

# AMONG FRIENDS

BY G. MICHAEL FENNER  
JAMES L. KOLEY '54  
PROFESSOR OF CONSTITUTIONAL LAW

In October of 1991, Collin Mangrum and my wife and I flew to Washington, D.C. to attend a small prayer service in a side chapel at the National Cathedral, followed by a ceremony on the back lawn of the White House. The occasion was the official investiture of Associate Justice Clarence Thomas. At the conclusion of the prayer service, Justice Thomas and I embraced—not for the first time, and not for the last—and I felt something hard on his back, under his coat, and, worried I knew the answer, asked “What’s that?”

Our friend had become at once famous and infamous. He had become Justice Thomas, one-ninth of one of the most powerful bodies on earth: the United States Supreme Court. He was now one-ninth of the body with the final say on the meaning of the Constitution; one-ninth of the body with the final say on the constitutionality of federal executive and legislative acts and of the acts of all three branches of each state’s government; one-ninth of the body with the final say on separation of powers, due process and equal protection of the law, and freedom of speech. And he was wearing a bulletproof vest.

I tell this story because, to me, it has a great deal to do with why Justice Thomas has come to Creighton two of the last three years and stayed a week to teach a class. Here, in Room 120 of the Creighton University School of Law, Justice Thomas can take off the armor.



At the Creighton University School of Law, Justice Thomas is free to hang around after class, like a normal law professor, and talk with his students.

He is free to have a conversation with a member of law review about the United States Supreme Court opinion on which she wrote her case note. Just like a normal law professor, except here she is talking about the case with the man who wrote the Court’s opinion.



He is free to stop a young first year student in the hallway, late one afternoon, and ask him his name, where he is from, and what high school he attended, and then talk with him about a quarterback that the Justice remembers went to that high school. He is free to have a normal conversation like an ordinary, non-infamous, shields-down human being. The conversation is free to turn to law school, though it does not have to. The Justice may ask the young man how he likes law school and how he did. The student may ask advice and, if he does, the Justice will give it. The two of them may discuss how to be the best law student you can be and how to be the best judge you can be.

He is free to slide into a booth at a local breakfast place and sit for two hours with three members of the faculty and laugh so long and hard—all four of them—that the next day the waitress says to him “Yesterday, I thought we were going to have to throw the bunch of you out of here for being so rowdy.” And the waitress is free to come up and say something like that to him.

Creighton is a place where Justice Thomas can be—and is—among friends. Friends who agree with him and friends who disagree with him, but friends after all.

In February of 2001, Justice Thomas came to Creighton and he and I taught a seminar to 40 of our law students.<sup>1</sup> In February of 2003, he came back and we did it again. From the names of every student who pre-enrolls for the seminar, 40 are drawn for final enrollment.

In the first week of the seminar, we discuss the wide variety of approaches to judicial review, both in theory and as applied. We read works by some of the best of those who think about these things: John Hart Ely, Laurence Tribe, Michael McConnell, Learned Hand, Stephen Carter, Kimberlé Williams, and Kurt Vonnegut, Jr.

In the second week of the seminar, we discuss the most important historical cases from the Supreme Court, cases with familiar names such as: *Marbury v. Madison*; *McCulloch v. Maryland* and *Wickard v. Filburn*; *Youngstown Sheet & Tube Co. v. Sawyer* and *United States v. Nixon*; *Dred Scott v. Sandford*, *Plessy v. Ferguson*, and *Brown v. Board of Education*. The work of Justices famous and infamous, with familiar names such as: John Marshall, Roger Taney, John Marshall Harlan, and Earl Warren.



After that, each student must select one case that was part of the seminar and rewrite the opinion in a way that the student believes would have changed the course of

constitutional law for the better—improve on the work of the Court.

Most mornings during his week at Creighton, Justice Thomas sits down with members of the faculty. The conversation is wide ranging.

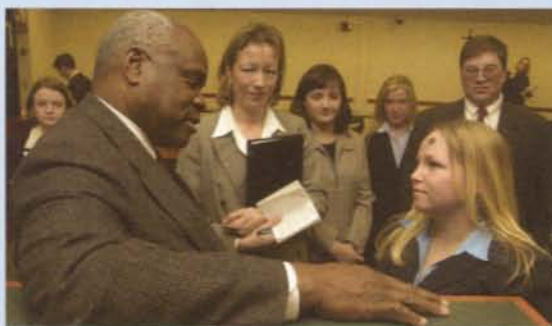


During class, Justice Thomas talks about the cases assigned for the day, with an emphasis on the role of the judge (and, therefore, by inference, the role of the lawyer).

Questions and comments are encouraged and welcomed. Justice Thomas uses lecture, he uses the Socratic method, and he uses humor.



Every afternoon, he hangs around after class and talks with the students. He stays until the last question is asked, the last conversation is had.



One evening, he has dinner at a local steak house with 12 students who are not in the seminar, whose names are drawn by lottery.

After the final class of the week, he hangs around for conversation and for photographs, including the class photo.



After the week is over, he does not forget his students. A year after she was a student in his 2001 class, a young woman who had by then

graduated law school and moved to Minneapolis, learned that Justice Thomas was coming to her town. She contacted his office to welcome him to Minneapolis. He got back to her and invited her to breakfast. Both, I am told, had a pleasant and relaxing morning.

Truly good friends are one of life's greatest blessings. One of our greatest blessings at the Law School is our good friend Justice Clarence Thomas. I think it is neither presumptuous nor arrogant for us to say that Justice Thomas's list of blessings includes his many friends here at the Law School.



Justice Thomas and some of his friends at Creighton.

<sup>1</sup> The seminar runs for two weeks, five days a week. I teach the first week alone and Justice Thomas and I (mostly Justice Thomas) teach the second week. Regarding the seminar we conducted in February of 2001, see *Creighton Lawyer Magazine*, 3-6 (Winter 2002).