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USA and the Courts
CSPAN
Washington DC 20006

Dear Sirs:

I wish to bring up an issue which might be the basis of an interesting conversation or interview on "USA and the Courts". This concerns the controversy as to when Justice Thomas actually became a member (a sitting justice) of the US Supreme Court. There were two swearing in ceremonies, one on October 16, required by the constitution, and one on or about November 1, required by statutory law. Did Thomas become a member of the court when Bush signed his commission, when he was a sworn in on October 16, or later at the second swearing in ceremony (on November 1, I believe)? See the attached article with comments by Justice White on when Thomas becomes a member of the Court. If you look at the excellent book on the U.S. Supreme Court, from the Congressional Quarterly, edited by Elder Witt, you will note that there is one other individual (in Lincoln's time) who was confirmed by the Senate but never sat as a justice. He died before the swearing in.

There are other issues. Brennan was sworn in twice, once as a recess appointee to the Court and again as a regular appointee (after confirmation by the Senate).

Might I suggest Maureen Dowd (New York Times, Washington bureau, [redacted]) as an excellent person to interview on your show concerning these issues. She seems to be quite well versed on the questions.

Sincerely,

[redacted]

Enclosure

1ST STORY of Level 1 printed in FULL format.

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HEADLINE: The Thomas Swearing-In;
A Festive Mood at Thomas Swearing-In

BYLINE: By MAUREEN DOWD, Special to The New York Times

DATELINE: WASHINGTON, Oct. 18

BODY:

In a White House ceremony that was as much a festive political victory rally as a solemn swearing-in, President Bush praised Clarence Thomas today, saying, "America is blessed to have a man of this character serve on its highest court."

"Clarence Thomas has endured America at its worst, and he's answered with America at its best," Mr. Bush said. "He brings that hard-won experience to the High Court, and America will be the better for it."

In a ceremony on the South Lawn, as about 1,000 friends, relatives and supporters looked on, the 43-year-old judge took the oath of office as the 106th Justice on the Supreme Court, his hand on a Bible held by his wife, Virginia.

'Many Difficult Days'

The happy demeanors of the Thomases, as they sat and stood next to the Bushes, were a far cry from the angry, strained expressions they wore at the Senate Judiciary Committee hearings last weekend.

Since William H. Rehnquist was in mourning, due to the death on Thursday of his wife, Natalie, the oath was administered by Justice Byron R. White, the senior Associate Justice.

Mr. Thomas, like the President, referred to the searing Senate hearings last weekend on the accusations by Anita F. Hill, an Oklahoma Law School professor. She asserted that Mr. Thomas had sexually harassed her, when he was her superior in the early 1980's at the Education Department and the Equal Employment Opportunity Commission.

"Since that bright sunny day in Kennebunkport, July 1, there have been many difficult days as we all went through the confirmation battle, and I mean we all," Mr. Thomas said. "But on this sunny day in October, at the White House, there is joy. Joy in the morning."

Theme of Healing

Recalling his journey from Pin Point, Ga., to the Supreme Court, Mr. Thomas thanked his family, thanked the nuns who taught him, thanked America and thanked his wife and son. "My wife is my best friend and over the past 110 days we

have been brought closer together, our love has been strengthened and we have become better people," he said.

Mr. Thomas continued to strike a theme of healing, saying: "It is a time to look for solutions rather than exploit problems. In the words of Sir Winston Churchill, 'Let us go forward together.' "

Ordinarily, the White House swearing-in, which precedes the more formal Supreme Court ceremony administering the judicial oath, is a low-key affair, held inside the White House and covered only by a pool of reporters, rather than the whole White House press corps.

But in the case of Judge Thomas, only the second black to ascend to the Supreme Court, the White House was eager to showcase its triumph over the Democrats and liberal interest groups who had opposed him, throwing open the South Lawn ceremony to 1,000 guests, setting up the Marine band in the Truman balcony to play patriotic tunes, and inviting in reporters to roam the grounds and cameras to provide live television coverage.

Court Ceremony Postponed

To the surprise of some officials at the Supreme Court, who considered it unseemly haste, the White House declined to follow the lead of the Supreme Court in postponing the ceremony because of Mrs. Rehnquist's death. The Court ceremony, tentatively set for Monday, will now be in two weeks, on Nov. 1.

In another move that created friction between the White House and the Supreme Court, the President's spokesman, Marlin Fitzwater, tried to insist today that Mr. Thomas became a Justice as soon as the President signed a document today called a commission, rather than after Mr. Thomas takes both the constitutional oath administered today at the White House and the judicial oath at the Supreme Court, as required by Federal law.

Some Court officers felt that the White House was grandstanding in its rush to make Mr. Thomas, who struggled to make it to the Supreme Court, a Justice sooner than the law allows. Reflecting a direct message to the President that the Justices believe Federal law is clear that Mr. Thomas is not a Justice until he is sworn in at the Court in two weeks, Justice White pointedly told Mr. Thomas today that "when at 10 o'clock on Nov. 1, you take the judicial oath that is required by statute, you will become the 106th Justice to sit on the Supreme Court, and we look forward to that day."

Family Sat in Front Rows

Mr. Thomas's son, Jamal, his mother, Loyola Williams, his sister, Emma Mae Martin, his brother, Myers, and assorted cousins were in the front rows in seats set up on the lawn.

The audience also featured witnesses who had testified at the Senate hearing on Mr. Thomas's behalf, like John N. Doggett 3d, Phyllis Berry and Diane Holt; Democrats on the Judiciary Committee, including Joseph R. Biden Jr. and Dennis DeConcini; Republicans on the Judiciary Committee, like Alan K. Simpson, Orrin G. Hatch and Strom Thurmond; lobbyists and lawyers for the White House who had shepherded Mr. Thomas through his ordeal, like Kenneth Duberstein and C. Boyden Gray, and his key backer, Senator John C. Danforth.

Senator Danforth, a minister who was Mr. Thomas's most ardent champion, said in an opening prayer: "We thank you for his strength, his courage and for the kindness and devotion of his heart. Especially, we thank you that he has persevered through adversity, that he has fought the good fight."

Pat Robertson, the Christian broadcaster and former Republican Presidential candidate, said: "It's a great victory for the pro-family people of America. We are simply delighted that a man of Judge Thomas's moral character will be sitting on the Supreme Court."

SUBJECT: APPOINTMENTS AND EXECUTIVE CHANGES

ORGANIZATION: SUPREME COURT (US)

NAME: THOMAS, CLARENCE (JUDGE); BUSH, GEORGE (PRES); DOWD, MAUREEN



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