

## Clarence Thomas Hearings

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It's good to be among Rotarians. It's been a long time. You guys have fun. I used to do that too. I left some years ago because I found out I was trying to make up my make-ups and it wasn't working any longer.

If you ask people down at the Claremont Rotary Club they'll tell you I left when women came in, but I want you to know when doesn't mean because. I just want you to understand that.

This is a very good opportunity for me to remind some of you of something—I don't know if any of you were in Nevada County last August when I was up there, and some people asked me to come back, more specifically, to come up to Yuba City, and they asked me to tell something about water when I got here. I'm not talking about water today, but I did promise people that when I came up to Yuba City in October to talk to the Rotary Club, I would bring some water commitment with me. I hope you all recognize that you have your first snowfall in the mountains today and it's raining outside. Is that good enough? Just ask and it shall be delivered.

I want to spend a few minutes with you rehearsing something you doubtless know as well as I do—the events of the last month dealing with the Supreme Court confirmation hearings for my friend, Clarence Thomas. This is not an easy topic to talk about even though now Clarence sits on the Court and is Justice Thomas and many of us are justly proud of his position. I was present on the South Lawn of the White House a week ago today when he took the oath with Justice White presiding, after some opening remarks by President Bush. There were about 700 of us gathered there—a very intimate group, but as you might imagine, there was an immense sigh of relief as he took that oath. There was a collective participation in the experience that, finally, this is over, this Chinese-torture process to which he had been subjected by the Senate Committee on the Judiciary. And so now in the aftermath, people are musing about the process and wondering what it means to have this man on the Court, and what it means to have a Senate committee that gives us the kind of entertainment our's provides for the American people.

When Lon Renfro asked me if I had brought any slides with me, he made me blush. Supreme Court Justice Potter Stewart, back in 1956, was hearing a pornography case and the Court was having trouble trying to decide the case. They couldn't tell what was pornography and what was not—this was the *Roth* case—and finally, after they debated redeeming social importance and all other kinds of high-fallutin', abstract phrases, Justice Stewart said, well, I don't know how to define it, but I know it when I see it. I suppose after these Senate hearings the American people can say they know it when they hear it.

That is, in my opinion, the thing that is most fascinating about the experience we've been through. I never would have imagined the day would come that the Senate of the United States would present such a display to the people of this country. It used to be that the Senate was

called the greatest deliberative body on the face of the earth. This goes all the way back to the 19th Century—this isn't just some PR pabulum that's been put out recently. This was a chamber that heard the debates between Webster and Haynes in the 19th Century, among many other very important moments in which great principles were debated with passion. We have even had fistfights on the floor of the Senate, over the question of slavery, among other things. But, at no time in our history have we ever seen anything quite so debasing as this experience we suffered, and I use the word suffer advisedly, through the conformation process of Justice Thomas.

I could break it down and do very simple, very short propositions for you and we should have a couple of minutes left for any questions you might have thereafter.

You know something about who I am. I only met Justice Thomas in 1987 when I joined the Commission on Civil Rights at Ronald Reagan's behest. I was very happy I'd met him. I found a man of rare intelligence and genuine commitment to the Constitution of this country. Rare intelligence, I say, not to mean that he's the brightest American that ever walked the earth, but that he stands out in a way that's visible to anyone who becomes involved in the policy-making community in Washington. Namely, he actually was thinking and reading and talking and learning important things even as he worked there, heading a very important government commission. Most people I meet in Washington are coasting on what they learned in law school or business school. They read novels and other things, and newspapers, but they don't genuinely wrestle with questions the way Justice Thomas has been doing in this four and a half years that I have known him.

When he described himself to that senate committee as a part-time political theorist, talking about natural law, he wasn't lying. That wasn't just a smart way to get out of having to answer the questions. I know that because much of that political theory he was talking about during those years, he was talking about in my presence, having read things he asked me to suggest. We went through this process, this growth, together; he genuinely means it. I can guarantee you he never heard the expression "natural law" at Yale Law School.

So, you have someone who is alive, intellectually, morally, and who's devoted to the Constitution, who was proposed to the Supreme Court of the United States by President Bush—a very fine appointment, I think, one that may stand out as the best made in this century. He now will sit there, and we will have a chance to judge that claim.

But, for us, the important thing was the reaction to the appointment. From the very first day you noticed people disparaging the man's character. Some of them used crude, racial epithets to describe him—even Harvard law professors referred to him as an "Oreo," and similar kinds of crude epithets that we would never accept in this country from Jimmy "the Greek" Snyder. He'd lose his job for a slip of the tongue. Or Al Campanis. But somehow, those who have been identified as the tribunes of civil rights are free to abuse people and to use the crudest epithets in describing them, without ever having to pay any price for it.

The opening of this process on July I set the stage for what you saw at the end of the process, because as it turns out, despite the earnest efforts of the civil rights lobbyists, and their henchmen in the United States Senate, they could not find the grounds to defeat this nominee, they could not defeat him with the public at large and they could not defeat him where they tried hardest to do so, among American blacks throughout this country.

On July I, when the nomination was announced, they took a poll and 40 per cent of American blacks responded positively, favorably. That was when they had no information about

him. At the end of July they took another poll—that number had become 62 per cent. That support held up throughout the process, wavering as polls do, but being very nearly the same throughout the entire process, so that the people who were scheming—trying to find a way, an Achilles’s heel, with which to assail this particular nominee—had failed to do so even as they went through the normal hearing process. We also know from a *Washington Post* reporter that they were digging around throughout this whole time trying to find or invent whatever dirt they could to throw, and we know they threw that dirt at the last minute, at the eleventh hour, when all else had failed.

This is what I think is significant. We have been asked to ask the question, what was Anita Hill’s motivation? It seems to me that that is throwing us off the scent, if you will. If we are going to follow this hunt through to the end, then we need to stay on the main track, the main trail, as Anita Hill was nothing other than the first violin in a symphony which was staged by other conductors, most of whom sat there in the Senate Judiciary Committee from the Democrat side. It’s their motivation that counts, not Anita Hill’s. Not only were her charges were fabricated, but, more importantly, the whole show, the whole drama was a stage show—they thought maybe a bawdy comedy, but I personally think it was a tragedy—a stage show. We can tell by a number of facts, but I’m only going to mention one to you, which I think stands out so dramatically it forces us to come to terms with the reality that what’s wrong is not the process, but the people in charge.

Senator Simon, on the weekend of the leak, was the first person to step forth and declare that there must be new hearings. As he stood in front of the microphones, he argued, “We don’t know enough. We haven’t heard enough. We weren’t given time—we must have new hearings. Let’s put off the vote.” Finally, they put off the vote; they opened the new hearings; we all know what happened. But do you remember the moment in the hearings when Senator Simon himself was questioning Ms Hill and trying very hard to be sympathetic to her, reaching out to her—defending her—how he let slip just two little phrases in which he said to her, “Do you remember when I talked to you on the telephone, the day before the committee voted, and how you told me about these things then?” He actually said that. He didn’t know what he was doing, but what he was saying to you and to me is, “I Paul Simon, am a liar. When I stood up and said I didn’t know, that was a lie. I had the information when the committee voted and I should have said right then, slow the process down, we need more time, let’s extend the hearings. I, Paul Simon, did not do that. Why did I, Paul Simon, not do that? Because I was playing a game. I wanted to use a so-called leak so that we could distance the senators from it and they wouldn’t have to take responsibility for exposing the nation to pornography. Hopefully, we could create such a stir, such a public turmoil that the nominee would withdraw. Then we wouldn’t have to vote at all; then we wouldn’t have to hurt anyone. We’d get off scot-free, our friends in the civil rights lobby would then come back and say well done, good job.”

It was all a stage play. Simon was one of the chief architects of it and I don’t doubt that Metzenbaum and Kennedy are part of it as well, and perhaps Leahy, Heflin, and Cole.

This stage play wasn’t just a game aiming for mere partisan advantage. It was, instead, a game that said something about what these Senators think about you and me. In Rome, when things got real bad, they gave the people gladiator contests, bread and circuses. Not even that, which was terrible, is as bad as what these senators gave us.

I think that says something about the contempt they have for the American people. And that’s why I say the question is not the process, and it is not that Justice Thomas sits on the Court

as he does now. The deeper, the underlying issue is, how can the people in this country accept to be treated that way, by people who don't shrink from anything at all, and won't stop at anything—who stoop to the lowest level to accomplish mere partisan objectives.

This is the question we're left with and that's what leads me to say the problem isn't the process. People who have contempt for their citizens will corrupt any process. No matter what process you put in its place, if you put these people in charge of it, these are the results you are going to get. So I ask us to think about the people instead. There is something else we lost, besides having been insulted. That's the second point I want to make to which I can lead very briefly.

People have celebrated—well, at least he's on the court, at least now we'll find out whether he's a good Justice, whether George Bush was correct or not, whether he's qualified. No. The fact of the matter is, Justice Thomas is a young man at 43. By the time he serves on the Court twenty years he'll still be only sixty-three, of robust age, the age at which, ordinarily, in these days, people are very well qualified to seek the presidency. I think it's safe to say that there is no possibility whatever, given the scandal generated in these last few weeks, in the condition in which it was left, that this man could ever enter into electoral politics. It's not unheard of for Supreme Court Justices to be rumored for president and even themselves to think about it. It's happened throughout our history. But this is a case where it will not happen, because there would be no way for him to do so without dredging up these old tales hanging there unrefuted, which means then, that there was greater damage than has been acknowledged before. For someone who could very well have been the first black president of this country, will never be so.

There's enormous danger inflicted upon our institutions by this kind of cavalier attitude from the United States Senate, and that's what I want to bring home to the American people. That's what I want you to think about. Justice Thomas is okay in the sense that, personally, he doesn't have any doubts about himself. The day before the new Senate hearings, I talked to him on the telephone. That's when I knew everything was going to be alright, because I heard the sound of his voice. There was no insecurity; he was strong and he agreed with me that his being on the Court was the least important thing in the world at that point. What was important was not to lie down and let these people walk over you—that's what was important and that's why he fought the way he did. But I think we all have need to fight, and that's the message I wanted to bring to you.

We all have need to fight because we've all been attacked by the process we've witnessed. Will it change? Well, I ask you, what do you think? Is there some change in the process that's really going to make a difference?

QUESTION: The President announced today he's going to appoint some investigators to investigate the committee leak. Do you think that will actually divulge the leak?

ANSWER: I'm quite skeptical about it...

QUESTION: ...It's a pretty close-knit organization, is it not?

ANSWER: Well, it's close knit, and there's more to it than just having an investigation. You could conceivably find out who did it if someone talked in the press or someone's staff talked, but then the question is, what do you do to follow that up besides embarrass them publicly? It's largely up to the Senate to do that. It's up to the Senate to police itself in this respect. If there has been a violation of Senate rules, the Senate must publish it, which means you're turning to the people who have done it and asking them to punish themselves.

If there has been perjury, which I believe there was, in this hearing, there was also the crime of suborning perjury on the part of Senators. But you're asking the very people who are guilty of the crimes to punish themselves, and that strikes me as highly improbable.

QUESTION: What do you think of term limitations for Washington?

ANSWER: I don't think they're a good idea for Washington. I think it's a great idea for Sacramento and every other state capital in America.

When the Constitution was adopted in 1787, there were long discussions over whether to include term limitations for the federal government. The founders decided, for cogent reasons, not to do so, but what most people forgot later on was they did that in the context when every state had term limitations. Later in the 19th century the states, thinking they had to look like the federal government got rid of term limitations. That was a big mistake. The way to get turnover in Washington is to keep term limitations in the states so that you constantly bring up credible challengers, to incumbents—challengers who have the name recognition, who have the networks, who have the financial backing to take on the incumbents. That's the way to do it. Term limitations in Washington, I think, will be counterproductive because they undermine what we need most from national representatives, and that is a national perspective.

QUESTION: Can you address what you know about the new civil rights legislation and whether you think all the peace negotiations are watering it down?

ANSWER: Well, I was debating on the plane this morning whether it was more important for me to talk to you about this new civil rights bill or about Justice Thomas, and I finally decided I would talk about Justice Thomas, although I do think this is a very important piece of legislation that has a fundamental flaw which, sooner or later, we're going to have to deal with.

The debate can't be summarized very briefly, unfortunately. But I can say this. Quotas were never the big issue, although that's what the president has talked about and that's what everybody else has responded to. The quota issue was always secondary to an issue that I have been complaining about now for three years, trying to get people in Washington to pay attention to, but no one will. That is, that this legislation will, for the first time in our history, create differing standards of justice for the same offense, based on race and gender.

It says that minorities and women will have one standard of judgment, going into a court of law, everybody else will have a second standard of judgment. I think that is an extremely dangerous thing to do. In fact, it's worse than dangerous; I know that. To allow differing standards of justice rather than a common rule for all to grow among us is fatal to our constitutional tradition. So I still am not happy with this civil rights legislation.

QUESTION: Do you think we're ever going to get over some of the battles it seems like we spend about 50 per cent of our political time fighting each other, Republicans against Democrats?

ANSWER: Yes, we'll get over it, as we have historically done. I think the answer is yes and no. There will always be partisan struggles, but what will happen is, we will go from the issues and controversies that we resolve to new issues and that's the nature of freedom, that's the nature of the process. We do have to resolve the issues that are controversies in such a way as to make us, at large, in agreement on those issues. That's happened very dramatically in this country with the respect to the question of slavery. Virtually no one will make a public defense of slavery in the United States of America, and that covers every stripe of political opinion—there's no

partisanship on that question any longer. So the great questions that divide us, those are the ones which through struggle we eventually develop a consensus about, a general understanding that redefines us or unites us as Americans. Once we've accomplished that, the first thing we will discover is that people who are really free can always find new things to argue about, new grounds of partisanship.

So the important thing is to keep it in balance—to know that while we're being partisan, we're still trying to build a country in which we all embrace one another—Democrats and Republicans. We're not trying to build a country in which there are no longer any Democrats—I know some people think I might imagine that.