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Open Letter Concerning The Invitation To Justice Clarence Thomas To Speak At The UGA School Of Law Graduation Ceremony

Dear Colleagues, Law Students and Other Members of the Law School Community:
On Monday, November 25, 2002, the law faculty of the University of Georgia School of Law received a memorandum from Dean David Shipley which begins as follows: "I am pleased to announce that Justice Clarence Thomas has accepted the invitation extended by me, Class of 2003 President Josh Belinfante, Class of 2003 Vice President Megan Jones, and Class of 2004 Vice President Rebecca Franklin to be our graduation speaker on May 17, 2003."

The decision to invite Justice Thomas is appalling, unwise and perverse—the embodiment of bad judgment. Anyone who has carefully examined his opinions in the fields of criminal procedure, civil rights, civil liberties, the rights of prisoners, and the writ of habeas corpus knows that Justice Thomas has one of the most anti-human rights voting records in modern Supreme Court history.

This man does not deserve the honor of being invited to speak at the law school graduation ceremony. He is *inimicus libertatis*, the enemy of liberty.

A worse choice of a judge as graduation speaker could hardly have been made. Inviting a judge with his lamentable record on individual rights issues is a terrible mistake and sets a bad precedent. He is not the type of judge who should be held up as an example for students on the verge of entering the legal profession. He is unworthy of the high honor being bestowed on him by this law school. His appearance here will, in the eyes of future generations, be a blot on the reputation of and an embarrassment to this law school.

The poor judgment reflected in the disastrous decision to invite Justice Thomas unfairly places graduating law students on the horns of a dilemma. They must choose between, on the one hand, being forced to attend a ceremony where Justice Thomas will be feted and to listen politely to and applaud Justice Thomas' speech, or, on the other hand, foregoing attendance at their own graduation ceremony. Similarly, law faculty members must either attend Justice Thomas' speech or miss the ceremony.

And who is this man the students and faculty will be forced to listen to if they attend the cere-

mony? Justice Thomas is a reactionary judicial activist—a right-wing extremist pretending to be a neutral and impartial judge. His judicial philosophy amounts to "a new, aggressive, and repressive judicial activism." Niles, *Clarence Thomas: The First Ten Years Looking For Consistency*, 10 Am. U. J. Gender Soc. Pol'y & L. 327, 332 (2002).

This man's judicial philosophy embodies the right-wing extremist agenda. He has a narrow view of the basic rights of Americans and usually votes to denigrate and attenuate those rights. In cases involving criminal procedure, civil rights, civil liberties, the rights of prisoners, and the writ of habeas corpus he almost always sides with the government and rejects the claims of individuals that their rights were violated.

"Thomas has... been a consistent member of the Court's most conservative wing since his first term... If judicial liberalism is defined in the traditional fashion as support for individuals' rights in disputes with the government, Thomas stands out as a strong conservative in any analysis... Justice Thomas has established a consistent and predictable voting record as a dependable member of the Court's most conservative wing... [H]e articulates... a vision of constitutional interpretation that... advances his preferences for... diminution of constitutional protections for individuals." Smith, *Clarence Thomas: A Distinctive Justice*, 28 Seton Hall L. Rev. 1, 2, 28 (1997). He believes that the role of the courts in protecting individual rights is very limited. He not infrequently expresses an inclination to overrule landmark pro-human rights Supreme Court precedents. He doesn't think much of the writ of habeas corpus. Indeed, in *O'Neal v. McAninch*, 513 U. S. 432, 447 (1995), in a dissenting opinion, he went so far as to assert: "We have ample cause to be wary of the writ [of habeas corpus]." I can recall only one case where Justice Thomas has ever voted in favor of granting relief to a habeas corpus petitioner, and in that case Justice Thomas, along with Justice Scalia, took a narrower view than the Court of the peti-

tioner's rights and only concurred in part and in the judgment. *Lynce v. Mathis*, 519 U. S. 433 (1997).

He is shrilly pro-death penalty. He "expresses little sympathy for the plight of the incarcerated." Note, *Lasting Stigma: Affirmative Action and Clarence Thomas's Prisoners' Rights Jurisprudence*, 112 Harv. L. Rev. 1331, 1341 (1999). He is "the first justice to criticize, even indirectly, the ruling in *Brown v. Board of Education*..." *Id.* at 1348 n. 50. Furthermore, some of Justice Thomas' opinions rejecting claims of violations of rights are written in a mocking, scornful tone inappropriate in a judge but typical of a right-wing extremist.

In deciding individual rights cases Justice Thomas almost always votes the same as the two other right-wing extremists serving on the Court, Chief Justice Rehnquist and Justice Scalia. See, e.g., Wilkins, *Worthington, Chow, Chow & Becker, Supreme Court Voting Behavior: 2000 Term*, 29 Hastings Const. L. Q. 247 (2002) (tables of voting patterns of Supreme Court justices since 1991 term). Justice Thomas is therefore one of the principal reasons why tragically in recent years the Supreme Court has been implementing a counterrevolution in criminal procedure and individual rights—a counterrevolution which has narrowed the legal rights and remedies of Americans against government, enlarged the power of the state over the individual and transformed the role of the Court from that of the keeper of the nation's conscience to that of a cost-benefit analysis calculating machine.

Impius et crudelis iudicandus est qui libertati non favet, the old legal maxim says. He is to be judged impious and cruel who does not favor liberty. This maxim fits Justice Thomas to a T.

Moreover, Justice Thomas is one of the five right-wing Republican justices who handed the presidency to Republican candidate George W. Bush in *Bush v. Gore*, 531 U. S. 98 (2000), the most outrageously partisan decision of the Supreme Court in history, a decision in which, as

Vincent Bugliosi has written, "the Court committed the unpardonable sin of being a knowing surrogate for the Republican party instead of being an impartial arbiter of the law." Bugliosi, *None Dare Call It Treason, The Nation*, at 11 (Feb. 5, 2001).

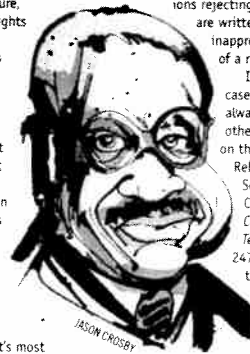
In this letter I limit my critique of Justice Thomas to his voting record while on the Supreme Court. I put to one side the serious questions that have been raised about whether Justice Thomas lied or was deceptive or evasive when he testified at his U. S. Senate confirmation hearing in 1991. See, e.g., C. Smith & J. Baugh, *The Real Clarence Thomas: Confirmation Veracity Meets Performance Reality* (2000); J. Mayer & J. Abramson, *Strange Justice* (1994); Baugh & Smith, *Doubting Thomas: Confirmation Veracity Meets Performance Reality*, 19 Seattle U. L. Rev. 455 (1996); Bell, *Clarence Thomas: Evasive or Deceptive*, 21 N. C. Cent. L. J. 194 (1995); Tushnet, *Book Review*, 63 Geo. Wash. L. Rev. 466 (1995). *Contra*: D. Brock, *The Real Anita Hill* (1993); O'Daniel, *Book Review*, 5 Tex. Rev. L. & Pol. 495 (2001).

When Justice Thomas appeared at the University of North Carolina School of Law in 2002, the Black Law Students Association there staged a teach-in protest, and the five African-American law faculty members boycotted his appearances and issued a joint letter which stated in part: "We will not participate in any institutional gesture that honors and endorses what Justice Thomas does." To all of which I say, Amen.

In protest of Justice Thomas' appearance here I shall not attend the law school graduation ceremony. Instead, at the time Justice Thomas speaks, I will deliver my own speech on May 17 at the Tate Center. The speech will focus on Justice Thomas' deplorable record as a Supreme Court justice and the blows that record has inflicted on liberty, freedom, rights and justice. My speech will be part of a lawful, respectful, peaceable, classic exercise of First Amendment rights.

Donald E. Wilkes, Jr.
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