

23

THE CONFIRMATION HEARING OF U.S. SUPREME COURT JUSTICE CLARENCE THOMAS

By Evan Gutman CPA, JD (2002)

The Judicial confirmation process and the Bar admissions process are very similar to the extent of the irrational nature of questions asked. In October, 1991 Clarence Thomas, who was nominated to the U.S. Supreme Court by George Bush testified before the Senate Judiciary Committee during his confirmation hearings. Unexpected surprise allegations of sexual harassment were made against him by Anita Hill, and the nation was glued to their television sets for several days watching the hearings. The hearings essentially degenerated to the point of being almost as bad as the State Bar admissions process. Thomas' very correct and appropriate statements about the manner in which he was treated during the process and the impact it had on the nation are equally applicable to Bar admission proceedings. I quote many of his courageous statements here at length. His statements make it undeniably clear that Judges are the first ones to condemn the types of tactics used during the Bar admissions or Judicial confirmation process, when they are the ones victimized by such unfair tactics. The only way to ensure that such injustice is discontinued with respect to the Bar admissions process, is to require all State Bar attorneys and Judges to regularly submit character information just like that required of Bar Applicants. Once they have to regularly submit character information, they will undoubtedly formulate a rational questionnaire. Clarence Thomas' statements capture the essence of the State Bar admissions process perfectly. These are the words he spoke during the congressional hearings on his nomination before the entire nation on national television (Letter headings delineate separate segments of hearing):

(A)

THOMAS : I think that this today is a travesty. I think that it is disgusting. I think that this hearing should never occur in America. This is a case in which this sleaze, this dirt, was searched for by staffers of members of this committee, was then leaked to the media, and this committee and this body validated it and displayed it at prime time over our entire nation. How would any member on this committee, any person in this room, or any person in this country, would like sleaze said about him or her in this fashion? Or this dirt dredged up and this gossip and these lies displayed in this manner? How would any person like it?

The Supreme Court is not worth it. No job is worth it. . . . I think something is dreadfully wrong with this country when any person, any person in this free country would be subjected to this.

. . . This is a circus. It's a national disgrace. And from my standpoint as a black American, as far as I'm concerned, it is a high-tech lynching for uppity blacks who in any way deign think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is what will happen to you. You will be lynched, destroyed, caricatured by a committee of the US Senate rather than hung from a tree.

(B)

THOMAS : . . . Today is not a day that in my opinion is high among the days in our country. This is a travesty. You spent the entire day destroying what it has taken me 43 years to build. . . . "The facts keep changing, Senator. When the FBI visited me, the statements to this committee and the questions were one thing. The FBI's subsequent questions were another thing, and the statements today as I received summaries of them were another thing. It is not my fault that the facts changed. . . . So, the facts can change, but my denial does not.

(C)

THOMAS : Senator, I would not want to . . . dignify those allegations with a response. As I have said before, I categorically deny them. To me, I have been pilloried with scurrilous allegations of this nature, I have denied them earlier, and I deny them tonight.

(D)

SEN. HATCH: And are you aware of why those statutes of limitations are so short?

THOMAS: I would suspect that at some point it would have to do with the decision by this body that either memories begin to fade or stories change or perhaps individuals move around and it would be more difficult to litigate them.

SEN HATCH: Well, it involves the basic issue of fairness, just exactly how you have described it.

(E)

THOMAS : This whole affair bothers me, Senator. I am witnessing the destruction of my integrity.

(F)

THOMAS : And I think that if you want to really be fair, you parade every single one before you and you ask them in their relationships with me whether or not any of this nonsense, this garbage, trash that you've siphoned out of the sewers against me, whether any of it is true. Ask them. They've worked with me.

(G)

THOMAS: Senator, as I indicated this morning, it just isn't worth it. The nomination isn't worth it, being on the Supreme Court isn't worth it. There is no amount of money that's worth it. . . . Being an associate justice of the Supreme Court will never replace what I have been robbed of. I wouldn't recommend that anyone go through it. . . .

I think the country has been hurt by this process. I think we are destroying our country, we are destroying our institutions, and I think it's a sad day when the US Senate can be used by interest groups and hate mongers and people who are interested in digging up dirt to destroy other people, and who will stop at no tactics when they can use our great institutions for their own political ends. We are gone far beyond McCarthyism. This is far more dangerous than McCarthyism. . . .

(H)

THOMAS: . . . You are ruining the country. If it can happen to me, it can happen to anybody, anytime, over any issue. Our institutions are being controlled by people who will stop at nothing. They went around this country looking for dirt, not information on Clarence Thomas, dirt. Anybody with any dirt. Late night calls. Calls at work. Calls at home. Badgering. Anything. Give us some dirt. **(FN-Testimony Friday 10/11/91)**

(I)

SEN LEAHY: . . . Did you ever have a discussion of pornographic films with Professor Hill?

THOMAS: Absolutely not.

SEN. LEAHY: Ever had with any other women?

THOMAS: Senator, I will not get into any discussions that I might have about my personal life or my sex life with any person outside of the work place--

(J)

THOMAS: . . . One of the things that has tormented me over the last two and a half weeks has been how do I defend myself against this kind of language and these kinds of charges, how do I defend myself?

(K)

THOMAS: Senator, as I've indicated before, and I will continue to say this and believe this -- I have been harmed. I have been harmed, my family has been harmed, I've been harmed worse than I've ever been harmed in my life.

I wasn't harmed by the Klan.

I wasn't harmed by the Knights of Camellia.

I wasn't harmed by the Arian Race.

I wasn't harmed by a racist group.

I was harmed by this process. This process, which accommodated these attacks on me.

. . .

If someone wanted to block me because they felt I wasn't qualified, that's fine.

. . .

But to destroy me -- Senator, I would have preferred an assassin bullet to this kind of living hell that they have put me and my family through.

(L)

THOMAS: I don't think that I should be here today.
I don't think that this inquisition should be going on.
I don't think that the FBI file should have been leaked.
I don't think that my name should have been destroyed.
And I don't think that my family and I should have been put through this ordeal.
And I don't think that our country should be brought low by this kind of garbage.

(FN Testimony Saturday, 10/12/91-Morning)

(M)

THOMAS: . . . This issue was investigated by the FBI, then leaked to the press. And I do not share your view that this was not concocted.

(N)

THOMAS: . . . I will just simply say that these allegations are false. They were false when the FBI informed me of them. When they were subsequently changed to additional allegations, they were false. And they continue to be false.

(O)

SEN HEFLIN: . . . And the only thing that I'm asking you, Judge, is whether or not you refuse to answer any questions other than what may have occurred in employment. Do you continue to do that?

THOMAS: Oh, absolutely, Senator. I will not be further humiliated by this process. I think that I have suffered enough. . . . And I think enough is enough.

(P)

SEN. HEFLIN: . . . Well, let me just ask you these other things. This might have some bearing, it might not, but I think it should be asked. What was the date of your divorce?

THOMAS: I think it's irrelevant here, Senator.

...

THOMAS: . . . I will only discuss the allegations in this case. . . .

(Q)

THOMAS: . . . I did not expect this circus. I did not expect this charge against my name. I expected people to do anything but not this. And if by going through this, another nominee in the future or another American won't have to go through it, then so be it. . . .

(R)

THOMAS: . . . I don't think this is right. I think it's wrong. I think it's wrong for the country. I think it's hurt me and I think it's hurt the country. . . . And yet I sit here accused. And I'll never be able to get my name back. I know it. They day I received the phone call . . . that this was going to be in the press, I had -- I died. The person you knew, whether you voted for me or against me, died. My view is that that is an injustice.

(S)

THOMAS: As I indicated earlier, it is an injustice to me, but it is a bigger injustice to this country. I don't think any American, whether that person is homeless, whether that person earns minimum wage or is unemployed, whether that person runs a corporation or a small business, black, white, male, female, should have to go through this for any reason.

The person who appeared here for the real confirmation hearings believed that it was okay to be nominated by the Supreme Court and have a tough confirmation hearing. This person, if asked by George Bush today would he want to be nominated, would refuse flatly and would advise any friend of his to refuse. It's just not worth it.

(T)

THOMAS: Senator, I believe that someone, some interest group, I don't care who it is, in combination, came up with this story and used this process to destroy me.

(U)

THOMAS: . . . I didn't want my personal life or allegations about my sexual habits or anything else broadcast in every livingroom in the United States. . . . And hopefully it never happens to another American.

(V)

THOMAS: . . . And as I sit here on matters such as privacy, matters such as procedures for charges against individuals in the criminal context or civil context, this has heightened my awareness of the importance of those protections, the importance of something that we discussed in theory -- privacy, due process, equal protection, fairness.