

former director William Casey's policy agenda;

6) diluted the quality of agency analytical product with a large-scale hiring of inexperienced recruits, while concentrating areas of special concern to the former Reagan administration and Casey in the hands of a trusted few.

The charges, backed up by informal submissions from 22 serving CIA employees, have re-focused the confirmation hearings while adding explosive material to testimony presented Sept. 24 by Acting Director Richard Kerr and senior analyst Charles E. Allen, on what Gates knew, and when he knew it, about the Iran-Contra affair.

In the public hearings, it became clear that the issue is the political corruption which permitted the CIA to be used by those associated with Bush who cooked up the Iran-Contra affair and the October Surprise, including manufacturing the existence of a "moderate faction" within Iran and rigging the intelligence estimates and briefing process to push that evaluation through against the opponent view. The changed evaluation was what helped make possible the deals with Khomeini and his mad mullahs who took U.S. hostages, and blew up marines in Beirut.

Goodman charged, "A question remains. Was the President himself a victim of CIA misinformation, or even disinformation?" for when President Reagan insisted he was dealing with "Iranian moderates," no such group existed.

A second, equally devastating case was applied to the investigation of the 1981 assassination attempt against Pope John Paul II, when singleminded pursuit of the Soviet connection helped cover up the trail of the criminals.

Public hearings on the closed-door evidence were scheduled after Sen. Sam Nunn (D-Ga.) asked Goodman to identify which parts of his testimony were classified. Goodman replied that none was. The testimony has reportedly triggered a shift in attitude of some senators who had previously been assumed to be supportive of Gates's nomination, among them Alan Cranston (D-Calif.) and Warren Rudman (R-N.H.). Cranston told interviewers that "if the charges are accurate, they could jeopardize the nomination."

Bush had demanded back in July that the nomination process be conducted with dispatch, intending originally to see his candidate appointed before the summer recess. Independent Counsel Lawrence Walsh's continuing investigation into the Iran-Contra affair stopped that dead in its tracks. But it didn't stop Bush from continuing to back a candidate so tainted.

The question that continues to come up is, what does Bush himself owe to Robert Gates, to stick thus as he has with such damaged goods? London's sometimes scurrilous *Private Eye* magazine pointed out that Gates, like present ambassador to South Korea Donald Gregg, is a Carter administration National Security Council holdover, situated to have been one of the insiders for Reagan-Bush during the 1980 election. That certainly ought to be an area that any investigation of political corruption should look into.

Commentary

Oliver Wendell Holmes causes Thomas deadlock

by Edward Spannaus

Up until the day before the vote on his confirmation, Clarence Thomas was expected to easily win a majority of the votes in the Senate Judiciary Committee. Yet, when the committee voted on Sept. 27, the vote tied 7-7, and the nomination was sent to the floor of the Senate without a recommendation—the first time in history this has occurred. Suddenly, the success of President Bush's nomination was in question.

What had happened? Opposition from the liberals—Sens. Edward Kennedy (D-Mass.), Paul Simon (D-Ill.), Howard Metzenbaum (D-Ohio), etc.—was a foregone conclusion, particularly on the politically popular abortion issue. The most important "swing" vote was that of the influential Sen. Howell Heflin (D-Ala.). (Heflin is the former chief justice of Alabama, former chairman of the National Conference of Chief Justices, and now heads the Senate's sleaziest unit—its ethics committee.)

On Sept. 26, Heflin announced his opposition to Thomas. Without Heflin's vote, no Democrats on the Judiciary Committee other than Sen. Dennis DeConcini (D-Ariz.) would be likely to support the Thomas nomination.

Immediately after the committee vote, a commentator for Pacifica Radio reported that Heflin had turned against Thomas because of Thomas's attacks on Oliver Wendell Holmes. Readers of *EIR* were already well aware of the significance of the Holmes issue for the hearings. (See *EIR*, Sept. 13 and Sept. 27, 1991.) More than any other single jurist, Holmes is responsible for eradicating any notions of natural law and morality from American law, in favor of radical positivism and pragmatism.

Kennedy starts the Holmes issue

Virtually all press commentary on the hearings was confined to the sterile ideological framework of "liberal-conservative" issues. Press coverage was dominated by the predetermined issues of abortion, affirmative action, and "natural law," and Thomas's pre-programmed attempts to avoid a forthright statement of his own views. As to those portions of the hearings in which Thomas broke out of the straitjacket imposed by his Bush administration handlers—reflected in

his responses regarding criminal procedure, his attacks on Chief Justice William Rehnquist, or the Holmes issue—these were simply ignored by the establishment news media.

The first senator to bring up the Holmes issue was Kennedy, on the afternoon of Sept. 13. Prior to that, Heflin had engaged Thomas in a very friendly round of questions which gave Thomas the opportunity to talk at length about his youth, his earlier radicalism, and to present a very sympathetic picture of himself.

Toward the end of the day, Kennedy confronted Thomas with a 1988 speech in which he had attacked Holmes as a “nihilist” who “scoffed at natural law and natural rights.” Thomas tried to cover himself by responding that Holmes “was a great judge, a giant in our judicial system.” Kennedy then read a quote from Thomas saying that Holmes “sought to destroy the notion that justice, natural right, and natural law were objective.” Thomas tried to brush it aside as a quote from someone else.

On Sept. 16, Kennedy, better prepared, came back again on the Holmes issue, reading a long quotation from Thomas’s 1988 speech. Thomas, likewise better prepared, came back at Kennedy with the 1927 *Carrie Buck* case, in which Holmes had upheld the involuntary sterilization of a poor southern white woman. “Much of that resulted from concern about some statements like that in *Buck v. Bell* of Justice Holmes,” said Thomas. “I have concerns about statements like ‘three generations of imbeciles are enough.’”

Heflin finishes the Holmes issue

In the afternoon of Sept. 16, Senator Heflin jumped into the Holmes issue, picking up after Kennedy, and completely abandoned his friendly tone of the previous Friday. For almost 15 minutes, Heflin pressed Thomas on the obvious inconsistency between his comments on Holmes in 1988 and now, and asked if Thomas had now changed his opinion of Holmes. Thomas defended his 1988 statements, while still asserting that “clearly he [Holmes] is a great justice, but that doesn’t mean that we can’t disagree with him.”

Finally, Heflin read a long excerpt from Thomas’s 1988 speech again, and then lectured Thomas: “For you to attack, with words like this, in a speech, a Justice of the Supreme Court, as well as one who is generally regarded as one of the giants of the Supreme Court, raises some question in my mind.” Heflin went on: “What was your scholarship . . . how much had you read about him at the time?” Thomas again returned to the *Carrie Buck* case as “troublesome,” and went on to talk about the importance of natural law as the backdrop to the Constitution.

Heflin kept it up for a while, and Thomas continued trying to explain, but clearly the damage had been done. Heflin, obviously very exasperated, eventually gave up.

On Sept. 24, the day before the Judiciary Committee vote, Heflin announced his intentions, declaring: “Judge Thomas’s answers and explanations about previous speech-

The following is the controversial section of Clarence Thomas’s 1988 speech which so deeply offended Sens. Edward Kennedy and Howell Heflin:

The homage to natural right inscribed on the Justice Department building should be treated with more reverence than the many busts and paintings of Justice Oliver Wendell Holmes in the Department of Justice. You will recall Holmes as one who scoffed at natural law, “that brooding omnipresence in the sky.” If anything unites the jurisprudence of the left and the right today, it is the nihilism of Holmes. As Walter Burns puts it in his essay on Holmes . . . “No man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman, or to teach what a people needs in order to govern itself well.” . . . As constitutional scholar Robert Faulkner put it, “What Marshall had raised, Holmes sought to destroy.” And what Holmes sought to destroy was the notion that justice, natural rights, natural law were objective, that they existed at all apart from willfulness, whether of individuals or officials.

es, articles, and positions raised thoughts of inconsistencies, ambiguities, contradictions, lack of scholarship, lack of conviction, and instability.” Heflin also said that he feared that Thomas “might be part of the right-wing extremist movement.”

There is no doubt as to what Heflin was referring. Oliver Wendell Holmes, arguably the most evil jurist of the 20th century, is nonetheless a sacred icon among most judges and legal scholars. Whatever vestiges of a natural law philosophy still existed by the late-19th and early 20th centuries in the United States were eradicated by Holmes, who cynically rejected any other basis for law than force and custom. The only established grouping which has consistently attacked Holmes over the years is the Roman Catholic Church. To almost everyone else, the authority of Holmes is axiomatic.

Chief Justice Rehnquist, an avowed Hobbesian, has identified his own radical positivism with that of Holmes, and has praised Holmes for his view that morality has nothing to do with law.

Thomas’s use of the statement that the Holmes issue “unites the jurisprudence of the left and the right” is absolutely correct, as shown by the alliance of Kennedy and Heflin on this issue. On this issue, at least, Thomas broke the rules of the “liberal-conservative” charade that passes for politics in Washington. Now, he is paying the price.

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