

NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

TUESDAY, SEPTEMBER 17, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room 325, Senate caucus room, Russell Senate Office Building, Hon. Edward M. Kennedy, presiding.

Present: Senators Biden, Kennedy, Heflin, Simon, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. The committee will come to order.

I would like to welcome a very distinguished panel this morning. The Judiciary Committee undertakes a very serious constitutional duty when it considers the nomination of a Supreme Court Justice. The expertise each of you brings to this process will, I am sure, make your views of significant interest to the committee.

Each of you has made an important contribution in an area of great concern in these hearings: Civil rights and the role of the Supreme Court in protecting individual liberties.

Professor Days, would you be good enough to come up? He is from Yale Law School, has an extensive background in the area of civil rights, served as President Carter's Assistant Attorney General for Civil Rights, and before his tenure at the Justice Department as an attorney for the NAACP Legal Defense Fund.

Professor Edley of Harvard Law School has advanced degrees in both law and public policy. During the Carter administration, he served as an assistant to the President, and as the Assistant Director of the White House Domestic Policy Staff, and as a Special Assistant Secretary in the Department of Health, Education, and Welfare.

Professor Lawrence of Stanford Law School brings to these hearings an expertise not only in the law but also in education. He was an assistant professor at Harvard's Graduate School of Education and an attorney with the Harvard Center for Law and Education and the director of the Federation of Boston Community Schools. He has focused in both his writings and his teachings on issues of race and the Constitution.

We are delighted to have all of you here this morning. I think, as we heard from Chairman Biden, we have a very full day of wit-

nesses. We appreciate very much your effort in being here, but we hope that you will be able to respond to what questions we have—limit your presentation to 5 minutes and then respond to questions. All of the statements will be included in their entirety in the record.

According to our committee, I guess we have to swear you in. Do you swear the testimony you will give is the truth, the whole truth, and nothing but the truth, so help you God.

Mr. EDLEY. I do.

Mr. LAWRENCE. I do.

Mr. DAYS. I do.

Senator KENNEDY. Mr. Days, welcome. I had the good opportunity to work with, I think all of you, on a number of different public policy issues, and we know of your continuing interest in all of these matters on the Constitution. So we are very fortunate to have you.

Professor Days.

TESTIMONY OF DREW S. DAYS, PROFESSOR, YALE LAW SCHOOL; CHRISTOPHER EDLEY, JR., PROFESSOR, HARVARD LAW SCHOOL; AND CHARLES LAWRENCE, PROFESSOR, STANFORD LAW SCHOOL, ON BEHALF OF THE SOCIETY OF AMERICAN LAW TEACHERS

Mr. DAYS. Senator Kennedy, thank you for allowing me to testify this morning before this committee during what we all recognize is a very important proceeding. I can assure you that I respect the solemn responsibility that the Senate must discharge in its constitutional advise-and-consent role, and that I offer my testimony in that spirit.

I think it has been very difficult, Senator Kennedy and Senator Thurmond, for many people to come to grips with how they would respond to the nomination of Clarence Thomas. And I certainly include myself in that category. It has not been easy coming to a determination.

But one of the things that I was concerned about—and I think that thinking was very much affected by the opening statements that many of you made at the beginning of these proceedings about the role of a Justice of the Supreme Court, about the role of the Supreme Court as a guardian of the individual. I think Senator Heflin talked about the Supreme Court being the people's court, dealing with real issues and real people. Senator Thurmond, you talked about its responsibility to administer justice, to be concerned about that standard.

What I tried to do was place Clarence Thomas in that context, as a guardian of individual rights, as a member of a people's court. And the more I did that, the more difficult I found it to envision Clarence Thomas as the next Associate Justice of the Supreme Court.

My conclusion was very much affected by two things: First, reading his writings and reviewing some of the speeches that he has given on issues of concern to me, and issues that I have dealt with for most of my professional life, what strikes me about his articles and his speeches is their detachment from history; his treatment of