

Testimony of Patricia King
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Chairman Biden and members of the Committee, I appreciate the opportunity to testify before you on the nomination of Judge Clarence Thomas to the United States Supreme Court.

As a black woman, it is difficult for me to oppose the nomination of a black individual who has known great personal struggle. Nevertheless, Judge Thomas's extensive record and personal posture is so antithetical to the interests of women and blacks -- especially black women -- that I feel an obligation to testify against his nomination.

Much has been said of Judge Thomas' rise from Pinpoint, Georgia to the federal bench. Without question, the Supreme Court should include people who have endured such struggles. But we must recognize that that alone is not enough.

I don't often talk publicly about my own background, but I think it is necessary here to put Judge Thomas' life story -- dramatic and compelling as it is -- into the context of life in black America. Judge Thomas' background is not unique among African Americans of our generation. And virtually all of us over the age of forty have had at least one exceptional grandparent who has been injured and severely humiliated by racism in America.

I grew up during segregation with my sister in a female headed household in a public housing project in Norfolk, Virginia. I

attended segregated schools through high school and never knew any white contemporaries. I was able to apply to only one college because we did not have the money for multiple applications. I was able to attend Wheaton College in Norton, Massachusetts, because my uncle put a second mortgage on a house he owned -- the only piece of real property owned by anyone in my family -- in order to pay college bills.

I am reluctant to parade that family history in public, but not because I am ashamed of my background. I am very proud of my mother's strength and tenacity and the love and determination she employed in raising my sister and me. I am grateful to my uncle for what he did and to the other members of my family for the encouragement they gave me. I am profoundly grateful to the high school teacher who taught, inspired, and pushed me to achieve. And I am proud of them all as strong black people who battled through racism and material poverty to hold themselves in dignity and to forge spiritually rich lives. I don't talk about it simply because it has no impact on my capacity to function effectively as an adult or professionally as a lawyer and a legal educator. Moreover, my story is not unique in the black community and, frankly, I don't want either people's sympathy or their condescension.

My background was not a predictor of my performance as a government worker in the State, Justice and Health, Education and Welfare Departments or during the time I worked at the Equal Employment Opportunity Commission. Some of that government service, by the way, was rendered during the Nixon and Reagan

administrations. Nor could that background have served as a predictor of success in my eighteen-year career as a law professor at Georgetown University or in my service on a broad array of government commissions and panels dealing with the most complicated and delicate problems of medical and legal ethics that our country has faced in the last decade and a half.

And, frankly, I don't think Judge Thomas' background is any more a predictor of his future service on any bench than mine has been for my career.

Though there are similarities between Judge Thomas' background and my own, it seems to me that there is an attitudinal difference that separates us. I readily acknowledge that some of my successes resulted from affirmative action -- my admission to Harvard Law School, for example -- and from the help and support I received from others. In remembering where I came from, I also remember very bright young black people who were not as fortunate as I. They did not have my mother or my aunts and uncles, but if they had had a chance, they could have made some real contributions to this society. But affirmative action came too late for them; they had slipped away before it was firmly established in the late 1960s when I went to law school. Somehow Judge Thomas seems not to remember those he must have encountered along the way who were lost to the darkness simply because there was no help for them. I surely worry about that lack of memory and empathy in someone of my race who is proposed as a Justice for the Supreme Court.

Even his behavior towards his own family raises serious

concerns. While Judge Thomas gives his grandfather great credit for his success, he has not been so generous to his sister, Emma Mae Martin. In describing his rise from humble beginnings, he has frequently criticized her need to turn to welfare for a period in her life, saying, for example: "She gets mad when the mailman is late with her welfare check. That's how dependent she is." He has criticized her children as well: "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."¹

Judge Thomas' willingness to castigate his sister publicly for personal gain is deeply troubling not only for its opportunism, but also for what it reveals about his lack of compassion and understanding about his own sister's struggle to overcome great obstacles. Similarly, Judge Thomas' ability to extend compassion to others whose cases may come before the Court is also in question since the situation faced by Emma Mae Martin is one shared by many other black women.

Judge Thomas' father abandoned his family when he and his siblings were very young. As is the case in many female-headed households, the family was poor. Judge Thomas' mother supported her family by picking crabs at five cents a pound. When a fire destroyed their home and their belongings, Mrs. Thomas could no longer support her family on her salary (she moved from picking crabs to cleaning houses), and sent the children to live with

¹ New York Times, "Thomas's Journey on Path of Self-Help," July 7, 1991.

relatives. While the boys lived with their grandfather, an independent middle-class businessman, Judge Thomas' sister was sent to live with her aunt. She graduated from high school, married, and had children. When her husband left, she supported her children by holding down two minimum wage jobs. Only when that aunt suffered a stroke and needed care was Ms. Martin forced to turn to welfare; like many women, Ms. Martin had no choice but to quit her job in order to provide such care. She was on welfare for four or five years before returning to the workforce; she is now employed as a cook.²

The story of the women in Judge Thomas' family demonstrates an ethos of family support, resourcefulness and interdependence -- not dependence. When husbands left the family or relatives fell ill, it was the women who carried the burden for the family -- at great cost to any personal ambition. At the same time, though, their story makes plain the limited range of opportunities and choices available to black women, especially those who are single heads of households. Judge Thomas, however painful his personal experiences were, and are, because of racism, did not face the multiple barriers of race and poverty when compounded by sex discrimination and family responsibility. Moreover, in his oft-repeated recitation of his personal history, little space or respect is given to the intense struggle of these women. Yet stories like these are at the heart of the heroic rise of our people and Judge

² L.A. Times, "Sister of High Court Nominee Traveled Different Road", July 5, 1991, p. 4 col. 1.

Thomas' insensitivity to that aspect of his personal and our communal life is deeply troubling.

Judge Thomas' record shows no understanding of the imperative to provide opportunities and choices to black women. The notion of "choice," usually perceived as limited to issues of reproductive freedom, is really a much broader concern for black women:

Choice is the essence of freedom. It's what we African-Americans have struggled for all these years... the right to select our own paths, to dream and reach for our dreams. The right to choose how we would or would not live our lives.³

Black women understand that no matter how hard they work, and no matter how well prepared they might be, workplace choices and opportunities for them may be limited. The work experiences of Judge Thomas' mother and sister are not unique. African-American women historically have been represented in substantial proportions in the labor force; however, we have yet to reap the full economic rewards of that participation. While it is true that many of us have improved our status as workers, many more remain in low wage jobs.⁴ Even when women hold equal amounts of education, job training, and work experience, they are three times more likely to

³ "We Remember", Statement of African-American Women for Reproductive Freedom, (1989).

⁴ For example, in 1989, 27.3 percent of employed black women were in low-paying service occupations, as compared to 16.1 percent of white women. M. Power, "Occupational Mobility of Black and White Women Service Workers," (Presented at the Institute for Women's Policy Research Second Annual Women's Policy Conference, June 1990) (unpublished manuscript).

earn low wages as white men.⁵ African-American women are four times as likely to be low wage workers.⁶ The average family income for black women is less than that of white women.⁷ The unemployment rate is higher for black women than for white women.⁸ Black women -- like Judge Thomas' sister -- are more likely to hold several low-wage part-time jobs with no health insurance or other benefits.

As demonstrated by Judge Thomas' own experience, the status of black women in the workplace contributes to their poverty and to the poverty of their families. The number of black women who head households is growing; to the extent that single parents fare badly in the labor market, or are unemployed, their children suffer. That Judge Thomas' mother and sister have worked as crab pickers, cooks, and maids, as have thousands of other black women, is not an accurate indication of their abilities, but rather a reflection of the dearth of choices available to them as black women -- in particular black women heading households in rural Georgia.

⁵ National Displaced Homemakers Network and the Institute for Women's Policy Research, "Low-Wage Jobs and Workers: Trends and Options for Change", Washington, D.C. 1989.

⁶ *Id.*

⁷ On average, the 1989 median annual earnings of black women working year-round and full-time was \$17,389 -- 61% of white men's annual earnings of \$28,541. The figure for white women for the same period was \$18,922, or 66% of the annual earnings of white men. National Committee on Pay Equity, Newsnotes (March 1991) at 6.

⁸ Overall, 11 percent of black women who desire to work are unemployed, compared with 4 percent of white women. Staff Report, United States Civil Rights Commission, The Economic Status of Black Women: An Exploratory Investigation, October 1990.

Judge Thomas' positions on affirmative action, wage discrimination, class action litigation, and other proven remedies for discrimination may possibly become law and public policy that would further limit the choices for black women in the workplace. For example, Judge Thomas has repeatedly attacked well-established Supreme Court case law on affirmative action -- even when developed to remedy proven egregious discrimination and despite its demonstrated effectiveness in expanding equal employment opportunity. As head of the EEOC he deliberately chose not to seek goals and timetables in settlement agreements and consent decrees, changing course only in reluctant response to vigorous objections from members of Congress. He drastically cut back enforcement of the Equal Pay Act, the law that prohibits gender-based differentials in jobs that are equal or substantially equal; and, notwithstanding the EEOC's obligation to enforce the laws prohibiting gender- and race-based wage discrimination, he adopted a cramped analysis of Title VII's application to such discrimination that left the claims of many women unremedied. And, in spite of the proven effectiveness of class action litigation, Judge Thomas criticized the EEOC's reliance on that strategy and reduced the resources devoted to it -- causing a substantial reduction in the number of class action cases filed by the agency.

Of equal concern to me is Judge Thomas' record on reproductive freedom. That issue is all too often viewed through the narrow prism of abortion and thought to be of interest only to white women. That is not the case. The fundamental right to privacy,

including the right to abortion, is at the core of equality for all women, including black women and other women of color.* If women cannot control their own bodies, it is difficult -- if not impossible -- for them to fight for or enjoy the other rights to which they are entitled.

Black women interpret this right as the right to choose to have a baby, as well as the right to choose not to. For black women, the right to reproductive freedom also means access to information about family planning options and to safe and affordable health care, including pre-natal and post-natal care.¹⁰ No one needs a broad array of reproductive choices more desperately than black women, poor women, and women with children.¹¹ When women's reproductive freedom is curtailed, black women and other women of color and their families suffer first and most deeply.

Before he was nominated to the Court, Judge Thomas made speeches, wrote articles, and signed on to reports that criticized or attacked constitutional protections of reproductive freedom that have enhanced the power of black women over their own lives. His post-nomination retreat from his record, his refusal to discuss Roe

* National Council of Negro Women and Communications Consortium Media Center, "Women of Color Reproductive Health Poll", August 30, 1991. The survey respondents included African-American women, Latinas, Asian women, and Native American women. About three-fourths of those responding to the survey agreed that the decision to have an abortion is one that every woman should make for herself.

¹⁰ Statement of African American Women for Reproductive Freedom.

¹¹ Statement of African-American Women for Reproductive Freedom; Women of Color Reproductive Health Poll (From FN. 9).

to any meaningful degree, and his claims that he has never thought seriously about these issues provides us with scant comfort. A decision to overturn Roe will have drastic implications for our lives and our health. Women who are captives of poverty or geography, including many women of color, would be robbed of their choices and again forced to risk their lives in back alleys.

In conclusion, I want to repeat that this has been a most difficult decision for me to make. Our role models are all too few, and Judge Thomas' personal achievements are indeed impressive. However, we cannot afford to let those achievements blind us to the reality of his record on issues of critical importance to black women -- including, but not limited to, his apparent lack of compassion and understanding of the struggle of the black women in his life. Our role models -- and our Supreme Court justices -- should include not only those men and women who have demonstrated personal achievements, but also those men and women who have demonstrated an understanding of what it takes to rise up and out of oppressive circumstances. All of us who have "made it" have an obligation to help others, and to recognize that others need our help. Judge Thomas has been able to dream and to reach for his dreams; yet he has ignored the need for or worked to deny that choice to others. He should not be confirmed.