



## Jack Kelly: Racism, Democrat-style

### Conservative blacks are given no respect

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Chief Justice William Rehnquist's health is so poor he likely soon will be called to the Great Appellate Bench in the Sky. On NBC's "Meet the Press" program last month, the new Senate Democratic leader, Sen. Harry Reid, said he could support the elevation of conservative Justice Antonin Scalia to chief justice, but not Thomas.

"I think that [Thomas] has been an embarrassment to the Supreme Court," Reid said. "I think his opinions are poorly written."

Prodded by CNN to cite an example, the Democratic leader replied:

"That's easy to do. You take the Hillside Dairy case. In that case you had a dissent written by Scalia and a dissent written by Thomas. It's like looking at an eighth-grade dissertation compared with somebody who just graduated from Harvard."

But there was no dissent written by Scalia in the 2003 case of Hillside Dairy v. Lyons. And Thomas' entire dissent consisted of this paragraph: "I join Parts I and III of the Court's opinion and respectfully dissent from Part II, which holds that (section) 144 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7254, 'does not clearly express an intent to insulate California's pricing and pooling laws from a Commerce Clause challenge.' Ante, at 6-7. Although I agree that the Court of Appeals erred in its statutory analysis, I nevertheless would affirm its judgment on this claim because 'the negative Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application,' Camps Newfoundland/Owatonna Inc. vs. Town of Harrison, 520 U.S. 464, 610 (1997) (Thomas, J, dissenting) and, consequently, cannot serve as a basis for striking down a state statute."

Angela Onwuachi-Willig, a liberal Democrat and law professor who is black, said Reid's erroneous attack on Thomas appeared to be motivated by racism. "It is the black justice who cannot write opinions, articulate independent thoughts or perform his job well," she said, writing in the Chicago Tribune. "The exact same comments were made about the late Justice Thurgood Marshall."

Democrats are willing to permit President Bush to replace Rehnquist with another white male conservative, but not with a conservative who is non-white.

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**Jack Kelly is national security writer for the Post-Gazette and The Blade of Toledo, Ohio**  
[jkelly@post-gazette.com](mailto:jkelly@post-gazette.com),  
412-263-1476.

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Even with the support of nearly 90 percent of blacks, Democrats have lost the White House and both houses of Congress. If just one black in five were habitually to vote Republican, the Democratic party could go the way of the Federalists and the Whigs.

Blacks in America are too large and heterogeneous a group to maintain indefinitely such ideological uniformity. Voting for Democrats is a habit which should fray with time, as it has for Hispanics and did in the past for the Irish and the Italians.

Democrats maintain their hammerlock on black votes by accusing Republicans of racism. Whenever a Republican president appoints obviously qualified blacks to high public office, this smear seems less credible. And Colin Powell, Condoleezza Rice and -- yes -- Clarence Thomas prove that a black can get ahead without chopping cotton on the liberal plantation.

Janice Rogers Brown is Condoleezza Rice with a law degree. She is a bright, articulate, black woman who accomplished much despite growing up in the segregated South. No one can call her unqualified on the basis of her resume.

Democrats successfully filibustered Bush nominees for appellate courts, including Brown, because the battle didn't register on the radar screens of most people. A Supreme Court fight would be too big to ignore.

It will be hard for Democrats to fight Thomas and Brown without appearing racist. That could remind blacks that every segregationist who ever served in Congress was a Democrat. But if they fail to block the nominations, then it will be a Republican president who appoints the first black chief justice, the first black woman justice.

Some think it would be more politically astute for Bush to nominate a Hispanic for the next Supreme Court vacancy, since Hispanics are overtaking blacks as the largest minority group, and are much more inclined to vote Republican.

But Democrats have been opposing the first Hispanic to be nominated for attorney general on the grounds that he is insufficiently gentle to terrorists who tried to kill us. Those whom the gods would destroy, they first make mad.

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