STRANGE CRUEL JUSTICE

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*Impius et crudelis judicandus est qui libertati non favet,* the ancient legal maxim says. "He is to be judged impious and cruel who does not favor liberty." This maxim would be an appropriate personal motto for U. S. Supreme Court Justice Clarence Thomas.

A best selling book about him is entitled *Strange Justice.* A New York Times editorial brands him the Court's "cruelst justice." He is one the principal reasons the Court is leading this country through a counterrevolution in civil liberties, civil rights, and privacy protections, in which nearly anything the government does in the name of fighting crime or terrorism is deemed constitutionally acceptable.

Clarence Thomas made it to the Court by mendacity. Thomas, who has a long history of embracing right wing extremist views, was narrowly confirmed by the Senate in 1991 by a vote of 52-48 (the smallest majority in a century) after stormy confirmation hearings where under oath he dishonestly claimed to be a moderate rather than a right winger and gave other sworn testimony which at best was deceptive or evasive, and at worst downright false. On the issue of a woman's constitutional right to an abortion, for example, he told the Senators that he could "not remember" ever having discussed the *Roe v. Wade* decision with anyone and that he had never "debated the contents of it." He further testified: "[T]rust me, my mind is open, I don't have an opinion on the issue of abortion." Soon after joining the Court, however, the truth came out: Justice Thomas is a fanatical pro-lifer, consistently voting against a woman's right to choose, and eager to overturn *Roe v. Wade.* As the *New York Times* notes: "At his hearing, [Thomas] said he had never uttered an opinion about *Roe v. Wade* to anyone. It's hard to grasp how anyone could go so quickly from such agnosticism to ... bitterly condemn[ing] that precedent and demand[ing] that it be overruled."

At his confirmation hearings, Thomas professed to empathize with criminal defendants and prisoners, but as a justice he is relentlessly hostile to them, and he nearly always votes to deny their claims. A good example is a 1992 Supreme Court decision which upheld a modest award of damages to a prison inmate who proved in federal district court that while he was in handcuffs and shackles two prison guards had, when there was no need to do so, punched him in the mouth, eyes, chest, and stomach, as well as kicked and punched him from behind, and that as result of this episode he suffered minor bruises, swelling of his face, mouth, and lip, loosened teeth, and the cracking of his partial dental plate. Justice Thomas filed an infamous mocking dissent claiming that "[t]oday's expansion of the Cruel and Unusual Punishments Clause [is] ... another manifestation of the pervasive view that the Federal Constitution must address all ills in our society," and that "[t]he Eighth Amendment is not, and should not be turned into, a National Code of Prison Regulation." Since his appointment to the Supreme Court, Thomas's judicial decision-making has amounted (in the words of one legal scholar who has studied his record) to "a new, aggressive, and repressive judicial activism." In individual rights cases he usually votes the same as the two
other right-wing extremists serving on the Court, Chief Justice Rehnquist and Justice Scalia. In cases involving criminal procedure, civil rights and liberties, the rights of prisoners, and the writ of habeas corpus Thomas almost always sides with the government and rejects the claims of individuals that their rights were violated. "He articulates ... a vision of constitutional interpretation that ... advances his preferences for ... diminution of constitutional protections for individuals" (to quote another legal scholar who has examined his record). He wants to abrogate a woman's right to choice and permit the recriminalization of abortion. He is strongly in favor of capital punishment and just as strongly opposed to affirmative action. He thinks it is constitutional to execute juveniles and the retarded. He is the first (and only) justice to criticize the Brown v. Board of Education decision.

As a Seattle University Law Review article notes: "[T]he evidence clearly shows that significant aspects of [Thomas's Senate] testimony are at odds with his record on the Court ... He has not proved to be an open-minded, independent thinker ... [T]he nation's policies and future must be affected by a judicial officer ... whose judicial performance ... [was] quickly out of step with his confirmation testimony... [Thomas has] moved back to his original [right wing] position after telling the nation that he really stood on some other ground ..."

Justice Thomas is also one of the five right-wing Republican justices who stole the presidency from Al Gore in 2000 in that egregious manifestation of political partisanship disguised as a court judgment, Bush v. Gore, the most outrageously partisan decision in Supreme Court history, a decision in which, as Vincent Bugliosi says, "the Court committed the unpardonable sin of being a knowing surrogate for the Republican party instead of being an impartial arbiter of the law."

Anyone who questions why the Supreme Court is no longer the guardian of liberty, rights, and justice, and has become the lapdog of big government and a cheerleader for the executive branch, need only examine the career of Justice Thomas to find the answer. The courts are failing us, freedoms are fading, because we have foolishly allowed compassionless creatures such as Clarence Thomas to become our judges. The enemies of liberty have been placed in charge of protecting liberty.