

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT  
WASHINGTON, D.C. 20001

CLARENCE THOMAS  
UNITED STATES CIRCUIT JUDGE

September 30, 1991

The Honorable Joseph R. Biden, Jr.  
Chairman, Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510-6275

Dear Chairman Biden:

I have enclosed responses to the written questions of Senator Levin that accompanied your letter of September 20, 1991. By copy of this letter to Senator Levin, I am also providing copies of my responses directly to him.

Sincerely,



Clarence Thomas

Attachments

cc: Honorable Strom Thurmond  
Ranking Minority Member  
Senate Judiciary Committee

Honorable Carl Levin  
United States Senate

Questions from Senator Levin for Judge Thomas

1. You've said that your personal political opinions would not taint you as a Supreme Court justice. Please list two Supreme Court cases in which you disagree personally with the effect or policy implications of the court's decisions, but believe were correctly decided?
2. Do you believe the Supreme Court's decision in Moore v. City of East Cleveland was correctly decided?
3. Which two U.S. Supreme Court justices of the last fifty years do you most admire, and why?
4. In the area of affirmative action, do you personally draw a distinction between goals and quotas?
5. Do you personally oppose a company's policy of setting nonbinding goals (i.e. not fixed quotas) for the promotion of minorities in a work force that was historically without any minority promotions?
6. When you said that Chief Justice Rehnquist "failed all Americans" in upholding the special prosecutor law, did you personally believe what you were saying or were you just reflecting what you perceived to be the executive branch's position?
7. You were quoted in 1980 regarding your sister as saying that "she gets mad when the mailman is late with her welfare check," and that "What's worse is that now her kids feel entitled to the check, too. They have no motivation for doing better or getting out of that situation." Were those three statements factually true when you made them?
8. You have been quoted as saying that Congress is "a coalition of elites which failed to be a deliberative body that legislates for the common good or the public interest," and that Congress is "no longer primarily a deliberative or even a law making body," and that "Congress is out of control," and that there is not "a great deal of principle in Congress itself." Did you personally believe those statements when you wrote or spoke them? Do you believe those statements today?
9. In 1987 you told the Heritage Foundation that "I, for one, do not see how the government can be compassionate...." Is this also your current position?
10. In 1989 you wrote that "Faced with enemies more ruthless and zealous than those in Jefferson's time, can this nation possibly go forward without a science of the rights of man?" Do you believe the rights of man is a science?

1. In stating that the personal views of judges should play no role in judicial decisionmaking, I believe that I was stating a truism. I believe that proper judicial decisionmaking requires a judge to determine first what his or her role is in a particular case, and then to discharge his or her responsibilities in an impartial manner.

Although there may be Supreme Court decisions that involve policy implications with which I may have disagreed while a policymaker, but which were correctly decided, as a general matter I do not believe that it is appropriate for me to endorse the results in specific cases. I also believe that the policy implications of decisions are matters for the political branches. A judge's objective must always be to determine the intent of the legislature.

2. As I explained during the hearings, I believe it generally would be inappropriate for me to identify precedents I do or do not believe are correctly decided. I have no agenda of precedents I wish to revisit. However, in response to a question from Chairman Biden, I explained that I believe the notion of family is one of the most personal and private relationships we have in this country, and that had Moore been decided differently it could have had ramifications for those in the same situation I was in as a child, living with my grandparents. As I indicated to the Committee, I have no reason to disagree with the method of analysis applied in Moore.

3. It is difficult to state categorically that I most admire any particular justice. I have great admiration for the second Justice Harlan for his principled decisionmaking and his constant efforts to identify the appropriate role of the Supreme Court in relation to the other two branches of government. I also greatly admire Justice Thurgood Marshall for his courageous efforts to assure that the rights of all citizens were protected.

4. Yes. A goal can differ from a quota in at least two ways. First, it can be less absolute: a quota must be met, whereas a goal can be flexible. Second, a goal can be implemented with differing methods. For example, a goal that was pursued through expansion of the applicant pool and outreach programs would differ significantly from a goal that was pursued through the use of direct preferences at the selection stage; the latter would be more like a quota than the former.

5. In general, no. "Nonbinding" goals can be very useful as a management tool to determine the effectiveness of an employer's efforts to promote equal employment opportunity.

6. The tone and phrasing of my remarks, and my willingness to address such an issue, reflected my position in the executive branch. As to the substance of my comments, it was of personal importance to me that my audience understand that the system of separated powers, including the accountability of the political

branches, is a basic protection of our most treasured rights and liberties. That point is important whether or not one agrees with the majority's decision in Morrison.

7. I made the unfortunate remark concerning my sister to a single reporter seated next to me at a luncheon in December 1980 in an effort to explain how much I cared about the unintended consequences of certain social programs. I was dismayed to see the statement in print. I immediately traveled to Savannah from Washington, D.C. to discuss the statement with my sister and my family. The statement was not made in a public forum. The statement was not intended to show any resentment toward my sister, with whom I am very close.

8. Again, the tone of my comments reflected my position in the executive branch and several difficult but unrepresentative experiences with the congressional oversight process. I shared with many observers, both within and without Congress, the fear that Congress was devoting too much attention to the day-to-day operations of executive agencies and not enough to the formulation of public policy. In my testimony, I gave the decision on military action in the Persian Gulf as an example of Congress at its best: the great issues of war and peace were powerfully debated, and each Senator and Representative took a public stand on the ultimate question.

9. I believe that remark to have been seriously misunderstood. It was not an objection to government programs of aid to the needy. As I attempted to explain in response to questions from Senator Simon, my comment rested on my philosophical understanding of the proper role of government. To my way of thinking, programs of public assistance rest on our obligation as an organized society to the disadvantaged: as part of its basic function, government must provide for the least fortunate, just as it is obliged to protect us from private violence. I regard the fulfillment of that obligation as a basic responsibility, not an act of compassion.

10. I did not mean to suggest that the study of the rights of man is a "science" in the sense that physics is a science. Rather, my point was that, as a matter of political theory, organized societies can rationally conclude that all persons are inherently equal. As I attempted to make clear in my testimony before the Judiciary Committee, I believe that a judge must separate political theory from law.