

5-28-2003

# Embarrassing Justice

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## Repository Citation

Wilkes, Donald E. Jr., "Embarrassing Justice" (2003). *Popular Media*. Paper 52.  
[http://digitalcommons.law.uga.edu/fac\\_pm/52](http://digitalcommons.law.uga.edu/fac_pm/52)

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# GUEST ED

## EMBARRASSING JUSTICE

Here is the text of the speech given by UGA Professor of Law Donald E. Wilkes, Jr. in the Tate Student Center Plaza at the University of Georgia, May 17, 2003 to protest U.S. Supreme Court Justice Clarence Thomas' speech at the law school graduation.

I thank you for attending this Justice Thomas Protest Demonstration. Our purpose is to publicly and peaceably protest U.S. Supreme Court Justice Clarence Thomas, who is speaking at the UGA law school graduation ceremony today.

You know, one of the strangest things I have learned recently is that Clarence Thomas' followers and admirers, who, like Thomas himself, are of the far right-wing persuasion, think that we have no right to have this demonstration. They also think that I have no right to give this speech, no right to participate in this demonstration, no right to criticize Thomas, no right to refuse to attend the law school graduation ceremony, and no right to

speak at the time he speaks. Others of Thomas' right-wing claque seem to think that while I may arguably possess these rights it is odious for me to exercise them.

Well, let me say this: This is America! And may the day never come when in America a law professor at a university is prohibited from delivering a public speech, and participating in a peaceable demonstration, criticizing any government official having power over our lives and liberties, including judges on the Supreme Court!

Today's protest demonstration is fitting because Justice Thomas is—quite justly—the most detested judge in America. Do you know of any other judge on our highest court ever being dubbed "The Cruellest Justice" in a *New York Times* editorial?

### RIGHT WING DARLING

Today's protest is hardly surprising. Just about every time he visits a law school, Justice Thomas is greeted with protests and demonstrations by faculty and students. Justice Thomas' defenders mistakenly interpret this telling phenomenon by claiming that the Justice is the innocent victim of racism, of ignorance, of intolerance, of mean-spiritedness—all perpetrated by a left-wing conspiracy of depraved scoundrels. Indeed, nothing is more evident than that the members of Thomas' claque can see absolutely no basis whatever for anyone ever criticizing Thomas in even the slightest degree; and therefore they disdainfully reject as illegitimate and fraudulent commentators or commentaries that point out defects in Thomas' judicial philosophy or record. In lashing out at Thomas' critics they play the race card with shocking cynicism. The truth is, the Thomas claque talks about his judicial opinions the way Christian fundamentalists speak of the inerrancy of the Bible. Thomas, they seem to think, is infallible.

Tragically, Justice Thomas himself shares this bunker mentality. He thinks all criticisms of him are either spurious or personal. He labels all protests as "biliois and venomous assaults." He thinks that demonstrators want to deny him the right to think the way he does. Like his band of supporters, he manifests an unhealthy proclivity for branding his critics as racists. These are disturbing indications of his unfitness to be a judge.

Since my Open Letter of Feb. 18 [*Flagpole*, April 30], I have been showered with insulting letters and emails from Justice Thomas' claque. Omitting the worst of the profane maledictions and vituperative epithets directed at me by these admirers of Justice Thomas for daring to criticize Justice Thomas, the claque has called me a "racist" and a "bigot." I have been told, "You do not deserve to live in this state or even the country." I am said to be "extremely petty and immature" and an "ardent socialist." I have been called "left-wing pro-criminal." I have been accused of engaging in "theatrics" and a "publicity stunt." I am charged with "display[ing] a venomous hatred." I am accused of being a "hater" who "hate[s] traditional values, the foundations of American justice, and anyone who loves those things." My views have been called "disgusting," "mean-spirited and full of hate," as well as "misguided, unfounded, and even laughable." I have been said to be "immature," "childish," to "whine," to be a "whiny baby" and "another whiny liberal," to "display an appalling lack of professionalism," and to have made a "vitriolic call for censorship." I have been accused of being "pitiful and repugnant," and of having ascended to "the height of arrogance." Another message I received tells me, "[O]nce it becomes clear that your feelings are not shared by a 'majority' of students, it is in the best traditions of our country and our moral compass to sit down and shut up." I am said to be a "jackass." One gentleman kindly sent me an email informing me that where he comes from they spit on people like

## We Warned You



Those painted bulldogs are beginning to crop up around down, and don't say we didn't warn you [*Flagpole*, April 30]. Soon there will be 37 giant ceramic dogs hulking here. Some, stall we say, look better than others, depending on the artist. The point is to raise money for charity and showcase local artists. Like Athens didn't already have enough bulldogs.

## JIM HIGHTOWER

### Grabbing Our Airwaves

You've got to love the Bushite's orchestration of Orwellian wordplay when they issue new edicts to get the public interest.

Instead of simply admitting that they're rigging the rules to further enrich their corporate campaign contributors, they use poll-tested phrases to make a negative sound positive, such as "balancing environmental excesses" or "modernizing outdated labor laws." These Orwellian phrases always cover up a gotcha.

The latest example comes from the FCC, which is supposed to be our watchdog over the public airwaves. But Chairman Michael Powell is the lapdog of the big conglomerates that want to turn our airwaves into their private, for-profit plaything. He's now trying to ram through a rigging of FCC ownership rules that would let this handful of global media giants gain almost total control over mass-market news in your city... and throughout the country.

But rather than admit that this is a giveaway of an essential public asset—our airwaves—Powell plays wordgames, claiming that he's simply revising the rules of a bygone era.

Well, if he means an era in which a diversity of opinions, local news, free-flowing information and real competition exist on our airwaves—that certainly will be long gone under Powell's "revision." For example, he wants to allow a single conglomerate to control the TV programming for 90 percent of the American people. He also wants to let a single corporation own the newspapers and practically all of the radio and TV stations in any city—or in any number of cities.

This isn't the marketplace at work, as the Bushites claim—it's forced monopolization, and it will destroy any democracy on our airwaves and in our news sources. This power grab is so outrageous that Powell allowed only one perfunctory public hearing on it and plans to ram it through in a rushed up vote.

To fight for a democratic media, call the Free Press Media Reform Network at (413) 585-1533. Call now!

Jim Hightower is a political columnist, radio commentator and former Texas agriculture commissioner.

me. I am accused of "belong[ing] to the far left 'in-crowd' that has been mixing Metamucil with Viagra." I have even been charged with being "a walking, talking spincter."

Speaking from my own experience, therefore, I can assure you that anyone with the temerity to speak out against Thomas' astoundingly terrible judicial voting record on human rights issues will be subjected to torrents of personal abuse from right-wing extremists—name-calling, foul language, gutter talk, and ceaseless invective, epithets and expletives. Personally, I believe there is great significance in the fact that the lunatic fringe of the right-wing is so slavishly devoted to Thomas. It tells us a lot about what sort of judge Thomas is.

Contrary to what his supporters claim, however, there are good reasons indeed for the detestation of Justice Thomas, and I want to now speak about some of them.

### EVASIVE TESTIMONY

Let me begin with the circumstances under which Thomas was confirmed by the Senate by a 52-48 vote in 1991. There can't be much doubt that Thomas was deceptive or evasive in his con-

firmation hearing testimony. He concealed his right-wing extremist views and pretended to be a moderate middle-of-the-roader, dismissing as irrelevant or inconsequential numerous far right-wing positions he was on record as having taken; he professed to be free of preconceived ideologies or agendas when in fact he was a rigid ideologue with an activist right-wing agenda; he spoke as though he empathized with prisoners and criminal defendants when in fact he despises them; he claimed to be committed to "the little guy, the average person" when in fact his heart and mind belong to big government and the establishment; he claimed to broadly support the Voting Rights Act when he does not; he claimed to support affirmative action when he does not; and he claimed his mind was not made up on issues such as abortion when it fact it was. He even claimed that he had never in his life discussed the *Roe v. Wade* decision with anyone.

In light of his previously stated positions being the line on the right-wing agenda, Justice Thomas' confirmation statements smacked of mendacity at the time they were made. Subsequent events have confirmed suspicions that those

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## THIS MODERN WORLD

by TOM TOMORROW



statements were deceptive or evasive. Simply stated, Thomas' voting record on the Supreme Court belies his confirmation testimony. As noted in a thoughtful *Seattle University Law Review* article in 1996, "Doubting Thomas: Confirmation Veracity Meets Performance Reality (Joyce A. Baugh and Christopher E. Smith):

"Whether or not Thomas' confirmation testimony was purposefully evasive, the evidence clearly shows that significant aspects of his testimony are at odds with his record on the Court. He has not proven to be an open-minded, independent thinker and, on such controversial issues as abortion, voting rights, and affirmative action, Thomas' views in Supreme Court cases have been consistent with his controversial pre-Court speeches and writings rather than with the disclaimers and explanations he presented during his confirmation hearings. ... [Thomas'] judicial performance [was] quickly and obviously out of step with his confirmation testimony. [There] was no evolutionary process by which a judge developed new perspectives after spending time on the bench. Thomas did not move to a new position from his original point. Instead, he moved back to his original position after telling the nation that he really stood on some other ground as a judge."

Let me turn, as a specific example of this, to a woman's right to an abortion. When questioned on this matter, Thomas told the Senators that he did not have an opinion or position on the issue and that he was open-minded on abortion rights. Yet since joining the Supreme Court Thomas has remorselessly opposed the right to an abortion, always voting against any woman claiming a violation of this right. Indeed, within one year of taking office, in the case of *Planned Parenthood v. Casey*, he joined in two strident antichoice dissenting opinions, one filed by Chief Justice Rehnquist and the other by Justice Scalia, both of which explicitly advocated the outright overturning of *Roe v. Wade*. If Thomas had not been deceptive or evasive at his confirmation hearing, then, as the *New York Times* observed, "It's hard to grasp how anyone could go so quickly from such agnosticism to joining a dissent that bitterly condemns [*Roe v. Wade*] and demands that it be overruled."

Or, stating it somewhat differently, as Baugh and Smith note: "Despite his claim to have never examined the issue of abortion, Thomas evinced no reluctance to quickly and wholeheartedly endorse [Justice Scalia's] characteristically strong and sarcastic attacks on [*Roe v. Wade*]. ... Thomas' quick endorsement of a strong conservative position on abortion did little to quell suspicions that he had already adopted such a position but had intentionally hidden his view from the Senate and the public."

**GRAVE DOUBT**

There is also the Anita Hill matter. Law professor Anita Hill, it will be recalled, testified at the confirmation hearing that previously, at their

workplace, Clarence Thomas had sexually harassed her, and he responded by denying it in his testimony. The right wing elements who adore Thomas immediately began assassinating the character of Ms. Hill with their usual slanderous ferocity. Their line of attack was that Hill was "a little bit nutty, and a little bit slutty," to quote one authority. I must confess I believe Hill, although I can't prove she was telling the truth. But the basic point is this. After Hill's testimony the Senate had before it a nominee who had been credibly accused of serious misconduct in a case where the truth of the allegations had been neither proved nor disproved. Despite this, it proceeded to confirm Thomas. Thus, it put on the Supreme Court a man under a dark cloud of suspicion, a cloud which remains undispeled. This was a ghastly mistake because a Supreme Court Justice, like Caesar's wife, must be above suspicion. It was a mistake sparked by right-wing partisanship. If the nominee had been a liberal named by a liberal president, the Senate conservatives would have voted the nominee down on the grounds no one should serve on the highest court in the land if there are serious unresolved claims of misconduct pending against him. A Supreme Court Justice, they would have maintained piously, cannot be confirmed while under suspicion of misconduct. But because they agreed with Thomas' politics, they hypocritically voted for him.

One reason Justice Thomas is the object of pickets and protests at law schools, therefore, lies in the circumstances of his appointment. At his confirmation hearing he appeared to prevaricate about his views; doubts about his veracity were compounded by the votes he began casting as soon as he was on the Supreme Court; and he was confirmed despite grave allegations of personal misconduct which were never disproved. The circumstances of Thomas' confirmation indelibly tainted his judicial appointment and remain a blot on his judgeship.

**ANTI-RIGHTS**

But the principal reason why Justice Thomas is detested and protested is his incredibly poor record in voting on human rights issues in the Supreme Court. In my Open Letter, I summarized numerous Supreme Court decisions involving criminal procedure, habeas corpus, prisoners' rights and civil rights and liberties in which Thomas relentlessly voted against the individuals who claimed their rights had been violated. There were many other such dreary cases which I had neither the time nor the energy to mention.

Since I prepared that Open Letter, the Supreme Court has handed down a number of new decisions further manifesting Justice Thomas' pattern of resolving disputes between the individual and the government in favor of government. Let me mention two, in which we see the vintage Thomas.

First, in *Miller-El v. Cockrell*, decided Feb. 25, the Court held, 8-1, that a black Texas death row inmate who alleged that prosecutors engaged in racial discrimination in the jury selection process at his trial was entitled to appeal the denial of his federal habeas corpus petition. Only Justice

Thomas dissented, voting to deny the inmate even an appeal.

In *Lockyer v. Andrade*, decided Mar. 5, Justice Thomas was part of the five-justice majority (Rehnquist, O'Connor, Scalia, Kennedy, and Thomas) which denied federal habeas corpus relief to a California inmate sentenced under that state's draconian "three strikes" law. Although the five-justice majority did acknowledge that a prison sentence grossly disproportionate to the crime would violate the Eighth Amendment bar on cruel and unusual punishments, it nonetheless held that the inmate's sentence was constitutional. Justice Thomas and Justice Scalia also filed separate concurring opinions in a companion case decided the same day, *Ewing v. California*, which also involved an inmate sentenced under the "three strikes" law. In their concurring opinions in *Ewing* both Scalia and Thomas took the position that the Eighth Amendment contains no proportionality principle whatever and that a prison sentence never violates the Amendment merely because it is harshly disproportionate to the offense.

In order to put all this into perspective, let me add this. The California "three strikes" law mandates a life sentence, with no parole for 25 years, for a felony conviction, even a minor one, that follows two prior convictions for serious or violent crimes. One of the defendants was serving 25 years to life for stealing golf clubs; the other defendant was serving a life sentence with no parole for 50 years for shoplifting some videos. As the *Washington Post* observed, "such sentences have no place in our society." They certainly do, however, in the world of Clarence Thomas.

Let me also mention one other recent Supreme Court decision typifying Justice Thomas' insensitivity to the plight of the weak and the helpless. In *Brown v. Legal Foundation*, decided Mar. 26, the Court by a 5-4 vote upheld the legality of a practice involving interest on lawyers' escrow accounts which is used in every state to raise money for legal services for the poor. Justice Scalia filed a dissenting opinion, in which Chief Justice Rehnquist, Justice Kennedy and Justice Thomas joined. If the decision had gone the way Justice Thomas voted, about \$160 million used to pay lawyers for the indigent would have been wiped out. The lawsuit challenging the practice had been brought by a right-wing legal foundation which openly boasted that its purpose was to decapitate funding for legal services for the poor. If it had been up to Clarence Thomas, that foundation's evil effort would have succeeded.

**ODIOUS PERFORMANCE**

To understand why Thomas is so regularly protested, there are three other factors to be considered.

First, Justice Thomas took the Supreme Court seat previously occupied by the immortal Justice Thurgood Marshall, the great defender of freedom; and the gigantic differences between Thurgood Marshall's Court record and Clarence Thomas' have palpably (and justifiably) worked to Thomas' detriment. No one should ever underestimate the con-

sequences on public opinion of what Michigan federal judge Julian Cook calls "the sharp philosophical differences that exist between Thurgood Marshall and Clarence Thomas, the only two African-Americans to ever sit on the high court."

Thurgood Marshall advanced and glorified individual rights; Clarence Thomas retards and debases them. Justice Marshall, one scholar tells us, was known "for a steadfast belief in the Constitution as the pillar of democratic and egalitarian principles and in law generally as the protector of the poor and powerless." Justice Thomas, on the other hand, rejects that belief as sentimental claptrap. Imagine everything Justice Marshall was, and you have imagined what Justice Thomas is not. You know, one of the biggest misrepresentations I ever heard was when one of Justice Thomas' law clerks—and they, I should add, are major components of his clique—told a reporter that Thomas' decisions "are absolutely consistent with Justice Marshall." No wonder Thomas' clique regards all criticism of Thomas as incomprehensibly base.

Second, it must never be forgotten that not only does Justice Thomas systematically turn his back on individuals (and especially minorities, the poor, the powerless, the weak, the oppressed and prisoners, including death row inmates) who seek redress in the courts for violations of their rights, but he sometimes rejects their claims scornfully and mockingly. In certain of his anti-human rights judicial opinions there is a harshness of tone, a sarcastic meanness, an aggressive coldness that is alarming to non-Social Darwinists. Quite apart from his ideological defects, Justice Thomas lacks the temperament to be a judge. And this is part of the reason the *New York Times* labeled him "cruel."

Third, despite becoming a Justice, Clarence Thomas has continued to act like a partisan Republican. His scandalous participation in *Bush v. Gore*, in which he and four other Republican justices first stopped an ongoing vote recount and then barred any further recounts, thereby handing the presidency to the Republican candidate, is fully discussed in my Open Letter. Thomas' unparalleled conduct shortly after his Senate confirmation provides another example of his political partisanship. To quote one law review article discussing the matter, "After he was confirmed, Thomas reportedly acted like a politician in showing his appreciation to conservative groups, including anti-abortion groups, for supporting him... Like a victorious candidate, Thomas paid a round of thank-you calls to the conservative groups that helped him win confirmation."

Justice Thomas' rigid adherence to right-wing extremist views makes him perhaps the most predictable Justice on the Supreme Court. When in a criminal case before the Supreme Court the issue involves the admissibility of a confession you can be sure Thomas will vote that police extracted it lawfully; if a search and seizure is at issue, you can bet safely that he will vote that the police did not violate the Fourth Amendment; if the defendant claims that he was denied counsel or received ineffective assistance of counsel, Thomas will reject the claim; if the issue is whether a prosecutor committed misconduct that violated the due process rights of the

accused, Thomas will decide that there was no constitutional violation; and if the issue is whether a sentence or punishment violates the Eighth Amendment ban on cruel and unusual punishments, you can count on his voting that the sentence and punishment were lawful. If a prisoner seeks a federal writ of habeas corpus, Thomas will vote to deny it. If a prisoner files a civil rights action, Thomas will vote to dismiss it. In civil rights cases against police you can be confident that Thomas will vote against the plaintiff. In Voting Rights Act cases you can be sure that Thomas will find no violation of the Act. If the case involves affirmative action, you can bet Thomas will vote against affirmative action. If a case raises a claim of racial discrimination, Thomas will vote against the claim—except possibly where the plaintiff is white. If the case involves a claimed violation of the equal protection clause of the Fourteenth Amendment, Thomas will vote against the plaintiff's claim—unless, of course, the plaintiff is Republican George W. Bush and the defendant is Democrat Al Gore.

There are, of course, exceptional cases where Thomas upholds a rights claim, but the fact remains that no one ever lost money in the long run betting that Clarence Thomas will cast his judicial vote against a person who claims he has been wronged by government.

## A SURE BET

I am a law professor, not a clairvoyant, but I know enough about Clarence Thomas' judicial philosophy and his Supreme Court record that I can, with some confidence, predict how he will vote in at least three of the cases orally argued and now awaiting decision in the Supreme Court. These cases will be decided by the end of June, and when that happens and you watch, read, or hear the news about them, please remember what I foretold today. If I turn out to be wrong, I must say I personally will be overjoyed, because it will mean that there are signs of improvement in Clarence Thomas.

First, in the Michigan affirmative action case he will vote against affirmative action.

Second, in the Texas case involving the validity of a law criminalizing private consensual sodomy among adult homosexuals, he will vote to uphold the validity of the law.

Third, a relatively obscure case, *Chavez v. Martinez*, involves the question whether a citizen may bring a civil rights action for damages when a police officer coerces statements from the citizen even though the statements are not later used in court against the citizen. The facts of the case are shocking. After being shot five times by a police officer, the civil rights plaintiff was taken to a hospital emergency room where another policeman persistently questioned him despite his painful, life-threatening injuries, despite his repeated pleas that he did not want to answer, and despite repeated requests by medical personnel that the officer leave the emergency room. I predict that Justice Thomas will vote to deny damages and to dismiss this civil rights action.

## RIGHT WING JUDGES

How, then, did a strange character such as Clarence Thomas ever get nominated for the Supreme Court in the first place? When he was nominated in 1991, he was an undistinguished 43-year-old right-wing Republican lawyer who had been the controversial head of the EEOC for eight years and then an intermediate federal appellate judge for one year. In terms of merit, ability or achievements, he hardly seemed Supreme Court fodder. He was not a distinguished lawyer or judge; he had no scholarly achievements; he had made no significant contribution to the public good. When the first President Bush nominated Thomas, it was, he said, because of all lawyers in the country, Thomas was the most qualified—a bombastic absurdity of Goebbels proportions, and an insult to the hundreds, perhaps even thousands, of lawyers and judges far more deserving of the nomination than Thomas.

The real reason why Thomas was picked? For more than a third of a century, ever since Richard Nixon ran for president in 1968, one of America's two major political parties has pledged to stack the federal judiciary with right-wing judges, judges who will roll back previous judicial expansions and protections of human rights. This political party, under the ever-tightening grip of right-wing extremist elements, has controlled the presidency since 1969 except for 12 years, and during that period it has succeeded more than most people realize in its goal of filling the federal courts with right-wingers. Seven of the current Supreme Court justices were appointed by presidents of that party, and a substantial percentage of lower federal court judges were appointed by those same presidents, including over half of the current judges of the federal courts of appeals. Clarence Thomas was chosen as part of this continuing strategy of packing the federal courts. Like many other judges chosen pursuant to this scheme, he was young, male, Republican, right-wing and an ideologue, a statist and a majoritarian.

This court-packing scheme continues today, still cleverly smoke-screened by the use of Orwellian euphemisms which justify appointments of judges like Thomas by the use of phrases such as "judicial restraint," or "judges who will interpret the law not make it," or "judges who will strictly construe the rights of criminals," or "judges more concerned with the rights of victims than the rights of criminals." The appointment of judges who are not right-wingers is demonized by branding such judges as "judicial activists," or "liberal activists," or "judges who make the law rather than interpret it."

The results of this deliberate policy of tilting the federal judiciary to the right are before us. We are in the midst of an individual rights counter-revolution (also known as the Rehnquistion) in which, with the Supreme Court leading the charge and the lower federal courts only slightly behind, judicial protection of human rights has been eviscerated by federal court decisions attenuating our rights and the remedies for enforcing them. Every respectable book or scholarly article on the topic

acknowledges this shocking fact.

There have, of course, been other times in our history when presidents have stacked the courts, especially the Supreme Court. Washington stacked the Supreme Court with dedicated Federalists; Lincoln stacked the Court with anti-slavery pro-Unionists; and Franklin D. Roosevelt stacked the Court with pro-New Dealers. But never in our history has a court-packing scheme been carried on for over three decades, and never before was the purpose of the scheme filling the courts with men and women committed to curtailing the protections contained in the Bill of Rights.

Clarence Thomas' judicial career can be fully understood only by realizing that his appointment was part of this scheme and by recognizing that he has played and continues to play a key role in effecting this counterrevolution. Clarence Thomas and judges like him are subjecting our rights to a process of slow suffocation.

## RESPECT FOR RIGHTS

One of the fundamental principles of our system of justice, based on respect for individual rights, is that the judges are the ultimate guardians of our rights, that they are to be the watchmen who vigilantly protect our freedoms. In the words of a Nineteenth Century U.S. Supreme Court decision, "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Or, as the Georgia Court of Appeals said in 1913: "[Constitutional rights] are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government."

Justice Clarence Thomas does not understand this, and therefore instead of being a vigilant watchman he is a sleeping one. In fact, he is snoring. He specializes in dreaming up reasons why courts should deny or refuse to decide human rights claims. He thinks the job of courts is to refer individuals to other branches of government for the vindication of their rights. He does not view himself as a guardian of rights. A 1995 dissenting opinion of his in a case involving the writ of habeas corpus, the great legal remedy for redressing unlawful imprisonment, is classic. In voting (as usual) to deny habeas relief, Thomas asserted: "We have ample cause to be wary of the writ [of habeas corpus]." Instead of being vigilant to make sure our rights are protected, Thomas' watchfulness consists of keeping the Great Writ of Habeas Corpus under surveillance to make sure it does not get out of hand!

This is why making individuals such as Clarence Thomas federal judges is, as Martin Garbus wryly puts it, "courting disaster." This is why, as Patricia Ireland says, "Clarence Thomas is a threat to American Democracy and the Bill of Rights."

A Maine state judge once wrote: "The constitutional rights of the individual are our most cherished and important possessions." When we speak of liberty, rights and justice, or of a judge who lacks proper respect for them, we are talking of issues of paramount concern. "When justice disap-

pears," Kant wrote, "it is no longer worth while for men to live on earth."

In the words of a Georgia state judge: "[Constitutional rights] are the sacred civil jewels which have come down to us from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are halloved by the blood of a thousand struggles, and were stored away for safe-keeping in the casket of the Constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them."

Every time Clarence Thomas, utilizing his anti-human rights philosophy, votes against human rights claims, the rights of all of us are endangered. As a New York state judge far wiser than Thomas once wrote: "Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of essential values of civilized life."

There are those who believe that judges like Clarence Thomas are the wave of the future, but I don't agree. This is America! This country will wake up! But if, God forbid, I am wrong, and we move into a regime where Clarence Thomas-type judges are common, I would never abandon the case for liberty but would defiantly say to these judges, in the words of Swinburne:

"Though all men abuse them before you, and all knees bend, / I kneel not, neither adore you, but standing look to the end."

I conclude my speech today with this words:

Supreme Court Justice Clarence Thomas is an embarrassment to Georgia, to America, to the legal profession and to the judiciary. He is the type of individual who would give dissembling testimony in order to obtain his seat. He was confirmed under an ominous cloud of suspicion that lingers. He is a cheerleader for police, prosecutors, wardens and other government officials. The milestones of his judicial career are numerous votes which individually and in their cumulative effect undermine human rights and enhance the power and intrusiveness of government. He is part of, even the embodiment of, a scheme to pack the courts with enemies of freedom. He fails to comprehend that in the last analysis our basic rights must be preserved by the courts. He lacks the impartiality, the temperament and the open-mindedness required in a judge. Perhaps most unforgivably, Clarence Thomas is a politically partisan judge who, as his vote in *Bush v. Gore* shows, is willing to twist the law in order to elect a fellow Republican as president.

Future Americans will puzzle how this country could have sunk so low as to permit such an unpleasant oddity as Clarence Thomas to serve on the Supreme Court of the United States. They will also, however, rejoice with delight on discovering that, when Justice Thomas came to the UGA law school in Athens, Georgia on May 17, 2003, demonstrators there protested and a UGA law professor, in a speech, raised hell.

Donald E. Wilkes, Jr.



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