

**Remarks by United States District Court Senior Judge Jack E. Tanner Before the United States Senate Judiciary Committee Upon the Nomination of Judge Clarence Thomas To Be An Associate Justice of the Supreme Court of the United States.**

I was born in Tacoma, Washington, and I have lived there all of my life. I came from a family where my father was involved with the immigration of longshoremen and seamen on the Pacific Coast of this country. My father was a personal friend of Harry Bridges, the longtime leader of the Waterfront workers. I was a baseball player, and I thought good enough to play professional baseball except for the color line.

I became a member of the longshoremen union in Tacoma just before I went into the Army in World War II. I, of course, was a member of an all Black unit with white officers. We were known as one of those "Jim Crow" units in the armed forces of the United States. But, it was because of my experience in the army that caused me to go to law school. I went to law school under the GI Bill.

After law school I went into private practice. I represented anyone and everyone, including Blacks, Mexicans, Indians, and Orientals. I became a branch president of the NAACP, then an area President, then I served for seven years on the Board of Directors of the NAACP. I marched in the South, North, East and West in the civil rights demonstrations. I knew personally at the time all of the giants of the civil rights movement. I was a personal friend

of Medgar Evers before he was slain in Mississippi. I represented Indians in the State of Washington before the Supreme Court of the United States as to their treaty fishing rights.

I am a life member of the NAACP. I am a life member of the National Bar Association, and I am a member of the Judicial Council of the NBA as well as a Past Chairman of the council. I was one of the founders of the National Conference of Black Lawyers. I have received awards and recognition from all of these groups for outstanding contributions to the struggle for civil and human rights as well as for scholarship and justice in the federal courts. I have received recognition and awards from the National Association of Women Judges, and from the National Association of Blacks in the criminal justice system. I was honored by the members of the Federal Bar Association of the Western District of Washington for my contribution to fair play and justice in the Federal court.

I defer to no one as to the understanding and contribution to the ongoing struggle of men and women of all colors for civil rights and human dignity.

I think that I should say here that recently I have been appearing as a speaker at several grade schools in the State of Washington. The schools where I attended contained students of all

colors and backgrounds. I was amazed at the reactions to me when I appeared in my black robe. Their reactions and the responses of their parents was the most satisfying experience that I have had while on the Federal bench, and I am now in my fourteenth year of service.

My father was and I was, before I became a judge, active in Democratic politics.

I am here because of the most intense, unprecedented and harsh opposition, in the history of this country, to a nominee to the Supreme Court of the United States. The attacks have now also shifted to members of the Senate. There is no logic or reason for the attacks, whether from the right or the left. They are emotional attacks, based solely upon passion and prejudice, neither of which has any relevance to the qualifications or fitness of the nominee. I am most concerned with the concept of fairness and justice, which are the very foundation of our system of jurisprudence. These remarks that I am making are my own and do not purport to represent the view of any other person or organization.

I am also concerned because, I, too, appeared before this Committee under somewhat similar circumstances. I was the first Black person West of Chicago and North of San Francisco ever nominated as an Article III Judge. I was nominated by Senator

Warren G. Magnuson, the Chairman of the Senate Appropriations Committee. He formerly was, as several of you will recall, Chairman of the Commerce Committee, the committee where Civil Rights Legislation in the 1960's originated.

My nomination was immediately opposed by certain factions in the State of Washington. The opposition was led by a local newspaper. Senator Henry M. Jackson, concerned about the nature of the attack against my nomination, appeared at a news conference in Seattle and denounced the attack. Senator Jackson said that the attack against me was "only because he is Black" . . . "that, if Tanner was white, there would be no opposition to his nomination. . ." I think that I should say here that not one member of the Senate voted against my nomination.

As you know, Senators Jackson and Magnuson were both lifelong Democrats and ardent supporters of Civil Rights and human dignity for all. Both of them would know and understand why the President appointed Judge Thomas, and they would also understand that the President would not have nominated him if he was not qualified and fit to be an Associate Justice of the Supreme Court of the United States. There never has been a President of the United States who ever appointed a Black person to high judicial office or any other high office, when the person appointed was not qualified to do the job. That doesn't happen in America.

Several organizations have announced opposition to the Thomas nomination for a variety of specious reasons. He doesn't understand and appreciate the Black Experience, or his views on Civil Rights are inconsistent to Hispanics; he holds views dangerous to the rights important to Hispanics; he would undermine equal opportunity; he would oppose abortions for women. They say that he is opposed to quotas and affirmative action although he owes his own status to that policy; and, he is bent on, and espouses, a radical philosophy; that he doesn't like Jews, or labor organizations; that he is indifferent to the concerns of the elderly people; that he favors Catholicism over other religious faiths; that he does not fully understand the legal merits of issues; that he would sabotage the very laws he is supposed to enforce; and, that constitutional and statutory rights that Americans have enjoyed for years would be obliterated by a single stroke of his pen. It is also feared that he will apply "natural law" to deprive untold numbers of Americans of their life, liberty and property. The great debate among legal and political philosophers goes on and on. It means different things to different people. If you believe in either judicial activism or judicial restraint, right or left, then take your choice. One's viewpoint probably depends upon whose ox is getting gored.

The race to denounce the nominee has reached also a "lynch mob" atmosphere. The objective and goal of the opponents of the nominee is obvious, and that is to convince the Senate of the

United States that the nominee is not fit politically and ideologically to be an Associate Supreme Court Justice. There are, perhaps, some who are acting in good faith in opposing Thomas' nomination, but, at least, they are confused. They seem to believe that America is now at long last color blind, but the facts and reality are to the contrary.

The opponents of Judge Thomas' nomination are concerned that he might do this, or he might do that, or his confirmation will lead to some ideological shift in the Supreme Court, or that he is somehow outside the mainstream of legal thinking in this country, just because they do not agree with his sense of values or judicial philosophy, whatever it is that might be. Judge Thomas has sat, as a member of the United States Court of Appeals for the District of Columbia, for 19 months now, and his judicial philosophy is still uncertain and unknown. Yet, about 96% of the cases decided by that court are final decisions. What is certain and known about Judge Thomas is that he is independent and can't be put into a category. He is just where he should be. Speculation and hysteria, as to what the nominee might do, should not disqualify him from the Supreme Court. After all, no other nominee has ever been disqualified for such reasons. Judge Thomas understands, very well, the rule of law.

Let me take just a moment to explain to the members of the committee why I maintain that the opposition to the nominee is ill-

conceived and ill-advised. Most, if not all, of the opponents to Clarence Thomas' nomination appear to base their opposition upon what he might do to destroy or blunt a particular cause or program that they are interested in at the moment. They have been referred to at times as "special interests."

Where were those opposition leaders when former President Reagan nominated Chief Justice William Rehnquist? Where was the opposition when President Reagan nominated Justice Sandra Day O'Connor, or when Reagan nominated Justice Antonin Scalia? Where were they when President Bush nominated Justice Tony Kennedy and Justice David Souter? For the most part, they were silent, or at best offered only token opposition. But, the National Association for the Advancement of Colored People (NAACP), one of those groups opposing the current nominee, vigorously endorsed Justice Tony Kennedy and accepted him with open arms. Surely these organizations do not believe that their cause will fare any better under Justices Rehnquist, O'Connor, Scalia, Kennedy and Souter. Most were Appellate Court Judges, and all were nominated by a Republican President.

I realize, of course, that there is one obvious difference between Thomas and the previous nominees to the United States Supreme Court.

In my opinion, these groups are saying, and I include all those groups opposing Thomas' nomination, that we just do not trust Judge Thomas because he is a Black man. Support for this position comes from the prevalent view in America, and it is caused by the ravages and comes from the vestiges of slavery and the infamous Black codes which followed. The coloreds, (or Negroes, Blacks or African - Americans if you will ) could not be trusted with responsibilities and obligations that affected the armed forces, judicial, political, social and educational institutions of America. They could not be trusted to fight in the many wars of this country, although they did, and with courage and valor, and so it stood to reason that they could not be trusted with the life, liberty and property of white Americans.

In 1948 President Truman issued an executive order eliminating segregation in the armed forces of the United States. That order was the best thing that happened to the descendants of slaves since the Emancipation Proclamation. By that order Truman, in effect, acknowledged that Black members of the armed services could be entrusted with the security of America against all foreign powers. In 1949 President Truman appointed, for the first time in the history of the United States, the first Article III Black judge. He appointed William Hastie to the Third Circuit Court of Appeals. In 1955 the Supreme Court of the United States handed down the opinion of Brown v. Board of Education, the greatest decision ever handed down by the Supreme Court at any time in our history.



Thurgood Marshall was rewarded for his great victory in that case when President Lyndon Johnson nominated him to the Supreme Court of the United States. Once again, it had been recognized by the country that the Black man could be trusted.

Despite these significant strides toward equality, it was not until 1969 that a Republican President ever appointed an Article III Black judge. But, Richard Nixon did not make appointments of any Black to the Supreme Court, or to any of the United States Courts of Appeal.

In 1991, the United States went to war in the Middle East. The chairman of the Joint Chiefs of Staff of the Armed Forces of the United States was one Colin Powell, then a four-star general and a Black man as well. President Bush, as Commander - In - Chief of the Armed Forces, trusted the integrity, loyalty, training and experience of General Powell. He was, in fact, entrusting the security of the United States to a Black man. History will show that trust was well placed. It is my judgement that history will repeat itself, and one day show that President Bush, the first Republican President to ever do so, was right in entrusting to a Black man, the job of safeguarding the life, liberty and property of all Americans, by nominating Judge Clarence Thomas to the Supreme Court of the United States.

It defies logic and reason to say that since a Republican President has discovered, in 1991, another qualified Black man, that he should be rejected because he is Black. I would challenge and reject the suggestion by anyone, that America and the Supreme Court of the United States should be denied, for any reason, the Black Experience in America in 1991, or in any other time as long as America exists as a free nation. Just because a President appoints a person who has the same political philosophy that he has, it does not follow that the person nominated is not qualified or fit to sit on the Supreme Court.

Judge Thomas is just as well qualified to become an associate justice of the Supreme Court as were the 102 white males, 1 Black male and 1 white woman who have heretofore come before this body for advice and consent. In fact, because he has had the Black experience, he is better qualified than all but 2 members of the Supreme Court.

Neither the proponents nor the opponents of Judge Thomas' nomination seem to acknowledge, perhaps, the most important consideration, at this time in our history, that qualifies a person to sit on the Supreme Court. That most important qualification seems to be the nominee's ethnic and religious background. It just didn't happen that Antonin Scalia was the most qualified person when he was selected for the Supreme Court. He just happened to be

the most qualified person of Italian descent. It just didn't happen that Sandra Day O'Connor was the most qualified person when she was selected. She was, however, the most qualified female at the time. Tony Kennedy just happened to be of the Roman Catholic faith, and presumptively opposed to abortions. David Souter is somewhat of a mystery, but an educated guess would place him squarely in support of the President's political agenda.

This Committee can believe the President of the United States when he says that, "Judge Thomas is the best man for the job." Just because he happens to be a Black man does not disqualify him nor should it by any test or criteria. It has only happened twice, in our history, that a Black man has been nominated. It is highly doubtful that any of us in this room will see it happen again.

It is my judgement that there are a great number of Americans out there, and, yes, there are people throughout the world, who are watching this great drama unfold. It is also my judgement that the great majority of those Americans, white, black, brown, yellow and red, and of all religions and faiths, want to see Judge Clarence Thomas sitting as an Associate Justice on the Supreme Court of the United States. They want to see fair play and justice done to this man. They want to be able to point to this man and say to their children that they too can aspire to the highest court in the land; that they too can expect fairness and justice; and that they too can put their hopes and dreams in America where the rule of the

law, and not of man, reigns supreme.

In conclusion, let me just say, that despite the vicious, unwarranted and unprecedented attacks upon the nominee, he still stands tall. He has exhibited more than just plain character while under fire. This Black man has exhibited sheer guts and willpower, above and beyond the call of duty to his country. He has displayed courage and valor, in the face of the bitter criticism and abuse heaped upon him. Such valor and courage, in the time of war, is rewarded in the Armed Services of the United States, by an award of the Congressional Medal of Honor. What could be a greater test of character than that displayed by the nominee.