

Justice Clarence Thomas Breaks His Silence

By ADAM LIPTAK

WASHINGTON — One of the abiding mysteries at the Supreme Court is why Justice Clarence Thomas has failed to say a word in almost seven years of arguments. On Monday, when he finally broke his silence, the mystery was replaced by a riddle: Just what did Justice Thomas say?

The justices were considering the qualifications of a death penalty defense lawyer in Louisiana, and Justice Antonin Scalia noted that she had graduated from Yale Law School, which is Justice Thomas's alma mater.

Justice Thomas leaned into his microphone, and in the midst of a great deal of cross talk among the justices, cracked a joke. Or so it seemed to people in the courtroom.

The court transcript confirms that Justice Thomas spoke, for the first time since Feb. 22, 2006. It attributes these words to him, after a follow-up comment from Justice Scalia concerning a male graduate of Harvard Law School:

"Well — he did not — ."

Although the transcription is incomplete, some people in the courtroom understood him to say, in a joshing tone, that a law degree from Yale could actually be proof of incompetence or ineffectiveness. Others thought that he might have been referring to Harvard. What follows in the transcript supports the view that Justice Thomas made an actual point.

First, there is a notation indicating laughter in the courtroom. The stray words attributed to Justice Thomas are in no sense a joke or any other occasion for laughter.

And the lawyer at the lectern, a Louisiana prosecutor named Carla S. Sigler, responded, "I would refute that, Justice Thomas," indicating that he had articulated a proposition capable of refutation.

Ms. Sigler had earlier said that the Yale lawyer, Christine Lehmann, was "a very impressive attorney."

Justice Sonia Sotomayor, another Yale Law graduate, pressed Ms. Sigler about whether a fancy degree by itself proved anything.

"Counsel," she said, "do you want to define constitutionally adequate counsel? Is it anybody who's graduated from Harvard and Yale?"

There was more laughter. "Or even just passed the bar?" Ms. Sigler responded with a cryptic remark about her own alma mater, Louisiana State University. "Or L.S.U. Law," she said.

A call to Ms. Sigler was returned by her boss, John F. DeRosier, the district attorney in Lake Charles, La. "■ not sure Carla had a clear earshot of precisely what he said," Mr. DeRosier said of Justice Thomas. "It appeared lighthearted."

It is not unusual for Justice Thomas to banter with the members of the court who sit next to him, Justices Scalia and Stephen G. Breyer. But those communications are inaudible in the courtroom. This remark seemed meant for public consumption.

Justice Thomas has offered various reasons for his general taciturnity. He has said, for instance, that he is self-conscious about the way he speaks and has recalled being teased about the dialect he grew up speaking in rural Georgia.

In his 2007 memoir, "My Grandfather's Son," he wrote that he never asked questions in college or law school and that he was intimidated by some of his fellow students.

At other times, he has said that he is silent out of simple courtesy. He has also complained about the difficulty of getting a word in edgewise on an exceptionally voluble bench.

"We look like 'Family Feud,' " he told a bar group in 2000 in Richmond, Va.

The garbled transcript offers some support for that rationale.

Political scientists who study the court say it has been more than 40 years since a justice went an entire term, much less seven years, without saying a word at oral arguments.

There is room for debate about whether one aspect of Justice Thomas's record still stands. A joke is not a question, and it may fairly be said that he has still not asked a question for almost seven years.

The joke itself seemed good-natured, and it was made funnier by Yale Law School's reputation. While by some measure it is the best law school in the nation, it is also known for intellectual abstraction and disdain for the actual practice of law.

The joke was also probably evidence of a recent warming trend between Justice Thomas and the law school, from which he graduated in 1974.

In his memoir, Justice Thomas wrote that he had "peeled a 15-cent price sticker off a package of cigars and stuck it on the frame of my law degree to remind myself of the mistake ■ made by going to Yale."

"I never did change my mind about its value," he wrote, and for many years he refused to return to New Haven. But Justice Thomas visited in 2011 and spoke to an alumni group in Washington last year.

In remarks at a Washington synagogue in December, Justice Elena Kagan, a former dean of Harvard Law School, said she is often asked, "Why don't any Supreme Court justices come from any law school except Harvard or Yale?" Like Justices Thomas and Sotomayor, Justice Samuel A. Alito Jr. attended Yale. The six

others — Chief Justice John G. Roberts Jr. and Justices Breyer, Kagan, Scalia, Anthony M. Kennedy and Ruth Bader Ginsburg — all attended Harvard.

But Justice Kagan added an asterisk to the credentials of one of her colleagues.

“Justice Ginsburg spent one year at Columbia,” Justice Kagan said. “You know, slumming it.”
