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A Replacement for Thomas

By Jon O. Newman

There is a solution to the controversy over the Supreme Court vacancy that merits the consideration of all concerned — the President, the Senate, the American public and the nominee. Judge Clarence Thomas should step aside and the President should nominate Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

Here's why:

Most knowledgeable observers agree Judge Kearse is among the four or five persons most qualified for the High Court. The President said Judge Thomas was the person best qualified in the entire country. No one seriously thought this was true. He has a mediocre educational record,

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followed by some years of useful Government service and 17 months of judicial experience undistinguished by any notable opinions.

Judge Kearse compiled a brilliant record at Wellesley and Michigan Law School, became one of the outstanding lawyers in New York City and has served with extraordinary distinction for 12 years as my colleague on the Court of Appeals for the Second Circuit.

The selection of Judge Kearse would end a controversy that cannot be satisfactorily defused. Hearings on the accusations of Prof. Anita Hill will provide an uncertain basis for the Senate and the nation to determine exactly who said what and under what circumstances. It is unlikely that her allegations are entirely groundless, though the precise facts will probably never be known.

The President is absolutely right to recognize the need for diversity on the Supreme Court. Judge Kearse is a woman and an African American.

President Bush has already assem-

bled a conservative majority on the Supreme Court. Neither he nor the nation require another certified conservative. Judge Kearse's moderate views are precisely what the Court needs.

It is no disgrace for Judge Thomas to remain on a Court of Appeals in lieu of an expected Supreme Court appointment. Judge Clement F. Haynsworth Jr. served with great distinction for the Fourth Circuit after having his High Court nomination rejected in 1969. Judge Douglas H. Ginsburg continues to serve ably on the Court of Appeals for the District of Columbia Circuit after withdrawing from consideration amid controversy in 1987. Judge Thomas's future record on the appellate court may demonstrate distinction meriting another nomination to the Supreme Court.

For now, what is needed is an appointment that can unify the country in the assurance that the next Supreme Court nominee is a person of unquestioned excellence. Judge Kearse is that person. □

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