The Man Who Replaced the Great Justice Thurgood Marshall on the U.S. Supreme Court

Clarence Thomas

is an ultra-right-wing conservative who has consistently refused to acknowledge the continuing existence in the U.S. of institutional racism, classism, sexism, and other similar forms of injustice, nor has he, like his fellow conservatives on the bench, ever understood what true democracy really signifies. A staunch Trump supporter, he has sided against petitioners in almost all civil /human rights cases that have ever come up before the Court during his tenure. Because the U.S. Supreme Court plays such a powerful role in shaping the democratic rights of those who live on this country and because so many civil rights/human rights cases that have come for review before the Court in recent decades have come down to 5-4 decisions, there is no other person of color who has done more harm to the cause of civil/human rights in the post-civil rights era in United States than Thomas. This reading helps to underline two other facts: a person's skin color does not tell you everything about that person's politics, and the U.S. Supreme Court for most of its existence has been a supremely conservative *political* court (that is, it is not a court that has believed in the principle of "equal justice under law," as it claims).

NOTE: Regardless of which sections have been assigned in this reading, you must study all images.

SECTION ONE

Clarence Thomas Has His Own Constitution

By Jeffrey Toobin June 30, 2016

SOURCE: https://www.newyorker.com/news/daily-comment/clarence-thomas-has-his-own-constitution

This year's Supreme Court term abounded in so much drama—the death of Justice Antonin Scalia, the tie votes among the remaining Justices, the liberal victories in the final days—that it was possible to miss a curious subplot: the full flowering of Justice Clarence Thomas's judicial eccentricity.

Since his stormy confirmation, in 1991, Thomas has been the target of much unfair criticism. Some have argued, for example, that his years of silence during oral arguments meant he was not doing much work at all. In fact, Thomas is the most prolific opinion writer on the Court—and that is especially true this year. According to statistics compiled by Professor Steve Vladeck, of the University of Texas Law School, Thomas

wrote opinions in thirty-eight of the sixty-two cases the Justices decided in the 2015-16 term. That's twice as many as Justice Samuel Alito, a conservative, like Thomas, and the next-most active writer on the court. Likewise, Thomas's critics have made the condescending charge that he was just a blind follower of Scalia, an idea that the results this year also rebut.

The truth is that Thomas's view of the Constitution is highly idiosyncratic. Indeed, one reason he wrote so many opinions (often solo dissents and concurrences) was that no other Justice, including Scalia, shared his views. Thomas is a great deal more conservative than his colleagues, and arguably the most conservative Justice to serve on the Supreme Court since the nineteen-thirties.

While some Justices are famous for seeking consensus with their colleagues, Thomas seems to go out of his way to find reasons to disagree—often in the most provocative ways. Take, for example, his solo dissent this year in Foster v. Chatman, in which all the other Justices joined Chief Justice John G. Roberts, Jr.'s opinion setting aside a death-penalty verdict in Georgia. Roberts said that records preserved by the prosecutors in that case showed egregious racial discrimination in jury selection. Prosecutors said one juror "represents Black," another note said "No Black church," and other notes identified black jurors as "B#1," "B#2," and "B#3," as

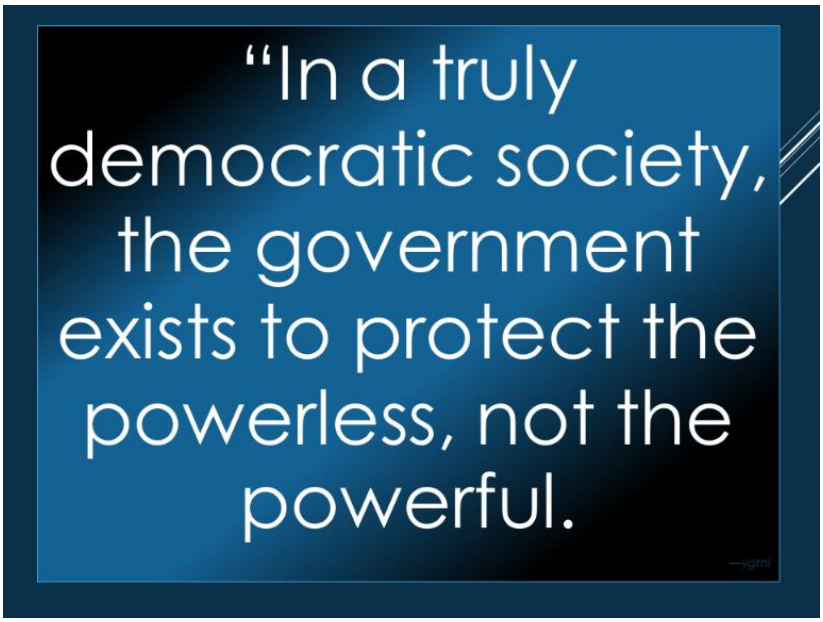
well as notes with "N" (for "no") appearing next to the names of all black prospective jurors. "The contents of the prosecution's file plainly belie the State's claim that it exercised its strikes in a 'color-blind' manner,"

Roberts wrote for the Court, adding, “the focus on race in the prosecution’s file plainly demonstrates a concerted effort to keep black prospective jurors off the jury.” Thomas, alone, was unpersuaded. The prosecutors’ notes, he wrote, provided “no excuse for the Court's reversal of the state court's credibility determinations." (The case reflects a long pattern at the court of Thomas, the only black justice, voting against programs designed to assist African-Americans, and rejecting findings of discrimination against African-Americans.)

The Foster case turned primarily on the facts, but it’s on constitutional law that Thomas is most isolated. Far more than even Scalia did, Thomas endorses originalism—the belief that the Constitution should be interpreted as its words were understood at the time it was written. By a vote of 5–3, the Court struck down Texas’s restrictions on abortion clinics in Whole Woman’s Health v. Hellerstedt, but neither of the other dissenters (Roberts and Samuel Alito) joined Thomas’s opinion. What’s most extraordinary about Thomas’s dissenting opinion in the abortion case is not that he objects to the ruling; as he noted, “I remain fundamentally opposed to the Court’s abortion jurisprudence.” But Thomas also took the opportunity to reject more than a century of the Court’s constitutional jurisprudence. He said that, since the Presidency of Franklin D. Roosevelt, the Court’s interpretation of the Constitution has become an “unworkable morass of special exceptions and arbitrary applications.”

The abortion dissent explains why Thomas is so cut off on the Court, even from his fellow-conservatives. He doesn’t respect the Court’s precedents. He is so convinced of the wisdom of his approach to the law that he rejects practically the whole canon of constitutional law. It’s an act of startling self-confidence, but a deeply isolating one as well. Even his ideological allies, who mostly come out the same way on cases, recognize that they must dwell within the world that their colleagues and predecessors created. Thomas, in contrast, has his own constitutional law, which he alone honors and applies.

Thomas just turned sixty-eight years old, and reports of his impending retirement briefly surfaced before his wife shot them down as “bogus.” Indeed, it is difficult to imagine that Thomas would allow any Democrat to choose his successor. Shortly after Scalia died, Thomas asked his first question in oral argument in more than a decade, but it’s highly unlikely that he will take on Scalia’s role as the pugnacious conservative in the Court’s public sessions. Rather, Thomas will continue his own way, increasingly alone, as the Court, for the first time in two generations, moves to the left. As for Thomas’s place on the Court, it’s difficult to improve on Scalia’s analysis, which I heard him give at a synagogue a decade ago. Scalia was asked about how his judicial philosophy differed from Thomas’s. “I’m an originalist,” Scalia said, “but I’m not a nut.”



SECTION TWO

The Clarence Thomas Takeover

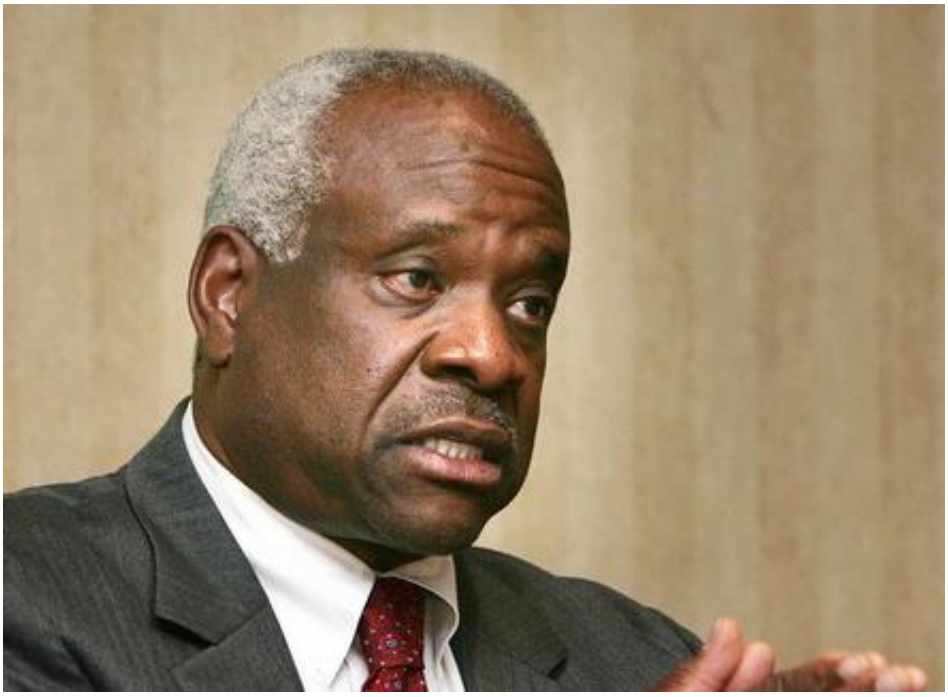
The justice has spent his career pushing a fringy, right-wing ideology. Now, he has an army of acolytes who can make his vision a reality.

Aug 02, 2017

By Dahlia Lithwick and Mark Joseph Stern

SOURCE: https://slate.com/news-and-politics/2017/08/clarence-thomas-legal-vision-is-becoming-a-trump-era-reality.html

There's a reason Clarence Thomas writes so many solo dissents and concurrences. The second-longest-tenured justice on the Supreme Court has spent more than 25 years staking out a right-wing worldview that can generously be described as idiosyncratic. Thomas' Constitution is one that gives a president at war the powers of a king while depriving Congress of any meaningful ability to regulate the country. His opposition to the very existence of much of the federal regulatory state, too, has never quite found five votes on the court. No other justice, except perhaps Neil Gorsuch if he continues down his current path, would carry his conservative principles to such an extreme position with regard to presidential authority and congressional constraint.



Now a judge who's spent his career teetering off the right edge of the federal bench finds himself at the center of the table. Thomas was on hand at the inauguration to swear in Vice President Mike Pence, using the same Bible that Ronald Reagan used when he was sworn in for both of his terms as president. But Thomas is more than just the Trump administration's philosophical hero. His once-fringy ideas are suddenly flourishing—not only on the high court, through his alliance with Gorsuch, but also in the executive branch.

Donald Trump's crude understanding of the United States government aligns startlingly well with Thomas' sophisticated political worldview. The president's belief that the commander in chief can wage war in whatever way he wishes corresponds neatly to Thomas' theory of the "unitary executive," and his visceral hostility to the Affordable Care Act dovetails with Thomas' abhorrence of the federal social safety net. The two men also share an absolutist opposition to gun control, a belief that the government may favor and promote Christianity over other faiths, a deep skepticism of the elite academic establishment, and a nostalgia for the perceived America of yesteryear. Both take a hard-line stance against illegal immigration and show little concern for the rights of individuals accused of terrorism. Thomas is a thinker and Trump is a feeler, but together they have arrived at similar conclusions. They want less government, a more authoritarian executive, more God, fewer racial entitlements, and more guns.

[….]

In an era in which former clerks seem, on balance, to be drifting away from Washington jobs, a whole lot of members of the old Thomas crew are moving back home. It's near impossible to count every former Supreme Court clerk who is now playing a role in the sprawling executive branch, but it's easy to see that an enormous number of Thomas protégés are stepping into positions of immense power. Every expert we spoke to, among them the *New Yorker*'s Jeffrey Toobin, agreed the Trump administration has brought on a striking number of Thomas clerks.

[….]

Thomas' influence can also be seen in the work of Neomi Rao, whom the Senate recently confirmed to lead the Office of Information and Regulatory Affairs. Until her appointment as Trump's regulatory czar, Rao served as a professor at George Mason University's law school—an institution that, at Rao's urging, was recently renamed in honor of Antonin Scalia. Rao has devoted her academic career to criticizing the administrative state—the web of agencies and committees that promulgate federal regulations. Her attacks on the government sit at the intersection of two quintessential Thomas principles: an aversion to regulations (especially labor and environmental rules) and a hostility toward limits on executive authority.

Rao believes, for instance, that independent agencies are unconstitutional. These commissions—which include the Securities and Exchange Commission, the Consumer Financial Protection Bureau, the Federal Communications Commission, the Equal Employment Opportunity Commission, and the Federal Reserve—flourish in part because they are removed from political pressures. Rao would like to change that. She believes that since these agencies are part of the executive branch, the president must be empowered to fire and replace their leaders.

Thomas sees his clerks as trainees in a very specific ideological program.

[….]

Thomas, who has described his clerks as his "little family," sees them as trainees in a very specific ideological program. He famously invites them to watch *The Fountainhead* at his home each year and has taken them on annual trips to Gettysburg to reflect on what he views as the conservative lessons of the Civil War. He also tutors his clerks on his judicial philosophy, instilling in them a profound reverence for his own vision of the rule of law.

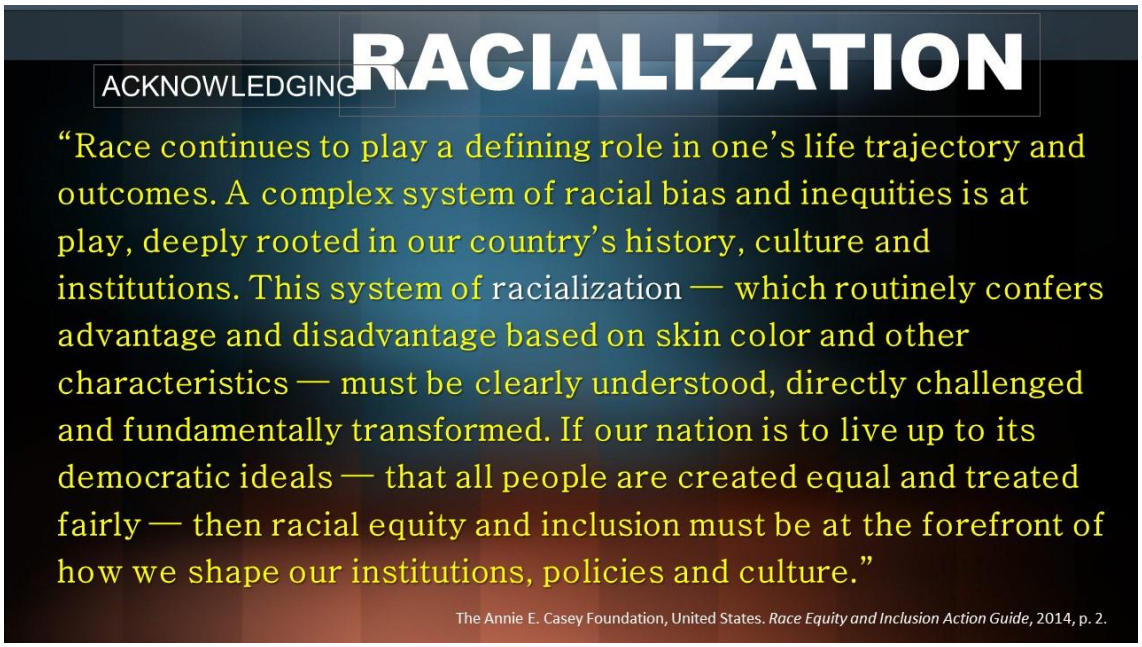
It's no surprise that so many of Thomas' clerks share a belief system with their former boss, and with each other. Thomas is known to be ideologically rigid when it comes to hiring (and in everything else). Prior to 2013, every clerk he'd brought on during his Supreme Court tenure had first served under an appellate-level judge who'd been appointed by a Republican president.* Even Scalia occasionally hired "counter-clerks," liberal-leaning men and women who had clerked for Democratic appointees on lower courts. Thomas has expressed no interest in this kind of ideological diversity. (To his credit, he does value educational diversity, intentionally hiring clerks from lower-ranked schools. Compare that with Scalia, who was openly biased against schools outside the T14.)

[….]

While Thomas is famously one of the most personable justices on the high court—the stories of his generosity to former clerks and court staff are myriad—he has also cultivated a with-us-or-against-us mindset that owes more to AM radio than George Will, and that maps perfectly onto Trump's Fox News–inflected worldview. Thomas is close buddies with Rush Limbaugh (he officiated at Limbaugh's third wedding) as well as fringe radio dogmatist Mark Levin. Georgetown law professor Peter Edelman has described him as "the Tea Party of the Supreme Court."

Thomas does not travel in the same conservative legal circles as John Roberts. Throughout his campaign, Trump derided the chief justice as an open traitor to the conservative project, explaining that "what he did with Obamacare was disgraceful." Trump called Roberts a "nightmare for conservatives" in January 2016 and claimed that he writes like a "dummy." He has described Thomas, meanwhile, as his favorite justice, calling him "very strong and consistent." We also know from a leaked email sent to the *Daily Beast* in February that Thomas' wife, Ginni Thomas, tried to organize conservative activists to defend Trump's initial travel ban. This political activism did not preclude Thomas from participating in the court's travel ban decisions, in which he has twice supported the president. There is a long-standing debate about whether Ginni Thomas' political activities might affect her husband's votes.

At the very least, the fact that she openly aligns herself with Trump—even as the rest of the justices try to ignore the unseemliness of it all—reflects his comfort with the Trumpian worldview.



It feels increasingly evident that Trump's reactionary view of conservatism is causing a schism at the Supreme Court. Over the past two terms, a split has opened up between the two center-right justices, Roberts and Kennedy, and the three far-right justices, Samuel Alito, Gorsuch, and Thomas. One explanation for the trend is that the center of the court is distancing itself from the hard-right crusaders, whom Democratic Sen. Mazie Hirono recently dubbed "the three horsemen of the apocalypse." This rift, if it continues, presages a possible split between the kinds of judges and justices Trump prefers—polemicists and bomb throwers—and the more traditional movement conservatives who have historically populated the federal bench. If Trump seeds the lower courts with judges like Allison Eid who share Thomas'

views, he stands to reshape the country for decades. That means that long after the Cabinet appointees and White House lawyers leave the scene, constitutional law will bear the thumbprints of Thomas and his clerks. Thanks to Trump, Thomas' ideas—about the unitary executive, the wall between church and state, and so much more—will now surely outlive both men.

Both Trump and Thomas have spent decades as the brunt of liberal jokes and slights. Both see themselves as innocent victims of women and interest groups that have fabricated claims against them. Both have seen their ideas slip from the very fringes of political discourse into the ascendancy.

Now, Thomas stands as a symbol of what a faltering, lawless Trump may yet accomplish—if his supporters can turn a blind eye on the faltering lawlessness. At the precise moment in which the more than 120 vacancies on the federal courts may be the only reason for conservatives to hold their noses and stand by Trump, it's Clarence Thomas who stands as a living embodiment of wars already won and triumphs yet to come.

SECTION THREE

Clarence Thomas's Conservatism: The First 20 years

Jason Farago
SOURCE: https://www.theguardian.com/commentisfree/cifamerica/2011/oct/13/clarence-thomas-conservatism-20-years

The enigmatic judge keeps a low profile; yet, time is very much on the side of the supreme court's most reactionary justice

Twenty years ago this Saturday, the Senate confirmed Clarence Thomas to the US supreme court, installing the nation's second black justice by the narrowest margin for a century. Everything about those days in 1991 is grim. The sexual harassment allegations of Anita Hill, who bravely faced down not only Thomas and an all-white, all-male Senate judiciary committee, but a hostile media as well, have passed into history. Thomas's furious condemnation of his "high-tech lynching for uppity blacks" marked a low point in the public discussion of race in America, not least as he was being questioned to take over the seat of the great Thurgood Marshall.

Even before a National Public Radio reporter disclosed Hill's accusations, the confirmation was already a shambles. Thomas and his supporters had learned from Robert Bork's crashed-and-burned nomination in 1987 that frankness is not a virtue for a prospective justice. Thomas played it coy, telling the committee that he "could not remember" ever discussing Roe v Wade or other landmark supreme court cases. He set a precedent that all other nominees have since followed: say nothing, for as many days as it takes. Thomas turned the Senate confirmation history into a *ballet de cour*, with the court's newest justice, Elena Kagan, taking content-free testimony to breathtaking extremes last year.

Since those very angry, very public days two decades ago, however, Thomas has largely disappeared from view. Recent controversy surrounding his wife Ginni, a Tea Party advocate and a staunch opponent of "Obamacare", began to revive interest in his personal life, but he remains an enigmatic presence. He refuses to attend the president's State of the Union addresses with the other justices, and unlike his benchmates Antonin Scalia and Stephen Breyer, he has never relished the public eye.

Thomas is the supreme court's quiet man. He has not asked a question at oral arguments since 2006, preferring to sit back in silence – sometimes gazing up at the ceiling – while his colleagues barrage petitioners on constitutional matters of the day. His public reserve, combined with his hugely contentious ascent to the high court and his tendency to vote in lockstep with the much more loquacious Scalia, have turned Thomas in the public imagination into a lightweight or a cipher.

Not even close. Thomas is nobody's sidekick: he may be mute, but he isn't dumb. More than any justice on the conservative bloc, Thomas has shown a desire and preparedness to strike down entire bodies of the law he disagrees with, even those dating to the founding of the republic.

According to Scalia himself, Thomas "doesn't believe in *stare decisis*, period." (The Latin phrase refers to the basic principle that contemporary justices should uphold precedent and only rarely overturn earlier decisions, allowing law to develop over time.) He is the court's true radical, and his carefully argued dissents, often buttressed with pages of discussion of colonial- and revolutionary-era life and law, envision an America free from equality protections, environmental regulation, prohibitions on cruel and unusual punishment, and pretty much anything else you might have thought the courts had accomplished since the invention of the radio.

In 2009, for example, eight of the nine justices signed a major ruling that upheld a key provision of the Voting Rights Act, the hallmark of civil rights legislation dating to 1965. The provision in question requires states and regions with a history of racial discrimination – not just southern states, but Alaska, parts of California and New Hampshire, and even Manhattan – to clear any changes to the voting system with a federal authority, in order to ensure that they do not disadvantage blacks and (latterly) other racial minorities. In his majority opinion, John Roberts, the chief justice, intentionally avoided the larger constitutional question the case posed, settling the case on narrow grounds. Scalia concurred, as did Samuel Alito, the court's other rightwing justice.

Not Thomas. The whole thing should go, he argued: racial discrimination is a thing of the past, and the federal government shouldn't be meddling in the first place with local electoral authorities. So why take it slow?

Thomas was also the lone wolf in Hamdi v Rumsfeld, one of the court's ringing decisions on limits to executive power. A majority of the court found that President Bush did not have the right to hold an American citizen indefinitely without trial by designating him an "illegal enemy combatant". Though the justices disagreed about the exact remedy, eight out of nine agreed that an American prisoner, regardless of what the executive calls him, retains his right to due process. Thomas, on the other hand, wrote a solo dissent: the president is commander-in-chief and can do whatever he needs to, including hold an American without charges or even the possibility of judicial redress.

And even when Thomas finds himself in the majority, he has not hesitated to try to broaden the scope of its decisions, placing his radical cards on the table when the circumstances don't remotely require it. Consider the 2007 case of Morse v Frederick – which you might remember as the "Bong Hits 4 Jesus" case, after the bizarre phrase written in duct tape on a 14-foot banner that a student unfurled outside his school. When the student was suspended for a week, he claimed the school violated his right to free speech. Roberts, writing for the court's conservative bloc, held otherwise: a school has a responsibility to discourage drug use, and the first amendment didn't require the school to tolerate such a sign.

Thomas signed that opinion. But he also authored his own. The petitioner's first amendment argument was unfounded, Thomas wrote – because students have no first amendment rights at all. It becomes clear, Thomas insists, if you go back to the 18th-century schoolhouse, where, as he wrote, "teachers commanded, and students obeyed." Throwing out the student's petition was not enough, Thomas argued; the court should throw out all earlier protections for students' speech, which, so far as the justice was concerned, had no basis in the constitution.

It's a fun world Thomas envisions, even if much of his most radical thinking remains confined to his dissents. But time is on his side. Thomas, we should not forget, was the youngest person in decades to reach the US supreme court bench when he was confirmed so narrowly 20 years ago. He is now only 63: a decade younger than Stephen Breyer, 15 years younger than Ruth Bader Ginsburg. Barring a disaster or a highly unlikely change of heart, he will probably match John Paul Stevens's extended tenure. It seems plausible that he could become the longest-serving justice of all time.

There is something almost perversely admirable about Thomas's sweeping jurisprudence – so long as it never becomes the law of the land. If the anniversary of the confirmation of our cruelest justice has any upside,

perhaps it can remind us that presidential and legislative elections have serious judicial consequences. And long-term ones. Judges on the German constitutional court serve a fixed 12-year span; in the two-year-old British supreme court, law lords will be bounced out at age 70. But here in America, our justices are with us for life.

And if the court's next member is chosen not by Barack Obama, but a Republican successor, then we might all soon be living in Thomas's brave new world.

SECTION FOUR

What They Didn't Tell You About Anita Hill and Clarence Thomas

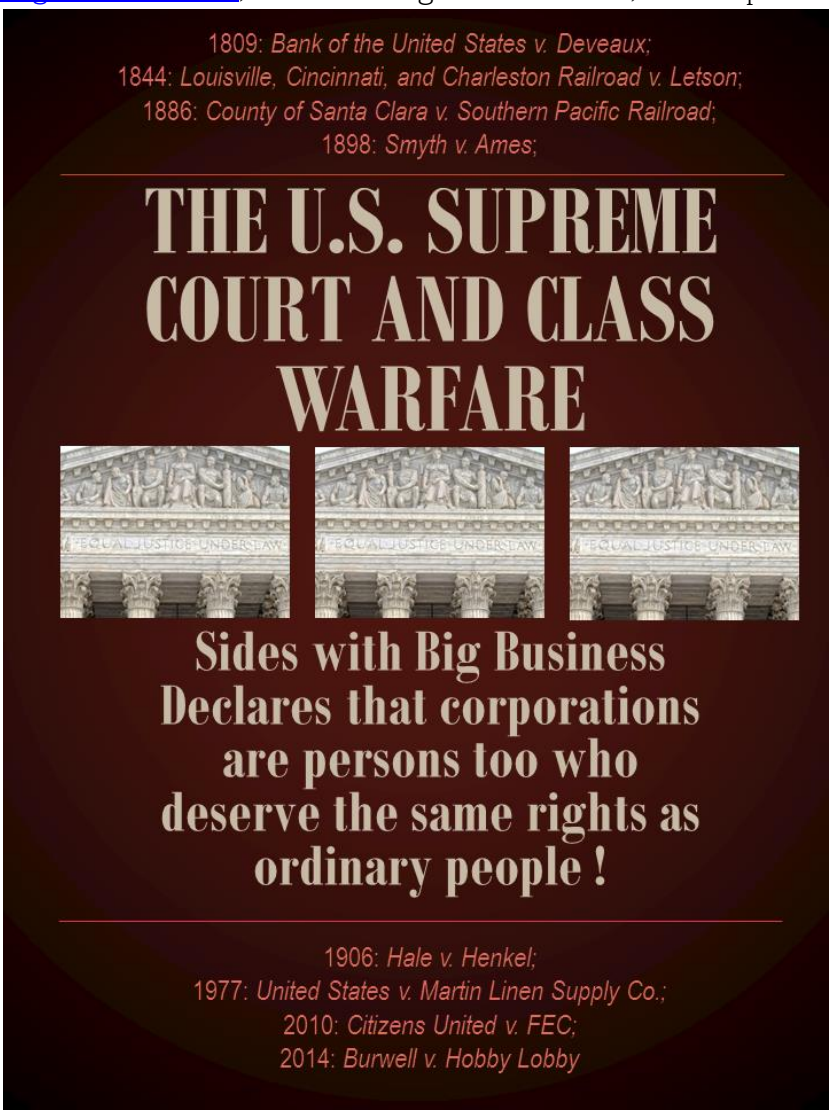
By Schuster Institute for Investigative Journalism 04/01/2014 04:17 pm ET Updated Dec 06, 2017

SOURCE: https://www.huffingtonpost.com/schuster-institute-for-investigative-journalism/what-they-didnt-tell-you-_b_5070620.html

It's been more than 20 years since Anita Hill took the stand in Clarence Thomas' Senate Judiciary Committee's Supreme Court nomination confirmation hearings, electrifying the nation. While Hill's allegations

of Thomas' sexual misconduct didn't stop Thomas' appointment to the Supreme Court, her testimony unexpectedly sparked a continuing national conversation on sexual harassment.

Few young women today have heard of the person who transformed their professional world; that includes Hill's own students at Brandeis University, where she currently teaches. Academy Award-winning director Freida Mock's new documentary,*Anita: Speaking Truth to Power*, aims to change that. The film, which opens to the general public on April 4, revisits that transformative moment in American social history. And it reveals that, since her moment of public courage, Ms. Hill has become a hero and model for those who do know her as a trailblazer, while thriving in her personal life.



Even those Americans who were glued to the televised hearings don't know the complicated backstory. Anita Hill's 1991 testimony did indeed launch a national conversation about sexual harassment and women's working conditions. But instead of a "he-said/she-said" narrative, with commentators taking sides based on their political views, the hearings could have been "he said/they said."

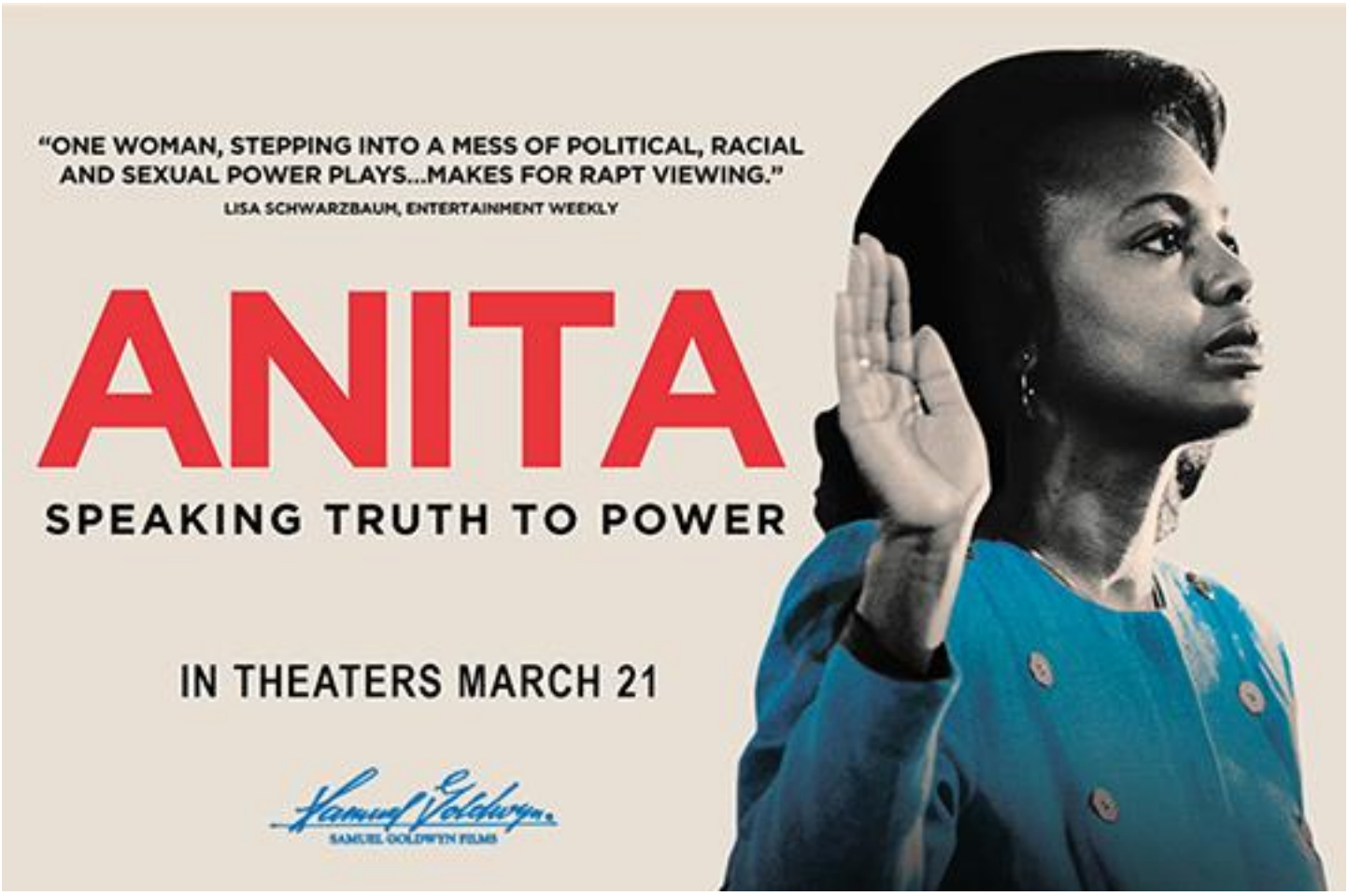
Another witness was waiting to testify against Thomas, with information that could have helped corroborate Hill's allegations. But Angela Wright, then a North Carolina journalist who had been subpoenaed by the Senate Judiciary Committee and left waiting in a Washington hotel for three days, was never called to testify.

Wright heard Anita Hill and thought, "I believe her because he did it to me." Her testimony might have changed history. She was subpoenaed. Why wasn't she called to testify — and what would she have said if she had been?

In 1994, Florence George Graves cleared up those mysteries in the *Washington Post*, revealing the intricate — and bipartisan — behind-the-scenes maneuvering by several Senate Judiciary Committee members to discourage Wright's testimony. The article, entitled "The Other Woman," uncovered a surprising agreement among top Republicans and Democrats not to call Wright, apparently because they feared either that her testimony would create even greater political chaos or that it would doom Thomas' nomination.

The article also revealed evidence suggesting that Thomas lied to the Committee. Several senators — including then-Republican Senator Arlen Specter of Pennsylvania, then-Senator Joe Biden (D-Del.), and several other key senators — told Graves they believed that if Wright had testified, Thomas would not have been confirmed to the Supreme Court, where he has repeatedly voted to narrow the scope of sexual harassment law.

Ten years later, Graves delved even further into the facts of the Thomas confirmation hearings "Anita Hill — The Complete Story," published in the *Boston Globe Magazine* in 2003, took a thorough look at the impact of Hill's testimony a decade after Thomas' confirmation. As Graves reported, while Hill was letting her life "speak for itself," more information — much of it suppressed at the time — was coming forth in her favor.



The newly disclosed facts illuminated a deeply flawed system for approving one of the most powerful officials in the United States: a lifetime appointment to our nation's Supreme Court.

Today Graves, like Anita Hill, is based at Brandeis University, where Graves launched and runs the Schuster Institute for Investigative Journalism, an independent reporting center focused on social justice and human rights. The Schuster Institute carefully and thoroughly investigates issues affecting those who are poor, migrants, enslaved, powerless, voiceless, jailed, or forgotten, and produces stories that are local, national, and global in scope.

For still more background and information about Anita Hill, about the hearings' social impact, and about related facts and controversies, see the Anita Hill webpage at the Schuster Institute.

The Forgotten Testimonies Against Clarence Thomas

By Jill Abramson
https://nymag.com/intelligencer/2018/02/the-forgotten-testimonies-against-clarence-thomas.html

During the 1991 hearings, EEOC employees Rose Jourdain, Sukari Hardnett, and Angela Wright accused their boss Clarence Thomas of having engaged in inappropriate workplace talk, which he denied. The three women weren't called to formally testify; instead, Wright and Jourdain were interviewed over the phone by members of the Senate Judiciary Committee and their staffs, and Hardnett submitted a written description of her experiences. Their interviews were very quietly entered into the record, without even some in Congress realizing the testimony existed.

Sukari Hardnett
If you were young, black, female and reasonably attractive and worked directly for Clarence Thomas, you knew full well you were being inspected and auditioned as a female. You knew when you were in favor because you were always at his beck and call, being summoned constantly, tracked down wherever you were in the agency and given special deference by others because of his interest. You knew when you had ceased to be an object of sexual interest — because you were barred from entering his office and treated as an outcast or, worse, a leper with whom contact was taboo. For my own part, I found his attention unpleasant, sought a transfer, was told one "just doesn't do that," insisted nonetheless, and paid the price as an outcast for the remainder of my employment at EEOC. That is why I resigned and left the EEOC. To maintain that Clarence Thomas's office was untainted by any sexuality and permeated by loving, nurturing, but asexual concern is simply a lie. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt about that dimension in Clarence Thomas's office. I know it. Clarence Thomas knows it. And I know he knows it because he discussed some of the females in his office with me. I have told all of this to Senate staff.

Angela Wright
Clarence Thomas did consistently pressure me to date him. At one point, Clarence Thomas made comments about my anatomy. Clarence Thomas made comments about women's anatomy quite often. At one point, Clarence Thomas came by my apartment at night, unannounced and uninvited, and talked in general terms, but also he would try to move the conversation over to the prospect of my dating him. We are talking about a general mode of operating. I can remember specifically one evening when the comment of dating came up — it was when the EEOC was having a retirement party for my predecessor, Alf Sweeney, which I had organized for Mr. Sweeney at Mr. Thomas's request, and we were sitting at the banquet table while the speakers and things were going through their speeches. And Clarence Thomas was sitting right next to me, and he at one point turned around and said this is really a great job, blah-blah-blah, and he said you look good and you are going to be dating me, too. That was not like the only time he said something of that nature … I specifically recall being at a seminar, I can't even tell you which seminar, because we had many of them, when Clarence Thomas commented on the dress I was wearing and asked me what size my boobs were.

Rose Jourdain

[Angela Wright] told me he had come to her home one night unannounced, and she told everyone — for example, one time she came into my office in tears, said she had bought a new suit that I thought was quite attractive — it was just a regular suit for a person to wear to work, a woman to wear to work — and he had had, evidently, quite a bit of comment to make about it and how sexy she looked in it … She became increasingly nervous about being in his presence alone … I am older than she, and she came to me oftentimes to ask advice, what should she do? We are talking about a time when sexual harassment was not a thing that women were talking about, and how to handle this … I know that she had made it quite clear to him that she was not interested in developing a relationship with him outside of the workplace. [Another time] I am sitting in the office, she walks in, slams the door, and says, "Do you know what he said to me?" And I said, "No, what did he say to you?" You know, because it has gone on before … [He had said,] "Ooh, you have very sexy legs," or something like "You have hair on your legs, and it turns me on," or something like that. I thought it was nutty, you know what I mean? It was that, but it was very unnerving to a young woman who is sitting there hearing this.

Additional reporting by Amelia Schonbek

SECTION FIVE

Do You Believe Her Now?

It's time to reexamine the evidence that Clarence Thomas lied to get onto the Supreme Court — and to talk seriously about impeachment.

By Jill Abramson February 18, 2018

SOURCE: http://nymag.com/daily/intelligencer/2018/02/the-case-for-impeaching-clarence-thomas.html

On the same fall night in 2016 that the infamous *Access Hollywood* tape featuring Donald Trump bragging about sexual assault was made public by the Washington *Post* and dominated the news, an Alaska attorney, Moira Smith, wrote on Facebook about her own experiences as a victim of sexual misconduct in 1999.

"At the age of 24, I found out I'd be attending a dinner at my boss's house with Justice Clarence Thomas," she began her post, referring to the U.S. Supreme Court justice who was famously accused of sexually harassing Anita Hill, a woman who had worked for him at two federal agencies, including the EEOC, the federal sexual-harassment watchdog.

"I was so incredibly excited to meet him, rough confirmation hearings notwithstanding," Smith continued. "He was charming in many ways — giant, booming laugh, charismatic, approachable. But to my complete shock, he groped me while I was setting the table, suggesting I should 'sit right next to him.' When I feebly explained I'd been assigned to the other table, he groped again … 'Are you sure?' I said I was and proceeded to keep my

distance." Smith had been silent for 17 years but, infuriated by the "Grab 'em by the pussy" utterings of a presidential candidate, could keep quiet no more.

Tipped to the post by a Maryland legal source who knew Smith, Marcia Coyle, a highly regarded and scrupulously nonideological Supreme Court reporter for *The National Law Journal,* wrote a detailed story about Smith's allegation of butt-squeezing, which included corroboration from Smith's roommates at the time of the dinner and from her former husband. Coyle's story, which Thomas denied, was published October 27, 2016. If you missed it, that's because this news was immediately buried by a much bigger story — the James Comey letter reopening the Hillary Clinton email probe.

Smith, who has since resumed her life as a lawyer and isn't doing any further interviews about Thomas, was on the early edge of #MeToo. Too early, perhaps: In the crescendo of recent sexual-harassment revelations, Thomas's name has been surprisingly muted.

Perhaps that is a reflection of the conservative movement's reluctance, going back decades, to inspect the rot in its power structure, even as its pundits and leaders have faced allegations of sexual misconduct. (Liberals of the present era — possibly in contrast to those of, say, the Bill Clinton era — have been much more ready to cast out from power alleged offenders, like Al Franken.)

But that relative quiet about Justice Thomas was striking to me. After all, the Hill-Thomas conflagration was the first moment in American history when we collectively, truly grappled with sexual harassment. For my generation, it was the equivalent of the Hiss-Chambers case, a divisive national argument about whom to believe in a pitched political and ideological battle, this one with an overlay of sex and race. The situation has seemed un-reopenable, having been tried at the highest level and shut down with the narrow 1991 Senate vote to confirm Thomas, after hearings that focused largely on Hill.

But it's well worth inspecting, in part as a case study, in how women's voices were silenced at the time by both Republicans and Democrats and as an illustration of what's changed — and hasn't — in the past 27 years (or even the last year). After all, it's difficult to imagine Democrats, not to mention the media, being so tentative about such claims against a nominated justice today. It's also worth looking closely at, because, as Smith's account and my reporting since indicates, Thomas's inappropriate behavior — talking about porn in the office, commenting on the bodies of the women he worked with — was more wide-ranging than was apparent during the sensational Senate hearings, with their strange Coke-can details.

But, most of all, because Thomas, as a crucial vote on the Supreme Court, holds incredible power over women's rights, workplace, reproductive, and otherwise. His worldview, with its consistent objectification of women, is the one that's shaping the contours of what's possible for women in America today, more than that of just about any man alive, save for his fellow justices.

And given the evidence that's come out in the years since, it's also time to raise the possibility of impeachment.

[….]

Lying is, for lawyers, a cardinal sin. State disciplinary committees regularly institute proceedings against lawyers for knowingly lying in court, with punishments that can include disbarment. Since 1989, three federal judges have been impeached and forced from office for charges that include lying. The idea of someone so flagrantly telling untruths to ascend to the highest legal position in the U.S. remains shocking, in addition to its being illegal. (Thomas, through a spokesperson, declined to comment on a detailed list of queries.)

Thomas's lies not only undermined Hill but also isolated her. It was her word versus his — when it could have been her word, plus several other women's, which would have made for a different media narrative and a different calculation for senators. As the present moment has taught us, women who come forward alongside other women are more likely to be believed (unfair as that might be). There were four women who wanted to testify, or would have if subpoenaed, to corroborate aspects of Hill's story. My new reporting shows that there is at least one more who didn't come forward. Their "Me Too" voices were silenced.

My history with the Thomas case is a long one. In the early 1990s, along with my then-colleague at *The Wall Street Journal* Jane Mayer, I spent almost three years re-reporting every aspect of the Hill-Thomas imbroglio for a book on the subject, *Strange Justice: The Selling of Clarence Thomas*.

[….]

When our book came out, I was told there were lawyers in the Clinton White House and some congressional Democrats who, based on our reporting, were looking into whether Thomas could be impeached through a congressional vote. It's not entirely without precedent: One Supreme Court justice, Samuel Chase, was impeached in 1804 for charges related to allowing his politics to infiltrate his jurisprudence — though he wasn't ultimately removed, and that particular criticism looks somewhat quaint now. In 1969, Justice Abe Fortas resigned under threat of impeachment hearings for accepting a side gig with ethically thorny complications; the following year, there were hearings (which ended without a vote) against another justice, William O. Douglas, accused of financial misdealings. But when the Republicans took control of Congress after the 1994 midterms, the Thomas-impeachment idea,


Lawyer Anita Hill at Thomas's Confirmation Hearings

always somewhat far-fetched politically, died.

To my surprise, the notion of impeaching Thomas resurfaced during the 2016 campaign. In the thousands of emails made public during the FBI investigation of Hillary Clinton, there was one curious document from her State Department files that caught my attention, though it went largely unremarked upon in the press. Labeled "Memo on Impeaching Clarence Thomas" and written by a close adviser, the former right-wing operative David Brock, in 2010, the seven-page document lays out the considerable evidence, including material from our book, that Thomas lied to the Judiciary Committee when he categorically denied that he had discussed pornographic films or made sexual comments in the office to Hill or any other women who worked for him. When I recently interviewed Brock, he said that Clinton "wanted to be briefed" on the evidence that Thomas lied in order to be confirmed to his lifelong seat on the Court. He said he had no idea if a President Hillary Clinton would have backed an effort to unseat Thomas.

[….]

Thomas's workplace sex talk was also backed up in 2010, nearly 20 years after the Hill-Thomas hearings, by Lillian McEwen, a lawyer who dated Thomas for years during the period Hill says she was harassed. She had declined to talk for *Strange Justice* but broke her silence in an interview with Michael Fletcher, then of the Washington *Post,* who had co-written a biography of Thomas. She said Thomas told her before the hearings that she should remain silent — as his ex-wife, Kathy Ambush, had. In another interview, McEwen told the New York *Times* that she was surprised that Joe Biden, the senator running the hearings, hadn't called her to testify. In fact, she'd written to Biden before the hearings to say that she had "personal knowledge" of Thomas.

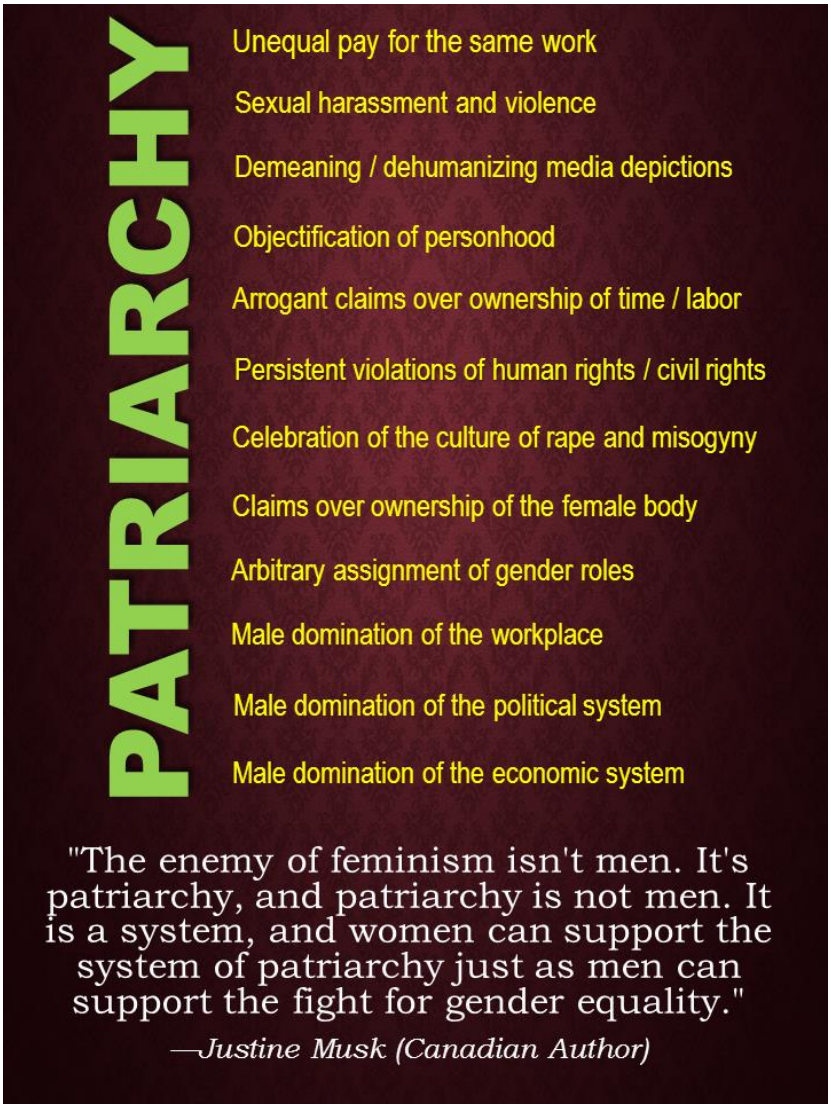
What sparked her to go public so many years later, McEwen told Fletcher, was a strange call Thomas's wife, Ginni, made to Hill on October 9, 2010. On a message left on Hill's answering machine, Ginni asked Hill to apologize for her testimony back in 1991. "The Clarence I know was certainly capable not only of doing the things that Anita Hill said he did, but it would be totally consistent with the way he lived his personal life then," said McEwen, who by then was also writing a bodice-ripping memoir, *D.C. Unmasked and Undressed*. According to the *Post,* Thomas would also tell McEwen "about women he encountered at work and what he'd said to them. He was partial to women with large breasts, she said." Once, McEwen recalled, Thomas was so "impressed" by a colleague's chest that he asked her bra size, a question that's difficult to interpret as anything but the clearest kind of sexual harassment. That information could also have been vital if made public during the 1991 confirmation hearings because it echoed the account of another witness, Angela Wright, who said during questioning from members of the Judiciary Committee that Thomas asked her bra size when she worked for him at the EEOC.

Neither Thomas nor his defenders came after McEwen for her story. Perhaps that was because of their lengthy past relationship. Probably, they wisely chose to let the story die on its own. But it's what sparked Brock's memo on the impeachment of Thomas.

The Thomas hearings were not just a national referendum on workplace behavior, sexual mores, and the interplay between those things; they were a typical example of partisan gamesmanship and flawed compromise. Chairman Biden was outmaneuvered and bluffed by the Republicans on the Judiciary

Committee. He had plenty of witnesses who could have testified about Thomas's inappropriate sexualized office behavior and easily proven interest in the kind of porn Hill referenced in her testimony, but had made a bargain with his Republican colleagues that sealed Hill's fate: He agreed only to call witnesses who had information about Thomas's workplace behavior. Thomas's "private life," especially his taste for porn — then considered more outré than it might be now — would be out of bounds, despite the fact that information confirming his habit of talking about it would have cast extreme doubt on Thomas's denials.

This gentleman's agreement was typical of the then-all-male Judiciary Committee. Other high-profile Democrats like Ted Kennedy, who was in no position to poke into sexual misconduct, remained silent. Republicans looked for dirt on Hill wherever they could find it — painting her as a "little bit nutty and a little bit slutty," as Brock later said, with help from Thomas himself, who huddled with GOP congressmen to brainstorm what damaging information he could unearth on his former employee, some of which he seems to have leaked to the press — and ladled it into the Hill-Thomas testimony. Meanwhile, Biden played by Marquis of Queensberry rules.



Late last year, in an interview with *Teen Vogue*, Biden finally apologized to Hill after all these years, admitting that he had not done enough to protect her interests during the hearings. He said he believed Hill at the time: "And my one regret is that I wasn't able to tone down the attacks on her by some of my Republican friends."

Thomas's lies not only undermined Hill but also isolated her. It was her word versus his — when it could have been her word, plus several other women's.

Among the corroborative stories — the potential #MeToos — that Biden knew about but was unwilling to use: those of Angela Wright; Rose Jourdain, another EEOC worker in whom Wright confided; and Sukari Hardnett, still another EEOC worker with relevant evidence. ("If you were young, black, female and reasonably attractive and worked directly for Clarence Thomas, you knew full well you were being inspected and auditioned as a female," Hardnett wrote in a letter to the Judiciary Committee, contradicting Thomas's claim "I do not and did not commingle my personal life with my work life" and supporting McEwen's 2010 assertion that he "was

always actively watching the women he worked with to see if they could be potential partners" as "a hobby of his.") Kaye Savage, a friend of Thomas's and Hill's, knew of his extensive collection of *Playboy* magazines; Fred Cooke, a Washington attorney, saw Thomas renting porn videos that match Hill's descriptions, as did Barry Maddox, the owner of the video store that Thomas frequented. And at least some members of Biden's staff would have known Lillian McEwen had relevant information.

This is what any trial lawyer would call a bonanza of good, probative evidence (even without the additional weight of the other people with knowledge of Thomas's peculiar sex talk, like Montwieler). In interviews over the years, five members of Biden's Judiciary Committee at the time of the hearings told me they were certain that if Biden had called the other witnesses to testify, Thomas would never have been confirmed.

The most devastating witness would have been Wright. In addition to what she told the committee about Thomas's comments on her breasts, she — upset by the experience — had also told her colleague Jourdain that Thomas had commented that he found the hair on her legs sexy. Jourdain, who came out of the hospital after a procedure just in time to corroborate Wright's testimony and was cutting her pain medication in quarters so that she would be lucid, was never called to testify. Their accounts were buried and released to reporters late at night.

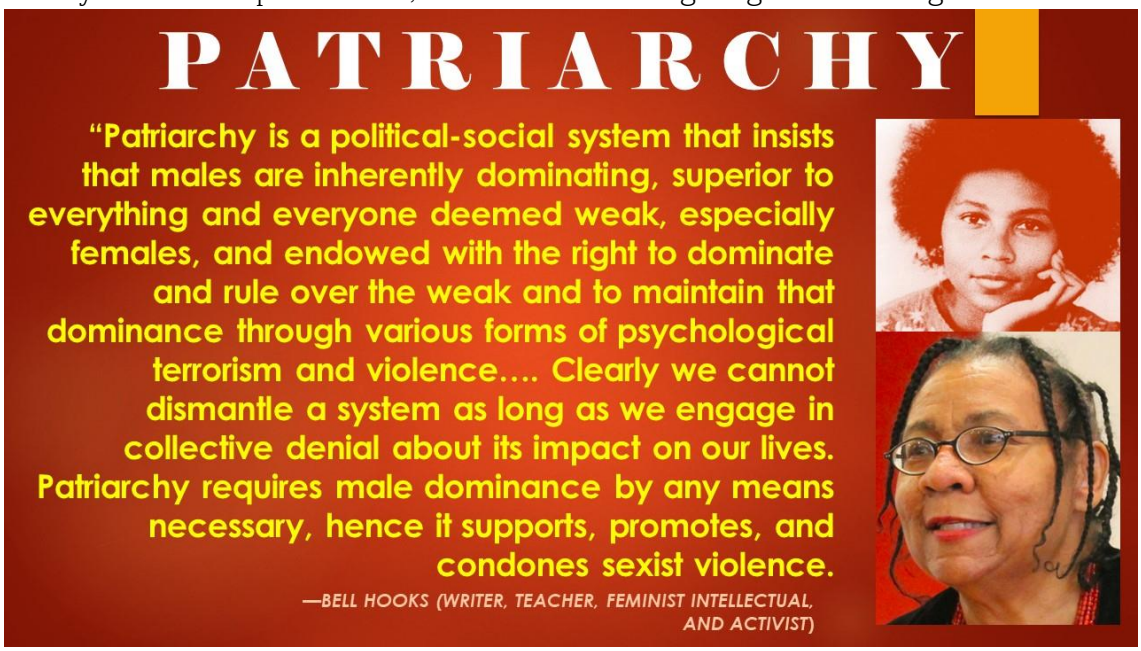
Wright would have killed the nomination. But Republicans, with faulty information spread by one of Thomas's defenders, Phyllis Berry, claimed Wright had been fired by Thomas for calling someone else in the office a "faggot." The man Wright supposedly labeled thus later said she never used the word, but Biden was too cowed to take the risk of calling her. Wright has since said repeatedly that she would have gladly faced Republican questioning. But in a pre-social-media age, that was that; the would-be witnesses weren't heard from. Less than a week after the confirmation vote, Thomas was hastily sworn in for his lifetime appointment on the bench.

[….]

Hill, who now teaches law at Brandeis University, was picked in December to lead a newly formed commission on sexual harassment in the entertainment industry; in a recent interview with Mayer for *The New Yorker*, she emphasized how crucial believability is to the narrative of cases like hers, and, in Mayer's words, "Until now, very few women have had that standing." Thomas, meanwhile, sits securely on the U.S. Supreme Court with lifetime tenure. He was 43 when he faced what he famously called "a high-tech lynching" before the Judiciary Committee. After that, he vowed to friends, he would serve on the Court another 43 years. He's more than halfway there. His record on the Court has been devastating for women's rights. Thomas typically votes against reproductive choice: In 2007, he was in the 5-4 majority in *Gonzales* v. *Carhart* that upheld the Partial-Birth Abortion Ban Act of 2003. He voted to weaken equal-pay protections in the Court's congressionally overruled decision in *Ledbetter* v. *Goodyear Tire.* He joined the majority decision in *Burwell* v. *Hobby Lobby,* holding that an employer's religious objections can override the rights of its women employees.

And, as Think Progress noted, "in one of the most underreported decisions of the last several years, Thomas cast the key fifth vote to hobble the federal prohibition on harassment in the workplace."* The 5-4 decision in 2013's *Vance* v. *Ball State University* tightened the definition of who counts as a supervisor in harassment cases.

The majority decision in the case said a person's boss counts as a "supervisor" only if he or she has the authority to make a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." That let a lot of people off the hook. In many modern workplaces, the only "supervisors" with those powers are far away in HR offices, not the hands-on boss who may be making a worker's life a living hell. The case was a significant one, all the more so in this moment.



Thomas, who almost never speaks from the bench, wrote his own concurrence, also relatively rare. It was all of three sentences long, saying he joined in the opinion "because it provides the narrowest and most workable rule for when an employer may be held vicariously liable for an employee's harassment."

The concurrence is so perfunctory that it seemed like there was only one reason for it: He clearly wished to stick it in the eye of the Anita Hills of the world.

SECTION SIX

Clarence Thomas Cast the Key Fifth Vote to Gut the Ban on Sexual Harassment

Maybe we should have believed Anita Hill.

Ian Millhiser Oct 28, 2016,

SOURCE: https://thinkprogress.org/clarence-thomas-cast-the-key-fifth-vote-to-gut-the-ban-on-sexual-harassment-3888423523d5/

On Thursday, news broke that Justice Clarence Thomas allegedly groped a 23 year-old woman at a dinner honoring Truman Scholars [in 1999]. And this is hardly the first time that a woman has come forward with

similar allegations against Thomas. The justice famously faced sexual harassment allegations from his former employee Anita Hill during his confirmation hearing.

Regardless of what may have occurred between Thomas and the women speaking out against him, his record as a justice suggests that he is not at all sympathetic to women's legal claims, especially in the context of sexual harassment.

As a justice, Thomas has largely been hostile to litigants seeking to protect women's rights. Thomas typically votes against reproductive choice. He voted to weaken equal pay protections in the Court's congressionally overruled decision in *Ledbetter v. Goodyear Tire*. He joined the majority decision in *Burwell v. Hobby Lobby*, holding for the first time that an employer's religious objections can trump the rights of their women employees. And, in one of the most under-reported decisions of the last several years, he cast the key fifth vote to hobble the federal prohibition on sexual harassment in the workplace.

Federal law distinguishes between sexual harassment by a co-worker and harassment by a supervisor. In a nutshell, an employer is only liable for co-worker on co-worker harassment if that employer was negligent in permitting that harassment to occur. But if a supervisor harasses a worker, the employer often is automatically liable for that supervisor's actions.

In *Vance v. Ball State University*, a 5–4 Supreme Court redefined the word "supervisor" such that it means virtually nothing in many modern workplaces. Under *Vance*, a person's boss only counts as their "supervisor" if they have the authority to make a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."

One problem with this decision is that modern workplaces often vest the power to make such changes in employment status in a distant HR office, even though the employee's real boss wields tremendous power over them. During oral arguments in this case, for example, Justice Elena Kagan warned of a hypothetical professor who subjects their secretary "to living hell, complete hostile work environment on the basis of sex." Under the rule announced in *Vance*, that professor doesn't qualify as a "supervisor" if the authority over the secretary's job status rests with the "Head of Secretarial Services."

Similarly, in her dissenting opinion, Justice Ruth Bader Ginsburg listed several real world examples of abusive bosses who no longer count as "supervisors" thanks to *Vance*. In one case, an African-American woman who worked as a mechanic's helper faced racial and sexual harassment from the "mechanic in charge" of her work site. This mechanic "commented frequently on her 'fantastic ass,' 'luscious lips,' and 'beautiful eyes,' and, using deplorable racial epithets, opined that minorities and women did not 'belong in the business." At one point, "he pulled her on his lap, touched her buttocks, and tried to kiss her while others looked on."

And yet, this "mechanic in charge" no longer counts as a "supervisor" thanks to *Vance*.

Similarly, a trainee truck driver was paired with a "lead driver" who lacked the authority to fire or promote her, but who directed much of her day-to-day work and who "evaluated trainees' performance with a nonbinding

Clarence Thomas with spouse Gini Thomas

pass or fail recommendation that could lead to full driver status." One of these lead drivers "forced her into unwanted sex with him, an outrage to which she submitted, believing it necessary to gain a passing grade."

And yet, this lead driver also does not count as a "supervisor" under *Vance*.

Because *Vance* was a 5–4 decision, the case would not have come down the same way without Thomas' fifth vote. If a liberal justice held his seat, Ginsburg's view would have prevailed.

SECTION SEVEN

Is Gini Thomas a Threat to the Supreme Court?

Behind closed doors, Justice Clarence Thomas's wife is working with many groups directly involved in controversial cases before the Court.

By Jane Mayer

SOURCE: https://www.newyorker.com/magazine/2022/01/31/is-ginni-thomas-a-threat-to-the-supreme-court

In December, Chief Justice John Roberts released his year-end report on the federal judiciary. According to a recent Gallup poll, the Supreme Court has its lowest public-approval rating in history—in part because it is viewed as being overly politicized. President Joe Biden recently established a bipartisan commission to

consider reforms to the Court, and members of Congress have introduced legislation that would require Justices to adhere to the same types of ethics standards as other judges. Roberts's report, however, defiantly warned everyone to back off. "The Judiciary's power to manage its internal affairs insulates courts from inappropriate political influence," he wrote. His statement followed a series of defensive speeches from members of the Court's conservative wing, which now holds a super-majority of 6–3. Last fall, Justice Clarence Thomas, in an address at Notre Dame, accused the media of spreading the false notion that the Justices are merely politicians in robes. Such criticism, he said, "makes it sound as though you are just always going right to your personal preference," adding, "They think you become like a politician!"

The claim that the Justices' opinions are politically neutral is becoming increasingly hard to accept, especially from Thomas, whose wife, Virginia (Ginni) Thomas, is a vocal right-wing activist. She has declared that America is in existential danger because of the "deep state" and the "fascist left," which includes "transsexual fascists." Thomas, a lawyer who runs a small political-lobbying firm, Liberty Consulting, has become a prominent member of various hard-line groups. Her political activism has caused controversy for years. For the most part, it has been dismissed as the harmless action of an independent spouse. But now the Court appears likely to secure victories for her allies in a number of highly polarizing cases—on abortion, affirmative action, and gun rights.

NOTE: You can listen to the longer version of Section Seven here: https://audm.herokuapp.com/player-embed?pub=newyorker&articleID=61e49fc873406cef6c6cab01

SECTION EIGHT

The Case for Impeaching Clarence Thomas

By Michael Tomasky

SOURCE: https://newrepublic.com/article/165118/clarence-thomas-impeachment-case-democrats

The Supreme Court justice refuses to recuse himself from cases in which his right-wing activist wife, Ginni, has a clear interest. The Democrats should punish him for it.

In a sane world, Jane Mayer's excellent piece on Ginni Thomas in The New Yorker would set off a series of events that would lead to her husband Clarence Thomas's impeachment and removal from the Supreme Court. Ginni is involved with numerous far-right organizations and schemes that take very public positions on court decisions across a range of social and political issues, such as last week's 8–1 holding that Donald Trump could not block the release of documents related to the January 6, 2021, insurrection.

Thomas was the lone dissenter in that case. His wife sat on the advisory board of a group that sent busloads of insurrectionists to Washington on January 6. In addition, she cheered the insurrection on Facebook. It's just the most recent example where she has been involved in activities that directly or indirectly place her activism before the court, and her husband does not care how corrupt it looks.

They've been doing this for years. This first occasion was back in 2000, in a case Mayer doesn't even go into, when it was revealed after that election that as a Heritage Foundation staffer, Ginni was screening résumés for the incoming Bush administration while the nation awaited a ruling from the court on the Florida recount. There was pressure then on Thomas to recuse himself.

A decade later, when the first major Obamacare case came before the court, it was widely noted that Ginni's group, Liberty Central, called the law a "disaster" and urged repeal. Again, there were calls for Thomas to recuse.

He didn't do so in either case. And in the first one, he was part of the 5–4 majority in Bush v. Gore, one of the most self-discrediting decisions in the court's history.

So for 20 years, Ginni Thomas has been operating in the white-hot center of far-right activist circles, involved in everything from Obamacare to abortion rights to same-sex marriage to you name it—all issues that have come before her husband. A more honorable man would recuse himself from all such cases or indeed quietly ask his spouse to find another, less incendiary line of work that has no impact on the appearance of her husband's ethical standards.

And what have the Democrats done about it? Here, again, we see the difference between the two parties and their broader solar systems. If there were a liberal justice on the court with a spouse who was involved in every major ideological battle of our time, you can be sure the following process would have played out:

1. Some back-bench members of Congress would have started raising the issue.

2. Fox News and other right-wing media would have picked it up and turned the spouse into a symbol of liberal corruption.

3. Once in the majority, House Republicans would have held hearings and issued reports.

4. They probably would have impeached the justice, knowing that it would fail in the Senate but would tarnish said justice and any precedent of which he or she was a part.

The Democrats likely don't have the gumption to do this. But they could do it. The House Judiciary Committee could hold hearings into Ginni's organization and associations. The select committee on January 6 could ask her to testify and, once she refuses, subpoena her, which would require her husband to recuse himself on all January 6–related matters.

That would be hugely controversial, so they probably won't do it. But why not? Here's a question for you. If the Republicans retake the House this November, the chairman of the Judiciary Committee is going to be Jim Jordan. He's probably going to lead an impeachment of Joe Biden. Think he'll be cowed because it's hugely controversial?

The Democrats and their allies aren't powerless on this matter, and here are some moves they should make:

First, activist lawyers on the liberal side should file recusal demands of Thomas on every single case in which Ginni Thomas or any organization she's affiliated with has any kind of involvement (where she or the affiliated group has taken a public position, for example). This will at least keep the issue in the news and the spotlight on them.

Second, Democrats in Congress should push harder for the Supreme Court to adopt a judicial code that justices have to follow. Right now, the nine justices of the Supreme Court are the only federal judges in the land not bound by the Code of Conduct for U.S. judges. They police themselves. There are a number of proposals and recommendations, some laid out in this Brennan Center report, that would impose various ethics and disclosure rules on the court. This is not just a right-wing problem, by the way. Liberal justices also have taken lavish junkets paid for by ideological organizations. These are made public on financial disclosure forms, but typically with very little detail.

Third, something needs to be done to rein in the proliferation of amicus briefs. Corporate interests in recent years have flooded the court with amicus briefs that create the appearance of huge groundswells of support for a certain position, but often they're all backed by the same dark-money outfits. This amounts to lobbying, by people like Ginni Thomas's friends and allies and fellow board members and prize recipients. It's perfectly legal but rancidly corrupt.

Finally, there are giant loopholes in the financial disclosure rules for justices, such that a spouse can take in money from a source that has an amicus brief before the court, and no one knows it. Ginni Thomas got more than $200,000 from one person who had a brief in front of the court, and only the Thomases knew about it.

Public approval of the Supreme Court is down to 40 percent, a new low. A poll last year on individual justices' approval ratings is even more interesting. The three liberal justices were all above water by six to 10 points. The conservatives were all in negative territory, except Samuel Alito, who was +1. They think they're saving the republic from godless heathens like you and me. They somehow can't see that in saving it, they are destroying it, and none of them more so than Clarence Thomas and his nonexistent ethics. Democrats, it's long past time to make an issue of him and his wife.

SECTION NINE

The Radicalization of Clarence Thomas

His time working for Monsanto and other polluting industries helped make him the fierce conservative he is today.

By Scott W. Stern

SOURCE: https://newrepublic.com/article/163116/radicalization-clarence-thomas

In 1992, an electrician named Robert Joiner sued Monsanto, the immense and powerful agrochemical corporation that had, for many years, manufactured the toxic chemical compounds polychlorinated biphenyls, or PCBs. For more than a decade, Joiner had worked in a Georgia utilities plant, which used dielectric fluid containing PCBs as a coolant. As he tinkered with the machinery, the fluid splashed into his eyes and mouth; sometimes, he was forced to plunge his arms and hands directly into the fluid to make repairs. When Joiner fell ill with lung cancer, he took Monsanto (as well as General Electric) to court, arguing that his exposure to the chemicals had "promoted" his condition, and that Monsanto was therefore liable.

Five years later, the Supreme Court ruled against Joiner, siding with Monsanto's formidable legal team in a decision that has been largely forgotten outside legal circles. These days, law schools teach it mostly to explain the legal standard for expert scientific testimony; journalists rarely mention the case at all. But it is notable for one unexplored reason—one of the justices who ruled for Monsanto not only had worked for the company as a young lawyer but had personally negotiated contracts to indemnify it from liability for harm resulting from PCB exposure: Clarence Thomas.

Ever since his controversial 1991 confirmation hearings, Thomas has been the subject of ravenous popular and scholarly interest. Today, there is a veritable shelf of books and studies analyzing his biography, his ideology, and his jurisprudence. Yet none of them linger on the almost three years he worked for Monsanto (it was his

only private-sector experience) or the two subsequent years he spent advising Senator John Danforth—a Republican from Missouri—on environmental and energy issues.

To better understand Thomas's environmental work, I viewed several folders of Monsanto's highly restricted archival material in St. Louis. I then traveled to the State Historical Society of Missouri to view Danforth's surviving office files. These 40-year-old pieces of papers—which I read shortly before the coronavirus pandemic shut down archives across the world—plainly documented the influence of Monsanto and other polluting industries in shaping the young Thomas's thinking. When viewed alongside other archival material (including some records Monsanto was forced to disclose in litigation), the documents demonstrate how Thomas adopted the chemical industry's fierce opposition to government scrutiny in his subsequent legislative work and judging. As a justice, Thomas has displayed a profound reverence for untrammeled private enterprise and a deep skepticism of the administrative state. In short, he judges like the chemical industry attorney he once was.

Thomas spent the first several decades of his life as a reflexive liberal, not even registering as a Republican until 1980. His biographers have offered up a number of theories to explain his move to the political right: his resentment of privileged classmates at Yale Law School; his introduction to the writings of the conservative economist Thomas Sowell; his experience in the Missouri attorney general's office, opposing appeals from incarcerated individuals; his own growing wealth. Absent among these theories is the influence of Monsanto. Yet Thomas's time working within the chemical industry coincided with a period when it was one of the most anti-environmental and politically active corporate sectors in the United States.

When the 28-year-old Thomas arrived at the company's spacious, suburban offices in early 1977, he was entering a new world. Founded in 1901, Monsanto had become by mid-century a massive producer of chemicals, fertilizers, plastics, and, profitably, aspirin. Just as Thomas joined, it was also a company in flux—rapidly growing and reorganizing but also straining to find new sources of business. Under assault from environmental activists and government regulators, it funneled money into lobbying and litigation, battling virtually every law that might hinder its operations, from the Toxic Substances Control Act—which would eliminate one of its most profitable (and toxic) products, PCBs—to regulations that might compel Monsanto to disclose what it called "trade secrets."

Thomas's responsibilities at Monsanto included drafting contracts, advising managers on legal matters, dealing with liability issues, and registering pesticides and herbicides with federal agencies. One of his first tasks was to negotiate the aforementioned contracts for PCB disposal—a duty of enormous importance, given the danger PCBs posed to human health and the multiple billion-dollar class-action suits Monsanto was facing over PCB contamination at the time.

In the summer of 1979, Thomas left for a job as a legislative assistant with Senator Danforth. In this new position, Thomas relentlessly lobbied his boss on behalf of industry interests, especially the chemical industry. For instance, after representatives from DuPont asked him to have Danforth convince the "EPA to slow down their headlong rush to regulate CFC's"—chemicals that were manufactured by DuPont and that were destroying the ozone layer—Thomas dashed off a memorandum to Danforth, echoing DuPont's rhetoric. The

reason the EPA wished to regulate CFCs, he wrote, "is that theoretically they are responsible for depletion of the ozone." But Thomas was skeptical, and he sought to convince Danforth to co-sponsor a much weaker bill, citing industry talking points, such as the "severity of the economic impact on those industries relying on CFCs."

Thomas was likewise amenable when the steel and coal industries sought to skirt environmental regulations. At the request of steel company representatives, he lobbied Danforth to co-sponsor a bill to "stretch out" the period over which the Clean Air Act required "the steel industry [to] install pollution control equipment." He did the same for coal mining reps fighting amendments to the Surface Mining Control and Reclamation Act. And, remarkably, Thomas often advocated on behalf of Monsanto itself. To take just one example, he served as a liaison between the company and Danforth when the chemical giant objected to the U.S. Fish and Wildlife Service's proposal to designate land around one of Monsanto's plants as a "critical habitat" for a certain turtle species. Danforth lambasted the agency for its "apparently shabby treatment of Monsanto," and the agency soon dropped its proposal. Monsanto's director of environmental operations wrote to Danforth, thanking him and his staff—"especially Clarence Thomas."

At the time, Thomas was already displaying a hardening conservative sensibility. A week after Ronald Reagan was elected in 1980, Thomas wrote a memorandum for Danforth titled "We have power—now what?," in which he outlined an aggressive new direction for the senator and his staff now that Republicans had secured a Senate majority. Thomas suggested that Danforth seek a seat on the Environment and Public Works Committee, primarily in order to "limit the impact of the Clean Air and Clean Water Acts," which were both up for reauthorization in 1981. Such a seat would also allow Danforth to shape "the scope and coverage" of the Superfund bill (a subject in which "[i]ndustry" had "demonstrated its keen interest"), and to fight for the interests of Missouri industries, including Monsanto. Thomas saw the ascendant conservative movement as a chance to realize his environmental policy goals.

Thomas's years of work for, and on behalf of, polluting industries is plainly apparent in his judging. He is a consistent friend to corporations and a determined foe of administrative agencies, especially those that seek to protect the environment through regulation (most notably the EPA). He has written decisions in cases decided in favor of Shell, Texaco, and Entergy; sided repeatedly with coal companies; and attempted to rein in the authority of the very agencies he once sought to help corporate executives sidestep. Perhaps most notably, he and his colleagues have limited the liability provisions of the Superfund law—provisions Thomas fought against while working for Danforth.

To be clear, I am not alleging that Thomas has done anything illegal. But many observers have called on Thomas to recuse himself in cases involving Monsanto. He has always declined. Today, the company is frequently the subject of harsh criticism, stemming from its historic production of DDT, dioxin, Agent Orange, aspartame, Roundup, and genetically engineered seeds; it was voted the "Most Evil Corporation of 2013." This modern reputation may be why few of Thomas's supporters dwell on his corporate experience. But the effect the chemical industry had on him was profound. The effect he, in turn, has had on environmental rights in the United States is undeniable.