

September 19, 1991

Testimony of Edward Hayes, Jr., Esquire, on behalf of the Council of 100, an Organization of Black Republicans, before the Senate Judiciary Committee upon the Nomination of Clarence Thomas to the Supreme Court.

Good Morning, Mr. Chairman, and members of the Senate Judiciary Committee. My name is Edward Hayes, Jr. I am an attorney in private practice at Baker & Hostetler in Washington, D.C., and I appear before you this morning on behalf of the Council of 100, a national organization of black Republicans. The primary goal of the Council is to stimulate the participation by black Americans in the U.S. political process through candidacies for elected positions, through involvement at the local level, and through airing views on key issues.

The Council has appeared before the Congress on prior occasions to support candidates and to share its views on important pending legislation. We are delighted to appear today to support the candidacy of Judge Clarence Thomas as a Justice on the Supreme Court. Indeed, when Justice Marshall first announced his resignation from the Court, the Council wrote to President Bush recommending the consideration of Judge Thomas. We made this recommendation because we know Judge Thomas as an individual and because we have admired his selfless contributions to our country as a government official in several significant capacities. Having learned even more about him through the strenuous confirmation

process, we continue to believe that he should be confirmed for the Supreme Court.

Because my time before you is brief, I would like to focus on only a few key reasons for our support of Judge Thomas.

The first reason is the wealth of experience that Judge Thomas has already achieved. Having worked for Senator Danforth, having served in senior positions in the Administration, and serving now as a member of the U.S. Court of Appeals, he has had exposure to all branches of government. In addition, having worked as an attorney for Monsanto Corporation, he could be the only justice to have worked in the corporation counsel office of a major company. This opportunity to observe the operation of both government and business, and to address public concerns at different levels, gives Judge Thomas a perspective that few Supreme Court Jurists past or present could match.

Indeed, this Senate has already confirmed Judge Thomas on four separate occasions: as Assistant Secretary for Civil Rights at the Department of Education in 1981, twice as Chairman of the EEOC in 1982 and 1986, and most recently as U.S. Court of Appeals Judge for the District of Columbia in 1990.

Clearly the Supreme Court is not like any other institution and therefore more scrutiny is required. Yet it must be remembered that you do not have a blank slate before you. The positions for which the Senate has already appointed him have provided Judge Thomas the broad experience that qualifies him today. The Senate has on other occasions passed on his character after examination. The strength of his character is no less today, and in the end, when we judge nominees, the nature of one's character should be the bottom line criterium.

A second reason for the Council's support is that Judge Thomas has the honed ability and the independence of mind desirable of a jurist. As has been demonstrated in this hearing, Judge Thomas' independence of mind has not come without a great deal of personal cost to him and to his family. By daring to challenge conventional thinking, he has been ostracized by certain of his peers and personally attacked by spokespersons in the black community. Those who think that his questioning approach to examining policies that have become "sacred cows" is a matter of convenience, in order to endear himself to the Republican Party, would do well to consider the testimony offered on September 16th by Sister Mary Virgilius Reidy who taught Judge Thomas when he was in the eighth grade. According to Sister Mary, even at a young age Clarence Thomas did not uncritically accept orthodoxy. It should be clear to all by now that Clarence Thomas is first and foremost an independent thinker. This is what we should require of our jurists. They must

all be bright, sensitive, fair, and grounded in the Constitution as the law of the land. But they must also be able to analyze independently the law before them and to apply it with an open mind without being beholden to a particular philosophy, ideology, or patron.

Finally, we applaud the nomination of Clarence Thomas because it has brought to the fore the diversity of views that are so often overlooked within the black community. Certainly Judge Thomas has been controversial and rightly so. Anyone who dares to march to a different drummer will be controversial and arouse passion. However, it must not be ignored that despite the visibility of certain spokespersons within the black community that oppose Judge Thomas, there is also a great deal of quiet support for him. Indeed, recent polls by both ABC and Jet magazine indicate that 60% of black Americans support the nomination of Judge Thomas. In this regard, the leaders may have fallen behind the people.

In conclusion, the Council of 100 believes that if the finest steel is tempered in the hottest fires, then Clarence Thomas is a man of fine steel indeed. He has an open legal mind, he is fair and caring, and he has a commitment to public service. Moreover, he has the moral character, the breadth of experience, and a due regard for cautious construction of constitutional issues needed for a Justice.

Thank you for permitting me, on behalf of the Council of 100, to address the Committee in support of the nomination of Clarence Thomas to become a Supreme Court Justice.

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Immediate Past Chairman
Council of 100, an Organization of
Black Republicans