

To: Biven

From: Royale Ledbetter

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 September 19, 1991

THE GRADUATE SCHOOL OF ARTS AND SCIENCES

The Honorable Joseph R. Biven, Jr.
 Chairman, Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, D. C. 20510--6275

Re: The Honorable Clarence Thomas
Confirmation Hearings

Dear Mr. Chairman:

This letter is submitted respectfully in response to the obviously able and brilliant four Black law professors who testified against Judge Thomas's confirmation in the above hearings. You unquestionably have been chairing excellently and fairly the confirmation hearings. However, I am disturbed by the possible misleading and unintended or inadvertent impression that all Black Constitutional Law scholars are against the confirmation of Judge Thomas. I emphatically support the confirmation of Judge Thomas. Although my main position is now Distinguished Professor of Higher Education, a significant part of my background is in Constitutional Law, Theory, and History as the attached Resume makes clear. Therefore, I humbly request that you make my views a part of your record which I briefly outline as follows:

1. Special deference should be given to the Supreme Court nominations of the President where the nominee is a good example of or consistent with the type of nominee the President promised in his campaign for President. The Presidential political campaign process will be delegitimized and trivialized if the President's campaign promises are ignored or abandoned, except for very compelling reasons, such as an emergency or serious crisis. See Tollett and James, "Neo-Federalism: Taking Liberties With the Constitution," *ISEP MONITOR* 5:4 (December 1981):13-16. For a strong argument that Congress is the superordinate branch of government in the United States Constitution's scheme of separation and balance of powers, also see Kenneth S. Tollett, "William Winslow Crosskey and the Constitution," (M. A. Dissertation, University of Chicago, 1958).

2. It is inconceivable to me that President George Herbert Walker Bush will nominate anyone with a significantly or measurably different or more liberal jurisprudence than that of Judge Thomas. Indeed, if he did, he would violate his campaign promises and exacerbate cynicism about Presidential politics.

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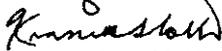
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3. It is also inconceivable to me that Judge Thomas totally has lost his Black identity such that if confirmed, he would not make decisions sensitive to the needs, interests, and rights of Blacks and other disadvantaged or deprived groups. For a reference to the importance of biography in constitutional law analysis from the Black perspective, see Kenneth S. Tollett, "The Viability and Reliability of the U.S. Supreme Court As An Institution for Social Change and Progress Beneficial to Blacks--Part II," *The Black Law Journal* 3 (1973):5-50, 6.

4. Judge Thomas is hardly an extremist or outside the mainstream of Constitutional Law, even considering his problematic views about natural law and rights in political theory or philosophy, with which I disagree as I disagree with many of Judge Thomas's other views, especially on affirmative action. For an illuminating "Note: Natural Law and the Supreme Court," see Stone, Seidman, Sunstein and Tushnet, *Constitutional Law* (1986), 62-65. Nevertheless, the failure to confirm Judge Thomas will appear inescapably to indicate that, as has so often happened in the experience of Blacks, the rules of the game are changed when Blacks have mastered them and put themselves into a position to profit from them, as has been the case with Judge Thomas. For a discussion of "the paradoxes and ironies" of the Black experience and how "the rules of the game seem to change when blacks master them and begin to benefit" from them, see Kenneth S. Tollett, "Commentary," in *Between Two Worlds: A Profile of Negro Higher Education*, by Frank Bowles and Frank A. DeCosta (1971), 251-271, 252, 253.

Hoping that the above will assist you in coming to a fair and reasonable decision in the confirmation hearings of the Honorable Judge Clarence Thomas, I am

Respectfully yours,



Kenneth S. Tollett
Distinguished Professor
of Higher Education

Enclosure: Kenneth S. Tollett: Resume
(09/19/91)

To: Eiden

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KENNETH S. TOLETT: RESUME (09/19/91)

1. Dr. Kenneth S. Tollett, Distinguished Professor of Higher Education at Howard University since 1971, received his A.B., J.D., and M.A. (Political Science, dissertation on "William Winslow Crosskey [Politics and the Constitution, 2 vols] and the Constitution") degrees from the University of Chicago. He was both Chairman of the National Advisory Board and Director of the Institute for the Study of Educational Policy (ISEP) at the University from March 1974 to March 1985. He supervised or directed the writing and publication for ISEP of fourteen major books or monographs, six occasional papers, seven volumes of the ISEP Monitor, three Primers (75,000 Bakke Case), two ISEP Perspectives, et al. He practiced law three years (1955-58) in Chicago, Illinois, and served as a Precinct Captain and President of the Fifth Ward Young Democrats. At 28, two years after joining the Faculty of the Texas Southern University (now Thurgood Marshall) School of Law in 1958, he became Acting Dean June 1960 and served as Dean until June 1970.

He served as Visiting Fellow (twice) at the Center for the Study of Democratic Institutions, Visiting Professor at the University of Colorado School of Law 1970-1971, and member of the Carnegie Commission on the Future of Higher Education 1969-73. Professor Tollett also is, was, or served as a member of several organizations, associations, committees, or commissions (61, currently 20), among which are or were American Bar Association (including the Task Force and later Special Committee on Professional Utilization); American Section (AMINTAPHIL) of the International Association for Philosophy of Law and Social Philosophy (IVR); the Visiting Committees, the College and the Graduate School of Arts and Sciences, Harvard University, and the Law School, University of Chicago; Chairman (former), District of Columbia Commission on Post-Secondary Education; Council on Legal Education Opportunity (CLEO) (a founding and organizing member); the Texas Constitutional Revision Commission (member of The Education and The Bill of Rights Subcommittees); Co-chairman (former) and presently Treasurer of the National Council (a.k.a. Conference) on Educating Black Children.

2. He has presented over **NINETY MAJOR PAPERS** for meetings and conferences, e. g., "Supreme Court Justice Thurgood Marshall: Mr. Civil Rights Advocate," Dedication Ceremonies for North Carolina Central University School of Law, Durham, North Carolina, September 20, 1980 and "Race Consciousness and Community: The Need for a Variety of Black Perspectives in the Civic or Public Deliberative Discourse," Biennial Meeting, AMINTAPHIL, University of Utah (October 1990). He has authored over **EIGHTY PUBLICATIONS**, e. g., "Verbalism, Law and Reality," and "Political Questions and the Law," University of Detroit Law Journal (1959 and 1965); "The Viability and Reliability of the U.S. Supreme Court as an Institution for Social Change and Progress Beneficial to Blacks," Parts I & II, Black Law Journal (1972 and 1973); **The Right to Education: Reaganism, Reaganomics, or Human Capital?** (ISEP, 1983); "The Propriety of the Federal Role in Expanding Equal Educational Opportunity," *Harvard Educational Review* (1982); "Affirmative Action in Law Schools: The Declining Concern for the Interest of Blacks," *Harvard Blackletter Journal* (Spring, 1987); "Universal Education, Blacks, and Democracy," *Race* (1989); "Racism and Race-Conscious Remedies," *The American Prospect* (1991). He has appeared on several radio and television programs, e.g., the "Today Show" twice to debate the Bakke Case and "The Advocates" to debate Liberal Arts for the Masses and received many awards, e.g., **The University of Chicago Alumni Association's Professional Achievement Award** in 1972; the **National Association for Equal Opportunity in Higher Education (NAFEO) BLACK COLLEGE ACT AWARD** for "longstanding commitment to strengthening Black Colleges and Universities" in 1987; and grants, totalling nearly \$3 million.