

I ACCUSE YOU, CLARENCE THOMAS!

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A Letter to the Hon. Clarence Thomas,
Associate Justice, Supreme Court of the United States

My dear Mr. Justice Thomas,

With all respect, will you permit me to express candidly my concerns about your proclivity for demeaning human rights? Will you allow me to tell you frankly, sir, that because of your relentless hostility to human rights claims you are a painful embarrassment to the Court you sit on, to America's heritage of liberty, and to the rule of law?

In two previous *Flagpole* articles, one published on April 30, 2003, the other on May 28, 2003, I examined at length your benighted judicial voting record and your strange anti-human rights philosophy. Since then you have continued in human rights cases to vote systematically in favor of assertions of government power and against claims of individual liberty, especially in the context of criminal procedure where you rule in favor of the government nearly 90% of the time. (The grim statistics are in 31 *Hastings Const. L. Q.* 499 (2004) and 32 *Hastings Const. L. Q.* 909 (2005)). Typical examples:

- In *Rasul v. Bush*, 542 U.S. 466 (2004), you were one of the four dissenters from the decision of the Court. In your judgment, aliens imprisoned at Guantanamo Bay were beyond the reach of the writ of habeas corpus.

- In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), in which the Court held that due process required that an American citizen, detained without charges indefinitely and incommunicado in a high-security military prison as an "enemy combatant," solely on the authority of President Bush, be given meaningful opportunity to contest the factual basis for his detention, you were the only dissenter. You were the only Justice to hold that Hamdi should be denied habeas corpus relief outright and the only Justice to conclude that it would be constitutional to deny a detainee both access to counsel and notice of the factual basis for the government's determination that he was an "enemy combatant."

- In *Missouri v. Seibert*, 542 U.S. 600 (2004), you were one of the four Justices who dissented from the Court's decision, which invalidated an outrageous police protocol for custodial interrogation under which police, in violation of the *Miranda* decision, would deliberately not give the *Miranda* warnings to suspects until after they had been interrogated and confessed.

- In *Roper v. Simmons*, 543 U.S. 551 (2005), you were one of the four Justices who dissented from the Court's decision that the execution of youths who were under 18 at the time of their capital crime is unconstitutional.

- In *House v. Bell*, 126 S. Ct. 2064 (2006), you were one of three Justices who dissented from the decision of the Court to permit a death row inmate to proceed on his federal habeas corpus petition where newly discovered evidence, including DNA evidence that directly contradicted the case the prosecution presented at the inmate's murder trial, indicated the inmate was

innocent.

■ In *Hudson v. Michigan*, 126 S. Ct. 2159 (2006), you were part of the five-Justice majority which held that when police violate the Fourth Amendment by effecting no-knock entry into a home to serve a search warrant, the evidence obtained inside will now be admissible in court.

■ In *Kansas v. Marsh*, 126 S.Ct. 2516 (2006), you wrote the opinion for the five-Justice majority upholding a statute which permits a death sentence to be imposed where the mitigating factors and the aggravating factors are in a state of equipoise.

■ In *U.S. v. Gonzalez-Lopez*, 126 S.Ct. 2557 (2006), you joined three other Justices who dissented from the Court's decision that denying a criminal defendant's Sixth Amendment right to retain the counsel of his choice is always reversible error.

■ In *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006), you dissented from the Court's holding that the military commissions established by President Bush to try suspected terrorists detained at Guantanamo Bay violated both the Uniform Code of Military Justice and the Geneva Convention. In your judgment, the kangaroo court procedures permitted by those military commissions were perfectly legal.

Therefore, Justice Thomas,

I accuse you of being the most reactionary Supreme Court Justice since Justice McReynolds.

I accuse you of callousness to the rights of individuals and minorities.

I accuse you of itching to overrule some of the most important pro-human rights decisions ever decided by the Supreme Court.

I accuse you of being a rubber stamp for the police, a lapdog of prosecutors, and a sock puppet of prison wardens.

I accuse you of regarding yourself as more a foot-soldier in the war on drugs and crime than a judge sworn to protect the rights of all Americans.

I accuse you of giving judicial approval to lawlessness in law enforcement and to the use of illegal means to enforce the criminal laws.

I accuse you of adulating capital punishment and of being the Supreme Court Justice most likely to uphold a death sentence.

I accuse you of implacable hostility to the writ of habeas corpus and of being the Supreme Court Justice most likely to rule against a person seeking habeas relief.

I accuse you being the Supreme Court Justice most likely to vote against and even ridicule the legal claims of minority groups or prisoners seeking relief in your Court.

I accuse you of being the Supreme Court Justice most likely to rule against black criminal defendants and black prisoners.

I accuse you of being the first Supreme Court Justice to criticize, albeit indirectly, the 1954 Brown v. Board of Education decision.

I accuse you of being the Supreme Court Justice most likely to rule against a black or minority person raising a civil rights claim or a claim based on the Voting Rights Act.

I accuse you of an appalling lack of sympathy for the poor, the oppressed, and the powerless.

I accuse you of being a right-wing extremist masquerading as an neutral magistrate.

I accuse you of deciding cases, not on the basis of the law or the facts or precedents, but based on your extreme right-wing views.

I accuse you of behaving on the Supreme Court as though the platform of your political party was the nation's constitution.

I accuse you of having been deceptive and evasive at your judicial confirmation hearings so that you could acquire the power you now utilize to subvert human rights protections.

Finally, sir, I accuse you of being a cruel judge in the tradition of Nicholas Eymeric, Conrad of Marburg, and George Jeffreys.

In making these accusations, sir, I have two goals. First, I hope to make as many Americans as possible aware of your lamentable judicial voting record and the inhumane philosophy underlying it. Second, I hope, I pray, that somehow I can assist in transforming you into a friend of liberty. Right-wing justice, you must understand, is not justice.

Sir, I beseech you to change direction and follow the path of the beloved Justice Thurgood Marshall. Stop exalting state power; cease attempting to reverse the historical trend of judicially expanding human rights; and jettison the social darwinism that makes you coldly indifferent to the plight of minorities, the economically disadvantaged, and the politically weak when their basic rights are trampled upon.

Please, sir, leave the right-wing darkness and emerge into the liberal daylight. The cause of liberty, justice, rights, and freedom beckons you. Shake off your anti-humanitarian attitudes, sir, so that posterity will bless not curse you, and so that among future generations your name will be revered rather than infamous!