

STATEMENT OF MOLLY YARD

Ms. YARD. Good morning.

The CHAIRMAN. Good morning. Welcome back.

Ms. YARD. Thank you very much for affording us this opportunity to speak once again on a nomination for a Supreme Court Justice.

My name is Molly Yard. I am president of the National Organization for Women, an organization of women and men dedicated to equality and justice for women in this country. I am please to be here today. I am particularly grateful to you for accommodating my time constraints.

You may be aware that I am recovering from a stroke that I suffered several months ago. I am still working on physical and speech therapy. Despite that, I was determined to present this testimony. I feel that I must make yet one more appeal to you to stand up for the rights of women and other oppressed groups. My commitment to women's rights is as strong as ever and I have suffered nothing in intensity due to my illness.

NOW is adamantly opposed to the nomination of Clarence Thomas. Mr. Thomas has demonstrated none of the qualities necessary for a member of this Nation's highest Court. While a Supreme Court Justice must be compassionate, Mr. Thomas has shown scorn for the oppressed. While a Justice must have respect for the law, Judge Thomas has demonstrated a willingness to promote his conservative personal agenda in defiance of the law of the land. While a Justice should be forthright, Judge Thomas has been evasive. Clarence Thomas has simply not shown himself to be worthy on the Supreme Court.

Judge Thomas seems to be doing his best to imitate the Teflon candidacy of David Souter. Perhaps he feels that a blank slate is an unimpeachable one. Yet, how can the good of this country possibly be served by a man who has spent weeks backing away from his own record?

Perhaps the most blatant example of Mr. Thomas' attempt to re-write history is his claim that we should not take seriously his public praise for Lewis Lehrman's antiabortion polemic. Mr. Thomas now would have us believe that he did not agree with the piece, but was only citing it to gain the support of his conservative audience.

Frankly, I don't believe that story, and neither should you. But even if I did, Mr. Thomas' defense that he says things that he doesn't believe in order to win an audience, does not inspire confidence in the statements he has made before your committee, and certainly does not make me secure that he will be a strong and zealous guardian of our constitutional rights.

Similarly, even if we were to accept Judge Thomas' astonishing claim that he has never given much thought to *Roe v. Wade*, this lack of interest in one of the crucial civil rights issues of the last 20 years would show Mr. Thomas to be so disengaged from modern legal and social debate as to disqualify him from sitting on the Supreme Court.

In fact, Clarence Thomas is not the enigma he would like to be. Both his words and his actions show him to be cold and callous.

Mr. Thomas compiled a record of neglect at the EEOC, particularly with regard to women's rights. This man insulted women who have suffered discrimination in employment, by calling their legitimate complaints clichés. He said that women avoid professions like the practice of medicine, because it interferes with our roles as wives and mothers. This type of medieval claptrap would doom any politician running for electoral office. Now, then, can it be considered acceptable for a Supreme Court nominee?

It is always easy to cut through people's pretensions by looking at how they treat their families. Many saints have been unmasked as sinners in the privacy of their homes. Clarence Thomas used his own sister, Emma Mae Martin, as an example to denigrate people on welfare. Yet, Mr. Thomas' sister overcame a life of poverty, to graduate high school and enter the work force.

After she was deserted by her husband, she supported her young children by working at two minimum wage jobs. She was indeed on welfare during a period when she was forced to leave her jobs to take care of her and Mr. Thomas' aunt, who had had a stroke. She now works as a cook on a shift that starts at 3 o'clock in the morning. As is too often the case, it appears that in Mr. Thomas' family, the male child was given the opportunity to get a college education and a professional career, while the girl accepted the responsibility of caring for the family. To me, Emma Mae Martin sounds like a brave, strong, admirable woman, committed to her family and fighting to do the best she can. Yet, Clarence Thomas sees her as dishonorable.

Mr. Thomas' cruel remarks would be bad enough when said of a total stranger. That he would use his own sister as the butt of such an insult is shocking. Mr. Thomas has been nominated for a position that requires, above all, sensitivity and concern about all those who come before the courts seeking justice. Rather than demonstrating those qualities, he has, instead, shown himself to be cynical and cold.

This nomination is particularly poignant for me, because of the man that Clarence Thomas has been nominated to replace. Had Thurgood Marshall never spent 1 day on the bench, his brilliant career as an activist civil rights lawyer would have guaranteed him a place in history and in the hearts of all people who believe in quality and justice.

Yet, Thurgood Marshall went on to champion the rights of the oppressed from the Supreme Court, tirelessly fighting to uphold the very principles that Clarence Thomas sees as outmoded and unnecessary. While nothing can extinguish the light that Thurgood Marshall lit, it would be sad to replace him with a man who is committed to dousing the torch that Justice Marshall carried so proudly.

I am glad President Bush nominated an African-American. I still remember the excitement, when President Johnson nominated Thurgood Marshall to the Court. Here was a man who epitomized the civil rights battle and the yearnings of African-Americans to be free. On the Court, Marshall has shown a concern for all those who suffer discrimination. He represents the best of the American dream. He makes the promise of the Declaration of Independence and the Constitution live. We need another on the Court of his caliber.

It has become increasingly difficult to come here on each succeeding Supreme Court nomination and beg for women's lives, only to have our pleas ignored. We urged you, in the strongest terms, to understand that the confirmation of Justices Kennedy and Scalia would lead inevitably to the erosion of women's right to safe, legal abortion.

Those predictions proved true 2 years ago, as the Court severely undercut *Roe v. Wade* in the *Webster* case, and went on a year later in the *Akron* and *Hodgson* decisions to take away the rights of young women to control their bodies. We warned that David Souter, silent though he was on many significant issues, would be yet another conservative, antiabortion vote. As we feared, Justice Souter was an instrumental part of the majority last term, when the Court took the incredible step of holding that women had no right to be informed by their physicians and other medical personnel of even the fact that abortion exists.

Senators many of you and your colleagues in the House have spent time in recent sessions trying to restore the civil rights that the Court has undercut, fighting to reverse the gag rule that the Court has upheld, and working to guarantee the right to abortion that the Court has imperiled.

Yet, had you held fast against the unsuitable nominees put before you by the Reagan-Bush administration, these efforts would not have been necessary. Your constitutional role is not to be a rubber stamp for the President.

Instead, you must look into your hearts and judge what is best for this country, before you advise and consent on nominations. It is not just your prerogative, but your duty to protect the fundamental constitutional rights of all of the people. How can you in good conscience consent to an increasingly unbalanced court that represents one judicial philosophy, a philosophy that ignores the needs of the majority of this country?

You have the chance with this nomination of restoring the promise of America, which for too many is an empty promise. You will live in history, if you give life to the promise. President Bush has ignored the chipping away of the dream. You can restore it, and we beseech you to do so. The history of this country has been one of developing individual rights. The courts have been crucial to this, but in the recent years we have been going backward. We must move forward, and you can set us on that path, so, once more, I appeal to you on behalf of women's rights.

In April of 1989, we pledged to the women of America that not one life would be lost due to illegal back-alley abortions. Unfortunately, some lives have been lost, but the end to that must come and we depend on you to make this possible.

The conservative tide has swept over the Supreme Court. With each Reagan-Bush nominee that the Senate confirmed, you entrench still more firmly a Supreme Court that is at best indifferent and, at worse, hostile to the rights of women, people in color, lesbians and gays, the handicapped, the elderly, the poor—all those who most need protection from the Nation's highest court.

You still have some ability to stop that tide, to give the dispossessed and disenfranchised a faint glimmer of hope that someone

cares about them, that the entire Government of the United States is not a cynical enterprise run by the privileged for the privileged.

I use you, once again, to stand up for equality for justice and for compassion. Vote against the confirmation of Clarence Thomas and assure that women will not once again face death from illegal back-alley abortions, and will assure that women will not suffer discrimination on the job. Nothing that has happened in this country, in my estimation, in the last 50 years has been as important as what Congress has done to guarantee the civil rights of all. The Civil Rights Acts of the 1960's were tremendous steps forward for this country. They gave hope to all of us.

I sit and read every day letters from women who are discriminated against in every way on the job. I can imagine what Ben Hooks' desk must be like, in terms of letters he gets from African-Americans who are discriminated against.

The time has come to put a stop to discrimination. It is in your hands to do that. You can absolutely affect the history of this country, and you can live in the history of this country as those who dared make the American dream a reality, and we ask that you do that by rejecting this nomination.

Thank you very much.

The CHAIRMAN. Ms. Yard, your commitment is never doubted, and you have never been more eloquent than you were today. I thank you, and I am impressed—we all are—that in light of what you have recently undergone physically that you would be here. I can assure you, you don't need any more speech therapy. You did incredibly well.

Ms. YARD. Good. That is very kind of you because—

The CHAIRMAN. That is true.

Ms. YARD. I listen to my own voice, and it doesn't sound like me. It sounds like someone else. So if I sound OK to you, that pleases me a lot.

The CHAIRMAN. You sound all right to everyone, and I thank you for being here. I mean that sincerely. I know it is not easy to be here.

Ms. Smeal.

STATEMENT OF ELEANOR SMEAL

Ms. SMEAL. Thank you, Senator Biden.

I am Eleanor Cutri Smeal, president of the Fund for the Feminist Majority, and I come before this committee to express strong and unequivocal opposition to the nomination of Clarence Thomas as Associate Justice for the U.S. Supreme Court. I am submitting into the record formal testimony that was prepared with the assistance of Erwin Chemerinsky, who is a distinguished professor of constitutional law at the University of Southern California.

The CHAIRMAN. Without objection, it will be placed in the record.

Ms. SMEAL. Thank you.

I would like to summarize that testimony but more importantly, in a very short time, to give a feeling of why it is that we have come before you. Molly Yard has come with great determination, although certainly under trying times. I have come in some ways worried that what I would say is redundant, because so many dis-