

**Statement by the African-American Faculty of the UNC School of Law  
Regarding the Visit of Justice Clarence Thomas**

**February 28, 2002**

On Wednesday, March 6, 2002, Clarence Thomas, Associate Justice of the Supreme Court of the United States, will visit the University of North Carolina School of Law. Plans for his visit include a breakfast with students, lunch and coffee with the faculty, visits to selected classes, and an afternoon appearance at the Carolina Club. And while many law students, faculty, staff, and alumni are expected to participate in the day's events, we the law school's five African-American faculty members will not join them. Although it has been reported in the local press that the law school is "delighted" to have Justice Thomas visit,<sup>1</sup> we emphatically do not share that delight.

For many people who hold legitimate expectations for racial equality and social justice, Justice Thomas personifies the cruel irony of the fireboat burning and sinking. For some—certainly, for us—his visit adds insult to injury. We note, parenthetically, that Justice Thomas follows the recent visits of Justices Scalia and O'Connor. Thus, within the last few years the law school will have brought to the campus three of the five justices who have voted consistently to turn back the clock on racial progress.

We live, today, in a United States that increasingly calls on African Americans to disavow the salience of race in American life, to claim that identity doesn't matter, and that race consciousness in any and every form is pernicious, even when it seeks to rectify racial wrongs. But in a United States in which African Americans are disproportionately poor, undereducated, imprisoned, and politically compromised, identity—racial identity—very clearly matters. Were that not the case, Justice Thomas, for all his claims to the contrary, could not have declared himself the victim of a "high-tech lynching" during the heated opposition to his appointment to the Supreme Court.

Accordingly, Justice Thomas is not just another Supreme Court justice with whom we disagree. Rather, as a justice, he not only engages in acts that harm other African Americans *like* himself, but also gives aid, comfort, and racial legitimacy to acts and doctrines of others that harm African Americans *unlike* himself—that is, those who have not yet reaped the benefits of civil rights laws, including affirmative action, and who have not yet received the benefits of the white-conservative sponsorships that now empower him.

The Supreme Court opinions of Justice Thomas are inevitably linked to those of Chief Justice Rehnquist and Associate Justices Scalia, O'Connor, and Kennedy. Thus, since Justice Thomas's appointment to the Court, replacing Justice Thurgood Marshall, he has provided the critical fifth vote in a number of decisions that have set back the quest for racial equality and social justice in this country. While these five justices attempt to mask their entrenched partisanship, we know better than to see their expressions as mere judicial philosophy. They articulate a conservative politics that drives a conservative jurisprudence to obstruct the quest for long-delayed racial equality and the increasingly urgent need for broad-based social justice.

For these reasons, we want to be clear that we reject not only the jurisprudence of Clarence Thomas, but also the politics of Clarence Thomas—just as over 90 percent of African-American voters rejected the politics of George W. Bush in the last presidential election. We

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<sup>1</sup> Ray Gronberg, *Justice Thomas to Visit Law School*, The Durham Herald-Sun, Feb. 5, 2002, at D3.

oppose the de facto, if not intentional, linkage of conservative political themes and racial injustice. Moreover, Justice Thomas has joined and now perpetuates the political-jurisprudential tradition that extends from the racial politics of Richard Nixon, Ronald Reagan, and George Herbert Walker Bush. Their race politics had a bearing on the selection of the justices they appointed and the outcomes of judicial decisions those justices have made.

The harm now being done from the bench of the Supreme Court visits not only those oppressed because of their race, but also many others. Although the denouement of the damage the current Supreme Court is doing is not yet completely clear, we know that society is now more closed, more hateful, less democratic, and less just than it could be if only Justice Thomas's deciding fifth vote were cast, even some of the time, with the four justices who generally dissent from his majority colleagues. The 5-4 decisions of the conservative majority of the Court are hurting real people, dashing legitimate expectations, and blocking our nation's best inclinations toward enhancing our human connectedness.

In closing, we recall that shortly after Clarence Thomas became the 106<sup>th</sup> justice of the United States Supreme Court, Judge A. Leon Higginbotham, Jr. wrote *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*.<sup>2</sup> In explaining the reasons for writing the letter, Judge Higginbotham observed, "By elevating you to the Supreme Court, President Bush has suddenly vested in you the option to preserve or dilute the gains this country has made in the struggle for equality."<sup>3</sup> Over the past decade, Justice Thomas has time and again exercised the wrong option. While the political right does not need Justice Thomas to push its agenda against social justice and equality, it does need him to put a black face on that agenda. Justice Thomas operates as powerfully on a symbolic register as on a jurisprudential one. For all its talk of color-blindness, the political right realizes that Justice Thomas will not be an effective icon of racial conservatism until African Americans ourselves accept and embrace him. *We* cannot.

We will not participate in any institutional gesture that honors and endorses what Justice Thomas does. We cannot delight in such a day. Therefore, while away from the day's events that will honor Justice Thomas, we will re-read Judge Higginbotham's letter, which we have attached to this statement. We will re-read it to secure some of the hope and pride in our nation's history, not just black history. We will re-read it to summon inspiration to add our voice and presence to the struggle for justice and equality that Justice Thomas is so intent on reversing. We invite others to read the letter as well.

With regret,

Charles E. Daye  
Marilyn V. Yarbrough  
John O. Calmore  
Adrienne D. Davis  
Kevin V. Haynes

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<sup>2</sup> *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005 (1992).

<sup>3</sup> *Id.* at 1007.