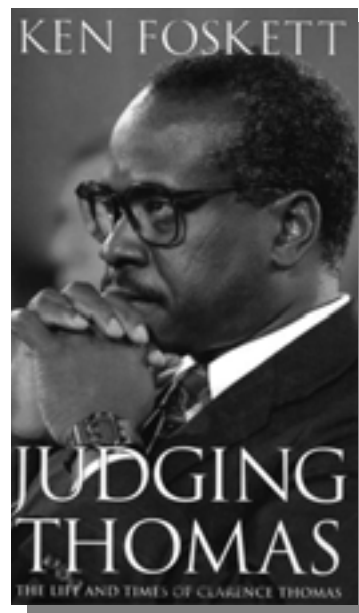


## book review

# From Pin Point to the Legal Pinnacle

by *Tory L. Lucas*



**A Book Review of *Judging Thomas: The Life and Times of Clarence Thomas*, by Ken Foskett (William Morrow, 2004, 339 pages, \$24.95)**

*Reviewed by Tory L. Lucas\**

Ken Foskett, an investigative reporter for the *Atlanta Journal-Constitution* and the author of *Judging Thomas*, believes “the key to unlocking Justice Thomas’s decision making is not dissecting the opinions but understanding the man who wrote them.”<sup>1</sup> That is how Foskett approached his biography of Clarence Thomas. Foskett did not analyze the written opinions of Justice Thomas to reveal a judicial

philosophy. Instead, Foskett delved into the more interesting question of who Clarence Thomas is as a man, which, in turn, may shed light on Clarence Thomas the justice. In the process, Foskett presents a fascinating story of Justice Thomas’s meteoric rise to the Supreme Court of the United States. Regardless of your current opinion of Justice Thomas, I highly recommend you read *Judging Thomas* to understand the man who is Justice Clarence Thomas. You will behold an epic American journey.

A person cannot always be understood by his accomplishments. Instead, we sometimes must look beyond the person himself, and look into that person’s family history. Foskett does a masterful job providing a glimpse of the family history that produced Clarence Thomas.

Thomas is a product of Liberty County, GA, an area both rich with history and shamed by its past. Foskett delivers a captivating history of Thomas’s slave ancestors, who worked hard in difficult conditions to enrich their white plantation owners. A few generations removed from slavery, Thomas was born inside a small home in Pin Point, GA. Although Pin Point can hardly be characterized as a hot-bed for producing Supreme Court justices, Foskett describes how Pin Point’s “hardscrabble image cloaked [Thomas] in the American dream and made his story compelling to Americans everywhere.”<sup>2</sup> A product of a poor, broken home, a seven-year old Thomas and his younger brother left their mother’s home, clutching shopping bags stuffed with their lives’ possessions. Thomas and his brother were moving in with Thomas’s grandparents, Myers and Christine Anderson. Myers would prove to be a powerful influence on Thomas’s beliefs and work ethic.

## Tory L. Lucas



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City School of Law, where he was the Arthur Mag Fellow of Law. Lucas has been a trial lawyer in private practice in Sioux City, IA and he has served as a judge advocate in the United States Air Force, where he was stationed at Maxwell Air Force Base, Alabama, and Arnold Air Force Base, Tennessee. Lucas currently teaches at Bellevue University and Creighton University School of Law.

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Foskett delves deep to describe Myers, a critical character in Thomas's story. Myers, a fuel oil deliveryman who believed in self-reliance, hard work and discipline, did not have any sons. Thomas and his brother, who Myers named "Boy" and "Peanut," were his new sons. Myers immediately taught them to work from "sun to sun," or from sunup to sundown. Myers showed and taught Thomas the value of hard work, a lesson Thomas was forced to learn the hard way—by doing it! Myers himself learned the value of hard work during his own childhood, so it was no surprise he implanted that same value inside Thomas. Living in an area rife with social strife, including the proliferation of the Ku Klux Klan, Myers overcame numerous obstacles to begin his own business in the 1930s, proving his creed of self-reliance and hard work were more than mere words—they defined him. As Myers's hard work paid off in the form of increased wealth, he continued his modest existence. Myers never failed to treat others with respect and, when needed, with charity. These values also transferred to Thomas.

Myers often implored that Thomas be somebody when he grew up. Thomas studied and worked hard. In his free time, Thomas spent hours at Savannah's black library reading about the world outside the segregated South. Little did Savannah know, but the young black student reading in the segregated library would someday serve as America's second black Supreme Court justice but the road would not be easy, as roads leading to greatness rarely are adorned with yellow bricks.

Education defines many successful Americans, especially those trained in the law. Foskett appropriately details Thomas's education. Thomas attended Savannah's segregated Catholic schools through the 10th grade, eagerly learning from the school's white nuns. According to Foskett, these schools "offered the best education possible for a black child in Georgia and equipped Thomas to thrive in successively more difficult school environments."<sup>3</sup>

During his youth, Thomas witnessed firsthand the civil rights movement, seeing boycotts and protest marches and attending NAACP meetings with Myers. During this time, Thomas also developed as an athlete, showing promise in basketball, football and baseball. His basketball skills developed to a point where he earned the nickname "Cousy," after the great Bob Cousy of the Boston Celtics. Thomas also faced prejudiced ridicule. As a child, Thomas had a "broad nose and coal black skin, [h]is hair was curly, not flat, and his lips were wide, not thin."<sup>4</sup> In the cruel confines of a racially stratified community, Thomas became known as "ABC: America's Blackest Child."<sup>5</sup> When Thomas reached high school, he again attended a segregated school, where the "rules all but eliminated contact with whites."<sup>6</sup>

During his adolescent years, Thomas internalized the Catholic Church's discipline and absolutism, seeing "the world in sharply defined categories of good and bad, heaven and hell, virtue and sin."<sup>7</sup> Foskett speculates that "way of evaluating the world one day added up to a judicial philosophy that was equally categorical and absolute."<sup>8</sup>

When Thomas reached the 10th grade, he transferred to an all-white school, Saint John Vianney Minor Seminary, "the most elite, challenging, and rigorous Catholic school in south Georgia," according to Foskett.<sup>9</sup> Thomas dreamed of becoming Savannah's first black Catholic priest, and he was on his way. Thomas would soon learn the value of his bedrock core values—hard work, self-reliance, and discipline—as he faced bigotry, sensed he did not belong, and thought was not good enough. These feelings would haunt Thomas throughout his life. Thomas graduated from Saint John's in 1967, the same year President Lyndon Johnson nominated Solicitor General Thurgood Marshall to the Supreme Court. When confirmed, Marshall became the Nation's first black justice. Twenty-four years later, Thomas replaced Marshall on the Court, becoming the Nation's second black justice.

Following high school, Thomas enrolled in Conception Seminary College in western Missouri. According to Foskett, Thomas confronted two instances of racism that reminded him of Myers's teachings: "Just remember that no matter how many degrees you get and how high you go, the lowest white man in the gutter can call you a nigger."<sup>10</sup> The first incident involved Thomas and a friend getting kicked out of a bar in Kansas based on Thomas's race. Thomas realized racism did not reside solely in the South. The second incident occurred on April 4, 1968, the fateful day Dr. Martin Luther King, Jr. was gunned down at the Lorraine Motel in Memphis. When the news of Dr. King's shooting made its way around the school, one white student responded, "Good. I hope the S.O.B. dies."<sup>11</sup> Thomas's dream of becoming a priest was dashed, and Thomas left both the seminary and the Catholic Church.

Foskett notes Thomas left the seminary without a plan for his future. Fortunately, a white nun helped Thomas get admitted to the College of the Holy Cross, which gave Thomas a full academic scholarship. When Thomas arrived on campus, he quickly befriended Gil Hardy, a black student from Philadelphia. Hardy would later introduce Thomas to Anita Hill. Thomas and other black students organized Holy Cross's first Black Student Union (BSU), with Thomas acting as secretary-treasurer. The BSU embraced the black nationalist movement. Rejecting assimilation and embracing black power, the BSU voted to create a black-only dormitory floor. One BSU member proclaimed, "Separatism is the solution for the present race problem in America."<sup>12</sup> Showing

a trait that would define him on the Supreme Court years later, Thomas was the lone dissenting voice.

Thomas, who Myers had taught self-reliance and discipline, was drawn to Malcolm X, the Black Muslims and the Black Panthers, based almost entirely on their teachings of self-reliance and discipline. Thomas also began to show signs of conservatism. He lectured classmates that they could only earn respect from white people through superior performance. Thomas embraced rugged individualism, devouring Booker T. Washington's teachings of self-reliance, believing black people had to educate themselves and outwork others to succeed.

After graduating from Holy Cross, Thomas attended Yale Law School. Of Thomas's 159 classmates, only 11 were black. Thomas was unhappy at Yale; he felt out of place. Although he still held many liberal positions from his Holy Cross days, Thomas began to transform into a conservative thinker. Although people tried to guide Thomas into civil rights law, Thomas wanted to be a business lawyer Thomas almost landed a job with an Atlanta law firm as the firm's first full-time black associate, but the firm delayed its hiring decision too long. Although he did not go to work for the Atlanta firm, a partner wrote of Thomas, "A real overachiever. Predict he will do well wherever he decides to go."<sup>13</sup>

Forced to find something other than his dream job, Thomas interviewed with a young John Danforth, Missouri's Attorney General. Danforth, who would later sponsor Thomas for a Supreme Court position, promised to "offer [Thomas] more experience and less pay than anyone else."<sup>14</sup> Thomas accepted a position as an assistant attorney general, and became the only black attorney in the office. When he became a Supreme Court justice years later, Thomas remarked that the attorney general position was the best job he ever had.

At this time, Thomas discovered the conservative black writer, Thomas Sowell. Ironically, Thomas had rejected Sowell's writings while at Yale without so much as reading them. According to Foskett, "No other writer was to have as much influence on Thomas's thinking about racial politics in America."<sup>15</sup> Persuaded by the logic of Sowell's arguments, Thomas adopted many of Sowell's beliefs. The two would later become lifelong friends. Thomas also befriended Larry Thompson, a conservative black attorney who rose to the position of deputy attorney general under President George W. Bush.<sup>16</sup> The two men often discussed affirmative action and were frustrated how black leaders forced black people to think alike. Thomas's friendship with Thompson also became lifelong. After leaving Danforth's office, Thomas worked for a large company in St. Louis for a couple years. This job proved to be Thomas's only private stint in his career.

Thomas used the springboard that was John Danforth's Attorney General's office<sup>17</sup> to blaze an amazing path across Washington, D.C. Thomas left Missouri in 1979 to head to our nation's capital, never to leave the District. He joined now-Senator Danforth as a legislative assistant. At this point, Thomas was unmistakably conservative, and his star was rising. As he embraced a greater number of conservative friends, Thomas's name was mentioned more and more in Republican circles. With the impending Reagan Revolution, Thomas's plan to return to the private sector vanished. Thomas would become a dedicated public servant.

When President Ronald Reagan took office, Thomas accepted a position as the assistant secretary for civil rights at the Department of Education. Inexperienced in government and only 32 years old, Thomas was quickly confirmed by the Senate Labor and Human Resources Committee. Thomas soon hired a 25-year-old Anita Hill as a special assistant reporting directly to him. Shortly after beginning his job at the Department of Education, Thomas's star rose again.

At the age of 34, Thomas became the chairman of the Equal Employment Opportunity Commission (EEOC). Hill, seemingly hitched to Thomas's star, rejected an offer to remain at the Department of Education, and followed Thomas to the EEOC.

Foskett details Thomas's leadership of the EEOC, noting some insiders deemed Thomas controversial. Upon his arrival at the EEOC, Thomas gave a speech in which he described the racism he had endured in his own life, and announced, "One comprehends quickly that discriminatory practices are not only unfair, unjust, and un-Christian, but also un-American."<sup>18</sup> In a glimpse of his unyielding belief in self-reliance, Thomas assured the EEOC staff that "no amount of badgering, distortions, or intimidation will change my mind. I will not go along with popular opinion to get along with people . . . I have no intentions of sacrificing my principles to accommodate others, or because it would be more expedient."<sup>19</sup> Thomas the man had matured into a fearless conservative thinker who was not afraid to take on the establishment.

During his eight years as EEOC chairman, Thomas transformed a poorly run federal bureaucracy into a first-rate agency serving the public. As Foskett notes, Thomas's eight years at the EEOC allowed Thomas to define his conservative views on affirmative action and other race-based approaches to discrimination. While "Thomas's conservative views won him powerful allies and supporters," those views also "flung him into the jaws of equally powerful adversaries, who saw him as a threat to some of the nation's most fundamental civil rights policies."<sup>20</sup> Foskett states Thomas "learned that the

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third rail of American politics was not Social Security but race. As EEOC chairman, he grabbed the electric current with both hands. The heat burned badly and stoked opposition to his Supreme Court nomination nine years later.”<sup>21</sup>

Perhaps the biggest development in Thomas’s mind during this period was his absolute belief that race-neutral policies were the only answer to solving race-created problems. *Judging Thomas* reveals how Thomas subconsciously spent a lifetime flirting with conservative principles, e.g., blacks are not mere members of groups and race-neutral policies assist blacks more than need-based stereotypes. These conservative convictions began to take form in Thomas’s public speeches and private comments. Thomas’ conservative approach to race issues now tracked his life-long lessons that led to his success—self-reliance, self-discipline, personal responsibility, individual freedom, and an unconditional opposition to discrimination no matter the form. Thomas’s political and judicial philosophies fused, and his confidence in those beliefs expanded. At one of many tumultuous Congressional briefings, Thomas showed he would not back down from the powerful. In gripping detail, Foskett tells the story of Thomas’s response to Senator Edward Kennedy’s accusation that Thomas should be ashamed of his employment discrimination record. Thomas, while waving an angry finger at the Senator, shot back that Thomas’s grandfather hung only three pictures at home—Jesus Christ, Dr. Martin Luther King, Jr., and President John F. Kennedy—explaining President Kennedy should be ashamed of his brother.

During a trip to New York City to attend an affirmative action roundtable organized by the Anti-Defamation League (ADL), Thomas encountered Virginia Lamp, a young labor lawyer at the U.S. Chamber of Commerce. Thomas and Lamp later shared a cab ride to the airport. As they exited the cab, Lamp told Thomas, “I’ve got some black women friends I’d like to introduce you to.”<sup>22</sup> Although not many happy marriages begin with such an introduction, the woman who would become Virginia Lamp-Thomas had made her mark on Thomas.

Lamp, born and raised in a well-to-do Republican family in Omaha, was deeply religious and deeply conservative. Growing up, Lamp dreamed of representing Omaha one day in Congress. After stints at other colleges, Lamp earned her degree at Creighton University in Omaha. She then enrolled at Creighton Law School. While at the Law School, Lamp befriended Professor G. Michael Fenner, who is currently the James L. Koley ’54 Professor of Constitutional Law at Creighton and enjoys near-rock star status in the Omaha legal community.<sup>23</sup> When Lamp led the youth campaign for Republican Hal Daub’s 1980 bid for Congress, Fenner, a

Democrat, opposed Daub. Even though they disagree on political issues, Fenner and Lamp are close friends. Fenner has said of Lamp, “She doesn’t like you or dislike you because of what you think. She likes or dislikes you for the kind of person you are.”<sup>24</sup>

When Daub won the election, Lamp left law school to work for him in D.C., only later to return to Omaha to finish her legal education and obtain her law degree. After serving Daub for another year, Lamp moved to the U.S. Chamber of Commerce. The river of fate landed both Thomas and Lamp in D.C. at the same time.

After their first encounter at the ADL meeting, Thomas and Lamp went on a date, saying they only wanted to be friends. And friends they became—best friends. On May 30, 1987, in Lamp’s hometown church in Omaha, Lamp and Thomas wed. Professor Fenner, who had maintained his friendship with Lamp, established a relationship with Thomas. This relationship paid great dividends for Fenner and Creighton when Thomas, after he became Justice Thomas, agreed to co-teach a biennial course on constitutional law at Creighton Law School.

In 1987, President Reagan nominated Judge Robert H. Bork of the D.C. Circuit Court of Appeals to replace retiring Supreme Court Justice Lewis F. Powell, Jr. Led by Senator Kennedy, the charge to defeat Judge Bork began immediately. After a long and bitter battle, Judge Bork was denied confirmation by the Senate by a vote of 58 to 42. Less than three months after suffering a demoralizing defeat, Judge Bork resigned from the D.C. Circuit. A year later, President George H.W. Bush called the 41-year-old Thomas to offer him a seat on the D.C. Circuit to replace Judge Bork.

According to Foskett, Thomas had no desire to be a judge. Savannah had no black attorneys and no black judges when Thomas was growing up, but when the President of the United States offers a lifetime position, people rarely decline. Thomas accepted the nomination, easily cleared the Senate Judiciary Committee, and soared through the Senate with only two Senators voting against him, but a monumental battle would soon erupt.

Less than two years later, Justice Marshall, a civil rights legend and liberal icon, announced his retirement from the Supreme Court. President Bush once again called Thomas, this time inviting Thomas to Kennebunkport, ME, to discuss the “Supreme Court thing.”<sup>25</sup> When Thomas arrived in Maine, President Bush offered Thomas a seat on the Supreme Court. Thomas accepted. On a beautiful day in July on the banks of the Atlantic Ocean, President Bush announced Thomas as his nominee. Standing behind the Presidential podium, Judge Thomas said, “As a child I could not dare dream that I would ever see the Supreme Court, not to

mention being nominated to it. I thank all of those who have helped me along the way, and who have helped me to this point and this moment in my life, especially my grandparents, who are—[tearing up]. Especially my grandparents, my mother, and the nuns, all of whom were adamant that I grow up to make something of myself.”<sup>26</sup> Within a day, the campaign to defeat Judge Thomas’s nomination had begun. An unapologetic black conservative was poised to replace the legendary liberal. The fight would be bruising, and Foskett spares few details.


Thomas had replaced Judge Bork on the D.C. Circuit after Judge Bork resigned due to the stinging confirmation defeat. Eerily resembling a fictional best-seller, Judge Thomas’s confirmation hearings would make Judge Bork’s Supreme Court hearings pale in comparison. Thomas testified before the Senate Judiciary Committee for 25 hours, and finished with the expectation he would win confirmation. Then Anita Hill’s harassment story broke. Whether you believe Hill’s testimony or Thomas’s testimony, Foskett presents a fair and balanced depiction of the drama that captivated a Nation. Foskett details a flurry of behind-the-scenes maneuvers that brought Hill’s story to the public. The rest is history, and Foskett’s history is worth reading.

Thomas gave a passionate rebuttal to Hill’s allegations of sexual harassment. Millions listened as Thomas gave an emotionally charged lecture to the members of the Senate Judiciary Committee: “In my 43 years on this earth, I have been able, with the help of others and with the help of God, to defy poverty, avoid prison, overcome segregation, bigotry, racism, and obtain one of the finest educations available in this country, but I have not been able to overcome this process. This is worse than any obstacle or anything that I have ever faced.”<sup>27</sup> Thomas later delivered words that will go down in legal history: “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. 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 deign to think for themselves, to do for themselves, to have different ideas, and it is a message that, unless you kowtow to an old order, this is what will happen to you. You will be lynched, destroyed, caricatured by a committee of the U.S. Senate, rather than hung from a tree.”<sup>28</sup>

Thomas’s pain oozes out of the book. Foskett devotes an entire chapter to describing the aftermath of the confirmation battle, adeptly titled “Wounded Bear.” Foskett declares the confirmation battles forever changed Thomas: “Thomas would never be the same. He emerged scarred and traumatized, suffering public humiliation that took him years to overcome. He rebuilt himself, but he was profoundly altered. The confirmation changed where and how he lived,

whom he trusted, what he said in public, even what he read. The exposure robbed him of the thing he prized the most: his good name.”<sup>29</sup>

Thomas’s bruising confirmation battle ended in the closest confirmation in America’s history, 52 yeas to 48 nays. Foskett described the confirmation as “the most racially and sexually charged Supreme Court drama in American history.”<sup>30</sup> Although Thomas had wandered from his faith from the time he left the seminary, his faith returned when Thomas needed it the most—during the confirmation hearings. With the unending support of his best friend and wife, Virginia; the religious support of Danforth, an Episcopalian priest; and the thoughts and prayers of other friends and countless Americans, Thomas endured. Clarence Thomas had become Justice Clarence Thomas.

For some, Hill’s allegations define Clarence Thomas, as we oftentimes see only an incomplete caricature of public figures. Foskett’s account provides the rest of Thomas’s story. After reading *Judging Thomas*, you may not change your mind as to who told the truth during the confirmation hearings, and you may decide you do not like Clarence Thomas the justice. You may not like Clarence Thomas the man. However, you will be glad you took the time to read the book. You will witness yet again how America provides boundless opportunities to its citizens, and how Clarence Thomas took advantage of those opportunities. The back cover to *Judging Thomas* proclaims the book “is a seminal biography of the youngest and most recognizable justice, and the man who may succeed William H. Rehnquist to become the nation’s first black chief justice.” Regardless of Justice Thomas’s ultimate fate, *Judging Thomas* yearns to be read. A poor, black child descended from Georgia slaves, with the deck seemingly stacked against him, believed in himself and America. That combustible combination of self-determination and the American Dream, mixed with hard work, propelled Thomas all the way to the Supreme Court. If ever a truly American story needed to be told, and read, that story is about Clarence Thomas. I highly recommend *Judging Thomas*.<sup>31</sup> 

## Endnotes

<sup>1</sup> Ken Foskett, *Judging Thomas: The Life and Times of Clarence Thomas*, xi (William Morrow 2004).

<sup>2</sup> *Id.* at 52.

<sup>3</sup> *Id.* at 54.

<sup>4</sup> *Id.* at 60.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 62.

<sup>7</sup> *Id.* at 71.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 73.

<sup>10</sup> *Id.* at 91.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 101.

<sup>13</sup> *Id.* at 133.

<sup>14</sup> *Id.* at 132.

<sup>15</sup> *Id.* at 143.

<sup>16</sup> Interestingly enough, John Ashcroft also worked in the Attorney General's office at the time Thomas did. President George W. Bush later appointed Ashcroft U.S. Attorney General, and Thompson became Ashcroft's deputy.

<sup>17</sup> Two of Thomas's contemporaries in Danforth's office also became highly successful in public life. Ashcroft replaced Danforth as Missouri's Attorney General, became Missouri's Governor, served Missouri as a U.S. Senator, and later became U.S. Attorney General. Christopher "Kit" Bond was later elected Governor of Missouri and then to the U.S. Senate representing the Show-Me State.

<sup>18</sup> *Judging Thomas*, at 160-61.

<sup>19</sup> *Id.* at 161.

<sup>20</sup> *Id.* at 162.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 194.

<sup>23</sup> Foskett did not describe Professor Fenner in this manner; this descriptive clause arose solely through editorial discretion.

<sup>24</sup> *Judging Thomas*, at 195.

<sup>25</sup> *Id.* at 212.

<sup>26</sup> *Id.* at 213.

<sup>27</sup> *Id.* at 244.

<sup>28</sup> *Id.* at 248.

<sup>29</sup> *Id.* at 206.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> Foskett's *Judging Thomas* is a magnificent biography of Justice Thomas. For another impressive book about Justice Thomas, I recommend Andrew Peyton Thomas's *Clarence Thomas: A Biography* (Encounter Books, 2001, 661 pages, \$29.95).

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