a matter within the agency's expertise where the agency has "thought hard about [the] appropriate factors." Citizens Against Burlington, 1991 U.S. App. LEXIS 12036 at *23. Thus, in Citizens Against Burlington, he refused to overturn the FAA's reasonable judgment as to the scope of alternatives to the FAA's approving a proposed airport expansion. The National Environmental Policy Act of 1969 (NEPA) requires agencies to consider "alternatives to the proposed action," but to determine such alternatives, "[s]omeone has to define the purpose of the agency action." Id. at *27. This choice was left in the first instance to the agency itself, subject to a reasonableness review by the federal court.

7/9/91

Proper Scope of Questioning

o One of the distinguishing characteristics of our system of government is the independence of the judiciary. If judges are compelled to give their views on issues in advance of their consideration of a case, that independence is jeopardized. To see the danger, one need only ask oneself: "What confidence would I have in the impartiality of a judge who had already stated his opposition to my case?"

o It has been universally recognized that questioning a judicial nominee about specific cases or issues that might come before him or her in a judicial capacity is improper.

o As Judge Thomas is both a nominee for a seat on the Supreme Court and a sitting federal judge, he must refrain from comment both about issues that might come before the Supreme Court or before the Court of Appeals for the District of Columbia Circuit.

o As Chairman Biden explained in statements prior to the confirmation hearings of Justice Souter, the Senate hearings must not "trespass" on the impartiality of judicial officers, Opening Statement, Tr. at 7, and for this reason three lines of investigation are improper:

1. Asking the nominee for "promises," "assurances" or "commitments as to how [he or she] would vote on any specific case." 136 Cong. Rec. S12780 (daily ed. Sept. 11, 1990); Opening Statement, Tr. at 4.

2. Asking questions "so as to apply a litmus test or a checklist as to the views of the nominee." 136 Cong. Rec. S12780 (daily ed. Sept. 11, 1990).

3. Asking questions that would "pry into [the nominee's] personal views on publicly debated issues." Opening Statement, Tr. at 4.

o Senator Specter also recognized that the independence of the judiciary is the principle reason for exercising restraint in questioning:

Retention of an independent judiciary requires restraint by the public and Senators in asking the nominee's ultimate views. By not asking such questions, the Senate will be reinforcing the basic doctrine of separation of powers. 136 Cong. Rec. S12777 (daily ed. Sept. 11, 1990).

o Thus Senator Specter "urged" his colleagues that "it is not appropriate to ask the ultimate question as to what Judge Souter will do on reversing or sustaining Roe versus Wade." 136 Cong. Rec. at S12777 (daily ed. Sept. 11, 1990).

o Senator Simon recently commented that asking a nominee to state a position on the disposition of a particular case is "inappropriate." "You shouldn't have a justice on the bench, hearing a case, wondering what he told a Senate judiciary committee at some time in the past," Senator Simon stated. "Friends, foes hunting Thomas' 'paper trail,'" Chicago Tribune 1:1 (July 4, 1991).

o In his confirmation hearings, Justice Marshall repeatedly refused to answer questions asked by Senator McCellan regarding Miranda v. Arizona and Escobedo v. Illinois, which were, of course, two important and controversial 5-4 decisions that had just been rendered by a narrowly and deeply divided Supreme Court. Hearings before the Committee on the Judiciary, United States Senate, on the Nomination of Thurgood Marshall, of New York, to be an Associate Justice of the Supreme Court of the United States, 90th Cong., 1st Sess. at 8-14 (1967). In response to a direct question concerning Miranda, Justice Marshall replied: "I am not saying whether I disagree with [Miranda] or not, because I am going to be called to pass upon it. There is no question about it, Senator. These cases are coming to the Supreme Court." Id. at 9.

o Later, after he repeatedly refused to answer questions posed by Senator Ervin regarding the Fifth Amendment, Justice Marshall asserted: "I do not think you want me to be in the position of giving you a statement on the fifth amendment, and then, if I am confirmed and sit on the Court, when a fifth amendment case comes up, I will have to disqualify myself. . . . But I think it would be wrong for me to give that opinion at this time. When the case comes before the Court, that will be the time." Id. at 53.

o Justice Marshall summarized his position thus: "My position is, which in every hearing I have gone over is the same, that a person who is up for confirmation for Justice of the Supreme Court deems it inappropriate to comment on matters which will come before him as a Justice." Id. at 55.

o Justice Brennan also resisted answering questions posed by Senator McCarthy concerning whether communism was a political party or a conspiracy, stating that he had "an obligation not to discuss any issues that are touched upon in cases before the Court." Hearings before the Committee on the Judiciary, United States Senate, on the Nomination of William Joseph Brennan, Junior, of New Jersey, to be Associate Justice of the Supreme Court of the United States, 85th Cong., 1st Sess. at 20 (1957). [NOTE: At the time of his confirmation hearings, Justice Brennan

was already sitting as a Justice on the Court by virtue of a recess appointment.]

o A federal statute requires a judge or justice to recuse himself or herself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The statute further requires the judge or justice to recuse "[w]here he has . . . expressed an opinion concerning the merits of the particular case in controversy." 28 U.S.C. § 455(b)(3).

o Canon 5(A)(3) of the ABA's Code of Judicial Conduct provides:

A candidate for judicial office:

* * *

(d) shall not:

* * *

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.

The commentary to this section makes clear that it "applies to any statement made in the process of securing judicial office, such as statements to . . . legislative bodies confirming appointment."

o Speaking at the ABA's annual convention in August of 1990, Justice Stevens warned that the Senate confirmation process could erode judicial independence if nominees are asked how they would vote on specific issues. Justice Stevens commented: "You really wouldn't want a judge who would say in advance how he or she would vote. Very important values are at stake in maintaining the independence of the nominee as he or she goes through the confirmation process." Reported in Newsday, p.13 (Aug. 8, 1990).

o Former Chief Justice Burger has commented: "To expect a nominee to make commitments, or even to engage in substantive discussion of a case yet unseen, borders on the preposterous." Parade Magazine (Sept. 16, 1990), quoted in PR Newswire (Sept. 13, 1990).

o Lloyd N. Cutler, former Counsel to President Carter, has asserted that "it is vital to the integrity of the process that neither they [the President and the Senate] nor the rest of us insist on knowing in advance how a new justice is going to vote in a particular case." "In Justices, Mystery Is Essential . . .", Washington Post A31 (August 2, 1990). Mr. Cutler also cited President Lincoln, who wrote in a letter to a friend: "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it." [NOTE: The next sentence in Lincoln's letter is: "Therefore, we must take a man whose opinions are known." Lincoln was not speaking in

hypothetical terms. The Supreme Court was preparing to hear the Legal Tender Cases, which would decide the constitutionality of a civil war statute authorizing the Treasury to print paper money. The statute was immensely important to the financing of the war. Lincoln eventually picked his Secretary of the Treasury, Salmon P. Chase, who had drafted the statute and urged Congress to enact it. After his confirmation, Justice Chase cast the deciding vote and wrote the opinion striking down the Legal Tender Act as unconstitutional.]

o Governor Cuomo has also recognized: "It is not appropriate to ask a judge or a candidate for the judgeship to tell you in advance how he's going to decide a case." "Souter and Senate: How Far Should Questions Go?", New York Times A16, col. 1 (July 26, 1990).

o The Washington Times has commented: "Judge Thomas is likely to refrain, as is only proper, from commenting on his personal and religious views and on cases likely to come before the Supreme Court." "The personal views of Clarence Thomas," Washington Times G2 (July 9, 1991).

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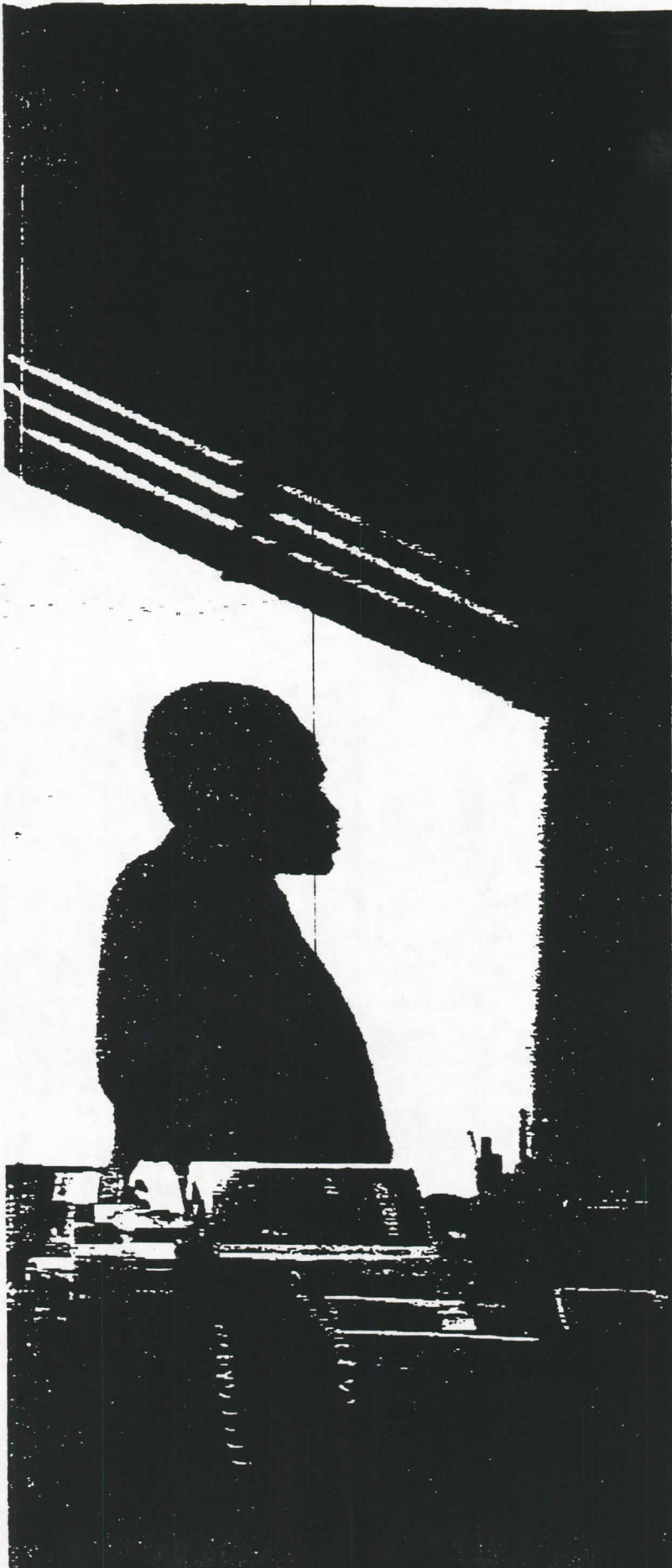
*Clarence Thomas, a black,
is Ronald Reagan's chairman of the
Equal Employment Opportunity Commission.
He walks a lonely road, not really agreeing
with conservatives or liberals*

A QUESTION OF FAIRNESS

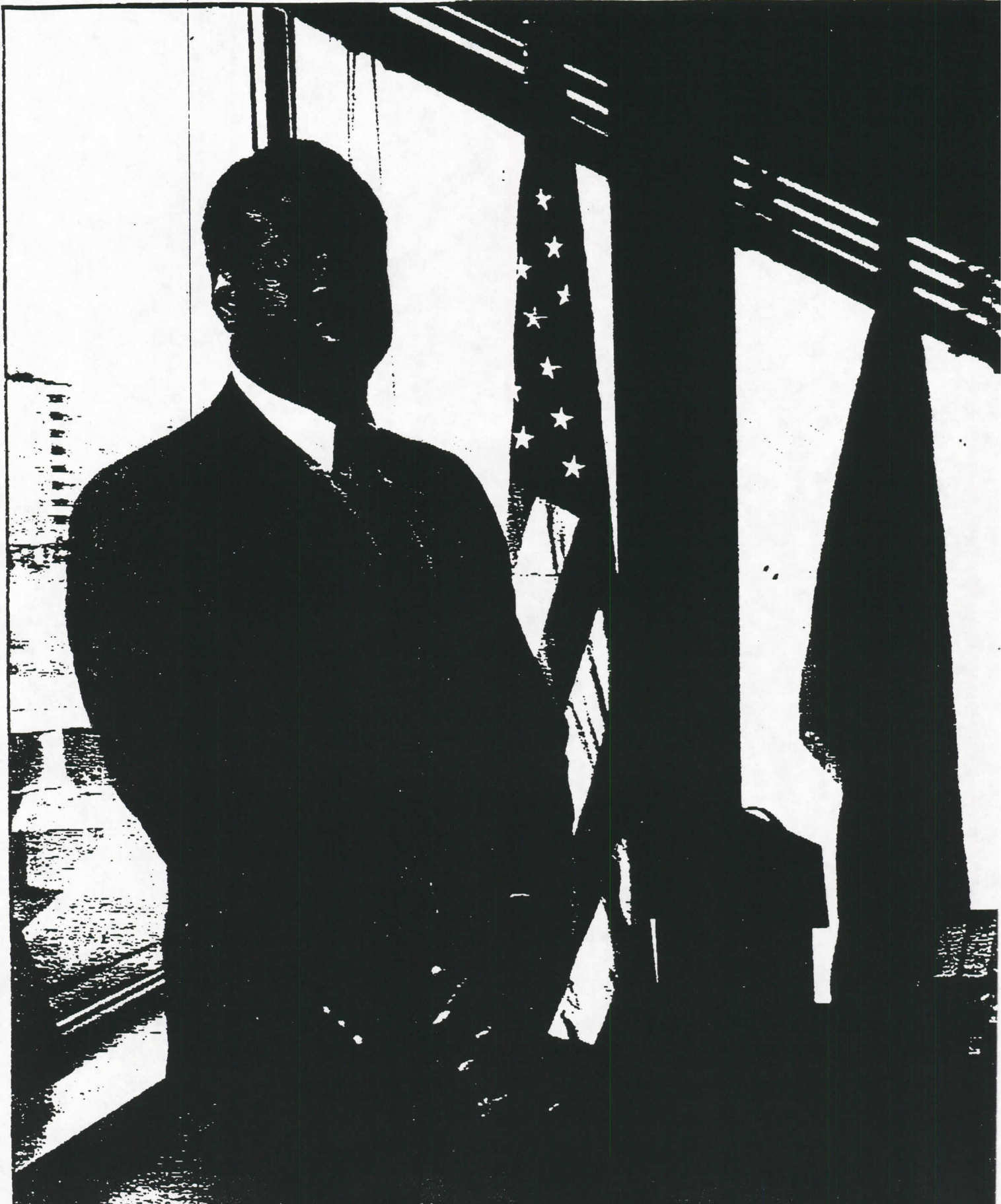
BY JUAN WILLIAMS

AS A CHILD IN THE 1950s, CLARENCE THOMAS WORE the ragged hand-me-downs familiar to many a poor black child in the segregated South. In the early 1960s, as the first black ever enrolled at St. John Vianney Minor Seminary, in Savannah, Georgia, he wore plain, neatly pressed shirts and slacks, along with an expression that bespoke a painful shyness. The goatee, the black leather jacket, and the solidarity with Malcolm X came at Holy Cross College, in Massachusetts, during the late 1960s. Yale Law School and corporate legal work in the 1970s finally brought Thomas a measure of real status and affluence. Now thirty-eight, and the chairman of the U.S. Equal Employment Opportunity Commission (EEOC), Clarence Thomas dresses in dark, elegant, conservative business suits. He earns \$71,000 a year and, when he is not being chauffeured in a government car, drives a Camaro IROC-Z. The desk in his Washington office is an impressive structure of polished oak. Behind his leather chair stand two flags, one the Stars and Stripes and the other bearing the legend "Don't Tread on Me." It is an apt motto for the head of an agency charged with ensuring that discrimination based on race, sex, age, religion, or national origin does not occur in the workplace, and that should it occur, appropriate steps are taken to seek redress.

The leaders of many civil-rights and women's groups wonder how seriously Clarence Thomas takes that motto. Indeed, some of them loathe Thomas. He is, after all, a member of the Reagan Administration—its second-highest-ranking black. He is the top federal official charged with curbing discrimination in the private sector. Every American company with more than fifteen employees must adhere to guidelines set by the EEOC on how to train, hire, and promote women, minorities, the elderly.



THE ATLANTIC MONTHLY



and the handicapped. Thomas not only shapes and enforces those guidelines but helps to define Reagan Administration policies with respect to black America generally, policies that most blacks and white liberals abhor. Holding Carter III, an official in the Carter Administration and now a syndicated columnist, recently characterized Thomas's performance as similar to that of the "chicken-eating preachers" who gladly parroted the segregationists' line in exchange for a few crumbs from the white man's table."

And yet, as I discovered in a series of interviews spanning Thomas's nearly five years in office, Thomas does take seriously the stated responsibilities of his position. He simply wishes to change what the word *discrimination* means in the EEOC's official lexicon from what it has meant for more than two decades. And even though he is a committed supporter of President Reagan, Thomas brings to his job a view of race relations in the United States that Ronald Reagan probably does not suspect he harbors. The President's director of the EEOC is something of a black nationalist, as well as a sad, lonely, troubled, and deeply pessimistic public servant.

Ultimately, he said to me one day, turning away as if to avoid revealing some private hurt, it doesn't matter that black and white Americans are unlikely ever to see each other as anything but blacks and whites. It doesn't matter that a black man in America is only rarely judged on the basis of his character rather than that of his color. It does not really matter that the dream of racial integration—of uplift through education, of gradual absorption into the social and economic mainstream—has not worked for most black Americans, even for those who, like him, have leaped the boundaries of the ghetto and, it would seem, "made it" in a white world. For when you get right down to it, Thomas said, successful blacks don't particularly like the kind of integration that whites have crafted for them in the past thirty years. Increasing numbers of middle-class blacks see integration simply as window dressing: blacks may be present and visible, but only a few have any real power.

On this point Clarence Thomas accurately captures the frustration of many middle-class blacks: people who are educated, employed in challenging and high-paying positions, and yet somehow still angry. The anger is usually inexplicable to their white friends and colleagues. The reason for it, quite simply, is race. "There is nothing you can do to get past black skin," Thomas said. "I don't care how educated you are, how good you are at what you do—you'll never have the same contacts or opportunities, you'll never be seen as equal to whites." In interviews and in polls middle-class blacks repeatedly come off as resentful about their lives in white America: angry at the pleasure some whites take in the progress made by blacks (even as black families continue to take in about fifty-nine cents for every dollar taken in by white families); angry, too, that

mal networks among whites that facilitate advancement).

But while Thomas may share the resentment of other middle-class blacks, he does not share much else. He has his own ideas about how to deal with racism and discrimination, and those ideas have made him less a radical of the far right than ideologically sui generis. He does not, deep down, share the Reagan Administration's professed belief in a "colorblind" society, because he believes that such a society probably cannot be achieved. It is unlikely that whites will ever fully accept blacks as equals, in his opinion, and so blacks should prepare to do for themselves: by making black schools into rigorous training grounds, by investing in black businesses, by working for black corporations, and by living in black neighborhoods. Forget the traditional pressure tactics—demonstrations, boycotts, lobbying by civil-rights groups—that are meant to gain a share of power, wealth, and influence in white American institutions.

Thomas's ideas have come to Washington at a time when the United States is entering what might be called the post-Romantic period of the American civil-rights movement. Ronald Reagan has won two terms in the White House with little support from black voters. He owes nothing to the black electorate. He rarely speaks to black groups and never meets with civil-rights leaders. Yet Thomas's racial agenda suits the Reagan Administration's agenda just fine. 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. He is a critic of the 1954 Supreme Court decision in *Brown v. Board of Education*, which declared the segregation of public schools to be illegal. Thomas thinks that the Court's ruling was based on the assumption that any all-black school had to be inferior to an integrated school. (Thomas, a single parent, sends his son to an integrated private school in the Washington suburbs but insists that whether the school is integrated, all-black, or virtually all-white is irrelevant, and that he chose the school he did only in the interest of obtaining the best education for his son.) Thomas is also against affirmative action to get more blacks into U.S. corporations, contending that affirmative action—meaning goals and timetables for employers who have hired few, or have never hired, blacks—not only is window dressing but also has failed to help the mass of poor black people get into the mainstream economy. Affirmative action, he believes, has primarily meant more money for a few qualified blacks, usually the scions of the already well-to-do. Thomas fights angrily against requirements that employers alter tests to allow as many blacks as whites to pass. These prescriptions strike him as "assuming that blacks lack intelligence" and that they "can't perform as well as whites." Lowering standards on tests, he says, may help a few blacks get a few good jobs, but it also puts the federal imprimatur on the idea that educated blacks can't compete, and therefore lends credence to it—

(where such blacks as there are feel shur out of the infor-

Extended Page 5.
en black colleges and universities rather than press white

schools to admit more blacks. White liberals, who want to end "dual" school systems in the South, should "leave black people alone."

Thomas stands in the tradition of Booker T. Washington, who argued against integrationists like W.E.B. DuBois earlier in this century. Washington contended that freed black slaves should remain in their own southern communities, work hard, and develop their own farms and businesses. Thomas favors strengthening black businesses in which employers can amass capital and employees can make it on their own without the stigma of being labeled "one of the blacks" in the firm. Thomas believes that the most significant progress made by the American civil-rights movement is due to the individual efforts of black men and women, standing firm in the face of overt racism and demanding their rights as Americans. Thomas puts little stock in rulings by the Supreme Court, decisions made in the White House, or even the good will of whites who support integration. 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. He quotes from memory these words of Malcolm X: "The American black man should be focusing his every effort toward building his own businesses and decent homes for himself. As other ethnic groups have done, let the black people, wherever possible, however possible, patronize their own kind, hire their own kind, and start in those ways to build up the black race's ability to do for itself. That's the only way the American black man is ever going to get respect."

Clarence Thomas, in sum, is a man who does not see integration as the panacea for the problems of black America. The familiar integrationist agitation of black civil-rights leaders leaves him cold. He agrees with Reagan's characterization of the civil-rights leaders as old men fomenting discontent to justify their own "rather good positions." "The issue is economics—not who likes you," Thomas has told me. "And when you have the economics, people do have a way of changing their attitudes toward you. I don't see how the civil-rights people today can claim Malcolm X as one of their own. Where does he say black people should go begging the Labor Department for jobs? He was hell on integrationists. Where does he say you should

many Hispanics and women as well—Thomas refuses to see civil rights as a matter of corporate struggle and group equity. Are blacks, Hispanics, and women, as groups, victims of discrimination on the job, as evidenced by group statistics on hiring, promotion, and pay? Thomas is not very much interested in this question. What about an *individual* who claims discrimination? Here, and here alone, a black or a woman might find Thomas to be a friend in court.

CLARENCE THOMAS WAS SENT TO LIVE WITH HIS grandfather, Myers Anderson, when he was seven years old. His father had long before left for Philadelphia; his mother had remarried, and her new husband didn't want children from the previous marriage around.



Thomas, his mother, and brother had been living in a room off an alley in Savannah for about a year. Before that the children had lived in Pinpoint, a run-down town outside Savannah, with an aunt. Thomas remembers eating cornflakes several times a day, wandering the streets, playing hooky. Displayed prominently in Clarence Thomas's office is a photograph of Myers Anderson: a muscular older man in a white undershirt, standing ready to go to work. "When the civil-rights people indict me," Thomas said soon after his grandfather's death, in 1983, "the man they are indicting is that man. Let them call him from the grave and indict him."

When Thomas and his brother went to live with their grandfather in Savannah, in 1956, it was the first time that they had ever lived in a house with a bathroom. It was their first experience of three square meals a day. Their grandfather had built his own house, and, although he could barely read or write, he was a strong advocate of education. Clarence could no longer miss school. Anderson, a devout Catholic, paid \$30 a year for the Thomas boys to attend an all-black Catholic school, run by white nuns. Every afternoon at three it was straight home to change clothes and help Myers deliver ice and oil. In the evenings, after washing dishes, Thomas went, he remembers, to the library for blacks, which had been built by the Carnegies. (Blacks were barred from the Savannah Public Library.) "I used to run to the library to flip through the pages and dream. I just remember *The New Yorker*. You know what did I love

Above all—and perhaps this is the main reason why he is regarded with such disdain by so many blacks, and so

to read this, be sophisticated enough to deal with these kinds of things." Although Myers Anderson was nearly il-

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literate. Clarence came to appreciate that his grandfather had not let segregation or a lack of schooling stand in the way of his living a decent life. His grandfather, a strong Democrat, had been involved in local efforts to get voting rights for blacks, and he voted religiously.

Clarence learned other lessons from his grandfather after a visit up North to see some relatives, who were now shelved in housing projects and living on welfare. "He'd say, 'Damn welfare, that relief!—Man ain't got no business on relief as long as he can work.'"

Southern society, both black and white, had another view of Clarence and his grandfather. Black Savannah society, Clarence Thomas recalls bitterly, knew him as ABC—America's Blackest Child ("and you have to remember that for someone to call you black in the sixties, that meant serious business"). He was ridiculed not only for his extremely dark complexion but also for his hair—they called it "nigger naps"—and thick lips. Thomas's grandfather endured worse. "I remember this lady came up to the house—Miss Morgan." Thomas told me one day. "Her husband was noted for being fairly mean. She drove up in one of those great big Buick Electras. Granddaddy was out in the field. You see a car driving up and you always wonder who it is, because we had a dirt road leading up to the house—you see all the dust and everything. She said, 'Myers, boy.' And you could see him seethe. He looked around and saw his little kids there. You could see him seethe. People say what kind of manhood does it take to yell back and get mad. But what must it have taken for him not only to take the insult but the stares from his kids seeing him being called a boy. The most significant things [in civil rights] were things that I saw day-to-day, not the protests downtown or in Washington."

Integration touched Thomas's life for the first time in tenth grade. His grandfather decided that he wanted Clarence, a good student, to attend an all-white Catholic boarding school, St. John Vianney Minor Seminary. Thomas was admitted without incident. He got excellent grades and was a star quarterback on the school's football team. His grandfather bragged that his grandson would become a priest. To Anderson, Clarence became a racial symbol. On vacations his grandfather would take him to the local NAACP meetings and have him read his grades aloud: "He thought I was living proof that black people were as good as white people."

In his own mind, however, Thomas was in a state of crisis. He had never been around many whites. Now he was living with them. He saw how many more possessions they had, how the other boys commanded respect as seminar-ians in a town where he was at best ignored. (Thomas remembers a quote from Richard Wright's *Black Metropolis*: "But the American negro, child of the culture that crushes him, wants to be free in a way that white men are free. For him to wish otherwise would be unnatural, unthinkable.") Most devastating of all were the racist jokes and slights

ethical model. But, Thomas told me, "After lights out someone would yell, 'Smile, Clarence, so we can see you.' The statement wasn't the bad part, it was no one saying 'Shut up.'" On Thursday afternoons, when students went to town with their friends, Thomas was left alone. Movie theaters were still segregated; to eat at a restaurant with classmates would have caused a stir.

Thomas remembers a "self-hate" stage, where "you hate yourself for being part of a group that's gotten the hell kicked out of them." He tried to fit in. He avoided every form of stereotypical behavior attributed to blacks. He took pains to speak perfectly—not in slang, not loudly. He stressed academic achievement. But acceptance did not come. When he left the seminary, he held a conviction he has carried since: there is nothing a black man can do to be accepted by whites. Consequently, despite his anger at segregation, he does not automatically grant that integration is good for black people. Thomas wants to know in every instance what integration means for blacks. If it means losing the alternative of going to their own schools, running their own businesses, then he doesn't like it. He has too many scars from episodes in which, in the name of integration, he was the only black. Today he says, "The whole push to assimilate simply does not make sense to me."

Thomas's skepticism about integration was heightened in 1967, when he enrolled at Immaculate Conception Seminary in Missouri to continue his training for the priesthood. He stayed only eight months. Martin Luther King, Jr. was shot in April of 1968. As Thomas entered a room that day, he heard one white seminarian say, "Good, I hope the son of a bitch dies." That was the end of the seminary. Alienated from whites, alienated from the kids in his neighborhood as a result of having been away at school, and alienated, finally, from his grandfather over leaving the seminary, Thomas worked for a while and then went north to Holy Cross. He paid his tuition with a combination of scholarships, work-study (washing dishes in the kitchen), and loans. His militancy became pronounced. He led the free-breakfast program for black schoolchildren in Worcester, Massachusetts, dallied with the Black Panthers, and urged a black walkout at the college over the issue of investment in South Africa. All the while he kept up a near perfect academic record. Eventually Thomas decided he wanted to be a lawyer, and he was accepted by Yale Law School.

At Yale, Thomas avoided his professors and sat in the back of the classroom. He did not want to be identified as a black student—one who perhaps had been admitted and must be coddled precisely because he was black. He shunned courses touching on civil rights, instead studying tax law, legal accounting, antitrust law, and property law. He remembers feeling the "monkey was on my back" because classmates believed that he and the dozen or so other blacks in his class were there to satisfy the school's social-policy goals, not because of their academic

mously in the library, he earned good grades. He was less impressed by the hard-edged minutiae of the law than by the notion that he was competing successfully with the best white minds. Yale gave him renewed confidence even as he was, in effect, hiding his face to avoid calling attention to his race. Confusion and contradiction reigned in his life. He felt alienated from a system that was trying to open itself to him, and became more of a loner than he had been before.

Even as Thomas turned inward, he was being urged into a position of leadership by other black students, who were pressing Yale to accept more blacks. Thomas did not take the assignment. He saw that many of the blacks who started Yale Law School did not graduate. Most of those who did graduate were the sons and daughters of black lawyers, doctors, and teachers. Thomas could not justify leading protests to get more Yale law degrees for middle-class blacks. "If quotas help you, fine," he has told me. "If they make your life wonderful, fine. If they get you a BMW or Mercedes, say that is why you want quotas. Man, quotas are for the black middle class. But look at what's happening to the masses. Those are my people. They are just where they were before any of these policies."

At the end of law school Thomas felt no debt to whites at Yale for allowing a black man from a poor family to go to school there. The suggestion that his education is proof of the good done by affirmative-action policies, executed in good faith to end the harmful cycle of broken families, bad schools, and unemployment, angers him. "I don't think black people are indebted to anybody for anything. Nobody has done us any favors in this country, buddy. This thing about how they let me into Yale—that kind of stuff offends me. All they did was stop stopping us."

As Yale ended and job interviews began, Thomas found himself singled out again. Recruiters from top firms kept mentioning that their firms would allow him to do pro bono work. He bolted from some interviews in anger. White students told him pro bono work was not mentioned in their interviews. "I went to law school to be a lawyer, not a social worker. If I want to be a social worker, I'll do it on my own time." Thomas ultimately took a job with another Yale alumnus, John Danforth, now a U.S. senator but at the time Missouri's Republican attorney general. Danforth didn't mention pro bono work. He promised Thomas no special treatment because of his race. Thomas became counsel to the state department of revenue and the tax commission. He avoided work on any racial issues, insisting that he would be judged a second-rate intellect by people who would assume that he was involved only because he was black. "Danforth was a good guy," Thomas said once. "He ignored the hell out of me."

Thomas worked for the State of Missouri for almost three years, and then went to work for Monsanto, the chemical company. In 1979 he rejoined Danforth, in the Senator's Washington office, again working on non-civil-rights issues, such as energy and the environment. And he

A MONTH BEFORE RONALD REAGAN'S FIRST INAUGURATION Clarence Thomas paid his way to San Francisco for a conference of black conservatives. Reagan's overwhelming election victory, won with almost no black support, had put the spotlight on the few blacks who counted themselves in his camp. Except for Thomas Sowell, the economist, most of the black conservatives were, like Thomas, relatively unknown. They took gleefully to the sudden attention from the press. I was then an editorial writer for *The Washington Post*, and I flew to San Francisco to hear the policy arguments being made by Ronald Reagan's black admirers.

Thomas was the most interesting of a very self-important crowd, because he was so brutally candid. In discussing welfare policy he explained that his opposition to public assistance was an outgrowth of his sister's experience on welfare in Georgia. "She gets mad when the mailman is late with her welfare check," he said. "That is how dependent she is. What's worse is that now her kids feel entitled to the check too. They have no motivation for doing better or getting out of that situation." His frankness in reflecting on his own position as a black conservative is, in retrospect, touched by irony. "If I ever went to work for the EEOC or did anything directly connected with blacks, my career would be irreparably ruined. The monkey would be on my back to prove that I didn't have the job because I'm black. People meeting me for the first time would automatically dismiss my thinking as second-rate."

I wrote a column for the *Post* about Thomas that drew the attention of the Reagan transition team. Various jobs in the Administration were discussed. Thomas, however, was reluctant to move to the executive branch. The column had attracted as much criticism from the left as interest from the right. Thomas was uncomfortable. Finally, though, in May of 1981, despite his misgivings, he joined the Administration as the Department of Education's assistant secretary for civil rights. He kept a low profile and generally avoided the press. But he stirred controversy among civil-rights activists from the start. For example, he 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. Civil-rights groups saw him as playing into the hands of southern white separatists. Thomas did not have time to ride out the storm. Eight months after he began his job at the Department of Education, the President nominated him to head the EEOC. He became the only black with any real power in the Reagan Administration on matters involving civil rights. (Clarence Pendleton, the chairman of the U.S. Civil Rights Commission, is empowered only to conduct studies and make recommendations.)

Soon after Thomas's nomination he and I began meeting regularly for informal conversations, most of them on

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and Thomas thought that the conversations would be advantageous to him. Eventually we began to talk easily and at length. He was outspoken and frank in discussing his shifting thoughts on civil rights, his frustrations, and his worries about his status within the Administration.

The Equal Employment Opportunity Commission was created by the Civil Rights Act of 1964, as a means to enforce statutory prohibitions against job discrimination on the basis of race, sex, color, religion, or national origin. The commission has five members, who review every case recommended by the EEOC's general counsel as possible material for a lawsuit. All the members are political appointees. As the chairman, Thomas oversees the agency's lawyers and regulators—a significant source of influence. The EEOC's power is limited to investigating a charge and seeking a settlement with the employer. The agency can subpoena evidence, take testimony, and file suit on behalf of a defendant or a class of defendants. The EEOC cannot itself fine or penalize the employer any other way. The agency also has a congressional mandate to deal with employer discrimination on the basis of age, as well as to investigate violations of the Equal Pay Act (which requires that equal pay be given to persons doing the same job).

Should General Motors be prodded to train more women welders? Should companies, reasoning that older workers have pension income to make up for a loss of salary, be allowed to lay off the elderly first? Are secretaries being

paid less than janitors because secretarial work is a traditionally female occupation? Should a business be permitted to promote blacks who don't pass qualifying tests, on the grounds that five times as many blacks as whites fail such tests? These are the kinds of questions that come before the EEOC. For more than two decades an established part of American corporate life has consisted in trying to keep the EEOC at bay. Last year the commission processed 66,000 complaints. Whether the EEOC files a lawsuit in any particular case depends largely on Clarence Thomas's conception of fairness.

Thomas told me a story from his boyhood to illustrate what fairness means to him. He was on the back porch, playing blackjack for pennies with some other boys. As the game went on, one boy kept winning. Thomas finally saw how the cards were marked. The game was stopped. There were angry words. Cards were thrown. From all sides fast fists snatched back lost money. There could be no equitable redistribution of the pot. The strongest, fastest hands, including those of the boy who had been cheating, got most of the pile of pennies. Some of the boys didn't get their money back. The cheater was threatened. The boys who snatched pennies that they had not lost were also threatened. But no one really wanted to fight—they wanted to keep playing cards. So a different deck was brought out and shuffled, and the game resumed with a simple promise of no more cheating.

 LIKEWISE

The pond is like a mackerel skin tonight.
 the mackerel like a beaded evening bag.
 This is like that, that is like this, oh.
 let's call the whole thing off and take it straight:
 nothing is like anything else.
 Even the parrot and the apish ape
 mirror mimic, and do like—unmatched.
 To begin: algae, abalone, slowwife—
 each the spitting image of itself.
 Likewise beetles (potato, scarab, and whirrigig).
 Nothing even comes close to barrel cactus:
 nothing is more original than a bog,
 more rare than the cougar and crane
 save all the above named.
 I've never seen anything like it—dustbowl, deer
 the descent of man and estuaries.
 flakes of snow (no two like), fire,
 fax, earnest, and guils.

are unique—there is nothing like a dam.
 Ditto inbreeding, ice ages, industrialization,
 joshua trees, lagoons, and the law
 that to liken a lichen is tautological.
 Indeed, the rule of diminishing simile holds
 that all of these are idiosyncrasies:
 the Leakeys, legumes, maize, marsupials, and moose.
 Virtually nothing is extraneous here—
 not orchids, ooze, pampas, nor peat.
 This is the world of plenitude and power—
 every bit of it out of this world:
 the rain and rattlers, sperm, swamps, and swans.
 As we now inch toward an end—vectors
 and a winter that figures to be like no other,
 say the selfsame earth is to your liking
 and let us continue—yeast, yuccas, zoons,
 all things like, beyond compare.

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That story, Thomas said, is a lot like the story of race relations in America. Whites had an unfair advantage. But in 1964, with the passage of the Civil Rights Act, the government stopped the cheating. The question now is, Should the government return the ill-gotten gains to the losers—the blacks, the Hispanics, and the women who were cheated by racism and sexism? Does fairness mean reaching back into the nation's past to undo the damage? Is the son entitled to recompense if the mother was a brilliant businesswoman who could not find a bank that would lend her money? How about the grandson of a black doctor who never earned as much as white practitioners but lived the life of the elite among blacks? Should American businesses have to compensate for the legacy of slavery—the poor, undereducated blacks living in dreary, stultifying ghettos that perpetuate perverse values? How would society, especially the society of government and business, make amends, even if making amends were its fervent goal?

Thomas believes that government simply cannot make amends, and therefore should not try. The best it can do is to deal a clean deck and let the game resume, enforcing the rules as they have now come to be understood. "There is no governmental solution," Thomas said. "It hasn't been used on any group. And I will ask those who proffer a governmental solution to show me which group in the history of this country was pulled up and put into the mainstream of the economy with governmental programs. The Irish weren't. The Jews weren't. Use what was used to get others into the economy. Show us the precedent for all this experimentation on our race."

He returned to the idea of the cheater on the porch: "I would be lying to you if I said that I didn't want sometimes to be able to cheat in favor of those of us who were cheated. But you have to ask yourself whether, in doing that, you do violence to the safe harbor, and that is the Constitution, which says you are to protect an individual's rights no matter what. Once you say that we can violate somebody else's rights in order to make up for what happened to blacks or other races or other groups in history, then are you setting a precedent for having certain circumstances in which you can overlook another person's rights?"

Individuals who are proven victims of discrimination have Clarence Thomas's EEOC on their side in the fight. But people who argue that they are victimized in corporate life as part of historical, across-the-board discrimination against a group find little sympathy at his agency. It could be, Thomas says, that blacks and women are generally unprepared to do certain kinds of work by their own choice. It could be that blacks choose not to study chemical engineering and that women choose to have babies instead of going to medical school.

If an employer over the years denies jobs to hundreds of qualified women or blacks because he does not want women or blacks working for him, Thomas is not prepared to

hundreds of local, individual acts of discrimination. Thomas would require every woman or black whom that employer had discriminated against to come to the government and prove his or her allegation. The burden is on the individual. The remedy is back pay and a job. "Anyone asking the government to do more is barking up the wrong tree," Thomas says.

Thomas has made it EEOC policy to shy away from class-action suits. He doesn't want to see blacks treated as numbers. So he favors aggressive attacks on employers only when they are proved to have discriminated against particular persons. "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. Blacks are the least favored group in this society. Suppose we did band together, group against group—which group do you think would win? We're breaking down everything, ten percent for the blacks, twenty-five percent for the women, two percent for the aged, everything broken out according to groups. Which group always winds up with the least? Which group always seems to get the hell kicked out of it? Blacks, and maybe American Indians.

"Playing the group game builds up racial conflict. That's what segregation was all about. But now blacks are out here raising all this Cain for group rights, and the ones who benefit the most, I think, would probably be white females, because they are the best-prepared group."

Clarence Thomas has resolved to play by the rules. Once again one sees the boy on the porch, the respect for method and procedure. Thomas is consistent. Because the courts in the past have mandated goals, timetables, and quotas, and because these are therefore the law of the land, Thomas's EEOC continues to enforce (though it may occasionally challenge) such decisions. This stance has sometimes left Thomas isolated within the Reagan Administration. But when it comes to new business before the commission, there is little in Clarence Thomas's record with which a right-wing Administration could find fault.

In "fiscal year" 1980 (October 1, 1979, to September 30, 1980) the EEOC was settling 32.1 percent of the cases that it closed, whereas the rate was 13.6 percent in the first half of 1986. The proportion of cases in which the EEOC finding was "no cause" (for a lawsuit) increased from 28.5 percent to 56.6 percent over the same period. A total of 22.3 percent fewer cases were filed in court in 1985 than in 1981. The decline in the number of cases pleased Thomas. He had turned the agency's attention away from cases based on statistical evidence of discrimination. Thomas was sensitive to reports that white managers often feel they cannot find enough qualified minority candidates. Perhaps an employer in the Southwest fires more Hispanics and women simply because he made an effort to hire them in the first place, the women and Hispanics who

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who can't do the job will be fired. To sue an employer because he keeps the door open to people who may be less educated and have little work experience would be to discourage him from giving those people a chance.

THOMAS'S TENURE AT THE EEOC HAS ALWAYS BEEN rocky, but it has been rocky for different reasons at different times. His first task was simply getting a hold on an agency with 3,100 employees and forty-eight local offices. By all accounts the agency Thomas inherited was administratively disheveled, with a long backlog of discrimination cases. Thomas seems to have been happy with unpublicized bureaucratic chores, happy to be left to himself. On his way into work every day he would have his driver stop at a Catholic church, where he would spend a few minutes alone in prayer. He does not attend church on Sundays. ("God is all right," he says. "It's the people I don't like.") Thomas rarely spoke with the press. He worked privately, almost anonymously, letting the Justice Department and the White House make political pronouncements on civil-rights policy. In the Administration, Thomas was often referred to as "the other Clarence," distinguishing him from the more visible Clarence Pendleton, at the Civil Rights Commission. As one of the very few prominent blacks in the Reagan Administration, he was criticized internally for his initial lack of a public role.

Once, during lunch at the White House mess, William Bradford Reynolds, the assistant attorney general for civil rights, was loudly urging him to be more aggressive. Thomas snapped back, "Don't tell me what to do, Brad. All I *have* to do is die and stay black."

If Thomas hoped to sit out the war of words between the Reagan Administration and the nation's leading civil-rights groups, he was only partially successful. Criticized by black leaders as an Uncle Tom, Thomas from time to time struck back. He publicly castigated civil-rights leaders who "bitch, bitch, bitch, moan and moan and whine" about the Reagan Administration. He characterized protests against apartheid in South Africa and against the Administration's policy of "constructive engagement" as less important than efforts at home to improve education for blacks and end poverty and drug abuse among them.

Meanwhile, Thomas found himself in occasional disagreements with other members of the Administration. Thomas freely blamed the Justice Department for setting a "negative agenda" on civil rights during the President's first term. He conceded to me that the Administration "blew it" by supporting tax-exempt status for a segregationist school, Bob Jones University. He stated frankly that he was working with racists, though he claimed that this hardly mattered, since, he said, there are some racists in every Administration. ("Yes, there are a lot of racists in the

with an out-and-out racist anyway to one who is racist behind your back.") He opposed Attorney General William French Smith when Smith refused to comply with a twelve-year-old federal law requiring federal agencies to submit annual statistical analyses of the number of minority-group members working in the executive branch. And, with mixed success, he has set himself against Justice Department attempts to overturn certain existing local quota plans for hiring and promotion. At one point in 1984 there was talk within the Administration of forcing Thomas's resignation, or at the very least of nominating a replacement when Thomas's term expired in 1985.

Though it was at first only dimly perceived, however, Thomas was transforming the nature of the EEOC—moving it firmly toward the Reagan right. The fundamental change was in the type of lawsuit that the commission was likely to bring. In the past the EEOC had brought a number of celebrated class-action cases against such major companies as AT&T and General Electric. The agency had alleged historical and widespread discrimination and sought changes in hiring practices, along with back pay for the victims. Those cases ended with multimillion-dollar settlements, and goals and timetables to govern future hiring. Now the EEOC focused on simply enforcing the law in cases brought by individuals who sought to prove specific acts of discrimination. The shift in emphasis fit Administration policy. Fewer class-action suits inevitably meant far less use of goals, timetables, and quotas to remedy findings of discrimination. It also meant fewer attempts to stop employers from giving tests, setting standards, or recruiting in a manner that caused disproportionately low numbers of blacks, women, and other minorities to get jobs.

Thomas held to his version of fairness: individual victims of discrimination should be helped by the government, but classes of people who theoretically were victimized by the nation's history of racism or sexism should not be helped. Indeed, Thomas viewed with deep misgivings any finding of discrimination based on broad statistics—once the most effective weapon wielded by the EEOC. The commission had for many years used statistics to put employers on the defensive for not hiring minorities or women in proportion to their numbers in the pool of qualified applicants. Statistics shifted the burden of proof from the individual, who was charging discrimination, to the company, which had to prove that it was *not* discriminating. Statistics had been employed vigorously by the EEOC ever since a favorable 1971 Supreme Court ruling in *Griggs v. Duke Power Co.*

Soon Thomas began to look at the use of statistics in the EEOC's own Uniform Guidelines on Employee Selection Procedure, which has been used by the courts as an authoritative interpretation of the Civil Rights Act of 1964. In September of 1984 Thomas led the five EEOC commissioners in a vote to review the guidelines, because, in

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garded the guidelines as a landmark in equal-opportunity law. It also had reverberations in the corporate world. Lawyers had become accustomed to the Uniform Guidelines as the one and only set of rules for playing the affirmative-action game—for avoiding race- and sex-bias lawsuits brought by the government. The guidelines require that any prerequisite for employment—a test, an interview, a physical standard, or a performance evaluation—result in a selection rate for any race, sex, or ethnic group within 20 percent of the selection rate for the group with the highest rate. If a hundred whites apply for a job and sixty are selected, that is a 60 percent hiring rate for qualified white applicants. An employer with forty qualified black applicants would have to hire twenty—a 50 percent hiring rate—to come up with a hiring rate for blacks that is within 20 percent of the hiring rate for whites.

In justifying the review of the guidelines, Thomas wrote that they were founded on the premise "that but for unlawful discrimination by an employer, there would not be variations in the rates of hire or promotion of people of different races, sexes, or national origins. . . . [The guidelines] also seem to assume some inherent inferiority of blacks, Hispanics, other minorities, and women, by suggesting that they should not be held to the same standards as other people, even if those standards are race and sex neutral." Last year the EEOC completed an internal review of the guidelines, but it has not yet acted on this report.

Thomas was roundly criticized by civil-rights groups for subjecting the guidelines to scrutiny. He cited the all-black basketball team at Georgetown University, a school with an overwhelmingly white student body, as an example of how statistics could mislead. Would anyone, he asked at a congressional hearing, charge that Georgetown was discriminating against white basketball players?

In newspaper interviews Thomas spoke freely of his disdain for the statistical basis of an ongoing EEOC suit, begun before Thomas joined the commission, against Sears, Roebuck & Co. The class-action suit claimed that Sears discriminated against women because it hired a far higher proportion of men than women for sales jobs, even though more women applied for the jobs. Sears, the EEOC claimed, also promoted fewer women than men to lucrative commissioned sales jobs. The government's suit did not have a single named plaintiff; it relied solely on em-

didn't prove Sears guilty of discrimination. The disparity in hiring figures between men and women could, he said, be due to cultural differences between men and women, educational levels, commuting patterns, and other "previous events." Lawyers for Sears actually tried to have Thomas testify in their behalf, hoping he would damage his agency's case. However, the judge refused the motion to take his deposition, ruling that what Thomas believed, even as the head of the EEOC, was irrelevant. In February of 1985, to Thomas's satisfaction, the EEOC lost the case. But Thomas has agreed to have his agency file an appeal on the basis of what his lawyers have told him are mistakes made by the trial judge. Thomas told me that he decided to go along with the appeal because if he didn't, "the liberals would be all over me." He does not want it said that he didn't give the case every chance to succeed.

In June of 1985 Thomas removed another potential



source of controversy between employers and the government by leading the commissioners to reject the validity of the notion of "comparable worth": the idea that people who are doing different jobs should nevertheless be paid equally if their jobs require comparable effort, responsibility, skill, and training. Traditionally female occupations, such as teaching, could be made to pay the same wage as traditionally male occupations, such as construction.

Women's groups have contended that jobs that usually go to men pay more because of the old-fashioned idea that a man is supporting a family while a woman is merely working for pin money, or supplemental income. Thomas countered that Title VII of the Civil Rights Act outlawed disparities in pay only when an employer paid men and women different wages for doing the identical job. The agency's decision closed a potential avenue of redress for women for the remainder of the Reagan Administration.

In July of 1985 five congressmen and three senators, including Senator Edward Kennedy, the ranking Democrat on the Senate's Committee on Labor and Human Resources, asked the General Accounting Office to investigate the EEOC. They were "deeply concerned that the EEOC's ability to effectively attack discrimination in the workplace [had] been diminished by a recent shift in policy which may run counter to the intent of Congress in enacting these remedial statutes." They insisted that Congress "required an extensive and sustained" effort from

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They complained that their mandate was "being flouted by the commission."

With the arguments between Thomas and his critics growing louder, the EEOC chairman suddenly found himself warmly received at the Justice Department and the White House. He worked closely with Attorney General Edwin Meese in pushing for a change in an executive order that requires federal contractors to show that they have made efforts to hire minorities and women. Meese and Thomas argued that the order amounted to quotas, because contractors who failed to hire minorities and women were given goals and timetables that had to be met under pain of losing government contracts. For the time being the executive order remains in effect, however, because Republican political strategists have judged that deleting all suggestion of quotas from the executive order carries too high a political price.

LAST SUMMER PRESIDENT REAGAN NOMINATED CLARENCE Thomas to a second term as chairman of the EEOC. On August 12, 1986, Thomas won Senate confirmation. The Senate's unanimous vote came a week after a 14-2 vote by the Labor and Human Resources Committee to recommend Thomas for a second term. The two senators who voted against Thomas in committee were Howard Metzenbaum, of Ohio, and Paul Simon, of Illinois. Metzenbaum said he opposed Thomas because "he has not brought [to the EEOC] a vigorous determination to enforce the law. . . . He has failed to show the kind of leadership which the civil-rights community is entitled to." The NAACP and the League of United Latin American Citizens said that Thomas was the key to a Reagan Administration plan to "roll back civil rights."

But the opposition lacked passion. In joint testimony representatives of other major civil-rights and women's-rights groups, ranging from the National Urban League to the NOW Legal Defense and Education Fund, said they did not know of any group involved with civil liberties that wanted Thomas reappointed. However, they said, "given this administration's record [we] have no illusions that a nominee committed to strong enforcement would replace [Thomas]. This Hobson's choice dilemma does nothing to quiet our concerns about the management and policy of the EEOC for the past five years." 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. And at the hearings, which were held in July, Thomas stole his opponents' thunder by telling the committee that he had

reversed his earlier position and ordered the EEOC's lawyers to resume using goals and timetables against employers found guilty of discrimination. "That's the law of the land, whether I like it or not," he said. When Metzenbaum asked about his personal view of affirmative action, Thomas replied, "Whatever reservations I have are purely personal. They're subversive literature now." When some Democrats suggested that Thomas might be merely saying expedient things on the record while off the record instructing his lawyers not to return to goals and timetables, Thomas privately promised, according to committee members, to send reports twice a year to the Senate on the number and types of cases in which the EEOC makes use of hiring and promotion goals and timetables. Despite such concessions, Thomas retains considerable power to push his agenda at the EEOC—an agenda that amounts to curbing federal intervention.

In mid-September, Attorney General Edwin Meese, Assistant Attorney General for Civil Rights Bradford Reynolds, and Senator Strom Thurmond, the former segregationist from South Carolina, came to the EEOC's offices to swear in Clarence Thomas. It was an unlikely sight—the three white men shaking hands and slapping backs with Thomas. Reynolds had days earlier attacked Supreme Court Associate Justice William Brennan as a man seeking "unlimited judicial power to further a personalized egalitarian vision of society" through racial preferences and a "liberal social agenda." Meese was about to give a speech encouraging politicians to disregard Supreme Court rulings if they felt the rulings were wrong. Clarence Thomas, in his moment of triumph, stood shoulder-to-shoulder with his Administration colleagues. None of the three stayed more than a few minutes at Thomas's celebration. But before he left, Reynolds raised his glass. "It's a proud moment for me to stand here," he said, "because Clarence Thomas is the epitome of the right kind of affirmative action working the right way."

Clarence Thomas flinched. Some of his aides looked down and shook their heads. After all Thomas had been through in defense of the Administration position on civil rights, Reynolds had implicitly dismissed him as an affirmative-action hire. And, worse, Reynolds had thought it a compliment. Thomas showed a look of cold hurt—a look of disgust. He folded his arms across his chest and looked away from Reynolds. By the time Meese had said a few words and Thurmond had sworn him in, an uneasy smile had returned to Thomas's face. A few days later, when I asked about his reaction to Reynolds's comment, Thomas waved his hand, as if swatting away the memory. "I can't pay no attention to Brad," he said. □

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Myers Anderson was fiercely independent, and believed that his freedom depended on his ability to survive, without reliance on a hostile government and in an environment in which it seemed that Blacks only had privileges--not rights. Christine Anderson was a quiet, saintly woman. She would often intercede with her husband, on behalf of their two grandsons. Her most constant instruction to her grandsons was "say your prayers." And, each morning she greeted them with their lunch, hot breakfast, and gospel music from the radio station. She, too, worked constantly.

Clarence's grandparents enrolled him and his brother in St. Benedict's Grammar School, a segregated Catholic school. Although the physical plant was old, the education was rigorous.

Franciscan nuns taught them. Education was the number one priority. No excuses. Myers and his brother were informed and reminded, as required, that in any disagreement with the teachers, they were always wrong and the teachers were always right. Clarence and his brother missed one-half day from school during the entire time they lived with their grandparents. Education was seen as the key to a better way of life. Clarence's grandfather felt that Catholic schools were better because there was corporal punishment, discipline, and uniforms. He didn't see how a child could be taught without these.

Clarence, his brother and their grandfather were members of St. Benedict's Catholic Church, where the two boys were altar boys. (Their grandmother attended a Baptist Church.) At St. Benedict's Grammar School, the nuns stressed the inherent equality of all people, and pushed the students to excel. At home, at school, and at Church, Clarence was constantly pushed and encouraged to perform and achieve--no matter what the odds were.

From 1962-64, Clarence attended St. Pius X High School for the 9th and 10th grades. St. Pius X was also segregated and also taught by the Franciscan nuns. In 1964, Clarence transferred to St. John Vianney Minor Seminary near Savannah. He repeated the 10th grade in order to take three years of Latin. He finished his high school education there in 1967. At St. John's, he was the only black student in his class. There was one other black student in the freshman class during Clarence's first year, however, he did not return for his sophomore year. Attending St. John's was Clarence's first regular contact with whites, other than nuns. At St. John's, Clarence redoubled his efforts to achieve. And, he did very well. One indication of what his classmates thought of his efforts can be gleaned from a statement which they placed under his yearbook picture: "Blew that exam, only got a 98."

From 1967-68, his freshman year in college, Clarence attended Immaculate Conception Seminary in Conception Junction, Missouri. He transferred to Holy Cross College in Worcester, Massachusetts for his sophomore year and graduated with honors in 1971. There, he helped found the Black Students Union, where he served as an officer for three years. He worked in the Free Breakfast Program and tutored in the Worcester community. Clarence was an excellent student who was considered by many to be a "grind." His college education was financed by a combination of scholarships, loans and work study. However, there always seemed to be well-intentioned persons who helped when times were most difficult. One such person was an anonymous donor of \$300.00 to finance a speed reading course for Clarence.

From 1971-74, Clarence attended Yale Law School with the intent of returning to Savannah. He worked for New Haven Legal Assistance during law school and the summers of 1971 and 1972. He worked for a small integrated firm in Savannah in the summer of 1973, financed, in part, by a grant from the Law Students Civil Rights Research Council.

During his third year in law school, Clarence decided not to return to Savannah as he had originally planned. Since he was married, had a child, and student loans, he reluctantly interviewed with law firms. In the process, he once again

confronted an old nemesis, racial discrimination. Though he had done well in law school, he was interrogated about his performance in college, high school and even grammar school. The interview process tended to be insulting and condescending. The obvious assumption was that Clarence was not as good as his white classmates, even if his law school grades were higher.

Ultimately, John C. Danforth, then Attorney General of Missouri, offered Clarence a job in his office. Clarence was first impressed by Danforth's sincerity and honesty. He first admitted to Clarence that he did not know how it was to be Black and poor since he was neither. Then he promised Clarence that he would treat him the same as everyone in the office.

Clarence sat for the Missouri bar in the summer of 1974. That summer would be most memorable not for the bar examination but for his two-month stay at the house of Margaret Bush-Wilson, who would later become Chairman of the Board of the NAACP. She allowed Clarence to live at her house, since he had no money and knew no one in Missouri. Her generosity, advice and counsel have influenced and remained with Clarence over the years.

In August of 1974, Clarence and his family moved to Jefferson City, Missouri. The job in the Attorney General's office turned

out to be everything that it had been billed to be. The work was endless, the staff was small, and there was no bureaucracy in the office. It was perfect for a young attorney. Three days after being sworn in as a member of the Missouri bar, Clarence argued his first case before the Supreme Court of Missouri. Over the next 2-1/2 years, he would represent the state in many cases before the trial courts, appellate courts, and Supreme Court of Missouri, in matters ranging from criminal law to taxation.

In 1977, Clarence left the Attorney General's Office and went to work in the law department of Monsanto Company, where he worked on general corporate legal matters such as antitrust, contracts and governmental regulations.

He rejoined now Senator Danforth in August of 1979 as a legislative assistant. During his 1-1/2 years on Capitol Hill, Clarence was responsible for issues involving energy, environment, federal lands and public works.

He was nominated in the spring of 1981 by President Reagan as the Assistant Secretary for Civil Rights in the U.S. Department of Education. In the spring of 1982, he was nominated by President Reagan to become Chairman of the Equal Employment Opportunity Commission. He was sworn in on May 17, 1982. He was renominated and reconfirmed in 1986. Having been Chairman of EEOC for more

than seven years, he has served longer in that position than any of his seven predecessors.

Clarence was appointed by President Bush to the U.S. Court of Appeals for the District of Columbia on March 6, 1990. He was President Bush's first appointee to that court.

Clarence's first marriage ended in divorce. He has one son, Jamal, by that marriage, and has had custody of Jamal since 1983. For most of his tenure at EEOC he has been a single parent. Jamal is now 16 years old and a junior in high school.

Clarence remarried in May of 1987. His bride is the former Virginia Bess Lamp. Mrs. Thomas is a Senior Legislative Officer at the U.S. Department of Labor. Clarence, Virginia, and Jamal reside in northern Virginia.

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INFORMAL BIOGRAPHY

Clarence
ADF
Dec 7th

Clarence Thomas was born on June 23, 1948, in a small wood frame house outside of Savannah, Georgia. The house in which he was born, as well as the bed, was owned by Annie Crawford, his young mother's aunt. He was brought into this world by a midwife. His birth certificate reads simply that he was born in Pinpoint, Rural. His mother's name was Leola Thomas and is currently Leola Williams. His father's name is M.C. Thomas. The initials do not represent additional names. Clarence's father left while he was still a toddler, and has lived in Philadelphia most of Clarence's life. Clarence would see him only once during his childhood, at the age of nine.

For the first six and a half years of his life he lived in Pinpoint with his mother, her aunt and uncle, together with his older sister and a younger brother, Myers. They lived in the same wood frame house in which Clarence was born. The community of Pinpoint is one of many Black communities outside Savannah, Georgia. Although development threatens its existence today, in the late 40's and early 50's it was indeed rural. In Drums and Shadows - survival studies among the Georgia Negroes, Pinpoint is described as follows:

"Pinpoint, a Negro community about nine miles southeast of Savannah is scattered over some

twenty or thirty acres on a peninsula overlooking Shipyard Creek. Many of the small wooden cabins are neatly whitewashed and are half hidden by shrubbery and spreading oaks. Flowers and vegetables are planted in the most advantageous sunny spots near the houses and most yards are enclosed by picket fences, giving a cozy and pleasant privacy. The lawns, little more than wagon tracks, twist in and across the settlement. The informal and haphazard scattering of the houses, with high shrubbery bordering the lawns, gives an effect that is pleasing and unusual.

Pinpoint has a church, a pavilion on the tidewater creek, and a crab cannery. The men and women who do not work as domestic servants at the nearby country places find employment in the crab cannery or fish and crab and shrimp for themselves. The life is quiet, soothed by the smell of salt marsh.

* * *

The people are, almost without exception, black or dark skinned, proud, upstanding and loyal, suspicious of strangers but generous and trusting to friends." (cites omitted).

The house in which Clarence and his family lived was simple, but always neat and pleasant. For lighting, they used kerosene lamps, and there were also several electric ceiling lights. They had no indoor plumbing, and shared an outhouse with several neighbors. They carried water from a common pump usually in water buckets. As alluded to in Drums and Shadows, supra, everyone worked. Women did "day" work, cleaning houses for the whites who lived nearby. They also shucked oysters and picked crabs. Kids would often scrub crab barks to earn spending money. The men were usually day laborers and/or they raked oysters, fished or crabbed. They also steamed crabs, which the women then picked. Clarence's mother was among the best crab pickers. His sister, until recently also picked crabs on a regular basis. As children, they played under the houses, or in the woods and marsh. They chased and caught fiddler crabs, and minnows, climbed trees, and played with makeshift toys.

Clarence started the first grade in September, 1954 at Haven Home School, which was segregated. Coincidentally, Brown v. Board of Education was decided that same year. About midway through the

school year, Clarence's brother and their cousin, Little Richard, accidentally burned their house down. As a result, Clarence and his brother moved to Savannah to live with their mother. They lived in one room of a tenement. There was a common kitchen. The kitchen floor consisted of old linoleum on the ground. There was an old gas stove that rarely worked and the old ice box in the upstairs hall rarely had ice in it. There was also a common toilet outside. The wooden structure had rotted, the toilet itself was always filthy and leaked sewage into the backyard. There was a small kerosene stove in the room for heat. Clarence usually slept on a loveseat while his brother slept in the bed with their mother. Their mother worked long hours as a maid, for \$20.00 every two weeks. She left early in the morning and returned at the end of the day. Clarence completed the first grade at Florance Street School. He attended afternoon classes. He had poor attendance and 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. Their grandparents had an ice delivery and fuel oil business. Their grandmother had a sixth grade education and their grandfather had gone to the third grade, although he made it very clear that in those three years he learned nothing since he was only allowed to attend school for a small fraction of the school year. He

learned how to read and write a little after he became an adult. Clarence's grandfather was a proud, disciplined man who believed that everyone who could work should work. He never knew his father, and his mother died when he was nine years old. He lived with his grandmother, who according to him was freed from slavery as a young girl. His grandmother died when he was twelve years old. He then went to live with his uncle, who was a hard man, with a family of about 16 children. Clarence's grandfather often told stories of how they had to hunt, fish, farm, and do "piece" work for nearby whites in order to survive. Myers Anderson's very hard life, without mother or father, no education, and in an era of segregation and Jim Crow laws, was a dominant influence on the way he raised his grandsons. They had to learn to work and to survive, no matter what happened in the world.

The world of Clarence's youth was the world of segregated Georgia. All of life was segregated, schools, libraries, movies, and lunch counters. There were separate water fountains and public restrooms for those who were "colored." Clarence recalls an incident when they were traveling from Savannah to the farm in Liberty County. As was customary, they stopped for gasoline. His grandfather asked whether his wife could use the restroom. The attendant said there was no "colored" restroom. Clarence's

grandfather loudly and forcefully told the attendant that if his wife couldn't use their restroom, he couldn't use their gas. And, they sped off and stopped at a gas station with a "colored" restroom. This was the reality in which Myers and Christine Anderson were determined to raise two boys who could do for themselves.

Clarence and his brother worked with their grandfather on the oil truck or at whatever he was doing when there was no need to deliver oil. During the school months, they were required to be dressed and ready for work by 3:00pm. School ended at 2:30pm. There was always work to be done: in the yard, on old houses that their grandparents owned, maintaining the trucks and car, painting, roofing, plumbing, etc. On Saturdays, if there was no oil to be delivered, the car had to be washed; the lawn, cut; the hedges, trimmed; the yard, cleaned, shoes polished and so forth. To Clarence and his brother, there seemed to be no rest for the weary.

Clarence's grandfather believed that he could do just about anything. And when Clarence and his brother would say they couldn't do something, he would chastise them not to use the word "cant." "Old man can't is dead. I helped bury him," he would often say. For example, in the winter of 1957, he decided to build a house on family farm land that had lain fallow for quite

some time. When he said he would build something, he meant exactly that. He had previously built the house in which they lived in Savannah and several of the houses which he owned in the neighborhood. Clarence and his brother were required to work closely with him to build the house carrying cinder blocks, mixing cement, etc. In the spring of 1958, with the house completed, they began to farm. Each year they cleared more and more land to plant and cultivate. They also raised chickens, pigs, and cows. They built garages, barns and a wire fence around a hundred acres or so. Initially, their grandfather plowed with a horse and mule, with Clarence and Myers following him. Later he bought an old Ford tractor. Then Clarence and Myers began to do quite a bit of plowing at the age of 13 or 14. They also used the tractor to haul logs and to cut and rake hay. Aside from plowing with a tractor, the rest of the farm work was done manually. They worked from "sun-up to sun-down" with an hour to an hour and a half for lunch. The extended lunch breaks were necessitated by their grandfather's nap after lunch. Myers Anderson believed, to his grandsons' chagrin, that the sun should not catch anyone still in bed. Everyone should start work as soon as there was enough daylight to see.

Myers Anderson believed strongly in the maxim: early to bed, early to rise. He usually went to bed between 8 and 9 p.m. and rose between 2 and 4 a.m. If his grandsons occasionally were

fortunate enough to sleep surreptitiously until 7 or 8 a.m., he would observe that they must have thought that they were rich. And, he would lecture them that a poor man could not afford to sleep that late.

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Gary A. Franks

Congressman
5th District, Connecticut



NEWS RELEASE

FOR IMMEDIATE RELEASE
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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."

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