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## CIVILITY A SPEECH DELIVERED BY ASSOCIATE JUSTICE CLARENCE THOMAS TO STUDENTS AT WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW LEXINGTON, VIRGINIA TUESDAY, MARCH 10, 1998

Clarence Thomas

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## CIVILITY

### A SPEECH DELIVERED BY ASSOCIATE JUSTICE CLARENCE THOMAS TO STUDENTS AT WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW LEXINGTON, VIRGINIA TUESDAY, MARCH 10, 1998

*The Editors of the Washington and Lee Race and Ethnic Ancestry Law Journal are pleased to publish this speech delivered by Associate Justice Thomas in the Moot Court Room at Washington and Lee University School of Law. The Editorial Board is honored that Justice Thomas chose the Washington and Lee Race and Ethnic Ancestry Law Journal to publish his speech on the concept of civility.*

*The Editors would like to acknowledge the invaluable assistance of Justice Clarence Thomas, the Black Law Students Association and the Federalist Society, who co-sponsored the speech, and particularly Chuck James, a second year law student who coordinated this event. To preserve the original language of Justice Thomas' speech, the Race Ethnic Ancestry Law Journal presents the text in its raw format, although the Editors did have an opportunity to review and make minor changes to the speech. The Editors have indicated source references where appropriate.*

#### PROGRAM INTRODUCTORY REMARKS

BARRY SULLIVAN (Dean of the Washington and Lee University School of Law): I want to welcome all of you to this very special occasion in the life of the Law School. I want to thank the Black Law Students Association and the Federalist Society for making it possible, and most of all, I want to thank Justice Thomas for being with us this morning. I will now turn the podium over to Chuck James.

CHUCK JAMES (President of the Black Law Students Association): I would like to echo Dean Sullivan's sentiments in thanking Justice Thomas for visiting with us today. This visit is especially significant because the Court is still in session. We are grateful and extremely appreciative of Justice Thomas taking time out of his busy schedule to be here. Without further adieu, I would

like to introduce Justice Clarence Thomas, the One-Hundred and Sixth Associate Justice to the United States Supreme Court.

The Honorable Clarence Thomas<sup>1</sup>

It is truly an honor to appear at the alma mater of a friend of mine, Justice Powell. He is indeed one of the finest human beings I have met. In fact, he was my neighbor at the Court. He no longer maintains an office at the Court, but he is certainly there in spirit. Justice Powell was extremely proud and honored to be a member of the Court. He always thought of himself as being somewhat unworthy of such an honor. I could not agree more with him, as I will allude to later. He is a kind, honorable and decent Virginia gentleman. He and I shared the distinction, which he loved to point out, of being the only two Southerners on the Court. Interestingly, most people do not think of me as a Southerner. I think that is probably because of pigmentation. I will be brief in my remarks today in order to leave quite a bit of time for your questions. I think it is always very important to hear what you have to say, and to respond to your questions. I urge you, from the bottom of my heart, to ask the questions to which you are seeking answers.

I have been a member of the Court now for almost six and one-half years. There is a different attitude that one develops after having been on the Court for such a substantial amount of time. I do not know how long I will be there, but one gains a certain perspective. Let me just say that it is far different from what I anticipated the Court would be. It is not the antagonistic institution that I thought would exist. I heard the political and legal commentary about the members of the Court. I heard about the supposed block voting and about the various camps that had been posited. I found no such camps.

Let me make this point: we simply do not see each other on a frequent basis. I will see more of you all in the

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<sup>1</sup> Associate Justice of the United Supreme Court. Justice Thomas earned an A.B. degree from Holy Cross College and a J.D. from Yale law School before taking a job as assistant attorney general of Missouri in 1974. In 1981, Justice Thomas was named an assistant secretary for civil rights in the U.S. Department of Education. In 1982, he was named chairman of the federal Equal Employment Opportunity Commission. He was appointed to the U.S. Court of Appeals for the District of

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Columbia in 1989, and nominated as the one-hundred and sixth Supreme Court Justice by President George Bush to the Supreme Court in July 1991, replacing the retiring Justice Thurgood Marshall. For a complete biographical background of Justice Thomas, see Susan N. Herman, *Clarence Thomas*, in *THE JUSTICES OF THE UNITED STATES SUPREME COURT: THEIR LIVES AND MAJOR OPINIONS 1829, 1829-58* (Leon Friedman et al. eds., 1995).

short time that we will spend together than I will see of my colleagues in this two-week break. I am on the same floor as my colleagues at the Court, with the exception of Justice Ginsberg, who is located one floor up. For the most part, we will only see each other when we have conferences, a formal event, or when we sit. There is rarely contact beyond that.

As a new Justice on the Court, it was a pleasant surprise to witness the civility of the other Justices. There has been much discussion about the lack of civility in our society. Interestingly, we do not talk much about civility at the Court. We actually work in a civil environment. You think about your own environment here. How many people can you truly debate difficult issues with? Let us say the issue is abortion or affirmative action. Can you have a civil, but clear and firm discussion about any of those issues with people who profoundly disagree with you? Can you do it year in and year out? That is what we have to do. Yet, in six and one-half years, I have yet to hear the first unkind word. Can you say the same when you do not have to make the decisions? Can you say that you can debate those difficult issues without animus, without personal insults, without hard feelings? We have decided cases on abortion, the death penalty, the First Amendment, and affirmative action. At no time have there been any personal attacks. There have been some dissents that had a little edge to them. I prefer not to have dissents with an edge to them. I do not write dissents that way. But, the dissents that you see are the worst of it. We simply do not have animus around the Court.

When we start each day, we always start with a handshake. Now you shake hands with someone with whom you profoundly disagree, look that person in the eye, and see how difficult that is. It is very simple, but you think about it. Can you shake somebody's hand, look him in the eye, and stab him in the back? I think it is very important to have that personal contact.

The workload of the Court was another surprise for me. I found that the workload was far greater than I had anticipated. I thought we would sit around and pontificate about the social order and other broad philosophical issues. Instead, I spend a lot of time getting through briefs, drafting opinions and reviewing petitions for certiorari. I found that the members of the Court are extremely conscientious. It is almost a competition to see who is the most prepared. It is not as though you get a promotion at the end of it. It is an extraordinary environment of individuals who are doing the right things for the right reasons. It is an absolutely fabulous place to work.

My work can be broken down into three simple categories. First, we decide which cases we will review. At least four Justices must vote to grant a petition for certiorari. I am sure that you hear talk of the "Rehnquist Court." The Chief Justice, however, has yet to ask me to vote a certain way on any case, either on the merits or at the certiorari stage. It simply does not happen. [The standards for

granting certiorari are rather clear: that there be a federal issue and that there be a split among the circuits, or the state court of last resort.] Each member of the Court makes that assessment individually. I usually make that determination on Sundays prior to the conference. Shortly thereafter, when the discuss list circulates on Tuesday, the Chief Justice places those cases on the agenda for our certiorari conference, with subsequent amendments to it. When the list circulates, I go through it a second time. Voting is conducted on Friday mornings. We sit down at 9:30 a.m., go through the cases, and then vote. Voting is done in descending order of seniority, starting with the Chief Justice. It is a fairly simple process. I would like to reiterate that it is extremely rare to know the vote of any member of the Court prior to the conference. When certiorari is granted on certain cases, it is a big surprise to me. As a result, I wholeheartedly dismiss any talk of there being some pattern to granting certiorari.

The second activity in which I engage as an Associate Justice is the preparation to decide the case. I think such preparation begins when the Court decides to grant certiorari. Members of the Court are aware of the issues and begin to study them at that point. Understandably, many of the issues are repetitive. In fact, we may see them in the certiorari stage several times, or we may have already written on the issue. I begin deciding the case as soon as the Court grants certiorari as I begin to get an understanding of the core issues of the case. Of course, I have very extensive conferences with my law clerks. I go through the briefs and in most cases, I generally know where I am coming out before oral argument.

Let me give you a few quick points about oral argument. Some of you will be oral advocates. The worst thing that could happen to an advocate is that he does not know the facts of the case or the legal questions presented. You would think that by the time advocates get to the Supreme Court that they would know one or both. Unfortunately, this is not always the case. It is unforgivable not to know your own case. On several occasions, the petitioners did not even know the question presented in their own case. Why are you here? It seems incredible to me that you can get to that stage of review and not know what question it is that you have asked the Court to decide. Lack of candor in oral argument is a big problem. I rarely ask questions, but lack of candor will bring me out of my chair. There are people who think that we do not prepare for these cases. It is incredible that they think we do not take oral argument seriously.

Another problem with oral advocacy, and one that is non-productive, is the argument that I am right, because he's wrong. Advocates spend all their time arguing about why somebody else is wrong rather than arguing why they are right. That type of argument does not help the Court. We cannot write an opinion that states the petitioner is right because the respondent is wrong. That is not much of an opinion, and there is no way we can decide a case on that basis. I think the best advocates are

the individuals who are honest about both the facts and the law. Advocates who recognize the legal points and ask the Court to make a logical progression to decide the case in a way that supports their position are more helpful to the Court.

Another quality that I like to see in advocates is the ability to be intellectually agile. For example, some advocates have five points to make, and if you ask them about something that looks like a sixth point, they become confused. You must be intellectually agile and know your case well enough to know the permutations. You must be able to make the arguments, know the strengths and weaknesses of your case, and be familiar with the case law. I think that some advocates are so firm and embedded in their own personal advocacy for their client or for themselves that they do not realize that they are also instructing the Court. The members of the Court are there to be instructed. We need assistance finding an answer because we have to write an opinion. The advocate has to understand and help us bridge the gap.

After we hear cases on Monday, we decide them on Wednesday afternoon. There is very quick turnaround. The cases we hear on Tuesday and Wednesday, we decide on Friday morning at our certiorari conference. Again, we decide in descending order of seniority, starting with the Chief Justice. There is no opportunity to hide. The Chief Justice has to record the votes and following a discussion of a case, will simply ask, "What is your vote?"

Let me underscore this point. At no time, with rare, rare exception, do you know the vote of anyone going into those conferences. I have this game that I play with my law clerks, because they consider themselves to be very bright. When I return from conference, I ask them, "You have been here; you have heard the arguments; you know the other clerks; and you know the personalities around the Court. What's the vote? How did this case come out?" It is always interesting watching them try to guess the Court's vote. In the most obvious cases, my clerks will be correct in predicting the final outcome of the Court. In the less obvious cases, however, they are almost invariably wrong. Now, if they do not know, how could someone outside of the process know? One of my clerk's guessed that a case would be a 9-0 affirmed; it turned out to be a 9-0 reversed. He said, "I'm right, I told you it would be 9-0." The point is, you simply do not know the outcome of the cases prior to the conferences.

I want to make one further point about the conferences. I wish that each of you could be there to hear what really goes on. Even though you might not agree with the outcome of the case, you would be extremely proud of the way the affairs of this nation are conducted at that level. There is nothing that goes on in that con-

ference room that would make you second guess the faith that you put in the institution. The Court is a fine example of the way business should be done.

I want to make a brief comment or two about the way we do our business with the Court as compared to the other branches of government. When I first came to the Court, we had a very interesting and difficult preemption case. *Cipollone*<sup>2</sup> was a preemption case involving cigarette companies. I remember the clerks telling me the way that it was analyzed in the media. Instead of discussing the merits of the case, the media framed the issue as which members of the Court smoked cigarettes. Clearly, this is not the appropriate way to analyze a preemption case.

The Court simply does not analyze cases based on policy. I do not do it. Not only is it a waste of my time, it is wrong, and as members of the Court, we do not have that authority. That is done in the Executive Branch of government. I think each of us has to resist the temptation to impose our personal views on our Constitution and on our Nation's laws. I am criticized from time to time, because I am a black person sitting on the United States Supreme Court and some people have argued that I should take that into account when I make decisions. My being black is one of my many personal characteristics. What does that have to do with being an Article III judge? Now, if that is legitimate, should my faith as a Catholic play a role in my decision making process? Should I telephone the Pope or the Vatican before I make a decision concerning the establishment clause or abortion? Well, obviously, you will say "No, to the latter." And I will say, well, if you say no to the latter, it must be no to the former. Both considerations are wrong. I am an Article III judge and I am required by oath to be impartial. I think each member of the Court is required to do the same.

We all have to remember in this room, and remember as advocates and citizens, that the members of this Court are not participants in the political process. We have lifetime appointments to the Court. The last thing you want is someone on the Court who imposes his or her personal views on our statutes and our Constitution. There may be some of you in this room who do not agree with me. Suppose, for example, I came to you and said, "Look, I am going to be on the Court for forty years and I am going to have a good time. There is a lot of stuff I need to straighten out." You would be absolutely horrified. Now, if you agree with me, you will say, "that it is going to be a good forty years!" Both approaches are illegitimate. I would be horrified if any Article III judge said, "I get to do what I want to do. I am unfettered, and my personal opinion can be wrapped in law and become

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<sup>2</sup> *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992) (The Supreme Court held that the Federal Cigarette Labeling Act of 1969 did not preempt state law damages actions. The Court fur-

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ther held that Section 5(b) of the 1969 Act preempts failure to warn and fraudulent misrepresentation claims, but does not preempt express warranty or conspiracy claims).

legitimate." That line of thinking is fundamentally wrong. I have not seen it happen, and I do not anticipate seeing it happening during my tenure. To the extent I ever see it, I will try to expose it for what it is.

I have covered a lot of ground, but I think that it is important for you to understand the workings of the Court, and certainly my own particular views. I want to cover one other point and that is the issue of civility. Civility is the bedrock of our society and our work on the Court. If we are going to be a country that has laws, live by those laws, and debate such laws, we must have civility. None of it works without civility. There is no way that any of you can look at one of your colleagues with whom you disagree, castigate him and expect that person to hear your argument. It does not work. Civility is absolutely required. When we lose civility, I think we are quickly headed back to a state of nature.

When I worked at the Equal Employment Opportunity Commission I visited Washington and Lee University School Of Law to serve as a panel member on affirmative action. Now, we all know that only Whites can think about affirmative action. Blacks are allowed to express opinions about other topics, but not to have a view on affirmative action. The day we are born, we are programmed to believe that this is your opinion, and if you deviate in any way, then you ought to be treated in a less than civil way on that issue. We all know that our viewpoints on this issue are preordained and we go on with our lives knowing that. Well, I do not happen to believe that. The consequence of those beliefs is that you are not treated in a civil manner.

Throughout the 1980s, many Blacks who dared to disagree with the conventional paradigm were attacked. These Blacks were called "Uncle Tom's," "sell-out's," and a myriad of other names. Now, do you think that name-calling advances the argument on an important issue? The answer is no. Such name-calling does nothing to promote a clear understanding of the serious issues facing our society. For example, let us take the issue of abortion. Do you think that an understanding of abortion is advanced by attacking one another? The answer is no. Feelings are hardened, and the harder the feelings, the less likely the issue will ever be resolved, discussed or advanced in a constructive way.

The current events in Washington have opened the eyes and the ears of those who were profoundly deaf and blind to this issue some years ago. I could make some harsh comments about the people who are suddenly aware that there are problems in our society with civility today. I do not think expedience is a reason to be concerned about the problem. There are many more profound reasons to promote civility than just the fact that you are now being beaten upon or someone you like is being beaten upon. That is not a suitable reason to dislike incivility, and to prefer civility. Everything we stand for should be in favor of civility; everything — your livelihood, your country, your institutions.

I think, in part, some of this incivility is fueled by the

cynicism in our society. Well, cynicism gets you nothing. Do you know people who tear down everything you build up? Does it advance the ball to be cynical about matters of faith? Does it advance the ball to be cynical about all of our institutions? Does it advance the ball to be cynical about things that are important, or that we once considered important? I, quite frankly, do not think so. I did not think so during the 60s, although I was captured by cynicism. You cannot live your life on negatives. You cannot live your lives being cynical. You simply must have a stake. What are you doing here, if you are going to be a cynic? Why are you studying laws that will govern our society if you do not believe in them? Why do you care about the Constitution that governs our country, if you do not have a stake in the country or the Constitution? I could not do this job if I were cynical about our Constitution or our institutions. I have to believe in them.

I would encourage you not to be cynical. If you do not respect individuals or institutions, what is left? What is left for you, and what is left for our country? I think that what is left is the inevitable road to the state of nature. Each of you who are planning on becoming lawyers and who plan to participate in our country is duty-bound to avoid cynicism. Otherwise, I ask you this simple question: Why are you doing it? Why are you here? Why do you claim to love our Constitution and want to be a part of something important if you are cynical about it?

I leave you with this quote, which for years has been something that has truly been a part of my own thinking, and that is a conversation in *A Man For All Seasons*<sup>3</sup> between Roper and Thomas More. More asks Roper, "Would you cut down all the laws to go after the Devil?" Roper's response was, "I would cut down every law in England to do that." Why? Well, because he believes this is the right thing. What does More say to that? He says, "Oh, and when the last law comes down and the Devil turned around on you, where would you hide, Roper, the law's being flat? This country's planted thick with laws from coast to coast — Man's law, not God's. If you cut them down, and you are just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I will give the Devil benefit, benefit of law, for my safety's sake."

The least among us deserve respect as human beings. The least among us deserve constitutional rights. Why? If for no other reason than our own safety's sake, because one day we are going to need the very same laws that we apply to the least among us. The civility that was denied to others ten or fifteen years ago is the same civility that can be denied to you in ten or fifteen years. You think about that and see if that is not sufficient reason to protect the rights of someone who you do not

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<sup>3</sup>Robert Bolt, *A man for all seasons; a play in two acts* (Random House, New York 1962).

like, or you might not know as a close friend or ally. Thank you all, and I am open for questions.

A short question and answer period followed. This piece includes excerpts of questions posed by Washington and Lee University law students and faculty.

PROFESSOR: Justice Thomas, you have spoken on a couple of occasions about the lack of civility. If I understand correctly, you have attributed the lack of civility in the legal profession to the tendency for litigants to clothe themselves in sort of Messianic zeal. They are not fettered by the necessity of putting together democratic majorities and trying to accomplish certain objectives with the courts. How do you feel this has affected the confirmation process where the stakes seem to have been so escalated in recent years?

JUSTICE THOMAS: That is an excellent question. It has affected our entire society. The point that I have made is simply that everybody thinks that they are the champions of truth and justice, and they will not be limited by anything. They will tear down all the laws to get after the devil, because they feel that strongly about it. My point is very simply that maybe you do not have all the right answers. People with whom you disagree have a point of view that you should respect or at least listen to. When you go into court, you should respect the institution and abide by its rules. You should not go after your opponent because you have that Messianic zeal.

When I was nominated someone said, "We are going to kill you." When someone says they are going to kill you, I would take them seriously. I will admit that at one point I wore a bullet-proof vest. I think that when we get to that point, that it is win at any cost, how do we survive in this society? I think it destroys not just the confirmation process, but everything in its path. For example, I could not have a conversation with you if we both had Messianic zeal because I would think that you are the enemy, and you would think that I am the enemy. We certainly would not sit down and have a discussion. We would just figure out new ways to lob some mortars at each other. I think that is inappropriate in a democratic society. I think that lack of civility is inappropriate in a democratic society and in an institution like the Court.

The wonderful thing at the Court, is that it does not happen. You just simply cannot work with your colleague if you do not respect that person. In each of my dissents, I have said, I respectfully disagree. I think that it

is important to say that I respect your ideas, but I simply do not agree with you.

I watched that happen with a classmate of mine, Lani Guinier.<sup>4</sup> People were quick to reduce her to a non-entity. While I may disagree with her, she is not a non-entity. You do not have to reduce her to that level to simply challenge her ideas. I think that you can respect the ideas and profoundly disagree with them. That is where I try to focus my attention, and even in my dissents, I go to great length to go after the ideas and never the person. I think the confirmation process has been personalized, and indeed politics have been personalized. We should not at all be surprised that the confirmation process is getting more deeply into personal matters.

During the 1980s, I watched it happen. I was nominated and confirmed five times in that decade. From 1981, when I was first nominated and confirmed, to 1991, when I completed my last confirmation, the process became increasingly more difficult.

STUDENT: You have mentioned the current political environment in Washington. Are you surprised by the affect of the Court's decisions in *Morrison v. Olsen*<sup>5</sup> and *Jones v. Clinton*<sup>6</sup>?

JUSTICE THOMAS: *Jones v. Clinton* was very careful to say that there is a delicate balancing and that the scale should be tipped in favor of the presidency. It did not say that there was an absolute "no," but it suggested that you cannot allow these things to drag on in court against the President.

With respect to *Morrison*, I will note that I was criticized during my confirmation for agreeing with Justice Scalia's dissenting opinion in *Morrison*. As I expressed then, any time you have some institution outside the three branches of government, you are distorting the way our government operates — the checks and balances — there is less accountability.

Justice Scalia also pointed out a pragmatic concern that unlike the typical prosecutor who prosecutes the person who allegedly committed a crime, you now have the prosecutor being proactive and searching for crimes. That was of concern to me back when I was at the EEOC, and I defended that position during my confirmation hearings. It should be of concern to everybody whenever we have something that does not fit within our structure, including that statute.

I think Justice Stevens did a very careful job trying to recognize the importance of the presidency, but also that

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<sup>4</sup> Lani Guinier is a professor of law at the University of Pennsylvania. For her most influential piece, see Lani Guinier, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS AND REPRESENTATIVE DEMOCRACY* (1994).

<sup>5</sup> *Morrison v. Olsen*, 487 U.S. 54 (1988) (The Court held that the Ethics and Government Act, which establishes the authority

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of the independent counsel, does not violate the appointments clause, Article III, or the separation of powers doctrine.

<sup>6</sup> *Jones v. Clinton*, 117 S. Ct. 1636 (1997) (Holding that the Constitution does not afford the President of the United States temporary immunity from civil damages litigation arising out of events that occurred prior to his entering office).

there was not this absolute rule as to being sued for personal matters.

STUDENT: Is it a proper role for Congress to ask Article III nominees to talk about their potential feelings about issues, or are you more attune to Justice Stevens' approach that candidates and judges should not, in advance of being selected for position, tell the appointing authority how they feel about particular issues?

JUSTICE THOMAS: I think that is a very important question because, I think, this ties in with what has happened at the confirmation hearings. There is a growing consensus that we have become more of a policy-making body. To the extent that the members of Congress think that we are policy-making, then they should have a right to know how we feel about certain policy issues, whether it is abortion or something else. They kept asking me about abortion. Well, I did not have any view on abortion. When you adjudicate, I believe that you ought to weed out your personal preferences. If we stuck to this principal, then such questioning would be illegitimate. But, to the extent that they think we are policy-makers, I think the questioning is quite legitimate.

One of my law clerks came to me after I arrived at the Court, and said, "Do you want me to get a copy of your confirmation hearings, so we can go through some of the things you said, so you do not contradict them." I was not interested in the confirmation hearings. For some reason, the confirmation process is an ordeal that they set up that has very little to do with being an Article III judge. For example, while I received many questions on substantive due process cases, I did not receive any questions on the dormant commerce clause.

There have been cases where I have had policy prejudices, but I have cast votes that have been in exact opposition to my policy prejudices. I tell my clerks up front, "Here is my prejudice; lean against it. Tell me exactly why I am wrong." I have yet to go with a single prejudice. Personal policy prejudices are not a basis for making decisions.

STUDENT: You mentioned personal bias has no place in your decision-making. Does the public interest have a place in your decision-making? To what extent will you allow the interests of the American people affect your decision?

JUSTICE THOMAS: Society has a great interest in the Constitution and in the work of the legislatures it elects to make those policy judgments. I do not think that it is the proper role of the judiciary to trump the legislative role. I do not know all of the implications or the policy considerations

that go into making law because that is not my purview. Those considerations are placed in the hands of the legislative branches and I have to respect that. The difficult cases that we review are the ones where your heart says, this is not right, but the Constitution gives you a really short rope. The question is whether you can amend the Constitution of the United States to do what your heart says? There may be a legitimate debate in some people's eyes, but I do not think so. To summarize, public interest plays a role, but the interest that I give priority to is the Constitutional order, and the faith that all of you place in the political branches of government.

STUDENT: Are there any areas of the law in which the Court has not addressed, or the Court has addressed, that you see emerging or re-emerging?

JUSTICE THOMAS: The Court is a fascinating place to work. As you know, I was not a judge very long before I was sent up to the Court, but it is the issues I find fascinating. You tell me retroactivity is not fascinating whether it is in the context of bankruptcy or in the context of taxation. You tell me an ex post facto case is not fascinating, or a double jeopardy case. You see, each opinion is interesting, not so much fascinating in and of itself, but because it affects the country

While I can not anticipate the developing areas of law, I am sure that the Fourth Amendment will continue to expand. We have not done a whole lot with the privileges and immunities clause. I love to go from the beginning to the end of a decision. You take a fascinating case like the *McIntyre*<sup>7</sup> case — the woman who was doing the anonymous leaf-letting. It gives you an opportunity to really think through how we participate in our political process, and how we can participate in it. As our society continues to move along, the Constitution becomes more important.

I can not tell you all the areas that are going to emerge, but I think intriguing constitutional cases and statutory cases will come before the Court. We have a line item veto case already before the Court. Look how that affects our country. Each decision affects every single one of us. It is not purely an academic matter; it is interesting, and every one of these cases is very important. The Court is not cavalier about its opinions. Each member of the Court takes every case seriously.

There are some nights when you sit up and you pace the floor a little bit, and you ask yourself, "Am I right?" So, other people can be trivial about it by saying, "Well, the Court made this decision because the members of the Court smoke." But, we do not have that luxury, because we have taken the oath to be Article III judges. We have the authority to affect your lives. It affects you all, what you do, and how you live your lives.. Thank you all very much.

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<sup>7</sup>*McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) (holding that Ohio's statutory prohibition against distribution

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of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment).