



Written by [Steve Byas](#) on September 17, 2021

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## The Confirmation Battle of Clarence Thomas

Americans sat glued to their TV sets as Clarence Thomas, a nominee to the U.S. Supreme Court, responded to last-minute charges by an obscure law-school professor at the University of Oklahoma College of Law. With the hearings before the Senate Judiciary Committee winding down, and Thomas's confirmation seemingly secured, Professor Anita Hill had unleashed 11th-hour accusations against him, charging that Thomas had sexually harassed her while he was her supervisor at the Equal Opportunity Employment Commission during the Reagan administration.



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"I cannot imagine anything that I said or did to Anita Hill that could have been mistaken for sexual harassment.... I have not done what she has alleged, and still do not know what I could have possibly done to cause her to make these allegations," Thomas told the committee.

The story of the battle over the confirmation of Clarence Thomas to the nation's highest federal court really begins four years earlier, with a previous nominee, Robert Bork.

### "Borked"

After President Ronald Reagan nominated Bork to an associate justice's post on the Supreme Court, the American Left was quite concerned. Bork was an advocate of following the letter and spirit of the U.S. Constitution, and that philosophy in a Supreme Court justice was a potential roadblock to the agenda of American progressives.

Since the Supreme Court's infamous *Roe v. Wade* decision in 1973, which declared that the right of a woman to have an abortion was somehow a "right" hidden somewhere in the penumbras of the Ninth and 14th Amendments to the U.S. Constitution, an energetic pro-life movement has sprung up with the ultimate goal of getting the Supreme Court to reverse itself. On the other hand, a similarly energetic movement calling itself pro-choice has arisen to defend the decision.

Bork, a former law professor at Yale and a former solicitor general of the United States (an official who leads the legal team in the Justice Department arguing the government's side in cases before the Supreme Court), was nominated by Reagan to the U.S. Court of Appeals for the D.C. Circuit in 1982. As the Republican Party had a strong majority in the U.S. Senate, which confirms (or rejects) judicial nominations, Bork was easily confirmed.

After Bork took his place on the D.C. Circuit, it was considered only a matter of time before he would be named to the Supreme Court, as membership on that circuit is considered a steppingstone position to the Supreme Court. As such, not only was Reagan primed to tap Bork, the progressives who did not like his originalism philosophy (that judges should follow the Constitution, not their personal views) were also ready to oppose him.



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Having been a law professor who was quite prolific in writing academic articles enunciating his originalist positions, plus having a long tenure on the D.C. Circuit, Bork had left a long “paper trail” for his enemies on the Left to challenge — or to distort.

Senator Edward “Ted” Kennedy (D-Mass.) led the charge against Bork with a broadside on the floor of the Senate. “Robert Bork’s America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens’ doors in midnight raids, schoolchildren could not be taught about evolution, writers and artists would be censored at the whim of government,” Kennedy claimed, “and the doors of the federal courts would be shut on the fingers of millions of citizens for whom the judiciary is often the only protector of the individual rights that are at the heart of our democracy.”

I remember watching Kennedy’s rant and shaking my head with a laugh. No one could take this demagoguery seriously, I thought. I was wrong.

Kennedy’s opening salvo was used as a template for the Left’s unfounded attacks upon Bork, and his nomination was eventually scuttled in the Senate, 58-42. The attacks were so severe that a new word entered the lexicon of American politics. Anyone so attacked is now said to have been “Borked.”

Senator Kennedy added that Reagan should not be allowed to “impose his reactionary vision of the Constitution on the Supreme Court and on the next generation of Americans.”

While Reagan was hardly a “reactionary,” Kennedy had, perhaps unintentionally, touched on what Supreme Court battles are all about. Presidents, whether Ronald Reagan or Franklin Roosevelt, eventually leave office, but the men and women they place on the Supreme Court extend their influence far beyond a president’s tenure in office. This is particularly the case when judges routinely overstep the constitutional boundaries of their office and engage in what is commonly called judicial activism.

## **The Nomination of Clarence Thomas**

This October marks the 30th anniversary of Thomas’ confirmation battle, which ended with his ascension to the Supreme Court. While there is little in the one term of President George Herbert Walker Bush for constitutionalists to remember with fondness, the naming of Thomas to the Supreme Court was clearly a plus.

Thomas might very well be the most consistent constitutionalist on the High Court today.

When Bush sent Thomas’ nomination to Capitol Hill, he evidently did not know just how strong of a constitutionalist Thomas was, according to Thomas. One reason for this was that, remembering the savage beating taken by Robert Bork, the administration did not want to go through that gauntlet again. The Democrats had a majority in the Senate, and because of that Bush needed to nominate someone whom the Democrats would have a hard time attacking in the manner they had savaged Bork.

Thomas had not been a law professor like Bork, and had done very little writing that could be similarly distorted by the Left. During the confirmation proceedings, then, Thomas was expected to bob and weave like a boxer and not let the Democrats score any direct hits. He certainly was to avoid taking any hard position on *Roe v. Wade*, for example.

Secondly, Clarence Thomas was not a white guy like Bork, but rather an African-American. Republicans assumed that the Democrats would be reluctant to savage a black man, fearing the possibility of



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---

offending an important voting bloc depended upon by the Democratic Party.

At first, the Democrats tried to seize upon some statements Thomas had made concerning “natural law.” It seems that Thomas believed that the rights of Americans — indeed all human rights — came from God, and because of this, governments that violate them are violating natural law. It appears that the attack was intended to argue that Thomas believed unborn children have a natural right to life.

This was an odd attack, considering that this theory of the purpose of government — the belief that rights come from God — is clearly stated in the Declaration of Independence. Even Ted Kennedy’s brother, President John F. Kennedy, had said so in his 1961 inaugural address: “The rights of man come not from the generosity of the state, but from the hand of God.” Such a bold statement today by a Democratic politician might get him run out of the party.

In the end, this tactic did not work, as it was difficult to argue that there was something wrong with a founding principle of the country. Thomas made it through the grilling of the Senate Judiciary Committee largely unscathed, and it appeared his confirmation was secured.

After all, Thomas had an amazing story, the type of story that was the fulfillment of the American Dream. Born in Georgia, Thomas grew up in a rather poor household, essentially reared by his grandfather, who was a no-nonsense type of man. Somewhat “radical” (self-described) in his early days, Thomas was bright enough to gain admission to Yale Law School, where he excelled. With the passing of time, Thomas had drifted into a much more conservative stance, both socially and politically.

## Reagan Hires Thomas

When Reagan was elected president in 1980, he understandably had political reasons to bring more conservative blacks into his administration. He named Thomas to lead the Civil Rights Division of the Department of Education, a department that Reagan had actually wanted to abolish. But with Democrats still in control of the House of Representatives, that was not likely to happen.

It was in this position that Thomas first met Anita Hill. “Shortly after I started work,” Thomas recalled in his autobiography, *My Grandfather’s Son*, “Gil Hardy called me and asked me to ‘help a sister’ who was leaving his firm.” Hardy died in 1989 — two years before Thomas’s confirmation hearings — but in 1981 he was one of Thomas’ closest friends. A black lawyer, Hardy was a partner in the Washington law firm of Wald, Harkrader, and Ross.

The “sister” was Hill. Thomas asked if Hill was a Republican, and was told that she was not. Thomas explained to Hardy that it would be “all but impossible to shepherd a political appointee through the vetting process unless the person had been a longtime Reagan supporter.” Only because Hardy was such a close friend did Thomas relent and agree to interview Hill.

Interestingly, during the interview, Thomas asked her why she was leaving a prestigious law firm to work for an obscure civil-rights agency. Hill told Thomas that her “options were limited.” According to Hill, her boss — a partner with the firm — had asked her for a date, and when she declined, he began giving her unpleasant work assignments and poor performance assessments.

Thomas then asked her for her opinion of President Reagan. “I detest him,” Hill said. Knowing it was impossible to hire her as a political appointee, and remembering how difficult it was to find a good job himself after graduation, he hired her as a non-political employee instead.



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The next year, Reagan asked Thomas to head up the Equal Employment Opportunity Commission (EEOC). Thomas told the staff that he was leaving the Department of Education for the EEOC, and Hill asked to go with him. Thomas tried to dissuade her, but she was persistent.

"You're a rising star. I want to go with you," Hill pleaded.

Thomas relented, despite Hill having no experience with employment law. Near the end of 1982, Chris Roggeron, Thomas' chief of staff, told Thomas that Hill's performance was falling short of expectations, and she was often late finishing her assignments. Another concern Thomas had was that Hill "seemed far too interested in my social calendar. She regularly inquired about my after-hours activities and on more than one occasion had asked me if she could accompany me to professional functions."

When Roggeron took a job in California, Hill demanded Thomas choose her as his replacement, noting that she was also a Yale Law School graduate, whereas two others under consideration had only gone to Duke and Boston College, respectively. When Thomas tapped Allyson Duncan (the Duke grad) for the position, Hill was outraged, accusing Thomas of picking her because of her lighter skin (Duncan was a lighter-skinned black woman).

It was not long after this incident that Thomas was invited to speak at an EEOC luncheon at Oral Roberts University's (ORU) law school in Tulsa, Oklahoma. Knowing that Hill had grown up near Tulsa, and still had family there, Thomas suggested that she could attend the conference as well. Hill readily agreed, and flew out a few days before the seminar. Thomas, on the other hand, took an early morning flight the day of the luncheon, and returned home the same day.

In her book *Speaking Truth to Power*, Hill wrote that she and Thomas rode on the same plane to Oklahoma, and that Thomas had asked her to sit in the back of the plane with him. But, considering that Thomas was not even on the same plane as Hill, this would have been impossible.

When Thomas arrived at the seminar, Charles Kothe, the dean of the law school, told Thomas that Hill had performed well at the seminar, and he asked Thomas for permission to speak with her about joining the faculty. Thomas told Kothe that Hill had family ties in Oklahoma, and she was, in fact, looking for a new job. Kothe offered Hill a job, and she accepted. In her book, Hill expressed some concern about the "conservative ideology" of the school. (One suspects that Kothe assumed that Hill was a conservative, since she was working for Thomas.)

Three years later, Hill contacted Thomas and asked that he speak at an EEOC function in Tulsa. Thomas shared one of the head tables with Hill and Kothe (who by this time was actually working for Thomas at EEOC). Kothe was planning to drive Thomas to the airport the next morning, but Hill showed up for breakfast and insisted that she drive Thomas in her new Peugeot. Thomas recalled, "She was excited about the car [and she] seemed happy.... She called me from time to time after that, but so far as I can remember, I never saw her again."

Interestingly, Hill neglects to mention in her book that she volunteered to drive Thomas to the airport.

Hill continued to call Thomas, "almost always when she wanted something," Thomas remembered. She usually spoke with Diane Holt, who was Thomas' secretary at EEOC. Holt logged the calls, and would often take messages when Thomas was out of the office. Hill even called Thomas at his home periodically until he moved and changed his phone number.



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## Hill's 11th-hour Attack on Thomas

There is no indication that Thomas had given Hill much thought during the contentious confirmation hearings, certainly no indication that he feared she might accuse him of sexual harassment. Then, with predictions that Thomas might receive in excess of 60 votes, he received a phone call that two agents from the Federal Bureau of Investigation (FBI) needed to come by and speak with him. While Thomas wondered what they could possibly need to know this late in the confirmation process, he recalled in his autobiography, "I feared the worst."

Hill had contacted Harriet Grant, nominations counsel to the Judiciary Committee, desiring to make an anonymous allegation against the nominee, and let the committee conduct an investigation. The chairman of the committee, Senator Joe Biden (D-Del.), refused to allow anonymous allegations. Hill decided to give up her anonymity and go public. The charges would be turned over to the FBI for an investigation. Although Hill made the allegations in an affidavit, beginning with the words "I swear," she neglected to have it notarized.

The FBI agents told Thomas that there was "an allegation of sexual harassment" from Hill. Thomas found the ugly accusations incredible. "I could have cried," Thomas recalled. He told the agents that he had been dating another woman at the time of the allegations and that he had helped Hill get a job at the ORU law school, and even mentioned that she had volunteered to drive him to the airport following the second ORU seminar.

When the story broke, Thomas' chances of being confirmed dropped immediately. In fact, despite the effort of Republicans on the committee to push the nomination to the floor for a vote, they finally agreed to a delay so more hearings could be held. In short, the votes were no longer there for Thomas to be confirmed without additional testimony that would focus on Hill's charges.

Thomas recalled that it was not the first time that Hill had made such charges about a supervisor. As noted earlier, when Thomas hired Hill at the Department of Education, she had claimed that one of the partners at her former place of employment had sexually harassed her. Thomas told a fellow appeals court judge that he had never been attracted to Hill, claiming she had bad breath.

Diane Holt, Thomas' secretary, remembered that Hill was a liberal feminist. Hill had, according to a story in the *Washington Post*, been critical of Thomas for his conservative views. "He doesn't relate to people who don't make it on their own," Hill claimed of Thomas. Because of this, some of Thomas' defenders argued that Hill's motivation was political — that she was lying to keep a conservative critic of *Roe v. Wade* off the court.

Senator John Danforth, a Missouri Republican for whom Thomas had worked, was livid at what he considered a last-minute hit job: "First, this was a last-ditch attempt to defeat a nomination that we had thought we had won. The Hill story was identical to the weekend-before-the-election attacks made by losing candidates against winning candidates. Just as last-minute political attacks should be dismissed by the voters, so this last minute attack should be dismissed by the American people."

While one can certainly sympathize with Danforth's position, it is a sad commentary that while many people agree with him that lies are often told to win a political race, many of those same people tend to believe such lies. In the case of Hill's allegations, many of Thomas's supporters in the Senate were hesitant to note the obvious political intent to keep Thomas, a constitutionalist, off the court. The





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Republicans had no doubt expected that Democrats would be reluctant to attack a black nominee, for fear of alienating black voters. What they had not considered was that the Democrats perhaps had a greater fear of elevating a conservative black man to the Supreme Court, which could cause some blacks to be more sympathetic to conservative causes in general, and the Republican Party in particular. In other words, the greater fear was that Clarence Thomas could begin a process of peeling chunks of the black vote away from the Democrats.

## **The Borking of Clarence Thomas**

The charges leveled against Thomas in an attempt to derail his confirmation were not about his interpretation of the Constitution, or even about abortion, but were a personal attack on his character. Charging Thomas with sexual harassment gave the Democrats an opportunity to go on offense. Now, if the Republicans continued to defend Thomas, they could be charged with defending a man against a woman's charges of sexual harassment. In short, feminism would trump racist accusations, especially with Hill being a black woman.

It appeared that Thomas' nomination was sunk. After all, it is difficult to prove a negative — that he had not harassed Hill. Probably the majority of Americans — at least in 1991 — could not believe someone would lie about sexual harassment for political purposes.

After Hill went before the committee to make her charges, Thomas was brought back to offer a rebuttal. In a statement laced with controlled anger, Thomas said, "When I stood next to the president in Kennebunkport, being nominated to the Supreme Court of the United States, that was a high honor. But as I sit here, before you, 103 days later, that honor has been crushed."

Thomas continued, detailing the personal pain he had endured throughout the process. "From the very beginning charges were leveled against me from the shadows — charges of drug abuse, anti-Semitism, wife-beating, drug use by family members, that I was a quota appointment, confirmation conversion and much, much more, and now, this."

As the senators sat silent, Thomas certainly knew that his primary audience was the American public. "I have complied with the rules. I responded to a document request that produced over 30,000 pages of documentation. And I have testified for five full days, under oath. I have endured this ordeal for 103 days. Reporters sneaking into my garage to examine books I read. Reporters and interest groups swarming over preposterous and damaging rumors. Calls all over the country specifically requesting dirt."



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---



**Founders' intent:** The Framers of the Constitution did not envision that the Supreme Court would become as powerful as it has. But as much as modern devotees of our Constitution lament this perversion, each nomination made to the Supreme Court becomes a critical battle in preserving our republican form of government intended by the Founding Fathers.

Then, in a dramatic conclusion, Thomas said, "This is not American. This is Kafkaesque. It has got to stop. It must stop for the benefit of future nominees, and our country. Enough is enough."

Of Hill's specific allegation, Thomas was blunt. "I would like to start by saying unequivocally ... that I deny each and every single allegation against me today that suggested in any way that I had conversations of a sexual nature or about pornographic material with Anita Hill, that I ever attempted to date her, that I ever had any personal sexual interest in her, or that I in any way ever harassed her."

Finally, Thomas summed up his feelings about the whole confirmation proc-ess. "The Supreme Court is not worth it. No job is worth it. I am not here for that. I am here for my name, my family, my life and my integrity. I think something is dreadfully wrong with this country, when any person, any person in this free country would be subjected to this."

Combined with powerful testimony from former employees of Thomas, who directly refuted Hill's case, the hearings concluded with a dramatic swing in Thomas' favor in the court of public opinion. His subsequent confirmation by the Senate was a result of this change. At the close of the hearings, about two-thirds of Americans polled thought Thomas, not Hill, was telling the truth.

One of those testifying for Thomas was Janet Brown, who had worked for Thomas. She told the committee that she had been sexually harassed in the workplace years earlier, and she found the experience "humiliating." She said that Hill's testimony was astonishing. "Let me assure you that the last thing I would ever have done is follow the man who did this to a new job, call him on the phone or voluntarily share the same air space again."

But not only did Hill follow Thomas to a new job, she also called him on the phone, multiple times. Thomas' secretary at EEOC recalled several such phone calls after Hill had left the agency. Telephone logs indicated there were 11 calls from Hill (this would not include the times that Thomas was present and available, and she put the call on through).

One phone call from Hill even left the hotel room number where she was staying in D.C.



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Unfortunately, once Thomas was confirmed, conservatives believed the battle was over. Whereas two-thirds of Americans believed Thomas over Hill at the conclusion of the hearings, a little over a year later, the public now believed Hill, by a margin of 53-37 percent, according to a poll by the *Washington Post*.

What had happened? The Left would have no doubt preferred to block Thomas' nomination altogether. Failing that, however, they desired to destroy his reputation, so his opportunities to be a role model for African-Americans would be diminished. When conservatives went on to other issues, progressives did not. They never concede an issue or a situation.

As George Orwell wrote in his classic dystopian novel *1984*, those who control the past can control the future. This is exactly what the character assassination of Clarence Thomas was all about. As Thomas said during his powerful testimony to the Senate Judiciary Committee in 1991, "This is a circus. This is a national disgrace. And from my standpoint as a black American, as far as I am concerned, it is a high-tech lynching for uppity blacks who in any way think for themselves, to do for themselves, to have different ideas."

Compare the reaction of the Left to the allegations against Thomas to those against President Bill Clinton. Of the 26 senators who had voted against Thomas' confirmation and were still in office in 1998, all of them voted to keep Clinton in office.

Even Anita Hill defended Clinton, arguing in a *Newsweek* article that the two situations "are quite different." Appearing on *Meet the Press*, Hill supported the defense of Clinton by prominent feminist leaders. "We live in a political world, and the reality is that there are larger issues other than just individual behavior."

From that short statement, I am sure readers can judge for themselves that there are many people willing to lie in order to advance what they consider "larger issues."

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