

## ***Friendship of Justice and Magnate Puts Focus on Ethics***

By Mike McIntire

June 18, 2011

PIN POINT, Ga. — Clarence Thomas was here promoting his memoir a few years ago when he bumped into Algernon Varn, whose grandfather once ran a seafood cannery that employed Justice Thomas's mother as a crab picker.

Mr. Varn lived at the old cannery site, a collection of crumbling buildings on a salt marsh just down the road from a sign heralding this remote coastal community outside Savannah as Justice Thomas's birthplace. The justice asked about plans for the property, and Mr. Varn said he hoped it could be preserved.

"And Clarence said, 'Well, I've got a friend I'm going to put you in touch with,'" Mr. Varn recalled, adding that he was later told by others not to identify the friend.

The publicity-shy friend turned out to be Harlan Crow, a Dallas real estate magnate and a major contributor to conservative causes. Mr. Crow stepped in to finance the multimillion-dollar purchase and restoration of the cannery, featuring a museum about the culture and history of Pin Point that has become a pet project of Justice Thomas's.

The project throws a spotlight on an unusual, and ethically sensitive, friendship that appears to be markedly different from those of other justices on the nation's highest court.

The two men met in the mid-1990s, a few years after Justice Thomas joined the court. Since then, Mr. Crow has done many favors for the justice and his wife, Virginia, helping finance a Savannah library project dedicated to Justice Thomas, presenting him with a Bible that belonged to Frederick Douglass and reportedly providing \$500,000 for Ms. Thomas to start a Tea Party-related group. They have also spent time together at gatherings of prominent Republicans and businesspeople at Mr. Crow's Adirondacks estate and his camp in East Texas.

In several instances, news reports of Mr. Crow's largess provoked controversy and questions, adding fuel to a rising debate about Supreme Court ethics. But Mr. Crow's financing of the museum, his largest such act of generosity, previously unreported, raises the sharpest questions yet — both about Justice Thomas's extrajudicial activities and about the extent to which the justices should remain exempt from the code of conduct for federal judges.

Although the Supreme Court is not bound by the code, justices have said they adhere to it. Legal ethicists differed on whether Justice Thomas's dealings with Mr. Crow pose a problem under the code. But they agreed that one facet of the relationship was both unusual and important in weighing any ethical implications: Justice Thomas's role in Mr. Crow's donation for the museum.

The code says judges "should not personally participate" in raising money for charitable endeavors, out of concern that donors might feel pressured to give or entitled to favorable treatment from the judge. In addition, judges are not even supposed to know who donates to projects honoring them.

While the nonprofit Pin Point museum is not intended to honor Justice Thomas, people involved in the project said his role in the community's history would inevitably be part of it, and he participated in a documentary film that is to accompany the exhibits.

Deborah L. Rhode, a Stanford University law professor who has called for stricter ethics rules for Supreme Court justices, said Justice Thomas "should not be directly involved in fund-raising activities, no matter how worthy they are or whether he's being centrally honored by the museum."

On the other hand, the restriction on fund-raising is primarily meant to deter judges from using their position to pressure donors, as opposed to relying on "a rich friend" like Mr. Crow, said Ronald D. Rotunda, who teaches legal ethics at Chapman University in California.

"I don't think I could say it's unethical," he said. "It's just a very peculiar situation."

Justice Thomas, through a Supreme Court spokeswoman, declined to respond to a detailed set of questions submitted by The New York Times. Mr. Crow also would not comment.

Supreme Court ethics have been under increasing scrutiny, largely because of the activities of Justice Thomas and Ms. Thomas, whose group, Liberty Central, opposed President Obama's health care overhaul — an issue likely to wind up before the court. Mr. Crow's donation to Liberty Central was reported by Politico.

In January, the liberal advocacy organization Common Cause asked the Justice Department to investigate whether Justices Thomas and Antonin Scalia should have recused themselves from last year's Citizens United campaign finance case because they had attended a political retreat organized by the billionaire Koch brothers, who support groups that stood to benefit from the court's decision.

A month later, more than 100 law professors asked Congress to extend to Supreme Court justices the ethics code that applies to other federal judges, and a bill addressing the issue was introduced.

It is not unusual for justices to accept gifts or take part in outside activities, some with political overtones.

Justice Stephen G. Breyer has attended Renaissance Weekend, a retreat for politicians, artists and media personalities that is a favorite of Democrats, including former President Bill Clinton. Justice Ruth Bader Ginsburg participated in a symposium sponsored by the National Organization for Women's Legal Defense and Education Fund, and a philanthropic foundation once tried to give her a \$100,000 achievement award. She instructed that the money be given to charity.



Algernon Varn, whose grandfather once ran a seafood cannery where Justice Clarence Thomas's mother worked, on the site of the old cannery. Mr. Varn said Justice Thomas put him in touch with a buyer to restore the property and build a museum. Stephen Morton for The New York Times

But in the case of Justice Thomas and his dealings with Mr. Crow, the ethical complications appear more complex.

### Conservative Ties

Mr. Crow, 61, manages the real estate and investment businesses founded by his late father, Trammell Crow, once the largest landlord in the United States. The Crow family portfolio is worth hundreds of millions of dollars and includes investments in hotels, medical facilities, public equities and hedge funds.

A friend of the Bush family, Mr. Crow is a trustee of the George Bush Presidential Library Foundation and has donated close to \$5 million to Republican campaigns and conservative groups. Among his contributions were \$100,000 to Swift Boat Veterans for Truth, the group formed to attack the Vietnam War record of Senator John Kerry, the 2004 Democratic presidential candidate, and \$500,000 to an organization that ran advertisements urging the confirmation of President George W. Bush's nominees to the Supreme Court.

Mr. Crow has not personally been a party to Supreme Court litigation, but his companies have been involved in federal court cases, including four that went to the appellate level. And he has served on the boards of two conservative organizations involved in filing supporting briefs in cases before the Supreme Court. One of them, the American Enterprise Institute, with Mr. Crow as a trustee, gave Justice Thomas a bust of Lincoln valued at \$15,000 and praised his jurisprudence at an awards gala in 2001.

The institute's Project on Fair Representation later filed briefs in several cases, and in 2006 the project brought a lawsuit challenging federal voting rights laws, a case in which Justice Thomas filed a lone dissent, embracing the project's arguments. The project director, an institute fellow named Edward Blum, said the institute supported his research but did not finance the brief filings or the Texas suit, which was litigated pro bono by a former clerk of Justice Thomas's.

"When it came time to file a lawsuit," he said, "A.E.I. had no role in doing that."

### Coming Up With a Plan

In addition to his interest in politics and policy, Mr. Crow is well known for his keen devotion to history.

A backyard garden at his \$24 million Dallas residence is dominated by old statues of dictators he has collected from fallen regimes, including Lenin and Stalin. His private library is packed with 8,000 rare books and artifacts, including a Senate roll call sheet from Justice Thomas's confirmation and a "thank you" letter from the justice, according to local news reports.

There are a number of reasons Justice Thomas might be thankful to Mr. Crow. In addition to giving him the Douglass Bible, valued 10 years ago at \$19,000, Mr. Crow has hosted the justice aboard his private jet and his 161-foot yacht, at the exclusive Bohemian Grove retreat in California and at his grand Adirondacks summer estate called Topridge, a 105-acre spread that once belonged to Marjorie Merriweather Post, the cereal heiress.

Christopher Shaw, a folk singer who said he had been invited several times to perform at Topridge, recalled seeing Justice Thomas and his family “on one or two occasions.” They were among about two dozen guests who included other prominent Republicans — last summer, the younger Mr. Bush stopped by.

“There would be guys puffing on cigars,” Mr. Shaw said. “Clarence just kind of melted in with everyone else. We got introduced at dinner. He sat at Harlan’s table.”

Mr. Crow’s \$175,000 donation to the library in Savannah in 2001 started out anonymous, but it was eventually made public amid opposition to the project by some local black leaders who did not like Justice Thomas’s politics. Similarly, Mr. Crow sought to keep his role in the museum quiet.

At first glance the Pin Point Heritage Museum, scheduled to open this fall, would seem an unlikely catalyst for an ethical quandary. That Pin Point’s history is worthy of preservation is not in dispute.

Part of the Gullah/Geechee Cultural Heritage Corridor designated by Congress, it is representative of tight-knit Southern coastal settlements that trace their roots to freed slaves and were often based around fishing. In Pin Point, the Varn crab and oyster cannery, founded in the 1920s, was a primary source of jobs until it closed in 1985.

Mr. Varn and his wife, Sharon, said they had long hoped the property could be saved from commercial development but had little success coming up with a plan. That changed after their chance encounter with Justice Thomas, who was visiting his childhood home with a television news crew.

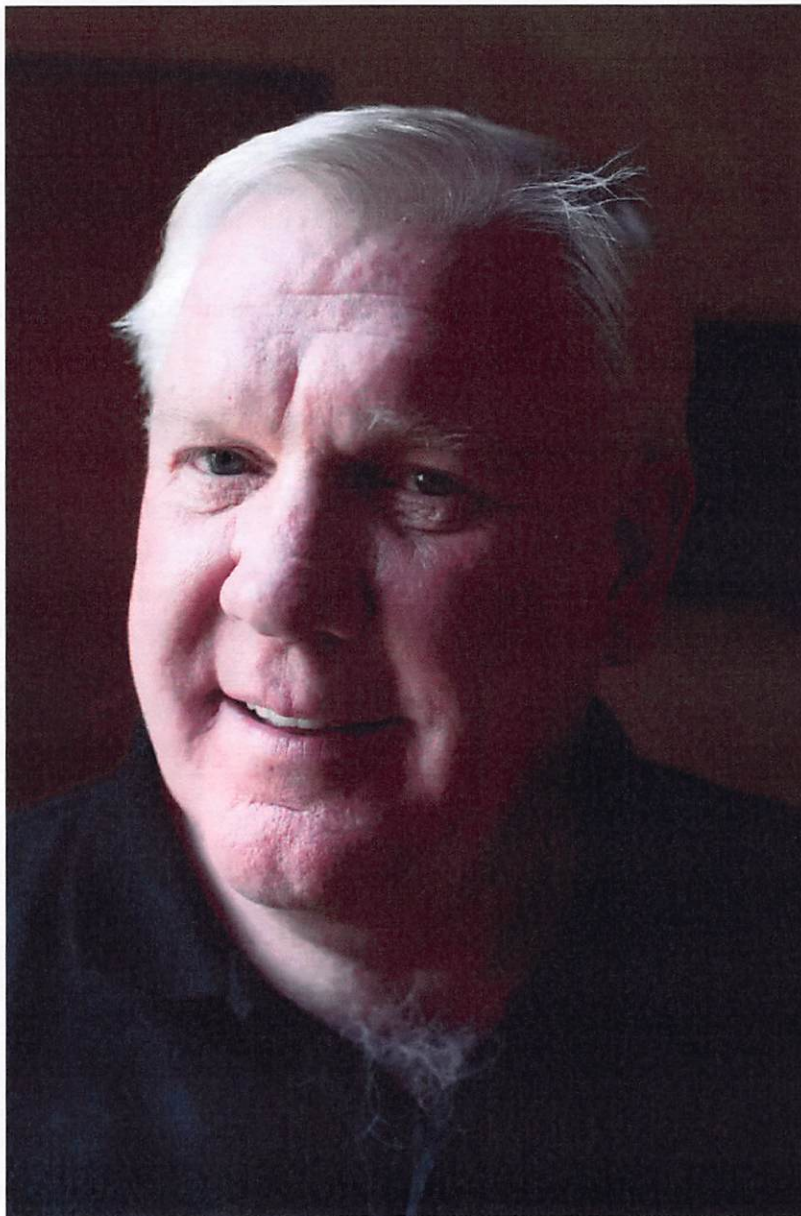
Justice Thomas, 62, was born and raised near the cannery overlooking the Moon River, where it was not uncommon for babies to rock in bassinets made of crab baskets while their mothers shucked oysters. He sympathized with the Varns’ wishes and said he had a friend who could help, Mr. Varn said.

The Varns eventually sold their property in April 2008. During a recent interview at their home near the cannery, they made it clear that they were “not supposed to say” who the buyer was, and a news release issued last November by a Savannah public relations firm said the museum was being “privately funded by an anonymous donor.”

But the paper trail leads back to Mr. Crow, and in interviews at the project site, people working on it acknowledged that he was financing it. Property records show a company called HKJRS/Pinpoint bought the land for \$1.5 million, and incorporation records say the company is controlled by a Dallas-based partnership run by Mr. Crow.

Project documents reviewed by The Times show a preliminary construction budget of \$1.3 million, but it is unclear if that includes expenses related to the content and design of the museum.

Justice Thomas remains closely involved with the project. Emily Owens, a museum spokeswoman who works for Mr. Crow’s company, said the justice “played a big part” in creating a video documentary that will be part of the museum experience. He hosted a design team from Dallas for a four-hour meeting at his Supreme Court offices in February.



Harlan Crow, a Dallas real estate magnate, met Justice Thomas a few years after he joined the Supreme Court. Brian Harkin

And he has had a role in picking people to help with the museum. Barbara Fertig, a history professor at Armstrong Atlantic State University in Savannah, said that she was asked to meet with Justice Thomas last spring and that “by the end of the meeting, he said he would like me to work on this project.”

She said she had “never been particularly curious” about why Mr. Crow is financing it, adding that costly preservation projects are often possible only because of philanthropy motivated by friendships. Justice Thomas and Mr. Crow would seem to fall into that category, Ms. Fertig said.

“I’ve been in the company of the two of them together,” she said, “and they certainly really are friends.”

### **The Code of Conduct**

That friendship is important to determining whether Justice Thomas’s interactions with Mr. Crow conflict with the code, said Raymond J. McKoski, a retired state judge in Illinois who wrote a law review article on charitable fund-raising by judges. If Justice Thomas did not “misuse the prestige of office” in getting Mr. Crow to take on the project, it should not be a concern, he said.

“Some of it depends on the conversations that took place,” Mr. McKoski said. “Who brought up the idea? How willing was Mr. Crow to do it? What exact questions were asked by Justice Thomas?”

Beyond the admonition against fund-raising, the code generally discourages judges from partaking in any off-the-bench behavior that could create even the perception of partiality. It acknowledges the value in judges’ being engaged with their communities, lecturing on the law and doing charitable work, but draws a line where those activities might cause a reasonable person to worry that a judge is

indebted to or influenced by someone.

“The code of conduct is quite clear that judges are not supposed to be soliciting money for their pet projects or charities, period,” said Arn Pearson, a lawyer with Common Cause. “If any other federal judge was doing it, he could face disciplinary action.”

The justices are not bound by the federal judiciary’s conduct code, because it is enforced by a committee of judges who rank below the justices. Even so, Justices Breyer and Anthony M. Kennedy said in testimony before Congress in April that the justices followed the code.

Beyond the code, the justices must comply with laws applying to all federal officials that prohibit conflicts of interest and require disclosure of gifts. Justice Thomas’s gift acceptances drew attention in 2004, when The Los Angeles Times reported that he had accumulated gifts totaling \$42,200 in the previous six years — far more than any of the other justices.

Since 2004, Justice Thomas has never reported another gift. He has continued to disclose travel costs paid by schools and organizations he has visited for speeches and teaching, but he has not reported that any travel was provided by Mr. Crow.

Travel records for Mr. Crow’s planes and yacht, however, suggest that Justice Thomas may have used them in recent years.

In April 2008, not long after Mr. Crow bought the Pin Point property, one of his private planes flew from Washington to Savannah, where his yacht, the Michaela Rose, was docked.

That same week, an item appeared in a South Carolina lawyers’ publication noting that Justice Thomas was arriving aboard the Michaela Rose in Charleston, a couple of hours north of Savannah, where the Crow family owns luxury vacation properties. The author was a prominent lawyer who said she knew of the visit because of a family connection to Mr. Crow.

Justice Thomas reported no gifts of travel that month in his 2008 disclosure. And there are other instances in which Justice Thomas’s travels correspond to flights taken by Mr. Crow’s planes.

On Jan. 4, 2010, when Justice Thomas was in Savannah for the dedication of a building in his honor, Mr. Crow’s plane flew from Washington to Savannah and returned to Washington the next day. Justice Thomas reported in his financial disclosure that his travel had been paid for by the Savannah College of Art and Design, which owned the building.

In his 2009 financial disclosure, Justice Thomas reported that Southern Methodist University in Dallas — Trammell Crow’s alma mater — had provided his travel for a speech there on Sept. 30. Flight records show that Mr. Crow’s plane flew from Washington to Dallas that day.

Among the questions The Times submitted to Justice Thomas was whether he was on any of those flights, and if so, whether the colleges reimbursed him or Mr. Crow. The colleges declined to comment.

One item not required to be reported in Justice Thomas’s financial disclosures is the millions of dollars Mr. Crow is spending on the museum. That is because the money is not being given to the justice as a gift.

For Algernon and Sharon Varn, who said they were thrilled to see a cherished piece of local history being restored, the museum is a gift to the community. While it is about more than Justice Thomas, they said, he deserves credit for putting them together with someone who had the money and the interest to make the project a reality.

“He was instrumental in getting the process started, because he wanted it preserved to show that no matter where you came from, you can go where you want,” Mr. Varn said. “He had a meager existence, and yet look where he is today. It’s a great American story.”