

Constance Berry Newman

Talking With Thomas for 10 Years

In nominating Judge Clarence Thomas to serve as associate justice of the U.S. Supreme Court, President Bush has chosen an individual who has both the intellect and the intellectual honesty for the job. He nominated a person who will be fair and sensitive to the struggles of all Americans—black, brown, white, red and yellow.

Judge Thomas would not let people's religion or station in life affect the way they thought about their rights. He has a special understanding of those poor striving for political and economic empowerment.

And he is willing to listen to others with whom he is not supposed to agree. I know. I am one of those people. For almost a decade Judge Thomas and I have discussed many issues, but most often our discussions were about inequities in this nation and approaches to ensuring equal opportunity for all. We agreed, we disagreed, and we have both changed our minds some.

The discussion and the debate about Judge Thomas's qualifications are confusing, and not all who have participated have been fair. What disturbs me is that much of the discussion is not even relevant. In order to be fair and relevant we must ask, What does the Constitution require? Article II, Section 2, provides that the president by and with the advice and consent of the Senate shall appoint judges of the Supreme Court. The Constitution does not set specific requirements such as an examination or even citizenship. It is up to the advise-and-consent process to determine the qualifications.

Through the years the questions asked the nominees have changed because the issues have changed. What has not changed significantly are the basic value judgments made about the nominees. I will set out what I believe to be the most important of those values.

It is important that a justice of the U.S. Supreme Court be competent. Even though the Constitution does not require that they be lawyers, all 105 justices have had legal training, with more than half having served on the bench. The American Bar Association has had uneven influence in the process through various administrations, looking at such factors as judicial temperament, character, intelligence and trial experience.

I will not second-guess the ABA. However with regard to Judge Thom-



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as's competence, fairness requires recognition of the following points: Judge Thomas graduated from Holy Cross College with honors and from Yale Law School. He was assistant attorney general of Missouri from 1974 to 1977. He was counsel to Monsanto Co. and legislative assistant to Sen. John Danforth. He has been confirmed by the Senate on four separate occasions. The most relevant confirmation was in 1989 as a U.S. Court of Appeals Judge for the District of Columbia. Since confirmation he has participated in more than 140 decisions.

A justice of the court must have an open, inquiring mind—a willingness to listen and be sensitive to the struggles evidenced by the issues before the court. At the time of confirmation, the Senate cannot know of the issues the justice will face. What is important is that the nominees have no preconceived notions of how they will decide specific cases. They must be prepared to review complicated briefs with an open mind and to listen to the arguments, inquiring and then deciding.

When Earl Warren was nominated to be chief justice in 1953, there should not have been and was not a

way for the Senate to know how he would decide the landmark case *Brown v. Board of Education* in 1954. It was important to the Senate that Warren be competent and fair, inquiring about the struggles evidenced by the issues in the case. And he was just that. We would have that in Judge Thomas, an independent thinker who is fair and who will listen. Judge Thomas has read and quoted many people of varying points of view. That type of inquiring mind is needed on the court.

A justice of the court must have integrity, particularly intellectual honesty. We entrust a great deal to the nine on the Supreme Court. They must honestly call the cases as they see them. An independent thinker, Judge Thomas will have no problem adapting to the culture of the Supreme Court.

I trust the president's judgment in nominating Judge Thomas, but I can go further. After almost 10 years of discussions with him, I am comfortable with the idea that he will be one of the nine people deciding the issues that come before the Supreme Court during my lifetime and afterward.

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