

TESTIMONY BEFORE THE JUDICIARY COMMITTEE OF THE UNITED STATES
SENATE IN OPPOSITION TO THE CONFIRMATION OF CLARENCE THOMAS
AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
BY THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

INTRODUCTION

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, protects the rights of Asian Americans through impact litigation, legal advocacy, and community education. Current priorities include voting rights, anti-Asian violence, immigrants' rights, employment/labor rights, and redress for Japanese Americans incarcerated during World War II. AALDEF conducts year-round student internship training and counsels thousands of Asian Americans each year at free legal advice clinics.

Based on an analysis of Clarence Thomas's writings, court decisions (as a judge on the Court of Appeals for the District of Columbia Circuit), and record at two administrative agencies (Chairperson at the Equal Employment Opportunity Commission from 1982 to 1990 and Assistant Secretary for Civil Rights in the Department of Education from 1981 to 1982), AALDEF finds that the interests of the Asian American community will not be served by his confirmation as Associate Justice on the Supreme Court of the United States, and therefore respectfully requests that this Committee and the entire Senate vote to deny his confirmation.

THE ASIAN AMERICAN COMMUNITY

The 1990 census shows over seven million Asian Americans living in the United States, with a variety of occupations and lifestyles as widely different as the language, culture, diet and other differences they bring from their homelands (where their relatives constitute almost two-thirds of the world's total population). More than 20 Asian and Pacific Islander subgroups were identified in the 1990 census, compared to just five in 1970, when they were broken out of the "other" category for the first time. Also significant is that just 1.5 million Asian Americans were reported by the census in 1970, so there has been more than a 400 percent increase in population in just twenty years. Looking towards the future, while Asian Americans represent only three percent of the United States population today, by the year 2000, projections show them representing almost four percent of the U.S. population, or 9.9 million. By the year 2050, the Population Reference Bureau estimates that they will represent 6.4 percent of Americans-- the same proportion that Hispanics represented in 1980.

Asian Americans, like all people, suffer from poverty, substance abuse, homelessness, mental illness, domestic violence, and other problems. Unfounded media misperceptions about their

wealth, education and opportunities, however, have created the twin problems of inter-minority group resentment and denial of access to needed social services, which disproportionately affect the Asian American poor. In times of economic contraction, like those we see today, resentment and racial hostility frequently flares up into physical violence, and denial of access to needed resources becomes a sentence of death or unending misery to those already on the brink of disaster.

1990 census figures indicate that the poverty rate for all Asian Americans is between 14 and 17 percent, double that of the eight percent figure for non-Hispanic whites. Compounding the difficulties of the poorest Asian Americans are problems that also plague the poor of other communities: 1) racially-motivated violence at the hands of individual bigots, youth gangs, and insensitive police officers; 2) harassment by immigration officials based on appearance or accent, even if legal papers are in order; and 3) for the many who become naturalized Americans, disenfranchisement based on lack of bilingual ballots or redistricting processes that include little or no Asian Pacific American representation.

While individual Asian Americans have been part of the American scene since the mid-1700's, most scholars view the large influx of Chinese gold miners to California after 1848 as the beginning of today's Asian American community. In successive waves, shaped by restrictive immigration laws, market forces, the needs of individual laborers, and other factors, large Chinese, Japanese, and Filipino communities were formed on the West Coast, and smaller communities of Indian, Korean and other immigrants were also present. Vietnamese, Cambodian, Laotian and other communities are more recent in derivation, coming to these shores as a result of refugee policies stemming from the Vietnam War and its aftermath.

For reasons beyond the scope of this testimony, Asian Americans have suffered from institutional and individual discrimination from the time we arrived here until the present day. For example, discriminatory laws, such as the federal Chinese Exclusion Act of 1882, were passed on federal, state and local levels soon after the first large wave of immigration in the late 1840's and early 1850's. A half century later, in 1942, the federal government participated in the mass removal and detention of all mainland Japanese Americans, a civil liberties nightmare that was not remedied until a successful redress movement in the late 1980's resulted in passage of appropriate remedial legislation and individual money damage awards to former internees. The California Foreign Miner's Tax of 1850 and Alien Land Law of 1913 restricted employment opportunities and land ownership opportunities, respectively. Similar laws were passed in most

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Western states. San Francisco, like other West Coast cities, passed a number of oppressive ordinances, such as those aimed at Chinese laundries in the 1850's. These were challenged in Yick Wo versus Hopkins (1886) and other landmark Supreme Court vindications of equal protection rights for all Americans. After 1965, when immigration law changes brought in both more professional and more unskilled Asian Pacific Americans, the discrimination suffered by all Asian Pacific Americans took on new forms. Physical violence in response to perceived economic threats continued unabated. Burning of Chinatowns, lynchings, massacres and other brutalities were well-documented realities of nineteenth and early twentieth century American life. Recent pistol-whippings, baseball bat clubbings, and shots fired by the Klan at Vietnamese fishermen in the Gulf of Mexico continue the American tradition of beating up Asians in times of economic downturns.

**CLARENCE THOMAS'S NEGATIVE IMPACT
ON THE ASIAN AMERICAN COMMUNITY**

Confirmation of Clarence Thomas as Associate Justice on the Supreme Court of the United States will negatively impact Asian Americans in three ways: 1) denial of access to affirmative action and other equal justice remedies won by the civil rights movement over the years, 2) denial of access to privacy rights and abortions, and 3) creation of a false spokesperson for the legal needs of people of color in this country. Each of these three impacts will be explored individually.

Despite the fact that he is himself African American, Judge Thomas has proven by his words and actions in public life that he is no friend of affirmative action and other equal justice remedies won by the civil rights movement, including Asian Americans, over the years. When he served as Chairperson of the Equal Employment Opportunity Commission from 1982 to 1990, Thomas refused to litigate class-based, industry-wide cases of discrimination, which had proved to be a more effective tool for ending discrimination than waiting for individual complainants. He also let 13,000 age discrimination claims expire by not processing them before the end of a two-year statute of limitations. Only special Congressional legislation saved those claims, which is why the National Council of Senior Citizens, the Older Women's League, and similar groups oppose his candidacy. In addition, a General Accounting Office investigation in 1988 found that the EEOC had refused to aggressively follow its mandate by allowing from 40 to 87 percent of its cases to close due to lack of investigation.

While benefitting from affirmative action himself at schools such as Yale Law School and jobs such as the Chairpersonship of the EEOC, Judge Thomas wants to close the door of opportunity behind

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him. While he acknowledges that racial barriers persist in this country, he refuses to support the one policy that has led to real change in education, employment, and other arenas. He believes that race should not be a factor in interpreting the "color-blind" Constitution, but fails to suggest alternate ways to overcome the effects of past and continuing discrimination such as that suffered by Asian Americans.

In the area of abortion rights, privacy rights and family issues, Judge Thomas maintains that natural law and the Declaration of Independence inform the interpretation of Constitutional rights. He has maintained that natural law protects the unborn and usurps the woman's right to choose an abortion to terminate a pregnancy. These views, when extrapolated, can be seen in the 1987 report of President Reagan's Working Group on the Family, of which Judge Thomas was a member. The report called for traditional nuclear families, divorce that is harder to obtain, restriction of teen sexuality, and encouragement of women staying home to care for children. This moralism and imposition of one set of values on all people was mirrored in Thomas's article in a book assessing the Reagan years, where he expressed unease even about Griswold versus Connecticut, the pathbreaking 1965 decision that gave married couples the right to obtain legal contraceptives.

Judge Thomas's views are of concern to Asian Americans for two reasons. First, the imposition of natural law and moralistic rationalizations for laws have been at the heart of anti-Asian American and other xenophobic sentiments for 150 years. Restrictions on our ability to immigrate to this country and our ability to live where and how we chose were rationalized because we were considered dirty or less than human. It was not "natural" to look like us, worship our non-Christian gods, or eat our Asian-derived foods. Second, the right to an abortion has given Asian American women the freedom to plan their family lives and, when necessary, make the difficult decision to terminate a pregnancy. Overturning Roe versus Wade, which Judge Thomas almost certainly will vote to do if elevated to the High Court, will be a major setback for these women.

Aside from having concerns about his views on legal issues, Asian Americans have deep concerns about Judge Thomas's candidacy because of the fact that, if he ascends to the High Court, he will become the highest ranking judicial spokesperson for all people of color in this country the way Justice Thurgood Marshall was over the last several decades. Through lectures, articles, and court decisions, he most certainly will undermine affirmative action and other programs that have opened the door to opportunity in this country, and will provide the appearance of African American and other minority community support for the regressive opinions the High Court is certain to write on the rights of criminal

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defendants, employees facing discrimination, and women seeking abortions.

CONCLUSION

As an organization devoted to the rights of Asian Americans, it is very difficult for us to express reservations about a fellow person of color. The Supreme Court most certainly needs the insights that a jurist of color could bring to it and, because President Bush seems to be embracing affirmative action in his decision to nominate a candidate of African American ancestry, his next candidate should be another of the thousands of experienced African American lawyers and judges presently working in this country. However, to accept a person whose actions and views have been and continue to be harmful to one's interests just because that person is of a particular racial heritage is to be patronizing and wrong. Judge Thomas has gotten where he has because he has betrayed the interests of Asian Americans and other people of color, so to honor him by this elevated post is to dishonor others who continue to struggle for the privileges Judge Thomas now enjoys.

On behalf of the Asian American community, therefore, AALDEF respectfully recommends that the Judiciary Committee and full Senate vote to reject the nomination of Judge Thomas to serve as an Associate Justice of the Supreme Court of the United States. Thank you for this opportunity to address you.

REFERENCES

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