Testimony of Patricia J. Williams

STATEMENT
BY
PATRICIA J. WILLIAMS
ON BEHALF OF
THE CENTER FOR CONSTITUTIONAL RIGHTS
AGAINST THE NOMINATION
OF JUDGE CLARENCE THOMAS TO THE
U.S. SUPREME COURT

Senators, Ladies and Gentlemen, Good afternoon. I come before you today on behalf of the Center for Constitutional Rights. It is with great regret that we oppose the nomination of Clarence Thomas.

Many of the civil rights organizations who have preceded me have distilled the basis of our concern that Clarence Thomas's nomination represents a threat to the assiduous protection of civil liberties, particularly in the areas women's rights, affirmative action, rights of the elderly. I will not repeat all of the bases of the Center's concern. You may refer to the Statement of the Center which I will enter into the record at the end of this presentation.

One of the most distinguishing features of Clarence Thomas's philosophy is his wholesale rejection of statistics and other social science data, and with it the rejection of a range of affirmative action remedies that have been central to our social and economic progress.

While self-help and stong personal values are marvelous virtues they are no stand-in for the zealous protection of civil and human rights--that protection being the paramount task of the judiciary in any democracy, and of our Supreme Court in greatest particular. The problem with Clarence Thomas's espousal of these self-help values is that he positions them in direct "either/or" tension with the any other value; self-help is presented as bitterly competitive rather than in complete concert with those social measures that would help ever more rather than ever fewer people.

An example of why this kind of created tension is so pernicious: recently, I saw a television program, such as we have all seen, with overvoices presenting statistics about the lack of educational opportunity for black children in inner-city schools--statistics about drop-out rates, drugs, crime, teacher apathy, lack of funding, inadequate facilities (particularly for math and science study), padlocked public libraries, low expectations of civic officials and school administrators, and general conditions of hopelessness. At the end of this very depressing summary, the anchor turned to four young teenagers in the studio, all black, all excellent students in a special program designed to encourage inner-city students with an interest in science. He asked: "We've just heard that black kids aren't very good in math and science; are you here to show us that that's a lie?" The students then

proceeded to try to redeem themselves from the great group of the "not very good" inner city black children by setting themselves apart as ambitious, dedicated, "different" in one sense, yet "just the same as" the majority of all other kids at the same time.

It was unbearable listening to these young people try to answer this question. It put them in an impossible double bind. These were lower class kids who came from tough inner-city neighborhoods where very few of their friends could realistically entertain aspirations to become neurosurgeons or microbiologists. It was this community from which they were being cued to be different. Let me be very clear: I am not faulting, but praising these young people's aspirations and goals. What concerns me is the way in which not only the TV anchor, but also many in this society, including many blacks, and including Clarence Thomas, force them and others like them to reconcile their successful status by presenting the conditions from which they were so serendipitously rescued as a mere fiction waiting to be willed away by the mere choice to overcome it. In this way, the commentator's question actually limited their alternatives, compromised their function as *realistic* role models, and prompted explanations of their good fortune that tended to kill their sense of communal affiliation as the only way of permitting the truth of their individualism to remain intact. Although this sort of rhetoric is frequently wrapped in

aspirations of racial neutrality, it in fact pits group against individual in a way that is not only race-based, but pits successful or middleclass blacks against their less fortunate friends and even family.

Moreover, a question, a model that asks children whether they can prove statistics to be a lie does not treat statistics as genuinely informative. If the actual conditions of large numbers of people can be proved a lie by the accomplishments of an exemplary few, then social science data and statistics only reinforce an exception that proves the rule. They do not represent the likely consequences of social impoverishment; they bear no lessons about the chaotic costs of the last several years of having eliminated from our social commitment the life nets of basic survival. Rather, these data are reduced to evidence of deserved destitution, and chosen despair, the numerical tracking of people who disssemble their purported deprivation--dismissed as mere "lockstep" thinking, opinion rather than empiricism.

The Supreme Court in recent cases, perhaps most vividly in City of Richmond v. J.A. Croson, has persistently done something with statistical evidence that is very like asking four schoolchildren if they can make into a lie the lost opportunities of countless thousands of others. Richmond had a black population of approximately 50%, yet only 0.67% of public construction expenditures went to minority contractors. The city set a

30% goal in the awarding of its construction contracts to minorities, based on its findings that local state and national patterns of dicrimination had resulted in all but complete lack of access for minority-owned businesses. The Croson majority dismissed these gross underrepresentations of people of color, of blacks in particular, as potentially attributable to their lack of "desire" to be contractors. In other words, the nearly one hundred percent absence of a given population from an extremely lucrative profession was explained away as mere lack of initiative. As long as the glass is 0.67% full....

The dismissiveness of Clarence Thomas's analysis of statistical evidence exceeds that even of the majority's reasoning in Croson. For all of his quite moving anecdotalizing about his own history, Thomas by this gesture effectively supplants our larger common history with individualized hypotheses about free choice, in which each self chooses her destiny even if it is destitution. Clarence Thomas has not clearly committed himself to taking into account past and present social constraints as realistic infringements on the ability to exercise choice. He ignores that history which gives at least as much weight to the possibility that certain minority groups have not had many chances to be in charge of things as to the possiblity that they just don't want to, or that they just can't.

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But if we do not begin to take the horrendous social conditions of black people seriously--as social not just individual problems--we risk becoming a permanently divided society. Such social necessity not only may have, it MUST have at least some place in the Supreme Court's considerations into the next century.

I will close by making a brief observation about the course of these hearings. There has been a deeply disconcerting pattern of Judge Thomas either revising or disclaiming much of the most troubling aspects of his record over the past decade. If one believes in this epiphanous recanting, we are left with the disturbing phenomenon of a Supreme Court nominee who didn't read his own citations, who misunderstood the legal import of his own obstructionist administrative actions, and who didn't really mean most of what he said.

And if one is not inclined to believe that Clarence Thomas's keen intelligence could leave him in quite so disingenous a state of disarray, then you, the Senate must come to terms with the fact that you are confronted with an outright, practiced refusal to answer questions. And this is a tremendously serious violaton of the Senate's right to answers about any nominee's views and disposition to uphold precedent as well as judge facts, interpret new law. The Senate has a constitutional *duty* ensure that the court remains a place where voices of dissent and unpopular

causes may be heard. Ambiguity is not the standard. A senatorial leap of faith, as the Philadelphia Enquirer urged yesterday, is not good enough. Much of the vocabulary that even some senators have employed during the course of these hearings--"impression," "faith," "instinct," "hope," and "trust"--simply does not amount to a reasoned "choice" to support Clarence Thomas.

There have been many careless accusations about how "politicized" these hearings have become. But the Constitution expressly makes the Senatorial process of inquiry a political one. The Constitution specifies that no nominee shall be confirmed without the "advice and consent" of the senate. Let me be clear: the basis of this concern has nothing to do with whether Clarence Thomas is conservative, liberal, republican, or democrat. If the senate is confronted with a tabula rasa--or even a tabula-not-so clara, a "mystery" as some of you have acknowledged--then there is little basis for either knowledgeable advice, or informed consent.

And this, this is a severe threat to the functioning of our tripartite system of government, to the balance of political input that the involvement of the several branches of government must provide before someone is placed into that most sensitive position of discretionary insularity, that shielded office of highest trust that is the Supreme Court.

STATEMENT BY

THE CENTER FOR CONSTITUTIONAL RIGHTS

AGAINST THE NOMINATION OF

JUDGE CLARENCE THOMAS

TO THE U.S. SUPREME COURT

Statement by the

Center for Constitutional Rights

against the nomination of

Judge Clarence Thomas

to the United States Supreme Court

The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

Contributions to CCR are tax-deductible.

Additional copies of this booklet can be ordered from the Center for Constitutional Rights at the address below.

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Center for Constitutional Rights
666 Broadway
New York, New York 10012
(212) 614-6464
(212) 614-6499 (fax)

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"I am unalterably opposed to programs that force or even cajole people to hire a certain percentage of minorities."

JUDGE CLARENCE THOMAS

The Center for Constitutional Rights urges all groups and individuals who are concerned with social justice to vigorously oppose the nomination of Judge Clarence Thomas to the Supreme Court.

This nomination is competely unacceptable for the many reasons detailed below, which include Judge Thomas' controversial role as administrator of the Equal Employment Opportunity Commission (EEOC), his views on the most serious issues currently facing women and people of color, and his judicial qualifications, which, like most of the Bush-Reagan appointments to the federal bench, reflect slender legal and judicial experience.

Moreover, this nomination is an insult to the African-American community which must now endure, if President Bush has his way, the replacement of a legendary African-American fighter for human rights -- Justice Thurgood Marshall -- with a right-wing African-American bureaucrat -- Judge Clarence Thomas.

It is also an affront to millions of Americans -- people of color, women, laboring people, the poor, the elderly -- who, for the past 25 years, looked to the Supreme Court as the final arbiter and protector of their rights.

By selecting Judge Thomas, President Bush seeks to get one step closer to the goal he and President Reagan charted 11 years ago, and which they have nearly accomplished: the appointment of conservative judges to all levels of the federal court system, including the Supreme Court, who will alter the judicial face of our country for generations to come.

While President Bush, who recently demonstrated his dedication to civil rights by opposing the Civil Rights Bill, cynically plays on the legitimate desire of many people to see diversity on the court, let there be no doubt about it: he intends to utilize a person of color to put the last nail in the coffin containing the progressive legacy of Justice Marshall. This nomination raises the nightmarish prospect of right-wing presidents using women and people of color to reverse the gains won over the past three decades, gains won with blood and tears. It cannot -- to use President Bush's own words in another grim context -- be allowed to stand.

Judge Thomas is an unsuitable candidate for the following reasons:

Record as Chair of the Equal Employment Commission

While serving as Chairman of the EEOC, the agency which enforces federal laws prohibiting employment discrimination on the basis of race, sex, national origin and age, Judge Thomas informed a senate committee that more than 13,000 age discrimination complaints were at risk of being lost because they were not processed before the expiration of the two-year statute of limitations.[1]

During his tenure, the number of class action suits declined precipitously in comparison to the number of individual cases. This meant that the agency was more concerned with individual cases than with challenges to systemic discrimination. In fact, Judge Thomas wrote, "most of our cases involve discrimination by a particular manager or supervisor, rather than a 'policy' of discrimination..."[2]

Judge Thomas' methodology was described as follows in a profile in the Atlantic Monthly:

> 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 see a "pattern and practice" of discrimination. He sees 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.[3]

The General Accounting Office found in 1988 that a large number of cases were closed -- from 40 to 87 percent -- because allegations were not fully investigated by the field offices and state fair employment practices agencies.[4] In addition, the backlog of cases at the EEOC rose from 31,500 in 1983 to 46,000 in 1989, as did the processing time -- from 4 to 7 months in 1983 to almost 10 months in 1989.[5] The number of equal pay cases declined from 35 in 1982 to 7 in 1989.[6] And the agency ceased to aggressively pursue its mandate: former EEOC Chair Eleanor Holmes Norton wrote, "The EEOC effectively has lost the role as lead agency conferred to it by the historic Civil Rights Reorganization of 1978, not because of any change in law, but by abdication to the Justice Department."[7] Finally, even the Civil Rights Commission, which had lost much of its steam in the Reagan years, reported in 1987 that "on a number of policy issues requiring regulatory activity, the EEOC to date has accomplished very little."[8]

"I don't think that government should be in the business of parceling out rights or benefits."

- Judge Clarence Thomas

Actions and views about affirmative action

Judge Thomas regards affirmative action as useless and harmful to the initiative of African-Americans (this despite the fact that he took advantage of an affirmative action policy at Yale Law School). The author of the Atlantic Monthly portrait described Judge Thomas as believing that "There is no governmental solution" [to historical discrimination], and that "government simply cannot make amends, and therefore should not try."[9]

In an interview in the New York Times in July 1982, Judge Thomas said:

> I am unalterably opposed to programs that force or even cajole people to hire a certain percentage of minorities. I watched the operation of such affirmative-action policies when I was in college, and I watched the destruction of many kids as a result. It was wrong for those kids, and it was wrong to give that kind of false hope.[10]

He wrote, "A positive civil rights policy would aim at reducing barriers to employment, instead of trying to get 'good numbers.'"[11] And further:

> I don't think that government should be in the business of parceling out rights or benefits. Rights emanate from the Constitution and from the Declaration. They are there, and they should be protected. I am not confident that Washington is any more moral or stronger than anyone else to assign rights, or even better able to do it. We should be careful not to concede the rights of individuals in our society in order

to gain something such as parity. Ultimately that will do us a disservice [12]

While heading up the EEOC, Judge Thomas changed its previous practice of setting goals and timetables for employers to make jobs available to women and people of color. In 1985, according to an Alliance for Justice report, "the EEOC acting general counsel, with the Chairman's support, ordered EEOC regional attorneys not to include goals and timetables for settlements or in actions in which the EEOC had intervened. The general counsel also ordered legal staff not to seek enforcement of goals and timetables in existing consent decrees." This prompted a protest by five congresspersons who stated that the "Commission is forfeiting the most effective tool to combat centuries of discrimination." It was only when the Supreme Court handed down three decisions in May and June 1986 upholding the use of goals and timetables that Judge Thomas promised to reinstate the policy.[13]

Judge Thomas acknowledged the deeply entrenched racism in this country when he said, "There is nothing you can do to get past black skin. 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."[14] Yet he eschews affirmative action as a way to reduce "barriers to employment," and offers no other alternatives, leaving women and people of color to the mercy of the very people he distrusts.

Other racial matters

Judge Thomas complained about civil rights leaders who "bitch, bitch, bitch, moan and moan and whine" about the Reagan Administration.[15]

A sharp exchange took place between Judge Thomas and Joseph H. Duff in a symposium on affirmative action:

> *Thomas:* A race-conscious law is one that defines rights based on race. Segregation and apartheid are race-conscious laws.
>
> *Duff:* I was admitted to law school under the University of California's Equal Opportunity Program. I passed the bar exam, and now practice law in the community. That is a good race policy.
>
> *Thomas:* It is good for you.
>
> *Duff:* It is also good for the community and the society.
>
> *Thomas:* No, I think it is good for you. When I went to college the problems with those policies were quite significant as were the animosities they generated.[16]

"Right to life," the family, and contraception

Although Judge Thomas has not ruled directly on these issues during his tenure as a judge, a good idea of his general attitude about family issues can be obtained from the 1987 report issued by President Reagan's Working Group on the Family, of which Judge Thomas was a member. This report is such a litany of right-wing views about the family that it is worthwhile quoting it at length. It includes discussions about the nature of the family (preferably, a traditional nuclear constellation), divorce (it should

be made harder to obtain); the Supreme Court's "weakening" of the traditional family; teen-age sexuality (it must be restricted); women staying at home to care for children (it should be encouraged), and so on:

> ...If an ever larger percentage of adults choose not to marry or choose to remain without children, there will be public implications...With current fertility levels and without immigration, our population will decline; this is a problem we share with much of the western world...[17]

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> The disconcerting truth is that judicial activism over the last several decades has eroded this special status [of the family] considerably.[18]

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> ...[In the past 25 years the Supreme Court has handed] down a series of decisions which would abruptly strip the family of its legal protections and pose the question of whether this most fundamental of American institutions retains any standing...The Court has struck down State attempts to protect the life of children in utero, to protect paternal interest in the life of the child before birth, and to respect parental authority over minor children in abortion decisions...The Supreme Court has turned the fundamental freedom to marry into a right to divorce without paying court costs It has journeyed from protection of the "intimate relation of husband and wife" in its contraception cases to the dictum that "the marital couple is not an independent entity with a heart and mind of its own .."[19]

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> ...traditional divorce laws inhibited easy separations...In so doing, they sometimes made things difficult, and changes in divorce law may well have been overdue. But in a relatively short period of time, almost all the states adopted a model divorce law that established, in effect, no-fault divorce.[20]

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> ...enrollment in a family planning program appeared to raise a teenager's chances of becoming pregnant and of having an abortion.[21]

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> At a minimum, no Federal program should provide incentives for sexual activity by teens. No Federal activity should contravene the approach we have taken to drug abuse: we do not compromise with self-destructive behavior. We insist that it stop and we provide assistance to those young people who want to regain control of their future.[22]

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> Government should not provide incentives -- or make things easier

-- for teenagers tempted to promiscuity. For example, AFDC benefits should be restructured to limit their availability to those minors who agree to continue to live with their parents. This step would go a long way toward making illegitimate motherhood less attractive in the poverty culture.[23]

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Unlike Sweden, for example, the mothers of America managed to avoid becoming just so many more cogs in the wheels of commerce.[24]

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In one of the great tragedies of American life, tens of thousands of childless families wait for children to adopt while 1.8 million other Americans abort their unborn children each year.[25]

Judge Thomas' comments about abortion have raised such enormous concern that most leading women's organizations are opposing his nomination. In a speech he made in 1987 to the Heritage Foundation Judge Thomas spoke favorably about an article written by another conservative, Lewis E. Lehrman, in which Lehrman wrote:

Adapting Lincoln's words from his patient struggle for the inalienable right to liberty in the 1850's, we may now say that the "durable" moral issue of our age is the struggle for the inalienable right to life of the child-in-the-womb -- and thus the right to life of all future generations...

May it be reasonably supposed that an expressly stipulated right to life, as set forth in the Declaration and the Constitution, is to be set aside in favor of the conjured right to abortion in Roe v. Wade, a spurious right born exclusively of judicial supremacy with not a single trace of lawful authority, implicit or explicit, in the actual text or history of the Constitution itself?

Are we finally to suppose that the right to life of the child-about-to-be-born -- an inalienable right, the first in the sequence of God-given rights warranted in the Declaration of Independence and also enumerated first among the basic positive rights to life, liberty, and property stipulated in the Fifth and Fourteenth Amendments of the Constitution -- are we, against all reason and American history, to suppose that the right to life as set forth in the American Constitution may be lawfully eviscerated and amended by the Supreme Court of the United States, with neither warrant nor amendment directly or indirectly from the American people whatsoever?[26]

Judge Thomas said Lehrman's article "on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."[27] This view, according to some legal scholars, puts Judge Thomas to the right even of Justice Scalia in the matter of abortion, since no justice currently on the Supreme Court has voiced the view that the fetus has either God-given or constitutional rights. Translated into current realities, a court that took this

position could not only overturn Roe but could make abortion illegal in all states.

The Griswold v. Connecticut decision, which gave married couples the right to obtain legal contraceptives, also caused Judge Thomas some unease. He wrote:

> Some senators and scholars are horrified by Judge Bork's dismissal of the Ninth Amendment, as others were horrified by Justice Arthur Goldberg's discovery, or rather invention, of it in Griswold v. Connecticut." ["The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."]
>
> ...A major question remains: Does the Ninth Amendment, as Justice Goldberg contended, give to the Supreme Court certain powers to strike down legislation? That would seem to be a blank check. The Court could designate something to be a right and then strike down any law it thought violated that right. And Congress might also use its powers to protect such rights -- say a "right" to welfare.[28]

Economic issues and congressional oversight

As illustrated above, Judge Thomas' distaste for welfare surfaces in many of his writings and speeches, but probably his most widely-publicized comment was made about his own sister, who received public assistance for six years while she cared for the aged aunt who had helped raise her. Judge Thomas said, "She gets mad when the mailman is late with her welfare check. 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."[29] His distrust of governmental economic aid extends to criticisms of minimum wage laws and unfair labor practices as unnatural interference with the economic process.[30]

"As Lt. Col. Oliver North made it perfectly clear last summer, it is Congress that is out of control."

- Judge Clarence Thomas

Judge Thomas also appears to distrust congress. He wrote that congress was "out of control," and cited none other than Ollie North as a person competent to assess this: "Congress remains the keystone of the Washington establishment. Over the past several years, Congress has cleverly assumed a neutral ombudsman role and has thrust the tough choices on the bureaucracy, which Congress dominates through its oversight function. As Lt. Col. Oliver North made it perfectly clear last summer, it is Congress that is out of control."[31] Legal scholars fear that Judge Thomas may be unsympathetic to congressional initiatives on oversight.

Judicial experience

The idea that President Bush chose the best-qualified person for this job is not credible.

Judge Thomas has served on the U.S. District Court of Appeals for only 16

"Even had Bush limited his selection pool to black judges on the federal courts of appeal, there are at least a half-dozen other black judges whose accomplishments, both on the bench and before becoming federal judges, put those of Thomas to shame."

- Prof. Derrick Bell
Harvard University

months. Before that, he was Chairman of the Equal Employment Opportunities Commission for eight years, an administrative role which was much-criticized and controversial. His actual legal experience includes three years in then-Missouri Attorney General John Danforth's office, followed by a two-year stint at the Monsanto Corporation. He then served as a legislative assistant to Danforth for two years, and served for a year at the Department of Education's civil rights division.

In the days following the nomination many legal scholars expressed concern about the question of qualifications, especially Professor Derrick Bell of Harvard, who commented, "Even had Bush limited his selection pool to black judges on the federal courts of appeal, there are at least a half-dozen other black judges whose accomplishments, both on the bench and before becoming federal judges, put those of Thomas to shame."[32]

Judge Thomas' record since becoming an appeals judge is undistinguished and spotty. As of July 3, 1991 Judge Thomas had authored 16 opinions. While these opinions, standing alone, offer no clear indication of what positions Judge Thomas will take in civil rights and women's rights cases if he is elevated to the Supreme Court, it appears that he will provide an additional vote to the Court's present conservative majority in criminal cases.

Two decisions, however, should be of concern to workers and environmentalists. In one case,[33] Judge Thomas rejected a union challenge to a Labor Department decision permitting a mine owner in Alabama to use a high-voltage electrical cable within 150 feet of a working mine face in violation of federal regulations. The union had argued that use of these cables would increase miners' exposure to dust and methane, create ventilation problems and make escape from the mines more difficult. In another case,[34] Judge Thomas rejected a challenge by an alliance of Toledo, Ohio residents to a Federal Aviation Administration decision authorizing expansion of a local airport. The residents contended that the FAA had violated several environmental statutes and regulations.

The qualifications issue existed even when Judge Thomas was nominated to his present post on the U.S. district court: fourteen members of congress, all chairpersons and high-ranking members of house committees which oversee the Equal Employment Opportunity Commission, opposed it. At that time, representatives of more than 20 public interest organizations expressed concerns about Judge Thomas' qualifications during Senate Judiciary Committee hearings.

"It horrifies me that the country might have to endure 40 years of opinions of a black man who has shown no sense of compassion for the needs of the poor, who hasn't the guts to acknowledge that 'self-help' isn't enough in a milieu of institutionalized racism, and who embraces heartless legalisms where abortion and other rights of women are at issue."

- Carl Rowan

Conclusion

Judge Thomas, who called Robert Bork's defeat "disgraceful,"[35] is a complicated man, at once a dedicated conservative and a self-described admirer of both Dr. Martin Luther King, Jr. and Malcolm X, something of a nationalist, a critic of affirmative action and a "bootstrapper," a man who suffered extreme poverty and discrimination but one who believes in little or no government assistance to combat these conditions. His nomination has appalled otherwise moderately conservative African-American commentators like Carl Rowan:

> "It horrifies me that the country might have to endure 40 years of opinions of a black man who has shown no sense of compassion for the needs of the poor, who hasn't the guts to acknowledge that 'self-help' isn't enough in a milieu of institutionalized racism, and who embraces heartless legalisms where abortion and other rights of women are at issue."[36]

The Center for Constitutional Rights believes that Judge Thomas' inconsistency and complexity should be scant comfort to progressive-minded people. As Christopher Edley, an African-American commentator, wrote in the Washington Post: "If there were a snowball's chance in Hades that Thomas would be a moderate on the court, he would not have been nominated."[37]

In fact, we fear that Judge Thomas' successful appointment will impact on the court in a way that goes beyond mere conservatism. His voice will be used to permit extreme conservatism to re-emerge. That it comes from an African-American will be used as tragic legitimation of those views. Judge Thomas will likely participate in the end of legal abortion in this country; and he may also extend new economic concepts of deregulation, which will make life even more difficult for the great majority of people in this country.

Even if, as some people predict, a defeat of this nomination is followed by the selection of someone even less suitable, the Center for Constitutional Rights believes that this battle is worthwhile. Though the conservative tide is lapping over the steps of the Supreme Court, there are many millions of people who will continue to search -- and who will find -- a way to struggle successfully for their human rights. It is this standard of human rights to which we must insist that all prospective Supreme Court justices subscribe.

We urge all civil rights and civil liberties organizations to take a position against the nomination of Judge Thomas and request all such organizations that haven't issued conclusive positions to do so as soon as possible. This nomination is an insult, not a pat on the back. Finally, we urge all fair-minded people to communicate their ideas and thoughts on this subject to the members of the Senate Judiciary Committee, to their congressperson and senator, and to their local newspapers and media outlets. We remain convinced that the voices of the millions of people to whom this is a vital concern will be heard.

New York City
July 30, 1991

ENDNOTES

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2. Ibid., p. 7. Judge Thomas' original remarks appeared in 5 Yale L. & Pol. Rev. 402 (1982).

3. Juan Williams, "A Question of Fairness," Atlantic Monthly, February 1987, p. 79. (Hereafter, Atlantic Monthly profile.)

4. Ibid., p. 7.

5. Ibid., p. 8.

6. Ibid., p. 8.

7. Ibid., p. 8. Ms. Norton's comments appeared in 62 Tulane Law Review 601, 703 (1988).

8. Ibid., p. 8.

9. Atlantic Monthly profile, p. 79.

10. Quoted in Time, July 25, 1991, p. 19.

11. Judge Clarence Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," in Assessing the Reagan Years, Cato Inst., p. 397.

12. Symposium, "Affirmative Action: Cure or Contradiction," Center Magazine, November/December 1987, p. 23.

13. All the information in this paragraph appears in the Alliance for Justice Report, p. 4.

14. Atlantic Monthly profile, p. 72.

15. Atlantic Monthly profile, p. 80.

16. "Affirmative Action: Cure or Contradiction," Center Magazine, Nov./Dec. 1987, p. 25.

17. "The Family -- Preserving America's Future, A Report to the President from the White House Working Group on the Family," Gary L. Bauer, Chairperson, p. 3.

18. Ibid., p. 10.

19. Ibid., p. 11-12.

20. Ibid., p. 11-12.

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22. Ibid., p. 28.

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24. Ibid., p. 31.

25. Ibid., p. 33.

26. Lewis E. Lehrman, "The Declaration of Independence and the Right to Life," in The American Spectator, April 1987, p. 22.

27. Judge Clarence Thomas, "Why Black Americans Should Look to Conservative Policies," a speech given to the Heritage Foundation on June 18, 1987.

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31. Judge Clarence Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 Harvard Journal of Law & Public Policy, 63.

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33. International Union, United Mineworkers of America v. Federal Mine Safety and Health Administration, 931 F.2d 908 (1991).

34. Citizens Against Burlington v. Busey, 1991 WL 100655 (D.C. Cir. June 14, 1991).

35. Judge Clarence Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," in Assessing the Reagan Years, ed. David Boaz, Cato Institute, 392.

36. Carl T. Rowan, Baltimore Sun, July 4, 1991.

37. Christopher Edley, Jr. Washington Post, July 7, 1991.