

# Justice Thomas asks questions in court, first time in 10 years

WASHINGTON (AP) — Justice Clarence Thomas broke 10 years of courtroom silence Monday and posed questions during a Supreme Court oral argument, provoking gasps from the audience.

And it wasn't just one question; it was a string of them in an exchange that lasted several minutes.

It was only the second week the court has heard arguments since the death of Justice Antonin Scalia, Thomas' friend and fellow conservative, whom he'd sat next to for seven years. Scalia was famous for aggressive and sometimes combative questions from the bench. His chair is now draped in black in observance of his Feb. 13 death.

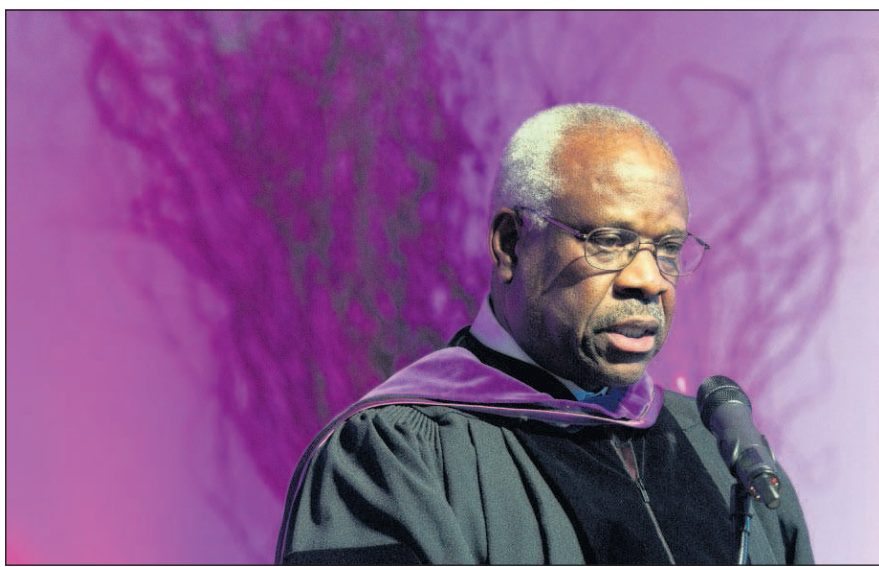
Thomas' gravelly voice unexpectedly filled the courtroom and enlivened an otherwise sleepy argument about gun rights. He peppered Justice Department lawyer Ilna Eisenstein, who was trying to wind up her argument, with 10 or so questions that seemed to be a vigorous defense of the constitutional right to own a gun.

"Ms. Eisenstein, one question," Thomas said. "This is a misdemeanor violation. It suspends a constitutional right. Can you give me another area where a misdemeanor violation suspends a constitutional right?"

Until then, it had been business as usual for the first 50 minutes of the hourlong session in *Voisine v. United States*. The court was considering the reach of a federal law that bans people convicted of domestic violence from owning guns.

None of the other justices visibly reacted to Thomas' remarks.

Eisenstein noted that violating other laws can, in some cases, limit a person's free-speech rights under the



AP Photo/Michael Dwyer, File

In this 2012 file photo Supreme Court Justice Clarence Thomas speaks at College of the Holy Cross in Worcester, Mass.

First Amendment.

"OK," Thomas said. "So can you think of a First Amendment suspension or a suspension of a First Amendment right that is permanent?"

It was a topic no other justice had asked about. And his comments came after several of the other justices seemed to favor the government's position that the law applies whether the abuse is intentional or reckless.

Thomas last asked a question in court on Feb. 22, 2006, and his unusual silence over the years has become a curiosity. Every other justice regularly poses questions from the bench.

Thomas has come under criticism for his silence from some who say he is neglecting his duties as a justice. He has said he relies on the written briefs in a case and doesn't need to ask questions of the lawyers appearing in court.

Carrie Severino, a former clerk to Thomas who now heads a conservative advocacy group, said the justice had kept his silence "because he felt that oral arguments have become less civil and respectful of the attorneys and their arguments over the past two decades, often becoming little more than rhetorical jousting among the justices."

Like Scalia, Thomas has long championed Second Amendment gun rights. In December, he and Scalia objected when the high court refused to hear a challenge to a Chicago suburb's assault weapons ban that was upheld by lower courts. Thomas said the justices should not stand by while lower courts relegate "the Second Amendment to a second-class right."

Thomas did not speak during the court's second argument on Monday.

# Federal judge: U.S. cannot make Apple provide iPhone data

NEW YORK (AP) — A federal judge ruled Monday that the U.S. Justice Department cannot use a 227-year-old law to force Apple to provide the FBI with access to locked iPhone data, dealing a blow to the government in its battle with the company over privacy and public safety.

The ruling, by U.S. Magistrate Judge James Orenstein, applied narrowly to one Brooklyn drug case, but it gives support to the company's position in its fight against a California judge's order that it create specialized software to help the FBI hack into an iPhone linked to the San Bernardino terrorism investigation.

Orenstein belittled some government arguments, saying attorneys were stretching an old law "to produce impermissibly absurd results."

He rejected government claims Apple was only concerned with public relations. He said he found no limit on how far the government would go to require a person or company to violate the most deeply-rooted values.

And he said claims that Apple must assist the government because it reaped the benefits of being an American company "reflects poorly on a government that exists in part to safeguard the freedom of its citizens."

Both cases hinge partly on whether a law written long before the computer age, the 1789 All Writs Act, could be used to compel Apple to cooperate with efforts to retrieve data from encrypted phones.

"Ultimately, the question to be answered in this matter, and in others like it across the country, is not whether the government should be able to force Apple to help it unlock a specific device; it is instead whether the All Writs Act resolves that issue and many others like it yet to come," Orenstein wrote. "I conclude that it does not."

Apple's opposition to the government's tactics has evoked a national debate over digital privacy rights and national security. On Thursday, the Cupertino, California-based company formally objected to the California order, accusing the federal government of seeking "dangerous power" through the courts and of trampling on the company's constitutional rights.

The separate California case involves an iPhone 5C

owned by San Bernardino County and used by Syed Farook, who was a health inspector. He and his wife Tashfeen Malik killed 14 people during a Dec. 2 attack that was at least partly inspired by the Islamic State group. The couple died later in a gun battle with police.

Orenstein, ruling with an eye to the California case, referenced it multiple times in a 50-page ruling and noted that the government request there was far more "intrusive."

The New York case features a government request far less onerous for Apple and its cellphone technology; the extraction technique exists for that older operating system and it's been used before some 70 times before to assist investigators.

Since late 2014, that physical extraction technique hasn't existed on newer iPhones. In California, U.S. Magistrate Judge Sheri Pym ordered investigators to create specialized software to help the FBI bypass security protocols on the encrypted phone so investigators can test random passcode combinations in rapid sequence to access its data.

The court ruling comes one day before a Tuesday congressional hearing that will include testimony from FBI Director James Comey and Apple General Counsel Bruce Sewell on encryption and "balancing Americans' security and privacy."

Orenstein said he was offering no opinion on whether in the instance of this case or others, "the government's legitimate interest in ensuring that no door is too strong to resist lawful entry should prevail against the equally legitimate societal interests arrayed against it here."

He noted Congress has not adopted legislation that would achieve the result sought by the government and said it must be discussed by "legislators who are equipped to consider the technological and cultural realities of a world their predecessors could not begin to conceive."

The Justice Department said in a statement that it's disappointed in the ruling and plans to appeal in coming days. It said Apple had previously agreed many times prior to assist the government and "only changed course when the government's application for assistance was made public by the court."

# North Korea puts detained American before cameras

PYONGYANG, North Korea (AP) — North Korea presented a detained American student before the media on Monday in Pyongyang, where he tearfully apologized for attempting to steal a political banner — at the behest, he said, of a member of a church back home who wanted it as a "trophy" — from a staff-only section of the hotel where he had been staying.

North Korea announced in late January it had arrested Otto Warmbier, a 21-year-old University of Virginia undergraduate student. It said that after entering the country as a tourist he committed an anti-state crime with "the tacit connivance of the U.S. government and under its manipulation."

No details of what kind of charges or punishment Warmbier faces were immediately released.

According to Warmbier's statement Monday, he wanted the banner with a political slogan on it as a trophy for the church member, who was the mother of a friend.

In previous cases, people who have been detained in North Korea and made a public confession often recant those statements after



AP Photo/Kim Kwang Hyon

American student Otto Warmbier speaks during a press conference on Monday in Pyongyang, North Korea.

their release.

He was arrested while visiting the country with Young Pioneer Tours, an agency specializing in travel to North Korea, which is strongly discouraged by the U.S. State Department. He had been staying at the Yanggakdo International Hotel, which is located on an island in a river that runs through Pyongyang, the capital.

It is common for sections of tourist hotels to be reserved for North Korean staff and off-limits to foreigners.

In Washington, State Department spokesman John Kirby said that as a general practice, it was not

uncommon for North Korea to detain and imprison people on false or "trumped-up" charges, and use detentions for propaganda purposes.

But Kirby said he could not comment on Warmbier's case because of privacy considerations, nor on whether Sweden, which handles consular affairs for the U.S. in North Korea, has had access to him.

In his comments, Warmbier said he was offered a used car worth \$10,000 by a member of the church. He said the church member told him the slogan would be hung on its wall as a trophy. He also said he was told that

if he was detained and didn't return, \$200,000 would be paid to his mother in the form of a charitable donation.

Warmbier identified the church as the Friendship United Methodist Church, which is in his hometown, Wyoming, Ohio.

Meshach Kanyion, pastor of the church, would not confirm whether he knows Warmbier or if he is a church member.

"I don't have any comment at this time," he told The Associated Press.

Warmbier's parents said they had not heard from their son since his arrest and were greatly relieved to finally see a picture of him.

"You can imagine how deeply worried we were and what a traumatic experience this has been for us," Warmbier's father, Fred Warmbier, said in a statement provided by the University of Virginia.

"I hope the fact that he has conveyed his sincere apology for anything that he may have done wrong will now make it possible for the (North Korean) authorities to allow him to return home," he said.

## BRIEFLY

### Europe's crisis worsens: Migrants face razor wire, tear gas

IDOMENI, Greece (AP) — Pressed against coils of razor wire and shouting "Help us!," refugees and migrants at Greece's northern border were pushed back by Macedonian police using tear gas and stun grenades, as authorities here raced to build more camps to shield the escalating number of stranded people from winter.

A top European Union official prepared to visit the region Tuesday to try and ease the crisis that produced more scenes of chaos: Syrian and Iraqi refugees and others forced their way through part of a Macedonian border fence, some clutching infants or struggling to free duffel bags caught in the razor-wire. They were met by Macedonian riot police.

Volunteer doctors said at least 22 migrants, including 12 children, were treated for breathing difficulties and cuts. Authorities in Macedonia said one policeman was injured and

that dozens of special forces officers were flown in by helicopter to help quell a refugee protest.

"Tragically, there seems to be more willingness among European countries to coordinate blocking borders than to provide refugees and asylum-seekers with protection and basic services," said Giorgos Kosmopoulos, head of Amnesty International in Greece.

Some 7,000 migrants, mostly from Syria, Iraq and Afghanistan, are crammed into a tiny camp at the Greek border village of Idomeni, and hundreds more are arriving daily.

### KKK leader: Request for police security denied before rally

LOS ANGELES (AP) — A Ku Klux Klan leader who was injured when his small group of demonstrators brawled with counter-protesters in a Southern California park this weekend said Monday that he called police beforehand asking for security and was told, "We don't do that."



Will Quigg said in an interview with The Associated Press that he contacted the Anaheim Police Department but that the agency denied his requests for a police presence. The KKK then told officers that the group would hire an outside security company.

"They said, 'No, you can't do that either,'" Quigg said.

The Police Department is facing scrutiny for its response after three people were stabbed and several others were injured in the melee Saturday involving several dozen people and spanning a city block. Investigators determined that Klan members acted in self-defense after the counter-protesters attacked.

The department notified the public that the KKK planned to hold an anti-immigration protest at a park about 3 miles from Disneyland, but at least one witness said he saw no uniformed officers when the attack began.

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