

Commentary On the Thomas Nomination

By Manhattan Borough President
Ruth W. Messinger

The following is an edited version of a speech given by Ms. Messinger to the Brooklyn School of Law.

Like many of you, I have been profoundly disturbed by the events surrounding the nomination and confirmation of Clarence Thomas to the United States Supreme Court, and I believe we need to talk long and hard to one another about their ramifications. I am haunted by Wyoming Senator Alan Simpson's performance before the hearings, on Ted Koppel's *Nightline* program, when he attempted to bullyrag National Public Radio reporter Nina Totenberg for her broadcast reports breaking the story of Anita Hill's accusations against Justice Thomas. Simpson landed on Ms. Totenberg with both cowboy boots, claiming that, because of her reports, Anita Hill would now inevitably be "injured and destroyed and belittled and hounded and harassed."

I am mentally transfixed by this episode for three reasons. First, it offered a gruesome foretaste of the treatment that Simpson and his colleagues proceeded to dish out to Professor Hill. The second reason is the truly warped deflection of responsibility for impending violence embodied in those remarks. We expect these sorts of psychological evasions from serial killers, not United States senators. The third reason brings me to the purpose of my remarks today—a discussion of the unresolved political issues raised by the Thomas confirmation.

In his performance on *Nightline* and throughout the hearings, Senator Simpson was engaged in intimidation—of Professor Hill, of Nina Totenberg—and, I would argue, intimidation of every woman listening to him. "Speak out and we will destroy you." The message was that crude. Silencing that message—finally securing for women the full dignity and equality that is our due—is the greatest unresolved political question left over from the Thomas hearings.

I want to talk about that question on two levels: the personal and the political—but of course personal is political and vice versa. So let me instead divide my remarks into what could be called the traditionally per-

sonal and the traditionally political.

First the personal: most of you will be entering the legal profession within the next year or two. For those of you who are women, this is what you have to look forward to—and men, this is what your wives or girlfriends, should they become attorneys, can expect:

- If you go to work for a law firm, you will, going by current standards, be about half as likely as your male classmates to become a partner.
- You will, five years after graduation, likely be earning 40 percent less per year than your male classmates, and you will likely be stuck in such low-prestige specialties as probate work, domestic relations, or the legal problems of women and children. Salary differentials are even more pronounced for women of color.
- You will be tortured by the complications of deciding whether a desire to have children will consign you to the "mommy track." This decision will be made infinitely more

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difficult by the fact that your employer—like 99 percent of all private sector employers—will not have a child care program. Conversely, of course, if you decide not to have children you will be regarded as unnaturally ambitious or perhaps infertile, or maybe both.

- If you choose to work in the public sector—perhaps for the federal government—don't expect to go too high. The number of women in major policy-making positions is now half what it was in the 1970s.
- When you enter the courtroom, you will be subjected to intimidation, treated like little girls who really ought to be home changing diapers, and expected to endure crude remarks and passes.

Now here's the good news: as professional women, you will be comparatively lucky. Women are two-thirds of all poor adults in the United States. More than 80 percent of all full-time working women in the country make less than \$20,000 per year—for men the figure is about 40 percent. Working women are more likely to live in bad housing and lack medical insurance,

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and are twice as likely not to draw a pension. They are, additionally, far more likely to shoulder most or all of the financial, physical, and emotional responsibilities of child-rearing.

This is crucially important information in light of the split among women that developed along class lines

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in response to Anita Hill's testimony and Clarence Thomas's defense. Certainly, some of that split is attributable to racial solidarity; many African-American women interpreted the Senate inquiry as an attack on a strong African-American male. Certainly, the hearing revealed how explosive the mix of race, gender and power is in our social and political lives. It suggests we have not begun effectively to address our underlying anxieties about these issues. The hearings also revealed something that women involved in politics prefer not to talk about—that the women's movement is perceived as a professional or upper-income women's movement.

Unless and until we recognize these splits and attempt to heal them, women will be politically divided and manipulated. The result will be that we professional women, as well as the great majority of working women, will remain trapped where we are.

You, as law students and as lawyers, can play a crucial role in healing that split. Brooklyn Law School is justly acclaimed for its extensive clinical practice programs. I'm sure many of you are enrolled in one of them, or plan to enroll. In those clinics, in your dealing with your clients, and in your performance in the courtrooms, you are in the trenches in the struggle to keep poor people in their apartments, to protect the social security benefits of the elderly and disabled, and to win adequate child support awards. I challenge you to think about that work politically as well as legally and to grasp the faulty public policy at the heart of the legal problems ensnaring the poor, the working women, and the children of this city.

Open your hearts and minds to your clients, not gullibly, but intelligently. Let them see you, not as an aloof, distant professional, but as a counselor, an advisor, and an advocate—as someone who understands the forces arrayed against them and who will help even those odds.

The personal is political—and making those personal connections day in and day out in your work will help tremendously in overcoming the resentments and

distrusts that divide women from one another. That task carries over into what, for the purposes of this talk, I am calling the traditionally political.

A few days ago, my friend Haywood Burns, the dean of the CUNY Law School, spoke on the subject of Thomas's confirmation, noting that for most of its history, the Supreme Court has been a conservative body. We should not forget that it required a full sixty years of unremitting legal and political struggle before the court overturned its "separate but equal" *Plessy v. Ferguson* doctrine. With the confirmation of Justice Thomas, there is now a solidly conservative majority on the Supreme Court. That means that the court is not likely to be an arena in which to wage a struggle for justice and equality. Rather, the arena must now be the political realm: Congress, the state legislatures, and the hearts and minds of our fellow citizens.

We need to face up to the truth in the argument that over the last twenty years, political progressives have become overly reliant on the courts at the expense of remembering how to talk to our fellow Americans—that we have forsaken persuasion for litigation. Don't get me wrong. We will always need litigation, but it's time to sharpen up our skills in persuasion as well. We can and must start with healing up the splits I alluded to earlier—splits among people who should be natural allies.

On universal health care, on family and medical leave, on job training, on expanding heads start, on funding shelters for battered women, on building affordable housing and increasing equity in education, and on federal legislation enlarging the right to sue to correct on-the-job discrimination and harassment, people need to

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know who their real friends are.

Our legislators must be made more accountable and more representative. A higher percentage of women than men vote and we must become more adept at mobilizing that political power. Obviously, that means changing the composition of that elite, all-white near men's club, the United States Senate. The next time an Anita Hill steps forward, she should not be required to face what *Times* columnist Anna Quindlen described as "an unbroken line of knotted ties."

Women's political power will have a salutary effect on the style, as well as the substance, of politics. I

was in Austin, Texas last month for a conference on women in government, and talked with Ann Lewis, a former official in the national democratic party who is writing a book on women in politics. In her interviews, she has found that male candidates typically speak in the imagery of war and sports while female candidates more often talk simply about achieving results, and achieving results usually means conciliation and compromise.

Much of the distaste people rightly found in the Thomas confirmation process arises simply from the muscle-flexing, locked horns, "slash and burn" tactics used in the process. It's certainly a result of socialization, not genetics, but the fact is that women just aren't as prone to such take-no-prisoners behavior. Barbara Roberts, the governor of Oregon, recently made quite a stir with a speech answering charges that she hasn't been in enough fights with the state legislature. She answered that she didn't feel the need to have a string of scalps on her belt.

Of course, you can be tough and effective without being Alan Simpson. I'll close with an example from my own experience.

When I was first elected to the New York City Council in the mid-1970s, I was on a council committee questioning a city agency head. I was not satisfied with the answers I was getting, and really zeroed in on him until I got the information I wanted. Afterwards, one of my colleagues said to me, "I thought you said you weren't a lawyer." "That's right," I said, "I'm not." "Then where did you learn to cross-examine like that?" "Oh, that's easy," I said. "I'm a mother." I can't help but think that if there had been a few tough mothers on the Senate Judiciary committee, the questioning would have been a lot sharper.

The Thomas confirmation process exposed the continuing vulnerability of women in America. It also shed light on the divisions among women that exacerbate that vulnerability. It reduced the already constricted hope of defending ourselves or enlarging our rights through the federal courts. The great unfinished task left by the hearing is the real maturation of feminist political power, and the sooner we get on with that task, the better.

When Will Israel Get a Fair Deal?

By Daniel J. Bases

What a time to ask for more money. The Israeli government under the leadership of Yitzhak Shamir, riding high on the wave of good-will earned for allowing

Israelis to suffer over forty Scud missile attacks during the Gulf War, should have had an easier time in securing ten billion dollars in loan guarantees to alleviate the strain of

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supporting 1,000 new Israeli citizens a day. The flood of Soviet Jews into Israel was and still is considered an essential infusion of new lifeblood into the system. In just over two years, over 350,000 Soviet Jews have emigrated, in addition to the tens of thousands of Ethiopian Jews airlifted at great expense. What better time, rather what more essential time, to ask for loan guarantees from the United States than now, when the realization of so many dreams for freedom are coming true?

Israel is not asking for this money out of the American taxpayer's pocket. By co-signing the loans, the US will enable Israel to borrow money from private banks in the US at a lower rate, money which will be paid back over a 30 year period. The humanitarian requirements of this situation are immense. More than just supplying food and shelter to these refugees, Israel must build an infrastructure capable of supporting an estimated one million new citizens. "It is estimated that it will cost 40 to 50 billion dollars to absorb the immigrants. This will involve building 260,000 homes, creating 360,000 jobs, building 12,000 new classrooms and expanding Israel's water, sewage, and road systems." (*Questions*) The fact that over 40 percent of the Soviet immigrants are highly literate and technically trained in engineering, medicine, mathematics, sciences, and the arts will make the transition that much easier and afford Israel a greater potential for growth and success. By emigrating to Israel they have found the religious and political freedoms denied them in the Soviet Union. With American help, perhaps they may find a decent place to live and prosper.

Political-Economic Maneuvering

George Bush's request for a delay in granting the loan guarantees amounts to little more than strong-arm tactics for political gain. By creating a connection between loan guarantees and housing settlements in the "occupied territories," Bush has created a climate in which the US's greatest ally, Israel, is being made the scapegoat for all the problems of Arab-Israeli relations. As Martin Peretz of *The New Republic* points out, Bush's