

**NOMINATION OF JUDGE CLARENCE THOMAS TO BE
ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES**

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

**THE NOMINATION OF CLARENCE THOMAS TO BE ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES**

OCTOBER 11, 12, AND 13, 1991

Part 4 of 4 Parts

J-102-40

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

56-273

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328

ISBN 0-16-040838-5

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NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

FRIDAY, OCTOBER 11, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to notice, at 10:01 a.m., in room SD-325, Russell Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Present: Senators Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

OPENING STATEMENT OF CHAIRMAN JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

The CHAIRMAN. The hearing will come to order.

Let me inform the Capitol Hill Police that, if there is not absolute order and decorum in here, we will recess the hearing and those who engage in any outburst at all will be asked to leave the committee room.

Good morning, Judge.

Today, the Senate Judiciary Committee is meeting to hear evidence on sexual harassment charges that have been made against Judge Clarence Thomas, who has been nominated to be an Associate Justice of the Supreme Court.

I want to speak very briefly about the circumstances that have caused us to convene these hearings. We are here today to hold open hearings on Prof. Anita Hill's allegations concerning Judge Thomas. This committee's handling of her charges has been criticized. Professor Hill made 2 requests to this committee: First, she asked us to investigate her charges against Judge Thomas, and, second, she asked that these charges remain confidential, that they not be made public and not shared with anyone beyond this committee. I believe that we have honored both of her requests.

Some have asked how we could have the U.S. Senate vote on Judge Thomas' nomination and leave Senators in the dark about Professor Hill's charges. To this, I answer, how could we have forced Professor Hill against her will into the blinding light where you see her today.

But I am deeply sorry that our actions in this respect have been seen by many across this country as a sign that this committee

does not take the charge of sexual harassment seriously. We emphatically do.

I hope we all learn from the events of the past week. As one person who has spent the past 2 years attempting to combat violence of all kinds against women through legislative efforts, I can assure you that I take the charge of sexual harassment seriously.

The committee's ability to investigate and hold hearings on Professor Hill's charges has now been dramatically changed by the events which forced Professor Hill, against her wishes, to publicly discuss these charges. The landscape has changed. We are, thus, here today free from the restrictions which had previously limited our work.

Sexual harassment is a serious matter and, in my view, any person guilty of this offense is unsuited to serve, not only the Nation's highest court, but any position of responsibility, of high responsibility in or out of government. Sexual harassment of working women is an issue of national concern.

With that said, let me make clear that this is not, I emphasize, this is not a hearing about the extent and nature of sexual harassment in America. That question is for a different sort of meeting of this or any other committee.

This is a hearing convened for a specific purpose, to air specific allegations against one specific individual, allegations which may be true or may not be true.

Whichever may be the case, this hearing has not been convened to investigate the widespread problem, and it is indisputably widespread, the widespread problem of sexual harassment in this country.

Those watching these proceedings will see witnesses being sworn and testifying pursuant to a subpoena. But I want to emphasize that this is not a trial, this is not a courtroom. At the end of our proceedings, there will be no formal verdict of guilt or innocence, nor any finding of civil liability.

Because this is not a trial, the proceedings will not be conducted the way in which a sexual harassment trial would be handled in a court of law. For example, on the advice of the nonpartisan Senate legal counsel, the rules of evidence that apply in courtrooms will not apply here today. Thus, evidence and questions that would not be permitted in the court of law must, under Senate rules, be allowed here.

This is a factfinding hearing, and our purpose is to help our colleagues in the U.S. Senate determine whether Judge Thomas should be confirmed to the Supreme Court. We are not here, or at least I am not here to be an advocate for one side or the other with respect to the specific allegations which we will review, and it is my hope and belief that my colleagues here today share that view.

Achieving fairness in the atmosphere in which these hearings are being held may be the most difficult task I have ever undertaken in my close to 19 years in the U.S. Senate.

Each of us in this committee has already stated how he will vote on Judge Thomas' nomination. The committee, as the Senate rules require, has already voted in this committee on whether or not Judge Thomas should be on the Court. Each of us has already said whether we think Judge Thomas should or should not be a Su-

preme Court Justice, for reasons related to or unrelated to charges we will listen to today.

In this setting, it will be easy and perhaps understandable for the witnesses to fear unfair treatment, but it is my job, as chairman, to ensure as best as I possibly can fair treatment, and that is what I intend to do, so let me make three ground rules clear for all of my colleagues:

First, while legal counsel sitting behind me has advised that the rules of evidence do not apply here, counsel has also advised the Chair that the Chair does have the power to rule out of order questions that are not relevant to our proceedings. Certain subjects are simply irrelevant to the issue of harassment, namely, the private conduct of out-of-the-workplace relationships, and the intimate lives and practices of Judge Thomas, Professor Hill, and any other witness that comes before us.

Thus, as chairman, I will not allow questions on matters totally irrelevant to our investigation of the professional relationship of Judge Thomas and any woman who has been employed by him.

The committee is not here to put Judge Thomas or Professor Hill on trial. I hope my colleagues will bear in mind that the best way to do our job is to ask questions that are nonjudgmental and open ended, in an attempt to avoid questions that badger and harass any witness.

Second, while I have less discretion than a judge in a trial to bar inappropriate or embarrassing questions, all of the witnesses should know that they have a right, under Senate Rule 26.5, to ask that the committee go into closed session, if a question requires an answer that is "a clear invasion of their right to privacy."

The committee will take very seriously the request of any witness to answer particularly embarrassing questions, as they view them in private.

Third, the order of questioning: Because this is an extraordinary hearing, Democrats and Republicans have each taken the step of designating a limited number of Senators to question for the committee. On the Democratic side, our questioners will be Senators Heflin, Leahy, and myself. As I understand it, on the Republican side, the questioners will be the ranking member, Senator Hatch and Senator Specter. That is said to make sure that we do not mislead anyone as to how we will proceed.

In closing, I want to reiterate my view that the primary responsibility of this committee is fairness. That means making sure that we do not victimize any witness who appears here and that we treat every witness with respect. And without making any judgment about the specific witnesses we will hear from today, fairness means understanding what a victim of sexual harassment goes through, why victims often do not report such crimes, why they often believe that they should not or cannot leave their jobs.

Perhaps 14 men sitting here today cannot understand these things fully. I know there are many people watching today who suspect we never will understand, but fairness means doing our best to understand, no matter what we do or do not believe about the specific charges. We are going to listen as closely as we can at these hearings.

Fairness also means that Judge Thomas must be given a full and fair opportunity to confront these charges against him, to respond fully, to tell us his side of the story and to be given the benefit of the doubt.

In the end, this hearing may resolve much or it may resolve little, but there are two things that cannot remain in doubt after this hearing is over: First, that the members of this committee are fair and have been fair to all witnesses; and, second, that we take sexual harassment as a very serious concern in this hearing and overall.

So, let us perform our duties with a full understanding of what I have said and of our responsibilities to the Senate, to the Nation and to the truth.

I yield now to my colleague from South Carolina.

**OPENING STATEMENT OF HON. STROM THURMOND, A U.S.
SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Mr. Chairman, we have taken the unusual step of reconvening this committee in order to consider further testimony regarding the nomination of Judge Clarence Thomas to be a Justice of the Supreme Court of the United States.

We are here this morning to attempt to discern the truth in some rather extraordinary allegations made against this nominee, and because Judge THomas has requested an opportunity to refute these allegations and restore his good name.

Mr. Chairman, before we begin, I want to emphasize that the charge of sexual harassment is a grave one and one that each Senator on this committee takes with the utmost seriousness. This is an issue of great sensitivity and there is no doubt in my mind that this is difficult for everyone involved.

Both Judge Thomas and Professor Hill find themselves in the unenviable position of having to discuss very personal matters in a very public forum. I want to assure them at the outset that they will be dealt with fairly. This will be an exceedingly uncomfortable process for us all, but a great deal hangs in the balance and our duty is clear, we must find the truth.

I would like to commend Chairman Biden, who worked with me to ensure that this hearing would be conducted fairly. After consulting with each Member on my side, I have decided that Senator Hatch will conduct the questioning of Judge Thomas. I have also decided, after consultation, that Senator Specter will undertake the questioning of Professor Hill and the other witnesses. I reserve the privilege of propounding questions myself.

I want to make it clear that every Republican member of this committee has been deeply involved in this process from the day Judge Thomas was nominated by President Bush. However, in the interest of time and fairness to all the witnesses, I believe the procedures that have been outlined will work best for everyone involved.

Over 100 days ago, when President Bush nominated Judge Thomas, this committee undertook a thorough and far-reaching investigation of his background. That investigation turned up noth-

ing questionable about the Judge, but, rather, showed him to be an individual of great character and accomplishment.

During the original confirmation hearings, this committee heard testimony from over 100 witnesses, both for and against the nomination. Not one of these witnesses, even those most bitterly opposed to this nomination, had one disparaging comment to make about Clarence Thomas' moral character. On the contrary, witness after witness spoke of the impeccable character, abiding honesty and consummate professionalism which Judge Thomas has shown throughout his career.

In conclusion, I want to comment briefly about the allegations that have been raised by Professor Hill. The alleged harassment she describes took place some 10 years ago. During that time, she continued to initiate contact with Judge Thomas in an apparently friendly manner. In addition, Professor Hill chose to publicize her allegations the day before the full Senate would have voted to confirm Judge Thomas.

While I fully intend to maintain an open mind during today's testimony, I must say that the timing of these statements raises a tremendous number of questions which must be dealt with, and I can assure all the witnesses that we shall be unstinting in our efforts to ascertain the truth.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, before I swear Judge Thomas, I ask that the police officer to go to the front of that door while Judge Thomas is speaking, and prevent anyone from going in or out. He is entitled to absolute quiet in this room, no matter who wishes to enter.

Judge would you stand to be sworn? Judge, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Judge THOMAS. I do.

The CHAIRMAN. Judge, do you have an opening statement? Please proceed.

TESTIMONY OF HON. CLARENCE THOMAS, OF GEORGIA, TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Judge THOMAS. Mr. Chairman, Senator Thurmond, members of the committee: as excruciatingly difficult as the last 2 weeks have been, I welcome the opportunity to clear my name today. No one other than my wife and Senator Danforth, to whom I read this statement at 6:30 a.m., has seen or heard the statement, no handlers, no advisers.

The first I learned of the allegations by Prof. Anita Hill was on September 25, 1991, when the FBI came to my home to investigate her allegations. When informed by the FBI agent of the nature of the allegations and the person making them, I was shocked, surprised, hurt, and enormously saddened.

I have not been the same since that day. For almost a decade my responsibilities included enforcing the rights of victims of sexual harassment. As a boss, as a friend, and as a human being I was proud that I have never had such an allegation leveled against me,

even as I sought to promote women, and minorities into nontraditional jobs.

In addition, several of my friends, who are women, have confided in me about the horror of harassment on the job, or elsewhere. I thought I really understood the anguish, the fears, the doubts, the seriousness of the matter. But since September 25, I have suffered immensely as these very serious charges were leveled against me.

I have been wracking my brains, and eating my insides out trying to think of what I could have said or done to Anita Hill to lead her to allege that I was interested in her in more than a professional way, and that I talked with her about pornographic or x-rated films.

Contrary to some press reports, I categorically denied all of the allegations and denied that I ever attempted to date Anita Hill, when first interviewed by the FBI. I strongly reaffirm that denial. Let me describe my relationship with Anita Hill.

In 1981, after I went to the Department of Education as an Assistant Secretary in the Office of Civil Rights, one of my closest friends, from both college and law school, Gil Hardy, brought Anita Hill to my attention. As I remember, he indicated that she was dissatisfied with her law firm and wanted to work in Government. Based primarily, if not solely, on Gil's recommendation, I hired Anita Hill.

During my tenure at the Department of Education, Anita Hill was an attorney-adviser who worked directly with me. She worked on special projects, as well as day-to-day matters. As I recall, she was one of two professionals working directly with me at the time. As a result, we worked closely on numerous matters.

I recall being pleased with her work product and the professional, but cordial relationship which we enjoyed at work. I also recall engaging in discussions about politics and current events.

Upon my nomination to become Chairman of the Equal Employment Opportunity Commission, Anita Hill, to the best of my recollection, assisted me in the nomination and confirmation process. After my confirmation, she and Diane Holt, then my secretary, joined me at EEOC. I do not recall that there was any question or doubts that she would become a special assistant to me at EEOC, although as a career employee she retained the option of remaining at the Department of Education.

At EEOC our relationship was more distant. And our contacts less frequent, as a result of the increased size of my personal staff and the dramatic increase and diversity of my day-to-day responsibilities.

Upon reflection, I recall that she seemed to have had some difficulty adjusting to this change in her role. In any case, our relationship remained both cordial and professional. At no time did I become aware, either directly or indirectly that she felt I had said, or done anything to change the cordial nature of our relationship.

I detected nothing from her or from my staff, or from Gil Hardy, our mutual friend, with whom I maintained regular contact. I am certain that had any statement or conduct on my part been brought to my attention, I would remember it clearly because of the nature and seriousness of such conduct, as well as my adamant opposition to sex discrimination sexual harassment.

But there were no such statements.

In the spring of 1983, Mr. Charles Cothey contacted me to speak at the law school at Oral Roberts University in Tulsa, OK. Anita Hill, who is from Oklahoma, accompanied me on that trip. It was not unusual that individuals on my staff would travel with me occasionally. Anita Hill accompanied me on that trip primarily because this was an opportunity to combine business and a visit to her home.

As I recall, during our visit at Oral Roberts University, Mr. Cothey mentioned to me the possibility of approaching Anita Hill to join the faculty at Oral Roberts University Law School. I encouraged him to do so. I noted to him, as I recall, that Anita Hill would do well in teaching. I recommended her highly and she eventually was offered a teaching position.

Although I did not see Anita Hill often after she left EEOC, I did see her on one or two subsequent visits to Tulsa, OK. And on one visit I believe she drove me to the airport. I also occasionally received telephone calls from her. She would speak directly with me or with my secretary, Diane Holt. Since Anita Hill and Diane Holt had been with me at the Department of Education they were fairly close personally and I believe they occasionally socialized together.

I would also hear about her through Linda Jackson, then Linda Lambert, whom both Anita Hill and I met at the Department of Education. And I would hear of her from my friend Gil.

Throughout the time that Anita Hill worked with me I treated her as I treated my other special assistants. I tried to treat them all cordially, professionally, and respectfully. And I tried to support them in their endeavors, and be interested in and supportive of their success.

I had no reason or basis to believe my relationship with Anita Hill was anything but this way until the FBI visited me a little more than 2 weeks ago. I find it particularly troubling that she never raised any hint that she was uncomfortable with me. She did not raise or mention it when considering moving with me to EEOC from the Department of Education. And she never raised it with me when she left EEOC and was moving on in her life.

And to my fullest knowledge, she did not speak to any other women working with or around me, who would feel comfortable enough to raise it with me, especially Diane Holt, to whom she seemed closest on my personal staff. Nor did she raise it with mutual friends, such as Linda Jackson, and Gil Hardy.

This is a person I have helped at every turn in the road, since we met. She seemed to appreciate the continued cordial relationship we had since day one. She sought my advice and counsel, as did virtually all of the members of my personal staff.

During my tenure in the executive branch as a manager, as a policymaker, and as a person, I have adamantly condemned sex harassment. There is no member of this committee or this Senate who feels stronger about sex harassment than I do. As a manager, I made every effort to take swift and decisive action when sex harassment raised or reared its ugly head.

The fact that I feel so very strongly about sex harassment and spoke loudly about it at EEOC has made these allegations doubly

hard on me. I cannot imagine anything that I said or did to Anita Hill that could have been mistaken for sexual harassment.

But with that said, if there is anything that I have said that has been misconstrued by Anita Hill or anyone else, to be sexually harassment, then I can say that I am so very sorry and I wish I had known. If I did know I would have stopped immediately and I would not, as I have done over the past 2 weeks, had to tear away at myself trying to think of what I could possibly have done. But I have not said or done the things that Anita Hill has alleged. God has gotten me through the days since September 25 and He is my judge.

Mr. Chairman, something has happened to me in the dark days that have followed since the FBI agents informed me about these allegations. And the days have grown darker, as this very serious, very explosive, and very sensitive allegation or these sensitive allegations were selectively leaked, in a distorted way to the media over the past weekend.

As if the confidential allegations, themselves, were not enough, this apparently calculated public disclosure has caused me, my family, and my friends enormous pain and great harm.

I have never, in all my life, felt such hurt, such pain, such agony. My family and I have been done a grave and irreparable injustice. During the past 2 weeks, I lost the belief that if I did my best all would work out. I called upon the strength that helped me get here from Pin Point, and it was all sapped out of me. It was sapped out of me because Anita Hill was a person I considered a friend, whom I admired and thought I had treated fairly and with the utmost respect. Perhaps I could have better weathered this if it were from someone else, but here was someone I truly felt I had done my best with.

Though I am, by no means, a perfect person, no means, I have not done what she has alleged, and I still do not know what I could possibly have done to cause her to make these allegations.

When I stood next to the President in Kennebunkport, being nominated to the Supreme Court of the United States, that was a high honor. But as I sit here, before you, 103 days later, that honor has been crushed. From the very beginning charges were leveled against me from the shadows—charges of drug abuse, antisemitism, wife-beating, drug use by family members, that I was a quota appointment, confirmation conversion and much, much more, and now, this.

I have complied with the rules. I responded to a document request that produced over 30,000 pages of documents. And I have testified for 5 full days, under oath. I have endured this ordeal for 103 days. Reporters sneaking into my garage to examine books I read. Reporters and interest groups swarming over divorce papers, looking for dirt. Unnamed people starting preposterous and damaging rumors. Calls all over the country specifically requesting dirt. This is not American. This is Kafka-esque. It has got to stop. It must stop for the benefit of future nominees, and our country. Enough is enough.

I am not going to allow myself to be further humiliated in order to be confirmed. I am here specifically to respond to allegations of sex harassment in the work place. I am not here to be further hu-

miliated by this committee, or anyone else, or to put my private life on display for a prurient interest or other reasons. I will not allow this committee or anyone else to probe into my private life. This is not what America is all about.

To ask me to do that would be to ask me to go beyond fundamental fairness. Yesterday, I called my mother. She was confined to her bed, unable to work and unable to stop crying. Enough is enough.

Mr. Chairman, in my 43 years on this Earth, I have been able, with the help of others and with the help of God, to defy poverty, avoid prison, overcome segregation, bigotry, racism, and obtain one of the finest educations available in this country. But I have not been able to overcome this process. This is worse than any obstacle or anything that I have ever faced. Throughout my life I have been energized by the expectation and the hope that in this country I would be treated fairly in all endeavors. When there was segregation I hoped there would be fairness one day or some day. When there was bigotry and prejudice I hoped that there would be tolerance and understanding some day.

Mr. Chairman, I am proud of my life, proud of what I have done, and what I have accomplished, proud of my family, and this process, this process is trying to destroy it all. No job is worth what I have been through, no job. No horror in my life has been so debilitating. Confirm me if you want, don't confirm me if you are so led, but let this process end. Let me and my family regain our lives. I never asked to be nominated. It was an honor. Little did I know the price, but it is too high.

I enjoy and appreciate my current position, and I am comfortable with the prospect of returning to my work as a judge on the U.S. Court of Appeals for the D.C. Circuit and to my friends there.

Each of these positions is public service, and I have given at the office. I want my life and my family's life back and I want them returned expeditiously.

I have experienced the exhilaration of new heights from the moment I was called to Kennebunkport by the President to have lunch and he nominated me. That was the high point. At that time I was told eye-to-eye that, Clarence, you made it this far on merit, the rest is going to be politics and it surely has been. There have been other highs. The outpouring of support from my friends of long-standing, a bonding like I have never experienced with my old boss, Senator Danforth, the wonderful support of those who have worked with me.

There have been prayers said for my family, and me, by people I know and people I will never meet, prayers that were heard and that sustained not only me, but also my wife and my entire family. Instead of understanding and appreciating the great honor bestowed upon me, I find myself, here today defending my name, my integrity, because somehow select portions of confidential documents, dealing with this matter were leaked to the public.

Mr. Chairman, I am a victim of this process and my name has been harmed, my integrity has been harmed, my character has been harmed, my family has been harmed, my friends have been harmed. There is nothing this committee, this body or this country can do to give me my good name back, nothing.

I will not provide the rope for my own lynching or for further humiliation. I am not going to engage in discussions, nor will I submit to roving questions of what goes on in the most intimate parts of my private life or the sanctity of my bedroom. These are the most intimate parts of my privacy, and they will remain just that, private.

[The prepared statement of Judge Clarence Thomas follows:]

[DRAFT 7:00 a.m.]

STATEMENT OF CLARENCE THOMAS
BEFORE THE SENATE JUDICIARY COMMITTEE
October 11, 1991

AS EXCRUCIATINGLY DIFFICULT AS THE LAST TWO WEEKS HAVE BEEN,
I WELCOME THE OPPORTUNITY TO CLEAR MY NAME TODAY, ~~BEFORE THIS~~
~~COMMITTEE.~~ NO ONE OTHER THAN MY WIFE HAS SEEN AND HEARD THIS
STATEMENT...NO HANDLERS, NO ADVISORS.

THE FIRST I LEARNED OF THE ALLEGATIONS BY PROFESSOR ANITA HILL
WAS ON SEPTEMBER 25, 1991 WHEN THE FBI CAME TO MY HOME TO
INVESTIGATE HER ALLEGATIONS. WHEN INFORMED BY THE FBI AGENT OF THE
NATURE OF THE ALLEGATIONS AND THE PERSON MAKING THEM, I WAS
SHOCKED, SURPRISED, HURT AND ENORMOUSLY SADDENED. I HAVE NOT BEEN
THE SAME SINCE THAT DAY.

FOR ALMOST A DECADE, MY RESPONSIBILITIES INCLUDED ENFORCING
THE RIGHTS OF VICTIMS OF SEXUAL HARASSMENT. AS A BOSS, AS A FRIEND

AND AS A HUMAN BEING, I WAS PROUD THAT I HAD NEVER HAD SUCH AN ALLEGATION LEVELLED AGAINST ME AS I SOUGHT TO PROMOTE WOMEN AND MINORITIES INTO NON-TRADITIONAL JOBS.

IN ADDITION, SEVERAL OF MY FRIENDS WHO ARE WOMEN HAVE CONFIDED IN ME ABOUT THE HORROR OF HARASSMENT ON THE JOB OR ELSEWHERE. I THOUGHT I REALLY UNDERSTOOD THE ANGUISH, THE FEARS, THE DOUBTS, THE SERIOUSNESS OF THIS MATTER.

BUT SINCE SEPTEMBER 25TH, I HAVE SUFFERED IMMENSELY AS THESE VERY SERIOUS CHARGES WERE LEVELLED AGAINST ME. I HAVE BEEN RACKING MY BRAINS AND EATING MY INSIDES OUT TRYING TO THINK OF WHAT I COULD HAVE SAID OR DONE TO ANITA HILL TO LEAD HER TO ALLEGE THAT I WAS INTERESTED IN HER IN MORE THAN A PROFESSIONAL WAY AND THAT I TALKED WITH HER ABOUT PORNOGRAPHIC FILMS. CONTRARY TO SOME PRESS REPORTS, I CATEGORICALLY DENIED ALL OF THE ALLEGATIONS AND DENIED THAT I EVER ATTEMPTED TO DATE ANITA HILL. I STRONGLY REAFFIRM THAT

DENIAL.

LET ME DESCRIBE MY RELATIONSHIP WITH ANITA HILL.

IN 1981, AFTER I WENT TO THE DEPARTMENT OF EDUCATION AS AN ASSISTANT SECRETARY IN THE OFFICE OF CIVIL RIGHTS, ONE OF MY CLOSEST FRIENDS, GIL HARDY, BROUGHT ANITA HILL TO MY ATTENTION. AS I REMEMBER, HE INDICATED THAT SHE WAS DISSATISFIED WITH HER LAW FIRM AND WANTED TO WORK IN GOVERNMENT. BASED PRIMARILY ON GIL'S RECOMMENDATION, I HIRED ANITA HILL.

DURING MY TENURE AT THE DEPARTMENT OF EDUCATION, ANITA HILL WAS AN ATTORNEY ADVISOR WHO WORKED DIRECTLY WITH ME. SHE WORKED ON SPECIAL PROJECTS AS WELL AS DAY TO DAY MATTERS. AS I RECALL, SHE WAS ONE OF TWO PROFESSIONALS WORKING DIRECTLY WITH ME. AS A RESULT WE WORKED CLOSELY ON NUMEROUS MATTERS.

I RECALL BEING PLEASED WITH HER WORK PRODUCT AND THE PROFESSIONAL BUT CORDIAL RELATIONSHIP WHICH WE ENJOYED AT WORK. I ALSO RECALL ENGAGING IN DISCUSSIONS ABOUT POLITICS AND CURRENT EVENTS.

UPON MY NOMINATION TO BECOME CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ANITA HILL, TO THE BEST OF MY RECOLLECTION, ASSISTED ME IN THE NOMINATION AND CONFIRMATION PROCESS. AFTER MY CONFIRMATION, SHE AND DIANE HOLT, THEN MY SECRETARY, JOINED ME AT EEOC. I DO NOT RECALL THAT THERE WAS ANY QUESTION OR DOUBT THAT SHE WOULD BECOME A SPECIAL ASSISTANT TO ME AT EEOC, ALTHOUGH, AS A CAREER EMPLOYEE, SHE RETAINED THE OPTION OF REMAINING AT THE DEPARTMENT OF EDUCATION.

AT EEOC, OUR RELATIONSHIP WAS MORE DISTANT AND OUR CONTACTS LESS FREQUENT AS A RESULT OF THE INCREASED SIZE OF

MY PERSONAL STAFF AND THE DRAMATIC INCREASE AND DIVERSITY OF MY DAY TO DAY RESPONSIBILITIES. UPON REFLECTION, I RECALL THAT SHE SEEMED TO HAVE SOME DIFFICULTY ADJUSTING TO THIS CHANGE IN HER ROLE, IN ANY CASE, OUR RELATIONSHIP REMAINED BOTH CORDIAL AND PROFESSIONAL. AT NO TIME DID I BECOME AWARE EITHER DIRECTLY OR INDIRECTLY THAT SHE FELT I HAD SAID OR DONE ANYTHING TO CHANGE THE CORDIAL NATURE OF OUR RELATIONSHIP. I DETECTED NOTHING FROM HER, OR FROM MY STAFF, OR FROM GIL HARDY, OUR MUTUAL FRIEND, WITH WHOM I MAINTAINED REGULAR CONTACT.

I AM CERTAIN THAT HAD ANY STATEMENT OR CONDUCT ON MY PART BEEN BROUGHT TO MY ATTENTION, I WOULD REMEMBER IT CLEARLY BECAUSE OF THE NATURE AND SERIOUSNESS OF SUCH CONDUCT AS WELL AS MY ADAMANT OPPOSITION TO SEX DISCRIMINATION AND SEXUAL HARASSMENT. BUT THERE WERE NO SUCH STATEMENTS.

IN THE SPRING OF 1983, MR. CHARLES KOTHE CONTACTED ME TO SPEAK AT THE LAW SCHOOL AT ORAL ROBERTS UNIVERSITY IN TULSA OKLAHOMA. ANITA HILL, WHO IS FROM OKLAHOMA, ACCOMPANIED ME. IT WAS NOT UNUSUAL THAT INDIVIDUALS ON MY STAFF WOULD TRAVEL WITH ME OCCASIONALLY. ANITA HILL ACCOMPANIED ME ON THAT TRIP PRIMARILY BECAUSE THIS WAS AN OPPORTUNITY TO COMBINE BUSINESS AND A VISIT HOME. AS I RECALL, DURING OUR VISIT AT ORAL ROBERTS UNIVERSITY, MR. KOTHE MENTIONED TO ME THE POSSIBILITY OF APPROACHING ANITA HILL TO JOIN THE FACULTY AT ORAL ROBERTS UNIVERSITY LAW SCHOOL. I ENCOURAGED HIM TO DO SO AND NOTED TO HIM, AS I RECALL, THAT ANITA HILL WOULD DO WELL IN TEACHING. I RECOMMENDED HER HIGHLY AND SHE EVENTUALLY WAS OFFERED A TEACHING POSITION.

ALTHOUGH I DID NOT SEE ANITA HILL OFTEN AFTER SHE LEFT EEOC, I DID SEE HER ON ONE OR TWO SUBSEQUENT VISITS TO TULSA, OKLAHOMA. AND ON ONE VISIT, I BELIEVE SHE DROVE ME TO THE

AIRPORT. I ALSO OCCASIONALLY RECEIVED TELEPHONE CALLS FROM HER. SHE WOULD SPEAK DIRECTLY WITH ME OR WITH MY SECRETARY, DIANE HOLT. SINCE ANITA HILL AND DIANE HOLT HAD BEEN WITH ME AT THE DEPARTMENT OF EDUCATION, THEY WERE FAIRLY CLOSE PERSONALLY AND I BELIEVE THEY OCCASIONALLY SOCIALIZED TOGETHER. I WOULD ALSO HEAR ABOUT HER THROUGH LINDA JACKSON, WHOM BOTH ANITA HILL AND I MET AT THE DEPARTMENT OF EDUCATION, AND FROM MY FRIEND, GIL HARDY.

THROUGHOUT THE TIME THAT ANITA HILL WORKED WITH ME, I TREATED HER AS I TREATED MY OTHER SPECIAL ASSISTANTS. I TRIED TO TREAT THEM ALL CORDIALLY, PROFESSIONALLY, AND RESPECTFULLY. AND, I TRIED TO SUPPORT THEM IN THEIR ENDEAVORS AND BE INTERESTED IN AND SUPPORTIVE OF THEIR SUCCESS. I HAD NO REASON OR BASIS TO BELIEVE MY RELATIONSHIP WITH ANITA HILL WAS ANYTHING BUT THIS WAY UNTIL THE FBI VISITED ME A LITTLE MORE THAN TWO WEEKS AGO.

I FIND IT PARTICULARLY TROUBLING THAT SHE NEVER RAISED ANY HINT THAT SHE WAS UNCOMFORTABLE WITH ME. SHE DID NOT RAISE OR MENTION IT WHEN CONSIDERING MOVING WITH ME TO EEOC FROM THE DEPARTMENT OF EDUCATION. AND, SHE NEVER RAISED IT WITH ME WHEN SHE LEFT EEOC AND WAS MOVING ON IN HER LIFE. AND TO MY FULLEST KNOWLEDGE, SHE DID NOT SPEAK TO ANY OTHER WOMEN WORKING WITH OR AROUND ME, WHO WOULD FEEL COMFORTABLE ENOUGH TO RAISE IT WITH ME -- ESPECIALLY DIANE HOLT TO WHOM SHE SEEMED CLOSEST ON MY PERSONAL STAFF. NOR DID SHE RAISE IT WITH MUTUAL FRIENDS SUCH AS LINDA JACKSON AND GIL HARDY.

THIS IS A PERSON I HAVE HELPED AT EVERY TURN IN THE ROAD SINCE WE MET. SHE SEEMED TO APPRECIATE THE CONTINUED CORDIAL RELATIONSHIP WE HAD SINCE DAY ONE. SHE SOUGHT MY ADVICE AND COUNSEL, AS DID VIRTUALLY ALL OF THE MEMBERS OF MY PERSONAL STAFF.

DURING MY TENURE IN THE EXECUTIVE BRANCH, AS A MANAGER, AS A POLICY MAKER AND AS A PERSON, I HAVE ADAMANTLY CONDEMNED SEX HARASSMENT. THERE IS NO MEMBER OF THIS COMMITTEE OR THE SENATE WHO FEELS STRONGER ABOUT SEX HARASSMENT THAN I DO. AS A MANAGER, I MADE EVERY EFFORT TO TAKE SWIFT AND DECISIVE ACTION WHEN SEX HARASSMENT REARED ITS UGLY HEAD. THE FACT THAT I FEEL SO VERY STRONGLY ABOUT SEX HARASSMENT AND SPOKE SO LOUDLY ABOUT IT AT EEOC, HAS MADE THESE ALLEGATIONS DOUBLY HARD ON ME.

I CANNOT IMAGINE ANYTHING THAT I SAID OR DID TO ANITA HILL THAT COULD HAVE BEEN MISTAKEN FOR SEXUAL HARASSMENT. BUT WITH THAT SAID, IF THERE IS ANYTHING THAT I HAVE SAID THAT HAS BEEN MISCONSTRUED, BY ANITA HILL OR ANYONE ELSE, TO BE SEXUAL HARASSMENT, THEN I CAN SAY THAT I AM SO VERY SORRY AND I WISH I HAD KNOWN. IF I DID KNOW, I WOULD HAVE STOPPED IMMEDIATELY AND I WOULD NOT, AS I HAVE DONE OVER THE PAST TWO WEEKS, HAD TO TEAR AWAY AT

MYSELF TRYING TO THINK OF WHAT I COULD POSSIBLY HAVE DONE. BUT,
I HAVE NOT SAID OR DONE THE THINGS THAT ANITA HILL HAS ALLEGED.

GOD HAS GOTTEN ME THROUGH THE DAYS SINCE SEPTEMBER 25TH. AND
HE IS MY JUDGE.

MR. CHAIRMAN, SOMETHING HAS HAPPENED TO ME IN THE DARK DAYS
THAT HAVE FOLLOWED SINCE THE FBI AGENTS INFORMED ME ABOUT THESE
ALLEGATIONS. AND THE DAYS HAVE GROWN DARKER AS THIS VERY SERIOUS,
VERY EXPLOSIVE, AND VERY SENSITIVE ALLEGATION^s ~~was~~ ^{were} SELECTIVELY
LEAKED TO THE MEDIA OVER THE PAST WEEKEND. AS IF THE CONFIDENTIAL
ALLEGATION^s ^{to me} WERE NOT ENOUGH, THIS APPARENTLY CALCULATED PUBLIC
DISCLOSURE HAS CAUSED ME, MY FAMILY, AND MY FRIENDS ENORMOUS PAIN
AND GREAT HARM.

I HAVE NEVER IN ALL MY LIFE FELT SUCH HURT, SUCH PAIN, SUCH
AGONY. MY FAMILY AND I HAVE BEEN DONE A GRAVE AND IRREPARABLE

INJUSTICE.

DURING THE PAST TWO WEEKS I LOST THE BELIEF THAT IF I DID MY BEST, ALL WOULD WORK OUT. I CALLED UPON THE STRENGTH THAT HELPED ME GET OUT OF PINPOINT ... AND IT WAS ALL SAPPED OUT OF ME. IT WAS SAPPED OUT OF ME BECAUSE ANITA HILL WAS A PERSON I CONSIDERED A FRIEND, WHOM I ADMIRE AND THOUGHT I HAD TREATED FAIRLY AND WITH THE UTMOST RESPECT. PERHAPS I COULD HAVE BETTER WEATHERED THIS IF IT WAS FROM SOMEONE ELSE, BUT HERE WAS SOMEONE I TRULY FELT I HAD DONE MY BEST WITH. THOUGH I AM BY NO MEANS A PERFECT PERSON, I HAVE NOT DONE WHAT SHE HAS ALLEGED. AND, I STILL DON'T KNOW WHAT I COULD POSSIBLY HAVE DONE TO CAUSE HER TO MAKE THESE ALLEGATIONS.

WHEN I STOOD NEXT TO THE PRESIDENT IN KENNEBUNKPORT, BEING NOMINATED TO THE SUPREME COURT OF THE UNITED STATES WAS A HIGH HONOR. BUT AS I SIT HERE BEFORE YOU 103 DAYS LATER, THAT HONOR HAS BEEN CRUSHED. FROM THE VERY BEGINNING, CHARGES WERE LEVELLED

AGAINST ME FROM THE SHADOWS. CHARGES OF DRUG ABUSE, ANTI-SEMITISM, WIFE BEATING, DRUG USE BY FAMILY MEMBERS, THAT I WAS A QUOTA APPOINTMENT, CONFIRMATION CONVERSION, AND MUCH MORE ... AND NOW THIS.

I HAVE COMPLIED WITH THE RULES. I RESPONDED TO A DOCUMENT REQUEST THAT PRODUCED OVER 30,000 PAGES OF DOCUMENTS. AND I HAVE TESTIFIED FOR FIVE FULL DAYS. I HAVE ENDURED THIS ORDEAL FOR 103 DAYS -- REPORTERS SNEAKING INTO MY GARAGE TO EXAMINE BOOKS I READ, REPORTERS AND INTEREST GROUPS SWARMING ^{over} ~~THROUGH~~ DIVORCE PAPERS LOOKING FOR DIRT, UNNAMED PEOPLE STARTING PREPOSTEROUS RUMORS, CALLS ALL OVER THE COUNTRY SPECIFICALLY REQUESTING DIRT. THIS IS NOT AMERICAN. THIS IS KAPKAESQUE. IT HAS GOT TO STOP. IT MUST STOP FOR THE BENEFIT OF FUTURE NOMINEES AND OUR COUNTRY. ENOUGH IS ENOUGH.

I AM NOT GOING TO ALLOW MYSELF TO BE FURTHER HUMILIATED IN ORDER TO BE CONFIRMED. I AM HERE SPECIFICALLY TO RESPOND TO ALLEGATIONS OF SEX HARASSMENT IN THE WORKPLACE. I AM NOT HERE TO BE FURTHER HUMILIATED BY THIS COMMITTEE OR ANYONE ELSE OR TO PUT MY PRIVATE LIFE ON DISPLAY FOR PRURIENT INTEREST OR OTHER REASONS. I WILL NOT ALLOW THIS COMMITTEE OR ANYONE ELSE TO PROBE INTO MY PRIVATE LIFE. THAT IS NOT WHAT AMERICA IS ALL ABOUT. TO ASK ME TO DO THAT WOULD BE TO ASK ME TO GO BEYOND FUNDAMENTAL FAIRNESS.

YESTERDAY, I CALLED MY MOTHER. SHE WAS CONFINED TO HER BED, UNABLE TO WORK AND UNABLE TO STOP CRYING. ENOUGH IS ENOUGH.

MR. CHAIRMAN, IN MY 43 YEARS ON THIS EARTH, I HAVE BEEN ABLE WITH THE HELP OF OTHERS TO DEFY POVERTY, AVOID PRISON, OVERCOME SEGREGATION, BIGOTRY, RACISM AND OBTAIN ONE OF THE FINEST EDUCATIONS AVAILABLE IN THIS COUNTRY. BUT I HAVE NOT BEEN ABLE TO OVERCOME THIS PROCESS. THIS IS WORSE THAN ANY OBSTACLE OR ANYTHING

THAT I HAVE EVER FACED.

THROUGHOUT MY LIFE, I HAVE BEEN ENERGIZED BY THE EXPECTATION AND THE HOPE THAT IN THIS COUNTRY I WOULD BE TREATED FAIRLY IN ALL MY ENDEAVORS. WHEN THERE WAS SEGREGATION, I HOPED THERE WOULD BE FAIRNESS ONE DAY. WHEN THERE WAS BIGOTRY AND PREJUDICE, I HOPED THAT THERE WOULD BE TOLERANCE AND UNDERSTANDING.

MR. CHAIRMAN, I AM PROUD OF MY LIFE -- PROUD OF WHAT I HAVE DONE -- PROUD OF MY FAMILY -- AND THIS PROCESS IS TRYING TO DESTROY IT ALL.

NO JOB IS WORTH WHAT I HAVE BEEN THROUGH. NO HORROR IN MY LIFE HAS BEEN SO DEBILITATING. CONFIRM ME IF YOU WANT. DON'T CONFIRM ME IF YOU ARE SO LED. BUT LET THIS PROCESS END. LET ME AND MY FAMILY REGAIN OUR LIVES. I NEVER ASKED TO BE NOMINATED. IT WAS AN HONOR. LITTLE DID I KNOW THE PRICE. I ENJOY AND

It is too high!
^

APPRECIATE MY CURRENT POSITION AND I AM COMFORTABLE WITH THE PROSPECT OF RETURNING TO MY WORK AS A JUDGE AND TO MY FRIENDS ON THE COURT OF APPEALS. EACH OF THESE POSITIONS IS PUBLIC SERVICE, AND I HAVE "GIVEN AT THE OFFICE". I WANT MY LIFE AND MY FAMILY'S LIFE BACK AND I WANT THEM RETURNED EXPEDITIOUSLY.

I HAVE EXPERIENCED THE EXHILARATION OF NEW HEIGHTS, FROM THE MOMENT I WAS CALLED TO KENNEBUNKPORT BY THE PRESIDENT TO HAVE LUNCH, AND HE NOMINATED ME. THAT WAS THE HIGH POINT. I WAS TOLD EYE TO EYE THAT: "CLARENCE, YOU MADE IT THIS FAR ON MERIT, THE REST IS GOING TO BE POLITICS."

THERE HAVE BEEN OTHER HIGHS...THE OUTPOURING OF SUPPORT FROM FRIENDS OF LONGSTANDING, A BONDING LIKE I HAVE NEVER EXPERIENCED WITH MY OLD BOSS, JACK DANFORTH. THE WONDERFUL SUPPORT OF THOSE WHO HAVE WORKED WITH ME. THERE HAVE BEEN PRAYERS SAID FOR MY FAMILY AND ME BY PEOPLE I KNOW AND PEOPLE I WILL NEVER MEET --

PRAYERS THAT WERE HEARD AND THAT SUSTAINED NOT ONLY ME, BUT ALSO MY WIFE AND MY ENTIRE FAMILY.

INSTEAD OF UNDERSTANDING AND APPRECIATING THE GREAT HONOR BESTOWED ON ME, I FIND MYSELF HERE TODAY DEFENDING MY NAME, MY INTEGRITY BECAUSE SOMEHOW SELECT PORTIONS OF CONFIDENTIAL DOCUMENTS DEALING WITH THIS MATTER WERE MADE PUBLIC.

MR. CHAIRMAN, I AM A VICTIM OF THIS PROCESS. MY NAME HAS BEEN HARMED. MY INTEGRITY HAS BEEN HARMED. MY CHARACTER HAS BEEN HARMED. MY FAMILY HAS BEEN HARMED. MY FRIENDS HAVE BEEN HARMED.

I WILL NOT PROVIDE THE ROPE FOR MY OWN LYNCHING OR FOR FURTHER HUMILIATION. I AM NOT GOING TO ENGAGE IN DISCUSSIONS, NOR WILL I SUBMIT TO ROVING QUESTIONS OF WHAT GOES ON IN THE MOST INTIMATE PARTS OF MY PRIVATE LIFE OR THE SANCTITY OF MY BEDROOM. THESE ARE THE MOST INTIMATE PARTS OF MY PRIVACY AND THEY WILL REMAIN JUST THAT: PRIVATE.

The CHAIRMAN. Thank you, Judge. You will not be asked to.

Before I begin my questioning of Judge Thomas, I would remind the committee and the nominee that, with respect to one set of allegations, those pertaining to Prof. Anita Hill, we are somewhat limited at this stage as to permissible questions. Professor Hill, as recently as late last night, continues to ask us to maintain the confidentiality of her statement to the committee.

So, Judge Thomas, at this stage of the hearing, without having heard Professor Hill's testimony and without using her statement, our questioning to you may not be complete. We may have to discuss some aspects of the allegations with you at the end of these hearings.

I would also note for the record that the choice of the order of these hearings was left to you. I asked whether or not you wished to go first or second, and you chose, as is your right, to speak first and then, if you so chose, to speak last.

Therefore, with respect to Professor Hill, I intend to focus on the general nature of your relationship with her, her responsibilities in your office and the environment in which she worked.

Judge you have spoken to some of these issues in your opening statement, but let me ask you—

Senator HATCH. Mr. Chairman.

The CHAIRMAN. Yes.

Senator HATCH. Mr. Chairman, I just want to say something for the record here. This is not the appointment of a justice of the peace. This is the nomination process of a man to become a Justice of the Supreme Court of the United States, and he has been badly maligned.

I might add that I have a lot of sympathy for Professor Hill, too, and I am not going to sit here and tolerate her attorneys telling you or me or anybody else that, now that she has made these statements in writing, with what is, if the Judge is telling the truth—and I believe he is—scurrilous allegations, that that statement cannot be used, especially in this proceeding. It is a matter of fairness.

I might add that I have been informed that the reporter who broke this story has her statement and read it to her before she would even talk to her. Now, it would be the greatest travesty I have ever seen in any court of law, let alone an open forum in the nomination process of a man for Justice of the U.S. Supreme Court, to allow her attorneys or her or anybody on this committee or anybody else, for that matter, to tell us what can or cannot be used now that this man's reputation has been very badly hurt.

The CHAIRMAN. Would the Senator yield?

Senator HATCH. I am not finished.

I intend to use that statement, because it is fair to use it. I do not want to hurt—

The CHAIRMAN. Senator, let me—

Senator HATCH. Let me finish.

The CHAIRMAN. No; I will not.

Senator HATCH. Yes; you will. Yes; you will.

The CHAIRMAN. Let me just make one—you are entitled to use the statement under the rule. No one, the Chair cannot stop you from using the statement.

Senator HATCH. Well, Mr. Chairman, how can it be admissible to everybody? Everybody in this country is going to see it.

Senator SIMPSON. Mr. Chairman, how can she request confidentiality at this point, when she said she—

The CHAIRMAN. I can answer that question. Professor Hill says that she wants to tell her story. She did not release the statement, she says, and she wants her story told by her. Because we have given the opportunity to the Judge to speak first, if he so chose, and he has, she wants to be able to present her thus far unreleased statement in her own words. She will not have spoken publicly when she comes and addresses the committee.

Now, why don't we get on with this process?

Senator THURMOND. Mr. Chairman, let me say a word.

Senator HATCH. I am not finished.

Senator THURMOND. Wait just 1 minute.

Senator HATCH. OK.

Senator THURMOND. Mr. Chairman, she has been on television telling her story. She has made it public, so, therefore, I think the right to use that statement ought to be admitted.

Senator KENNEDY. Mr. Chairman.

Senator HATCH. Mr. Chairman, I did not release the floor. I did to the chairman, because the chairman—I want to finish my comments.

The CHAIRMAN. The Senator from Massachusetts and then we will go back—

Senator HATCH. Mr. Chairman.

The CHAIRMAN. Everybody is going to get a chance to say what—

Senator HATCH. All right, if you will come back to me, I would appreciate it.

Senator KENNEDY. Mr. Chairman, it seems to me that you outlined a reasonable way of proceeding. I think it is entirely proper that Judge Thomas be able to make what statement that he so desires. And I thought it was a very moving statement, Judge.

It might be appropriate, if that is the desire, that at least we work out in terms of the committee and the committee's understanding the way that we are going to proceed on this. As I understand, the professor had indicated a willingness to testify first or go second, and now we are in the situation where Judge Thomas has spoken, and it seems to me that we ought to be able to work out at least the way that we are going to proceed that is going to be respectful both of Judge Thomas and the witness, without getting into a lot of back and forth up here, which is not really the purpose of the hearing.

What I might suggest, at least, is that we have a very brief recess, so that we can at least find out the way that we can proceed that is consistent with Judge Thomas, consistent with the others, and satisfactory to the committee.

Senator HATCH. Mr. Chairman.

Senator DECONCINI. Mr. Chairman.

Senator HATCH. Mr. Chairman.

The CHAIRMAN. The Senator from Utah.

Senator HATCH. I object to a recess. The fact of the matter is, last Thursday, a substantial majority of the Senate frankly asked us to

get to the bottom of this. The public deserves to know now, one way or the other, and the public is going to know, if I have anything to say about it.

Our colleagues demanded it. They did not ask us to just find out so much as the witness will allow us to ask, and I have no intention of pillorying or maligning Professor Hill. I feel sorry for both of these people. Both of them are going to come out of this with less of a reputation. It is pathetic and it would not have happened—

Senator DECONCINI. Mr. Chairman.

Senator HATCH. Let me finish, if I could.

If somebody on this committee or their staff had had the honesty and the integrity before the vote to raise this issue and ask for an executive session and say this has to be brought—nobody did, and then somebody on this committee or their staff, and I am outraged by it, leaked that report, an FBI report that we all know should never be disclosed to the public, because of the materials that generally are in them. They take it down as it is given. It has raw stuff in it, but it has been leaked. The media knows everything in it. I think the American people are entitled to know, if they want to.

What I am trying to say is that, to be frank, Mr. Chairman, there are inconsistencies in the statement of Anita Hill to the FBI, compared to her other statements. I do not particularly intend to go into that. She is entitled to explain these discrepancies, but Judge Thomas is entitled to point out these inconsistencies for their bearing on the credibility of the accuser in this instance, nice person though she may be, a good law professor though she may be, a fellow Yale law graduate though she may be, and the statements of—

The CHAIRMAN. Senator—

Senator DECONCINI. Mr. Chairman.

Senator HATCH. If I could just finish. I promise to be shorter. The statements of the subsequent witnesses are also at variance with Professor Hill's statements with what she told the FBI. If she happens to testify differently today, we have to find out which of those statements are true, and if I—

The CHAIRMAN. Senator, we are not at liberty to publicly discuss what is in the FBI report. Her statement is what—

Senator HATCH. The heck we're not. This report has been leaked to the press, they know about it. Part of it has been read to the accuser in this case. I think it is time to be fair to the nominee. He has come this far. He is the one who is being accused. They have the burden of showing that he is not telling the truth here, and he has a right to face the accuser and everything that accuser says, and if he does not, then I am going to resign from this committee today. I am telling you, I don't want to be on it.

The CHAIRMAN. The hearing is in recess for 5 minutes.

[Recess.]

The CHAIRMAN. The hearing will come to order.

The committee has met and resolved the impasse the following way: Professor Hill indicated on the telephone that she was prepared to have her statement released.

In further discussion with the committee and others involved, it has been determined that we will excuse temporarily Judge Thomas and we will call momentarily as the witness Anita Hill. Anita Hill will be sworn and will make her own statement in her own words. At that time, we will begin the questioning of Professor Hill, after which we will bring back Judge Thomas for questioning.

Now, the committee will stand in recess until—and I imagine it is only momentarily, until Professor Hill arrives. We will stand in recess until she is able to take her seat, which should be a matter of a minute or so.

I am told that security is clearing the hall. She is in the hall, so that she can come down.

[Pause.]

The CHAIRMAN. I will tell you what the procedure will be, while your family and others are being seated. In a moment, I will ask you to stand to be sworn. When that is finished, we will invite you to make any statement that you wish to make, and then I will begin by asking you some questions. Senator Specter will ask you some questions, and then Senator Leahy will ask you some questions, and then I assume it will be Senator Specter again, but I am not certain of that.

Again, welcome. We are happy that you are here, and stand and be sworn, if you will: Professor, are you prepared to tell the whole truth and nothing but the truth, so help you, God?

Ms. HILL. I do.

[The biographical statement of Ms. Hill follows:]

ANITA F. HILL**EDUCATION****LEGAL**

J.D. Yale University, School
of Law 1980

Honors

Earl J. Warren Legal Scholar

Activities

Yale Moot Court (appellate competition)
Barristers Union (trial competition)
Yale Legislative Services (clinical, research
and writing program in Legislative studies)
Child Advocacy Clinic (clinical program
representing children and parents in state
proceedings)
Student Representative
Student Member, Law School Admissions Policy
Committee

UNDERGRADUATE

B.S. Psychology Oklahoma State University 1977

Honors

National Merit Scholar
Oklahoma State University Regents Scholar
Presidents Honor Roll
Deans Honor Roll
Oklahoma State University's Nominee for the
Danforth Fellowship

Activities

Participant, Department of Health, Education
& Welfare workshop on *Adams v. Califano*
Volunteer Counselor, Office of Freshmen
Programs & Services
Member, Advisory Board of Oklahoma State
University Women's Council

PROFESSIONAL EXPERIENCE**ACADEMIC**

Professor of Law 1986 - Present
 University of Oklahoma
 300 Timberdell Road
 Norman, OK 73019

Faculty Administrative Fellow
 Office of the Provost
 University of Oklahoma
 Evans Hall
 Norman, OK 73019

Subjects Taught

Contracts I & II
 Transactions in Goods
 Civil Rights/Civil Liberties Seminar
 Commercial Law Seminar

Honors

Recipient Calvert Law Faculty Award
 College of Law, Associates Distinguished
 Lectureship

Activities

Faculty Advisor, Black Law Student
 Association
 Coach, Frederick Douglas Moot Court
 Competition Team
 Member, University Faculty Senate
 Member, University Athletic Council
 Member, President's Advisory Committee
 on Minority Affairs
 Member, Dean's Advisory Committee on
 Afro-American Studies Program
 (College of Arts & Sciences)

Committee Assignments

Student Scholarship; Curriculum and
 Scheduling; Library & Space Utilization;
 Indian Law Review; Personnel; Moot Court;
 University Judicial Tribunal; & University
 Committee on Discrimination

Assistant Professor of Law 1983-1986
 O.W. School of Law, Oral Roberts University
 7777 South Lewis Avenue
 Tulsa, OK 74147

Subjects Taught

Commercial Transactions I & II
 Employment Discrimination Law
 Constitutional & Civil Rights
 Appellate Advocacy
 Legal Research & Writing

Committee Assignments

Admissions; Faculty Development &
 Evaluation; Student Affairs; Law
 Review; Long Range Planning &
 Development; and Law Library

PUBLIC

Special Assistant to the Chairman 1982-1983
 Equal Employment Opportunity Commission
 2401 "E" Street, N.W.
 Washington, D.C. 20506

Responsibilities

Reviewing and analyzing Commission policy
 Writing legal policy and position papers for
 the Chairman
 Advising the Chairman on the effectiveness of
 the program and the functions of the
 Commission
 Reviewing various administrative and managerial
 functions in the Offices of Review &
 Appeals, Congressional Affairs, and Public
 Affairs

Special Counsel 1981-1982
 Office of the Assistant Secretary
 Department of Education, Office for Civil
 Rights
 Washington, D.C. 20202

Responsibilities

Advising the Assistant Secretary on legal and policy matters
 Reviewing legal and policy positions for consistency with enforcement activities
 Writing position papers on various civil rights, education issues

PRIVATE

Associate 1980-1981 and Summer 1979
 Ward, Hartrader & Ross
 1300 Nineteenth Street, N.W.
 Washington, D.C. 20036

Responsibilities

Researching and writing appellate and agency briefs and interoffice memoranda on environmental; corporate; antitrust and administrative law questions

Researching and writing continuing legal education coursebook on banking law

Associate Summer 1978
 O'Melveny & Myers
 611 West Sixth Street
 Los Angeles, California 90036

Responsibilities

Researching and writing interoffice memoranda primarily on corporate and litigation questions

SCHOLARSHIP

"A Drawee's Right to Restitution of Mistaken Payments Under Articles 3 and 4 of the UCC," 7 *Journal of Law and Commerce* 293, Reprinted in Volume 3, *Banking Law Anthology*.

"*Prairie Production, Inc. v. Agchem Division Penn Walt Corp. and Roth v. Maloney Cadillac*., Old and New Approaches to Manufacturer Liability for Economic loss." *Consumer Law Quarterly*.

"A Comparative Study of the Convention on the Limitation Period in International Sales of Goods and Article 2-725 of the Uniform Commercial Code." *25 Texas International Law Journal* 1.

"The Relative Nature of Property in the Context of Bankruptcy," *Kansas Law Review*.

"Bankruptcy, Contracts & Utilitarianism," *Missouri Law Review*.

PROFESSIONAL ORGANIZATIONS

Member, District of Columbia Bar Association

Member, American Bar Association, Committee on Uniform Commercial Code, Subcommittees on General Provisions, Sales, Bulk Transfers and Documents of Title; and Letters of Credit, Working Group on the Convention on the Limitation Period in the International Sales of Goods, Chair, Working Group on Unidroit Principles of International Contract Law.

Former Member, Oklahoma Bar Association, Young Lawyers Division on Professional Ethics; Alternative Dispute Resolution; and Minorities in the Profession

Former Member and Officer, Northeastern Oklahoma Black Lawyers Association

Former Member and Officer, Yale Law School Alumni Association, Washington, D.C.

CIVIC ACTIVITIES

Former Member and Vice President, Board of Directors Women's Resource Center

Former Member, Board of Directors of Handitrans of Norman

Former Member, Board of Directors Big Brothers and Big Sisters of Green Country (Tulsa, Oklahoma)

**TESTIMONY OF ANITA F. HILL, PROFESSOR OF LAW,
UNIVERSITY OF OKLAHOMA, NORMAN, OK**

The CHAIRMAN. Professor Hill, please make whatever statement you would wish to make to the committee.

Ms. HILL. Mr. Chairman—

The CHAIRMAN. Excuse me. I instruct the officers not to let anyone in or out of that door while Professor Hill is making her statement.

Ms. HILL. Mr. Chairman, Senator Thurmond, members of the committee, my name is Anita F. Hill, and I am a professor of law at the University of Oklahoma.

I was born on a farm in Okmulgee County, OK, in 1956. I am the youngest of 13 children. I had my early education in Okmulgee County. My father, Albert Hill, is a farmer in that area. My mother's name is Erma Hill. She is also a farmer and a housewife.

My childhood was one of a lot of hard work and not much money, but it was one of solid family affection as represented by my parents. I was reared in a religious atmosphere in the Baptist faith, and I have been a member of the Antioch Baptist Church, in Tulsa, OK, since 1983. It is a very warm part of my life at the present time.

For my undergraduate work, I went to Oklahoma State University, and graduated from there in 1977. I am attaching to the statement a copy of my résumé for further details of my education.

The CHAIRMAN. It will be included in the record.

Ms. HILL. Thank you.

I graduated from the university with academic honors and proceeded to the Yale Law School, where I received my J.D. degree in 1980.

Upon graduation from law school, I became a practicing lawyer with the Washington, DC, firm of Wald, Harkrader & Ross. In 1981, I was introduced to now Judge Thomas by a mutual friend. Judge Thomas told me that he was anticipating a political appointment and asked if I would be interested in working with him. He was, in fact, appointed as Assistant Secretary of Education for Civil Rights. After he had taken that post, he asked if I would become his assistant, and I accepted that position.

In my early period there, I had two major projects. First was an article I wrote for Judge Thomas' signature on the education of minority students. The second was the organization of a seminar on high-risk students, which was abandoned, because Judge Thomas transferred to the EEOC, where he became the Chairman of that office.

During this period at the Department of Education, my working relationship with Judge Thomas was positive. I had a good deal of responsibility and independence. I thought he respected my work and that he trusted my judgment.

After approximately 3 months of working there, he asked me to go out socially with him. What happened next and telling the world about it are the two most difficult things, experiences of my life. It is only after a great deal of agonizing consideration and a number of sleepless nights that I am able to talk of these unpleasant matters to anyone but my close friends.

I declined the invitation to go out socially with him, and explained to him that I thought it would jeopardize what at the time I considered to be a very good working relationship. I had a normal social life with other men outside of the office. I believed then, as now, that having a social relationship with a person who was supervising my work would be ill advised. I was very uncomfortable with the idea and told him so.

I thought that by saying "no" and explaining my reasons, my employer would abandon his social suggestions. However, to my regret, in the following few weeks he continued to ask me out on several occasions. He pressed me to justify my reasons for saying "no" to him. These incidents took place in his office or mine. They were in the form of private conversations which would not have been overheard by anyone else.

My working relationship became even more strained when Judge Thomas began to use work situations to discuss sex. On these occasions, he would call me into his office for reports on education issues and projects or he might suggest that because of the time pressures of his schedule, we go to lunch to a government cafeteria. After a brief discussion of work, he would turn the conversation to a discussion of sexual matters. His conversations were very vivid.

He spoke about acts that he had seen in pornographic films involving such matters as women having sex with animals, and films showing group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises, or large breasts involved in various sex acts.

On several occasions Thomas told me graphically of his own sexual prowess. Because I was extremely uncomfortable talking about sex with him at all, and particularly in such a graphic way, I told him that I did not want to talk about these subjects. I would also try to change the subject to education matters or to nonsexual personal matters, such as his background or his beliefs. My efforts to change the subject were rarely successful.

Throughout the period of these conversations, he also from time to time asked me for social engagements. My reactions to these conversations was to avoid them by limiting opportunities for us to engage in extended conversations. This was difficult because at the time, I was his only assistant at the Office of Education or Office for Civil Rights.

During the latter part of my time at the Department of Education, the social pressures and any conversation of his offensive behavior ended. I began both to believe and hope that our working relationship could be a proper, cordial, and professional one.

When Judge Thomas was made chair of the EEOC, I needed to face the question of whether to go with him. I was asked to do so and I did. The work, itself, was interesting, and at that time, it appeared that the sexual overtures, which had so troubled me, had ended.

I also faced the realistic fact that I had no alternative job. While I might have gone back to private practice, perhaps in my old firm, or at another, I was dedicated to civil rights work and my first choice was to be in that field. Moreover, at that time the Department of Education, itself, was a dubious venture. President Reagan was seeking to abolish the entire department.

For my first months at the EEOC, where I continued to be an assistant to Judge Thomas, there were no sexual conversations or overtures. However, during the fall and winter of 1982, these began again. The comments were random, and ranged from pressing me about why I didn't go out with him, to remarks about my personal appearance. I remember him saying that "some day I would have to tell him the real reason that I wouldn't go out with him."

He began to show displeasure in his tone and voice and his demeanor in his continued pressure for an explanation. He commented on what I was wearing in terms of whether it made me more or less sexually attractive. The incidents occurred in his inner office at the EEOC.

One of the oddest episodes I remember was an occasion in which Thomas was drinking a Coke in his office, he got up from the table, at which we were working, went over to his desk to get the Coke, looked at the can and asked, "Who has put pubic hair on my Coke?"

On other occasions he referred to the size of his own penis as being larger than normal and he also spoke on some occasions of the pleasures he had given to women with oral sex. At this point, late 1982, I began to feel severe stress on the job. I began to be concerned that Clarence Thomas might take out his anger with me by degrading me or not giving me important assignments. I also thought that he might find an excuse for dismissing me.

In January 1983, I began looking for another job. I was handicapped because I feared that if he found out he might make it difficult for me to find other employment, and I might be dismissed from the job I had.

Another factor that made my search more difficult was that this was during a period of a hiring freeze in the Government. In February 1983, I was hospitalized for 5 days on an emergency basis for acute stomach pain which I attributed to stress on the job. Once out of the hospital. I became more committed to find other employment and sought further to minimize my contact with Thomas.

This became easier when Allyson Duncan became office director because most of my work was then funneled through her and I had contact with Clarence Thomas mostly in staff meetings.

In the spring of 1983, an opportunity to teach at Oral Roberts University opened up. I participated in a seminar, taught an afternoon session in a seminar at Oral Roberts University. The dean of the university saw me teaching and inquired as to whether I would be interested in pursuing a career in teaching, beginning at Oral Roberts University. I agreed to take the job, in large part, because of my desire to escape the pressures I felt at the EEOC due to Judge Thomas.

When I informed him that I was leaving in July, I recall that his response was that now, I would no longer have an excuse for not going out with him. I told him that I still preferred not to do so. At some time after that meeting, he asked if he could take me to dinner at the end of the term. When I declined, he assured me that the dinner was a professional courtesy only and not a social invitation. I reluctantly agreed to accept that invitation but only if it was at the very end of a working day.

On, as I recall, the last day of my employment at the EEOC in the summer of 1983, I did have dinner with Clarence Thomas. We went directly from work to a restaurant near the office. We talked about the work that I had done both at Education and at the EEOC. He told me that he was pleased with all of it except for an article and speech that I had done for him while we were at the Office for Civil Rights. Finally he made a comment that I will vividly remember. He said, that if I ever told anyone of his behavior that it would ruin his career. This was not an apology, nor was it an explanation. That was his last remark about the possibility of our going out, or reference to his behavior.

In July 1983, I left the Washington, DC, area and have had minimal contacts with Judge Clarence Thomas since. I am, of course, aware from the press that some questions have been raised about conversations I had with Judge Clarence Thomas after I left the EEOC.

From 1983 until today I have seen Judge Thomas only twice. On one occasion I needed to get a reference from him and on another, he made a public appearance at Tulsa. On one occasion he called me at home and we had an inconsequential conversation. On one occasion he called me without reaching me and I returned the call without reaching him and nothing came of it. I have, at least on three occasions been asked to act as a conduit to him for others.

I knew his secretary, Diane Holt. We had worked together both at EEOC and Education. There were occasions on which I spoke to her and on some of these occasions, undoubtedly, I passed on some casual comment to her, Chairman Thomas. There were a series of calls in the first 3 months of 1985, occasioned by a group in Tulsa which wished to have a civil rights conference. They wanted Judge Thomas to be the speaker and enlisted my assistance for this purpose.

I did call in January and February to no effect and finally suggested to the person directly involved, Susan Cahall, that she put the matter into her own hands and call directly. She did so in March 1985.

In connection with that March invitation, Ms. Cahall wanted conference materials for the seminar, and some research was needed. I was asked to try and get the information and did attempt to do so. There was another call about another possible conference in July 1985.

In August 1987, I was in Washington, DC, and I did call Diane Holt. In the course of this conversation she asked me how long I was going to be in town and I told her. It is recorded in the messages as August 15, it was, in fact, August 20. She told me about Judge Thomas' marriage and I did say, congratulations.

It is only after a great deal of agonizing consideration that I am able to talk of these unpleasant matters to anyone, except my closest friends as I have said before. These last few days have been very trying and very hard for me, and it hasn't just been the last few days this week. It has actually been over a month now that I have been under the strain of this issue. Telling the world is the most difficult experience of my life, but it is very close to have to live through the experience that occasioned this meeting. I may have used poor judgment early on in my relationship with this

issue. I was aware, however, that telling at any point in my career could adversely affect my future career. And I did not want, early on, to build all the bridges to the EEOC.

As I said, I may have used poor judgment. Perhaps I should have taken angry or even militant steps, both when I was in the agency or after I had left it, but I must confess to the world that the course that I took seemed the better, as well as the easier approach.

I declined any comment to newspapers, but later when Senate staff asked me about these matters, I felt that I had a duty to report. I have no personal vendetta against Clarence Thomas. I seek only to provide the committee with information which it may regard as relevant.

It would have been more comfortable to remain silent. It took no initiative to inform anyone. I took no initiative to inform anyone. But when I was asked by a representative of this committee to report my experience I felt that I had to tell the truth. I could not keep silent.

[The prepared statement of Ms. Hill follows:]

Embargoed Until 10:00 am, 10/11/91

Professor Anita F. Hill
Senate Judiciary Committee
October 11, 1991

Mr. Chairman, Senator Thurmond, Members of the Committee, my name is Anita F. Hill, and I am a Professor of Law at the University of Oklahoma. I was born on a farm in Okmulge, Oklahoma in 1956, the 13th child, and had my early education there. My father is Albert Hill, a farmer of that area. My mother's name is Erma Hill, she is also a farmer and housewife. My childhood was the childhood of both work and poverty; but it was one of solid family affection as represented by my parents who are with me as I appear here today. I was reared in a religious atmosphere in the Baptist faith and I have been a member of the Antioch Baptist Church in Tulsa since 1983. It remains a warm part of my life at the present time.

For my undergraduate work I went to Oklahoma State University and graduated in 1977. I am attaching to this statement my resume with further details of my education. I graduated from the university with academic honors and proceeded to the Yale Law School where I received my J.D. degree in 1980.

Upon graduation from law school I became a practicing lawyer with the Washington, D.C. firm of Wald, Harkrader & Ross. In 1981, I was introduced to now Judge Thomas by a mutual friend. Judge Thomas told me that he anticipated a political appointment shortly and asked if I might be interested in working in that

office. He was in fact appointed as Assistant Secretary of Education, in which capacity he was the Director of the Office for Civil Rights. After he was in that post, he asked if I would become his assistant and I did then accept that position. In my early period, there I had two major projects. The first was an article I wrote for Judge Thomas' signature on Education of Minority Students. The second was the organization of a seminar on high risk students, which was abandoned because Judge Thomas transferred to the EEOC before that project was completed.

During this period at the Department of Education, my working relationship with Judge Thomas was positive. I had a good deal of responsibility as well as independence. I thought that he respected my work and that he trusted my judgment. After approximately three months of working together, he asked me to go out with him socially. I declined and explained to him that I thought that it would only jeopardize what, at the time, I considered to be a very good working relationship. I had a normal social life with other men outside of the office and, I believed then, as now, that having a social relationship with a person who was supervising my work would be ill-advised. I was very uncomfortable with the idea and told him so.

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Civil Rights. During the latter part of my time at the Department of Education, the social pressures and any conversations of this offensive kind ended. I began both to believe and hope that our working relationship could be on a proper, cordial and professional base.

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more or less sexually attractive. The incidents occurred in his inner office at the EEOC.

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her and I had contact with Clarence Thomas mostly in staff meetings.

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At some time after that meeting, he asked if he could take me to dinner at the end of my term. When I declined, he assured me that the dinner was a professional courtesy only and not a social invitation. I reluctantly agreed to accept that invitation but only if it was at the very end of a workday. On, as I recall, the last day of my employment at the EEOC in the summer of 1983, I did have dinner with Clarence Thomas. We went directly from work to a restaurant near the office. We talked about the work I had done both at Education and at EEOC. He told me that he was pleased with all of it except for an article and speech that I done for him when we were at the Office for Civil Rights. Finally, he made a comment which I vividly remember. He said that if I ever told anyone about his behavior toward me it could ruin his career. This was not an apology nor was there any explanation. That was his last remark about the possibility of our going out or reference to his behavior.

In July 1983, I left the Washington, D.C. area and have had minimal contacts with Judge Clarence Thomas since.

I am of course aware from the press that some question has been raised about conversations I had with Judge Clarence Thomas after I left the EEOC. From 1983 until today I have seen Judge Clarence Thomas only twice. On one occasion I needed to get a reference from him and on another he made a public appearance in Tulsa. On one occasion he called me at home and we had an inconsequential conversation. On one other occasion he called me without reaching me and I returned the call without reaching him and nothing came of it. I have, on at least three occasions been asked to act as a conduit for others.

I knew his secretary, Diane Holt, well when I was with the EEOC. There were occasions on which I spoke to her and on some of those occasions undoubtedly I passed on some casual comment to Thomas.

There was a series of calls in the first three months of 1985 occasioned by a group in Tulsa which wished to have a civil rights conference; they wanted Thomas to be the speaker, and enlisted my assistance for this purpose. I did call in January and February to no effect and finally suggested to the person directly involved, Susan Cahall, that she put the matter back into her own hands and call directly. She did do that in March of 1985. In connection with that March invitation to Tulsa by Ms. Cahall, which was for a seminar conference some research was needed; I was asked to try to get the research work and did

attempt to do so by a call to Thomas. There was another call about another possible conference in July of 1985.

In August of 1987, I was in Washington and I did call Diane Holt. In the course of this conversation she asked me how long I was going to be in town and I told her; she recorded it as a August 15; it was in fact August 20. She told me about Thomas' marriage and I did say "congratulate him."

It is only after a great deal of agonizing consideration that I am able to talk of these unpleasant matters to anyone but my closest friends. Telling the world is the most difficult experience of my life. I was aware that he could effect my future career and did not wish to burn all my bridges. I may have used poor judgment; perhaps I should have taken angry or even militant steps both when I was in the agency or after I left it, but I must confess to the world that the course I took seemed to me to be the better as well as the easier approach. I declined any comment to newspapers, but later, when Senate staff asked me about these matters, I felt I had a duty to report. I have no personal vendetta against Clarence Thomas. I seek only to provide the Committee with information which it may regard as relevant. It would have been more comfortable to remain silent. I took no initiative to inform anyone. But when I was asked by a representative of this committee to report my experience, I felt that have had no other choice but to tell the truth.

The CHAIRMAN. Thank you, very much.

Professor, before I begin my questioning, I notice there are a number of people sitting behind you. Are any of them your family members that you would like to introduce?

Ms. HILL. Well, actually my family members have not arrived yet. Yes, they have. They are outside the door, they were not here for my statement.

The CHAIRMAN. We will make room for your family to be able to sit.

Ms. HILL. It is a very large family, Senator.

The CHAIRMAN. Well, we will begin but attempt to accommodate as quietly as we can what may be an unusual arrangement. I might ask, is everyone who is sitting behind you necessary? Maybe they could stand and let your family sit. I would assume the reason that—to make it clear—the reason that your family is not here at the moment is that you did not anticipate coming. If those do not need to be seated behind Miss Hill could stand with the rest of our staffs, we could seat the family.

We will try to get a few more chairs, if possible, but we should get this underway. We may, at some point, Professor Hill, attempt to accommodate either your counsel and/or your family members with chairs down the side here. They need not all be up front here.

Fine, we can put them in the back, as well.

Now, there are two chairs on the end here, folks. We must get this hearing moving. There are two chairs on the end here. We will find everyone a seat but we must begin.

Now, Professor Hill, at the risk of everyone behind you standing up, would you be kind enough to introduce your primary family members to us.

Ms. HILL. I would like to introduce, first of all, my father, Albert Hill.

The CHAIRMAN. Mr. Hill, welcome.

Ms. HILL. My mother, Erma Hill.

The CHAIRMAN. Mrs. Hill.

Ms. HILL. My mother is going to be celebrating her 80th birthday on the 16th.

The CHAIRMAN. Happy birthday, in advance.

Ms. HILL. My sister, my eldest sister, Elreatha Lee is here; my sister Jo Ann Fennell, my sister Coleen Gilcrist, my sister Joyce Baird.

The CHAIRMAN. I welcome you all. I am sorry?

Ms. HILL. My brother, Ray Hill.

The CHAIRMAN. Thank you, Professor.

Ms. HILL. I would also—I am sorry.

The CHAIRMAN. Please?

Ms. HILL. I would also like to introduce my counsel at this time.

The CHAIRMAN. Yes; that would be appropriate.

Ms. HILL. Mr. Gardner, Ms. Susan Roth, and Mr. Charles Ogeltree.

The CHAIRMAN. Thank you.

Now, professor, thank you for your statement and your introductions and I think it is important that the committee understand a little more about your background and your work experience

before we get into the specific allegations that you have made in your statement.

I understand, as you have just demonstrated, you come from a large family and I have been told that you have indicated that you are the youngest in the family, is that correct?

Ms. HILL. Yes, I am.

The CHAIRMAN. Now, I assume, like all families, they have been a great help and assistance to you. Let me ask you tell me again your educational background for the record?

Ms. HILL. I went to primary, elementary and secondary school in Okmulge County, and Morris High School, Morris Jr. High and Erim Grade School in reverse order. I went to Oklahoma State University starting in 1973 and graduated in 1977 from Oklahoma State University with a degree in psychology, and in 1977 I began attending Yale Law School. I graduated, received my J.D. degree from there in 1980.

The CHAIRMAN. Now, what was your first job after graduation from law school?

Ms. HILL. I worked at the firm of Wald, Harkrader & Ross.

The CHAIRMAN. How did you acquire the job—that is a Washington law firm?

Ms. HILL. That is a Washington, DC, law firm.

The CHAIRMAN. And how did you acquire that job?

Ms. HILL. Through the interviewing process. The first interview took place at Yale Law School. I was interviewed for that job. I don't remember the names of the interviewers. I was called to Washington for an interview in the office, of Wald, Harkrader & Ross, I was interviewed by a number of people and I accepted an appointment with them.

Now, I will say that that interview process was proceeded by work that I had done with them as a summer associate, and so the interview process the second time around was really, actually I will say that the interview process took place before the summer associate and then at the end of that summer associateship I was asked to work there full time.

The CHAIRMAN. Who was your immediate supervisor when you were at that law firm?

Ms. HILL. Well, a number of individuals. I worked with a number of different attorneys on different projects.

The CHAIRMAN. So, it would the budget you we are working on?

Ms. HILL. Yes.

The CHAIRMAN. Now, what type of work did you do while you were at the law firm? Was it specialized, or did you do whatever was asked by any of the partners?

Ms. HILL. Well, since I worked there for only 1 year, I was a fairly new associate, most of my work was basically what was available and when I had time available to do it. However, I did some Federal Trade work, I did some environmental law work there, and I participated in the drafting of a manual on banking law while I was there.

The CHAIRMAN. Now, did you decide you wanted to leave that law firm, or was it suggested to you?

Ms. HILL. It was never—

The CHAIRMAN. Did someone approach you and say there's another job you might like, or did you indicate that you would like to leave the law firm to seek another job?

Ms. HILL. I was interested in seeking other employment. It was never suggested to me at the firm that I should leave the law firm in any way.

The CHAIRMAN. How old were you at this time?

Ms. HILL. At the time, I was 24 years old.

The CHAIRMAN. Now, were you dissatisfied at the law firm? Why did you want to leave?

Ms. HILL. Well, I left the law firm because I wanted to pursue other practice, in other practice other than basically the commercial practice, civil practice that was being done at the law firm. I was not dissatisfied with the quality of the work or the challenges of the work. I thought that I would be more personally fulfilled if I pursued other fields of the law.

The CHAIRMAN. Now, again, were you approached as to the opportunity at the Department of Education, or were you aware that there was a potential opening and you sought it out?

Ms. HILL. I spoke only with Clarence Thomas about the possibility of working at the—

The CHAIRMAN. Excuse me. How did you get to Clarence Thomas, that is my question?

Ms. HILL. I was introduced to him by a mutual friend.

The CHAIRMAN. Was the mutual friend a member of the law firm for which you worked?

Ms. HILL. Yes, and his name is Gilbert Hardy. He was a member of the firm for which I worked, Wald, Harkrader & Ross.

The CHAIRMAN. You had expressed to Mr. Hardy that you would like to move into government or move out of the practice? Were you specific in what you wanted to do?

Ms. HILL. I told him only that I was interested in pursuing something other than private practice.

The CHAIRMAN. Now, some of the activities of the Office of Civil Rights at the time were pretty controversial. We heard testimony, in fact, about the fact the office was under court order to change its practice for carrying out its duties, and some have suggested that Mr. Thomas had done an exemplary job in changing things, and some have suggested otherwise.

Did the controversy surrounding the office detract from your interest in taking this job, or did you consider it?

Ms. HILL. I certainly considered it. I considered the fact that there was talk about abolishing the office. I considered all of those things, but I saw this as an opportunity to do some work that I may not get at another time.

The CHAIRMAN. Did you think this was as good job?

Ms. HILL. Pardon me?

The CHAIRMAN. Did you view this as a good job, or did you view this as an intermediate step?

Ms. HILL. I viewed it as a good job, yes.

The CHAIRMAN. Can you describe for the committee your duties, initial duties when you arrived at the Department of Education, in the civil rights area? What were your duties?

Ms. HILL. My duties were really special projects and special research. A lot of the special projects involved commenting on Office for Civil Rights policies, it involved doing research on education issues as they related to socioeconomic factors, and so forth.

The CHAIRMAN. Was Judge Thomas your direct supervisor? Did you report to anyone else but Judge Thomas at the time?

Ms. HILL. I reported only to Judge Thomas.

The CHAIRMAN. So, the Department of Education, your sole immediate supervisor was Judge Thomas?

Ms. HILL. Yes.

The CHAIRMAN. And what was your title?

Ms. HILL. Attorney adviser.

The CHAIRMAN. Attorney adviser. Now, did you have reason to interact with Judge Thomas in that capacity very often during the day?

Ms. HILL. We interacted regularly.

The CHAIRMAN. Did you attend meetings with Judge Thomas?

Ms. HILL. I would attend some meetings, but not all of the meetings that he attended.

The CHAIRMAN. Perhaps you would be willing to describe to the committee what a routine work day was at that phase of your career in working with Judge Thomas.

Ms. HILL. Well, it could—I am not sure there was any such thing as a routine work day. Some days I would go in, I might be asked to respond to letters that Judge Thomas had received, I might be asked to look at memos that had come from the various offices in the Office for Civil Rights.

If there was as meeting which Judge Thomas needed to attend, that he wanted someone there to take information or to help him with information, I might be asked to do that.

The CHAIRMAN. Where was your office physically located relative to Judge Thomas' office?

Ms. HILL. His office was set up down the hall from mine. Inside his set of offices, there was a desk for his secretary and then his office was behind a closed door. My office was down the hall, it was separated from his office.

The CHAIRMAN. Can you describe to us how it was that you came to move over to the EEOC with Judge Thomas?

Ms. HILL. Well, my understanding of—I did not have much notice that Judge Thomas was moving over to the EEOC. My understanding from him at that time was that I could go with him to the EEOC, that I did not have—since I was his special assistant, that I did not have a position at the Office for Education, but that I was welcome to go to the EEOC with him.

It was as very tough decision, because this behavior occurred. However, at the time that I went to the EEOC, there was as period—or prior to the time we went to the EEOC, there was as period where the incidents had ceased, and so after some consideration of the job opportunities in the area, as well as the fact that I was not assured that my job at Education was going to be protected, I made a decision to move to the EEOC.

The CHAIRMAN. Were you not assured of that, because you were a political appointee, or were you not assured of it because—tell me why you felt you weren't assured of that.

Ms. HILL. Well, there were two reasons, really. One, I was a special assistant of a political appointee, and, therefore, I assumed and I was told that that position may not continue to exist. I didn't know who was going to be taking over the position. I had not been interviewed to become the special assistant of the new individual, so I assumed they would want to hire their own, as Judge Thomas had done.

In addition, the Department of Education at that time was scheduled to be abolished. There had been a lot of talk about it, and at that time it was truly considered to be on its way out, and so, for a second reason, I could not be certain that I would have a position there.

The CHAIRMAN. Now, when you moved over to EEOC, can you recall for us, to the best of your ability, how that offer came about? Did you inquire of Judge Thomas whether or not you could go to EEOC? Did he suggest it? Do you recall?

Ms. HILL. I recall that when the appointment at the EEOC became firm, that I was called into his office, and I believe Diane Holt was there, too, and—

The CHAIRMAN. Diane Holt, his personal secretary?

Ms. HILL. Diane Holt was his secretary at Education. We were there and he made the announcement about the appointment and assured us that we could go to the EEOC with him.

The CHAIRMAN. Now, when you went to EEOC, what were your duties there?

Ms. HILL. Well, my duties were really varied, because it was a much larger organization, there were so many more functions of the organization, my primary duties were to be the liaison to the Office of Congressional Affairs and the Office of Review and Appeals, so that I reviewed a number of the cases that came up on appeal, to make certain our office had given proper consideration, I acted as a liaison to the press sometimes for the Chairman's office, through Congressional Affairs and Public Relations.

I had some additional responsibilities as special projects came along.

The CHAIRMAN. Did you have as much occasion to interact personally with Judge Thomas at EEOC as you had with him at the Department of Education?

Ms. HILL. No, no. We were much busier. We were all much busier and the work that we did was work that did not necessarily require as much interaction. A lot of times, at the Education Department, the work required some—there were policy decisions that were to be made and we were trying to do an evaluation of the program, so there was more interaction at that time. At EEOC, there were just projects that had to get out, and so there was less of an opportunity for interaction.

The CHAIRMAN. Who was your immediate supervisor at EEOC?

Ms. HILL. At the EEOC, initially, Clarence Thomas was my immediate supervisor. After a period, Allyson Duncan was appointed to be the Director of the Staff. Initially, the staff consisted of two special assistants, myself and Carleton Stewart. The staff eventually grew to a larger number of assistants, and Allyson Duncan was brought up from the Legal Counsel's Office to take control of that situation.

The CHAIRMAN. Now, how long were you at EEOC with Judge Thomas before Allyson Duncan became the chief of staff?

Ms. HILL. I don't recall.

The CHAIRMAN. Once she became the chief of staff, was she the person who gave you assignments most often and to whom you reported most often?

Ms. HILL. That's right. Occasionally, at the staff meeting assignments would be given out, but that was held only 1 day a week, so during the rest of the week when things came up, Allyson was in charge of giving out assignments.

The CHAIRMAN. Now, did the Judge's chief of staff report directly to him, or did she have an intermediate supervisor?

Ms. HILL. No, she reported directly to him, as I understand.

The CHAIRMAN. Who prepared your performance evaluation?

Ms. HILL. I understood that Judge Thomas prepared the performance evaluations.

The CHAIRMAN. Did the chief of staff, to the best of your knowledge, have the power to fire you?

Ms. HILL. Not to my knowledge.

The CHAIRMAN. Who had that power?

Ms. HILL. Judge Thomas.

The CHAIRMAN. Was there anyone else at EEOC that you believe possessed that power?

Ms. HILL. No; not for that office.

The CHAIRMAN. Was Judge Thomas still then your ultimate boss and the boss of the entire office?

Ms. HILL. Yes.

The CHAIRMAN. Now, was there any routine work day at EEOC that you could describe for the committee?

Ms. HILL. Actually, most of the work that we did, unlike at Education, most of the work was responding to internal memos, instead of responding to things that had come from outside. There were many more of those, because there were many more offices, and so each of us were responsible for a certain area, would respond to a memo or write up a memo to be sent to the Chairman for his response.

We also had hearings and there was always a special assistant who was assigned to sit in the Commission hearings, and so some days, if we were having hearings, well, one of the special assistants—very often it was me—would sit in the hearing to provide the Chairman with information.

During the days of the week that we were not having hearings, we had to prepare the Chairman for the hearings themselves, so that we had to go through the files on the hearings and the records and brief the Chairman on those or write memos that briefed the Chairman on them.

The CHAIRMAN. Professor, you have testified that you had regular contact with Judge Thomas at the Department of Education and you have just described the extent of your contact with Judge Thomas at EEOC, and you have described your professional interaction with him.

Now, I must ask you to describe once again, and more fully, the behavior that you have alleged he engaged in while your boss, which you say went beyond professional conventions, and which

was unwelcome to you. Now, I know these are difficult to discuss, but you must understand that we have to ask you about them.

Professor, did some of the attempts at conversation you have described in your opening statement occur in your office or in his office?

Ms. HILL. Some occurred in his office, some comments were made in mine. Most often they were in his office.

The CHAIRMAN. Did all of the behavior that you have described to us in your written statement to the committee and your oral statement now and what you have said to the FBI, did all of that behavior take place at work?

Ms. HILL. Yes, it did.

The CHAIRMAN. Now, I would like you to go back——

Ms. HILL. Let me clarify that. If you are including a luncheon during the workday to be at work, yes.

The CHAIRMAN. I am just trying to determine, it was what you described and what you believe to be part of the workday?

Ms. HILL. Yes.

The CHAIRMAN. Now, I have to ask you where each of these events occurred? If you can, to the best of your ability, I would like you to recount for us where each of the incidents that you have mentioned in your opening statement occurred, physically where they occurred.

Ms. HILL. Well, I remember two occasions these incidents occurred at lunch in the cafeteria——

The CHAIRMAN. Do you remember which of those two incidents were at lunch, professor?

Ms. HILL. The——

The CHAIRMAN. Let me ask this, as an antecedent question: Were you always alone when the alleged conversations would begin or the alleged statements by Judge Thomas would begin?

Ms. HILL. Well, when the incidents occurred in the cafeteria, we were not alone. There were other people in the cafeteria, but because the way the tables were, there were few individuals who were within the immediate area of the conversation.

The CHAIRMAN. Of those incidents that occurred in places other than in the cafeteria, which ones occurred in his office?

Ms. HILL. Well, I recall specifically that the incident about the Coke can occurred in his office at the EEOC.

The CHAIRMAN. And what was that incident again?

Ms. HILL. The incident with regard to the Coke can, that statement?

The CHAIRMAN. Once again for me, please?

Ms. HILL. The incident involved his going to his desk, getting up from a worktable, going to his desk, looking at this can and saying, "Who put pubic hair on my Coke?"

The CHAIRMAN. Was anyone else in his office at the time?

Ms. HILL. No.

The CHAIRMAN. Was the door closed?

Ms. HILL. I don't recall.

The CHAIRMAN. Are there any other incidents that occurred in his office?

Ms. HILL. I recall at least one instance in his office at the EEOC where he discussed some pornographic material and he brought up the substance or the content of pornographic material.

The CHAIRMAN. Again, it is difficult, but for the record, what substance did he bring up in this instance at EEOC in his office? What was the content of what he said?

Ms. HILL. This was a reference to an individual who had a very large penis and he used the name that he had referred to in the pornographic material—

The CHAIRMAN. Do you recall what it was?

Ms. HILL. Yes; I do. The name that was referred to was Long John Silver.

The CHAIRMAN. Were you working on any matter in that context, or were you just called into the office? Do you remember the circumstances of your being in the office on that occasion?

Ms. HILL. Very often, I went in to report on memos that I had written. I'm sure that's why I was in the office. What happened generally was that I would write a note to Clarence Thomas and he would call me in to talk about what I had written to him, and I believe that's what happened on that occasion.

The CHAIRMAN. Let's go back to the first time that you alleged Judge Thomas indicated he had more than a professional interest in you. Do you recall what the first time was and, with as much precision as you can, what he said to you?

Ms. HILL. As I recall, it either happened at lunch or it happened in his office when he said to me, very casually, "you are to go out with me some time."

The CHAIRMAN. You ought to or you are to?

Ms. HILL. You ought to.

The CHAIRMAN. Was that the extent of that incident?

Ms. HILL. That was the extent of that incident. At that incident, I declined and at that incident I think he may have said something about, you know, he didn't understand why I didn't want to go out with him, and the conversation may have ended.

The CHAIRMAN. Would you describe for the committee how you felt when he asked you out? What was your reaction?

Ms. HILL. Well, my reaction at that time was a little surprised, because I had not indicated to him in any way that I was interested in dating him. We had developed a good working relationship; it was cordial and it was very comfortable, so I was surprised that he was interested in something else.

The CHAIRMAN. With regard to the other incidents—and my time is running down, and I will come back to them—but with regard to the other incidents that you mentioned in your opening statement, can you tell us how you felt at the time? Were you uncomfortable, were you embarrassed, did it not concern you? How did you feel about it?

Ms. HILL. The pressure to go out with him I felt embarrassed about because I had given him an explanation, that I thought it was not good for me, as an employee, working directly for him, to go out. I thought he did not take seriously my decision to say no, and that he did not respect my having said no, to him.

I—the conversations about sex, I was much more embarrassed and humiliated by. The two combined really made me feel sort of

helpless in a job situation because I really wanted to do the work that I was doing; I enjoyed that work. But I felt that that was being put in jeopardy by the other things that were going on in the office. And so, I was really, really very troubled by it and distressed over it.

The CHAIRMAN. Can you tell the committee what was the most embarrassing of all the incidents that you have alleged?

Ms. HILL. I think the one that was the most embarrassing was this discussion of pornography involving women with large breasts and engaged in a variety of sex with different people, or animals. That was the thing that embarrassed me the most and made me feel the most humiliated.

The CHAIRMAN. If you can, in his words—not yours—in his words, can you tell us what, on that occasion, he said to you? You have described the essence of the conversation. In order for us to determine—well, can you tell us, in his words, what he said?

Ms. HILL. I really cannot quote him verbatim. I can remember something like, you really ought to see these films that I have seen or this material that I have seen. This woman has this kind of breasts or breasts that measure this size, and they got her in there with all kinds of things, she is doing all kinds of different sex acts. And, you know, that kind of, those were the kinds of words. Where he expressed his enjoyment of it, and seemed to try to encourage me to enjoy that kind of material, as well.

The CHAIRMAN. Did he indicate why he thought you should see this material?

Ms. HILL. No.

The CHAIRMAN. Why do you think, what was your reaction, why do you think he was saying these things to you?

Ms. HILL. Well, coupled with the pressures about going out with him, I felt that implicit in this discussion about sex was the offer to have sex with him, not just to go out with him. There was never any explicit thing about going out to dinner or going to a particular concert or movie, it was, "we ought to go out" and given his other conversations I took that to mean, we ought to have sex or we ought to look at these pornographic movies together.

The CHAIRMAN. Professor, at your press conference, one of your press conferences, you said that the issue that you raised about Judge Thomas was "an ugly issue". Is that how you viewed these conversations?

Ms. HILL. Yes. They were very ugly. They were very dirty. They were disgusting.

The CHAIRMAN. Were any one of these conversations—this will be my last question, my time is up—were any one of these conversations, other than being asked repeatedly to go out, were any one of them repeated more than once? The same conversation, the reference to—

Ms. HILL. The reference to his own physical attributes was repeated more than once, yes.

The CHAIRMAN. Now, again, for the record, did he just say I have great physical attributes or was he more graphic?

Ms. HILL. He was much more graphic.

The CHAIRMAN. Can you tell us what he said?

Ms. HILL. Well, I can tell you that he compared his penis size, he measured his penis in terms of length, those kinds of comments.

The CHAIRMAN. Thank you.

My time is up, under our agreement. By the way, I might state once again that we have agreed to go back and forth in half-hour conversation on each side; when the principals have finished asking questions, those members who have not been designated to ask questions, since all have been keenly involved and interested in this on both sides, will have an opportunity to ask questions for 5 minutes.

But let me now yield to my friend from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Hill, I have been asked to question you by Senator Thurmond, the ranking Republican, but I do not regard this as an adversary proceeding.

Ms. HILL. Thank you.

Senator SPECTER. My duties run to the people of Pennsylvania, who have elected me, and in the broader sense, as a U.S. Senator to constitutional government and the Constitution.

My purpose, as is the purpose of the hearing, generally, is to find out what happened.

Ms. HILL. Certainly.

Senator SPECTER. We obviously have a matter of enormous importance from a lot of points of view. The integrity of the Court is very important. It is very important that the Supreme Court not have any member who is tainted or have a cloud. In our society we can accept unfavorable decisions from the Court if we think they are fairly arrived at.

The CHAIRMAN. Senator, excuse me for interrupting but some of our colleagues on this end, cannot hear you. Can you pull that closer? I know that makes it cumbersome.

Senator SPECTER. I have tried carefully to avoid that.

The CHAIRMAN. Well, it worked.

Senator SPECTER. You can hear me all right, can you not, Professor Hill?

Ms. HILL. Yes, I can.

Senator SPECTER. OK. But I was just saying, about the importance of the Court where there should be a feeling of confidence and fairness with the decisions, as we parties can take unfavorable decisions if they think they are being treated fairly. I think this hearing is very important to the Senate and to this committee, because by 20-20 hindsight we should have done this before. And obviously it is of critical importance to Judge Thomas, and you, whose reputations and careers are on the line.

It is not easy to go back to events which happened almost a decade ago to find out what happened. It is very, very difficult to do. I would start, Professor Hill, with one of your more recent statements, at least according to a man by the name of Carl Stewart, who says that he met you in August of this year. He said that he ran into you at the American Bar Association Convention in Atlanta, where Professor Hill stated to him in the presence of Stanley Grayson, "How great Clarence's nomination was, and how much he deserved it."

He said you went on to discuss Judge Thomas and our tenure at EEOC for an additional 30 minutes or so. There was no mention of sexual harassment or anything negative about Judge Thomas. He stated that during that conversation. There is also a statement from Stanley Grayson corroborating what Carlton Stewart has said.

My question is, did Mr. Stewart accurately state what happened with you at that meeting?

Ms. HILL. As I recall at that meeting, I did see Carlton Stewart and we did discuss the nomination. Carlton Stewart was very excited about the nomination. And said, I believe that those are his words, how great it was that Clarence Thomas had been nominated. I only said that it was a great opportunity for Clarence Thomas. I did not say that it was a good thing, this nomination was a good thing.

I might add that I have spoken to newspaper reporters and have gone on record as saying that I have some doubts and some questions about the nomination. I, however, in that conversation where I was faced with an individual who was elated about the probabilities of his friend being on the Supreme Court, I did not want to insult him or argue with him at that time about the issue. I was very passive in the conversation.

Senator SPECTER. Excuse me?

Ms. HILL. I was very passive in the conversation.

Senator SPECTER. So that Mr. Stewart and Mr. Grayson are simply wrong when they say, and this is a quotation from Mr. Stewart that you said, specifically, "how great his nomination was, and how much he deserved it." They are just wrong?

Ms. HILL. The latter part is certainly wrong. I did say that it is a great opportunity for Clarence Thomas. I did not say that he deserved it.

Senator SPECTER. We have a statement from former dean of Oral Roberts Law School, Roger Tuttle, who quotes you as making laudatory comments about Judge Thomas, that he "is a fine man and an excellent legal scholar." In the course of 3 years when Dean Tuttle knew you at the law school, that you had always praised him and had never made any derogatory comments. Is Dean Tuttle correct?

Ms. HILL. During the time that I was at Oral Roberts University I realized that Charles Kothe, who was a founding dean of that school, had very high regards for Clarence Thomas. I did not risk talking in disparaging ways about Clarence Thomas at that time.

I don't recall any specific conversations about Clarence Thomas in which I said anything about his legal scholarship. I do not really know of his legal scholarship, certainly at that time.

Senator SPECTER. Well, I can understand it if you did not say anything, but Dean Tuttle makes the specific statement. His words are, that you said, "The most laudatory comments."

Ms. HILL. I have no response to that because I do not know exactly what he is saying.

Senator SPECTER. There is a question about Phyllis Barry who was quoted in the New York Times on October 7, "In an interview Ms. Barry suggested that the allegations," referring to your allega-

tions, "were the result of Ms. Hill's disappointment and frustration that Mr. Thomas did not show any sexual interest in her."

You were asked about Ms. Barry at the interview on October 9 and were reported to have said, "Well, I don't know Phyllis Barry and she doesn't know me." And there are quite a few people who have come forward to say that they saw you and Ms. Barry together and that you knew each other very well.

Ms. HILL. I would disagree with that. Ms. Barry worked at the EEOC. She did attend some staff meetings at the EEOC. We were not close friends. We did not socialize together and she has no basis for making a comment about my social interests, with regard to Clarence Thomas or anyone else.

I might add, that at the time that I had an active social life and that I was involved with other people.

Senator SPECTER. Did Ms. Anna Jenkins and Ms. J.C. Alvarez, who both have provided statements attesting to the relationship between you and Ms. Barry, a friendly one. Where Ms. Barry would have known you, were both Ms. Jenkins and Ms. Alvarez coworkers in a position to observe your relationship with Ms. Barry?

Ms. HILL. They were both workers at the EEOC. I can only say that they were commenting on our relationship in the office. It was cordial and friendly. We were not unfriendly with each other, but we were not social acquaintances. We were professional acquaintances.

Senator SPECTER. So that when you said, Ms. Barry doesn't know me and I don't know her, you weren't referring to just that, but some intensity of knowledge?

Ms. HILL. Well, this is a specific remark about my sexual interest. And I think one has to know another person very well to make those kinds of remarks unless they are very openly expressed.

Senator SPECTER. Well, did Ms. Barry observe you and Judge Thomas together in the EEOC office?

Ms. HILL. Yes, at staff meetings where she attended and at the office, yes.

Senator SPECTER. Let me pick up on Senator Biden's line of questioning. You referred to the "oddest episode I remember" then talked the Coke incident. When you made your statement to the FBI, why was it that that was omitted if it were so strong in your mind and such an odd incident?

Ms. HILL. I spoke to the FBI agent and I told them the nature of comments, and did not tell them more specifics. I referred to the specific comments that were in my statement.

Senator SPECTER. Well, when you talked to the FBI agents, you did make specific allegations about specific sexual statements made by Judge Thomas.

Ms. HILL. Yes.

Senator SPECTER. So that your statement to the FBI did have specifics.

Ms. HILL. Yes.

Senator SPECTER. And my question to you, why, if this was such an odd episode, was it not included when you talked to the FBI?

Ms. HILL. I do not know.

Senator SPECTER. I would like you to take a look, if you would, at your own statement in the first full paragraph of page 5, on the

last line and ask you why that was not included in your statement to the FBI?

Ms. HILL. Excuse me, my copy is not—would you refer to that passage again?

Senator SPECTER. Yes, of course.

Referring to page 5 of the statement which you provided to the committee, there is a strong allegation in the last sentence. My question to you is, why did you not tell that to the FBI?

Ms. HILL. When the FBI investigation took place I tried to answer their questions as directly as I recall. I was very uncomfortable talking to the agent about that, these incidents, I am very uncomfortable now, but I feel that it is necessary. The FBI agent told me that it was regular procedure to come back and ask for more specifics if it was necessary. And so, at that time, I did not provide all of the specifics that I could have.

Senator SPECTER. Professor Hill, I can understand that it is uncomfortable and I don't want to add to that. If any of it—if there is something you want to pause about, please do.

You testified this morning, in response to Senator Biden, that the most embarrassing question involved—this is not too bad—women's large breasts. That is a word we use all the time. That was the most embarrassing aspect of what Judge Thomas had said to you.

Ms. HILL. No. The most embarrassing aspect was his description of the acts of these individuals, these women, the acts that those particular people would engage in. It wasn't just the breasts; it was the continuation of his story about what happened in those films with the people with this characteristic, physical characteristic.

Senator SPECTER. With the physical characteristic of—

Ms. HILL. The large breasts.

Senator SPECTER. Well, in your statement to the FBI you did refer to the films but there is no reference to the physical characteristic you describe. I don't want to attach too much weight to it, but I had thought you said that the aspect of large breasts was the aspect that concerned you, and that was missing from the statement to the FBI.

Ms. HILL. I have been misunderstood. It wasn't the physical characteristic of having large breasts. It was the description of the acts that this person with this characteristic would do, the act that they would engage in, group acts with animals, things of that nature involving women.

Senator SPECTER. Professor Hill, I would like you now to turn to page 3 of your statement that you submitted to the committee, that we got just this morning. In the last sentence in the first full paragraph, you again make in that statement a very serious allegation as to Judge Thomas, and I would ask you why you didn't tell the FBI about that when they interviewed you.

Ms. HILL. I suppose my response would be the same. I did not tell the FBI all of the information. The FBI agent made clear that if I were embarrassed about talking about something, that I could decline to discuss things that were too embarrassing, but that I could provide as much information as I felt comfortable with at that time.

Senator SPECTER. Well, now, did you decline to discuss with the FBI anything on the grounds that it was too embarrassing?

Ms. HILL. There were no particular questions that were asked. He asked me to describe the kinds of incidents that had occurred as graphically as I could without being embarrassed. I did not explain everything. I agree that all of this was not disclosed in the FBI investigation.

Senator SPECTER. Was it easier for you because one of the FBI agents was a woman, or did you ask at any time that you give the statements to her alone in the absence of the man FBI agent?

Ms. HILL. No, I did not do that. I didn't ask to disclose. I just—I did not.

Senator SPECTER. Well, I understand from what you are saying now that you were told that you didn't have to say anything if it was too embarrassing for you. My question to you is, did you use that at any point to decline to give any information on the ground that it was too embarrassing?

Ms. HILL. I never declined to answer a question because it was too embarrassing, no. He asked me to describe the incidents, and rather than decline to make any statement at all, I described them to my level of comfort.

Senator SPECTER. Well, you described a fair number of things in the FBI statement, but I come back now to the last sentence on page 3 in the first full paragraph, because it is a strong allegation. You have said that you had not omitted that because of its being embarrassing. You might have said even something embarrassing to the female agent. My question to you is, why was that omitted?

Ms. HILL. Senator, at the time of the FBI investigation, I cooperated as fully as I could at that time, and I cannot explain why anything in specific was not stated.

Senator SPECTER. Professor Hill, you testified that you drew an inference that Judge Thomas might want you to look at pornographic films, but you told the FBI specifically that he never asked you to watch the films. Is that correct?

Ms. HILL. He never said, "Let's go to my apartment and watch films," or "go to my house and watch films." He did say, "You ought to see this material."

Senator SPECTER. But when you testified that, as I wrote it down, "We ought to look at pornographic movies together," that was an expression of what was in your mind when he—

Ms. HILL. That was the inference that I drew, yes.

Senator SPECTER. The inference, so he—

Ms. HILL. With his pressing me for social engagements, yes.

Senator SPECTER. That that was something he might have wanted you to do, but the fact is, flatly, he never asked you to look at pornographic movies with him.

Ms. HILL. With him? No, he did not.

The CHAIRMAN. Will the Senator yield for one moment for a point of clarification?

Senator SPECTER. I would rather not.

The CHAIRMAN. To determine whether or not the witness ever saw the FBI report. Does she know what was stated by the FBI about her comments?

Senator SPECTER. Well, Mr. Chairman, I am asking her about what she said to the FBI.

The CHAIRMAN. I understand. I am just asking that.

Have you ever seen the FBI report?

Ms. HILL. No; I have not.

The CHAIRMAN. Would you like to take a few moments and look at it now?

Ms. HILL. Yes; I would.

The CHAIRMAN. OK. Let's make a copy of the FBI report. I think we have to be careful. Senator Grassley asked me to make sure—maybe you could continue—it only pertains to her. We are not at liberty to give to her what the FBI said about other individuals.

Senator SPECTER. I was asking Professor Hill about the FBI report.

Obviously because the portion I am questioning you about relates to their recording what you said, and I think it is fair, one lawyer to another, to ask about it.

The CHAIRMAN. No, I would continue, because you are not asking her directly. I just wanted to know whether or not her responses were at all based upon her knowledge of what the FBI said she said. That is all I was asking.

Senator SPECTER. Well, she has asked to see it, and I think it is a fair request, and I would be glad to take a moment's delay to—

The CHAIRMAN. This is the FBI report as it references Professor Hill, only Professor Hill.

Senator SPECTER. May we stop the clock, Mr. Chairman?

The CHAIRMAN. Yes, we will. We will turn the clock back and give the Senator additional time. I will not ask how long to turn it back. I will leave that decision to Senator Simpson.

Senator SIMPSON. I will be watching the clock. Thank you, Mr. Chairman.

[Pause.]

The CHAIRMAN. That was not to hurry you along, Professor. That was to ask for silence in the room.

The only point I wish to make is that you know what is in the report and understand that the report is a summary of your conversation, not a transcription of your conversation.

[Pause.]

The CHAIRMAN. While we have this momentary break, the Senator has 10 or more minutes remaining, and at the conclusion of his questioning we will recess for lunch for an hour and then begin with Senator Leahy.

Senator LEAHY. At what time?

The CHAIRMAN. Whatever, an hour from the time we end.

Senator LEAHY. I see. I'm sorry, I didn't hear that part. Thank you.

The CHAIRMAN. All right. Have you had a chance to peruse it?

Ms. HILL. Yes.

The CHAIRMAN. Thank you.

Ms. HILL. Thank you.

The CHAIRMAN. Now I apologize to my colleague for the interruption.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Hill, now that you have read the FBI report, you can see that it contains no reference to any mention of Judge Thomas' private parts or sexual prowess or size, et cetera. My question to you would be, on something that is as important as it is in your written testimony and in your responses to Senator Biden, why didn't you tell the FBI about that?

Ms. HILL. Senator, in paragraph 2 on page 2 of the report it says that he liked to discuss specific sex acts and frequency of sex. And I am not sure what all that summarizes, but his sexual prowess, his sexual preferences, could have—

Senator SPECTER. Which line are you referring to, Professor?

Ms. HILL. The very last line in paragraph 2 of page 2.

Senator SPECTER. Well, that says—and this is not too bad, I can read it—“Thomas liked to discuss specific sex acts and frequency of sex.” Now are you saying, in response to my question as to why you didn't tell the FBI about the size of his private parts and his sexual prowess and “Long John Silver.” That information was comprehended within the statement, “Thomas liked to discuss specific sex acts and frequency of sex”?

Ms. HILL. I am not saying that that information was included in that. I don't know that it was. I don't believe that I even mentioned the latter information to the FBI agent, and I could only respond again that at the time of the investigation I tried to cooperate as fully as I could, to recall information to answer the questions that they asked.

Senator SPECTER. Professor Hill, you said that you took it to mean that Judge Thomas wanted to have sex with you, but in fact he never did ask you to have sex, correct?

Ms. HILL. No, he did not ask me to have sex. He did continually pressure me to go out with him, continually, and he would not accept my explanation as being valid.

Senator SPECTER. So that when you said you took it to mean, “We ought to have sex,” that that was an inference that you drew?

Ms. HILL. Yes, yes.

Senator SPECTER. Professor Hill, the USA Today reported on October 9,

Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that “quietly and behind the scenes” would force him to withdraw his name.

Was USA Today correct on that, attributing it to a man named Mr. Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer?

Ms. HILL. I do not recall. I guess—did I say that? I don't understand who said what in that quotation.

Senator SPECTER. Well, let me go on. He said,

Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer, says Hill was advised by Senate staffers that her charge would be kept secret and her name kept from public scrutiny.

Apparently referring again to Mr. Henderson's statement, “they would approach Judge Thomas with the information and he would withdraw and not turn this into a big story, Henderson says.”

Did anybody ever tell you that, by providing the statement, that there would be a move to request Judge Thomas to withdraw his nomination?

Ms. HILL. I don't recall any story about pressing, using this to press anyone.

Senator SPECTER. Well, do you recall anything at all about anything related to that?

Ms. HILL. I think that I was told that my statement would be shown to Judge Thomas, and I agreed to that.

Senator SPECTER. But was there any suggestion, however slight, that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known or for you to come forward under circumstances like these?

Ms. HILL. There was—no, not that I recall. I don't recall anything being said about him being pressed to resign.

Senator SPECTER. Well, this would only have happened in the course of the past month or so, because all this started just in early September.

Ms. HILL. I understand.

Senator SPECTER. So that when you say you don't recall, I would ask you to search your memory on this point, and perhaps we might begin—and this is an important subject—about the initiation of this entire matter with respect to the Senate staffers who talked to you. But that is going to be too long for the few minutes that I have left, so I would just ask you once again, and you say you don't recollect, whether there was anything at all said to you by anyone that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instrument that “quietly and behind the scenes” would force him to withdraw his name. Is there anything related to that in any way whatsoever?

Ms. HILL. The only thing that I can think of, and if you will check, there were a lot of phone conversations. We were discussing this matter very carefully, and at some point there might have been a conversation about what might happen.

Senator SPECTER. Might have been?

Ms. HILL. There might have been, but that wasn't—I don't remember this specific kind of comment about “quietly and behind the scenes” pressing him to withdraw.

Senator SPECTER. Well, aside from “quietly and behind the scenes” pressing him to withdraw, any suggestion that just the charges themselves, in writing, would result in Judge Thomas withdrawing, going away?

Ms. HILL. No, no. I don't recall that at all, no.

Senator SPECTER. Well, you started to say that there might have been some conversation, and it seemed to me—

Ms. HILL. There might have been some conversation about what could possibly occur.

Senator SPECTER. Well, tell me about that conversation.

Ms. HILL. Well, I can't really tell you any more than what I have said. I discussed what the alternatives were, what might happen with this affidavit that I submitted. We talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking, going to the FBI and getting more information; some questions from individual Sen-

ators. I just, the statement that you are referring to, I really can't verify.

Senator SPECTER. Well, when you talk about the Senate coming back for more information or the FBI coming back for more information or Senators coming back for more information, that has nothing to do at all with Judge Thomas withdrawing. When you testified a few moments ago that there might possibly have been a conversation, in response to my question about a possible withdrawal, I would press you on that, Professor Hill, in this context: You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month.

Ms. HILL. And I have done that, Senator, and I don't recall that comment. I do recall that there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be—that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that.

Senator SPECTER. Well, when you say a number of things might occur, what sort of things?

Ms. HILL. May I just add this one thing?

Senator SPECTER. Sure.

Ms. HILL. The nature of that kind of conversation that you are talking about is very different from the nature of the conversation that I recall. The conversations that I recall were much more vivid. They were more explicit. The conversations that I have had with the staff over the last few days in particular have become much more blurry, but these are vivid events that I recall from even 8 years ago when they happened, and they are going to stand out much more in my mind than a telephone conversation. They were one-on-one, personal conversations, as a matter of fact, and that adds to why they are much more easily recalled. I am sure that there are some comments that I do not recall the exact nature of from that period, as well, but these that are here are the ones that I do recall.

Senator SPECTER. Well, Professor Hill, I can understand why you say that these comments, alleged comments, would stand out in your mind, and we have gone over those. I don't want to go over them again. But when you talk about the withdrawal of a Supreme Court nominee, you are talking about something that is very, very vivid, stark, and you are talking about something that occurred within the past 4 or 5 weeks, and my question goes to a very dramatic and important event. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that that is not something that wouldn't stick in a mind for 4 or 5 weeks, if it happened.

Ms. HILL. Well, Senator, I would suggest to you that for me these are more than mere allegations, so that if that comment were made—these are the truth to me, these comments are the truth to me—and if it were made, then I may not respond to it in the same way that you do.

Senator SPECTER. Well, I am not questioning your statement when I use the word "allegation" to refer to 10 years ago. I just

don't want to talk about it as a fact because so far that is something we have to decide, so I am not stressing that aspect of the question. I do with respect to the time period, but the point that I would come back to for just 1 more minute would be—well, let me ask it to you this way.

Ms. HILL. OK.

Senator SPECTER. Would you not consider it a matter of real importance if someone said to you, "Professor, you won't have to go public. Your name won't have to be disclosed. You won't have to do anything. Just sign the affidavit and this," as the USA Today report, would be the instrument that "quietly and behind the scenes" would force him to withdraw his name. Now I am not asking you whether it happened. I am asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you, that you would remember in the course of 4 or 5 weeks.

Ms. HILL. I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say that.

Senator SPECTER. The sequence with the staffers is very involved, so I am going to move to another subject now, but I want to come back to this. Over the luncheon break, I would ask you to think about it further, if there is any way you can shed any further light on that question, because I think it is an important one.

Ms. HILL. OK. Thank you.

Senator SPECTER. Professor Hill, the next subject I want to take up with you involves the kind of strong language which you say Judge Thomas used in a very unique setting, where there you have the Chairman of the EEOC, the Nation's chief law enforcement officer on sexual harassment, and here you have a lawyer who is an expert in this field, later goes on to teach civil rights and has a dedication to making sure that women are not discriminated against. If you take the single issue of discrimination against women, the Chairman of the EEOC has a more important role on that question even than a Supreme Court Justice—a Supreme Court Justice is a more important position overall, than if you focus just on sexual harassment.

The testimony that you described here today depicts a circumstance where the Chairman of the EEOC is blatant, as you describe it, and my question is: Understanding the fact that you are 25 and that you are shortly out of law school and the pressures that exist in this world—and I know about it to a fair extent. I used to be a district attorney and I know about sexual harassment and discrimination against women and I think I have some sensitivity on it—but even considering all of that, given your own expert standing and the fact that here you have the chief law enforcement officer of the country on this subject and the whole purpose of the civil right law is being perverted right in the office of the Chairman with one of his own female subordinates, what went through your mind, if anything, on whether you ought to come forward at that stage? If you had, you would have stopped this man from being head of the EEOC perhaps for another decade. What went on through your mind? I know you decided not to make a complaint, but did you give that any consideration, and, if so, how could you

allow this kind of reprehensible conduct to go on right in the headquarters, without doing something about it?

Ms. HILL. Well, it was a very trying and difficult decision for me not to say anything further. I can only say that when I made the decision to just withdraw from the situation and not press a claim or charge against him, that I may have shirked a duty, a responsibility that I had, and to that extent I confess that I am very sorry that I did not do something or say something, but at the time that was my best judgment. Maybe it was a poor judgment, but it wasn't dishonest and it wasn't a completely unreasonable choice that I made, given the circumstances.

Senator SPECTER. My red light is on. Thank you very much, Professor Hill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Thank you, Professor Hill.

We will adjourn until 2:15 p.m. We will reconvene at 2:15 p.m. [Whereupon, at 1:10 p.m., the committee was recessed, to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Welcome back, Professor Hill.

The Chair now yields to the Senator from Vermont, Senator Leahy, who will question for one-half hour, and then we will go back to Senator Specter.

Senator LEAHY. Good afternoon, Professor Hill.

Ms. HILL. Good afternoon, Senator.

Senator LEAHY. Professor, we have had a number of discussions, almost shorthand discussions here, about things you are familiar with and which members of the committee are familiar with, but I would like to take you through a couple of the spots.

You have mentioned—and there were discussions and answers from you regarding the FBI investigation—would you tell us, was it one FBI agent, two FBI agents? How many spoke to you and where?

Ms. HILL. There were two FBI agents who visited me in my home.

Senator LEAHY. How was that arranged? Just focus on the mechanics, please.

Ms. HILL. Well, it was arranged, as I understand it, through Senator Biden's office. I received a phone call from one of the staff members of Senator Biden and she informed me that she had—excuse me, the date was September 23—she informed me that she had received a fax from me of my statement and that I should expect a call from the FBI.

When the FBI called, they called me at home, left a message on my machine, I returned their phone call that evening after work and arranged for them to come over immediately from Oklahoma City, I believe, to talk with me.

Senator LEAHY. That evening?

Ms. HILL. That evening, on Monday, September 23.

Senator LEAHY. About what time did they arrive?

Ms. HILL. They arrived at about 6:30.

Senator LEAHY. And who arrived?

Ms. HILL. Inspector Luddin and—there was one inspector named Inspector Luddin, and I don't recall the name of the other individual.

Senator LEAHY. One male and one female?

Ms. HILL. And one female.

Senator LEAHY. Now, was anybody else present for that interview?

Ms. HILL. No, no one else was present.

Senator LEAHY. It was just the three of you?

Ms. HILL. The three of us; yes.

Senator LEAHY. Did they tape record the interview?

Ms. HILL. No; one inspector did take notes.

Senator LEAHY. Now, what did they tell you they wanted?

Ms. HILL. They told me that they had been contacted by the committee, the Judiciary Committee, and that they wanted information regarding the statement that I had made to the committee.

Senator LEAHY. Did they have that statement with them?

Ms. HILL. I do not believe that they had the statement with them. It was clear from the questioning that they had read the statement, and I believe at one point in the evening Inspector Luddin did say that he had read the statement.

Senator LEAHY. When you made that statement, you had it typed up and you signed it, is that correct?

Ms. HILL. I typed it and I signed it.

Senator LEAHY. You typed and signed it, and kept a copy for yourself?

Ms. HILL. I only telefaxed a copy. I did keep a copy, the original.

Senator LEAHY. And you still have that?

Ms. HILL. I still have it.

Senator LEAHY. Have you given copies of that, other than the copy you telefaxed, to anybody else?

Ms. HILL. Well, I shared the statement with my counsel.

Senator LEAHY. Let's make sure I have this well in mind: You have the original copy, correct?

Ms. HILL. Yes.

Senator LEAHY. And you telefaxed a copy which, in itself, made copies to the committee, is that correct?

Ms. HILL. Pardon me?

Senator LEAHY. You faxed a copy to the committee, is that correct?

Ms. HILL. Yes.

Senator LEAHY. You gave a copy to your counsel?

Ms. HILL. Yes.

Senator LEAHY. Did you give a copy to anybody else?

Ms. HILL. Other than counsel? I don't believe that I gave a copy to anyone else.

Senator LEAHY. You did not give a copy to the FBI agents?

Ms. HILL. No; they told me that they had received a copy from the committee.

Senator LEAHY. Did you give a copy to any member of the press?

Ms. HILL. No; I did not.

Senator LEAHY. And so your counsel, the faxed copy, and your own copy are the only ones that you have had control of, is that correct?

Ms. HILL. Yes.

Senator LEAHY. Now, did the FBI give any indication to you of how you should answer—in great detail, little detail? How was the interview done?

Ms. HILL. Well, the interview was conducted, the indication that I had from the agents was that they would like to take as much information as they could, that they wanted as much as I felt comfortable giving. The questions that were asked were fairly general, in terms of what kinds of comments were made.

Senator LEAHY. Did they—go ahead. I didn't mean to cut you off.

Ms. HILL. No, that's fine.

Senator LEAHY. Now, in your statement that they told you they had, in that statement you were fairly specific about the kind of sexual discussions that you said Judge Thomas had with you, is that correct, Professor?

Ms. HILL. Yes, I felt that I was fairly specific.

Senator LEAHY. Did they refer to that specificity when they talked with you?

Ms. HILL. I'm sorry?

Senator LEAHY. Did the FBI agents refer to that specificity when they talked with you?

Ms. HILL. They simply said that if I got to any point with regard to being specific that made me uncomfortable, that I should withdraw from the conversation or I could perhaps give the information to the female agent who was there. They did not indicate that my comments were not specific enough or that they needed more information.

Senator LEAHY. Did they say that they might come back and talk with you again?

Ms. HILL. Yes, he almost assured me that he would come back.

Senator LEAHY. But did they?

Ms. HILL. In fact, they did not come back. I did receive a phone call the next day to verify two names of persons that I had given them, but they did not return for more information.

Senator LEAHY. And has anybody come back to talk with you since then?

Ms. HILL. From the FBI?

Senator LEAHY. From the FBI.

Ms. HILL. No, I have not spoken with the FBI since then.

Senator LEAHY. Now, you had a chance to read their report about you this morning, did you not?

Ms. HILL. Yes, I did.

Senator LEAHY. If you could just bear with me a moment, I want to read—do you have that before you?

Ms. HILL. Yes, I do.

Senator LEAHY. Would you turn to the part of the FBI report—and someone is getting me a copy now, as I do not have one—turn to the part where you have reference to the last time or the time you went out to dinner with Judge Thomas. Do you know the one I am referring to?

Ms. HILL. Yes.

Senator LEAHY. I believe it is on the second—let's see, now—yes, on page 4, is a line that, according to the FBI report, "Hill stated that when she left EEOC, Thomas took her out to eat." Do you find that paragraph, Professor Hill?

Ms. HILL. I'm sorry, what page are you referring to?

Senator LEAHY. On page 3 of your report, you see the paragraph which begins—I think it is one, two, three, four, five paragraphs down, "Hill stated that when she left EEOC, Thomas took her out to eat."

Ms. HILL. Yes.

Senator LEAHY. Would you read the rest of that sentence, please?

Ms. HILL. "Took her out to eat and told her that if she ever told anyone about their conversation, he would ruin her career."

Senator LEAHY. Now, is that precisely the way it is in your statement?

Ms. HILL. That is not precisely the way it is in my statement. That is not what I told the FBI agents.

Senator LEAHY. And what did you tell the FBI agents?

Ms. HILL. I told the FBI agent that he said that it would ruin his career.

Senator LEAHY. Now, the FBI agents, did they ask you to give them any written statement of any sort?

Ms. HILL. No, they didn't ask for any written statement.

Senator LEAHY. Did they ask if you would be willing to come to Washington to talk with them?

Ms. HILL. They didn't ask that.

Senator LEAHY. Did they ask if there was anything else you might be willing to do?

Ms. HILL. No, they didn't mention anything farther, except for coming back for additional questioning.

Senator LEAHY. Did they ask you if you would be willing to take a polygraph?

Ms. HILL. They asked if I would be willing to take a polygraph.

Senator LEAHY. And what did you say?

Ms. HILL. I answered, "yes."

Senator LEAHY. Let us go to that last meal discussion. It is your statement that the FBI misunderstood you and, as you have said in each of your statements, that Judge Thomas said that if this came out, it would ruin his career, not that he would ruin your career?

Ms. HILL. Exactly.

Senator LEAHY. Thank you. Where did you go for dinner that time?

Ms. HILL. I do not recall the restaurant, the name of the restaurant.

Senator LEAHY. Was it nearby or—

Ms. HILL. It was nearby work.

Senator LEAHY. Do you remember the type of restaurant?

Ms. HILL. No, I don't. It wasn't anything that was memorable to me, the type of food that we had.

Senator LEAHY. Do you remember how you got there?

Ms. HILL. I believe that the driver for Chairman Thomas or then Chairman Thomas took us, Mr. Randall, and dropped us off at the restaurant.

Senator LEAHY. And you went right from the office?

Ms. HILL. Went from the office.

Senator LEAHY. After dinner, how did you get home?

Ms. HILL. I took the subway home, if I recall correctly. As I am recalling—I'm not sure how I got home.

Senator LEAHY. Do you recall whether then Chairman Thomas offered you a ride home?

Ms. HILL. No, he did not offer me a ride home.

Senator LEAHY. Do you know whether his car came to pick him up?

Ms. HILL. I don't know how he got home, either.

Senator LEAHY. Do you recall approximately how long a time this was? Was this a case where you had to stand in line a long time to get a table or anything like that?

Ms. HILL. No, we walked right into the restaurant and sat down. I imagine that it was about an hour all-told.

Senator LEAHY. Did you have cocktails?

Ms. HILL. I did not have a cocktail.

Senator LEAHY. Anything alcoholic?

Ms. HILL. I don't recall having anything alcoholic.

Senator LEAHY. How long into the meal did the conversation you discussed come up? How long were you into the meal before the conversation you have just described came up?

Ms. HILL. I believe it was about—it was well into the meal, maybe mid-way, half-way or beyond.

Senator LEAHY. And what did you say in response?

Ms. HILL. My response was that I really just wanted to get away from the office and leave that kind of activity behind me.

Senator LEAHY. Did he ask you if you intended to ever make this public?

Ms. HILL. He did not ask me that.

Senator LEAHY. You have discussed somewhat earlier here today why you did not come forward with these allegations before. Had you come forward with them, at the time of your employment, either at the Department of Education or at the EEOC, what would have been the mechanism to come forward with the allegations?

Ms. HILL. I do not know of my own knowledge. I have been told or I have heard suggested that the oversight committee would have been the proper authority to deal with such an issue.

Senator LEAHY. Oversight within the department or here on the Hill?

Ms. HILL. No, here on the Hill, the congressional oversight committee that had oversight over the EEOC. But I don't know that, I just heard that.

Senator LEAHY. Did you at any time consider going somewhere, wherever the appropriate place might be, to make this public?

Ms. HILL. I considered it, but I really at the time did not clearly think out exactly where I would go.

Senator LEAHY. Had you come forward, what do you think would have happened?

Ms. HILL. Well, I can speculate that it might have been difficult—I can speculate that, had I come forward immediately after I left the EEOC, I can speculate that I would have lost my job at Oral Roberts.

Senator LEAHY. Professor Hill, this morning, Judge Thomas testified before this committee—and I don't know if you saw his testimony or not—

Ms. HILL. Yes, I did.

Senator LEAHY. Let me read from his statement. He said.

I cannot imagine anything that I said or did to Anita Hill could have been mistaken for sexual harassment. With that said, if there is anything that I have said that has been misconstrued by Anita Hill or anyone else to be sexual harassment, then I can say that I am so very sorry and I wish I had known. If I did know, I would have stopped immediately and I would not, as I have done over the past two weeks, had to tear away at myself trying to think what I could possibly have done, but I have not said or done the things that Anita Hill has alleged.

You are aware of that statement by Judge Thomas?

Ms. HILL. I am aware.

Senator LEAHY. Do you agree with that? Do you agree with his statement?

Ms. HILL. Do I agree with his statement?

Senator LEAHY. Yes.

Ms. HILL. No, I do not.

Senator LEAHY. Well, let us go through in summary. What are the things that you felt he should have known were sexual harassment?

Ms. HILL. Well, starting with the insisting on dates, I believe that once I had given a response to the question about dating, that my answer showed him that any further insisting was unwarranted and not desired by me.

I believe that the conversations about sex and the constant pressuring about dating which I objected to, both of which I objected to, were a basis—there was enough for him to understand that I was unappreciative and did not desire the kind of attention in the workplace. I think that my constantly saying to him that I was afraid, because he was in a supervisory position, that this would jeopardize my ability to do my job, that that should have given him notice.

Senator LEAHY. Did he ask you—well, you have said that he asked you for dates many times. By many, what do you mean? Can you give us even a ball park figure?

Ms. HILL. Oh, I would say over the course of—

Senator LEAHY. Of both the Department of Education and the EEOC.

Ms. HILL. I would say 10 times, maybe, I don't know, 5 to 10 times.

Senator LEAHY. And you said, no, each time?

Ms. HILL. Yes.

Senator LEAHY. With the exception of the departure dinner to which you have just testified here?

Ms. HILL. That was not a date and I made clear that it was not considered to be a date.

Senator LEAHY. And on that occasion, while you rode to the restaurant with him, you did not leave the restaurant with him? I mean you did not go—

Ms. HILL. No, I did not.

Senator LEAHY. You took the subway home.

Now, you said you made it clear to him about the discussions of pornography and all, that you did not like what he was saying, is that a fair statement of yours?

Ms. HILL. Yes, it is.

Senator LEAHY. Were these often or ever, these discussions of pornography or sexual acts, co-terminus with a request to go out on a date? I mean did they come up in the same conversation or was one of them one day and one of them the next?

Ms. HILL. I cannot say that they came up in the same conversation.

Senator LEAHY. Well, let's go back to this. You said that he had described pornographic movies to you, is that correct?

Ms. HILL. Yes.

Senator LEAHY. And explicitly described them?

Ms. HILL. Yes.

Senator LEAHY. When that happened, what would you say or what would you do?

Ms. HILL. I would say, specifically with the pornographic movies or material, I would say that I am really not interested in discussing this, I am uncomfortable with your talking about this, the kind of material that is—I would prefer not to discuss this with you.

Senator LEAHY. You would be that clear about it. Would the discussions end when you said that? I mean for that occasion?

Ms. HILL. Yes, for that occasion, very often they would. Sometimes I would have to say it more than once. But, yes, they would.

Senator LEAHY. Did you ever hear him say this to anybody else?

Ms. HILL. These kinds of—

Senator LEAHY. Yes.

Ms. HILL. I did not hear it.

Senator LEAHY. Did anybody ever tell you that he did?

Ms. HILL. No, no one ever told me that he did the same with them.

Senator LEAHY. Did he say these things to you in your office, at any time?

Ms. HILL. There might have been some occasion when he said it in my office.

Senator LEAHY. But you do recollect him saying it to you in his office?

Ms. HILL. Yes.

Senator LEAHY. Was that a big office or a small office, for either of the two jobs he had?

Ms. HILL. Well, I think they were relatively, both were relatively large offices. I remember the EEOC setup a little bit more clearly. I was there longer, but they were both large offices.

Senator LEAHY. Did you, at some time when he was saying it, say, "Look, I don't want to hear about this," and just walk out the door?

Ms. HILL. There were times when I would just walk away. If I were in a situation, like I could get up from his office and just leave, yes.

Senator LEAHY. Did he ever try to stop you from going out of the office?

Ms. HILL. No, he did not, not physically.

Senator LEAHY. In any fashion, like saying, "Don't go any further?"

Ms. HILL. Oh, no, he might have said, don't go or, you know, OK.

Senator LEAHY. What you mentioned happening in a cafeteria—were people within earshot? Was there anybody within earshot when it happened in the cafeteria?

Ms. HILL. No, not that I could see anyway. There might have been somebody within ear shot.

Senator LEAHY. Now, you testified to this today. You have given a statement that we have referred to. You discussed it with the FBI. Let's go back more to a time contemporaneous with when this happened. Did you discuss it with anybody at that time?

Ms. HILL. Yes, I did.

Senator LEAHY. And with whom did you discuss it at that time?

Ms. HILL. Well, Sue Hoerchner, I did discuss it with Sue Hoerchner, she was a friend of mine and someone I confided in. And I spoke with of this to two other people also.

Senator LEAHY. Let's talk about Ms. Hoerchner. Was that when you were at EEOC or the Department of Education?

Ms. HILL. That was at Education, I believe.

Senator LEAHY. And what was your relationship to her, was it as a coworker or—

Ms. HILL. No, she was not a coworker at Education. We had never worked together. She was a friend from law school.

Senator LEAHY. How often did you discuss it with her?

Ms. HILL. Maybe once or twice. Not, we did not discuss it very often. I can't say exactly how many times.

Senator LEAHY. What was the nature of your discussion with her?

Ms. HILL. Well, I was upset about the behavior. And that's what I was expressing to her as a friend, that it was upsetting and that I wanted it to stop and maybe even asked for advice or something to help me out of the situation.

Senator LEAHY. And did she offer advice?

Ms. HILL. I don't recall her offering any advice. I am not sure, exactly sure, what she said. I think she offered more comfort, because she knew I was upset.

Senator LEAHY. And did you discuss it with somebody else?

Ms. HILL. Yes, I have discussed it with other people.

Senator LEAHY. At that time?

Ms. HILL. Yes, at that time.

Senator LEAHY. And who was that, Professor?

Ms. HILL. I discussed it, in passing, well, no, not in passing. I discussed it with Eilen Wells, who is another female friend. She and I were close during the time and we had a conversation, in particular, we were talking about what I should do, how I should respond to it, what might make it stop happening.

At the time, in addition, I was dating someone, John Carr, and we discussed it because I was, I was upset by it. And I wanted to let him know why I was upset and again, just trying to see if there might be some way that he could handle this differently.

Senator LEAHY. And did he give you a recommendation?

Ms. HILL. I don't recall whether he did.

Senator LEAHY. You said when you talked to Ms.—was there anybody else that you recall?

Ms. HILL. At this point, I don't recall.

Senator LEAHY. You said when you talked with Ms. Hoerchner, you were very concerned and upset, and that is why you did. Describe to us how you felt when this happened.

Ms. HILL. Well, I was really upset. I felt like my job could be taken away or at least threatened. That I wasn't going to be able to work. That this person who had some power in the new administration would make it difficult for me in terms of other positions. I, it really, it was threatening from the job, in terms of my job, but it was also just unpleasant and something that I didn't want to have to deal with.

And it wasn't as though it happened every day but I went to work, during certain periods, knowing that it might happen.

Senator LEAHY. You said in your statement that at one point you were hospitalized for 5 days. Am I correct in understanding your statement, you felt it was related to this?

Ms. HILL. Yes, I do believe that it was related to the stress that I felt because of this.

Senator LEAHY. Had you ever had a similar hospitalization?

Ms. HILL. I had never had a similar hospitalization.

Senator LEAHY. Now, when you think back on this, you described how you felt at the time, how do you feel about it today?

Ms. HILL. Well, I am a little farther removed from it in time, but even today I still feel hurt and maybe today I feel more angry and disgusted. I don't feel quite as threatened. The situation, I am removed from it. My career is on solid ground and so the threat is not there. But the anger and hurt is there.

Senator LEAHY. In your statement you had said that between 1981 and 1983 you spoke to only one person about these incidents—Susan Hoerchner and you have talked about two others now. Is there a contradiction there?

Ms. HILL. Well, in my statement I do say that I only spoke with one person. That is all that I recalled at the time that I made the statement. I am finding that, I am recalling more about the situation. I really am finding that I repressed a lot of the things that happened during that time, and I am recalling more, in more detail.

When I made the statement too, I might add, that I made it rather hurriedly and even though I had been thinking about the situation, I had not perhaps given all of the consideration in terms of who I had told that I should have for such a statement.

Senator LEAHY. Since this began, for whatever series of reasons, there has been discussion and debate about how all of this came about, and this has become a most public matter. You cannot get much more public than the situation we are in right now.

And Judge Thomas has been up for confirmation on other occasions. Did you think, on any of those other occasions, about coming forward and giving, in effect, the same testimony that you are giving here today?

Ms. HILL. I may have considered it, but I was not contacted in those confirmation hearings. And I did not come forward on my own in that confirmation hearing, the most recent one.

Senator LEAHY. You mean this one?

Ms. HILL. Not this one, but the prior one.

Senator LEAHY. Had you been contacted in the prior one?

Ms. HILL. I had not been contacted in the prior one.

Senator LEAHY. But you were contacted in this one?

Ms. HILL. I was contacted in this one, yes.

Senator LEAHY. I realize—and my time is virtually up—this requires speculation and you can or cannot answer as you see fit, but had you not been contacted would you have come forward on this occasion?

Ms. HILL. I cannot say that I would have.

Senator LEAHY. Mr. Chairman, I have a lot more questions, but my time is up and I will stop there.

Thank you.

The CHAIRMAN. We will give you an opportunity, Senator, to complete those.

Senator LEAHY. Thank you.

The CHAIRMAN. We now recognize the Senator from Pennsylvania, Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Hill, there is a report in the Kansas City Star of October 8, 1991, that says in an August interview with the Kansas City Star, Anita Hill offered some favorable comments regarding Clarence Thomas and some criticism. And then further on it says, quoting you, "judicial experience aside, the Clarence Thomas of that period"—referring to his days in EEOC early—"would have made a better judge on the Supreme Court because he was more open-minded."

Now, how is it that you would have said that Judge Thomas, in his early days at EEOC would have made a better judge, at least an adequate judge, considering all of the things you have said that he told you about, at the Department of Education and also at EEOC?

Ms. HILL. That opinion, Senator, was based strictly on his experience, his ability to reason. It was not based on personal information which I did not see fit to share with that reporter. I was trying to give as objective an opinion as possible and that's what that statement is based on.

In addition, very early on, I believe I was commenting on his time at Education. Very early on at Education I was not experiencing the kinds of things that I later experienced with Judge Thomas.

Senator SPECTER. But when you make a statement in August 1991 and say, that "judicial experience aside, the Clarence Thomas of that period would have made a better judge on the Supreme Court because he was more open-minded" you are making a comparison as to what Judge Thomas felt judicially early on before he changed his views on affirmative action. So that is the reference to, at that period.

But when you say that Judge Thomas would have made a better Supreme Court Justice, you are saying that, at one stage of his career, he would have made an adequate Supreme Court Justice.

Ms. HILL. Well, I am not sure that that's what I am saying at all. I am sure that what I was trying to give to that reporter was my

assessment of him objectively without considering the personal information that I had. Now, if I had said to him, I don't think he would have made a good judge because of personal information that I have, then I think I would have had to explain that or at least created some innuendo that I was not ready to create.

In addition, I think as a university professor, quoted as a university professor you have some obligation to try to make objective statements. And that's what I was doing. I was attempting to make an objective statement about the individual based on his record as a public figure and I was not relying on my own private understanding and knowledge.

Senator SPECTER. Well, let's take it the way you have just re-explained it. An objective evaluation, without considering personal information, as a law school professor to make a comment, on his record as a public figure. How could you conclude, in any respect, that he would be appropriate for the Court even if you say that was without considering the personal information, if you had all of this personal information?

Ms. HILL. I did not say that he would be appropriate for the Court, Senator. I said that he would make a better judge. I did not say that I would consider him the best person for the Supreme Court.

Senator SPECTER. Well, when you say he would have made a better judge at one point, are you saying that there is not an explicit recommendation or statement that, as you said earlier, on the basis of his intellect, aside from the personal information that you decided not to share, that he would have been a better Supreme Court Justice?

Ms. HILL. I am sorry, would you rephrase that?

Senator SPECTER. Sure. Isn't the long and short of it, Professor Hill, that when you spoke to the Kansas City Star reporter, that you were saying, at one point in his career he would have been OK for the Supreme Court?

Ms. HILL. No.

[Pause.]

Senator SPECTER. What were you saying as to Judge Thomas' qualifications for the Supreme Court when you spoke to the reporter in August?

Ms. HILL. We were speaking in terms of his being openminded. One of the comments that the reporter made was that some have complained that he has a set ideology and that he won't be able to review cases on their own. My comment went to whether or not he did have that set ideology and it was that now he did, whereas a few years ago, I did not find that to be so.

I found him to be more openminded. So in that sense, I believe that he was better suited for a judicial position at that time, than now. And that's all that I was referring to, that particular comment or my concern about the nominee's qualifications for being on the Court.

Senator SPECTER. Well, it is certainly true, Professor Hill, that your statement has a comparative that Judge Thomas would have been a better judge of the Supreme Court at an earlier point in his career, but if you stand on your statement that this interview does

not contain a recommendation for Judge Thomas, so be it. Is that your position?

Ms. HILL. Yes, it does, that is my position.

Senator SPECTER. Did you ever maintain any notes or written memoranda of the comments that Judge Thomas had made to you?

Ms. HILL. No, I did not.

Senator SPECTER. In your statement and in your testimony, here, today, you have said that you were concerned that "Judge Thomas might take it out on me by downgrading me, or by not giving me important assignments. I also thought that he might find an excuse for dismissing me."

As an experienced attorney and as someone who was in the field of handling sexual harassment cases, didn't it cross your mind that if you needed to defend yourself from what you anticipated he might do that your evidentiary position would be much stronger if you had made some notes?

Ms. HILL. No, it did not.

Senator SPECTER. Well, why not?

Ms. HILL. I don't know why it didn't cross my mind.

Senator SPECTER. Well, the law of evidence is that notes are very important. You are nodding yes. Present recollection refreshed, right?

Ms. HILL. Yes, indeed.

Senator SPECTER. Prior recollection recorded, right?

Ms. HILL. Yes.

Senator SPECTER. In a controversy, if Judge Thomas took some action against you, and you had to defend yourself on the ground that he was being malicious in retaliation for your turning him down, wouldn't those notes be very influential if not determinative in enabling you to establish your legal position?

Ms. HILL. I think they would be very influential, yes.

Senator SPECTER. So, given your experience, if all this happened, since all this happened, why not make the notes?

Ms. HILL. Well, it might have been a good choice to make the notes. I did not do it, though. Maybe I made the wrong choice in not making the notes. I am not a person—I was not interested in any litigation. I was not interested. If I had been dismissed, very likely I would have just gone out and tried to find another job. I was not interested in filing a claim against him, and perhaps that is why it did not occur to me to make notes about it.

Senator SPECTER. Well, I am not on the point of your being interested in making a claim. What I am on the point of is your statement that you were concerned that he might take retaliatory action against you, and therefore the inference arises that the notes would have been something which would have been done by an experienced lawyer.

Ms. HILL. One of the things that I did do at that time was to document my work. I went through very meticulously with every assignment that I was given. This was, this really was in response to the concerns that I had about being fired. I went through, I logged in every work assignment that I received, the date that it was received, the action that was requested, the action that I took on it, the date that it went out, so I did do that in order to protect

myself, but I did not write down any of the comments or conversations.

Senator SPECTER. Well, when you comment about documenting your work to protect yourself because of concern of being fired, wouldn't the same precise thought about documentation have led you to document Judge Thomas' statements to you?

Ms. HILL. Well, I was documenting my work so that I could show to a new employer that I had in fact done these things. I was not documenting my work so that I could defend myself or to present a claim against him.

Senator SPECTER. Well, why would you need to document with precision the time the assignment came in and the time you completed the work for a new employer? Wouldn't that kind of documentation really relate to the adequacy and speed of your work at EEOC, contrasted with a finished product which you could show to a new prospective employer?

Ms. HILL. I'm sorry. I don't quite understand your question. Are you saying that the new employer would not be interested in knowing whether or not I turned my work around quickly?

Senator SPECTER. What is the relevancy as to when you got the assignment and how fast you made it, for a new employer?

Ms. HILL. Because it goes to whether or not I was slow in turning around the work product in a very fast-paced job situation.

Senator SPECTER. Professor Hill, as you know, the statute of limitations for filing a case on sexual harassment is 180 days, right?

Ms. HILL. Yes.

Senator SPECTER. A very short statute of limitations because of the difficulty of someone defending against a charge of sexual harassment, right?

Ms. HILL. Well, it is a short turnover time. I am not quite sure exactly why it is that short. That is one of the reasons that it is so short.

Senator SPECTER. Well, you are an expert in the field. *Delaware State College v. Ricks*, 101 Supreme Court Reporter, in 1980, *Johnson v. Railway Express Agency*, 421 U.S. Reports, comment about the short period of limitations because of the difficulty of defending against a charge of sexual harassment.

Ms. HILL. Yes, but I don't believe either of those cases say that that is the only reason. And let me clarify something: I consider myself to be an expert in contracts and commercial law, not an expert in the field of sexual harassment or EEO law. I don't even teach in that area any more.

Senator SPECTER. Well, you did teach civil rights law?

Ms. HILL. Yes, at one point.

Senator SPECTER. You taught civil rights law after 1980, right?

Ms. HILL. Yes, I have.

Senator SPECTER. Well, all right, it is one of the reasons for having a short period of limitations, to give someone an opportunity to defend himself against a charge of sexual harassment because they are hard to defend.

Ms. HILL. Certainly.

Senator SPECTER. The statute of limitations in a contract case is 6 years?

Ms. HILL. Well, in some States.

Senator SPECTER. Some States, 6 years?

Ms. HILL. The statute of limitations is not set. It is not a set thing. It varies from State to State.

Senator SPECTER. The Federal statute of limitations on crimes is 5 years?

Ms. HILL. I am not a criminal expert. I don't know.

Senator SPECTER. Do you know of any statute of limitations which is as short as 6 months, besides sexual harassment cases?

Ms. HILL. Do I know of any?

Senator SPECTER. Yes.

Ms. HILL. No, not offhand.

Senator SPECTER. Well, in the context of the Federal law limiting a sexual harassment claim to 6 months because of the grave difficulty of someone defending themselves in this context, what is your view of the fairness of asking Judge Thomas to reply 8, 9, 10 years after the fact?

Ms. HILL. I don't believe it is unfair. I think that that is something that you have to take into account in evaluating his comments.

Senator SPECTER. I had asked you this morning, Professor Hill, about a statement which was made by Ms. Barry, and I had asked you then in the context of your saying that she didn't know you and you didn't know her. You then expanded that to say that she didn't know your social life, but you did say that she had an opportunity to observe you and Judge Thomas at EEOC. I want to come back to that for just a moment, because the New York Times says this: "In an interview, Ms. Barry suggested that the allegations were a result of Ms. Hill's disappointment and frustration that Mr. Thomas did not show any sexual interest in her."

Now, aside from saying that Ms. Barry doesn't know about you on the social side, what about the substance of what Ms. Barry had to say?

Ms. HILL. What exactly are you asking me?

Senator SPECTER. Well, I will repeat the question again.

Was there any substance in Ms. Barry's flat statement that, "Ms. Hill was disappointed and frustrated that Mr. Thomas did not show any sexual interest in her"?

Ms. HILL. No, there is not. There is no substance to that. He did show interest, and I have explained to you how he did show that interest. Now she was not aware of that. If you are asking me, could she have made that statement, she could have made the statement if she wasn't aware of it. But she wasn't aware of everything that happened.

Senator SPECTER. Professor Hill, do you know a man by the name of John Doggett?

Ms. HILL. Pardon me?

Senator SPECTER. A man by the name of John Doggett?

Ms. HILL. John Doggett?

Senator SPECTER. John Doggett III.

Ms. HILL. Yes, I have met him.

Senator SPECTER. I ask you this, Professor Hill, in the context of whether you have any motivation as to Judge Thomas. What was your relationship with Mr. Doggett?

Ms. HILL. I don't recall. I do not recall. We were friends, but I don't—it wasn't anything. I just don't know.

Senator SPECTER. Well, before I pursue this question, I will give you a copy of his statement, give you an opportunity to read it before I ask you about that, and I will do that at a break.

Ms. HILL. Thank you.

Senator SPECTER. How close were you to Dean Charles Kothe of the Oral Roberts Law School?

Ms. HILL. He was the dean of the law school. I was there for a year. I believe he was the dean for a year while I was there. We worked together.

Senator SPECTER. One of the comments which was made by Dean Kothe related to your voluntarily driving Judge Thomas to the airport on an occasion when he came to speak at Oral Roberts Law School. My question is that in a context where you had responded to some people who asked you to make inquiries of Judge Thomas, in a context of his having said these things to you as you represent, being violations of the Civil Rights law, constituting sexual harassment, given that background, why would you voluntarily agree to drive Judge Thomas to the airport?

Ms. HILL. I really don't recall that I voluntarily agreed to drive him to the airport. I think that the dean suggested that I drive him to the airport, and that I said that I would. But at any rate, one of the things that I have said was that I intended to—I hoped to keep a cordial professional relationship with that individual, and so I did him the courtesy of driving him to the airport.

Senator SPECTER. Well, when you say you wanted to maintain a cordial professional relationship, why would you do that, given the comments which you represent Judge Thomas made to you, given the seriousness of the comments, given the fact that they violated the Civil Rights Act? Was it simply a matter that you wanted to derive whatever advantage you could from a cordial professional relationship?

Ms. HILL. It was a matter that I did not want to invoke any kind of retaliation against me professionally. It wasn't that I was trying to get any benefit out of it.

Senator SPECTER. Well, you say that you consulted with him about a letter of recommendation. That would have been a benefit, wouldn't it?

Ms. HILL. Well, that letter of recommendation was necessary. The application asked for a recommendation from former employers.

Senator SPECTER. Judge Thomas testified at some length this morning about his shock and dismay and anger, and specified a group of facts which he said in effect undercut your credibility: when you moved with him from the Department of Education to EEOC; when you went with him voluntarily, and I take it it was voluntary, to go to a speech which he made at Oral Roberts Law School; when you contacted him about the speech at the University of Oklahoma; when you asked him for his guidance and his advice.

Would you say, Professor Hill, that all of those contacts and the continuation of a cordial professional association, relationship, have no bearing at all on your representation that he made these disgusting comments to you and was guilty of sexual harassment in violation of the Civil Rights Act?

Ms. HILL. I wouldn't say that they have no bearing, but I believe that I have explained a number of those factors. I talked to you about why I went to the EEOC. I talked to you about—would you list those again? I have forgotten what representations you are suggesting.

Senator SPECTER. Well, I know that you have explained or given an explanation as to why you moved from the Department of Education to EEOC, and I know you have an explanation for the Oklahoma University invitation, but nonetheless you called him. I know you have an explanation for the Oral Roberts incident.

But in seeking to evaluate the credibility between you and Judge Thomas, I am asking, and I think you have already answered it, that it does have some relevancy as to whether you would maintain over a long period of time this cordial association if he had been so disgusting to you, had victimized you with sexual harassment and had violated the Civil Rights Act.

Ms. HILL. Well, the things that occurred after I left the EEOC, occurred during a time—any matter, calling him up from the university—occurred during a time when he was no longer a threat to me of any kind. He could not threaten my job; he already had tenure there. He could not threaten me as he had, implicitly at least, at the EEOC; I was no longer working with him at the EEOC. So I was removed from the harassment at that point. I did not feel that it was necessary to cut off all ties or to burn all bridges or to treat him in a hostile manner.

Moreover, I think that if I had done that, I would have had to explain in this, this whole situation that I have come for today. I think what one has to do is try to put oneself in the situation that I was in, and I think it is not an atypical situation. Perhaps all of those things, if you look at them without any explanation, might suggest that there was no harassment, but there is an explanation for each of those things. And given the judgment that I made at the time, that I did want to maintain some cordial but distant relationship, I think that there is no contradiction in what I am saying and those actions.

Senator SPECTER. All right. I am prepared to leave it at that. There is some relevancy to that continuing association questioning your credibility, but you have an explanation. I will leave it at that.

I want to ask you about one statement of Charles Kothe, Dean Kothe, because he knew you and Judge Thomas very well. I want to ask you for your comment on it. There is a similar reference in the Doggett statement which I am not going to ask you about because you haven't read the Doggett statement and you say you do not remember him. Out of fairness I want to give you a chance to read that first, but you do know Dean Kothe and he does know Judge Thomas.

And this is his concluding statement: "I find the references to the alleged sexual harassment not only unbelievable but preposterous. I am convinced that such are the product of fantasy." Would you care to comment on that?

Ms. HILL. Well, I would only say that I am not given to fantasy. This is not something that I would have come forward with, if I were not absolutely sure about what it is I am saying. I weighed

this very carefully, I considered it carefully, and I made a determination to come forward. I think it is unfortunate that that comment was made by a man who purports to be someone who says he knows me, and I think it is just inaccurate.

Senator SPECTER. Well, you have added, during the course of your testimony today, two new witnesses whom you made this complaint to. When you talked to the FBI, there was one witness, and you are testifying today that you are now "recalling more," that you had "repressed a lot." And the question which I have for you is, how reliable is your testimony in October 1991 on events that occurred 8, 10 years ago, when you are adding new factors, explaining them by saying you have repressed a lot? And in the context of a sexual harassment charge where the Federal law is very firm on a 6-month period of limitation, how sure can you expect this committee to be on the accuracy of your statements?

Ms. HILL. Well, I think if you start to look at each individual problem with this statement, then you're not going to be satisfied that it's true, but I think the statement has to be taken as a whole. There's nothing in the statement, nothing in my background, nothing in my statement, there is no motivation that would show that I would make up something like this. I guess one does have to really understand something about the nature of sexual harassment. It is very difficult for people to come forward with these things, these kinds of things. It wasn't as though I rushed forward with this information.

I can only tell you what happened, to the best of my recollection what occurred and ask you to take that into account. Now, you have to make your own judgments about it from there on, but I do want you to take into account the whole thing.

Senator SPECTER. Well, I will proceed with the question of motivation on my next round, because the red light is now on.

The CHAIRMAN. Thank you very much, Senator.

There is one-half hour still to use. I am going to yield the bulk of it to Senator Heflin, but I am going to ask for just a few minutes.

Would you prefer a break?

Ms. HILL. No.

The CHAIRMAN. Because you have been sitting there a long time.

Ms. HILL. I will take a break. I need to read the statement from Mr. Doggett.

The CHAIRMAN. Well, we are not going to go to Mr. Doggett now. Before we get back to Senator Specter, we will break and give you an opportunity to read that statement, which, I might add, we are reading for the first time ourselves.

Ms. HILL. OK.

The CHAIRMAN. But we are not going to break now, so there will be order. Order in here. We will break after Senator Heflin and I ask our questions, and then we will give you time to read the statement, and, as I said, give all us time to read the statement, because the statement is news to me as well as the rest of the committee, other than Senator Specter.

Senator Specter and all of us acknowledge that there is a need to understand the nature of sexual harassment and the way in which people respond to that harassment.

One of the things that you have repeatedly said here, and you have said publicly prior to coming here, is that this was not your idea, you did not want to come here. You have stated, and it appears to be so, that you are a reluctant witness, not one who is out charging down the road. As Senator Specter acknowledged, and as every expert in the field acknowledges, that is not conduct inconsistent with someone who has been harassed.

Now, let me ask you this, though, because I am sure a lot of people, including me, are wondering about it. You indicated, and it is totally understandable, that you repressed a lot. Again, every expert over the years with whom I have spoken about this subject—not about you, not about this incident, but about the nature and the conduct of harassment and the response of the person harassed acknowledges that repression is not unusual.

Ms. HILL. Yes.

The CHAIRMAN. But I would like to ask you if, notwithstanding that fact, you can lay out for the committee what, in fact, was the sequence of events that did bring you forward?

You and I had a long discussion—relatively long discussion—the night that the Senate agreed—we meaning the members of the committee—the Senate agreed to put off the vote on Judge Thomas until 6 o'clock this coming Tuesday. I called to tell you that you would be receiving a subpoena so that you would not be alarmed when someone knocked at your door, and then you and I had a discussion about the sequence of events that brought you here. You have made reference to that sequence, directly and indirectly, on this record and off this record, but publicly.

Now, this is not something that you initiated, is that correct?

Ms. HILL. No; it is not.

The CHAIRMAN. And you were contacted by a staff person from the U.S. Senate, is that correct?

Ms. HILL. Yes.

The CHAIRMAN. And you indicated to me you thought that staff person—and it is perfectly understandable, you would, in my view—you thought that staff person was a staff person from the Judiciary Committee, is that correct?

Ms. HILL. Yes.

The CHAIRMAN. And then you were contacted subsequently by two other staff persons?

Ms. HILL. Yes. Let me clarify something. I thought that staff person was acting on behalf of a member of the committee—

The CHAIRMAN. I see.

Ms. HILL [continuing]. With regard to their duties on the committee.

The CHAIRMAN. I see. Which is I understand to be the case, and legitimately so.

Ms. HILL. Yes.

The CHAIRMAN. But as we talked, I had indicated to you that I, in my responsibilities as chairman, did not make known the allegations to the committee as a whole until after the committee had begun its meeting. That is not your responsibility, that is mine, but I want to get at this issue, because it seems to me it does go to explain your assertions here this morning as to how you got here.

What ultimately made you decide that you must go public, knowing that all this would occur?

Ms. HILL. Well, I was presented with the information by a newspaper reporter.

The CHAIRMAN. The information that you had submitted to me and I distributed to the committee?

Ms. HILL. Yes.

The CHAIRMAN. You were presented with that information and—

Ms. HILL. Over the telephone, it was read to me verbatim by a member of the press.

The CHAIRMAN. Now, the thing that was read to you verbatim was the statement that you had submitted and asked me to distribute to the committee, is that correct?

Ms. HILL. Yes.

The CHAIRMAN. So, in your view, you are here as a result of some unexpected events—

Ms. HILL. Definitely.

The CHAIRMAN [continuing]. And events that turned out not to be within your control?

Ms. HILL. Definitely.

The CHAIRMAN. Do you consider yourself part of some organized effort to determine whether or not Clarence Thomas should or should not sit on the bench?

Ms. HILL. No, I had no intention of being here today, none at all. I did not think that this would ever—I had not even imagined that this would occur.

The CHAIRMAN. Now, as I listened to you today answer very direct questions by Senator Specter, fair and direct questions, you stated here—correct me if I am wrong—that you did not view what was happening to you as a situation in which you would need to have a record to be able to retaliate or sue. Your main objective was to try to stop what you alleged to be happening, from happening, is that correct?

Ms. HILL. That is correct, that was my motive at the time, just to stop the activity.

The CHAIRMAN. Is this what you anticipated?

Ms. HILL. This? No, not at all. I would have never even dreamed, I just can't imagine.

The CHAIRMAN. Is it reasonable to say that it was your hope and expectation that it would not come to this?

Ms. HILL. It was exactly what I was trying to really very—I made greater effort to make sure that it did not come to this, and I was meticulous, I was making every effort to make sure that this public thing did not happen. I did not talk to the press. I was called by the press on July 1. I did not talk to the press. This is exactly what I did not want.

The CHAIRMAN. And is it fair to say that attitude prevailed up until the moment the press person called you and read you your statement?

Ms. HILL. Well, the attitude of not wanting this to happen?

The CHAIRMAN. Yes.

Ms. HILL. It prevails even today.

The CHAIRMAN. Well, we are beyond that point, as you know.

Ms. HILL. Yes, we are beyond that point, but it certainly prevailed up until that point.

The CHAIRMAN. The reason I ask that is that it is important, it seems to me, for the committee to know why someone would move from one point to the next and still hope that she didn't have to reach an end point, with the end point being a situation like this one here. Am I misstating in any way your desires as you moved along in this process or were moved along in this process?

Ms. HILL. The desire was never to get to this point. The desire—and I thought that I could do things and if I were cautious enough and I could control it so that it would not get to this point, but I was mistaken.

The CHAIRMAN. I thank you very much.

I yield to my friend from Alabama, Senator Heflin.

Senator HEFLIN. Professor Hill, we heard Judge Thomas deny that he had ever asked you to go out with him socially, dating, and deny all allegations relative to statements that allegedly he had made to you that involved sex, sex organs, pornographic films and materials and this type of thing.

You have testified that this occurred, and that he asked you to date and go out socially. You have testified here today concerning statements that he had made to you about pornographic films and materials and other things.

I, and I suppose every member of this committee, have to come down to the ultimate question of who is telling the truth. My experience as a lawyer and a judge is that you listen to all the testimony and then you try to determine the motivation for the one that is not telling the truth.

Now, in trying to determine whether you are telling falsehoods or not, I have got to determine what your motivation might be. Are you a scorned woman?

Ms. HILL. No.

Senator HEFLIN. Are you a zealoting civil rights believer that progress will be turned back, if Clarence Thomas goes on the Court?

Ms. HILL. No, I don't—I think that—I have my opinion, but I don't think that progress will be turned back. I think that civil rights will prevail, no matter what happens with the Court.

Senator HEFLIN. Do you have a militant attitude relative to the area of civil rights?

Ms. HILL. No, I don't have a militant attitude.

Senator HEFLIN. Do you have a martyr complex?

Ms. HILL. No, I don't. [Laughter.]

Senator HEFLIN. Well, do you see that, coming out of this, you can be a hero in the civil rights movement?

Ms. HILL. I do not have that kind of complex. I don't like all of the attention that I am getting, I don't—even if I liked the attention, I would not lie to get attention.

Senator HEFLIN. Well, the issue of fantasy has arisen. You have a degree in psychology from the University of Oklahoma State University.

Ms. HILL. Yes.

Senator HEFLIN. Have you studied in your psychology studies, when you were in school and what you may have followed up with,

the question of fantasies? Have you ever studied that from a psychology basis?

Ms. HILL. To some extent, yes.

Senator HEFLIN. What are the traits of fantasy that you studied and as you remember?

Ms. HILL. As I remember, it would require some other indication of loss of touch with reality other than one instance. There is no indication that I am an individual who is not in touch with reality on a regular basis and would be subject to fantasy.

Senator HEFLIN. The reality of where you are today is rather dramatic. Did you take, as Senator Biden asked you, all steps that you knew how to take to prevent being in that witness chair today?

Ms. HILL. Yes, I did everything that I knew to do, I did.

Senator HEFLIN. There may be other motivations. I just listed some that you usually look to relative to these. Are you interested in writing a book? [Laughter.]

Ms. HILL. No, I'm not interested in writing a book.

Senator HEFLIN. In the statement that was made which we refer to as an affidavit, on the—do you have a copy of that?

Ms. HILL. Yes, I do.

Senator HEFLIN. Mr. Chairman, just for part of the full record, I would move that that statement be made a part of the record.

The CHAIRMAN. Without objection, it will be made part of the record.

Senator HEFLIN. You describe on the second page, starting at the first paragraph there, about the working relationship and the various conversations, which you say were very vivid and very graphic, pertaining to pornographic materials and films and other statements of that nature.

Then you end that paragraph with these words: "However, I sense that my discomfort with his discussions only urged him on, as though my reaction of feeling ill at ease and vulnerable was what he wanted."

In other words, you are basically stating that that appeared to be his goal, rather than trying to obtain an intimate or sexual relations with you. It may be that you also felt that, though that raises quite an issue.

"However, I sense that my discomfort with his discussions only urged him on as though my reaction of feeling ill at ease and vulnerable was what he wanted." What do you mean by that? How do you conclude that?

Ms. HILL. Well, it was almost as though he wanted me at a disadvantage, to put me at a disadvantage, so that I would have to concede to whatever his wishes were.

Senator HEFLIN. Do you think that he got some pleasure out of seeing you ill at ease and vulnerable?

Ms. HILL. I think so, yes.

Senator HEFLIN. Was this feeling more so than a feeling that he might be seeking some type of dating or social relationship with you?

Ms. HILL. I think it was a combination of factors. I think that he wanted to see me vulnerable and that, if I were vulnerable, then he could extract from me whatever he wanted, whether it was sexual or otherwise, that I would be under his control.

Senator HEFLIN. As a psychology major, what elements of human nature seem to go into that type of a situation?

Ms. HILL. Well, I can't say exactly. I can say that I felt that he was using his power and authority over me, he was exerting a level of power and attempting to make sure that that power was exerted. I think it was the fact that I had said no to him that caused him to want to do this.

Senator HEFLIN. You cite the instance of the Coke can and his statement of pubic hair on it. Do you feel that he was attempting to have some specific message by relating that? How did you interpret that?

Ms. HILL. I did not have a clue as to how to interpret that. I did not know; it was just a very strange comment for me. I could not interpret it. I thought it was inappropriate, but I did not know what he meant.

Senator HEFLIN. Now, was there an occasion when you were at the EEOC that you wanted a different job or a promotion or a higher job?

Ms. HILL. I never sought a promotion with Clarence Thomas while at the EEOC. I never sought a promotion with anyone while at the EEOC.

Senator HEFLIN. Well, did this Allyson Duncan, in effect, take over some position or become a supervisor of you, as opposed to what it had previously been, and was it a reorganization, or what were the facts pertaining to that?

Ms. HILL. When Allyson Duncan took over her position—let me say this: Prior to when Allyson Duncan moved into the office of the Chair as an assistant, the assistants had basically been reporting directly to Thomas, and what I understood happened was that the work got too much for him to handle, to dole out to the assistants himself, so he reorganized the structure and appointed Allyson as the chief of staff for the special assistants in that office.

Senator HEFLIN. Now, Senator Specter asked you about the USA Today report of October 9, 1991, in which it recites that Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument which quietly and behind the scenes would force him to withdraw his name.

Keith Henderson, a 10-year friend of Hill's and a former Senate Judiciary Committee staffer, says Hill was advised by Senate staffers that her charge would be kept secret and her name kept from the public scrutiny.

Have you had a conversation with Keith Henderson during the period of time from when you were originally contacted by some staffers from the Senate and the time that this newspaper account occurred?

Ms. HILL. Yes, I did.

Senator HEFLIN. You did. All right. And what was your conversation with Mr. Henderson? What did you tell him?

Ms. HILL. Well, my conversation was that I was really concerned about the situation involving this issue, that I had made the comments to the staff, that I had followed up on those comments with an affidavit and that I had gone through the investigation, all with the understanding that this was not going to be a public matter,

and that I was concerned about whether or not the information would be made available to all the committee.

Senator HEFLIN. Well, during any conversation with Keith Henderson, did you tell him that certain staffers had told you that if you went ahead and signed the affidavit, that that might be a way to get him to withdraw?

Ms. HILL. No, I did not tell him that.

Senator HEFLIN. Well, did you tell him that that was mentioned or that it would have been mentioned relative to this?

Ms. HILL. No, I didn't tell him that.

Senator HEFLIN. Do you know whether or not Keith Henderson talked to certain Judiciary Committee staffers?

Ms. HILL. I did not—I don't know whether he did talk to Judiciary Committee staffers.

Senator HEFLIN. Do you know whether in any conversation that he might have talked to Judiciary staffers, they might have said that is a possibility?

Ms. HILL. Do I know of any conversation—

Senator HEFLIN. Well, do you know whether or not there was a conversation between Keith Henderson and some staffer in which they were discussing the affidavit and saying that there were certain possibilities, which included the possibility that Clarence Thomas might withdraw his name?

Ms. HILL. That might have happened, but I haven't talked with Keith Henderson about that.

Senator HEFLIN. When you were at the EEOC, were you there on November 23, 1983? Would you have been there then?

Ms. HILL. No, I was not there then. I had left for Oral Roberts University.

Senator HEFLIN. When did you leave?

Ms. HILL. I left in July 1983.

Senator HEFLIN. Have you read a story in the Washington Post, today, Friday, October 11, in which there is mentioned a case involving allegations that Earl Harper, Jr., a regional attorney in the EEOC Baltimore office, had made unwelcome sexual advances to several women on his staff? When you were there at the EEOC, do you remember anything about a case being alleged involving Earl Harper, who was a trial attorney at the Baltimore office of the EEOC?

Ms. HILL. I don't recall any case.

Senator HEFLIN. All right. Since you graduated, your scholastic work, have you written any Law Review articles?

Ms. HILL. Yes, I have.

Senator HEFLIN. How many Law Review articles have you written?

Ms. HILL. I've written six, seven, including a short Law Review article—if I may back up, I have written five Law Review articles, some shorter pieces in journals.

Senator HEFLIN. Now, while you were at the Office of Civil Rights of the Department of Education, according to the way I read the statements, most of these instances pertaining to descriptions of pornographic films and materials was mentioned to you at the Department of Education, as opposed to the EEOC office?

Ms. HILL. I think the more explicit statements probably did occur at Education more than later at EEOC.

Senator HEFLIN. But they did occur some at EEOC?

Ms. HILL. Yes.

Senator HEFLIN. Now, how old were you at this particular time that you were at the Department of Education?

Ms. HILL. I was 25, I just turned 25 when I started the job.

Senator HEFLIN. Did you have any family here in Washington?

Ms. HILL. No, I did not.

Senator HEFLIN. Did you have other than certain friends that you could turn to in times of difficulty and—

Ms. HILL. I just had some friends. I did have some friends, but no family.

Senator HEFLIN. Mr. Chairman, I believe that is all I have.

The CHAIRMAN. Thank you very much.

We will recess for 15 minutes—let's have order in here, please—and at that time we will come back and Senator Specter will question, and then we will move to Senators who have 5 minutes of questions and we hope that will be it. We will, in due course, call back Judge Thomas.

We are recessed for 15 minutes.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Before we begin this next round of questioning, through what I know to be inadvertence, the affidavit that was given to Professor Hill was also for the first time made available to the committee at-large; the Senator from Pennsylvania did not realize that we did not have it, either.

There has been an agreement from the outset of this proceeding—because, as I said, this is not a trial, this is a hearing to seek the facts—that everyone on the committee would have made available to them any and all documents that are produced, for whatever reason, before there is any introduction of such documents in the record or before there is any questioning on any documents. That applies to Professor Hill, that applies to Judge Thomas, and that applies to all our witnesses.

Again, I think in this case this was inadvertence. The Senate has indicated to us they want this very important and difficult matter resolved and they gave us essentially 48 hours to get ready for this, so there is going to be a lot that drops between the cup and the lip here, but one of the things that won't is any document that all members of the committee have not had in sufficient time to examine, read, and think about before it is even presented.

With that, while we are doing a bit of housekeeping here on such an important matter, let me suggest, again, the committee's intention in terms of timing: The committee intends to go back to Senator Specter. He indicates he may have more questions than his next half-hour, and Senator Leahy has indicated that he has some more questions. It is my sincere hope, Professor Hill, that we do not keep you much longer.

At the conclusion of Senator Leahy's questioning, we will then do what I indicated at the outset. Each member who has not asked questions, all of whom have a keen interest in this matter, will have up to 5 minutes to ask a question or questions.

We will then, God willing, excuse Professor Hill and call Judge Thomas back this evening, and I hope we will complete Judge Thomas' testimony tonight before we go tomorrow to other witnesses.

I thank you for your patience, Professor Hill. Again, as we have with all witnesses, if at any point during this process, as I indicated to Judge Thomas and to every witness before us, you desire to ask for a break, for whatever reason—you need not have any reason—you just indicate to the Chair and we will recess.

Now, with that, let me yield to my friend from Pennsylvania, Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Chairman, as you have noted, I have not known you had not seen the Doggett statement, but, in any event, the interruption gave both Professor Hill and other members of the committee a chance to see that statement.

Professor Hill, a copy or copies of that statement, copies were made available to you over the break, and I ask you now if you would have any objection to answering questions about that statement.

Ms. HILL. No.

Senator SPECTER. All right. It may be that Mr. Doggett will appear as a witness. If he does, it would be appropriate to give you a chance to comment and, rather than have you come back after the fact, you can comment now. I had candidly some question in my mind about asking you about this statement at all, but our lines of inquiry at this kind of a proceeding are very different from any other kind of a proceeding. You have now had a chance to read it and you are willing to comment about it?

Ms. HILL. Yes, I will.

Senator SPECTER. I bring up the statement of Mr. Doggett, because of the statement which was made by Dean Kothe. You have already commented about where Dean Kothe of the Oral Roberts Law School made the statement about fantasy. I don't intend to repeat again, but that comes up in the Doggett statement.

Now, the Doggett statement is a long statement and I am going to summarize it by reading a portion of page 2. You, of course, Professor Hill, are free to bring up any other part of it you want, if you would like to go into any of the rest of it.

Senator METZENBAUM. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes, you may, Senator.

Senator METZENBAUM. Mr. Chairman, it is my understanding that if I follow this procedure by accepting this affidavit and inquiring of the witness in connection with it, that you open up a little Pandora's box, because we can get all sorts of sworn statements—I see a number of them that were handed to me a little bit ago, and it seems that there is no end.

It is my understanding further that there were some limits as to the number of witnesses that would be called by Judge Thomas, that were interested in his confirmation; a number by Ms. Hill. And my question is what are the rules?

The CHAIRMAN. The Senator makes a valid point. We had agreed to a witness list submitted on behalf of Judge Thomas by the minority, and a witness list that was submitted on behalf of Professor

Hill. We were of the understanding that this was the totality of the witness list.

There was an agreement that there would be no witnesses called other than those witnesses without the entire committee being informed of, and deciding on, whether or not to issue a subpoena to any witness that had not, heretofore, been mentioned.

Now, obviously Mr. Doggett's affidavit, it would seem to me, at a minimum, would require Mr. Doggett to come forward and be under oath. So, by implication, we have changed the groundrules of who would be witnesses and under what circumstances.

I would suggest that it may not be inappropriate to question Professor Hill on Mr. Doggett's statement, but not absent the opportunity of the majority to be able to question Mr. Doggett. I have insisted that both the majority counsel and the minority counsel simultaneously interview every person on the witness list so that they have an opportunity to listen to and question that potential witness.

In the case of Mr. Doggett that has not occurred. Now, unless my colleague from South Carolina would object, it seems to me that it is not appropriate at this moment to question Professor Hill, notwithstanding her willingness to be questioned, and I am told that Mr. Doggett is scheduled to be interviewed by majority and minority staff at 5 o'clock today.

Senator THURMOND. Yes, this afternoon.

The CHAIRMAN. I would respectfully suggest to my friend from Pennsylvania it would be more appropriate to question Professor Hill on Mr. Doggett's assertions after all parties on the committee have had an opportunity to speak with Mr. Doggett, so that other Senators will have an opportunity to intelligently question Professor Hill on Mr. Doggett's statement, and after the staff has spoken to—Mr. Doggett.

So, unless my colleague from South Carolina objects. I would suggest we postpone any questioning on Mr. Doggett. Although it may be totally appropriate to do so, until the full committee has had a chance, as per our agreement, to interview Mr. Doggett so we are all prepared, and are able to ask intelligent follow-up questions.

Senator THURMOND. Mr. Chairman, I do not object, just provided that we have the opportunity to question Professor Hill after Mr. Doggett has testified.

The CHAIRMAN. Professor Hill, this may mean that you have to come back. And I would leave the choice to you but I would respectfully suggest that it is better for us to have an opportunity, all of us, to question Mr. Doggett before you are questioned about whatever Mr. Doggett had to say.

Would you like time to confer with your counsel?

Ms. HILL. Yes, just a moment, please.

I will agree to come back if necessary to respond on Mr. Doggett's statement.

The CHAIRMAN. Well, it may be possible—I am not promising this—it may be possible that we can do this by interrogatories or sworn interrogatories, or by affidavit, but I do not make that commitment. The only commitment I am making now—it seems to me fair—is for the committee to be fully informed prior to your being questioned on this.

Senator HATCH. Mr. Chairman?

The CHAIRMAN. Yes?

Senator HATCH. I haven't perhaps been privy to some of these agreements that have been made, but it seems to me there is nothing wrong—

Senator LEAHY. Orrin, we cannot hear you down here.

Senator HATCH. I am sorry, I apologize. It seems to me there is nothing wrong with while the witness is here, asking her about these questions about, you know, this particular statement. She was willing to answer it. And I think you save time by doing it. And, frankly, I don't see any problem with that. I think the Senator could have—

Senator THURMOND. If she is willing to go ahead, we have no objections.

Senator HATCH. He can ask any questions he wants, maybe we will not call Doggett. But at least he should be able to ask her if this is true, or if this is what happened? And she can answer.

Senator LEAHY. Mr. Chairman?

The CHAIRMAN. I will yield in a moment to my friend from Vermont. There is one simple reason why I would not like to go forward now. Quite frankly, it is not totally as a consequence of whether or not we are being fair to the witness, although I think it would be unfair to her.

It is simply that I don't know enough. I want to be able to question the witness on this issue when she returns for questioning and it seems to me that the best way to find out the truth is for everybody on this committee to have ample opportunity to review whatever is going to be introduced in evidence, so that we can all intelligently question on the matter.

I yield to my friend from Vermont.

Senator LEAHY. Mr. Chairman, I really echo what you said, but I know that we have tried, in fairness to everybody involved—the administration, Judge Thomas, Professor Hill and everybody else—we have worked out groundrules that you and Senator Thurmond and the rest of the committee have agreed to. And we have all had to develop whatever we were going to do within those groundrules. This would go outside them, and as one who has been designated to ask questions, I would find it very difficult to do any kind of a followup on this without having been able to at least delve into a statement of somebody who is not going to be a witness, but used almost as though they had been. And for the sake of a few hours' delay, whatever it might be, I would rather do it in a way that all of us—those asking questions based on the statement, those who may want to do followup questions based on the statement—at least know what the facts are.

Senator HATCH. Well, Mr. Chairman, I don't know of these groundrules. I have not heard of this that you can't ask a witness questions. Now, admittedly we may decide that we do not call this

man as a witness, but it is a verified statement, as I understand it, and she may agree or not agree with it, but she did read it, she said that she was willing to testify and I don't see any reason why he can't ask questions about it. It is relevant to the proceedings.

Senator THURMOND. Mr. Chairman, I do not think we ought to attempt to require her, but if she is willing to go ahead, then we can save time, I think.

The CHAIRMAN. Ms. Hill would you prefer to wait until we or our staffs have had a chance to interview Mr. Doggett, or would you prefer to go now?

Ms. HILL. That's a hard choice, if the committee needs—

The CHAIRMAN. Then the Chair will make the choice, we will wait.

Senator SIMPSON. I would like to hear her choice, if I might.

The CHAIRMAN. OK.

Senator THURMOND. We'll give her the choice.

Ms. HILL. I can comment on the statement now. I am not sure what the statement is supposed to mean.

The CHAIRMAN. That's the problem.

Ms. HILL. And it is really baffling me. I am really confused by it, but it is meaningless to me.

Senator THURMOND. Do you prefer to go forward now or not?

Ms. HILL. Excuse me, just a moment.

Senator THURMOND. I think whatever she prefers.

The CHAIRMAN. I agree, whatever the witness prefers, we will do.

Senator LEAHY. Mr. Chairman, I might say that it is because the affidavit is so meaningless to me that I wanted to question it further, but whatever works.

Ms. HILL. If the Chairman recommends that we wait, I am perfectly happy to wait.

The CHAIRMAN. I have no recommendation. [Laughter.]

Ms. HILL. So you are going to make me decide, aren't you?

The CHAIRMAN. If it were left to me I would want to abide by the established rules, but if the witness prefers to go, she may go.

Ms. HILL. I would prefer that we abide by the rules that we have then.

The CHAIRMAN. Then we will wait.

Senator SIMPSON. Mr. Chairman, let me ask a question. We were all in the hall during the recess and the media has this affidavit and they are not going to wait for anything.

Ms. HILL. That's true, they don't.

Senator SIMPSON. And so you know that. And I just say that to you as a lawyer, that it will be circulated. It is now going out, and there is no response from you. I would think that obviously this man should come and testify. I would think that he automatically qualifies as a witness. The other witness, Angela Wright, I was told about yesterday afternoon. They took a deposition from her yesterday and I saw it last evening. And she said, although the headline was, "new and dazzling evidence," she said, "I am not stating a claim of sexual harassment against Clarence Thomas. It is not something that intimidated or frightened me. At the most it was annoying and obnoxious."

So, surely, if we are going to have fairness, and we have had fairness, but this is an extraordinary document and it is not, nor was

yours, a notarized statement. It is a sworn statement. It is an affidavit. And so I think I am ready to do anything you wish but the feeding frenzy is on.

The CHAIRMAN. There is no right answer, I expect, to this question. With regard to the person referred to by the Senator from Wyoming as soon as we became aware that such a person existed we contacted all staff within 20 minutes, and any discussions that took place with that person were done jointly.

But I only say that to put them at rest. I want to end this. I see your counsel has indicated that it might be a good idea for you to go forward. And if that is your decision, we will go forward; from now on, though, as I said, no document will be put in place until every member has had time, to examine it and we will abide by your counsel's recommendation to you.

Mr. GARDNER. Mr. Chairman, I want to explain that she is ready to answer questions. The issue of whether or not to bend the rules is not ours, it is yours.

The CHAIRMAN. Yes, sir, and this is the last statement I am going to make on this. It is very easy for me to insist on the committee rules being followed, but you and Ms. Hill's other counsel may rightly conclude that Senator Simpson is correct, and that this will mean that this affidavit will be sitting out there for 2, 4, 6, 8 hours without a response. Since it is not a court of law, I am not prepared to make the judgment on whether or not Professor Hill is prejudiced by the fact that she cannot respond. That is why the chair is not going to rule that the committee rules must be adhered to, especially as they are not the committee rules, but ground rules laid down in what is obviously an extraordinary, unusual, and unprecedented hearing.

So, ultimately, we must look to the witness and her counsel to determine what is in her best interests, not the committee's best interest. From the beginning, the interests at stake are those of Professor Hill and those of Clarence Thomas, not those of the committee.

Ms. HILL. Will there be an opportunity to respond to the witness if he is called?

The CHAIRMAN. Yes. You will have an opportunity to respond today, this moment if you wish, and to the witness if he is called.

Ms. HILL. Then I am ready to go forward.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I think my time is up. [Laughter.]

Mr. Chairman, I would just like to say initially for the record that I did not make this statement available to the media or anyone.

The CHAIRMAN. I understand that, Senator, I know you better than that.

Senator SPECTER. And the election is to proceed.

The CHAIRMAN. The election of the witness is to proceed knowing that we may call Mr. Doggett here to testify under oath if we so deem necessary.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Hill, I had started to question you about this affidavit. I had desisted in mid-sentence because I wanted you to have an op-

portunity to read it. There was a concern on my part about the document but I think it has sufficient value and since you are willing to respond to it, I am going to discuss it with you briefly.

This is an affidavit provided by a man who knew both you and Judge Thomas, and its relevancy, to the extent that it is relevant, arises on page 2 where Mr. Doggett says the following:

The last time I saw Professor Anita Hill was at a going away party that her friends held for her at the Sheraton Carlton Hotel on K Street, just before she left for Oral Roberts Law School. During this party she said that she wanted me to talk in private. When we moved to a corner of the room she said, "I am very disappointed in you. You really shouldn't lead on women and then let them down." When she made that statement I had absolutely no idea what she was talking about. When I asked her what she meant she stated that she had assumed that I was interested in her. She said that it was wrong for me not to have dinner with her or to try to get to know her better. She said that my actions hurt her feelings and I shouldn't lead women on like that. Quite frankly I was stunned by her statement and I told her that her comments were totally uncalled for and completely unfounded. I reiterated that I had never expressed a romantic interest in her and had done nothing to give her any indication that I might be romantically interested in her in the future. I also stated that the fact that I lived three or four blocks away from her but never came over to her house or invited her to my condominium should have been a clear sign that I had no personal or romantic interest in her. I came away from her going away party feeling that she was somewhat unstable and that in my case she had fantasied about my being interested in her romantically.

On page 3,

It was my opinion at the time and it is now my opinion that Ms. Hill's fantasies about sexual interest in her were an indication of the fact that she was having a problem being rejected by men she was attracted to. Her statements and actions in my presence during the time when she alleges that Clarence Thomas harassed her were totally inconsistent with her current descriptions and are, in my opinion, of yet another example of her ability to fabricate the idea that someone was interested in her, when, in fact, no such interest existed.

My question to you, Professor Hill, is, is Mr. Doggett accurate when he quotes you as saying, "I am very disappointed in you. You really shouldn't lead on women and then let them down."

Ms. HILL. No, he is not.

Senator SPECTER. What, if anything, did he say to you?

Ms. HILL. As I recall, before we broke I told you that I had very limited memory of Mr. Doggett. The event that he is talking about was a party where there were 30 or 40 people. I was talking to a lot of people, they were people who I had known while I was here in Washington, and we might have had some conversation, but this was not the content of that conversation. I have very limited memory of him. I did not at any time have any fantasy about a romance with him.

Senator SPECTER. In the earlier part of his affidavit he says that he met you in 1982 at a gathering of African-American lawyers on Capitol Hill, and that he had a number of contacts with you. Are his statements in that regard accurate, if you recall?

Ms. HILL. As I said, my memory of him is limited. I do remember at some point seeing him jogging near my home, but beyond that I have a very limited memory of any interaction that I had with him or how I might have met him, anything like that.

Senator SPECTER. I am shifting now, Professor Hill, to a key issue regarding your testimony that you moved with Judge Thomas from the Department of Education to EEOC because you needed the job. That is your testimony, correct?

Ms. HILL. Well, I think that is your summary of my testimony.

Senator SPECTER. Well, is my summary accurate?

Ms. HILL. Well, I said that I moved to EEOC because I did not have another job. This position that—I was not sure whether I would have a position at the Department of Education. I suppose that could be translated into I needed the job.

Senator SPECTER. OK. I am informed, Professor Hill, that you were a schedule A attorney and in that capacity could stay at the Department of Education. Is that incorrect?

Ms. HILL. I believe I was a schedule A attorney but, as I explained it, I was the assistant to the Chair of—oh, excuse me—assistant to the Assistant Secretary of Education. That, I had not been interviewed by anyone who was to take over that position for that job. I was not even informed that I could stay on as a schedule A attorney, as well as, as I stated before, the agency was subject to being abolished.

Senator SPECTER. But as a schedule A attorney, you could have stayed in some job?

Ms. HILL. I suppose. As far as I know, I could have, but I am not sure because at the time the agency was scheduled to be abolished.

I want to add, too, that one of the things that I have made the point about before was that the activity had ended at that time, and I enjoyed the work. I wanted to do civil rights work, but I didn't know what work I would be doing if I could have even stayed at the agency, at the Department of Education. I moved on because I assumed that the issue of the behavior of Clarence Thomas had been laid to rest, that it was over, and that I could look forward to a similar position at the EEOC.

Senator SPECTER. I understand that you have given that reason, that the behavior had ended, so that you have given a basis for not expressing a concern, but your statements in your earlier testimony involved your conclusion that you would have lost your job, and I am now—

Ms. HILL. That was one of the factors.

Senator SPECTER. Excuse me?

Ms. HILL. That was one of the factors.

Senator SPECTER. That was one of the factors, and I am now asking you about the correctness of that in light of the fact that you were a schedule A attorney. While you would not have been Judge Thomas' assistant or perhaps the assistant of the Assistant Secretary, as a class A attorney you could have in fact kept your job, had you wanted to stay there.

Ms. HILL. That really was not my understanding, sir. At the time I understood that my job was going to be lost. That was my understanding.

Senator SPECTER. Well, did you make an inquiry?

Ms. HILL. With whom?

Senator SPECTER. Anyone?

Ms. HILL. I did not make an inquiry. I went on what I was told in my conversation with Mr. Thomas.

Senator SPECTER. Well, Judge Thomas was replaced by Harry Singleton, and Harry Singleton in fact, according to an affidavit provided, was prepared to retain you as one of his attorney advisors. Now I pursue this in some detail, Professor Hill, because on

your prior statements as well as your testimony here. In extensive newspaper accounts there has been a major question raised about why you would leave with Judge Thomas, considering your statements about his sexual harassment.

And I understand that you have given us part of your thinking, the cessation, so perhaps it wouldn't arise. But there has been a major basis for your leaving the Department of Education, because you would have lost your job and at 25, as I recollect the press accounts and your statements, you needed a job. But on inquiry it is determined, No. 1, that as a class A attorney you could have stayed at the Department of Education in an attorney's job; and, second, that Harry Singleton, who took Judge Thomas' position, was ready to retain you as one of his attorney advisers, had you made an inquiry.

So that leads to the question, just how concerned were you about losing the job when you made no inquiry about your status to keep a job as a class A attorney, or any inquiry with the successor Assistant Attorney General who was prepared to keep you?

Senator METZENBAUM. Mr. Chairman, again I want to raise the question about the method of procedure. What we have now, within the last 15 minutes we were presented five pieces of paper, some of which are notarized, some of which aren't, are various people making certain statements. And now we find that our friend, Senator Specter—and before that we had been presented the affidavit of Mr. Doggett—now we find that this lady is being called upon to respond to these statements, some of which are notarized, some of which aren't.

But what we are doing is, we are introducing a whole new element of testimony in this means by inquiring of her. And frankly, Mr. Chairman, I feel it violates the rules under which you told us this committee was operating and which I think we all agreed to. I think it is a back door way of approaching the question of how many witnesses each side will bring forth.

Senator SPECTER. Mr. Chairman, if I may respond—

The CHAIRMAN. Yes.

Senator SPECTER. [continuing]. This is a key point as to why Professor Hill left one department and went to another. According to her statements, Judge Thomas had sexually harassed her at the Department of Education, and she went with him to EEOC in significant part, if not in major part, according to her statement, because she would have lost her job.

Now, Senator Metzenbaum may find that uncomfortable, but I frankly object to his interruption. The witness doesn't have any problem with the question.

Senator METZENBAUM. I want to say I am not wanting to interrupt my friend in his line of inquiry. I am raising the question with the Chair with respect to the procedure. We were all told that there would be only so many witnesses, and unless there was agreement between the Chair and the ranking member, that is the number that would be had. But if you have witnesses come in through affidavits and then inquire about them to Ms. Hill, I think that it just is not following the procedures.

Senator SPECTER. Mr. Chairman, this is a question which goes to the heart of the credibility of what the witness has testified to, as

to her reason for a very critical move from the Department of Education to EEOC.

The CHAIRMAN. There is no question that it is as represented. The question is whether the remainder of the committee had any opportunity to prepare, or even know whether this was going to happen. What I am afraid is going to happen now is, by the time that Judge Thomas gets here, there will be 2, 7, 10, 12, 15 affidavits that no one will have had an opportunity to look at, and Judge Thomas will be questioned on things that could be totally scurrilous, could be in fact totally off the wall, without any of our staffs having had an opportunity to determine whether the person proffering the statement is in fact credible and whether that person should be called before the committee.

Senator THURMOND. Mr. Chairman, may I make a statement?

The CHAIRMAN. Yes.

Senator THURMOND. I think the question is proper because without this affidavit, you don't need the Doggett affidavit. He could ask her the question that he did ask her, why she left when she could have stayed, without this affidavit. You don't need this affidavit. The question he asked is perfectly proper.

Senator KENNEDY. But Mr. Chairman, just on this issue, it is being represented that Singleton had a job available for Professor Hill. I mean, I think it would be legitimate to find out when did Mr. Singleton indicate that Professor Hill might have a job. Did he have a conversation with her prior to the time that she left the agency? Here a Senator is saying, "Well, don't you know that Mr. Singleton," who happens to be one of Clarence Thomas' best friends, "had a job just out there, and why didn't you take it? And the fact you didn't take it must reflect something," and I think all of us know what is trying to be reflected.

And so I think it is perfectly appropriate for us, when we are going to talk about asking a witness about when that job was available, to know when that job—whether Mr. Singleton talked to Professor Hill, when he talked to her, when he indicated a job was going to be available, rather than just go ask the witness right here on an affidavit, at some time Mr. Singleton concluded, based upon your standing over there, that you would have been available.

And I think that is the point the Senator from Ohio is making. I think it is a legitimate point.

Senator SPECTER. Mr. Chairman, if I may respond just briefly—

The CHAIRMAN. Yes.

Senator SPECTER. [continuing]. The question is whether Professor Hill asked Mr. Singleton. She is in the process of leaving. She is concerned about her job, and the question which I asked goes to the issue of her inquiry as to her ability to stay because she is in a class A status or, secondarily, to keep the same position as the Assistant Secretary's advisor. It goes to the issue of her state of mind, as to whether she felt she really had to move with Judge Thomas to keep a job.

Senator HATCH. Well, Mr. Chairman—

The CHAIRMAN. Wait a minute. Let me say something.

Senator HATCH. Before you rule I would like to make a statement, though—

The CHAIRMAN. Make it briefly, if you could.

Senator HATCH. I will try.

It seems to me that these questions are relevant——

Senator METZENBAUM. We can't hear you, Orrin.

Senator HATCH. I'm sorry.

It seems to me that these questions are relevant. Last night we were trying to obtain all the knowledge we could from this so-called Angela Wright. Well, she gave so much testimony and then refused to talk after that. Now does that mean that she is going to be barred from testifying? I don't think anybody on your side is going to argue that.

He is entitled to ask her, in advance, what her recollection is of these things. And all that means is, if she will answer it, either she agrees with the statement or she doesn't. If she doesn't, she doesn't. Now if she doesn't and the Singleton statement says something else, we have an option of calling Singleton or not calling him. I mean, that doesn't take anybody's rights away from them, and I think if she wanted to, she would have an option of coming back if she didn't like what he said. So I think I never heard of this rule.

The CHAIRMAN. I thank my friend, and——

Senator LEAHY. Mr. Chairman, I do wish to make one point on this. How fair can it be to either Professor Hill or any other witness if any of us can sit up here and say, "I have this stack of affidavits, and in affidavit No. 5 in the third paragraph somebody says such-and-such. What do you have to say about that?"

I mean, at the very least, at the very least they ought to be able to see these affidavits. At the very least, they ought to have some idea of who the person is and if they are credible. Otherwise you could go down through a whole list and say, "Ah, affidavit No. 29, in the second sentence, they say that you were living in Japan at the time. Can you prove that you weren't?" I mean, this doesn't make much sense.

The CHAIRMAN. I thank my colleagues for their advice. The Chair rules as follows.

Senator SIMPSON. Mr. Chairman, may I? I have been——

The CHAIRMAN. You have been very good. [Laughter.]

Senator SIMPSON. I promise. It is a very difficult day for me.

Mr. Chairman, let me just say every one of us at this table is in anguish because what we are trying to deal with is the credibility of these two people, principally, and so anything that goes to their credibility we have to hear. Forget about Doggett. I am glad you responded. I think that was appropriate, because that thing would be splattered all over the place, and if you hadn't said anything, you would pay for it.

And so now you can't tell me what you are going to do when Clarence Thomas gets here and you bring up any questions impugning his credibility. Are we going to invoke this rule? I want to see it to believe it. This is about credibility.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. Well, let me tell you what I am going to do, and then I will yield to my colleagues.

It is appropriate to ask Professor Hill anything any Member wishes to ask her to plumb the depths of her credibility. It would be appropriate to ask her about Mr. Singleton, but it is inappropri-

ate to represent what Mr. Singleton says via an affidavit. There is a distinction.

So you can ask anything you want. You can ask her what Santa Claus said or didn't say, whether she spoke to him or not, but it is inappropriate to introduce an affidavit from Santa Claus prior to every member on this committee having an opportunity to check it out, for the following reason: We may find out that Santa Claus is not real. Therefore, it may not be very relevant whether Santa Claus said something or not.

So, we are all lawyers on this committee, with one or two exceptions. There is a fundamental distinction between being able to ask a direct question, to determine the credibility of a witness, and representing what another individual said the witness said or what an individual said they thought about the motivation of the witness. There is a distinction.

So the Chair will rule that you can ask anything you want about credibility; you cannot represent, via an affidavit or a sworn statement or a statement, as to what the individual in question thinks. If that is the case, ask the committee to bring that witness forward, and then we will sit down and renegotiate among ourselves and with the White House how many witnesses we are going to have. But as pointed out here, this is another way of getting in 2, 5, 7, 10, 20 witnesses without allowing for an opportunity to cross-examine them.

Now that is the Chair's ruling. Did my friend want to say anything?

Senator SIMON. I would just buttress that by saying there is one other reason, Mr. Chairman, and that is, if we don't abide by the rules, we are going to end up in these wrangles constantly every time a new affidavit is brought up.

The CHAIRMAN. I assure my friend from Wyoming that I will impose the same exact rule on anyone questioning Judge Thomas.

Now, the Senator from Pennsylvania has the floor.

Senator SPECTER. Mr. Chairman, am I accurate that I only have 29 minutes left?

The CHAIRMAN. You have whatever time was—let me ask. Let me ask Senator Simon.

Senator SPECTER. Twenty-nine minutes on my 30-minute round.

The CHAIRMAN. Pardon me?

Senator SPECTER. Is it accurate that I only have 29 minutes left on my 30-minute round?

The CHAIRMAN. It is accurate you can have as much time as you want, Senator.

Senator SPECTER. Thank you very much, Mr. Chairman.

Professor Hill, did you know that, as a class A attorney, you could have stayed on at the Department of Education?

Ms. HILL. No, I did not know at that time.

Senator SPECTER. Did you make any effort to find out that, as a class A attorney, you could have stayed on at the Department of Education?

Ms. HILL. No, I relied on what I was told.

Senator SPECTER. Sorry, I didn't hear you.

Ms. HILL. I relied on what I was told by Clarence Thomas.

Senator SPECTER. My question—

Ms. HILL. I relied on what I was told by Clarence Thomas. I did not make further inquiry.

Senator SPECTER. And what are you saying that Judge Thomas told you?

Ms. HILL. His indication from him was that he could not assure me of a position at Education.

Senator SPECTER. Was that when you were hired or when he was leaving?

Ms. HILL. When he was leaving.

Senator SPECTER. Did you make any inquiry of his successor, Mr. Singleton, as to what your status would be?

Ms. HILL. No, I did not. I'm not even sure that I knew who his successor would be at the time.

Senator SPECTER. Well, was Mr. Singleton on the premises for about four weeks in advance of Judge Thomas' departure as the—

Ms. HILL. I don't—

Senator SPECTER. May I finish the question?

Ms. HILL. I don't—I'm sorry.

Senator SPECTER. May I finish the question?

Ms. HILL. I'm sorry.

Senator SPECTER. Was Mr. Singleton on the premises for about 4 weeks prior to Judge Thomas' departure, for transition?

Ms. HILL. I don't recall.

Senator SPECTER. Did you make any effort at all with anybody in the Department of Education to find out whether you could stay on in a job there?

Ms. HILL. As I said before, I did not make any further inquiries.

Senator SPECTER. Well, how concerned were you on your decision to move with Judge Thomas to EEOC, notwithstanding your represented comments about retaining some job somewhere?

Ms. HILL. I'm sorry, could you rephrase your question?

Senator SPECTER. Well, I would be glad to repeat it. If you made no inquiry to see if you could stay at the Department of Education, perhaps even as the assistant to the Assistant Secretary of Education, how much of a factor was your need for a job to go along with Judge Thomas, even though he had made these reprehensible statements?

Ms. HILL. It was part of what I considered.

Senator SPECTER. Professor Hill, there has been disclosed in the public milieu the records of certain telephone logs as so much of the evidence or representations or comments about this matter, and you were quoted in the Washington Post as saying, "I'm terribly saddened and deeply offended by these allegations. Ms. Hill called the telephone logs garbage, and said that she had not telephoned Thomas, except to return his calls." Did you, in fact, say that you had not telephoned Thomas, except to return his calls?

Ms. HILL. No, I did not say that.

Senator SPECTER. The Washington Post is in error on that statement attributed to you?

Ms. HILL. Well, I can tell you something about that conversation.

Senator SPECTER. Please do.

Ms. HILL. When that conversation was made, it was my indication that the reporter was saying to me that "we have information

that you talked to Clarence Thomas 10 or 11 times over this period of time that was described." That was my understanding of what she was telling me. I knew that I had not talked to Clarence Thomas, and I told her that. I said I haven't talked to Clarence Thomas 10 or 11 times, and she said that there were telephone logs that indicated that I had.

Senator SPECTER. Well, it is not a matter of talking to Judge Thomas, it is as matter of telephoning—

Ms. HILL. I understand that.

Senator SPECTER. May I finish the question—it is a matter of telephoning him. Did you tell the reporter for the Washington Post that you had not telephoned Thomas, except to return his calls?

Ms. HILL. I said to her that I had not talked to Clarence Thomas 10 or 11 times over that period of time.

Senator SPECTER. So, she misunderstood you, to say that you had not telephoned Thomas 10 or 11 times?

Ms. HILL. I think there was miscommunication in the entire interview.

Senator SPECTER. Did you call the telephone log issue "garbage"?

Ms. HILL. I believe that the issue is garbage, when you look at what seems to be implied from the telephone log, then, yes, that is garbage.

Senator SPECTER. Have you seen the records of the telephone logs, Professor Hill?

Ms. HILL. Yes, I have.

Senator SPECTER. Do you deny the accuracy of these telephone logs?

Ms. HILL. No, I do not.

Senator SPECTER. Then you now concede that you had called Judge Thomas 11 times?

Ms. HILL. I do not deny the accuracy of these logs. I cannot deny that they are accurate, and I will concede that those phone calls were made, yes.

Senator SPECTER. So, they are not garbage?

Ms. HILL. Well, Senator, what I said was the issue is garbage. Those telephone messages do not indicate that—they are being used to indicate, that is, that somehow I was pursuing something more than a cordial relationship, a professional relationship. Each of those calls were made in a professional context. Some of those calls revolved around one incident. Several of those calls, in fact, three involved one incident where I was trying to act on behalf of another group, so the issue that is being created by the telephone calls, yes, indeed, is garbage.

Senator SPECTER. Well, the issue which was raised by Senator Danforth, who disclosed this log in a press conference, was done so on the point that you had made repeated efforts to contact Judge Thomas. This bore on the issue as to whether he had sexually harassed you, on the approach that if he had victimized you by sexual harassment, you would not be calling him so many times. So, when you were quoted by the Washington Post as, number one, calling them garbage and denying that you had telephoned Thomas, it constituted your statement that you had, in fact, not made those efforts to contact him.

Now, my question to you is, since those calls were in fact made, as you now say, doesn't that have some relevance as to whether the committee should accept your statements about Judge Thomas' sexual harassment in the context of your efforts to call him this many times over that period of time?

Ms. HILL. No.

Senator SPECTER. OK.

Answer into the microphone, if you will, so we can hear you.

Ms. HILL. I'm sorry. My response is no, that those are not relevant to the issue of whether or not there was harassment. My point is this—and I believe that these are completely consistent with what you have before you in my statement—my point is that I have stated to you that I continued, I hoped to continue to maintain a professional relationship, for a variety of reasons. One was a sense that I could not afford to antagonize a person in such a high position.

Those calls that were made, I have attempted to explain, none of them were personal in nature, they involved instances where I passed along casual messages or instances where I called to either find out whether or not the Chairman was available for a speech, acting on behalf of someone else. No, they have very little, if any, relevance at all to the incidents that happened before those phone calls were made.

Senator SPECTER. Very little relevance, but perhaps some?

Ms. HILL. I believe they have none. We may differ on that.

Senator SPECTER. You say that they were all professional and you have accounted for a number of them in your statement, but a number of them have not been accounted for. For example, the log on January 30, 1984, "Just called to say hello, sorry she didn't see you last week." May 9, 1984, "Please call." October 8, 1986, "Please call."

Taking the one, "Just called to say hello, sorry she didn't see you last week," first of all, is that accurate?

Ms. HILL. As I indicated earlier, I do not deny the accuracy of these messages.

Senator SPECTER. You had picked out one of the calls in your statement which appears on page 8, as follows: "In August of 1987, I was in Washington and I did call Diane Holt. In the course of this conversation, she asked me how long I was going to be in town, and I told her."

Now, the log says, "Anita Hill, 547-4500, 4:00 o'clock, in town until 8:15," is dated August 4. Now, if the log represents your making the statement "in town until August 15," from August 4, some might interpret that as a suggestion that you would be available to meet, maybe, maybe not, but some might suggest that.

If, on the other hand, Judge Thomas' secretary asked you how long you were going to be in town, the initiative would come from her. It would contain no possible suggestion of your availability to meet. My question to you is how do you know today that, on August 4, 1987, she asked you how long you were going to be in town, as opposed to your saying that you would be in town until August 15.

Ms. HILL. That is my recollection of how the telephone conversation took.

Senator SPECTER. And your representation to this committee is that you have recollection at this moment that Judge Thomas' secretary asked you how long you were going to be in town, as opposed to your volunteering the statement to her? You have an active recollection of that?

Ms. HILL. That is my recollection.

Senator SPECTER. OK.

Ms. HILL. May I comment on that telephone call?

Senator SPECTER. Sure.

Ms. HILL. I was actually in town until the 20th of August, so at least this may be an accurate representation of what was written in the log, but that is not an accurate representation of my activities.

Senator SPECTER. What relevance does that have?

Ms. HILL. My point is you asked if these phone messages were accurate, and I said that I would not deny their accuracy, but I will deny the accuracy of that as a representation of my activities.

Senator SPECTER. Let me return, Professor Hill, to the question as to how you first came to be contacted by the Senate, and I would appreciate it if you would tell us when the first contact was made, by whom and the circumstances?

Ms. HILL. On September 4, a woman named Gail Laster called me and a message was left at my office.

Senator SPECTER. On September 4?

Ms. HILL. On September 4.

The CHAIRMAN. What was the woman's name?

Ms. HILL. September 4.

The CHAIRMAN. Her name?

Ms. HILL. Gail Laster.

The CHAIRMAN. Thank you.

Senator SPECTER. You say the person was who?

Ms. HILL. Gail Laster, and I don't have the message in front of me, but the indication was that she was working with a Senate office and I can't—

Senator SPECTER. And what happened next?

Ms. HILL. At some point in between—on September 4, I must have returned her call or she on her own initiative called back on September 5 and I returned her call on that same day.

Senator SPECTER. Now, on September 4, did you call back or on September 5 did she call you again?

Ms. HILL. On September 4, I called back.

Senator SPECTER. And did you talk to someone?

Ms. HILL. I left a message.

Senator SPECTER. What happened next?

Ms. HILL. On September 5, she called me.

Senator SPECTER. And what was the content of that conversation?

Ms. HILL. I returned her call on September 5, and during that call she asked me if I knew anything about allegations of sexual harassment.

Senator SPECTER. Do you have notes of these matters, Professor Hill? I see you reading from something there.

Ms. HILL. Yes, I do, I have notes that I have made.

Senator SPECTER. Did you make those notes contemporaneously with the event?

Ms. HILL. No, I did not.

Senator SPECTER. When did you make the notes?

Ms. HILL. I made these notes yesterday.

Senator SPECTER. OK. What was the conversation that you had on September 5 with, you say, Gail Laster?

Ms. HILL. G-a-i-l, Laster, L-a-s-t-e-r.

Senator SPECTER. And what was the conversation which you had with Gail Laster?

Ms. HILL. She asked me some general questions and then she asked me if I knew anything about allegations of sexual harassment or tolerance of sexual harassment at the Office of the EEOC, in particular as they related to Clarence Thomas.

Senator SPECTER. And what was your response?

Ms. HILL. My response was that I did not have any comment on either of those.

Senator SPECTER. And what did she say when you told her that you had no comment, as opposed to no knowledge of any tolerance of sexual harassment?

Ms. HILL. I believe we might have gone on to something more general about the nomination. I don't believe the conversation lasted very long after that.

Senator SPECTER. Well, what was in the conversation?

Ms. HILL. As I say, we went on to more general matters regarding the nomination, issues about—

Senator SPECTER. You don't recall the specific contents of the conversation?

Ms. HILL. Oh, we talked about general issues involving women in the workplace, what I thought of his views on that, on those issues.

Senator SPECTER. What happened next?

Ms. HILL. On September 6, Ricky Seidman called me. I returned the call on that day and she asked me some specific questions about some work that I had done at the Department of Education. We spoke about that work and she asked what role I played in doing it, and then she again asked me about rumors or did I know anything or had I heard any rumors while I was at the EEOC involving his tolerance, Judge Thomas' tolerance of sexual harassment—

Senator SPECTER. And what response—

Ms. HILL [continuing]. Or whether I knew anything about his actually engaging in sexual harassment acts.

Senator SPECTER. And what was your response?

Ms. HILL. At that point, I told Ms. Seidman that I would neither confirm nor deny any knowledge of that.

Senator SPECTER. Anything further in that conversation?

Ms. HILL. At that point, I think again we might have moved on. She—

Senator SPECTER. Might have moved on, or do you not recall the specifics of the conversation?

Ms. HILL. I will complete my thought here. At that point, she said are you saying that you will neither confirm nor deny your knowledge, or are you saying that you will neither confirm or deny that the actual harassment existed, and I told her it was the latter.

Senator SPECTER. What happened next?

Ms. HILL. I told her that I wanted to think about it and that I would get back to her.

Senator SPECTER. Think about what?

Ms. HILL. Think about this issue of sexual harassment.

Senator SPECTER. Did that conclude the conversation?

Ms. HILL. That concluded the conversation.

Senator SPECTER. What happened next?

Ms. HILL. I think in the interim, on the weekend, over the weekend of September 7 or 8, I spoke to Ms. Seidman again. I did speak to her again and I asked her specifically, if I were to discuss this matter, where should I go? That I wanted to talk with someone who was knowledgeable about the issue before I proceeded to tell what I knew. At that point what I was trying to do was to really determine, get some sense of how the committee would approach this and give some—take some effort to weigh what I thought was valuable information, but I wanted to do it from a more objective viewpoint.

Senator SPECTER. And what did Ms. Seidman tell you?

Ms. HILL. At that point she told me that she knew someone who worked on the Senate Labor Committee, James Brudney, who would have information, who had worked in the area of sex discrimination, and that he would be able to give me some indication of the law. She also said that she had his telephone number.

Senator SPECTER. Well, why would you need someone to give you an indication of the status of the law, considering your own knowledge of sexual harassment and the fact that you had been a civil rights professor at Oral Roberts Law School?

Ms. HILL. I had not practiced in the area. I have never actually practiced in the area. I have taught in the area, but it has been—I haven't taught in the area since 1986, and I understand that this is a very fast-developing area of law. In addition, I wanted a more objective evaluation of my situation and I wanted to do it with someone who I could trust. I knew James Brudney and I wanted to talk with him so that I might be able to make that evaluation.

Senator SPECTER. So Ms. Seidman recommended Mr. James Brudney?

Ms. HILL. She gave me his name, and I indicated that he was someone who I knew and who I thought had integrity and who I could trust with confidential information.

Senator SPECTER. OK, and then you did talk to Mr. Brudney?

Ms. HILL. Yes, we talked.

Senator SPECTER. And when was that?

Ms. HILL. Well, we talked on the weekend of September 7 and 8.

Senator SPECTER. And what was the content of that conversation?

Ms. HILL. Actually, I'm sorry, that is incorrect. We talked on September 9.

The content of the conversation was really, "Tell me something. What do you know about the development of sexual harassment? If I disclose to you certain facts, can you make an evaluation of some kind as to what kind of legal conclusion one might make?"

Senator SPECTER. So that at that time there was a doubt in your mind as to whether Judge Thomas was, in fact, guilty of sexual harassment on the facts as you knew them?

Ms. HILL. Well, I want to back up and say something here. In my statement to you I never alleged sexual harassment. I had conduct that I wanted explained to the committee. My sense was, my own personal sense was that yes, this was sexual harassment, but I understood that the committee with their staff could make that evaluation on their own. So I didn't have any doubts but I wanted to talk with someone who might be more objective.

Senator SPECTER. Well, you did call it sexual harassment in your extensive news conference on October 7, even though you did not so characterize it to the FBI or in your statement to this committee.

Ms. HILL. But that news conference on August 7 had not taken place at the time—or, excuse me, on October 7—

Senator SPECTER. October 7.

Ms. HILL [continuing]. On October 7 had not taken place at the time that this conversation was made.

Senator SPECTER. Well, the statement to the committee and the statement to the FBI hadn't taken place, either.

Ms. HILL. The statement to the FBI had not; you are right.

Senator SPECTER. So that you made statements to the FBI during the week of September 23 and you furnished this committee a statement on September 23, both of which occurred after your conversation with Mr. Brudney, but in neither of those statements did you conclude that Judge Thomas was guilty of sexual harassment.

Ms. HILL. I had reached—in either of which statements?

Senator SPECTER. You did not tell the FBI that Judge Thomas was guilty of sexual harassment, did you?

Ms. HILL. I don't recall telling them that he was guilty of sexual harassment, no. I didn't tell them that.

Senator SPECTER. Or you didn't characterize his conduct as sexual harassment.

Ms. HILL. I did or did not?

Senator SPECTER. You did not characterize Judge Thomas' conduct as sexual harassment when you gave the statement to the FBI, correct?

Ms. HILL. Senator, I guess I am not making myself clear. I was not raising a legal claim in either of my statements. I was not raising a legal claim. I was attempting to inform about conduct.

Senator SPECTER. But you did raise a legal claim in your interview on October 7.

Ms. HILL. No, I did not raise a legal claim then.

Senator SPECTER. Well, I will produce the transcript which says that it was sexual harassment.

Ms. HILL. Well, I would suggest that saying that it is sexual harassment and raising a legal claim are two different things. What I was trying to do when I provided information to you was not say to you, "I am claiming that this man sexually harassed me." What I was saying and what I state now is that this conduct that took place, you have your own legal staff and many are lawyers yourselves. You can investigate and determine whether or not it is

sexual harassment, and that is one of the things that I want to get away from.

Were I filing a claim, if I were filing a complaint in court, this would be done very differently, but this does not constitute a legal complaint.

Senator SPECTER. So that you are not now drawing a conclusion that Judge Thomas sexually harassed you?

Ms. HILL. Yes, I am drawing that conclusion.

Senator SPECTER. Well, then, I don't understand.

Ms. HILL. Pardon me?

Senator SPECTER. Then I don't understand.

Ms. HILL. Well, let me try to explain again.

I brought this information forward for the committee to make their own decision. I did not bring the information forward to try to establish a legal claim for sexual harassment. I brought it forward so that the committee could determine the veracity of it, the truth of it, and from there on you could evaluate the information as to whether or not it constituted sexual harassment or whether or not it went to his ability to conduct a job as an Associate Justice of the Supreme Court.

Senator SPECTER. But, Professor Hill, there is a big difference between your articulating your version of events, contrasted with your statement that Judge Thomas sexually harassed you. And in the transcript of your October 7 interview, you responded to a question saying that it was sexual harassment.

Ms. HILL. In my opinion, based on my reading of the law, yes, it was. But later on, immediately following that response, I noted to the press that I did not raise a claim of sexual harassment in this complaint. It seems to me that the behavior has to be evaluated on its own with regard to the fitness of this individual to act as an Associate Justice. It seems to me that even if it does not rise to the level of sexual harassment, it is behavior that is not befitting an individual who will be a member of the Court.

Senator SPECTER. Well, Professor Hill, I quite agree with you that the committee ought to examine the conduct or the behavior and make a factual determination of what you say happened and what Judge Thomas said happened. But when you say that you had not make the statement that he had sexually harassed you, that is at variance with your statement at the October 7 news conference.

Ms. HILL. Senator, I would submit that what I said was, I have not raised a claim of sexual harassment in either of my statements, and I will say again that in the news conference I was simply stating that yes, in my opinion, this does constitute sexual harassment.

Senator SPECTER. OK. Back to Mr. Jim Brudney. You consulted with him because you wanted some expert advice on what—

The CHAIRMAN. Senator, I am not going to interrupt you, but your time is up. Go ahead, finish this line of questioning, and then we will move to our friend from Vermont, but I just wanted you to be aware.

Senator SPECTER. I am sorry. I hadn't noticed.

The CHAIRMAN. That is all right. There is no reason why you should have.

Senator SPECTER. I had recollected your statement, "Take as much time as you want."

The CHAIRMAN. That is true. Go ahead, finish this line, and then we will go to our friend from Vermont. I just wanted to alert you to start to wind down.

Senator SPECTER. Well, this is not necessarily brief, because I think it is important to develop the facts as to the contacts, which end up with the issue as to whether the USA Today report is correct that, "Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that 'quietly and behind the scenes' would force him to withdraw his name."

The CHAIRMAN. Well, I understand, and I assumed that is where the Senator was going. Since that will take a little more time, why don't we break here?

Senator SPECTER. That is fine with me, Mr. Chairman.

The CHAIRMAN. And let me ask, because there is a lot of pressure for any witness sitting under the lights this long, would you like to take a break now?

Now before everyone starts to get up and go, let me tell you what we are going to do from here on, if I can. It is our hope and intention that shortly we will take a break. We will then come back to Senator Leahy, and from that point will continue—although we agreed we would stop at this point, the purpose of this is factfinding. We will allow time for any questions from my friend from Pennsylvania has, or from my friend from Vermont may have, speaking for me and for Senator Heflin.

But we are going to try to finish with the witness relatively soon, and then we will break for dinner. It is the intention of the Chair to have Judge Thomas return then. In fairness to him, he should have an opportunity to speak tonight and should not have to wait to respond to what has been asserted, and so that is how we will proceed.

We will recess for 10 minutes.

[Recess.]

The CHAIRMAN. Welcome back. Now again we are waiting to hear from Judge Thomas, whether he wishes to—I know there are a few people in the press who are anxious to know what the schedule will be for tonight.

I have made a commitment, I think it is only fair, that Judge Thomas can come on whenever he wishes after Professor Hill finishes. He has not decided whether he wants to testify tonight. If he wishes to speak tonight, we will go tonight as long as is appropriate or is reasonable, and I can't guess what that would be at this moment.

So I apologize to those who are trying to set their schedules but again, as I said, this is not a trial. This is a fact-finding mission, and we are going to be as fair as we can to all parties.

As it appears now, we have, Professor Hill, two more principal questioners who will question you for roughly a half-hour apiece. Then we are going to yield, as I indicated at the outset, to any of our colleagues who wish to ask up to 5 minutes. It is my sincere hope that all the questions that they wish to have asked will have been asked.

So we will be a minimum of another hour and a maximum of another hour and 40 minutes or thereabouts. We will then break

for dinner. If Judge Thomas wishes to come back, we will break for roughly 45 minutes to 1 hour for dinner. If he does not wish to come back, we will recess until tomorrow morning. We will have to decide on the time when I speak to the ranking member, whether it is 9 or 10 o'clock tomorrow morning.

I can see my friend from Wyoming seeking recognition.

Senator SIMPSON. Mr. chairman, I think that all should be aware that I feel rather positive that Judge Thomas does want to be here this evening. Whether it can be concluded or not, I don't know, but—

The CHAIRMAN [continuing.] I guarantee that he will be, then.

Senator SIMPSON. I know you will be fair. I know you will be.

The CHAIRMAN. So thank you for your patience, Professor Hill, and for everyone else's. Let us now turn to the Senator from Vermont, Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Professor Hill, let me go back to some of the areas we discussed earlier. I would like to refer first to a comment just made by the chairman, and then I want to go into a couple of the questions posed by Senator Specter.

The chairman said, and quite rightly, that this is not a trial. We are not having a trial on whether sexual harassment under the statute was committed or not, and whether or not the statute of limitations has run. We are trying to find out what the facts are.

And with that in mind, I turn to the questions Senator Specter was asking you. He talked about whether you had called your charges against Judge Thomas "sexual harassment" in your FBI statements. During your October 7 press conference in Norman, OK, you were asked, "Professor Hill, you said that you did not describe this as sexual harassment in your FBI statement." You answered, "I described the incidents. I did not use the term 'sexual harassment.'"

Let me go, if I might—and please just bear with me a couple of minutes on this—let me go to your earlier statement today, your sworn statement. You talked of Judge Thomas calling you into his office and then saying, and I quote from your statement on page 3,

After a brief discussion of work, he would turn the conversation to discussions of sexual matters. His conversations were very vivid. He spoke about acts that he had seen in pornographic films involving such matters as women having sex with animals and films showing group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises or large breasts involved in various sex acts.

Now without saying whether you felt that his conduct met a specific statutory definition of harassment, tell us in your own words, Professor Hill, after one of those conversations, how did you feel?

Ms. HILL. I was embarrassed. I found this talk offensive, completely offensive. It was—I made the point that it was offensive and it was something that was thrust upon me. It was not something that I voluntarily entered into and, therefore, it was even more offensive. It was—just the nature of the conversation was very offensive and disgusting, and degrading.

Senator LEAHY. Without going into a statutory description of what is or is not sexual harassment, how did you feel after—and I

quote from your statement, "on several occasions Thomas told me graphically of his own sexual prowess."

How did you feel then?

Ms. HILL. That was really embarrassing because I thought it even personalized it more to the individual who I was looking at. I mean it is one thing to hear about something that someone has seen, but it is another thing to be face-to-face with an individual who is describing to you things that they have done and that was very embarrassing and offensive and I did not like it. I felt, I just, it was just, I mean it is hard for me to describe. It just made me feel very bad about the whole situation.

Senator LEAHY. And on page 5, without repeating it again, you spoke of discussions he had had with you, about himself and other women, is that correct?

Ms. HILL. Yes.

Senator LEAHY. Professor Hill, you spoke of us all being lawyers and we read the statute and the code words of the statute, let me just ask you one more time, did you consider that, at least as it involved you, harassment?

Ms. HILL. Yes, I did.

Senator LEAHY. Thank you.

Now, Professor, we have spoken in other questions of phone logs. Have you seen the phone logs that Senator Danforth released; I believe the New York Times and the Washington Post and others have had articles about them?

Ms. HILL. Yes, I have seen that.

Senator LEAHY. Now, you left EEOC in 1983. Is that correct?

Ms. HILL. Yes.

Senator LEAHY. Judge Thomas left EEOC in 1990. Is that correct?

Ms. HILL. As far as I recall.

Senator LEAHY. Approximately 7 years there?

Ms. HILL. Yes.

Senator LEAHY. If you count up the phone calls that are shown on those phone logs—assuming that they are accurate—and that amounts to, in the 7 years, what, a dozen phone calls?

Ms. HILL. I think they were described as 10-to-12 or 10-to-11 phone calls.

Senator LEAHY. About one and a half per year?

Ms. HILL. Yes.

Senator LEAHY. So assuming those phone logs are accurate, you were not exactly beating down the doors with phone calls there, were you?

Ms. HILL. I was not at all.

Senator LEAHY. Now, there was a question about Mr. Doggett. Do you have any strong and clear recollection of Mr. Doggett at all?

Ms. HILL. No, not at all.

Senator LEAHY. If you were asked to, would you be able to describe him accurately?

Ms. HILL. I could not with any specificity describe him. I think I remember him as being tall.

Senator LEAHY. It happens to a lot of us.

Who was the legal counsel at EEOC when you started there in the spring of 1982?

Ms. HILL. Legal counsel was Constance Dupre .

Senator LEAHY. I beg your pardon?

Ms. HILL. The legal counsel was, I believe, Constance Dupree at the EEOC.

Senator LEAHY. Did there come a time when there was a change made in this position? After you went to EEOC?

Ms. HILL. After I went to the EEOC, I believe she retired from the Government service altogether, but she left that position.

Senator LEAHY. Was it a short time after you arrived or a long time after you arrived? Do you recall?

Ms. HILL. Oh, I believe it was about mid-way, maybe 4 or 5 months, it may have been shorter than that.

Senator LEAHY. Who became legal counsel then, do you recall?

Ms. HILL. I do not recall the individual's name.

Senator LEAHY. Now, in one of the interviews this morning a witness stated—and this was an interview for which you have not seen the transcript but both the Republican and Democratic counsel were there—the witness said that you had expressed your desire to have the legal counsel's position. Had you done that, had you expressed such a desire at the time that the vacancy occurred, the one you just described?

Ms. HILL. No. I did not express any desire for that position. I had no desire for such a position. I was just new to the EEOC.

Senator LEAHY. So did you have conversations with an Armstrong Williams about getting that job, the job of legal counsel?

Ms. HILL. No, I did not.

Senator LEAHY. And you do not recall applying for the job of legal counsel?

Ms. HILL. I did not.

Senator LEAHY. Thank you.

Senator Specter questioned you at some length about following Judge Thomas from the Department of Education to the EEOC, is that correct?

Ms. HILL. Yes, that is correct.

Senator LEAHY. And am I correct in restating your testimony that those conversations, which you now describe as—just during these questions—have described as harassment, those conversations began at the Department of Education, is that correct?

Ms. HILL. Yes, that is correct.

Senator LEAHY. But notwithstanding that, you went to the EEOC when Judge Thomas went there?

Ms. HILL. Yes.

Senator LEAHY. Do you recall prior to going to the EEOC, how long before that had been the last conversation of the nature that you have described here with Judge Thomas? Of those conversations that you found offensive, how long prior to your transfer had one of those occurred?

Ms. HILL. I would say 4 months or so, about 4 months.

Senator LEAHY. Some time, in fact.

Ms. HILL. Some time.

Senator LEAHY. Now, did anybody tell you that you could stay and have a job at the Department of Education?

Ms. HILL. Nobody told me that.

Senator LEAHY. Had President Reagan pledged and campaigned on such a pledge that he would do away with the Department of Education, if elected?

Ms. HILL. Yes, he had, and that was the understanding within the Department itself. The individuals who were working in the Department understood that to be the case.

Senator LEAHY. And President Reagan was then President?

Ms. HILL. Yes, he was.

Senator LEAHY. And nobody told you that there would be a job in the Department of Education where you could still work in civil rights, is that correct?

Ms. HILL. Nobody told me that.

Senator LEAHY. But you did want to work in civil rights, according to your testimony?

Ms. HILL. Yes, I did.

Senator LEAHY. Now, walk me through again, please, what was the nature of the job that would be available to you at EEOC, how did you hear about it, what did you do to apply for it and so forth?

Ms. HILL. I did not apply for it. I heard about it from Judge Thomas. He indicated to me that I could go with him to the EEOC and I would have the same type of position that I had at the Department of Education.

Senator LEAHY. And that was?

Ms. HILL. That of a special assistant who would be working directly under him, advising him on a number of projects and issues that came up.

Senator LEAHY. Now, Professor Hill, you have told us of the conversations. In answering questions today you have elaborated even on the statement that you gave us early on, is that correct?

Ms. HILL. Yes, I have.

Senator LEAHY. Is there anything you would change, in either your statement or your answers that you have given us today about the kinds of conversations that you had with Judge Thomas that you say were so offensive?

Ms. HILL. No, sir, I would not change anything.

Senator LEAHY. How did you feel at the time that you had those conversations?

Ms. HILL. During the time that I had those conversations I was very depressed. I was embarrassed by the type and the content of the conversations. I was concerned about whether or not I could continue in my position.

Senator LEAHY. Now, that was years ago. As you recount them today, how do you feel today?

Ms. HILL. Today I feel more angry about the situation. Having looked at it with hindsight I think it was very irresponsible for an individual in the position of the kind of authority as was Mr. Thomas, at the time, to engage in that kind of a conduct. It was not only irresponsible, in my opinion, it was in violation of the law. Now, I am much more divorced from it. I am less embarrassed by the fact that I went through that, after having gone through what I have gone through now, I am less embarrassed by it. It is still embarrassing. It is embarrassing that I did not say anything, but I am angrier about it and I think that it needs to be addressed by this committee.

Senator LEAHY. Do you have anything to gain by coming here? Has anybody promised you anything for coming forth with this story now?

Ms. HILL. I have nothing to gain. No one has promised me anything. I have nothing to gain here. This has been disruptive of my life and I have taken a number of personal risks. I have been threatened and I have not gained anything except knowing that I came forward and did what I felt that I had an obligation to do and that was to tell the truth.

Senator LEAHY. And my last question: Would your life be simpler, quieter, far more private had you never come forth at all?

Ms. HILL. Yes. Norman, OK is a much simpler, quieter place than this room today.

Senator LEAHY. I have a good friend in Norman, OK and I have actually visited Norman, OK and I agree with you.

Mr. Chairman, that is all I have.

The CHAIRMAN. Thank you.

Senator THURMOND. Senator Specter, do you want to proceed?

Senator SPECTER. Yes, thank you, Mr. Chairman.

When my time expired we were up to the contact you had with Mr. Brudney on September 9. If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to the committee?

Ms. HILL. Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process for bringing information forward to the committee. And in the course of our conversations Mr. Brudney asked me what were specifics about what it was that I had experienced.

In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process.

Senator SPECTER. Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?

Ms. HILL. Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, a Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process.

Senator SPECTER. So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?

Ms. HILL. Yes.

Senator SPECTER. Isn't that somewhat different from your testimony this morning?

Ms. HILL. My testimony this morning involved my response to this USA newspaper report and the newspaper report suggested that by making the allegations that that would be enough that the

candidate would quietly and somehow withdraw from the process. So, no, I do not believe that it is at variance. We talked about a number of different options. But it was never suggested that just by alleging incidents that that might, that that would cause the nominee to withdraw.

Senator SPECTER. Well, what more could you do than make allegations as to what you said occurred?

Ms. HILL. I could not do any more but this body could.

Senator SPECTER. Well, but I am now looking at your distinguishing what you have just testified to from what you testified to this morning. This morning I had asked you about just one sentence from the USA Today news, "Anita Hill was told by Senate Staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that quietly and behind the scenes would force him to withdraw his name."

And now you are testifying that Mr. Brudney said that if you came forward and made representations as to what you said happened between you and Judge Thomas, that Judge Thomas might withdraw his nomination?

Ms. HILL. I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate steps in the process. What we were talking about was process. What could happen along the way. What were the possibilities? Would there be a full hearing? Would there be questioning from the FBI? Would there be questioning by some individual Members of the Senate?

We were not talking about or even speculating that simply alleging this would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward, Judge Thomas might withdraw. That is the essence as to what occurred.

Ms. HILL. No, it is not. I think we differ on our interpretation of what I said.

Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witness speak in her own words, rather than having words put in her mouth?

Senator SPECTER. Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation to what was asked by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation—

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL [continuing]. I understood Mr. Specter's question to be what kinds of conversation did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such a use. We talked about a number of possibilities, but there was never any indication that, by simply making

these allegations, the nominee would withdraw from the process. No one ever said that and I did not say that anyone ever said that.

We talked about the form that the statement would come in, we talked about the process that might be undertaken post-statement, and we talked about the possibilities of outcomes, and included in that possibility of outcome was that the committee could decide to review the point and that the nomination, the vote could continue, as it did.

Senator SPECTER. So that, at some point in the process, Judge Thomas might withdraw?

Ms. HILL. Again, I would have to respectfully say that is not what I said. That was one of the possibilities, but it would not come from a simple, my simply making an allegation.

Senator SPECTER. Professor Hill, is that what you meant, when you said earlier, as best I could write it down, that you would control it, so it would not get to this point?

Ms. HILL. Pardon me?

Senator SPECTER. Is that what you meant, when you responded earlier to Senator Biden, that the situation would be controlled "so that it would not get to this point in the hearings"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point.

Senator SPECTER. Thank you very much.

The CHAIRMAN. Thank you, Senator.

Now, Professor Hill, with your continued indulgence, I will yield to my colleagues, alternating, and limit their questions to 5 minutes, if I may, and I would begin with my friend from Massachusetts, Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I will just take a moment.

I know this has been an extraordinary long day for you, Professor Hill, and it obviously has been for Judge Thomas, as well, and I know for your family. I just want to pay tribute to both your courage in this whole procedure and for your eloquence and for the dignity with which you have conducted yourself, and, as is quite clear, from observing your comments, for the anguish and pain which you have had to experience today in sharing with millions of Americans. This has been a service and we clearly have to make a judgment. It certainly I think has been a very important service.

Let me just say, as far as I am concerned, I think it has been enormously important to millions of Americans. I do not think that this country is ever going to look at sexual harassment the same tomorrow as it has any time in its past. If we are able to make some progress on it, I think history books will show that, to a very important extent, it is because of your action.

The viciousness of harassment is real, it is experienced by millions of people as a form of sex discrimination, and I think all of us are hopeful that we can make progress on it, and I just want you to know that I believe that you have made an important contribution, if we do.

Thank you, Mr. Chairman.

Ms. HILL. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, I appointed Senator Specter to question Professor Hill and those supporting her, so I will now yield my time to him.

Senator SPECTER. Well, with an additional yielding, Mr. Chairman, I would just join in thanking Professor Hill for coming forward. I would join in the comment that this proceeding has been illuminating to tell America what is the law on sexual harassment. That is something which had not been known. From what I have heard in the last few days, there has been a lot of change in conduct in the workplace in this country.

I just would have wished, in retrospect, that we had done this earlier and that this educational process had not come in this forum on a Supreme Court nominee at this stage. But you have answered the questions and I join in thanking you for that.

Ms. HILL. Thank you.

The CHAIRMAN. Senator Metzzenbaum.

Senator METZENBAUM. Ms. Hill, I could not help but think of my own four daughters, as you sat there, and thought to myself how much courage and commitment and concern, but even more, the valor you possess to come before the U.S. Senate and speak out in areas so sensitive, and I am sure are so difficult for you to talk about.

I do not know what impact your testimony will have on the confirmation process, but I know that your testimony will have a tremendous impact on this Nation from henceforth. The women of this country, I am certain, owe you a fantastic debt of gratitude for bringing this issue of sexual harassment to the fore.

But as one of those 98 men in the U.S. Senate, I think I speak for all of us when I say we owe you a debt of gratitude, as well, for bringing this issue up to the fore, in a more striking, more sympathetic, more concerned manner than ever before. I think you have made this Nation, men and women alike, more enlightened, more aware, more sensitive, and the Nation will never be the same, thanks to you.

Thank you.

The CHAIRMAN. There will be order in the chamber. I am serious when I say that, any outburst at all, no matter how small, will result in police removing whomever does it from the chamber.

Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

I have been pleased to sit here and listen today, and I just want to say one thing, that I apologize to you on behalf of our committee that you had to be heard under these circumstances, because had the committee considered this matter—and I have to say that Chairman Biden and ranking member Thurmond, when they heard about this the first time, they immediately ordered this FBI investigation, which was the very right thing to do, it was the appropriate thing to do and they did what every other chairman and ranking member have done in the past, and the investigation was done and it was a good investigation.

Then Chairman Biden notified everybody on his side and many of us were notified, as well. Any member of the committee, before we voted, could have put this over for a week for consideration, if

they were concerned. Any member could have insisted on at least an executive session, where neither of you would have had to have appeared in public, or any member could have insisted on an open session. The committee could have voted.

These FBI reports are extremely important and they have raw data, raw information. They take down what people tell them and that is why they are not to be leaked to the press or anywhere else, and that is why these rules are so important. And had an appropriate, fair procedure been followed, you would not have been dragged through the media and through all of these other things that both of you have been dragged through, that both of you have suffered from, as you have.

I have to say that I hope I never see that happen again to anybody in any confirmation proceeding, let alone a confirmation for a Justice of the Supreme Court of the United States of America.

Having said that, I wish you well and I won't make any further comments at this time.

The CHAIRMAN. Thank you very much.

Senator DeConcini.

Senator DeCONCINI. Thank you, Mr. Chairman.

Professor Hill, I join in realizing the difficulty of today's proceedings. It is very obvious and I appreciate that immensely. Sexual harassment is not as new as maybe some members seem to think it is. I just remember, as a young boy, my mother telling me about sexual harassment on her job and losing her job when she was 22 years old. So I grew up with that in my mind. She mentioned it several times as I grew in age.

I had dinner with her the night before last and she got choked up just telling me again about it 60 years later.

So, it is a subject that is very sensitive. Obviously, men have a more difficult time, I believe, of understanding it, but I do believe there are many men in this Senate, in the House of Representatives and other political offices that indeed are sensitive as much as a man can be.

Now, one of the areas that intrigued me today was Senator Heflin's questions of motives. I am not at all indicating any diminution of your motive, but I am interested in your answers to some of those.

Before I ask you that, do you see anything positive coming out of what you have been through here today and the last week or so of this ordeal, other than increasing the awareness of sexual harassment in the workplace? Is there any single thing you see more significant than that coming out of this?

Ms. HILL. Yes, Senator.

Senator DeCONCINI. What do you see as the most significant public thing coming out of this unfortunate experience that you have had to go through now?

Ms. HILL. Other than creating awareness, I see that the information is going to be fully explored, the information that I provided will be fully explored, it will be given a full hearing. In addition, I think that coming out, my coming forward may encourage other people to come forward, other people who have had the same experiences who have not been able to talk about them.

Senator DECONCINI. That would be raising the awareness of sexual harassment in the public.

Ms. HILL. Raising the awareness, but also giving people courage.

Senator DECONCINI. And giving people the courage to step forward and do what you did not do 10 years ago or 6 years ago or even 2 years ago, but you are doing today?

Ms. HILL. Yes.

Senator DECONCINI. Is your motive also an attempt to clear your name from any degrading publicity that has occurred? Do you feel put upon? Do you feel exposed?

Mr. HILL. Coming here today?

Senator DECONCINI. Do you feel injured and damaged as a result of this, even though you obviously have committed yourself to proceed with it?

Ms. HILL. You mean my motive in coming here today or something that I think will be a positive thing from coming here today?

Senator DECONCINI. No, I mean is your motive also to help clarify to the public your own position on sexual harassment, due to the publicity that has resulted from this being brought up to the forefront? Is that one of your motives? Is that one of the reasons you came forward? In other words, was your reputation one of the reasons you came forward. Do you feel that your reputation was being degraded or impugned by the fact that this was printed all over the press and that people were making countercharges and questioning your motives, and what have you? Is that one of the reasons?

Ms. HILL. I definitely—coming here today, yes, I did want to accomplish that. There were a number of very ugly and nasty things that have been said, and I did want to come forward and tell my side.

Senator DECONCINI. Do you think, now having told your side and responded to these questions, that your reputation from your standpoint could ever be fully restored?

Ms. HILL. Not in the minds of many, never, it will not be.

Senator DECONCINI. And in your opinion, Professor Hill, is there any single group or entity that you think caused more damage to you? I am interested in your perception. It seems to me that those who leaked this information certainly caused damage. The press, in my opinion, should be on trial, because they did not have to print this, but they elected to do so. In this country, as we all know they can print anything they want, true or false. Then the committee made a judgment to not address these allegations, and I think that is certainly on trial.

Obviously, Judge Thomas is on trial, though this is not a trial. You are on trial, in the sense of credibility here. Is the committee more culpable for causing you to have to come forward, is the press more culpable, or is everyone equally culpable?

Ms. HILL. I think it is just the reality, Senator, of this situation, the nature of this complaint and I cannot point my finger at any one entity and say you are responsible for it.

Senator DECONCINI. But you said earlier—and correct me if I am wrong—that you did not want today to be what it is, that you had hoped that you could just get the information to this committee, and ultimately you agreed that your name could be used only among the committee members. You had hoped that that would be

sufficient for the members to make a judgment, and that you would not have to do what you are doing today. Is that correct?

Ms. HILL. Yes.

Senator DECONCINI. Yes. Now, that did not happen or we would not be here today. Would you repeat why you think we are here? Why did you have to come forward and make this public presentation, when you had hoped just to bring this information to the committee, without having to do what you are doing today?

Ms. HILL. Well, I think that there are a number of factors. I think that however the material was leaked, that was one factor. I believe that the press is a factor, but I think, in addition, that the information is just going before the public that wants to know and wants to know about this, and so I think, again, there is a variety of situations and factors that caused this to occur today.

Senator DECONCINI. Let me ask you this, if I can, Professor Hill: If this information had not been leaked, would you have come forward in this public forum?

Ms. HILL. No.

Senator DECONCINI. If the press had not published or read your statement to you, and left you with the distinct impression that they were going to publish it, would you still have felt obligated to come forward in this public way?

Ms. HILL. I do not believe that I would have come forward.

Senator DECONCINI. You would not have come forward.

Ms. HILL. I do not believe I would have.

Senator DECONCINI. So, it is safe to say that because the information was first leaked and then made public, that you felt that you no longer could proceed with what you originally felt was proper, which was making the information available only to the committee and not in a public forum. Is that a fair statement?

Ms. HILL. Yes.

Senator DECONCINI. Thank you. I won't be very much longer.

Another concern I have is, when you were at the Department of Education and these, in my terms, God-awful things occurred—grotesque, ugly, I don't know how else I can depict them. Obviously they were extremely offensive, and you did not want them to continue, so you attempted to inform the person that you didn't want them to continue. I have a difficult time understanding, and it is obviously because I am not a woman and have not had that kind of personal experience, I have a difficult time understanding, but how could you tolerate that treatment, even though you didn't have another job? I realize that this is part of the whole problem of sexual harassment in the work place, the fact that women tolerate it.

Maybe you explained this sufficiently, but if you wouldn't mind repeating to me what went through your mind: Why, No. 1, you would stay there after this happened several times; and, No. 2, even though it ceased for a few months, why you would proceed on to another job with someone that hadn't just asked you out and pressed you, but had gotten into the explanations and explorations of the anatomy with you?

Ms. HILL. Well, I think it is very difficult to understand, Senator, and in hindsight it is even difficult for me to understand, but I have to take the situation as it existed at that time. At that time, staying seemed the only reasonable choice. At that time, staying

was the way that—in a way, a choice that I made because I wanted to do the work. I in fact believed that I could make that choice to do the work, and that is what I wanted to do, and I did not want to let that kind of behavior control my choices.

So I attempted to end the behavior, and for some time the behavior did stop. I attempted to make that effort. And so the choice to continue with the same person to another agency involved a belief that I had stopped the behavior that was offensive.

Senator DECONCINI. Is it safe to say, then, Ms. Hill—based on the readings that I have done in this area by professionals who counsel on it—that you were willing to stuff this inside you and go on with your life and keep it from exploding?

Is that a safe assumption? We all have done that under different circumstances. We stuff certain things in and don't explode or react. Is that one way of describing what you did?

Ms. HILL. I did repress a number of my feelings about it, to allow myself to go on and to continue.

Senator DECONCINI. Is it safe to say that you did this for a long period of time?

Ms. HILL. Yes, I did.

Senator DECONCINI. And you obviously saw Chairman Thomas move on to bigger and better positions, including being appointed to an appellate court judge, and still you did not take any action. Did you, at that time, again repress your feelings and have to keep it down? Do you recall going through that any other time?

Ms. HILL. Well, at some point over the last few years, or at various points, I think that I have dealt with many of my repressed feelings about this. I have just dealt with them on my own.

Senator DECONCINI. You didn't hire or solicit any counseling or any assistance. You just dealt with it on your own?

Ms. HILL. Dealt with them on my own.

Senator DECONCINI. And finally we are here today where it is all over, so to speak. It is all out, not that by any means there won't be repercussions, but you finally have let it all out.

Ms. HILL. Well, that is my feeling, but one has to consider that even before this point I had dealt with the feelings of humiliation, realizing that none of this was my fault, and had dealt with a sense that I was helpless to confront this kind of a situation again, so many of the feelings have been dealt with.

Senator DECONCINI. And the fact that you admit that in retrospect maybe you should have done something, do you conclude that it is all someone else's fault, and not your own?

Ms. HILL. Yes.

Senator DECONCINI. Is that your frame of mind?

Ms. HILL. That is my frame of mind.

Senator DECONCINI. Thank you.

Thank you, Mr. Chairman, and thank you for the additional time.

The CHAIRMAN. Thank you very much.

Senator SIMPSON.

Senator SIMPSON. Thank you, Mr. Chairman.

Mr. Chairman, there are two additional documents here, and I am asking and take your advice, from the two FBI agents who are—if this has been furnished for over two hours under the

rules—the affidavits from the two FBI agents indicating the inconsistencies as expressed by Professor Hill this morning. Is that not appropriate?

The CHAIRMAN. It is appropriate. The inconsistencies are not of all that much consequence. At some point maybe we should read it. I think it may be helpful for you to read the entire thing in the record.

Senator SIMPSON. I only have 5 minutes, Mr. Chairman.

The CHAIRMAN. No, no. Well, you go ahead and put it in the record and I will read them, because they are not of much consequence, but—let me put it this way—I think people should know what they say.

Senator SIMPSON. Well, I think that they should know that the witness did not say anything to the FBI about the described size of his penis, the description of the movie "Long Dong Silver," about the pubic hair in the Coke story, and describing giving pleasure to women with oral sex. That is not part of the original FBI report. And the agents are simply saying that there was no pressure upon the witness, and they specifically say—the woman FBI Agent particularly said that she was quite clear that she did not care whether it was general or specific.

The interviewing Special Agent, a woman, said that if the subject was too embarrassing, she did not have to answer, that was Professor Hill's statement, but the Special Agent said that she, the other agent, apologized for the sensitivity of the matter but advised Professor Hill that she should be as specific as possible and give details. She was further advised that if the questions were too embarrassing, Special Agent Luton would leave the room and she could discuss the matter with Special Agent Jameson.

I think that is appropriate only from the standpoint that you describe in your statement so poignantly that these were disgusting things, and yet they did not appear in the FBI report. That is enough. We will enter it into the record.

[The statement referred to follows:]

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/11/91

Special Agent JOHN B. LUTON, Federal Bureau of Investigation, Oklahoma City, Oklahoma, watched the morning session of testimony by Professor ANITA FAYE HILL, before the U. S. Senate, Judiciary Committee, Washington, D.C., on October 11, 1991. The following discrepancies were noted regarding her testimony when compared to the statement she provided Special Agents JOHN B. LUTON and JOLENE SMITH JAMESON, September 23, 1991.

Professor HILL stated that she was advised by the interviewing Agent that she did not have to answer questions if they were too embarrassing as she would possibly be re-interviewed by FBI Agents at a later date. In fact, she was told by Special Agent LUTON to provide the specifics of all incidents. She was also told that it might be necessary to re-interview her at a later time regarding this matter, but that occurred at the end of the interview.

During Professor HILL's testimony before the Senate Judiciary Committee, she referred to numerous telephonic contacts with representatives of that Committee regarding her allegations prior to preparing the Signed Statement. On September 23, 1991, she was asked by the interviewing Special Agents as to what her motivation was for submitting her statement to the Judiciary Committee. She advised the interviewing Agents that she made the decision to prepare the statement after several telephone conversations with her personal friend, SUSAN HOESCHNER. The last telephone conversation between her and HOESCHNER was on a Sunday prior to her preparation of her statement. She did not mention the telephone conversations that she had had with representatives of the Judiciary Committee.

Professor HILL in her testimony identified a number of specific incidents in which Judge CLARENCE THOMAS made embarrassing comments to her about sexual activities. Among these was the reference to Judge THOMAS' sexual prowess and size. She made reference to a pornographic movie in which an individual by the name of LONG DONG SILVER played a role. She cited an instance in which she was in his office and he referred to a coke can and made the statement, "Who left their pubic hair on my coke," or words to that effect. During the interview on September 23, 1991, Professor HILL did not mention any of the above incidents.

Investigation on 10/11/91 at Oklahoma City, Oklahoma # 77A-HO-154494

by SA JOHN B. LUTON/vlw Date dictated 10/11/91

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/11/91

Special Agent (SA) JOLENE SMITH JAMESON observed the morning session of testimony to the Senate Judiciary Committee by Professor ANITA HILL as it was broadcast on CNN on October 11, 1991. During that broadcast, Professor HILL made comments that were in contradiction with statements she had made to SAs JAMESON and JOHN B. LUTON. Those contradictory comments are set forth as follows:

Professor HILL stated she did not discuss specific incidents in detail because the interviewing Special Agent had advised her that, if the subject was too embarrassing, she did not have to answer. In fact, SA LUTON apologized for the sensitivity of the matter, but advised Professor HILL that she should be as specific as possible and give details. She was further advised if the questions were too embarrassing, SA LUTON would leave the room and she could discuss the matter with SA JAMESON.

During the interview with the SAs, Professor HILL stated she could only recall specifics regarding the pornographic incidents involving people in sex acts with each other and with animals. Ms. HILL never mentioned Judge THOMAS saying how well endowed he was. HILL never mentioned or referred to a person named "Long Dong Silver" or any incident involving a Coke can, all of which she testified to before the Senate Judiciary Committee.

Professor HILL stated she had been advised early in the interview that SA LUTON would recontact her at a later time to obtain more specific details. In fact, SA LUTON advised Professor HILL, only at the termination of the interview, that a follow up interview might be necessary if further questions arose.

Investigation on 10/11/91 at Oklahoma City, Oklahoma # 77E-HQ-154496
 by SA JOLENE SMITH JAMESON/kag Date dictated 10/11/91

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The CHAIRMAN. I realize that the way we are doing this is a bit unusual. My recollection was, that the witness had acknowledged that they did not appear in the report, and had acknowledged that she had not said that to the agents, as well.

Ms. HILL. That is true.

Senator SIMPSON. Mr. Chairman, you have your opportunity to—

The CHAIRMAN. No, I just wanted to mention this now because this is unusual, and she hasn't had a chance to see it. Please continue.

Senator SIMPSON. You are very fair.

Let me ask you, I think both of you say that you—both Judge Thomas and you say you never met each other until 1981. Is that correct?

Ms. HILL. That is correct.

Senator SIMPSON. Weren't you both members of the Black Republican Congressional Staff Association?

Ms. HILL. No.

Senator SIMPSON. You never were?

Ms. HILL. No, I never was.

Senator SIMPSON. Well, I don't have enough time to go into that one. I had heard you were, and that you knew him there, and other people stated that, and perhaps—that is what I was advised by a person who called me who knew you both, and was there with you both, but that is enough.

I am not leaving that out there as some sinister thing. I am just trying to find out if you knew each other before, because I heard that because he knew you there and respected you and enjoyed you there and found you very professional, that it was there he made the contact to then bring you to the Department of Education.

Ms. HILL. Which group is this?

Senator SIMPSON. The Black Republican Congressional Staff Association.

Ms. HILL. No, I am not a member of that. I have never been a member of that group.

Senator SIMPSON. In 1970, 1979, or 1980, some time in there—

Ms. HILL. I was in law school in 1979 and 1980.

Senator SIMPSON. Eighty and eighty-one?

Ms. HILL. In eighty, I graduated from law school in 1980 and went to work in private practice here in Washington, DC.

Senator SIMPSON. OK, that's good. Thank you. That was presented to me.

Now I heard Howard Metzenbaum say, and you have presented yourself and your testimony in an extraordinary way. I did think that Senator Specter pointed out some inconsistencies. But like Howard, I thought too of my daughter, my rainbow of life, and I would be outraged if such alleged conduct occurred directed to her.

And then I have had the terrible pain of also thinking of my sons, raised by a very enlightened mother, responsive, still kiss their old man good night and things like that, and rather expansive, stalwart boys, and where that kind of conduct could lead them—very troubling for me. Because all we have heard for 103 days is about a most remarkable man, and nobody has come forward, and they scoured his every shred of life, and nobody but you

and another witness, apparently who is alleging no sexual harassment, has come forward.

And so maybe, maybe, it seems to me you didn't really intend to kill him, but you might have. And that is pretty heavy, I don't care if you are a man or a woman, to know that 43 years or 35 years of your life or 60 years of your life, where no one has corroborated what is a devastating charge, kind of a singular torpedo below the water line and he sinks, while 103 days of accumulated things never penetrated the armor.

So I guess I would just say it is a very troubling thing to me, it really is, and leave out who leaked what to who or what media person let it out. That all will be hashed. But let me tell you, if what you say this man said to you occurred, why in God's name, when he left his position of power or status or authority over you, and you left in 1983, why in God's name would you ever speak to a man like that the rest of your life?

Ms. HILL. That is a very good question, and I am sure that I cannot answer that to your satisfaction. That is one of the things that I have tried to do today. I have suggested that I was afraid of retaliation, I was afraid of damage to my professional life, and I believe that you have to understand that this response—and that is one of the things that I have come to understand about harassment—that this response, this kind of response, is not atypical, and I can't explain. It takes an expert in psychology to explain how that can happen, but it can happen, because it happened to me.

Senator SIMPSON. Well, it just seems so incredible to me that you would not only have visited with him twice after that period and after he was no longer able to manipulate you or to destroy you, that you then not only visited with him but took him to the airport, and then 11 times contacted him. That part of it appalls me. I would think that these things, what you describe, are so repugnant, so ugly, so obscene, that you would never have talked to him again, and that is the most contradictory and puzzling thing for me.

The CHAIRMAN. Thank you, Senator.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

First, Professor Hill, let me say to your parents, you have a daughter you ought to be very, very proud of. I am sure you are proud of your whole family.

I want to underscore what has been said by my colleagues. You have shown great courage and you have handled yourself with dignity, and you have lifted the level of consideration of this whole question of sexual harassment as no one has done before in the history of our country. No matter what happens on the nomination, I think you have performed a real public service.

On the question of sexual harassment, you and I know and the members of this committee know that physical contact is not necessary for sexual harassment, but I have had two people tell me over the phone that there couldn't have been sexual harassment because there was no physical contact. If I can use another analogy that I think people would understand, if you were to receive the kind of language over the telephone that you received in an office, would you consider that an obscene phone call?

Ms. HILL. Yes.

Senator SIMON. And I think everyone understands obscene phone calls.

Let me just ask two totally disconnected questions beyond this: You say in your statement, "In February, 1983 I was hospitalized for five days on an emergency basis for an acute stomach pain which I attributed to stress on the job." One of the things we have to do in this committee, and my colleagues in the Senate have to do, is to make an evaluation, who is telling the truth? This is something objective that happened out there. But when you say "which I attributed to stress on the job," did your physician also suggest this as a possibility?

Ms. HILL. My physician suggested that it could be stress-related. They could not identify the nature of the illness. They couldn't give a medical diagnosis, so the physician did suggest that it might be stress related.

Senator SIMON. And then, finally—and this has been partially touched upon—but there are those who say the timing of this is all some kind of a plot. That is the term I hear over and over.

I recall calling you the day before our committee voted, when we talked about the possibility of distributing this, your statement, to Members of the Senate, and I said, "You can't do that and keep it confidential, and keep your name confidential." I sensed that you were really agonizing on this whole thing, and I think I sensed correctly, for obvious reasons.

But this thing gradually built, from the time you first contacted or had contact with the members of the Senate staff and Senate committee. Was there at any point anyone who suggested, "If you hold this out until the last minute, you could have a great impact on this process?"

Ms. HILL. No one ever suggested that, not at all.

Senator SIMON. And then finally let me just make a suggestion. You are always giving assignments to students at the University of Oklahoma Law School.

If I could give you and your fellow faculty members at the University of Oklahoma Law School and your law students an assignment, we face a very difficult problem, and it is not just with the Thomas nomination. How do we deal with a charge that someone makes, that is a substantial charge, but that person says, "I don't want my name used publicly," or even "I don't want the charge made publicly"? We should not simply ignore it. On the other hand, how are you fair to a nominee?

This is the struggle that this committee has gone through and the Senate is going through. I would be interested in you and your colleagues taking a look at that, sending a letter to members of this committee. But again I thank you. I think you have performed a great public service.

Ms. HILL. Thank you.

Senator SIMON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Professor Hill, let me at the outset be very candid and tell you that even though the issues that have been discussed here this afternoon and this morning are very, very important, if I had to ask some of these questions that were asked of you

today, I would not be able to do that. It is just not my nature. But I have one question and a couple of comments.

This is in regard to your testifying that you were approached by Senate staff members about disclosing these allegations. My question is whether or not any other individuals or any other organizations other than those who you publicly stated today or otherwise, or Senator Specter stated, whether any other individuals or organizations have approached you about disclosing these matters to the Judiciary Committee any time since Judge Thomas was nominated by the President on July 1st?

Ms. HILL. No. No other individual, no other organizations or individuals have approached me to disclose this to anyone. Do you mean prior to the contact from this or even after that?

Senator GRASSLEY. Or any time during July, August, or September, other than all those names that have already been discussed here today?

Ms. HILL. No. No one has urged me to do that or even approached me about it.

Senator GRASSLEY. OK.

Now, a couple of points that I would like to make and I suppose I am making these more for my colleagues than I am for anybody else. But one of the hardest parts of this discussion for me is the fact that if any Senate employee had a complaint of sex harassment that individual would not have the same remedy that you had available to you, Professor Hill, when you were an employee of Government, particularly, EEOC, although I know you chose not to pursue that remedy. Because, like so many laws that we pass, the U.S. Senate has exempted itself, as an employer, from the coverage of title VII, including the EEOC rules governing sex harassment. That is a situation that I hope the Senate will soon change so that our employees will be treated fairly just like any other employees.

On another point there has been much said—and, of course, each of us on this committee have had to deal with this, as the press has asked us how come we did not consider all of these things prior to voting this out of committee. This concerns the process of the Judiciary Committee. People are asking how we could have let your statement slip past us? How could we have had the committee vote without airing this matter? Those are valid questions.

And let me say that I am going to work towards assuring that this never happens again. I realize, of course, that our committee gets hundreds, maybe even thousands of allegations in a nomination like this one. And we rely upon our chairman and ranking member to determine which ones need investigation and which ones might be coming from cranks and crackpots. They determined this one needed investigation and they called in the FBI. But somewhere along the process something broke down.

So I would like to work with the chairman and ranking member and other colleagues to establish a new ground rule. Whenever the FBI is dispatched, every committee member should be notified about the nature of the allegation. And when the FBI has completed its work, every committee member should be notified and have access to that report. And a determination by the committee should be made as to how we need to proceed with any allegations.

A rule like this should ensure, once and for all, that even an 11th hour charge, like yours, has been fully considered.

I yield the floor.

You can comment if you want to.

Ms. HILL. I would like, for a moment, to revisit your first question. I am keenly aware that I want to be certain of my answers. The first question was whether or not anyone had contacted me to urge me to come forward with this?

Senator GRASSLEY. Yes.

Ms. HILL. No. No one did that. Ms. Hirschener did contact me and reminded me of the situation and we discussed the fact that we had talked about this in earlier years but she did not urge me to come forward at all.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. Thank you, very much. Of course the state of the law actually is that women, even in these kinds of situations, don't have adequate remedies. All they have is an injunction. They are not permitted to get any damages which is one of the matters that is being addressed in the Civil Rights Bill.

The Senator from Wisconsin.

Senator KOHL. Thank you, Mr. Chairman.

Professor Hill, as you said, this has been a difficult time for you. You wanted to make the committee aware of your experiences with Clarence Thomas but you also wanted to preserve your privacy and that is understandable and we deeply regret that it has not worked out that way. But while the process may have failed you, Professor Hill, you certainly have not failed the process.

For without making, at this time, any judgments about the ultimate truth of your claims we can make a certain judgment about the value of the public discussions that your claims have created. All of us have learned a great deal about and become more sensitive to the problem of sexual harassment and inappropriate behavior. The issue is complex and our understanding may never be complete, but your perception of your relationship with Judge Thomas is clear in your own mind, and your courage in coming forward and the composure you have demonstrated since this issue became public all speak to your character.

I am sure this has been very painful for you, as it has been for all of us, but I believe the pain will vastly improve the way that men and women respond to this problem throughout our country.

Thank you, very much.

Ms. HILL. Thank you, Senator Kohl.

Senator THURMOND. Senator Brown is next on my side.

Senator BROWN. Thank you, Mr. Chairman.

Professor Hill, you were kind enough to take my call earlier this week and you were very forthcoming and I appreciated that and the information you provided. I had a few additional questions that I thought might be helpful that I would bring up.

My impression was that calls from the staff that had originally prompted you to begin thinking about making a statement included not only questions about sexual harassment but had actually implied to you that there were rumors circulating about sexual harassment at the EEOC and even a suggestion that there might be rumors to sexual harassment related to you.

Now, could you share your view of what those rumors were or what they had suggested to you in those calls?

Ms. HILL. Well, when I received the calls I assumed that someone had known about the incidents as they were occurring who I did not know, who might have contacted the offices that called me. So when the statements were made and the questions were asked, I assumed that it was someone who knew that these things had happened and that they had come forward to the committee or to the individuals who were calling and that they were following up on that.

Senator BROWN. I guess what had occurred to me when I heard that description from you was that, at least the inference in my mind, was that the fact that there were stories or there could be stories circulating relating to sexual harassment, and perhaps the sexual harassment toward you, that that was one of the factors that encouraged you to come forward?

Ms. HILL. That was definitely one of the factors. I did not want the committee to rely on rumors. I did not want the rumors to perhaps circulate through the press without at least considering the possibilities or exploring the possibilities through the committee process of coming forward. So, yes, that call, those calls and that raising the issue with me very much encouraged me to further explore the process to determine how and if I could come forward.

Senator BROWN. You mentioned that you talked to several staffers and then eventually made a decision to come forward and you chatted with the committee and had a variety of conversations there. Were there others that you talked to after you talked to those two staffers and before you decided to speak to the committee?

Ms. HILL. I talked with personal friends. I talked with individuals who knew more about Title VII law than I did.

Senator BROWN. But I take it none of these conversations included people who were actively opposing the nomination?

Ms. HILL. No.

Senator BROWN. On the employment question, I thought I would go back to it. I must tell you that my own impression is that I think if you have a job you are reluctant to leave it without some other offers, but I thought it might be helpful to put a cap on that. At the point that Judge Thomas was leaving the Department of Education and had invited you to accompany him or go with him in terms of a job assignment over to the EEOC. Did you contact anyone in the private sector for a job? You have already talked about not exploring alternatives within the Education Department, but did you contact anyone about a job at that point?

Ms. HILL. I did not contact anyone in the private sector. I had left the private sector 9 months earlier and decided that I did not want to return at that point, to the private sector.

Senator BROWN. At the point that the harassment, or at least the harassment was alleged to have taken place at the Department, Education Department, did you begin to explore job opportunities at that point? As I understand that was a point sometime before the decision to leave?

Ms. HILL. No. I did not explore. I may have read Government hints but I did not actively look for another job.

Senator BROWN. With regard to the Judge, himself, you clearly, in working with him as you had, were familiar with a portion of his philosophy. Do you find you were in agreement with his philosophy on most issues proposed? What can you share with us on that?

Ms. HILL. Well, I am not really sure what his philosophy on many issues is. And so I can't say that I am in agreement or disagreement. I can say that during the times that we were there were, worked together, there were matters that we agreed on and some that we did not agree on and we had discussions about those matters.

But I am not really certain what his philosophies are at this point.

Senator BROWN. Would that be the case with regard to say, abortion or *Roe v. Wade*?

Ms. HILL. That I am not sure of his philosophies?

Senator BROWN. Sure of his philosophy or do you perceive a significant difference between the two of you in that area?

Ms. HILL. Yes.

Senator BROWN. Can you tell us what that might be? I don't mean to pressure you here. If you would prefer not to, please don't. But if there is something that you could share with us in that area, I think the committee would like to hear it.

The CHAIRMAN. Senator, from Judge Thomas' position this was supposed to relate to issues of harassment, and was not intended to be an investigation of Judge Thomas' views on abortion.

Senator BROWN. Mr. Chairman, you are perfectly correct. If there were something that wished to be offered there I thought it would be helpful.

I see the red light is on so I will conclude.

The CHAIRMAN. Now, two of our primary questioners also want to take an additional 5 minutes. Senator Leahy and then Senator Specter.

Senator LEAHY. I will be very brief. I know that everyone is tired. Professor Hill, you were asked questions by Senator Simpson this afternoon regarding the FBI report, which I believe you were shown, and about the question of whether there may be some inconsistencies. Everybody has to determine whether they feel there are or are not, I make no statement to that. Basically, the thrust was that you were less specific about these incidents—the language and the description of these two incidents—when you talked to the two agents than you were in your statement, here today.

Let me just ask three or four very quick questions and I think probably you could just answer, "yes", or "no".

The statement that you made here today was made under oath, is that correct?

Ms. HILL. Yes.

Senator LEAHY. And that statement was more specific than the conversation that you had with the FBI agents, is that correct?

Ms. HILL. Yes, I agree.

Senator LEAHY. And when specific questions were asked by different Senators about that, you went into even more specific details of the language that you say that Judge Thomas used, is that correct?

Ms. HILL. Yes.

Senator LEAHY. And if there had been even more questions going specifically conversation-by-conversation it would be safe to say that you would have had even more specific language?

Ms. HILL. I would have attempted to.

Senator LEAHY. It would be safe to say, also, that you found it uncomfortable repeating even the language that we elicited from you in the questions?

Ms. HILL. Yes.

Senator LEAHY. Thank you.

I have no further questions.

The CHAIRMAN. Thank you.

Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Just a word or two. Professor Hill, when you say that by hindsight—because I wrote this down, it is difficult for me to understand. In looking at the entire record, it is difficult for me to understand. You have substantially enlarged a testimony which I had expected based on the FBI report and your statement as to what you allege Judge Thomas had done. The critical move from the Department of Education to the EEOC is not understandable to me, where you make the statements about his offensive conduct. For an experienced lawyer not to inquire about standing or even an inexperienced lawyer not to inquire about standing to stay at the Department of Education or not to make an inquiry of the people in charge.

The toll calls you characterized as garbage which you admitted to in your interviews with the newspaper although you denied other aspects. You know concede to be true, you did make those calls. It is one thing for you to say that you felt constrained to maintain some sort of an association with Judge Thomas in the face of this kind of conduct which you have represented, but why make the calls which you agreed to, the how are you doing, or I am in town, or tell the secretary you are in town? Why drive the man to the airport? Why maintain that kind of a cordial association in the face of this kind of conduct?

We have an office, equal opportunities, EEOC to enforce the laws on sexual harassment. And we have here representations that the nation's chief law enforcement officer sexually harassed his attorney advisor. That attorney advisor is dedicated to enforcement of the law against sexual harassment and tells us that she moved from the Department of Education to EEOC because she wanted to protect the women of America. And conceding that this is an enormous educational experience, the question is why with an experienced lawyer in that position being concerned about women's rights, do you leave a man, Clarence Thomas, as Chairman of the EEOC for years when according to your testimony he has been guilty of sexual harassment, himself?

Now, I do see explanations at every turn. And I have wondered about the quality of those explanations, candidly. But there is no description for this entire proceeding other than a tragedy. I do not know how Judge Thomas defends himself beyond stepping forward and saying that he is shocked, surprised, hurt, and saddened. And the shortest statute of limitations I have ever heard of is 180 days.

Until I got involved in this proceeding I did not know there was such a short statute of limitations. Contract cases are 6 years, tort cases are 2 years, criminal cases are 5 years, but the Federal law has put that into effect because it is so difficult to defend and to go back and to recollect all that has happened. And I appreciate the stark nature of the statements which have been made.

But I also see that your own statement that you prepared in your leisure, put aside the FBI statement, you were with two people, but no mention about the Coke bottle, no mention about sexual prowess, no mention about other major issues which are in your statement. So I conclude, from looking at this very complex day on our obligation to try to find out what happened between a man and a woman long ago, and nobody else was there, that I would agree with you, Professor Hill, it is very difficult for me to understand.

The CHAIRMAN. Thank you, Senator.

The Senator from North Carolina—South Carolina, I beg your pardon.

Senator THURMOND. Well, don't forget it. [Laughter.]

The CHAIRMAN. I realize there are certain things I should never say to the Senator from South Carolina, and one of them is that he is from North Carolina.

Senator THURMOND. Mr. Chairman, I just have one brief question.

Professor Hill, I understand you told the FBI that you had concerns about the political philosophy of Judge Thomas and that he may no longer be open-minded. Is that accurate?

Ms. HILL. I told them that I did not quite understand, but as they had been represented, yes, that I did have some concerns.

Senator THURMOND. I have the FBI report here, and I just wondered if you remember telling them that.

Ms. HILL. I remember discussion about political philosophy and I remember specifically saying that I'm not quite sure that we understand his political philosophies. But based on what I understand, yes, there is some discomfort.

Senator THURMOND. That is all, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, let me just say, Professor Hill, we have heard in a sense the half of this story today, all of your story, and we have not heard all of Judge Thomas' story.

But I, for one, can assure you that, assuming for the moment what you have said is true, there is nothing hard to understand. Having spent as many years as I have dealing with the issue of victimization and victimization of women, I have seen that every single psychiatrist and psychologist who considers himself or herself an expert in the field will point out that the nature of response is not at all atypical, assuming it to be true—and please do not be offended by my saying “assuming it to be true.” I view myself again here as a finder of fact and we have yet to hear the whole story from Judge Thomas.

This is a tragedy; and people keep mentioning that, and my good friend from Iowa hopes that this will never happen again in the sense of the way the committee handled it.

I must be brutally frank with my colleagues and with everyone else involved: I do apologize to the women of America, if they got the wrong impression about how seriously I take the issue of sexual harassment, but I make no apologies for attempting to follow every one of your wishes, because everyone that I have spoken to, again, in the years that I have dealt with this subject indicate that the most unfair thing to do to a woman in your position is what was done to you, force you to do something that you did not intend to do.

So, I must tell you and I must tell everyone else, I take sexual harassment seriously, but I take your claim and took your claim that you have reasserted here today half a dozen times that you did not want this to go public as seriously as I possibly could. For those who suggest that there was some way to do it differently and still honor your commitment, I respond that I know of no such way to guarantee your anonymity, or to guarantee you would not have to be in this place on this day.

I must tell you, every instinct in me in the world wanted to say to the whole Senate and to the whole world that we should have a hearing on this. But again, we tend to look at large issues and forget individuals. You were the individual in the middle of this, and I will say again to anyone who will listen, as long as I am Chairman of this committee, if a person comes to me in a similar circumstance and says repeatedly and in different ways that I have no authority to tell their story, to leak their story, to demand that their story be put in a context different than they wish, I will honor that commitment.

I appreciate the fact, and to be very, very blunt about it, I can't tell you how thankful I am, purely from a personal standpoint—and I should not say this, but I am going to say it anyway—that you were so straightforward and honest about the way in which this committee handled your request, and so straightforward and honest about, notwithstanding occasional confusion, how you did not decide to do what is being done here, and were it not for the fact that it was leaked to a press person, you would not be here today.

It seems to me, ultimately, in this great giant machine we call this Nation and this Government, that I don't know how we can call ourselves civil libertarians. I don't know how we can call ourselves people interested in the individual, if, in the name of a larger cause to justify the ends, we make a judgment for an individual that that individual chooses and has a right not to make.

So, I must tell you. I admire you. I admire the way you handled this matter once you were confronted with it. As I said to you very bluntly over the telephone, all of us up here choose to be in this business, we choose to be under these lights, we choose to be under the scrutiny of those ladies and gentlemen sitting behind you, we choose to go before the American public and say "judge me," but we have no right to make you choose to do that.

Once you chose to do that, because you had no choice, you handled it with such grace and such elan that I can't quite understand how you were able to pull it off in the sense of walking before all those press people in the press conference and handling it the way

you did. I don't know three candidates in my whole life who could do that, and they have had 27 handlers telling them how to do it.

So, I don't want to kid anybody. If you came to me again in the same circumstance and said, "Senator Biden, keep this tight, do not make it go public," I would do the same thing again. I thank you for your honesty in laying out just what you did, because you could have very easily said, "oh, no, I would have come forward no matter what, I was getting ready to do that," and, quite frankly, made me look like an idiot.

I thank you very, very much. We can all talk about the process, it is a cumbersome one, but, ultimately, it seems that the purpose of the process is to protect the rights of individuals.

I thank you for being willing to be here. I thank you for your testimony.

We will now recess—

Senator HEFLIN. Mr. Chairman?

The CHAIRMAN. I will yield in just as moment.

Judge Thomas has indicated he wants very much to come back on this evening, so we will reconvene this hearing at 9:00 o'clock to hear from Judge Thomas.

Before we do, I yield to my friend from Alabama, who wants to submit for the record some—well, I will let him say what he wants to do.

Senator HEFLIN. Mr. Chairman, I want to submit certain newspaper articles that have appeared for the record.

These are from the Washington Post, October 11, 1991, and the headline is "Thomas' View Of Harassment Said to Evolve"; from the Baltimore Sun, dated October 11, 1991, "Thomas-Hill Disputes"; from the New York Times, on October 10, 1991, "Stark Conflict Marks Accounts Given by Thomas and Professor"; the Washington Post, of the same date, "Conflict Emerges Over A Second Witness"; from the Washington Post, October 11, 1991, "Charlotte Woman Details Thomas' Conducts"; from the New York Times, October 7, 1991, "Law Professor Accuses Thomas Of Sexual Harassment in 1980's"; and from the U.S. News & World Report, September 16, 1991, an article entitled "The Crowning Thomas Affair."

The CHAIRMAN. Without objection, they will be made a part of the record.

[The articles referred to follow:]

A10 FRIDAY, OCTOBER 11, 1991 ...

Thomas's View Of Harassment Said to Evolve

His Record at EEOC Is Source of Dispute

By Paul Taylor
Washington Post Staff Writer

During his 7½ years as chairman of the Equal Employment Opportunity Commission, the federal agency charged with enforcing job discrimination laws, Clarence Thomas appears to have concluded that sexual harassment was a more serious workplace problem than he once thought.

Before taking over at the EEOC, Thomas was part of a Reagan administration transition team that criticized a sexual harassment standard the EEOC issued under the Carter administration, arguing it encouraged "trivial" complaints and was unenforceable.

But five years later, when that same standard came under review in a Supreme Court case, then-EEOC Chairman Thomas was responsible for a Reagan administration friend-of-the-court brief urging that it be upheld.

Meantime, Thomas's record as an agency head, dealing with sexual harassment cases as a personnel matter, remains a source of dispute among supporters and critics.

Dolores L. Rozzi, director of the office of federal operations at the EEOC, said she remembers Thomas issuing a tough warning on sexual harassment to the staff when he demoted a male employee two grade levels for a sexual harassment offense.



CLARENCE THOMAS
... demoted worker for harassment

Rozzi said she had appealed to Thomas on behalf of the employee for a lesser punishment, but recalled that Thomas was hard-nosed. "He thought it was egregious that any woman would have to work under those conditions," said Rozzi, who has helped organize a rally of women employees of the EEOC in support of Thomas scheduled for today. "He was a real strait-laced, buttoned-down guy. We never told dirty jokes in front of Clarence Thomas. We wouldn't even use curse words."

However, Thomas's handling of what was probably the most notorious allegation of sexual harassment at the EEOC during his tenure continues to be a matter of controversy.

The case involved allegations that Earl Harper Jr., a regional attorney in the EEOC's Baltimore office, had made "unwelcome sexual advances" to several women on his staff—advances that then-EEOC general counsel David Slate concluded, after a lengthy internal investigation, had the effect of creating an "intimidating, hostile and offensive working environment."

On Nov. 23, 1983, Thomas wrote Slate a memo urging that Harper be fired. His memo said a staff recommendation for a lesser sanction was "much too lenient."

Slate did eventually recommend dismissal, but Thomas, who had the authority to fire Harper, never acted. Eleven months later, Harper, who had denied the allegations and retained a private attorney, retired—making the dismissal recommendation moot.

Reggie Welch, an EEOC spokesman, said yesterday that "when private attorneys get involved, things can drag on forever." He speculated Harper's retirement may have been part of a de facto settlement to get him out of the agency.

"It was a whitewash," countered Susan Silber, a lawyer who represented one of the women who accused Harper of sexual harassment and who won back pay from the EEOC in a civil suit. "It was highly unusual" that a recommendation for firing was not carried out, she said.

In late 1980, as a member of president-elect Ronald Reagan's transition team, Thomas joined in a report that said recently formulated EEOC guidelines on sexual harassment—defined as unwelcome sexual attention, whether verbal or physical, that affects an employee's job conditions or creates a hostile working environment—were so broad that they "undoubtedly led to a barrage of trivial complaints against employers around the nation."

The transition team report, co-written by Thomas, continued: "The elimination of personal slights and sexual advances which contribute to an 'intimidating, hostile or offensive working environment' is a goal impossible to reach. Expenditure of the EEOC's limited resources in pursuit of this goal is unwise."

But in 1985, when these same guidelines came before the Su-

preme Court in the case of *Meritor Savings Bank v. Vinson*, Thomas urged then U.S. Solicitor General Charles Fried to submit a friend-of-the-court brief supporting the guideline. He did, and the high court upheld the standard.

"He made a strong and very persuasive argument that sexual harassment is properly considered a form of discrimination because as a practical matter it seriously interferes with equal opportunities for women in the workplace," Fried wrote in a letter that the office of Sen. John C. Danforth (R-Mo.) solicited and then released.

While women's groups generally applauded the administration's 1985 brief in the *Vinson* case, they noted that on the issue of an employer's civil liability in sexual harassment cases, it advocated a stricter standard that the court adopted.

They also noted that during Thomas's tenure, the EEOC was about twice as likely to dismiss complaints of all forms of job discrimination—sexual, racial and age-based—as it had been during the Carter administration years. "I wouldn't exactly call the EEOC under Thomas a beacon of aggressive enforcement," said Marcia Greenberger, co-president of the National Women's Law Center.

Staff writers Howard Kurtz, Jim McGee and Barbara Vobejda and researcher Ralph Galliard Jr. contributed to this report.

Sun
10-11-91

Thomas-Hill disputes

The record on nine factual disputes on the credibility of Clarence Thomas and his accuser, Anita F. Hill:

1. Did Judge Thomas ask Ms. Hill for a date in 1981?

Ms. Hill's version: Judge Thomas asked her out socially and he refused to accept her explanation that it was inappropriate to go out with the boss. (National Public Radio, Oct. 6)

What Judge Thomas may have told the FBI: Unnamed congressional sources have been quoted as saying that Judge Thomas acknowledged asking Ms. Hill out for a date, but that he said he dropped the matter when she declined. (NPR, Oct. 6, and *New York Times*, Oct. 10)

Judge Thomas to Senators: Judge Thomas "denied that he had ever asked her for a date." (Sen. Arlen Specter, R-Pa., McNeil-Lehrer, Oct. 7)

2. Did Judge Thomas discuss pornography with Ms. Hill in 1981?

Ms. Hill: "He [Judge Thomas] spoke about acts he had seen in pornographic films involving such things as women having sex with animals and films involving group sex or rape scenes." (NPR, quoting unpublished Hill affidavit, Oct. 6)

Thomas defender: "He says . . . that none of the alleged salacious expressions were made by him to her." (Sen. John C. Danforth, R-Mo., press conference, Oct. 7)

3. If Ms. Hill was sexually harassed, why did she follow Mr. Thomas from the Education Department to the Equal Employment Opportunity Commission in 1982?

Ms. Hill: "If I quit, I would have been jobless. I had not built a resume such that I could have expected to go out and get a job. And you'll recall that in the early '80s, there was a hiring freeze in the federal government. (Press conference, Oct. 7)

Thomas defender: There was "no rational reason for her not to believe that she could have stayed" at the Education Department. When Mr. Thomas asked her to follow him to EEOC, "she was excited, flattered and gushing with enthusiasm about continuing to work with Clarence Thomas." (Andrew S. Fishel, who worked with both Ms. Hill and Judge Thomas at both the Education Department and the EEOC, *New York Times* interview, Oct. 9)

4. Did Ms. Hill know co-worker Phyllis Berry while they were both at the EEOC?

Thomas defender: Ms. Berry, who says she worked with both Ms. Hill and Judge Thomas as congressional liaison officer for the EEOC, told a reporter that Ms. Hill's allegations resulted from her disappointment and frustration that Judge Thomas had shown no sexual interest in her. (*New York Times*, Oct. 7)

Ms. Hill: "Well, I don't know Phyllis Berry and she doesn't know me, and so I don't have anything else to say to that." (Press conference, Oct. 7)

5. How did Ms. Hill get her first legal teaching job at Oral Roberts University in Oklahoma after leaving the EEOC in 1983?

Ms. Hill: "I interviewed for that job. And at that time, after the interview took place, after I had been assured that I would get the job, I went to him [Judge Thomas] and said, 'Would you write a recommendation?' And that came only because the process at Oral Roberts University required some kind of letter from a former employer." (Press conference, Oct. 7)

Thomas defender: Charles Kothe, then dean of the law school, said Judge Thomas played a more important part in her hiring than she has acknowledged. Mr. Kothe said he first met Ms. Hill when she accompanied Judge Thomas to Tulsa, Okla., so he could hold a seminar as EEOC chairman. (*New York Times*, Oct. 9)

6. Did Ms. Hill voluntarily stay in touch with Judge Thomas after the alleged sexual harassment, and if so, why?

Thomas defender: Handwritten phone logs kept in Judge Thomas' office show 11 calls received from Ms. Hill between 1983 and 1990. "Needs your advice in getting research grants," a secretary noted in an Aug. 29, 1984, entry. Another entry said "wanted to congratulate you on marriage." (Logs released by Senator Danforth, Oct. 8)

Ms. Hill: "If there are messages to him from me, these are attempts to return calls. . . . I never called him to say hello. I found out about his marriage through a third party. I never called to congratulate him." (*Washington Post* interview, Oct. 9)

7. Did Ms. Hill call Judge Thomas in 1990 and ask him to make a speech at the University of Oklahoma?

Thomas defender: Judge Thomas says Ms. Hill telephoned him in November 1990, they chatted for 10 to 15 minutes, and she asked him if he would be receptive to an invitation to speak at the University of Oklahoma Law School. (Senator Danforth press conference, Oct. 7)

Ms. Hill: "No, I did not invite him. The enrichment committee sent an official letter to him inviting him. The chairman of that committee came to me and said would you follow up to see, make sure he's got that letter and that he's going to pay some attention to it. At that time, I stated very clearly to the chairman of the committee that I did not want him to come here. And I, however, did make a phone call. . . ." (Press conference, Oct. 7)

Thomas defender's rebuttal: The Thomas phone logs will disclose that Ms. Hill made the call "many days before" the invitation letter went out, not afterward as Ms. Hill said. (Sen. Alan Simpson, R-Wyo., Senate floor speech, Oct. 8)

8. What was Ms. Hill's reaction when Judge Thomas was nominated to the Supreme Court?

Ms. Hill: "I was very disturbed. I have been very disturbed throughout this process. This has been a very painful process for me." (Press conference, Oct. 7)

Thomas defender: Carlton Stewart, an Atlanta lawyer who was special assistant to Judge Thomas at the EEOC, said Ms. Hill expressed delight at the Thomas nomination in a conversation with him at the American Bar Association convention. (Quoted in *Washington Post*, Oct. 8)

9. Did Ms. Hill provide the Senate committee a sworn statement in 1991?

Thomas defender: "She did not furnish an affidavit. An affidavit is something sworn to and then sealed. She chose to give a statement, a four-page statement." (Senator Simpson, speech to Senate, Oct. 8)

Ms. Hill: She gave a sworn affidavit to the FBI on Sept. 23. (Written statement to press, Oct. 7)

Stark Conflict Marks Accounts Given by Thomas and Professor

By MICHAEL WINES
Special to The New York Times

WASHINGTON, Oct. 9 — Judge Clarence Thomas and Anita F. Hill disagree not just on the basic question of whether he sexually harassed her.

On several fine points — from whether he sought to date her, to the nature of their telephone conversations in later years — the accounts of Judge Thomas, President Bush's nominee for the Supreme Court, and Ms. Hill, a former aide and an Oklahoma law professor, are in stark and seemingly irreconcilable conflict.

When the Senate Judiciary Committee reopens hearings into Judge Thomas's nomination on Friday, the lawmakers will scrutinize those differences as closely as the larger dispute over whether harassment actually took place.

Whose version proves credible may

Contradictions occur in both versions.

will determine whether Judge Thomas's denials are believed, and whether, in the end, he wins appointment to the Supreme Court.

Test Has Begun

The test is already well under way. Professor Hill's assertions are being scoured for inconsistencies and a Republican supporter of Judge Thomas, Senator Strom Thurmond of South Carolina, said this week that she had provided differing public and private versions of a climactic final confrontation with Judge Thomas in 1983, when she was an aide of his at the Equal Employment Opportunity Commission.

Judge Thomas's account may also be at odds with itself on one point: he is said to have given the Federal Bureau of Investigation and his Republican supporters in the Senate conflicting accounts of whether he asked Professor Hill for a date when they worked together in the early 1980's. In one case he said he had asked her out and been turned down, and in another he stated that he had never asked her out.

A supporter of Judge Thomas also made public information today that may reflect on a central facet of Pro-

fessor Hill's complaint: that he had given her vivid and unwanted descriptions of pornographic movies that he had seen.

The supporter and friend, Lovida H. Coleman Jr., issued a statement in response to questions about stories circulating in the capital that Judge Thomas had often been a patron of X-rated movie houses while a student at Yale Law School in the early 1970's. Ms. Coleman, also a student at Yale at the time, said that Judge Thomas "at least once humorously described an X-rated film to me and other colleagues." Elaborating beyond the statement, she acknowledged that this had occurred more than once.

None 'Offended'

But she also said that neither she nor other students "were offended by his amusing accounts."

Ms. Coleman, now a lawyer in Washington, continued, "Indeed, we would have been hypocrites to have been offended since very few of us failed to attend one or more similar films that were shown on the Yale University campus while we were in school."

Professor Hill's and Judge Thomas's sides have said, in strikingly similar words, that they eagerly anticipate a public test of the truthfulness of the statements by third parties.

"I want an official resolution of this," Professor Hill said in a news conference on Monday. "My integrity has been called into question, and by people who have never spoken to me."

On Tuesday, Senator John C. Danforth, the Missouri Republican who is Judge Thomas's chief patron on Capitol Hill, gave the Senate an account of Judge Thomas's request for vindication.

"They have taken from me what I have taken 43 years to build: my reputation," Senator Danforth quoted him as saying. "I want to clear my name."

Even though Ms. Coleman said Judge Thomas had an interest in pornographic films, she was also trying to help him clear his name. She called him "particularly sensitive and caring regarding the professional and personal concerns of the women he knows and with whom he has worked," and said she seriously doubted that he harassed Professor Hill.

Determining whose account of the relationship between Judge Thomas and Professor Hill is accurate is difficult, because both have made pub-

The Hearings On Television

The Senate Judiciary Committee hearings on Judge Clarence Thomas's nomination to the Supreme Court, starting at 10 A.M. Friday, will be broadcast on four channels. The coverage will continue on Saturday and Monday if required.

The Public Broadcasting Service will have gavel-to-gavel coverage with no commercial interruptions.

The Courtroom Television Network, which will start its coverage at 9 A.M., will only broadcast commercials when there is a break in testimony. The Cable News Network will have what it describes as extensive coverage, starting at 10 A.M.

C-Span will cover the hearings after a 10 A.M. House meeting until the end of the session. The channel will also replay the day's entire hearing beginning at 8 P.M.

None of the news divisions of the three major commercial networks had decided yesterday whether to cover the hearings.

lic statements on the matter. Those descriptions that exist come largely from anonymous sources who have seen confidential statements by Professor Hill — or from defenders of Judge Thomas who have personally heard or read his own confidential responses.

The starkest differences between the two center on two issues. One is Professor Hill's contention that Judge Thomas tried to date her while she worked at the Department of Education and the Equal Employment Opportunity Commission.

The other is Judge Thomas's claim, documented by what Senator Danforth called phone logs made public on Tuesday, that Professor Hill made several calls to his office after she left the Government and became a law professor in Oklahoma.

An initial news account of the issue, broadcast on National Public Radio

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last week, cited details of Professor Hill's charges included in a sworn affidavit that she had provided the Senate Judiciary Committee last month. In it, the N.P.R. account stated, Professor Hill alleged that when she was hired as Judge Thomas's personal assistant at the Education Department, "Thomas soon began asking her out socially and refused to accept her explanation that she did not think it appropriate to go out with her boss."

That same news report quoted Senate officials as saying that Judge Thomas had told the F.B.I. in late September that "he had asked Hill to go out with him, but when she declined, he said he dropped the matter." Last weekend, congressional officials confirmed that account of the F.B.I. interview.

Senators' Account Differs

Still, two of Judge Thomas's foremost supporters, Senator Danforth and Senator Arlen Specter, Republican of Pennsylvania, said this week that Judge Thomas had told them flatly that he had never asked Professor Hill for a date.

"He says he did not ask this person for a date, and none of the alleged salacious expressions were made by him to her," Senator Danforth said on Monday after talking to Judge Thomas. "He denies ever having asked her out or talked to her about anything like that," Senator Specter also said the same day.

Professor Hill has indicated that she eventually left her job with Judge Thomas in 1983 because the harassment did not stop, and that she maintained only a distant relationship with him in the following years. That was challenged on Tuesday. Senator Danforth produced telephone logs from Judge Thomas's years at the Equal Employment Opportunity Commission that he said showed that Professor Hill carried on a friendly and frequent relationship with her old boss by telephone.

The logs record 10 telephone calls to Judge Thomas's office from Professor Hill from 1984 to 1990, and an 11th call from an associate of Professor Hill calling at her suggestion. Notations made by Thomas's office indicate the calls involved such matters as "advice on getting research grants" and "congratulate you on your marriage." They do not indicate whether Professor Hill had initiated the calls or returned previous calls from Judge Thomas.

On Tuesday, Professor Hill told The

Washington Post that the logs were "garbage," and denied initiating any telephone calls to Judge Thomas.

"If there are messages to him from me, these are attempts to return telephone calls," she told The Post. "I never called him to say hello. I found out about his marriage through a third party. I never called him to congratulate him."

Reached later on Tuesday, Professor Hill declined to discuss the calls.

Professor Hill also gave National Public Radio a detailed account of what she said was her last meeting with Judge Thomas before leaving the Government in 1983 — a meeting in which she quoted him as telling her that any future disclosure of his harassment "would be enough to ruin my career."

That rendition was publicly disputed this week by Senator Thurmond. In remarks on the Senate floor, he said that Professor Hill's confidential account of her charges to the Judiciary Committee was different in that she said that Judge Thomas told her the disclosure of the incidents would ruin her career, not his.

Today, a supporter of Judge Thomas also sought to cast doubt on another aspect of Professor Hill's allegations, that she followed Judge Thomas only reluctantly from her job at the Education Department to a similar job at the equal employment commission.

Professor Hill has said that she stayed with Judge Thomas because she was only 25 years old and feared that he would be unable to find another job if she quit. She also said that Judge Thomas had stopped harassing her at the time of the move and that she believed that the incidents would not resume.

Today, Andrew S. Fishel who worked with Judge Thomas and Professor Hill at both the Education Department and the Equal Employment Opportunity Commission, said that Professor Hill expressed delight at the time at the prospect of following Judge Thomas to the E.E.O.C.

Mr. Fishel, who said he "unequivocally" supports Judge Thomas's nomination, said that there "was no rational reason for her not to believe that she could have stayed at the Office of Civil Rights" in the Education Department had she expressed a wish to do so.

"My recollection is that she was excited, flattered and rushing with enthusiasm about continuing to work with Clarence Thomas," Mr. Fishel said.



Associated Press

Prof. Anita F. Hill, who has accused Judge Clarence Thomas of sexual harassment, being escorted by a University of Oklahoma police officer yesterday

into the law school in Norman, Okla. Professor Hill was there to be photographed for magazines before departing for Washington.

CONFLICT EMERGES OVER A 2D WITNESS

Thomas Panel to Hear Woman — White House Protests

By ADAM CLYMER
Special to The New York Times

WASHINGTON, Oct. 10 — Despite a White House complaint, the Senate Judiciary Committee is prepared to hear a new witness against Clarence Thomas, the Supreme Court nominee, as the committee prepares for crucial public hearings Friday on a sexual harassment accusation against him.

The new witness is Angela Wright, a former press secretary at the Equal Employment Opportunity Commission, when Judge Thomas was chairman of the commission, a Senate aide said. Anita F. Hill has accused Judge Thomas of sexual harassment, and the Senate aide said Ms. Wright's report would be about the same general topic but gave no details.

Importance Is Denied

The White House issued a statement tonight critical of the committee's action, saying it had neglected the "normal practice" of first seeking an investigation by the Federal Bureau of Investigation. But it said Judge Thomas "will deal with the allegations in the course of the hearings."

Senator Alan K. Simpson, Republican of Wyoming, a Thomas supporter, said he had seen Ms. Wright's deposition and did not regard it as significant.

The nationally broadcast hearing will begin at 10 A.M., and one key issue in dispute was who would testify first, Professor Hill, who first brought the accusation of sexual harassment, or Judge Thomas. Senator Simpson said

an agreement was developing that Judge Thomas who has been on the defensive all week, would get the chance to go first. He said it was not clear if Professor Hill would come immediately after him.

An Unusual Move

The Senate agreed Tuesday to an unusual reopening of its confirmation process, a tense, drawn-out procedure that began July 1, when President Bush chose him to succeed Justice Thurgood Marshall who retired.

Despite strong opposition, he had seemed all but certain to win the Senate majority vote necessary for confirmation before Professor Hill's accusation was reported over the weekend.

Judge Thomas denied her sworn accusation in an affidavit he swore on Tuesday, but the Senate was stung by the charge that it had brushed off the charge without adequate inquiry and it arranged to put off the vote until next week and hear sworn testimony on the accusation.

Ms. Wright, now an assistant metropolitan editor at the Charlotte Observer, was still being interviewed by Committee aides tonight, said Senator Orrin G. Hatch, Republican of Utah. Jane Shoemaker, managing editor, "she has told me that I can share that she did not contact the committee and she was not seeking an audience with the committee. The committee sought her out and she is going to Washington in response to a subpoena."

Although the order of witnesses was not fully established, members of both parties on the committee announced plans for questioning intended to speed the proceedings, which are expected to take at least two days. Each party's senators are to ask questions for 30 minutes, then give way to the a senator from the other party.

Democrats planned to have Senators Joseph R. Biden Jr. of Delaware, the chairman, and Patrick D. Leahy of Vermont and Howell Heflin to Alabama do almost all of their questioning, while other committee members would generally sit and listen.

For the Republicans, Senator Hatch said he would question Judge Thomas and any witnesses called to support him while Senator Arlen Specter of Pennsylvania would interrogate Ms. Hill and her supporters.

Ms. Hill arrived in Washington today from Oklahoma and immediately began meeting with a hastily arranged volunteer team of lawyers.

Women Defend Thomas

President Bush defended his nominee when reporters questioned him briefly at the White House, saying: "I support him 100 percent, no fear of contradiction. I am strongly for him."

He said, "I'm simply not going to inject myself into what's going on in the Senate." He then urged: "Let's see the Senate get on with its business in a fair fashion and get this matter resolved." And when it's done in that manner, I am absolutely convinced that he will be confirmed and will be on the Supreme Court because in my view he deserves to be there."

As the hearing arrangements were being settled, Senator John C. Danforth, the Missouri Republican who has been Judge Thomas's leading Senate advocate, called a news conference to present 18 women who had worked with the nominee in Washington. The women said they were outraged about the accusation against him.

Pamela Talkin, his chief of staff at the Equal Employment Opportunity Commission, said: "It was Clarence Thomas's unequivocal and oft-repeated policy that sexual harassment, even in its most subtle forms, would not be tolerated at E.E.O.C. And it wasn't." She added, "He was adamant in demanding that all the women in the agency be treated with dignity and respect."

Helen Walsh, a manager at the agency, said she had worked with him at both the E.E.O.C. and the Department of Education, and there had never been any hint of impropriety about him at either place. "He has never even expressed anything that you would call off-color or sexist remarks," she said. "He has been open and nurturing of all of his employees."

The message of his former co-workers was that Judge Thomas could not have committed sexual harassment. Ricky Silberman, the commission's vice chairman, arranged the group meeting, saying that Mr. Thomas had fought to insure that "this noxious behavior not go on in the American workplace." Of the group, she said, "Outrage is, I believe, what we all feel."

Committee Action Defended

Senator Hatch held a news conference to complain that "some sleazy person" on the Judiciary Committee or its staff had told news organizations about Ms. Hill's accusation. He said the committee had behaved properly in agreeing to her request to not be named, and predicted that neither Professor Hill nor Judge Thomas "will come out with the reputations they had before."

Mr. Hatch also said he had not read the report on her accusation by the F.B.I. before voting for the nomination, but he said, "I knew what was in it." Asked why he had not read it, he said: "Well, I should have. There's no question about it."

According to a report on National Public Radio, Professor Hill gave this description of Judge Thomas's conduct: "He spoke about acts he had seen in pornographic films involving such things as women having sex with animals and films involving group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises or breasts involved in various sex acts."

Professor Hill's volunteer lawyers include John P. Frank, a nationally known lawyer from Phoenix, Susan Deller Ross, a prominent professor at Georgetown University, Michele Roberts of Washington and Janet Napolitano, an associate of Frank's from Phoenix.

Louise Hilsen of Devillier Communications, a public relations agency, said several members of Professor Hill's family would accompany her to the hearings. "She has a brother who is coming in from Kansas City and a brother is coming in from New York. Her parents are coming in. She's got a fairly large extended family, they're going to see who is available."

WASH. POST
10-1-91

Charlotte Woman Details Thomas's Conduct

Ex-Employee Alleges He Asked Her Breast Size, Came to Her House

By Karen Garloch
Charlotte Observer

CHARLOTTE, N.C., Oct. 10—A Charlotte woman who formerly worked for Supreme Court nominee Clarence Thomas told Senate investigators today that Thomas repeatedly asked her for dates, asked her breast size and showed up at her apartment uninvited.

Angela Wright, 37, an assistant metro editor for the Charlotte Observer, was subpoenaed by the Senate Judiciary Committee to testify Friday or Saturday at the reopened hearing into Thomas's nomination for the Supreme Court.

In an interview today, Wright said she never considered Thomas's advances sexual harassment and never considered filing a complaint.

"I'm not stating a claim of sexual harassment against Clarence Thomas," Wright said. "... It's not something that intimidated or frightened me. At the most, it was annoying and obnoxious." In 1985, Wright was fired by Thomas from a position at the Equal Employment Opportunity Commission.

But she said she thought about those advances earlier this week in light of allegations of sexual harassment against Thomas by another former aide, Anita Hill, a University

of Oklahoma law professor.

Hill, who worked for Thomas at the Education Department and the EEOC in the early 1980s, has alleged that Thomas frequently asked her out and when she refused, he described scenes from pornographic films he had seen.

Wright said she has never met Hill, but sympathized with her.

"I looked at this woman trying desperately to tell her story and be believed," Wright said. "... I know enough about the man to know he's quite capable of doing what she said he did."

A registered Republican, Wright
See WRIGHT, A12, Col. 1

Editor Outlines Thomas 'Inappropriate' Conduct

WRIGHT, From A11

was Thomas's director of public affairs at the EEOC from March 1984 to April 1985, when she was fired. Wright said that Thomas told her she was not aggressive enough in firing veteran EEOC employees. Thomas later gave Wright a positive job recommendation.

Wright said a Senate investigator called her Wednesday, and lawyers representing six senators interviewed her today for two hours by telephone.

During the year she worked for Thomas, Wright said, he repeatedly asked her to date him. At the time, Thomas was separated from his first wife. Wright is single.

"He would say, 'You will be going out with me,' or 'I'm going to start dating you,' or 'when I get around to dating you.' It was never, 'Will you go out with me?'" Wright said.

One night, shortly after she was hired, Wright recalled, she sat next to Thomas at an employment retirement banquet that she had arranged.

"He leaned over to me and said something like, 'This is really going well. You look good tonight, too. You're going to go out with me.'"

On another occasion, Wright said, Thomas "asked me what size my breasts were." He told her she looked nice and then, according to Wright, he said, "What size are your breasts?"

"I just said something like, 'Don't you think you ought to be familiarizing yourself with the speakers?'" she said. "I would usually ignore it and move on to the next level."

Wright said Thomas also showed up at her apartment in Washington one evening uninvited.

She said she asked him in and offered him a beer and they talked for about two hours. During that

time, she said he again asked her to go out with him and she again changed the subject.

"I pushed it in the back of my mind and moved on with my life," Wright said. "His comments were certainly unwelcome and inappropriate, but I never felt any threat from him. I just felt like he got a certain amount of pleasure out of saying certain things to women."

"I'm not saying now that this man threatened me or sexually harassed me," Wright said. "... My desire here is not to keep Clarence Thomas off the Supreme Court."

"But I'm knowledgeable of circumstances where Clarence Thomas was out of line and said things that were inappropriate. So, I believe Anita Hill... I'm saying I think this woman is credible and this is why I think she's credible."

Wright said her interview with Senate lawyers today seemed to indicate that Thomas supporters will try to discredit her testimony because Thomas fired her in 1985.

However, when an Observer editor called Thomas in January 1990 for a reference regarding Wright's work, Thomas said she had resigned.

Thomas called Wright an "excellent employee" who worked "very well under stress," according to notes taken by Mary Newsom, the Observer's special projects editor.

Wright, a Wilmington native and University of North Carolina-Chapel Hill journalism school graduate, joined the Observer as an assistant metro editor in February 1990 after two years as managing editor of the weekly Winston-Salem Chronicle.

Previously, she held several political jobs. In 1980 and early 1981, she was black media liaison for the Republican National Committee.

The New York Times

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Thomas
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7 Oct Monday

Law Professor Accuses Thomas Of Sexual Harassment in 1980's

By NEIL A. LEWIS
Special to The New York Times

WASHINGTON, Oct. 6 — Two days before the Senate is scheduled to vote on his nomination to the Supreme Court, Judge Clarence Thomas was publicly accused today of sexually harassing a law professor at the University of Oklahoma Law Center during the two years that she served as his personal assistant in the Federal Government.

Anita F. Hill, a tenured professor of law at Oklahoma, charged in an affidavit submitted to the Senate Judiciary Committee last month that when she worked for Judge Thomas over a two-year period beginning in 1981, he frequently asked her out and when she refused he spoke to her in detail about pornographic films he had seen.

The allegation added an element of uncertainty to what had already been a turbulent confirmation process for Judge Thomas, who is President Bush's choice to succeed Justice Thurgood Marshall on the Supreme Court. Senator John Danforth, a Missouri Republican who is the 43-year-old nominee's principal supporter in the Senate, said today that Judge Thomas "forcefully denies" the allegations.

Senator Paul Simon, an Illinois Democrat who is a member of the Judiciary Committee, said today that because of the allegations, the vote should be delayed. But Senate aides said they ex-

pected the vote to go forward because a delay would require the consent of all 100 members. At least 54 Senators have declared their intention to vote to confirm Judge Thomas.

Nonetheless, as word of the allegations spread this weekend, the White House and Judge Thomas's supporters mounted a swift counterattack on several fronts, depicting him as the victim of a desperate final gambit by his opponents.

Professor Hill never filed a formal affidavit.

Continued on Page A15, Column 1

Justices Return to Work

The Supreme Court opens its new term today, short one Justice but not lacking in high-profile cases that will test the dimensions of its conservative counter-revolution. Page A14.

The New York Times

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complaint against Judge Thomas. The accusations were first reported today by National Public Radio, which said Professor Hill had first made them to the Judiciary Committee the week of Sept. 10, while members of the panel were questioning Judge Thomas in public hearings.

In an interview broadcast this morning on NPR, Professor Hill said she intelligently decided she would not tell the committee of her charges, but changed her mind as the hearings were about to begin because she felt she had an obligation to tell what she believed to be true.

"I am a person who is in charge of protecting rights of women and other groups in the workplace and he is using his position of power for personal gain for one thing," she said. "And he did it in a very ugly and intimidating way."

Senator Joseph R. Biden Jr., the Delaware Democrat who is chairman of the Judiciary Committee, said in a statement today that when Ms. Hill first contacted the committee, on Sept. 12, she insisted that her name not be used and that Judge Thomas not be told of her allegations. He said this effectively tied the committee's hands.

Only on Sept. 23, Mr. Biden said, did she agree to allow the Federal Bureau of Investigation to investigate the alle-

gations. The White House today described the F. B. I. report as finding the allegations as "without foundation." But Congressional officials who have seen the report challenged that characterization, saying the bureau could not draw any conclusion because of the "he said, she said" nature of the allegation and denial.

By all accounts, the White House and the Senate Democratic leadership, including Senator Biden and Senator George J. Mitchell, the majority leader, were briefed about the accusation shortly after the F. B. I. completed its investigation.

At the time cited by Professor Hill, Judge Thomas headed the Office of Civil Rights in the Department of Education and she was his personal assistant. In her affidavit, Congressional officials said, Professor Hill said that typically after a brief discussion of work, Judge Thomas would "turn the conversations to discussions about his sexual interests." She described his remarks as vivid as he discussed sexual acts he had seen in pornographic films.

Professor Hill did not return repeated telephone calls seeking comment today. In a written statement to news organizations today, she said that she was first approached by the Judiciary Committee on Sept. 3 and was invited to provide background information on Judge Thomas because she had worked with him. She said that after "numerous discussions" with the committee's staff she decided to submit an affidavit. She said she discussed the matter publicly with the NPR reporter, Nina Totenberg, only because the reporter had a copy of the affidavit and she wanted to be able to respond to the information before it was made public.

In her affidavit, according to the Congressional officials, Professor Hill said that Judge Thomas, who was separated from his first wife at the time, dropped the subject when he began dating someone else. Since the remarks had stopped, she said, she accepted an offer to follow him as a personal assistant when he became chairman of the Equal Employment Opportunity Commission. He soon resumed his advances, she said.

"Feeling Without a Choice"

In an interview with NPR, Prof. Hill said Judge Thomas never attempted to jounce her nor did he threaten her job. But she said that the age of 35 she felt vulnerable. *ch*

intimidated. "I felt as though I did not have choice, that the pressure was such I was going to have to submit to it pressure in order to continue get good assignments," she said in interview.

Senator Biden said in a statement today that the allegations were investigated by the Federal Bureau of Investigation at the request of the Judiciary Committee. Judge Thomas told the bureau's investigators that he had as the woman out a few times and she declined eventually dropped all advances.

The White House today described as "without foundation." But Congressional officials who have seen the report challenged that characterization saying the bureau could not draw conclusion because of the "he said, she said" nature of the allegation and denial.

Senator Danforth said the charges were a desperate "eleventh-hour tack more typical of a political campaign than of a Supreme Court confirmation." In an effort to diminish Professor Hill's credibility, he said Judge Thomas flew out to Horn Okla., this spring to address her.



Associated Press
Anita F. Hill, law professor, who has accused Judge Clarence Thomas of sexual harassment.

The New York Times

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students at her invitation.

A White House official said that Ms. Hill's credibility was damaged by the fact that she did not make these allegations until very late in the confirmation process, nine years after the alleged acts occurred.

The White House provided reporters with the name of Phyllis Berry, who worked with both Ms. Hill and Mr. Thomas at the employment opportunity commission. In an interview, Ms. Berry suggested that the allegations were a result of Ms. Hill's disappointment and frustration that Mr. Thomas did not show any sexual interest in her. Ms. Berry, who was the commission's

Congressional liaison officer for five years, said that Judge Thomas was intensely aware that he had to conduct himself with acute propriety because he believed that as a black Republican he would be under special scrutiny.

Ms. Berry speculated that Ms. Hill might have wanted to develop a relationship with Mr. Thomas and that because Judge Thomas was "not able to respond to her in the way she expected or hoped, he might have hurt her feelings."

But a number of colleagues and friends of Ms. Hill said they could not imagine her fabricating such allegations.

"I've known Anita Hill for 14 years and she is a person of enormous integrity and spirituality," said Stephen L. Carter, a law professor at Yale University. Professor Carter, who attended Yale Law School with Professor Hill, added, "She is a person of great compassion and thoughtfulness and if she said something like that occurred it would have to be considered very seriously."

Prof. Harry F. Tepper Jr., a colleague of Professor Hill at the University of Oklahoma, issued a statement saying: "Anita is not part of any political plot I share the view of those who say that Judge Thomas has been sub-

jected to unfair criticism in the past, but that is not the case here. In my view, Anita's disclosures have nothing to do with partisanship or politics."

The allegations of sexual harassment involve a period when Judge Thomas was the chairman of the E.E.O.C., the agency that is charged with dealing with sexual harassment claims and he was, in effect, the nation's chief enforcement officer on the subject.

Courts have recognized two different varieties of sexual harassment, the overt sex for favors at the workplace kind and a more subtle type in which actions create an unwelcome or hostile environment.

In 1986 the Supreme Court ruled that sexual harassment may occur when there is unwelcome and pervasive conduct of a sexual nature and that could

include matters like remarks laced with innuendo.

In her interview with NPR, Professor Hill said that at the time she was being harassed she confided her uneasiness to another law school classmate, a woman who is now a state judge in the West. NPR said the woman confirmed Ms. Hill's account of the content and timing of their conversation on the condition that she not be identified.

In a statement today, Professor Hill said that she told the committee of the sexual harassment charges because: "My interest has been in fulfilling my responsibilities to the political process as I see them. That is to provide the Senate with information about a nominee. Allegations that my efforts are an attempt to disparage the character of Clarence Thomas are completely unfounded."

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See Page 4, infra

The crowning Thomas affair

A tormented man faces the test of a lifetime: Should he sit on the nation's highest court?

When white friends greet Clarence Thomas and ask, "How are you?" Thomas often replies, "Just trying to make it in your world." The words are said with a grin, but Thomas's good humor is wrapped around a core of complex emotions: confidence and insecurity, determination and resentment. George Bush's choice to succeed Thurgood Marshall on the Supreme Court has spent most of his 43 years proving that he is good enough to "make it" in the white world. But he has risen so fast—from a junior Capitol Hill staffer to Supreme Court nominee in just 10 years—that Thomas approaches his confirmation ordeal this week filled with anxiety that he may fail this final test. On the day he was named by Bush two months ago, Thomas called friends like Alex Neichvolodoff, a colleague from Capitol Hill, to say he had "this fear in the pit of my stomach."

If Thomas is afraid of losing the confirmation battle, he also worries about winning it. He has told colleagues on the U.S. Court of Appeals for the District of Columbia, where he has served barely 18 months, that he might not be ready for his new assignment and wishes it had come five years from now. At his confirmation hearing last year, Thomas admitted that he has "not had time to form an individual, well-thought-out constitutional philosophy."

One friend, who has talked at length with the judge, calls his legal views "a mishmash" and adds, "There aren't a lot of anchors there." The American Bar Association reflected such concerns when it rated him "qualified" for the high court. That is a passing grade but not the highest rating, and two panel members judged him "unqualified." Sen. John Danforth, Thomas's mentor, concedes: "He is a person who is evolving." Indeed,

supporters are trying to turn Thomas's inexperience to advantage, saying that his malleability means that he will not be a rigidly conservative vote on the court.

To the extent that Thomas does have a philosophical anchor, it is this: Individuals can, and should, help themselves. Government and programs often make matters worse by depriving the proponents of initiative. Race-based preference programs generate racial tensions, give blacks too many excuses for their failures and prevent people like him from getting credit for real achievement. His whole life embodies a single, thunderous idea: I am the author of my own story.

Divided soul. But as Thomas takes his seat in front of the Judiciary Committee, the picture he presents is riddled with contradictions. He is a black nationalist who divorced his black wife, married a white woman and lives in a white neighborhood, a foe of affirmative action who has been named to the court primarily because he is black, an individualist who feels uncomfortable with the leaders of both races and both parties.

There is meager evidence on Thomas's legal philosophy, but as an executive branch official he followed Supreme Court decisions even when he disagreed with them; thus, he might be slow to overturn established precedent. He has voiced support for natural law, the idea that individuals have "unalienable rights" not granted by government. And while some abortion-rights activists fear he would assign such rights to the unborn and oppose abortion, Thomas is more likely to cite natural law in defending individual rights—such as free speech—against government power.

Thomas was pushed ahead so fast because Bush apparently felt compelled to pick a black American for the seat and thought no other candidate with proper-

U.S. NEWS

conservative credentials was available. Thomas was picked from a pool of one to fill a quota of one, and his selection as deeply divided the black community story, Page 33). To his supporters, Thomas is a role model of hard work and self-reliance. To his critics, he is a traitor to his race. The attacks wound him deeply, leaving him confused and isolated. As he told the newspaper *Legal Times* in 1984, "I don't fit in with whites, and I don't fit in with blacks. We're in a mixed-up generation—those of us who were sent out to integrate society." Yet Thomas revels in being contrary, and friends wonder if his fiery behavior borders on the impulsive. He plays country and eastern music, roots for the Dallas Cowboys in a city of rabid Redskins fans and displays a Georgia state flag on his desk that looks strikingly like a Confederate banner. "I think he's very alone," says a friend.

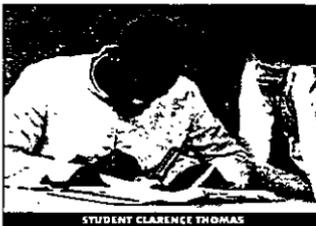
One criticism of Thomas is that he has "forgotten his roots," or at least drawn the wrong lessons from his incredible life. But he is very much a product of his past, of the "hated and love," as he puts it, that dominated his boyhood: the hatred of state-sponsored segregation and the love of family, neighbors and teachers. If anything, Thomas relies too heavily on his own experiences and does not fully understand that the world of his youth, in both its strengths and weaknesses, no longer exists. Government is no longer the despised enforcer of racial bias. And, a sad irony, the end of segregation has meant the demise of many institutions that nourished him, from black-owned businesses to a school run by Franciscan nuns for black children.

Fresh reminders. Thomas acknowledges that he is mourning a lost world, telling a commencement audience last spring, "My community is gone." But even his current world, as a judge in the second most powerful court in the land, yields up fresh reminders of prejudice. Recently, he was driving his car out of the garage at the federal courthouse, heading for a lunch date. As an old friend, Mark Edelman, recounts the story, Thomas paused at the garage entrance. Suddenly, a man opened the back door, climbed in and gave Thomas an address. He thought the judge, with his black skin and fancy car, must be a chauffeur.

Thomas was born on the marshy banks of Moon River, in the hamlet of Pin Point, Ga., on June 23, 1948. He was a toddler when his father deserted the

family, leaving his mother with two small children and a third on the way. "I made my living by picking crab for 5 cents a pound to raise three head of children," his mother, Leola Williams, told *US News*. "That was hard. I did the best I could." When the house on Moon River burned down, the family moved to Savannah, where Thomas's mother found

THE IDEAS



STUDENT CLARENCE THOMAS

"What our nuns gave us is what we need now: God, values, morality and education."

A TRIBUTE IN 1986

"In any multiethnic, multiracial society, race-conscious remedies generate severe racial conflicts."

INTERVIEW IN 1987

"I am appalled that there are greater penalties for breaking into a mailbox than for violating someone's basic civil rights."

SPEECH IN 1985

work as a domestic for \$15 a week, including bus fare. She dropped her children off with her parents, Christine and Myers Anderson, every morning before 7 and picked them up at night.

Eventually, the strain grew too great, and Clarence and his brother, Myers, moved in with their grandparents while their sister went to live with an aunt. "The kids knew how hard I was working," says Mrs. Williams. "They saw me many times in the ice and cold waiting for a bus. I was an example to them." Even at 62, she works two jobs, starting as a hospital aide at 4:30 a.m. and ending as a nursing home worker at 11 at night.

Some family friends wonder why Mrs. Williams, whose son makes \$132,700 a year, continues to work so hard, but she says, "I just love to work. It's the only way you can have something."

The dominant figure in Thomas's boyhood was his grandfather, a stern man who sold wood, coal and fuel oil from the back of a home-built pickup in the black neighborhoods of Savannah. The boys would change clothes when they came home from school and join Daddy, as they called him, on his rounds, picking up orders and making deliveries. Like Thomas's mother, his grandfather set an example of grit and discipline. "My dad didn't have to lay a hand on you," says Mrs. Williams. "He could look at you and scold you with his eyes." But Anderson did more than just scold his grandsons, according to Allen Moore, an old Thomas friend from Danforth's staff. "Clarence told me that he tasted the bell regularly."

Today, Thomas longs for the "very stable, disciplined environment" of his youth. In a recent speech, he described watching a woman unwrap a candy bar for a child, then toss the wrapper into the street. "I asked myself, what is wrong with this picture?" he recalled. "I can't remember how many times, as a child, I was made to pick up my candy wrappers and put them in my pocket until I found a trash can."

It was from his grandfather that Thomas absorbed a passionate resentment of welfare. Myers's maxim: "Man ain't got no business on relief as long as he can work." But Thomas's ferocity on the subject also flows from a deeper impulse. He is clearly ashamed at the number of blacks on welfare, and he is angry that they threaten his lifelong crusade to prove that his people are "as good as white people." This loathing helps explain one of the ugliest incidents in Thomas's life. In a meeting of black conservatives in 1980, he harshly attacked his sister, Emma Mae Martin, for being on welfare. "She gets mad when the mailman is late with her welfare check. That's how dependent she is."

He now voices regret for the comment, made perhaps to enhance his conservative credentials. It was clearly unfair to a woman who had her first job at age 7, scrubbing clam shells for 50 cents a barrel. His sister did go on welfare for a time in the 1970s, but only because she was caring for four children and an elderly aunt. Once the aunt died she went back to work as a hospital cook, starting some days at 3 a.m. and attending Bible classes on Tuesday nights. Martin told *US*

THE GUIDES

Clarence Thomas has learned much from the counsel of relatives, teachers and mentors. SEN. JOHN DAMFORTH, his first boss after law school, attracted him to the Republican Party and a life of public service. His mother, **LEOLA WILLIAMS**, set an example of self-reliance, taking grueling jobs as a domestic worker after his father left home.

His grandfather **MYERS ANDERSON**, who reared Thomas after the stress on his mother grew too great, emphasized the importance of independence and charity, running his own small business and leaving groceries for needy neighbors. His lessons were sometimes reinforced with a leather belt. The **FRANCISCAN NUNS** who taught Thomas in elementary school imparted such self-confidence, notes a classmate, that if they "told you that you could walk through a brick wall, you thought you could do it."



SEN. JOHN DAMFORTH, THE MENTOR GUIDING THOMAS'S NOMINATION



LEOLA WILLIAMS



THOMAS WITH THE NUNS AND HIS WIFE



MYERS ANDERSON

News that there is no lingering animosity between brother and sister, and that when Thomas comes home he puts on his overalls, argues with her about politics and eats the favorite foods of his childhood: deviled crab, deer, even raccoon.

The racism Thomas faced when he moved to Savannah remains a vivid memory: the James Bond movies he never saw because they did not come to the all-black movie theater; his grandfather's admonition that "you can never look a white woman in the eye"; the roadside sign saying, "Welcome to North Carolina—Ku Klux Klan territory." Today, Thomas's visceral suspicion of government can be traced partly to those boyhood experiences, when the state was a guarantor of inequality.

As practicing Catholics, Christine and Myers Anderson sent Thomas and his brother to a parochial school, St. Benedict's. There, they were taught by an extraordinary group of Irish nuns who continued the self-help ideal. At school, Thomas occasionally had time for fun, playing basketball with a flair that earned him the lifelong nickname "Cousy," after the Boston Celtic star Bob Cousy. But mainly school meant work, and the nuns saw their mission this way, according to Roy Allen, Thomas's boyhood friend and now a Democratic state senator: "There may be walls up now, but they will come down, and we want you to be ready."

The nuns taught racial equality by

deed as well as word. Living in the black section of town and refusing to accept privileges based on race, Allen recalls a class trip when the bus driver told the nuns they could sit in front, while the children had to sit in back. "Sister just said, 'Where my kids sit, I will sit,' and she came back and sat with us." Thomas absorbed the lesson well. Sister Mary Virgilius, his favorite teacher, remembers the youngster asking, "Why should we salute the flag and say, with liberty and justice for all when there isn't a liberty for black people?" In addition, the nuns were not above a little psychological warfare. "They were always telling us that the white kids thought they were smarter than we were," says Lester Johnson, an old friend and Savannah attorney. "I think they did it to make us competitive."

Growing discomfort. From St. Benedict's, Thomas went to high school at St. John Vianney Minor Seminary, a largely white boarding school for future priests, where he continued to overcome barriers. The yearbook for 1967 quotes a favorite Thomas comment: "Blew that test, only a 98." But the slights continued as well, with one classmate writing in that same yearbook, "Keep on trying, Clarence. Someday you'll be as good as us."

Thomas's discomfort with the church grew stronger at Immaculate Conception Seminary in Missouri, where he lasted only a year. White classmates would cross the street to avoid greeting him, and in an interview in 1984 with the *Holt*

Cross (his next school) alumni magazine, Thomas said of those days, "I was considered the black spot on the white horse." He recalled the day in 1968 that Martin Luther King Jr. was shot: "I was following this white seminarian up a flight of stairs, and I overheard him say, after he heard that Dr. King had been shot, 'That's good. I hope the SOB dies.' I think that was the last straw. I couldn't stay in this so-called Christian environment any longer." Thomas left the seminary, enrolling at Holy Cross in Worcester, Mass., as a sophomore, but the decision caused a deep rift with his grandparents that lasted for years.

When Thomas arrived at Holy Cross, the school was just admitting a sizable number of blacks for the first time. He feared flunking out and described life there as "like being in a cold, isolated foreign country." This chill led the blacks to form a Black Students Union, with Thomas as treasurer, and he also joined the popular causes of the day: protests against the Vietnam War, a feeding program for local black youngsters. But classmate Leonard Cooper remembers him more as a "moderate liberal" than as a militant. One incident in particular sums up Thomas's evolving view of the world. When the Black Students Union voted to have an all-black corridor in a dormitory, Thomas was the lone dissenter. Classmate Stanley Grayson, a former deputy mayor of New York City, still recalls Thomas's criticism: "It

THE INFLUENCES

as a small child, Clarence Thomas was seldom seen without a book under his arm, and many say his activism and thinkers have shaped his world view. Economist **THOMAS SOWELL** reinforced his young disenchantment with race-segregated programs. **MALCOLM X** intrigued the young Thomas with his black-power message, and the judge has collected most of Malcolm X's recorded speeches.

The works of novelist **RICHARD RIGHT** spoke to feelings of anger and isolation Thomas often had but appreciated. The judge is also attracted to the novels of writers like **ATM JND** and **Louis L'Amour** because of gloriously heroic individuals overcoming great odds. Exposure to the slogan **THOMAS AQUINAS** helped open the judge's belief that natural law confers on an individual rights government can take away.



RICHARD WRIGHT



ATM RAND



MALCOLM X



THOMAS AQUINAS



THOMAS SOWELL, THE INTELLECTUAL GURU

as in the real world. The world forces you to mix and mingle with the white majority. But his strongest point was that he didn't want to make it easy for others to interact with him.

It was during these years that exposure to certain authors and activists took up Thomas's world view. Black novelist Richard Wright "woke me up," the judge says, by addressing his growing sense of racial identity and injustice. He Black Panthers appealed to "some of us who were young and hot-blooded and ill-tempered," but Thomas rejected their emphasis on violence and Marxism-Leninism. The "Autobiography of Malcolm X" was assigned to all new students in 1968, and it struck a resonant chord in the angry young man, particularly its emphasis on self-reliance and black entrepreneurship. To this day, Thomas can quote from memory Malcolm's advice: "As other ethnic groups have done, let the black people, whenever possible, however possible, atomize their own kind, hire their own kind and start in those ways to build up the black race's ability to do for itself."

Affirmative action. Married to his first wife, Kathy, the day after graduating from Holy Cross, Thomas went on to Yale Law School. Critics argue that in going to Yale, he profited from the sort of affirmative action programs he now opposes, and James Thomas, the law school admissions officer for the past 22 years, generally agrees. "It's pretty

clear," Dean Thomas says, that Clarence was helped by Yale's vigorous recruiting of members of minority groups but he denies that standards were lowered significantly for those recruits.

The son of a woman who works 18-hour days is no stranger to long hours. He was at the dining hall when it opened for breakfast at 7, sometimes regaling other early risers with hilarious descriptions of the X-rated movies he liked to watch for relaxation. He never came to a party before 10, when the library closed. Even sports were played flat-out, full tilt, as classmate Lovida Coleman Jr. remembers. "I've never seen anybody who could overthrow his receiver by 30 or 40 yards the way Clarence could. I would not say he was a finesse player," says Coleman.

Some of Thomas's opposition to race-preference programs stems from experiences at Yale, where he saw affirmative action helping many more middle-class blacks than poor ones like himself. He was always strapped for money—wearing workman's overalls and shirts worn through at the elbows—and he grew close to classmates from similarly poor backgrounds: Frank Washington, the son of a laborer, and Harry Singleton, whose mother cleaned houses. "The notion of being responsible for your own place in life was a dominant theme for all three of us," says Washington, now a cable TV executive in California. Above all, Yale reinforced Thomas's belief that

affirmative action robs every black achievement and robs him of respect. As he told *Washington Post* reporter Juan Williams in 1980, "You had to prove yourself every day because the presumption was that you were dumb and didn't deserve to be there on merit."

Thomas and his classmates talked often about joining the legal mainstream and not being pigeonholed in "black" jobs. But though his specialty was tax law, and he had done well in school, Thomas found that firms in Atlanta asked "condescending and demeaning questions and wanted to talk mainly about charity work for poor clients. At that point, Dean Guido Calabresi at Yale mentioned Thomas to John Danforth, then the attorney general of Missouri and a member of Yale's board. The job as an assistant attorney general paid little, but Thomas took it because Danforth made him the promise he had been looking for all his life: He would be treated the same as everybody else.

During this period, Thomas's political views sharply changed. In 1972, two years before finishing Yale, Thomas was still a liberal Democrat, voting for George McGovern. But he drifted rightward, impelled by what he saw as a growing contradiction between the modish liberal ideas of the academic world and the old-fashioned truths his grandfather had instilled. Then one day, Thomas got a call from a friend Clarence, there's another black guy

THE DOCKET

How Thomas might influence the Supreme Court in its next term

ABORTION The first case *Can Operation Rescue be barred from blocking access to abortion clinics?* The court also may consider laws from Louisiana, Utah and Guam that attempt to ban most abortions. Abortion-rights advocates fear Thomas is an abortion

RACE BIAS Cases will test which courts should end supervision of school desegregation plans and how air rates must go in desegregating public universities. Though Thomas opposes many monumental remedies to job-bias claims, he is sympathetic to measures such as scholarships that aid poor blacks

CRIME First, the court will rule on laws that require criminals to give their victims profits from movies or



ABORTION, OPERATION RESCUE



ENVIRONMENT



HATE-CRIME LAWS

books based on their crimes. Later, the court is likely to consider controversial questions involving capital punishment and police searches. Thomas is believed likely to take a hard-line anti-race stance

ENVIRONMENT The justices will decide whether it was proper for Congress to bar lawsuits against logging activities that might harm the Northern spotted owl. In addition, they will rule on whether the U.S. government can back foreign projects that may endanger animals. Thomas has hinted that he might vote to curb use of courts by groups such as environmentalists to challenge government policies

HATE CRIMES The justices will study a St. Paul, Minn., law that bans symbolic acts such as burning crosses that provoke "anger, alarm or resentment" on the basis of race, color, creed, religion or gender. Some experts believe Thomas could help tip the court's balance and reverse the decrease that protected flag burners from prosecution two years ago

but here [in California] who is as crazy as you are. He has the same ideas that you have. There are two of you."

The friend was talking about Thomas Sowell, the economist and author, who describes affirmative action as a "world-wide disaster," dividing the races and failing to reach the truly disadvantaged. A review of Sowell's book, "The Economics and Politics of Race," had been published that day in the *Wall Street Journal*, and Thomas "soaked it up." By his own admission, Thomas "bugged" Sowell, calling him in California, attending a lecture he delivered in St. Louis, egging the author to autograph a copy of his book. It represented the wisdom of Myers Anderson and Sister Mary Virgil backed up by economic data and coated with a veneer of philosophy. "I consider him not only my intellectual mentor," says Thomas, "but my salvation as far as thinking through these issues. I thought I was totally insane. His book was manna from heaven."

Career move. After a short stint in the private sector working for the Monsanto Co., Thomas moved to Washington in 1979 to work once again for Danforth, now a senator. But another turning point in his life came quickly. After the 1980 election, Sowell invited Thomas to a meeting of black conservatives in San Francisco. The election of Ronald Reagan had emboldened the conservatives to go public, and the meeting drew considerable press attention. A *Washington*

Post article quoted Thomas as saying his career would be "irreparably ruined" if he worked for an agency centered on civil rights like the Equal Employment Opportunity Commission. "People meeting me for the first time would automatically dismiss my thinking as second-rate," Thomas said.

The article caught the attention of the Reagan transition team, which was looking for blacks to fill certain visible posts. Thomas was insulted, he admits, when asked to become assistant secretary of education for civil rights, but in the end, he took the job to make his mark. In less than a year he had been promoted—to head the EEOC, precisely the job he had once said would ruin his career. When he was up for reappointment in 1986, Thomas tried hard to find a new post in the administration but lacked the right political friends and was turned down, according to William Bradford Reynolds, head of civil rights in the Reagan Justice Department. He was still at the commission when Bush tapped him for the U.S. Court of Appeals in July 1989.

Thomas's record at the EEOC is a complicated one. While generally unsympathetic to affirmative action, he had many fierce battles with administration officials like Reynolds who took an even tougher line. But when he lost, he played the good soldier and followed administration policy. He did not like large class-action suits that relied on statistical analysis to prove that an en-

tire company had followed a pattern of discrimination. But he was aggressive in protecting individuals who—like his grandfather years before—had suffered directly from prejudice. By that point, his aversion to race-based programs was fully formed, according to Fred Alvarez, who served with Thomas at the EEOC and quotes him as saying, "If you show preference for one group over another, you demean one group and make the other unhappy. I've been both deterred and preferred because of race, and they both felt bad."

Final confirmation. Today, Thomas is an angry man with a hostile word to say about almost everybody: white conservatives who treat black conservatives like intellectual Steppin' Fetchits; "providing sideshows of antiblack quips and attacks"; civil-rights groups who "regularly castigated and mocked" black conservatives because they did not agree with them; the press, which he accuses of a conspiracy to ignore black conservative thought.

If Clarence Thomas is confirmed—and all signs point that way—there will no longer be any doubts about his "making it" in the world. Perhaps then the furies driving him will abate. Perhaps then, having been judged as fully worthy, the new justice will be able to judge others less harshly. ■

BY STEVEN V. ROBERTS
WITH JEANNE FORTINON AND TED GIST

The CHAIRMAN. Again, I thank your family—

Ms. HILL. Mr. Chairman?

The CHAIRMAN. Yes?

Ms. HILL. I would just like to take this opportunity to thank the committee for its time, its questions and the efforts that it has put into this investigation on my behalf.

Thank you.

The CHAIRMAN. Thank you.

We are adjourned until 9 o'clock.

[Whereupon, at 7:40 p.m., the committee was recessed, to reconvene at 9 p.m., the same day.]

EVENING SESSION

The CHAIRMAN. The committee will please come to order.

Judge it is a tough day and a tough night for you, I know. Let me ask, do you have anything you would like to say before we begin?

I understand that your preference is, which is totally and completely understandable, that we go 1 hour tonight, 30 minutes on each side. Am I correct in that?

Judge THOMAS. That is right.

FURTHER TESTIMONY OF HON. CLARENCE THOMAS, OF GEORGIA, TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

The CHAIRMAN. Do you have anything you would like to say?

Judge THOMAS. Senator, I would like to start by saying unequivocally, uncategorically that I deny each and every single allegation against me today that suggested in any way that I had conversations of a sexual nature or about pornographic material with Anita Hill, that I ever attempted to date her, that I ever had any personal sexual interest in her, or that I in any way ever harassed her.

Second, and I think a more important point, I think that this today is a travesty. I think that it is disgusting. I think that this hearing should never occur in America. This is a case in which this sleaze, this dirt was searched for by staffers of members of this committee, was then leaked to the media, and this committee and this body validated it and displayed it in prime time over our entire Nation.

How would any member on this committee or any person in this room or any person in this country would like sleaze said about him or her in this fashion or this dirt dredged up and this gossip and these lies displayed in this manner? How would any person like it?

The Supreme Court is not worth it. No job is worth it. I am not here for that. I am here for my name, my family, my life and my integrity. I think something is dreadfully wrong with this country, when any person, any person in this free country would be subjected to this. This is not a closed room.

There was an FBI investigation. This is not an opportunity to talk about difficult matters privately or in a closed environment. This is a circus. It is a national disgrace. And from my standpoint, as a black American, as far as I am concerned, it is a high-tech lynching for uppity-blacks who in any way deign to think for them-

selves, to do for themselves, to have different ideas, and it is a message that, unless you kow-tow to an old order, this is what will happen to you, you will be lynched, destroyed, caricatured by a committee of the U.S. Senate, rather than hung from a tree.

The CHAIRMAN. We will have—

Senator THURMOND. Mr. Chairman?

The CHAIRMAN. The Senator from South Carolina.

Senator THURMOND. I have named Senator Hatch to cross-examine the Judge and those who are supporting him.

Senator HATCH. As I understand it, it was—

The CHAIRMAN. I think that is correct. I think we would start with Senator Heflin and then go to Senator Hatch.

Senator HATCH. I think that is the way I was—I would be happy to do it, but I think that is the way I was told.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. Judge Thomas, in addition to Anita Hill, there have surfaced some other allegations against you. One was on a television show last evening here in Washington, channel 7. I don't know whether you saw that or not?

Judge THOMAS. No.

Senator HEFLIN. You didn't see it. It was carried somewhat in the print media today, but it involved a man by the name of Earl Harper, Jr., who allegedly was a senior trial lawyer with the EEOC at Baltimore in or around the early 1980's. Do you recall this instance pertaining to Earl Harper, Jr.?

Judge THOMAS. I remember the name. I can't remember the details.

Senator HEFLIN. The allegations against Mr. Harper involved some 12 or 13 women who claim that Mr. Harper made unwelcome sexual advances to several women on his staff, including instances in which Mr. Harper masturbated in the presence of some of the female employees. The allegations contain other aspects of sexual activity.

The information we have is that the General Counsel of the EEOC, David Slate, made a lengthy internal investigation and found that this had the effect of creating an intimidating, hostile and offense working environment, and that on November 23, 1983, you wrote Mr. Slate a memo urging that Mr. Harper be fired. Mr. Slate eventually recommended dismissal. Then the story recites that you did not dismiss him, you allowed him to stay on for 11 months and then he retired.

Does that bring back to you any recollection of that event concerning Mr. Earl Harper, Jr.?

Judge THOMAS. Again, I am operating strictly on recollection. If I remember the case, if it is the one I am thinking of, Mr. Harper's supervisor recommended either suspension or some form of sanction or punishment that was less than termination.

When that proposal—the supervisor initially was not David Slate—when that proposal reached my desk, I believe my recommendation was that, for the conduct involved, he should be fired. The problem there was that if the immediate supervisor's decision is changed—and I believe Mr. Harper was a veteran—there are a number of procedural protections that he had, including a hearing

and, of course, he had a lawyer and there was potential litigation, et cetera.

I do not remember all of the details, but it is not as simple as you set it out. It was as a result of my insistence that the General Counsel, as I remember, upgraded the sanction to termination.

Senator HEFLIN. Do you know a Congressman by the name of Scott Kluge, a Republican Congressman who was defeated by Robert Kastenmeier of Wisconsin, who now serves in Congress, who back in the early 1980's, 1983 or something, was a television reporter for a channel here in Washington and that he at that time disclosed this as indicating that, after the recommendation of dismissal, that you did not move in regards to it for some 11 months and let him retire? Do you know Congressman Kluge?

Judge THOMAS. I do not know him. Again, remember, I am operating on recollection. There was far more to it than the facts as you set them out. His rights had much to do with the fact that he was a veteran and that we could not simply dismiss him. If we could, that was my recommendation, he would have been dismissed.

Senator HEFLIN. There was no political influence brought to bear on you at that time to prevent his dismissal? Do you recall if any political—

Judge THOMAS. There was absolutely no political influence. In fact, it was my policy that no personnel decisions would in any way be changed or influenced by political pressure, one way or the other.

Senator HEFLIN. Now, it is reported to me that Congressman Kluge, after your nomination, went to the White House and told this story and, I hear by hearsay, that the White House ignored his statement and that Congressman Kluge further came to the Senate Judiciary Committee and made it known here.

As far as I know, I attempted to check—I have not been able to find where it was in the Judiciary Committee, if it was, and I think the Chairman has attempted to locate it—but the point I am asking is, in the whole process pertaining to the nomination and the preparation for it, were you ever notified that Congressman Kluge went to the White House in regards to this?

Judge THOMAS. I do not remember that, Senator.

Senator HEFLIN. Nobody ever discussed that?

Judge THOMAS. No.

Senator HEFLIN. Well, that is the way it has been reported to me and it is very fragmented relative to it, but I have asked that all the records of the EEOC be subpoenaed by subpoena duces tecum pertaining to that, in order that we might get to the bottom of it.

Senator HATCH. Mr. Chairman, if I could interrupt Senator Heflin, I really think this is outside the scope, under the rules. I would have to object to it.

The CHAIRMAN. I would have to sustain that objection. I do not—

Senator HATCH. I hesitate to object, but I just think we ought to keep it on the subject matter.

The CHAIRMAN. I do not see where it is relevant.

Senator HEFLIN. Well, I think it is relevant in the issue pertaining to the period of time relative to the issue, particularly in re-

gards to the responsibilities as head of the agency dealing with discrimination in employment.

Senator HATCH. Mr. Chairman——

The CHAIRMAN. If I may say——

Senator HATCH. Mr. Chairman——

The CHAIRMAN. If I may speak, let me say this is not about whether the Judge administered the agency properly. The only issue here relates to conduct and the allegations that have been made, so I would respectfully suggest to my friend from Alabama that that line of questioning is not in order and I rule it out of order.

Senator HEFLIN. All right, sir, I will reserve an exception, as we used to say.

Now, I suppose you have heard Professor Hill, Ms. Hill, Anita F. Hill testify today.

Judge THOMAS. No, I haven't.

Senator HEFLIN. You didn't listen?

Judge THOMAS. No, I didn't. I have heard enough lies.

Senator HEFLIN. You didn't listen to her testimony?

Judge THOMAS. No, I didn't.

Senator HEFLIN. On television?

Judge THOMAS. No, I didn't. I've heard enough lies. Today is not a day that, in my opinion, is high among the days in our country. This is a travesty. You spent the entire day destroying what it has taken me 43 years to build and providing a forum for that.

Senator HEFLIN. Judge Thomas, you know we have a responsibility too, and as far as I am involved, I had nothing to do with Anita Hill coming here and testifying. We are trying to get to the bottom of this. And, if she is lying, then I think you can help us prove that she was lying.

Judge THOMAS. Senator, I am incapable of proving the negative that did not occur.

Senator HEFLIN. Well, if it did not occur, I think you are in a position, with certainly your ability to testify, in effect, to try to eliminate it from people's minds.

Judge THOMAS. Senator, I didn't create it in people's minds. This matter was investigated by the Federal Bureau of Investigation in a confidential way. It was then leaked last weekend to the media. I did not do that. And how many members of this committee would like to have the same scurrilous, uncorroborated allegations made about him and then leaked to national newspapers and then be drawn and dragged before a national forum of this nature to discuss those allegations that should have been resolved in a confidential way?

Senator HEFLIN. Well, I certainly appreciate your attitude towards leaks. I happen to serve on the Senate Ethics Committee and it has been a sieve.

Judge THOMAS. But it didn't leak on me. This leaked on me and it is drowning my life, my career and my integrity, and you can't give it back to me, and this Committee can't give it back to me, and this Senate can't give it back to me. You have robbed me of something that can never be restored.

Senator DECONCINI. I know exactly how you feel.

Senator HEFLIN. Judge Thomas, one of the aspects of this is that she could be living in a fantasy world. I don't know. We are just trying to get to the bottom of all of these facts.

But if you didn't listen and didn't see her testify, I think you put yourself in an unusual position. You are, in effect, defending yourself, and basically some of us want to be fair to you, fair to her, but if you didn't listen to what she said today, then that puts it somewhat in a more difficult task to find out what the actual facts are relative to this matter.

Judge THOMAS. The facts keep changing, Senator. When the FBI visited me, the statements to this committee and the questions were one thing. The FBI's subsequent questions were another thing. And the statements today, as I received summaries of them, are another thing.

I am not—it is not my fault that the facts change. What I have said to you is categorical that any allegations that I engaged in any conduct involving sexual activity, pornographic movies, attempted to date her, any allegations, I deny. It is not true.

So the facts can change but my denial does not. Ms. Hill was treated in a way that all my special assistants were treated, cordial, professional, respectful.

Senator HEFLIN. Judge, if you are on the bench and you approach a case where you appear to have a closed mind and that you are only right, doesn't it raise issues of judicial temperament?

Judge THOMAS. Senator? Senator, there is a difference between approaching a case objectively and watching yourself being lynched. There is no comparison whatsoever.

Senator HATCH. I might add, he has personal knowledge of this as well, and personal justification for anger.

Senator HEFLIN. Judge, I don't want to go over this stuff but, of course, there are many instances in which she has stated, but—and, in effect, since you didn't see her testify I think it is somewhat unfair to ask you specifically about it.

I would reserve my time and go ahead and let Senator Hatch ask you, and then come back.

The CHAIRMAN. Senator Hatch?

Senator HATCH. Judge Thomas, I have sat here and I have listened all day long, and Anita Hill was very impressive. She is an impressive law professor. She is a Yale Law graduate. And, when she met with the FBI, she said that you told her about your sexual experiences and preferences. And I hate to go into this but I want to go into it because I have to, and I know that it is something that you wish you had never heard at any time or place. But I think it is important that we go into it and let me just do it this way.

She said to the FBI that you told her about your sexual experiences and preferences, that you asked her what she liked or if she had ever done the same thing, that you discussed oral sex between men and women, that you discussed viewing films of people having sex with each other and with animals, and that you told her that she should see such films, and that you would like to discuss specific sex acts and the frequency of sex.

What about that?

Judge THOMAS. Senator, I would not want to, except being required to here, to dignify those allegations with a response. As I

have said before, I categorically deny them. To me, I have been pilloried with scurrilous allegations of this nature. I have denied them earlier and I deny them tonight.

Senator HATCH. Judge Thomas, today in a new statement, in addition to what she had told the FBI, which I have to agree with you is quite a bit, she made a number of other allegations and what I would like to do is—some of them most specifically were for the first time today in addition to these, which I think almost anybody would say are terrible. And I would just like to give you an opportunity, because this is your chance to address her testimony.

At any time did you say to Professor Hill that she could ruin your career if she talked about sexual comments you allegedly made to her?

Judge THOMAS. No.

Senator HATCH. Did you say to her in words or substance that you could ruin her career?

Judge THOMAS. No.

Senator HATCH. Should she ever have been afraid of you and any kind of vindictiveness to ruin her career?

Judge THOMAS. Senator, I have made it my business to help my special assistants. I recommended Ms. Hill for her position at Oral Roberts University. I have always spoken highly of her.

I had no reason prior to the FBI visiting me a little more than 2 weeks ago to know that she harbored any ill feelings toward me or any discomfort with me. This is all new to me.

Senator HATCH. It is new to me too, because I read the FBI report at least 10 or 15 times. I didn't see any of these allegations I am about to go into, including that one. But she seemed to sure have a recollection here today.

Now, did you ever say to Professor Hill in words or substance, and this is embarrassing for me to say in public, but it has to be done, and I am sure it is not pleasing to you.

Did you ever say in words or substance something like there is a pubic hair in my Coke?

Judge THOMAS. No, Senator.

Senator HATCH. Did you ever refer to your private parts in conversations with Professor Hill?

Judge THOMAS. Absolutely not, Senator.

Senator HATCH. Did you ever brag to Professor Hill about your sexual prowess?

Judge THOMAS. No, Senator.

Senator HATCH. Did you ever use the term "Long Dong Silver" in conversation with Professor Hill?

Judge THOMAS. No, Senator.

Senator HATCH. Did you ever have lunch with Professor Hill at which you talked about sex or pressured her to go out with you?

Judge THOMAS. Absolutely not.

Senator HATCH. Did you ever tell—

Judge THOMAS [continuing]. I have had no such discussions, nor have I ever pressured or asked her to go out with me beyond her work environment.

Senator HATCH. Did you ever tell Professor Hill that she should see pornographic films?

Judge THOMAS. Absolutely not.

Senator HATCH. Did you ever talk about pornography with Professor Hill?

Judge THOMAS. I did not discuss any pornographic material or pornographic preferences or pornographic films with Professor Hill.

Senator HATCH. So you never even talked or described pornographic materials with her?

Judge THOMAS. Absolutely not.

Senator HATCH. Amongst those or in addition?

Judge THOMAS. What I have told you is precisely what I told the FBI on September 25 when they shocked me with the allegations made by Anita Hill.

Senator HATCH. Judge Thomas, those are a lot of allegations. Those are a lot of charges, talking about sexual experiences and preferences, whether she liked it or had ever done the same thing, oral sex, viewing films of people having sex with each other and with animals, that maybe she should see such films, discuss specific sex acts, talk about pubic hair in Coke, talking about your private parts, bragging about sexual prowess, talking about particular pornographic movies.

Let me ask you something. You have dealt with these problems for a long time. At one time I was the chairman of the committee overseeing the EEOC and, I might add, the Department of Education, and I am the ranking member today. I have known you for 11 years and you are an expert in sexual harassment. Because you are the person who made the arguments to then Solicitor General Fried that the administration should strongly take a position on sexual harassment in the *Meritor Savings Bank v. Vinson* case, and the Supreme Court adopted your position.

Did I misstate that?

Judge THOMAS. Senator, what you have said is substantially accurate. What I attempted to do in my discussions with the Solicitor is to have them be aggressive in that litigation, and EEOC was very instrumental in the success in the *Meritor* case.

Senator HATCH. Now, Judge, keep in mind that the statute of limitations under title VII for sexual harassment for private employers is 180 days or 6 months. But the statute of limitations under title VII for Federal employers and employees is 30 days.

Are you aware of that?

Judge THOMAS. Yes, Senator, I am generally aware of those limitations.

Senator HATCH. And are you aware of why those statutes of limitation are so short?

Judge THOMAS. I would suspect that at some point it would have to do with the decision by this body that either memories begin to fade or stories change, perhaps individuals move around, and that it would be more difficult to litigate them.

I don't know precisely what all of the rationale is.

Senator HATCH. Well, it involves the basic issue of fairness, just exactly how you have described it. If somebody is going to be accused in a unilateral declaration of sexual harassment, then that somebody ought to be accused through either a complaint or some sort of a criticism, so that that somebody can be informed and then

respond to those charges, and, if necessary, change that somebody's conduct.

Is that a fair statement?

Judge THOMAS. I think that is a fair statement.

Senator HATCH. Now let me ask you something: I described all kinds of what I consider to be gross, awful sexually harassing things, which if you take them cumulatively have to gag anybody. Now you have seen a lot of these sexual harassment cases as you have served there at the EEOC. What is your opinion with regard to what should have been done with those charges, and whether or not you believe that, let's take Professor Hill in this case, should have done something, since she was a Yale Law graduate who taught civil rights law at one point, served in these various agencies, and had to understand that there is an issue of fairness here.

Judge THOMAS. Senator, if any of those activities occur, it would seem to me to clearly suggest or to clearly indicate sexual harassment, and anyone who felt that she was harassed could go to an EEO officer at any agency and have that dealt with confidentially. At the Department of Education, if she said it occurred there, or at EEOC, those are separate tracks. At EEOC, I do not get to review those, if they involve me, and at Department of Education there is a separate EEO officer for the whole department. It would have nothing to do with me. But if I were an individual advising a person who had been subjected to that treatment, I would advise her to immediately go to the EEO officer.

Senator HATCH. An EEO office then would bring the parties together, or at least would confront the problem head-on, wouldn't it?

Judge THOMAS. The EEO officer would provide counseling—

Senator HATCH. Within a short period of time?

Judge THOMAS [continuing]. Within a short period of time, as well as, I think, if necessary, an actual charge would be—

Senator HATCH. So the charge would be made, and the charge would then—the person against whom it was made would have a chance to answer it right then, right up front, in a way that could resolve it and stop this type of activity if it ever really occurred?

Judge THOMAS [continuing]. That is right.

Senator HATCH. And you have just said it never really occurred.

Judge THOMAS. It never occurred. That is why there was no charge.

Senator HATCH. You see, one of the problems that has bothered me from the front of this thing is, these are gross. Cumulative, I don't know why anybody would put up with them, or why anybody would respect or work with another person who would do that. And if you did that, I don't know why anybody would work with you who suffered these treatments.

Judge THOMAS. I agree.

Senator HATCH. Furthermore, I don't know why they would have gone to a different position with you, even if they did think that maybe it had stopped and it won't start again, but then claimed that it started again. And then when they finally got out into the private sector, wouldn't somehow or other confront these problems in three successive confirmation proceedings. Does that bother you?

Judge THOMAS. This whole affair bothers me, Senator. I am witnessing the destruction of my integrity.

Senator HATCH. And it is by a unilateral set of declarations that are made on successive dates, and differ, by one person who continued to maintain what she considered to be a "cordial professional relationship" with you over a 10-year period.

Judge THOMAS. Senator, my relationship with Anita Hill prior to September 25 was cordial and professional, and I might add one other thing. If you really want an idea of how I treated women, then ask the majority of the women who worked for me. They are out here. Give them as much time as you have given one person, the only person who has been on my staff who has ever made these sorts of allegations about me.

Senator HATCH. Well, I think one of our Senators, one of our better Senators in the U.S. Senate, did do exactly that, and he is a Democrat, as a matter of fact, one of the fairest people and I think one of the best new people in the whole Senate.

This is a statement that was made on the floor of the Senate in this Record by my distinguished colleague, Senator Lieberman, a man I have a great deal of respect for. Senator Lieberman's staff conducted a survey of various women who have worked for you over the years. He was concerned. He has been a supporter of yours, and he was one who asked for this delay so that this could be looked into because he was concerned, too.

But as a result of the survey, Senator Lieberman made the following statement: He said, "I have contacted associates, women who worked with Judge Thomas during his time at the Department of Education and EEOC, and in the calls that I and my staff have made there has been universal support for Judge Thomas and a clear indication by all of the women we spoke to that there was never, certainly not a case of sexual harassment, and not even a hint of impropriety." That was put into the Congressional Record on October 8, 1991.

And I think Senator Lieberman has performed a very valuable service because he is in the other party. He is a person who looks at these matters seriously. He has to be as appalled by this type of accusation as I am, and frankly he wanted to know, "Just what kind of a guy is Clarence Thomas?" And those of us who know you, know that all of these are inconsistent with the real Clarence Thomas.

And I don't care who testifies, you have to keep in mind, this is an attorney, a law graduate from one of the four or five best law schools in this land, a very intelligent, articulate law professor, and the only person on earth other than you knowing whether these things are true—the only other person. I don't blame you for being mad.

Judge THOMAS. Senator, I have worked with hundreds of women in different capacities. I have promoted and mentored dozens. I will put my record against any member of this committee in promoting and mentoring women.

Senator HATCH. I will put your record against anybody in the whole Congress.

Judge THOMAS. And I think that if you want to really be fair, you parade every single one before you and you ask them, in their

relationships with me, whether or not any of this nonsense, this garbage, trash that you siphoned out of the sewers against me, whether any of it is true. Ask them. They have worked with me. Ask my chief of staff, my former chief of staff. She worked shoulder to shoulder with me.

Senator HATCH. Well, I think we should do that.

Now, Judge, what was Professor Hill's role in your office at the Education Department and at the EEOC?

Judge THOMAS. Senator, as I indicated this morning, at the Department of Education Ms. Hill was an attorney-adviser. I had a small staff and she had the opportunity to work on a variety of issues.

Senator HATCH. She was your number one person?

Judge THOMAS. By and large, on substantive issues, she was.

Senator HATCH. How about when you went to the EEOC?

Judge THOMAS. At EEOC that role changed drastically. As I indicated, my duties expanded immensely. EEOC, as you remember, had enormous management problems, so I focused on that. I also needed an experienced EEO staff, and my staff was much more mature. It was older. It was a more experienced staff.

As a result, she did not enjoy that close a relationship with me, nor did she have her choice of the better assignments, and I think that as a result of that there was some concern on her part that she was not being treated as well as she had been treated prior to that.

Senator HATCH. At any time in your tenure in the Department of Education, did Professor Hill ever express any concern about or discomfort with your conduct toward her?

Judge THOMAS. No.

Senator HATCH. Never?

Judge THOMAS. No. The only caveat I would add to that would be that from time to time people want promotions or better assignments or work hours, something of that nature, but no discomfort of the nature that is being discussed here today.

Senator HATCH. Now I note that Professor Hill alleges improper conduct on your part during the period of November, 1981 to February or March of 1982. Now isn't it true that both you and Professor Hill moved from the Education Department to the EEOC in April of that same year?

Judge THOMAS. Senator, that is an odd period. The President expressed his intent to nominate me to become Chairman of EEOC in February 1982, and during that very same period, to the best of my recollection, she assisted me in my nomination and confirmation process. I did in fact leave actual work at the Department of Education, I believe in April, and started at EEOC in May 1982, and she transferred with me.

Senator HATCH. So, in other words, Professor Hill followed you to the EEOC no more than 2 or 3 months, possibly only 1 month after she claims this alleged conduct occurred.

Judge THOMAS. Precisely.

Senator HATCH. Isn't it true, Judge Thomas, that Professor Hill could have remained in her job at the Education Department when you went to the EEOC?

Judge THOMAS. To the best of my recollection, she was a schedule A attorney. I know she was not cleared through the White House, so she was not a schedule C. She was not a political appointee. As a result, she had all the rights of schedule A attorneys, and could have remained at the Department of Education in a career capacity.

Senator HATCH. And even if she might not have remained the number one person to the head of the Civil Rights Division, which you were, she would have been transferred to another equivalent attorney's position.

Judge THOMAS. If she had requested it.

Senator HATCH. Did you tell her anything to the contrary?

Judge THOMAS. Not to my knowledge. In fact, I don't think it ever came up.

Senator HATCH. She didn't even ask you?

Judge THOMAS. I don't think it ever came up. I think it was understood that she would move to EEOC with me if she so desired.

Senator HATCH. If I could just button it down, in other words, Judge Thomas, if instead of following you to the EEOC, Professor Hill had remained at the Department of Education as a schedule A attorney, she would have had as much job security as any other civil service attorney in the government. And this is especially true, isn't it, because of your friendship with Harry Singleton?

Judge THOMAS. That is right. If she was concerned about job security, I could have certainly discussed with Harry Singleton what should be done with her. He is a personal friend of mine. He is also, or was, a personal friend of the individual who recommended Anita Hill to me, Gil Hardy. Gil Hardy of course drowned in 1988, but both of us or all three of us had gone to Yale Law School and knew each other quite well.

Senator HATCH. Now, Judge Thomas, I understand that on occasion, and you correct me if this is wrong, but I have been led to believe that on occasion Professor Hill would ask you to drive her home, and that on those occasions she would sometimes invite you into her home to continue a discussion, but you never thought anything—you never thought of any of this as anything more than normal, friendly, professional conversation with a colleague. Am I correct on that, or am I wrong?

Judge THOMAS. It was not unusual to me, Senator. As I remember it, I lived in southwest Washington, and would as I remember—and again, I am relying on my recollection, she lived someplace on Capitol Hill—and I would drive her home, and sometimes stop in and have a Coke or a beer or something and continue arguing about politics for maybe 45 minutes to an hour, but I never thought anything of it.

Senator HATCH. When Professor Hill worked for you at the EEOC, did she solicit your advice on career development or career opportunities?

Judge THOMAS. Senator, as I discuss with most of the members of my personal staff, I try to advise them on their career opportunities and what they should do next. You can't always be a special assistant or an attorney-adviser. And I am certain that I had those discussions with her, and in fact it would probably have been based

on that that I advised Dean Kothe that she would be a good teacher and that she would be interested in teaching.

Senator HATCH. Did she treat you as her mentor at the time, in your opinion?

Judge THOMAS. Pardon me?

Senator HATCH. Did she treat you as though you were a mentor at the time?

Judge THOMAS. She certainly sought counsel and advice from me.

Senator HATCH. Now at any time during your tenure at the EEOC, did you ever discuss sexual matters with Professor Hill?

Judge THOMAS. Absolutely not, Senator.

Senator HATCH. At any time during your tenure at the EEOC, did Professor Hill ever express discomfort or concern about your conduct toward her?

Judge THOMAS. No, Senator.

Senator HATCH. From your observations, what was the perception of Professor Hill by her colleagues at the EEOC? What did they think about her?

Judge THOMAS. Senator, some of my former staffers I assume will testify here, but as I remember it there was some tension and some degree of friction which I attributed simply to having a staff. As I have had 2 weeks to think about this and to agonize over this, and as I remember it, I believe that she was considered to be somewhat distant and perhaps aloof, and from time to time there would be problems that usually involved—and I attributed this to just being young—but usually involved her taking a firm position and being unyielding to the other members of the staff, and then storming off or throwing a temper tantrum of some sort that either myself or the chief of staff would have to iron out.

Senator HATCH. What was your opinion of the quality of Professor Hill's work at the EEOC, as her administrator and as the head of the EEOC?

Judge THOMAS. I thought the work was good. The problem was that—and it wasn't a problem—was, it was not as good as some of the other members of the staff.

Senator HATCH. While Professor Hill worked for you at the EEOC, did she ever seek a promotion?

Judge THOMAS. I believe she did seek promotions. Again, most of that was done through the chief of staff at that time.

Senator HATCH. Well, if so, to what position?

Judge THOMAS. She may have sought a promotion. In 1983, my chief of staff left and I was going to promote someone to my executive assistant/chief of staff, which is the most senior person on my personal staff, and I think that—again, I am relying on my memory—she aspired to that position and, of course, was not successful and I think was concerned about that.

Senator HATCH. I see. When did Professor Hill leave the Equal Employment Opportunity Commission?

Judge THOMAS. In 1983.

Senator HATCH. In 1983. Why do you think she decided to leave the agency at that time?

Judge THOMAS. Senator, I thought that she felt at the time that it was time for her to leave Washington and also to leave Government. She had, I believe, expressed an interest in teaching and the

opportunity at Oral Roberts University provided her both with the opportunity to be in Oklahoma and to teach and, as I remember, she did not lose any salary or any income in the bargain, and that was attractive.

Senator HATCH. Did you assist her in getting that job at Oral Roberts University?

Judge THOMAS. Yes, Senator, I discussed her with Dean Charles Kothe, both informally and provided written recommendation, formal recommendation for her.

Senator HATCH. All right. Have you had any contacts with Professor Hill since she left the EEOC in 1983?

Judge THOMAS. Senator, from time to time, Anita Hill would call the agency and either speak to me or to my secretary and, through her, she would leave messages. They had been friends, Diane Holt. On a number of occasions, I believe, too, I am certain of one, but maybe two, when I was in Tulsa, OK, I spent time with her, I saw her, and I believe on one occasion she drove me to the airport and had breakfast with me.

Senator HATCH. Mr. Chairman, with unanimous consent, I would introduce into the record at this point excerpts from Judge Thomas' telephone logs from 1983 to 1991, if I could.

The CHAIRMAN. Without objection.

[The information referred to follows:]

1984

JANUARY 30th
MESSAGE

Caller

Phone

Time

[REDACTED]	✓	[REDACTED]	[REDACTED]
[REDACTED]	✓	[REDACTED]	[REDACTED]

JANUARY 31st

[REDACTED]	✓	[REDACTED]	[REDACTED]
[REDACTED]	✓	[REDACTED]	[REDACTED]

Anita Hill

✓

11:30

just called to say hello. Sorry she
didn't get to see you last week.

[REDACTED]	X/	[REDACTED]	[REDACTED]
[REDACTED]	✓	[REDACTED]	[REDACTED]
[REDACTED]	✓	[REDACTED]	[REDACTED]

1984

May 8th

Caller	Phone	Time	Message
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

May 9th

Aita Hill	918-495-6057	11:40	Pls Call
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

May 10th

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1985

July 3rd

CALLER	Phone #	TIME	MESSAGE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

July 5th

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Arta Hill	✓ (919) 587-1240	1:30	Pls. call.
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July 8th

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1781

AUGUST 4/1911

CALLER	Phone	Time	MESSAGE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Anita Hill	547-4500	4:10	in town til 8:15 -- wanted to contact you re marriage. (P)
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AUGUST 5TH

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

AUGUST 6TH

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TO <i>Judge</i>		DATE <i>11/1/90</i>	TIME <i>10:40</i>	(312) <i>PM</i>
FROM <i>Prof. Anita Hill</i>		AREA CODE <i>405</i>	NO. <i>325-4699</i>	
OF		EXT.		
MESSAGE	<i>Re: Speaking Engagements at</i>			
	<i>University of Oklahoma School</i>			
	<i>of Law</i>			
	SIGNED <i>[Signature]</i>			
PHONED <input type="checkbox"/>	CALL BACK <input type="checkbox"/>	RETURNED CALL <input type="checkbox"/>	WANTS TO SEE YOU <input type="checkbox"/>	WAS IN <input type="checkbox"/>
		WILL CALL AGAIN <input type="checkbox"/>	URGENT <input type="checkbox"/>	

Senator HATCH. Judge Thomas, do you have—

The CHAIRMAN. These are the same excerpts that he has had.

Senator HATCH [continuing]. These are the same ones that you have had. Now, Judge Thomas, are you familiar with these?

Judge THOMAS. I have seen those logs, Senator.

Senator HATCH. Do you recall any of the telephone conversations with Professor Hill reflected by these particular messages?

Judge THOMAS. I do, Senator.

Senator HATCH. For instance, on January 31, according to these logs—and I think I have got them correct, I am quite sure—on July 31, 1984, at 11:30 a.m., a message from Anita Hill, “Just called to say hello, sorry she didn’t get to see you last week.” Is that accurate?

Judge THOMAS. Yes, that was I think one instance when she had come to town, either on personal business or because of her job, and my schedule conflicted with any opportunity to meet with her and simply called to—that was a call from her, I think, to reflect that.

Senator HATCH. No. 2, on May 9, 1984, at 11:40 a.m., Anita Hill was the caller, the message was “Please call,” and she left her phone number, (718) et cetera. Do you remember that?

Judge THOMAS. Yes, Senator.

Senator HATCH. No. 3, on August 29, 1984, at 3:59 p.m., Anita called, and the message was “Need your advice in getting research grants.” Do you recall that?

Judge THOMAS. I remember that, Senator.

Senator HATCH. What was that call about?

Judge THOMAS. I can’t remember exactly what the project was, but she wanted some ideas as to how she could get I think some grants, either from EEOC or some other agency, to do some research I believe at Oral Roberts, and I believe we discussed that and I may have put her in contact with someone. Again, my recollection of that is vague, but we did have a discussion.

Senator HATCH. Did you help her?

Judge THOMAS. I tried.

Senator HATCH. You tried.

No. 4, on August 30, 1984, at 11:55 a.m., Anita was the caller, the message “Returned your call (call between 1 and 4).” Do you remember that?

Judge THOMAS. I don’t remember the specifics of the call, but I remember that on the log, Senator.

Senator HATCH. Was she calling you or were you calling her?

Judge THOMAS. She was calling me. My secretary, when I placed the call and someone returned it, my secretary noted “returned your call.”

Senator HATCH. On January 3, 1985, at 3:40 p.m., Anita Hill was the caller, “Please call tonight,” and then left a phone number and a room number. Do you remember that?

Judge THOMAS. I remember that. I think she must have been in town on a trip and that was her hotel room number. I don’t know which hotel. I again may have been out of town, either on a business trip or somehow for some other reason inaccessible or unavailable.

Senator HATCH. No. 6, February 6, 1985, 5:50 p.m., Anita Hill was the caller, again it said, "Please call." Another call from her to you?

Judge THOMAS. That's right.

Senator HATCH. No. 7, on March 4, 1985, at 11:15 a.m., Anita Hill called again, "Please call re research project." Do you remember that?

Judge THOMAS. I remember that, Senator.

Senator HATCH. Did you help her?

Judge THOMAS. I did. I think the—I can't remember the details, but I think she and Dean Charles Kothe were involved in some research in a fairly large project and wanted some data from EEOC, and I think we provided them with that data.

Senator HATCH. No. 8, March 4, 1985, at 11:25 a.m., call from Susan Cahall, "With Tulsa EEO office referred by Anita to see if you would come to Tulsa on 3/27 to speak at the EEO Conference." Do you remember that?

Judge THOMAS. Yes, I remember the message. I think that was—she would not have otherwise gotten through to me and used Anita's name in order to gain access to me and perhaps receive a positive response.

Senator HATCH. Mr. Chairman, I notice that my time is about up—

The CHAIRMAN. You go right ahead.

Senator HATCH [continuing]. But I just want to finish this one line, if I can.

The CHAIRMAN. No, you take all the time you want.

Senator HATCH. Thank you. I really appreciate that.

No. 9, is July 5, 1985, at 1:30 p.m., Anita Hill is the caller, "Please call," with a number clearly out of town. Do you remember that?

Judge THOMAS. Again, I remember it being in my log, Senator.

Senator HATCH. OK. No. 10, October 9, 1986, at 12:25 p.m., Anita Hill called, message, "Please call, leaving at 4:05," and an area code number. Do you remember that?

Judge THOMAS. Yes, I do.

Senator HATCH. No. 11, August 4, 1987, 4:00 p.m., Anita Hill, caller, "In town until 8:15, wanted to congratulate you on your marriage." Do you remember that?

Judge THOMAS. I remember that, Senator, because one of the—my wife and I were on a delayed honeymoon in California when she came to town.

Senator HATCH. No. 12, November 1, 1990, 11:40 a.m., Anita Hill, caller, "Re speaking engagement at University of Oklahoma School of Law." Do you remember that?

Judge THOMAS. That was since I have been on the Court of Appeals, Senator.

Senator HATCH. There are 12 phone calls between 1983 and 1990. Did you try to call her back each time?

Judge THOMAS. Senator, I tried, whenever I received calls from her or from others, I attempted to return those calls. Although, as I indicated before you started through those series of calls, I remember the messages in the log themselves, but I don't remember

the nature of each call. It would be my practice to return those calls, especially from someone such as Anita.

Senator HATCH. So, each and every time she called you, you tried to call her back and tried to help her?

Judge THOMAS. Senator, the log reflects only those calls where she was unsuccessful in reaching me.

Senator HATCH. Did you ever call her, other than to return these calls?

Judge THOMAS. Senator, I may have. Again, Anita Hill was someone that I respected and was cordial toward and felt positive toward and hopeful for her career, and I may have on occasion, and I can't remember any specific occasion, picked up the phone just to see how she was doing. Again, the calls that you have there are the calls that are reflected or that reflect her inability to get in touch with me when she had called, as opposed to the instances in which she was able to contact me successfully.

Senator HATCH. Judge Thomas, before this day, have you seen Professor Hill on various occasions since she left the Equal Employment Opportunity Commission?

Judge THOMAS. Yes, Senator. As I indicated, I recall seeing her I am certain one time and perhaps twice in Tulsa, OK, and on one of those occasions it is my recollection that we had dinner with Charles Kothe, we also had—

Senator HATCH. She was there?

Judge THOMAS [continuing]. Charles Kothe, the Dean of—

Senator HATCH. Was she there at that dinner?

Judge THOMAS [continuing]. She was at the dinner. We also had—we being Anita and myself—breakfast with Charles Kothe at his house. I usually slept at Charles Kothe's house, and I believe she drove me to the airport, and for some reason I seem to remember that she had a Peugeot.

I may be wrong on that, but I remember her being very proud of it, because, to my recollection, she did not have a car in Washington.

Senator HATCH. I see. In addition to all the phone calls, you had these contacts and these meetings. How would you describe these meetings?

Judge THOMAS. Very cordial, positive, always one—as I treat my other special assistants, I tend to be the proud father type who sees his special assistants go on and become successful and feels pretty good about it. It would be that kind of a contact, as well as her telling me how her teaching assignments were going. Indeed, that was similar to the conversation, again, that I would have with my other special assistants or former special assistants.

Senator HATCH. Overall, how would you characterize the nature of your contacts with Professor Hill since she left the EEOC in 1983?

Judge THOMAS. They have always been very cordial and very positive, Senator.

Senator HATCH. Any unpleasantness?

Judge THOMAS. Never.

Senator HATCH. Any problems ever raised?

Judge THOMAS. No, Senator.

Senator HATCH. Any questions about your conduct?

Judge THOMAS. No, Senator.

Senator HATCH. Can you think of any reason for her efforts to continue to try to be associated with you?

Judge THOMAS. Senator—could you repeat the question, Senator?

Senator HATCH. Can you think of any reason why she would want to continue this cordial professional relationship with you?

Judge THOMAS. Senator, I would hope it would have been for the same reasons that all of my other special assistants did, that I was very supportive of them. The people, some of whom you will hear from today, who have flown in, certainly at their own expense, they feel warmly toward me and have a sense of loyalty and feel that I will help them and that I will assist them as best I could, and I believe that was as part of the reason and we certainly enjoyed a cordial and professional relationship.

Senator HATCH. Before you first heard of Professor Hill's allegations during this confirmation process, did you have any reason to believe that she was unhappy with you?

Judge THOMAS. Senator, on Tuesday, September 24, the day before I heard from the FBI, I would have told you, if you asked me, that my relationship with Anita Hill was cordial, professional and that I was very proud of her for all she had done with her life and the things that she had accomplished.

Senator HATCH. Judge Thomas, this is your fourth confirmation in 9 years, isn't that correct?

Judge THOMAS. Yes, Senator. It is either my—yes, Senator, it is.

Senator HATCH. In fact, three of those confirmations occurred, the time of the allegations by Professor Hill.

Judge THOMAS. Actually this, Senator, would be the fourth.

Senator HATCH. That's right, this would be the fourth.

So she actually has known you through four Senate confirmations, four of them. No, this is the fourth. So four Senate confirmations, right?

Judge THOMAS. That's right.

Senator HATCH. And none of those have been very easy, have they?

Judge THOMAS. That's right, now that I think about it, none of my confirmations, aside from the first one, was easy.

Senator HATCH. And you had your critics in each and every one of them, didn't you?

Judge THOMAS. That is right.

Senator HATCH. Do you remember the details of each of those calls that were made that we went over?

Or do you just remember them generally?

Judge THOMAS. I remember the calls generally, Senator. I don't remember the specifics of each call. That has been quite some time.

Senator HATCH. Well, let me just say this. I have kept everybody too long and I know we can continue tomorrow, but I would like to ask this question just to end the day with and I think it is an important question. I have to say, cumulatively, these charges, even though they were made on all kinds of occasions, I mean they are unbelievable that anybody could be that perverted. I am sure there are people like that but they are generally in insane asylums. What was your reaction when you first heard of these allegations against you, just the first allegations, not all the other ones, and

then you can tell me your reaction when you heard of these ones that were brought forth for the first time today?

Judge THOMAS. Senator, when the FBI informed me of the allegation, the person first, there was shock, dismay, hurt, pain, and when he informed me of the nature of the allegations I was surprised, there was disbelief and again, hurt. And I have reached a point over the last 2 weeks, plus, I have reached a point where I can't go over each and every one of these allegations again.

As I said in my statement this morning, that when you have allegations of this nature by someone that you have thought the world of and felt that you have done the best for it is an enormously painful experience and it is one when you ask yourself, you rip at yourself, what could you have done? And why could this happen or why would it happen?

Senator HATCH. How do you feel right now, Judge, after what you have been through?

Judge THOMAS. Senator, as I indicated this morning, it just isn't worth it. And the nomination is not worth it, being on the Supreme Court is not worth it, and there is no amount of money that is worth it, there is no amount of money that can restore my name, being an associate Justice of the Supreme Court will never replace what I have been robbed of, and I would not recommend that anyone go through it.

This has been an enormously difficult experience, but I don't think that that is the worst of it. I am 43 years old and if I am not confirmed I am still the youngest member of the U.S. Court of Appeals for the D.C. Circuit. And I will go on. I will go back to my life of talking to my neighbors and cutting my grass and getting a Big Mac at McDonald's and driving my car, and seeing my kid play football. And I will live. I will have my life back. And all of this hurt has brought my family closer together, my wife and I, my mother, but that is not—so there is no pity for me. I think the country has been hurt by this process. I think we are destroying our country. We are destroying our institutions. And I think it is a sad day when the U.S. Senate can be used by interest groups, and hate mongers, and people who are interested in digging up dirt to destroy other people and who will stop at no tactics, when they can use our great political institutions for their political ends, we have gone far beyond McCarthyism. This is far more dangerous than McCarthyism. At least McCarthy was elected.

Senator HATCH. Judge, I have a lot of other questions to ask you and I think they are important questions. I think you deserve the opportunity to tell your side of this and you have done it here so far. And I have to tell you this has come down to this, one woman's allegations that are 10 years old against your lifetime of service over that same 10-year period. I have known you almost 11 years. And the person that the good professor described is not the person I have known.

We are going to talk a little bit more about this tomorrow and about what went on there and about how this could have happened. How one person's uncorroborated allegations, could destroy a career and one of the most wonderful opportunities for a young man from Pin Point, GA.

Judge THOMAS. Senator, I repeat what I said, I have been hurt by this deeply, and nothing is worth going through this. This has devastated me and it has devastated my family. It is untrue. They are lies. I have hundreds of women who work with me, and you can call them, dozens who worked closely with me on my personal staff. You can call them. You can bring them up and give them as much air time as you have given this one, one person, with uncorroborated scurrilous lies and allegations. Give them as much time and see what they say.

Senator HATCH. I hope we will do that.

Judge THOMAS. It is not just that, Senator, it is more than that. You are ruining the country. If it can happen to me it can happen to anybody, any time over any issue. Our institutions are being controlled by people who will stop at nothing. They went around this country looking for dirt, not information on Clarence Thomas, dirt. Anybody with any dirt, anything, late night calls, calls at work, calls at home, badgering, anything, give us some dirt. I think that if our country has reached this point we are in trouble. And you should feel worse for the country than you do for me.

Senator HATCH. I feel bad for both.

Mr. Chairman, I am sorry I have kept us over a little bit. I wish I could proceed further tonight but I think we will wait until tomorrow morning. I know everybody is dead tired, and I am sure you are dead tired, I know that.

So, thank you for giving me this extra time. You have always been courteous and decent, and frankly, you have run this committee through this whole process in a courteous and decent way, including the way in which you ran it with regard to the FBI report, as well. We, on this side, know that but thank you.

The CHAIRMAN. Let me, before we go, Judge Heflin, reserved some of his time.

Senator HEFLIN. Judge Thomas, you describe Anita Hill and your relationship with her up until you heard, on September, I believe you said the 24th, as cordial, positive, had no trouble with her, in any way. Now, you make rather strong statements. Do you think that Anita Hill is lying?

Judge THOMAS. Senator, I know that what she is saying is untrue.

Senator HEFLIN. Now, what do you think that her motivations are to come here and testify?

Judge THOMAS. Senator, I have agonized over that. I have thought about it. I have thought about why she would say these things, why she would come here, why it would keep changing. I don't know.

Senator HEFLIN. Well, if you don't know, see we, in the committee, have a responsibility to figure out if she is not telling the truth, why? When you worked with her did you feel that she was a zealous civil rights supporter who was willing to consider and be only a one-interest individual?

Judge THOMAS. Senator, I cannot characterize her that way. I have not thought about her that way. But I would like to address what you said before that. I think you have more than an obligation to figure out why she would say that. I think you have an obli-

gation to determine why you would allow uncorroborated, unsubstantiated allegations to ruin my life.

Senator HEFLIN. Well, she has testified, that you, in effect, act as a character witness for her. You have testified here about the relationship, her work, and her reputation and here we are trying to get to the bottom of what the facts are. And we want to know what the truth is, and you knew her probably better than any one of us.

Judge THOMAS. Senator, there are others that you could bring as witnesses. I have suggested to you there are dozens of people who work there. And—

Senator HEFLIN. I think you have made a point and I hope they are brought here.

The CHAIRMAN. We are, we have agreed already to do that.

Senator HEFLIN. But we are still faced with the fact, Judge, that if she is lying why? We are still faced with the fact that if she is telling a falsehood, what is the motivation?

Now, we have watched her testify today and she is a meek woman.

Judge THOMAS. That is not as I remember Anita. Anita is, I can't say that and you can ask others who visit here, Anita would not have been considered a meek woman. She was an aggressive debater. She stood her ground. When she got her dander up, she would storm off and I would say that she is a bright person, a capable person. Meek is not a characterization that I would remember.

Senator HEFLIN. Well, you say when she got her dander off she would stalk off.

Judge THOMAS. Well, she was a good debater. She fought for her position. I don't remember her as being someone who was a push-over.

Senator HEFLIN. Well, was she a vindictive woman?

Judge THOMAS. I think, Senator, that she argued personally for her position, and I took it as a sign of immaturity, perhaps, that when she didn't get her way, that she would tend to reinforce her position and get a bit angry. I did not see that as a character flaw or vindictiveness.

Senator HEFLIN. Did she have any indication to you that she wanted to be a martyr in the civil rights movement?

Judge THOMAS. Senator, I can't answer all those questions. What I have attempted to do here is simply say to you that—you indicated that she was meek and suggesting that she was not an aggressive, strong person. I remember Anita as aggressive, strong and forceful and advocating the positions that she stood for. Again, there are others who worked with her and I suggest that you have them come before this committee and you ask them.

With respect to why, as I saw through my own memory and my own recollection of what could possibly have happened, particularly at EEOC, the change in position, where she was no longer my top assistant or my top aid and she became one of many, and certainly not the most senior and not the one who received the better assignments and later not becoming the top assistant, that could have been a basis for her being angry with me, but that doesn't seem to be too much of a basis.

I don't know, Senator. If I knew, I would not have been as perplexed as I am.

Senator HEFLIN. Well, did she ever show signs of being resentful?

Judge THOMAS. I can't remember, Senator. I know that she has shown signs that she was upset when she did not get her way. Again, I am not going to sit here and attempt to criticize her character. I can only say that during the time that she worked with me, she was not perfect, but there seemed to me nothing that would suggest that she would do this to me.

Senator HEFLIN. Well, did she at any time during the time that she worked with you at the EEOC, which most of—I mean at the Department of Education, where most of the charges that she makes against you pertaining to remarks about pornographic films and pornographic materials, and then she says they continued some, but that there were more at that time, she was your attorney assistant, as I understand it.

Judge THOMAS. Attorney adviser.

Senator HEFLIN. All right. Did you at that time ever notice anything about her that would indicate to you that she was out of touch with reality?

Judge THOMAS. Senator, again, that is 10 years ago and my working relationship with her, she was professional and cordial, as I suggested this morning. It did not involve, as I have indicated, any discussion of pornographic material or any attempt to ever date Anita. I view my special assistants as charges of mine. They are students, they are kids of mine and I have an obligation to them. It is the same way I feel toward interns and individual co-ops or stay-in-school students.

Senator HEFLIN. Well, we are still left in a great quandary and we are trying to get to the bottom of it. After she went to EEOC with you, did she show any signs at that time of being out of touch with reality?

Judge THOMAS. Senator, again, I am not a psychologist or psychiatrist, and at EEOC, I can tell you, I was enormously busy and spent an enormous amount of time at the office, involved in any number of activities. At EEOC, the assignments, as I remember them, the individual in charge of the office, I had a chief of staff at the time who would take care of the assignments and would be more involved with the special assistants.

My suggestion to you, as I have indicated, would be that this committee spend some time with the people who worked there. This committee has spent I think an inordinate amount of time with someone making uncorroborated allegations against me, and should have people who have worked with me, who have not seen any such activity, who did not corroborate these allegations and who had opportunities to work with and observe Anita Hill.

Senator HEFLIN. I believe Chairman Biden adds to that, saying that they will come and be available. But, now, at the Department of Education and at the EEOC, did any fellow employee of hers, did any supervisor of hers or anybody else indicate to you that she was out of touch with reality?

Judge THOMAS. The only one employee who indicated very strongly to me during my tenure at EEOC that she was, I believe—and I believe this may be a quote—my enemy, and I refused to believe that and argued with him about that and refused to act in accordance with that.

Senator HEFLIN. Well, did he tell you any of the facts surrounding how he arrived at the opinion that she was your enemy?

Judge THOMAS. Senator, as I said, I ignored it. Loyalty is something that was important to me and I paid no attention to it and he in recent days reminded me of what he told me.

Senator HEFLIN. All right. Now, was there any other information that came out while you were working with her that would indicate to you that she lived in a fantasy world or anything?

Judge THOMAS. Senator, again, I don't know, I am not a psychiatrist or psychologist. I was a busy chairman of an agency.

Senator HEFLIN. Well, here we are in a perplexed situation trying to get to the bottom of it. I will ask you again, do you know of any reason why she might purposely lie about these alleged incidents?

Judge THOMAS. Senator, I don't know why anyone would lie in this fashion.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. Judge, just because we take harassment seriously doesn't mean we take the charges at face value. You have pointed out that when you worked with Anita Hill and up until the moment that the charge was made available to you through an FBI agent, you thought her to be a respected, reasonable, upstanding person. When a respectable, reasonable, upstanding person, a professor of law, someone with no blemish on her record, comes forward, this committee has the obligation to do exactly what you would have done at EEOC, investigate the charge.

You are making a mistake, if you conclude that because this is being investigated before all the evidence is in; the conclusion has been reached by this committee.

You have said some things tonight that are new information to us. Assuming them to be true, it is the first time I've heard that you were ever invited, drove home and/or were invited into Professor Hill's apartment to have a Coke or a beer. You have told us things that are new. You should not in your understandable anger refuse to tell us more. We have to figure this out.

For us to have concluded, when faced with a person of Professor Hill's standing and background that this is something we were not going to look at would have been irresponsible.

I don't disagree with you, it was irresponsible, the way in which Professor Hill ended up before us. I understand that, and if I had had anything to do with it, I would apologize for it, but in a very much smaller fashion, I was at the other end of that one myself.

So, do not in your anger refuse to tell us more tomorrow. This is not decided. Witnesses are going to be coming forward, the witnesses that you and your attorneys have asked us to hear, and people we want to hear from.

Senator HATCH. Mr. Chairman, could I just make one last comment?

The CHAIRMAN. You may.

Senator HATCH. I hope that nobody here, either on this panel or in this room, is saying that, Judge, you have to prove your innocence, because I think we have to remember and we have to insist that Anita Hill has the burden of proof or any other challenger, and not you, Judge.

The fact of the matter is, the accuser, under our system of jurisprudence and under any system of fairness, would have to prove their case.

Judge we will go into some things tomorrow, and I look forward to questioning again tomorrow, and we wish you a good night's rest and we look forward to seeing you tomorrow.

Senator SIMPSON. Mr. Chairman.

The CHAIRMAN. I have been asked by one of my colleagues to clarify one thing. I don't think you misunderstood it, but no one else should. What I was referring to, that—

Senator HATCH. I wasn't referring to you.

The CHAIRMAN. I know you weren't. I am just referring to my comment. I was referring to the fact that Professor Hill testified here today that her statement, which we have attempted to keep confidential, was leaked to the press. That is what I am referring to as an injustice.

Senator HATCH. Right.

Senator SIMPSON. Mr. Chairman, just a moment, because Howell Heflin and I came here to the Senate together in the class of 1978. I have great respect for him and I see this terrible quandary that he is in, because I have watched him work.

Intimately we have worked together on a lot of things, and it is the same thing we all feel, but there is a big difference here, and Orrin has just touched on it, and that is what you said this morning, Mr. Chairman, in your very fair way, and I quote from your statement, and I think we must not forget this, and this is a quote from our Chairman this morning: "Fairness also means that Judge Thomas must be given a full and fair opportunity to confront these charges against him, to respond fully, to tell us his side of the story and to be given the benefit of the doubt."

Now, that's what we are doing here, and if there is any doubt, it goes to Clarence Thomas, it does not go to Professor Hill.

The CHAIRMAN. I made the statement and I stand by the statement. That is why I—not that you need my recommendation, Judge, but tell us what you know. We are trying to determine what happened. It is as simple as that. And the mere fact, as I said, that we take the allegation seriously does not mean that we assume the allegation is correct.

Senator THURMOND. Mr. Chairman, I believe you mentioned Clarence Thomas' attorneys. So far as I know, he has no attorneys. He doesn't need any.

The CHAIRMAN. Tomorrow, we will reconvene—I assume, Judge, it is your choice, I assume you wish to come back tomorrow. The committee is not demanding you come back tomorrow. Do you wish to come back tomorrow?

Judge THOMAS. I think so, Senator. I would like to finish this.

The CHAIRMAN. We will reconvene at 10 o'clock.

[Whereupon, at 10:34 p.m., the committee recessed, to reconvene on Saturday, October 12, 1991, at 10 a.m.]

NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

SATURDAY, OCTOBER 12, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:14 a.m., in room SR-325, Russell Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Present: Senators Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

The CHAIRMAN. The committee will come to order.
Good morning, Judge.

FURTHER TESTIMONY OF HON. CLARENCE THOMAS, OF GEORGIA, TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

The CHAIRMAN. The Chair yields for the next round of questioning to the Senator from Vermont, Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Good morning, Judge. Judge, yesterday, you said—in answer, I believe, to a question—that you had not watched or listened to the 6 or 7 hours of Professor Hill's testimony. You are obviously under no requirement to do so, but I wonder if, since then, you have had either an opportunity to read or be briefed about what she said?

Judge THOMAS. Senator, prior to coming here last night, I was briefed about much of what she said. Of course, my wife watched significant portions of it and talked about some of the things that she had to say.

Senator LEAHY. The reason I ask, is that you may have followed a part of the testimony in which she spoke about going to dinner with you at the time when you—when she, rather, was leaving the EEOC. Are you familiar with that part of her testimony?

Judge THOMAS. Senator, I am familiar that she said that. I didn't see it. I was briefed that she said that.

Senator LEAHY. Was there such a dinner?

Judge THOMAS. Senator, I do not recall such a dinner. It was not unusual for me, when a staffer was leaving, to go to lunch or to—dinner would be more unusual, but not out of the question, but it was not unusual to take them out and just simply say "thank you." In later years, I know we had much bigger dinners. We would have

many members of the staff go out and be a cause for great celebration. But I don't specifically recall such a dinner.

Senator LEAHY. Do you recall any time ever taking Professor Hill out to dinner?

Judge THOMAS. No, Senator.

Senator LEAHY. Now, Judge, in her testimony, in which she speaks of this dinner, she said that you had driven her to the restaurant—she did not recall the restaurant. You have heard, I am sure, the conversation that she recounts as taking place. And then after you left and went on to wherever you went, she took the subway home, again according to her testimony. She said that the two of you went there in your car. You were assigned, I believe, a car and driver in your position. If that was so, would there be a log that the driver keeps of where he might drive you?

Judge THOMAS. No, Senator, we did not keep logs. I used my driver more frequently in the early years and less frequently in my later years at EEOC, but we didn't have logs.

Senator LEAHY. Even though if drivers work late, they get paid overtime, they don't keep logs of where they go?

Judge THOMAS. Senator, my driver at that time worked with me later. He was on my personal staff. I don't think the driver today is on the personal staff. But the driver at EEOC was assigned to the Chairman's office when I went onboard and would still have been assigned to the Chairman's office.

Senator LEAHY. At the time that Professor Hill was talking about, just at the time that she was leaving the office, who would have been the driver?

Judge THOMAS. Mr. Randall, James Randall, who has since retired.

Senator LEAHY. Mr. James Randall?

Judge THOMAS. Randall.

Senator LEAHY. I'm sorry, between the sound of the cameras clicking, Judge, I still didn't hear the last name.

Judge THOMAS. Mr. James Randall.

Senator LEAHY. Randall. Thank you. But the bottom line is that—well, let me make sure I understand this. Professor Hill said the two of you went out to dinner as she was leaving. Professor Hill, of course, further alleges—and this would be a major and explosive matter—that you said something to her to the effect, "If you ever tell about this, it will damage or destroy my career." Now, that was her statement. I want you to have a chance to give yours. Am I correct in understanding your testimony now that you have no recollection of ever having such a conversation at any time? Is that correct?

Judge THOMAS. No, I have no recollection of having dinner with her as she left, although I do not think that it would be unusual for me to have gone either to lunch or to particularly an early dinner with a member of my staff who was leaving. I would categorically deny that, under any circumstances, whether it is breakfast, lunch or dinner, that I made those statements.

Senator LEAHY. Then, would it be safe to say your testimony is: At any time, whether in a social, business or any other setting, you never made the statement, "If this comes out, it would ruin my

career," or anything even relating to that kind of a statement. Is that correct?

Judge THOMAS. That's right.

Senator LEAHY. Thank you.

Now, I just want to make sure I understand this and then we will move on to another subject. Do you recollect ever going to dinner with Professor Hill? I understand your saying it would not be unusual to go with a member of the staff, but do you ever recollect going to dinner with her at all?

Judge THOMAS. I don't recall, other than the once I believe we had dinner, perhaps, with Charles Kothe in Oklahoma subsequent to her leaving EEOC, I don't recall ever having gone to dinner with Professor Hill.

Senator LEAHY. I understand that, and you have stated that before, but I am just talking about the time when she was working there. You did not have any such—

Judge THOMAS. I do not recall. Let me add one thing, Senator.

Senator LEAHY. Certainly.

Judge THOMAS. I occasionally, with my personal staff as well as with my personnel, when I am going out to lunch, I will grab the first person available and say is anybody ready for lunch and walk out to either a local place or perhaps just a deli to grab a sandwich. That is customary with me, so I don't want to suggest that there wasn't an occasion when I would do something like that.

Senator LEAHY. Judge Thomas, I can't imagine a Member of the Senate who doesn't do the same thing and say to some of the staff, "Let's grab a sandwich, let's grab lunch," something like that, and continue discussion of whatever might be going on. I don't think you speak of something unusual, nor do I suggest you do.

Tell me, Judge, you said yesterday that there were a couple of occasions when you would go by Professor Hill's apartment, probably have a beer, and continue discussions. Do you recall? I forget which Senator you had responded to.

Judge THOMAS. That's not the way I said it, Senator. What I said—

Senator LEAHY. Would you restate it the way you said it?

Judge THOMAS. What I said was, when we were at the Department of Education, there were, as I recall, a number of instances in which I gave her a ride home and she asked me just to drop in to continue discussion, and I would have a Coke or a beer or something and leave. That was, again, nothing, I thought nothing of it. It was purely innocent on my part and nothing occurred with respect to that, other than those conversations.

Senator LEAHY. I'm not suggesting by the question that there was anything that was not. I just wanted to make sure I understand this. That was only when you were at the Department of Education, is that correct?

Judge THOMAS. That's the reason I recall that, is because I lived in Southwest, and for a significant part of her tenure at EEOC, I did not have a personal car, and she lived nearby on Capitol Hill. The Switzer Building is in Southwest, and I would just simply give her a ride to the other side of the Hill.

Senator LEAHY. Do you recall where on the Hill she lived?

Judge THOMAS. No, I do not.

Senator LEAHY. Do you recall anything at all about the apartment, big, little, old, new?

Judge THOMAS. She had a roommate, of course, and the area that I remember was just a small living room-type area, where there was a TV and I think a small couch or something.

Senator LEAHY. OK. Do you remember whether it was an old building, a new building or—

Judge THOMAS. I remember it as an old building or an older building, and a duplex, for some reason a duplex in my mind.

Senator LEAHY. Now, Judge, you have spoken eloquently in the past of the kind of racial harassment and racial discrimination you've faced growing up—a lesson perhaps for everybody, realizing that these are not some ancient things, that a man your age is speaking within a generation of it.

Let me ask you, since you have been in the work force for about 20 years since leaving law school, have you ever witnessed sexual harassment first-hand?

Judge THOMAS. Senator, I have witnessed incidents that I would consider sexual harassment and inappropriate conduct. As Chairman of EEOC, particularly, in the work force there, I was adamant that this conduct would not take place, and anyone who has worked with me understand that, I was adamant that it would not take place.

Senator LEAHY. In being adamant, how did you translate that to staff or the people who worked for you? In statements, speeches, memos, personnel—how would you do it, Judge?

Judge THOMAS. If you engage in it, you will be fired, simple.

Senator LEAHY. The easiest way to have it.

Judge THOMAS. If you engage in it, you will be fired.

Senator LEAHY. We have a similar rule in my office for drug abuse and sexual harassment: If you do it, you're gone.

Judge THOMAS. Anyone who, and you will have witnesses who have worked with me, you ask them what my statements were. It was very simple. That is particularly easy on a personal staff and it is particularly easy with schedule C appointees.

Senator LEAHY. Judge, you said you have witnessed sexual harassment first-hand. What was the nature of—can you just give me some idea of the type that you have seen?

Judge THOMAS. Well, the types of things are, again, people using graphic language to subordinates who are female, women, there would be individuals who would expect certain conduct on the part of women, that they expect to stay in the work force or to prosper. Those kinds of things I have seen either when I was not in the position to do anything about it and I've heard about when I was in a position to do something about it, and in the latter instance, I did something about it.

Senator LEAHY. Judge, it is a very difficult thing to do here, under the circumstances, but could you just step out of the role for a moment of being a Supreme Court nominee and think back to being head of the EEOC? You get a call from an investigator in a district office who has just had a woman come in with a claim of sexual harassment. He relays the claim to you and you look at it and say, "Yes, this fits on all fours within the regulations and stat-

utes." And he says, "But, Mr. Chairman, it was 5 years ago, the statute has run." What would you say to him?

Judge THOMAS. Senator, that is certainly something that never occurred during my tenure. There were instances in which there were older charges of that nature. What we would generally find would be that the person involved would have engaged in a pattern of that kind of practice.

To give you an instance, if that person is a manager that we are talking about, you could find a pattern and you can find more recent occurrences, to my knowledge—again, this may not always be the case, but when you have a person who is engaged in grotesque conduct or harassing conduct, you will find more than one person. If the person has a habit of harassing secretaries, you will find a series of secretaries. If the person has a habit of harassing professionals, subordinates, or other employees, you will find a series of those. You will not find generally just one isolated instance, and I think that would be the trigger to look for more instances of them.

Senator LEAHY. Would it be unusual, though, to have the initial allegation be something that happened sometime back? I understand what you are saying about the pattern, that you didn't reconstruct later, but would it be unusual to have the initial allegation of sex harassment be of sometime past?

Judge THOMAS. To my knowledge, Senator, based on just what I have seen personally, it would be unusual.

Senator LEAHY. Thank you.

Judge THOMAS. Usually, what you would have is you would have a recent occurrence that would trigger an instance, and then you would look back and you will see a pattern.

Senator LEAHY. Going back to the charges that Professor Hill made yesterday, one was of your discussing pornographic films with her. She stated this happened on a number of occasions and that she had found it uncomfortable and asked you not to. Let me ask you—she has been asked whether this happened—let me ask you: Did you ever have a discussion of pornographic films with Professor Hill?

Judge THOMAS. Absolutely not.

Senator LEAHY. Have you ever had such discussions with any other women?

Judge THOMAS. Senator, I will not get into any discussions that I might have about my personal life or my sex life with any person outside of the workplace.

Senator LEAHY. I'm not asking—

Judge THOMAS. I will categorically say I have not had any such discussions with Professor Hill.

Senator LEAHY. Please don't misunderstand my question, Judge. I am confining it to the workplace. I have no interest in what might be your personal life. That is yours. What I am asking about is within—as she alleges—within the workplace. Let me make sure I fully understand—I am asking you this question, so that you can give the answer.

Am I correct in understanding your answer that within the workplace with Professor Hill, you never had such a discussion?

Judge THOMAS. Right.

Senator LEAHY. You never had such discussions within the workplace with any other women?

Judge THOMAS. That's right.

Senator LEAHY. Or anyone, for that matter?

Judge THOMAS. That's right.

Senator LEAHY. Thank you.

Now, were you interviewed—you were interviewed by the FBI, you have talked about that. Were you interviewed on—there seems to be some confusion—on September 28 by the FBI?

Judge THOMAS. I don't know which dates in September. I was interviewed on Wednesday, I believe, September 25, I'm not sure.

Senator LEAHY. I think we have some confusion. In your affidavit, it says, "I told the Federal Bureau of Investigation on September 28, 1991, I categorically deny"—

Judge THOMAS. Well, it's Wednesday.

Senator LEAHY. I've got—it says "date of transcription," the FBI, it says 9-28-91. It was faxed on September 25, 1991, and I am just wondering—we have in about five different places on here—if the FBI has made a typographical error and has the dates off by 3 days. It was on a Wednesday, which is—

Judge THOMAS. It was on a Wednesday.

Senator LEAHY. When you had that discussion with them, did they ever mention or did you ever mention to them going to her apartment at any time, going to Professor Hill's apartment at any time?

Judge THOMAS. I think I may have mentioned that I dropped her off at home and I may have mentioned that I had been in her apartment. I can't remember. I don't think they were focusing on that. I think they were focusing more on whether or not I—the allegations that she made.

Senator LEAHY. I understand. You said yesterday in your statement that,

I cannot imagine anything that I said or did to Anita Hill that could have been mistaken for sexual harassment. With that said, if there is anything that I have said that has been misconstrued by Anita Hill or anyone else to be sexual harassment, then I can say that I'm so very sorry, I wish I had known; if I did know I would have stopped immediately, and I would not, as I have done over the past 2 weeks, tear away at myself trying to think of what I could have possibly done, but I have not said or done the things Anita Hill has alleged.

I have heard people say was there something further to that. Can you think of anything—I mean, you say if there was anything, then you're very sorry, but you are also saying you cannot think of anything that could approach this, is that correct?

Judge THOMAS. That's right, Senator. I have agonized over this. This has not been an easy matter for me, and I don't know how or why she would say these things. I don't know what I could have done that would have resulted in this, and that is just to simply make that point, that if I did anything to anyone that would bring them to a point to suggest or to think that I engaged in sexual harassment, then I am sorry, because it is certainly conduct that I would not approve and conduct that I would not engage in.

Senator LEAHY. Well, let me follow up on that a bit, since you searched your mind for why she would do this. Now, if I understand your testimony, I am trying to give a summary—and please

correct me if I am inaccurate in the summary—you feel that you gave Professor Hill opportunities in Government service, as you have others, is that correct?

Judge THOMAS. That's right.

Senator LEAHY. And you have stated that you felt a particular responsibility, you spoke of them really basically almost as family, to the people that have worked for you and for bringing them forward and giving them these opportunities, is that correct?

Judge THOMAS. Yes, Senator. In Professor Hill's case—and it is important to me that this be understood—I believe that when I have assistants or interns, that I have a personal responsibility for them, as teacher, advisor, not employer. I am the employer, also, but they are my personal charges for whom I have responsibility.

Anita Hill came to me through one of my dearest, dearest friends—he was the best man at my wedding, we were at Holy Cross College together, we were at Yale Law School together, we were the two slowest guys on the track team, we spent a lot of time together, we lived across the way from each other in law school, we lived together during the summer when my marriage broke up, I slept at his apartment—this was my dearest friend, and when he brought her to my attention, it was a special responsibility that he asked me to take on, and I felt very strongly that I could discharge that in the way that I did, and that was to be careful about her career, to make sure she had opportunities, to be there to offer advice and counsel, and that is something that I continued with my other special assistants. They are family. My clerks are my family. They are my friends.

Senator LEAHY. Well, then, having done all this for Professor Hill, and knowing now what she has said here, and what you have read, and hearing her statement, under oath, explicit as it was—a statement that you have categorically denied, to use your term—why would she do this?

Judge THOMAS. Senator, you know, I, I have asked myself that question, as I told you. I have not slept very much in the last 2½ weeks. I have thought unceasingly about this, and my wife simply said, "Stop torturing yourself."

I don't know why family members turn on each other. I don't know why a son or a daughter, or a brother or sister would write some book that destroys a family. I don't know. All I can tell you is that from my standpoint I felt that I did everything I could toward Professor Hill in the same way that I would do with my other special assistants to discharge my responsibilities. I don't know. I do not have the answer.

Senator LEAHY. Have you had any conversation with her since this began? I mean, since these charges came out?

Judge THOMAS. No, Senator.

Senator LEAHY. I am not trying to be facetious, Judge, I am just—I mean, was there any attempt, not by you, but was there any attempt by Professor Hill—did she make any attempt to reach you?

Judge THOMAS. No, not to my knowledge. Senator, I have had no conversations with her since, to my knowledge, November 1991.

Senator LEAHY. So, when did you first hear of these allegations?

Judge THOMAS. When the FBI walked—I first heard that there had been, in a call from the White House, allegations of an unspecified nature which needed to be—and the FBI would be sent out. That was Wednesday morning, the 28th or 25th. And that I was to contact the FBI agent or the FBI and set up an appointment. I did that and the agent came out, I think 1½ or 2 hours later. The first I heard of the nature of the allegations was when the FBI agent, after identifying himself, informed me.

Senator LEAHY. At your home?

Judge THOMAS. At my home.

Senator LEAHY. And were you there alone meeting with him or—

Judge THOMAS. I was there alone with two FBI agents.

Senator LEAHY. Judge, what was your reaction? I mean when you heard this—you are saying you heard this for the first time—what was your reaction?

Judge THOMAS. Senator, my reaction initially, I was stunned. I was hurt. I was confused. I was pained. I did not know what happened, I did not know where it came from. I did not know what the basis of it was. I couldn't believe it and when he said there is an allegation by Anita Hill, I think my words to him were, "Anita?" And then when he told me what the nature of the allegations was, I said, "You can't"—something, like you have got to be kidding. This can't be true.

I can't remember. All I can tell you it was painful.

Senator LEAHY. There was no flash, could she have misconstrued—

Judge THOMAS. No.

Senator LEAHY. Fill-in-the-blank that?

Judge THOMAS. No, it is just like this is incredible, I can't believe it.

Senator LEAHY. Have you now—I don't want to go through repetition of them here—but have you now heard the specific charges that Professor Hill made yesterday during her 6 or 7 hours of testimony against you?

Judge THOMAS. Senator, I have heard the initial charges through the FBI agent and I have been briefed on the specific charges from yesterday that were different from the previous statements.

Senator LEAHY. And, Judge, what is your response to those specific charges again?

Judge THOMAS. Senator, my response is that I categorically, unequivocally deny them. They did not occur.

Senator LEAHY. Incidentally, somebody just handed me a note, and I missed this, too, but you said your last contact with Professor Hill was November 1991.

Judge THOMAS. 1990, I am sorry, 1990. I would have to be clairvoyant I guess. [Laughter.]

Senator LEAHY. Judge, I think that you and I may disagree on a number of things, but I think both of us would agree on one thing. Neither of us have been clairvoyant in these hearings or in this process. But you meant 1990?

Judge THOMAS. 1990.

Senator LEAHY. Have you spoken with any of the witnesses of this hearing within the last week, the witnesses who are going to be at this hearing?

Judge THOMAS. I don't know. You would have to give me each of the witnesses, Senator. I have spoken with friends of mine who were at EEOC and maybe some of the witnesses. I have spoken to them in the halls here, they have called to wish me well. These are people who are like family to me. These are not—these are former special assistants, I believe, and individuals who were in the inner confines of my office. And again, as I indicated, my staff and I are family.

Senator LEAHY. Do you know whether personnel from the White House have talked to the witnesses who are going to appear here?

Judge THOMAS. I would assume they coordinated their appearance here, Senator, so I would assume the conversations did occur to make sure they were here and the timing, et cetera.

Senator LEAHY. Thank you, Judge.

My time is up and I know that Senator Hatch and Senator Biden have time and I will come back later on.

The CHAIRMAN. Thank you.

Senator Hatch.

Senator HATCH. Thank you, Chairman Biden.

Judge there are a lot of things in Anita Hill's testimony that just don't make sense to me. I liked her personally. I thought she presented herself well. There is no question she is a very intelligent law professor. She has graduated from one of the finest schools in the land, law schools that is, and her undergraduate work was exemplary.

She is clearly a very intelligent woman. And I think everybody who listened to her wants to like her and many do. But, Judge, it bothers me because it just doesn't square with what I think is—some of it doesn't square with what I think is common experience, and just basic sense, common sense.

I hesitate to do this again but I think it is critical and I know it outrages you, as it would me, as it would anybody who is accused of these type of activities.

In her first statement on this issue, given to the FBI she said that about 2 or 3 weeks after Thomas originally asked her for a date, he started talking about sex. He told her about his experiences and preferences and would ask her what she liked or if she had ever done the same thing. Hill said that he discussed oral sex between men and women. Thomas also discussed viewing films of people having sex with each other and with animals. He told her that he enjoyed watching the films and told her that she should see them. He never asked her watch the films with him. Thomas liked to discuss specific sex acts and frequency of sex.

That is allegation No. 1, given in what I consider to be a pretty decent FBI investigation, pretty thorough, by a man and a woman, FBI agent.

In the 4-page statement that she issued, which of course was leaked to the press by somebody on this committee, in violation of law, in violation of the Senate ethics, in violation of a stringent rule formulated because these FBI reports contain raw data. And information from the FBI report was released and this statement

was given, in fact, the reporter who broke the story read the statement to her, according to her own remarks.

She then said in this statement—this is the second one—after brief discussion about work he would turn the conversation to discussions about sexual interests. His conversations were very vivid. He spoke about acts that he has seen in pornographic films involving such things as women having sex with animals and films involving group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises or breasts involved in various sex acts.

That is the second statement which is considerably different from the first and adds some language in. And you denied each and every one of these allegations last night.

So I won't go through that again today, although if you want to say anything about it further, I would be happy to have you do it.

Then, yesterday, she appeared before this committee and in her statement yesterday, her written statement of which I have a copy, that was distributed to the press and everybody else, she said "his conversations were very vivid. He spoke about acts that he had seen in pornographic films involving such matters as women having sex with animals and films showing group sex and rape scenes. He talked about pornographic materials depicting individuals with large penises or large breasts involved in various sex acts. On several occasions, Thomas told me graphically of his own sexual prowess." Three different versions, each expansive, each successively expansive.

Now, Judge Thomas, anybody who made all of those cumulative statements—if you take one of them out of context, they are so graphic and so crude, and so outrageous, and I think so stupid, that would be enough, in my opinion, to find sexual harassment against anybody, if it happened. But if you have all of those cumulatively together the person who would do something like that, over a period of time, really a short period of time according to her, and in two different separate agencies, we will put it that way, that person, it seems to me, would not be a normal person. That person, it seems to me, would be a psychopathic sex fiend or a pervert.

Now, Judge, you have had to have thought about this, I know you are outraged by it, and you have denied all of these things, and you said, these things did not happen, they are simply untrue.

And you have had an evening to think about it, do you have anything further to say about it?

Judge THOMAS. Senator, my reaction to this has been, over the last 2 weeks, has been one of horror. I can't tell you what I have lived through. I can't tell you what my wife has lived through or my family. I can't tell you what my son has lived through. I don't know what to tell him about this. If I were going to date someone outside of the work place, I would certainly not approach anyone I was attempting to date, as a person, with this kind of grotesque language.

Senator HATCH. I have to interrupt you here, Judge, but there was an implication that you not only repetitively asked her for dates—I don't know, I guess that can be construed as sexual harassment, repetitively asking a woman for dates—but the implica-

tion was, and the clear implication which she spoke about was that you wanted more than dates, if her allegations were true.

Judge THOMAS. Senator, I did not ask her out, and I did not use that language. One of the things that has tormented me over the last 2½ weeks has been how do I defend myself against this kind of language and these kind of charges? How do I defend myself? That's what I asked the FBI agent, I believe, for the first time. That's what I have asked myself, how do I defend myself?

If I used that kind of grotesque language with one person, it would seem to me that there would be traces of it throughout the employees who worked closely with me; there would be other individuals who heard it, or bits and pieces of it, or various levels of it.

Senator HATCH. Don't worry, Judge, probably before the weekend's out they will find somebody who will say that.

Judge THOMAS. Well, the difficulty also was that, from my standpoint, is that in this country when it comes to sexual conduct we still have underlying racial attitudes about black men and their views of sex. And once you pin that on me, I can't get it off. That is why I am so adamant in this committee about what has been done to me. I made it a point at EEOC and at Education not to play into those stereotypes, at all. I made it a point to have the people at those agencies, the black men, the black women to conduct themselves in a way that is not consistent with those stereotypes, and I did the same thing myself.

Senator HATCH. When you talk in terms of stereotypes, what are you saying here? I mean I want to understand this. First of all, let me go back to your first spot.

You said that if you wanted to date somebody or even if you wanted to seduce somebody—you didn't say that—but just put yourself in the mind of this, if you had wanted to seduce her, is this the kind of language you would use? Is this the kind of language a reasonable person would use, is this the kind of language that anybody would use who wanted a relationship?

Judge THOMAS. Outside of the work force, or outside of the workplace that is not certainly the way I would approach someone I would want to date. Whether I would date that person for a long time or just go to dinner, that is not my approach. I think that—and I have to reiterate this—that for someone in the work force to use that kind of grotesque language it has to show up with other staff members. When we looked at sex harassment cases, when we looked at cases of people involved in unacceptable conduct of this nature, there was always a pattern. The other point that I am making that is of great concern to me is that this is playing into a stereotype.

Senator HATCH. Before we get to that, Judge, I am going to get to that, that's an interesting concept that you have just raised, and I promise I will get back to it. You are a very intelligent man, there is no question about it. Anybody who watches you knows that. You could not have risen to these high positions in Government, been confirmed four times by the august U.S. Senate, three times by the Labor Committee—upon which a number of us, here on this committee serve, and whose staff members were used in this investigation—and I might add, once now before the Judiciary Committee, august committees.

She is an extremely intelligent woman and from all appearances a lovely human being. Do you think an intelligent African-American male, like you, or any other intelligent male, regardless of race, would use this kind of language to try and start a relationship with an intelligent, attractive woman?

Judge THOMAS. Senator, I don't know anyone who would try to establish a relationship with that kind of language.

Senator HATCH. Unless they were sick.

Judge THOMAS. I don't know of anyone.

Senator HATCH. I don't even know of people who might have emotional disturbances who would try this. Now, I want to ask you about this intriguing thing you just said. You said some of this language is stereotype language? What does that mean, I don't understand.

Judge THOMAS. Senator, the language throughout the history of this country, and certainly throughout my life, language about the sexual prowess of black men, language about the sex organs of black men, and the sizes, et cetera, that kind of language has been used about black men as long as I have been on the face of this Earth. These are charges that play into racist, bigoted stereotypes and these are the kind of charges that are impossible to wash off. And these are the kinds of stereotypes that I have, in my tenure in Government, and the conduct of my affairs, attempted to move away from and to convince people that we should conduct ourselves in a way that defies these stereotypes. But when you play into a stereotype it is as though you are skiing downhill, there's no way to stop it.

And this plays into the most bigoted, racist stereotypes that any black man will face.

Senator HATCH. Well, I saw—I didn't understand the television program, there were two black men—I may have it wrong, but as I recall—there were two black men talking about this matter and one of them said, she is trying to demonize us. I didn't understand it at the time. Do you understand that?

Judge THOMAS. Well, I understand it and any black man in this country—Senator, in the 1970's I became very interested in the issue of lynching. And if you want to track through this country, in the 19th and 20th centuries, the lynchings of black men, you will see that there is invariably or in many instances a relationship with sex—an accusation that that person cannot shake off. That is the point that I am trying to make. And that is the point that I was making last night that this is high-tech lynching. I cannot shake off these accusations because they play to the worst stereotypes we have about black men in this country.

Senator HATCH. Well, this bothers me.

Judge THOMAS. It bothers me.

Senator HATCH. I can see why. Let me, I hate to do this, but let me ask you some tough questions. You have talked about stereotypes used against black males in this society. In the first statement of Anita Hill she alleges that he told her about his experiences and preferences and would ask her what she liked or if she had ever done the same thing? Is that a black stereotype?

Judge THOMAS. No.

Senator HATCH. OK. Anita Hill said that he discussed oral sex between men and women. Is that a black stereotype?

Judge THOMAS. No.

Senator HATCH. Thomas also discussed viewing films of people having sex with each other and with animals. What about that?

Judge THOMAS. That's not a stereotype about blacks.

Senator HATCH. OK. He told her that he enjoyed watching the films and told her that she should see them. Watching X-rated films or pornographic films, is that a stereotype?

Judge THOMAS. No.

Senator HATCH. He never asked her to watch the films with him, Thomas liked to discuss specific sex acts and frequency of sex.

Judge THOMAS. No, I don't think so. I think that could—the last, frequency—could have to do with black men supposedly being very promiscuous or something like that.

Senator HATCH. So it could be partially stereotypical?

Judge THOMAS. Yes.

Senator HATCH. In the next statement she said,

His conversations were very vivid. He spoke about acts that he had seen in pornographic films involving such things as women having sex with animals and films involving group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises or breasts involved in various sex acts.

What about those things?

Judge THOMAS. I think certainly the size of sexual organs would be something.

Senator HATCH. Well, I am concerned. "Thomas told me graphically of his own sexual prowess," the third statement.

Judge THOMAS. That is clearly—

Senator HATCH. Clearly a black stereotype.

Judge THOMAS [continuing]. Stereotypical, clearly.

Senator HATCH. Do you think that—well, what do you feel about that?

Judge THOMAS. Senator, as I have said before, this whole affair has been anguish for me. I feel as though I have been abused in this process, as I said last night, and I continue to feel that way. I feel as though something has been lodged against me and painted on me and it will leave an indelible mark on me. This is something that not only supports but plays into the worst stereotypes about black men in this society. And I have no way of changing it, and no way of refuting these charges.

Senator HATCH. Now, let me just—people hearing yesterday's testimony are probably wondering how could this quiet, you know, retired, woman know about something like "Long Dong Silver"? Did you tell her that?

Judge THOMAS. No, I don't know how she knows.

Senator HATCH. Is that a black stereotype, something like Long Dong Silver?

Judge THOMAS. To the extent, Senator, that it is a reference to one's sexual organs, and the size of one's sexual organs, I think it is.

Senator HATCH. There is an interesting case that I found called *Carter v. Sedgwick County, Kansas*, a 1988 case, dated September 30. It is a Tenth Circuit Court of Appeals case. It is a district court case. It is a district court case within the tenth circuit.

And do you know which circuit Oklahoma is in?

Judge THOMAS. My guess would be the tenth circuit. I remember serving on a moot court panel with a judge from the tenth circuit and I believe she was from Tulsa.

Senator HATCH. Well, I have to tell you something, I believe Oklahoma is in the tenth circuit, and Utah is also.

An interesting case and I am just going to read one paragraph, if anybody wants to read it. I apologize in advance for some of the language, I really do. It is a civil rights case, an interesting civil rights case.

And again I apologize in advance for the language. I just want to read one paragraph. "Plaintiff testified that during the course of her employment she was subjected to numerous racial slurs"—by the way this is an extremely interesting case because the head note says, black female brought suit against county and county officials contending she suffered sexual harassment and was unlawfully terminated from her employment with county on the basis of her race and sex. Now, anybody who wants it, we will make copies for you or you can get it. I will give the citation, as a matter of fact. The citation is 705 F.Supp 1474, District Court Kansas, 1988.

Let me just read the one paragraph.

Plaintiff testified that during the course of her employment she was subjected to numerous racial slurs and epithets at the hands of the Defendant Brand. And was sexually harassed by Defendant Cameron. Specifically as to Plaintiff's claim of race discrimination. Plaintiff testified that Defendant Brand referred to Plaintiff on several occasions as John's [Cameron] token

I apologize for this word, but it is in here—"nigger." That is certainly racist.

And at other times, would tell Plaintiff that it was "nigger pick day". Plaintiff claims that Defendant Brand kept a picture of a black family in his office, and when Plaintiff questioned Brand about the picture he boasted of his own

And the word is used again—"blood and of his sexual conquests of black"—and I am not going to say that word, it is a pejorative term, it is a disgusting term.

So, this man was claiming sexual conquests.

Plaintiff further testified that on one occasion Defendant Brand presented her with a picture of Long Dong Silver—a photo of a black male with an elongated penis.

I apologize again.

Well, it goes on, it gets worse, maybe not worse, but it goes on. That is the public opinion that's available in any law library. I have to tell you I am sure it is available there at the law school in Oklahoma and it is a sexual harassment case.

I am really concerned about this matter. Because, first of all, I really don't believe for one instant, knowing you for 11 years, sitting in on four confirmation processes, having them pick at you, and fight at you, and find fault all the way through—and it is fair game with regard to what you did and what you tried to do, what your excesses were with regard to your job, what your failures were, what your successes were—all of that is fair game and it happened.

And you went through it and you held your dignity and answered all the questions. You were confirmed three times in a row.

This is your fourth time. And you should be confirmed here. Never once were you attacked like this by anybody and I know you, and the people who know you the best and that involves hundreds of people, think the world of you. They know you are a good man. They know this woman's a good woman. And this is not consistent with reality. And I am not going to find fault beyond that with Professor Hill. I liked her, too, she presented herself well.

I will tell you the Juan Williams piece in the Washington Post telling how all these interest groups have scratched through everything on Earth to try and get something on you, all over the country, all over this town, all over your agency, all over everybody. And there are a lot of slick lawyers in those groups, slick lawyers, the worst kind. There are some great ones, too, and it may have been a great one who found the reference to "Long Dong Silver", which I find totally offensive.

And I find it highly ironic that you have testified here, today, that used against you by one who taught civil rights, who came from one of the five best law schools in the country, who is an intelligent, apparently decent African-American, used against you, a bunch of black stereotype accusations.

What do you think about that?

Judge THOMAS. Senator, as I have indicated before and I will continue to say this and believe this, I have been harmed. I have been harmed. My family has been harmed. I have been harmed worse than I have ever been harmed in my life. I wasn't harmed by the Klan, I wasn't harmed by the Knights of Camelia, I wasn't harmed by the Aryan race, I wasn't harmed by a racist group, I was harmed by this process, this process which accommodated these attacks on me. If someone wanted to block me from the Supreme Court of the United States because of my views on the Constitution, that is fine. If someone wanted to block me because they felt I was not qualified, that is fine. If someone wanted to block me because they don't like the composition of the Court, that is fine. But to destroy me, Senator, I would have preferred an assassin's bullet to this kind of living hell that they have put me and my family through.

Senator HATCH. Let me just give you one more. Everybody knows that the worst nightmare for any trial lawyer is to have a person who has an impeccable background, a good appearance and appears to believe everything that person is saying, testifying. And it happens in lots of trials, lots of them.

I have been there, believe it or not. I have lost a lot of the skills, but I have been there. Sixteen years here causes you to lose a lot of things. You almost lose your mind sometimes, and some have suggested that I have, from time to time. But I am just going to give you one more because it really offends me, maybe it doesn't anybody else, maybe I am wrong. But I don't think so. I have been through this a lot of times. I have been through this, only usually—Senator Biden, I am really going to have to take more time than a half hour, if you will let me, I have got to finish this and I have got to finish my line of questions.

The CHAIRMAN. Without objection, you can take the time you want and then we will just reallocate the rest of the time.

Senator HATCH. Thank you. I really appreciate that.

She testified:

One of the oddest episodes I remember was an occasion in which Thomas was drinking a Coke in his office, he got up from the table, at which we were working, went over to his desk to get the Coke, looked at the can and asked, "Who has put pubic hair on my Coke?"

That's what she said. Did you ever say that?

Judge THOMAS. No, absolutely not.

Senator HATCH. Did you ever think of saying something like that?

Judge THOMAS. No.

Senator HATCH. That's a gross thing to say, isn't it?

Whether it is said by you or by somebody else, it is a gross thing to say, isn't it?

Judge THOMAS. As far as I am concerned, Senator, it is and it is something I did not nor would I say.

Senator HATCH. Ever read this book?

Judge THOMAS. No.

Senator HATCH. "The Exorcist"?

Judge THOMAS. No, Senator.

Senator HATCH. Ever see the movie?

Judge THOMAS. I have seen only the scene with the bed flapping.

Senator HATCH. I am going to call your attention, and keep in mind, Juan Williams said, this great journalist for the Washington Post, I differ with him, but he is a great journalist. I don't differ with him on everything, we agree on a lot of things.

We certainly agree in this area. But he wrote down what they have tried to do to smear you, he wrote down that they have the whole country blanketed trying to dig up dirt, just like you have said it, just like you have said it. And let me tell you these are not itty-bitty tort attorney investigators. These are the smartest attorneys from the best law schools in the land, all paid for at the public interest expense, that is what is ruining our country, in large measure because some of these groups, not all of them—many of these public interests are great, I don't mean to malign them all—but a number of them are vicious. We saw it in the Bork matter and we are seeing it here.

You said you never did say this, "Who has put pubic hair on my Coke." You never did talk to her about "Long Dong Silver." I submit, those things were found.

On page 70 of this particular version of the "Exorcist,"

Oh, Burk, sighed Sharon. In a guarded tone, she described an encounter between the Senator and the director. Dennings had remarked to him, in passing, said Sharon, that there appeared to be "an alien pubic hair floating around in my gin."

Do you think that was spoken by happenstance? She would have us believe that you were saying these things, because you wanted to date her? What do you think about that, Judge?

Judge THOMAS. Senator, I think this whole affair is sick.

Senator HATCH. I think it's sick, too.

Judge THOMAS. I don't think I should be here today. I don't think that this inquisition should be going on. I don't think that the FBI file should have been leaked. I don't think that my name should have been destroyed, and I don't think that my family and I should

have been put through this ordeal, and I don't think that our country should be brought low by this kind of garbage.

Senator HATCH. These two FBI agents told her to be as specific as she could possibly be, and yet she never said anything about Long Dong Silver or pubic hair to them. She didn't say it in her statement, her 4-page statement, which is extensive, single-spaced, 4 pages. But she said it yesterday.

I don't know whether you noticed, but I noticed that whole entourage—not her family, they looked beautiful, they look like wonderful people to me. Look at her parents, they are clearly good people, clearly, her sisters, clearly good people. But I saw the entourage come in, and I'm not saying they did this, but you can bet your bottom dollar that someone found every possible stereotype, to use your terms—but I never fully understood that—every possible stereotype that could be dug up.

Judge Thomas, I just have to finish another short line of questions. I will have others later.

The CHAIRMAN. Senator, you are welcome to do that. Can you give us an idea how long you are going to go?

Senator HATCH. If you could give me another 10 minutes, I would appreciate it.

The CHAIRMAN. Sure, just so we have an idea.

Senator HATCH. First of all, I would like to put Juan Williams' article into the record at this point.

The CHAIRMAN. Without objection.

[The article referred to follows:]

Juan Williams

Open Season on Clarence Thomas

The phone calls came throughout September. Did Clarence Thomas ever take money from the South African government? Was he under orders from the Reagan White House when he criticized civil rights leaders? Did he beat his first wife? Did I know anything about expense account charges he filed for out-of-town speeches? Did he say that women don't want equal pay for equal work? And finally, one exasperated voice said: "Have you got anything on your tapes we can use to stop Thomas."

The calls came from staff members working for Democrats on the Senate Judiciary Committee. They were calling me because several articles written about Thomas have carried my byline. When I was working as a White House correspondent in the early '80s, I had gotten to know Thomas as a news source and later wrote a long profile of him.

The desperate search for ammunition to shoot down Thomas has turned the 102 days since President Bush nominated him for a seat on the Supreme Court into a liberal's nightmare. Here is indiscriminate, mean-spirited mudslinging supported by the so-called champions of fairness: liberal politicians, unions, civil rights groups and women's organizations. They have been mindlessly led into mob action against one man by the Leadership Conference on Civil Rights. Moderate and liberal senators, operating in the proud tradition of men such as Hubert Humphrey and Robert Kennedy, have allowed themselves to become sponsors of smear tactics that have historically been associated with the gutter politics of a Lee Atwater or crazed right-wing self-promoters like Sen. Joseph McCarthy.

During the hearings on his nomination Thomas was subjected to a glaring double standard. When he did not answer questions that former nominees David Souter and Anthony Kennedy did not answer, he was pilloried for his evasiveness. One opponent testified that her basis for opposing him was his lack of judicial experience. She did not know that Supreme Court justices such as liberal icons Earl Warren and Felix Frankfurter, as well as current Chief Justice William Rehnquist, had no judicial experience before taking a seat on the high court.

Even the final vote of the Senate Judiciary Committee on whether to recommend Thomas for confirmation turned into a shameless assault on Thomas by the leading lights of progressive Democratic politics. For example, in an incredibly bizarre act, Chairman Joseph Biden stood up after a full slate of testimony and said Thomas would make a "solid justice," but then voted against him anyway.

At the time of the vote, two of the committee's Democrats later explained to me, the members of the Judiciary Committee figured it would make no difference, since Thomas had the votes to gain confirmation from the full Senate. So, they decided, why not play along with the angry roar coming from the Leadership Conference? "Thomas will win, and the vote will embarrass Bush and leave [the Leadership Conference] feeling that they were heard," explained one senator on the committee.

Now the Senate has extended its attacks on fairness, decency and its own good name by averting its eyes while someone in a position to leak has corrupted the entire hearing process



BY RAY LUSTIG—THE WASHINGTON POST

by releasing a sealed affidavit containing an allegation that had been investigated by the FBI, reviewed by Thomas's opponents and supporters on the Senate committee and put aside as inconclusive and insufficient to warrant further investigation or stop the committee's final vote.

But that fair process and the intense questioning Thomas faced in front of the committee for over a week were not enough for members of the staffs of Sens. Edward M. Kennedy and Howard Metzenbaum. In addition to calls to me and to people at the Equal Employment Opportunity Commission, they were pressing a former EEOC employee, University of Oklahoma law professor Anita Hill, for negative infor-

mation about Thomas. Thomas had hired Hill for two jobs in Washington.

Hill said the Senate staffers who called her were specifically interested in talking about rumors involving sexual harassment. She had no credible evidence of Thomas's involvement in any sexual harassment, but she was prompted to say he had asked her out and mentioned pornographic movies to her. She rejected him as a jerk, but said she never felt her job was threatened by him, he never touched her, and she followed him to subsequent jobs and even had him write references for her.

Hill never filed any complaint against Thomas; she never mentioned the problem to reporters for The Post during extensive interviews this sum-

mer after the nomination, and even in her statement to the FBI never charged Thomas with sexual harassment but "talked about [his] behavior."

Sen. Paul Simon, an all-out opponent of Thomas, has said there is no "evidence that her turning him down in any way harmed her and he later recommended her for a job [as a law professor]." Hill did say that because Thomas was her boss, she felt "the pressure was such that I was going to have to submit . . . in order to continue getting good assignments." But by her own account she never did submit and continued to get first-rate assignments.

The bottom line, then, is that Senate staffers have found their speck of mud to fling at Clarence Thomas in an alleged sexual conversation between two adults. This is not the Senate Judiciary Committee finding out that Hugo Black had once been in the Ku Klux Klan (he had, and was nonetheless confirmed). This is not the Judiciary Committee finding that the nominee is an ideologue incapable of bringing a fair and open mind to the deliberations of the court. This slimy exercise orchestrated in the form of leaks of an affidavit to the Leadership Conference on Civil Rights is an abuse of the Senate confirmation process, an abuse of Senate rules and an unforgivable abuse of a human being named Clarence Thomas.

Further damaging is the blood-in-the-water response from reputable news operations, notably National Public Radio. They have magnified every question about Thomas into an indictment and sacrificed journalistic balance and integrity for a place in the mob. The New York Times ran a front-page article about "Sexism and the Senate" that gave space to complaints that only

two of the 100 members of the Senate are female. The article, in an amazing leap of illogic, concluded that if a woman had been on the Judiciary Committee, more attention would have been given to Professor Hill's report. But attention was given to what she said. A full investigation took place. Why would a woman senator not have reached the conclusion that what took place did not rise to the level necessary to delay the vote on Thomas in the committee or to deny him confirmation?

To listen to or read some news reports on Thomas over the past month is to discover a monster of a man, totally unlike the human being full of sincerity, confusion, and struggles whom I saw as a reporter who watched him for some 10 years. He has been conveniently transformed into a monster about whom it is fair to say anything, to whom it is fair to do anything. President Bush may be packing the court with conservatives, but that is another argument, larger than Clarence Thomas. In pursuit of abuses by a conservative president the liberals have become the abusive monsters.

Sen. Charles E. Grassley said on the Senate floor Tuesday that the smears heaped on Thomas amounted to the "worse treatment of a nominee I've seen in 11 years in the Senate." Sen. Dennis DeConcini said it "is inconceivable, it is unfair and I can't imagine anything more unfair to the man." And Sen. Orrin G. Hatch described the entire week's performance as a "last-ditch attempt to smear the judge."

Sadly, that's right.

Juan Williams writes for Outlook and The Washington Post Magazine.

Senator HATCH. "The phone calls came throughout September," Juan Williams said.

Did Clarence Thomas ever take money from the South African government? Was he under orders from the Reagan White House when he criticized civil rights leaders? Did he beat his first wife? Did I know anything about expense account charges he filed for out-of-town speeches? Did he say that women don't want equal pay for equal work? And finally, one exasperated voice said, "Have you got anything on your tapes we can use to stop Thomas." The calls came from staff members working for Democrats on the Senate Judiciary Committee.

I didn't say that. I am just repeating it, but I know it's true.

They were calling me, because several articles written about Thomas have carried my byline. When I was working as a White House correspondent in the early 1980's, I had gotten to know Thomas as a news source and later wrote a long profile of him. The desperate search for ammunition to shoot down Thomas has turned the 102 days

This is just a few days ago—

102 days since President Bush nominated him for a seat on the Supreme Court into a liberal's nightmare. Here is indiscriminate, mean-spirited mudslinging supported by the so-called champions of fairness: liberal politicians, unions, civil rights groups and women's organizations.

All of whom Juan Williams has regard for, or at least did up until this article. I am just reading excerpts.

Now the Senate has extended its attacks on fairness, decency and its own good name by averting its eyes, while someone in a position to leak has corrupted the entire hearing process.—

It couldn't have been said better in one paragraph, somebody on this committee—

By releasing a sealed affidavit containing an allegation that had been investigated by the FBI, reviewed by Thomas' opponents and supporters on the Senate committee and put aside as inconclusive and insufficient to warrant further investigation to stop the committee's final vote.

It is an interesting article. I commend it to everybody.

Judge Thomas, I have a copy of a November 14, 1984, memorandum concerning sexual harassment that you issued within the EEOC. The memo emphasizes the importance of an earlier EEOC order issued shortly before your arrival at that agency.

Judge Thomas, before I get into that memo, I would just like to say this to you, and I wrote it down, because I wanted to say it right: I have to tell you, Judge Thomas, I have reflected on these hearings—this is my handwriting—and what has unfolded this past week is terrible. One of the things that I find most ironic is that many have tried to turn this issue into a referendum on sexual harassment.

Well, let me say, this is not a referendum on sexual harassment. We all deplore sexual harassment. We all deplore the type of conduct articulated here by Professor Hill. But the most ironic thing to me is, it is easy for us on this committee to say that we deplore sexual harassment, and many on this committee have said in the past and during these proceedings and before the media.

But you, Judge Thomas you have spent your career doing something about it, a heck of a lot more than deploring sexual harassment. You and your people at the EEOC have been directly involved and have done a lot about it, I know that, because, along

with Senator Kennedy and the other members of the Labor Committee, we oversee what you do.

Now, the memo that you issued at the EEOC on sexual harassment, this emphasizes the importance of an earlier EEOC order issued shortly before your arrival at the agency, and that memo stated in unequivocal terms that sexual harassment is illegal.

The final paragraph of the memo, which was signed by you, reads as follows:

I expect every Commission employee to personally insure that their own conduct does not sexually harass other employees, applicants or any other individual in the workplace. Managers are to take the strongest disciplinary measure against those employees found guilty of sexual harassment. Sexual harassment will not be tolerated at the agency.

Underlined.

Now, Judge Thomas, does this memo reflect a major policy commitment of yours?

Judge THOMAS. It expresses my strong attitude and my adamant attitude that sex harassment was not to take place at EEOC.

Senator HATCH. Judge Thomas, I also have a copy of an EEOC plan for the prevention of sexual harassment issued in 1987, while you were Chairman of the Equal Employment Opportunity Commission, which clearly states that sexual harassment includes "unwelcome sexual teasing, jokes, remarks or questions." Now, is this consistent with the views that you personally have believed in and have abided by during your lifetime?

Judge THOMAS. Yes.

Senator HATCH. Or certainly during these last 10 or 11 years—

Judge THOMAS. Yes, Senator.

Senator HATCH [continuing]. Which are the years in question. Was sexual harassment tolerated within the EEOC by you, as Chairman, or while you were Chairman?

Judge THOMAS. Absolutely not.

Senator HATCH. Did you make clear your views to those around you or who were working with you on sexual harassment?

Judge THOMAS. Yes, on many occasions.

Senator HATCH. I would like to just bring up briefly, to ask you what your experience was in handling sexual harassment charges within the EEOC itself while you were the Chairman of the EEOC. I realize that most of the relevant information is contained in confidential employee files, but a few general questions would be in order at this point. You have been asked about this already, but this I think needs to be clarified.

There were a number of such charges brought and processed within the EEOC while you were there, were there not?

Judge THOMAS. That's right, Senator.

Senator HATCH. And these—

The CHAIRMAN. Excuse me, let me interrupt, not on your time. I made a ruling yesterday—you are fully within your rights and if the Judge would like to go on it, we can continue—that the conduct at EEOC on sexual harassment was not at issue. Now, you have made it an issue again, which I understand. It is pretty hard—

Senator HATCH. I agree it is not an issue, but it was made an issue.

The CHAIRMAN. No, I ruled it out of order yesterday, it was not allowed to be an issue. Now, it seems to me that Senator Heflin has a right to go back and question now on that issue.

Senator HATCH. On this particular issue, I have no problem with that.

The CHAIRMAN. Fine. Yesterday I cut Senator Heflin off and I still think it is beyond the scope of this hearing. I do not think he should have to answer questions about his conduct at EEOC in terms of what his policies were. If that's the case, however, then it is going to be hard for me to fairly sit here and rule that one Senator can ask questions regarding an issue and another Senator cannot ask countervailing questions.

I just want to make that point.

Senator HATCH. I appreciate it, but the real purpose of this is not to go into the matter any deeper than Senator Heflin did, but just to rebut what was said in his questioning, and that's the only reason I am doing this. I don't want to go any further, I don't want to particularly open up the whole issue, although I am sure that he would be happy to discuss it.

I think, frankly—let me just do this and I think you will see why it is relevant under the circumstances. I did not object—

The CHAIRMAN. No, I think it is relevant. I just want to make sure you understand.

Senator HATCH. But I mean as a rebuttal to what was said.

The CHAIRMAN. There is no rebuttal. I cut the Senator from Alabama off. Go ahead.

Senator HATCH. After a number of comments were made, I want it clarified. Maybe I should have objected earlier, but I didn't and I think this needs to be clarified.

Again, I repeat, I believe most of the relevant information is contained in confidential files there at the EEOC. I think the EEOC maintains its confidentiality, unlike the Senate Judiciary Committee.

There were a number of such charges brought and processed, you have just said, within the EEOC. You handled these matters, right?

Judge THOMAS. That's right.

Senator HATCH. And these cases would have been investigated by the General Counsel's Office, with disposition recommended by that office and then approved by yourself, as Chairman of the Commission itself, is that correct? Is that a fair statement?

Judge THOMAS. It would be approved by the whole Commission.

Senator HATCH. Now, just to the specific point, I want to give you a chance to speak on it. Now, reference was made earlier today or last night to the *Harper* case. In November of 1983, the very time relevant to today's charges, you sent a memorandum to the General Counsel of the EEOC, David Slate, in which you concurred in a recommendation to terminate Mr. Harper's employment, because of sexual harassment charges, and that you specifically noted your view, your individual view that termination, as severe a punishment as it is, was in that case "too lenient" punishment.

Judge THOMAS. I generally remember either handwriting that on the memo, I felt very strongly that he should have been fired, and that was my view. I felt and continue to feel that individuals en-

gaged in this conduct should be fired, and that's the approach I took at the EEOC.

Senator HATCH. Well, there are a lot of other things that I could go into to show that you have been a champion in this area for women. You have been a champion in many ways for a lot of us.

I have taken way over the allotted time, but I thought it was essential, because I really am starting to become, more than I have been, outraged about the way you have been treated. I have been outraged over the way this committee has treated you, and I think Senator Biden and Senator Thurmond did everything they should have done. They handled it like every prior difficult decision. The chairman, I have great respect for him for that.

But somebody on this committee has abused the process, and I am not going to be happy with just an Ethics investigation. I don't think anybody is.

The CHAIRMAN. I am going to order one, though.

Senator HATCH. I want you to order an FBI investigation. I want an investigation by real appropriate, non-Senate staffers. I want some people who are not affiliated with the Senate to look into this matter, because I think that is the only way we even have the slightest chance, anyway, of getting to the bottom of it, and then we probably will not.

But if we are fair, this is not, as I said at the beginning, the nomination of a Justice of the peace to the some small county in some small State. This involves the very integrity of and fabric of our country.

I also want to say that the burden of proof is certainly not on Judge Thomas. This is America. The burden of proof is on those who use statements that are stereotypical statements. I thought when we were talking about stereotypes, that we were talking about the Exorcist and some of these things that apparently some very bright minds out there have found to help make this dramatic in a destructive way to these good people.

Mr. Chairman, I will come back again and try to ask the rest of my questions.

The CHAIRMAN. Thank you.

Let me make one thing clear; there will be an investigation of this matter, because I believe that not only has the Judge been wronged, but Anita Hill has been wronged, and the process has been wronged.

I think it is appropriate to take a break in a moment, but I would like to ask my colleagues to caucus with me for a minute. I want to make it clear to the press, that there is nothing of any consequence in the caucus. I want to try to figure out the schedule for the rest of the day.

While we recess for 15 minutes I would like my colleagues to caucus across the hall with me for a few minutes.

[Recess.]

The CHAIRMAN. The hearing will come to order.

In order to accommodate the schedules of the committee and the nominee, we are going to adjourn—this is a committee decision—for lunch until 1:30.

[Whereupon, at 12:13 p.m., the committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

Judge I will begin with a few questions. I will be asking questions off and on during the day. Both Senators Leahy and Heflin may have questions, so we will go for roughly 40 or 45 minutes with questions on this side, and then yield back to our friend from Utah, and then maybe start to wind this down, hopefully.

Senator THURMOND. I may have a few myself.

The CHAIRMAN. As pointed out by the ranking member, other Senators may have questions, as well.

Judge Thomas, yesterday and today, we heard about the obvious sharp and stark contrast between Professor Hill's testimony and yours. You have indicated that you have no desire or willingness, and I have agreed, to go into aspects other than those that have been alleged in your personal life.

We had a witness before us who is a tenured professor at a law school and whom, prior to her coming forward, you viewed, as a credible person. We have two very credible people, with very, very diverse positions on an issue. I know of no way to make this process enjoyable.

Rather than ask you to go through her allegations, which you have categorically denied and my colleagues, Senators Hatch and Heflin and Leahy, have already questioned you about, I would like to try to find out where there is agreement in the testimony, not disagreement. Hopefully we can determine whether or not there is any place from which we can logically begin to make the cut on who is telling the truth. Obviously, someone is not.

Again, I go back to the point that you have made time and again, and admirably, that you had not second-guessed the professor's credibility until now. It came as a shock to you.

So, if you are willing, I would like to decide where there is agreement between the testimony given by you and given by her. You testified that Professor Hill was your attorney advisor at the Education Department. Is that correct?

Judge THOMAS. That's right, Senator.

The CHAIRMAN. How many such attorney advisors did you have?

Judge THOMAS. Senator, there was one other more senior professional on my staff, but she was not an attorney at the time—she was going to law school, in fact—on whom I relied for some policies as well as some management work. She would have been the only other professional on my personal staff.

The CHAIRMAN. So, on your personal staff, there were only two people at the Department of Education—

Judge THOMAS. That's right.

The CHAIRMAN [continuing]. Professor Hill and this other person who was going to law school at the time.

Judge THOMAS. That's right. Two professionals, and there was also a secretary.

The CHAIRMAN. And a secretary.

Judge THOMAS. That's right, Diane Holt.

The CHAIRMAN. Now, I take it that it was not uncommon for you to talk one on one with Professor Hill, while at the Department of Education?

Judge THOMAS. That's true. That was also true with the other person.

The CHAIRMAN. With regard to both of these persons, I assume conversations with either or both would take place fairly frequently. Let me not assume anything. Would they take place fairly frequently? Would you see them more than once a day, for example, in the conduct of your affairs at the Department of Education?

Judge THOMAS. It would not be uncommon, but I would not assign a number to it. It may be that some days I may see them none and other days I might see them once.

The CHAIRMAN. Up here, for example, as you know from working with Senator Danforth's staff, the chief of staff, the head of the committee, the person in charge of the legislative operation, those people, generally speaking, have media access to Senators Danforth, Thurmond, Biden. I mean that is kind of how it works up here, but I don't want to confuse how it works here with how it worked there. I assume that if Professor Hill wanted to see you, she would have essentially the same kind of access that you observe the chief of staff would have here, on the Hill, to the office in which you worked?

Judge THOMAS. No.

The CHAIRMAN. No?

Judge THOMAS. That's not an accurate comparison.

The CHAIRMAN. Then I would like to hear what yours was.

Judge THOMAS. The Deputy Assistant Secretary would have that kind of access.

The CHAIRMAN. The Deputy Assistant Secretary would have that access to you.

Judge THOMAS. That's right.

The CHAIRMAN. I see. Would you describe the type of access that Professor Hill, in her professional responsibilities at Education, had to you?

Judge THOMAS. I think it was my secretary who normally made those kinds of judgments. If I were available, if I were not busy, if I were not in the middle of something and the matter merited it, she certainly didn't have to make an appointment.

The CHAIRMAN. Now, this other person who worked in the capacity similar to Professor Hill, as you described it, what was his or her name?

Judge THOMAS. Her name was Tricia Healey.

The CHAIRMAN. Healey, H-e-a-l-e-y?

Judge THOMAS. I think so, but she perhaps had more access, because I believe—and that has been 10 years ago—we met at the beginning and at the end of the day routinely. She was the person who followed the list of assignments that I had within the organization, people who needed to be involved in certain projects, people with whom I needed to touch base, projects that were finished and unfinished, evaluations that needed to be done, and those kinds of things.

The CHAIRMAN. Now, either at the Department of Education or at EEOC, when Professor Hill would have access to you, either at her initiative or your initiative, in the performance of your duties, was it unusual for those conversations or exchanges to take place alone, just with the two of you?

Judge THOMAS. It wasn't unusual, just as it wasn't unusual for Tricia Healey, but normally I have basically an open door and my secretary Diane would guard that door, basically.

The CHAIRMAN. So, like the conduct of any business, usually, not all decisions or all judgments that are brought to you by staff require you to call in all the staff. Many of those decisions are made, as they are here, one on one?

Judge THOMAS. No, I think that's going too far. I made those kinds of decisions one on one, generally with the Deputy Assistant Secretary.

The CHAIRMAN. I see.

Judge THOMAS. There were any number of problems that we had within the agency, and I believe that when I made those kinds of decisions, it would have been with him. I would have spent a significant amount of time with Tricia Healey, I think, going through the assignments, and that would be one on one, but it would usually be more going through a list of things to get done.

The CHAIRMAN. Now, in your discussions, conversations, and meetings with Professor Hill, you have indicated to the committee or I have gotten the impression that you viewed yourself as her mentor, the same role you have with all people who have been on your personal staff. Is that correct?

Judge THOMAS. I looked out for the members of my personal staff. I made sure that I tried to be aware of their careers and aware of their progress, et cetera, not just a mere employer-employee relationship. Again, that was true in the case of my other assistant, who was I believe at that time either finishing night law school and/or studying for the bar exam, and it was simply an effort to make some accommodation. I thought it was a good idea and she was doing very well.

The CHAIRMAN. In attempting to find out where there is agreement were there ever occasions that you would have an opportunity or occasion to be speaking with Professor Hill, in either capacity, EEOC or as her boss at Education, where you would discuss matters, either as her mentor, or in any other capacity, where you would discuss matters other than business matters?

Judge THOMAS. I think that there may be occasions when we would debate politics, as I indicated. She was from Yale Law School and, of course, I was interested in what had happened to the law school. There were some people I think who had clerked on the Supreme Court who had been in her class, and that sort of thing, similar to what I do with my clerks. They have their own friends, they have their ideas about the world, and occasionally they will chat with me about those or if they have problems. I think Anita Hill had some health problems from time to time. I can't remember exactly what they were, but I believe either back or allergies or something like that. It would be those sorts of things.

The CHAIRMAN. Professor Hill testified, for example, that you sometimes discussed how your son was doing.

Judge THOMAS. No, I don't remember that. I brought my son to the office quite a bit. He was a young kid then and my wife and I were separated and he would be in the office, and—

The CHAIRMAN. I am not going anywhere in terms of your son. I am just trying to get a sense of the flavor of the conversation.

Judge THOMAS. I am trying to tell you, I don't remember that. I discussed my son perhaps and the problems that I was having from a financial standpoint, I may have mentioned it to my secretary, but I don't remember mentioning that to Professor Hill. What I am suggesting to you now is that my son, because he was living with his mother, came to the office fairly frequently and was around.

The CHAIRMAN. I understand that. Once when we were having a full committee meeting over here, there was a knock on the door. We had asked not to be disturbed, and in walked my 10-year-old daughter, so I understand about children being at work.

Senator DECONCINI. It raised the IQ of the whole meeting, didn't it? [Laughter.]

The CHAIRMAN. How can I disagree with that? [Laughter.]

Now, Judge, you testified that you never asked out the professor on a date, is that correct?

Judge THOMAS. That's right.

The CHAIRMAN. Now, I am sure it was pointed out to you, if you don't know, that everything that is reported isn't true, not because it is intentionally meant to mislead, but because sometimes there is a miscommunication. It was reported in the New York Times, on the October 7, on page A13, that "Judge Thomas told the investigators"—meaning the paper's investigators—"that he had asked the woman out a few times and, after she declined, eventually dropped all advances." I assume that is a misunderstanding?

Would someone rapidly running back tell me, without my glasses, did I misread it? What's this say? I don't have my glasses. What does that say?

Senator THURMOND. Do you want to borrow mine?

The CHAIRMAN. Yes. [Laughter.]

Thank you. You are only twice my age, too.

Senator THURMOND. We are young otherwise.

The CHAIRMAN. That's exactly right.

It says: "Senator Biden said in a statement today that the allegations were investigated by the Federal Bureau of Investigation, at the request of the Judiciary Committee. Judge Thomas"—this did not come from Senator Biden—"Judge Thomas told the Bureau's investigators that he had asked the woman out a few times and, after she declined, eventually dropped all advances." That is incorrect?

Judge THOMAS. That is wrong.

The CHAIRMAN. Wrong.

Judge THOMAS. I had the occasion to be re-investigated by the FBI agents prior to this hearing. In fact, I believe that it would have been on Thursday afternoon, and the FBI agent, in my living room, stated that it was wrong, the very same FBI agents who interviewed me, and indicated that he was distressed that this matter had been reported that way. At no time, did I ever indicate that I ever asked her out. I categorically deny that I ever asked her on a date.

The CHAIRMAN. That is why I ask you the question, Judge, to confirm on the record, what you said. I thought that is what you had said, but it has been sitting out there.

Let me return to your discussions, if any, with Professor Hill that may have been of a non-work nature.

Judge THOMAS. Pardon me?

The CHAIRMAN. You indicated, there were some discussions you have had with her about Yale Law School, discussions, conversations or exchanges at work that did not relate to what was going on at work, which would be almost impossible for anyone in the whole world to not have in a business setting. I want to make it clear that you don't every time, and we don't, always talk to our staff about business only. So, you have indicated that you have had some discussions with her about Yale Law School, how it was going, how it has changed—

Judge THOMAS. Mutual friends, frankly, Gil Hardy, it may have been current events, those sorts of things, the things I talk with my clerks about or the other members of my staff.

The CHAIRMAN. Did you ever inquire about or did she ever volunteer, to the best of your recollection, anything about her social life. Such as, "I can't stay late tonight, I've got a date, yeah, that fellow you mentioned at the Supreme Court from Yale, I'm dating him," or anything? Was there any discussion ever that you recall about her social life?

Judge THOMAS. Someone might—she may have said I've got to leave tonight, because I'm going out to dinner. I can't recall a specific, nor would there be any reason for me. It would be simply a reason for her not being at work. There may have been an indication of what she was doing. There could be no extensive discussion about that. I don't see any reason why that would happen. I mean, today, what my clerks would simply do is, "I'm having dinner with a couple of friends of mine from law school."

The only thing that I can remember, and this is very general, was that I believe—and I could be misrecalling this—was that she had dated someone in Oklahoma who came to New England or something and they weren't together, or something like that. That's really vague.

The CHAIRMAN. It is kind of hard for anybody to remember anything of a passing topic from a while ago.

And again, we are all trying to find out what could be the motivation, if, in fact, what you say is true and what she says is not true. How has this happened?

You indicated, today, that a friend of yours who was your Holy Cross classmate, law school classmate, summer roommate is now deceased.

Judge THOMAS. That's right.

The CHAIRMAN. This friend had referred Anita Hill to you—and I do not have the transcript from this morning, so please correct me if I am wrong—so you said you believed you had a special obligation as a consequence of his referral.

Now, did that special obligation result in any additional impact on your relationship, professional or otherwise, with Anita Hill in a way any differently than it has with any other person that has worked for you? Let me make it clear now, OK, for the moment I am not talking about the allegations, I am trying to figure the relationship that you and Professor Hill had. Did you feel a special obligation to look out for her? She was a young woman, so did you say be careful what you do because certain parts of this city are dangerous. Or, you know, you have to be careful who you date, or

make sure you call your mother. Or have you called, was his name, Gil?

Judge THOMAS. Yes.

The CHAIRMAN. Have you called Gil, he is concerned about you, you need to keep in touch, or anything of that nature?

Judge THOMAS. I don't recall anything of that nature, Senator. What I was referring to was to make sure that I looked out for her career, that she got solid work, to make sure that everything was OK at work, that she got her promotions, those kinds of things. The kind of relationship that you are talking about, in your examples, those are the kinds of things I look out for with young interns, who work with me during the summer, or individuals who are in coop programs, those individuals.

I have had some who were 19 or 20 years old who I would treat more like my own son or daughter.

The CHAIRMAN. So there would be no reason for anyone, including Professor Hill, to assume that you were asserting and/or you were taking on a role, any other role, other than an employer who was concerned about the work product. This is as opposed to what all of us have when young interns, from our States, are sent down here to work for us. We have unpaid interns in my office. A friend will say, can my son or daughter come work for you, and the first thing I say is they can't come down unless I know where they are going to live. Is there a relative down here? I am not taking responsibility for a 17-year old kid to come, not just to this city, but to any city.

So, all of us, I am sure at one time or another have talked to young women or men who are in college and in town to work as interns. We have said how are you doing in school? Or tell me what you are doing?

Was there any reason for Anita Hill to think that there was that kind of relationship between you and her?

Judge THOMAS. I can't think of a reason for her to think that. As I indicated, Senator, or Mr. Chairman, there are any number of younger kids that have worked for me that I would be concerned about, individuals who are not from this city and who do not understand the city; individuals who occupy themselves after work with other kids their age, again, without the guidance. I would be concerned about them not knowing the rules of the city, but certainly not in her case.

The CHAIRMAN. Now, you said yesterday something that I don't dispute—I don't know so I can't dispute it. When one of the committee members said that Professor Hill was a meek professional woman, and she came across as a meek person, you replied well, I would call her anything but meek.

Can you elaborate on that a little bit more for me today?

Judge THOMAS. Well, the point that I was making, Senator, if you asked me to describe the Anita Hill who worked for me, meek would not be the word. She was very bright. And she would argue for, particularly with the other special assistants, argue for her position and, sometimes to a fault. And by that, I simply mean that she would become entrenched in her own point of view and not understand the other point of view. And she was certainly capable of

storming off and going to her office, and that happened on any number of occasions.

So, meek, would not be the word. She was also a forceful debater on the issues that she was involved in.

The CHAIRMAN. Was there any change between the Anita Hill that first started to work for you at the EEOC and the Anita Hill—I beg your pardon, at Education—who eventually worked for you at EEOC? Just before she left, was it basically the same person, same modus operandi, same professional relationship relative to you?

Judge THOMAS. No. The relationship, as I indicated in my opening statement, Mr. Chairman, changed primarily because my job changed and the staff went from those 2 professionals to maybe 10, 12, 15 professionals with a chief of staff, office directors of 14 individuals, and a chief of staff being in charge of my personal staff, as opposed to the staff having direct access. So even the special assistants could not see me on an as-available basis.

The chief of staff could see me on that basis, but she could not.

The CHAIRMAN. When you saw her, though, was it essentially the same professional woman in terms of her professional attitude? Did she seem more confident, less calm? Was there any difference in the Anita Hill, not necessarily in terms of access, but in terms of the professional lawyer who worked for Clarence Thomas? Was she the same woman in terms of when you were with her?

Judge THOMAS. Senator, I can't—all I can say is this, that I can't tell you that there was a specific change. What I can say is that she was having more of a difficulty, I thought, from my perspective, she was having more difficulty in the role at EEOC because there were so many more staffers. And there were so many different levels of communications.

For example, on—or responsibilities—for example, I would rely on individuals with more experience to work on projects that were of great significance to me. There were routine assignments that would be, what I could call grunt work, much more than we had at Education. There was sort of a pecking order and I don't think that she, in that role, at EEOC was very high on the pecking order because of experience.

The CHAIRMAN. Well, you said yesterday, when you first appeared, that you can't imagine what you could have said that would have caused Anita Hill to say what she has said. But if there was anything she misunderstood—I don't know this exact quote—then you are sorry.

Now, let me ask you this. On its face that seems to me to be a completely reasonable statement for one to make. I think—I will speak for myself—that things I might say, or jokes that I might tell with a male, trusted aid that I have been with for 20 years, might not be the same joke that I would be willing to tell with the female members of my staff.

And I suspect that, were I a woman, there are certain things that I could say to the females on my staff that I couldn't say to the males on my staff.

Among the men on your staff did you ever kid about, make reference to, say you saw, or deal with any of the subjects that Anita Hill says you dealt with, spoke to, and mentioned to her?

Judge THOMAS. No. Let me go back a second. There are a couple of comments I would like to make about that.

The CHAIRMAN. Sure.

Judge THOMAS. I attempted to conduct myself in a way with my staff so that there were no jokes that I would listen to or tell to men that I could not listen to or tell to women. There were no jokes that I found acceptable that I could not listen to or tell to any ethnic group.

The other thing. When I was speaking about on something I may have missed, I was talking about a kind of insensitivity—let me give you an example.

The CHAIRMAN. That's what I am trying to drive at.

Judge THOMAS. And it doesn't mean mean-spirited and it's not in the area we are talking about. A former member of your staff came to work for me in 1982, Barbara Parris.

The CHAIRMAN. One of the best people who have ever worked for me.

Judge THOMAS. That's right, and one of the best who has ever worked for me and who is familiar with me.

The CHAIRMAN. She has made me aware of just how familiar she is.

Judge THOMAS. That's right and she understands about why I feel so strongly about being here. Barbara Parris, my offices were on the fifth floor and the elevator panel, button panel, panel of buttons was at a level that Barbara Parris could not reach because she is a short person. She did not tell me. And I was insensitive to it because I could reach the panel. So someone had to inform me that she was climbing up four or five flights of stairs because she could not reach the panels.

It is that kind of insensitivity, oversight, and I made it a point to tell my staffers, if I do something, let me know what it is. If you see something, tell me what it is so that we can correct it. If you hear something, tell me what it is. My grandfather used to have a statement, "I can read your letter, but I can't read your mind."

And the point is, let me know if I am overlooking something, and I think that the totality, the other component of my statement was that if something happened, if I had known, I could have corrected it. That has been my attitude.

The CHAIRMAN. I was just referring to your comment, I think you said, if there was anything I did or said.

Judge THOMAS. That's right.

The CHAIRMAN. I was referring to the "said" part. I was not referring to telling ethnic jokes, but let's say that you and I are sitting and watching a football game and you watch some 280-pound tackle blow away a 158-pound flankerback. You and I might describe that in a way, sitting with one another and both having played football, that we would not describe in the same way if there were five women sitting in the room. I may be wrong, maybe you would not.

Judge THOMAS. Senator, this may sound unusual to you, but I would describe it the same way.

The CHAIRMAN. Well, that's interesting. Maybe that is because you were closer to the 280-pound lineman and I was closer to the 130-pound flankerback. [Laughter.]

Judge THOMAS. Senator, my attitude was, in my work environment, my staffs were almost invariably predominantly women. The senior person on my staff was a woman. I could not tolerate individuals making that environment uncomfortable or hostile. I could not tolerate individuals who had to segregate their language or conduct in order to get along. The conduct had to be purged of offensive attitudes and I made that a constant effort, and that's something that I was proud of and it was something I am sure the people who worked with me felt comfortable with and understood.

The CHAIRMAN. In order to attempt to seek the truth I am accepting, for the sake of this discussion, the assertions that you never said anything in the workplace or out of the workplace to Ms. Hill. Let's, as we lawyers say, stipulate to that for the moment.

Judge THOMAS. Senator, you stipulated to my character earlier.

The CHAIRMAN. I did, and I have again. All right, now let me ask you this question. We are trying to find out why we are here. An incredibly credible woman, who thus far has not had her character or her integrity impugned, sat before us and, at a minimum, impressed this committee on both sides. Now, we both know that employees form opinions about the person with whom they work not based totally upon that person in the working environment.

For example, no matter how well your boss treats you if you knew, from observation or you heard from outside, that he did not treat his children well, then you would not necessarily have a universally high regard for him. You treat your children well, I am not making any innuendo. The point I am trying to make is how can we figure out, if we can, why this very credible woman might, as you are asserting, be telling a lie?

Judge THOMAS. No, she is asserting that I did something. I am not asserting anything about her.

The CHAIRMAN. I understand that. Well, she is asserting you did something, and you are denying you did what she asserted. We have two very credible people in front of us. Now, all I am asking you is, if there is anything outside of the workplace that would reasonably, unreasonably, or even remotely lead a person to form an opinion of you different than they had of you in the workplace?

Judge THOMAS. Senator, my relationship with my staff, although I care about them, is in the workplace.

The CHAIRMAN. I understand that, but opinions—

Judge THOMAS. No, Senator, it is in the workplace. I did not make these statements or do these things. And I cannot get into or determine how she arrived at whatever it is that influenced her. I am simply saying that I don't know what her motivation was. These things did not happen. I did not allege anything, or I did not say anything to her or I did not attempt to date her.

The CHAIRMAN. I understand that. Let me give you an example of what I am thinking of and maybe you can think of something that relates to this. If not, we will drop the whole subject.

I can think of specific employees with whom I have worked. Their working relationship with me and with everyone in my office has been exemplary. I have gone—I can think of a specific incident—to lunch with this person and several others, in this case the person was a man. We ordered lunch and the lunch was late. We are out of the work environment. This person berated the waitress

at which time I said, you don't work for me here, and you are not going to work for me anywhere if you treat people that way. Now, this occurred out of the work environment.

After about 5 or 6 years working with this person, I had never seen him this way, and yet I watched this person just read the riot act to a waitress because she brought the wrong meal. So my opinion of that person was colored by something totally unrelated to the workplace.

This is the last time I will ask you this and then I will drop it. Is there anything you can think of outside the workplace that Professor Hill would have heard of, or witnessed, that might have shaded her opinion of you?

Judge THOMAS. Senator, or Mr. Chairman, I attempt to conduct myself with my staff, at lunch or walking down the street or whatever, in a way that they could be, or think, or feel was admirable. I do not and did not co-mingle my personal life with my work life, nor did I co-mingle their personal life with the work life.

I can think of nothing that would lead her to this.

The CHAIRMAN. OK. I accept your statement.

Let me ask you another question. Did you inform the FBI that you had, on occasion, driven Professor Hill home or 't you had, on occasion, gone in for a Coke or a beer after work?

Judge THOMAS. I think I did, Senator, again these events have unfurled very rapidly. And I don't think that was a particular issue. Their response was, or their questioning went to specific allegations.

The CHAIRMAN. I am not suggesting if you didn't—

Judge THOMAS. I am just saying, I don't remember but I think I did.

The CHAIRMAN. OK, now, having asked you that, I have another area I am confused about. I don't know whether it was Senator Hatch, Senator Leahy, or Senator Specter, that asked these questions, but I am confused about cars.

Senator LEAHY. About?

The CHAIRMAN. Cars, automobiles. Now, I thought I heard you say you did not own an automobile when you were at the Department of Education. I thought I heard you say that you did not have a driver assigned to you when you were at the Department of Education. Did I miss that? What are the facts? Did you own an automobile when you were at the Department of Education, and/or did you have a driver assigned to you or an automobile available to you through the Government?

Judge THOMAS. At the Department of Education I owned a car.

The CHAIRMAN. So you would drive to work?

Judge THOMAS. No. Some days—I lived in Southwest—and the Department of Education is in Southwest, the Switzer Building, and I would walk to work some days and other days I would drive depending on what I needed the car for. My point was that I would work late often, and if it was late or if for some reason she may have needed a ride, I would give her a ride. Or if I were headed in that direction or if I were leaving.

The CHAIRMAN. So you would drive her in your own automobile is the point.

Judge THOMAS. Yes, but it wasn't—I don't remember a large number of times, but it has happened.

The CHAIRMAN. Can you give us any sense of how often it happened that you would go in and have a coke or a beer after work?

Judge THOMAS. Oh, it couldn't have happened any more than maybe twice or three times. Nothing, there was no, it was nothing major. It was just a matter of, you know, we may have been arguing about something, debating something, a policy or something.

The CHAIRMAN. What are the kinds of things you would argue about?

Judge THOMAS. I think we debated affirmative action, we debated busing, those sorts of things, black colleges.

The CHAIRMAN. Now, you said she had a roommate. Did you ever meet her roommate when you—

Judge THOMAS. Yes. To my knowledge, those were the only times I have seen her. She was, as I remember, a basketball player, I think she was in a basketball league. And occasionally she would walk by in her sweats or be there in her sweats.

The CHAIRMAN. At the apartment?

Judge THOMAS. That's right.

The CHAIRMAN. So you would be in the apartment with both—

Judge THOMAS. In an open area, yes, that's right.

The CHAIRMAN. OK.

I am almost finished here. I just want to make sure that I have covered the things that I had questions about or that I misunderstood.

Judge THOMAS. Let me make one point. I did not have a driver assigned to me at Education. There was a carpool at the Department of Education. I had a driver assigned to me as Chairman of EEOC. After I arrived at EEOC, the car that I had, it was a Fiat Spider, was recalled. And—

The CHAIRMAN. Was what? I am sorry?

Judge THOMAS. Was recalled.

The CHAIRMAN. Oh, rehauled.

Judge THOMAS. Defective.

The CHAIRMAN. Recalled?

Judge THOMAS. Yes.

The CHAIRMAN. Oh, because it was defective. I am sorry. Fiat will appreciate that.

Judge THOMAS. And I used the money to pay my son's tuition so I didn't have a car.

The CHAIRMAN. Gotcha. At Education?

Judge THOMAS. At EEOC.

The CHAIRMAN. At EEOC.

Judge THOMAS. And I, subsequently, I believe in 1983, got a car a year or so later.

The CHAIRMAN. Another area where you both agree is that occasionally, or at least on one or more occasions, you had lunch with Professor Hill in the cafeteria.

Judge THOMAS. I don't think I said that. I just—

The CHAIRMAN. No, I think she said it. I'm not sure what you said.

Judge THOMAS. No, I don't think I said that. I don't recall ever having lunch with her in the cafeteria.

The CHAIRMAN. I see.

Judge THOMAS. I would rarely, at the Department of Education, almost never, at EEOC, go to the cafeteria with the exception of breakfast. That may not have been a good thing, but I rarely went there in the early years. In the later years—

The CHAIRMAN. This was at EEOC?

Judge THOMAS. At EEOC, in the later years I went more frequently.

The CHAIRMAN. Did you ever have breakfast with her at EEOC in the cafeteria?

Judge THOMAS. No, not to my knowledge. I am trying to finish up with Education.

The CHAIRMAN. I am sorry.

Judge THOMAS. At the Department of Education, my habits for eating lunch usually consisted of—and I am giving my normal pattern—my normal pattern was to work out at the NASA gym at noon and then to run and then to grab takeout or have my secretary grab takeout and eat at my desk. That was my normal pattern. I rarely remember eating at the Department of Education cafeteria.

The CHAIRMAN. OK.

Judge THOMAS. That does not mean I didn't, it just wasn't—

The CHAIRMAN. No, I understand what you are saying. The one, two, or three occasions that you drove Professor Hill home and went into her apartment to have a Coke or continue a debate, were they all at Education or did any of them also occur at EEOC?

Judge THOMAS. To my knowledge, it only occurred at Education because it was very convenient for me. My car was parked right outside of my office and easy just to drive over and drop her off.

The CHAIRMAN. All right. Now, are there other employees, such as this other person who had more access to you at EEOC, that you were in a position to offer a ride home? The one going to night school or law school or the bar exam, I apologize, but I forget the name.

Judge THOMAS. Her husband worked at the agency so they commuted together.

The CHAIRMAN. I see.

Judge THOMAS. So that was not the problem. I have, over time, with other members of my staff dropped them off some place if they needed it, at a Metro station or if we were headed, I was headed in the same direction.

The CHAIRMAN. Judge, there has been a lot of reference to the telephone logs. We went through them in detail with Professor Hill, but we did not spend much time discussing them with you.

And do you have the original telephone logs, by any chance?

Judge THOMAS. I have the originals in my chambers, yes.

The CHAIRMAN. You have the originals, because EEOC doesn't have them nor does Ms. Holt?

Judge THOMAS. I have the originals in my chambers. I was advised, I believe, and I could be wrong that those were my property when I left the EEOC.

The CHAIRMAN. I am not suggesting they are not. I just wonder where they are, that's all.

Well, Judge, that's all. I have used up enough time. Now, I may have a few more questions later, as I digest this, but thank you very much.

I yield to the ranking member, who indicates that he has a question.

Senator THURMOND. Mr. Chairman, in my opening statement I appointed Senator Hatch and Senator Specter to question the witnesses. However, I reserved the right, if I saw fit now and then, to ask a question. I do care to ask a question at this time.

Judge, we have your testimony and we have Ms. Hill's testimony. Some of the press have asked me outside and some people, too, what was the motivation? This question was raised by Senator Heflin earlier and Senator Biden touched on it—the motivation for these charges.

In other words, why did she make these charges? In talking with several people, some of them the press, and other people, various reasons have been assigned. I just want to ask you if you care to comment on any of them.

One is she failed to get a promotion under you. Another is because you didn't date her she felt rejected. Another is she said in her own statement to the FBI about differences in political philosophy. Another is stated by the dean of the law school, Charles A. Kothe, under whom she taught at the Oral Roberts University Law School, he made this short paragraph and it covers that. He said,

I have come to know Clarence Thomas quite intimately over the last 7 years and have observed him and his relationship with members of his staff as well as his conduct at social gatherings, and never once was there any hint of unacceptable conduct with respect to women. In fact, I have never heard him make a coarse remark or engage in any off-color conversation.

And he makes this statement, "I find the references to the alleged sexual harassment not only unbelievable, but preposterous. I am convinced that such is the product of fantasy." And I have had several other people mention that as a possible reason. Then, as a fifth reason that has been mentioned by someone is instability.

Now, those things have come to me from other people, and I just want to ask you if you care to comment on any of those?

Judge THOMAS. Senator, I don't know what the motivation is and, as I indicated, any of those may or may not be correct. I can't speculate. But I think that the appropriate individuals to ask that are the staffers who were involved in leaking this information and who made contacts with her.

Senator THURMOND. That is all, Mr. Chairman.

The CHAIRMAN. Thank you. I understand that you still have time. Whom do you wish to yield it to?

Senator HATCH. I am happy to defer the balance of my time to Senator Specter.

The CHAIRMAN. Senator Specter has the remainder of this half hour.

Senator SPECTER. Thank you, Mr. Chairman.

Judge Thomas, at the start of my participation in today's hearings I repeat what I said yesterday. I do not view this as an adversary proceeding, and I do not represent anyone in this proceeding except the people of Pennsylvania who elected me. I took on the job of questioning at the request of Senator Thurmond, the ranking

Republican, but that is not intended by me to mean that I am taking sides.

The questioning yesterday of Professor Hill was obviously difficult from many, many points of view. And I attempted with her, as I attempted with you during the earlier part of these proceedings to be scrupulously polite and professional and nonargumentative.

The purpose of my questioning her and the purpose of the round that I am about to undertake with you is to deal with the issue of credibility. We have a situation here where many have characterized it as two very believable witnesses. And I had searched for a long while to see if there was a way to reconcile the testimony here, so that it would be possible to believe both of the critical witnesses and that has not been possible to do.

The next step, as I have seen it, is to try to make an analysis on credibility from what we have. It would be fine to go out and conduct a very extensive investigation but we have been given the charge here from last Tuesday to come to a conclusion so that the Senate can vote on this matter by this coming Tuesday. We are trying to do that. In the questions that I am about to ask you, which relate to Professor Hill's testimony yesterday, it is not with any intention of impugning Professor Hill at all, but in an effort to see what indicators there are as to credibility here.

The problem is a hard one because none of us wants to discourage women from coming forward with charges of sexual harassment. And I have been working for the past year and a half to get the civil rights bill which would improve the issue for women on sexual harassment. The fellow who is sitting behind you is Senator Danforth. It is obviously true that this hearing has raised the consciousness of America on this issue of sexual harassment, but the generalizations have to be put aside.

We have to make a determination as to whether you did or did not engage in the kind of conduct which is being charged. And with that brief introduction what I would like to cover with you in this round relates to questions on credibility, on four specific subjects.

First, the USA article; second, her move from Education to EEOC; third, her testimony on not documenting the alleged comments; and four, the inferences on credibility arising from the telephone logs.

The issue of the article in USA Today, I think is a very compelling one because I believe—and I am going to ask you about this—that Professor Hill testified in the morning and demolished her testimony in the afternoon. What I want to examine with you for the next few minutes is an extremely serious question as to whether Professor Hill's testimony in the morning was or was not perjury.

I do not make that statement lightly. But we are searching here for what happened. And nobody was present with a man and a woman when this tragedy arose. The quality of her testimony and the inferences are very significant on the underlying question as to credibility.

I am going to read you extensive extracts from the testimony which I re-read this morning and I think it ought to be noted that we proceed here on a very short timetable. Senator Thurmond asked me to undertake this job on Wednesday. I started on it with

Thursday. We are in hearings on Friday and are reading overnight text this morning.

And the start of it was my question to Professor Hill about the USA article on October 9, "Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that would quietly, and behind the scenes, would force him to withdraw his name."

Now, I am about to go through the transcript where I asked Professor Hill about this repeatedly. At one point she consulted her attorney and throughout an extensive series of questions yesterday morning flatly denied that any Senate staffer had told her that her coming forward would lead to your withdrawal. In the afternoon she flatly changed that by identifying a Senate staffer who she finally said told her that she was told that if she came forward you would withdraw or might withdraw your nomination.

The transcript, which is prepared overnight, does not reveal the part where she consulted with her attorney, but I asked my staffers to review the tape, because I recollected that and they did find the spot, which I shall refer to, but I want to make that plain that it is not in the written transcript.

I start, Judge Thomas, at page 79 of the record, where I questioned Professor Hill, that USA Today reported on October 9.

Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that, quietly and behind the scenes, would force him to withdraw his name.

I am not reading all of it, because I cannot in the time we have here, but if anybody disagrees with anything I read, they are at liberty to add whatever they choose.

On page 80:

Question: Did anybody ever tell you that, by providing the statement that there would be a move to request Judge Thomas to withdraw his nomination? Ms. Hill: I don't recall any story about using this to press anyone.

Later, on page 80:

Ms. Hill: I don't recall anything being said about him being pressed to resign.

Page 81:

Senator Specter: Well, aside from 'quietly and behind the scenes pressing him to withdraw,' any suggestion that just the charges themselves in writing would result in Judge Thomas withdrawing and going away? Ms. Hill: I don't recall that at all, no.

Skipping ahead to page 82—this is in the middle of one of my questions:

You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month. Ms. Hill: And I have done that, Senator, and I don't recall that comment. I do recall there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that.

Then skipping ahead to page 84:

Senator Specter: Would you not consider a matter of real importance, if someone said to you, professor, you won't have to go public, your name won't have to be disclosed, you won't have to do anything, just sign the affidavit, and this, as USA Today reports, would be the instrument that, quietly and behind the scenes, would force him to withdraw his name. Now, I am asking you whether it happened. I am

asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you that you could remember in the course of four or five weeks.

Now, it is at this time that she consulted with her attorney, according to my recollection and according to my staff's, looking at the tape. And then she says: "I don't recall a specific statement and I cannot say whether that comment would have stuck in my mind, I really cannot say this."

In the afternoon session, I asked Professor Hill—

Senator SIMON. What page are you referring to?

Senator SPECTER. Page 203—to begin, if you could, and proceed from there to account who called you and what those conversations consisted of as it led to your coming forward to the committee.

Then, on a long answer inserted at the end, which was not responsive, because I wasn't asking about the USA Today article any more, she says—and this appears at the bottom of 203.

It even included something to the effect that the information might be presented to the candidate and to the White House. There was some indication that the candidate—excuse me—the nominee might not wish to continue the process.

Then, on the following page, 204, continuing in the middle of the page: "Senator Spector: So, Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward? Ms. Hill: Yes."

Now, Judge Thomas, what do you make of that change of testimony?

Judge THOMAS. Senator, I think that the individuals such as Jim Brudney, Senator Metzenbaum's staffer on the Education and Labor Committee, should be brought to hearings like this to confront the people in this country for this kind of effort, and I think that they should at some point have to confront my family.

Senator METZENBAUM. I would like to just make a statement. Yesterday, I called for the Ethics Committee to investigate the matter of the leak and anything else they consider appropriate. Jim Brudney was performing his responsibilities as a member of my staff.

Senator THURMOND. Mr. Chairman, I might make this statement, that today I have called for an FBI investigation. I think that is the one that will count, and the Republicans on this side of the aisle, all I have talked with have agreed to sign it, all down the line, I believe, and—

Senator SPECTER. Wait a minute. I am not getting into any collateral issues at this time. I have not discussed signing anything. I do not want to have any attention diverted from this issue, which is the nomination of Judge Thomas, and the point we are on now is where the credibility is. When Senators want to interrupt, that is part of the process around here, but I am not going to discuss that issue at this time.

Judge Thomas, I went through that in some detail, because it is my legal judgment, having had some experience in perjury prosecutions, that the testimony of Professor Hill in the morning was flat-out perjury, and that she specifically changed it in the afternoon, when confronted with the possibility of being contradicted, and if you recant during the course of a proceeding, it is not perjury, so I state that very carefully as to what she had said in the morning.

But in the context of those continual denials and consulting the attorney and repeatedly asking the question, with negative responses, that, simply stated, was false and perjurious, in my legal opinion. The change in the afternoon was a concession flatly to that effect.

In searching for credibility, let me add that I am not representing that it is conclusive or determinative, but it certainly is very probative and very weighty.

Let me now move to another issue of credibility, which is an issue very central to this proceeding. That is the factors relating to Professor Hill's moving from the Department of Education to EEOC, and whether she would have moved with you, had you said the outrageous things which have been attributed to you.

In her statement, on page 4, she states, among other reasons, "I also faced the realistic fact that I had no alternative job." She then quotes you in her testimony—I want to be precise, so I will cite the reference, page 172, at the top of the page:

Ms. Hill: I was relying on what I was told by Clarence Thomas. I did not make any further inquiry. Senator SPECTER: And what are you saying that Judge Thomas told you? Ms. Hill: His indication from him was that he could not assure me of a position at Education. Senator SPECTER: Was that when you were hired or when he was leaving? Ms. Hill: When he was leaving.

Question, Judge THOMAS: Did you tell her that you could not assure her of a position at Education, when you made the move to EEOC?

Judge THOMAS. Senator, I do not recall that conversation, and as I reflect back, there would be no reason for me to tell her that. Anita Hill was a graduate of Yale Law School, was performing well, and was a career employee. She was a schedule A. She was not a political employee, so she could remain in the department in other capacities. There were a significant number of attorneys, both in the Department of Education, generally, and in the Office of Civil Rights, specifically.

In addition, my successor was a close personal friend of mine, Harry Singleton, also a Yale Law School graduate, and if she wanted to stay at the Department of Education, it would have been a simple matter of bringing it to the attention of Harry.

In addition to that, Gil Hardy was not only a personal friend of mine, he was as personal friend of Harry's. We were all at Yale Law School at the same time. So, there would have been no reason for me to have said that she could not remain at the Department of Education.

Senator SPECTER. Judge Thomas, Professor Hill later said or at one point said, as it appears on page 160 of the record, "I was a schedule A attorney." Now, based on your knowledge of her as an attorney herself, is it credible that she would not know, as a schedule A attorney, that she could stay on at the Department of Education?

Judge THOMAS. Senator, it would seem more likely to me that someone of her intellect and her capabilities would know what her classification was and would certainly find out, when there is a question of whether or not you are going to have a job during a transitional period. Those are not complicated matters and they

are not hard to find out. Indeed, the other assistant who was on my staff would have been knowledgeable in the area of personnel.

Senator SPECTER. I want to now move to the issue of the record-keeping relating to my questioning of Professor Hill on keeping a record on the comments which she has said you made.

At page 114 of the record, I asked her—let me back up for just a minute to set the ground work for what I had asked her, and I read her this, as well. In her statement, at page 5, she said, "I began to be concerned that Clarence Thomas might take it out on me by downgrading me or not giving me important assignments. I also thought he might find an excuse for dismissing me."

Now, in the context of that statement, I asked Professor Hill this question, which appears at page 114 of the record:

In a controversy, if Judge Thomas took some action against you and you had to defend yourself on the ground that he was being malicious in retaliation for turning him down, wouldn't those notes be very influential, if not determinative, in enabling you to establish your legal position? Ms. Hill: I think they would be very influential, yes. Senator Specter: So, given your experience, if all this happened, since all this happened, why not make the notes? Ms. Hill: Well, it might have been a good choice to make the notes. I did not do it, though.

Now, my question to you is, knowing Professor Hill as you do and based on your evaluation of her as an attorney, is it credible, with these kind of things having been said and her being concerned contemporaneously about possible dismissal, that she would not make notes of these kinds of comments?

Judge THOMAS. Senator, it is not credible that any career employee would be concerned that one individual could effectuate a dismissal. It would be a much better case, if this were a schedule C employee who can be dismissed summarily. Nor can you summarily downgrade an employee. The employees in the Federal system have an array of rights and opportunities for hearings, so that could not occur.

I think you are also right that it is reasonable for any employee who is faced with the possibility or fear of downgrading or dismissal to document any adverse conduct that has resulted in that that is in some way not appropriate conduct. That happens in many instances in which you have employees against whom actions have been taken.

Senator SPECTER. When I pursued the question about making the notes, Professor Hill responded in a collateral way, which I think is relevant. I want to ask you about, on the issue of credibility, and this appears at page 115 of the record:

Ms. Hill: One of the things that I did do at that time was to document my work. I went through very meticulously with every assignment that I was given. This really was in response to the concerns that I had about being fired. I went through, I logged in every work assignment that I received, the date that it was received, the action that was requested, the action that I took on it, the date that it went out, and so I did do that in order to protect myself, but I did not write down any of the comments or conversations.

My question to you is this, Judge Thomas: Where she says she is concerned about being fired and she says that she is taking precautions and writes down the details of work assignments, if she is looking for retaliation from you, is it credible that, having statements been made, that she would not make a written notation of

those statements in the context where she writes down notes on all of these other matters?

Judge THOMAS. Senator, it does not sound credible to me, but I think there is further point. Oftentimes, when individuals are concerned about their ratings, they will document their work product, the quality of their work product or copies of their work product and the speed with which they turn around the work product, so that they can then argue during the rating period that they should receive a higher rating. That is not unusual, particularly if there have been some complaints that the work was not being done in a timely fashion.

I was not aware of that and don't know that that was the case in her situation, but it is not unusual for individuals who are concerned about their ratings to document their work. I think it would be unusual for someone who is thinking that they were going to be dismissed to be documenting the work that they received.

Senator SPECTER. Well, I raise these issues and I ask you to amplify as to your view, knowing Professor Hill as you did, about the documentation which she testified to and the absence of documentation on these comments on the question of credibility.

Judge Thomas, a final subject matter on this round is a matter of the telephone logs, and I began this subject matter on the question as to how many times Professor Hill called you. The evidence already adduced demonstrated that there were 11 calls recorded, 10 at EEOC and 1 at the Court of Appeals for the D.C. Circuit. My first question to you on this subject is: Were there other calls which got through, where you talked to Professor Hill on calls initiated by her, which, because they got through, would not have been recorded in the logs?

Judge THOMAS. Senator, there could well have been. If I were available when the calls were received, they would have gotten through and would not have been logged in. The purpose of our telephone log was only to log messages, so that I could return calls. So, there could have been any number of instances in which I spoke directly to her, without having returned her call.

Senator SPECTER. Judge Thomas, the Washington Post reported on this issue that, "Ms. Hill called the telephone logs garbage, and said that she had not telephoned Thomas, except to return his calls." I questioned her about that at pages 173 and 174 of the record.

Then, to abbreviate this, when confronted with the logs, I asked her, and this appears at page 175 of the record, "Then you now concede that you had called Judge Thomas 11 times?" Answer, following some other material, "I will concede that those phone calls were made, yes."

My question to you, Judge Thomas, is what impact do you think that has on her credibility?

Judge THOMAS. Senator, I think it is another of many inconsistencies that have occurred in her testimony.

Senator SPECTER. Judge Thomas, I was a little disappointed, maybe more than a little disappointed, that you did not watch the proceedings yesterday, in terms of seeing precisely what Professor Hill had to say, both from the point of view of wanting to know

what it was and from the point of view of being in a better position to defend yourself. Why didn't you watch those hearings?

Judge THOMAS. Senator, the last 2½ weeks have been a living hell and there is only so much a human being can take, and as far as I was concerned, the statements that she sent to this committee and her statements to the FBI were lies and they were untrue, and I didn't see any reason to suffer through more lies about me. This is not an easy experience.

Senator SPECTER. Judge Thomas, I can understand that it is not an easy experience for you. It hasn't been an easy experience for anybody. But in the context where she comes forward and she is testifying, and the fact is she said much more in her statement here than she had in either her written statement to the committee on September 23rd or what she said to the FBI, and there was a good bit of exchange above and beyond what she said, and it just struck me a little peculiarly that you had not wanted to see what she had said, realizing the difficulty, but also focusing on the question of being able to respond. It is a little hard to ask you questions, if you haven't seen her testimony. It requires going through a lot of the record. I just was concerned that you had taken that course, in light of the seriousness, the importance, and the gravity of the matter.

Judge THOMAS. Senator, I wish there was more for me to give, but I have given all I can.

The CHAIRMAN. Senator, your time has expired, but we will come back.

Senator SPECTER. Okay. Thank you very much. Thank you, Judge Thomas.

Thank you, Mr. Chairman.

The CHAIRMAN. Before I yield to my colleagues to question, I must point out that reasonable people can differ and we certainly do on this committee. I would just like to make sure, I say to my friend from Pennsylvania, that the remainder of the record on page 204, 205, and 206 appear in the record with regard to Mr. Brudney. Senator Specter says:

Mr. Brudney said to you that the nominee Judge Thomas might not wish to continue the process, if you came forward with a statement on the factors which you have testified about. Ms. Hill: Well, I am not sure of exactly what he said. I think what he said, depending on the investigation of the Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process. Senator Specter: So, Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward? Ms. Hill: Yes. Senator Specter: Isn't that somewhat different from your testimony this morning? Ms. Hill: My testimony this morning involved my response to this USA newspaper report, and the newspaper report suggested that, by making the allegations, that would be enough, that the candidate would quietly and somehow would withdraw from the process, so, no, I do not believe that it is at variance. We talked about the matter of different options, but it was never suggested, just by telling incidents that might, that would cause the nominee to withdraw. Senator Specter: Well, what more could you do to make allegations as to what you said occurred? Ms. Hill: I could not do any more, but this body could. Senator Specter: Well, but I am now looking at you're distinguishing what you just testified to, from what you testified this morning. This morning, I had asked you about just one sentence from USA Today.

I emphasize that—Just one sentence from USA Today, "Anita Hill was told by Senate staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument

that quietly and behind the scenes would force him to withdraw his name."

Skipping:

Ms. Hill: I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate stages in the process. What we were talking about was the process, what would happen along the way, what were the possibilities, would there be a full hearing, would there be questioning from the FBI, would there be questioning by some individual members of the Senate. We are not talking about or even speculating that simply alleging this would cause someone to withdraw.

At the bottom of page 206: "Ms. Hill" —

Senator SPECTER. Why don't you continue reading, Senator Biden, if you are —

The CHAIRMAN. I will read the whole thing, then:

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter, had you said at the outset that Mr. Brudney told you that if you came forward, Judge Thomas might withdraw. That is the essence of what occurred. Ms. HILL: No, it is not. I think we differ on interpretation of what I said. Senator SPECTER: Well, what am I missing here? Senator KENNEDY: Mr. Chairman, can we let the witness speak her own words, rather than having words put in her mouth? Senator SPECTER: Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say, let him participate in this hearing. The CHAIRMAN: Now, let everybody calm down. Professor Hill, give your interpretation of what was asked by Senator Spector, and then we can ask you further questions. Ms. HILL: My interpretation — Senator THURMOND: Speak into the microphone, so that we can hear you. Ms. HILL: I understood Senator Spector's question to be what kinds of conversations did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such use. We talked about a number of possibilities, but there was never any indication that, by simply making these allegations, the nominee would withdraw from the process. No one ever said that, and I did not say that anyone ever said that.

Let me make sure I read that correctly:

No one ever said that, and I did not say that anyone ever said that. We talked about the form that the statement would come in. We talked about the process that might be undertaken post-statement. We talked about the possibilities of outcomes, and included in that possibility of outcomes was the committee could decide to review the point and that the nominee, the vote could continue as it did. Senator SPECTER: So that, at some point in the process, Judge Thomas might withdraw? Ms. HILL: Again, I would have to respectfully say that is not what I said, that was one of the possibilities, but it would not come from my simply making an allegation.

Do you want me to keep reading?

Senator SPECTER. Yes, please.

The CHAIRMAN.

Senator SPECTER: Professor Hill, is that what you meant, when you said earlier, at best I could write it down, that you could control it so that it would not get to this point? Ms. HILL: Pardon me? Senator SPECTER: Is that what you meant, when you responded earlier to Senator Biden that the situation would be controlled so that it would not get to this point in the hearing? Ms. HILL: Of a public hearing? In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point. Senator SPECTER: Thank you very much. The CHAIRMAN: Thank you, Senator.

Senator KENNEDY. Mr. Chairman?

Senator METZENBAUM. Mr. Chairman?

The CHAIRMAN. The Senator from Massachusetts.

Senator KENNEDY. If I could be recognized, just in one other part of the record that was just referenced with regard to the telephone calls, on page 175, it will just take a moment, because there was

reference about inconsistency and the use of "garbage," as Ms. Hill used it:

Senator SPECTER: Did you call the telephone log issue garbage? Ms. HILL: I believe the issue is garbage, when you look at what seems to be implied from the telephone log, then, yes, that is garbage. Senator SPECTER: Have you seen the records of the telephone logs? Ms. HILL: Yes, I have. Senator SPECTER: Do you deny the accuracy? Ms. HILL: No, I don't. Senator SPECTER: Then you now concede you have called Judge Thomas 11 times? Ms. HILL: I do not deny the accuracy of the logs. I cannot deny they are accurate. I will concede that those phone calls were made, yes. Senator SPECTER: So, they are not garbage? Ms. HILL: Well, Senator, what I said was the issue is garbage. Those telephone calls do not indicate that they are being used to indicate that somehow I was pursuing something more than a cordial relationship or a professional relationship. Each of those calls were made in a professional context. Some of those calls revolved around one incident. Several of those calls, in fact, three involved one incident where I was trying to act in behalf of another group. So, the issue that is being created by the telephone calls, yes, indeed, is garbage.

Senator METZENBAUM. Mr. Chairman?

The CHAIRMAN. The Senator from Ohio.

Senator METZENBAUM. Mr. Chairman, there seems to be some issue made as to the conduct of Mr. Brudney, who is the director of my Labor Subcommittee. Mr. Brudney is as honorable and able and dedicated as any person on my staff.

Mr. Brudney was performing his responsibilities in that connection by inquiring into the background of the nominee to be an Associate Justice of the Supreme Court. That came about by reason of the fact that Mr. Brudney and his staff had considerable knowledge concerning Judge Thomas when he was up for confirmation by reason of his activities at the Equal Employment Opportunity Commission. There is no secret about the fact, on the basis of those conclusions, this Senator decided not to vote for Judge Thomas' confirmation to the Circuit Court of Appeals.

But Mr. Brudney was inquiring into what facts were concerning the thoughts of your former employees. He and his staff were doing it. The first call was actually made in September—earlier than September 9. When Mr. Brudney was informed that there were certain allegations concerning the possibility of sexual harassment, he did exactly what any other staffer should have done.

He performed his responsibilities and performed them well. He reported them to me and I told him to immediately turn them over to the Judiciary Committee staff. That is what he did. The fact that Ms. Hill and he had a conversation as to what might develop by reason of her speaking out has already been spoken to in the transcript.

Now, Judge Hill, I have a lot of respect for you—Judge Thomas, excuse me, I apologize—Judge Thomas, I have to say to you that these are important allegations. These are allegations concerning the issue of sexual harassment, and I can only say this to you: Mr. Brudney would have been irresponsible had he not brought the matter to my attention, and I would have been irresponsible if I did not direct him to bring it to the attention of the Judiciary Committee, in order that the Judiciary Committee might investigate the matter. Mr. Brudney did not arrive at any conclusion, I did not arrive at any conclusion, and the subject of this hearing has not, as yet, arrived at any conclusion, and I doubt very much that it will arrive at any specific conclusion.

But I want to make it clear that Mr. Brudney was doing what he should have done, and had he done less he would have been irresponsible. And had this Senator and this committee done less, it would have been irresponsible. Sexual harassment is too important an issue to sweep under the rug.

Judge THOMAS. Senator, it was not swept under the rug. This issue was investigated by the FBI and then leaked to the press, and I do not share your view that this was not concocted. This has caused me great pain and my family great pain, and God is my judge, not you, Senator Metzenbaum.

Senator BROWN. Mr. Chairman, the Senator from Ohio has brought up the subject of his staffer and I understand his interest in defending him—

The CHAIRMAN. If I may—

Senator BROWN [continuing]. Why can't this committee hear from Mr. Brudney?

The CHAIRMAN. If you will just yield for just a second.

We are going a half hour and a half hour. The subject of Mr. Metzenbaum's staff was not brought up by Mr. Metzenbaum. It was brought up, appropriately, by Senator Specter. It was appropriate for Senator Specter to bring it up.

Now, on the half-hour time we have on this side, it was appropriate for the Senator to respond. When we go back, it will be appropriate for you to pursue it, if you would like.

It is true, Judge Thomas, that God is your judge and all our judges, we all know that. But in the meantime, under the rules, we have to make a vote, and we have to judge. We are not God and none of us thinks we are, and none of us like this. Some of us have been in a situation similar to yours, not many of us, but some of us, and it is not very comfortable, but, unfortunately, there is a question of judgment.

Now, before I yield the remainder of our time, which is probably only about 20 minutes. How much time is left? Fifteen minutes. Before I yield the remainder of the time to either Senator Heflin or Senator Leahy.

Senator HEFLIN. I believe it is Senator Leahy.

The CHAIRMAN. Before I yield to Senator Leahy, let me ask a question, if I may, and that is: Did you, when the nominee first moved into her apartment, help her and her roommate install a stereo and a turntable, her roommate is the basketball player whose name I don't remember? Did you—

Judge THOMAS. Sonia Jarvis is her name.

The CHAIRMAN [continuing]. Ms. Jarvis, her roommate. There is nothing wrong with this, but did you help her install a stereo and a turntable that took about a half hour or an hour or so? Did that occur? I'm just trying to find out where we agree.

Judge THOMAS. Senator, I don't recall that at all.

The CHAIRMAN. I thank you.

Now, I yield the remainder of the time to my friend from Vermont.

Senator LEAHY. Judge, you said that you remember seeing her housemate there. I understand you don't remember the name of her housemate?

Judge THOMAS. Sonia Jarvis.

Senator LEAHY. That was Sonia Jarvis?

Judge THOMAS. She is on my phone logs, also.

Senator LEAHY. And if Anita Hill were to say that you came to her house once to install stereo equipment and a turntable, and that was the only time you were in her home, would that be accurate?

Judge THOMAS. No, it would have been—I don't remember helping her install a stereo or turntable. I do remember several times just dropping in after I had driven her home, just to chat, but that was it. It was no significant—it was nothing of great moment. But I do not recall helping her install a—I don't know when she moved into her apartment.

Senator LEAHY. Of the times that you brought her home or to her apartment, how many times was Sonia Jarvis there, if you recall?

Judge THOMAS. I think each time. She would have wandered in or came by or something like that. I just simply remember her being in sweats, from a basketball game or something. That's the only time I can remember seeing her, I think.

Senator LEAHY. But you think that she was there each time?

Judge THOMAS. That's right.

Senator LEAHY. And if—

Judge THOMAS. That's my recollection.

Senator LEAHY. I understand. And if Anita Hill said that—other than that stereo and turntable, which you say you do not recall—if she said other than that time, that Judge Thomas never drove her home and never came in to visit and talk politics or any other thing, that would not be accurate?

Judge THOMAS. Not to my recollection, Senator.

Senator LEAHY. And if Sonia Jarvis said that she saw you there only once and it was to help install stereo equipment and that is the only time that she ever saw you in the house, that would be inaccurate?

Judge THOMAS. That would not be my recollection, Senator.

Senator LEAHY. It would be contrary to what you just testified to. That is, your recollection was that she was there each time you were there?

Judge THOMAS. My recollection was, as I stated this morning, again, we are talking 10 years ago, Senator.

Senator LEAHY. I understand.

But I am talking about what you stated just 1 minute or 2 ago—

Judge THOMAS. That she would have been there, yes, that would have been my recollection.

Senator LEAHY. Judge, I want to yield to Senator Heflin, but I have tried throughout all of this to ask very short questions and to stay away from the speech making. But bear with me just for a moment.

A robbery takes place, an armed robbery say, and two people are standing there, two witnesses see it. And one says, "that robber was tall." The other one says, "No, that robber was short." Well, the fact is, the robbery took place. Everybody, including the victim, agrees the robbery took place, but you have two people, honest people, standing there and one says, "By God, it was a tall robber,"

and the other one says, "No, it was a short robber," but the robbery takes place. We can understand that. And we can understand the difference of view in how two people might observe an event.

But here, it is like two ships in the night. I mean you seem to be diametrically opposed, certainly, in your testimony and Anita Hill's. I think we would both agree that, on the basic substance of what we are talking about here, you are diametrically opposed, is that correct?

Judge THOMAS. Senator, I just simply said that I deny her allegations categorically.

Senator LEAHY. I understand. If her allegations were correct, if what she has stated under oath was so, that would be sexual harassment, would it not?

Judge THOMAS. Senator, I think it would be.

Senator LEAHY. But, at the same time, you categorically deny that those events ever took place?

Judge THOMAS. I categorically deny, Senator, in the strongest terms.

Senator LEAHY. It would be sexual harassment if they happened, but you say they did not happen?

Judge THOMAS. That's right.

Senator LEAHY. Then we have one of two possibilities, obviously. One of you is not telling the truth. Or is there any possibility that both of you are seeing the same thing, both of you seeing the same robbery but seeing it entirely differently? Which is it? Is it that one of you absolutely is not telling the truth or one of you—or both of you, rather, are viewing the same events differently?

Judge THOMAS. Senator, I am not going to get into analyzing that. I will just simply say that these allegations are false. They were false when the FBI informed me of them, when they were subsequently changed to additional allegations they were false. And they continue to be false.

Senator LEAHY. And there is nothing in her testimony of these allegations, in your mind, where the two of you could be seeing the same thing?

Judge THOMAS. Senator, my relationship with Anita Hill was cordial and professional, just as it was with the rest of my special assistants. And I maintain that that is all there was. My other special assistants are available for you to talk to them to determine exactly how I treated them.

Senator LEAHY. Thank you.

Senator HEFLIN. Judge, Senator Hatch brought up the issue of the tenth circuit case pertaining to Long Dong Silver, and in your responsibility as head of the EEOC, do you keep up with cases involving discrimination and sexual harassment that the circuit court of appeals may decide?

Judge THOMAS. Senator, the way that that is normally done is that if there is a significant case, I did not read specific cases, but if there were a significant case the general counsel would summarize that, would analyze it, and if necessary, would simply provide us with a copy of it.

I would not normally read circuit court opinions unless it was breaking new ground.

Senator HEFLIN. In the field of employment discrimination, how many circuit court of appeals opinions have been written, per year, over the last several years?

Judge THOMAS. Senator, I don't know.

Senator HEFLIN. Now, let me ask you, did you read this case of the tenth circuit that involved this Long Dong Silver?

Judge THOMAS. Senator, this is the first I have heard of it, and I have not read it.

Senator HEFLIN. I have been told that there is a pornographic movie in regards to "Long Dong Silver". Have you ever heard of that name?

Judge THOMAS. No, Senator.

Senator HEFLIN. Now, this issue of pubic hair in the Coke—did you read the book, the Exorcist?

Judge THOMAS. No, Senator.

Senator HEFLIN. Quite a few people have read it, from what I understand. I haven't read it, but—

Judge THOMAS. I don't know. I can't testify. I think the publisher would have to tell you that, Senator.

Senator HEFLIN. All right, have you seen the deposition of Angela Wright that has been taken in this case?

Judge THOMAS. No, Senator.

Senator HEFLIN. Well, then I will wait on that. It has some reference to your relationship with Juan Williams. I suppose Angela Wright is going to testify and the proper time would be to ask then.

You, in your opening remarks made a statement about the lack of corroborating witnesses. I had some discussion with two other people and we were talking about how unusual this case was and how it has attracted attention nationally because of its unusualness. And one of them remarked it is not unusual that this occurs, and the type of situation we are in today occurs in almost every date rape case—that there are no witnesses.

Usually in regard to the prosecution and the defense of those cases, a somewhat wider latitude is allowed relative to background pertaining to it.

Senator HATCH. Mr. Chairman, excuse me, Senator, I have to object to this line of questioning. I don't know of anybody who has accused him of date rape. Is that what you are driving at?

Senator HEFLIN. Well, it is a common term as I understand it. Date rape is where people go out on dates and rape occurs.

Senator HATCH. What does that have to do with this?

Senator HEFLIN. Well, the analogy between the two is that in the trial of such cases, a broader leeway is given relative to investigations of people that have a past history of such tendencies. And the only thing I am asking you, Judge, is whether or not you refuse to answer any questions other than what may have occurred in employment. Do you continue to do that?

Judge THOMAS. Oh, absolutely, Senator. I will not be further humiliated by this process. I think I have suffered enough, my family has suffered enough. I think that I have attempted to address all of the questions with respect to my relationship with Ms. Hill in the work force and I think enough is enough.

Senator HEFLIN. I had an old trial lawyer tell me one time, Judge, that if you've got the facts on your side, argue the facts to the jury. If you've got the law on your side, argue the law to the judge. If you've got neither, confuse the issue with other parties.

Senator HATCH. You mean like date rape?

Senator HEFLIN. That's a statement. I don't simply ask questions. You have been asked questions that really have been asked for the purpose of making speeches. After a long period of time they would ask you a question.

And they would ask you questions about whether that is credible, which, in effect, is asking a participant if such occurred. Let me just ask you these other things. This might have some bearing and it might not.

But I think it should be asked. What was the date of your divorce?

Judge THOMAS. I think it is irrelevant here, Senator. I was separated during—I will only answer during the relevant time period. All of that material is in my FBI file and was available to the committee before. I will only discuss the allegations in this case. My family, Senator, has been humiliated enough. I have been humiliated enough. I was separated from my former wife, once in January of 1981; we reconciled during the summer; and then we separated again in August of 1981.

Senator HEFLIN. All right, I will respect you. Whatever you want to state and however you want to answer it.

There was a question that I believe was asked of Ms. Hill or she brought it out, or I have seen it in files, affidavits, or somewhere, that Professor Hill said you made a statement to her, "You know, if you had any witnesses, you would have a good case against me."

Did any such thing like that ever happen?

Judge THOMAS. That's nonsense, Senator. I never made any statement like that. I never made the statements that she has alleged.

Senator HEFLIN. Well, we get back to the issue of who is telling the truth, and what the motives are. Has any thought come to your mind as to what her motive might be?

Judge THOMAS. Senator, as I said before, I think you should ask the people who helped concoct this and the people who leaked it to the press what the motives were.

Senator HEFLIN. That is when we talk about other issues of both parties.

Judge THOMAS. I understand.

Senator HEFLIN. We are still left with a quandary as to where we are. And as I stated in the first hearing, what is the real Clarence Thomas like? I think an issue now is what is the real Anita Hill like? And we have to make the decisions relative to those issues.

Senator LEAHY. I wonder if I just might—if the Senator would yield on that—I wonder if I might follow on the last, when Senator Heflin spoke to the question of motivation, Judge, and asked what could be her motivation? And you said, we ought to ask the people who concocted this. I think I am accurately re-stating what you said, is that correct? I don't want to put words in your mouth.

Judge THOMAS. Yes.

Senator LEAHY. I am not sure that that's an answer that many might accept. Let's think about this just for a moment. You have Anita Hill, a woman who has gone to Yale Law School, certainly one of the finest law schools in this country and I am sure, as a graduate, you accept that.

She is obviously quite bright, and you have certainly stated in the past a high regard for her. You have hired her in two positions of significant trust and responsibility. She went through the bar exam, and all of that, not an easy task for anyone.

She held those two positions of high trust and responsibility, both at the Department of Education and at the EEOC, and she then went to a university where she is a law professor and has done well enough to become tenured. Holding that, not only the law degree, but a license to practice law, something she has worked extremely hard for for years, protected and nurtured all this way through, as well as her experience. Why would she come here and perjure herself, throw away all of that? For what? What would she possibly get out of throwing all of that away?

Judge THOMAS. Senator, I don't know. I know the Anita Hill that worked for me and the relationship that I have had with her from time to time on the intermittent calls or the few visits over the years. I don't know what has happened since 1983. All I know is that the allegations are false and that I don't have a clue as to why she would do this.

Senator LEAHY. Do you know Angela Wright?

Judge THOMAS. Angela Wright?

Senator LEAHY. Yes.

Judge THOMAS. Yes. She was a schedule C employee at EEOC.

Senator LEAHY. Would she have any reason to attack you or—

Judge THOMAS. Yes.

Senator LEAHY. And what would that be?

Judge THOMAS. I terminated her very aggressively a number of years ago. And very summarily.

Senator LEAHY. Not with extreme prejudice, as the term is sometimes used?

Judge THOMAS. It was summarily.

Senator LEAHY. Thank you. I just realized, I have been handed a note that says my time is up.

Thank you, Mr. Chairman.

The CHAIRMAN. First of all, Judge, would you like to break for a moment?

Judge THOMAS. Yes, my back is giving me some problems.

The CHAIRMAN. I am sorry I have been out of the room for a few moments. The Senator from Ohio is asking unanimous consent to speak for two minutes. Is there an objection to that?

Senator THURMOND. I have no objection.

Senator HATCH. I have no objection.

Senator METZENBAUM. Mr. Chairman, I thank you and I thank my colleagues on the other side. There has been continued discussion and suggestions with respect to the matter of how this matter was leaked to the press. One Senator actually made a public statement that was carried in the New York Times indicating that this Senator or my staff had been responsible for the leak.

I went to the floor of the Senate and demanded an apology from that Senator and said I had not leaked it, neither had my staff. I am pleased to say that he acknowledged that and indicated a correction. But I want to make it clear today to you, Judge Thomas, and to any of the rest of the world that neither this Senator nor any of my staff have been the source of any leaks to the press on this subject.

Thank you.

The CHAIRMAN. Judge, 15, 10, 20? How much time do you want. You are the guy under the gun, how much time do you want?

Judge THOMAS. Ten is fine.

The CHAIRMAN. We will recess for 10 minutes.

Senator KENNEDY. Mr. Chairman, if I could just ask the Judge, I was not aware that the Senator from Ohio was going to make the comment, but I, too, want to indicate here, before this committee and in this forum that neither I nor my staff were involved in any of these leaks. I regret that we all have to get into a situation where we have to deny these matters, but I want to give that assurance in this forum, in this committee to the Judge.

Senator HATCH. Mr. Chairman, I would like to speak on behalf of all of the Republicans, none of us did it, I will guarantee you that.

Judge THOMAS. Somebody did it, Senator.

Senator LEAHY. Well, obviously nobody did it.

The CHAIRMAN. The chair will recess for 10 minutes.

[Recess.]

Judge THOMAS. Senator, I would like to correct something. I was just informed by someone who is more informed than I was about my staff at Education. Again, this has been quite some time. I had two attorney advisors and I think two or three Schedule C appointees who also reported to me.

The CHAIRMAN. I am sorry, I could not hear the last part, Judge.

Judge THOMAS. Senator, I indicated that I only had two professional staffers.

The CHAIRMAN. Correct.

Judge THOMAS. It appears that I had two attorney advisors, one other than in addition to Anita Hill, as well as a second professional, and then, in addition to those, two political appointees, two or three political appointees on my personal staff, so that is six.

The CHAIRMAN. Judge, I am not sure it is relevant, but can you—

Judge THOMAS. Well, the—

The CHAIRMAN. No, no, I appreciate you correcting it. Do you recall the names of the two attorney advisors?

Judge THOMAS. Well, Anita Hill and Kathleen Flake, I think was the second—

The CHAIRMAN. Kathleen?

Judge THOMAS. Flake.

The CHAIRMAN. F-l-a—

Judge THOMAS [continuing]. k-e, I think.

The CHAIRMAN. You also had two or three political appointees.

Judge THOMAS. Whom I can't remember. That's easy enough to check.

The CHAIRMAN. OK, and then you mentioned one other person, the woman who was in law school at the time?

Judge THOMAS. Right. That's right.

The CHAIRMAN. She was not an attorney advisor, but she was one who was in frequent contact.

Judge THOMAS. Exactly.

The CHAIRMAN. OK. Thank you for correcting the record.

I think we are pretty well ready to wind up here, Judge, but it is now the opportunity of Senator Hatch to question, and he says he would like to have 30 minutes and he is entitled to that.

Senator HATCH. I hope I don't have to take the whole 30 minutes, Judge, but I do want to cover just one or two other points before we are through here today.

Judge Thomas, yesterday, Senator Heflin repeatedly asked you to ascribe some motivation to Professor Hill's allegations, and I think, from the way I look at this record, there are some profound differences in political philosophy between you and her.

I am about to read an excerpt of one of her statements that I think is worth putting in the record:

Hill said that her initial impression of Thomas was very favorable and she respected him for his accomplishments and concern for others. She said that she also came from a poor family, so she related closely to his circumstances. She said that when she started working for Thomas, he supported quotas for minorities in employment and Federal sanctions against employers who did not comply with the quotas, and then went on.

That is the relevant part.

Later, Hill said that she has also seen Thomas change his political philosophy since 1981 to the present, from supporting quotas for minorities in employment with sanctions for non-compliance to no quotas. She is concerned that these may be changed for personal political expediency and may not represent his true philosophy. If that is the case, he may no longer be open-minded, which is essential for an Associate Justice of the United States Supreme Court.

The CHAIRMAN. Senator, what are you reading from?

Senator HATCH. I am reading from her statements made to the FBI agents.

The CHAIRMAN. So, you are reading from the FBI report?

Senator HATCH. That's right.

The CHAIRMAN. Senator, we agreed that we would not violate the committee rules and read from the FBI report. You and I agreed with the remainder of the committee in the room across the hall 2 hours ago. It is incredible to me that you would walk in here and read from an FBI report, when we all know it is against the committee rules to read from FBI reports.

Senator HATCH. Now we are concerned with FBI reports. I didn't agree to that. If you will recall, I stepped out to use the men's room. [Laughter.]

Which I do with regularity at my age, I have to say. But to make a long story short, how does that hurt anything?

The CHAIRMAN. Senator, let me tell you how it hurts. It is beyond the issue related to here. I may be mistaken, but I thought you were one who said in the other room that having dealt with these reports as much as any of us have, that they are full of nothing but hearsay on most occasions. The reason why I have worked so hard to keep FBI reports totally secret is because they have little or no probative weight, because they are hearsay. The FBI does their interviews by walking up to person A and saying will

you speak to us, and the guarantee is anonymity. That is what the FBI tells the person, and the FBI speaks to the person.

Now, for us to summarily go back and say, as a matter of policy, that we are going to break the commitment the Federal Government makes to an individual, in order to get that individual to cooperate in an investigation, is disastrous.

Senator HATCH. That is exactly my point, Senator. You just made the best argument in the world against why this is the most unfair process for Judge Thomas we have ever had. But if you listened in that meeting, I said yes, in the future, let's abide by that rule, there is a very good reason for it, but we have to be able to use it here, because there has to be some evidence of motivation, and I told you at the beginning of this hearing I was going to use it, because there are inconsistencies with Professor Hill's testimony and statements.

Now, let's be fair. I mean these are not hearsay statements. These are statements made by her. Let me back it up further with a statement she made to the press, because it says the same thing, basically.

The CHAIRMAN. Precisely. Why don't you ask from that? Ask him the FBI report, without—

Senator HATCH. Senator, listen, I refuse to accept a process where someone on this committee releases her statement and materials from the FBI report for all the world to see and the newspapers to print and the media to show, that are tremendously damaging to the Judge, because they have been brought up in open forum that had to occur, because somebody in a sleazy way broke the rules.

The CHAIRMAN. Senator—

Senator HATCH. Now, wait, let me just finish.

The CHAIRMAN. I'm going to let you finish and then I'm going to cut you off real quick.

Senator HATCH. Well, if you think you're going to cut me off, I think you're wrong. I'm going to listen to you and I'm going to pay attention to you, Mr. Chairman, but let me just finish. This is all I'm going to say about it and I won't read any more from that particular report, but I am going to read from the newspaper.

Let me tell you something, this never had to occur, if whoever did this was honest. They could have brought this up before the vote, we could have decided this matter, we could have determined to have an executive session here, and you know that and you would have done it. I don't find any fault with you and I don't find fault with you feeling this way now, but I felt this way from the beginning and I know you did.

But those are fair comments. These matters have been leaked. I don't know that people out there don't have every aspect of the report, and I think some of them probably do and others, and to prevent me from bringing this up, when it is an important point at the last minute of this I think would be a travesty, under the circumstances. I have never, never leaked an FBI report.

The CHAIRMAN. You just did, Senator.

Senator HATCH. Oh, no, I didn't. Oh, no, I didn't. I used an FBI report under very fair circumstances, and they couldn't be more fair. Like I say, this is no longer, this is not some insignificant ap-

pointment. This is one of the most important appointments in our country.

The CHAIRMAN. Are you finished, Senator?

Senator HATCH. This is not the Soviet Union. This is the United States of America. And let me tell you, let me tell you something—well, I didn't mean it quite that way—[Laughter.]

Let me go on. I won't—

The CHAIRMAN. Senator—

Senator HATCH. Go ahead, I will listen to you, but if I can, I would like to go ahead.

The CHAIRMAN. No one has worked harder or has been more diligent in the 19 years I have been in the Senate about keeping confidential anything that was sent to me as confidential. No one on this committee has been more damaged by the leak by an unethical person than me. I fully understand.

Senator HATCH. I agree.

The CHAIRMAN. Now to turn around and decide that because somebody was unethical about releasing not an FBI report, not an affidavit, but a memorandum from a woman who asked that it be confidential is justification for discussing, from that point on, anything that appears in an FBI report, including the FBI report matters that had to do with Mr. Thomas or any of the witnesses who were spoken to, is totally inappropriate. I sincerely hope we won't go through this again.

Senator DeConcini.

Senator HATCH. I did not have my time.

Senator DeConcini. Mr. Chairman?

The CHAIRMAN. The Senator from Arizona.

Senator DeConcini. Mr. Chairman, let me say a word, because I agree with what you just said.

Senator HATCH. I do, too.

Senator DeConcini. I also agree that this is most unfair, and I think the Senator from Utah has pointed that out, I think a number of us have pointed that out, even members who have already taken a position in opposition to Judge Thomas, that this thing is unfair because of the unauthorized leak.

But I do not believe that old saying "two wrongs make a right", and to do it again I think is improper, and the only thing that I differ with you, Mr. Chairman, in your statement is that no one has been hurt more than you, an unauthorized leak, because that—

The CHAIRMAN. No, no, I mean on this matter in this committee.

Senator DeConcini. No, I understand. I just take exception to that personally, and I can—

The CHAIRMAN. Whether or not—

Senator Simpson. Mr. Chairman?

The CHAIRMAN. It is irrelevant, whether I was hurt the most. Let me just make this point. If we began to read from FBI reports, the ability of the FBI to conduct further investigations with witnesses will come to a screeching halt.

Senator DeConcini. I agree.

Senator HATCH. Mr. Chairman, let me just—

Senator Simpson. May I?

Senator HATCH. Surely.

Senator SIMPSON. Mr. Chairman, may I just say—

The CHAIRMAN. Yes, please.

Senator SIMPSON [continuing]. I think we have done that already. To say that we haven't done that here, I think more than several of us, particularly with Ms. Hill, have referred continually—the record is full of references—to her FBI report; as comparing it with her second version with more explicit sexual material, and to her third version with ever more vivid sexual material. We have used that several times by various members of this committee.

Senator HATCH. Yes.

The CHAIRMAN. If the Senator from Wyoming would yield to—

Senator SIMPSON. I am ready to do what you suggest. I would concur with what you are doing and I support that, but it is a difficult thing. We have injected this entire record with quotes from FBI reports, not the report, but a paragraph, a sentence. I have heard it now for three—

Senator HATCH. Everybody has. Everybody has. Now, if I could—

The CHAIRMAN. I yield now to the Senator from South Carolina.

Senator THURMOND. Mr. Chairman, how would it do to just eliminate the words "FBI" from the report and let him go ahead? [Laughter.]

Senator HATCH. Let me say this: Mr. Chairman, I said at the beginning, when I raised my voice at the beginning of these hearings, that now that the FBI report has been leaked, it is not fair for the media to have it and not the general public.

On the other hand, I agree with your statement, it should never have been leaked—

The CHAIRMAN. Senator, do you have evidence that the press has the FBI report? You keep saying that. Do you have evidence that the press or anybody has the report? Is there any place it has been printed, is there any place it has been quoted from?

Senator HATCH. Senator, why don't you let me finish my statement? I will—you just let me do that—I respect you as chairman, I have stood up for you as chairman, I have said this hasn't been your fault, it hasn't been your doing, and I believe it, and I believe what you are saying is true now, and I hope in the future nobody will leak any of these reports or use them in any untoward manner.

Senator THURMOND. Just check the newspaper, it is in there, the same thing. Go ahead with that.

Senator HATCH. Let me just say what I intended to say. That is what I intend to do from here on in.

I will tell you, to sit here and say that something that is relevant, when I told you I was going to do what I wanted to do at the beginning, because of the unfairness of it, because I want the Judge to have a square shake, and I made it clear, I didn't mince any words, I said that's going to happen and nobody really disagreed with me at that time—

The CHAIRMAN. Senator—

Senator HATCH. [continuing]. And I apologize, if you think I had agreed in that room, but I made it clear to you that, in this context, with the unfairness that has gone on, that I thought that it could be used. Now, I won't use it from here on out.

Senator THURMOND. Mr. Chairman, aren't we wasting time?

The CHAIRMAN. We are now, Mr. Chairman. Let's move ahead.

Senator THURMOND. Let's move ahead.

Senator HATCH. Well, you people think you are wasting time, but I don't. I think he has been getting—

Senator THURMOND. Use the newspaper, it's the same thing.

Senator HATCH. I will use what I will.

Senator THURMOND. Well, use the newspaper and you will be—

Senator KENNEDY. Can you get them to stop fighting over there? [Laughter.]

The CHAIRMAN. Will the Senator proceed, and proceed under the rules, please.

Senator HATCH. I always follow Senator Kennedy's advice.

So, I will use the newspaper: "Anita Hill, a former special assistant to"—I think this is in the Washington Post, dated Monday, September 9, 1991, just shortly after she was contacted—

Anita Hill, a former special assistant to Thomas at the Education Department and the EEOC, was particularly disturbed by Thomas' repeated public criticism of his sister and her children for living on welfare. It takes a lot of attachment to publicize a person's experience in that way and a certain kind of self-centeredness not to recognize some of the programs that benefited you, said Hill, now an Oklahoma law professor. I think he doesn't understand people, he doesn't relate to people who don't make it on their own.

Then it says in this article, "If liberals consider him a traitor, conservatives within the administration suspect that he was a closet liberal, Thomas said in a 1987 speech."

Now, the reason I brought that up, Judge, is because, basically, what Hill said in that article and what I have brought up was that she thought you had changed your political philosophy and that had been for quotas and now you are against them.

Now, my question is, just the day before the committee hearings began she was one of your opponents, and that was before any of the charges were aired. Now, is political philosophy part of this problem?

Judge THOMAS. Senator, as I have indicated about other motives, I have no reason to believe that it is not a basis for what has happened to me. It is obvious—there is another comment, though, that I would like to make, and that is that there is no record, to my knowledge, and I have no recollection of ever making a statement about my sister in any speeches. That was in one news article on December 16, 1981.

The references with respect to changing my position on quotas, my position on quotas has been pretty much the same, from a policy standpoint, since the mid-1970's.

Senator HATCH. And what is that—well, I can let that go. Judge Thomas, I take it that she disagrees with you on your stand on quotas?

Judge THOMAS. She disagreed with me when she was on my personal staff on that issue, Senator.

Senator HATCH. Was that a matter of some contention between you?

Judge THOMAS. I think in the instances she would get a bit irate on that particular issue, as I remember it.

Senator HATCH. Because she took the opposite position?

Judge THOMAS. That's right.

Senator HATCH. She was for quotas?

Judge THOMAS. I think she was adamant about that position.

Senator HATCH. OK. Well, I think that—

Judge THOMAS. That is my recollection, Senator.

Senator HATCH. Well, I think that needed to be brought up.

Judge, when the President asked you at Kennebunkport whether you and your family could take what would follow in the process, did you have any idea what you were going to have to "take"? Could you have guessed that some people, including people on this committee, people in the media and others would dredge up stories about drug use, wife-beating, advocating Louis Farahkan's anti-semitism, lying about your neutrality in *Roe v. Wade*, sexual harassment, maybe even implications of other things? Did you think you would have to face scurrilous accusations like those, which you have refuted?

Judge THOMAS. Senator, I expected it to be bad and I expected awful treatment throughout the process, I expected to be a sitting duck for the interest groups, I expected them to attempt to kill me, and, yes, I even expected personally attempts on my life. That is just how much I expected.

I did not expect this circus. I did not expect this charge against my name. I expected people to do anything, but not this. And if by going through this, another nominee in the future or another American won't have to go through it, then so be it, but I did not expect this treatment and I did not expect to lose my name, my reputation, my integrity to do public service. Again, I did not ask to be nominated, I did not lobby for it, I did not beg for it, I did not aspire to it.

I was perfectly happy on the U.S. Court of Appeals for the D.C. Circuit, which is a lifetime appointment. I did not expect to lose my life in the process.

Senator HATCH. A Washington Post article just today said that you said—and I recall you saying—you told of reporters sneaking into my garage, interest group lobbyists swarming over divorce papers looking for dirt. I remember you said this is not the American dream, this is Kafka-esque, it has got to stop, enough is enough.

The Post article goes on to say some activists were unmoved by Thomas' emotional plea, dismissing it as a last-ditch effort to salvage his nomination. "The major groups don't have anything to apologize for," said one of the civil rights activists. He went on to say, "The battle has been fought on policy and philosophy," although he acknowledged "it has taken a distressing turn."

The article goes on to say,

That turn illustrates the increasingly symbiotic relationship between committee staffers, liberal interest groups and the news media. It is a phenomena that accelerated with the Reagan administration's attempts to insure conservative domination of the judiciary in the 1980's. Many thought it reached its ultimate expression in the battle over the nomination of Robert H. Bork to the Supreme Court in 1987. But within days after President Bush announced Thomas' nomination, liberal activist groups began the search for ammunition they hoped could defeat him. An informal coalition that included Cropp.

I suppose he is with people for the American Way.

Kate Michelman of the National Abortion Rights Action League, Nan Aaron of the Alliance for Justice, and others began holding almost daily strategy sessions, at first restricting their probes to exposing what they viewed as his track record as a rigid Reagan administration ideologue. Cropp said that his organization, which had played a pivotal role in the Bork fight.

I might add that they put ads in the paper and I accused them of 99, as I recall, errors in the ad, and they never answered the accusations, they could not, really.

Cropp said that his organization, which had played a pivotal role in the Bork fight, assigned four full-time staffers, several interns and four other field organizers to anti-Thomas activities. The group also filed Freedom of Information requests for copies and videotapes of all his public speeches and videotapes while he headed the Equal Employment Opportunity Commission and the Office of Civil Rights in the Department of Education.

Naturally, they can do that if they want to, but these are only a few groups that are mentioned, and there are literally hundreds, if not thousands of groups in this area, and the groups, many feel, have taken over the process.

And in the process the ideology becomes more important than truth, it becomes more important than integrity, it becomes more important than ethics, it becomes more important than preserving people's reputations, it becomes more important than simple, basic decency to human beings.

I think it was said best, again I cite Juan Williams' statement, he said:

This desperate search for ammunition to shoot down Thomas has turned the 102 days since President Bush nominated him for a seat on the Supreme Court into a liberal's nightmare.

Now, this is a journalist who is not particularly conservative, but nevertheless a great journalist.

"Here is indiscriminate"—didn't quite mean it the way that some have taken it, he is a great journalist and I mean that. I don't know how people take that implication but I mean that.

Senator THURMOND. Tell them the name.

Senator HATCH. Juan Williams. "Here is indiscriminate"—he is describing, he is describing this desperate search for ammunition.

Here is indiscriminate mean-spirited mud slinging supported by the so-called champions of fairness. Liberal politicians, unions, civil rights groups, and women's organizations, they have been mindlessly led into mob action against one man by the Leadership Conference on Civil Rights. Moderate and liberal Senators operating in the proud tradition of men, such as Hubert Humphrey and Robert Kennedy, have allowed themselves to become sponsors of smear tactics that have historically been associated with the gutter politics of a Lee Atwater or crazed right-wing self-promoters like Senator Joseph McCarthy. During the hearings on his nomination, Thomas was subjected to a glaring double-standard.

Now, for those of you who laugh, why is it that Juan Williams is one of the few who has pointed out this glaring double-standard. Laugh at that, laugh at that. That's what I am talking about here. I am not talking about liberal and conservative politics. I am talking about decency. I am talking about our country, America.

Thomas was subjected to a glaring double-standard. I have never seen it worse, never. When he did not answer questions that former nominees David Souter and Anthony Kennedy did not answer he was pilloried for his evasiveness. One opponent testified that her basis for opposing him was his lack of judicial experience.

She did not know that Supreme Court Justices, such as liberal icons Earl Warren, and Felix Frankfurter, as well as current Chief Justice William Rehnquist had no judicial experience before taking a seat on the high court.

There is a lot more that could be said. But he says a very interesting paragraph and I think it does sum it up, he said:

This slimy exercise orchestrated in the form of leaks of an affidavit to the Leadership Conference on Civil Rights is an abuse of the Senate confirmation process, an abuse of Senate rules, and an unforgivable abuse of a human being named Clarence Thomas.

Laugh at that. Everybody here knows what I am talking about, everybody here. People have tried to make this, have tried to make sexual harassment the only issue here. Now, sexual harassment is ugly, it is unforgivable. It is wrong. It is extremely destructive, especially to women, but to men, too. Sexual harassment should not be allowed.

I would like you to describe now, for this gathering, what it is like to be accused of sexual harassment. Tell us what it feels like. And let me add the word, unjustly accused of sexual harassment.

Judge THOMAS. Senator, as I have said throughout these hearings, the last 2½ weeks have been a living hell. I think I have died a thousand deaths. What it means is living on one hour a night's sleep. It means losing 15 pounds in 2 weeks. It means being unable to eat, unable to drink, unable to think about anything but this and wondering why and how? It means wanting to give up. It means losing the belief in our system, and in this system, and in this process. Losing a belief in a sense of fairness and honesty and decency. That is what it has meant to me.

When I appeared before this committee for my real confirmation hearing, it was hard. I would have preferred it to be better. I would have preferred for more members to vote for me. But I had a faith that, at least this system was working in some fashion, though imperfectly.

I don't think this is right. I think it's wrong. I think it's wrong for the country. I think it's hurt me and I think it's hurt the country. I have never been accused of sex harassment. And anybody who knows me knows I am adamantly opposed to that, adamant, and yet, I sit here accused. I will never be able to get my name back, I know it.

The day I get to receive a phone call on Saturday night, last Saturday night, about 7:30 and told that this was going to be in the press, I died. The person you knew, whether you voted for me or against me, died.

In my view, that is an injustice.

Senator HATCH. Now, Judge—

Judge THOMAS. As I indicated earlier, it is an injustice to me, but it is a bigger injustice to this country. I don't think any American, whether that person is homeless, whether that person earns a minimum wage or is unemployed, whether that person runs a corporation or small business, black, white, male, female should have to go through this for any reason.

The person who appeared here for the real confirmation hearings believed that it was okay to be nominated to the Supreme Court and have a tough confirmation hearing. This person, if asked by

George Bush today, would he want to be nominated would refuse flatly, and would advise any friend of his to refuse, it is just not worth it.

Senator HATCH. Judge, you are here though. Some people have been spreading the rumor that perhaps you are going to withdraw. What is Clarence Thomas going to do? What is Clarence Thomas going to do?

Judge THOMAS. I would rather die than withdraw. If they are going to kill me, they are going to kill me.

Senator HATCH. So, you would still like to serve on the Supreme Court?

Judge THOMAS. I would rather die than withdraw from the process. Not for the purpose of serving on the Supreme Court but for the purpose of not being driven out of this process. I will not be scared. I don't like bullies. I have never run from bullies. I never cry uncle and I am not going to cry uncle today whether I want to be on the Supreme Court or not.

Senator HATCH. Well, Judge, I hope next Tuesday you make it and I believe you will, and I believe you should. And I believe it is important for every American that you do.

Because I think in your short 43 years of life that you have just about seen it all and if anybody's in a position to help their fellow men and women under the Constitution, then I have to say you are. And I am proud of you. I am proud of you for not backing down.

That's all I have, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, we are down to Senators having 5 minutes and I will begin to yield back and forth. Judge, let me make sure I understand one thing. Do you believe that interest groups went out and got Professor Hill to make up a story or do you believe Professor Hill had a story, untrue from your perspective that groups went out and found. Which do you believe?

Judge THOMAS. Senator, I believe that someone, some interest group, I don't care who it is, in combination came up with this story and used this process to destroy me.

The CHAIRMAN. A group got Professor Hill to say or make up a story?

Judge THOMAS. I believe that in combination this story was developed or concocted to destroy me.

The CHAIRMAN. With Professor Hill? I mean it is a critical question. Are you saying a group concocted a story with Professor Hill and then went out—

Judge THOMAS. That's just my view, Senator.

The CHAIRMAN. I know, I am trying to make sure I understand it.

Judge THOMAS. There are no details to it or anything else. The story developed. I do not believe—the story is not true. The allegations are false and my view is that others put it together and developed this.

The CHAIRMAN. And put it in Professor Hill's mouth?

Judge THOMAS. I don't know. I don't know how it got there. All I know is the story is here and I think it was concocted.

The CHAIRMAN. Well, Judge, I know you believe that and I am not going to be able to or attempt to, at this moment, refute that. There has been an assertion that has just been made and I want to know whether you would agree with it. It is important for us to keep our eye on the ball here. There are two versions of this story. Either Professor Hill had a story that she told someone and it was taken advantage of by being leaked, or a group sat down, decided to make up a story and found a willing vessel willing to speak out in Professor Hill.

Professor Hill suggests the first version. I want to know what you believe.

Now, they are fundamentally different things in terms of culpability.

Judge THOMAS. Senator, those distinctions are irrelevant to me. The story is false. And the story is here and the story was developed to harm me.

The CHAIRMAN. Thank you.

Judge THOMAS. And it did harm me.

The CHAIRMAN. Let me go down the line here. Senator Kennedy?

Senator KENNEDY. No, Judge, we just thank you for coming under extraordinary difficult circumstances.

The CHAIRMAN. Senator Thurmond?

Senator THURMOND. I believe he is coming back to answer any other charges and I will wait until then.

The CHAIRMAN. Senator Metzenbaum?

Senator METZENBAUM. I have no comment.

The CHAIRMAN. Senator Simpson.

Senator SIMPSON. Well, it has been a powerful presentation by a powerful person. And I have known you for several years and I have known Ginny before I knew you. I think it is very well that you were not here to hear the testimony of Ms. Hill. That was a good step, whosever idea that was that you did not, of course, you were not here, but you didn't watch it. It would have driven you—

Judge THOMAS. Thank you.

Senator SIMPSON [continuing]. In a way I do not think would have been appropriate. And here we are. You have been before us for 105 days. We have seen everything, known everything, heard every bit of dirt, as you call it so well. And what do we know about Professor Hill? Not very much. I am waiting for 105 days of surveillance of Ms. Hill and then we will see, you know, who ate the cabbage, as we say out in the Wild West. This is an impossible thing.

And now, I really am getting stuff over the transom about Professor Hill. I have got letters hanging out of my pockets. I have got faxes. I have got statements from her former law professors, statements from people that know her, statements from Tulsa, OK, saying, watch out for this woman. But nobody has the guts to say that because it gets all tangled up in this sexual harassment crap.

I believe sexual harassment is a terrible thing. I had a bill in a year ago, doubling the penalties on sexual harassment. I don't need any test. I don't need anybody to give me the saliva test on whether one believes more or less about sexual harassment. It is repug-

nant, it is disgusting in any form. And the stuff we listened to, I mean, you know, come on—from the moon.

And it is a sexual stereotype. Just like asking you sexual stereotype questions about your personal life, any woman would be offended by that—about your divorce, you did this, you did that. Talk about in reverse. There is not a woman alive who would take the questions you have had to take, would be just repelled by it. That's where the watershed is here.

It is a good thing that this awareness goes up. It is a terrible, tragic, thing that it should bruise you. And if we really are going to do it right, we are all mumbling about how do you find the truth? I will tell you how you find the truth, you get into an adversarial courtroom and everybody raises their hand once more and you go at it with the rules of evidence and you really punch around in it. And we can't do that. It is impossible for us to do that in this place.

The Chairman knows it and he has been exceedingly fair. And so here we are and we will not get to the truth in this process. But there is truth out there and that is in the judicial system. Thank God that there is such a system. It has saved many, many a disillusioned person who was, you know, headed for the Stygian pits.

So, if we had 104 days to go into Ms. Hill and find out about her character, her background, her proclivities, and all the rest I would feel a lot better about this system. And I am talking about the stuff I am getting from women in America who are sending me things and especially women in Oklahoma. That will all become public. I said, at the time it would be destructive of her and some said, well, isn't that terrible of Simpson, a menacing threat. It was not menacing. It is true.

That she would come forward and she would be destroyed. She will, just as you have been destroyed. I hope you can both be rehabilitated. I have a couple of questions, if I may, Mr. Chairman.

The CHAIRMAN. Yes.

Senator SIMPSON. I have not taken time and I will get to that. Angela Wright will soon be with us, we think, but now we are told that Angela Wright has what we used to call in the legal trade, cold feet. Now, if Angela Wright doesn't show up to tell her tale of your horrors, what are we to determine about Angela Wright?

Did you fire her and if you did, what for?

Judge THOMAS. I indicated, Senator, I summarily dismissed her, and this is my recollection. She was hired to reinvigorate the public affairs operation at EEOC. I felt her performance was ineffective, and the office was ineffective. And the straw that broke the camel's back was a report to me from one of the members of my staff that she referred to another male member of my staff as a faggot.

Senator SIMPSON. As a faggot?

Judge THOMAS. And that is inappropriate conduct, and that is a slur, and I was not going to have it.

Senator SIMPSON. And so you just summarily discharged her?

Judge THOMAS. That is right.

Senator SIMPSON. That was enough for you?

Judge THOMAS. That was more than enough for me. That is my recollection.

Senator SIMPSON. That is kind of the way you are, isn't it?

Judge THOMAS. That is the way I am with conduct like that, whether it is sex harassment or slurs or anything else. I don't play games.

Senator SIMPSON. And so that was the end of Ms. Wright, who is now going to come and tell us perhaps about more parts of the anatomy. I am sure of that. And a totally discredited and, we had just as well get to the nub of things here, a totally discredited witness who does have cold feet.

Well, Mr. Chairman, you know all of us have been through this stuff in life, but never to this degree. I have done my old stuff about my past, and shared those old saws.

But I will tell you, I do love Shakespeare, and Shakespeare would love this. This is all Shakespeare. This is about love and hate, and cheating and distrust, and kindness and disgust, and avarice and jealousy and envy, all those things that make that remarkable bard read today.

But boy, I will tell you, one came to my head, and I just went and got it out of the back of the book. Othello, read Othello, and don't ever forget this line: "Good name in man and woman, dear my Lord"—do you remember this scene?

* * * is the immediate jewel of their souls. Who steals my purse, steals trash. 'Tis something, nothing. 'Twas mine, 'tis his, and has been slave to thousands. But he that filches from me my good name, robs me of that which not enriches him, and makes me poor indeed.

What a tragedy. What a disgusting tragedy.

The CHAIRMAN. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, I have some questions, and it may take more than 5 minutes. I hope I could just follow them up and get this over with, rather than waiting around.

Judge I have great empathy with what you have been through. I happen to have a little experience, going through an awful process. I think this is atrocious. I went through an atrocious process that I thought I would never get over, but I did. Just like you, I had a strong family, I believed in myself, and I did not do the things I was accused of, so I have a kind of a feeling of what you have gone through. Mine was not a sexual harassment charge, but I felt just about as bad as you did. I thought I was going to die. Thanks to my wife and family and some good friends, that didn't happen.

And when the leaks came toward this Senator, I must say there wasn't a howl except from the Chairman of the Ethics Committee, who stood up on the floor of the Senate, and the Majority Leader, and very few other people stood up on the floor of the Senate, as they did when the leaks came about you. So if nothing else, at least for this Senator, somebody gives a damn about leaks and breaking the rules, and maybe we will finally put an end to leaks, which I think caused you to go through what you have had to go through.

Now, Judge Thomas, I think the question that Chairman Biden asked you, and you answered it in such a manner that it really is irrelevant, was how all this happened. The fact is that it happened, no matter whether Ms. Hill plotted it, whether she was paid to do it, whether her conscience drove her to do it. The fact is that it has, in your judgment, ruined your name, and that you died two weeks ago.

Is that fair, to restate your position?

Judge THOMAS. It is fair.

Senator DECONCINI. Now, Judge, based on that—and I think that the circumstances that give rise to these allegations against you are—I can't believe I am here myself. I can't believe that this process is taking place, to a U.S. Appellate Court Judge who has been confirmed three times by this body, a life appointment, I can't believe you are even here and I am even here. I am ashamed to be part of this process.

But nevertheless, that is my job, and I am here because the Senate said, "Go back and do it again." We did it. We did it right, I believe. I think the chairman protected Ms. Hill, as she wanted to be protected, and he did it with the spirit of protecting her rights. And now, I won't go into the press any more, I have beat up on them enough I guess, but we are here because it was leaked and the press released it.

I don't think Professor Hill will ever fully recover from what she has gone through, regardless of what happens to you, and I don't know whether you will. And my question to you is, do you think you can recover from dying a thousand deaths, having your name and your reputation ripped from you through this process? Can you recover as an individual and serve on the Supreme Court?

Judge THOMAS. Senator, there is also a positive side of this.

Senator DECONCINI. Tell me what it is, except raising the awareness of sex harassment, and I don't say that is minimal, but I think that awareness is out there and has been out there for a long time, if I may say myself, and I didn't need this experience to raise it for me, but please don't let me interrupt what you say is the positive side. Believe me, I am looking for one; I am praying for one.

Judge THOMAS. During this process, the last 105 days, and the last 2½ weeks especially, I have never had such an outpouring of love and affection and friendship in people who know me, not people making these scurrilous assertions but people who know me, supporting me and caring for me, helping me to recover from it and survive it—my wife; my son, whose reaction is just to be terribly angry.

I think it showed me just how vulnerable I am as a human being, and any American, that these kinds of charges can be given validity in a process such as this, and the destruction it can do. It has given me that sense.

I think it has also shown people in our country what is happening. I didn't want them to see what happened to me. I didn't want my personal life or allegations about my sexual habits or anything else broadcast in every living room in the United States. But they see this process for what it is, and I think that is good, and hopefully it never happens to another American.

Yes, I can heal. As I said in my opening remarks, I will simply walk down the Hill, if I am not confirmed, that will be it, and continue my job as Court of Appeals Judge, and hopefully live a long life, enjoy my neighbors and my friends, my son, cut my grass, go to McDonald's, and drive my car, and just be a good citizen and a good judge and a good father and a good husband. Yes, I will survive. My question was, will the country survive, and hopefully it will.

Senator DECONCINI. And if you are confirmed?

Judge THOMAS. I will survive, a different person. I would have hoped, Senator, when I was nominated, that it would have been an occasion for joy. There has never been a single day of joy in this process. There has never been one minute of joy in having been nominated to the Supreme Court of the United States of America.

Senator DECONCINI. Judge Thomas, you said—correct me if I am wrong—after 10 days or whatever it was, 90 witnesses and your 5 days, I thought you were not just being gracious but being sincere, where you thanked the chairman and this committee and, as you said today, you would have liked to receive more votes here but you didn't, and that was the process. As I remember your words, you said, "I think I have been treated fairly, and I have no quarrel or no ill feelings." Am I restating that correctly, how you felt after your formal hearing?

Judge THOMAS. That is right, Senator.

Senator DECONCINI. And I can understand that you don't feel that way today, and my question continues to go to the sense of you being confirmed. What does it do to somebody? Does it affect their ability to approach cases, as you indicated, and satisfactorily so to this Senator, approach cases as a Supreme Court Judge? Can you be reborn in the sense of the loss that you have had to suffer here in the last 2 weeks? And how do you cope with it, if you care to say? And if you don't, I will understand.

Judge THOMAS. Senator, there is one thing that I have learned over my life, and that is that I will be back.

The other thing that I have learned in this process are things that we discussed in the real confirmation hearing, and that is our rights being protected, what rights we have as citizens of this country, what constitutional rights, what is our relationship with our Government. And as I sit here on matters such as privacy, matters such as procedures for charges against individuals in a criminal context or a civil context, this has heightened my awareness of the importance of those protections, the importance of something that we discussed in theory—privacy, due process, equal protection, fairness.

Senator DECONCINI. Judge, is it safe to say that—what a way to have to come to it, and this Senator was satisfied you didn't have to come to it, that you met the threshold for my vote—what you are now saying to us is that through this God-awful experience you will be more sensitive towards the rights of the accused, and that is because your rights have been violated. Is that correct?

Judge THOMAS. I have been an accused.

Senator DECONCINI. And your rights—

Judge THOMAS. Were violated, as far as—

Senator DECONCINI [continuing]. Were violated?

Judge THOMAS. I think strongly so.

Senator DECONCINI. Thank you, Judge Thomas.

Thank you, Mr. Chairman.

The CHAIRMAN. The Senator from South Carolina.

Senator THURMOND. Mr. Chairman, it has been mentioned here about he has been confirmed three times. My recollection is four times, as the assistant in the Civil Rights Division, and twice in EEOC, wasn't it?

Judge THOMAS. That is right, Senator.

Senator THURMOND. And then in the civil court. Four times.

Judge THOMAS. That is right.

Senator THURMOND. So this will be the fifth time.

Judge THOMAS. That is right, Senator.

Senator THURMOND. I just want to make the record straight.

Judge THOMAS. Thank you, Senator Thurmond.

Senator GRASSLEY. Judge Thomas, the thing that keeps going through my mind is, all 14 of us sit here, while you are being questioned all the time. I am reminded of the verse that says, "He who is without sin, let him be the first to cast the stone." I know you have gone through a lot of things. I have sinned; I can't cast that stone. And there isn't anybody perfect on this side, either. As you stare at us, I keep hoping you know that at least half of the members of this committee voted for you, and that not everybody on this side of the aisle is your enemy.

I heard something on one of the commentaries on television, more than once. I want to bring it up for you to give a response to, because I think it has put a very unfair message out there. I don't think it has come from anchor people; I think it has come from people that have appeared to make commentary, other than politicians.

The contrast you and Professor Hill, saying, why would she come forward? She doesn't have anything to gain by coming forward and didn't have to come forward, so she obviously would have to be telling the truth, while in your case it is considered implicit that you are lying because you have everything to lose.

I would like to have you tell the American people your reaction to that comparison.

Judge THOMAS. Senator, I think that people can rationalize just about anything. I have learned through this process that people have fit square pegs into round holes, and they do it very well and have no problem with that inconsistency. I don't know what Anita Hill has to gain; I don't know. I don't know what goes on in her mind. But I have already lost. I have lost my name.

As I said before, I never aspired to the Supreme Court. I am on the Court of Appeals. I love my job. I love what I do every day. I have lost everything in this process. I am here not to be confirmed; I am here to get my name back. All I have to gain from this process is to salvage a little bit of my integrity and a little bit of my name. Nothing more.

Senator GRASSLEY. You haven't mentioned your grandfather at all this particular sitting. I would like to have you tell me what advice you think, he would give to you if he were advising you today.

Judge THOMAS. Well, Senator, in 1983—and this is something that I said during my real confirmation hearings—when I was getting hammered in the public and getting criticized, and I complained to him, he told me to stand up for what I believe in. That is what he would tell me today: not to quit, not to turn tail, not to cry "uncle," and not to give up until I am dead. He had another statement: "Give out but don't give up." That is what he would say to me.

Senator GRASSLEY. Mr. Chairman, I yield. Thank you.

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

Judge Thomas, most of us have made the decision on the basis that you have asked for. There are, I think it is safe to say, a few Members of the Senate who have not made the decision yet, and what is happening here may be the decisive factor. I read in one of the morning newspapers where Senator Brown was quoted as saying, "We have two very credible witnesses." I think there are those who, whether they are reporters in this room or people viewing it on television, have come away with a good impression of both of you; but obviously one person is telling the truth and one is not, and it is difficult to determine that.

And you look at factors that weigh on either side that, in a small way, may be measurable. Let me just outline for you some of these factors, and if you would correct me if I am leaving out anything on your side of the fact. First, that she followed you from one job to another. I understand her statement that the harassing ceased and she needed the job, but she did follow.

Second, the phone calls, 11 phone calls in 7 years. Some of them can be explained, maybe all of them can be, I don't know. And some additional contact with you, limited, but some additional contact. While psychiatrists say for those who have sexual abuse, this is not an uncommon occurrence, nevertheless, it seems to me those weigh on your side.

On the other side is, first of all, the much discussed question of motivation. She is clearly a reluctant witness and, as I sense it, her motivation may be public service. It is very difficult. You can stretch, but it is hard to find other motivation.

Second, the detailed facts that she comes up with could be created, but it is difficult to imagine that. I don't happen to be a fan of lie-detectors, but she volunteered to the FBI that she would take a lie-detector test. I don't find generally that people who are not telling the truth volunteer to take lie-detector tests.

Finally, she experienced stomach pains only one time in her life, due to job stress, she says, and her physician at least apparently partially confirms, and that was during this period that she was working for you.

Now, none of these factors alone is enough, and maybe in combination they are not enough. But what would you say to my colleagues in the Senate who are trying to weigh this thing and say what are some more objective criteria that can be used, as you weigh this?

Judge THOMAS. Senator, I don't think there are objective criteria in weighing evidence. That is why you have rules of evidence and procedures in courts of law. This is not a court of law. That is why you have judges and finders of fact. That is why you have a careful review process. That is why you have statutes of limitations. That is why you have cross-examination by experienced trial counsel. That is why you have precedents. That is why you have a judicial system.

Senator SIMON. Let me ask you another question about the process. If you were on this committee and we came up with another similar situation, would we be better off having such a hearing in executive session, without cameras, without reporters, without television sets in executive session?

Judge THOMAS. Senator, I think you should in these instances trust the FBI or experienced investigators. If you don't like their reports, I think you should stop relying on them. I don't think that this body can serve as a judicial system.

Senator SIMON. But we have to make judgments.

Senator THOMAS. I don't think that this body can serve—this is a political body, I don't think it can serve as a judicial system.

Senator SIMON. I guess, again, the FBI does not draw conclusions, as you know, as you have seen FBI reports, and we have to make judgments and I don't think the—I don't know how we are going to improve the process.

Judge THOMAS. I think that this is clearly wrong.

Senator SIMON. I think we are in agreement that the process has to be improved.

Judge THOMAS. No, Senator, in the strongest terms, this process can only go in one direction and that is improvement. This is clearly wrong.

Senator SIMON. I have no further questions, Mr. Chairman.

The CHAIRMAN. The Senator from Colorado, Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Specter has already asked questions. If he has any more, we will go to him later.

Senator BROWN. In trying to review what we have had before us, it strikes me that we have taken on a question that, by any measure, is very difficult. It is not just that we have had two very persuasive people before us, but I have tried to make some notes as to what it is we are looking at. We are looking at a very serious charge. We are looking at a charge about activities, about very repugnant statements of an extreme nature, and the case is one where there are no witnesses.

Normally, when you have a disagreement, you have got some witnesses, but we don't have any witnesses here. There is no documentation here. There is nothing we can check, in terms of the documents, because there are no documents that were made up at the time. There was no notification. Normally, with an event like this occurred, someone would bring a charge and there would be a notice to the person who is accused. There is no notification here.

We are looking at a charge that is 10 years old. It wasn't done yesterday, it wasn't done last week, it wasn't done 6 months ago or 5 years ago, it was done 10 years ago. That is some 20 times beyond the statute of limitations. The statute of limitations, as I understand it, is a number of days, or in some events as long as 6 months. This is 20 times the statute of limitations.

Basically, what we are called upon to prove or you are called upon to prove is a negative. You are called upon to prove that 10 years ago you didn't do something. I am not sure how you do that. I am not sure how you prove a negative.

One thing I guess that does come to mind is that you could call in every woman that has worked closely with you and show this committee whether or not you have exhibits that type of activity with others. That is, it is difficult to prove a negative, but that is one thing to do. As I understand our rules, we have requested that those women be called in, and the committee has not allowed that. I don't fault the chairman with that. I believe the chairman has

tried very hard to be fair. We do have time limitations. Nevertheless, we are faced with trying to prove this question and not be able to listen to them.

Now, I also followed up with a letter to ask that we at least require the FBI to take statements from these women who we don't have time to hear, and that request was turned down by this committee. I think that evidence is important and should be taken, but that evidence was turned down by this committee. I have asked and the chairman has allowed to allow statements, if these women want to make them, to be entered in the record, and I think that will be helpful.

I have also asked that the staffers who there is reason to believe has evidence to offer here be called. In talking with Professor Hill and in listening to her testimony, it became very clear that the reason she came forward with these charges is because these staffers told her there were rumors about sexual harassment and there was an implication that she was involved in those rumors, and part of the reason I believe she came forward was in response to the stories they told her, and to not take that testimony I just think is wrong. We have made that point and that request has been turned down.

The bottom line I think is it is tough to decide this case. I think there are two avenues that we can look at: One, if the event took place, what kind of conduct would it have engendered in her and what kind of conduct would it have engendered in you. I haven't got a complete list, but I think there is a possibility, if the very severe conduct took place, that it could have resulted in a complaint from her. It did not. No complaint was made. Is that determinate? No. There are certain reasons that complaints would not be brought forth, but it is one question to look at.

No notes were made of the incident. There was no effort at the time of the incident to find another job. There was no effort at the time of moving to the EEOC to find another job. Even though she indicated that she didn't want to continue on, she made no effort to check for another job at the Department of Education or in the private sector.

Even after the incident, there was no effort to cut off contacts, either in terms of finding another job or in terms of even, after having left the job, contacts continued. Now, it strikes me that the incident, as vile as it is described, took place, that there may well be a reason to not continue contacts.

There was no mention of these charges when you were up for confirmation in 1982. There was no mention of these charges when you were up for re-confirmation in 1984. No one came forward. There was no mention of these charges when you were up for confirmation for the Circuit Court of Appeals.

There are even some reports that have come of her praise of you after the incidents. Now, none of these by themselves determine the issue, but all of them I think bear on the question of whether or not it happened. Because if it did happen, as vile conduct as is described, it surely must have affected these nine specific examples, and I suspect more.

That brings me to what I hope you will search your mind for: It strikes me, if this incident happened, it would not only affect her

conduct toward you, but it would affect your conduct toward her. What is alleged is that you repeatedly asked her out and she refused. What is alleged is that you uttered very vile words, and she did not react the way you wished her to.

I would like you, if you are willing, to itemize for us decisions you had to make about Professor Hill in terms of job references, in terms of retention for jobs, in terms of pay, in terms of evaluation, in terms of references, and in terms of assistance, what did you do in terms of your conduct after this alleged event took place.

Judge THOMAS. Senator, my treatment of Anita Hill was consistent throughout. As I have indicated, her allegations are false. She repeatedly received promotions, as scheduled, as far as I can remember. In fact, she may have been promoted on an accelerated basis. Her assignments, for her age and experience at that time, I think were fairly aggressive.

I certainly made sure that when she decided to leave, that I assisted her and I have kept contact with her, not on a regular basis, but certainly returned her calls and, whenever she needed help, responded to that. That is during and after. My conduct is consistent with my treatment of all of my special assistants, particularly those who do a good job. There is nothing in my conduct toward her that would indicate any negative events.

Her conduct toward me over the years has been precisely the same, it has always been warm and cordial, professional. This is the first I have heard of any allegations and, certainly, as I have indicated, or two and a half weeks ago, certainly as I indicated, it did not occur. But my conduct toward her is the same as my conduct toward my other special assistants who were successful or who performed well.

I would look for, if these events had happened, some disparity in that, and there is no disparity in that. My relationship with her I think at this time or prior to this event was pretty much the same as my relationship with my other former special assistants.

Senator BROWN. Is there anything you can think of in your conduct that would suggest you retaliated?

Judge THOMAS. Absolutely not, Senator.

Senator BROWN. I yield back. Thank you.

The CHAIRMAN. Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

Judge, all of our hearts and our concerns and our sympathies go out to you and your family, for the travail which you have undergone here, and I think it is important to recognize that it is a collective travail—that extends to institutions of government, the American people and Anita Hill. This has been a very damaging affair and many, many people have gotten hurt. I don't know as there is anybody in our country who has been helped by this unhappy situation.

I would like to offer the observation and get your response to it, that, regardless of all the other reasons that brought us here—including things like leaks which should not have occurred—there is a single most important reason without which we would not be here today, and that is Professor Hill, an African-American, hired by you, trained by you, promoted by you, a person that you have

described repeatedly as smart, tough-minded, resilient, and effective.

That person leveled a charge against you of sex harassment, a charge that you have said is a very, very serious charge and cannot be taken lightly. And Anita Hill and all that she represents in the relationship that you had with her is what brings us here today. Do you have a comment on that, sir?

Judge THOMAS. I don't agree with that, Senator. I have been exposed to this process for 105 days—105. I wasn't nominated last week and confirmation hearings set for this week. I think this is wrong.

Senator KOHL. But at the—

Judge THOMAS. I think this is wrong.

Senator KOHL [continuing]. But at the end of the nomination process, you said—you said to Senator DeConcini and he repeated back to you—you said that you had been treated fairly up to that point.

Judge THOMAS. I was treated fairly, Senator, but this is 105 days. That is a month ago. That is a month ago.

Senator KOHL. That's 30 days ago.

Judge THOMAS. Yes.

Senator KOHL. Right.

Judge THOMAS. This process is wrong, Senator. There is no way, as far as I am concerned, that you can validate it.

Senator KOHL. I don't want to—

Judge THOMAS. The allegations, anyone can make an allegation. I deny those allegations. I have always cooperated with the FBI. Think about who you are talking to. I have been a public figure for 10 years. I have been confirmed four times. I have had five FBI background checks. I have had stories written about me, I have had groups that despise me, looking into my background.

I have had people who wanted to do me great harm. You are talking about a person who ran an agency—two agencies to fight discrimination, who, if I did anything stupid like this, gross like this, had everything to lose, who adamantly preached against it. It just seems as though I am here to prove the negative in a forum without rules and after the fact.

I think that all this has done is give a forum to people who can make terrible charges against individuals who have to come here for confirmation. I think this is all this has done and it has harmed me greatly, Senator.

That is not to say that sex harassment is not serious. My record speaks for itself on that. But there is a forum for that. You have agencies for that. You have courts for that to deal with those. You cannot deal with those in this process in this manner.

What you are doing is you are inviting and validating people making very serious charges against other individuals who do not have the capacity to extricate themselves from it.

Senator KOHL. I think you are absolutely right. I still would like to make the point, if I may, very respectfully, that the charge was brought not by somebody who was a stranger to you but by somebody who was very close to you in a very important job with you, for a very long time.

Judge THOMAS. She was not there a very long time, Senator, and it was in 1983 that she left.

Senator KOHL. OK.

Finally, I would like to say, Judge Thomas, and to all of us who are here today and listening that this is obviously not what America ought to be. And while we want to get to the truth in this particular case, the truth will be well-served if all of us stop and think long and hard about what we are doing to our Nation.

We simply have to restore civility and decency to the public debate.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Kohl.

Senator SPECTER. Mr. Chairman?

The CHAIRMAN. Senator Specter and then to you. I hope the principals will limit their questions to 5 minutes or less. They have had plenty of time to question.

Senator SPECTER. Thank you, Mr. Chairman, just a couple of more questions.

Judge Thomas, the visits which you have testified about to the home of Professor Hill had not been known, at least to me, and my question to you is, how do you square that with your policy of not socializing or not dating anybody in the office? Was there any element of socializing at all in the visits which you have described to Professor Hill's apartment?

Judge THOMAS. Senator, I did not consider it socializing. It was, of course, it would be more the nature of my talking to my clerks or my talking to my special assistants outside of the office. I did not consider it anything other than a professional cordial talk or chat. And, of course, she has indicated, I guess, in some communications with the committee that I went over to help her with a stereo, but I would not have considered it socializing.

Senator SPECTER. Judge Thomas, when I met with you on the morning of September 27, before the Judiciary Committee voted, I had asked you at that time about these charges, having seen the FBI report the night before.

And I was asking you about the question of motivation. You made some comments to me at that time, although they are somewhat sensitive, I think they are worth exploring for just a moment now. That was the comment you made about a possible concern that Professor Hill might have had regarding your dating a woman who was of a lighter complexion. Would you amplify what had happened, respond, and testify as to what had happened in that regard?

Judge THOMAS. Senator, I think it is sensitive, and I think enough sensitive matters have been discussed here. I would reluctantly discuss it but I was merely speculating and groping around for some rationale. And the point I was making to you was that there seemed to be some tension between, as a result of the complexion, the lighter complexion of the woman I dated and the woman whom I chose to be my chief of staff, or my executive assistant and some reaction, as I recall it to my preferring individuals of the lighter complexion.

Senator SPECTER. Did Professor Hill not get a promotion that she was working for within your staff?

Judge THOMAS. Again, I can't remember the exact details of it, but I think she wanted to have that position, the executive assistant position. But that's again, Senator, that is speculation as to what the motivation would be and I hesitate to even mention it here.

Senator SPECTER. Finally, you mentioned that there had not been any detailing given to the comment about an associate of yours who classified Professor Hill as your enemy which you had disregarded because of your overall view of the generalized loyalty of your staff. Can you amplify what happened in that regard?

Judge THOMAS. Well, there were some members of my—at least one member of my staff who felt that she did not have my best interests at heart and he would continue to, as I remember it, articulate that point of view, and I would, again, dismiss it.

Senator SPECTER. Well, did he tell you why he felt that way?

Judge THOMAS. It must have been based on specific things at that time. I don't recollect the bases of his conclusion nor his statements, but he would say it repeatedly when he saw evidence of it.

Senator SPECTER. Thank you, very much, Judge Thomas. I am glad to conclude before the red light went on.

The CHAIRMAN. Thank you, very much.

Senator Heflin.

Senator HEFLIN. Mr. Chairman, I will just take 30 seconds. I want to clarify one thing. One member of my staff thought there might be some misunderstanding about it. I accused no one of rape. And the only reason I was using it as a comparison is because when you have date rape offenses you seldom have any witnesses, any corroborating witnesses. I was using that analogy in this instance because we don't have any witnesses or any corroborating witnesses, that's all.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, I will be brief. We can go around and around and we will be back basically at the same position. Judge, when you and I left off, I think we agreed on the fact that there is irreconcilable conflict in the testimony. I know you feel strongly about which way that should come down.

I am not at all happy with the whole process. This is my third term here and I have sat on four different committees that have had confirmation processes. We have spent more time on this one than any other nomination in nearly 18 years. I can only gather how difficult it has been for you, and your family, your wife, son, others. You are here with a good friend of all of ours, and a tower of integrity in the U.S. Senate, Senator Danforth. I know how difficult it has been for him, I chatted briefly with him this morning.

As a U.S. Senator—I do not like at all the way we have been brought here. The Chairman stated and virtually everybody on the committee has supported the position that he took about how we got here. I was glad to hear the Chairman and the ranking member state that an investigation will be made of where this material came from. I assume that is going to be completed and we will find out.

I especially want to know because I got to see that FBI report about 3 days after it was in the newspapers for the first time. I

would like to read them in a little bit different sequence. But we were sent by the Senate to try and find an answer and this is a very difficult process.

I suspect that everybody watching this is trying to figure out what the answer is, just like we are. Telephone calls, I have just been advised, into my office are absolutely split down the middle. I would hope that nobody would decide this by polls but, that we would do it by our best independent judgment.

And I would hope that we might find a way where we are sure that when we do a confirmation process, we are always dealing with the facts. I don't know the answer to this one. We still have a long time to go. You can think of 100 places you would rather be, I can think of at least 100 places I would rather be—all in my home State.

And we may never come to the final conclusion we want. We may never come to the final conclusion of what has happened here. And you know, if that happens, it is even a greater tragedy than many think.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let me, Judge, say a couple of things and we will let you go.

First of all, this unfortunately is not the first time this committee has been presented with a situation like this. It has been the first time we have been presented one that involved a Supreme Court Justice. We have other people nominated before this Court where there are allegations by former wives of mistreatment and wife beating. There is no appropriate forum to resolve that, as you point out.

Now, we have an option in that particular case to say, well, we will send it to the court first. Before we decide whether to confirm this particular person, have the court decide that issue. Believe me, I would like that. I did not sign onto this job or run for it to be a judge. If I wanted to do that, I would be a judge now in my home State. I don't want to be a judge. I hate this job.

But all my colleagues here were telling everybody how awful the process is. Let me be completely blunt about it. It is like democracy. It is a lousy form of government, except that nobody has figured out another way.

Now, I can turn around and I can say to this particular person whose wife has come forward and said, I have been abused, I can say, I will tell you what, we are going to disregard that and we are going to confirm you anyway. Or I can say I don't believe it and therefore, I am not going to tell these fellows, which I have done on other matters unrelated to wife beating.

There has been more nominees sent up here in the last two administrations that have had drug problems, and I never even told these folks about, because it happened 10, 20, 30 years ago.

So I take the heat and I take the responsibility and I will continue to do it as long as I am Chairman, no matter what these guys think of this process, okay? Number one.

Number two, when an allegation of consequence comes forward I do not have the recourse to send it to the courts. I have the recourse only to send it to my colleagues. There is no other institutional way of doing it. I made a judgment on this one. My trust was

violated by somebody. And then the fat was in the fire. And we would be in the same position if the day before the hearing began Ms. Hill, unrelated to any statement of this committee, stood up and held a press conference and said, as I spoke with counsel, as the possibility could happen, from the White House and just held a press conference. We would be in the same spot. We could say we are not going to resolve that, let's put this nomination on hold and send it to the courts.

Not a possibility. Not able to do that no matter what my colleagues who are now telling everybody how wrong this process is. And let me say another thing. This isn't over. Your grandfather is right, you have no right to give up. There are compelling arguments to be made for you and they may end up being made by me and others.

For example, one of the arguments made against you constantly by those who opposed your nomination is here is a guy who sought this. He has suckered it. He has gone out and he has laid down for people for it and he is not dumb. A guy who wanted this in the beginning. I heard people coming to us and testifying and saying you wanted this and planned this since the late 1970's. Well, if you planned this in the late 1970's and you did this you are one of the dumbest people I have ever run across in my life.

And you don't impress me as being dumb. Your defenders here are not even smart enough to figure out to make that defense for you. My job is not to defend you or to prosecute you. It is to see to it that you get a fair shot in a system that is imperfect but it is a good system.

Now, everybody points out what hasn't been made here. Every expert that has ever testified before me in this committee on an issue that I do know something about and I have spent, with the exception than maybe one person on this committee, more time dealing with abuse against women and the surrounding circumstances than anybody else in the Senate.

And every expert comes forward and says, there's a pattern. It doesn't happen in isolated instances. It is a pattern. If there is not a pattern, to me that is probative. That has some dispositive weight. No one has proved a pattern here of anything. We are not finished yet. But no one has proved a pattern.

Again, these people have decided already, once and for all, they are for you or against you. You need better lawyers. You need to hire me.

I am getting fed up with this stuff about how terrible this system is. I hear everybody talking about how terrible the primary system is. We are big boys. I knew when I ran for President that everything was free game. Anybody who runs for the Supreme Court or who is appointed to the Supreme Court, to be more precise, should understand, this is not boyscouts, it is not cubscouts. In the case of the President and the right to be leader of the free world, well no one ever said it would be easy. And whoever goes to the Supreme Court is going to determine the fate of this country more than anybody. For the next 20 years we are going to have people scrupulous and unscrupulous respond and react.

And this is not a referendum on whether or not, whether or not sexual harassment is a grave offense. I said from the beginning, this is about whether or not sexual harassment occurred.

And lastly, Judge, with me, from the beginning and at this moment, until the end, the presumption is with you. Now we are going to hear more witnesses they are going to come in and corroborate your position and hers. And we will find out whether they are telling the truth or not as best as we are capable of doing, just like you as a judge are when you look them in the eye and make a judgment.

So, Judge, this is less directed at you, than it is to my pontificating colleagues, Democrat and Republican alike, so, Judge, I have not made my judgment, based upon this proceeding, because we have not heard all the evidence.

And the last thing I will point out, the next person who refers to an FBI report as being worth anything, obviously doesn't understand anything. FBI explicitly does not, in this or any other case reach a conclusion, period, period. So, Judge, there is no reason why you should know this.

The reason why we cannot rely on the FBI report, you would not like it if we did because it is inconclusive. They say he said, she said, and they said, period.

So when people wave an FBI report before you, understand they do not, they do not reach conclusions. They do not make, as my friend points out more accurately, they do not make recommendations.

Judge, it is no fun but there are certain things in our society that have occurred that the nature of the offense is an offense that is almost always takes place there can be and will be no corroborating evidence, and all of us are susceptible to that errant charge.

And if you don't think that we are going to see individuals up here charged, individuals in the Senate, individuals in the work place charged, maybe even not without merit charged.

But Judge, everybody says, "We know how you feel." No one can know how you feel. That always excites me, when I hear people tell me how it feels.

"Oh, you lost family. I know how it feels."

"Oh, you lost this. I know how it feels."

"You went through that, and they ruined your reputation by it. I know how it feels."

No one knows how it feels, but I hope we stop this stuff. The press did nothing wrong; it is not their fault. It is the nature of what happens here when something goes public. This is not a right and wrong, until it comes down to a decision about you, and the presumption is with you. With me, the presumption is with you, and in my opinion it should be with you until all the evidence is in and people make a judgment.

So, Judge, I don't know exactly how you feel, but you have clearly demonstrated how you feel, and some of us, not all of us here, have an inkling how you feel. And like I said, I ran for this job to affect foreign policy, to affect domestic policy, not to be a judge. If I wanted to be a judge, I would have arranged for that a long time ago.

Judge wait until it is over—it will be over in the next 2 days—to make your judgment. You will not be unaffected by this, no matter what happens. Nobody goes through the white hot glare of this process, any level, for any reason, and comes out unaffected. But, Judge, nobody's reputation, nobody's reputation is a snapshot. It is a motion picture, and the picture is being made, and you have made the vast part of it the last 43 years.

Senator THURMOND. Can I say just a word?

Judge the chairman is a good man. He frequently votes with me.

The CHAIRMAN. Judge, I voted against you. It had nothing to do with this. I voted against you, and you and I disagree, like you said, on philosophy, as I can best understand it.

Judge go home, do whatever you are going to do. Thank you for being here. You are entitled to come back any time you want to come back, after we hear the rest of the witnesses, and no one should make any judgment about anybody until we hear the rest of the witnesses.

We are recessed for 15 minutes.

[Recess.]

The CHAIRMAN. The committee will please come to order.

I apologize for keeping the witnesses waiting, and as the old saying goes, we have got good news for you and bad news for you. After a caucus of the committee, the full committee, Democrats and Republicans, in deciding how we would meet our responsibilities to the full Senate to be able to conduct and conclude this hearing in as fair a way to everyone involved, and particularly to the nominee, it has been concluded as follows, and essentially unanimously concluded:

That we will reconvene tomorrow at noon; that the reason why we are not going to go forward with this panel tonight, is that if we go forward with this panel tonight, under the agreed procedures we would be required to, understandably, go forward with the next panel tonight. The likelihood of that occurring and finishing in any remotely reasonable hour is incredibly unlikely.

So if the witnesses are able, and we sincerely hope they are, we will ask them to come back, this panel, Ms. Hoerchner, Ms. Wells, Mr. Carr, Mr. Paul, tomorrow at noon. It is our hope, although not full expectation, to finish this hearing tomorrow, to give our colleagues in the Senate, as we were charged, an opportunity to contemplate and mull over the record and what they have heard and seen on Monday and Tuesday, and to vote Tuesday.

There is no question, as I informed the leadership when they asked if we could conduct this hearing fully by the vote Tuesday night and still give the Senate time to fully consider every aspect of it, my unequivocal answer was no, we could not. And the Senate decided that we were going to do it within that time, so that there would be a final vote in order to lift the unanimous consent agreement from last week.

So we are operating under some limitations. Our goal continues to be to find the truth. We believe that a full night's sleep may help elucidate that goal somewhat—not for the panel, but for the committee and the staff—and so we will reconvene tomorrow at noon and go hopefully as long as it takes to finish.

[Whereupon, at 6:30 p.m., the committee recessed, to reconvene at 12 p.m., Sunday, September 13, 1991.]

NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

SUNDAY, OCTOBER 13, 1991

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 12:04 a.m., in room SR-325, Russell Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Present: Senators Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Thurmond, Hatch, Simpson, Grassley, Specter, and Brown.

The CHAIRMAN. The committee will come to order.

I thank the witnesses, the first panel and others, for doing what they obviously believe to be their civic duty and step into the breach. It is not comfortable for anyone at all involved in this process.

I would like to begin, prior to introducing the panel, by indicating how we are going to proceed. The designated questioners will proceed for 15 minutes per questioner, and then nondesignated Senators will have an opportunity to question for up to 5 minutes.

In addition, I want to make it clear that we thought it best to come back with clear heads this morning and start this morning. That was the only reason for us not going into the night last night. Third, we are going to try our best to accommodate the truth emerging in this process, but it is hard to do that in this process.

One senior correspondent said to me on the way into the building today, as I saw him, "You know, this criticism of the process of this all being done in the cold light of day or the hot lights of television," he said, "when I got here, I spent the first so many years of my professional career criticizing all these hearings that were held closed."

So, the only thing I want to emphasize, if there is any witness anywhere along the process today who wishes to have their comments made in closed session, because they believe it would be embarrassing to say something or repeat something, we will do that. We will do that.

Finally, last night, as I defended the process as the only one we have, I want to make it absolutely clear, I am not defending, have not defended, will not defend, and will pursue to determine who caused us to have to defend this whole matter and leaked this in-

formation. Whoever leaked this information did something that I believe to be totally unethical, if not illegal.

But we here, we will pursue this question and we will attempt to end the process today, although I must say at the start what I said at the start of this entire process: We could go on legitimately for another 10 days, seeking out corroborators of corroborators, seeking out additional information, further investigating.

That is not a luxury that we have, and it is not the condition upon which this vote was postponed. The postponement, I might add, was called for by the nominee, as well as by the Senate as a whole when this information was leaked to the press.

Having said that, let me introduce our panel today, our first panel, who includes the following witnesses:

The Honorable Susan Hoerchner, a workers compensation judge in Norwalk, CA. Thank you for coming all the way across the country, Judge.

Helen Wells, project manager for the American Welfare Association, in Washington, DC.

John Carr, a partner in a law firm in New York City.

And Joel Paul, an associate professor of law at the Washington College of Law, at the American University, in Washington, DC.

Now, would you each prepare to proceed in the order in which you were called. Prior to that, I am going to yield to my colleague, the Senator from South Carolina, to see if he has anything he would like to say at the outset of today's hearing.

Senator THURMOND. Mr. Chairman, as I understand it, we are going to stay in session now until we finish all of the witnesses. It will be completed when we end today or tonight, whenever it is?

The CHAIRMAN. Will you all stand and be sworn—I beg your pardon. We are going to attempt to finish this this evening. I have learned, after almost 19 years in the Senate, not nearly however many it has been for you, Senator, that I never predict what the Senate can do, and as has been observed by everyone, I cannot control what any one Senator on this committee will or will not do, or I cannot predict what is going to happen in terms of the desire on the part of the nominee or anyone else to have additional witnesses. But it is my sincere hope that we will bring this matter to a close in terms of the public hearing this evening.

Now, will the witnesses stand to be sworn: Do you swear to tell the whole truth and nothing but the truth, so help you, God?

Ms. HOERCHNER. I do.

Mr. PAUL. I do.

Ms. WELLS. I do.

Mr. CARR. I do.

The CHAIRMAN. Now, we will begin with Ellen Wells. Ms. Wells, if you will proceed.

TESTIMONY OF A PANEL CONSISTING OF ELLEN M. WELLS, PROJECT MANAGER, AMERICAN WELFARE ASSOCIATION, WASHINGTON, DC.; JOHN W. CARR, ESQ., NEW YORK, NY; SUSAN HOERCHNER, WORKER'S COMPENSATION JUDGE, NORWALK, CA; AND JOEL PAUL, ASSOCIATE PROFESSOR, AMERICAN UNIVERSITY LAW SCHOOL, WASHINGTON, DC

TESTIMONY OF ELLEN M. WELLS

Ms. WELLS. Thank you, Senator.

Good afternoon, Senators. My name is Ellen M. Wells—

The CHAIRMAN. Please do not have anyone in or out the door during the testimony of these four witnesses, during their statements, I mean.

Senator THURMOND. If you will speak into the machine, so as we can hear.

The CHAIRMAN. Unfortunately, this is an old room and you have to pull the microphone very close, if you could.

Thank you.

Ms. WELLS. Good afternoon, Senators.

My name is Ellen M. Wells. I am a project manager at the American Public Welfare Association, in Washington, DC.

I received a master's degree in public affairs and a juris doctorate from the George Washington University.

I met Professor Hill in 1981 at a social gathering, and we developed a friendship. I was also acquainted with Judge Thomas during the late 1970's and early 1980's, as a result of our joint membership in the Black Republican Congressional Staff Association.

In the fall of 1982, Professor Hill shared with me, in confidence, the fact that she considered Judge Thomas' behavior toward her in the office—

Senator HEFLIN. Mr. Chairman, if I might interrupt, I don't mean to, but if there are prepared statements that they are reading from, I think it would be helpful to the members of the committee if they had copies of the—I don't have one. If there is a copy of the prepared statement, I would like to follow it in writing, as well as by ear.

The CHAIRMAN. While Ms. Wells is doing her statement, if the—do we have statements? The statements have not been provided, Senator. It is too late now.

Senator HEFLIN. All right.

Ms. WELLS. I can—

The CHAIRMAN. No, it is not your fault. Just proceed.

Ms. WELLS. All right.

In the fall of 1982, Professor Hill shared with me, in confidence, the fact that she considered Judge Thomas' behavior toward her in the office to be inappropriate. Professor Hill did not at that time nor in subsequent conversations provide exact details about the actions she found inappropriate conduct. She did tell me they were sexual in nature.

I should note that I did not ask for details, for two reasons: Neither Professor Hill nor I would have been comfortable discussing such matters. Women typically don't talk in sexually explicit

terms. Second, she appeared to simply need a sympathetic ear and, as her friend, that is what I tried to provide.

I believed the statements made by my friend, Professor Hill. As she told me of the situation, she appeared to be deeply troubled and very depressed, and later I remember talking to her by telephone while she was in the hospital, and she explained to me that what she was suffering from appeared to be job related, job-stress related.

I think it is important for me to state that Professor Hill did not contact me in connection with this hearing. In fact, because of the way our lives have been proceeding, I have not seen or spoken to Prof. Anita Hill in 2 years.

I called the law school and left a message of support and willingness to be of assistance, if needed. My call jogged her memory of what she had said to me. As a consequence, Professor Hill asked her attorneys to get in touch with me.

Finally, Senators, I would like to say that I am not a party to any effort to derail Judge Thomas' confirmation to the Supreme Court by any interest group or by individuals who may not agree with his political philosophy. I am here as an individual simply as a matter of conscience to tell you what I was told by Anita Hill, and I believe this information relevant to the decision that you are called upon to make.

Thank you.

The CHAIRMAN. Thank you very much.

Mr. Carr.

TESTIMONY OF JOHN W. CARR

Mr. CARR. Mr. Chairman, Senator Thurmond, members of the committee: My name is John William Carr. I reside in the city of New York. I am an attorney, by profession, and a partner at the law firm of Simpson, Thatcher & Bartlett.

I met Anita Hill in the spring of 1981. At the time, we were introduced by a mutual friend, while they both were employed at the law firm of Wald, Harkrader & Ross, in Washington, DC.

I was a student at the time at Harvard University, where I was simultaneously pursuing a law degree at the Harvard Law School and an MBA degree at the Harvard Business School. During the final semester of the 1982-83 academic year, I developed a social relationship with Anita Hill.

I lived in Cambridge, MA, and she lived in Washington, DC, which made seeing one another very difficult. However, during this particular period, we spoke several times at length on the telephone.

During one of these telephone conversations, Anita Hill revealed to me that her supervisor was sexually harassing her. I recall that she did not initially volunteer this information. Rather, during the telephone conversation, it quickly became clear to me that she was troubled and upset. In response to my expressions of concern about her feelings, Anita Hill told me that she was upset, because her boss was making sexual advances toward her. I recall that she was clearly very disturbed by these advances and that she cried during the telephone call.

I knew that Anita Hill worked for Clarence Thomas at the Equal Employment Opportunity Commission. In this telephone conversation, it was immediately clear to me that she was referring to Judge Thomas.

I asked her to tell me what he had done. It is my recollection that she told me that Clarence Thomas had asked her out on dates and showed an unwanted sexual interest in her. She was very uncomfortable talking about these events, and said that she did not want to go into any detail about the actions that so upset her. I do recall, however, that she said these sexual advances had taken place before.

It was clear to me at that time that she found this very painful to talk about, and I did not push her to speak of it further. At this point, the conversation turned to how appalling it was that the head of the EEOC would engage in sexual advances toward one of his own employees.

I thought it was outrageous and, in a perverse sort of way, ironic that the person in charge of fighting discrimination in the workplace could harass an employee in this way. This portion of the conversation I dominated with my own repeated expressions of outrage. It is because of this outrage and irony that I recall our conversation today.

It was clear that Anita Hill did not want to continue to dwell on these incidents, and the conversation moved to other subjects. Later in the spring of 1983, my relationship with Anita Hill subsided. We did not have the opportunity to see one another and lost touch. I believe we last spoke prior to my graduation in June 1983. Except for seeing her at these proceedings, I have not seen or spoken to Anita Hill since 1983.

On Sunday evening, October 6, I saw television reports that Professor Hill had accused Judge Thomas of sexual harassment. I immediately remembered that she had told me of his sexual advances. The next day, Monday, October 7, I discussed with colleagues at my office that these conversations had taken place with Professor Hill and her comments about Judge Thomas.

As I discussed these conversations, my recollection of them became clearer. On the following day, Tuesday, October 8, I discussed my recollections with a few of my partners, whose experience and judgment I respect. Later that day, I sent Professor Hill an overnight letter in which I stated that I remember our conversation about sexual harassment. In my letter, I also expressed my admiration for the public stance she had taken, particularly in light of the pain it might cause her.

The next day, Wednesday, October 9, I received a telephone call from a man who identified himself as a friend of Anita Hill at the University of Oklahoma. He said that Professor Hill had received my letter, and he and I discussed its contents briefly. I also spoke that day about my recollections of our 1983 telephone call with an attorney representing Ms. Hill in Washington.

On Thursday morning, October 10, I traveled to Chicago on business, where I received a message to call another attorney, Janet Napolitano, who I was told was also representing Professor Hill. Ms. Napolitano asked me if I would be willing to come before the

Senate Judiciary Committee and tell of my 1983 telephone conversation with Anita Hill. I agreed to come.

Later that evening, I was interviewed over the telephone by various members of the staff of the Judiciary Committee. After this interview, I immediately flew to Washington, where on Friday, October 11, I received a subpoena to appear before this committee.

The CHAIRMAN. Thank you.

Judge Hoerchner.

TESTIMONY OF JUDGE SUSAN HOERCHNER

Judge HOERCHNER. Mr. Chairman, Senator Thurmond and members of the committee: My name is Susan Hoerchner.

I am here testifying pursuant to this committee's subpoena. I have not seen any FBI report or any other written record of any information I have supplied in the course of this investigation. Neither have I seen Anita's affidavits.

I am a workers' compensation judge in California. I have known Anita Hill for about 13 years. We met when she was my editor for a project at Yale Legislative Services, when we were first-year law students. We soon became friends.

While at Yale, Anita had good friends across every spectrum: men and women, black and white, conservative and liberal. Reasons for her popularity were apparent. It's not just a question of my never having known her to lie—I have never known Anita even to exaggerate. I have never known her to express anger. I have never known her to condemn a person, rather than particular behavior. I have never known her to use profane or offensive language.

In law school, Anita was always gracious and generous with her understanding and her time. Many times, she would invite me and other of her harried law student friends to her apartment for a delicious home-cooked dinner, which she somehow found time to prepare, even though she was as busy and hard-working law student herself. Perhaps most important of all to me personally, Anita was always somebody to whom I could talk and with whom I could laugh.

When Anita and I graduated from law school, both of us, as it happened, came to Washington for our first jobs. We lived in different parts of the city. We were both busy with our new jobs, so we did not get together with great frequency. What we did do, however, was keep in touch by telephone. Those conversations would often last as much as an hour.

I remember, in particular, one telephone conversation I had with Anita. I should say, before telling you about this conversation, that I cannot pin down its date with certainty. I am sure that it was after she started working with Clarence Thomas, because in that conversation she referred to him as her boss, Clarence.

It was clear when we started this conversation that something was badly wrong. Anita sounded very depressed and spoke in a dull monotone. I asked Anita how things were going at work. Instead of a cheery "Oh, just busy," her usual response, this time she led me to understand that there was a serious problem.

She told me that she was being subjected to sexual harassment from her boss, to whom she referred by name. That boss was Clarence Thomas. Anita's use of the words "sexual harassment" made an impression on me, because it was the first time I had heard that term used by a friend in personal conversation.

Anita said that Clarence Thomas had repeatedly asked her out. She told me she had, of course, refused, but that he wouldn't seem to take "no" for an answer. He kept pressing her and repeating things like "I'm your time" and "You know I'm your kind of man, but you refuse to admit it."

One thing Anita told me that struck me particularly and that I remember almost verbatim was that Mr. Thomas had said to her, "You know, if you had witnesses, you'd have a perfect case against me."

She told me that she was very humiliated and demoralized by Mr. Thomas' behavior and that it had shaken her faith in her professional ability.

At the end of the conversation, Anita seemed more depressed than when it began. Contrary to my hope, talking things out did not seem to have given her any relief or comfort.

After our conversation, I was both saddened about my friend. Because it had been so painful for Anita to talk about the matter, I did not try to pull information out of her. In subsequent conversations with Anita, I learned that the problem continued, but I do not recall in detail further conversations about this matter.

Mr. Chairman, in conclusion, as a result of the high esteem in which her law school classmates hold her, 65 members, over 65 members of Anita's law school class have been contacted and have signed the following statement:

It has been our privilege to know Anita Hill, professionally and personally, since the late 1970's, when we were in law school together. The Anita Hill we have known is a person of great integrity and decency. As colleagues, we wish to affirm publicly our admiration and respect for her.

She is embroiled now in a most serious and difficult controversy, which we know is causing her great pain. We make no attempt to analyze the issues involved or to prejudge the outcome. We do, however, wish to state emphatically our complete confidence in her sincerity and good-faith, our absolute belief in her decency and integrity. In our eyes, it is impossible to imagine any circumstances in which her character could be called into question. We are dismayed that it has been. We know that it could not be by anyone who knows her.

Anita has imperiled her career and her peace of mind to do what she felt was right. We know we are powerless to shield her from those who will seek to hurt her, out of ignorance, frustration or expediency in the days ahead, but we will have failed ourselves, if we did not at least raise our voices in her behalf. She has our unhesitating and unwavering support.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Paul.

TESTIMONY OF JOEL PAUL

Mr. PAUL. Mr. Chairman, Senator Thurmond and members of the Committee: I am an associate professor of law at the Washington College of Law at American University here in Washington. Before joining the faculty at American University in 1986, I practiced banking and corporate law in California. I presently teach international business and trade and foreign relations law.

I am here to give my account of what I was told in the summer of 1987 by Prof. Anita Hill——

The CHAIRMAN. The summer of when?

Mr. PAUL. The summer of 1987.

The CHAIRMAN. Thank you.

Mr. PAUL [continuing]. And to give my impressions of her character and credibility.

As soon as I read Professor Hill's allegations in the Washington Post, on Monday morning, I realized that I had a duty to come forward and to give my account, because I knew that Professor Hill's allegations were not an 11th-hour fabrication, as some have said, but, rather, a more specific description of the events she related to me more than 4 years ago.

I first met Professor Hill at a 10-day conference of the Association of American Law Schools, in June 1987, at the University of New Mexico Law School. I was impressed by her intellect and her professional achievements.

At that time, she was interested in coming to Washington to research an article she was then writing. I suggested to her that she might want to spend some time at the Washington College of Law, since we are always looking for good teachers and scholars to join our faculty.

Subsequently, I arranged for Professor Hill to come to our school during July 1987, where she was given an office, secretarial support, and use of our library facilities for the summer.

At that point, a number of our faculty were very interested in encouraging Professor Hill to apply for a visiting professorship at the American University. During the course of her research at our school, we had a number of occasions to talk about her interest in the American University and our interest in having her join the faculty.

During one such occasion, over lunch in the university cafeteria, I asked Professor Hill why she had left the EEOC. This was a logical question to ask in the course of discussing with her her employment history. Professor Hill responded, reluctantly and with obvious emotion and embarrassment, that she had been sexually harassed by her supervisor at the EEOC.

I was shocked and astonished by her statement, which is why I remember the incident so vividly. I do not recall whether she went on to say the name Clarence Thomas, but if she had said it, the name would not have meant anything to me at that time, because I had no idea who Judge Thomas was. I asked Professor Hill if she had sought any recourse for her situation, and she said no. When I asked her why not, she said that she felt she had no effective recourse in that situation.

I believe that Professor Hill's statement to me was truthful. Professor Hill at that time had no reason to claim sexual harassment as an explanation for leaving the EEOC. Many people leave government jobs for teaching positions. Thus, I concluded then and I still believe that she was telling the truth.

On Monday morning, after I read the news of Professor Hill's allegations, I phoned some of my colleagues from my home to ask their advice about what to do with this information that I had.

When I arrived at school later that morning, another colleague, Ms. Susan Dunham, on her own initiative, came to me, having read the article in the Post—

The CHAIRMAN. What day was this, again?

Mr. PAUL. This was on Monday morning, sir—and she reminded me, that is, Ms. Susan Dunham reminded me of the fact that I had communicated to her the substance of my conversation with Professor Hill shortly after it occurred.

I then recalled that, indeed, right after my lunch conversation with Professor Hill, I went to Ms. Dunham, who had some practical experience in the field of employment discrimination, and told her of Professor Hill's problems at the EEOC. Ms. Dunham said at that time that this was the case of the fox guarding the hen house. That phrase stuck in my mind. I was pleased that Ms. Dunham independently could confirm my memory of these events.

I had at that time, and I have now, no reason to question the facts as Professor Hill related them to me. I always regarded her as having the highest integrity. I know her to be a deeply religious person.

Moreover, I cannot believe that she could be politically motivated. I know from numerous conversations with her that she served faithfully in the Reagan administration, that she was generally in sync with the goals of that administration, and that she did not disagree with the overall policies of the administration.

Indeed, when Judge Robert Bork was nominated to the Supreme Court in the summer of 1987, I remember vividly that Professor Hill supported his nomination and told me that she held him in extremely high esteem, as a former teacher of hers at Yale. Her strong support of Judge Bork led to a number of loud lunch table disagreements between Professor Hill and other colleagues of mine. Thus, I cannot accept the conclusion that her statements have been motivated by political ideology.

In closing, I would reemphasize that I am here simply to aid the Senate Judiciary Committee in its efforts to determine these facts. I have not taken any position with regard to Judge Thomas' nomination prior to these allegations. Indeed, a national petition of law professors opposing his nomination was circulated at my law school several weeks ago. I was asked to sign it and I refused, despite the fact that 18 of my colleagues signed that petition, as well as many others from other law schools.

I came forward on my own initiative to recount what I was told by Professor Hill. I have not spoken to Professor Hill since sometime prior to the nomination of Judge Thomas. I have never discussed my testimony or any aspect of these hearings with Professor Hill or any person representing Professor Hill, or with any organization or anyone representing any organization.

Mr. Chairman, I am here to help you get to the facts. Thank you.

The CHAIRMAN. Let me begin by asking you again, for the record, just go down the line starting with the judge, if you will, tell me your college education, your post-graduate education and what jobs you have held since your graduation from post-graduate school, please.

Judge HOERCHNER. I have a bachelor of arts degree from the University of the Pacific, and, more specifically, from their honors

college, Raymond College, which has since been re-absorbed into the university. I have a Ph.D. in American studies from Emory University. I have a J.D. from Yale University Law School.

The CHAIRMAN. A J.D. law degree.

Judge HOERCHNER. Right.

The CHAIRMAN. And upon graduating, was Yale Law School, your last formal education?

Judge HOERCHNER. That is correct.

The CHAIRMAN. So, you graduated with honors from undergraduate school, you went on to get a Ph.D. from Emory University, and then you went on to get a law degree from Yale University.

Judge HOERCHNER. That is almost correct. We did not have the classification, I believe, of graduating with honors.

The CHAIRMAN. I see.

Judge HOERCHNER. It was an honors college.

The CHAIRMAN. An honors college, excuse me. Now, upon graduating from Yale, where did you go to work?

Judge HOERCHNER. I went to work for the National Labor Relations Board, in Washington.

The CHAIRMAN. And from there?

Judge HOERCHNER. And from there to a San Francisco law firm, Littler, Mendelsohn, Baskiff & Tiche.

The CHAIRMAN. And from there?

Judge HOERCHNER. And thereafter, I was self-employed and worked as an independent contractor. Thereafter, I went into teaching—I skipped one point.

After I had accepted a teaching position at Valparaiso University School of Law in Indiana, I worked on a temporary basis for an elected city auditor in the city of Berkeley. I taught at Valparaiso University School of Law and at Chase Law School in Northern Kentucky University. Thereafter, I returned to California, where I worked for the State Compensation Insurance Fund for about 3½ years, before becoming a workers compensation judge, a little bit more than a year ago.

The CHAIRMAN. Thank you. I think it is important we establish each of your backgrounds, because this is all coming down to background and credibility, the credibility of everyone involved in this matter. I am not questioning your credibility. I want to establish for the record who you are, before I question you.

Now, let me ask you, Judge Hoerchner, you indicated you had numerous conversations, as I understand it, with Professor Hill during the period of the alleged harassment, while she was working at EEOC and the Department of Education. Is that correct?

Judge HOERCHNER. That is not exactly correct, Senator. I have said that I remember mainly one conversation. I believe there were other conversations in which she led me to understand that the problem was continuing, but I do not have any detailed recollection—

The CHAIRMAN. All I am trying to establish now is the nature of the relationship you had with Anita Hill when you were both in Washington during that period.

Judge HOERCHNER. OK.

The CHAIRMAN. Was it an unusual thing for you to talk to Professor Hill during that period, or was that a fairly normal undertaking? Did you keep in contact with one another?

Judge HOERCHNER. Yes, we did, we kept in contact, namely by telephone, due to our busy schedules.

The CHAIRMAN. And how often during this period, would you estimate, you spoke to Professor Hill, either on a weekly basis, a monthly basis or during the entire period? Did you speak to her once a week, once a month? Did you see her frequently? Can you give us some estimation of the frequency?

Judge HOERCHNER. I believe that while I was living in Washington, we spoke at least once a week.

The CHAIRMAN. And how long were you living in Washington?

Judge HOERCHNER. I left Washington in late November, late November 1981.

The CHAIRMAN. And you arrived when?

Judge HOERCHNER. In early June 1980.

The CHAIRMAN. So, you were there about a year and 4 months or 5 months?

Judge HOERCHNER. Approximately.

The CHAIRMAN. So, it is fair to say you spoke to her more than a couple dozen times during that period?

Judge HOERCHNER. Oh, yes. I would like to clarify: In September and October 1981, I was on a temporary assignment in California.

The CHAIRMAN. Now, let me ask you further: You recalled for our committee minority and majority staff, you have recalled in other inquiries made of you officially, and you have recalled today one specific conversation where Professor Hill said to you that she was being harassed, that she was being repeatedly asked out on dates.

Now, you said you did not ask her for any detail and she did not offer any detail. In light of the frequency with which you spoke to her, did you find it unusual that she would not tell you more about this? It sounds like you had an ongoing close relationship, at least by telephone. Did it surprise you?

Judge HOERCHNER. Not after hearing the tone of her voice when she initially told me how depressed and demoralized she was. In addition, as I mentioned in my statement, I have never known Anita to use offensive language. The situation was to me too clearly painful to her for me to try to pull out any further information.

The CHAIRMAN. Did you advise her to take any action? Did she seek your counsel? Did—

Judge HOERCHNER. She did not ask for advice.

The CHAIRMAN. Did you say, you should complain. Did you give her any advice?

Judge HOERCHNER. She did not ask for advice, and I did not give her any advice.

The CHAIRMAN. Why did you think she was calling you then to tell you this?

Judge HOERCHNER. I have not said that she telephoned me. I don't remember who called whom.

The CHAIRMAN. Why did you think she initiated this with you?

Judge HOERCHNER. I believe she initiated this part of the conversation in response to a question about how things were going at work.

The CHAIRMAN. Now, you said, in your testimony, that you knew the problem continued after that conversation. How did you know that the problem continued after first being made aware of it in the conversation that you related to us, here today?

Judge HOERCHNER. In telephone conversations I asked and she led me to understand that it was happening, and often would say, she didn't want to talk about it at that time.

The CHAIRMAN. Mr. Carr, you were dating Anita Hill. I assume that's what you meant by having a—we use a lot of euphemisms in this town and an old fashioned word—you were dating Professor Hill at some point in the past, is that correct?

Mr. CARR. I think that's close.

The CHAIRMAN. OK. Well, maybe—

Mr. CARR. Let me explain, if I may? When you say, dating, I think of a relationship that was going on.

The CHAIRMAN. I admit that I find it difficult—I mean these phrases, my sons are 21 and 22 and I use phrases like dating and they look at me like I—did you go out alone with her from time-to-time? [Laughter.]

Mr. CARR. Yes. I would characterize it that we met, we dated, and the bulk of our relationship was on the telephone getting to know one another.

The CHAIRMAN. I see. Now—

Mr. CARR. I guess I would say we didn't get but so far.

The CHAIRMAN. I understand that. [Laughter.]

All right. Seriously, I am not trying to get into anything, the details of your relationship. I just want to get a sense of what this is. Because the reason I ask, I would like you to tell me, Mr. Carr, you said that—please correct me if I am wrong; I am paraphrasing—that you were angry or outraged when you heard from her on the telephone that her boss was doing what?

Mr. CARR. He said her boss was making sexual advances.

The CHAIRMAN. Making sexual advances. Now, would you characterize your response, again, for us. When she told you that, at the time, do you recall—

Mr. CARR. I was outraged.

The CHAIRMAN. Now, did you give her any advice?

Mr. CARR. I don't recall giving her any advice, other than to calm down and to try to—

The CHAIRMAN. To what? I'm sorry.

Mr. CARR. To calm down and to try to cheer up. I don't think I gave her any advice about what to do.

The CHAIRMAN. Your testimony, in case she didn't mention to you—did she mention to you any other form of harassment, and it can be harassment, any other form of harassment other than repeatedly being asked out? Did she indicate to you the nature of the harassment, beyond being asked out?

Mr. CARR. My recollection is that she did not go into detail as to the nature of the harassment, but I have a clear recollection that the advances toward her were sexual in nature and something beyond merely, would you go out with me?

The CHAIRMAN. Now, you indicated you spontaneously contacted Professor Hill via a letter when this all broke.

Mr. CARR. That's correct.

The CHAIRMAN. You were then contacted by several of her attorneys, or you ended up speaking to several of her attorneys. Now, have you spoken to any interest group, have you been contacted by anyone other than members of this committee or the Federal Government that have called you to encourage you to do, say, or characterize anything at all?

Mr. CARR. No.

The CHAIRMAN. Ms. Wells, you were quite emphatic about not being—I'm not sure it's your phrase—"a tool of or pushed by or any—"

Ms. WELLS. A party to—

The CHAIRMAN [continuing]. Any interest group. Let's go back, if I may. Again, would you tell me the dates or the approximate dates of the conversation you had with the professor. Just tell me the date, and I will follow it from there.

Ms. WELLS. It was in the fall of 1982. And that, I know, well, I have a recollection that we had other conversations concerning the situation, but the one that stands out and is most vivid for me is that initial conversation when she made the disclosure.

The CHAIRMAN. Now, what makes you remember that you had other conversations relative to her displeasure with her boss and how he was treating her relative to sexual advances?

Ms. WELLS. My—well, because of the way we operated, we were in frequent contact. We were a support mechanism for one another. I mean we shared the good news and we shared the bad news.

The CHAIRMAN. Did you ever see her, or was this merely a telephone relationship?

Ms. WELLS. Oh, no, she told me this in person.

The CHAIRMAN. She told you that in person?

Ms. WELLS. Yes.

The CHAIRMAN. Give me a sense of the relationship that you had with her at the time. Did you go to dinner with her? Did you meet her for lunch? Would you visit each other in your apartments or homes? I mean, what was the nature of your social relationship?

Ms. WELLS. Senator, we had a very warm and close relationship. I would not say that we were best friends, we had other friends, but she and I shared certain values, and outlook about life. She would come to my home and have dinner. She would go on shopping sprees with my mother and sister.

We went out, did a lot of things together.

The CHAIRMAN. Now, you seem like a very strong-willed person?

Ms. WELLS. My friends say so.

The CHAIRMAN. Why did you not give her any advice, during this period when you knew she was unhappy. I mean did you not pull her aside, at any point, and say, hey, look, Anita, whatever? Or, did you do it at all? Did you ever raise the subject with her or did it only come up from her to you?

Ms. WELLS. It was something that came up from her. If I—to open the conversation—if I were to do something like that, I would say, well, you know, how are things going? I know Professor Hill as

a very private person. And I am a very private person. And I do not believe, and it is my experience that she shares this, that you don't walk around carrying your burden so that everyone can see them. You are supposed to carry that burden and try to make the best of it.

Now, if you need to talk about it, you need a good ear for that, then I am there for you. And if you want my advice, and you let me know that you want that, then I will give it to you.

The CHAIRMAN. Did it surprise you that she stayed?

Ms. WELLS. No, it did not, because I think that is something that a woman in that situation would do. I know, in my situation, when confronted with something not quite as of a long-term nature as Professor Hill's experience, I stayed.

The CHAIRMAN. Right. Now, Mr. Paul, you are corroborating that you were told about Professor Hill's displeasure with her boss and his sexual advances. Let me not characterize; what did she say to you? Did she use the term that she was harassed or sexual advances or uncomfortable? What was the term that she used to you when you asked her why she left EEOC?

Mr. PAUL. Senator, the specific terms that I recall were, that she said that she was sexually harassed by her supervisor at the EEOC.

The CHAIRMAN. Now, who is Susan Duncan that you refer to?

Mr. PAUL. Susan Dunham, D-U-N-H-A-M—

The CHAIRMAN. I am sorry.

Mr. PAUL [continuing]. Is the head of the legal methods program at our law school, Washington College of Law.

The CHAIRMAN. So she teaches at law school as well?

Mr. PAUL. Yes, she does. She teaches courses on legal methods and she also runs the legal methods program.

The CHAIRMAN. Why would you go from the lunch table to the—I assume that's where you were told this—

Mr. PAUL. Susan's office at the time was adjacent to mine. Susan had a practice prior to working on the faculty which involved employment discrimination cases. I was shocked and disturbed by what Professor Hill had told me. I did not know anything about that area of the law, as I have testified. My area of expertise is business law, and corporate law. So I went to Susan to sort of ask her, you know, what could have been done? Why wasn't any recourse taken, and that was how we had this conversation.

The CHAIRMAN. Were you going to her in the expectation or hope that there might still be recourse that could be taken? Were you thinking of going back and advising—

Mr. PAUL. No, Senator, no.

The CHAIRMAN. Now, you say, well, I am still curious. If you were not doing it for that reason, to see if there was still a cause of action to go back and try to convince Professor Hill to do something. What was the motivation of going to your fellow colleague?

Mr. PAUL. My motivation was to try to understand better the position that women may be in, in that situation. It was simply a matter of academic—

The CHAIRMAN. What were you told—

Mr. PAUL [continuing]. Curiosity.

The CHAIRMAN. What were you told?

Mr. PAUL. I am sorry?

The CHAIRMAN. What were you told by your colleague as to why women stay in that situation, or did she volunteer anything?

Mr. PAUL. Ms. Dunham said—and this is all that I really can say that I recall on my own—is that she said that this was a case of the fox guarding the hen house. That portion of the conversation I can recall on my own. I believe Ms. Dunham has had a conversation with the Judiciary Committee staff, but I don't recall.

The CHAIRMAN. She has. I just want to ask one last question. I realize my 15 minutes are up. Judge, I would like to ask you, you read a letter from your classmates at the law school. Now, were they classmates who were from the same graduating class, or were they people who were contemporaneously at Yale Law School at the time that Professor Hill was at Yale Law School? Do you know?

Judge HOERCHNER. I believe that they were from the same graduating class.

The CHAIRMAN. How many were in your graduating class, do you recall, roughly?

Judge HOERCHNER. I believe 131 people graduated and I am not sure whether or not that included people who were getting degrees other than the J.D.

The CHAIRMAN. Now, the last question; how did this letter materialize? Did you circulate this letter?

Judge HOERCHNER. No. Due to the last-minute nature of these proceedings, I have not at all been involved in the letter.

The CHAIRMAN. How did it come to be placed in your hand then?

Judge HOERCHNER. When I came to the hearings, Friday, I saw a copy of it.

The CHAIRMAN. Who gave you the letter?

Judge HOERCHNER. I think my attorney, Ron Allen, had a copy and he passed it over.

The CHAIRMAN. Judge, help me out here. Do you know where the devil the letter came from? That's what I am trying to find out.

Judge HOERCHNER. I am not quite sure—

The CHAIRMAN. Fair enough.

Judge HOERCHNER. [continuing]. What you are asking.

The CHAIRMAN. All right, my time is up.

Senator THURMOND. Mr. Chairman, I yield to Senator Specter, who will examine the witnesses supporting Anita Hill.

Senator SPECTER. Thank you, Mr. Chairman.

I begin today with a statement that I made before that I have been asked to raise the questions by Senator Thurmond. But I do so in the context of I do not believe this is an adversarial proceeding. I do not represent anyone except Pennsylvania, and what we are trying to do here is to find out what the facts are.

Judge Hoerchner, you said when you were questioned by staff members, there had been a brief questioning of you a few days ago, back on October 10, and this appears on page 14 of the record.

Question: Did she ever relate to you that you were the only person that knew about these allegations or these problems she was having at work?

Answer: I think she told me that more recently.

Question: More recently that you were the only person that knew?

Answer: Yes.

When was it that Professor Hill told you that you were the only person she had told about this incident?

Judge HOERCHNER. I do not have a copy of the transcript, but I know that very shortly after that, I corrected that statement. The agent—

Senator SPECTER. In the transcript, Judge Hoerchner?

Judge HOERCHNER. I do not have a copy of the transcript.

Senator SPECTER. Are you saying that you corrected that at the time that you were questioned about other people?

Judge HOERCHNER. Right. That it was the FBI agent who told me that there were only three names mentioned, and now that was either in her original statement or in her FBI interview. Those names were Anita Hill, Clarence Thomas, and Susan Hoerchner. And from that I concluded, I understand wrongly, that I was the only one she had told.

Senator SPECTER. Well, let us make a copy of the transcript available to you, Judge Hoerchner. May we have an extra copy presented to the judge, so that she can have it while she responds to the questions, please?

Judge Hoerchner, the first reference that I made was at page 14, where I had read to you the short exchange beginning in the fourth line down:

Did she ever relate to you that you were the only person that knew about these allegations or these problems she was having at work?

Answer: I think she told me that more recently.

Question: More recently that you were the only person that knew?

Answer: Yes.

Do you find that on page 14?

Judge HOERCHNER. Yes; I do.

Senator SPECTER. Now, there is a later reference in the transcript to the FBI. It appears on page 24 of the record. About the middle, Ms. Hoerchner:

OK, I recently came to the conclusion that I was the only one that she had told at the time and I believe that the basis for the conclusion was that I was told by the FBI agent who interviewed me that there were only three names on, either the affidavit, or stemming from her FBI interview. I am not sure which, I think the affidavit, and that my name was the only one she had listed as a corroborating witness.

Is that the reference that you had to what you said to the FBI?

Judge HOERCHNER. Yes.

Senator SPECTER. Well, did the FBI tell you that anything other than that you were the only person that she was supposed to have told about this?

Judge HOERCHNER. I am not sure that the FBI actually said that I was the only corroborating witness. I know he told me that there were only three names listed on one or another of the documents that he had.

Senator SPECTER. May I ask you to refer now to the bottom of page 21 of the transcript, the last three lines?

You said, you were the only person Anita Hill told. You were the only person who knew about the allegations of sexual harassment, and you said that she reiterated that recently to you.

Was this in one of those phone conversations?

Answer: No, she never told me until recently.

Question: That you were the only person who knew?

Answer: Right.

Question: When did she tell you that?

Answer: It may have been around the time that she wanted to know if I would talk to the FBI?

Question: So we are talking about the last couple of weeks of September?

Answer: Very recent, yes.

Is that accurate, Judge Hoerchner?

Judge HOERCHNER. No, that was my mistake. I corrected that, as you have noted, on page 24 of the transcript.

Senator SPECTER. Well, on the part that I read?

Judge HOERCHNER. I beg your pardon?

Senator SPECTER. On the part that I read about the FBI?

Judge HOERCHNER. Yes.

Senator SPECTER. Well, the part about the FBI says this:

Ms. Hoerchner: OK. I recently came to the conclusion that I was the only one she had told at the time, and I believe that the basis for the conclusion was that I was told by the FBI agent who interviewed me that there were only three names on either in the affidavit or stemming from her FBI interview—I'm not sure which, I think the affidavit—and my name was the only one she had listed as a corroborating witness.

Is that what you are referring to that you told the FBI?

Judge HOERCHNER. No, I did not tell the FBI that. That is what the FBI agent told me, and I drew a conclusion.

Senator SPECTER. Well, in your statement about what the FBI told you, on the part I just read to you, that's the same thing as in your two prior segments of testimony, and you conclude in that sentence—and this is at the bottom of that paragraph—"and that my name was the only one she had listed as a corroborating witness."

Are you saying, Judge Hoerchner, that you—as I read these three statements, they all say the same thing to me, that it was recently that—where they all say that you thought you were the only person she had told about this, and the extract that I read at page 22 said that it was very recently that she had told you that, within the last couple of weeks of September.

Judge HOERCHNER. And on page 24, which is my better recollection, it was the FBI agent who said that to me, and not Anita.

Senator SPECTER. Well, where on page 24 does it say that it was the FBI agent who—well, on page 24, it does say that the FBI agent told you that your name was the only one. But you're saying that your prior reference to—well, let me ask you this: Did you say anywhere in this interview that when you had said Professor Hill told you that you were the only one she had told this about, that you were incorrect on that?

Judge HOERCHNER. I don't think that I explicitly retracted that. I do believe that that was incorrect.

Senator SPECTER. Let me move to another point, Judge Hoerchner, and that is when did Professor Hill tell you about this incident, Judge? And I ask you this, because in a couple of parts of your testimony you said it was in September 1981, and at page 28, the following question and answer session occurred:

"Question: Can you give us maybe how that came up, why she talked to you about Judge Thomas"—are you with me there, Judge?

Judge HOERCHNER. Not yet.

Senator SPECTER. OK. It is about two-thirds of the way down: "Question: Can you give us maybe how that came up, why she talked about Judge Thomas to you?"

Judge HOERCHNER. OK. Is that a question? I'm sorry.

Senator SPECTER. Well, I want to refer to the transcript.

Judge HOERCHNER. Yes, line 16, page 28?

Senator SPECTER. Right. It reads as follows:

Can you give us maybe how that came up, why she talked about Judge Thomas to you? She said she was changing jobs and going to work for him in the Office of Civil Rights, Department of Education and how excited she was. Question: Do you remember roughly when you all may have had that conversation, when that came up? Answer: Have to be that it was before the part where we talked about his behavior. I don't really know.

Now, my question to you is, when you said that it "have to be that it was before the part where we talked about his behavior," did she change jobs before she told you about this incident as you testified, where she said that he sexually harassed her?

Judge HOERCHNER. She changed jobs from her law firm to go to work for Clarence Thomas in the Department of Education before she mentioned any problems with sexual harassment.

Senator SPECTER. Well, did she tell you about the sexual harassment after she moved from the Department of Education to EEOC?

Judge HOERCHNER. I have made clear to the FBI and in the staff interview that I simply cannot pin down the date with certainty.

Senator SPECTER. Judge Hoerchner, you called, according to the information you have given us before, you called Professor Hill the day of the appointment of Judge Thomas to the Supreme Court of the United States. Is that correct?

Judge HOERCHNER. Yes, I did.

Senator SPECTER. And what was the purpose of that call?

Judge HOERCHNER. I called to ask her whether she had heard about the nomination, and she said she had been contacted by telephone by the press and she heard about it that way and that her stomach turned. I asked her whether she was going to say anything. She did not give me a direct answer.

Senator SPECTER. Why did you ask her whether she was going to say anything? Was there some thought in your mind that she should come forward?

Judge HOERCHNER. I had no thought or should or shouldn't. I wanted to see what she was going to do.

Senator SPECTER. And what was her response to you at that time?

Judge HOERCHNER. She replied that she was appalled at the treatment of Professor-then Judge Bork in his confirmation hearing, and from that I concluded that she did not intend to step forward.

Senator SPECTER. And did she tell you at that time that she thought that both Judge Bork and Judge Thomas should stand or fall on their ideas?

Judge HOERCHNER. I believe she did.

Senator SPECTER. At page 21 of the transcript, looking at the top, the first line, you said,

And she said that she was told that her only option was to be investigated by the FBI, and we both thought it was odd and I thought that there should have been

some alternative where she could make a statement with her name being used as some sort of an intermediate measure, so I guess some days later the phone started ringing.

When did that conversation with Professor Hill occur, Judge Hoerchner?

Judge HOERCHNER. That was after she had made a statement to a member of the Chairman's staff and I had made a statement to the member of the Chairman's staff.

Senator SPECTER. Was there a thought that you had expressed that it might be possible for Professor Hill to come forward, is that the alternative that you were referring to, where there would be an intermediate measure, or just what did you mean by that?

[Pause.]

Senator SPECTER. I ask this, Judge Hoerchner, because there has been a good bit of testimony as to whether Professor Hill might have come forward, without having these public hearings and had Judge Thomas withdraw, and my question to you is: When you had that discussion with her about some alternative and some sort of intermediate measure, whether you were discussing with her at that time the possibility that there could be some action taken to have Judge Thomas withdraw, without having these proceedings?

Judge HOERCHNER. Neither she nor I had ever used the term "withdraw," nor had that thought ever occurred to me, until I appeared here and listened to the committee hearings.

Senator SPECTER. Well, what did you mean, when you said "alternative and intermediate measure?"

Judge HOERCHNER. I was under the impression that the information had not been disseminated to the committee, and I understood that we both had requested confidentiality. I'm not sure that even today I know exactly what confidentiality entailed.

Senator SPECTER. But you know what it doesn't entail?

Judge HOERCHNER. I am beginning to think I am learning.

Senator SPECTER. Well, what I am getting at is did you have some thought that your identity and her identity could have been kept confidential, and had the matter concluded without coming forward, and if so, in what way?

Judge HOERCHNER. Senator, I am a judge. My job is to look at evidence and apply the law and make a decision. When I first made my statement to a member of the Chairman's staff, that is what I expected the Senate to do. I still expect the Senate to do that, and at this point I have no idea what the result will be. My concern is simply telling the truth.

Senator SPECTER. I see that my time is up, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you.

Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

Judge you live in California now, correct?

Judge HOERCHNER. Yes, I do.

Senator LEAHY. Judge, let me ask you, you have not testified before Senate committees before, have you?

Judge HOERCHNER. I certainly have not.

Senator LEAHY. Would it be safe to say that has never been high on your agenda of things that you might want to do on a Sunday afternoon? [Laughter.]

Judge HOERCHNER. That would be extremely high or very near the top.

Senator LEAHY. Judge, we have had a number of discussions in answer to Senator Specter's questions about the transcript of your interview, and I ask you to turn to page 4 of that transcript. Would you read lines 15 through 18, please?

Judge HOERCHNER.

I remember, in particular, one statement that I am remembering almost verbatim, but not completely verbatim. That was that he said to her, you know, if we had any witnesses, you would have a perfect case against me.

Senator LEAHY. Now, who was it who made that statement to you, and who was that person talking about?

Judge HOERCHNER. Anita Hill was quoting to me what her boss Clarence had said to her.

Senator LEAHY. And by Clarence, did you understand Clarence Thomas?

Judge HOERCHNER. I understood Clarence Thomas.

Senator LEAHY. Thank you.

Would you turn to page 11 of your transcript, please. On page 11, there is a question asked of you, and let me read the question to you. It begins on page 10, and then I would ask you to read your answer:

Let me get back to a comment you made about the first telephone call you related. You said that Anita Hill had related to you that there had been sexual harassment at work by my boss. I may be paraphrasing part of that, except that I know the words sexual harassment were used in your quote. Do you specifically recall her using those two words?

Judge, would you please read on lines 18 and 19 what your response was to the question, whether you specifically recall Anita Hill using the words "sexual harassment?"

Judge HOERCHNER. "Yes, I do. I think they were the first time I had ever heard them on a personal basis from a friend."

Senator LEAHY. Then, last, would you turn to page 29, please, Judge. There is a question that begins on line 11, and I will read the question to you. The question was, "Did she give specific details, or how specific did she get?" Judge, what was your answer?

Judge HOERCHNER.

Well, my memory, I remember two specific aspects about his behavior, and that was the repetitive pushing himself upon her as a social partner and his statement, if we had any witnesses, you would have a great case against me."

Senator LEAHY. Lastly, in your statement this morning, you say, "It's not just a question of my never having known her to lie, I've never known Anita to even exaggerate."

Judge, on each of these statements, the ones that you have just read and, of course, the one I just referred to from this morning's statement, is that your testimony here today?

Judge HOERCHNER. Yes, that is correct.

Senator LEAHY. Now, did the FBI agents at one point in their discussion with you tell you that in the FBI report they could keep your name anonymously, if you requested that?

Judge HOERCHNER. I believe we finished the interview, with the understanding that the agent would have interviewed Susan Hoerchner, who would have said "no comment," and that my interview, the interview that I gave him would go out under something like L.A. No. 1.

Senator LEAHY. Judge, you were given the opportunity, if you just wanted to stay anonymous, not to have to testify here, to be in California this afternoon. Why did you come forth?

[Pause.]

Judge HOERCHNER. I think my reasons were similar to those of Anita and the sense that I have a duty, as a citizen, to tell the truth.

Senator LEAHY. And what you have told me here today is the truth?

Judge HOERCHNER. Yes, it is.

Senator LEAHY. I will just ask you one more question about Professor Hill. Is she, in your estimation, a woman who suffers from fantasies in any way, or is she pretty level-headed?

Judge HOERCHNER. She is one of the most level-headed people I have ever known. Her feet are firmly on the ground. She has never conveyed any fantasy to me whatsoever.

Senator LEAHY. Thank you, very much.

Ms. Wells, in speaking of Anita Hill, you said, "we are both very private persons." Is that a fair restatement of what you said?

Ms. WELLS. Yes, Senator.

Senator LEAHY. But you said something else and I think maybe it's important—especially for this panel to hear, and probably a lot of other people to listen to—you said, you weren't surprised that she stayed.

Ms. Wells—I am sorry to delve into your privacy and everybody else's—tell me, why do you say that?

Ms. WELLS. Well, when you are confronted with something like that you feel powerless and vulnerable. And unless you have a private income, you have no recourse. And since this is generally done in privacy, there are no witnesses, and so it is your word, an underling, against that of a superior, someone who is obviously thought well of or they would not have risen to the position that they hold. And so if you hope to go forward, and by going forward, move out from under their power and control, you sometimes have to put up with things that no one should be expected to put up with.

Senator LEAHY. No one should be expected to put up with—but, Ms. Wells, it's your experience that this is something that goes on?

Ms. WELLS. Yes, it is my experience.

Senator LEAHY. And Ms. Wells, sitting here today do you feel that this is what Anita Hill experienced?

Ms. WELLS. Yes, I do, Senator.

Senator LEAHY. Thank you.

Now, Mr. Carr, thinking back on it, you said that you did not give her any advice on filing a complaint or anything else. Now that you have thought about it, and listened to all that has happened, if you had it to do over again, what do you think you might have given for advice?

Mr. CARR. I think I would have advised her to leave her job. I just, I have no recollection that I gave her any advice or didn't give

her any advice, and we may have discussed that. I mean she may have told me that she was planning to leave her job at some point. I just don't recall it.

Senator LEAHY. Mr. Carr, would it not be right to say if a friend comes to you and says, "Look, I've got this problem"—well, let's do it in the abstract: A friend comes to you with a problem. What is going to be your first reaction? Interrogate the heck out of them on the problem? Or, if they are troubled, offer them comfort?

Mr. CARR. I am sorry, the first choice was?

Senator LEAHY. Interrogate the heck out of them on the problem or offer them comfort?

Mr. CARR. I think my first inclination is going to be to try to find out exactly what they are talking about, but I think I will be very hesitant to push to find out too much information if they are reluctant.

And realizing that they are reluctant and I think I would certainly worry about comforting them.

Senator LEAHY. And Ms. Wells, I want to deal with one point you said. And correct me if I am not restating your testimony correctly. You said that if somebody, not independently wealthy, needs a job, and hopes that maybe if they stay at that job they might advance to a different job, that's one reason for not just walking away. Is that correct?

Ms. WELLS. That is correct.

Senator LEAHY. Was Anita Hill somebody who was independently wealthy who could just say, "I will take my trust fund or whatever and walk out of here"?

Ms. WELLS. By no means. If she was, she certainly never disclosed it to me. One of the things we liked to do was to bargain hunt.

Senator LEAHY. Would it be fair to say that your impression of her was of the single woman in the workplace living on her salary?

Ms. WELLS. Precisely, Senator.

Senator LEAHY. Now, Mr. Paul, account again what Professor Hill's demeanor was when she told you about this?

Mr. PAUL. We were sitting in the university cafeteria. It was in the course of an informal conversation about her employment opportunities. She was obviously embarrassed that I had asked the question. She was reluctant to answer the question. She was emotional, hesitant.

Senator LEAHY. You remember that attitude on her part?

Mr. PAUL. I remember quite vividly because I felt embarrassed, Senator, that I had asked what may have been an inappropriate question with no intention of asking an inappropriate question.

Senator LEAHY. Did you have any reason to doubt what she was saying to you?

Mr. PAUL. Absolutely not.

Senator LEAHY. Now, back to you, Judge Hoerchner. You have come here and you have testified under oath about a conversation some years ago. The conversation, because of its nature, apparently stands out strongly in your mind. Is that correct?

Judge HOERCHNER. There are certain aspects of the conversation that stand out in my mind. They are the fact that her boss' name was Clarence. He repeatedly asserted to her that he was her kind

of man, she would not admit it, he said, and that if she had any witnesses she would have a great case against him.

Senator LEAHY. Judge, has anybody forced you or enticed you to come forward here?

Judge HOERCHNER. Absolutely not. In fact, Anita has never asked me to come forward.

Senator LEAHY. Ms. Wells, I will ask you the same question. Has anybody enticed you, forced you to come forward here?

Ms. WELLS. No, they have not, Senator.

Senator LEAHY. Is this a process you would have just as soon passed up?

Ms. WELLS. Oh, yes, I—oh, yes, I would not be here if I could have, you know, done something else.

Senator LEAHY. Mr. Carr, you are a partner in a law firm in New York City, is that correct?

Mr. CARR. That's correct.

Senator LEAHY. And would it be safe to say that this type of a Sunday afternoon testifying is not the sort of thing that the partners in your law firm normally do?

Mr. CARR. That's true, Senator. I would tell you that I am a corporate lawyer. I represent clients in business transactions that we try to keep quiet and confidential and discreet. I do not believe any client I have represented would be pleased to know that their lawyer was before you or before the cameras. It is something that I have been concerned about and worried about and was very hesitant to do this.

But I think it is, I think it is important to speak the truth when you know it, and I felt that I had an obligation to do this.

Senator LEAHY. And, Mr. Paul, you stated earlier that when many of your colleagues signed a letter or petition or whatever opposing Judge Thomas for confirmation to the Supreme Court, you declined to sign that, that you did not join with the others.

Mr. Paul, did anybody force you to come forward here?

Mr. PAUL. Absolutely not, Senator.

Senator LEAHY. And why are you here?

Mr. PAUL. I am here because I read the reports in the newspaper on Monday and credibility and character of a professional colleague of mine was called into question. I felt that it was my duty to come forward. My duty both with respect to my colleague and also, more importantly, with respect to the U.S. Senate.

Senator LEAHY. Thank you very much.

Mr. Chairman, I see the red light is on.

The CHAIRMAN. Thank you, very much, Senator.

Now, we will have one more, an additional 15-minute round for Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Judge Hoerchner, turning now to page 7 of the previous deposition which you have given on line 4, the question was, the last part of the question:

You tried to talk to her about it later; did you have any idea about when your attempt was? Answer: I think it would have been once or twice when we spoke on the phone. It was very unsuccessful and I just know that it was after the one time we talked about it at length.

Judge HOERCHNER. I am sorry, Senator, we are page 7, line?

Senator SPECTER. No, we are on page 13, line 4.
And the question is:

You tried to talk to her about it later; did you have any idea when your attempt was? Answer: I think it would have been once or twice when we spoke on the phone and it was very unsuccessful and I just know that it was after the one time that we talked about it at length.

And my question to you is, Why did you think or was there any indication given to you by Professor Hill why she wouldn't talk about it again?

Judge HOERCHNER. The reason would have been apparent to me from her initial pain and humiliation when she told me about it the first time. I agree with Ms. Wells, that Anita is a very private person. She has no desire to discuss these things, particularly in a public forum.

Senator SPECTER. Well, my question goes to her having talked to you about it once and her declining to talk to you about it again, and whether there was any thought in your mind as to what had actually happened on her unwillingness to talk about it when you had asked her about it on one or two occasions after that?

Judge HOERCHNER. As I mentioned in my statement, to my surprise at the end of the conversation she did not seem to be cheered or comforted in any way. Apparently talking about it was of absolutely no help to her.

Senator SPECTER. Let me turn now, Judge Hoerchner, to the question about a couple of the job changes. You had commented in your deposition, which appears at page 7, line 4—picking up at the end of line 4—

Judge HOERCHNER. Just a moment.

Senator SPECTER [continuing]. "She was going to leave because of that, whether or not she had another job." And that was in response to the question of her reasons for leaving her job at EEOC.

Were you aware of the fact that she did not leave her job at EEOC, or that the circumstances as represented to you did not cause her to leave the job at EEOC without finding another job first?

Judge HOERCHNER. I believe after she left she told me—I met her at a professional conference—and it was clear that she did have another job. In that conversation she did not say that she was going to leave her job and refuse to get another job. She just said that she would give herself some time and then she would leave no matter what.

Senator SPECTER. Well, my question to you goes to the point as to whether when you said that she was going to leave EEOC whether she had another job or not. Whether from the conversation which you had with her, you thought that she was so upset that she would leave EEOC even if she couldn't find another job? It goes to the issue of how upset she was on the conversation that she had with you when she did not leave immediately, but did not leave until she found another job?

Judge HOERCHNER. At the time that we spoke, she was very upset.

Senator SPECTER. Let me move on then, Judge Hoerchner. You talked, on page 30 of your deposition, about your view of Judge

Thomas. And it starts on page 30, line 5, I will skip up to line 2, where it said:

Question: And you based, you said an attitude toward power. Where did come from? Why would you think that Judge Thomas had an attitude about power, where did that come from?

Answer: It came from the idea that most of the positions that he had, that I knew about were in civil rights, equal employment opportunity and that his behavior really showed a disregard for general principles of equal opportunity or the rights of individuals and it led me to believe that he possibly thought that the law was for other people.

My question, Judge Hoerchner, did you ever consider in the light of Professor Hill telling you that Judge Thomas had sexually harassed her and he was the Chairman of the EEOC, which was the Nation's chief law enforcement officer on this issue, did you ever consider giving Professor Hill advice that she ought to come forward and expose him so that he would not be in the position to thwart appropriate enforcement of equal rights, and laws against sexual harassment?

Judge HOERCHNER. No, Senator, I did not. I believe that the tremendous inequity in power between them would have been dispositive.

Senator SPECTER. On page 37, Judge Hoerchner, you refer to a conversation with Mr. James Brudney, would you tell us what the circumstances were of that, please?

Judge HOERCHNER. A conversation between Anita and Jim Brudney?

Senator SPECTER. Between you and Jim Brudney.

Judge HOERCHNER. Between myself and Jim Brudney. Yes. After I was interviewed by the FBI, we left, I left the interview, I believe, with the understanding that a pseudonym, a number LA-1, would be used instead of my name. The next day I was in a training class with other judges and the presiding judge of the board where we were being trained pulled me out of class because I had a telephone call from the FBI. It was the FBI agent who had interviewed me. He said that the people in Washington wanted me to give my name. He led me to understand that because there were only three names involved everyone would know who LA-1 was. At that point, I was still unsure whether I wanted to give my name.

The State court system that I work in is part of the executive branch under a Republican administration. I feared retaliation. I knew that there was one person on the Hill, I knew of the name of one person who was at Yale at the same time that I was who was a member of my brother's class. I wished to speak with him about the ramifications of having my name used in the FBI report.

Senator SPECTER. Did Mr. Brudney urge you to come forward?

Judge HOERCHNER. Absolutely not. He refused to give me any advice. He repeated many times very kindly that he understood my reluctance.

Senator SPECTER. Judge Hoerchner, have you heard Ms. Hill's testimony about details as to what she said Judge Thomas said to her, without repeating them now?

Judge HOERCHNER. I believe I heard almost all of it.

Senator SPECTER. Did she give you any details at all, except for saying that he pushed himself on her and tried to date her and the

statement about if they had a witness, it would be a good case? But did she tell you about any of the other materials, about the films, about the rest of it?

Judge HOERCHNER. About that—I'm sorry?

Senator SPECTER. About the films and about the rest of what she had testified here, which you say you think you heard?

Judge HOERCHNER. I do not have a specific memory of that and that would be very much in keeping with her reserved character.

Senator SPECTER. Let me ask you about one final part of the transcript, and it appears at page 12, line 14. The question is:

Is it possible, Judge Hoerchner, that she was referring to—again, I understand the comments you made about your recollection—is it possible that she was referring to the same time period in which she worked at EEOC? Answer: Well, I was trying to remember all of this at first. At one point, I thought it was EEOC, but I was drawing conclusions based on other parts of my memory. I really don't know which it was, and, again, I really don't know if it was 1981 versus another time.

I was concerned, when I saw this reference that you said that "I was drawing conclusions based on other parts of my memory," and my question to you is what did you mean by that?

Judge HOERCHNER. Well, I did know that Clarence Thomas became the Chair for the EEOC. Now, whether I knew that at the time I spoke to Anita and we had the most memorable conversation or not, I can't really say.

Senator SPECTER. Well, what was there that you were drawing from other parts of your memory, though?

Judge HOERCHNER. I think I mentioned to the staff member that I have a vague memory of something about education films that they had reviewed for civil rights, sexual harassment-related issues, and that is a very vague memory.

Senator SPECTER. Judge Hoerchner, did Professor Hill ever have any discussion with you about her move from the private law firm to the Department of Education? She has testified that one of the reasons she left the Department of Education to go with Judge Thomas to EEOC, notwithstanding the incidents, was that she was fearful that the Department of Education would be abolished, because that was one of the planks in President Reagan's program. Did you ever have any conversation with her or any insight into any of her thinking, when she left the law firm to go to the Department of Education, any concern that that might be insecure, because the department might be abolished?

Judge HOERCHNER. I don't remember anything about the abolition of the department. The only thing I remember her saying about her desire to go to the Department of Education was that she was very interested in working in a policy-making position.

Senator SPECTER. Mr. Carr, you have testified that Professor Hill told you about comments during the course of the telephone conversation. How did they happen to arrive during the course of a telephone conversation?

Mr. CARR. My recollection is that we spoke periodically and that it was natural in those conversations to inquire about how we were each doing. In this conversation, it was clear that she was not doing very well, and I asked her why she was upset or what was bothering her, and this is what she explained.

Senator SPECTER. When you say it was clear from your conversation that she was not doing very well, can you amplify that? I ask, because it is rather unusual, obviously, to bring up the subject of sexual harassment, and I am interested to know what there was in the conversation that would have led you to that inquiry and would have led her to that disclosure.

Mr. CARR. Well, my recollection is that, in response to a generalized "how are you doing," that the tone of her voice was a little different, that she was trying not to express something, that she was holding something in, that she could not make the standard and sort of normal affirmative declaration that things were fine, and then I inquire further as to what was wrong.

Senator SPECTER. In response to Senator Biden's questions and also in your deposition, you were precise on both occasions in saying that she said that her boss was making sexual advances toward her. Did she specify what those advances were?

Mr. CARR. I don't recall that she did, no.

Senator SPECTER. And in the deposition, at page 3—and I don't think you will need the transcript, but we can give you one—the question was, "Did she identify who her boss was? Answer: I knew she worked for the EEOC and that it was Clarence Thomas."

And in your testimony here today, you said that it was clear to you that she was referring to Judge Thomas, but she did not identify Judge Thomas by name, did she?

Mr. CARR. I don't recall that she identified him by name. I do recall, though, that I spoke very strongly about the irony, I guess, in how I guess disgusting it was that the head of the EEOC should be making sexual advances toward her. There's no question in my mind—in fact, I think of how do I remember this, and the reason I remember this is because it was the Chairman of the EEOC.

Senator SPECTER. Well, aside from what is clear in your mind, my question to you is did she say it was Clarence Thomas?

Mr. CARR. I don't recall.

Senator SPECTER. I see that my time is up, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We are going to go now to 5-minute rounds. Mr. Carr, let me ask you, before I yield to—

Senator SPECTER. Mr. Chairman, I have some more questions.

The CHAIRMAN. Well, we agreed we can do this, but we are going to have to begin to change the ground rules here. We will confer on this.

Senator SPECTER. Well, there was no agreement as to a total length of time.

The CHAIRMAN. No, but we will go to 5-minute rounds. You can have your questions in 5-minute rounds like other Senators.

Senator SPECTER. OK. Fine.

The CHAIRMAN. Mr. Carr, how would you know someone was upset on the telephone? Are you married?

Mr. CARR. No.

The CHAIRMAN. Is there anyone you have had a relationship with for an extended period of time?

Mr. CARR. Yes.

The CHAIRMAN. Did you ever have any doubt when you picked up the phone and say how are you, whether or not you know whether they are all right or not?

I wonder if any man or woman in the world has ever picked up the phone and called someone with whom they had a relationship and said how are you, and heard that silence on the other end of the phone and not wondered whether something was wrong. The inability to know whether someone on the other end of the phone is upset seems to me to be an experience every American has probably shared at one time or another.

Mr. CARR. I would agree that it is very easy with anyone that you have even the slightest of relationship, to be able to tell whether they are happy or sad with the slightest of cues over the phone.

The CHAIRMAN. Were you surprised that—did you find it unusual at all that, notwithstanding the fact that the relationship had not—whatever your phrase was—not matured, not gone forward, that she would discuss or raise the subject of sexual harassment?

The Senator from Pennsylvania said it was rather unusual to bring up the subject of sexual harassment. Did you find it unusual that she would confide in you to the extent that she would tell you she was upset and she was being harassed? What did you think when she told you? Did you say well, our relationship just hit a new high? What did you think?

Mr. CARR. If someone would have asked me, sort of in the abstract, whether Anita Hill would have shared such a thing with me at that point in our relationship, I would not have been able to say yes. I would have wondered whether she would have. But as I think about it, my recollection is that Anita Hill is a very honest and forthright person, and maybe, in a simplistic sense, when asked the question, she was visibly upset, she could not—she did not think to avoid telling me.

The CHAIRMAN. I yield to my friend from Alabama.

Senator HEFLIN. Judge Hoerchner, you are a workmen's compensation judge, and in the experience that you have had relative to judging, have you found that when confronted with an issue of fact, that the recollection process, where the fact occurred several years previous, that recollection of the incident and the details of the incident do not always come to mind in the witness' recital of them and his recollection, the continuing process, particularly if these events, incidents, facts and conversations occurred a number of years ago?

Judge HOERCHNER. Yes, Senator, I definitely believe that is the case.

Senator HEFLIN. Do conversations with people who bring back to your memory certain instances help in regard to trying to comprehensively refresh your memory?

Judge HOERCHNER. I believe that is the case, as well. I do wish to say, though, that I have never discussed with Anita since that main conversation that I remember, the substance of that conversation or when it took place.

Senator HEFLIN. Now, we are faced with the issue here between two people, both Yale Law School graduates, both who appear to have had prior to all of this arising, good reputations among people that had worked with them. We have the problem of trying to sift

through all of the facts and come up with some decision, if it is humanly possible—and it may not be humanly possible—of who is telling the truth.

The issue of motivation as to someone coming forward and making a statement that was untrue arising—now, we have gone into various elements that people might think of in regard to motivation, and I want to ask you, and all of you and each of you can answer it: Was she, in your observation, a zealous-cause person, whether it be in civil rights, the feminist movement, or whatever? Did she ever indicate to you that she was as zealous-cause person, who was willing to do great things, move forward, and take drastic steps in order to advance whatever her cause would be?

Judge HOERCHNER. Most definitely not, Senator. I know that she worked under the Reagan administration. To this day, I have no idea how she votes. I have very little sense of where she would fit on a political spectrum. Further, due to the quiet and gentle strength of her nature, she is not someone who seeks a public forum.

Senator HEFLIN. Certainly, you wouldn't use the word "militant" in any degree?

Judge HOERCHNER. I think she would be very offended by that word.

Senator HEFLIN. All right. Ms. Wells?

Ms. WELLS. I would agree with the judge. In all the time that I have known Professor Hill, we have not had a conversation that would indicate a militant viewpoint about current affairs or any particular philosophy. She is very even tempered, in my estimation.

Senator HEFLIN. Mr. Carr?

Mr. CARR. Your characterization of her as militant I found—

Senator HEFLIN. Well, I don't mean to necessarily use "militant." It is probably the extreme word to use.

Mr. CARR. Well, just to respond to that, I am a corporate, sort of a Wall Street lawyer, my profession, and I would consider myself militant compared to Anita Hill. [Laughter.]

Senator HEFLIN. Mr. Paul.

Mr. PAUL. I recall on one occasion asking her specifically about whether she agreed with the policies of the Reagan administration specifically on civil rights issues, and I remember her saying that she didn't have any disagreements with them.

The only time I remember her being at all animated in a political discussion was the lunch table discussion that I referred to in my testimony, where she very strenuously defended her former mentor-teacher Judge Robert Bork.

Senator HEFLIN. I am limited to 5 minutes, and I will sort of go over these and ask each of you to make comments on it: Vindictiveness, a martyr-type complex, desire to be a hero, write a book, spurned woman or scorned woman in regard to romantic interests, and then the issue of whether or not she has any fantasy or out of touch with reality.

I suppose most of you have heard what we have attempted to go over to find motivation, and if you would comment on those, each one of you.

Judge HOERCHNER. Is that to start with me, Senator?

Senator HEFLIN. Yes.

Judge HOERCHNER. On vindictiveness, I have never known Anita to express a desire for revenge in any context. I will address the characteristics that I remember, and then I hope you can refresh my memory.

She was not a spurned woman, and I am unaware of any context in which she has ever felt herself to be a spurned woman.

And what are the other qualities?

Senator HEFLIN. Well, I don't know if I remember them all. I will have to go back and read them—martyr complex—you could look at it from a group basis and give them—because my time is up—just an overall response relative to these matters and give us a thumbnail viewpoint.

Judge HOERCHNER. They are all sound like the product of fantasy, frankly, Senator. As we have all commented, she is as very private, reserved person, whose personal style is that of gentleness, dignity, and understatement. She is very uncomfortable with the prospect of being in the public eye.

Senator HEFLIN. All right.

Ms. Wells.

Ms. WELLS. The answer would be in the nature for all of the qualities, if you will, that you listed, Senator. I would say that the thing that attracted me to Professor Hill made me feel I want to know this person is the fact that she is a very sweet-natured person, and yet you can feel from within her a wonderment, a sense of joy about life, and I love to hear her laugh and she loves to laugh. She is a happy person, a very giving person and one of the best friends anyone could hope to have.

Senator HEFLIN. Mr. Carr.

Mr. PAUL. You have to remember that my recollections of Anita Hill are I guess 9 years ago. I can't remember any of those characteristics being particularly applicable to her. I heard earlier this characterization as a spurned woman, and for a moment I tried to recall whether I had spurned her or she had maybe spurned me, but I don't recall. [Laughter.]

Professor, I don't know Professor Hill in the same personal way as these other individuals. I know her as a professional colleague and she has always struck me as a person with two feet very firmly planted on the ground. The only book, Senator, I could conceive of her wanting to write would be a book on the Uniform Commercial Code. [Laughter.]

The CHAIRMAN. Again, we are going to continue this going back and forth for 5 minutes. I have indicated to Senators on both sides that, as we get to the end of the process and people have no questions, but if one Senator continues to have questions. He will have an opportunity to ask those questions. We will alternate, so that every Senator gets an opportunity to participate this way I will just recognize the ranking member each time and he can determine who will move next.

I recognize the Senator from South Carolina.

Senator THURMOND. Mr. Chairman, I am going to yield my 5 minutes to Senator Specter and suggest to other members that they yield their time to him such as they are don't need.

I now yield to Senator Hatch.

Senator HATCH. I would be happy to yield my 5 minutes to Senator Specter, as well.

Senator THURMOND. Senator Simpson?

Senator SIMPSON. Mr. Chairman, I would like to ask a couple of questions.

The CHAIRMAN. The Senator from Wyoming.

Senator SIMPSON. Thank you, Mr. Chairman.

Because the anguish of the committee is just encompassed in the immediate remarks of Ellen Wells saying those things about Ms. Hill in a beautiful way is just exactly what Jack Danforth said about Clarence Thomas, that he was a man of joy, you said, and laughter and a great friend to be around, and that was said the first day, and now you add to it this day and that is the anguish of the moment for us.

We are, you know, trying our best. We really are not open-minded, but trying, because we have had a vote here already. The vote was 7 to 7, and when you hear people speak, the two speaking from that side of the aisle, they are speaking on the basis that they voted against Judge Clarence Thomas to confirmation to the U.S. Supreme Court, and when you hear Senator Specter and Senator Hatch, they voted for his confirmation.

So, this is really not—we are not here as judges, as our chairman has so clearly reminded you, and it becomes ever more clear every day. But we are doing our best, and they can chuckle and giggle and laugh about the process and be cynical, but cynics have no heroes and they never will. Something terribly, something terribly bad has happened here. I don't know that we will ever find it.

I just wanted to ask—just to be sure that I have—Mr. Paul just one question. In your statement, you said when she told you of this, you did not recall whether she went on to say the name Clarence Thomas. You have been very frank about that. You don't remember that?

Mr. PAUL. I don't recall that she did, Senator. She may have, but it would have meant nothing to me.

Senator SIMPSON. And then you said, "If she said it, the name would not have meant anything to me, since I would not have recognized it at the time."

Mr. PAUL. That's correct, Senator.

Senator SIMPSON. You know, part of this terrible process has been about sexual harassment, a great deal of it, but some of it has been about leaks, a lot of it, too. So, I looked in your testimony here in the transcript of proceedings, and on page 18, you name a person who spoke with you who told you that you were going to be subpoenaed later that day.

That person is on Senator Biden's staff and a very reputable man. His name I do not bring up. He is a senior staff person, and that would have been his job, for him to call you and say you are going to be subpoenaed. But I was interested in your comment, only because I had my old bald dome battered in the other day by this person.

It says here on page 18 that Mr. Biden's person spoke to you to say that "I was going to be subpoenaed later today, although I had already learned that from Nina Totenberg."

Mr. PAUL. Senator, I should explain—

Senator SIMPSON. Would you tell me how that came to pass? I just have a passing interest.

The CHAIRMAN. I would like to know the answer to that, too.

Mr. PAUL. Senator, I apologize. I didn't mean to take sides between you and Ms. Totenberg.

Senator SIMPSON. No, no, we are both able to do that. [Laughter.]

Mr. PAUL. I was being perhaps too glib there. I've never spoken to Ms. Totenberg. What I meant was that I had been woken up by my clock radio going off and I heard Ms. Totenberg say my name, as I woke up, saying that I had been subpoenaed to appear before this committee.

Senator SIMPSON. I see.

Mr. PAUL. It was quite a wake-up call, Senator. [Laughter.]

Senator SIMPSON. That saved us a further round. [Laughter.]

Now, wait until I tell you what she told me. [Laughter.]

I have it here before me, but it is Sunday in America, so I shall leave it out. [Laughter.]

One final question, and here it really is. You are speaking with passion and with truth, and this is my question: Does it seem odd to any of you here that these universally crude and obscene things which we have all heard, it is all that is out there, and we know that they took place, according to Ms. Hill, between 1981, 1982, 1983, and 1984, somewhere in all that pattern, perhaps, that is what we are told, and that she has stated to this panel that pressure, that this man was exerting power over her, authority, status, a threat of a loss of a job.

Those things are all in this record, and yet others have said that, because she was a schedule A attorney, there was never any fear of that and that she knew that or should have known that, and others have given us information that there was plenty of budget there and she would have been taken care of, and that will come in later in the next panel.

So, here is, this foul, foul stack of stench, justifiably offensive in any category, that she was offended, justifiably, embarrassed, justifiably, and that she was repelled, justifiably. And I ask you why, then, after she left his power, after she left his presence, after she left his influence and his domination or whatever it was that gave her fear—and call it fear or revulsion or repulsion—why did she twice after that visit personally with him in Tulsa, OK, had dinner with him in the presence of others, had breakfast with him in the presence of others, rode to the airport alone with him in the presence of no one, and we have 11 phone calls initiated by her from 1984 through the date of Clarence Thomas' marriage to Ginni Lamp, and then it all ended and not a single contact came forward.

What does that say about behavior? Because Ms. Hill is not alleging sexual harassment—go back and look, go back and look at her press conference, go back and look at all of it—she is alleging behavior.

We are here today because of behavior. If we are here today because of behavior, may I please have a summary from you of what this says about her behavior? I would ask each of you—and I will defer my next round—I just think it is critical. We are talking about behavior. As human beings, I would like you to respond to this as behavior.

Mr. PAUL. Senator, I am not an expert in the field of sexual harassment and I think I probably should defer to someone who has had a bit more experience in the area.

Senator SIMPSON. Thank you. Mr. Carr?

Mr. CARR. Neither am I an expert in sexual harassment or, for that matter, behavioral sciences. However, I do know that in looking forward as a young professional at my career, I am concerned that I will be on good terms with the people who have a say or an impact or are in a position to judge my career, and I would be extremely, extremely hesitant to say anything to offend or cut them off, for fear that in the future they might adversely impact my career.

I may need them for a reference or anything of that sort, and it may well be that Anita Hill—and I am just telling you, this is my own view on the way people act—it may well be that a good portion of Anita Hills', so to speak, professional claim to fame was due to her experiences with Clarence Thomas, and it may well be that to categorically cut off that relationship would have been detrimental to her career going forward.

Senator SIMPSON. Even in the face of this stuff. Now, may I ask Ms. Wells?

Ms. WELLS. Yes, Senator, I think Mr. Carr has stated the case very well, and even in the face of that, you would, until she got to be in a position that would be, shall we say, higher, she would not wish to find herself on less than cordial terms with him. It is something that—I know my mother told me, and I am sure Anita's mother told her, when you leave, make sure you leave friends behind, because you don't know who you may need later on, and so you at least want to be cordial.

I know I get Christmas cards from people that I don't see from one end of the year to the other and, quite frankly, do not wish to, and I also return their cards and will return their calls, and these are people who have insulted me and done things which perhaps have degraded me at times, but they are things that you have to put up with, and, being a black woman, you know, you have to put up with a lot, and so you grit your teeth and you do it.

Senator SIMPSON. Judge.

Judge HOERCHNER. Senator, I believe Anita has testified very credibly in response to the issues that you raised. I would like to add my voice to what Mr. Carr has said, that simply the realities of business and professional life are such that she could not afford to burn that particular bridge behind her, particularly, to extend the metaphor, when that bridge is the highest person in her field and her claim to fame.

And to that, I would add the understanding of her character, that she, in my impression, only wanted the behavior to stop. She has no desire to get even or to harm him.

Senator SIMPSON. Mr. Chairman, I thank you. I am afraid that will remain a puzzlement for me forever, as to how that can be, where one would continue a relationship with a person that had done this foul, foul presentation of verbiage, verbal garbage to him or her, and I shall never understand that, and it remains one of my great quandaries.

Another thing that puzzles me deeply, she was in Washington, DC, where there would have been a very fertile ground for her complaint. It might not have been out in the land. It might not have been in some other State of the Union, but she was in Washington, DC, at a time of public consciousness and awareness, and it just seems to me impossible to believe that something that happened 10 years or 8 years ago can come out of the night like a missile and destroy a man, after 43 years of exemplary life.

Senator THURMOND. Senator Grassley.

The CHAIRMAN. Senator, we go to this side, if we could.

Senator THURMOND. Excuse me.

The CHAIRMAN. Senator Metzenbaum next.

Senator METZENBAUM. I address these comments to the two ladies on the panel. These hearings have brought forth comments from women, and I am not sure we men totally appreciate the significance of sexual harassment.

During these hearings, one lady came to me and told me that when she was 16 years old, she was fondled by a male, a friend of the family, and she never told her parents, never told anybody about it for 27 years, until the night before she spoke to me, she had told her husband. And all during that entire 27 years she had felt that she was somehow guilty, that she had done something wrong, but she hadn't done anything, nothing. She was in the presence of this person and it occurred.

Another lady told me that she had worked at a company where the chief executive had made numerous approaches to her, and she said I didn't quit talking to him, I didn't quit having a relationship if he gave me a ride home, I didn't create a chasm between us, because I, as a black woman, was concerned about my future.

I just want to ask you, Judge and Ms. Wells, if you can maybe explain to us 14 men and the balance of our colleagues in the Senate and maybe the rest of the country, what it is to experience sexual harassment or how a woman feels and the repression that she places upon herself not to talk about it or do anything about it or to sever the relationship with the person who has harassed her, either one of you.

Ms. WELLS. I think one of the first things you would ask yourself is what did I do. You blame yourself, you say is it something I'm wearing. I have been in this sort of situation. OK, perhaps it's the perfume I have on.

I went to a Catholic school, and the nuns certainly taught me to be careful in my dress. I remember one sister telling us that you had to be careful of the perfume that you wore, because the title indicated the kind of emotions you would generate in a gentleman. [Laughter.]

I laughed, but, I will tell you, Sr. Ganier, the advice you have given me has held me in good stead, so I paid attention to that. But you do ask yourself what did I do, and so you try to change your behavior, because it must be me, I must be the wrong party here.

Then I think you perhaps start to get angry and frustrated, but there is always that sense of being powerless and you are also ashamed. I mean, what can you tell your friends and family, because they ask you, well, what did you do, and as you keep it in, you don't say anything. Or someone says, well, you should go for-

ward, you have to think again, well, how am I going to pay the phone bill, if I do that. Yes, perhaps this job is secure, but maybe they will post me in an office in a corner with a telephone and the Washington Post to read from 9 to 5, and that won't get me anywhere. So, you are quiet and you are ashamed and you sit there and you take it.

Judge HOERCHNER. Senator, I agree that there is a tremendous tendency toward self-blame in women who are subjected to this sort of experience. It goes so far back into our history, even in the Garden of Eden, who was the bad person there who offered the apple to Adam and had to suffer for that for the rest of eternity or for the rest of human history.

I believe that most women who are in a situation of sexual harassment really only desire cessation of the problem. They have, very often, I believe, little desire for revenge. If the behavior stops, then they are much more comfortable, I believe, but I think the pain remains. I think it is indelible.

The CHAIRMAN. Let me reiterate here that there are two distinct issues here. One is the response of those victimized and the other is whether or not someone was victimized here. This is relevant testimony, what we just heard.

I always find it difficult as to why men can't understand it. I wonder how many tens of thousands of millions of men in this country work for a boss who treats them like a lackey, tells them to do certain things and they stay on the job. We never ask why does that man stay on the job.

I wonder how many men there are, if in fact they are approached by a man on the job who had a different preference than they do, I wonder how ready they would be to go open and say, "By the way, my boss, that fellow up there, approached me." A lot would, just like a lot of women do go forward, and a lot wouldn't.

I don't know why we have so much trouble understanding the pattern of the victimized person, but that is not the issue here today. The issue here today is whether or not there was victimization, whether or not there was harassment. Although this is relevant, I want to keep bringing it back.

The only reason it is brought up now is because those who are making, as they should, Judge Thomas' case keep coming forward and saying, "why would you stay?" I have not brought forward, as was suggested, "expert testimony" on the pattern of victimization, the pattern of behavior that people would engage in.

I have held numerous hours of hearings on that subject, but we are here again, please, as a fellow I used to talk for, a great trial lawyer in Delaware, used to say, please keep our eye on the ball, and the ball is not the overall pattern of harassment in America, but whether or not Anita Hill was harassed. This will only continue to be brought up as long as we continue to ask the question "why would she stay?" There are both legitimate questions but let's keep our eye on the ball as best we can.

Now I yield to my friend from South Carolina.

Senator THURMOND. Senator Grassley.

Senator GRASSLEY. None of you have claimed close friendship with Anita Hill. What bothers me in this whole hearing is the fact that these allegations, as serious as they are and as serious as she

felt about them to come forward at this time, it seems to me would also be told to close friends who would come and want to testify, and I don't have any indication that we have any close friends who are willing to come and testify.

Do you know that she is a person who has close friends, or does this bother you that you have not had this close friendship with her, and yet you come forward and other people don't come forward?

Judge HOERCHNER. Senator Grassley, I believe that you are laboring under a misapprehension. I consider Anita Hill a very close friend and one of my very best friends from law school.

Senator GRASSLEY. You do consider her a close friend?

Judge HOERCHNER. Yes.

Senator GRASSLEY. OK, what about for the other three?

Ms. WELLS. I consider myself a close friend. In my comments at the start of this session, I mentioned that I had not seen or spoken to her in 2 years, but that was scheduling problems, shall we say. We kept in contact occasionally through correspondence, and one of the reasons I will—and that is just the last 2 years—one of the reasons I know that we are close is, because the moment the phone rings and I hear her voice or she hears my voice, we pick up as though the conversation had just ended an hour before.

So I have these ties to her, this invisible tie to her that exists across the miles that separate us.

Senator GRASSLEY. But not close enough in either one of your two cases, although you say you were close friends to her, to offer her any advice. If she is a close friend, why would you not offer advice in a time of trial and tribulation like she evidently was going through?

Ms. WELLS. In my case it was because the situation was so personal and painful, it would have been very presumptuous of me to try to tell her what to do. I would like to add that there are other very close friends of her under subpoena to testify before this committee.

Senator GRASSLEY. Wouldn't your friendship, the more trying the situation is, demand your help, the closer that relationship is?

Ms. WELLS. My feeling seems to have been pretty much what Mr. Carr said that his was, that I wanted to listen and to comfort, and it is very painful to me that my listening apparently did not provide comfort.

Mr. CARR. I would just say that you may find this difficult to understand, but the limitations on our relationship had to do with time. It began and it ended, but during that period of time I would have considered us close. I would have considered us very close.

Ms. WELLS. Senator, on that point of why I would not have offered her advice, as I indicated, she wanted a sympathetic ear, and the nature of the complaint is such that you have to be very careful what you suggest to someone in terms of how they ought to proceed, because of the very serious ramifications. And quite frankly, although I may very well have said something that sounded like advice, I am afraid I would have told her to do exactly what she did. I would have been wrong, but that is what I would have done.

Mr. PAUL. Senator, as I have testified, I am not a close personal friend of Professor Hill's. I am a professional colleague of hers who

has always been very impressed by her, and so my recollections are not colored by a personal relationship to her.

Senator GRASSLEY. Mr. Chairman, I will yield the rest of my time to Senator Specter.

The CHAIRMAN. Well, since there are only a few seconds left of that time, we will give Senator Specter more time.

Senator THURMOND. Senator Brown?

The CHAIRMAN. No, no. I'm sorry. We are going back to this side again.

Senator THURMOND. Well, that is what I was thinking. Did you change your mind?

The CHAIRMAN. No, I didn't. I misled you. I'm sorry. We will not go to Senator Specter now. We will go to Senator Kennedy, and then we will go to Senator Brown, and then we will go to Senator DeConcini, then back to Senator Specter. And if he needs more than 5 minutes, we will do more than 5 minutes.

Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

I am sure I want to join in welcoming the panel, and I am sure in their own minds they must be wondering why they are being so questioned about what they understand were conversations that took place over a period of years. And I commend them for the honesty of their comments and for the helpfulness that they have provided this committee. I think it has been a very important service.

Some people just don't want to believe you. You have to understand that. They just don't want to believe you, and they don't want to believe Professor Hill. That is what the fact of the matter is, and you may be detecting some of that in the course of the hearing and the questions this afternoon.

But I hope, Mr. Chairman, that after this panel we are not going to hear any more comments, unworthy, unsubstantiated comments, unjustified comments about Professor Hill and perjury, as we heard in this room yesterday. I hope we are not going to hear any more comments about Professor Hill being a tool of the various advocacy groups, after we have heard from Ellen Wells and John Carr and Joe Paul, all of whom have volunteered to come forward after they heard about this in the newspapers—comments about individual groups and staffers trying to persuade her.

I hope we are not going to hear more about politics. You can imagine what Professor Hill would have gone through if she had been a Democrat, and we hear this afternoon she was a Bork supporter; worked in a Republican administration. I hope we are not going to hear a lot more comments about politics.

I hope we are not going to hear a lot more comments about fantasy stories picked out of books and law cases, after we have heard from this distinguished panel, or how there have been attempts in the 11th hour to derail this nomination. I hope we can clear this room of the dirt and innuendo, that has been suggested by Professor Hill as well, about over-the-transom information, about faxes, about proclivities. We heard a good deal about character assassination yesterday, and I hope we are going to be sensitive to the attempts of character assassination on Professor Hill. They are unworthy. They are unworthy.

And, quite frankly, I hope we are not going to hear a lot more about racism as we consider this nominee. The fact is that these points of sexual harassment are made by an Afro-American against an Afro-American. The issue isn't discrimination and racism. It is about sexual harassment, and I hope we can keep our eye on that particular issue.

I want to thank the panel for their testimony, for their response to questions. I found it enormously enlightening. I think the Members of the Senate will. It is very clear from your presence here, the comments you have made, the way you have responded to questions, that you are doing this as a matter of responsibility and justice—justice to an individual who has had the courage in very difficult and trying times, and everyone who has seen the attempts to go after her over the period of the last 3 days has to understand her hesitancy, but your presence here I think has been enormously helpful to this committee and to the Senate, and I thank you for responding.

The CHAIRMAN. Senator Brown.

Senator BROWN. I think your coming today is not only appreciated but very helpful for us to understand the state of mind of Anita Hill, and I think very helpful in giving some verification to her thoughts at the times that you all had conversations with her.

As I review the various comments that each of you have made, it strikes me that you have given verification to the fact that she indeed talked about being asked out, talked about inappropriate actions. I believe one of you or several of you used the term "sexual harassment."

I want to try and get a feel, if there were other things besides these involved in what she related to you. Specifically, did she relate to you that there was any touching, any physical contact initiated by Clarence Thomas? Anyone have that conversation?

Judge HOERCHNER. No, Senator, she did not relay that to me.

Ms. WELLS. Nor to me, Senator.

Mr. CARR. She never told me that, I don't believe. I don't recall.

Mr. PAUL. I don't recall.

Senator BROWN. We have heard some comments about very gross language being used, with extremely descriptive terms being used. Were those terms related to any of you?

Ms. WELLS. I beg your pardon? I don't think I understood.

Senator BROWN. We have heard comments that Judge Thomas used very gross language, very explicit terms. Were those specific terms related to any of you, in the conversation you had with her?

Mr. PAUL. I don't recall.

Mr. CARR. My recollection is that I attempted to find out more about what had happened, briefly, but that she did not want to talk about it.

Ms. WELLS. She did not relay those terms to me. As I said, it would have been a use of sexually explicit language, and neither she nor I engage in such conversation.

Judge HOERCHNER. I do not recall her use of such terms with me, either.

Senator BROWN. Well, thank you. I appreciate your very straightforward responses.

I will give the balance of my time to Senator Specter, as well.

Senator THURMOND. Senator Specter.

Senator DECONCINI. Wait a minute.

Senator THURMOND. I beg your pardon.

Senator DECONCINI. Thank you.

Senator KENNEDY [presiding]. He does have remaining time. We will go to Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

Senator KENNEDY. Is that OK?

Senator THURMOND. If he can pick that up, when Specter questions, just go ahead.

Senator KENNEDY. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman, and I am sure that Senator Specter is going to have all the time.

I want to thank you, too, for coming forward. We all have some judgments that we all took here on Judge Thomas before we had to come back, so we all have staked out a position. The other 84 Senators, some have and some haven't. So all of us here, as you may know, have already taken a position, but our job is to listen, and I have listened, and I thank you for coming forward.

My questions I hope are really observations, first of all. Mr. Carr, it just really got to me when you said that—or did you say this?—that your appearance here, not only would you much rather be doing something else, but it was not going to enhance your career, and that your corporate clients wouldn't like this. Is that what you said, or did I misinterpret you?

Mr. CARR. I don't know the political views of my corporate clients, per se, Senator. What I meant was that I doubted that any of them would find it a positive thing.

Senator DECONCINI. They wouldn't?

Mr. CARR. I don't think so.

Senator DECONCINI. You don't think so?

Mr. CARR. Although I don't know whether they would find it a negative thing.

Senator DECONCINI. Just out of curiosity, and it has nothing to do with the proceedings, and you don't have to do this, I would like to know, just if you would call me sometime, if your corporate clients really do object to you coming forward and doing this, and you don't even have to tell me who they are. But it just struck me funny, I think any corporate client would be proud of you, that you are that kind of a man, but maybe I am wrong. I haven't practiced law for 15 years, and so maybe corporations and corporate clients are different than they were when I practiced.

The other thing is, Mr. Carr, did you say that no outside group or anybody contacted you, that you came forward on your own?

Mr. CARR. I saw the accusations on the television. I remembered them. I wrote a letter to Anita Hill, telling her that I remembered our conversation, and then I was contacted by people working with her and asked if I would testify.

Senator DECONCINI. If you would, and your lawyer is Janet Napolitano? Or is that—

Mr. CARR. No, she is, I assume she is Anita's lawyer.

Senator DECONCINI. She is Anita's lawyer. I didn't know if she also represented you. She is a very fine lawyer. I happen to know her.

Ms. Wells, let me ask you this: I appreciate your explanation of why a woman—and perhaps this applies to men, too, in different senses—why a woman would stay on under sexual harassment, and you said you would have done that, and you would have advised her to stay, even though now you say that was wrong, and I appreciate that honesty.

If Professor Hill had told you the explicit that she told this committee, No. 1, would you have felt obligated to give her advice? And would that advice have been, as you said it would have been, to stay on?

Ms. WELLS. If I had learned of the actual nature of the behavior, I would—well, I was stunned, first of all, just to hear the news without details. To hear the details, I think I would have been so outraged that I perhaps would have said, “Well, we have to do something. You cannot live through this.”

Senator DECONCINI. Do something. And personally, you know, nobody can really get inside someone else’s moccasins or shoes, but if that had happened to you, would you have stayed on and moved on in the job—given the explicitness of the testimony given yesterday?

Ms. WELLS. Without getting into details, Senator, and I say this only to try to help you understand what I think went on here, I would be unsure, simply because I was touched in the workplace, not merely on one occasion, and I stayed in that position.

Senator DECONCINI. And you stayed on.

Ms. WELLS. So therefore, I really can’t say what I would have done with words.

Senator DECONCINI. And, judge, did Professor Hill at any time in your conversations mention to you her desire to be advanced in the EEOC, of another position she would like to have had or was seeking?

Judge HOERCHNER. No, not to my recollection.

Senator DECONCINI. There was never any discussion, in that hour-long conversation, of her aspirations or her disappointment or her ambitions?

Judge HOERCHNER. No, but let me clarify, if I may. I don’t know how long that conversation lasted. I do know that we often spoke for up to an hour.

Senator DECONCINI. And none of those conversations, whether they were 10 minutes or up to an hour, ever contained any discussion about her ambitions or her desires to move on and what she thought her chances were, or any discussions along that line?

Judge HOERCHNER. No, absolutely no. The only thing I clearly remember her saying about the nature of the work was that she liked being—

Senator DECONCINI. Excuse me. I didn’t hear your answer.

Judge HOERCHNER. She made no comments about moving upward or—

Senator DECONCINI. Thank you. I did hear your answer.

Judge Hoerchner, did you have to hire a lawyer to come here today?

Judge HOERCHNER. No.

Senator DECONCINI. You didn’t? Do you have a lawyer representing you here?

Judge HOERCHNER. I have a lawyer who was my moot court director at Yale Law School. His name is Ron Allen.

Senator DECONCINI. And he is a pro bono lawyer, or are you paying him?

Judge HOERCHNER. He has not submitted a bill yet. [Laughter.]

Senator DECONCINI. Lots of luck, Mr. Allen.

Thank you.

And just lastly, Dean Paul, you don't consider yourself a friend of Professor Hill. A professional acquaintance, is that fair to say?

Mr. PAUL. I would say that we were professional colleagues.

Senator DECONCINI. Professional colleagues.

Mr. PAUL. We are on friendly terms. I see Professor Hill typically once or twice a year at the annual meetings of the Association of American Law Schools.

Senator DECONCINI. Yes. Do you think you fall into the category, then, in her statement where she said:

It is only after a great deal of agonizing consideration that I am able to talk of these unpleasant matters to anyone but my closest friends.

She must consider you a friend, don't you think?

Mr. PAUL. I think that she considers me a friendly professional colleague. I don't know why she chose to relate the story to me. I don't know if she remembers relating the story to me. As I say, I haven't spoken to Professor Hill since prior to the Thomas nomination.

Senator DECONCINI. Thank you.

And thank you, Chairman, for the additional time. I appreciate it.

Senator THURMOND. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Wells, let me pick up with your statement as I wrote it down, when you heard the details as to what Professor Hill had said that Judge Thomas said to her, "so outraged you would have to do something." The issue which we have before us is one of credibility, as to whom to believe. We have gained substantial insights in a lot of testimony which has been given as to the view of a woman in a position of this sort.

You did not know the details. You only knew that it was inappropriate and sexual in nature, as to what Professor Hill had told you. That is what your testimony has been here today.

When you get the details and, as you say, you were outraged that you thought something would have to have been done, we have a situation where Professor Hill went from the Department of Education to the EEOC, and she was a classification attorney where she could have kept her job, and then she went with him voluntarily on a trip to Oral Roberts. I am not suggesting any impropriety, but she went with him. And, after that she called him on many occasions. There are 11 in a log, and we will have a witness later who will testify that she called him on many other occasions that weren't written down in the log because they got through to Judge Thomas.

And we have an astute professor, a law professor, a lawyer, who was concerned about being fired by Judge Thomas, so that when he gave her work assignments she wrote them all down, the date she

received them, the nature of the work, how long it took her to finish them.

But in the context of that kind of concern, and she testifies about these outlandish statements having been made, she doesn't write any of them down.

And we are trying to figure out what really happened. If it is sexual harassment, the man ought not be on the Court. Ought not be on any court. He ought not be the head of EEOC.

And the testimony has been that, I think it was, that he was her claim to fame, should not burn that bridge. But, even considering all of that and knowing Professor Hill as you do, and in the light of your statement "so outraged, have to do something," what would that something have been? Would it have been to follow him from one job to another? To call him up? To drive him to the airport? Or would it at least have been not to maintain that kind of an association?

Ms. WELLS. Well, Senator, as I believe I indicated earlier, one of the reasons that I would be hesitant to offer advice on this kind of issue is because of the ramifications, and it is such a personal thing. So, yes, if she had something like that, sitting outside of the situation I would have said, "Oh, this is terrible. Yes, you must do something."

But what could I actually expect her to do? When I told a close friend about my occurrence, in terms of being touched, I was told immediately, "Oh, you should file a suit." I wasn't going to do that. I couldn't do that. First of all, who saw it? Nobody. But I would tell you this: I didn't need to write it down because I remember the places on my body that he touched, just as she did not need to write down the words he used because they are burned indelibly into her brain.

And so, yes, it may seem strange that you maintain contact, but I think it is something that you just school yourself to do. And I understand that that seems difficult, but that is what happens oftentimes.

And it takes a great deal of strength and courage to not maintain some kind of a cordial relationship, if you will, because we are all told about networking. I mean, my goodness, graciousness. You can open up any women's magazine and you go to seminars on how women are supposed to learn to network since we don't have the old boys club. Take up golf, ladies. Take up tennis. Learn to get out there so you can do these things to maintain these contacts. And so you don't burn your bridges.

Senator SPECTER. So, in essence, you are saying that even though you were so outraged you would have to do something that ultimately you would have done nothing?

Ms. WELLS. I think that is the case.

Senator SPECTER. And would she have maintained that kind of a friendly relationship, called him up, drive him to the airport, et cetera?

Ms. WELLS. I don't know all those—all the circumstances, but given the kind of work—I am sorry?

Senator SPECTER. Well, Professor Hill has said that she made those calls. She admits to 11 calls.

Ms. WELLS. Yes.

Senator SPECTER. I think the record is plain that she did drive him to the airport. And it is, of course, very plain that she moved with him from one agency to another and that she went to Oral Roberts. She accompanied him on a trip.

We are interested in your perspective, and interested if you would have maintained all of those kinds of activities, given the feelings that were involved with the reprehensible statements alleged to have been made.

Ms. WELLS. Well, over the course of, let's see, what—I am not sure. I think it was 1983 when she started at Oral Roberts and we are at 1991. I don't see 11 calls, some of them on behalf of other people, as a lot of contact. It is business in nature.

Senator SPECTER. Well, there were more calls than that 11 which were recorded where he was not present.

Mr. Carr, you said that you found the comments outrageous. Did you give any thought, at the time you had this telephone conversation with Professor Hill, to saying to her what are you going to do about it; let's consider taking some action; here you have a man who is the head of the EEOC, chief law enforcement of the country on sexual harassment?

Did the thought cross your mind, whether or not she did anything, that these outrageous comments should at least warrant some consideration of some action?

Mr. CARR. I don't recall that we discussed that or that we did not discuss it. I, it may well be that at that point she had decided to leave his employ and she told me that. I just don't recall.

Senator SPECTER. Well, my question to you is did you give her any such advice? Are you saying that you might have given her that advice or am I to consider it if it were simply now? Do you not recall?

Mr. CARR. I am saying I don't recall today. That is right.

Senator SPECTER. Professor Paul, you testified about a comment made by an associate of yours, the fox in the hen house, and I believe as you characterized it you were shocked and astonished by what Professor Hill had told you.

Did you give any thought to any suggestion about her taking some action given the fact that this happened at EEOC, the agency which was charged with enforcing laws against sexual harassment?

Mr. PAUL. As I testified, Senator, I asked her if she had taken any recourse and she said no. And I asked her why not and she said that she felt that she had no recourse. I don't recall more than that conversation.

Senator SPECTER. Your testimony was that she said she had been sexually harassed by her supervisor. I am advised, and we have to have testimony on this, but I am advised reliably that she had two supervisors besides Judge Thomas, who was her ultimate supervisor as the Chairman of the EEOC.

Would the statement she made to you about a supervisor comprehend as well a supervisor other than the Chairman of the EEOC?

Mr. PAUL. Well, Senator, she said that she had been sexually harassed by her supervisor. From what I know of Professor Hill, it is not conceivable to me that she would now be blaming Judge Thomas for the actions of another man. So I would have to con-

clude that no, Senator, I believe that she was talking about Judge Thomas.

Senator SPECTER. Well, I am not asking you for a conclusion. I am asking you about what she said in terms of supervisor and whether that, aside from any other inferences which you may make whether the category supervisor or whatever it was she said would comprehend other supervisors, if, in fact, there were? And we have to hear about that.

Mr. PAUL. I don't know, Senator.

Senator SPECTER. Judge Hoerchner, let me come back to a couple of points which have been asked, that I asked you about by some other people. I turn to page 5 of the notes and testimony, and line 6.

Senator KENNEDY. Repeat the page, please.

Senator SPECTER. Page 5, line 6.

Senator KENNEDY. Thank you.

The CHAIRMAN. Senator, I am not going to cut you off. But again, there are some who haven't asked over here, so you are beyond the 5 minutes.

Senator SPECTER. That is fine. Thank you, Mr. Chairman.

The CHAIRMAN. We are going back and forth.

Senator SPECTER. Glad to yield?

The CHAIRMAN. Why don't we do that? And you will have an opportunity to ask again.

Now, Senators Simon and Kohl have not had an opportunity to ask, as I understand it. So, Senator Simon?

And again, any member of the panel who continues to have questions, we will allow them the opportunity to question. But I just want to make sure everybody gets a shot first.

Senator SIMON. Thank you, Mr. Chairman.

First, not to the panel, but on a talk show this morning one of the commentators said that I was the source for the leak of the affidavit. That is just absolutely false. I don't operate that way. I have seen how leaks have damaged people, our colleagues. Senator DeConcini suffered a great injustice because of a leak. And I just want everyone to know that there is simply no truth to that. Neither I nor my staff leaked the documents.

The CHAIRMAN. Senator?

Senator SIMON. Yes, sir?

The CHAIRMAN. I am sorry. If it is on that matter, continue. But before you get to questioning I want to ask the panel a question about—

Senator SIMON. Go ahead.

The CHAIRMAN. You have been on for a while now. Would you all like to break—yes. I can see the heads shaking.

Senator would you rather continue your questioning now or give them a break and then question? How would you like to do it?

Senator SIMON. The panel would like to take a break right now. I will take my 5 minutes after the break, Mr. Chairman.

The CHAIRMAN. We will recess for 15 minutes.

[Recess.]

The CHAIRMAN. The hearing will come back to order.

To explain to the witnesses what we are doing, we are trying to figure out the remainder of the schedule. I emphasize again that

Senator Thurmond and I are under strict time constraints placed on us, understandably, by the entirety of the Senate, the leadership in the Senate and the remainder of the Senate, to resolve this entire matter in time for all of our colleagues to be able to consider all the testimony here and make a judgment.

As I have indicated at the outset, were this a trial, which is not, all of you who are sitting as the panel members here know that there would be a legitimate reason for this trial to go on for another week or more. We do not have that luxury.

The nominee insists on a resolution of it. The White House insists on a resolution of it. And the Senate insists on a resolution of it. So what we are attempting to do is work out not only a time when we are going to vote on this on the Senate floor, which is done 6 o'clock Tuesday night, but an agreement on an absolute end time when these hearings will end.

And I assure this panel, you will not have to be here till the end. We are about to do that with you all now, and we will probably recess very briefly after this panel is completed to discuss the final witness list and the time frame within which each witness or panel will be coming before the Committee.

I thank the panel and I thank everyone in this room for their indulgence, and I hope they understand. But based upon the knowledge of the arcane processes of the Senate I am sure no one will understand. But nonetheless, that is where we are.

Now, where were we in questioning? Who was next?

Senator Simon has 5 minutes.

Senator SIMON. Mr. Chairman, first, if I may comment on something said by Senator Specter just before my time came up. He said, and I wrote it down, there were more than 11 calls, that only 11 were documented. To my knowledge, that is an inaccurate statement.

We know Judge Thomas—

Senator SPECTER. Mr. Chairman, I said we would produce a witness who would testify to that. That there other calls, that 11 were documented when he wasn't there, but we would produce a witness.

So, if Senator Simon is going to quote me, please be accurate.

Senator SIMON. Well, perhaps you know that there were more. So far there has been nothing entered into the evidence suggesting that there were more than 11 calls.

The CHAIRMAN. Let me ask the Senator from Pennsylvania, has the name of that witness been made available to the Committee as a whole?

Senator SIMON. Yes, that is Ms. Holt, who is the custodian of the records—

The CHAIRMAN. Ms. Holt. All right. Fine.

Senator SPECTER [continuing]. And also the secretary, who is prepared to testify that there were many more calls made by Professor Hill which got through to Judge Thomas, so there was not a notation.

The CHAIRMAN. But it is Ms. Holt we are talking about?

Senator SPECTER. That is right.

The CHAIRMAN. Thank you.

Senator SIMON. And let me just add that one or more of those calls were made with great reluctance. We have evidence on that also.

Now, getting to the panel, and we will get to you here. Judge Hoerchner, you said in your deposition you were asked:

Question. "Did you see her press conference on television?"

Answer. Yes, I did.

Question: Did you find her to be credible?

Answer. I saw most of it. Absolutely. If you knew Anita you couldn't doubt her word on anything. I've never known her even to exaggerate. As you can tell from what you've seen of her on television and in person, her style is understatement in everything she does.

Now, yesterday it was suggested by one of the Members of the Senate that the fact that she did not document what was happening to her questions her credibility. I would be interested in any reflections you might have, all four witnesses, on whether or not—on the mater of documentation in that kind of a situation, and does the fact that she did not document this in any way diminish her credibility in your mind?

Judge if we can call on you first.

Judge HOERCHNER. Absence of documentation could never diminish Anita's credibility to those of us who have known her since 1977 and 1978. Documentation is usually in my experience something that someone would do who is contemplating a lawsuit. It was always my impression that Anita had no intention to sue then Mr. Thomas and that she has had no agenda vis-a-vis Judge Thomas.

Senator SIMON. Ms. Wells?

Ms. WELLS. The lack of documentation does not trouble me, Senator, because I think, as I tried to indicate to Senator Specter earlier, I don't see what a record would have accomplished. She knew what was done to her.

And furthermore, to put it down on paper, to say he said X to me on Thursday, would have been no more evidence for us today than anything else.

Senator SIMON. And, of course, she didn't anticipate anything like this.

Ms. WELLS. No. So there was no reason. As the Judge said. she wasn't thinking of bringing a suit.

Senator SIMON. And, if I could relate it, it says to me that she didn't intend to prosecute or carry on in that way.

You have mentioned your own experience. Did you document that in any way, writing it down in a diary or anything?

Ms. WELLS. No, I did not. It is just something that will always be with me and so I have no need to write it down. I would like to forget it and I cannot. So I would not want it to be anywhere where it could be picked up and read by anyone.

Senator SIMON. Mr. Carr?

Mr. CARR. I would echo that, I guess. But in addition, my recollection of discussing these things with Anita Hill is that they were very painful for her, and I think she did not want to, certainly, talking about them with me, and she may well have wanted to forget them, and that writing them down may, in fact, in and of itself have been additionally painful for her.

Senator SIMON. Mr. Paul?

Mr. PAUL. Senator, I would have to say as a lawyer that the absence of documentation is completely consistent with my recollection of her reluctance in wanting to discuss it and her statement that she felt she had no recourse.

Senator SIMON. If I may ask one more question, Mr. Chairman?

The CHAIRMAN. Briefly.

Senator SIMON. Each of you has explained why you are here. Why do you think Anita Hill came forward and testified?

Judge HOERCHNER. She has said that she came forward out of a sense of her obligation as a citizen. I think the incidents that occurred those many years ago have raised a serious question of character in someone who has been nominated for one of the most important positions in the country.

I know that she was very reluctant to come forward. I think she felt she had a duty to her country.

Senator SIMON. Ms. Wells?

Ms. WELLS. Well, I can only echo what the judge has said. Anita, Professor Hill, is a very loyal person and therefore she is loyal to what she believes she ought to do, and so therefore she has come forward only because she felt that that was the right thing to do.

Senator SIMON. Mr. Carr?

Mr. CARR. Senator, I can really only, I guess, speculate on it, on why she has come forward. I would think my recollections of her personality are that while she would like to come forward in this manner she would be terrified of the invasion of privacy and she would have been extremely hesitant.

At the same time, I have the recollection that she is a forthright person and when asked a question she feels compelled to give an honest answer. And I would think here that she has somehow found herself on the sort of proverbial slippery slope. That she has felt obligated to make some statement when asked and that that has snowballed totally out of control to the point where she had no alternative but to come forward in a total and fulsome way.

Senator SIMON. And, if I could ask you, and then I want to hear from Mr. Paul, she is both a lawyer and a law professor. I assume she has a very elevated feeling, as we all do, for the Supreme Court.

Do you think this was a factor in coming forward also?

Mr. CARR. It may well have been that when she looked at the price she would have to pay to do this that because it was the Supreme Court she viewed it as of such great importance that she was willing to pay that price.

Senator SIMON. Mr. Paul.

Mr. PAUL. Of course, I haven't discussed with Professor Hill, Senator, her reasons for coming forward, but I would imagine that if I were in her situation, when asked the question by an agent of the FBI, I would feel compelled to answer the question honestly as a servant to the court.

I cannot imagine anything that Professor Hill could think to gain as a legal academician by coming forward. I think her career has, frankly, probably suffered as a result of her coming forward. I think that she had a very bright career. I think that if someone had asked me a few weeks ago I would say that I could imagine

Professor Hill coming before this Committee in a very different capacity, as a judicial nominee herself. I think her opportunities for that now have been destroyed. I think she paid a big price for her conscience.

Senator SIMON. I thank you. And I thank all four of you for coming forward. Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. Senator Thurmond.

Senator KOHL. Thank you very much, Mr. Chairman. And thank you for being here today, folks.

Senator KENNEDY. I think it goes Senator Thurmond, and then, Senator Kohl, I will recognize you.

Senator KOHL. Oh, I am sorry.

Senator THURMOND. I would like to ask you this question. From your testimony, it appears that none of you four witnesses have any personal knowledge of the charges made by Professor Hill against Judge Thomas, and that all you know about the matter is what Professor Hill told you. Is that correct?

Judge HOERCHNER. I was not a precipitate witness, Senator.

Senator THURMOND. What was that?

Judge HOERCHNER. I was not a precipitate witness.

Senator THURMOND. What did she say?

Judge HOERCHNER. I said that is correct.

Senator THURMOND. Ms. Wells.

Ms. WELLS. That is correct, Senator.

Senator THURMOND. Mr. Carr.

Mr. CARR. It is correct. I was not in the room.

Senator THURMOND. Mr. Paul.

Mr. PAUL. That is true, Senator.

Senator THURMOND. That is all. Thank you very much.

I yield the rest of my time to Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

When my time last expired, Judge Hoerchner, I was asking you to refer to page 5 of your prior testimony before the staff. A question where you said, at line 6, on page 5, "I did run into her very briefly at a professional conference in 1984, late December."

My question to you is did you, at that time, ask Professor Hill anything about these alleged statements made by Judge Thomas?

Judge HOERCHNER. I did not remember asking her that.

Senator SPECTER. Judge Hoerchner, can you be any more specific than you have been about where you were at the time this conversation occurred where you say Professor Hill made these statements about Judge Thomas' comments? We have been trying to fix the date. It would be helpful if you were able to at least say where you lived at that time, in an effort to try to pin that down. Can you help us on that?

Judge HOERCHNER. Unfortunately as I have explained to the FBI and here, I really cannot pin the date down. The one thing I can be absolutely certain about is the fact that she was working for Clarence Thomas at the time because she stated that she was experiencing sexual harassment from her boss, Clarence.

Senator SPECTER. Can you, at least, tell us whether you were living in Washington at the time you had that conversation with her?

Judge HOERCHNER. I cannot pin down the date with any further specificity.

Senator SPECTER. Judge Hoerchner, shifting over to the contacts you had with other people at or about the time you called Professor Hill on the day of Judge Thomas' nomination for the Supreme Court, have you received a call from anyone prior to the time you called Professor Hill asking her what she was going to do?

Judge HOERCHNER. Absolutely not.

Senator SPECTER. When did you have the first call, if any, from any member of the news media?

Judge HOERCHNER. I am trying to remember who called whom. The first person from the news media with whom I spoke was Nina Totenberg from National Public Radio and PBS.

Senator SPECTER. What did she say to you?

Judge HOERCHNER. That was after Anita had already spoken to her. She just briefly asked me the same types of things that I had been asked by the staff member of the Chairman.

Senator SPECTER. And what did you respond?

Judge HOERCHNER. I responded with essentially the same information that I had given in my statement. I also asked her not to use my name.

Senator SPECTER. Judge Hoerchner, you are not in a position to corroborate Professor Hill's statement that Judge Thomas spoke about acts that he had seen in pornographic films, are you?

Judge HOERCHNER. I do not have an explicit memory of that.

Senator SPECTER. Judge Hoerchner, are you in a position to corroborate Professor Hill's statement that Judge Thomas talked to her about such matters as women having sex with animals?

Judge HOERCHNER. I do not have a memory of references of women having sex with animals. But I do have a memory of her telling me that he said to her, if we had any witnesses, you would have a perfect case against me.

Senator SPECTER. I understand that. What I am trying to do now is to go through the real essence or gravamen or testimony which Professor Hill gave against Judge Thomas to be sure that we understand you. Because as I understand it, you do not, but I want to be sure, that you said you don't have, you can't corroborate her claim that Judge Thomas spoke to her about pornographic films. You can't corroborate Judge Thomas' statement about women having sex, et cetera, as I just said.

Can you corroborate her claim that Judge Thomas spoke about pornographic materials depicting individuals with large sex organs?

Judge HOERCHNER. No.

Senator SPECTER. Can you corroborate her claim that Judge Thomas spoke to her graphically about his own sexual prowess?

Judge HOERCHNER. No.

Senator SPECTER. Can you corroborate her claim that Judge Thomas spoke to her about the odd episode, or Judge Thomas participated in the odd episode about drinking a coke with the allegation of the pubic hair?

Judge HOERCHNER. No.

Senator SPECTER. Ms. Wells, are you in a position to corroborate Professor Hill's testimony that Judge Thomas spoke to her about pornographic films?

Ms. WELLS. No, I am not.

Senator SPECTER. Are you in a position to corroborate Professor Hill's claim that Judge Thomas spoke to her about women having sex, et cetera, with others than men?

Ms. WELLS. No.

Senator SPECTER. Are you in a position to corroborate that he talked about pornographic materials with large private parts?

Ms. WELLS. No, I am not.

Senator SPECTER. Are you in a position to corroborate that Judge Thomas talked to her about his own sexual prowess?

Ms. WELLS. No, I am not.

Senator SPECTER. Or about the coke incident?

Ms. WELLS. No, I am not.

Senator SPECTER. Mr. Carr, are you in a position to corroborate any of that?

Mr. CARR. Those are all consistent with the things she has told me but I am not in a position to corroborate them specifically.

Senator SPECTER. And, Professor Paul, are you in a position to corroborate that Judge Thomas talked to Professor Hill about pornographic films?

Mr. PAUL. No.

Senator SPECTER. About any of the specifics I have asked Ms. Wells and Judge Hoerchner about?

Mr. PAUL. All of that, Senator, would be consistent with sexual harassment, but she did not talk to me—I don't recall that she talked to me about any of those particulars.

Senator SPECTER. Professor Paul, did you know prior to the time these hearings started, that when Professor Hill accompanied Judge Thomas from the Department of Education to EEOC that as a matter of fact she had a classification at the Department of Education that she could have stayed there?

Mr. PAUL. No, Senator.

Senator SPECTER. Professor Paul, did you know that prior to the time that this hearing started that Professor Hill had made at least 11 calls which were recorded to Judge Thomas, and others unrecorded?

Mr. PAUL. No, Senator.

Senator SPECTER. Did you know, Professor Paul, that Professor Hill drove Judge Thomas to the airport and was with him alone on what occasion in Oklahoma City or Tulsa?

Mr. PAUL. No, Senator.

Senator SPECTER. Did you know any of that, Mr. Carr?

Mr. CARR. No.

Senator SPECTER. Did you know any of that, Ms. Wells?

Ms. WELLS. No, Senator.

Senator SPECTER. Did you know any of that, Judge Hoerchner?

Judge HOERCHNER. I didn't hear her testify about driving him to the airport.

Senator SPECTER. So you didn't know about that?

Judge HOERCHNER. No, I did not know about that.

Senator SPECTER. Judge Hoerchner, if you had to vote on Judge Thomas, yes or no, what would it be?

Judge HOERCHNER. Senator, I don't have a vote here.

Senator SPECTER. Ms. Wells, if you had to vote yes, or no, on Judge Thomas, what would it be?

Ms. WELLS. Senator, the hearings are not over and you have more witnesses for Anita Hill to hear and I think then you would have a better understanding of her and why we are here saying that her allegations are true.

Senator SPECTER. Mr. Carr, if you had to vote yes or no on Judge Thomas, what would it be?

Mr. CARR. Senator, I have not followed the hearings earlier before the Senate decided to delay, and so I can't make an informed decision based on that, but I do believe the sexual harassment charges, and I think he would have to be one incredible jurist to get over my view that those are true. So I would vote, no.

Senator SPECTER. Would you want to hear the rest of the testimony?

Mr. CARR. I think if I was in the official position to make that choice, then I would definitely hear the rest of the testimony.

Senator SPECTER. Professor Paul, you have already testified that when they came to you, you wouldn't sign the letter.

Mr. PAUL. That's correct, Senator.

Senator SPECTER. Do you have an opinion today, would you vote yes, or no on Judge Thomas?

Mr. PAUL. If these allegations are proved true, Senator, I would say that he is not fit for the Supreme Court.

Senator SPECTER. But you would want to hear the rest of the evidence?

Mr. PAUL. Yes, Senator.

Senator SPECTER. So that none of you is in a position, sitting there today without hearing the rest of the evidence to reject Judge Thomas solely on the basis of what Professor Hill has said?

Mr. CARR. Sir, I am in a position to do that.

Senator SPECTER. I thought you wanted to hear the rest of the evidence, Mr. Carr.

Mr. CARR. I said that I would—I think it would be incumbent upon me to review all of the evidence, but that I have great difficulty imagining that he could be such a great jurist as to justify being confirmed in light of my belief that there was sexual harassment.

Senator SPECTER. No further questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Kohl.

Senator KOHL. Thank you, very much, Mr. Chairman.

Just to follow up on what Senator Specter has been asking you. You are in a position, do I understand it, on the basis of your testimony today, to state as a matter of fact that Professor Hill informed you in a way that satisfied you that she was being sexually harassed by Judge Thomas, by Clarence Thomas? Is there any question in your mind about the clarity of the information that she provided to you? The sense that she provided to you?

Judge Hoerchner.

Judge HOERCHNER. There is no question in my mind that that happened.

Senator KOHL. In specific, did she tell you and corroborate to you that he had asked her out on numerous occasions in a manner that made her very uncomfortable and felt that she was being harassed?

Judge HOERCHNER. Yes, she did.

Senator KOHL. Ms. Wells.

Ms. WELLS. She did not get into that detail. She helped me to understand that she was the recipient of inappropriate and offensive behavior in the office.

Senator KOHL. Mr. Carr.

Mr. CARR. My recollection, at the time, is that I believed her and I believed her without question. Since recalling that conversation and listening to and hearing much of the testimony here, I have rethought that view, and I have racked my brain trying to understand it. Having done that, I nonetheless come back to the same position that I believe her.

Mr. PAUL. There is no question in my mind, Senator, that she told me she was sexually harassed by her supervisor at the EEOC and I believed her then and I believe her still.

Senator KOHL. Has she ever discussed with you being sexually harassed by anybody else, any other supervisor?

Mr. PAUL. No, Senator.

Senator KOHL. Any other evidence except this evidence with respect to Clarence Thomas?

Judge Hoerchner.

Judge HOERCHNER. She has never done so. She has been very poised in dealing with men and has had little trouble in laughing off or brushing off unwelcome advances, but in a situation like this where there is such a gross inequity in power she was not able to do so to her satisfaction.

Senator KOHL. Ms. Wells, did she ever discuss with you sexual harassment from anybody else?

Ms. WELLS. No, never, just concerning Judge Thomas.

Senator KOHL. Mr. Carr.

Mr. CARR. No, she didn't, but to be fair, we only discussed for a brief period of time. Our contact was over a limited period of time. No.

Senator KOHL. Judge Hoerchner, we have discussed today the pain and suffering that Anita Hill has endured. I would like to ask you from your vantage point, as a judge, do you have any comment to make on the pain and the suffering that has been endured by Judge Thomas' family here?

Can you give us some insight, offer some words?

Judge HOERCHNER. Yesterday Judge Thomas spoke here very eloquently about the pain that he has experienced. There is only one person to blame for that pain, and I know no one who takes any joy in his suffering. His suffering is very apparent. There is, however, only one person to blame. It is not the press. It is not the person or persons who leaked the information. It is not Anita Hill. He is suffering as a result of his own actions. And there is another person who has been suffering much, much longer. She is suffering now, she was suffering 10 years ago, and she is not suffering as a result of her actions. And that person is Anita Hill.

Senator KOHL. Anybody else wish to comment on that?

[No response.]

Senator KOHL. One more question. This is 1991, that was 1981. Do you have any comment on how you think that sexual harassment might be approached in our society today compared to 10 years ago?

Are we 10 years further ahead, or are we in the same place?

How do you imagine a woman might handle a similar situation today, Judge?

Judge HOERCHNER. Senator, even today, a woman who is 23, 24 years old, as Anita was, just out of law school, working in a situation of such tremendous inequity of power, I really could not realistically advise her that she would have adequate protection were she to make a complaint.

Senator KOHL. Ms. Wells.

Ms. WELLS. I think there is, to a certain extent, a greater sensitivity among men about this, not overwhelming, but there is a greater one. And so I have seen some progress to that extent. But if there is anything that will help women deal with this, I think it is the fact that women seem to rely so much more on one another and have a better understanding that you can come together and talk about this and the best thing to do is to talk about it and to try to work together to resolve it, and to realize that you are not the guilty party. And the sooner that you throw off that idea, the sooner that you can get some healing and some closure to it.

Senator KOHL. Mr. Carr, anything different today from 10 years ago?

If she would have called you today, versus 10 years ago and discussed her problem with you, what might you have recommended differently today from 10 years ago?

Mr. CARR. I am not sure how I would have differed today from then. I may well, at this point, being 10 years older and having a better sense of how my own career has gone and how careers do go, on the one hand been extremely cautious in advising her about the risk. On the other hand, upon reflection, I may have been more supportive of her to take the risk.

Mr. PAUL. Senator, as you know, the Supreme Court did not establish hostile work environment as a cause of action until 1987, I believe, so that in that sense perhaps we have made some progress in our understanding of the law. But I must admit, as a person who does not teach in this area and is not familiar with the law in this area, that 4 years ago when Anita Hill came to me and told me this story and said that she felt she had no recourse at the EEOC, I did not understand why. I think now, when I see what has happened to Professor Hill as a result of these hearings, as a result of coming forward, I can better understand why victims of sexual harassment don't feel that they have any recourse.

Senator KOHL. Well, I, too, want to thank you for coming here today. I think you have given us dramatic evidence of what it is like in our society today to be female and not powerful and not wealthy, and still make an attempt to try and get by what the difficulties are in many cases. In that respect, you have been very enlightening to me, I would like to hope to my colleagues, and to many millions of Americans, so I thank you for being here today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator SIMPSON.

Senator SIMPSON. Mr. Chairman, I really will be much less than 5 minutes.

It is a very puzzling thing here for me. You are all lawyers, and you are all lawyers telling us that the system does not work for sexual harassment. What a curious and extraordinary thing. It is 1991, and these laws have been on the books for years, and Joe Biden, our chairman, has been involved deeply in these issues. So have many of us.

Sexual harassment is talked about all over America, and you are telling us as four lawyers that the system doesn't work, and this is very troubling to me. Obviously we have a great deal to do. I thought it worked. I thought if you went forward, that things took place. A consultation takes place; supervisors; anonymous; and these things take place. And you are saying just—it is like saying the process doesn't work.

I can understand why the chairman bristles. The process does work, but you are telling us it doesn't, and I don't understand that, in this day, in this city, that sexual harassment claims aren't done in the way the statute was drawn, in the sense of a way to get them expressed to protect both—both the victim and the harasser.

Because here is a pattern—if there is a pattern, we are told that—psychologically, of the victim and their response, and there is also a pattern of the harasser. It is seldom a singular thing. And that is the way it is, and that is what we are dealing with.

And my question is this. I understood Ellen Wells very effectively and passionately describes sexual harassment. Did you say—and I am asking you, if I didn't hear, with all this going on—you said you had been touched. Did you bring a claim of sexual harassment? No, you said not. OK. I'm sorry.

Judge Hoerchner, have you ever brought a claim of sexual harassment?

Judge HOERCHNER. There was an incident of sexual harassment where I now work, and the main victim of this contained it through the internal system, and an investigation was done. I spoke to the investigator and I wrote a statement which was not sent to the decisionmaker in that instance, because the perpetrator and his attorneys had worked out a settlement, the terms of which are secret.

Senator SIMPSON. But you were involved in that in some way?

Judge HOERCHNER. I was involved in a very minor way.

Senator SIMPSON. Well, I am not trying to be sinister. I was just thinking if you were involved in it or you were helping someone else with a sexual harassment charge, either as a counsel or friend, I am wondering why you didn't help your closest friend, Anita Hill, when she was faced with the same information, and why you didn't give her that same counsel, and that is, "Do something."

Judge HOERCHNER. You are making an unwarranted assumption.

Senator SIMPSON. I am not trying to; I am just asking.

Judge HOERCHNER. In this more recent situation I did not counsel the person, and as I said, I did try to help Anita. I tried to help

her by listening and providing comfort, and apparently there was no comfort to be found.

Senator SIMPSON. Would you have done it differently now, knowing what you know, than what you did then?

Judge HOERCHNER. If I were dealing with Anita at her present age, confidence, professional status, I would consider advising her to do something or say something. To be frank, I don't remember ever giving Anita advice about anything in my life.

Senator SIMPSON. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I have a few questions, and there are still some more, if you are prepared. Let me ask each of you to answer each of these questions, if you would.

Did Professor Hill ever complain to you that any other employer she had or anyone else other than the nominee had harassed her or had made unwanted sexual advances toward her, had asked her for a date, anything? Can anyone? Let's just go down the list. Judge?

Judge HOERCHNER. I will just repeat essentially the same thing that I said the last time I was asked that question. No, she has never complained of that. She was very poised and very capable of brushing off or laughing off unwanted sexual advances. In this situation, in part I am sure because of the great disparity in power, she was not able to successfully do that.

The CHAIRMAN. Ms. Wells.

Ms. WELLS. She has never described to me a situation similar to this or any way remotely similar to this, in terms of a work situation where a supervisor or a superior was making unwelcome advances.

The CHAIRMAN. Mr. Carr.

Mr. CARR. No, Senator.

The CHAIRMAN. Mr. Paul.

Mr. PAUL. No, Senator.

The CHAIRMAN. Now have any of you ever known, under any circumstances—and you are under oath—has there been any circumstance in your relationship at any time with Professor Hill where you have known her to lie? Judge?

Judge HOERCHNER. Absolutely not.

Ms. WELLS. Never.

Mr. CARR. Never.

Mr. PAUL. Absolutely not.

The CHAIRMAN. And it is an obvious question, but do any of you have any reason to believe, because there have been a lot of notions proffered here as to whether Professor Hill, who has obviously made an impression of sincerity on the committee as well as many other people, is doing anything other than simply telling the truth? Judge Thomas has come across as very forceful and sincere in his denials. Do you have any reason to believe that any of the reasons that have been offered here, raised here, suggested here over the last several days as you have watched this, amount to anything other than she is simply telling the truth and the facts as they occurred? Anyone?

Mr. PAUL. Senator, if there were any desire on the part of Professor Hill for some sort of advancement in the profession of legal

education, this whole proceeding was not the way to advance her career. She had tremendous opportunities. I feel confident that there were many law schools in this country that would have been happy to have offered Professor Hill a position, prior to this proceeding. She chose to stay where she was because she wanted to be close to her family.

The CHAIRMAN. Do any of you, anyone else, have any reason? For example, does anybody have any reason to believe—and again, you are under oath—that, as has been suggested by some here, there is a possibility that Professor Hill is fantasizing? Is there anything in her background or character, in any aspect of your relationship with her, that would lead you to believe—and remember, you are under oath—that she is possibly fantasizing about what happened?

Ms. WELLS. She is one of the most truthful people that I know. She is not one subject to bouts of fantasy. At best, she might be a little sentimental, but to make up a story, for what purpose? To bring this kind of public exposure to herself, it would not be in character.

Mr. CARR. Senator, I certainly would echo that there is absolutely nothing in her character, as I recall, and that the things in her character that I do recall would not support the notion that she would fantasize.

The CHAIRMAN. What in her character do you recall that would not support the notion that she would fantasize?

Mr. CARR. My recollection is that she is a very level-headed and factual person.

The CHAIRMAN. There has been suggested here the possibility that—and I know this has been raised, but I want it on the record—that she might be so ambitious that although, Professor Paul, she would not be looking to advance her career this way, she might be looking to advance her financial situation by being able to turn this into a book or a movie. That has been suggested by some here. Is there anything in her character that would lead you to believe that is a possibility?

Mr. PAUL. Senator, as I said earlier, I believe that the only book Professor Hill has any interest in writing would be a book on the Uniform Commercial Code. She is a private person, as has been testified already. I can't imagine her wanting to reopen this episode. She was so reluctant in her discussions with me. And, moreover, once again going back 4 years ago in our discussion, there is no conceivable, possible gain or advantage she could have imagined 4 years ago, in a discussion in a university cafeteria about her coming to work at my university, in telling me then that she left the EEOC because she was sexually harassed by her supervisor.

The CHAIRMAN. I would like each of you to answer the question.

Mr. CARR. I can only imagine that the rationale for wanting to write a book would be fame or money, and I do not think those are significant motivations for Anita Hill. I don't believe she would have made the career choices she has made with the hope of somehow cashing in at some late date in her life. I think if she was motivated by money, she would have made different career choices.

The CHAIRMAN. Are you a partner in your law firm?

Mr. CARR. I am.

The CHAIRMAN. Without naming your law firm, how large is your law firm?

Mr. CARR. About 430 lawyers; about 100 partners.

The CHAIRMAN. Would Anita Hill have any difficulty getting a job with your law firm?

Mr. CARR. Today she might, but I think that is a reference to the economic times, but I have no doubt she would have—I don't think she would have any difficulty getting a job at a major law firm, either in New York or in some other city.

The CHAIRMAN. Ms. Wells, with regard to the question of writing a book, is there anything in her background? Did she ever indicate to you that, "Boy, I saw such-and-such a story, they could turn that into a mini-series," or anything?

Ms. WELLS. There is nothing. I wouldn't even be tempted to say that she was particularly romantic in outlook. By that I mean, she is not even the type, as I know her, to want to sit down and talk about the latest best-seller, and get into the characterizations there and talk about how this character appeals to you, as though that individual were real. I don't even think she likes soap operas.

The CHAIRMAN. Does she enjoy, like some men and women do, gossip?

Ms. WELLS. We never gossip. She and I never gossip, so I can't speak to that. I mean, we knew many of the same people, and we never sat around talking about them and gloating over juicy tidbits. That wasn't in her nature.

The CHAIRMAN. Judge, it has been suggested by some, as well, that she may just be a very malleable person. It was clearly suggested yesterday, at least as one possibility, that she had an ideological bent that was inconsistent with the nominee, she felt strongly about that, and that she found herself placed in the hands of interest groups who used her like putty to accomplish this ideological end that she felt was important to accomplish and they felt was important to accomplish.

Is she that malleable a person, or is there anything in her character—and again you are under oath—in your knowledge of her, to indicate to you that she is someone that is that malleable or so inclined?

Judge HOERCHNER. Well, as I testified just a moment ago, I have never given her advice, and the reason is that she is so independent and that I respect her judgment so much that I would not presume to advise her. I cannot imagine a force that could take her and use her as a malleable object.

The CHAIRMAN. I say to my colleagues, I know my time is up, I only have two more questions. It may be useful for me to finish them, if that is all right, and then move on to anyone else who may have questions.

I would like to ask a question of Mr. Carr and Mr. Paul. Mr. Paul, Professor Paul, at the university did you find her one that was malleable, that shrank from intellectual combat, that was easily able to have her opinions formed? I mean, is there any evidence of that?

Mr. PAUL. I would not describe her as shrinking from an argument, no, Senator.

The CHAIRMAN. How would you describe her?

Mr. PAUL. My impression is that she is a very strong person. I think my impression of her is that she feels very deeply about her own being. She has a strong sense of roots, a strong sense of who she is and what she is, perhaps based on her religious upbringing, and she doesn't shrink from anything.

The CHAIRMAN. Notwithstanding the fact that maybe a more senior professor who is sitting having a discussion on a legal point, she is not the kind who would yield her opinion to an ad hominem argument?

Mr. PAUL. That is correct, Senator. The summer that she was visiting at our school was the summer of Judge Bork's nomination to the Supreme Court. If you recall, that was a very controversial nomination.

The CHAIRMAN. I had forgotten that. [Laughter.]

I would like to forget that.

Mr. PAUL. Members of my faculty were, I would say, mostly opposed to the nomination, and in defending Judge Bork as she did at that time, she could not have thought she was advancing her opportunities to return to our school. She did so. She did so eloquently. She did so with tremendous force and conviction.

The CHAIRMAN. Mr. Carr, on the same point, is she strong-willed? Is she malleable? Was she someone who yielded to intellectual or any other kind of pressure?

Mr. CARR. I would not call her malleable. I don't recall strenuous intellectual debate with her.

The CHAIRMAN. I guess that wasn't what you had in mind. [Laughter.]

I don't mean that in a bad way. I wasn't trying to be facetious. I mean, there was a different relationship you had. I should drop this. [Laughter.]

Senator HATCH. Yes, you should drop that.

The CHAIRMAN. I should drop that part. You understand what I mean. I am being very serious. I mean, was there anything in her character that would lead you to believe that groups or individuals could use her for their advantage, to promote another cause? That is what I am trying to get at because that is what has been raised here. It has been flatly suggested that is what happened.

Mr. CARR. I don't believe that that would be possible. My recollections of Anita are that she had some fundamental, basic beliefs about what was right and what was wrong, and I would venture to guess that these kinds of sexual accusations were clearly wrong, and that she was not expedient or willing to subvert or change her views inconsistent with the way they in fact were.

The CHAIRMAN. I have one last area to cover. Did any of you attend her going-away party that was, we have heard testified to here, at the EEOC when she decided she was going to leave?

Ms. WELLS. I attended a going-away party at the Sheraton-Carleton.

The CHAIRMAN. Was that the going-away party, do you recall? What was the purpose of the going-away party?

Ms. WELLS. Well, she was saying good-bye to her friends here.

The CHAIRMAN. To go to where?

Ms. WELLS. To Oral Roberts.

The CHAIRMAN. To go to Oral Roberts University. Were there anyone else at that party among the four of you?

Judge HOERCHNER. No, she did tell me about it later.

The CHAIRMAN. Do any of you know a Mr. Doggett, John Doggett?

Judge HOERCHNER. No.

Ms. WELLS. No.

Mr. CARR. I went to business school with John Doggett, and I would consider him a friend.

The CHAIRMAN. Do you know, did John Doggett ever indicate to you that he went out with, wanted to go out or thought that Ms. Hill wanted him to go out with her?

Mr. CARR. No, I don't.

The CHAIRMAN. I have no further questions now.

Senator THURMOND. On our side, I don't believe anyone else except Senator Grassley.

The CHAIRMAN. Senator Brown?

Senator BROWN. Senator Specter had none and Senator Brown had none, and the rest of them have none, except Senator Grassley.

Senator GRASSLEY. Well, maybe it is more of a comment than a question.

The lawyers on the committee refer you to you folks as corroborating witnesses, and I guess, as I understand it, you are supposed to confirm what Professor Hill has alleged about Judge Thomas. There is no doubt in my mind that you folks are telling the truth, so I don't raise any fault with that, that you are telling us what Professor Hill told you.

But it seems to me that, in this role, you do not confirm any sexual harassment by Judge Thomas of Professor Hill. Of course, you couldn't give any details about what Professor Hill says happened to her, because she didn't give you any of these details. I have sat here and listened to you, I haven't heard of any details, so it would be very helpful to us, if you could provide confirmation of details that she discussed Friday.

I also find it surprising that you didn't really offer any advice to her, but Senator Simpson covered that point.

It seems to me that someone as forthright and independent as Professor Hill would have given some details, if they really had them. It just doesn't make sense that she simply told her friends or acquaintances that she was being harassed at work, and that's it, that's it. It just doesn't seem to fit.

I have one question, which does not follow up on that. Senator Specter asked—and I guess I would ask everybody but Mr. Carr this. Senator Specter asked if you would vote for Judge Thomas. I want to know if you want to see Judge Thomas on the Supreme Court. And I would start with you, Judge Hoerchner.

Judge HOERCHNER. Senator, I am only here to tell the truth about what I was told back in the early 1980's. You have heard the truth today, and it is up to you to decide what to do with it.

Senator GRASSLEY. Ellen Wells?

Ms. WELLS. I echo what the judge says. I am here to give you this information that I know to be the truth, and for me to sit here and to say what my personal opinions may be about Judge Thomas'

qualifications for the Supreme Court, I think would not be appropriate, it would not answer to what I am here for.

Senator GRASSLEY. Professor Paul?

Mr. PAUL. Senator, as a legal scholar and an attorney, I have been asked the question many times prior to these allegations, whether or not Judge Thomas should be confirmed. I did not take a position then, I am not taking a position now. I am simply here to tell the truth about what I was told by Professor Hill 4 years ago, that she was sexually harassed by her supervisor at the EEOC.

Senator GRASSLEY. Well, you said you didn't sign the letter. I am kind of puzzled. If you have reason to believe that Judge Thomas is a sexual harasser or guilty of sexual harassment, why wouldn't you sign a letter against him?

Mr. PAUL. First of all, Senator, I was asked to sign a letter prior to these allegations. Second of all, Senator, I believe that Professor Hill told me the truth in 1987, but I believe that you, Senator, and the other members of this committee sitting here trying to determine the facts should wait to hear all the evidence, before making a determination.

As I said in response to Senator Simpson's question, if Judge Thomas, in fact, committed the acts alleged, then I don't think he should be confirmed. If he did not commit the acts alleged, I have no position.

Senator GRASSLEY. I guess maybe I can't go any further and ask you further, if you don't want to answer my questions, but I can at least tell you why I asked. As I understand lawyers, you take an oath to uphold the Constitution in practicing your profession, Professor Paul. You are a student of the Constitution and of the Supreme Court decisions. It seems to me like people in your position ought to have a personal view of whether or not Judge Thomas ought to be on the Supreme Court and that you would welcome an opportunity to express it, and that you would think that, for a nonlawyer like me, it would be important for me to know it to determine whether or not you have got any bias.

Mr. PAUL. Senator, I didn't have the opportunity during the original round of hearings to review the record, but if you would like me to review the record, I will be happy to come back and present you with my opinion. [Laughter.]

Senator GRASSLEY. Mr. Chairman, I have no further questions.

Senator LEAHY. Mr. Chairman?

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Mr. Chairman, I would note, on the question of whether Mr. Paul, because he is a lawyer and has taken an oath as a lawyer, should be able to tell us how to vote on this. There are only 100 people in this country who have taken an oath that requires them to vote on this confirmation, and 14 of them are here. We are the only ones who must state an opinion. I don't want to leave any kind of impression out there that, simply because somebody is a lawyer, they must have an opinion on whether Judge Thomas goes on the Supreme Court or not. There are only 100 people who have taken the oath of office that requires them to vote on it.

Judge Hoerchner, without going into everybody's testimony, you said you came here to tell the truth and that we should use that

truth. None of you said you saw the activity. The nature of the activity is such that nobody would have. But each of you has testified that, years ago, Anita Hill came to you and told you of that. I just remind everybody who is watching these proceedings that corroboration is this: The woman who is sexually harassed is not going to go and tell you people about it, so that some day, 9 or 10 years later, you would be in this room to tell about it. But you are, and we will use your testimony.

Thank you, Mr. Chairman.

Senator HATCH. Mr. Chairman?

The CHAIRMAN. Senator—

Senator THURMOND. Mr. Chairman, Senator Hatch wants to say something.

The CHAIRMAN. Senator Hatch.

Senator HATCH. Let me just ask you, Professor Paul—I have deliberately stayed out of asking any questions, but I have been intrigued—when Professor Hill chatted with you, did she seem upset when she was chatting with you?

Mr. PAUL. Yes, Senator.

Senator HATCH. Bitter?

Mr. PAUL. No, I wouldn't describe her as bitter.

Senator HATCH. But upset?

Mr. PAUL. Yes, Senator, she was embarrassed.

Senator HATCH. And she was not very happy with the person who did this to her, whoever it was?

Mr. PAUL. I would hesitate to express an opinion on that, Senator.

Senator HATCH. Well, how would you appraise her demeanor?

Mr. PAUL. I would appraise it by saying that she was embarrassed that I had raised the subject by asking her why she had left the EEOC, and she responded to my direct question, I guess honestly—that is my assessment—and she was embarrassed that I had brought it up.

Senator HATCH. This was in 1987?

Mr. PAUL. Correct, Senator.

Senator HATCH. OK. That's all.

Senator THURMOND. I guess we are through with the panel, Mr. Chairman.

The CHAIRMAN. No, we're not, we have two over here that wish to ask questions.

Senator SIMON. Mr. Chairman, if I could have the attention of Senator Specter here, there was a discussion about how many phone calls were made, and he said Ms. Holt's deposition indicates that more than 11 calls were made. If he will look at the deposition, on page 32, line 15, the question is asked, "Do you recall any other times that Anita Hill called, where you did not note that on the telephone log? Answer: I don't."

On page 44, line 20:

You mentioned the Vice Chairman showed you three or maybe more pages. Do you have a recollection of Ms. Anita Hill calling Clarence Thomas any more times than may have sporadically shown up on three such pages? Answer: I would not even guess about that. I don't know.

Thank you, Mr. Chairman.

Senator SPECTER. Mr. Chairman, I am advised that Ms. Holt will appear as a witness and testify that there were other calls made by Professor Hill. On the first citation where Senator Simon has read the record, which I am having pulled and will review, it was related to recordings which I think referred to occasions when Judge Thomas was not present. But she is up in the next panel, and we will soon see.

Senator SIMPSON. Mr. Chairman?

The CHAIRMAN. The Senator from Wyoming.

Senator SIMPSON. I have one further question of Judge Hoerchner.

The CHAIRMAN. Excuse me, does the Senator yield?

Senator BROWN. I Kohl. I yield.

Senator SIMPSON. Oh, I'm sorry.

The CHAIRMAN. I apologize. The interruptions—they are not interruptions. The reason that I am occasionally turning around is because of this constant administrative question as to who comes on next and how in timing, and that is why the minority and majority staff, when I turn around, it is not for lack of input from my colleagues questioning.

The Senator from Wyoming.

Senator SIMPSON. Judge Hoerchner, I asked you if you had ever filed a charge of sexual harassment. I don't think you indicated to me that you had.

Judge HOERCHNER. That's correct.

Senator SIMPSON. I have a record from California, in Norwalk County or Norfolk County, CA, that you did file a claim against a fellow judge, a man named Judge Foster. Is that correct?

Judge HOERCHNER. I was not sure how far in the proceedings that went. It was my understanding that he had negotiated a settlement. I was told that my statement was never taken up to the home office of our board, so—

Senator SIMPSON. But you did file a claim of sexual harassment against a fellow judge within your system?

Judge HOERCHNER. I cannot say that I didn't. I did not fill out any papers. It's possible that the result of my having spoken to the investigator was taken as filing a claim within our system, and in that case it would be correct.

Senator SIMPSON. But he did eventually resign and the process of his resignation and the activities around that were rather widely publicized within that county, weren't they?

Judge HOERCHNER. The terms of the settlement were secret, were supposed to be secret. I am not aware of the full extent of them.

Senator SIMPSON. Again, I am interested only in your intent to do those things and you feel strongly about it, and I am wondering why that counsel was not given to your friend.

Judge HOERCHNER. Senator Kohl, did you have—

Senator KOHL. Yes, just one quick question.

Yesterday, Judge Thomas said that there was a plot afoot in this country to derail his nomination to the Supreme Court. As I hear your comments today, it is obvious to me that if there was a plot afoot, it must have originated 10 years ago. So, do you think that Anita Hill plotted for as long as 10 years ago to derail Judge Thomas' nomination to the Supreme Court?

Judge HOERCHNER. I think that would have been impossible.

Ms. WELLS. The same, Senator, that would have been impossible and unthinkable.

Mr. CARR. I don't think that is possible.

Mr. PAUL. No, Senator, she would be not only deserving of an Academy Award, but she would be a prophet.

Senator KOHL. But he yesterday did, as you know, if you followed his testimony, he made a very, very big point of stating that what was happening here was that there was a huge plot among Anita Hill and others to see to it that he never achieved his nomination. Are you saying that you regard that sort of an analysis on his part to be almost out of the question?

Ms. WELLS. Senator, I would like to point out that the members of this panel met when they walked into this room, so in order for us to have been part of a conspiracy or a plot, we needed to have met one another at some point to get our facts straight and whatever, and we did not have that opportunity.

Mr. PAUL. That's correct, Senator.

Judge HOERCHNER. That is correct.

Mr. CARR. I agree with that.

Mr. PAUL. That's correct, Senator, we don't know each other.

Senator KOHL. You've never met before you met here today?

Mr. PAUL. I've never met any of these people before.

Mr. CARR. We met yesterday.

Judge HOERCHNER. Yesterday, when we walked into the hearing room.

Senator KOHL. Yesterday was the first time?

Ms. WELLS. That's correct.

Judge HOERCHNER. Right.

Senator KOHL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, any other questions?

Senator THURMOND. No.

The CHAIRMAN. There being none, I want to thank this panel very, very much. We kept you a long time, over 5 hours.

We are now going to recess for 5 minutes, but I want to call the next panel witnesses to come forward while we do this. The next panel will be J.C. Alvarez, Nancy Fitch, Diane Holt and Phyllis Berry Myers.

We will reconvene in 5 minutes.

[Recess.]

The CHAIRMAN. Ladies and gentlemen, I thank the panel. I know they had to take a little break while we were taking a break, we had them sitting there so long.

Let me indicate what the committee has agreed upon as to how we are going to proceed from now to the moment we end this hearing. And let me reiterate the constraint under which the Senate has placed this committee.

For those who don't know the Senate rules, which are, hopefully, 100 percent of the American people, there has been essentially a motion to recommit here; that is, we have been instructed by the Senate as a whole to take this matter back to the full committee, given a specific time constraint that we report back to the Senate as a whole on this specific issue, the allegation relating to sexual

harassment; we have all our testimony in and concluded, so that there are 24 hours in which our colleagues can have time to reconsider or consider this matter; and there is a vote scheduled, by unanimous consent of the Senate, to take place at 6 o'clock on Tuesday night.

What we were taking our time doing a moment ago is deciding on how we were going to specifically accommodate the rights and interests of all the parties, in particular the nominee, and meet the requirement of the Senate. And this is what we have agreed upon, majority and minority.

We are going to proceed tonight with potentially all of the following panels, but with no more than, no one additional other than the people I am about to read. The distinguished panel that sits before us, and has been sitting before us very patiently.

When that panel is finished, there will be a panel that will be made up of up to three people, maybe fewer—made up of David Swank, Kim Taylor, and Sonya Jarvis. It may be fewer than that, but it can be up to those three people.

The next panel after that will be made up of Stanley Grayson, Carlton Stewart, John N. Doggett, III, or Charles Kothe, the Dean of Oral Roberts. That is the maximum number of people who will appear on the panel. None of them have to appear. But that is the maximum that can appear.

And then there will be an additional panel of nine individuals, all of whom worked for Clarence Thomas, all women who wish to come and testify to how he related to them: Patricia Johnson, Pamela Talkin—T-a-l-k-i-n, Janet Brown, Ricky Silberman, Connie Newman, Linda Jackson, Nancy Altman, Anna Jenkins, Lori Saxon. They will each have 3 minutes to make whatever statement they wish to make on behalf of the nominee. There will be 32 minutes remaining in the time they will be allowed to be on the stand. Sixteen minutes will be divided on each side for cross-examination, if there is any cross-examination.

Then we will bring forward, if it is the decision of the witness to want to come forward, and that is not fully decided yet, Ms. Angela Wright. We are talking with Ms. Wright now, the committee as a whole, majority and minority. Ms. Angela Wright.

After Ms. Angela Wright there will be, if it is decided by any of member of the committee to call this individual, a Ms. Rose Jordan, who allegedly—I emphasize allegedly—can corroborate the testimony of Angela Wright. Staffs have taken her deposition. It will be reviewed by members of the committee, majority and minority. If the deposition taken by the majority and minority is sufficient, that will suffice. If not, any member can call that individual forward for cross-examination.

We will then end tonight. If that takes till 9, 11, 12, or 4 in the morning, that will be done.

Tomorrow we will reconvene at 10 o'clock. Professor Anita Hill will have the right, if she so chooses, to come back at 10 a.m. She will be able to testify and/or be cross-examined up until 2 p.m. Whether or not her statement is finished, whether or not the cross-examination is finished, we will politely excuse her. She cannot remain beyond 2 o'clock.

At 2 o'clock the nominee, if he so chooses, will come forward. He will be able to say whatever he wishes and/or be cross-examined or examined on direct up until 6 o'clock.

At 6 o'clock p.m. tomorrow this committee shuts down. Period.

There is no requirement, as a matter of fact, we are explicitly asked by the Senate as a whole not to vote on this matter. It will be left to the Senate. This committee has already voted on Clarence Thomas. The transcripts of this committee proceeding will be made available almost immediately to every Member of the U.S. Senate. They will have 24 hours to make any judgment they wish to make and determine whether or not what has transpired here the previous 4 days influences their vote one way or another.

Any Senator can go to the Senate floor after 6 p.m., if the Senate is in, and I don't know whether it is in or not—but if the Senate is in, up until 6 p.m. on Tuesday, for as long as the Senate is in up to that point, and say anything they want about anything having to do with this matter, whether they wish to go in and say Cock Robin told them the following happened or a little bird dropped in from the blue and gave me this affidavit. But that is not the business of the committee.

So, I want to turn to my distinguished colleague from South Carolina and ask him whether or not what I related is in fact what the majority, overwhelming majority of the committee voted to do?

Senator THURMOND. Mr. Chairman, I think you have stated it correctly. The only thing, if you wish to bring Ms. Wright here, you have that right. And we will have a chance to cross-examine her.

The CHAIRMAN. That is absolutely correct.

Senator THURMOND. But we object to any statement by her, or affidavit, being put in the record without cross-examination.

The CHAIRMAN. That is absolutely correct. No affidavits at all will be placed in this record from now until the time the committee completes its responsibility.

Is there anyone on the committee that has heard what I have said that disagrees with what I laid out as being the majority will of the committee?

Senator SIMPSON. Mr. Chairman?

The CHAIRMAN. Yes?

Senator SIMPSON. I believe there was one further addendum. That there would be no closing statements.

The CHAIRMAN. That is correct. There will be no closing statements by any member on the committee.

Senator SPECTER. Mr. Chairman?

The CHAIRMAN. The Senator from Pennsylvania?

Senator SPECTER. I would just like the record to note my dissent.

The CHAIRMAN. The record will note the dissent of the distinguished Senator from Pennsylvania as to the manner in which we have otherwise I believe unanimously—

Senator BROWN. Mr. Chairman?

The CHAIRMAN. Yes?

Senator BROWN. I would also like my dissent noted.

The CHAIRMAN. Dissent as to all of it or—well, never mind. It doesn't matter. Senator, I don't mean that flippantly. I mean it is not worth going back into—

Senator BROWN. Sure.

The CHAIRMAN. The committee voted 12 to 2 to proceed as I have outlined, with the dissents noted. Obviously, everyone else other than Senator Specter and Senator Brown, voted affirmatively to proceed as I have stated.

Now, thank you all for your patience. That is the unanimous consent agreement that has just been agreed to. Ladies and gentlemen, let us proceed.

I thank this panel for their absolute patience here. You have been very gracious.

And there will be no dinner break, I say to our friends in the press. There will be no break, other than occasionally requiring, if the witnesses are here longer than their constitutions would warrant, we will break for that purpose.

And I say to the panel, if you have any preferred order of proceeding—why don't we begin by first swearing you all in?

Do you all swear the testimony you are about to give is the truth and the whole truth, so help you, God.

Ms. ALVAREZ. I do.

Ms. FITCH. I do.

Ms. HOLT. I do.

Ms. BERRY. I do.

The CHAIRMAN. I was just, as usual, properly corrected by my colleague. I should have said instead of the truth and the whole truth, the truth and nothing but the truth. But we understand what you all just swore to.

Now, why don't we begin then, if you have no preferred order, with Ms. Alvarez and work our way across. Or either way. Do you have a preference?

There being none, we will start with Ms. Alvarez. And welcome back. I know you were here, it seems like 100 years ago, but not too long ago.

I have been instructed by my colleague from South Carolina to ask you if you can keep your statements to 3 minutes because there is going to be a lot of questions of you.

Senator THURMOND. Well, Mr. Chairman, that was your—I think that it was agreed that there would be a 3-minute limit.

The CHAIRMAN. I think that is correct. Five minutes.

Senator THURMOND. That was the last panel. Excuse me. I was in error on that.

The CHAIRMAN. Keep your statements to 5 minutes, if you would, and then we will begin the questions.

Ms. ALVAREZ. I will do the best I can.

The CHAIRMAN. Thank you very, very much.

TESTIMONY OF A PANEL CONSISTING OF J.C. ALVAREZ, RIVER NORTH DISTRIBUTING, CHICAGO, IL; NANCY E. FITCH, PHILADELPHIA, PA; DIANE HOLT, MANAGEMENT ANALYST, OFFICE OF THE CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, WASHINGTON, DC; AND PHYLLIS BERRY-MYERS, ALEXANDRIA, VA

TESTIMONY OF J.C. ALVAREZ

Ms. ALVAREZ. My name is J.C. Alvarez. I am a businesswoman from Chicago. I am a single mom, raising a 15-year-old son, running a business. In many ways, I am just a John Q. Public from Middle America, not unlike a lot of the people watching out there and not unlike a lot of your constituents.

But the political world is not a world that I am unfamiliar with. I spent 9 years in Washington, DC. A year with Senator Danforth, 2 years with the Secretary of Education, a short stint at the Federal Emergency Management Agency, and 4 years as Special Assistant to Clarence Thomas at the EEOC.

Because of this past political experience, I was just before this committee a couple of weeks ago speaking in support of Clarence Thomas's nomination to the Supreme Court. I was then and I still am in favor of Clarence Thomas being on the Supreme Court.

When I was asked to testify the last time, I flew to Washington, DC, very proud and happy to be part of the process of nominating a Supreme Court Justice. When I was sitting here before you last time, I remember why I had liked working in Washington, DC, so much—the intellectual part of it, the high quality of the debate. Although I have to admit when I had to listen to some of your questioning and postulating and politicking, I remembered why I had left. And I thought at that point that certainly I had seen it all.

After the hearings, I flew back to Chicago, back to being John Q. Public, having a life very far removed from this political world, and it would have been easy to stay away from politics in Washington, DC. Like most of your constituents out there, I have more than my share of day-to-day challenges that have nothing to do with Washington, DC, and politics. As I said before, I am a single mom, raising a teenager in today's society, running a business, making ends meet—you know, soccer games, homework, doing laundry, paying bills, that is my day-to-day reality.

Since I left Washington, DC, I vote once every 4 years for President and more frequently for other State and local officials. And I could have remained outside of the political world for a long, long time and not missed it. I don't need this. I needed to come here like I needed a hole in the head. It cost me almost \$900 just for the plane ticket to come here, and then there is the hotel and other expenses. And I can assure you that especially in these recessionary times I have got lots of other uses for that money.

So why did I come? Why didn't I just stay uninvolved and apolitical? Because, Senators, like most real Americans who witness a crime being committed, who witness an injustice being done, I could not look the other way and pretend that I did not see it. I had to get involved.

In my real life, I have walked down the street and seen a man beating up a woman and I have stepped in and tried to stop it. I have walked through a park and seen a group of teenage hoodlums taunting an old drunk man and I have jumped in the middle of it. I don't consider myself a hero. No, I am just a real American from Middle America who will not stand by and watch a crime being committed and walk away. To do so would be the beginning of the deterioration of society and of this great country.

No, Senators, I cannot stand by and watch a group of thugs beat up and rob a man of his money any more than I could have stayed in Chicago and stood by and watched you beat up an innocent man and rob him blind. Not of his money. That would have been too easy. You could pay that back. No, you have robbed a man of his name, his character, and his reputation.

And what is amazing to me is that you didn't do it in a dark alley and you didn't do it in the dark of night. You did it in broad daylight, in front of all America, on television, for the whole world to see. Yes, Senators, I am witnessing a crime in progress and I cannot just look the other way. Because I am John Q. Public and I am getting involved.

I know Clarence Thomas and I know Anita Hill. I was there from the first few weeks of Clarence coming to the Commission. I had the office next to Anita's. We all worked together in setting and executing the goals and the direction that the Chairman had for the EEOC. I remember Chris Roggeron, Carlton Stewart, Nancy Fitch, Barbara Parris, Phyllis Berry, Bill Ng, Allyson Duncan, Diane Holt—each of us with our own area of expertise and responsibility, but together all of us a part of Clarence Thomas's hand-picked staff.

I don't know how else to say it, but I have to tell you that it just blew my mind to see Anita Hill testifying on Friday. Honest to goodness, it was like schizophrenia. That was not the Anita Hill that I knew and worked with at EEOC. On Friday, she played the role of a meek, innocent, shy Baptist girl from the South who was a victim of this big, bad man.

I don't know who she was trying to kid. Because the Anita Hill that I knew and worked with was nothing like that. She was a very hard, tough woman. She was opinionated. She was arrogant. She was a relentless debater. And she was the kind of woman who always made you feel like she was not going to be messed with, like she was not going to take anything from anyone.

She was aloof. She always acted as if she was a little bit superior to everyone, a little holier than thou. I can recall at the time that she had a view of herself and her abilities that did not seem to be based in reality. For example, it was sort of common knowledge around the office that she thought she should have been Clarence's chief legal advisor and that she should have received better assignments.

And I distinctly remember when I would hear about her feeling that way or when I would see her pout in office meetings about assignments that she had gotten, I used to think to myself, "Come on, Anita, let's come down to Earth and live in reality." She had only been out of law school a couple of years and her experience and

her ability couldn't begin to compare with some of the others on the staff.

But I also have to say that I was not totally surprised at her wanting these assignments because she definitely came across as someone who was ambitious and watched out for her own advancement. She wasn't really a team player, but more someone who looked out for herself first. You could see the same thing in her relationships with others at the office.

Senator KENNEDY [presiding]. Excuse me. Ms. Alvarez, we had the 5 minutes, you know, for the other panel. But we have very extensive questionings. I don't want to cut you off when you have been waiting a long time.

Ms. ALVAREZ. Well, Senator, if you would just give me a few more minutes.

Senator THURMOND. Mr. Chairman, I would like to make a statement. The other panel has been on all day long. This is a panel in reverse now. And the only limitation was the nine, No. 9, for 1 hour, and that is the last panel to come on.

I object to cutting these people off. They are entitled to speak.

Senator LEAHY. Mr. Chairman, we made an agreement just about 10 minutes ago and it is already being broken. Let's stick to the agreement.

Senator THURMOND. There is no agreement on this panel at all. It was the last panel of nine people that we agreed to take 1 hour on and no more. This panel is answering the first panel that has been on here for hours and hours, and they are entitled to speak, and we are going to contend for it.

Senator KENNEDY. Well, I think the record will show that there were as many questions focused on the other panel from that side as it was from this side. I distinctly heard the chairman say that they were going to be 5 minutes and then it is unlimited.

Senator THURMOND. Well, he suggested 5 minutes.

Senator KENNEDY. All right. Let's make it 7.

Senator THURMOND. No, we don't want to limit them.

Senator KENNEDY. Let's make it 7.

Senator THURMOND. You didn't limit this morning. You didn't limit all day long. They were in Ms. Hill's favor. Here are some in Judge Thomas' favor. They are entitled to speak.

Senator HATCH. And they read their full statements, the last panel.

Senator KENNEDY. I will ask the clerk to read back what Chairman Biden said about this panel.

Senator THURMOND. Well, send it to Chairman Biden.

Senator KENNEDY. I will ask the clerk to read back what was agreed to.

Senator THURMOND. These was no agreement.

Senator LEAHY. It was agreed to.

Senator THURMOND. He just said he suggested 5 minutes.

Senator SIMPSON. Mr. Chairman? Mr. Chairman?

Senator KENNEDY. Go ahead, Ms. Alvarez. Continue.

Senator SIMPSON. Mr. Chairman, if I—

Senator KENNEDY. Ms. Alvarez is going to continue.

Senator SIMPSON. Mr. Chairman, if I could, I think we all concurred on the one panel with 3 minutes and that is separate and apart from this.

Senator THURMOND. The last panel.

Senator SIMPSON. And this is the regular panel and the regular time that we did this morning with the other group. And we just ask for the same courtesies here.

Senator KENNEDY. That is exactly, the Senator has stated. Whatever time was given to the earlier panel ought to be given to this panel.

I am glad the Chair is back. [Laughter.]

Good to see you, Joe.

The CHAIRMAN [presiding]. Please go on.

Ms. ALVAREZ. If I could finish.

The CHAIRMAN. I know I don't know, and I don't want it repeated. Did you all settle it? Are we all square?

Ms. ALVAREZ. It is settled. I am going to finish.

The CHAIRMAN. There is no limit on this panel. What is the motion?

Senator THURMOND. There is no motion at all. Just let them speak till they get through.

The CHAIRMAN. Speak.

Ms. ALVAREZ. Please. I made an awful lot of effort to come here. I would like to just finish saying what I have to say.

The CHAIRMAN. Yes. You go right ahead.

Ms. ALVAREZ. You could see that Anita Hill was not a real team player, but more someone who looked out for herself. You could see this even in her relationships with others at the office. She mostly kept to herself, although she would occasionally participate in some of the girl-talk among the women at the office, and I have to add that I don't recall her being particularly shy or innocent about that either.

You see, Senators, that was the Anita Hill that we all knew and we worked with. And that is why hearing her on Friday was so shocking. No, not shocking. It was so sickening. Trust me, the Anita Hill I knew and worked with was a totally different personality from the Anita Hill I heard on Friday. The Anita Hill I knew before was nobody's victim.

The Clarence Thomas I knew and worked with was also not who Anita Hill alleges. Everyone who knows Clarence, knows that he is a very proud and dignified man. With his immediate staff, he was very warm and friendly, sort of like a friend or a father. You could talk with him about your problems, go to him for advice, but, like a father, he commanded and he demanded respect. He demanded professionalism and performance, and he was very strict about that.

Because we were friends outside of the office or perhaps in private, I might have called him Clarence, but in the office he was Mr. Chairman. You didn't joke around with him, you didn't lose your respect for him, you didn't become too familiar with him, because he would definitely let you know that you had crossed the line.

Clarence was meticulous about being sure that he retained a very serious and professional atmosphere within his office, without the slightest hint of impropriety, and everyone knew it.

We weren't a coffee-klatching group. We didn't have office parties or Christmas parties, because Clarence didn't think it was appropriate for us to give others the impression that we were not serious or professional or perhaps working as hard as everyone else. He wanted to maintain a dignity about his office and his every behavior and action confirmed that.

As his professional colleague, I traveled with him, had lunch and dinner with him, worked with him, one-on-one and with others. Never did he ever lose his respect for me, and never did we ever have a discussion of the type that Ms. Hill alleges. Never was he the slightest bit improper in his behavior with me. In every situation I have shared with Clarence Thomas, he has been the ultimate professional and he has required it of those around him, in particular, his personal staff.

From the moment they surfaced, I thought long and hard about these allegations. You see, I, too, have experienced sexual harassment in the past. I have been physically accosted by a man in an elevator who I rebuffed. I was trapped in a xerox room by a man who I refused to date. Obviously, it is an issue I have experienced, I understand, and I take very seriously.

But having lived through it myself, I find Anita Hill's behavior inconsistent with these charges. I can assure you that when I come into town, the last thing I want to do is call either of these two men up and say hello or see if they want to get together.

To be honest with you, I can hardly remember their names, but I can assure you that I would never try and even maintain a cordial relationship with either one of them. Women who have really been harassed would agree, if the allegations were true, you put as much distance as you can between yourself and that other person.

What's more, you don't follow them to the next job—especially, if you are a black female, Yale Law School graduate. Let's face it, out in the corporate sector, companies are fighting for women with those kinds of credentials. Her behavior just isn't consistent with the behavior of a woman who has been harassed, and it just doesn't make sense.

Senators I don't know what else to say to have you understand the crime that has been committed here. It has to make all of us suspicious of her motives, when someone of her legal background comes in here at the 11th hour, after 10 years, and having had four other opportunities through congressional hearings to oppose this man, and alleges such preposterous things.

I have been contacted by I think every reporter in the country, looking for dirt. And when I present the facts as I experienced them, it is interesting, they don't print it. It's just not as juicy as her amazing allegations.

What is this country coming to, when an innocent man can be ambushed like this, jumped by a gang whose ring leader is one of his own proteges, Anita Hill? Like Julius Caesar, he must want to turn to her and say, "Et tu, Brutus? You too, Anita?"

As a mother with a child, I can only begin to imagine how Clarence must feel, being betrayed by one of his own. Nothing would

hurt me more. And I guess he described it best in his opening statement on Friday. His words and his emotions are still ringing in all of our ears and all of our hearts.

I have done the best I could, Senators, to be honest in my statement to you. I have presented the situation as it was then, as I lived it, side by side, with Clarence and with Anita.

You know, I talked with my mom before I came here, and she reminded me that I was always raised to stand up for what I believed. I have seen an innocent man being mugged in broad daylight, and I have not looked the other way. This John Q. Public came here and got involved.

Senator KENNEDY [presiding]. Ms. Fitch.

TESTIMONY OF NANCY E. FITCH

Ms. FITCH. Mr. Chairman, Senator Thurmond, members of the committee: My name is Dr. Nancy Elizabeth Fitch. I have a BA in English literature and political science from Oakland University, which was part of Michigan State University at the time—

Senator THURMOND. Would you please pull the microphone closer to you, so that the people in the back can hear you.

Ms. FITCH [continuing]. And a masters and Ph.D. in history from the University of Michigan in Ann Arbor. I have taught at Sangamon State University in Illinois, was a social science research analyst for the Congressional Research Service of the Library of Congress, been a special assistant and historian to the then Chairman of the U.S. Equal Employment Opportunity Commission, Clarence Thomas, an assistant professor of history at Lynchburg College in Virginia, and presently assistant professor of African-American Studies at Temple University, in Philadelphia.

From 1982 to 1989, I worked as a special assistant historian to then Chairman Clarence Thomas of the U.S. Equal Employment Opportunity Commission. I worked for and with him 7 years and have known him for 9. I researched the history of African-Americans, people of color and women and their relationship to issues, including employment, education and training. These were used for background on speeches, special emphasis programming at the Commission and for policy position papers.

I reported only to Judge Thomas, and my responsibilities also included outreach efforts to local colleges and universities and to the D.C. public schools. Judge Thomas was interested in his staff and himself being mentors and role models, especially, but not only to young people of color.

In these 9 years, I have known Clarence Thomas to be a person of great integrity, morally upstanding, professional, a decent person, an exemplary boss. Those years spent in his employ as a schedule C employee, a political appointee, were the most rewarding of my work life to that time. My returning to higher education I attribute to his persuading me to return to what I loved, not continuing as a bureaucrat, but returning to teaching.

I would like to say Judge Thomas, besides being a person of great moral character, I found to be a most intelligent man. Senator Biden was correct yesterday, when he indicated that the Republi-

can side of the panel might have overlooked its easiest defense, that of dealing with the judge's intelligence.

If these allegations, which I believe to be completely unfounded and vigorously believe unfounded, were true, we would be dealing not only with venality, but with abject stupidity with a person shooting himself in the foot, having given someone else the gun to use at any time.

There is no way Clarence Thomas—CT—would callously venally hurt someone. A smart man, concerned about making a contribution to this country as a public official, recognizing the gravity and weightiness of his responsibilities and public trust, a role model and mentor who would, by his life and work, show the possibilities in America for all citizens given opportunity, well, would a person such as this, Judge Clarence Thomas would never ever make a parallel career in harassment, ask that it not be revealed and expect to have and keep his real career. And I know he did no such thing.

He is a dignified, reserved, deliberative, conscientious man of great conscience, and I am proud to be at his defense.

As I told the FBI agent who interviewed me on Tuesday, October 1, I trust Judge Thomas completely, he has all of my support and caring earned by 9 years of the most positive and affirmative interacting, not only with me, but with other staff and former staff, men and women, and I know he will get back his good name.

Thank you.

Senator KENNEDY. Thank you very much.

Ms. Holt.

TESTIMONY OF DIANE HOLT

Ms. HOLT. Mr. Chairman, Senator Thurmond, and members of this committee: My name is Diane Holt. I am a management analyst in the Office of the Chairman of the Equal Employment Opportunity Commission.

I have known Clarence Thomas for over 10 years. For 6 of those years, I worked very closely with him, cheek to cheek, shoulder to shoulder, as his personal secretary. My acquaintance with Judge Thomas began in May 1981, after he had been appointed as Assistant Secretary for Civil Rights at the Department of Education.

I had been the personal secretary to the outgoing Assistant Secretary for several years. Upon Judge Thomas' arrival at the Department, he held a meeting with me, in which he indicated that he was not committed to bringing a secretary with him, and had no wish to displace me. Because he was not familiar with my qualifications, he made no guarantees, but gave me an opportunity to prove myself.

That is the kind of man he is.

In May 1982, Judge Thomas asked me to go to the EEOC with him, where I worked as his secretary until September 1987.

I met Professor Hill in the summer of 1981, when she came to work at the Department of Education as attorney adviser to Judge Thomas.

After about a year, Judge Thomas was nominated to be Chairman of the EEOC. He asked both Professor Hill and myself to transfer with him.

Both Ms. Hill and I were excited about the prospect of transferring to the EEOC. We even discussed the greater potential for individual growth at this larger agency. We discussed and expressed excitement that we would be at the right hand of the individual who would run this agency.

When we arrived at the EEOC, because we knew no one else there, Professor Hill and I quickly developed a professional relationship, a professional friendship, often having lunch together.

At no time did Professor Hill intimate, not even in the most subtle of ways, that Judge Thomas was asking her out or subjecting her to the crude, abusive conversations that have been described. Nor did I ever discern any discomfort, when Professor Hill was in Judge Thomas' presence.

Additionally, I never heard anyone at any time make any reference to any inappropriate conduct in relation to Clarence Thomas.

The Clarence Thomas that I know has always been a motivator of staff, always encouraging others to grow professionally. I personally have benefited from that encouragement and that motivation.

In sum, the Chairman Thomas that I have known for 10 years is absolutely incapable of the abuses described by Professor Hill.

Senator KENNEDY. Thank you very much.

Ms. Berry-Myers?

TESTIMONY OF PHYLLIS BERRY-MYERS

Ms. BERRY. You can call me Phyllis Berry, since that was my name that I used throughout my professional life, and that's probably what most people are going to refer to me as.

Mr. Chairman, Senator Thurmond and members of the committee, I am Phyllis Berry.

I know and have worked with both Clarence Thomas and Anita Hill. I have known Judge Thomas since 1979, and Anita Hill since 1982. Once Clarence Thomas was confirmed as the Chairman of the Equal Employment Opportunity Commission and had assumed his duties there, he asked me to come and work with him at the Commission.

I joined his staff as a special assistant in June of 1982. At the Commission, Chairman Thomas asked that I assume responsibility for three areas: I was to, one, assist in assessing and reorganizing his personal staff, scheduling, speech writing, and those kinds of things; two, to assist in professionalizing the Office of Congressional Affairs, as that office was called then; and, three, assist in reorganizing the Office of Public Affairs, as that office was called then.

Anita Hill was already a member of Clarence Thomas' staff when I joined the Commission.

There are several points to be made:

One, many of the areas of responsibilities that I had been asked to oversee were areas that Anita Hill handled, particularly congressional affairs and public relations. We, therefore, had to work together. Chris Rogerson was the director of congressional affairs at that time, and Anita Hill worked more under his supervision than Clarence Thomas'.

Two, Clarence Thomas' behavior toward Anita Hill was no more, no less than his behavior toward the rest of his staff. He was re-

spectful, demand of excellence in our work, cordial, professional, interested in our lives and our career ambitions.

Three, Anita Hill indicated to me that she had been a primary advisor to Clarence Thomas at the Department of Education. However, she seemed to be having a difficult time on his EEOC staff, of being considered as one of many, especially on a staff where others were as equally or more talented than she.

Four, Anita Hill often acted as though she had a right to immediate direct access to the Chairman. Such access was not always immediately available. I felt she was particularly distressed, when Allyson Duncan became chief of staff and her direct access to the Chairman was even more limited.

Five, I cannot remember anyone, except perhaps Diane Holt, who was regarded as personally close to Anita. She was considered by most of us as somewhat aloof.

In addition, I would like to make these comments:

In her press conference on October 7, 1991, Anita Hill indicated that she did not know me and I did not know her. However, in her testimony before this committee, she affirmed that not only did we know one another, but that we enjoyed a friendly, professional relationship.

Also, she testified that I had the opportunity to observe and did observe her interaction with Clarence Thomas at the office.

Two, I served at the Department of Education at the same time that Anita Hill and Clarence Thomas were there. One aspect of my job was to assist with the placement of personnel at the department, particularly schedule C and other excepted service appointments, such as schedule A appointments.

Excepted Service means those positions in Federal civil service excepted from the normal, competitive requirements that are authorized by law, Executive order or regulation.

The schedule C hiring authority is the means by which political appointees are hired. The schedule A hiring authority is the means by which attorneys, teachers in overseas dependent school systems, drug enforcement agents in undercover work, et cetera, are hired.

The office that I worked in was also responsible for reviewing any hiring that the department's political appointees made under the excepted service hiring authority. Therefore, in that capacity, I was aware of any excepted service hiring decisions made in the Office of Civil Rights, and that is the office that Clarence Thomas headed at that time, and Anita Hill was hired in that office as a schedule A employee.

Federal personnel processing procedures require a lot of specific knowledge and a lot of paperwork, and I do not profess to be a Federal personnel expert. But I can attest to the procedures required by our office and the Office of Personnel at the Department of Education at that time.

At the end of such procedures, a new employee would have no doubt whatsoever regarding their status, their grade, their pay, their benefits, their promotion rights, employment rights and obligation as a Federal employee and as an employee in the department.

A new employee would know whether their employment is classified as permanent or temporary, protected or nonprotected, and

those kinds of things. Each new employee must sign a form that contains such information, before employment can begin.

The Personnel Department at the Department of Education is a fine one, and it takes pride in thoroughly counseling new employees.

Senator HATCH. Let me start with you, Ms. Holt. You were here in what we would call, in a true trial, in the capacity of really a personal witness as well as a custodial witness. You can help us, it seems to me, figure out the significance and relevance of the telephone log records of the messages received by Clarence Thomas.

Also, since the testimony of Anita Hill on Friday, the issue of whether Professor Hill's telephone calls to Judge Thomas might in fact have been telephone calls to you has been interjected, because she indicated some of them were just calls to you. Is that so?

Ms. HOLT. She did call me on occasion.

Senator HATCH. Are they ones you have listed in these logs?

Ms. HOLT. They are not, no.

Senator HATCH. They are not?

Ms. HOLT. No.

Senator HATCH. And this is your handwriting on these logs, primarily?

Ms. HOLT. Primarily.

Senator HATCH. With regard to these phone calls involving Anita Hill?

Ms. HOLT. Right.

Senator HATCH. Each and every one of them?

Ms. HOLT. Each and every call? No.

Senator HATCH. But I am talking about the ones involving Anita Hill only.

Ms. HOLT. That is what I am saying. No, there is one call on here that—

Senator HATCH. Well, we will go through it. Yes, one call, but all the others are your handwriting.

Ms. HOLT. Right.

Senator HATCH. Now there are 10 messages recorded by you in the telephone log book which I had entered into the record yesterday. Now do these represent all of the times that Anita Hill called or might have called Judge Thomas during the 7 years that you worked for Judge Thomas?

Ms. HOLT. There were other times she called and he was available to take the call, which would mean that there was no indication in the phone log.

Senator HATCH. So there were a number of other times besides the at least 10 that you wrote down, mentioned in these logs?

Ms. HOLT. Right.

Senator HATCH. Were they frequent or were they just sporadic?

Ms. HOLT. They were sporadic.

Senator HATCH. But they were more than one, two, three? Could you give us an estimate?

Ms. HOLT. I would say maybe another five or six.

Senator HATCH. Another 5 or 6, so at least 15 or 16 calls that you received over these years, during the 7 years you worked for Judge Thomas. Is that right?

Ms. HOLT. Right.

Senator HATCH. Were these always cordial calls?

Ms. HOLT. They were always cordial.

Senator HATCH. Was her voice always basically the same? Was it friendly?

Ms. HOLT. It was always friendly.

Senator HATCH. OK. If she called and Judge Thomas were in and available to take the call, that would be put through on most occasions, right?

Ms. HOLT. It would be put through.

Senator HATCH. That you wouldn't write down?

Ms. HOLT. I'm sorry?

Senator HATCH. You would not write those calls down?

Ms. HOLT. I would not write that down, no.

Senator HATCH. OK. Now as you have said, these 10 calls are in your handwriting. So is there any other reason to dispute their correctness?

Ms. HOLT. No, sir.

Senator HATCH. Are you sure of their correctness?

Ms. HOLT. I am, sir.

Senator HATCH. As I mentioned, Professor Hill spoke of you this last Friday as a friend and, you know, attempts to diminish the significance of these messages, it seems to me, were made by her, at least at the one press conference, by claiming that many were calls placed to you and not to Judge Thomas, or Clarence Thomas at the time; that the messages to Judge Thomas were only accidental developments from her conversations with you. Have you heard that?

Ms. HOLT. I heard that, yes.

Senator HATCH. Is that true?

Ms. HOLT. That is not true. Had Anita Hill called me and even asked that I pass on a hello to Judge Thomas, I would have done just that, but it would not have been an official message in his phone log.

Senator HATCH. I see. Now I know it is a long time ago, but can you recall any tension or strain in her voice during any of these calls that she made to you and through you to Judge Thomas?

Ms. HOLT. Never.

Senator HATCH. So these particular questions that she would leave with you, or these particular statements that she made with you, they were basically unremarkable as far as any emotion or any other—

Ms. HOLT. They were unremarkable to me.

Senator HATCH. And they were all friendly?

Ms. HOLT. They were all friendly.

Senator HATCH. And they were all friendly toward Judge Thomas?

Ms. HOLT. They were.

Senator HATCH. Did you sense any animosity or any hostility or any aggravation or—

Ms. HOLT. Never.

Senator HATCH. Never. Is that true during the whole time that you knew her while she worked there?

Ms. HOLT. That is true of the entire time.

Senator HATCH. You were the gatekeeper, weren't you?

Ms. HOLT. I was, yes.

Senator HATCH. Nobody could get in or out without you?

Ms. HOLT. If I was there, that is true.

Senator HATCH. I bet you were a good one. I bet you were a good one.

Now I would like you to go back even further, to the time when all three of you worked at the EEOC. After any meeting or lunch between Anita Hill and Clarence Thomas, did you ever notice anything about Ms. Hill—or Professor Hill, excuse me—and her behavior, her moods or simply the way she looked, that ever led you to believe that anything unusual had really taken place between her and Clarence Thomas?

Ms. HOLT. No, never.

Senator HATCH. Never once?

Ms. HOLT. I never noticed anything.

Senator HATCH. Is it fair to say that their relationship was entirely professional?

Ms. HOLT. I would say that, yes.

Senator HATCH. How about the rest of you? Consider the same questions. Is there anything that would have indicated to you that the relationship was anything less than entirely professional? Ms. Alvarez?

Ms. ALVAREZ. No, sir. They always appeared to be very professional with one another. That was the way Clarence demanded it.

Senator HATCH. Ms. Fitch?

Ms. FITCH. Always professional. The times that Anita Hill and I went out together, and that might be no more than three times in a little over a year's period, we would leave work and we were talking about the job, talking about him, felt that he was going places and wanted to make sure that we, as his personal staff, were in the position to help him do what he needed to do to get there, so no.

Senator HATCH. Ms. Berry-Myers?

Ms. BERRY. I don't remember any time them having anything that was more than professional, cordial, friendly. She always indicated that she admired and respected the man.

Senator HATCH. Always?

Ms. BERRY. Always.

Senator HATCH. Right up to the day that she left to go to Oral Roberts University?

Ms. BERRY. To my knowledge, yes.

Senator HATCH. Now, Ms. Holt, in your opinion, or any of the others of you, is there any other person in the EEOC or any other person in this country who might have been in a better position to know whether or not Clarence Thomas and Anita Hill had anything other than a strictly professional relationship?

Ms. HOLT. I don't think anyone could say that they had anything other than the professional relationship.

Senator HATCH. Now, Ms. Holt, as I read this log, there are four messages in 1984, five messages in 1985, and then only one message in 1986, and then one in 1987, and then there follows a more than 3-year gap without any messages. What is the last message before that 3-year gap, in fact, the last message in the log book itself? What is the message of August 4, 1987?

Ms. HOLT. On August 4?

Senator HATCH. 1987.

Ms. HOLT. "Anita Hill. In town until 8:15. Wanted to congratulate you on marriage."

Senator HATCH. So for each of the years there were a number of calls that you have in the log here, and there were a number of calls outside of the log—

Ms. HOLT. Right.

Senator HATCH [continuing]. That were passed through because he was there, but the log calls stop in August of 1987. Is that correct?

Ms. HOLT. As far as I know.

Senator HATCH. Were there any other calls made after that, other than the two for law schools?

Ms. HOLT. I left the Chairman's office in September, immediately after that.

Senator HATCH. OK. Well, as of that date in August of 1987, what was the message that was in that log?

Ms. HOLT. I'm sorry, Senator?

Senator HATCH. As of the date that I mentioned, on August 4, 1987, in your handwriting, what is the message that was left by Anita Hill?

Ms. HOLT. On August 4?

Senator HATCH. Yes.

Ms. HOLT. "In town until 8:15. Wanted to congratulate you on marriage."

Senator HATCH. And to your knowledge, that was the last one that you ever took, then?

Ms. HOLT. To my knowledge, yes.

Senator HATCH. Now you have independent knowledge, do you not, of Anita Hill's job title while at the Office of Civil Rights. Is that correct?

Ms. HOLT. Right. She was attorney-advisor.

Senator HATCH. She was an attorney-advisor?

Ms. HOLT. Yes.

Senator HATCH. Now do you know how that position is classified by the government?

Ms. HOLT. Right. I know it is a schedule A position.

Senator HATCH. Schedule A. What does that mean?

Ms. HOLT. It means that it doesn't have to go through the normal competitive process.

Senator HATCH. It means that that job is permanent, doesn't it?

Ms. HOLT. Right.

Senator HATCH. In other words, even though she may not be able to keep that first assistant to the—

Ms. HOLT. Assistant Secretary.

Senator HATCH [continuing]. The Secretary that she had with Clarence Thomas, she would be able to go in any other area as an attorney-advisor.

Ms. HOLT. And even if Clarence Thomas' replacement had not wanted to keep her as his attorney-advisor, he could have placed her someplace else within the agency.

Senator HATCH. Now she told this committee that she felt like she had to go along with Chairman Thomas over to the EEOC, if I recall this correctly—you correct me, if you saw it—but that she was afraid that she might not have a job. Do you think—

Ms. HOLT. To my knowledge, I mean, she never asked me what her options were. I didn't think there was any indecision on her part. We were both enthusiastic about going to EEOC.

Senator HATCH. She was enthusiastic?

Ms. HOLT. She was.

Senator HATCH. Well, wasn't that, though, because she wanted to serve in this particularly stronger civil rights area?

Ms. HOLT. We discussed that this man was a rising star and we wanted to be there with him.

Senator HATCH. But wasn't that just you feeling that way?

Ms. HOLT. No, that was her feeling that way also.

Senator HATCH. That he was a rising star, and that she wanted to be part of that rising—

Ms. HOLT. We both wanted to be a part of that?

Senator HATCH. You did, too?

Ms. HOLT. Yes.

Senator HATCH. I understand you because you have expressed your loyalty and your feelings toward Chairman Thomas, Judge Thomas now, but you are sure that that is the way she felt?

Ms. HOLT. I am sure.

Senator HATCH. You took her to lunch; you two went to lunch on a regular basis, didn't you?

Ms. HOLT. We did.

Senator HATCH. I mean, you knew each other real well. You went many times, didn't you?

Ms. HOLT. We went to lunch often.

Senator HATCH. Quite often. Well, what did you and Professor Hill like to talk about? Any particular subject or conversation that is more prominent in your memory than any other? And if you could kind of tie it into—

Ms. HOLT. There was never any particular subject. We talked about men. We didn't talk about sex in any vivid sense, but we talked about it in a very general sense, as indeed many of my women friends and I do.

Senator HATCH. Another other particular—

Ms. HOLT. We talked about work, and we talked about what she did on the weekend or what I did on the weekend, just general conversations.

Senator HATCH. Well, and you never saw anything that would indicate that she had animosity toward then-Chairman Thomas?

Ms. HOLT. Never.

Senator HATCH. Or even at the prior job as Assistant Secretary of Education?

Ms. HOLT. None whatsoever.

Senator HATCH. And you were just about as close to Judge Thomas as anybody could have been, right?

Ms. HOLT. We were—we are very close, yes.

Senator HATCH. You have heard—let me just throw this out to all of you—I am not going to repeat the cumulative charges that would fill a whole page, of what she said Judge Thomas told her as he was pursuing her for dates and, as she implied, maybe pursuing her for something more than dates. Now each of you have heard those, so there is no reason for me to repeat them, but cumulative-ly they are pretty awful. Would you all agree?

Ms. FITCH. Yes.

Ms. HOLT. They are.

Senator HATCH. Could that have happened? Let's start with you, Ms. Alvarez. Could he have used that language with her?

Ms. ALVAREZ. Knowing Clarence Thomas, it is impossible.

Senator HATCH. It is impossible?

Ms. ALVAREZ. In the work environment, he was so professional, he was so—and, you know, I considered myself a friend of his, and I could never be friendly with him in the office. He drew that line. We were friends, and he was my boss, and when I was in the office, he was professional, as well as we knew each other.

Senator HATCH. All right.

Ms. Fitch?

Ms. FITCH. Yes, the probability of that happening, whether in the workplace or outside of it, in my best knowledge is nil, is zero. The probability is just not there. When I heard those things, I knew they didn't come from him.

Senator HATCH. So you are saying you know that it is zero, the chances of him doing that?

Ms. FITCH. The probability of his doing that is zero, Senator.

Senator HATCH. So it really isn't even a probability. It just means it would not have happened.

Ms. FITCH. Yes, sir.

Senator HATCH. How about you, Ms. Holt?

Ms. HOLT. In my opinion, he would never, ever subject any woman to that kind of language.

Senator HATCH. Ms. Berry-Myers.

Ms. BERRY. When I first met with Clarence Thomas in 1982, there was no—we sat in his office. He had a desk, a chair, and the chair I was sitting in. That was all that the EEOC employees left in the Chairman's office. That is how much they welcomed him there.

And we sat down, and from my political background, usually the first thing that you ask a candidate is, "OK, if I open up your closet, what skeletons are going to come falling out? I need to know right now." So I talked to Clarence Thomas about the need to comport himself in a way that there could be absolutely no taint on his reputation, on his character, on his honor, because we were about to embark upon an arduous task.

There wasn't anybody in this town, except perhaps Senator Hatch, that supported that man in the position that he had assumed, so I knew that everything that we did—public policy, program, firing people, anything that we did—he was going to be under microscopic scrutiny because he was a black Republican conservative in an agency that was overwhelmingly neither and in a town that is tough, and he was about to undertake a tough job. And with all the other things that we had to do, we didn't have any time to be dealing with anything that mind besmirch his character.

Senator HATCH. Well, do you have any concerns he might do otherwise?

Senator METZENBAUM [presiding]. Senator Hatch, your time has expired.

Senator HATCH. Let me just finish. This line only takes a—

Ms. BERRY. None whatsoever, and not only would he not, but he instructed his personal staff about the need for us to comport ourselves in such a way as to not disgrace his office.

Senator HATCH. OK. Thank you. My time is up, but I wanted to finish that and allow you to at least finish that thought, and we will come back to you in the next round.

Ms. BERRY. Thank you.

Senator METZENBAUM. Senator Heflin.

Senator LEAHY. Mr. Chairman, would Senator Heflin yield to me just for one question?

Ms. Holt, just so we are not confused, could I ask one of the staff, just would you let me take that just for a moment? We will give it right back to you. I just want to make sure we are all reading from the same choir book here, or log book.

Let me ask you, while he is bringing that up, just these questions: Each time that the log book shows Anita Hill calling, did she connect with Clarence Thomas every single time she called, to your knowledge?

Ms. HOLT. I don't understand.

Senator LEAHY. I mean, did she get through to him? A lot of these are messages. Does the fact that a message was taken here, does that mean that she—

Ms. HOLT. The fact that a message was taken meant that she didn't get to him right away.

Senator LEAHY. It does not mean she got to him each time?

Ms. HOLT. It means she didn't get to him at that time.

Senator LEAHY. OK, and you don't know whether she ever did?

Ms. HOLT. She did. The check mark beside the call indicates that the call was successfully returned.

Senator LEAHY. And how do you know that?

Ms. HOLT. It was my system. I devised it.

Senator LEAHY. OK, but do you know it because you placed the call back?

Ms. HOLT. I placed the call, got them on the line, and I checked it off that the call had been successfully returned.

Senator LEAHY. Senator Hatch asked you if there might have been a lot of other calls, and you were asked once before by the Republican and Democratic staff of this committee, "Do you have a recollection of Ms. Anita Hill calling Clarence Thomas any more times than may have sporadically shown up on three such pages?" And your answer was, "I would not even guess about that. I don't know." Is that correct?

Ms. HOLT. I was saying that I would not even guess about any particular dates, any particular times, or any particular year.

Senator LEAHY. Thank you very much.

Senator Heflin, thank you for your courtesy.

Senator HEFLIN. Ms. Holt, you knew Anita Hill quite well socially.

Ms. HOLT. We were professional friends.

Senator HEFLIN. Professional friends, all right. You went out to lunch together and things like that. Did you ever go out in the evening together, for dinner or something?

Ms. HOLT. Only on one occasion.

Senator HEFLIN. On one occasion. All right. If Anita Hill is telling a falsehood, do you have any explanation why she would be telling it?

Ms. HOLT. I have no idea, sir. She is the only one, I believe, that can answer that question.

Senator HEFLIN. Now, you went from the Department of Education to EEOC with Judge Thomas, Clarence Thomas the Director?

Ms. HOLT. He went over 2 or 3 weeks before I did, yes.

Senator HEFLIN. And then you followed him?

Ms. HOLT. Right.

Senator HEFLIN. And Anita Hill was also one of those that followed him from the Department of Education to the EEOC?

Ms. HOLT. Right.

Senator HEFLIN. Was there anybody else?

Ms. HOLT. That is it, as far as I know, at that time.

Senator HEFLIN. Did he ask you all to come?

Ms. HOLT. He did.

Senator HEFLIN. He did. All right. Now, at that particular time when that move was made was there a good deal of discussion that the Reagan administration wanted to abolish the Department of Education?

Ms. HOLT. I had heard that, Senator.

Senator HEFLIN. You had heard it. Was there any discussion at that particular time that the Reagan administration wanted to abolish the EEOC?

Ms. HOLT. I had not heard that.

Senator HEFLIN. You had not heard that.

Now, did you take dictation from Director Thomas?

Ms. HOLT. Not in the traditional sense of the word. When Judge Thomas wanted to dictate, he stood at my desk and I typed.

Senator HEFLIN. He didn't use a dictaphone?

Ms. HOLT. He did on occasion.

Senator HEFLIN. On occasion. And sometimes he would, in effect, dictate to you letters standing at your desk?

Ms. HOLT. He did.

Senator HEFLIN. He would. All right.

Did you open his mail?

Ms. HOLT. If his mail was marked "personal," I opened it. We had an Office of Executive Secretariat that was responsible for opening all mail addressed to the Chairman.

Senator HEFLIN. To the Chairman. But, if it was personal you would open it?

Ms. HOLT. I would open it; yes.

Senator HEFLIN. All right. Do you know whether or not he received mail at his home?

Ms. HOLT. I have no way of knowing that, Senator.

Senator HEFLIN. You don't know about that.

What was the age of his son at that time in 1982?

Ms. HOLT. I think 6, 7.

Senator HEFLIN. In the mail that you might have opened, did you ever open any mail that contained pornographic materials?

Ms. HOLT. I did not.

Senator HEFLIN. You did not. All right.

Now, did you hear of or know of anyone by the name of Earl Harper at the Washington office?

Ms. HOLT. I am not familiar with him; no.

Senator HEFLIN. You are not familiar with him. All right.

Did any of you?

Ms. FITCH. No, Senator.

Senator HEFLIN. Did you, Ms. Berry?

Ms. BERRY. Yes.

Senator HEFLIN. We went into this and then it was reopened later. It is my information that I now believe may have been incorrect.

Was he in the Washington office?

Ms. BERRY. I am sorry. I don't know for sure which office he was assigned to.

Senator HEFLIN. You don't know that. Well, what do you know about him?

Ms. BERRY. What I know is, and I don't recall all of the facts of the case, I just understand that Earl Harper was alleged to have been a sexual harasser.

Senator HEFLIN. Do you remember, Ms. Holt, dictating, any dictation by Clarence Thomas to the General Counsel pertaining to this man Harper?

Ms. HOLT. I don't remember any specific letters; no.

Senator HEFLIN. Now, Ms. Berry, have you made any statements that suggested that the allegations of Anita Hill were the result of Ms. Hill's disappointment and frustration that Mr. Thomas didn't show any sexual interest in her?

I am talking to Ms. Phyllis Berry Myers.

Ms. BERRY. That is what I said.

Senator HEFLIN. You said that to a newspaper?

Ms. BERRY. Yes, I did.

Senator HEFLIN. What were the facts pertaining to that?

Ms. BERRY. Just my observations of Anita wishing to have greater attention from the Chairman. I think she was used to that at the Department of Education. Wanting to have direct access to his office, as though she had a right to have access to his office. Speaking in just highly admirable terms for the Chairman, in a way sometimes that didn't indicate just professional interest.

Those were my impressions.

Senator HEFLIN. Now, what you are relating to me relates to a sexual interest.

Ms. BERRY. Pardon me?

Senator HEFLIN. What you just related, are you saying that those set of circumstances made you to believe that she had a sexual interest?

Ms. BERRY. That she had a crush on the Chairman? Yes.

Senator HEFLIN. She had a crush on the Chairman?

Ms. BERRY. Yes.

Senator HEFLIN. And would you recite those statements and things that you observed again?

Ms. BERRY. It is in my written testimony, sir.

Senator HEFLIN. Well, I am asking you now, if you would, in order to recite those again as to that. I didn't understand anything that you said—

Ms. BERRY. Had any effect relative to sexual relations. They appeared to be more professional and an attempt to have greater access to him from a professional viewpoint.

Senator HEFLIN. I just would like for you to recite them again, if there is something—

Ms. BERRY. That is your impression. My impression was that Anita wished to have a greater relationship with the Chairman than just a professional one.

Senator HEFLIN. And so you say that the fact that she didn't have as much access and other things that they indicate a sexual interest, as opposed to a professional or a work interest?

Ms. BERRY. Exactly.

Senator HEFLIN. And that is what you are saying.

How would you distinguish between the two?

Ms. BERRY. How would I distinguish between the two?

Senator HEFLIN. Yes. What you recited to me did not appear to be anything other than a work interest. But I would just like for you to go ahead and recite how that is a sexual interest, as opposed to a work interest.

Ms. BERRY. To have in a working environment, in a busy office, part of my responsibilities coming to the EEOC was to help structure access to the Chairman. There was a lot of work to do helping setting up scheduling, helping organize the work flow of a product, determining staff positions, things of that nature. That was one of my responsibilities when I first came there.

To think that you should at any hour of the day, anytime that you want to be able to walk in, have time with him, indicated to me more of a proprietary interest than a professional interest.

Senator HEFLIN. Were you conversant or did you know what the relationship had been at the Department of Education relative to access with her boss there?

Ms. BERRY. Only from her indications. That she was a primary, and whatever that meant, a primary adviser to the Chairman. And I would assume a primary adviser, such as myself or J.C. or Diane, meant someone that had readily—could be readily available to the Chairman.

Senator HEFLIN. Now, we went into this somewhat, Senator Leahy but also Senator Specter in his examination of Ms. Hill went into this question about whether or not she knew Phyllis Berry, and I assume—I don't know how—did the paper refer to you as Phyllis Berry or Phyllis Barry?

Ms. BERRY. Yes, as far as I know. It wasn't a paper. It was a press conference.

Senator HEFLIN. I mean, well whatever it was, was it Barry or Berry?

Ms. BERRY. That was my understanding, that they said do you know Phyllis Berry?

Senator HEFLIN. Is it Berry or Barry?

Ms. BERRY. Berry—B-e-r-r-y.

Senator HEFLIN. All right. Now, Senator Specter asked these questions, and I will read the questions and the answer:

Senator SPECTER. There is a question about Phyllis Barry, B-a-r-r-y, who was quoted in the New York Times on October the 7th, "In an interview Ms. Barry suggested that the allegation [referring to your allegation] was a result of Ms. Hill's

disappointment and frustration that Mr. Thomas did not show any sexual interest in her."

You were asked about Ms. Barry at the interview on October the 7th and were reported to have said, "Well, I don't know Phyllis Barry and she doesn't know me." And there were quite a few people who have come forward to say that they saw you and Ms. Barry and that you knew each other very well.

Then Ms. Hill answered.

I would disagree with that. Ms. Barry worked at EEOC. She did attend some staff meetings at EEOC. We were not close friends. We did not socialize together and we had no basis for making a comment about my social interest with regards to Clarence Thomas or anyone else. I might add at the time that I had an active social life and that I was involved with other people.

Then later Senator Specter asked her:

So that when you said Ms. Barry doesn't know me and I don't know her you weren't referring to just that, but to some intensity of knowledge.

And Ms. Hill answered:

Well, this is a specific remark about my sexual interest and I think one has to know another person very well to make those kind of remarks unless they are very openly expressed.

Now, I am asking, you don't have any question in your mind that Anita Hill knew you. It is a question as to the degree of intensity she knew you relative to whether or not you could form an opinion as to whether or not she had a sexual interest with Mr. Thomas?

Ms. BERRY. Senator, as I indicated in my statement, I worked very closely with Anita and I think that—I don't have the record before me, but I do believe that Senator Specter asked her also, "And she had the opportunity to observe you and Clarence Thomas at the office?" and she indicated that yes, not only did I have the—yes, I did have the opportunity to observe them. And I did have that opportunity.

And my opinion is that Anita had more than a professional interest in Clarence Thomas.

Senator HEFLIN. Well, did he ever indicate any return of it?

Ms. BERRY. No. And, if you continue reading the New York Times article, that is exactly what I said. And I said that "And because of that I think her feelings were hurt."

Senator HEFLIN. Now, Ms. Holt, in regard to telephone calls other than those that you logged, do you have a recollection as to whether there were any additional phone calls that came in from Anita Hill to Mr. Thomas?

Ms. HOLT. What I recall, Senator, is that there were occasions when Ms. Hill would call the office and would be put directly through to Clarence Thomas.

Senator HEFLIN. You have taken a deposition in this case where people asked you questions, and a question was asked you, "Do you have a recollection?"—on page 44—"of Anita Hill calling Clarence Thomas any more times than may have been sporadically shown up on these three other pages?" And the answer: "I would not even guess about that. I don't know."

Have you had changes in recollection since giving that deposition?

Ms. HOLT. As I just indicated to Senator Leahy, I was saying that I would not fathom a guess about any particular day or time or year that she had called him without it being in the log.

Senator HEFLIN. So you are saying that he could have called, or do you know that she called or what?

Ms. HOLT. I know, Senator, that there were occasions when she called and was put directly through to Judge Thomas.

Senator HEFLIN. But those were not recorded and no record is made, is that what you are saying?

Ms. HOLT. Exactly.

Senator HEFLIN. Do you know how often they occurred?

Ms. HOLT. No, I don't. But there weren't that many of them.

Senator HEFLIN. Wasn't that many of them. And over a period of how many years are these phone—that is from 1984, these logs are 1984, 1985, 1986, 1987. Would there have been as many as two or three?

Ms. HOLT. Four or five. Six, maybe.

Senator HEFLIN. It would have probably been what, in the neighborhood of no more than one a year?

Ms. HOLT. Possibly, sir.

Senator HEFLIN. Well, my time has run out.

Senator KENNEDY [presiding]. Senator Hatch.

Senator HATCH. Thank you. Now, let me go back to you, Ms. Berry. If I can call you Ms. Berry for the purposes of this hearing.

Ms. BERRY. That is fine.

Senator HATCH. Did you hear Anita Hill's press conference last Monday?

Ms. BERRY. Pardon me?

Senator HATCH. Did you see Anita Hill's press conference last Monday, or hear it?

Ms. BERRY. Last Monday? Was that October—I don't know dates anymore.

Senator HATCH. Whenever it was, the first press conference.

Ms. BERRY. October 7? No, I did not see her press conference. Reporters starting calling my home asking me had I seen Anita Hill's press conference where she indicated that she was responding to my quotes in the Times article and she indicated that she did not know me and that I did not know her.

And so I issued a statement saying that this is in response to Anita Hill's statement at an October 7 press conference indicating that she did not know me and I did not know her, that is not true. And then I went on to explain how it is that I did, in fact, know Anita Hill.

Senator HATCH. Well, when you heard Professor Hill claim "I don't know Phyllis Berry and she doesn't know me," did you think, as Professor Hill claimed on Friday, that her remark was only meant to indicate that you were not in a position to speculate about her private life or did you give those words what I would call their natural meaning and think that she was not telling the truth?

Ms. BERRY. When I heard it I thought she wasn't telling the truth. Obviously, she knew me. We worked together for many years, and we worked closely together, particularly in the Office of Congressional Affairs, particularly on the Chairman's staff, and I knew of her at the Department of Education. So I had no idea what she was talking about, except that I took her at face value. She said she didn't know me.

Senator HATCH. Well, after Professor Hill denied that she knew you the press conference erupted in applause, which is the largest ovation of the day. What were you thinking at that moment?

Ms. BERRY. I didn't see her press conference.

Senator HATCH. You didn't see it?

Ms. BERRY. I am sorry. I was working on Little League stuff and I wasn't watching television.

Senator HATCH. Well, you have indicated that the reason why Professor Hill has been so reluctant to acknowledge your existence appears to be the fact that you have advanced a theory for why Professor Hill is making these allegations, and your theory is, to say the least, unflattering to her in her position.

Can you repeat that theory as you gave it to the New York Times, and tell us if it still seems accurate to you?

Ms. BERRY. It still seems accurate to me.

Senator HATCH. And what was your theory?

Ms. BERRY. Because Clarence Thomas did not respond to her heightened interest, didn't respond to her in that way. He treated her just like he treated everybody else on the staff. That her feelings were hurt.

And I think opportunities that she thought that she ought to have, access that she ought to have and she didn't receive. I mean it was competitive. We were a tough, strong group of women around Clarence Thomas and he based—we had to perform. We had strict performance agreements, and you had to perform. And, if you couldn't hang, if you couldn't perform, you got his wrath. If you performed, you got his praise.

I think because she was at EEOC not treated special that she didn't feel comfortable there.

Senator HATCH. OK. Ms. Fitch, I was impressed by your statement, as I have been of all of your statements. I am impressed with each and everyone of you, and I think Judge Thomas was very lucky to have you working with him.

But I particularly notice you used the term "decent"—

Ms. FITCH. I'm sorry.

Senator HATCH. I particularly noticed you the used the term "decent" in describing Clarence Thomas.

Ms. FITCH. Yes.

Senator HATCH. Do you use that very often?

Ms. FITCH. Yes. If you talk to the people who talked to me even before I left the Commission, when I went to Lynchburg, VA, when I went to Temple, even at the time that he was nominated for the Supreme Court, I've always used that term about the Judge, and it kicked out for me some time ago, at least a year or two ago, if not longer, that I don't use that term for everybody, and it's not that there aren't other decent people, because there certainly are.

But what intrigues me about him is that I always paid a great deal of attention to his character, this man that I felt had a conscience that operated all the time, that realized the gravity of his position, and I found that impressive and that has a lot to do with my use of that term, and I still don't throw it around indiscriminately and I still call him a decent person.

Senator HATCH. Did you consider yourself a friend of Anita Hill's, and did you have a relationship with her outside of Washington?

Ms. FITCH. Anita Hill and I did not spend a lot of time together. We did not go to lunch, because I don't go to lunch often. We maybe went out three times after work for dinner. We were not prowling Washington or anything. I went to her house on one occasion. When she was in the hospital, I visited her there. At her farewell party at the Sheraton, I was in attendance and I believe I was the only person from the Commission who was there.

After she left the Commission, I stayed in touch with her. We did meet once when she came into town. Subsequently, we tried to get together. I had a house-warming gift for her, but we never caught up with each other.

Senator HATCH. I see. Did you ever hear her mention any problems with Clarence Thomas?

Ms. FITCH. Never. Never. Never, even after she left the Commission.

Senator HATCH. So, both during the time she was there and after she left?

Ms. FITCH. Yes, Senator.

Senator HATCH. OK. Now, your statement mentions that you knew both Anita Hill and Phyllis Berry while you were at the EEOC.

Ms. FITCH. Yes.

Senator HATCH. Is it possible, in your view, that Anita Hill was telling the truth at this press conference on Monday, when she stated, "I don't know Phyllis Berry and she doesn't know me"?

Ms. FITCH. Senator, when I heard that, I was very surprised. I don't know what she meant by it. I took it to mean that she was unaware of Ms. Berry's existence, and I knew that not to be the case.

Senator HATCH. Have you ever heard or ever known Anita Hill to lie on any other occasion?

Ms. FITCH. No, I haven't, Senator.

Senator HATCH. OK.

Ms. Alvarez, did you know Phyllis Berry and Professor Hill at the EEOC?

Ms. ALVAREZ. Yes, sir, I did.

Senator HATCH. So, you knew they worked together?

Ms. ALVAREZ. Yes.

Senator HATCH. In your statement, you noted that Professor Hill was "not a team player," and "appeared to have her own agenda." Could you elaborate on that?

Ms. ALVAREZ. Well, there seemed to be all of us in the group kind of working toward the same goal, and I think we got along with each other, we would occasionally talk, and Anita mostly kept to herself. She was very strong-willed, she liked to do things her way, and that was always the way she—that was the way she gave the impression, that she kind of had her own agenda, her own way of doing things. So, no matter what the rest of the team was doing, she was going to do it Anita's way.

Senator HATCH. Now, you say you knew Judge Thomas well.

Ms. ALVAREZ. Yes.

Senator HATCH. Did you ever hear him ask Anita Hill for a date, the whole time you knew both of them?

Ms. ALVAREZ. No, never.

Senator HATCH. And you knew her well.

Ms. ALVAREZ. I knew her at the office.

Senator HATCH. OK. Did you ever see any indication that either of them had a romantic interest in the other?

Ms. ALVAREZ. No.

Senator HATCH. Did you ever hear of Judge Thomas discussing sex with anybody, including Anita Hill?

Ms. ALVAREZ. At the office, never, sir.

Senator HATCH. Again, I am going to ask you this question. You are his close friend and you worked closely with him. Is it conceivable that Clarence Thomas, the Clarence Thomas you have known and worked with for the past 13 years, that he could have made the perverted statements that Professor Hill said he did?

Ms. ALVAREZ. Not a chance, sir.

Senator HATCH. Did you ever hear Professor Hill express any dissatisfaction with then Chairman Thomas or the way he treated her?

Ms. ALVAREZ. No. No, not at all.

Senator HATCH. If you had a young daughter in her early twenties, would you want her to work with Judge Thomas?

Ms. ALVAREZ. Absolutely. Absolutely.

Senator HATCH. From your experience of working with Professor Hill and Judge Thomas at the EEOC, did Professor Hill think that she had some sort of a special relationship with Judge Thomas?

Ms. ALVAREZ. Yes, she used to give that impression. She used to like to tout the fact that she had worked with him before. You know, when we would get into debates on how we were going to handle an issue, she would say, "Well, I know how he thinks, I know how he likes his papers written or I know the position he wants to take," or something like that. That was something she always sort of held out in front of everyone at the staff, that she had this sort of inside track to him.

Senator HATCH. What I would like to ask each and every one of you is, rack your brains, as people who were around both of them, who have known both of them during that period of time, who really have had a close working relationship professionally and even a friendship relationship with Judge Thomas. How could she have testified the way she did here?

Ms. FITCH. Senator, to me it was incredible. I don't know. I can't answer that. I was dumb-struck. I have no idea.

Senator HATCH. Ms. Fitch?

Ms. HOLT. I have no idea, Senator.

Senator HATCH. Well, let me ask you this: Do any of you believe her testimony here?

Ms. HOLT. I do not believe a word, not one word.

Ms. FITCH. Senator, I don't believe it, either.

Senator HATCH. I didn't hear you.

Ms. FITCH. I'm sorry. Senator, I do not believe a word of it, either.

Senator HATCH. You don't believe a word of it.

Ms. FITCH. No, I don't.

Senator HATCH. How about you, Ms. Myers?

Ms. BERRY. When she could stand up in front of the world and say "I did not know Phyllis Berry and Phyllis Berry does not know me," I can imagine she probably would say anything. I mean, I exist and I existed then. I worked very closely with her, and that wasn't the truth, so it seems to me that if she could not tell the truth on one thing, she could not tell the truth on another.

Senator HATCH. Ms. Alvarez?

Ms. ALVAREZ. I cannot believe one word of her testimony. That is not the Clarence Thomas I know. That is not the Clarence Thomas I worked with.

Senator HATCH. You heard Chairman Thomas' testimony with regard to the allegations that she made on three successive occasions, once to the FBI, once in her 4-page single-spaced typewritten statement, and another one when she appeared here before this committee last Friday, and you heard Judge Thomas' response to that.

Ms. FITCH. Yes, Senator, he said he categorically denied her allegations.

Senator HATCH. He did deny them.

Ms. FITCH. Yes.

Senator HATCH. Did you hear his response on the negative stereotypes?

Ms. FITCH. I heard most of it, Senator.

Senator HATCH. What do you think of those comments made by her attributed to him and his comments back about those comments?

Ms. FITCH. As a historian, I know those comments to be stereotypical.

Senator HATCH. Why would you think she would say that?

Ms. FITCH. Senator, I have no idea. I don't know, but they are certainly kind of pat formulaic statements that people have historically made about black men in this country.

Senator HATCH. Don't they play on white prejudices about black men?

Ms. FITCH. Of course they do, Senator.

Senator HATCH. Of course they do, but why would she use that language, and why would he use it?

Ms. FITCH. Senator, I think what I am trying to say is that it is incomprehensible that she would say these things, incomprehensible that she might believe them. I do not know. I have not talked to her in three years. I don't know.

Senator HATCH. Would those kind of statements, had they been—would those kind of statements, as they are, would they tend to turn some people in this country against Clarence Thomas?

Ms. FITCH. Senator, I have been in the street a lot lately listening to people's conversations, and they have been talking about this process and about this man, and I am finding that most people are concerned about the seriousness of the allegations, they take the issue of sexual harassment seriously. They are not discounting that. They do not believe the things that are being said about this man. They are too pat, they don't—even for people who don't know him—don't think they seem to hang very well together.

Senator HATCH. Now, have any of you women ever heard of any male using that type of language, in order to obtain a date with a woman?

Ms. FITCH. Senator, this was not to obtain a date with me, but when I taught at Sangamon State University in Illinois, in a room with four other people, including an older man who was old enough to be my father, a Federal contract compliance officer said some things like that to me, and nobody said anything in response. I was very hurt by that. I stayed away from him. He had no jurisdiction or authority over me. It's possible for people to say things like that. It is improbable that this man said those things.

Senator HATCH. Well, what do the rest of you feel about that?

Ms. HOLT. I agree that it's impossible for Clarence Thomas to have said those things.

Senator HATCH. Ms. Alvarez.

Ms. ALVAREZ. I agree that it is absolutely impossible for Clarence to have said it.

Senator HATCH. Ms. Berry.

Ms. BERRY. It's impossible and not a great deductive method in my way of thinking. [Laughter.]

Senator HATCH. Well, you know, I hate to tell you this, but I agree with that. You know, people all over this country are trying to figure out how somebody could testify in such a believable manner and say the cumulative total of those awful, ugly, terrible sexual things and expect a woman to date him or expect some form of a relationship with a woman.

It bothers me, because she appears to believe everything that she said, and I myself don't want to call her a liar. But as an old trial lawyer, I have seen witnesses just like that who believe every word they say and every word is absolutely wrong and we have proven it wrong and they still believe it.

I am highly offended, having been the coauthor, along with Senator Kennedy, of the Polygraph Protection Act to protect employees from being forced to go through polygraphs, that this group of handlers of Professor Hill have had her undergo a polygraph.

I can tell you right now, you can find a polygraph operator for anything you want to find them for. There are some very good ones and there are some lousy ones, and a whole raft in between. And to do that and interject that in the middle of this is pathetic, as if it has any relevance whatsoever. It wouldn't even be admissible in a court of law.

Now, I just want to ask you this last question. I have known Judge Thomas for 11 years. I have sat in on all five of his confirmation proceedings. I presided over three of them, as chairman of the Labor Committee. And I have never seen anything to indicate that he would treat any human being like this woman says he treated her.

I am going to ask you to search your minds one last time: Is there anything that could have been misconstrued or construed, in your opinion, that could have caused anyone, including Anita Hill, to say what she did here to the whole world?

Ms. HOLT. Senator, since these allegations surfaced, that is all I've really done, is wonder why——

Senator HATCH. Me, too.

Ms. HOLT [continuing]. Why would she want to tell these lies, and I haven't come up with an answer yet. But I can certainly say that I don't believe a word of it.

Senator HATCH. I think that sums it up pretty well.

Thank you very much.

The CHAIRMAN. Thank you.

Senator THURMOND. Mr. Chairman, I have one question I would like to propound.

The CHAIRMAN. I could ask a couple, too, but you go right ahead, Senator. Instead of going back, we will go to you.

Senator THURMOND. Is it possible that Professor Hill had a crush on Judge Thomas and felt rejected, because he would not date her? Any of you care to answer that?

Ms. BERRY. Since I am the one who said that, you have got to understand, I guess, what kind of man Clarence Thomas is. In many ways, I think he is atypical in his treatment of women. He is respectful of our abilities and our talents and expertise, allowed us to have opportunities that ordinarily women did not have at the Commission.

My own title, as the Director of the Office of Congressional Affairs, is a good example. That is usually the purview of a man. He allowed us to do things that women ordinarily did not have the opportunity to do. He made sure that women were included in almost every aspect of Commission life as it related to job opportunities.

He is courteous, he is generous, he is caring, and I can understand any woman responding to a man that has those kinds of attributes.

Ms. FITCH. Senator, as I said before, on the three occasions—and I don't think it was more than that—that Anita Hill and I did go out after work, from work, it was clear to me that she had very friendly feelings towards now Judge Thomas and that she felt that they were returned.

I knew that she had been with him at the Department of Education. I knew that they had met through a mutual friend, and I knew that she had friendly feelings for him. That made it all the more surprising to me, therefore, that she made these allegations. I never got any sense from her that she had any romantic interest in him at all. From my experience with her, that was not what she was concerned about. As I said before, she saw him as a person who was going places and was going to make a contribution in this country, and both of us felt that we wanted to do whatever we could to help him do that.

In my case, at last, it was not to follow a rising star, necessarily, and I can't say that that was her intention, either. I don't know. We did not talk about him in those terms, but we did talk about him when we went off together, and we talked about work and how we could make him almost perfect. I think it was unreasonable, the things that we wanted him to do, to be completely flawless, to be 100 percent perfect. No human being is that way, and when I was in my twenties I was very judgmental and wanted people to be perfect, too, and I think that was part of the problem. But I don't see that that would have led to this kind of an allegation.

Senator THURMOND. Any other comments?

[No response.]

Senator THURMOND. Thank you very much.

The CHAIRMAN. Just for the record, as the Senator said, I appreciate your direct answer, Ms. Fitch, and yours, Ms. Myers. But I could ask you, for example, is it possible that there is life in outer space? Is it possible there is life in outer space?

Ms. FITCH. Of course, it's possible, Senator.

The CHAIRMAN. Ms. Myers, is it possible there's life in outer space?

Ms. BERRY. It's possible.

The CHAIRMAN. Thank you.

Now, let me ask you another question, if I may. Before I ask you the question, let me make it clear that there has been a lot of discussion about records here and the testimony taken, when you were giving testimony over the telephone or in person or to the FBI, and I am not reading from the FBI. There are things that are said here that seem inconsistent.

I am not accusing you of inconsistency here, but I just want to make sure I understand. You said in a question from staff, in the staff interview—and it is only one thing, so I don't think you have to have the whole page, but if you need it, I would be happy to give it to you, page 57—the staff person asked you, "Did you see Anita Hill's press conference on television?" And your answer was yes.

Then the next question asked you, "Did you find her credible?" Your answer was, "She sounded credible."

Now, that is not necessarily inconsistent with what you said today, but I want to make sure I understand. Today, you said that you believed that you don't believe one word of Anita's Hill testimony. Can you make a distinction between your saying "she sounded credible" and what you said here?

I might point out, before you answer it, I think that other Senators who question for the record should be able to understand that there are these kinds of discrepancies that aren't nearly the discrepancies they are made out to be, but go ahead.

Ms. HOLT. What I meant was, if someone did not know Anita Hill, she sounded credible. I know Anita Hill and I know Clarence Thomas, and I know Clarence Thomas is not the kind of person that would do those things.

The CHAIRMAN. So, notwithstanding the fact you said she sounded credible, in response to the staff—

Ms. HOLT. Right, if I did not know her—

The CHAIRMAN [continuing]. You really meant to say, if you did not know her, you thought she sounded credible?

Ms. HOLT. She sounded credible. She presents herself well.

The CHAIRMAN. And you just failed to say the first part, if you did not know her, she sounded credible, is that correct?

Ms. HOLT. That's correct.

The CHAIRMAN. I accept that. I just want to make two points, one, to clear up the discrepancy, and, two, to point out that witnesses can appear to have discrepancies in these records, and there would be no discrepancy at all, in fact.

Now, let me ask you, Ms. Fitch, you have been extremely precise in your answers. I think you have been extremely precise, you made it absolutely clear that you think Clarence Thomas is an in-

credibly admirable man, an admirable person and one whom you don't believe said this.

For example, in response to my good friend from Utah, you pointed out what I think everyone in America does know, and that is that there are men who do say things like that alleged to have been said by the Judge.

Now, you don't believe that the Judge said that, but you explained to us that you believe——

Ms. FITCH. Yes.

The CHAIRMAN. From other men, not from the Judge.

Ms. FITCH. Not from Judge Thomas, and I do not believe he would say those things.

The CHAIRMAN. I understand that, and I want to make it clear. You do not believe that. You believe he is totally credible.

Ms. FITCH. Yes.

The CHAIRMAN. You believe everything he is saying, but I want the record to show what I think every woman in America knows, that there are men who do say things exactly like what Judge Thomas is accused of saying, notwithstanding my friend from Utah's research creating the impression that it is so unusual that it never happens.

Senator HATCH. Not as a cumulative whole, though.

Ms. FITCH. Oh, no.

Senator HATCH. Well, see, that is what he is trying to get you to say.

Ms. FITCH. Yes.

Senator HATCH. The fact is, he said one statement, but a cumulative whole, if you hung around that fellow——

Ms. FITCH. Well, there might be two or three statements strung together, but no, it is not a whole litany like that.

The CHAIRMAN. Let me put it another way, Ms. Fitch. And I was very fastidious about never interrupting my friend from Utah, and I assume he won't interrupt me again.

Now what do you think, let me ask you, that man who said those things to you, do you think if you had been in his company the next 7 days, he might not have said similar things to you again and again?

Ms. FITCH. Senator, I was very sure he would say those things to me in private if I was in his orbit, so I stayed away from him.

The CHAIRMAN. Thank you very much. That is cumulative.

Now let me make another point, if I may. I want to make it clear, because I understand and I believe everything that all of you are saying. It is clear that you truly believe what you say to be correct and to be a legitimate and accurate characterization of Clarence Thomas. I don't doubt that for a minute. You are under oath, and it is clear that you all believe that. I am not suggesting anybody has been put up to anything by anybody. I believe you believe it.

Now one of the things that has been indicated here is this notion of maybe that the witness, Professor Hill, really was basically the woman scorned, that she really had this romantic interest in Clarence Thomas and that she was spurned, and after being spurned she took up the role in the way that Shakespeare used the phrase,

"Hell hath no fury like . . .," and that is what is being implied here.

Now, Ms. Fitch, you said you have no doubt, as I understand it, that the Professor wanted very much to see the Judge move on and do great things for America.

Ms. FITCH. Be successful in his career, yes.

The CHAIRMAN. Be successful. But I want the record to note—and correct me if I am wrong—that in those conversations with the professor where you drew that conclusion, that she wished to see him succeed.

Ms. FITCH. Yes.

The CHAIRMAN. You also went on to say, unless I misunderstood you, that you did not believe there was any romantic element to that.

Ms. FITCH. Oh, no, Senator, and we both said the same things about him, and for neither one of us was there any romantic talk about him at all.

The CHAIRMAN. Thank you.

Now, Ms. Alvarez, in a statement that you issued after Professor Hill's allegations became public, you observed, and I quote.

Ms. Hill was not a team player and appeared to have her own agenda. She always attempted to be aloof from the staff, constantly giving the impression she was superior to others on the staff.

Then your statement goes on to conclude that Professor Hill had a "punchant for being self-serving and condescending toward others," and that the allegations she made "are absurd and are clearly an attempt on her part to gain notoriety." You also said the charges are "outrageous, ridiculous and totally without merit."

Now, Ms. Alvarez, my question to you is this: Could there be a different conclusion drawn from your observation that during her tenure at EEOC, Professor Hill appeared "aloof from the staff"? You draw the conclusion from that that she was self-serving and condescending. Could Professor Hill's aloofness have resulted from feeling uncomfortable around the Chairman of the Commission?

Ms. ALVAREZ. No, it was not her aloofness that made me feel like she was condescending. She was aloof, and she has been described that way by a number of people. The way she made me feel, she acted condescending towards others, was that she would say she had this inside track, she knew the Chairman better than anyone else, and therefore she had some sort of rights, because she had worked with him before, because she was close to him, because she knew how he thought and that sort of thing. So she condescended to others in that way.

The CHAIRMAN. Well, how about the aloofness part. Could the aloofness be—

Ms. ALVAREZ. Well, she was not aloof from him. She was aloof from the rest of the staff.

The CHAIRMAN. I see. Now how do you know she wasn't aloof from him?

Ms. ALVAREZ. Just in the dealings that I saw. She never seemed to avoid him. She never seemed to try and stay away—

The CHAIRMAN. I see.

Ms. ALVAREZ [continuing]. Or she didn't respond to him in a staff meeting or anything like that. I am saying that with the other staff she was very stand-offish.

The CHAIRMAN. I see.

Ms. Holt, did you find her condescending and aloof? You dealt with her probably more than anybody.

Ms. HOLT. She wasn't condescending to me, Senator.

The CHAIRMAN. She was not?

Ms. HOLT. No.

The CHAIRMAN. I can understand why. She wanted to get in that door, right?

Ms. HOLT. That could have been it.

The CHAIRMAN. Ms. Myers—and my apologies, do you wish me to refer to you as Ms. Berry-Myers or would you prefer—

Ms. BERRY. It doesn't matter, Senator.

The CHAIRMAN. All right.

Ms. BERRY. I know who you are talking to, either way.

The CHAIRMAN. All right. Ms. Myers, did you find her to be aloof and condescending?

Ms. BERRY. I found her to be aloof, and a woman scorned can mean not just in the romantic context, but if your ideas are not longer, the ones that are considered the ones that the Chairman adopts, if your point of view is not given more weight than someone else's, if your—there are many ways, and not just in the romantic sense, but in the ways that—

The CHAIRMAN. I'm sorry. How did you mean them, then?

Ms. BERRY. Pardon me?

The CHAIRMAN. How did you mean?

Ms. BERRY. I meant it with both of those contexts.

The CHAIRMAN. You mean both romantic and in terms of being rejected professionally, in a sense?

Ms. BERRY. Yes. Those were my observations of Anita and the situation.

The CHAIRMAN. I see. Can you give me an example?

Ms. BERRY. Of what?

The CHAIRMAN. Of where she was either rejected and you observed the reaction to her rejection, either in terms of romantic entre or an intellectual entre?

Ms. BERRY. Or an intellectual entre? That was my job, as I said, to be the political eyes and ears, and that sometimes meant that I had to advise the Chairman to take a position that was in his best interest and that of the Commission, and not oftentimes a position that was in the best interests of the bureaucracy or of one side or the other. We had to do what was best in terms of enforcing the law, administering and managing the agency, et cetera, et cetera, and sometimes there were ideological conflicts in that way.

And I have heard Anita characterized in the press as a conservative, and I guess I have a different opinion of what that means. At the Commission I would not have characterized Anita as a conservative. I would have characterized her more as a moderate person or a liberal, and there were times when it was necessary that the conservative view prevail, in my opinion, on some positions that the Chairman took that she adamantly disagreed with.

The CHAIRMAN. How would you characterize yourself, Ms. Myers?

Ms. BERRY. I would characterize—

The CHAIRMAN. As conservative or liberal, I mean, or moderate or whatever.

Ms. BERRY. Now that's a good question. On some issues I am very conservative; on some issues I am not.

The CHAIRMAN. I see that.

Senator LEAHY. Aren't we all?

The CHAIRMAN. Is that not also the case for the Professor?

Ms. BERRY. Obviously, yes.

The CHAIRMAN. I see, so she is just like you, then?

Ms. BERRY. No, she is not. I haven't alleged that Clarence Thomas—

The CHAIRMAN. No, no, no. I mean—

Ms. BERRY. So she is not like me. [Laughter.]

The CHAIRMAN. No, no. I mean in terms of her political ideology.

Ms. BERRY. On some things, perhaps.

The CHAIRMAN. Does anybody else want to ask a question?

Senator LEAHY. This is not a question. I just would like to note something for the record, if I might, Mr. Chairman. And that is that Senator Hatch referred in just the last few minutes to Anita Hill's handlers somehow, Svengali-like—my term, not his—sending her out to take a polygraph.

I would just note for the record, according to her sworn testimony, the first suggestion of a polygraph came when the administration sent the FBI to talk to her. According to what she stated here, she told us that the FBI asked her if she would be willing to take a polygraph and she said—again according to her testimony here—that indeed she would.

I have no idea of the qualifications of whomever administered it or anything else. I have just heard about it. It would not be admissible in a court of law. Nobody is required to take a polygraph, but I just wanted to note, for the record, that the first suggestion of that came not from somebody advising Professor Hill but from, according to her testimony, the people the administration sent out on the investigation that was requested by the White House and this committee.

Senator HATCH. If the Senator would yield on that point, as the co-author along with Senator Kennedy of the Polygraph Protection Act, we did a lot of study of this, and there is no question that polygraphs should only be given under certain circumstances, with the approval of both sides, and not unilaterally by one side that may be very biased. You can find a polygraph operator to do anything you want them to do, just like you can find a pollster. Some pollsters in this country, not many, but some will do anything. They will find any conclusion you want, just by changing the questions.

Then again, polygraph operators, there are circumstances where people really believe what they are doing. They really believe it. It is totally false, but they believe it. She may very well be in that category, and might even pass a real polygraph examination.

So to throw that in the middle of a Supreme Court nomination as though it is real, legitimate evidence is highly offensive, that is my only point, and highly political, and again, too pat, too slick,

exactly what a two-bit slick lawyer would try to do in the middle of something as important as this. Now that is the point I was raising.

Senator LEAHY. Mr. Chairman, the point to be made is that it was the FBI, sent by the White House, who first suggested the polygraph.

Senator HATCH. No, that is not true. That is not true. It was this committee, not the White House. It was this committee.

Senator LEAHY. Is that why the report first goes to the White House?

The CHAIRMAN. Will the Senator withhold?

The FBI was asked by the Majority and the Minority to investigate. The White House, the administration, has to authorize that when we request it.

Senator LEAHY. That's right.

The CHAIRMAN. It was in the FBI—

Senator LEAHY. I am referring to the sworn testimony here.

Senator HATCH. It's a terrible thing, I'll tell you.

Senator LEAHY. The sworn testimony—

Senator HATCH. You only use it when it benefits her.

Senator LEAHY. The sworn testimony of Professor Hill was that she said that she was prepared to take an FBI polygraph.

Senator SPECTER. Mr. Chairman, might I be heard for one minute?

The CHAIRMAN. Yes, you may.

Senator SPECTER. I think on this subject it ought to be said that lie detector tests are not generally admissible in court—

The CHAIRMAN. That is correct.

Senator SPECTER [continuing]. Because they do not have the requisite reliability. I have extensive experience, being the Assistant Counsel to the Warren Commission, which I was present when Jack Ruby's lie detector test was taken, and that is a very different circumstance. But notwithstanding the fact that Jack Ruby passed it all without any indication of deception, when J. Edgar Hoover forwarded the report to the Warren Commission, it was his statement that the polygraph ought not to be accepted because it wasn't sufficiently reliable. And while we talk about it, it is generally accepted, a general principle of law, that a polygraph lie detector test is not admissible in court because of the lack of requisite reliability.

The CHAIRMAN. The Senator is correct, and this is one Senator, and I think most believe that lie detector tests are not—are not—the appropriate way to get to the truth. That wasn't the issue I thought that was being raised here. The issue I thought being raised here was whether or not some slick lawyer cajoled or coerced this particular individual into taking a lie detector test. Now let me—

Senator METZENBAUM. Mr. Chairman?

The CHAIRMAN. Yes?

Senator METZENBAUM. I don't know anything at all about polygraphs or lie detectors, but as I understand it there is a reference paper indicating the credentials of the company or of the man who took the polygraph test. I think it would be appropriate—I think the CIA does use polygraph tests, I don't know that for sure, but I

think they do—and I would just suggest that whatever the credentials are of the individual or company that took the test, that that be included in the record at this point.

The CHAIRMAN. I would object to that. I believe that the admission in the record of a lie detector test this committee had nothing to do with ordering, and cannot vouch for the credentials. And even if they could vouch for the credentials of the person issuing the lie detector test, if we get to the point in this country where lie detector tests are the basis upon which we make judgments and insist upon people having them, and by inference of those who don't have them that they did something wrong, we have reached a sad day for the civil liberties of this country.

That does not go to the issue of whether the individual is entitled to, on their own, ask for a lie detector test. People can make of it what they wish.

Now let me——

Senator THURMOND. Mr. Chairman, I commend you for that stand.

Senator HATCH. So do I, Mr. Chairman.

Senator LEAHY. I happen to agree with it too, Mr. Chairman, while we are passing out kudos here.

The CHAIRMAN. Well, I am flattered. Let's move on. Thank you very much. Now let's move on.

Ms. FITCH, I want to clarify something in the record, again an apparent inconsistency; it may not be.

I have been in and out of the room trying to accommodate some administrative requirements, and I apologize for not being here. Correct me if I am wrong.

I am under the impression that you told Senator Hatch that you did not go to lunch with Anita Hill.

Ms. FITCH. I did. And I said it because I tend not to go to lunch. Period.

The CHAIRMAN. Now, is the letter that you—I don't want to misstate anything. Hang on.

I would like to ask staff to give you this letter, the original of this letter. The letter I am referring to is a letter written by you, allegedly written by you to Ms. Hill. The members of the committee have a copy of this letter.

Again, this may not be an inconsistency. I just want to be sure I understand. This letter, I might add, was submitted to the committee, to me and to Senator Thurmond, on October 12, from Warren W. Gardner, counsel for Anita Hill.

Just so people—while you are reading it, there is nothing salacious in it. There is nothing outrageous. There is nothing, other than for you to explain to me and for the record.

Ms. FITCH. I did, this is my handwriting. Yes.

The CHAIRMAN. Now, will you read—this sounds like a trial. Would you explain the first three or four sentences to us?

Ms. FITCH. Should I read it?

The CHAIRMAN. If you would like. I just want you to explain what appears to be an inconsistency.

Ms. FITCH. Senator, ask anybody, I rarely went to lunch.

The CHAIRMAN. No, I am not suggesting—read the first sentence, or the first two sentences. Unless you think that it is too private to read.

Ms. FITCH. Oh. All right. Read it out loud?

The CHAIRMAN. Yes, would you read it out loud, please.

Ms. FITCH. Life is dull without you. I keep looking for someone to go to lunch with or sneak out to an early movie with.

The CHAIRMAN. That is sufficient.

Ms. FITCH. Now there is nobody.

The CHAIRMAN. That is sufficient.

Now, would you just explain for the record what you mean you say "I keep looking for someone to go to lunch with," "without you," and your statement that you didn't go to lunch with Anita Hill?

Ms. FITCH. I don't remember ever going to lunch with Anita Hill. It is probably just hyperbole, Senator. Really.

The CHAIRMAN. I see. I don't doubt you.

Ms. FITCH. I may have gone into her office with a sandwich that I got from the snack bar and sat in her office and eaten it. But I was not in the office that often.

The CHAIRMAN. Sufficient. I am not being accusatory. I just want, because it is in the record and every Senator has this—

Ms. FITCH. I don't see any inconsistency, what I just said and what is actually the truth. Yes.

The CHAIRMAN. I just want to make the point again that honorable, decent people like you can say things that seem inconsistent, and I hope we understand that other people on the record can say things in the record that appear to be inconsistent and in fact are not inconsistent.

Senator THURMOND. Mr. Chairman, I want to call your attention.

The CHAIRMAN. Sure.

Senator THURMOND. She says "I keep looking for someone to go to lunch with." She didn't say she went to lunch with her.

The CHAIRMAN. No, I agree with that. That is why I just asked. But most people would assume, if I wrote you a letter, Senator, after I retired, which would be long before you will, and I said, "Dear Strom, it's really dull not being in the Senate, I keep looking for someone to go to lunch with," any reasonable person would assume that you and I went to lunch based on that. I don't say we went to lunch, but reasonable persons would assume that. And that is all I wanted to clear up.

Senator THURMOND. I wouldn't say "would" to him. I would say "could."

Ms. FITCH. I think I was writing her a cheery letter. I did miss her. She was one of the first people that I met when—

The CHAIRMAN. Let me make it clear, Ms. Fitch. I totally believe you. I think it is a totally clear explanation. I don't doubt it for a moment, and I don't doubt your credibility.

But, again, I would point it out for my colleagues on the committee who are trying to be very precise. If I wanted to make the case—

Ms. FITCH. Yes.

The CHAIRMAN [continuing]. I could have very easily made the case, and all the press to the best of their ability would write down,

I suspect, and say, "Geez. Biden just tripped her up. Biden just showed that she really did go to lunch with her." And you didn't. I believe you didn't. I accept it.

Ms. FITCH. Senator, I said that I may very well have gone to snack bar and gotten a sandwich and eaten in her office.

The CHAIRMAN. I understand. I understand.

Now, let me move on—and I sincerely do not question your credibility.

Ms. Myers, and I only have a few more questions—well, as a matter of fact, you have been on a long time. I won't ask any more questions.

Anyone else have any more questions? Whomever, Senator Thurmond I recognize.

Senator THURMOND. I recognize Senator Simpson.

Senator SIMPSON. Well, thank you very much. You have been very impressive, and the night wears on and we have got a lot more to do. But I, since we are putting statements and things in the record about polygraphs, I want to get in the record a statement by Larry Thompson, Esquire, former U.S. attorney, with regard to the issue of the total unreliability of a polygraph test, and thank Senators Kennedy and Hatch for the Polygraph Protection Act which protects people from this kind of stuff.

This is a real, you know, bush league kind of a thing in the midst of these type of activities. And most of us practiced law here or somewhere, and it really is quite extraordinary. And then, you know, if the resources of the handlers have been directed to this letter, which is a simple letter of friendship from Ms. Fitch to Anita Hill with nothing in it at all, then it does continue to get to be a longer night.

Whether you had lunch with anybody or nobody, there is nothing in this letter. There is nothing even to be gained from that letter.

The CHAIRMAN. If the Senator would yield?

Senator SIMPSON. I certainly will, because I am commenting.

The CHAIRMAN. It was only offered, not to purport that there was anything in there that was—

Senator SIMPSON. My time is not running. Go ahead. I just want to be sure about my time.

The CHAIRMAN. Your time won't run.

Senator SIMPSON. Okay.

The CHAIRMAN. It was only offered, not to purport that there was anything extraordinary in it, as I said even before I showed it to the witness. It was done, I assume, by not her handlers, by her lawyers. Now, if we are calling handlers, then I assume everybody has handlers out there.

Senator SIMPSON. Mr. Chairman, let's be quite honest here as to what is going on. When Ms. Hill came here to testify the other day, this whole front row was filled with people. I thought they were family. They were not. They were attorneys. Some were friends. Some were paid. And Ms. Hill has a public relations firm which she has hired, or someone has hired for her, and that is public record. So let's get that in to the American people, and know that in these extraordinary activities she does have what anyone would call, could call handlers. A public relations firm for a witness is unheard of during my time here, plus handlers.

The CHAIRMAN. Senator, I am not arguing with that. It is no different than Mr. Duberstein, who has a public relations firm, that has been hired by the White House to "handle the nominee."

All I am saying is there is nothing wrong with any of that. Nothing about it is pejorative, on either side. I don't think we should make it that.

I assume the reason the letter was sent to the Senator and myself—the ranking member—was because there was concern about the testimony being given. I guess why we were given the letter, might come up and be something totally inconsistent with the relationship.

It was not inconsistent. But that is the reason I assume the letter was there.

Ms. FITCH. And it was as I stated, that we were friendly.

The CHAIRMAN. You did. I say for the 400th time.

Ms. FITCH. No. I understand, Senator.

The CHAIRMAN. I am not questioning your integrity. I do not question it. I believe you are telling the truth as you know it, as you have observed it. I believe you.

Senator THURMOND. In fact, you would believe all of them, wouldn't you?

The CHAIRMAN. Yes. I don't question any of them. I do not question any of them as to the facts. I question their judgment sometimes as to being able to make these leaps of faith.

Ms. Myers is a wonderful woman. I question her instinct that says that there was romantic interest. I don't know it to be true or not true. That is pure speculation on the part of Ms. Myers. I don't question anything else that Ms. Myers testified to as the facts.

Senator THURMOND. You might ask her why she said that, if you want to.

The CHAIRMAN. You did. We did. I did.

Senator THURMOND. That is why I said it.

The CHAIRMAN. And now let's go back to the Senator from Wyoming, whose time it is.

Senator SIMPSON. Thank you, Mr. Chairman, and I do appreciate your unflinching patience as we grind on. But I did want that statement of Larry Thompson to appear in the record which, of course, says, as I indicated, that they are not admissible in the workplace. And thanks to Senators Kennedy and Hatch employers are not allowed to use that as a club over their employees.

Furthermore, Mr. Thompson goes on to say, "In the context of these proceedings I understand, based on information from reliable scientific sources, that if a person suffers from a delusional disorder he or she may pass a polygraph test. Therefore, a polygraph examination in this context has absolutely no bearing on whether the events at issue are true or untrue."

That is not my quote. That is his. And now let's go to some questions. Just a few, please.

The calls, the logger of the calls. I have heard about you, Ms. Holt, and I would like to have someone like you as my gatekeeper. But I do, and they are very good. Let me ask you this.

The last call from Ms. Hill, after maybe 15 or 16 calls, some logged, some not logged, some just talking to you as a friend, or if she would talk to Nancy Fitch as a friend, or Phyllis Berry-Myers

as a friend, or J.C. Alvarez, she was someone you knew and I assume, you know—in all the ways I leave it to you. You have described your relationship. I won't embellish that.

But, in any event, there were no more calls to you after the last one about the marriage. Isn't that the last one we have recorded for our records?

Ms. HOLT. That is right, Senator.

Senator SIMPSON. In other words, the calls came from 1984 to 1988, 1987—August of 1987, by a woman who had heaped a garbage of verbiage upon her in her life. And the calls continued to come, 15 or 16 of them, and then they ended on that August 4 day in the afternoon when she found—and did you tell her that Clarence had married?

Ms. HOLT. I don't recall that, Senator.

Senator SIMPSON. You remember that conversation?

Ms. HOLT. Not really. I don't.

Senator SIMPSON. In any event, she left the message, which is of the record, congratulations, and that was that.

Senator THURMOND. On the marriage.

Senator SIMPSON. On the marriage. And so that is the last call that Ms. Hill ever made to your knowledge to the agency?

Ms. HOLT. That is the last one to my knowledge, yes.

Senator SIMPSON. Let me ask—you made a statement, Ms. Alvarez, on page 4. A rather powerful comment about Ms. Hill and your alarm as to what she had done and said. It was something to the effect—you have your statement there?

Ms. ALVAREZ. Um-hum.

Senator SIMPSON. It was page 4. I quote from page 4, at the top: "I don't know how else to say it, but it blew my mind to see Anita Hill testifying Friday. Honest to goodness, it was like schizophrenia. That was not the Anita Hill I knew and worked with at the EEOC. On Friday, she played the role of a meek, innocent, shy Baptist girl from the South who was a victim of this big bad man." That is quite a powerful statement.

Why did you say this reference to schizophrenia?

Ms. ALVAREZ. Because there were two different personalities.

Senator THURMOND. Speak out so we can hear you, please.

Ms. ALVAREZ. There were two different personalities. When I worked with Anita Hill and I knew her, as I said, she was not a victim. She was a very tough woman. She stood her ground. She didn't take a lot of anything from anyone, and she made sure you knew it.

And the person who was here Friday was somebody who played a totally different role. Who was I am meek, I am shy, I am overwhelmed, I am victimized. And that was not the Anita Hill I knew. It was two different personalities.

Senator SIMPSON. Well, based upon the years that you have known her, all of you, and worked with Anita Hill, have any of you ever known her to exaggerate small slights that you might have seen, make a big deal out of something that didn't warrant it?

Ms. ALVAREZ. Well, the exaggeration that I saw in her probably most often was about her relationship with the Chairman. You know, that she knew how he thought, she had some sort of special

insight into him, that sort of thing. That was the exaggeration that I saw.

Senator SIMPSON. And so, and I am going to conclude. So have you ever known her to focus on an injustice of some sort that she felt should be remedied? Have any of you seen that? You do. I just asked you because you used that phrase. And I wonder if any of you have ever witnessed in her some exaggeration of a slight or focusing on an injustice of some sort. Do you recall that?

Ms. HOLT. I don't recall, Senator.

Ms. FITCH. There was once an overreaction that stuck out in my mind. It wasn't important, but I thought it was clearly an overreaction. But it was not about anything terribly important.

Senator SIMPSON. Did you notice anything like that, Ms. Myers.

Senator METZENBAUM [presiding]. Senator, your time is up, and I have tried to be patient. It has gone over for several minutes.

Senator SIMPSON. I know but I haven't—just the final witness, if I might. Did you notice anything like that in what I asked?

Ms. BERRY. Not that I remember. Not that I can remember.

Senator SIMPSON. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you.

Ms. Berry or Berry-Myers, you made one statement that I found quite interesting. You said that, "In that capacity I have been privy to the most intimate detail of his life," meaning, of course, Judge Thomas.

Were you familiar with the details of his family life?

Ms. BERRY. Somewhat. What I meant by that was having to go through the confirmation process I am witness to like—FBI documents, letters for or against, background checks, you know, those sorts of things. That is what I meant by that.

Senator METZENBAUM. Those are the professional parts. You were saying the most intimate details of his life. Did you know, for example, of his relationship with his son?

Ms. BERRY. Yes. His son and my son were friends, and are friends.

Senator METZENBAUM. And did you know the ladies he dated, if any? I am not even sure if he was married at the time you made that statement.

Ms. BERRY. Yes, I know.

Senator METZENBAUM. You knew the ladies he went out with socially?

Ms. BERRY. Some, yes. Yes. I know of them. Some I know. And I knew his wife, yes. His first wife, Kathy.

Senator METZENBAUM. Do you know about personal problems that he had, if any?

Ms. BERRY. I know how, I know the struggle that it was when he was separating from his wife, what impact that had on his life and his son's life.

Senator METZENBAUM. The reason I asked the question is because Judge Thomas said in his statement, "I do not and will not commingle my personal life with my work life, nor did I commingle their personal life with the work life. I can think of nothing that would lead her to this," was the last sentence. It is not relevant to this point.

But the point is he says that he kept his personal life extremely private. You seem to indicate that it was sort of public.

Let me just ask—

Ms. BERRY. There is not an inconsistency in that or what—what he has said or what I am saying. In the professional contact that I had with this man I also got to know of his private life, his private travails and things. Because that was part of my job in preparing him for processes like this one.

Senator METZENBAUM. Let me just ask each of you a question which can be answered yes or no. Each of you has testified as to the qualities of Judge Clarence Thomas and with a great deal of respect, and one of the—a major issue in this matter relates to Anita Hill's testimony about certain claims of sexual harassment.

I ask you yes or no. Could Clarence Thomas have made such remarks to Anita Hill, whatever those remarks, absent your presence and you would never have known anything about it?

Ms. BERRY. Of course, Senator, if we weren't there we wouldn't know anything about it.

Senator METZENBAUM. Pardon?

Ms. BERRY. If we weren't present, we wouldn't know anything about it.

Senator METZENBAUM. Correct. Would each of you answer? Isn't that the fact for each of you? That you actually would—it would be normal if a man were making such remarks at the workplace or any other place that other workers would not be familiar with those remarks?

Ms. ALVAREZ. Senator, I don't think any of us could account for his time 24 hours a day, even in the office. But we know the man that he is and we know that he is not capable of making those remarks.

Ms. FITCH. Senator, I had said, I think carefully, that I was talking about probability in terms of the Judge, not possibility. Anything is possible, but the probability for me was nil.

Senator METZENBAUM. Thank you, Ms. Fitch.

Ms. Holt, do you care to comment?

Ms. HOLT. It is true that those comments could have been made in private, a private moment between he and Ms. Hill. However, I do feel that if this were going on I would have discerned something at some point, and I did not.

Senator METZENBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thurmond?

Senator THURMOND. Senator Grassley will inquire.

Senator GRASSLEY. Taking off on a point that Senator Metzbaum just raised, and following an axiom of politics—or maybe it's one that even ought to be practiced in every day life—if you always tell the truth, then you don't have to worry about what you told somebody else and you won't be in a mode of lying to cover up another lie. So always tell the truth and you won't get in trouble.

As a practical matter, if Mr. Thomas was doing all of the things that Professor Hill accuses him of, he wouldn't have been doing them just with her. It would be a weakness that would come out in conversations and with activities with other people that surely there is no way that this could have been covered up.

I mean it would have come out some place if a person had a weakness like this.

Ms. BERRY. That's my belief.

Senator GRASSLEY. I primarily ask the question, not based on your understanding of personal behavior, but rather in your office. In your office environment could anything like this have been kept secret?

Ms. FITCH. Senator, no. My office was not in the suite of the Chairman. It was on staff floors and I heard all kinds of things about things that were happening in the Commission, about other people. There were never any stories floating around about the chairman in a negative or of this kind of nature is what I am saying.

Senator GRASSLEY. And especially in Washington, D.C. If two people know about something it is no longer a secret in this town.

Ms. BERRY. And there were no secrets at the EEOC, believe me.

Senator GRASSLEY. There were no secrets at the EEOC?

Ms. BERRY. No secrets.

Senator GRASSLEY. So I mean there is no way, given how people are, especially in this town, that an activity like this could have been a secret?

Ms. HOLT. No.

Ms. BERRY. No.

Senator GRASSLEY. Okay. I have just kind of a comment about something that Senator Leahy asked you folks. He asked if you had any information about why Anita Hill would jeopardize her career by coming forward with public allegations about Judge Thomas.

Now, I am not sure that this is a relevant question. Professor Hill admits that she never expected her allegations to be made public, so the possibility of public disclosure must not have been a factor in her decision to accuse Judge Thomas. And by making secret allegations behind closed doors she would not have to worry about jeopardizing her career or reputation.

Does that sound reasonable to you?

Ms. FITCH. I have said previously that I have no idea of motivation. I can't ascribe motivation to other people, only to myself.

Ms. BERRY. And I am not a mind reader, Senator, so I have no idea what was going through her mind.

Ms. HOLT. I have no ideas.

Ms. ALVAREZ. I have no explanation.

Senator GRASSLEY. There has been some suggestion by Ms. Alvarez that there may be two Anita Hills, because you never knew the one that you saw on television. I want to ask the other three of you, while you were working with Anita Hill, did you see that she could have been two different people? You saw her as an aggressive lawyer arguing for her position very vocally, fighting for her position, etc.

Did you ever see another side to her, so that there could be some reason to believe that she was other than just this aggressive person? Any hint of that in any way?

Ms. HOLT. I never saw another side.

Ms. FITCH. I saw her as a smart person and also as a reserved one and that is pretty much what I saw the other day, except the

story was something I had never heard before. No, so the answer is, no.

Senator GRASSLEY. Okay. Ms. Berry?

Ms. BERRY. No.

Senator GRASSLEY. Let me also ask you about Professor Hill: you know the old saying that a certain individual would even walk on their grandmother to get ahead. Is she the sort of a person? Did you ever see her as being that sort of a person that would do anything just to get ahead?

Ms. FITCH. No, Senator.

Ms. HOLT. No, I did not.

Senator GRASSLEY. Ms. Berry.

Ms. BERRY. To have ambition, to be ambitious, yes, but to do anything? I don't know.

Ms. ALVAREZ. I also saw her as quite ambitious and I have said so. To take it to the extent that she has, I think it kind of got out of hand, maybe before she even realized it.

Senator GRASSLEY. My time is up.

The CHAIRMAN. If you need more time, Senator, go ahead, take a few more minutes. You have been very patient, extremely patient.

Senator GRASSLEY. Given your expertise as a historian, Professor Fitch, I wondered if I might ask you to draw on that background for a moment. You heard Judge Thomas testify Friday comparing his treatment here to a lynching. I would like to have you explain or elaborate on that comparison for us.

Why is this ordeal, defending against a charge of sex harassment, similar to a lynching, as he put it?

Ms. FITCH. I haven't talked to the Judge since he made those comments, but when he made those comments I felt that I understood them. I have a student who is working on lynching right now, so I have been thinking about this. Lynching was something that was done to intimidate people, that was done to control them, as well as kill them. And I think, if I understand what the Judge was saying, was that this was an attempt to do that to him; that the process, the subsequent confirmation hearings process, this process was patently unfair, that it was a way to neutralize and control and intimidate not just him, but possibly through him, any person that was considered, as he put it, uppity.

When black soldiers came back from World War I, they felt that they had proved themselves to the country and to their fellow citizens; and wore their uniforms down south and that was a sure way to get yourself lynched, because they were wrapped, so to speak, in the American flag. That was to tell these people that they were not Americans. I see a connection and understood what he meant by that. He said electronic lynching, I believe.

Senator GRASSLEY. Well, do you sense then that there has to be a larger group of people that see him or people who think like him as a threat that must be put down right now or worry about what will happen if they are not put down right now?

Ms. FITCH. Senator, I have talked to a colleague who worked with us on personal staff who you may have a statement from, I am not sure, and we talked about this on the phone and his words, subsequently, I think used in the press were character assassination. For me the operative word there is assassination. And the other word

is neutralization and I felt and some of us do feel that any person of color in this country who goes against the stream of what people think black people in this country should be thinking and feeling and doing by so distinguishing themselves, put themselves at great risk.

This is not something that my colleague and I felt only because of the last few weeks. This is something we talked about years ago and tried to talk to the Judge about, and in a comment to a friend last evening, I said, if he didn't understand what we were trying to say then—and obviously we were not beating him over the head with it, because it is a very uncomfortable thing to say to someone—I was assured that after his testimony of the last 2 days he understood it now.

Senator GRASSLEY. Yes. I had a black leader in my State advise me to be against him, saying, "He doesn't even speak our language."

What is meant by that? I honestly don't know.

Ms. FITCH. Senator, I don't know what the person who said that meant, but I think it means that that person is somehow perceived to be outside the group, is not in some perceived lock-step. And I think if you look at the history of black people in this country you see that people have always had diverse views. We are not a monolithic community in thought. And I think that is a huge mistake for the dominant society to think and for us to buy into.

And I suppose that—I don't know the situation you are talking about—but that is probably what that meant.

Senator GRASSLEY. Well, have you ever heard other black American leaders use the expression, he doesn't even speak our language?

Ms. FITCH. I don't know if I have heard the exact words, but I have gotten the distinct impression from working and watching Judge Thomas and how he seems to be perceived by black leaders, some of them, that that is something that they are saying, in effect, if they are not using those exact words. So I understand what that means.

Senator GRASSLEY. Well, it is almost like denouncing the individuality that we worship in America.

Ms. FITCH. I think, Senator, the problem is that when you are a community under siege it is very difficult for people to want to allow diversity of opinion. It is understandable. I don't like it but it is understandable and I don't think in any situation where you have communities that are considered minority and where there are a majority community around them that you are going to find this kind of attitude.

Senator GRASSLEY. In other words, we are all going to hang together or hang separately?

Ms. FITCH. That, I think that is one way of explaining it, yes, Senator. That may be a simplistic way of doing it. I am sure there are other things involved, but, certainly that is one way of putting it. And I don't think it is just true in this country, it's probably true in South Africa, and in other places where there are communities under siege within the countries that they live in, and the societies that they live in.

Senator GRASSLEY. So you intellectually lynch the people who do want to—

Ms. FITCH. That's one way of doing it, Senator. That is probably the lesser of many evils.

Senator GRASSLEY. Okay, I am done.

The CHAIRMAN. Thank you, very much.

Let me clear up two facts and you have been here a long time. We are not going to hold you much longer. But Ms. Holt, on the last page of the transcript that you have in front of you of your logs, there is an insertion or an addition, an addendum, that has one message on it, the very last page. And it is in a different form than the others are and it says, "Judge, 11-1-90, 1:40", etc.

And the handwriting seems to be different from all the other handwriting.

Ms. HOLT. It is different.

The CHAIRMAN. Is it yours?

Ms. HOLT. No, it isn't. This was probably taken at the court.

The CHAIRMAN. I want the record to show that this is not admissible as part of your telephone logs and it is not admissible in the record. Ms. Holt cannot testify as to whether or not this is true, is that correct, Ms. Holt?

Ms. HOLT. That is correct, yes.

The CHAIRMAN. So, therefore, it is not admissible as a part of the record.

Now, let me ask one other thing. Do any of you know Sacari Hardnet?

Ms. HOLT. I knew her, Senator.

Ms. FITCH. Yes, Senator.

The CHAIRMAN. Do you, Ms. Alvarez?

Ms. ALVAREZ. No.

The CHAIRMAN. Ms. Fitch, you know her?

Ms. FITCH. Yes.

The CHAIRMAN. Ms. Holt you know her?

Ms. HOLT. Yes.

The CHAIRMAN. Ms. Myers, do you know her?

Ms. BERRY. No, I don't know her.

The CHAIRMAN. Now, can Ms. Fitch and Ms. Holt tell me who she is? Ms. Holt?

Ms. HOLT. She was a legal intern in the Office of the Chairman.

The CHAIRMAN. At EEOC?

Ms. HOLT. At EEOC. What happens is that we hire legal interns while they are still in law school. When they graduate law school they have a certain period, and I don't know what that is, to pass the bar. Their titles are then changed to attorney.

Ms. Hardnet completed law school but she failed the bar so she had to be dismissed from her position.

The CHAIRMAN. I see. Do you know who she is?

Ms. FITCH. Yes.

The CHAIRMAN. What do you know of her?

Ms. FITCH. Senator, the same thing.

The CHAIRMAN. Did you work with her at all?

Ms. FITCH. I vaguely remember that I might have been involved in some project or she might have been involved in some project I was working on. I remember her but I can't tell you what that

project might have been about and I don't recall that she was there more than maybe 9 months.

The CHAIRMAN. More than maybe—

Ms. FITCH. I don't think she was there more than 9 months, if possibly that long. That's my recollection.

The CHAIRMAN. What is your recollection, Ms. Holt?

Ms. HOLT. No more than a year, at any rate.

The CHAIRMAN. Did you hear the Chairman's testimony last night?

Ms. HOLT. I did.

The CHAIRMAN. The Judge's testimony and the Judge will have an opportunity to come back and he can clarify this, but maybe you can help me. Remember when I was asking him about legal assistants, you may remember I asked him who his legal assistants were and he corrected the record and he said I had more than one legal assistant?

Ms. HOLT. I think he was referring to the Department of Education.

The CHAIRMAN. Thank you. That was my question.

I also want the record to show that my friend from Wyoming, in an attempt to save me from myself, has suggested to me that it was not William Shakespeare who said, "Hell hath no fury." I still thought Shakespeare may have said it as well, but he says William Congrave said it, and the phrase was, "Heaven hath no rage like love to hatred turned, nor hell fury like a woman scorned."

I want the record to show that and thank him for that. [Laughter.]

I also must tell you that I have my staff researching Shakespeare to see if he said it, not that I think Mr. Congrave would ever plagiarize Shakespeare. [Laughter.]

Does anybody have any further questions?

Senator SPECTER. Could I inquire, Mr. Chairman?

Senator THURMOND. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I welcome the chance to talk to you ladies because you are an unusual panel here which is testifying on behalf of Judge Thomas, but knows Professor Hill very well. What we have been searching for in this long proceeding is some way to understand the issue of motivation and each of you has testified very forcefully that you think Judge Thomas is correct that the charges are false.

Let me start with you, Ms. Holt, because you seem to know Professor Hill very well. Were you surprised when these charges were leveled?

Ms. HOLT. I was absolutely surprised, I was in shock.

Senator SPECTER. Well, knowing—I expected that to be your answer—knowing Professor Hill as you do and being confident that Judge Thomas is in the clear, do you have any insight to shed on what Professor Hill may be doing, what her motivation is, if you think she is not telling the truth?

Ms. HOLT. I know, I mean the allegations she has made are not even in character with Clarence Thomas.

Senator SPECTER. But is it in character with Professor Hill to make such charges?

Ms. HOLT. I never thought so, sir.

Senator SPECTER. So you have it out of character for Judge Thomas to do this and you have it out of character for Professor Hill to make the charges.

Ms. HOLT. Right.

Senator SPECTER. Then why is she making the charges?

Ms. HOLT. I have no idea, Senator.

Senator SPECTER. No speculation?

Ms. HOLT. None whatsoever, but I hope they find out.

Senator SPECTER. Well, I think that with you four women we have as good a chance to find out as any way.

Ms. FITCH, you were very friendly. You didn't go to lunch with her, but you knew her very well.

Ms. FITCH. We might have had lunch, Senator.

Senator SPECTER. I am sorry, I can't hear you.

Ms. FITCH. We might have had lunch together, Senator, I am not—

Senator SPECTER. But at any rate, you were close to her, you were friendly with her?

Ms. FITCH. Yes, exactly.

Senator SPECTER. And when you first heard of these charges against Judge Thomas what was your reaction?

Ms. FITCH. I was stunned. I was absolutely stunned.

Senator SPECTER. Stunned?

Ms. FITCH. Yes, and I still am.

Senator SPECTER. Still stunned?

Ms. FITCH. Yes.

Senator SPECTER. Was it in character for Professor Hill to make false charges like this?

Ms. FITCH. I have never known Professor Hill to make false charges. And as I said—

Senator SPECTER. Well, you knew her very well for how long?

Ms. FITCH. We were together from July 1982 to whenever she left in 1983, and I stayed in touch with her for possibly 2 years and I called maybe once every other month.

Senator SPECTER. Lots of contacts?

Ms. FITCH. Excuse me?

Well, when I was in the office and she was in the office we saw each other.

Senator SPECTER. Talked to her a great deal?

Ms. FITCH. Yes, I did because—

Senator SPECTER. Got to know her pretty well?

Ms. FITCH [continuing]. I felt she was kind of the person I could of relate to since I was new on the staff and she had been with the Chairman for some time, and I just felt that she was somebody I kind of gravitated to, to kind of get—

Senator SPECTER. But no idea, not any speculation?

Ms. FITCH. No speculation because there was no basis in the conversations that we have had and we had many at work.

Senator SPECTER. Ms. Berry, you have testified that your relationship was barely speaking professionally and we have already had extensive—

Ms. BERRY. With Angela Wright, but not with Anita Hill.

Senator SPECTER [continuing]. No, no, I am coming with Professor Hill. Oh, your relationship with Professor Hill was—

Ms. BERRY. She has described it, and it was so, that it was a cordial, friendly, professional relationship.

Senator SPECTER [continuing]. So, were you surprised when you read her statement in the news conference on October 7 that referring to you, that she doesn't know me and I don't know her?

Ms. BERRY. Yes.

Senator SPECTER. When you first heard of the charges by Professor Hill against Judge Thomas, what was your reaction?

Ms. BERRY. I was devastated and I was angry. I couldn't understand how someone—for a man who helped nurture her career, on the word of a good friend of his and hers, gave her a job at the Department of Education, subsequently asked her to join him at the EEOC, come to the EEOC, gave her responsibilities there, supported her, acted as her mentor, gave her recommendations to go to Oral Roberts, helped her to secure that job—

Senator SPECTER. But is she the kind of a person to make false charges, prior to the time that these were made?

Ms. BERRY [continuing]. I hadn't known her to be such.

Senator SPECTER. How well did you know her?

Ms. BERRY. I knew her professional. I'm not much of a socializer, but I didn't socialize.

Senator SPECTER. But over how long a period did you know her professionally?

Ms. BERRY. I knew her from 1982 until the time that she left the Commission.

Senator SPECTER. Did you talk to her fairly often?

Ms. BERRY. Yes, it was part of my responsibility.

Senator SPECTER. But no idea at all why she would be motivated to make false charges?

Ms. BERRY. No idea whatsoever.

Senator SPECTER. How about you, Ms. Alvarez, how well did you know her?

Ms. ALVAREZ. No, I knew her professionally. I did not know her as well as some of these others did.

Senator SPECTER. How long did you know her?

Ms. ALVAREZ. From the first time, my first day at the Commission until she left.

Senator SPECTER. What was your reaction, when you heard these charges by Professor Hill against Judge Thomas?

Ms. ALVAREZ. I was shocked. I was absolutely shocked, and I was sickened by it, because, likewise, I knew that he had helped her on lots of occasions, and I just felt like it was a betrayal.

Senator SPECTER. Ms. Holt, this committee has to make a judgment. We have heard people of the panel before you four women came on, who said that they had total confidence in Professor Hill. You women have said you have total confidence in Judge Thomas. Can you give any clue, any clue at all as to how this committee can break that deadlock?

Ms. HOLT. Senator, I guess for all of us—again, we were talking about probability, we are talking about patterns of behavior that we have not witnessed—we are talking about the fact that up to the time of these allegations, we never heard anyone else make such allegations in our presence, talk about such things. We never heard rumors flying about this Chairman, Clarence Thomas—

Senator SPECTER. But how about the behavior or patterns of behavior of Professor Hill?

Ms. HOLT. Senator—

Senator SPECTER. You never heard her make a false charge, did you?

Ms. HOLT. No, I haven't, but I guess my focusing on constructive looking at people—my focus has been on Judge Thomas. I cannot—

Senator SPECTER. Why not put a focus on Professor Hill?

Ms. BERRY. On October 7, I made—

Senator SPECTER. You first, Ms. Fitch, and then you, Ms. Berry.

Ms. HOLT. Well, I have been out of touch with Professor Hill for 3 years, so I may have written her lately about my last position, but I have not heard back from her. I can't say what she may be doing or thinking since the last 3 years that I last spoke to her. I have periodically run into the Judge and talked to him, stayed in touch with his mother whom I met when I was in Savannah, so it is not the same thing.

Senator SPECTER. What did you want to add, Ms. Berry?

Ms. BERRY. Well, on October 7, I heard a false charge, "I do not know Phyllis Berry and she does not know me."

Senator SPECTER. Let me ask one other question for response by all of you, and it is this: Is it possible that Professor Hill could think this happened and it did not? We have explored that possibility, and you are not professionals and I don't know how much insight the professionals can provide, but each of you women knew her rather well, especially Ms. Holt and Ms. Fitch.

One of the questions that has been going through my mind that I started out with was some effort to reconcile the testimony of these two people who appear to be so credible. I had thought that it might be possible to reconcile them, frankly, until I heard Professor Hill's testimony and the expanded nature of the charges which were made at that time—very different from what she put in her statement and very different from what she had told the FBI, and when I saw those expanded charges, it didn't seem possible to reconcile them.

But we have a situation here where you have a pattern of conduct toward Judge Thomas, which is admitted to by Professor Hill, where she has a very cordial relationship, no indication of anger, moves with him from one job to another, she does tell one friend and tells that friend that she has only told her, and then three more people come up today, which I hadn't heard about until yesterday, and the charges are expanded and Ms. Berry has speculated about the spurned woman approach.

But can you women shed any light on the possibility that Professor Hill might have had an attachment or a feeling which would have led her to think about these things?

Senator Hatch yesterday put into the record some speculation, and that is what we are doing here, pure and simple. But you women know her well enough, so that I think you might have some insight into it, in terms of the case, which had the reference to "Silver" and reference to some other facts which came from another case. And without impugning any impropriety or wrongdoing, what do you think, Ms. Holt? I think you know her the best

of anybody on the panel. Do you think it is conceivable that Professor Hill might really think this happened, when it didn't?

Ms. HOLT. I think that's the only conceivable answer, Senator, because I do not believe it happened.

Senator SPECTER. Well, you don't believe it happened and you can't find any motivation for her.

Ms. HOLT. I can't find any motivation for her saying that it did happen.

Senator SPECTER. Do you think she is the kind of a person who would come here under oath and say that it happened, if she didn't think it did happen?

Ms. HOLT. I don't know. She didn't appear to be that type of person when I knew her.

Senator SPECTER. You knew her second best, Ms. Fitch. Do you think it is possible that she really believes in her mind today that it never really happened?

Ms. FITCH. I think it's possible. I may be on shaky ground here. I have read a little bit in psychiatry, but there is something called transference. I'm not talking now about Professor Hill, but just in general terms.

My understanding of what transference means is that you may have strong feelings about someone and you're able to focus on someone who is either a therapist or someone who has been kind to you, and things get kind of muddled and they carry the burden of whatever someone else may or may not have done or what is something that you think actually happened.

So, there are any number of explanations, I would suspect, that would say that she is not a liar, but that this did not happen, but that, yes, she could probably pass a polygraph test, because she does sincerely believe that this happened with this person. And I say again that I do not believe in the allegations.

Senator SPECTER. Well, have you seen anything in her personality or had any experience with her, because you knew her very well, which would give you some factual basis or some feeling that she might think that it happened, when, in fact, it didn't?

Ms. FITCH. Senator, that's why I said I am not talking about Professor Hill, but just in general terms about this idea of transference. No, I can't say that I have.

Senator SPECTER. Ms. Alvarez, what do you think about that possibility?

Ms. ALVAREZ. I didn't know her well enough personally to be able to say that she was—that this would be something she would do. I didn't see her professionally as somebody who would do that. I do recall her being very ambitious, and—

Senator SPECTER. Is this going to help her ambition?

Ms. ALVAREZ. Well, she is—

Senator SPECTER. Her life is not going to be any easier now.

Ms. ALVAREZ. Well, I think she has now become, as I think somebody on this committee put it, the Rosa Parks of sexual harassment. You know, the speaking engagements will come, the book, the movie. I mean I don't know.

Senator SPECTER. Do you think that's her motivation?

Ms. ALVAREZ. I don't—I'm speculating. I have had to try and sort out what I think, why I think she might have done it. I think that

it might have started off as a political, she was a political pawn, and the situation got out of control and she took it—

Senator SPECTER. So, you think she is deliberately not telling the truth, as opposed to saying something that she thinks might have happened, when, in fact, it didn't?

Ms. ALVAREZ. Yes, because I did not know her personally well enough to make a judgment on her personality and whether she was capable of that fantasy. My only way of looking at it is that it is a professional, I mean it is a personal move on her part, to advance her.

Senator SPECTER. Ms. Berry, you have the final comment. You had started off with a quotation of the New York Times, which I asked Professor Hill about, saying that you thought there might have been a romantic interest that was denied. Do you think that—well, you've already said you don't think she's the kind of person that makes something up, but you disbelieve what she said. Do you think that, based on your knowledge of her, that there could be a situation where she thinks it happened, but, in fact, it did not?

Ms. BERRY. A point I would like to make, I was listening some to Mr. Carr's testimony this morning or today, and he had indicated that Anita said to him that "I was harassed by my supervisor." Clarence Thomas was not the only supervisor that Anita had, and Mr. Carr seemed to make this gigantic leap, because he knew that she was on Clarence Thomas' personal staff, that the supervisor that she must have been referring to was Clarence Thomas.

Senator SPECTER. Who were others who could be classified as a supervisor?

Ms. BERRY. Mr. Roggeron was her supervisor in Congressional Affairs, and when I succeeded him to Congressional Affairs, he became the Executive Assistant, and so he was also her supervisor. How can I say this? Mr. Roggeron doesn't have such an impeccable reputation.

Senator SPECTER. So, you think, in the case of one of the witnesses this morning, Professor Paul might just have the wrong man?

Ms. BERRY. I am saying that's possible. He seemed to make that—he didn't identify. He said, "Anita Hill said to me that she was being harassed by her supervisor," and he said, "I dominated the conversation and, because she worked for Clarence Thomas, it must have been Clarence Thomas."

The CHAIRMAN. Senator, it is time to switch.

Senator SPECTER. If I may make just one more comment, Mr. Chairman. I had not heard what Senator Kennedy said this morning, and I waited until I got a transcript of the record, because I didn't want to make a comment, without being precise as to what Senator Kennedy had said.

When I got a transcript of the record about 15 minutes ago, I told Senator Kennedy that I was going to raise this point, because I strongly disagree with what he said, but I wanted to be sure, before I took issue with it.

When Senator Kennedy had a turn earlier today, he said, "But I hope, Mr. Chairman, that after this panel, we are not going to hear any more comments unworthy, unsubstantiated comments, unjusti-

fied comments about Professor Hill and perjury, as we heard in this room yesterday."

I want to say that the comments I made yesterday were not unworthy, were not unsubstantiated or unjustified. On the contrary, they were well-based and well-founded in the record. It is a little late to debate it now, but I am prepared to do so, at your pleasure, Senator Kennedy.

Senator KENNEDY. Well, Mr. Chairman, it is nonsense to suggest that Professor Hill committed perjury or anything remotely approaching it. It was very clear what she was saying to Senator Specter.

Initially, she said no one on the committee staff had suggested to her that Judge Thomas might withdraw quickly and quietly, simply because she made an allegation to the committee. Later, she said the possibility of withdrawal had come up, but in the context of a very different kind of conversation about the various things that might happen down the road as one of a broad range of possible outcomes, if Professor Hill reported what had happened. That's an obvious distinction between the two statements, and it is preposterous to call it perjury.

The CHAIRMAN. Gentlemen, before you—

Senator SPECTER. Just one reply, Mr. Chairman.

I regard that comment and characterization as preposterous. I did not start this argument, but I am not going to back away from it. To be in this committee room and to say that they are unsubstantiated is just patently wrong. I asked the question repeatedly, and there was no doubt about it. The witness was very evasive, and then the witness was really decisive in saying that no staffer had approached her with a suggestion that Judge Thomas might withdraw. Then, in the afternoon, in an unresponsive way and a way which really showed calculation, she slipped in a comment to the contrary. I think, having had some experience in the field, that what she said was just flatly untrue in the morning and she changed it in the afternoon. I think she did so, knowing that it was a recantation and avoided a problem.

Thank you, Mr. Chairman.

Senator KENNEDY. Well, if I could be recognized 30 seconds.

The CHAIRMAN. Gentlemen, I will recognize the Senator from Massachusetts for 30 seconds, and then I respectfully suggest that this debate is likely to go on on the floor anyway, and I would ask that we end it. In the meantime, shortly after, I am going to ask the women on the panel whether they need a break. They have been sitting there a long time. I don't know how much people have to go.

I yield to my colleague from Massachusetts.

Senator KENNEDY. Senator Specter has repeatedly effectively what he said in the transcript, when he said "I went through that in some detail, because it is my legal judgment, having some experience in perjury prosecution, the testimony of Professor Hill in the morning was flat-out perjury. She specifically changed it in the afternoon, when confronted with the possibility of being contradicted, and if you recant during the course of proceeding, it is not perjury, so I state very carefully as to what she had said in the morning."

But in the context of those continual denials, consulting the attorney, repeatedly asking the question, I believe this was at a time when I did interrupt. I know that the Senator from Pennsylvania didn't think it appropriate, but some of us thought he was attempting to put words into the mouth of Professor Hill. He went on and simply stated "was false and perjurious, in my legal opinion, and the change in the afternoon was a concession fatally to that effect."

Mr. Chairman, rather than going through the reference parts now and taking the time, I would like to ask that those parts of the record that refer to those exchanges be included now in the record, and the members can make up their own mind. The members can make up their own mind as to what conclusion they would draw.

Senator SPECTER. That is satisfactory to me.

The CHAIRMAN. Without objection, so ordered.

[The information referred to follows:]

POLYGRAPHS

It has been mentioned already in the course of this hearing that Professor Hill, on her own and not in response to any request from this Committee, took a polygraph examination -- a lie detector test -- which she passed. She was asked about her allegations regarding Judge Thomas, and the test concluded that she was not lying.

It has been suggested that this polygraph test somehow violated the 1988 polygraph law. That is nonsense. The 1988 law simply banned certain employers from requiring employees to take polygraph tests in certain circumstances. It did not prohibit employees from voluntarily taking the tests in any circumstances.

The bill even allowed employers to require employees to take polygraph tests when the employer was investigating certain specific crimes and had reason to suspect a particular employee. And firms such as security firms are allowed to use polygraphs in any circumstances. And the bill did not ban polygraph examinations by federal, state or local governments.

Anita Hill volunteered to take the test; it is nonsense suggest that federal law undercuts the results of that test in any way.

1 continually pressure me to go out with him, continually, and
2 he would not accept my explanation as being valid.

3 Senator Specter. So that when you said you took it to
4 mean, "We ought to have sex," that that was an inference that
5 you drew?

6 Ms. Hill. Yes, yes.

7 Senator Specter. Professor Hill, the USA Today reported
8 on October 9th, "Anita Hill was told by Senate staffers her
9 signed affidavit alleging sexual harassment by Clarence
10 Thomas would be the instrument that 'quietly and behind the
11 scenes' would force him to withdraw his name." Was USA Today
12 correct on that, attributing it to a man named Mr. Keith
13 Henderson, a 10-year friend of Hill and former Senate
14 Judiciary Committee staffer?

15 Ms. Hill. I do not recall. I guess--did I say that? I
16 don't understand who said what in that quotation.

17 Senator Specter. Well, let me go on. He said, "Keith
18 Henderson, a 10-year friend of Hill and former Senate
19 Judiciary Committee staffer, says Hill was advised by Senate
20 staffers that her charge would be kept secret and her name
21 kept from public scrutiny."

22 "They would," apparently referring again to Mr.
23 Henderson's statement, "they would approach Judge Thomas with
24 the information and he would withdraw and not turn this into
25 a big story, Henderson says."

1 Did anybody ever tell you that, by providing the
2 statement, that there would be a move to request Judge Thomas
3 to withdraw his nomination?

4 Ms. Hill. I don't recall any story about pressing,
5 using this to press anyone.

6 Senator Specter. Well, do you recall anything at all
7 about anything related to that?

8 Ms. Hill. I think that I was told that my statement
9 would be shown to Judge Thomas, and I agreed to that.

10 Senator Specter. But was there any suggestion, however
11 slight, that the statement with these serious charges would
12 result in a withdrawal so that it wouldn't have to be
13 necessary for your identity to be known or for you to come
14 forward under circumstances like these?

15 Ms. Hill. There was--no, not that I recall. I don't
16 recall anything being said about him being pressed to resign.

17 Senator Specter. Well, this would only have happened in
18 the course of the past month or so, because all this started
19 just in early September.

20 Ms. Hill. I understand.

21 Senator Specter. So that when you say you don't recall,
22 I would ask you to search your memory on this point, and
23 perhaps we might begin--and this is an important subject--
24 about the initiation of this entire matter with respect to
25 the Senate staffers who talked to you. But that is going to

1 be too long for the few minutes that I have left, so I would
2 just ask you once again, and you say you don't recollect,
3 whether there was anything at all said to you by anyone that,
4 as USA Today reports, that just by having the allegations of
5 sexual harassment by Clarence Thomas, that it would be the
6 instrument that "quietly and behind the scenes" would force
7 him to withdraw his name. Anything related to that in any
8 way whatsoever?

9 Ms. Hill. The only thing that I can think of, and if
10 you will check, there were a lot of phone conversations. We
11 were discussing this matter very carefully, and at some point
12 there might have been a conversation about what might happen.

13 Senator Specter. Might have been?

14 Ms. Hill. There might have been, but that wasn't--I
15 don't remember this specific kind of comment about "quietly
16 and behind the scenes" pressing him to withdraw.

17 Senator Specter. Well, aside from "quietly and behind
18 the scenes" pressing him to withdraw, any suggestion that
19 just the charges themselves, in writing, would result in
20 Judge Thomas withdrawing, going away?

21 Ms. Hill. No, no. I don't recall that at all, no.

22 Senator Specter. Well, you started to say that there
23 might have been some conversation, and it seemed to me--

24 Ms. Hill. There might have been some conversation about
25 what could possibly occur.

1 Senator Specter. Well, tell me about that conversation.

2 Ms. Hill. Well, I can't really tell you any more than
3 what I have said. I discussed what the alternatives were,
4 what might happen with this affidavit that I submitted. We
5 talked about the possibility of the Senate committee coming
6 back for more information. We talked about the possibility
7 of the FBI, asking, going to the FBI and getting more
8 information; some questions from individual Senators. I
9 just, the statement that you are referring to, I really can't
10 verify.

11 Senator Specter. Well, when you talk about the Senate
12 coming back for more information or the FBI coming back for
13 more information or Senators coming back for more information,
14 that has nothing to do at all with Judge Thomas withdrawing,
15 so that when you testified a few moments ago that there might
16 possibly have been a conversation, in response to my question
17 about a possible withdrawal, I would press you on that,
18 Professor Hill, in this context: You have testified with
19 some specificity about what happened 10 years ago. I would
20 ask you to press your recollection as to what happened within
21 the last month.

22 Ms. Hill. And I have done that, Senator, and I don't
23 recall that comment. I do recall that there might have been
24 some suggestion that if the FBI did the investigation, that
25 the Senate might get involved, that there may be--that a

④ } 1 number of things might occur, but I really, I have to be
2 honest with you, I cannot verify the statement that you are
3 asking me to verify. There is not really more that I can
4 tell you on that.

5 Senator Specter. Well, when you say a number of things
6 might occur, what sort of things?

7 Ms. Hill. May I just add this one thing?

8 Senator Specter. Sure.

9 Ms. Hill. The nature of that kind of conversation that
10 you are talking about is very different from the nature of
11 the conversation that I recall. The conversations that I
12 recall were much more vivid. They were more explicit. The
13 conversations that I have had with the staff over the last
14 few days in particular have become much more blurry, but
15 these are vivid events that I recall from even eight years
16 ago when they happened, and they are going to stand out much
17 more in my mind than a telephone conversation. They were
18 one-on-one, personal conversations, as a matter of fact, and
19 that adds to why they are much more easily recalled. I am
20 sure that there are some comments that I do not recall the
21 exact nature of from that period, as well, but these that are
22 here are the ones that I do recall.

23 Senator Specter. Well, Professor Hill, I can understand
24 why you say that these comments, alleged comments, would
25 stand out in your mind, and we have gone over those. I don't

1 want to go over them again. But when you talk about the
2 withdrawal of a Supreme Court nominee, you are talking about
3 something that is very, very vivid, stark, and you are
4 talking about something that occurred within the past four or
5 five weeks, and my question goes to a very dramatic and
6 important event. If a mere allegation would pressure a
7 nominee to withdraw from the Supreme Court, I would suggest
8 to you that that is not something that wouldn't stick in a
9 mind for four or five weeks, if it happened.

10 Ms. Hill. Well, Senator, I would suggest to you that
11 for me these are more than mere allegations, so that if that
12 comment were made--these are the truth to me, these comments
13 are the truth to me--and if it were made, then I may not
14 respond to it in the same way that you do.

15 Senator Specter. Well, I am not questioning your
16 statement when I use the word "allegation" to refer to 10
17 years ago. I just don't want to talk about it as a fact
18 because so far that is something we have to decide, so I am
19 not stressing that aspect of the question. I do with respect
20 to the time period, but the point that I would come back to
21 for just one more minute would be--well, let me ask it to you
22 this way.

23 Ms. Hill. Okay.

(5) 24 Senator Specter. Would you not consider it a matter of
25 real importance if someone said to you, "Professor, you won't

1 have to go public. Your name won't have to be disclosed.
2 You won't have to do anything. Just sign the affidavit and
3 this," as the USA Today report, would be the instrument that
4 "quietly and behind the scenes" would force him to withdraw
5 his name. Now I am not asking you whether it happened. I am
6 asking you now only, if it did happen, whether that would be
7 the kind of a statement to you which would be important and
8 impressed upon you, that you would remember in the course of
9 four or five weeks.

10 Ms. Hill. I don't recall a specific statement, and I
11 cannot say whether that comment would have stuck in my mind.
12 I really cannot say that.

13 Senator Specter. The sequence with the staffers is very
14 involved, so I am going to move to another subject now, but I
15 want to come back to this. Over the luncheon break, I would
16 ask you to think about it further, if there is any way you
17 can shed any further light on that question, because I think
18 it is an important one.

19 Ms. Hill. Okay. Thank you.

20 Senator Specter. Professor Hill, the next subject I
21 want to take up with you involves the kind of strong language
22 which you say Judge Thomas used in a very unique setting,
23 where there you have the Chairman of the EEOC, the Nation's
24 chief law enforcement officer on sexual harassment, and here
25 you have a lawyer who is an expert in this field, later goes

1 on to teach civil rights and has a dedication to making sure
2 that women are not discriminated against. And if you take
3 the single issue of discrimination against women, the
4 Chairman of the EEOC has a more important role on that
5 question even than a Supreme Court justice--a Supreme Court
6 justice is a more important position overall, but if you
7 focus just on sexual harassment.

8 The testimony that you described here today depicts a
9 circumstance where the Chairman of the EEOC is blatant, as
10 you describe it, and my question is: Understanding the fact
11 that you are 25 and that you are shortly out of law school
12 and the pressures that exist in this world--and I know about
13 it to a fair extent, I used to be a district attorney and I
14 know about sexual harassment and discrimination against women
15 and I think I have some sensitivity on it--but even
16 considering all of that, given your own expert standing and
17 the fact that here you have the chief law enforcement officer
18 of the country on this subject and the whole purpose of the
19 civil right law is being perverted right in the office of the
20 Chairman with one of his own female subordinates, what went
21 through your mind, if anything, on whether you ought to come
22 forward at that stage, because if you had, you would have
23 stopped this man from being head of the EEOC perhaps for
24 another decade? What went on through your mind? I know you
25 decided not to make a complaint, but did you give that any

1 consideration, and, if so, how could you allow this kind of
2 reprehensible conduct to go on right in the headquarters,
3 without doing something about it?

4 Ms. Hill. Well, it was a very trying and difficult
5 decision for me not to say anything further. I can only say
6 that when I made the decision to just withdraw from the
7 situation and not press as claim or charge against him, that
8 I may have shirked a duty, a responsibility that I had, and
9 to that extent I confess that I am very sorry that I did not
10 do something or say something, but at the time that was my
11 best judgment. Maybe it was as poor judgment, but it wasn't
12 a dishonest and it wasn't a completely unreasonable choice
13 that I made, given the circumstances.

14 Senator Specter. My right light is on. Thank you very
15 much, Professor Hill.

16 Thank you, Mr. Chairman.

17 The Chairman. Thank you, Senator.

18 Thank you, Professor Hill.

19 We will adjourn until 2:15. We will reconvene at 2:15.

20 [Whereupon, at 1:10 p.m., the committee was recessed, to
21 reconvene at 2:15 p.m., the same day.]

1 Mr. Chairman, that is all I have.

2 The Chairman. Thank you.

3 Senator Thurmond. Senator Specter, do you want to
4 proceed?

5 Senator Specter. Yes, thank you, Mr. Chairman.

6 When my time expired we were up to the contact you had
7 with Mr. Brudney on September 9th. If you could proceed from
8 there to recount who called you and what those conversations
9 consisted of as it led to your coming forward to the
10 committee?

11 Ms. Hill. Well, we discussed a number of different
12 issues. We discussed one, what he knew about the law on
13 sexual harassment. We discussed what he knew about the
14 process for bringing information forward to the committee.
15 And in the course of our conversations Mr. Brudney asked me
16 what were specifics about what it was that I had experienced.

17 In addition, we talked about the process for going
18 forward. What might happen if I did bring information to the
19 committee. That included that an investigation might take
20 place, that I might be questioned by the committee in closed
21 session. It even included something to the effect that the
22 information might be presented to the candidate or to the
23 White House. There was some indication that the candidate
24 or, excuse me, the nominee might not wish to continue the
25 process.

1 Senator Specter. Mr. Brudney said to you that the
2 nominee, Judge Thomas, might not wish to continue the process
3 if you came forward with a statement on the factors which you
4 have testified about?

5 Ms. Hill. Well, I am not sure that that is exactly what
6 he said. I think what he said was, depending on an
7 investigation, a Senate, whether the Senate went into closed
8 session and so forth, it might be that he might not wish to
9 continue the process.

10 Senator Specter. So Mr. Brudney did tell you that Judge
11 Thomas might not wish to continue to go forward with his
12 nomination, if you came forward?

13 Ms. Hill. Yes.

14 Senator Specter. Isn't that somewhat different from
15 your testimony this morning?

16 Ms. Hill. My testimony this morning involved my
17 response to this USA newspaper report and the newspaper
18 report suggested that by making the allegations that that
19 would be enough that the candidate would quietly and somehow
20 withdraw from the process. So, no, I do not believe that it
21 is at variance. We talked about a number of different
22 options. But it was never suggested that just by alleging
23 incidents that that might, that that would cause the nominee
24 to withdraw.

25 Senator Specter. Well, what more could you do than make

1 allegations as to what you said occurred?

2 Ms. Hill. I could not do any more but this body could.

3 Senator Specter. Well, but I am now looking at your
4 distinguishing what you have just testified to from what you
5 testified to this morning. And this morning I had asked you
6 about just one sentence from the USA Today news, "Anita Hill
7 was told by Senate Staffers that her signed affidavit
8 alleging sexual harassment by Clarence Thomas would be the
9 instrument that quietly and behind the scenes would force him
10 to withdraw his name."

11 And now you are testifying that Mr. Brudney said that if
12 you came forward and made representations as to what you said
13 happened between you and Judge Thomas, that Judge Thomas
14 might withdraw his nomination?

15 Ms. Hill. I guess, Senator, the difference in what you
16 are saying and what I am saying is that that quote seems to
17 indicate that there would be no intermediate steps in the
18 process. What we were talking about was process. What could
19 happen along the way. What were the possibilities? Would
20 there be a full hearing? Would there be questioning from the
21 FBI? Would there be questioning by some individual members
22 of the Senate?

23 We were not talking about or even speculating that
24 simply alleging this would cause someone to withdraw.

25 Senator Specter. Well, if your answer now turns on

1 process, all I can say is that it would have been much
2 shorter had you said, at the outset, that Mr. Brudney told
3 you that if you came forward Judge Thomas might withdraw.
4 That is the essence as to what occurred.

5 Ms. Hill. No, it is not. I think we differ on our
6 interpretation of what I said.

7 Senator Specter. Well, what am I missing here?

8 Senator Kennedy. Mr. Chairman, can we let the witness
9 speak in her own words, rather than having words put in her
10 mouth?

11 Senator Specter. Mr. Chairman, I object to that. I
12 object to that vociferously. I am asking questions here. If
13 Senator Kennedy has anything to say let him participate in
14 this hearing.

15 The Chairman. Now, let everybody calm down. Professor
16 Hill, give your interpretation to what was asked by Senator
17 Specter. And then he can ask you further questions.

18 Ms. Hill. My interpretation--

19 Senator Thurmond. Speak into the microphone, so we can
20 hear you.

21 Ms. Hill. I understood Mr. Specter's question to be
22 what kinds of conversation did I have regarding this
23 information. I was attempting, in talking to the staff, to
24 understand how the information would be used, what I would
25 have to do, what might be the outcome of such a use. We

1 talked about a number of possibilities, but there was never
2 any indication that, by simply making these allegations, the
3 nominee would withdraw from the process. No one ever said
4 that and I did not say that anyone ever said that.

5 We talked about the form that the statement would come
6 in, we talked about the process that might be undertaken
7 post-statement, and we talked about the possibilities of
8 outcomes, and included in that possibility of outcome was that
9 the committee could decide to review the point and that the
10 nomination, the vote could continue, as it did.

11 Senator Specter. So that, at some point in the process,
12 Judge Thomas might withdraw?

13 Ms. Hill. Again, I would have to respectfully say that
14 is not what I said. That was one of the possibilities, but
15 it would not come from a simple, my simply making an
16 allegation.

17 Senator Specter. Professor Hill, is that what you meant,
18 when you said earlier, as best I could write it down, that
19 you would control it, so it would not get to this point?

20 Ms. Hill. Pardon me?

21 Senator Specter. Is that what you meant, when you
22 responded earlier to Senator Biden, that the situation would
23 be controlled "so that it would not get to this point in the
24 hearings"?

25 Ms. Hill. Of the public hearing. In entering into

1 these conversations with the staff members, what I was trying
2 to do was control this information, yes, so that it would not
3 get to this point.

4 Senator Specter. Thank you very much.

5 The Chairman. Thank you, Senator.

6 Now, Professor Hill, with your continued indulgence,
7 what we will do is, I will yield to my colleagues,
8 alternating, and limit their questions to 5 minutes, if I
9 may, and I would begin with my friend from Massachusetts,
10 Senator Kennedy.

11 Senator Kennedy. Thank you, Mr. Chairman. I will just
12 take a moment.

13 I know this has been an extraordinary long day for you,
14 Professor Hill, and it obviously has been for Judge Thomas,
15 as well, and I know for your family. I just want to pay
16 tribute to both your courage in this whole procedure and for
17 your eloquence and for the dignity with which you have
18 conducted yourself, and, as is quite clear, from observing
19 your comments, for the anguish and pain which you have had to
20 experience today in sharing with millions of Americans. This
21 has been a service and we clearly have to make a judgment.
22 It certainly I think has been a very important service.

23 Let me just say, as far as I am concerned, I think it
24 has been enormously important to millions of Americans. I do
25 not think that this country is ever going to look at sexual

The CHAIRMAN. Now, let me canvas here for a minute, because you have been a long time sitting there.

Does anyone else have a question for this panel? Senator DeConcini, roughly how long do you wish?

Senator DECONCINI. Five minutes or less.

The CHAIRMAN. I will go down the line here.

Senator SIMON. Five minutes.

The CHAIRMAN. Five minutes.

Senator HATCH. Five minutes.

The CHAIRMAN. Five minutes, one minute.

We will give you a recess.

[Recess.]

The CHAIRMAN. I think that the last questioner was Senator Specter. Senator Specter was the last one to question, correct?

Senator THURMOND. So who is next?

The CHAIRMAN. I think it is Senator DeConcini, and then Senator Hatch.

Senator DECONCINI. Thank you, Mr. Chairman. I don't have too many questions.

Let me ask the panel, if I can, particularly Ms. Fitch and I guess Ms. Holt, it sounds like, from what you tell us today, that you were pretty good friends with Professor Hill. Is that a fair assumption?

Ms. FITCH. We were good work friends. I was a good work friend with Anita Hill, yes.

Ms. HOLT. We were professional friends.

Senator DECONCINI. Professional friends.

Ms. HOLT. And I use the word "professional" because we did not socialize on weekends or after work.

Senator DECONCINI. In the course of that friendship, did she ever mention to you a friendship she had with Susan Hoerchner?

Ms. HOLT. No, she did not.

Senator DECONCINI. She did not? Or to Ellen Wells?

Ms. HOLT. She had mentioned Ellen Wells.

Senator DECONCINI. She had mentioned Ellen Wells? Can you recall?

How about you, Ms. Fitch? Did she ever mention either one?

Ms. FITCH. I don't recall those names, Senator.

Senator DECONCINI. Ms. Holt, what about Ellen Wells? Do you remember in what context that was mentioned?

Ms. HOLT. I don't remember with any specificity, just that she knew Ellen Wells, and I recall having heard the name mentioned by Professor—

Senator DECONCINI. Did she by any chance tell you, "This is one of my best, closest friends?"

Ms. HOLT. No, she did not.

Senator DECONCINI. Would you really have remembered that, you think, if she had said that?

Ms. HOLT. Right.

Senator DECONCINI. And John Carr, was that name ever—

Ms. HOLT. I remembered her referring to a "John".

Senator DECONCINI. To a "John," and not in any context of a close friend or some relationship?

Ms. HOLT. I remember her referring to a "John" that she was dating.

Senator DECONCINI. That she was dating.

Ms. FITCH, how about you?

Ms. FITCH. Now, I don't recall that, Senator.

Senator DECONCINI. Just not to leave anybody out, Ms. Berry, did—

Ms. BERRY. I don't recall any such conversation.

Senator DECONCINI. No such conversation.

Now I guess, Ms. Alvarez, this question is more to you. You know, listening to Judge Thomas here and his high regard and respect for then Ms. Hill, now Professor Hill, you know, he doesn't have anything derogatory to say about her. He is just absolutely aghast and awash that this would happen, where your testimony is very critical of her. How do you equate that? Is that if he had a relationship with her in the professional field that was more compatible than the relationship that you had with Ms. Hill in the professional field?

Ms. ALVAREZ. Why do you say I was critical of her? I don't think I was critical by saying—let me think how I described her—

Senator DECONCINI. Let me just read it to you. It says, "She was opinionated, arrogant, and a relentless debater. She was the kind of woman who always made you feel like she was not going to be messed with, like she was not going to take anything from anyone. She was aloof. She always acted as if she was superior to everyone else, holier-than-thou." I think that is critical, but maybe—

Ms. ALVAREZ. I don't know. Some people would call me arrogant, and some people would call me opinionated and a relentless debater.

Senator DECONCINI. Nobody would call you arrogant. You are such a very nice lady.

Ms. ALVAREZ. I don't think those are necessarily negative characteristics.

Senator DECONCINI. You don't? Oh, OK.

Ms. ALVAREZ. No. In some people's mind, they would think to say a woman was tough, a woman was arrogant, that would mean that—

Senator DECONCINI. Opinionated—

Ms. ALVAREZ [continuing]. Opinionated? No, I don't think that is necessarily—

Senator DECONCINI [continuing]. Arrogant, and a relentless debater, are not critical?

Ms. ALVAREZ. If someone called me those things—

Senator DECONCINI. Even two of those are not critical in your mind? OK.

So my point is, did you hold her in high regard? Now I realize a lot has happened since then, and it is hard to look back on the nice side of somebody who—

Ms. ALVAREZ. I did not have a problem with her professionally.

Senator DECONCINI. You did not what?

Ms. ALVAREZ. I did not have a problem with her professionally. I thought that I didn't like her superior attitude. I didn't like the way she kind of projected that onto the rest of the staff.

Senator DECONCINI. Ms. Holt, you were asked a question about the Department of Education being suggested to be abolished by the Reagan administration, and you said you were aware of that?

Ms. HOLT. I had heard that, yes.

Senator DECONCINI. You had heard that. You were also aware, or were you aware that there was ever a vote or even a debate on the Senate floor or House floor?

Ms. HOLT. No, I wasn't aware of that.

Senator DECONCINI. Yes. There wasn't.

Ms. HOLT. There was a rumor.

Senator DECONCINI. It was a rumor only, wasn't it, because there has never been a vote up here on Capitol Hill, on either the floor of the Senate or the House, to abolish, and there wasn't during those years. I just want the record to show that.

Now, Ms. Fitch, when you were answering Senator Grassley's question about the problem of speaking somebody's language, and that Clarence Thomas was going upstream or talked about the uppity blacks being different or something, do you have a feeling that there is some agenda here that is moving this or motivating this?

Ms. FITCH. Senator, as a historian who has tried to look at the totality of the African-American experience in this country, my proclivity is to look at conspiracy theories, and I don't want to too closely associate that with this particular case. However, it would not surprise me that anyone, regardless of race, who hears a different drummer is at potential risk.

Senator DECONCINI. Yes, potential risk.

Ms. FITCH. And I am more comfortable thinking of it in those terms.

Senator DECONCINI. So if you were extremely conservative, perhaps the liberal side wouldn't want you there, and might be involved in such a thing?

Ms. FITCH. Well, Senator, that is a possibility, and it is also possible that conservatives might want to make it look like the—

Senator DECONCINI. Yes, on the other side, from the other side, and if you were very strong on some ideological issue—

Ms. FITCH. It is possible, Senator.

Senator DECONCINI [continuing]. Such as abortion or *Roe v. Wade*, there could be some effort by those who opposed it or who opposed the right-to-life position.

Ms. FITCH. I should probably say, though, Senator, one of the reasons I liked then Chairman Thomas was that I am not a conservative Republican. I am a New York Rockefeller Republican, so we did not always agree. I consider myself a moderate, and he knew that.

Senator DECONCINI. Thank you, thank you.

My last question is, just do you believe, each one of you, would you just state here for me, do you believe that Professor Hill was telling the truth when she testified here for some six hours. Ms. Alvarez?

Ms. ALVAREZ. No, sir.

Senator DECONCINI. Ms. Fitch.

Ms. FITCH. No, sir.

Senator DECONCINI. Ms. Holt.

Ms. HOLT. No, sir.

Senator DECONCINI. Ms. Berry.

Ms. BERRY. No, sir, absolutely not.

Senator DECONCINI. Absolutely not. Thank you very much. I have no further questions.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. Senator Hatch.

Senator HATCH. Let me just ask a few more questions, just to finish off what I had in mind.

In the Washington Post of September 9, 1991, the day before our hearings began, Anita Hill was quoted as follows, referring to a 10-year-old article in which Judge Thomas made comments relative to his sister. Now here is what Professor Hill said before she made—this statement was made before she made any public charges of harassment: "It takes a lot of detachment to publicize a person's experience in that way."

She was also quoted as observing that Judge Thomas exhibited "a certain kind of self-centeredness, not to recognize some of the programs that benefited you." And she also was quoted as saying, "I think he doesn't understand people. He doesn't relate to people who don't make it on their own."

Now I would like to ask all of you, and we could start from you, Ms. Alvarez, across, did Anita Hill ever mention to any of you, at the time that you knew her, that she believed Clarence Thomas to be "detached" and that she thought he was "self-centered," that she believed that he failed to recognize the programs that benefited minorities and, most importantly, that she thought he did not "relate to people" and "didn't understand people"? Did you ever hear any comments like these from her? Ms. Alvarez.

Ms. ALVAREZ. No, sir, I never did. I heard nothing but positive things about him, and everything he did in terms of helping her was an example of just the same thing.

Senator HATCH. Ms. Fitch.

Ms. FITCH. No, Senator.

Senator HATCH. Ms. Holt.

Ms. HOLT. No, Senator, and in fact her statement to the effect that he was unfriendly and couldn't relate to people could not be further from the truth. Even the members of the domestic staff talked to Chairman Thomas about their problems.

Senator HATCH. And he talked to them?

Ms. HOLT. And he talked to them.

Senator HATCH. And he treated them equally?

Ms. HOLT. He treated them equally.

Senator HATCH. Now let me just ask this last question. There has been some indication that part of the problem here was that she was ambitious and desired a promotion in the department, and if I have it correctly, Allyson Duncan was promoted above her. Am I correct? She got the job? Ms. Holt, go ahead.

Ms. HOLT. It wasn't actually a promotion. It was more recognizing Allyson as the chief of staff, as having supervisory responsibility in terms of assignments.

Senator HATCH. But is it true that Anita Hill wanted that position or that recognition, to use your term?

Ms. HOLT. She never indicated directly to me that she wanted it, no.

Senator HATCH. How about the rest of you? Ms. Alvarez.

Ms. ALVAREZ. It was common knowledge. I can't recall exactly who said what, but there were several times that people made reference to that.

Senator HATCH. Ms. Fitch.

Ms. FITCH. Senator, again, my experience is different because I was away, so any office-type politics I might not be aware of, so I am unaware of—

Senator HATCH. But you were aware of her ambition and that she desired—

Ms. FITCH. Oh, yes, she was ambitious.

Senator HATCH. Nothing wrong with that. I am not implying anything wrong.

Ms. FITCH. But I don't know about this specific position. I can't speak to that at all.

Senator HATCH. Sure. And Ms. Berry?

Ms. BERRY. She didn't indicate to me specifically, but I heard from other members from the Commission, throughout the Commission, that, yes, she desired that position.

Senator HATCH. That is all I have, Mr. Chairman.

The CHAIRMAN. Can you tell us for the record, Ms. Myers, who you heard it from, what other members, by name, you heard it from?

Ms. BERRY. I could, but I won't. They haven't volunteered to come forward.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Ms. Holt, I was just confused by one thing. You may have already said this, but when did you leave the EEOC?

Ms. HOLT. I am still at the EEOC.

Senator LEAHY. When did you leave the employ of Clarence Thomas? I'm sorry.

Ms. HOLT. In September of 1987.

Senator LEAHY. In September of 1987, and the last call from Anita Hill, according to your log, was August of 1987. Is that correct?

Ms. HOLT. Correct.

Senator LEAHY. And then after that, you were no longer there, keeping the log. About a month later, you were no longer keeping the log. Is that correct?

Ms. HOLT. That is correct.

Senator LEAHY. And by the number of calls we have in here, she called an average of about once every 7 or 8 months, so the fact that there wasn't another call a month later, there is nothing unusual in that, is there?

Ms. HOLT. No, sir.

Senator LEAHY. But there seemed to be some inference by some here that she made that call and then suddenly cut off because she had been told that Judge Thomas was on his honeymoon or something. The fact is, a month later you were gone, and she didn't call that often anyway. We have six or seven calls logged in here, a handful of calls over several years. It averages about one and a half or so a year. I just didn't want the wrong inference to be left here.

Ms. Alvarez, you opined that possibly Anita Hill could have been doing this so she could make a movie. Let me tell you, after spend-

ing 30, 40 hours, whatever it is we have been here, I can't imagine anybody would want to spend 30 or 40 minutes in this movie, and I don't really see that as a motivation.

But you did say one thing, and you were very emphatic on this answer, and I want to make sure I understood you right. You said that Judge Thomas never talked about sex matters at work. You were very emphatic about that. Is that right?

Ms. ALVAREZ. That is right.

Senator LEAHY. Including pornography or anything else?

Ms. ALVAREZ. Right.

Senator LEAHY. What about outside of work?

Ms. ALVAREZ. Clarence and I were friends. We had been friends for many, many years, personal friends. Our kids went to the same school together. I knew his wife. We were going through a divorce at the same time and everything else. We had the kind of confidences, personal conversations, that friends have, that close friends have, and any more than that really is not relevant. I mean, at the office we were colleagues and the friendship part of it never—

Senator LEAHY. Did you talk about pornography outside the office?

Ms. ALVAREZ. No, sir, we never did.

Senator LEAHY. Well, I am not sure I understand your answer. I am not really trying to trick you or anything here, but you said you didn't talk about pornography, didn't talk about sex matters at work. I asked you about outside of work, and—

Ms. ALVAREZ. And I am trying to explain to you that Clarence and I knew each other very well, and that we had a personal friendship.

Senator LEAHY. You didn't date?

Ms. ALVAREZ. No, sir.

Senator LEAHY. Do you want to add to that? I am not sure I understand. Do you know of him talking to anybody outside of work?

Ms. ALVAREZ. I am sorry. Say this again.

Senator LEAHY. Other than yourself, do you know of Clarence Thomas talking to people outside of work about either sex or pornography? Outside of yourself?

Ms. ALVAREZ. No, sir. I just know that with me we, we had a friendship and that was it. I mean, we shared conversations that close friends share when you are going through divorce, when you are going through raising kids, all those sorts of things. The typical things that close friends talk about.

Senator LEAHY. Thank you. OK. I just wanted to clear that up. And, Ms. Holt, you have certainly cleared up a question that was left hanging out here and I appreciate that.

Thank you, Mr. Chairman.

Senator KENNEDY. [presiding.] Senator Thurmond.

Senator THURMOND. I have one question I would like to ask Dr. Fitch.

Dr. Fitch, I believe you said that you visited Professor Hill in the hospital.

Ms. FITCH. Yes, I did.

Senator THURMOND. Do you know roughly when that was and why Professor Hill was there?

Ms. FITCH. Senator, I know, I believe it was in 1983. I believe it was in summer, sometime between spring and summer. I don't, I can't give you an exact date. I did go to see her. I think she was in the hospital for a week and I do not recall that the nature—I don't recall what she was suffering from. It rang a bell that it might have had something to do with a stomach ailment, but I don't remember what the diagnosis was. I don't know that I ever knew.

Senator THURMOND. What hospital was she in?

Ms. FITCH. I believe, Senator, it was Capitol Hill Hospital. It is a hospital on the Hill and I think that is the name of it.

Senator THURMOND. Thank you. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Ms. Holt, occasionally, at least in our office, when people call in they will sometimes be given a home phone number. Occasionally, when we call back to other people we will have on file their home phone number as well as their office number.

I recognize it has been some time, but do you have any recollection as to whether or not Professor Hill had Clarence Thomas's home phone number or whether or not he had her home phone number?

Ms. HOLT. I have no way of knowing that. I can only say that I did not give Professor Hill Clarence Thomas's home phone number.

Senator BROWN. And you never referred her to his—to call him at home?

Ms. HOLT. I did not.

Senator BROWN. And you never got a feel for whether they chatted outside of office hours?

Ms. HOLT. No.

Senator BROWN. Thank you. A question to all of you. It may not be anything that we can add here, but I suspect most members are like I. You find the current divergence, or dramatic divergence in their testimony somewhat hard to explain.

In thinking about Clarence Thomas, was he the kind of person who would be different in the way he treated people, react to people, talk to people in private than he would be, let's say, when other people were present? Is there a significant difference in the way he behaved or talked or acted when you would be in an office setting along with him versus where others could see or hear?

Ms. HOLT. He always treated me with respect. He was a professional, and I had no problems whether there were 20 people around or whether we were alone.

Senator BROWN. No significant difference in the way—

Ms. HOLT. No difference at all.

Senator BROWN. What about the rest of you? Any observations in that area?

Ms. FITCH. I agree with what Ms. Holt just said. There was no difference.

Ms. BERRY. I agree.

Ms. ALVAREZ. I agree to a point. Because Clarence and I were friends outside of the office. I probably saw, I mean I would call him Clarence, you know. We talked about the kids and personal things that friends talk about that he would not have shared with people at the office.

Senator BROWN. I was trying to go through and outline some of the traits that we have come to learn about him. I think all of us have come to learn about him. We have really listened to him for 7 days. I don't know how close a friendship it has engendered, but I think this committee has come to know him pretty well as well.

But at least as I go through it, I find things like he is a serious person, and here is someone who after they were separated from their wife, a bachelor, in effect, again, sells his only car to pay for his son's tuition to school, and that is an unusually serious—I don't know many bachelors who sell their only means of transportation for their son's tuition. A very unusually serious person.

From the depositions I have read, this is someone who didn't tell dirty stories either in public or private, or even on camping trips. That he appears formal, intense, extremely hardworking, strict, and demanding are a couple of terms I have heard applied both to others around him and himself. I don't suppose there is anybody on this committee that doesn't think that what they need to do is work out every noon instead of eat or at least—I should speak for myself. I feel that need. And yet not many do it, or at least I don't.

I mean this is an extremely disciplined serious individual. Is that a proper impression? Are there other descriptions you could give me of Clarence Thomas?

Ms. FITCH. That is my description of him and one of the things that impressed me the most about him. And I think that those combinations of terms is what I meant when I thought of the word "decent" to apply to him in all ways.

Ms. BERRY. But he is also generous, and supportive, and willing to promote people who work for him, kind. He is a good human being. Intelligent.

Senator BROWN. The remarks he is alleged to have made and the conduct he is supposed to have done; that is, to ask someone out repeatedly and to pressure them to go out with you is an aggressive, is an aggressive personal act when someone says no to pressure them again. And it is almost confrontational in a personal way. To say those kinds of remarks is a very confrontational, hostile thing to do.

Were those traits present in Clarence Thomas?

Ms. FITCH. No, Senator.

Ms. HOLT. No, Senator.

Ms. ALVAREZ. Not at all.

Ms. BERRY. In fact, the Clarence Thomas that I first met was really kind of—I know it is going to be hard for you all to believe this, but he was really kind of socially shy. It took me maybe 6 months to get the man out of his office and to circulate among the employees, and at the Commission, you know, to greet them in the hall and to have lunch in their cafeteria, those sorts of things, because he is a relatively disciplined, serious individual. And the kinds of public relations things that I felt he needed to do, such as give public speeches and to greet the employees, and all of those kinds of things, it was like pulling hen's teeth to get the man to do that.

And then after he started doing that and saw the public reception to the real Clarence Thomas, that he was funny and smart

and an articulate speaker, then it was hard for me to get him back in the office. But.

Senator BROWN. Help me with one last question, if you would. If someone said to you to be personally very aggressive, as someone would be if they pushed someone to go out with them that wouldn't take no for an answer and said very, very gross things to them, someone said that was totally out of character, would that be an accurate statement? Would it be a gray area? How would you compare the contact that is described to Clarence Thomas?

Ms. HOLT. Uncharacteristic, in a word.

Ms. BERRY. Not Clarence Thomas at all.

Ms. ALVAREZ. There is no way he is the man she alleges.

Senator BROWN. Well, thank you.

Senator KENNEDY. Thank you very much. Just before yielding to Senator Simon, I just want to make a comment about the panel. They are very strong supporters of Clarence Thomas. Understandable. They owe Clarence their jobs and they have great respect for him, and they are certainly qualified to speak on that.

But what they are not qualified is to psychoanalyze Professor Hill. And we have heard many reasons during the course of these hearings about concocted stories, about being pressured by various groups, and tonight we are hearing about schizophrenia, we are hearing about delusions, we are hearing about mental disturbances, and one has to just ask oneself how far will the proponents for this nomination go in trying to attack Professor Hill?

Senator Simon.

Senator SIMPSON. Mr. Chairman, did I hear you say "How far will the opponents go"? Was that what I heard?

Senator KENNEDY. Yes. That is right.

Senator SIMPSON. I think I am about to faint.

Senator KENNEDY. That is fine. You can do it on Paul Simon's time.

Senator SIMPSON. It will take a bigger room. I think I am about to go down.

Senator SIMON. Mr. Chairman, first I want to thank the witnesses, and particularly Ms. Alvarez, who has been here twice in a very short period of time. And good to welcome Dr. Fitch, who is a former faculty member at Sangamon State University.

Ms. FITCH. It's nice to see you.

Senator SIMON. Ms. Holt, in your deposition—and you probably heard me read this earlier, you perhaps did—you say, on page 32, "Do you recall any other times Anita Hill called and you did not note that on the telephone log?" And your answer, "I don't." You repeat that later in this same log.

Ms. HOLT. And I will state—

Senator SIMON. Here this evening, you have added—and I know that sometimes people can refresh your memory, as you go on—you have said there were five or six times additionally where she called.

Ms. HOLT. I said maybe five or six times. Like I think I mentioned before, when I responded to that question, I meant that I could not relate dates, times or years of when those calls came in.

Senator SIMON. Well, that's not the question. If I can go over to page 44, also, "Do you have a recollection of Ms. Anita Hill calling

Clarence Thomas any more times?" It doesn't say when, it says "any more times than may have sporadically shown up on these three pages?"

Did anyone consult with you or advise you?

Ms. HOLT. Absolutely not.

Senator SIMON. So, between the time of your deposition and right now, the additional five or six times, you didn't talk to anybody about that?

Ms. HOLT. You continue to say five or six times. It could have been two times, it could have been three times. You can't hold me to the five or six times. I'm not sure of that. I know for a fact that she called on instances when she was put directly through to Clarence Thomas.

Senator SIMON. But earlier this evening, Senator Specter said, when I read the deposition, said Ms. Holt will testify that she called an additional five or six times. Do you know where he got that information?

Ms. HOLT. I have no idea.

Senator SPECTER. Mr. Chairman, I did not say five or six times. I said I was told that she would testify that there were calls made which were not on the logs, because the calls were received, but I did not say five or six times.

Senator SIMON. Well, my recollection is you did say that, but we will let the record show, we will print the record and we will find out. Senator Specter at least admits that he said that you were going to testify about—

Senator SPECTER. No, I don't admit anything, Mr. Chairman. I state a fact. I don't make admissions here.

Senator SIMON. Well, he said—

Senator SPECTER. Thank you.

Senator SIMON [continuing]. That you were going to testify to additional calls beyond the deposition.

Ms. HOLT. I did not tell him that.

Senator SIMON. You don't know where Senator Specter got that information?

Ms. HOLT. I have no idea.

Senator SIMON. I have no further questions, Mr. Chairman.

The CHAIRMAN [presiding]. Senator Thurmond.

Senator KENNEDY. I think our time is up on this.

Senator THURMOND. I just have a question I would like to propound.

All of you ladies have a close relationship with Judge Thomas. Did you consider him to be a clean, decent, thoughtful, caring man, who treated his women and co-workers, as well as women in general, with courtesy and respect? I would like for each one of you to answer that.

Ms. ALVAREZ. Yes, sir, absolutely.

Senator THURMOND. Dr. Fitch.

Ms. FITCH. Most definitely, Senator.

Senator THURMOND. Ms. Holt.

Ms. HOLT. Absolutely.

Senator THURMOND. Ms. Myers.

Ms. BERRY. Absolutely.

Senator THURMOND. All of you answered yes, is that correct?

Ms. ALVAREZ. Yes.

Ms. FITCH. Yes.

Ms. HOLT. Yes.

Senator THURMOND. Thank you.

Is there anybody else on this side who has any questions?

Senator SIMPSON. Mr. Chairman, I just have—I understand what Senator Kennedy is saying, but the word “schizophrenic” did not appear from anyone on this side of the aisle. The word “delusion” did not appear from anyone on this side of the aisle. That was in the testimony or the statement of the U.S. attorney who said that was an impossible thing, to use a lie detector. Those names, those hot buttons, those phrases did not come from us, and it is curious to me how anyone could say that, when Judge Thomas was asked questions about what Professor Hill’s motivation was, that all of that entered the record, and that is all we are doing here.

So, I think just for the purposes of the record—and when you get to thinking about it, and all of us, as lawyers, have you ever seen a hearing in your life like this, where the opponents of the nominee and, in particular, a single witness, almost on a par in status with the nominee, is all out of balance—and that’s fine, I have no problem with that, but let us all realize what is happening here. This is about Clarence Thomas, nominee to the U.S. Supreme Court, not Anita Hill, and it seems to have tilted off in that extraordinary way.

One of the things that is in the public domain—and we have a rule, we have to see it for 2 days—I want to enter into the record this letter from Andrew S. Fishel, Managing Director of the Federal Communications Commission, where he said that he had listened to Ms. Hill testify, and he said, “At no time were any of the employes of OCR at risk of losing their jobs during this period”—this is the Office of Civil Rights at the Department of Education. They had a separate budget earmarked which was more sufficient to avoid any staff cutbacks. He was involved in the office, I understand.

“Additionally, no employees were made to feel that their jobs were in jeopardy”—I keep hearing this come up all the time. Quite the opposite was true, he said:

After Mr. Thomas announced his departure from OCR to go to EEOC, Mr. Thomas made a special point of walking the halls of OCR to introduce Mr. Harry Singleton, his successor, to OCR staff in order to facilitate the continuity of leadership. Any explanation of Ms. Hill’s rationale for leaving OCR to go to EEOC that is founded on her allegation that she would have lost her job at OCR is without basis.

I include that in the record, and I thank you, Mr. Chairman.

[The letter referred to follows:]

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 10 1991

OFFICE OF
MANAGING DIRECTOR

Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Senate Office Bldg.
Washington, D.C. 20510-0802

Dear Senator Biden:

I have been the Managing Director of the Federal Communications Commission for the past two years. I had been Management Director of the Office for Civil Rights in the Department of Education with direct responsibility for personnel and EEO during the time Mr. Clarence Thomas was Assistant Secretary. I was also Financial and Resource Management Director of EEOC while Mr. Thomas was Chairman. In these capacities, I also knew and worked with Ms. Anita Hill.

I differ with Ms. Hill's statement that she followed Mr. Thomas to EEOC because she would have lost her job at OCR. At no time were any of the employees of OCR at risk of losing their jobs during this period. OCR had a separate budget earmark which was more than sufficient to avoid any staff outbacks. Additionally, no employees were made to feel that their jobs were in jeopardy by Mr. Thomas' departure from OCR. Quite the opposite was true: after Mr. Thomas announced his departure from OCR to go to EEOC, Mr. Thomas made a special point of walking the halls of OCR to introduce Mr. Harry Singleton, his successor, to OCR staff in order to facilitate the continuity of leadership.

My explanation of Ms. Hill's rationale for leaving OCR to go to EEOC that is founded on her allegation that she would have lost her job at OCR is without basis. Indeed, Ms. Hill told me at the time that she was flattered to be selected by Mr. Thomas to work at EEOC. In our conversation, she also expressed her admiration for Mr. Thomas.

After I moved to EEOC to be Financial and Resource Management Director, Ms. Hill again praised Mr. Thomas to me. In several conversations that were held, she expressed both her respect for him as a man and as a leader of the EEOC.

In fact, Ms. Hill and I also talked after she announced her own departure from EEOC to become a law professor. She told me that she was indebted to Clarence Thomas for the opportunities he had given her and that he had always been supportive and encouraging of her career goals.

I would also like to express that as a career civil servant in the Senior Executive Service, I can state unequivocally that Mr. Thomas repeatedly, consistently and forcefully impressed upon his senior staff our own responsibilities to act in a professional manner in which would bring credit

Honorable Joseph R. Biden, Jr.

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and respect to the offices we held. In particular, he was vocally adamant that the presence of any form of discrimination--and he specifically mentioned sexual harassment--would not be tolerated. At no time during the nearly nine years I worked in organizations headed by him was there ever so much as a "hallway rumor" regarding his own conduct. He was widely viewed as the epitome of a moral and upright man by the staff he supervised.

I would like to add a personal note. I hold a doctorate from Columbia University and have authored articles and two books on sex equity issues, which I believe help to make me sensitive to the issues of sex discrimination and sexual harassment. I am also the husband of a professional woman who found she had no option but to formally charge her Ph.D. advisor of sexual harassment nearly two decades ago. I believe I am as sensitive to the issue of sexual harassment as any man can be. And I will tell you that nothing in Mr. Clarence Thomas's professional or personal demeanor, and nothing in any of my conversations with Ms. Anita Hill, have ever lead me to believe that Mr. Thomas could act in any of the ways in which Ms. Hill has charged.

If I can provide any additional information in regard to Mr. Thomas's performance or conduct at either OCR or EEOC, please let me know.

Sincerely yours,

AS

Andrew S. Fishel
Managing Director

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Senator METZENBAUM. Mr. Chairman.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Ladies, it has been a long evening, but before you go out of here, there were some other witnesses and one of those witnesses pointed out a letter that at that point had been signed by 50 Yale graduates who had graduated with Anita Hill and the number is now up to 66. And there is such an inconsistency between—and it is so difficult to reconcile what you are saying and what they said.

I would like to share with you their letter.

Dear Mr. Chairman, Senator Biden. It has been our privilege to know Anita Hill professionally and personally since the late 1970's when we were in law school together. The Anita Hill we have known is a person of great integrity and decency. As colleagues we wish to affirm publicly our admiration and respect for her. She is embroiled now in a most serious and difficult controversy which we know is causing her great pain.

We make no attempt to analyze the issues involved, or to prejudge the outcome. We do, however, wish to state emphatically our complete confidence in her sincerity and good faith and our absolute belief in her decency and integrity.

In our eyes it is impossible to imagine any circumstances in which her character could be called into question. We are dismayed that it has been. We know that it could not be by anyone who knows her. Anita has imperiled her career and her peace of mind to do what she felt was right.

We know we are powerless to shield her from those who will seek to hurt her out of ignorance, frustration, or expediency in the days ahead. But we will have failed ourselves if we do not at least raise our voices in her behalf. She has our unhesitating, non-wavering support.

Now, the amazing thing about this letter is not only the strength of the support for this lady but the fact that it came from all over the world. There were 66 names on it. One of the names is signed by somebody in Paris, France. One of them is signed by somebody in London, Ontario. One of the names is signed by somebody in Sao Paulo, Brazil. One of the names is signed by somebody in Perugia, Italy, and from New York, and California, and Arizona, and San Francisco, and all over the country.

How do you reconcile the fact that these 66 people, who also knew her as you knew her, although at an earlier point, but they say that "we have known her as a person of great integrity and decency and that we have known her professionally since the late 1970's when we were in law school together"? How do you reconcile the fact? How do you explain it to us, sitting on this committee, that here are 66 people, who are obviously people of good repute ostensibly—Yale Law School graduates—and here are four people who worked with her, also people of good repute and good standing saying one thing totally different than these 66 Yale graduates are saying?

Ms. FITCH. Senator, my response to that is that I am sure there are as many people and more who would say that say the same thing about Judge Thomas. That's the only response I can have to the question you are asking. I don't know what to say.

Ms. HOLT. Additionally a question comes to my mind about how long it has been since those 66 people have seen Professor Hill or have had any kind of—

Senator METZENBAUM. I am sorry, I didn't hear that.

Ms. HOLT. How long it has been since those people have had any interaction with Professor Hill.

Senator METZENBAUM. No, they say specifically and I am not sure about the facts, that "we are privileged to know her professionally and personally since the late 1970's when we were in law school together."

Now, how much of that time they have seen her, I don't know. I have to assume that some of them have seen her more than others. I think 15 of the names are from people here, in Washington.

Ms. BERRY. Well, I am sure that we had at least 66 women that were ready to come before this committee to tell them that Judge Thomas is a man of great decency and integrity if we are going to play the numbers game.

Ms. ALVAREZ. You will have six times 66 and you had a group of people out there who will tell you exactly the same thing. It is just that you limited the time. We only have until Tuesday. We could go on with people who could come here and testify on Clarence's behalf and people who have worked with him and people who have known him.

Ms. BERRY. And we are not intimidated by 66 names there and there are just four of us here.

Ms. ALVAREZ. Even if they went to Yale Law School.

Ms. BERRY. Exactly. [Laughter.]

The CHAIRMAN. If everyone in the Nation, everyone who went to law school who is not intimidated by someone who went to Yale Law School were here we would not have enough room if we piled them on top of one another. I just want the record to show that Yale Law School is a fine law school. I don't think it is any finer law school than a lot of law schools I can think of.

But having said that, a mild note of levity, I think your time is up, Senator.

Senator METZENBAUM. It is in the record?

The CHAIRMAN. It is in the record. I believe it is already in the record.

[The letter follows:]

October 10, 1991

Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-0802

Dear Mr. Chairman:

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Sonia Jarvis
Washington, DC

Jean Zoeller
Los Angeles, CA

Thomas S. Barrett
Alexandria, VA

Mark Del Bianco
Washington, DC

William Hassler
Washington, DC

Julie A. Roin
Charlottesville, VA

Saul Levmore
Charlottesville, VA

David W. Rivkin
New York, NY

Michael Klausner
New York, NY

David Zornow
New York, NY

Honorable Joseph R. Biden, Jr.
 October 10, 1991
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Samuel M. Sipe, Jr.
 Washington, DC

Ronald R. Allen, Jr.
 New York, NY

Cynthia L. Alicea
 New York, NY

Charles W. Fournier
 New York, NY

Jeffrey P. Cunard
 Washington, DC

Eric Cafritz
 Paris, France

Wandra Mitchell
 Washington, D.C.

Alan J. Bankman
 Palo Alto, CA

George J. Schutzer
 Washington, DC

Lawrence E. Starfield
 Washington, D.C.

Barbara Sih Klausner
 New York, NY

Susan M. Wolf
 London, Ontario

Thomas I. Kramer
 Portland, OR

Mark Charles
 New York, NY

Peter A. Barnes
 Weston, CT

Samuel B. Magdovitz
 Philadelphia, PA

Debra A. Valentine
 Washington, DC

Thomas P. Foley
 Harrisburg, PA

Ivy Thomas McKinney
 Stamford, CT

Victoria A. Cundiff
 New York, NY

Steven J. Roman
 Washington, DC

Kenneth T. Roth
 New York, NY

James C. Snipes
 Washington, D.C.

Frederick M. Lawrence
 Boston, MA

Boris Feldman
 Palo Alto, CA

Richard A. Kale
 Los Angeles, CA

Gregory P. Goeckner
 Los Angeles, CA

Gary Phillips
 Washington, DC

Yvonne Haywood
 Washington, DC

Judith A. Shulman
 Seattle, WA

George R. Keys, Jr.
 Washington, DC

Wendi Jones
 Los Angeles, CA

Honorable Joseph R. Biden, Jr.
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R. Duff Jordan
Sao Paolo, Brazil

Jacqui C. Hood
Santa Ana, CA

David Bixby
Phoenix, AZ

Steven M. Gold
New York, NY

Blair Levin
Raleigh NC

Daniel N. Larson
Rancho Cucamonga, CA

Karen L. Schroeder
Phoenix, AZ

Kevin Olson
Phoenix, AZ

Paul T. Friedman
San Francisco, CA

[Faxed signature pages are in the possession of
George Schutzer]

The CHAIRMAN. Now, does anybody on—Senator Kohl?

Senator KOHL. Thank you, Mr. Chairman.

Some of you suggested possible motives for Ms. Hill to have done what she did. And I can understand that. But what I cannot understand and perhaps you can explain it to me, is what the motives would be of those four people who came here today, each one who had heard from Professor Hill over the past 10 years, about these sexual harassment charges. Reputable people, people who had not talked to her over the past 2 years, had not talked to her over the past several months, but clearly reputable people who didn't know each other, came here from all walks of life.

And they testified that in 1981, 1982, 1983, and 1987, Professor Hill told them about what was happening.

Ms. BERRY. I have already challenged Mr. Carr's statement. He said that Anita Hill told him that she was harassed by her supervisor. And he made the great leap that the supervisor that she was referring to was Clarence Thomas. And that, right there, is suspect to me when I know, for a fact, that Anita Hill had more than one supervisor.

Senator KOHL. Okay. So in your case, you are saying her comments might have been about somebody else at EEOC? Her comments might not have referred specifically to him. All right, I think that is possible.

Diane.

Ms. HOLT. Senator, I think I would question the fact that none of those people who Professor Hill told that she had been sexually harassed did not provide any advice. These were professional people. They knew what the recourse was. Nobody told her to go forward with her story.

Senator KOHL. But the assumption there is that all four of them are lying.

Ms. HOLT. That's not my assumption.

Senator KOHL. But that is what you are saying.

Ms. HOLT. No, I said I questioned that fact.

Senator KOHL. I know but let's just move on to real talk. If you question that fact, you question the veracity of what they are saying.

Ms. HOLT. I do, yes.

Senator KOHL. All right, that is another way of saying in your opinion—

Ms. HOLT. I question it, but I am not calling them liars.

Senator KOHL. Well, we are just trying to use nice words, but I want to understand. You can say that, there is nothing wrong with it, but your explanation is that they are not telling the truth?

Ms. HOLT. That's right, I don't believe it.

Senator KOHL. I appreciate that.

And Ms. Fitch.

Ms. FITCH. Senator, in discussing motivation I have said that I only understand my own. I cannot, I cannot try to discuss their motivation. I am sure they had the best intentions and wanted to be helpful to the person that they believe in. I don't know what else to say about that question. It is a question that I can't answer.

Senator KOHL. Ms. Alvarez?

Ms. ALVAREZ. No, likewise, I couldn't begin to put motivation or words into somebody's mouth or in their heads. I think that there was possibly some, like Phyllis talked about, there may have been, it may not have been who they all assumed it was. I can't really, I can't offer any more explanation than that. There may have just been a misunderstanding of what she had to say.

Senator KOHL. All right. Just one other quick question.

Clarence Thomas has spoken here of a conspiracy, a lynching on the part of some white people that has a lot to do with what is happening. In fact, in his opinion, that is the major reason why we are here today and you, yourself, Ms. Alvarez, said "That we are beating up on the Judge, and that this is a trumped up deal" and so on.

But isn't it a fact that what we are dealing with here is a charge of sexual harassment by an African-American against an African-American? Isn't that why we are here today? Isn't that the fact of what brings us here today, an African-American woman who is charging an African-American man with sexual harassment? Is there something else that brings us here today?

I mean aren't we all here and hasn't a Senate committee convened to hold this hearing, because of a charge leveled at an African-American man by an African-American woman?

Ms. BERRY. That's an old tactic in this country, Senator, that we use and I am sickened by that. That's the thing, I guess, that embarrasses me most about this situation is that a black woman would allow herself to be a pawn to destroy a black man. Have we reached the point in our civilization or in this country where people can't legitimately have points of disagreement without trying to destroy the person because you don't agree with what that person stands for?

And the Chairman said, you might kill him but you are not going to kill his ideas.

Senator KOHL. No, we are not suggesting—

Ms. BERRY. There are a lot of other people out there who believe what Clarence Thomas says and his ideas are beginning to take root in the black community.

Senator KOHL. That may well be so but what we are discussing here is a charge against an African-American man by an African-American woman. How do we wind up saying this is a racist conspiracy?

Ms. BERRY. I haven't heard him use those terms. I heard him say a lynching.

Senator KOHL. Ms. Alvarez?

Ms. ALVAREZ. You are not investigating a sexual harassment charge.

Senator KOHL. Of course we are. That's what the hearing is about.

Ms. ALVAREZ. The statute of limitations ran out.

Senator KOHL. An allegation of sexual harassment, that's what the hearing is all about.

Ms. ALVAREZ. Well, no, an allegation of improper conduct.

Senator KOHL. Again, an allegation made by an African-American woman against an African-American man.

Ms. BERRY. Lynching doesn't necessarily have to refer to race.

Senator KOHL. Well—

Ms. BERRY. I mean what is happening to Clarence Thomas is, in my estimation, a——

Senator KOHL. Ms. Alvarez, then I will be finished.

Ms. ALVAREZ. No, I guess I am not sure quite the point you are trying to make.

Senator KOHL. Well, I am trying to understand why you——

Ms. ALVAREZ. You are trying to say this isn't a lynching?

Senator KOHL [continuing]. I can't understand why you are saying and that Thomas is saying that this is a racist conspiracy against——

Ms. ALVAREZ. I did not say that.

Senator KOHL. Well, you are saying, we, meaning the committee, are beating up on the Judge.

Ms. ALVAREZ. Yes.

Senator KOHL. He is calling it a lynching and you are saying we are beating up on a Judge, but what we are doing here is trying to understand whether there is any truth in the allegation made by an African-American woman against an African-American man.

Ms. ALVAREZ. I think there is a much better way that it could have been done, not in this kind of forum——

Senator KOHL. Well, that's true.

Ms. ALVAREZ [continuing]. And not in broad daylight and not on television and——

Senator KOHL. Well, that's true, but the allegation, itself, is an allegation made by an African-American woman against an African-American man. That is just a fact.

Ms. ALVAREZ. But what does that have to do? I mean that means it is okay to beat him up? I am not sure what you are saying. I am saying when I made that statement I think there was a better way for this whole thing to have been investigated and to have been handled. I think we did both of them a disservice by handling it the way we did, because you just beat him up in broad daylight and you took his name, his reputation, and his character and you can't give it back to him. That was my point.

The CHAIRMAN. Senator, do you have more? Is that it?

Senator KOHL. Yes. Thank you.

The CHAIRMAN. Thank you.

If there are not any more questions I do have two very, very short questions. And Ms. Fitch, if I ever need an advocate you are the one I want to hire. You are all very good, but let me ask you this. I think that one of the points has confused me in this process not merely who is telling the truth because that perplexes me as much as it perplexes the American public apparently. I don't know what the American public thinks. I take that back. It perplexes me.

Now, you were asked a question by Senator Hatch a while ago, if I recall, that was an echo of an assertion that Judge Thomas made yesterday in a very articulate fashion and it was this:

That isn't this a stereotypical attack on a black man? Judge Thomas—and I am not criticizing his statement, I just want to understand it, and as a black historian maybe you can help me—he indicated that he believed this was—I won't use exactly his words, because they are not appropriate coming from my mouth—but something to the effect that if an uppity black person is being put

down by other people, that's what this is about, putting down any black person who goes against the grain.

Now, I can understand that. What I can't understand though is how can one say that and not say the counter charges against Professor Hill are not equally, if not more stereotypical, of not taking seriously a black woman?

How can one charge about stereotypical behavior apply to the Judge and not equally apply to Professor Hill. This is not who is telling the truth—I am talking about this notion of stereotypical behavior we keep hearing hurled back and forth, across in front of me and this way as well, not by you but by others.

Can you shed some light on that point for me?

Ms. FITCH. I am not sure I really understand the question.

The CHAIRMAN. Well, the statement was made that the attack on Judge Thomas, along the lines relating to harassment, were stereotypical attacks on black men, they stereotyped black men.

Ms. FITCH. OK.

The CHAIRMAN. And what I am saying is if that is true, and I am not arguing whether it is or isn't, is it not equally true to immediately question the veracity of a black woman who comes forward to make an allegation against a black man as preposterous? Doesn't that just as neatly fit into a stereotypical treatment of black women who dare speak up? That's my question.

Ms. FITCH. I think I see where you are going to with this and in terms of both black men and white men, of course, that is a problem historically.

Yes, it is a no-win-no-win.

The CHAIRMAN. That doesn't go to the veracity of anything. I am just trying to understand because I heard for the first time the other day the phrase stereotypical treatment of black men who dare run against the stream.

Ms. FITCH. Yes, but in terms of the stereotypical response to black women it comes first from their experience with white men in this country. And I—

The CHAIRMAN. I agree with that—

Ms. FITCH. Yes.

The CHAIRMAN [continuing]. I agree with that, with white men.

Ms. FITCH [continuing]. Yes, and of course, it can be extended to any other men.

The CHAIRMAN. I understand, okay, thank you for clarifying that. Now, the absolutely last question I have is this: There was reference made earlier that there was a need to be able to establish a pattern of behavior. I don't know which of you said it.

Ms. FITCH. I think I might have talked about patterns and in trying to explain why I take the Judge's position in this and I am saying there was not any behavior that was ever evidenced by me over 7 years by myself, hearing from anyone else and that established a portfolio for him for me.

The CHAIRMAN. Okay, for you?

Ms. FITCH. Yes.

The CHAIRMAN. But you were not speaking as an expert in the field?

Ms. FITCH. Oh, heaven's no. I think—

The CHAIRMAN. Because experts tell me that it is equally plausible and it happens as often that you have a sexual harassment incident, as well as you have sexual harassment incidents coming from a single person. So there is not a need to be able to establish a pattern of behavior in order to establish that there is sexual harassment.

Ms. FITCH. Senator, I was very careful in the beginning to talk about possibility and probability.

The CHAIRMAN. I see.

Ms. FITCH. And I was addressing myself to probability.

The CHAIRMAN. You are a good lawyer and witness.

Ms. FITCH. Oh, God, I am not a lawyer.

The CHAIRMAN. On behalf of the Senate, it is presumptuous of me to say that but you are extremely clear and precise and it is impressive. You all are impressive and I thank you all for being here. It has been very, very late. You have spent a lot of time and Clarence Thomas is, indeed, fortunate to have four such loyal supporters who obviously believe every word they said and their experiences are as they have cited and I appreciate it.

Senator THURMOND. On behalf of this side of the aisle I wish to express appreciation to all of you and your splendid testimony.

Ms. ALVAREZ. Thank you.

Ms. BERRY. Thank you.

Ms. FITCH. Thank you.

Ms. HOLT. Thank you.

The CHAIRMAN. Thank you all very much. It has been a long evening for you. It has been a longer evening, I might add, for the next panel who has been waiting.

Now, ordinarily what we had agreed to do was the next panel of witnesses was going to be a panel of several people testifying on behalf of Professor Hill. Professor Hill has contacted us and indicated that in the interest of time she is fully prepared to forego having that panel testify. So we will move that as her decision, not the committee's decision.

We will now move to the panel to follow that one. They will be testifying on behalf of and in support of the position of Judge Thomas, and that is our first is Stanley Grayson, vice president with the firm of Goldman Sachs in New York; the second is Carlton Stewart with the Stewart firm in Atlanta, Georgia; the third witness is John M. Doggett III, a management consultant in Austin, Texas; and the fourth is Charles Kothe, former Dean of Oral Roberts University Law Center.

If you will all please come forward and before you sit we will swear you in if you will be prepared to stand and be sworn.

Do you all swear that your testimony will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GRAYSON. I do.

Mr. STEWART. I do.

Mr. DOGGETT. I do.

Mr. KOTHE. I do.

The CHAIRMAN. Thank you, and welcome. Thank you for your patience in waiting so long. Now let me ask the panel, is there any particular way in which you would like to proceed? Have you talked among yourselves how you would like to proceed?

Mr. GRAYSON. We have not talked, but Dean Kothe has asked if he could go first.

The CHAIRMAN. All right.

Dean, welcome. I know you have waited a long time. Your name has been spoken of often here, always positively, and so please begin your testimony, if you would.

Now again, gentlemen, I am going to ask you to keep your testimony relatively short, if we can, because you notice you will get a lot of chances to speak, because this panel has no reluctance to ask you questions.

Dean, please proceed.

TESTIMONY OF A PANEL CONSISTING OF STANLEY GRAYSON, VICE PRESIDENT, GOLDMAN SACHS LAW FIRM, NEW YORK, NY; CARLTON STEWART, STEWART LAW FIRM, ATLANTA, GA; JOHN N. DOGGETT III, MANAGEMENT CONSULTANT, AUSTIN, TX; AND CHARLES KOTHE, FORMER DEAN, ORAL ROBERTS UNIVERSITY LAW SCHOOL

Mr. KOTHE. Mr. Chairman and Senators, my name is Charles A. Kothe. I am of counsel to the firm of Clay, Walker—

Senator THURMOND. If you don't mind, I would get close to the microphone so we can hear you all over the room.

Mr. KOTHE. I am presently of counsel to the firm of Clay, Walker, Jackman, Dempson and Moller in Tulsa, Oklahoma.

During March of 1983 I was acting as the founding dean of the O.W. Coburn School of Law at Oral Roberts University (ORU). Being interested in our public relations and in our identity with the American Bar Association Accrediting Committee, I decided to have a program on civil rights. I had conducted many of them over the years.

I contacted the Equal Employment Opportunity Commission and talked to Clarence Thomas. I did not know him before that. He said he would come out to a seminar, and asked if he could bring a member of his staff, and I said of course. And so in April of 1983 we had a seminar on civil rights on our campus, and that is where I first met Anita Hill. In fact, the first time I talked with her, I recall, was at a luncheon at which Mr. Thomas was to be the featured speaker.

I learned at that time that she was from Oklahoma, and just out of the blue I said, "How would you like to come home and teach?" And she said, "I would like it."

And after the press conference that followed the luncheon, I told Chairman Thomas about my conversation and asked what he thought of it. He said, "Well, if that is what she would like to do, I would be all for it." And I said, "Well, do you think she would make a good teacher?" And I believe he said, "I think she would make a great teacher."

Following that, I arranged for her to be put in the process of filing applications which would go through our assistant dean. I wouldn't be involved in the paperwork until all of the recommendations were in. And sometime late in May I received her application, I believe, and all of the recommendations, and one from Chairman Thomas that was one of the most impressive, strongest

statements in support of a candidate for our faculty that we had ever received.

Based upon that and, I believe, a conversation also with Chairman Thomas, I recommended to our provost that we engage her as a member of our faculty. That doesn't just happen perfunctorily at ORU, to get on the faculty because the dean says so. No one gets on the faculty at that school unless Oral Roberts approves, and after Oral Roberts, the chairman of the Board of Regents. And that happened in her case, and sometime in June she was offered a position on our faculty to take effect in August of 1983.

In 1984 I resigned as dean, to become effective in June, and during that time as she and I became better acquainted and I learned of her working on special projects, I spoke to her about my interest in civil rights, which had started with the act of 1964, and indicated I would be interested in some special assignments. And through her I was put in touch with Chairman Thomas, and led ultimately to my appointment in April of 1984, or maybe it was April of 1985, to a special assistant to Clarence Thomas at the EEOC.

During that time I had a number of assignments, one among which was, I wrote the 33-page report on the success story of Clarence Thomas, which was basically the improvements that he made and the progress he had made at EEO, and she conferred with me about that.

The CHAIRMAN. I'm sorry. I didn't hear you. You were assigned to do what?

Mr. KOTHE. I was assigned to work with the various persons in the EEO on the progress that was made from previous administrations. Anita had been working on a history of the EEO, and I put together a 33-page report which I labeled "The Success Story of Clarence Thomas", outlining the progress that had been made over previous years.

In 1986 ORU law school was closed, and Anita went to OU. I didn't keep in as close a touch with her at that time.

In April of 1987 a speech was made by Clarence Thomas in Tulsa before a personnel group, that I believe was arranged by Anita. She and I and my wife sat at the table together, and Clarence Thomas was there at that dinner.

After he spoke, he stayed at my home, which he has on several other occasions. The next morning we had breakfast together, and she attended the breakfast, and it was one of joviality and just one of joy. After that, as I recall it, she volunteered to take him to the airport in her sports car, of which she was quite proud.

During that period we were in touch only by telephone, and in April or May of 1987 she sent me a white paper on a project that had been under discussion for a seminar which she described as developing an EEO program that really works. The featured subject of that was to be sexual harassment, and I was to, as she outlined in the program, to open the program on that subject.

We had talked about it, and all the time we ever talked about it, never once did she tell me or hint to me that she had had any personal experience of sexual harassment; never once in any of that time that that was under preparation, or in any other of the discussions we ever had when she was on our faculty, when she was in

my home, whenever we were together at any time, that Clarence Thomas was anything less than a genuinely fine person. In fact, she was very complimentary about him in every time we have ever talked together.

The last time she and I were together was in late 1987 or 1988, when we were both on the program for some personnel group in Tulsa. In discussing the preparation for that with her, I took what was generally my role of outlining the success story of Clarence Thomas. She took the technical part, and I think it had to do at that time with a case that involved pensions and civil rights.

And at that time, I believe Clarence Thomas had been married by that time, but in our discussions about him she was always very complimentary and I felt that she was fascinated by him. She spoke of him almost as a hero. She talked of him as a devoted father. She talked to me about his untiring energy. She never, ever, in all of our discourse, in all of those situations, ever said anything negative about him; and when we discussed the possibility of preparation for a seminar on sexual harassment, never said a word about her personal experience, or even her insights to any great degree.

In my experience with Clarence Thomas as a special assistant, I didn't have an office assigned, and frequently I would make my work station at the large conference table that he had in his office. Sitting there, I was able to observe him as he had discussions with some of the staff. Some of the employees would come, and other guests.

I traveled with this man for hours on end in automobiles, when we went through the swamps of Georgia together where he showed me where he was reared, and I have traveled with him by plane. I have been with him in business meetings, at banquets, at dinners in my home at least four times. We talked on to the end of the night in discussions of things that were of interest to both of us.

Never, ever in all of that time did I ever hear that man utter a profane word, never engage in any coarse conduct or loose talk. Always it was sincere, many times religious. We were both reading together, you might say at the same time together, the books by Rabbi Kushner, the one, "Why Bad Things Happen to Good People", and I suppose that is almost prophetic, and the other, "Who Needs God?" In fact, as we last talked about the one, "Who Needs God?" he built a sermon on that that he later gave in the pulpit at the church where he was married.

The last time I was with Clarence Thomas, he was our speaker at the Oklahoma Bar Association prayer breakfast, and on that occasion he told the story of his life and his spiritual experience, at the close of which he gave a prayer that brought tears to my eyes and many others there. That day we heard a man of God talk.

I have been with this man. He is a man of strength. He is a man of character. He is a man of high moral standing, and I tell you that it is not possible that he could be linked with the kinds of things that have alleged against him here. If it were true, it is the greatest Jekyll and Hyde story in the history of mankind. This is a good man, a man I have known, and a man I respect, and a man I think is worthy of a position on the U.S. Supreme Court.

The CHAIRMAN. Thank you very much.

Now, since you have waited so long, we are going to continue that but, Mr. Doggett, if you could make your statement a little briefer, and the rest of you, so we get a chance to ask questions, since we are getting into past 11. Mr. Doggett?

Mr. DOGGETT. I appreciate that, Senator. About 6:30 this morning in Austin, Texas, I got a telephone call saying, "We would like you to get to Washington as soon as possible." Any of you who know about Austin, Texas know that that is not all that easy to do.

The CHAIRMAN. Well, I am glad we waited this long so you could make it.

Mr. DOGGETT. Well, I have been here for quite a few hours. I got here about 2:30 actually.

The CHAIRMAN. I know it has been a long day. I appreciate that.

TESTIMONY OF JOHN N. DOGGETT III

Mr. DOGGETT. I appreciate what you are trying to do, because this is a very difficult process. The charges that Anita Hill has made against Clarence Thomas, if true, would justify all of you and all of us saying that he would not be fit to serve on any court, not just the Supreme Court. In fact, those charges, if true and if filed formally, would raise serious questions about legal liability on his part and possibly criminal liability on his part.

I am also saddened by the process of having some of the best and brightest people in our country coming before the world, throwing mud. Clarence Thomas and Anita Hill, as I knew them back then, were good, decent, bright, committed people, and it is hard for me to be here knowing that one of them has to be destroyed if our Nation is to be saved.

I appreciate how difficult what you are doing is. I don't think you have had a choice. Once those serious charges were made, you had no choice but to do what you could to find out whether or not there is any truth to them.

I have been impressed at the amount of work you and your staff have been able to do in such a short period of time. As a former litigator, I know I never would have tried to do what you have done in 2 or 3 days.

A week ago—well, let me tell you a little about who I am. I will try to be as short as I can, but I think this is very important.

I was born in a housing project in San Francisco, because my father left the east coast to be a minister to black workers who were coming from the South to work in the Navy Yard in San Francisco as part of the war effort. My family has had a commitment from the beginning to civil rights. My father was an associate of Martin Luther King. My father was the president of the NAACP, St. Louis branch, for 10 years. My mother was a teacher who served inner city students for all of her life.

At every step of my education in the public schools of Los Angeles, I was told by white teachers that I was not going to be able to excel because I was black. And my parents told me, "Whatever they say is irrelevant. You are going to do the best you can."

To give you an example, when I was in high school I asked for the catalogs for MIT and Cal Tech, and the college counselor gave me the catalogs for Illinois Institute of Technology. When I was in

high school, a good friend of mine who is now a tenured professor at Pomona College asked for an SAT application and she said, "You have to have your parents come here to get a SAT application." That is the world I grew up in.

I went to Claremont Men's College in 1965, and if you remember 1965, there was something called the Watts riots. That is what happened between my senior year of high school and my first year as a freshman. At Claremont Men's College, I was one of eight black students. All but two of us were freshmen. And when we would walk the streets of Claremont, people would stop and look at us. That is how strange we were.

And I can go on and I can go on and I can go on. I was the founding chairman of the Black Student Union of Claremont College, at the same time receiving an award from the ROTC as the most outstanding cadet in ROTC, in the midst of the Vietnam war, a war I opposed.

It was difficult for me to make a decision to come here, but I felt I had no choice. When I graduated from Claremont Men's College, I went to Yale Law School, and in my third year at Yale Law School, Clarence Thomas came as a first year student. My class at Yale Law School was the largest number of black students ever to be admitted at Yale Law School, and half of those who came, never graduated.

My first year at Yale Law School also was the time that there was the Black Panther trial, that the hippies and the yippies came to New Haven. It was a tumultuous time, and my experience at Yale Law School was a time where we said, as black students, "We are going to be the best possible people we can, and we are going to work on admission standards that guarantee that we get the best people we can possibly get." Clarence Thomas was one of those people.

In my senior year, in my third year at Yale Law School, one of the things we all did, we black law students, was to put together a seminar, a pre-entrance program, a week or so, in conjunction with the administration, to make sure that we could tell our colleagues about the ropes, so that they could maximize their performance. And I remember some of the students who had come before me saying, "It is impossible for black students to score the same on the law school admissions test as whites. It is impossible for black students to have the same GPAs."

And there were a handful of us who said that was—well, this is the Senate, and there are people who don't like obscenity—but there were a handful of people who had a very strong and negative reaction to that. And I remember with pride when the dean of Yale Law School was able to come up to some of those people and say, "I have in my hand a list of 15 applicants who are black, who have qualifications that meet the standards of anybody who is going to come to this law school."

I want to say that because that is my background.

When I graduated from Yale Law School, I took a job as a Reginald Hebrew Smith Community Lawyer Fellow, which is a special program the Government set up to make sure that legal service programs would have access to the best and brightest law students in the United States.

In the summer after I graduated, I took the bar exam at Connecticut while I was working full time as an attorney for New Haven Legal Assistance in New Haven. I studied for the bar examination in California, took that bar in February and passed it. In 9 months I took two different bar examinations and passed them, and worked as a legal services attorney and then eventually as the director of the Office of Legal Services of the State Bar of California.

There is a lot more I could say. I am not going to say it right now, but I just wanted to let you know that I have worked all my life to fight for a very simple idea: That is that we people who happen to be black are as capable as anybody else.

I now am a management consultant. I have refused, even though I have been asked by clients, to apply for the 8(a) program, and to this year I have not participated in any so-called set-aside, affirmative action programs. And the only one I ever participated in was this summer, where all you had to say was that you were 100 percent owned by blacks or by some other so-called minority group, because I wanted to prove that the reason people hired me was because I was the best there was.

I eventually went to Harvard Business School, where amazingly enough one of my friends was John Carr, the same John Carr who was here testifying on behalf of Anita Hill. And in fact, of Anita Hill, Clarence Thomas, and John Carr, John Carr is the person I am closest to because he is the person I knew the best. We were classmates at Harvard Business School.

I worked for Salomon Brothers during the summer. They offered me a full-time job. I turned them down. I joined McKenzie and Company here.

I met Anita Hill at a party in 1982, as far as I can remember, and I say as far as I can remember because, gentlemen, I had not thought about Anita Hill for 8 or 9 years, until I heard—until I read in the New York Times last Monday that she had made these charges against Clarence Thomas.

I was introduced to Anita Hill by a man named Gil Hardy, a Yale Law School graduate who eventually was a partner in the law firm that Anita Hill worked for initially. It is unfortunate that Gil Hardy is not here, and the only reason he is not here is that he is dead. He died in a scuba-diving accident off the coast of Morocco.

Gil Hardy knew Clarence and knew Anita more than anybody I know, and if he was here, we probably would not be here now.

I talked to Clarence on a number of occasions, and one of the reasons I came forward is that I remember those conversations, and Clarence told me—and let me tell you, at this time I was a Democrat, at this time I really had some reservations about whether or not the Reagan revolution was good for this country, at this time I was being hammered by Reagonites, because of my attitudes, and when I found out that somebody who had been a classmate of mine who I had assisted at Yale Law School was now in the position of being one of the top-breaking blacks in the Reagan administration, I wanted to go talk to this man and find out what was going on, because I knew he would tell me the truth.

One of the things that Clarence Thomas told me that really stuck in my mind, and one of the reason I said I've got to get this

information to this committee and let them decide whether or not it is valuable, is that he said, "John, they call me an Uncle Tom. They are at my back. They are looking for anything they can use to take me out." He was quite aware of the scrutiny that he was under and the fact that his positions were very unpopular.

I also remember him talking about Bradford Reynolds, who at that time was the Assistant Attorney General for Civil Rights, and many of us, including myself, complained that this man was not qualified to lead the civil rights effort of the Justice Department. He said, "John, the Reagan administration went to every black Republican lawyer it knew, and they all turned the job down, and so nobody can complain about Brad Reynolds being there. But I will tell you, one of my jobs is to make sure that I can try to keep this guy honest."

John Carr and I went to business school together. He was in the joint program. I had practiced 7 years after Yale Law School and had decided that the only way to help poor people and people who were opposed, was to learn more about how the economic system worked, to learn more about how businesses worked.

Since John was in the joint degree program, after I graduated from Harvard and came down to Washington, DC, he remained at Harvard for another year and then went to New York.

In all the years that I have known John Carr, he has never mentioned knowing Anita Hill, and yet she stated that she dated that man and he said here that he would not call it dating.

In all the years that I have known Clarence Thomas, except for knowing that Anita Hill worked for him, he never mentioned her name. We never had any conversations about her. He mentioned the names of a number of friends. At times, it was clear he was very interested in trying to get me to know more black Republican conservatives, hoping to be able to convert me to the cause. He was not successful. But he never mentioned her.

And all the times that I had conversations with Anita Hill on the telephone and in person, that I observed her at parties of black Yale Law School graduates, she never ever talked about Clarence Thomas or talked about any problems or anything about that man.

I did have an experience with Ms. Hill just before she left to go to Oral Roberts University. And but for that experience, I would not be here, because other than that, my experience and relationships with Anita Hill was what I would consider very normal, cordial, and I thought of her as a decent person.

As you know, I submitted an affidavit to you. Ever since this committee released that affidavit to the press, the press has come to me saying would you talk about that affidavit. I said no, I am an attorney, I do not feel that is appropriate for me to discuss anything that is going to be discussed by this committee, before the committee has an opportunity to discuss it with me.

Ted Koppel's office called and said would you be on Nightline? Tom Brokaw's office called. Garick Utley's office called. I even got a call a couple of days ago, saying, well, if you won't talk to us before you testify, will you show up on a Good Morning or Today Show after you testify? I am not going to do that. I am sickened by the fact that the best people, some of the best black people in this country, some of the best people in this country are participating

in such a destructive process. But I respect the fact, Senators, that, given the severity of the charges, you had no choice.

There are many things that I could say. There are many things that I will say. I stand behind the affidavit that I submitted to you, and I look forward to the time when this body and your colleagues vote on the nomination of Clarence Thomas, and I very much hope that you confirm Clarence Thomas.

But there is one other thing that I want to say, before I wait to respond to your questions. My wife and I—my wife is here behind me—were at a Thai restaurant last night with a friend of ours who had flown in from Africa to do some business with us, and this all blew up in all of our faces. Another one of our friends came up to us and said, “John, I just want to look at somebody who is stupid enough to stand up to the world and say here I am, throw stones at me, throw knives at me, throw rocks at me.”

Since you released my affidavit that I submitted to you, the press—I received a number of telephone calls, 40 in 2 hours, immediately after. Most of them have been positive, but some of them have been negative and some of them have been threatening. One of them was a man who left a message that was very simple, “Boom, boom, boom, boom, boom,” click, and he was not imitating the Eveready Rabbits.

I am from Texas, now, and those are supposed to be gunshots.

Last night, at that same Thai restaurant, a woman came out, as we were leaving, and said, “Shame, shame, shame, shame.” I said, “Excuse me, do you know any of the people involved? Do you know Anita Hill? Do you know Clarence Thomas? Do you know me?” She kept saying, “Shame, shame, shame, shame.” I said, “Do you know any of the facts?” And she said, “You know nothing about PMS, and I can’t stand any man who says a woman is unstable.” I said, “But do you know anything about the facts?” And she said—and I’m sorry I have to say this—she said, “Put your penis back in your pants.” [Laughter.]

This is somebody I had never seen before, somebody I do not know, somebody I hope I will never see again.

But I will tell you, Senators, I am not here for any other reason than to say I had information that I thought would be of use to you. You have decided this information is useful, and when this process is over, except possibly talking to people as I leave this building, I hope to never have to talk about this again.

Senator DECONCINI. Mr. Stewart?

TESTIMONY OF CARLTON STEWART

Mr. STEWART. Good evening, Senators, Senator Thurmond—I see that Senator Biden’s seat is empty—and other distinguished members of the committee.

My name is Carleton Stewart. I am a graduate of Holy Cross College and the University of Georgia Law School. I was formerly house counsel to Shell Oil Company, in Houston, TX, and Delta Airlines, in Atlanta, GA, respectively.

Additionally, I was a senior trial attorney with the Equal Employment Opportunity Commission, in Atlanta, GA, and later a special assistant to Judge Clarence Thomas, in Washington. Subse-

quently, I was as partner in the law firm of Arrington & Hallowell, in Atlanta, GA, and I am currently a principal in the Stewart firm in Atlanta, GA.

As aforesaid, I was a special assistant to Judge Clarence Thomas at the Equal Employment Opportunity Commission during much of the time that Anita Hill was employed there. At no time did I hear any complaints from Ms. Hill concerning sexual harassment. At no time during my tenure at EEOC, did I observe or hear anything relative to sexual harassment by Judge Clarence Thomas.

In August of 1991, I ran into Ms. Anita Hill at the American Bar Association Convention, in Atlanta, GA, whereupon she stated, in the presence of Stanley Grayson, how great Clarence's nomination was and how much he deserved it. We went on to discuss Judge Clarence Thomas at our tenure at EEOC for an additional 30 or so minutes. There was no mention of sexual harassment nor anything negative about Judge Thomas stated during that time.

Senator THURMOND. Would you pull the microphone closer to you, so that people in the back can hear you?

Mr. STEWART. Okay. I will boom for you.

I have known Judge Clarence Thomas for more than 30 years, and I find the allegations by Ms. Hill not only ludicrous, but totally inconsistent and inapposite to his principles and his personality.

I will shorten this, so that we can get on with this. Thank you.

Senator DECONCINI. Mr. Grayson?

TESTIMONY OF STANLEY GRAYSON

Mr. GRAYSON. Thank you, Mr. Chairman, Senator Thurmond, members of this Judiciary Committee.

My name is Stanley E. Grayson. I reside in the city and State of New York. I am a vice president at the investment banking firm of Goldman Sachs & Company. Immediately prior to joining Goldman Sachs, approximately 20 months ago, I served as the deputy mayor for finance and economic development for the city of New York.

I am a graduate of the University of Michigan Law School and the College of the Holy Cross.

During the weekend of August 10, 1991, while at the hotel and conference headquarters for the American Bar Association's convention, in Atlanta, GA, I was introduced to Prof. Anita Hill by Mr. Carleton Stewart.

At this meeting, Ms. Hill, Mr. Stewart and I sat and conversed for at least 30 minutes. During the course of our conversation, in the presence of Mr. Stewart, Ms. Hill expressed her pleasure with Judge Thomas' nomination, and stated that he deserved it.

During this time, Ms. Hill made no mention of any sexual harassment by Judge Thomas, nor did she in any way indicate anything that might call into question the character or fitness of Judge Thomas for the U.S. Supreme Court. To the contrary, she seemed to take great pride in the fact that she had been a member of Judge Thomas' staff at the Equal Employment Opportunity Commission.

Senator DECONCINI. Thank you.

Dean Kothe, let me just ask you a question here. References are made here in different statements about a period of time when

Judge Thomas was visiting you and apparently staying at your home. There was a dinner, where Professor Hill was invited and a breakfast the next morning where Professor Hill was invited, as was Judge Thomas, then Chairman Thomas, and that she drove Judge Thomas to the airport.

My recollection is that Professor Hill said that you asked her to do that. Do you recall those incidents, and did you ask her to do it? And if you did ask her to do it, did she leave any impressions, verbal or physical, that she didn't want to be with Judge Thomas or had any problem doing what you asked her to do, if you did ask her to take him to the airport? Do you remember the incident, first of all?

Mr. KOTHE. Oh, yes, but you would have to describe the setting, to fully understand even the importance of your question.

You know, the part that offends me so much here is that Clarence Thomas has never been described. You say who is the real Clarence Thomas? Well, the real Clarence Thomas is a warm, wonderful human being.

Senator DECONCINI. Yes, I understand that.

Mr. KOTHE. Let me finish.

Senator DECONCINI. Just address the area, if you will, please.

Mr. KOTHE. Yes, I will. At that breakfast, if you ever heard him laugh, it would vibrate this room. Anita doesn't have just a modest little laugh, either, and the two of them were just laughing, and it was laughing at laughing, incidents they would bring up about things that they were privy to that I was not, but my wife and I would sit there and just watch these two people just enjoy one another, as you do when you are in his presence.

When it ended, time to go to the airport, whether I asked her to take him to the airport, I don't think it was that way. It was a question of his going to the airport and she just said, "Well, I'll take him," and that's the way I recall it. But it was in a setting of conviviality or joy.

Senator DECONCINI. Of close friendship and respect in the—

Mr. KOTHE. Oh, my, you would have had to have been there to understand it.

Senator DECONCINI. Thank you, dean, very much.

Mr. Doggett, your affidavit is of interest, of course, because if you want to draw something from it, you can, and if you don't want to, you don't have to. One thing you can draw from it is that perhaps Ms. Hill—when you knew her then, she was not Professor Hill, I don't believe—would somewhat fantasize as to a relationship that she thought she was going to have with you. Is that a fair observation or your interpretation?

Mr. DOGGETT. That was the conclusion I came to, in response to what I felt was an absolutely bizarre statement she made to me at her going-away party.

Senator DECONCINI. Thank you. I have no further questions.

The CHAIRMAN [presiding]. Senator Thurmond?

Senator THURMOND. I have asked Senator Specter to propound to these witnesses.

Senator SPECTER. Thank you, Mr. Chairman.

We have heard many impressive witnesses during the course of these proceedings, but I do not believe that we have heard any more impressive than this panel.

I want to divide the first portion of the 15 minutes into two segments. Professor Kothe and Mr. Doggett have both submitted affidavits, which develop the statement of a fantasy on the part of Professor Hill, and I will examine both of them to see if there was any connection or any suggestion as to their use of the word "fantasy," and I can see Professor Kothe moving forward to suggest to the contrary, but I will come to that.

I first want to take up the testimony of Mr. Stewart and Mr. Grayson, because their testimony is much briefer, although by the time you finish your questioning tonight, you won't think so.

Going to a very important conversation which was held very recently, according to the statements of Mr. Stewart and Mr. Grayson, in August of this year, and a subject that I questioned Professor Hill about in detail, Mr. Stewart, you have already testified, and the critical part of your statement or your affidavit is, as follows:

"In August of 1991, I ran into Ms. Hill at the American Bar Association Convention, in Atlanta, Georgia, whereupon she stated to me in the presence of Stanley Grayson, 'How great Clarence's nomination was and how much he deserved it.'"

Mr. Stewart, are you sure that's the essence of what Professor Hill told you?

Mr. STEWART. Absolutely.

Senator SPECTER. Mr. Grayson's statement refers to the weekend of August 10, 1991, at the American Bar Association Convention, in Atlanta, Georgia, where he says he was introduced to Professor Hill by Mr. Stewart, and this is his statement: "During the course of our conversation, in the presence of Mr. Stewart, Ms. Hill expressed her pleasure with Judge Thomas' nomination and stated that 'he deserved it.'"

Mr. Grayson, are you certain that Professor Hill said that?

Mr. GRAYSON. Yes, I am, Senator.

Senator SPECTER. Later I'm going to come back to what Ms. Hill said by way of denial. But for the point of the first 15 minutes, I want to move at this point to what Mr. Doggett and Mr. Kothe have had to say.

And, Professor, I want to start because of limitation of time, and you will be expanding in great detail on your statement, and I want to turn to the statement which you submitted on October 7th and ask you if you have a copy of that with you?

Mr. KOTHE. I have the statement I submitted on October 10.

The CHAIRMAN. Senator? Senator, I am not interrupting this. On an administrative matter.

Senator SPECTER. Yes.

The CHAIRMAN. In light of the hour, do you mind if I make an announcement about the remainder of the witnesses that people may be interested in knowing.

Senator SPECTER. I would be glad to yield to you, Mr. Chairman.

The CHAIRMAN. And I apologize, but this has just been decided.

We have now only one more panel of witnesses and it will be limited to an hour. Because I would like to read to the Committee

a letter that I sent after a number of conversations with my colleagues, Democrats and Republicans, to Ms. Wright, who was going to testify, or potentially going to testify, had been subpoenaed, and to Ms. Jourdain, who was going to corroborate the testimony of Ms. Wright.

This is the letter that I telefaxed to her lawyer in the office in downtown Washington a few minutes ago after extensive negotiations and discussions with Democrats and Republicans and Ms. Wright's lawyer.

Dear Ms. Wright: It is my preference that you testify before the Judiciary Committee in connection with the nomination of Judge Clarence Thomas. But, in light of the time constraints under which the Committee is operating and the willingness of all the members of the Committee to have placed in the record of the hearing the transcripts of the interviews of you and your corroborating witness, Ms. Rose Jourdain, J-o-u-r-d-a-i-n, conducted by the majority and minority staff, I am prepared to accede to the mutual agreement of you and the members of the Committee, both Republican and Democrat, that the subpoena be vitiated. Thus the transcribed interviews of you and Ms. Rose Jourdain will be placed in the record without rebuttal at the hearing.

I wish to make clear, however, that if you want to testify at the hearing in person I will honor that request.

Signed: Sincerely, Joseph R. Biden, Jr.

Postscript on the bottom I attached from Angela Wright: "I agree the admission of the transcript of my interview and that of Ms. Jourdain's in the record without rebuttal at the hearing represents my position and is completely satisfactory to me."

[The letter referred to follows:]

JOSEPH R. BIDEA, JR., DELAWARE, CHAIRMAN
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 EDWARD H. LUTHERBARGER, IOWA
 STEVEN DUNCAN, ARIZONA
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 JOHN L. ROSEN, MISSOURI
 AND STAFF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

October 13, 1991

BY TELETYPE

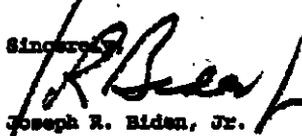
Ms. Angela Wright
 c/o James G. Middlebrooks
 Smith Eakins Ellis & Moore
 Suite 1205
 1615 L. Street, N.W.
 Washington, D.C. 20036

Dear Ms. Wright:

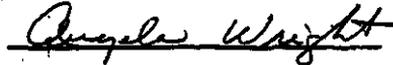
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I wish to make clear, however, that if you want to testify at the hearing in person, I will honor that request.

Sincerely,


 Joseph R. Bidea, Jr.

I agree. The admission of the transcript of my interview and that of Ms. Jourdain's in the record without rebuttal at the hearing represents my position and is completely satisfactory to me.


 Angela Wright

I want to testify at the hearing in person.

The CHAIRMAN. Translated Ms. Wright and Ms. Jourdain will not testify at the hearing. Their extensive interviews conducted by the majority and minority staffs will be placed in the official record available to all of our colleagues and to the press and the world, without rebuttal, in the record.

[The interviews referred to follow:]

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

* * *

COMMITTEE ON THE JUDICIARY

* * *

In the Matter of:

THE NOMINATION OF JUDGE CLARENCE THOMAS

TO BE AN ASSOCIATE JUSTICE TO THE U. S.

SUPREME COURT

Telephonic Interview of ANGELA DENISE WRIGHT

Pages 1 thru 69

Washington, D.C.
October 10, 1991

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

-----:;
:
In the Matter of the Nomination of :
Judge Clarence Thomas to be an Associate :
Justice of the U.S. Supreme Court :
:
-----:;

Thursday, October 10, 1991

Washington, D.C.

The telephonic interview of ANGELA DENISE WRIGHT, called for examination by counsel for the Senate Committee on the Judiciary in the above-entitled matter, pursuant to notice, in the offices of the Senate Committee on the Judiciary, Room SD-234, Dirksen Senate Office Building, Washington, D.C., convened at 10:43 a.m., when were present on behalf of the parties:

CYNTHIA HOGAN, Staff of Senate Biden
HARRIET GRANT, Staff of Senator Biden
ANN HARKINS, Staff of Senator Leahy
WINSTON LETT, Staff of Senator Heflin
TERRY WOOTEN, Staff of Senator Thurmond
MELISSA RILEY, Staff of Senator Thurmond
MILLER BAKER, Staff of Senator Hatch
RICHARD HERTLING, Staff of Senator Specter

1 P R O C E E D I N G S

2 MS. HOGAN: Hi, Angela. This is Cynthia Hogan,
3 from the Senate Judiciary Committee, in Washington.

4 I am sorry we are calling you a little bit later
5 than we had anticipated, but it took us a little bit of time
6 to get ourselves together this morning.

7 I wanted to let you know that, in addition to the
8 people I told you would be here, there are several others. I
9 told you last night that someone from Senator Thurmond's staff
10 would be here and that I would be here. Of course, I work
11 for Senator Biden.

12 There are actually two people here from Senator
13 Biden's office, myself and Harriet Grant, and two people here
14 from Senator Thurmond's office. As well, there are four other
15 lawyers here who work for different Senators. I wanted to
16 let you know that, before I put you on the speaker phone, so
17 that you were aware that we were here. We also do have a
18 court reporter, as I told you.

19 I am with Senator Biden. Now, if I put you on the
20 speaker phone, I want each of them to identify themselves and
21 to tell you who they work for. I want to reassure you that
22 it still remains that only two people are going to ask you
23 questions, and that is me and Terry Wooten, who works for
24 Senator Thurmond.

25 I just wanted you to be aware that these other

1 people are here, since I did not tell you that last night,
2 and to make sure it was okay with you, before I put you on the
3 speaker phone. If it is okay, I will ask each person to
4 identify themselves for you, so that you are clear about who
5 is here.

6 Is that all right? All right. Hang on.

7 MS. HOGAN: Ms. Wright?

8 MS. WRIGHT: Yes.

9 MS. HOGAN: All right. Why don't we just go around
10 the room here. I want everyone to identify themselves for
11 you, and I want to make sure we are on the record, so that
12 you are aware of who is here.

13 MS. GRANT: Hi, Ms. Wright. I am Harriet Grant. I
14 am with Senator Biden.

15 MS. WRIGHT: Okay.

16 MR. LETT: Ms. Wright, my name is Winston Lett, and
17 I am with Senator Heflin.

18 MS. WRIGHT: Winston, what was his last name?

19 MR. LETT: Lett, L-e-t-t.

20 MS. WRIGHT: And with Heflin?

21 MR. LETT: Yes, ma'am.

22 MS. WRIGHT: Okay.

23 MS. HARKINS: Ms. Wright, my name is Ann Harkins,
24 and I am with Senator Leahy.

25 MS. WRIGHT: Leahy?

1 MS. HARKINS: Leahy, L-e-a-h-y.

2 MS. WRIGHT: Okay.

3 MR. BAKER: Ms. Wright, my name is Miller Baker. I
4 work for Senator Orrin Hatch.

5 MS. WRIGHT: Miller Baker, with Orrin Hatch?

6 MR. BAKER: Yes, ma'am.

7 MS. RILEY: Ms. Wright, I am Melissa Riley, and I am
8 with Senator Thurmond's office.

9 MS. WRIGHT: Okay.

10 MR. WOOTEN: And I am Terry Wooten, with Senator
11 Thurmond's office.

12 MS. WRIGHT: Okay.

13 MR. HERTLING: Ms. Wright, my name is Richard
14 Hertling, H-e-r-t-l-i-n-g, and I am from Senator Specter's
15 office.

16 MS. WRIGHT: Okay.

17 Whereupon,

18 ANGELA DENISE WRIGHT

19 was called for examination and testified, as follows:

20 BY MS. HOGAN:

21 Q Ms. Wright, I am going to ask you again, mostly for
22 the benefit of the court reporter who is here, just to state
23 your name, your address, spell your name for us, so we make
24 sure she gets that down.

25 A Okay. I will state my name and address and I will

1 spell my name. I also would like to just preface whatever we
2 are about to say. Okay?

3 Q Okay. That's fine.

4 A My name is Angela, A-n-g-e-l-a, Denise, D-e-n-i-s-
5 e, Wright, W-r-i-g-h-t. What else did you want, my age or my
6 address?

7 Q Both would be fine.

8 A Okay. I am 37 years old. My address is
9
10

11 Q I would also like to ask you to state where you are
12 currently employed, but let me tell you that if you want to
13 make your statement first, go ahead.

14 A Okay. Well, I will do both. I am currently
15 employed as an assistant metro editor at the Charlotte
16 Observer.

17 I want to preface what we are about to say by saying
18 that I want to make it clear and I want it on the record that
19 the information that I am about to give is not information
20 that I approached anyone on Capitol Hill or on the Senate
21 Judiciary staff with, but it is something that I have
22 struggled with since I have seen Anita Hill on television on
23 Monday night, and once I got a call from the Senate Judiciary
24 Committee, that decision became quite obvious as to what I
25 should do.

1 Now, I will take whatever questions you want.

2 Q Okay. I would like you just very briefly, if you
3 could give us -- and I mean very briefly -- some background
4 about yourself, say, your education and your job history,
5 sort of, you know, one sentence.

6 A I have a degree in journalism from the University
7 of North Carolina, at Chapel Hill. Prior to working at the
8 Charlotte Observer, I worked as the managing editor of the
9 Winston-Salem Chronicle. prior to that, I worked for the
10 National Business League in Washington. Prior to that, I was
11 back in school in Chapel Hill. Prior to that, I was at the
12 EEOC. Prior to EEOC, I was at the United States Agency for
13 International Development. Prior to that, I was at the
14 Republican National Committee, and before that I was at the
15 Republican Congressional Committee, and before that I was at
16 the office of Senator -- excuse me, Congressman Charlie Rose.

17 Q Ms. Wright, as I understand it, you know Clarence
18 Thomas, is that correct?

19 A That is correct.

20 Q Can you tell us when you first met him?

21 A I first met Clarence Thomas in the late seventies,
22 probably around 1978-79, when several black staff members of
23 Republican congressional offices decided to form an
24 organization called the Black Republican Congressional Staff
25 Association. It was pretty much an informal organization

1 that disbanded eventually on its own, but our purpose was to
2 try and form some type of support group and some type of
3 group that could convince other black political-type people
4 that the Republican Party was a viable alternative to the
5 Democratic Party.

6 Q I'm sorry, did you meet Clarence Thomas in the
7 course of meetings of this association?

8 A Yes, that is correct.

9 Q And how often did you see him in this context? You
10 know, give me a rough estimate.

11 A Probably only three or four times. The organization
12 didn't last very long and I didn't go to every meeting that
13 was held.

14 Q Okay. Did you consider yourself a friend of his at
15 this time?

16 A No, an acquaintance.

17 Q Now, it is also my understanding that you worked
18 with Clarence Thomas at the EEOC, is that correct?

19 A That is correct.

20 Q And can you tell us when you were hired at the EEOC
21 and by whom?

22 A I was hired in March of 1984 by Clarence Thomas.

23 Q Can you tell me a little bit more about how you
24 found out about a job, or did you approach him about a job?
25 Can you give me a little bit of background about that?

1 A I was working as the Director of Media Relations
2 for the United States Agency for International Development,
3 when a friend of mine -- well, I guess I should really say an
4 acquaintance of mine -- Phyllis Barry Meyers, who was at the
5 time Clarence Thomas' Director of Congressional Affairs,
6 approached me at a reception on Capitol Hill and said that
7 Clarence Thomas was in dire need of a Director of Public
8 Affairs and would I be willing to talk to him about it, would
9 I be willing to consider that position, and I said yes. She
10 subsequently went to Clarence Thomas and told him that I
11 would consider it, and sometime later I went over and talked
12 to him about the position and he offered it to me and I left
13 AID and went to EEOC>

14 Q And you joined EEOC, this was in March of 1984?

15 A Yes.

16 Q And your title was what?

17 A Director of Public Affairs.

18 Q And can you describe a little bit for me what your
19 job responsibilities were?

20 A We had an office that had several public information
21 specialists, a video department, and my job was to coordinate
22 that staff -- I think at the time there were 27 maybe staff
23 members there -- and to produce in-house publications, to be
24 the Chairman's publicist, so to speak, his connection with the
25 media, to answer media questions, to advise him on public

1 appearances, his best contact with the media. He and
2 actually other office directors, I was responsible for
3 advising them on their contact with the media. We also
4 produced seminars on the equal employment laws and things of
5 that nature.

6 Q And did you report to Clarence Thomas?

7 A Yes, I did.

8 Q But you did at the same time work for others or
9 handle publicity for other people, is that correct? I just
10 want to make sure I understand --

11 A Publicity, if there was an office at EEOC that was
12 involved in some issue and the media was interested in
13 talking to that office director, generally the media came
14 through me, asked me about setting up interviews with that
15 particular person. It was not something that was required.
16 There, of course, were some office directors who picked off
17 directly from the media.

18 Q So, although you worked on publicity with other
19 people, you reported directly to Clarence Thomas, is that
20 correct?

21 A That is correct.

22 Q And can you give me a rough estimate of how much
23 contact you had with him in the course of your employment?

24 A The contact with Clarence Thomas was pretty much a
25 daily contact, in person or at least buzzing him on the phone

1 from my phone to discuss questions from the media or some
2 other course of business. You know, those were pretty
3 turbulent times for the EEOC, and we had lots of questions
4 from the press.

5 Q Sure. Did you consider your relationship with
6 Clarence Thomas at this time to be strictly professional?

7 A I considered Clarence Thomas at the time to be --
8 well, it was -- I guess you could say it was strictly
9 professional, in that there was no other contact between me
10 and Clarence Thomas outside of professional activities.

11 Q Okay. Now, my understanding is that there are some
12 statements or some comments that he made to you that you
13 wanted to -- I don't want to characterize them for you, but
14 that you are willing to tell us about. Can you tell me were
15 there comments that he made to you that maybe you considered
16 inappropriate?

17 A Yes, I can tell you that during the course of the
18 year that I worked for Clarence Thomas, there were several
19 comments that he made. Clarence Thomas did consistently
20 pressure me to date him. At one point, Clarence Thomas made
21 comments about my anatomy. Clarence Thomas made comments
22 about women's anatomy quite often. At one point, Clarence
23 Thomas came by my apartment at night, unannounced and
24 uninvited, and talked in general terms, but also conversation
25 he would try to move the conversation over to the prospect of

1 my dating him.

2 Q I think if it is all right with you, we need to try
3 and go through some of these comments very specifically. You
4 have mentioned now that he came to your apartment one evening,
5 and I believe you said he came over uninvited, is that
6 correct?

7 A Yes, that is correct.

8 MR. WOOTEN: Can we go back to maybe when it
9 started, rather than -- if that is the first contact, fine,
10 but --

11 BY MS. HOGAN:

12 Q I guess maybe I misunderstood. Was this the first
13 time that you felt there was something inappropriate done by
14 Judge Thomas?

15 A No, it was not.

16 Q Okay. Perhaps it would be easier if we could go
17 back to the beginning. You became employed at the EEOC in
18 March of 1984. Do you remember when the first comment or
19 conduct that Clarence Thomas engaged in that you considered
20 inappropriate?

21 A No, I do not.

22 Q Okay.

23 A Let me clarify one thing. The night he came by my
24 apartment was the first and the only time he came to my
25 apartment.

1 Q Okay.

2 A But, no, I cannot sit here and tell you I remember
3 dates. What I can tell you is that this is a general course
4 of action, this is an attitude and these are comments that
5 Clarence Thomas has generally tended to make.

6 Q Okay. You mentioned just a moment ago that,
7 generally, he pressured you to date him.

8 A Yes.

9 Q Was there anything that occurred along those lines
10 prior to the time he came to your apartment, that you recall?

11 A Yes.

12 Q Okay. Could you tell us about that?

13 A Well, I will tell you about one -- let me be
14 specific here. We are talking about a thing that, you know,
15 pretty much pops out of Clarence Thomas' mouth when he feels
16 like saying this. We are not talking about, you know,
17 traumatic single events here.

18 Q Right.

19 A We are talking about a general mode of operating.
20 I can remember specifically one evening when the comment of
21 dating came up, it was when we were having -- the EEOC was
22 having a retirement party for my predecessor, Alf Sweeney,
23 which I had organized for Mr. Sweeney at Mr. Thomas' request,
24 and we were sitting at the banquet table while the speakers
25 and things were going through their speeches, and Clarence

1 Thomas was sitting right next to me and he at one point
2 turned around and said this is really a great job, blah-blah-
3 blah, and he said and you look good and you are going to be
4 dating me, too. That was not like the only time he said
5 something of that nature.

6 Q Okay. Do you recall at all approximately when this
7 banquet occurred?

8 A Approximately, it was early summer or late spring
9 1984. It was held at some type of officers club in Virginia.
10 I can't remember what the officers club was, but at the time
11 one of my staff members, John Hawkins, was a member of that
12 club, and so he was able to procure it for us to have, you
13 know, we would actually have, you know, a very elaborate
14 retirement party for Mr. Sweeney.

15 Q And this was an evening event?

16 A It was, yes.

17 Q Was it like a dinner banquet?

18 A It was a dinner banquet.

19 Q Okay. And you said that you were sitting at the
20 banquet table with Clarence Thomas?

21 A Yes.

22 Q Next to you?

23 A Yes.

24 Q And when he made this remark to you about you would
25 be dating him, was anyone else sitting there with you?

1 A Well, there were several people there at the
2 banquet table, yes.

3 Q Do you know whether any of them heard this comment
4 that Clarence Thomas made to you?

5 A I seriously doubt that any of them heard it. He
6 was sitting right next to me and this wasn't something he was
7 shouting. He was talking, practically whispering, because
8 there was actually a program going on.

9 Q Okay. Was this a well-attended event? Can you
10 give me an idea of how many people may have been there?

11 A Yes, there were lots of people there, lots of
12 influential people there, including Congressmen, former
13 Congressman and Mayor Carl Stokes, Congressman Lewis Stokes.

14 Q So, this was not simply EEOC employees?

15 A It was not simply EEOC employees. What we had done
16 was to actually surprise Mr. Sweeney with a lot of old
17 friends. In fact, his entire family was there. He did not
18 know this banquet was happening, he did not know that these
19 people would be there, and a lot of them were old journalists,
20 like -- I cannot remember the lady's name, a black journalist
21 well known in EEOC, and she just died last year -- anyway,
22 there were also lots of people from the EEOC there. It was
23 actually crowded.

24 Q Now, after Clarence Thomas made this statement to
25 you about you dating him --

1 A Excuse me, I just remembered, Ethel Payne is the
2 name of this journalist I tried to remember.

3 Q I'm sorry, what was the last name?

4 A Ethel Payne, P-a-y-n-e.

5 Q After Clarence Thomas made this one comment to you,
6 was there any further discussion of what he said?

7 A No.

8 Q Did you respond in any way to his comment?

9 A No, I never did.

10 Q And he did not follow up his comment with any
11 additional discussion at that time?

12 A No, he did not.

13 Q Okay. Do you remember any other occasions on which
14 he pressured you to date him?

15 A No, I do not. I can't give you dates and times and
16 tell you that it was a general course of conversation.

17 MR. WOOTEN: Was the banquet the first time that
18 Thomas had said something to you?

19 MS. HOGAN: This is Terry Wooten speaking, for your
20 information.

21 MS. WRIGHT: Okay. No, Terry, it was not.

22 MR. WOOTEN: If we need to talk more about the
23 banquet, go ahead.

24 BY MS. WRIGHT:

25 Q Was there anything else that occurred at the

1 banquet that you recall, along these lines?

2 A No.

3 Q Do you remember specifically -- now, I understand
4 that you told us that there was this general environment of
5 this, but do you remember any specific comments that Clarence
6 Thomas made to you along these lines prior to this banquet?

7 A Prior to this banquet?

8 Q Correct.

9 A No, I cannot, any specific comments.

10 Q And what about after this banquet, do you remember
11 any specific comments where he talked to you about dating him?

12 A No, I can only remember them in general.

13 Q Okay. Why don't you tell us what you remember, in
14 general.

15 A In general, given the opportunity, Clarence Thomas
16 is the type of person -- well, let me back up a minute. In
17 general, given the opportunity, Clarence Thomas would say to
18 me, you know, "You need to be dating me, I think I'm going to
19 date you, you're one of the finest women I have on my staff,"
20 you know, "we're going to be going out eventually."

21 Q And what do you mean by "given the opportunity"?

22 A Given the opportunity, you know, if there was no
23 one else around or we were close enough that he could turn
24 around and whisper something of that nature.

25 A Do you ever recall him saying anything of this

1 nature to you when other people overheard it?

2 A No.

3 Q If it is all right with you, you mentioned that
4 this occurred once at your apartment.

5 A Yes.

6 Q Can you tell me a little bit more about that?

7 A He came to my apartment, I opened the door, I
8 offered him a beer, we talked, he sat at what was actually a
9 counter separating the kitchen from the living room area, we
10 sat on bar stools and talked in general about general things
11 and, you know, the conversation would turn to his desire to
12 date me, and I would adeptly turn it to some other topic.

13 Q And this was the first and only time he was at your
14 apartment?

15 A Yes, that is correct.

16 Q And he arrived uninvited?

17 A Yes, that is correct.

18 Q Did he say why he had come to your apartment?

19 A Not that I can recall. My recollection is that he
20 was in the neighborhood or something, but I can't actually
21 recall what he said when he came to the door or actually any
22 specific things about the conversation, except for the nature
23 of it.

24 Q So, you don't remember specific things he stated?

25 A No, I don't. You know, I wish I could apologize to

1 you for that, but it is not the kind of thing I was taking
2 notes about or I wasn't keeping a journal.

3 Q No, I certainly understand that it is a number of
4 years ago, and we just appreciate your sharing with us what
5 you remember. The only reason I am trying to ask, you know,
6 for specific recollections is in case you have them, I want
7 to make sure that we give you an opportunity to tell you.

8 A I specifically recall being at a seminar, I can't
9 even tell you which seminar, because we had many of them, when
10 Clarence Thomas commented on the dress I was wearing and
11 asked me what size my boobs were.

12 Q This was an EEOC conference?

13 A This was an EEOC seminar.

14 Q A seminar. I'm sorry, you said it was out of town?

15 A Yes.

16 MR. WOOTEN: Can we go back to the time frame when
17 you say Judge Thomas came to your apartment? I don't know
18 that we got the time frame. Can you give us an approximate
19 date?

20 MS. WRIGHT: Well, it was not in the summer, it was
21 like it was cold, it was the end of fall or early winter.

22 BY MS. HOGAN:

23 Q And do you know how he knew where your apartment
24 was?

25 A Well, I lived in that same apartment for about 5

1 years on Capitol Hill, three blocks from the White House --
2 excuse me, from the office building. Most of the people who
3 knew me knew where I lived.

4 MS. HOGAN: I think it would be easier for her, if
5 I continue.

6 MR. WOOTEN: If we could --

7 MS. WRIGHT: It doesn't matter to me how you want
8 to --

9 MR. WOOTEN: I don't want to create confusion, but
10 this is done in the time when you say Judge Thomas came to
11 your apartment when you worked at the EEOC, is that correct or
12 not? I don't want to put words in your mouth, but --

13 MS. WRIGHT: That is correct.

14 MR. WOOTEN: I am just trying to get a general time
15 frame.

16 BY MS. HOGAN:

17 Q This was during the year that you worked with Judge
18 Thomas at the EEOC?

19 A That is correct.

20 Q In the fall or possibly the winter?

21 A Yes.

22 Q The next thing you mentioned was this EEOC seminar,
23 do you have any recollection of when this occurred,
24 approximately?

25 A No. We went to several seminars. In fact, my only

1 recollection of it is that we were walking towards a meeting
2 room and I was briefing him, giving him information on what
3 this particular seminar was about; you know, the general run
4 of the mill things that public relations folks do and there
5 were other people walking just ahead of us, people in his
6 legal staff. But I can't remember which seminar that was, or
7 which hotel that was. We held seminars in Denver, in Miami,
8 I think, in Texas.

9 Q Do you remember what the subject of the seminar was?

10 A Well, the subjects of the seminar generally were
11 about the laws under which EEOC operated and the laws that
12 EEOC was charged with enforcing. We held community seminars
13 to simply go to the communities and tell people, you know,
14 this is what is qualified as age discrimination, this is what
15 qualifies as sexual harassment, this is what qualifies as
16 race discrimination and this is what the law says, and we had
17 other, you know, experts from around the agency -- lawyers and
18 those type of people -- to pretty much sit on panels and
19 discuss all aspects of discrimination law.

20 Q So these were seminars that the EEOC gave on some
21 type of regular basis?

22 A That's true, yes.

23 Q And they were given across the country?

24 A Yes.

25 Q And they were given to who? Was the public invited

1 to these conferences?

2 A Yes, they were.

3 Q Okay, and can you give me an average of how many of
4 these conferences you would attend with Clarence Thomas a
5 year or in the year that you worked for him?

6 A I think during that year we had four or five. I
7 can't say for sure, it is like four or five. But I want to
8 make it clear that I did not attend them with him. I
9 generally advanced him. My staff and I went out, prior to
10 Clarence Thomas, or any of the legal people getting there.

11 Q Did he attend all EEOC seminars of this type that
12 were given across the country?

13 A As far as I can remember, yes.

14 Q And you would do the advance work for all of these?

15 A Yes.

16 Q Okay, do you know whether anyone overheard the
17 comment to him, the comment that he made to you in this hotel?

18 A No, I don't. If they did, they did not react to it.

19 Q Okay, did you tell anyone about it?

20 A No, I did not.

21 Not, let me put it, not, I did not walk away from
22 that situation and go say, you know, guess what Clarence
23 Thomas just said.

24 Q Okay.

25 A But in the course of other conversations that I had

1 with other people, particularly women, about Clarence Thomas,
2 yes, I have made relayed that situation along with all others.

3 Q Do you recall any particular women that you spoke
4 to about this?

5 A Yes.

6 Q Okay, could you tell me who they were?

7 A Well, I would be willing to name one of them.

8 Q Okay.

9 A Because it is interesting to me that that person is
10 -- this is sort of in a denial -- but Phyllis Barry Meyers was
11 one of them.

12 Q And this is the same woman who initially contacted
13 you about working for Clarence Thomas?

14 A Yes.

15 Q And what was her position? She worked at the EEOC,
16 correct?

17 A She did, as Director of Congressional Affairs.

18 Q And you told her or discussed with her --

19 A She and I discussed Clarence Thomas on many
20 occasions and the conversations were, of course, always
21 varied depending on what the topic of the day was, but the
22 conversations also generally ended up talking about Clarence
23 and his approach to women, too.

24 Q Do you know whether you mentioned to her or to
25 anyone else the comments, the comment that was made to you at

1 Mr. Sweeny's retirement party?

2 A I can't sit down and remember specifically having
3 that conversation with anyone, no.

4 Q Okay, and what about the fact that Judge Thomas
5 came to your apartment. Do you remember if you ever mentioned
6 that to anyone?

7 A Yes, I did.

8 Q And who did you mention that to?

9 A I would rather not say because I don't know if she
10 would like to get involved.

11 Q Okay. Do you remember any other conversations with
12 anyone else -- men, women, anyone -- where you discussed the
13 comments made to you by Judge Thomas?

14 A No, I can't say -- no, I don't remember any other
15 specific conversations about Judge Thomas where I made
16 references to those specific comments.

17 Q Okay, did you have any other conversations with
18 people generally about Judge Thomas' conduct toward women in
19 the office?

20 A Yes.

21 Q And can you tell us anything about those
22 conversations? Who they were with or what the conversations
23 consisted of?

24 A No, I can't. I mean when you work for somebody you
25 generally talk about work and those people. I talked with

1 Clarence Thomas about other, I talked with other people at
2 EEOC about Clarence Thomas when I worked there, when I felt
3 that perhaps some things he did were not, some positions he
4 took were not the best ones to take, or some things he did
5 were not the best things to do.

6 Q So these were -- you just generally, you had
7 conversations on various occasions with other employees at
8 the EEOC that may have included some of these comments, or
9 other comments about Judge Thomas' conduct towards women?

10 A Yes.

11 Q Okay.

12 A Well, let me say this, too. There were select
13 people at EEOC that I would have had those conversations
14 with. I would not talk in general to people at EEOC about
15 that because Clarence Thomas and I were both political people
16 and I was very conscious of what to say to non-political type
17 people.

18 Q Okay, you mentioned that you did discuss generally
19 with Phyllis Barry Meyers?

20 A That's correct.

21 Q Do you recall what her reaction was when you
22 discussed this with her?

23 A Yes, I do.

24 Q And what was her reaction?

25 A Well, I, I can almost quote her as a matter of

1 fact, "Well, he's a man, you know, he's always hitting on
2 everybody."

3 Q I'm sorry, I didn't catch the last.

4 A "He's always hitting on everybody."

5 Q Okay, do you remember any other specific comments
6 that you might have made?

7 A No, I can remember one conversation with her that,
8 I can remember that that particular conversation with her
9 went on for a while, but I can't tell you what else was said,
10 you know, it was in general, the same kinds of comments.

11 Q Did you work closely with her in your capacity at
12 the EEOC?

13 A Yes, pretty much, but, you know, her office, her
14 responsibilities were very different. She worked as a
15 liaison to Capitol Hill and I was a liaison to the media.

16 Q Okay, are there any other occasions on which you
17 remember specific comments that Clarence Thomas made to you
18 that you considered inappropriate?

19 A None that I can give you dates for, no.

20 Q Okay. Can you tell me how long you worked at the
21 EEOC?

22 A For one year.

23 Q And can you tell me what the circumstances were of
24 your leaving the EEOC?

25 A Yes. Clarence Thomas fired me.

1 Q And can you just describe for me the circumstances
2 surrounding that?

3 A Sure. I came into my office one day and there was
4 a letter in my chair and I opened that letter and it said,
5 your services here are no longer needed as of -- whatever two
6 weeks from the date was -- you know, you will no longer be
7 employed by the EEOC.

8 And I read the letter. It was quite a surprise to
9 me. I took the letter and I went upstairs to Clarence Thomas'
10 office, whose secretary, Diane Holt, motioned me in without
11 even, without any question. When I walked into his office,
12 he was in the bathroom inside his office, and I sat down in
13 the chair beside his desk and waited for him to come out.
14 And when he walked out, I handed, I held the letter up and I
15 said, "What is this? What does mean? Why are you firing me?
16 And he says, "Well, well, --

17 [Pause.]

18 Q Ms. Wright, can you hear me?

19 A Yes, I can hear you.

20 Q Terrific, you were telling us about --

21 A I walked into his office.

22 Q Okay.

23 A Well, I said to him, you know, "What is this? Why
24 are you firing me?" And he says, "Well, Angela, I've never
25 been satisfied with your work."

1 I said, "Why have you not been satisfied with my
2 work, and why have you not told me this up to this point?" He
3 said, "Well, I told you to fire those folks down there, and
4 you haven't fired a soul down there." And I said, "Well,
5 Clarence, these people are career employees, not like I can
6 just go in there and say you are fired. It takes almost an
7 act of Congress to get them removed."

8 He said, "Well, I just in general am not satisfied
9 with your work."

10 The day prior to that I had held a press conference
11 on some issue that was real hot at the time, I don't remember
12 what that issue was, but it was a very successful press
13 conference. All the major media were there, the Wall Street
14 Journal, the Washington Post, there were 13 representatives
15 there in all. And that morning, that I was sitting there
16 talking to him, he had a press kit in front of him with
17 almost an inch of press clippings. So I picked that up and I
18 said to him, I said, "How can you say that especially today
19 of all days, you sitting right here, with a press packet from
20 a press conference that I just held for you yesterday that
21 was very successful, when you guys were on the hot seat?"

22 And he said to me, you know, "I never needed you to
23 get me any publicity. I could always call my buddy Juan
24 Williams over at the Washington Post if I needed publicity."

25 And I said, "Okay, fine. Well, look if you -- we

1 are both political so that is your prerogative. You could
2 tell me to go because you don't like the color of my shoes or
3 something like that", I said, "But the point here is,
4 Clarence, we are political and I don't believe this stuff you
5 are telling me about why you're firing me, but I do have this
6 question. Why did you decide to do this? If you wanted me
7 to leave this position, all you had to do was say, go to your
8 friends at the White House and call and see if you can get
9 another appointment", I said, "but your intent was to make me
10 unemployed. And why is that? I have been, I tried to be
11 loyal employee. I have tried to be your friend."

12 And he said, "Well, I never cared anything about
13 loyalty and I don't care a whole lot about friendship." And
14 I said, "Well", I just pushed the chair away from the table,
15 and I said, "Well, then, I hope you will be a very happy,
16 successful man, but I doubt it."

17 And I walked out of his office and I went down to my
18 office and I left EEOC. And that is the last conversation I
19 ever had with Clarence Thomas.

20 Q If I could just go back a little bit. You said
21 that the first notice that you received of this was in a
22 letter that was left in your office?

23 A It was a letter, it was a letter that was left in
24 my chair in my office.

25 Q And who was the letter signed by?

1 A By Clarence Thomas.

2 Q Okay, and at that time, you went up to his office?

3 A I did.

4 Q And do you remember anything else that was said
5 between the two of you in the meeting in his office?

6 A I, I, I think I just said it just about verbatim.

7 Q Okay. Do you recall when this was?

8 A It was, as far as I can recollect, in April.

9 Q And that is April of 1985?

10 A Yes.

11 Q Was anyone else present during this conversation?

12 A No.

13 Q Do you think that your failure to respond to any of
14 Judge Thomas' comments to you had anything to do with him
15 firing you?

16 A You are not the first person who has asked me that
17 question. Several people at EEOC asked me that question.

18 Q Do you remember who at EEOC asked you that question?

19 A Well, actually the man who was my predecessor who
20 you can't confirm, because he is now dead, Al Sweeney, that
21 was the first question that came out of his mouth. And there
22 were other people there but I, I really hesitate to drag
23 other people's names into this conversation who are not now
24 at all affiliated with this issue. I don't mind discussing
25 people who are, you know, who have already made a public

1 comment on this, but I don't want to volunteer anybody else's
2 participation.

3 Q Okay. Are there any other specific comments that
4 Judge Thomas told you at any time that you want to tell us
5 about?

6 A About the only thing I can tell you is that he did
7 tell me at one point during that conversation when I asked
8 him about why he was firing me that he was real bothered by
9 the fact that I did not wait for him outside his office after
10 work. It was a statement that I dismissed as one of his
11 statements.

12 Q So you didn't follow up on that or respond to that?

13 A Well, I don't remember responding. You know, I
14 wasn't a very happy person at that point. I was really
15 trying to get to the truth of what was really going on and
16 nothing he had said to me at that point sounded like the real
17 deal.

18 Q Well, did that comment make you think that perhaps
19 the firing had to do with your failure to respond to his
20 comments?

21 A It did not make me think that at that moment. What
22 I was thinking at that moment was he was grasping for all
23 kinds of reasons. In retrospect I guess that is a possibility
24 but that is not the first thought that came to my mind when
25 he said it.

1 Q Okay. After you left the EEOC, what did you do
2 next for employment?

3 A I did not -- when I left the EEOC I went back to the
4 University of North Carolina because I had not completed the
5 work on my degree. I went back to finish school.

6 Q Okay, and you finished school when?

7 A In December of 1985.

8 Q And this was your bachelor's degree in journalism?

9 A Yes.

10 Q And following your graduation from the University
11 of North Carolina, what did you do?

12 A I moved to Charlotte, North Carolina and I worked
13 for a while as a substitute school teacher, actually I worked
14 three jobs -- as a substitute school teacher, as a radio news
15 announcer, and as a freelance public relations.

16 I stayed in Charlotte for about, I guess that would
17 have been, gosh, I would have come to Charlotte maybe in May
18 of '86, and stayed in Charlotte until maybe September. And I
19 went and just a month in Atlanta with some friends of mine
20 there, just looking for work in Atlanta. And then went back
21 to Washington, after someone that I knew called me up and
22 asked me to take a position at the National Business League.

23 Q Okay, and following the National Business League,
24 was when you went to the Winston-Salem --

25 A Chronicle, yes.

1 Q -- Chronicle, okay. And following that, you went
2 back to Charlotte and took your present job, is that correct?

3 A That's correct.

4 Q Now, on any of these occasions when you took
5 employment after the EEOC, did you ask anyone at the EEOC for
6 a recommendation?

7 A No, I did not.

8 Q Okay, did you give anyone's name at the EEOC as a
9 reference to a potential employer?

10 A No, I did not, but on my resume the EEOC, of
11 course, is listed as a former place of employment.

12 Q Okay, did you have any, have you had any contact
13 with Judge Thomas since you left the EEOC?

14 A No, I have not.

15 Q Have you ever called his office or spoken to him by
16 telephone?

17 A I have called his office on one occasion but I
18 never got to speak to him.

19 Q And can you tell us about that one occasion?

20 A Yes. I had a friend who owns a telecommunications
21 firm. He installed telephone systems in businesses. He had
22 done lots of work on Federal military bases. And he had
23 contacted me about trying to talk to anyone I knew who worked
24 in the Government to perhaps see if they would be willing to
25 talk to him about using his phone system.

1 And I placed a call to Clarence Thomas on his
2 behalf. My call was never returned and I never tried again.

3 Q Who did you speak with? Did you call Judge Thomas
4 at his office?

5 A Yes, I called and I talked with Diane, his
6 secretary.

7 Q Okay, do you recall approximately when this call
8 might have occurred?

9 A In the summer of 1987.

10 Q And you left a message with Clarence Thomas'
11 secretary Diane?

12 A Yes.

13 Q And he never returned the call?

14 A That's correct.

15 Q Okay. Did you have any other occasions where you
16 called him or his office?

17 A No, I did not.

18 Q Have you had any contacts since you left the EEOC
19 with other employees of the EEOC who were there while you
20 were employed there?

21 A Yes, I have.

22 Q And can you tell us whether in any of those
23 conversations you discussed Clarence Thomas and any of the
24 facts we have discussed today?

25 A Generally, when I talk with people who work at the

1 EEOC, the conversation turns to Clarence Thomas, but no, not
2 specifically about the things we are talking about right now.

3 Q Okay. Just one point of clarification on your
4 degree from the University of North Carolina. You said you
5 graduated in December of '85 or in May of '86?

6 A I completed the requirements in December of '85.

7 Q Okay.

8 A They mailed the degree to me, because I stay in
9 Chapel Hill.

10 Q Okay. Ms. Wright, do you know Anita Hill?

11 A Do I know Anita Hill? I have never met Anita Hill,
12 and I have never heard of Anita Hill before this week.

13 Q You are, I take it, aware of Professor Hills'
14 allegations about Clarence Thomas?

15 A Yes, I am.

16 Q Do you feel that these allegations are in or out of
17 character for Clarence Thomas, as you know him?

18 A I feel that the Clarence Thomas that I know is
19 quite capable of doing just what Anita Hill alleges.

20 Q Do you have anything else you want to tell us today?

21 A No, I've told you all that I know.

22 MS. HOGAN: If you can bear with us just for one
23 minute.

24 MR. WOOTEN: If you all have something, go ahead.

25 MS. HOGAN: If you will bear with us just for one

1 minute, please.

2 MS. WRIGHT: Sure.

3 BY MS WRIGHT:

4 Q To go back briefly and follow up, you told us that
5 in the conversation you had with Clarence Thomas when he fired
6 you --

7 A Yes.

8 Q -- he made a comment about you didn't was it
9 outside his door for him at the end of the day. is that
10 accurate? I don't want to --

11 A That is correct.

12 Q Okay. Did you have any sense of what he meant by
13 that comment?

14 A Not at the time, no, and I don't remember if I
15 pursued it with him or not.

16 Q Okay. And did that lead you to -- when he said that
17 to you, was that in the context of explaining to you why he
18 was firing you?

19 A Yes, it was. It was -- excuse me just a minute,
20 please.

21 Q Sure.

22 A [Pause.] He was -- you know, I can't remember that
23 specific part of the conversation. In general, he was
24 talking about the kinds of things he felt that I should do,
25 how I should report to him.

1 Q Okay.

2 A You know, I can't go back and say what exact words
3 or which of his words preceded that or came out from that
4 particular statement, but that statement was made.

5 Q Okay. In the conversations you had with other
6 women at the EEOC about Clarence Thomas' conduct towards them,
7 did any other women tell you that he had made specific
8 references that they considered inappropriate?

9 A There were women who told me about specific
10 references that he had made, but I don't remember them
11 specifically saying that they considered it inappropriate.
12 It was not --

13 Q Did they tell you that -- did anyone else tell you
14 that he had made comments to them about their anatomy?

15 A No, I don't remember that.

16 Q Did any of them tell you that he had made comments
17 about wanting them to date him?

18 A Yes.

19 Q And do you remember any specifics with regard to
20 what these women told you?

21 A Yes, but one woman that I can think of right now,
22 particularly, was a married woman and I certainly would not
23 like to discuss that.

24 Q Okay. Are you still there, Ms. Wright?

25 A I'm still there. We can finish. I am not trying

1 to --

2 Q Okay. Sorry.

3 A Can I get you to hold on just a minute, so that I
4 can get another call in?

5 Q Certainly.

6 A [Pause.]

7 Q When you say that he made comments to you and to
8 other women about their anatomy, the only thing I believe you
9 have mentioned to us specifically is that he made a comment
10 about your boobs.

11 A Yes.

12 Q Were there any other specific comments about
13 women's anatomy that you know of?

14 A Yes, Clarence Thomas talked about women's anatomy
15 when he talked about the kind of women on his staff, he often
16 said I've got some fine women on my staff, and he would say
17 things about individual people's anatomy.

18 Q And can you be any more specific than that, in
19 terms of the type of comments he would make?

20 A I remember specifically him saying that one woman
21 had a big ass.

22 Q And this was a comment that he made to you about
23 another woman?

24 A I was not the only person in that room, come to
25 think of it, but I can't remember exactly who was there.

1 Q But this was a comment that he made in your
2 presence?

3 A Yes.

4 Q And do you remember any other specific comments?

5 A No, I don't.

6 MS. HOGAN: Okay. I think those are all the
7 questions I have for you right now. Terry Wooten, who works
8 for Senator Thurmond, is going to ask you some questions.

9 Terry, are you ready to go, or do you want to take
10 a few minutes' break?

11 MR. WOOTEN: Do you want to talk to me for a minute
12 on the side, or are you ready to go? I've got some things
13 that I can ask and then you can come back.

14 MS. HOGAN: Ms. Wright, do you want to take a break
15 for a few minutes, or are you content to go forward now?

16 MS. WRIGHT: I'm fine. Go ahead.

17 BY MS. HOGAN:

18 Q I do have just one other question that I want to
19 get on the record. Do you have anyone representing you, for
20 instance, a lawyer?

21 A I have talked with friends who are lawyers, but I
22 have not obtained legal counsel, no.

23 MS. HOGAN: Okay. Thank you.

24 BY MR. WOOTEN:

25 Q Is anybody there with you now, or are you alone?

1 A I am alone, me and my dog.

2 Q Are you at work or are you home?

3 A I am at home.

4 Q You said that the first that Judge Thomas made a
5 comment to you was at a retirement party.

6 A No, I did not say that was the first time. That
7 was one time, the time I remember.

8 Q Right. Could you go back and maybe tell us roughly
9 when the first time it was that Judge Thomas had made some
10 comment to you?

11 A No, I can't.

12 Q Is there any reason -- you can't give us the context
13 of maybe what he said the first time?

14 A No, I can't remember the first time, because it was
15 one of a general pattern with Clarence Thomas to pop these
16 things out of his mouth whenever he felt like it.

17 Q When can you say, roughly, when was the first time
18 he made comment to you -- and I don't know if you can or not,
19 but it is obviously a very serious allegation that he made
20 other kinds of comments, and you are somewhat vague about
21 what those comments were or when they took place.

22 A Okay.

23 Q I would just like to see if you can't think back
24 and maybe tell us when was the first time or how long had it
25 been when you were employed at the EEOC before he made the

1 first comment.

2 A Oh, there is no doubt in my mind, it hadn't been
3 very long, but I can't go back and tell you just what day or
4 how many weeks. You know, Clarence Thomas I think felt very
5 comfortable around me, and I want you to understand that I am
6 not sitting here saying to you that I was sexually harassed
7 by Clarence Thomas. I am a very strong-willed person and at
8 no point did I feel intimidated by him. Some other woman
9 might have, but these were not situations that I ran home and
10 ruminated on and wrote down in my diary.

11 Q When he made these comments, how did you feel about
12 it?

13 A I felt that he was annoying and obnoxious pretty
14 much, but, you know --

15 Q Did you take them as a joke, or did you take them
16 as something that maybe, you know, you had been harassed?
17 You said you had not been harassed. I mean did you take them
18 as a --

19 A Not sexually harassment, no.

20 Q I mean did --

21 A Harassment to me dictates some -- I mean indicates
22 some feeling that there is some threat. No, I never did feel
23 threatened or intimidated.

24 BY MS. HOGAN:

25 Q When you use the word "harassment" -- this is

1 Cynthia Hogan again -- do you mean sexually harassed in a
2 legal sense?

3 A I think that, yes, under the legal definition of
4 sexual harassment, what Clarence Thomas did fit the legal
5 definition, yes. I am not a lawyer, but as I understand it,
6 that --

7 Q I'm sorry, it did fit the definition, as you
8 understand it?

9 A As I understand it, yes.

10 BY MR. WOOTEN:

11 Q Let me go back. You had said before you just made
12 this statement that you didn't feel like you were sexually
13 harassed, that you felt like you were more annoyed by it.

14 A Yes, I certainly did make that statement. But what
15 I am saying to you is I am aware that, under the legal
16 definition of sexual harassment, his actions fit the criteria.
17 But was I intimidated to the point where I felt like filing a
18 sexual harassment suit? No, I didn't consider filing then
19 and I wouldn't file one now.

20 Q All right. The first specific time you remember
21 that Judge Thomas said something to you was at the retirement
22 party, that was the first time that you can say specifically
23 this is what he said to me?

24 A Well, I think the use of the word "first" is what
25 is bothering me. That is the one time when I can specifically

1 remember the comment in the context of other circumstances.

2 Q Now, after that happened, were you annoyed or did
3 you feel like you had been harassed, sexually harassed?

4 A Well, I think annoyed was as better term. I simply
5 turned to Lewis Stokes, who was on my right-hand side and
6 carried on a conversation with him.

7 Q All right. Did you ever tell anybody about that
8 incident at all, the fact that Judge Thomas had made a
9 comment to you at the retirement party?

10 A Well, I can't sit here and tell you that I had one
11 conversation about that particular incident, no, but I can
12 say that in the course of other general conversations, it is
13 likely that I did, but I can't say that someone, that that
14 was the focus of any other conversation I had, no.

15 Q Can you give us the name of any individual or
16 individuals that you may have mentioned this to, the fact that
17 something had been said to you at the retirement party?

18 A I could, but I am not willing to do that unless I
19 would first check with them to see if they felt comfortable
20 with me using their name in these proceedings.

21 Q Would you be willing to do that?

22 A I would be willing to check with them, yes.

23 Q Now, the second incident that you talked about to
24 us is when Judge Thomas came to your apartment. Can you give
25 us any indication as to how Judge Thomas knew where you lived?

1 A I had lived in the same apartment for five years on
2 Capitol Hill, three blocks from the Capitol, on C Street.
3 Duddington's Restaurant was literally by backdoor. Anyone who
4 knew me on Capitol Hill knew where I lived.

5 Q Well, let me ask you again: Was there any way -- do
6 you know how or have any indication as to how Judge Thomas
7 would have known where you lived?

8 A No, I didn't ask him.

9 Q All right. Did you ever give him your address?
10 Did you ever tell him where you lived?

11 A I think I probably wrote that down on the employment
12 application.

13 Q All right. Other than putting that on the
14 employment application, did you ever tell Judge Thomas where
15 you lived?

16 A Not that I can recall. I mean that may have been
17 part of our conversation at some point, but nothing
18 significant enough for me to remember.

19 Q Well, if it was part of a conversation, I guess the
20 question would be why would that come up in a conversation
21 that you would have with Judge Thomas?

22 A I can't answer that, because I can't recall a
23 conversation I had with him where that did come up. I am
24 simply allowing for the possibility.

25 Q So, as best you can remember, you never told Judge

1 Thomas where you lived or --

2 A No, I am not going to say I never told Judge Thomas
3 where I lived. That is probably unlikely. I tell most people
4 who you have any type of relationship with, when you talk
5 with them at some point you get to the topic of where you
6 live.

7 Q But you don't have any memory that he asked you
8 about where you lived?

9 A No, I don't have any memory of that.

10 Q Now, you said that he came over in the winter --

11 A What I remember is that it was not hot, it was cold
12 or cool.

13 Q Well, could you go back and recount maybe what you
14 were doing at the time, did you have a doorbell, did he knock
15 at the door? When you realized that Judge Thomas was there,
16 can you just pick up from there and tell us what you thought
17 first, and then what you did?

18 A Well, I went to the door and he was standing at the
19 door, I opened the door and I said probably hello, how are
20 you, come in. My guess is the conversation probably had
21 something to do with what are you doing in this part of this
22 neighborhood. I offered him a beer. We talked. He actually
23 stayed for some time and talked.

24 Q Can you tell us approximately what time it was that
25 he came over?

1 A No. I can remember about what time it was when he
2 left, because it was after midnight and I was getting quite
3 tired of the company.

4 Q Well, did you tell him that he needed to leave?
5 You said he stayed there for some long period of time.

6 A I did not tell him he needed to leave. I probably
7 made quite a few outward suggestions, like yawning and
8 becoming distracted.

9 Q Were you drinking, as well, at the time?

10 A Yes.

11 Q Now, I am sure that if the person who was your boss
12 came over, I assume there would be some conversation. Can
13 you give us maybe a little more general information about
14 what you discussed while he was there? Was this the first
15 time he had ever been to your apartment?

16 A It was.

17 Q So, is it accurate to say that you were probably
18 surprised when he came there?

19 A Yes, it is.

20 Q Well, can you just give us some indication of what
21 maybe you generally talked about?

22 A I think, in general, we talked about the EEOC or
23 changes he wanted to make there, most of them personnel
24 changes. He talked often about wanting to clean out the
25 public affairs department and fire all those folks down

1 there, because they were just a bunch of incompetents. I am
2 sure that was the thrust of it. We discussed that generally
3 whenever we talked, but then he would also, of course, discuss
4 his desire to date me, and I am very adept at turning the
5 conversation towards some other topic.

6 Q All right. Can you be just -- you said, I believe,
7 my notes show that you said that you can't remember specific
8 things. Let me ask you, if I could, Ms. Wright, to try to
9 remember specific things. What did he say to you specifically
10 about wanting to date you? Can you just be more specific
11 about it? Because it is as very serious matter, in my
12 judgment, to say that he came to your house. I mean if he
13 came over to talk about work, that is one thing. If he came
14 over to talk about other things, you know, that is another
15 thing. We just need some information from you about what he
16 talked about, if you could be a little more specific.

17 A I understand that this is as very serious matter.

18 Q I am not trying to --

19 A But I want you to understand that I am telling you,
20 a best as I can, what I know and what I have experienced with
21 the man named Clarence Thomas whom you are about to name to
22 the Court, and in this situation, if it were not for the
23 situation at hand, you probably would not be talking to me.
24 I know that you understand that.

25 I did not keep a journal, I did not write down his

1 comments. I can only tell you in very general terms what my
2 experience with Clarence Thomas has been.

3 Q Well, at the time that he came to your house, were
4 you ever afraid of him?

5 A I was never afraid of Clarence Thomas.

6 Q Now, let's go back to this seminar that you said
7 took place. I was just trying to get a rough time as to when
8 you were at this seminar where you say Judge Thomas made some
9 comment about your anatomy. Can you give us a rough time as
10 to when that was?

11 A We had several seminars that year. The most I
12 could tell you is that I can remember being at one of those
13 seminars when Clarence Thomas made that comment. How can I
14 tell you which seminar it was? Unfortunately, I know it
15 would be most helpful for you, but I cannot tell you. I
16 cannot remember that. Perhaps senility has set in at a young
17 age here, but I can't remember that. We are talking of six
18 or seven years ago.

19 Q Now, the term "boobs" came up. Is that a term that
20 he used when he spoke to you?

21 A No, actually that is a term that I am using.
22 Actually, what he said was what size are your breasts.

23 Q And at the time that statement was made, what was
24 your reaction to it?

25 A I said something like I think you best concentrate

1 on remembering the names of people you are going to be
2 sharing the panel with.

3 Q All right. Let me ask you, on either one of these
4 two specific occasions when Judge Thomas came to your house
5 or to your apartment or that he made the comments about your
6 anatomy, did you tell anybody at all about that, anybody that
7 you could remember who could corroborate that you, in fact,
8 told them about it?

9 A You know, I really don't mind cooperating with you,
10 but at this point I truly feel like I have answered these
11 questions that you are asking me already. Now, if you have
12 something new you want to ask me, I don't mind answering
13 them, but I am not going to go over this over and over and
14 over again.

15 Q My question to you is: If Clarence Thomas would
16 come to your apartment, just as though Senator Thurmond would
17 come to my apartment, I think that would be a pretty big deal
18 and I would probably tell somebody. My question to you is:
19 Did you ever tell anybody that Judge Thomas came to your
20 apartment?

21 A At one point today I already said yes, I did
22 specifically discuss the fact that Judge Thomas came to my
23 apartment with someone else whose name I don't care to use,
24 unless I call her, call that person and she says I don't mind
25 if you use my name. I am not going to volunteer the

1 participation of somebody who at this point is not a part of
2 this proceeding.

3 Q Let me ask you, would you be willing to do that?

4 A I would be willing to call this person; Lyons is
5 her name, if you -- I guess that this person would mind
6 because this person is still in a fairly political position.

7 Q Now, let's go to the time when you say that Judge
8 Thomas had fired you.

9 You mentioned something about a press conference
10 that you had held the day before.

11 A That's correct.

12 Q Was Judge Thomas agitated about that particular
13 press conference?

14 A He did express some agitation at that press
15 conference over the fact that Commissioner Gallegos was not
16 there.

17 Q I see, and you said that he had said generally that
18 he was never really satisfied with your performance?

19 A Yes, he did say that.

20 Q Do you, did Judge Thomas ever get more specific
21 than that, that you can remember?

22 A No, the only thing he said was that I didn't fire
23 the people in my office that he wanted me to fire.

24 Q And can you, did you have the authority to fire
25 people in your office?

1 A Political appointees, yes. I'm sure you understand
2 about the authority to fire career employees, don't you?

3 Q Frankly, I don't, but I presume it is not easy to
4 fire them.

5 A Career employees, let me just say career employees,
6 you don't just walk in and fire a career Federal employee.

7 Q I would assume it would be difficult. But I guess
8 my question is, and you may have answered it, is whether or
9 not Judge Thomas was more specific with you about why you
10 were being fired?

11 A No, he was not. But I think on that issue it might
12 be, it might be important to point out, that you know, Judge
13 Thomas gave me a wonderful recommendation when I took my
14 current job. It's my understanding that he said to the
15 person who called my references that firing me was the
16 biggest mistake he'd ever made in his life. You can call
17 that person, however, and ask her specifically what her words
18 are. You can call my office and perhaps it is written in my
19 files what he said, but I think that that, in itself,
20 indicates, you know, or should be some indication of what I'm
21 trying to tell you about that particular day. He was not
22 specific. I never did believe whatever reasons that were
23 that he gave me. My guess was that it was simply political,
24 that there was someone more powerful than I who wanted a
25 position as director of Public Affairs.

1 Q Right. Obviously you don't think you should have
2 been fired?

3 A No, I do not. I don't think I should have been
4 fired, but I'm really happy that he did.

5 Q Okay.

6 A And let me point out, obviously he didn't think so
7 either.

8 Q But because you say that he said that he made, that
9 that was the biggest mistake that he'd ever made?

10 Or a mistake that he had made to fire you?

11 A Yes. You know, I'm quoting someone on my staff,
12 Mary Newsome, I mean someone at the newspaper who did the
13 actual calls on my references so I don't want to put words in
14 his mouth, that weren't there. I'm sure she wrote those
15 comments down for the file, but you know, he said that I was
16 a great employee and would be an asset to everybody's staff,
17 etc.

18 MR. WOOTEN: If you will excuse me for just a
19 minute.

20 [Pause.]

21 BY MR. WOOTEN:

22 Q But you, since you were fired, you never -- and this
23 is a little bit unclear and somebody has asked me to clarify
24 this -- did you ever give Judge Thomas' name as a reference?

45 A I never gave his name as a reference.

1 MR. WOOTEN: Will you excuse us just a second.

2 [Pause.]

3 MS. HOGAN: Ms. Wright, would you like to take a
4 break for a few minutes?

5 MS. WRIGHT: Yes, I would like to get a glass of
6 water.

7 MS. HOGAN: Okay, that's fine.

8 [Pause.]

9 BY MR. WOOTEN:

10 Q Ms. Wright, if we could just continue?

11 A Okay.

12 Q It is my understanding -- and this is a question
13 that someone else has asked me to ask -- that Judge Thomas
14 gave you a recommendation at some point, some kind of glowing
15 recommendation. Is it from your current employer?

16 A Yes.

17 Q And the question would be, how did your current
18 employer, if you know, how did your current employer have the
19 opportunity or the ability to contact Judge Thomas if you had
20 never used his name as a reference?

21 A When I apply for work, I generally, for my resume,
22 every place that I have ever worked before. People that were
23 interested in hiring me at the Charlotte Observer did a
24 thorough check and they called every place that I had ever
25 worked before.

1 I mean you asked me if I have ever used Clarence
2 Thomas as a reference. I take that to me, do I list him as a
3 personal reference of someone that I want to be called? The
4 answer is, no, but I mean, you know, when I, my resume has
5 every place that I have ever worked at it, and I have no
6 problem with people checking every place I have ever worked
7 before.

8 Q Okay. Were you aware, obviously you were aware
9 that Judge Thomas was nominated to the Supreme Court?

10 A Yes.

11 Q I presume that you are aware of that very early on
12 in the process. I think he was nominated or the President
13 announced his intent to nominate, it may have been July the
14 1st.

15 A I am aware of that.

16 Q Can you tell us just what your feelings were at the
17 time that you heard he had been nominated to the Supreme
18 Court?

19 A I never wavered in my feelings about that. I don't
20 think, I don't think that Clarence Thomas is a good man and I
21 did not think that he should be on the Supreme Court.

22 Q And that's based on what?

23 A It's based on several conversations that I've had
24 with him and, and my opinion of him that he's really a kind
25 of, you know, not such a good person.

1 Q Well, is it based on the comments that annoyed you
2 or is it based on something else?

3 A Well, I mean, I can, I can give you several
4 comments that I've heard Clarence Thomas make that I think,
5 you know, are unbecoming of any individual, period, but
6 certainly unbecoming of someone who is going to spend the
7 rest of his life on the Supreme Court.

8 Q Well, can you just -- you said that you didn't think
9 that he should be on the Supreme Court, could you just tell
10 us why? So you say it's because of comments. Is it the
11 comments that we've discussed this morning, or something else?

12 A No, they are comments other than what we discussed
13 this morning. Let me name, I would say three. My
14 predecessor, Al Sweeney, who was an older man and quite
15 sickly. I, you know, Clarence Thomas in my opinion pretty
16 much wanted to force him to retire. Obviously I benefited
17 from that; once the position was open I was named Director of
18 Public Affairs.

19 But I remember Clarence Thomas saying to me, "Al
20 Sweeney is old, he's no good. He has one foot in the grave,
21 and the other one on a banana peel."

22 A second situation here. I remember sitting in a
23 staff meeting with Clarence Thomas and the majority white
24 staff there, and Clarence and several of the legal staffers
25 had gone to Mississippi for some type of meeting there. And

1 one of the staff members were saying they felt pretty
2 intimidated in Mississippi because they were with an
3 interracial group, and I remember Clarence sitting there and
4 rearing back in his chair with a cigar in his mouth and
5 saying, "I have no problem with Mississippi. You know why I
6 like Mississippi, because they still sell those little
7 Pickaninnies dolls down there. And I bought me a few of them,
8 too."

9 Okay? There was another occasion that I remember
10 when Clarence was talking to Jeff -- his last name was Funder
11 or something, Funderburk or something like that and he was
12 general counsel at the time. And Jeff was complaining about
13 not being able to get money for something. I don't remember
14 what that something was, mortgage or whatever. And I
15 remember Clarence saying to Jeff, "Well, you know, why you
16 can't get any money, because you're not black enough. Now,
17 if you grew a Dashiki, and if you grew an Afro and put on a
18 Dashiki, you would get all the Government money you want."

19 I remember Clarence telling me that one of the
20 people that Clarence wanted me to fire he wanted me to fire
21 him because he said this man was "a sycophant". He wanted me
22 to fire this other person because he said, "This man was a
23 dufus."

24 You know, I am of the opinion that Clarence is, you
25 know, not a very nice person. I was of that opinion before I

1 left EEOC and even, I can assure you that even if I had left
2 there under better circumstances, if he had thrown me the
3 biggest party in the world, I would still be of the opinion
4 that Clarence Thomas should not sit on the Supreme Court.

5 Q So what about his political philosophy? Does that
6 weigh into your decision that you don't think he should be on
7 the Court?

8 A Because of his political philosophies?

9 Q Right.

10 A No, his political philosophies are his own. He has
11 a right to whatever opinions he wants, I mean, he holds on
12 various issues. I am talking about character, pure and
13 simple.

14 Q Well, let me ask you -- I assume you are aware that
15 the committee had a lot of hearings. We heard from a lot of
16 witnesses.

17 A Yes.

18 Q I think we went for about eight days and most of
19 them were covered on TV. Can you tell us why you chose to
20 wait until now to come forward?

21 A Well, I think a more appropriate explanation of
22 what is going on here is I'm answering questions that are
23 just now being asked. But I must say that I was perfectly
24 willing to keep my opinions to myself, except, of course,
25 when asked about the Clarence nomination. I did not feel

1 that it was a good thing, until I saw Anita Hill on television
2 Monday night and my conscience started bothering me because I
3 knew I felt from my experience with Clarence Thomas that he
4 was quite capable of doing what she said. And it became a
5 very moral struggle with me at that point.

6 I was struggling with trying to determine, trying
7 to decide whether to say something, when I got a call from
8 the Senate Judiciary Committee and that question became no
9 longer a question.

10 Q All right, now you say that you got a call from the
11 committee, when you decided you were going to come forward,
12 did you call somebody or did somebody first call you?

13 A Somebody first called me.

14 Q Can you tell us who that was?

15 A It was Dugas Mark Schwartz.

16 Q And so he first called you?

17 A Yes.

18 Q Do you have any idea as to how he got your name?

19 A He said that he had gotten information that I
20 worked for Clarence Thomas. He knew of a column that I had
21 written that was not going to be published detailing my
22 opinion of this, of Hill's allegations.

23 Q I am sorry, your opinion of what?

24 A Oh Hill's allegations.

25 Q I see, could you make that available to us?

1 A No.

2 Q Can you give us some general description of what
3 you said?

4 A No, I'd rather not.

5 Because the column was not written in, with the
6 intent of publishing it. It was written in the context of a
7 discussion that I was having with my, with my supervising
8 editor about becoming a columnist.

9 Q Okay, so the first contact you had was when
10 somebody from the committee called you as opposed to you
11 calling the committee?

12 A That's correct.

13 Q Has anybody from the committee -- and I am not
14 talking about just from Senator Biden's staff -- but has any
15 staff member, from any member in Washington, have they called
16 you about this?

17 A No, they have not.

18 Q Can you just give us some indication as to how many
19 conversations, how many times you have talked to congressional
20 staff? And I presume you have just talked to Mr. Schwartz,
21 you said?

22 A Two or three times.

23 Q Okay.

24 MS. HOGAN: I might state, for the record, that
25 after -- Ms. Wright, correct me if I misstate anything --

1 after you spoke to Mark Schwartz, I and Mark Schwartz called
2 you back to set up today's telephone call. So I did speak
3 with you last night about the procedures for today.

4 MS. WRIGHT: The answer may be yes, there was
5 another woman involved and I am sorry to get into that issue,
6 but I remember only Mark Schwartz name.

7 MS. HOGAN: I can state that it was me, but I just
8 wanted to be clear that another conversation occurred at
9 which I was a part.

10 MS. WRIGHT: Okay, thank you, yes.

11 BY MR. WOOTEN:

12 Q Okay, when did you have the first contact with the
13 committee, with Mr. Schwartz?

14 A Yesterday.

15 Q Okay.

16 A At probably about maybe 5 o'clock or something like
17 that, I guess, I'm not really sure.

18 Q Okay, has anybody else -- and obviously it wouldn't
19 be any staff people -- has anybody else called and urged you
20 to come forward, or is this something did of your own
21 volition?

22 A People who know me who know that I know Clarence
23 Thomas have suggested and urged me to make a statement since
24 the day that Clarence Thomas was nominated, or at least since
25 the day the nomination became public.

1 MR. WOOTEN: Give me just one second, I think we
2 are pretty close to wrapping up here.

3 [Pause.]

4 BY MR. WOOTEN:

5 Q When you decided to come forward and people had
6 talked to you about coming forward, did you choose to come
7 forward because of the statements that Judge Thomas made to
8 you about dates, and the fact that he came to your house, or
9 did you come forward because of his character, that you just
10 didn't think he was somebody who should be on the Court?

11 MS. HOGAN: Excuse me, I just want to clarify that
12 I am not misunderstanding something. My understanding, Ms.
13 Wright, is that you did not come forward, that you were
14 contacted by Mark Schwartz of the committee?

15 MS. WRIGHT: Actually I was just about to correct
16 that, myself. I am sorry, Terry, but I cannot answer, I
17 cannot answer the questions if you are going to insist that I
18 decided to come forward. Obviously I did not come forward
19 with anything. I am just answering questions that are just
20 being asked of me.

21 BY MR. WOOTEN:

22 Q Let me see maybe I can rephrase. You said that
23 other people had suggested that you come forward. I guess my
24 question is, is the thrust of your concerns about Judge
25 Thomas, is it the comments that he made to you, or is it just

1 your general belief that he should not be on the Court?

2 A The thrust of my concerns at this point was to not
3 watch a woman, who I believed in my gut to be telling the
4 truth about a man who I believe to be totally capable of
5 doing what she said he did, the thrust of my concern was not
6 to watch her become victimized, when I knew of similar
7 situations that I had had with Mr. Thomas.

8 Q I think we are very close, just maybe one or two
9 questions, but we are very close to being finished.

10 A Let me just go on and clarify one other point I
11 think you are getting to here, as far as whether I, at any
12 point, felt the need to rush out and try and stop Clarence
13 Thomas' nomination to the Supreme Court. The obvious answer
14 to that is, no.

15 Q All right.

16 Others have given me some questions, and I want to
17 give everybody their chance to have their say through me, I
18 suppose.

19 Let me ask you, do you need a break?

20 A No, I am fine, go ahead.

21 Q Let me ask you one other question, did you and
22 Judge Thomas, I presume you all never had dated, or never did
23 date, or never go to dinner or anything like that?

24 A That is correct.

25 Q Okay. Now, can you tell us maybe who was your

1 closest friend at the EEOC during the year or so that you
2 were there?

3 A I could but I would rather not mention that
4 person's name without checking with that person to see how
5 they felt about their name being mentioned.

6 Q Well, let me ask you this, would you consider one
7 particular person your closest friend there?

8 A Yes.

9 Q And did you ever discuss the concerns you had, the
10 annoyances you had with Judge Thomas with that friend?

11 A Yes.

12 Q You did? All right. Well, if you would, I think
13 it may be helpful if you would check with that friend to see
14 if he or she is willing to come forward.

15 A Okay, I will be glad to do that.

16 Q Okay.

17 A But you keep using the term, come forward. I can
18 pretty much assure you that this person is not going to come
19 forward or want to be very involved in this at all.

20 Q I understand that. Well, I think -- and this is not
21 to encourage you to do one thing or another, you are certainly
22 free to do anything you want -- but that is something that, of
23 course, we are asking, because it would substantiate and
24 support what you have said, you see?

25 A I understand. I really do, and I understand your

1 responsibility to substantiate what I have said. And all I
2 can do is tell you what I know and what my experience has
3 been and you have to make your own judgments as to the
4 voracity of those statements. You know, I have no problem
5 talking to other people who could corroborate what I am
6 saying but, surely you understand that this is not at all a
7 pleasant situation to be in, and it is not something that
8 even I take lightly, even though I think I have got the guts
9 of a bull. But I don't necessarily relish the kind of fall
10 out that comes from speaking up in this type of a situation.

11 And I am not going to encourage anybody to do what
12 I have done.

13 Q It is just a question of if they would mind
14 committee staff contacting them to discuss what they may or
15 may not know, but let me ask you just a couple of other
16 questions.

17 Did you ever have evaluations at the EEOC prior to
18 that time that you were fired by Judge Thomas?

19 A You say up to the time?

20 Q Or prior to the time.

21 A Yes, yes, I did.

22 Q And who evaluated you at that time?

23 A Clarence Thomas did.

24 Q And can you just tell us the gist of those evalua-
25 tions, if you feel comfortable with that?

1 A I only -- I remember only one evaluation and it was
2 sort of a middle-line kind of evaluation. I wasn't satisfied
3 with it. Obviously, I thought I was doing a pretty good job
4 and I deserved a better evaluation, but it was one of those,
5 you know -- I don't even remember what the evaluation form was
6 like. I just remember it was sort of, you know -- if it was
7 a scale of, you know, maybe a scale of A to F, it was a C.

8 Q All right, and you only have one evaluation that
9 you can recall at this time? That's not a trick question;
10 I'm just asking you, recalling the year that you were there.

11 A That's the only one that I remember, yes.

12 Q Okay.

13 A There could have been one that was great, but I
14 don't remember that one.

15 Q Okay. All right, if you just give us one or two
16 minutes, maybe we're closing to wrapping up. I don't know,
17 but other people are -- I want to be sure that everybody has
18 a chance.

19 MS. HOGAN: I have just three or four questions to
20 follow up with. Terry, do you want me to go ahead?

21 MR. WOOTEN: Yes, why don't you go ahead.

22 BY MS. HOGAN:

23 Q Very quickly, Ms. Wright, because I know we've kept
24 you a long time, and I appreciate your speaking with us, you
25 were discussing before the fact that Clarence Thomas had

1 asked you to fire some of the career federal employees on
2 your staff.

3 It's my understanding that you, even with, you
4 know, authority over your staff, would have needed cause to
5 fire a career employee. Is that your understanding?

6 A Oh, yes, that's definitely my understanding.

7 Q And that's not the case with a political appointee,
8 is that correct?

9 A No, that is not the case at all. I mean, surely,
10 you guys know that that body is exempt from fair labor
11 standards.

12 Q And you were a political appointee at the EEOC, is
13 that correct?

14 A That is correct.

15 Q Okay, just a couple of more questions. You've
16 stated that the type of comments that Clarence Thomas made to
17 you that we've been discussing today were made on numerous
18 occasions. Can you give us any sense of what the rate of
19 these type of comments were? Did they occur once a month,
20 did they occur once a week? You know, can you give us any
21 general sense of that?

22 A Well, let's see, if I had to put it in a context of
23 how many times I would see him and he may make a comment, I'd
24 say probably it would be one out of four or one of out five
25 encounters with him, you know, he may make some statement.

1 Q Okay, and these were statements specifically about
2 you?

3 A Well, specifically about me and, like, you know,
4 when are you going to date me, that kind of a thing.

5 Q Exactly, okay. Did he also make, then, statements
6 about other women to you with any kind of regularity?

7 A No, not of that nature, if that's what you're
8 asking. I mean, we may have discussed other women in the
9 context of the way they were performing their jobs or
10 something.

11 Q Well, I guess what I'm asking is, earlier you had
12 told us that he did, on occasion, make statements about other
13 women's anatomy in front of you, and I guess I'm asking was
14 that an isolated incident that you described for us or did
15 that also occur with some frequency.

16 A Oh, that's not something that I would say was
17 frequent. Those are just what I remember as a couple of
18 situations when that happened.

19 Q Okay, thanks. Also, just briefly, we discussed the
20 comment that Judge Thomas made to you when you were at the
21 EEOC seminar out of town when he asked about your breast size
22 and complimented your dress, and I'm just wondering if you
23 recall at all even generally what you were wearing at the
24 time.

25 A No, I do not.

1 MS. HOGAN: Okay. That's all I have.

2 BY MR. WOOTEN:

3 Q Did Judge Thomas -- this is Terry again -- did Judge
4 Thomas ever say that he could ask you out of the EEOC because
5 of the professional relationship he intended to have with his
6 employees there?

7 A Did ever say that he couldn't ask me out?

8 Q Yes.

9 A No, he never said anything like that.

10 Q Let me ask you, do you know a Kate Simperand?

11 A Kate Simerade?

12 Q Simperade, Simperande?

13 A Yes, I do.

14 Q And have you ever charged her with any kind of
15 racism before or --

16 A Yes, I did. When I left the AID, I wrote her a
17 letter of recommendation saying that I felt she -- I'm para-
18 phrasing it, but I felt that she was quite unfair and racist
19 and insecure and lots of other things.

20 Q Can you tell us what led to you writing that letter?

21 A I really don't think that's relevant. I mean, can
22 you tell me why you want me to discuss my relationship with
23 Kate Simerade?

24 Q Well, we would be interested if you had made
25 allegations against other people.

1 MS. HOGAN: Is this -- excuse me for a minute. Why
2 don't we go off the record for a minute, if you can just hold
3 on, Ms. Wright.

4 MS. WRIGHT: Okay.

5 [Discussion off the record.]

6 BY MR. WOOTEN:

7 Q Let me ask you one more question. Again, I said
8 earlier I thought we were close to the end; I think we are
9 this time.

10 A Okay.

11 Q There's been a request to ask you a question, and
12 obviously this may be something that you don't want to
13 answer, but it's up to you. It's a question of who you voted
14 for in the '80, '84 and '88 --

15 MS. HOGAN: No, no, no.

16 BY MR. WOOTEN:

17 Q Well, let me ask you, do you consider yourself a
18 Republican? You don't have to say who you voted for.

19 MS. HOGAN: You don't have to answer that question
20 either.

21 MS. WRIGHT: I am a registered Republican.

22 MS. HOGAN: I'm not your counsel, but --

23 MR. WOOTEN: Okay, all right.

24 MS. HOGAN: I'm sorry to do this to you, Ms.
85 Wright. Can you hang on for one more minute?

1 MS. WRIGHT: Sure.

2 [Discussion off the record.]

3 MS. HOGAN: Ms. Wright, this is Cynthia Hogan
4 again. Let me put you on the speaker phone. I believe we
5 have no further questions, but I just want to make sure that
6 that's the case by putting you on the record.

7 Ms. Wright?

8 MS. WRIGHT: Yes?

9 MS. HOGAN: Terry, I'm aware you have no further
10 questions?

11 MR. WOOTEN: We have no further questions, and
12 thanks.

13 MS. WRIGHT: Okay, thank you.

14 MS. HOGAN: Ms. Wright, we appreciate it very much.
15 We're sorry for taking up so much of your time.

16 MS. WRIGHT: All right.

17 MS. HOGAN: We appreciate your willingness to talk
18 with us today. Thank you.

19 MS. WRIGHT: Bye-bye.

20 MS. HOGAN: Bye-bye.

21 [Whereupon, at 12:35 p.m., the interview was
22 concluded.]

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

* * *

COMMITTEE ON THE JUDICIARY

* * *

In the Matter of:

THE NOMINATION OF JUDGE CLARENCE THOMAS
TO BE AN ASSOCIATE JUSTICE TO THE U. S.
SUPREME COURT

Telephonic Interview of ROSE JOURDAIN

Pages 1 thru 39

Washington, D.C.
October 13, 1991

MILLER REPORTING COMPANY, INC.

807 C Street, N.E.
Washington, D.C. 20002
546-8686

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

-----:
:
In the Matter of the Nomination of :
Judge Clarence Thomas to be an Associate :
Justice of the U.S. Supreme Court :
:
-----:

Sunday, October 13, 1991

Washington, D.C.

The telephonic interview of ROSE JOURDAIN, called for examination by counsel for the Senate Committee on the Judiciary in the above-entitled matter, pursuant to notice, in the offices of the Senate Committee on the Judiciary, Room SD-234, Dirksen Senate Office Building, Washington, D.C., convened at 2:150 p.m., when were present on behalf of the parties:

MARY DeOREO, Investigator, Staff of Senate Biden
MARK SCHWARTZ, Staff of Senator Biden
TRIS COPPIN, Staff of Senator Leahy
MATT PAPPAS, Staff of Senator Heflin
BARRY CALDWELL, Staff of Senator Specter
MELISSA RILEY, Staff of Senator Thurmond

P R O C E E D I N G S

1
2 MS. JOURDAIN: Hello?

3 MS. DeOREO: Hi, Rose. This is Mary DeOreo, from
4 the Senate Judiciary Committee.

5 MS. JOURDAIN: Yes.

6 MS. DeOREO: Rose, I want to tell you, before we go
7 on the record, that there are sitting in the room with me
8 representatives from the majority side, Senator Biden's
9 staff, Senator Heflin's staff, and Senator Leahy's staff, and
10 there are also representatives from the minority side.

11 I will have them each introduce themselves to you,
12 but first I want to introduce Mark Schwartz, who wants to
13 make a few things clear with you, so you understand how it is
14 we are proceeding. Mark is an attorney on Senator's Biden's
15 Judiciary Committee.

16 MR. SCHWARTZ: Rose, hi.

17 MS. JOURDAIN: Hi.

18 MR. SCHWARTZ: I just wanted to make sure you
19 understood one point, which was that if this is going to be
20 sworn testimony, which is the preference, that we have sworn
21 testimony, you have the absolute right to have an attorney
22 present, and we could not conduct such sworn testimony
23 without either your having an attorney present or your saying
24 it's okay for us to take your sworn testimony without an
25 attorney present.

1 Now, before you answer that, the alternative for
2 you is to say you do not want to have this be a sworn
3 statement, in which case we will just take your statement on
4 the record and not be sworn. That is your choice. I don't
5 know if you have an attorney present with you.

6 MS. JOURDAIN: No, I don't. Hold on one minute.

7 [Pause.]

8 MR. SCHWARTZ: Are we on the record currently?

9 MS. DeOREO: Right now we are.

10 MR. SCHWARTZ: Okay. We are now on the record, so
11 we will start the interview when the court reporter, at the
12 appropriate time, can swear you in.

13 Whereupon,

14 ROSE L. JOURDAIN

15 was called for examination and was examined and testified, as
16 follows:

17 BY MS. DeOREO:

18 Q Ms. Jordan, this is Mary DeOreo.

19 A Ms. Jourdain.

20 Q Thank you. In fact, the first question is, would
21 you please give us the proper pronunciation and spelling of
22 your full name?

23 A Rose L. Jourdain, J-o-r-d-a-i-n.

24

25

1
2
3 MS. DeOREO: Thank you. Ms. Jourdain, we are going
4 to go off the record for a moment. I am going to put you on
5 hold.

6 [Discussion off the record.]

7 MS. DeOREO: Back on the record.

8 BY MS. DeOREO:

9 Q Ms. Jourdain?

10 A Yes.

11 Q It's Mary again. I just want to clarify one point.
12 Do you understand that you are sworn in?

13 A Yes.

14 Q And are you comfortable giving us your testimony,
15 having been sworn in?

16 A I am quite comfortable. The only thing I want to
17 ask you is that my address and phone number will not be made
18 public, will they?

19 Q None of this will be made public, Ms. Jourdain.

20 A Okay.

21 Q Thank you. All right. Because I understand that
22 this interview is taking place while you are at the Washington
23 Hospital Center--

24 A Yes.

25 Q --so I am wondering--we are going to try to stay to

1 the point and not take too long. I understand that you are
2 not physically all that comfortable.

3 A That's true.

4 Q Thank you. Could you please give me some general
5 background information about yourself, just education and
6 some of the jobs that you have had, bringing us up to EEOC?

7 A All right. I am a graduate of Lake Forest College,
8 I did graduate work at Northwestern University, I have taught
9 school, I have had many, many different jobs, largely writing
10 jobs. I have written a novel, I have written a television
11 play, you know, produced a novel, produced a television play,
12 I have written a textbook, and that's about it in a capsule.

13 Q And let me ask you, during all of this experience,
14 can you give me some of your more recent employers that you
15 had prior to coming to the EEOC?

16 A I was teaching school and then I came to Washington
17 and--

18 Q Was that a public.

19 A --I worked for the Agency for International
20 Development, but I went to the EEOC and then I went to the
21 NEA--

22 Q Thank you. I would like to now ask you--

23 A --the National Education Association, not the
24 National Endowment for the Arts..

25 Q Thank you, and I appreciate the clarification.

1 Also, I can hear that you are speaking to someone in the
2 room. Who is in the room with you?

3 A My daughter.

4 Q And what is her name, please?

5 A Jackie.

6 Q And her last name?

7 A Hayes.

8 Q Thank you. When were you employed at the EEOC?

9 A Now, I think, I believe it was 1980 -- I believe it
10 was from November '83 to March '85, although -- I think those
11 are the correct dates.

12 Q That's fine, and I understand, with the interview
13 coming at short notice, you haven't had a lot of time to go
14 back and think about it.

15 A I have not.

16 Q What was your position at the EEOC?

17 A I was hired as a speech-writer for the Chairman
18 Clarence Thomas.

19 Q And at that time, did you know Anita Hill?

20 A No, I never met her.

21 Q Did you know Judge Thomas professionally?

22 A I had never met the man until I walked into his
23 office for the job interview.

24 Q During the course of your working as a speech-
25 writer for Judge Thomas, did you meet with him personally?

1 A Yes.

2 Q On a daily basis?

3 A Sometimes on a daily basis, sometimes on--it was an
4 as-need-to-meet basis, really.

5 Q But you did have contact with him personally?

6 A Yes, and frequently.

7 Q Did you experience any sort of harassment from
8 Judge Thomas?

9 A I personally, none.

10 Q Did you observe this behavior, alleged behavior
11 from Judge Thomas towards anyone else?

12 A ..Well, he and I were generally in meetings discussing
13 speeches or in full staff meetings, so there would have been
14 little opportunity for that.

15 Q Thank you. Do you know Angela Wright?

16 A Yes, I do.

17 Q In what capacity?

18 A Angela Wright was head of the public relations
19 department at the EEOC. I met her first at AID, and then she
20 was also at EEOC. We became friends as a result of our
21 working together.

22 Q As you were working together at both places?

23 A Yes.

24 Q Were you friends at AID?

25 A I did not know her until I became, you know, we

1 became co-workers.

2 Q At AID?

3 A Yes.

4 Q All right. So, did you leave AID at about the same
5 time and go over to EEOC?

6 A I went first.

7 Q Okay. Just for our own background information,
8 were you fired from your job at AID?

9 A No, I left.

10 Q On your own volition?

11 A Yes.

12 Q Did Ms. Wright ever discuss with you any concerns
13 or problems she was having in her encounters with Judge
14 Thomas?

15 A Yes, she did.

16 Q Can you give me some specific details as to what
17 Ms. Wright told you?

18 A When Ms. Wright first came in, she was very
19 enthusiastic about her job. She was very happy to be there.
20 As time went on, she became increasingly -- she confided to
21 me increasingly that she was a little uneasy and she grew
22 more uneasy with the Chairman, because of comments she told
23 me that he was making concerning her figure, her body, her
24 breasts, her legs, how she looked in certain suits and
25 dresses.

1 Q Did she recount any specific experience?

2 A Well, for example, she told me he had come to her
3 home one night unannounced, and she told everyone--for
4 example, one time she came into my office in tears, said she
5 had bought a new suit that I thought was quite attractive, it
6 was just a regular suit for a person to wear to work, a woman
7 to wear to work, and he had had evidently quite a bit of
8 comment to make about it and how sexy she looked in it and
9 that kind of thing, and it unnerved her a great deal.

10 She became increasingly nervous about being in his
11 presence along. As time went on, he asked her to have a
12 meeting with him that was going to be a one-on-one meeting,
13 which would not be unusual, you know, with the head of the
14 public relations department, and these were scheduled in the
15 evening, at the end of the workday, and she was increasingly
16 uneasy about being there, and would say, why don't you wait
17 for me and, you know, I really don't want to be there that
18 long or alone with him, you know, not inviting me into the
19 meeting, but just asking me to remain in the building until
20 it was time for her--until she would be able to leave.

21 Q Were these conversations, Ms. Jourdain, between you
22 and Ms. Wright, were there only the two of you, or were there
23 occasions when someone else would be part of this specific
24 type of conversation?

25 A I think most of the time that she spoke to me, I

1 know most of the time she spoke to me alone. I really don't
2 know that there weren't times that there were other people in
3 the room, but there was probably only one, because she was
4 not going to--she was not trying to bad-mouth the Chairman.

5 Q Who would that other person--if there was someone
6 else--

7 A Hold on a minute.

8 [Pause.]

9 My daughter said she was in the room once when we were
10 discussing it.

11 Q And your daughter, again, for the record, is
12 Jackelyn Hayes--

13 A Right.

14 Q --and she knows Ms. Wright?

15 A Yes, she does.

16 Q But not because she is an employee of EEOC?

17 A But not because she is an employee, because she is
18 my daughter.

19 Q Thank you. Who did you talk to about Angela
20 Wright's concerns concerning the Chairman's behavior?

21 A I don't remember speaking to anyone about it. I
22 may have spoken--I probably did speak to my daughter. I may
23 have spoken to--I don't know that I spoke to anybody--I don't
24 know that I ever spoke to anybody specifically about his
25 behavior concerning her.

1 Q It would be pretty good gossip, there would be no
2 one else in the--

3 A It would be gossip, but I have never been a person
4 who was much into gossip.

5 Q All right. So, there was no occasion when someone
6 was talking about the Chairman, that you can recall saying,
7 "Oh, by the way"--

8 A I wasn't very--I mean I was not interested in
9 denigrating the Chairman.

10 Q All right.

11 A I was not out to say, oh, he's a dog or this kind
12 of thing. I was not interested in denigrating him at all.

13 MS. DEOREO: I am going to go off the record and
14 put you on hold for a moment.

15 [Discussion off the record.]

16 MS. DeOREO: Back on the record.

17 Ms. Jourdain?

18 MS. JOURDAIN: Yes?

19 MS. DeOREO: Mark Schwartz, who is on Senator
20 Biden's staff, has got some questions he would like to ask
21 you.

22 Ms. JOURDAIN: Yes.

23 BY MR. SCHWARTZ:

24 Q Ms. Jourdain, do you know the dates that Angela
25 Wright worked or was employed by the EEOC?

1 A I would not--I would believe it was shortly before
2 December or end of November of--if I went there in November,
3 I believe she came there in December. If I went there in
4 October, she came there in December. I went very shortly
5 before she did.

6 Q Could you give us an approximation as far as the
7 year?

8 A [No response.]

9 Q Let me go back to my notes and repeat--

10 A I have a feeling it was '83 to '85. I am pretty
11 sure of that. I'm pretty sure it was--

12 Q Just so that you understand, I don't want to be
13 confusing, I understand you have already said that you were
14 there approximately from November of 1983 to March of 1985.
15 I just wanted to know what part of your tenure at the EEOC
16 that Angela Wright was there, also.

17 A I'm not absolutely certain of these dates, but I
18 think I'm correct, but I must say that I am not positive I'm
19 correct on this issue. She would have been there from the
20 November following my coming until the time I left.

21 Q So, approximately the later part of 1984 through
22 March of '85?

23 A No, '83, I said '83.

24 Q Did you stay at the EEOC after Angela Wright left?

25 A I did not. We left at the same time.

1 Q Okay. Are you aware of the circumstances under
2 which Angela Wright left the EEOC?

3 A No, I'm not, actually. She told me she got a
4 letter from the Chairman saying that her services were no
5 longer required. I don't know that he gave her any reason.
6 I believe that she told me--and here again, I have not
7 committed it to memory, but it was a very curt, you know, a
8 two-paragraph or a three-paragraph letter. I don't remember
9 it. I had no reason to want to remember it.

10 Q You stated a little bit earlier that you were also
11 fired from the EEOC.

12 A I was dismissed the same day as Angela, and Angela
13 was like

14 Q Ms. Jourdain--

15 Q --when he wrote a letter of recommendation,
16 withdrawing that letter of recommendation for me for another
17 job, I had no problems with that, because I knew I had done a
18 decent job for him, but I did ask him and he wrote a very
19 strong letter, in fact, that the reasons for letting me go
20 was that he had chosen to write his own speeches and, to the
21 best of my knowledge, he never replaced me and did from then
22 on write his own speeches, probably--I don't know this for
23 sure--using somebody in part-time work, but I don't believe
24 he ever fired another full-time--

25 MR. SCHWARTZ: I just want to put you on hold for

1 one second.

2 Off the record.

3 [Discussion off the record.]

4 MR. SCHWARTZ: Back on the record.

5 BY MR. SCHWARTZ:

6 Q Ms. Jourdain?

7 A Yes.

8 Q We are back on the record. I just wanted to
9 clarify one thing and Mary DeOreo is going to help me clarify
10 it. I asked you a question, my last question, where I used
11 the word, fired, and I just wanted to back-track for a second
12 because you had earlier stated that the circumstances under
13 which you left the AID were what?

14 A That I quit.

15 Q Okay, that you had quit. And the circumstances
16 under which you left the EEOC were?

17 A I was dismissed.

18 Q Okay. I just wanted to be clear that my question
19 went to the circumstances under which you left the EEOC?

20 A Mm-hmm.

21 Q Okay, fine, just so there is no confusion on the
22 record.

23 A Now, the point that I am trying to make in my
24 statement is that as time went on Angela Wright became
25 increasingly upset and increasingly unnerved by what appeared

1 to be more aggressive behavior on the Chairman's part. She
2 came to me--I am older than she--and she came to me often
3 times to ask advice what should she do? I mean we are
4 talking about a time when sexual harassment was not a thing
5 that women were talking about, and how to handle this. You
6 know, what do you say? You know, I know that she had made it
7 quite clear to him that she was not interested in developing
8 a relationship with him outside of the work place.

9 BY MR. PAPPAS:

10 Q Ms. Jourdain, I am Matt Pappas and I work with
11 Senator Heflin. I was just wondering about Angela Wright
12 being dismissed from the EEOC. Did she ever give you any
13 indication that she was bitter toward the agency or toward
14 Clarence Thomas?

15 A No. I think that, I know that I was, I am certain
16 that both of us were dismissed for a very similar reason and
17 that was that we were increasingly ideologically opposed to
18 the Chairman's position. I know I was and I believe that
19 that had a great deal to do with Angela's dismissal.

20 Q But she never indicated to you that she was--

21 A No. She never said anything about being bitter.
22 In fact, I think she rather welcomed it because she was
23 thinking about going back to school and doing some other
24 things with her life anyway.

25 Q Okay.

1 A She was saving her money very carefully for a
2 return to school so I don't think it was a major interruption
3 of a career plan.

4 Q And she never said anything to you that would
5 insinuate that she might have been let go because she would
6 not enter into a relationship with Clarence Thomas?

7 A No. She never said that that was the reason. I
8 know that she was upset and more and more upset, as I said by
9 what she told me on--you know, she kept me pretty much
10 informed on this because it was making her very nervous, on a
11 more aggressive--not, you know, I am not speaking of a week-
12 to-week more aggressive--but a seemingly more aggressive
13 posture that--I mean her comments on her body and things. I
14 am not saying that each week it got worse, but they were
15 coming more frequently because she was telling me this more
16 frequently.

17 And her thing was, gee, I want to go back to
18 school. I want to get out of this, you know, I want to do
19 something else with my life.

20 Q So at the time she was dismissed from EEOC, would
21 you say that that was when it was at its worst? And what I
22 mean by that, the advances that she alleged that Clarence
23 Thomas made toward her?

24 A I can't say that for a--I can say that you are
25 talking about a cumulative effect, you know. I am not saying

1 that it was worse that week than it had been two months
2 before, but the cumulative effect, I think was there.

3 MR. PAPPAS: All right, thank you.

4 BY MR. COFFIN:

5 Q Hello, Rose, this Tris Coffin from Senator Leahy's
6 office.

7 A Yes?

8 Q I was wondering if you could tell me a little bit
9 more about the circumstances of Angela Wright's dismissal
10 from EEOC. You said it had something to do with an
11 increasingly--

12 A No. I am saying I don't know that that was it. I
13 am saying I know that these were circumstances that were also
14 happening at the same time. I don't know that these were the
15 circumstances of the dismissal.

16 Q Did you ever hear a comment that Ms. Wright made
17 that might have had something to do with her dismissal?

18 A Comment?

19 Q A particular comment?

20 A No. No, I don't know that.

21 Q Did you ever of Ms. Wright said of another EEOC
22 employee or called another EEOC employee a faggot?

23 A No, I did not hear that. I heard a lot, but I
24 didn't hear that one.

25 Q Okay.

1 A But nor do I want to give you the impression, under
2 any circumstances, that I felt that, as I said before, that
3 we have two situations here. We have a woman who is being
4 increasingly, made increasingly, who is being increasingly
5 unnerved, but I am not saying that her lack of responsiveness
6 is the reason for her dismissal. I don't want that to be
7 read into the record. I think there are two separate things
8 going on there.

9 Q I understand you.

10 Can you give us a little more detail about these
11 conversations between you and Ms. Wright where you discussed,
12 where she would tell you about the increasingly aggressive
13 behavior?

14 A Well, you know, for example, I was in my office,
15 and she would come in and she would close the door. And you
16 know, once she was, you know, once she was crying, and you
17 know--

18 Q Okay, slow down.

19 A She is a very strong woman. She is not the kind of
20 female that cries, you know what I mean?

21 Q Yes. I see, if you could just recall the first
22 time she came into your office or the first time she told you
23 these things. Tell us about that conversation.

24 A I don't remember the first--you know, we are
25 talking about events that happened a long time ago. I can

1 give you snapshot impressions but I can't tell you which
2 snapshot came first.

3 Q Okay. So do you have a conversation in your mind,
4 you are sitting in one chair and she is sitting in the other?

5 A I am sitting in the office, she walks in, slams the
6 door and says, do you know what he said to me, do you know
7 what he said to me? And I said, "No, what did he say to you?
8 you know, because it has gone on before. And I think at this
9 point it had something to do with her legs, you know.

10 Q And what would he say?

11 A I think it had something to do with, ooh, you have
12 very sexy legs, or something like you have hair on your legs
13 and it turns me on, or something like that. I thought, it
14 was nutty, you know what I mean? It was that, but it was
15 very unnerving to a young woman who is sitting there hearing
16 this, you know.

17 Then there was a conversation about her bra size,
18 and there was a conversation about a dress that she wore, I
19 don't know why that was a dress that was to be commented on.
20 It wasn't a skin-tight knit-type dress. There was another--
21 you know, it was the constant kind of do you know what he did?

22 Sometimes she laughed about it, you know. Sometimes
23 it got on her last nerve. You know, sometimes it had
24 happened so much that it was like you won't believe what
25 this, what he said now, you know?

1 Q Yes, did you travel with Angela to--

2 A No, I never did.

3 Q You never did.

4 A Yes, I did once.

5 Q Where?

6 A We went to, we went to New York, the Chairman,
7 Angela and I went to New York to set up something. I don't
8 even remember what it was. It was the only time we all went
9 anywhere.

10 Q Okay. You mentioned earlier on that Ms. Wright
11 said something to you about the Chairman coming by her house.
12 Could you tell me about that, please.

13 A Well, she called me up and she told me that he had
14 had the nerve to show up in her house and come in and--

15 Q Was this--

16 A --sat down and made himself at home, and you know,
17 what do you do about this kind of thing, you know?

18 Q Was this the next day?

19 A No, when that she told me?

20 Q Yes.

21 A I don't know whether she told me the next day or
22 she called me up that evening, that same evening, and said,
23 you won't believe what just happened.

24 Q Can you tell me step-by-step?

25 A No, I cannot tell you step-by-step on anything that

1 happened six years ago.

2 I mean I cannot swear to any step-by-step, anything

3 MR. COFFIN: Thanks.

4 BY MS. DEOREO:

5 Q I want to ask before go further, Ms. Jourdain, all
6 of us are sensitive to the fact that these are uncomfortable
7 days for you, physically uncomfortable days. How are you
8 doing?

9 A It's, it's hard sitting here talking.

10 Q Can I ask, can you give us a few more moments? I
11 very much would like representatives on the minority staff to
12 have an opportunity to ask you some questions.

13 A All right.

14 Q Would you like us to take a little break and call
15 you back?

16 A I would rather get through it.

17 Q Thank you. They are going to introduce themselves
18 to you.

19 A All right.

20 MS. RILEY: Ms. Jourdain, I am Melissa Riley and I
21 am with Senator Strom Thurmond's office and--

22 MR. CALDWELL Ms. Jourdain, my name is Barry
23 Caldwell and I am counsel to Senator Specter.

24 MS. JOURDAIN: All right.

25 BY MS. RILEY:

1 Q Can you go back to when you worked with Ms. Wright,
2 at AID?

3 A Ma-hum.

4 Q Can you tell us, do you know the reason why Ms.
5 Wright left AID?

6 A Yes. She was offered a much better position.

7 I know that she was not happy there and she was
8 offered a better position and she left. I believe that is
9 the reason.

10 She was not happy and she had an opportunity to
11 advance herself. She thought she did.

12 Q Okay. Could you tell us when was the last time you
13 spoke with Ms. Wright?

14 A You mean, today?

15 Q Yes, Ma'am, the last time you had a conversation
16 with her?

17 A I think it's been about--I can't really. I mean
18 it's been gee, I haven't spoken with her in several days, I
19 can tell you that. She knew that I was ill. And so she
20 called me, she has called me since I have been in the
21 hospital to see how I was doing.

22 Q Okay. Could you give me your best guess?

23 A Un-unh. In the hospital days start to run together.

24 Q I am sorry, I did not--

25 A I think it has been a week. Maybe, maybe 10, 11

1 days, something.

2 Q Okay. Going back to the episode that you mentioned
3 that Clarence Thomas came to Angela Wright's house, can you
4 give us, at all any kind of time frame during the period
5 that you specified that you worked at EEOC with her, during
6 the year, do you remember any season?

7 A I have a feeling that my recollection of her
8 telling me this is that it was very cold out, and that, you
9 know, it was not the type or time of year when people are out
10 for a walk, you know, and just drop by somebody's house.

11 So I think it was cold, it was kind of in winter.
12 It might have been late fall.

13 Q Okay, and back to the last time that you spoke to
14 her in a week or maybe 10 or 11 days ago, did you talk about
15 these episodes with Ms. Wright?

16 A About which episodes?

17 Q The episode of the house--

18 A No, I was talking about my illness.

19 Q Okay. So you never spoke to Ms. Wright about the
20 episode with Clarence Thomas dropping by her house
21 unannounced?

22 A I haven't spoken to her about that in a long time.
23 In fact, that is why it is not really clear to me.

24 Q Okay.

25 A I mean the details of it are not clear.

1 Q But the episode, you didn't speak to her about the
2 episode?

3 A I spoke many, a long time ago, but not, not not, we
4 were talking about my, my being in the hospital.

5 Q That's fine.

6 Did you know Ms. Wright before you worked at AID?

7 A No.

8 Q Okay. How close a friend were you with Ms. Wright,
9 would you socialize with her outside of work?

10 A Yes, we did. As time went on we became close
11 friends. Not at first we weren't close friends, but we became
12 closer because we worked together and we had projects that
13 overlapped and we became friends. In other words, the public
14 affairs office and the speech-writer's office, you know, has
15 things that they had to discuss. I mean, you know, those two
16 offices or those two people needed to confer and we found
17 that we had a lot of things we enjoyed in common, our
18 opinions in common and became friends.

19 Q And your friendship continued after Ms. Wright went
20 to EEOC and you joined her there or did--

21 A No, I was there first.

22 Q Okay, I am sorry.

23 A And she came over.

24 Q And your friendship continued at EEOC?

25 A Yes, it did.

1 Q Okay.

2 A In fact, it grew mainly because since that is when
3 that relationship was there, because that was when she headed
4 the public affairs office, and I was the Chairman's speech
5 writer.

6 Q And since you have, since you left EEOC and Ms.
7 Wright left the EEOC, how much contact have you had with her
8 over these years? Could you just take a guess?

9 A We have kept in contact with each other. You know,
10 we were, you know, it's like anybody else that you know and
11 you like and you hope to remain friends through life or at
12 least keep up with them and see how they are doing and coming
13 along. We have certainly kept up with each other. I think
14 she is a friend of mine, yes.

15 Q Would you, say, call her on holidays or her
16 birthday or would you just--

17 A I don't call anybody except my family on holidays
18 and my birthday.

19 Q Okay. So what would you say, would it be infrequent
20 contact since you left the EEOC?

21 A I think we talked, there were times that I called
22 her about things that I was doing that I thought she might be
23 interested in knowing about or give me some clues about how I
24 might, you know, make some improvements and she did the same
25 with me. She might be working on a story and call me up and

1 say, I'm working on this, do you think, you know, where else
2 do you think I might find some additional research material?
3 I was working on several projects and I said, hey, take a
4 look at this and what do you think of it? And she responded
5 to that.

6 Q Has Ms. Wright--

7 A These are episodic things, do you know what I am
8 saying?

9 Q Yes, Ma'am. Has Ms. Wright called you recently
10 working on a story about Clarence Thomas?

11 A No, un-unh. I didn't know she was.

12 Q I was just curious when you mentioned that.

13 A No, un-unh.

14 Q And you mentioned earlier that your daughter
15 acknowledged that she had some knowledge of the conversations
16 that you had with Ms. Wright about Clarence Thomas'
17 inappropriate comments to Ms. Wright, can you give us a time
18 frame about when your daughter would have known about these
19 comments?

20 A No, she heard about them about the same time they
21 were being made.

22 Q And how did she hear about them?

23 A She may have heard, she probably heard about them,
24 she did hear about them when Angela was at my house and she
25 may have been discussing it or was discussing it, you know,

1 trying to figure out what should I do about this, you know?
2 And it made a big impression on my daughter because she was
3 young.

4 Q After Ms. Wright became upset about Clarence
5 Thomas' advances towards her or his comments, I should say,
6 did you try to, what advice did you give her?

7 A As I remember the situation, I said to her, you
8 know, why don't you sit down and just discuss it with--I know
9 that she had said to him, she had made it clear to him that
10 she did not welcome these advances, and I said, just stay
11 firm with it, you know, just don't let him think you are
12 giving into it. You know, that you are becoming more, you
13 are, that there isn't any kind of possibility of any kind of
14 relationship here.

15 Q Did you, after Ms. Wright, conveyed these comments
16 to you, attempt to confirm his actions or did you try to
17 investigate these comments or go to any other women and say,
18 has he made these type of comments to you?

19 A I did not do that. I did not feel that I should
20 discuss her business or his business with other staff
21 members. I would never have said to anybody else on the
22 staff that the Chairman was saying these things, you know.

23 Q Did you consider them inappropriate?

24 A I--yes, I did consider them inappropriate and I did
25 not feel that that would help him at all in the delegation of

1 his duties to have women knowing that he was saying these
2 kinds of things, but I didn't say anything.

3 MR. SCHWARTZ: Melissa, may we go off the record?

4 MS. RILEY: We are going to put you on hold for
5 just a moment. Thank you.

6 [Discussion off the record.]

7 BY MS. RILEY:

8 Q Ms. Jourdain?

9 A Yes.

10 Q Sorry about that. We have a couple more questions.

11 I was just curious, have you ever contacted

12 Clarence Thomas for job references?

13 A Yes, I have.

14 Q And did he respond favorably?

15 A Extremely so.

16 Q And do you know if Ms. Wright ever contacted him?

17 A Yes, and he -- and I know that she was delighted

18 with the recommendation he gave her.

19 Q So she did attempt to contact him for a

20 recommendation?

21 A Yes, and he gave both of us very good

22 recommendations. In fact, you know, that being our -- we

23 needed them, you know.

24 Q A couple more questions, and then I believe one

25 more person, a couple more people, have more.

1 Did you happen to attend a retirement party for Al
2 Sweeney?

3 A Do you know, it seems to me that I did, but didn't
4 he die?

5 Q I am not sure and I would hate to say anything
6 about that. I just was curious if you attended the retirement
7 party.

8 A I can't remember whether I attended his retirement
9 party or his funeral. That sounds weird, but I think I did
10 attend a retirement party for him, yes.

11 Q It may have been at perhaps some club in Virginia?

12 A No, I have never been to a club in Virginia.

13 Q Or a hotel, maybe, in Virginia?

14 A I don't recall.

15 Q That's fine.

16 Did Ms. Wright ever talk to you about comments that
17 Clarence Thomas made to you at a retirement party?

18 A Made to me.

19 Q No, no, no, no. I'm sorry. Let me clarify that.

20 Did Ms. Wright ever speak to you about comments
21 which Clarence Thomas made to her at a retirement party?

22 A No, I don't remember her ever saying anything like
23 that.

24 Q Thank you.

25 A Any kind of comment about a retirement party.

1 Q No, let me clarify: Comments that Clarence Thomas
2 made, inappropriate comments that Clarence Thomas made to Ms.
3 Wright while attending a retirement party.

4 A No, I don't differentiate them as anything special.
5 You know what I mean?

6 MS. RILEY: Thank you, and I believe Mr. Caldwell
7 has a couple of questions for you.

8 BY MR. CALDWELL:

9 Q Hi, Ms. Jourdain. Just a couple of more questions
10 and perhaps a couple of follow-up.

11 You said you went to the EEOC just before Ms.
12 Wright.

13 A Yes.

14 Q Do you have a sense of how she found out about the
15 EEOC job?

16 A I think she told me about the job. I think she
17 knew the Chairman. I mean, I think that -- you know, they
18 were both Republicans and they had met at some Republican
19 functions. I think it was that kind of thing. You know,
20 there are not many black Republicans, and so they all knew
21 each other.

22 Q Right. You don't know if someone in particular
23 introduced her to the Chairman?

24 A I have no idea. It was not important, you know
25 what I mean? It was just something that she told me about.

1 I don't think that -- he was somebody, it was a contact that
2 she had. It was not anybody, you know.

3 Q I'm sorry. I missed that last part.

4 A He was a contact that she had. You know, in this
5 city, who are your contacts?

6 Q Right. Okay. I guess, lastly, do you have a sense
7 of why -- and I hope I don't misstate this -- why Ms. Wright
8 is coming forward? Motive is the question. Do you have a
9 sense of why she is coming forward now?

10 A Yes. Based on what I know about her, I would tend
11 to believe -- no, I don't tend to believe, I absolutely
12 believe that she heard this young black woman on the
13 television being raked over the coals, as though this
14 experience that she was having was completely impossible, and
15 you know, that a person in Clarence Thomas' position, black
16 or white, would not have done this, and this woman was
17 somehow coming from left field with some malicious agenda.

18 And having had a similar experience, I believe that
19 Angela would have felt it her bounden duty to go on record
20 saying that, and she is a very religious, very morally strong
21 person. You know, she is a person who believes very much in
22 right and wrong.

23 Q You said that you guys talked about these instances
24 of the Chairman's behavior while at the EEOC, and that you
25 remained in contact as friends. Did she discuss her --

1 A Wait a minute. I don't understand your question.

2 Q Well, here is my question: Did Ms. Wright discuss
3 with you her coming forward?

4 A No. When she called me, the last time I talked to
5 Angela Wright, she called me to see how I was doing. She
6 knew that I was sick. And if she mentioned it, it was in
7 passing and it was not something that I was particularly
8 involved in at that moment. Do you know what I mean? I was
9 in a lot of pain, and my concentration unfortunately was on
10 myself.

11 Q Okay. One last question. I understand that you
12 are friends, but if you had to step back and look at Ms.
13 Wright objectively, could you say there are any negative
14 qualities about her that stick out in your mind? For
15 instance, is she vindictive? Is she vengeful? Is she
16 something along those lines?

17 A No, I cannot say that, nothing like that. No, no.
18 No, no, no.

19 Q What about flirtatious?

20 A No, I don't think she is flirtatious. She is a
21 very life-affirming human being. She believes in -- she is
22 serious. She can have a lot of fun, but she believes that
23 life is a serious venture, that we are charged with certain
24 responsibilities, those of us who have had advantages, to
25 help other people.

1 Now if you are talking -- the only thing I can think of
2 that really, and that is not a negative, she tends to spend
3 an awful lot of time with her dog and treat it more as a
4 human being. That is the only thing that I can think of. I
5 have said to her, you know, like this dog gets as much care
6 as a lot of human beings, but that is the only thing I could
7 ever think of that I would say was negative.

8 MR. CALDWELL: Okay. Thank you. I think Ms. Riley
9 just has one or two other questions for you. Thank you very
10 much.

11 BY MS. RILEY:

12 Q Ms. Jourdain, I just wanted to go back and once
13 again ask you a couple of questions regarding the time that
14 Ms. Wright told you that Clarence Thomas came to her house
15 unannounced. Could you tell me, did she happen to say how
16 long he stayed at her house?

17 A No, I don't remember, but I think it was -- she was
18 -- no, she did not. I don't remember if she did tell me
19 that. I don't know that she told me that. I don't know that
20 she told me that, but I do know that he arrived, he made
21 himself at home, and all of this was rather presumptuous.

22 Q So you don't have a time frame as far as, did she
23 say he just stayed for 20 minutes, or did he stay for an hour
24 or two hours or --

25 A No, I don't believe she ever said that. I don't

1 believe she put it within a time frame. I think she was
2 appalled at the presumptuousness of it.

3 Q And did she ever tell you what time of the evening
4 he left, or the day or the morning or --

5 A It was not morning, and it certainly was not late
6 at night. I mean, it wasn't that he stayed there until
7 really late. I just don't remember. I don't know. I don't
8 know, but given my feeling of the affair or the incident, it
9 was probably something that he arrived around 8:30 or 9:00
10 and left around 10:30 or 11:00. I don't know.

11 MS. RILEY: Okay. I think that is all that I have.

12 BY MS. DeOREO:

13 Q Ms. Jourdain, this is Mary DeOreo again.

14 A Yes.

15 Q On the same point Melissa was asking about, that
16 same evening visit, did you have any understanding of how
17 Chairman Thomas got to Angela Wright's house? Did they live
18 within walking distance?

19 A I have no -- to the best of my knowledge, I know
20 she lived on Capitol Hill.

21 Q Fine.

22 A And to the best of my knowledge, he lived in
23 Southwest.

24 Q I am not asking you to guess. I am asking do
25 you --

1 A I don't know.

2 MS. DeOREO: Okay. That's fine.

3 I believe that the interview now is over, and Mr.
4 Schwartz has some things he wants to talk to you about, on
5 the record.

6 MR. SCHWARTZ: Ms. Jourdain, we are still on the
7 record. I wanted to go back to the original point we had
8 made at the beginning of the interview. Everyone here in the
9 room when we went off the record before has come to an
10 understanding, at least on our end, and just want to make
11 sure it squares with yours: that since you have given a sworn
12 statement, though none of us in the room would give a legal
13 opinion as to the effect of that sworn statement, you should
14 realize that the possibility would occur that if there were
15 later found to be a contradiction in some sort of legal form,
16 that could have legal consequences against you similar to
17 perjury, in some sort of untoward consequences.

18 I am not saying that would happen, but because of that I
19 wanted you to understand the implications of having sworn
20 yourself in, and if you now feel uncomfortable with that and
21 would like to take back your sworn part of it, we will just
22 treat the testimony as we have all other interviews we have
23 conducted during this proceeding, which is, it is out there
24 for the informational purposes of the members of the
25 committee. Now you should discuss that with your daughter.

1 MS. JOURDAIN: Hold on. Can you explain this to
2 her, because I have to move.

3 MR. SCHWARTZ: Okay.

4 Hi. I'm sorry, what was your name again?

5 MS. HAYES: Jacqueline Hayes.

6 MR. SCHWARTZ: Jacqueline, I'm sorry. My name is
7 Mark Schwartz, and we have in the room, I don't know if your
8 mother has told you, we have attorneys representing both
9 Senator Leahy, Senator Heflin, Senator Biden's staff, and
10 Senator Thurmond and Senator Specter's staff, along with
11 another member of Senator Biden's staff.

12 I just wanted your mother to understand that since
13 she has agreed to give sworn testimony, that if at some point
14 later there was found to be -- and I am not saying there
15 would be -- some contradiction, that the ramifications of
16 that, I could not swear to her that it might not be a
17 potential problem with perjury. And I just wanted her to
18 understand that, since she did not have an attorney present
19 with her.

20 And if she feels uncomfortable about that, we have
21 all agreed to treat this as we have all other statements, as
22 unsworn and just for informational purposes. Do you
23 understand?

24 MS. HAYES: Yes. Let me just explain that to her.
25 Hold on.

1 [Pause.]

2 MS. JOURDAIN: Hi. She explained this to me. You
3 said that many of the people you interviewed did not make it
4 a sworn statement?

5 MR. SCHWARTZ: To the best of my understanding --
6 and you can correct me if I am wrong, Melissa or Barry -- no
7 one else has given a sworn statement to us.

8 MS. JOURDAIN: If no one else has given it, then I
9 won't give one either. This is a statement but not a sworn
10 statement.

11 MR. SCHWARTZ: Okay. The reason why we had
12 requested that it be sworn is because of your current status
13 in the hospital room and the unlikelihood that you would be
14 able to testify before the committee. I just wanted you to
15 understand that.

16 MS. JOURDAIN: Yes.

17 MR. SCHWARTZ: Okay. Is there anybody on the
18 record who would like to make any more comments about this
19 subject?

20 [No response.]

21 MR. SCHWARTZ: Okay.

22 MS. JOURDAIN: So now we are clear, this is no
23 longer a sworn statement?

24 MR. SCHWARTZ: None of the parties involved in this
25 on the majority or the minority staff or the Senate will

1 treat this as a sworn statement taken under oath, so you can
2 feel comfortable with that. It will be stricken from the
3 record. Okay?

4 MS. JOURDAIN: Yes.

5 MR. SCHWARTZ: Okay, and before we go off the
6 record, anybody else? Any comments? Any questions?

7 MS. DeOREO: I want to thank you very much. We are
8 off the record now.

9 [Discussion off the record.]

10 MS. DeOREO: Back on the record.

11 Ms. Riley has one more question.

12 BY MS. RILEY:

13 Q Ms. Jourdain, I apologize. I have one more
14 question.

15 A Okay.

16 Q Could you tell us if the incident when Clarence
17 Thomas went to Angela Wright's house occurred while she
18 worked at AID with you, or --

19 A No, at EEOC. I believe it was -- oh, God. I'm
20 sure it was EEOC.

21 MS. RILEY: Okay. Thank you.

22 MR. SCHWARTZ: Okay. That's fine.

23 Since we are still on the record, I will just state
24 what your daughter said to us off the record, which was that
25 if it could be arranged at a future time, ~~that you would be~~

1 prepared to give a sworn statement.

2 MS. JOURDAIN: Yes. In other words, since nobody
3 else is giving a sworn statement, I would just as soon let it
4 go as what I have done. If it becomes extremely,
5 excruciatingly necessary and I can get it together, then I
6 will do it.

7 MR. SCHWARTZ: Okay. Thank you very much, and we
8 wish you a speedy recovery.

9 MS. JOURDAIN: Okay. Thank you.

10 MS. RILEY: We will be back in touch. Bye-bye.

11 MS. DeOREO: Bye-bye.

12 [Whereupon, at 3:08 p.m., the interview concluded.]

The CHAIRMAN. And that will, at least as far as this Committee's investigation at this moment of those two witnesses, end the matter. Now—and not in the matter in terms of judgment, in the matter in terms of witnesses.

So we are taking extensive testimony placed in the record by both majority and minority at the request of Republicans and Democrats as well as the potential witness. That is why I vitiated the subpoena, in spite of the fact I would have preferred her to be here. But, in light of the time constraints, I did not insist that that be done.

Now that means for the remainder of the night, I hope this doesn't encourage people to go longer than they otherwise would. For the remainder of the night, the only witnesses remaining are the four distinguished gentlemen before us and a panel of nine witnesses that are being produced by Judge Thomas, all women who worked in some capacity with him at, I believe EEOC. Don't hold me to that. It could be at Education as well.

Each will be by previous unanimous consent agreement limited precisely to three minutes. No more time will be allowed. And there will be 16 minutes a side to cross-examine if anybody wishes to do that.

I say that to the press and others who have been here so long trying to determine what the remainder of the witness list is.

Senator METZENBAUM. Mr. Chairman?

The CHAIRMAN. I yield to my friend from Ohio.

Senator METZENBAUM. Mr. Chairman, I certainly think we should conclude the hearing with respect to these witnesses. But I wonder whether, in view of the fact that it is now 11:30 at night, and the next nine witnesses, of those nine I think seven of them are employed by the Administration either at the EEOC or at the Labor Department or the Department of Education, and two of them, one is a former secretary to Senator Danforth and one is a former chief of staff to Clarence Thomas—I wonder, Mr. Chairman, if we couldn't stipulate that all of that testimony will be very supportive of Clarence Thomas? I don't think there is any argument about that. I don't know why there is any reason to have to hear it. And, frankly, I think in fairness to this Committee and in fairness to the candidate that it would serve just the same purpose. We know what the testimony will be.

The CHAIRMAN. I appreciate the Senator's request. And, as I hear from one of my friends from the far West and my right, not far right, a deal is a deal. They will be heard unless they choose to decide as two panels have on behalf of the witness, Ms. Hill, unless they so choose they will be heard because we have a unanimous consent agreement to do just that.

Now, with that, I apologize to my friend from Pennsylvania. I hope someone has kept some notion as to how much time—how much time does the Senator have left? He has nine minutes left. Six minutes had expired when I interrupted. And you will have time to come back, if you wish.

Senator SPECTER. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I apologize to the gentleman for the interruption.

Senator SPECTER. Mr. Stewart, after Professor Hill said to you "how great Clarence's nomination was and how much he deserved it," did you continue to have a discussion with Professor Hill?

Mr. STEWART. Correct.

Senator SPECTER. Was there any mention at all of any sexual harassment by Judge Thomas of Professor Hill?

Mr. STEWART. No mention at all, Senator.

Senator SPECTER. Or any other unfavorable conduct of Judge Thomas?

Mr. STEWART. No, none at all, Senator.

Senator SPECTER. And, Mr. Grayson, after, as you have testified, Professor Hill said about Judge Thomas that he deserved it, referring to the Supreme Court nomination, was there any discussion by Ms. Hill of anything derogatory about Judge Thomas?

Mr. GRAYSON. No, Senator.

Senator SPECTER. Is it Professor Kothe?

Mr. KOTHE. Well, you use the Pennsylvania Dutch pronunciation. Actually it is "Kothe."

Senator SPECTER. Professor Kothe?

Mr. KOTHE. Kothe.

Senator SPECTER. Professor Kothe—

Mr. KOTHE. Right.

Senator SPECTER. I would like you just to start, because time is limited and I can assure you there will be many questions on the body of your statement later, but because I want to move to Mr. Doggett in just a moment I would like you to just read the final paragraph of your statement of October 7, if you would, please?

Mr. KOTHE. I read it.

Senator SPECTER. Would you read it, please?

Mr. KOTHE. "I find the references to the alleged sexual harassment not only unbelievable but preposterous. I'm convinced that such is a product of fantasy."

Senator SPECTER. Professor Kothe, did anybody suggest to you that you use the word "fantasy" in describing Professor Hill's conduct?

Mr. KOTHE. No. In the second statement that I made on October 10 I left that off. That wasn't intended as words of art or scientific expression. It was just the instant reaction I had to this awful event. When I heard what the allegations were, my instant reaction was that it is just unbelievable, preposterous, and then I said that it must be a product of fantasy. Because if you just knew these people and knew Clarence Thomas, you would know that that couldn't possibly have been true.

Senator SPECTER. Well, Professor Kothe, was there anything that you could point to in Professor Hill's conduct which would lead you in either an evidentiary or a feeling way to that conclusion of fantasy?

Mr. KOTHE. No. I think perhaps my selection of words there was probably unfortunate. I have never seen Anita Hill in a situation where she wasn't a decent person, a dignified person, a jovial person. I have never seen her in a situation where actually you would say she is fantasizing in that sense. I almost regret that I used that in my first testimony.

Senator SPECTER. Well, then how would you explain Professor Hill's charges against Judge Thomas in the context of your very forceful testimony in support of Judge Thomas?

Mr. KOTHE. There is just no way of explaining it. How she ever was inclined to make such an observation is something that is totally beyond my comprehension. If you knew these two people as we all have known them, and evaluate that or equate that in the context of what has been alleged here, it just, it just couldn't be the same person, you wouldn't think.

Senator SPECTER. Mr. Doggett, turning to your affidavit, and I am going to ask you for the conclusions first before you comment on the substance of your statement. And permit me to comment, I found your testimony of your professional background extremely, enormously impressive.

And let me now move to the last line in the third full paragraph where you—well, why don't you read the last sentence in the third full paragraph on page 2, if you would, please?

Mr. DOGGETT. "I came away from her "going away" party feeling that she was somewhat unstable and that in my case she had fantasized about my being interested in her romantically.

Senator SPECTER. And, if you would now, Mr. Doggett, read the paragraph on page 3?

Mr. DOGGETT.—

It was my opinion at that time, and is my opinion now, that Ms. Hill's fantasies about my sexual interest in her were an indication of the fact that she was having a problem with being rejected by men she was attracted to. Her statements and actions in my presence during the time when she alleges that Clarence Thomas harassed her were totally inconsistent with her current descriptions and are, in my opinion, yet another example of her ability to fabricate the idea that someone was interested in her when in fact no such interest existed.

Senator SPECTER. Now, Mr. Doggett, while your testimony has already, in effect, answered this question, I want to ask you explicitly did anyone suggest to you that you use the word "fantasy" in describing your conclusion about Professor Hill?

Mr. DOGGETT. I talked to no one about my affidavit and the contents of my affidavit. I was quite frankly amazed when I heard the Professor had used the same term. In fact, just to make it very clear, I have not talked to the Judge, have not talked to any of these witnesses, I have not talked to the women that preceded us.

Senator SPECTER. Now, Mr. Doggett, what happened between you and Professor Hill which led you to conclude that she was fantasizing?

Mr. DOGGETT. At a going away party for Anita Hill before she went to Oral Roberts University Law School, soon after I arrived and relatively early in that going away party she asked me if we could talk in private, and I agreed, having no reason to see that that was inappropriate.

And she talked to me like you would talk to a friend who you are going to give some advice to help them "clean up their act." She said, "Something I want to tell you"—and this is what I have quoted in my affidavit, and it is the only part of my affidavit that talks about her statements that is in quotes because it was emblazoned in my brain because it was such a bizarre statement for me.

She said, "I'm very disappointed in you. You really shouldn't lead women on, or lead on women, and then let them down."

I came to a woman's "going away" party who I really didn't know very well. She says, "Hey, let's talk in the corner," and she said, "You led me on. You've disappointed me." And it is like, What? Where is this coming from?

I don't know about you, gentlemen. Washington, DC, is a very rough town if you are single and you are professional, for men and for women. Most people come here to be a part of the political process. They have legitimate, real ambitions. And it is a lonely town, a difficult town to get to know people because people are constantly coming in and coming out.

I came to Washington, DC, to be part of the business process. I was not interested in politics. I wanted to be an international management consultant. And the first time I met Anita Hill I sensed that she was interested in getting to know me better and I was not interested in getting to know Anita Hill. And, based on my experience as a black male in this town, I did everything I could to try not to give her any indication that I was interested in her, and my affidavit talks about that in some detail.

Even when I was jogging by her house and she said, "Hi, John," and we had a conversation, and she raised the issue of, well, since we are neighbors why don't we have dinner, I tried to make it very clear that although I respected her as a person and as a fellow alumnus of Yale Law School, and as somebody I thought was very decent, the only relationship I was interested in was a professional relationship.

And, as I stated in my affidavit, she said, "Well, what would be a good time?" and I was in my jogging clothes and so obviously I don't have a calendar with me. I said, "Well, I will check my calendar and I will get back to you." And I checked my calendar and I said, "Looks like Tuesday will work. You get back to me if that will work and let's talk about a place."

Later on with that dinner agreement, arrangements fell through, she gave me a call and said, "What happened?" I said, "What do you mean what happened? I never heard from you." She said, "Well, I never heard from you." And apparently, we both had expected the other person to call to confirm.

At the end of that I never heard from you, I never heard from you, if I was interested in her the logical response would have been, "Well, since we didn't get together this time, let's do it again." There was no response, and there was a very awkward, pregnant pause and the conversation ended.

And I never saw Anita Hill again until that "going away" party where she dropped at bombshell on me.

The CHAIRMAN. Senator, your time is up.

Senator SPECTER. Thank you very much, Mr. Chairman. I will come back the next round.

The CHAIRMAN. Mr. Doggett, I don't doubt what you said, but I kind of find it equally bizarre that you would be so shocked. Maybe it has never happened to you.

I know a lot of men who call a woman and ask her out or ask to meet. Let me finish my comments here. Ask to have—decide to have dinner. Say let's get together for dinner, but afraid to say

fully let's go out together for dinner. Let's get together. We live in the neighborhood, let's go to dinner. And then that person call back or you call again and speak to her again and the date is set. And then for whatever reason she doesn't show up.

You are still interested. You call back. You say, "How come you weren't there?" You say, "Well, I thought that you were going to call." And you thought I was going to call, et cetera. And that goes back and forth. Then there is a pregnant pause and you hang up.

Maybe I am just accustomed to being, turned down more than you were, when I was younger. But some men sit and say, "Geez. I wonder whether she's just bashful, that was the reason for the pregnant pause, or I wonder if she really wants me to call her back. She didn't say don't call me again. She didn't say I don't want to hear from you again. Maybe."

And then you see her a little while later a party and she is leaving town. And you walk up to her and you say, you know, "Can I talk to you?" And she says, "Yes." And you walk over to the corner of the party and say, "You know, you really shouldn't let guys down like that. You led me to believe that you wanted to go out with me. You shouldn't do that to women—or to men."

And, if she turned around and said, "You're fantasizing. How could you ever think that? You must be demented? You must be crazy."

I don't think that is how normal people function. I mean, I don't doubt a word you said. But you go on and say you said, "I'll check my calendar and get back to you." You checked calendars, you got back to each other, the date fell—the date? We don't use dates these days, I know. The dinner fell through. You talk again and say, "What happened?" and she is silent. And she says, "What happened?" and you are silent.

You did not say to her, did you, don't call me again? Don't pay attention to me? I may be a virile person but don't pay any attention, just stay away from me? You didn't say anything like that did you?

Mr. DOGGETT. I sure wish I had, Senator.

The CHAIRMAN. Well, I wish you had to because maybe there wouldn't be this confusion. She may not be telling the truth, but how one can draw the conclusion from that kind of exchange that this is a woman who is fantasizing, this is a woman who must have a problem because she has turned—are you a psychiatrist?

Mr. DOGGETT. Senator, I am trying to follow your question, but I may have to ask you to restate it.

The CHAIRMAN. My question is are you a psychiatrist?

Mr. DOGGETT. Absolutely not.

The CHAIRMAN. Are you a psychologist?

Mr. DOGGETT. Absolutely not.

The CHAIRMAN. Well, how from that kind of an exchange can you draw the conclusion that she obviously has a serious problem? Where is the section? I want to find it here in your statement. You were stunned by her statement. You told her her comments were totally uncalled for and completely unfounded. Balderdash!

I reiterated I had never expressed a romantic interest in her, had done nothing to give her any indication he might romantically be interested in the future. And I

also stated the fact that I lived three blocks away from her, but never came over should have led her to believe something.

Mr. DOGGETT. Pardon?

I didn't hear what you just said, sir.

The CHAIRMAN. The implication is that should have led her to understand that you weren't interested in her. Did she come up to you say in mildly hysterical terms, why have you not called me or did she just make the statement straight, monotone, you shouldn't lead somebody on like that, or whatever the precise statement was? Can you characterize the way she said it? Did she sound very disappointed in you, you really shouldn't lead women on like that and then let them down? Or did she say, why did you do this? I am very disappointed in you?

I mean can you characterize what it was like?

Mr. DOGGETT. She was very, very intense, Senator. This was not—

The CHAIRMAN. Describe for me how intense she was? Was her voice at a higher octave than normal?

Mr. DOGGETT. She seemed very upset to me.

The CHAIRMAN. Was her voice at a higher octave than normal, do you recall?

Mr. DOGGETT. She seemed very upset, Senator.

Senator my statement, my conclusion is based on a year and a half of experience, not just one afternoon jog on a Saturday in 1983.

The CHAIRMAN. Well, tell me what else she ever said to you?

Mr. DOGGETT. OK. Examples, that is a very fair question, Senator.

The CHAIRMAN. Thank you.

Mr. DOGGETT. The first time I went over to Clarence Thomas' office, okay, the question is what else did she say to me?

The CHAIRMAN. What did she ever say to you, yes.

Mr. DOGGETT. A, she called me after the dinner fell through. I didn't call her. B, there were a number of months that—

The CHAIRMAN. Let's stop there a minute. Wouldn't that lead you to believe that maybe she thought you might be interested or she wouldn't put her ego on the line to call a man?

Mr. DOGGETT. Absolutely, Senator.

The CHAIRMAN. All right.

Mr. DOGGETT. What I have tried to say and what I am trying to say right now is that I did everything in my power with Professor Hill over the time I knew her to make it absolutely, positively clear that I was not interested in that woman.

The CHAIRMAN. Did you say that to her? Did you say, Professor Hill, look, I mean, Anita, I just want to be clear before we get things out of hand here. I want to make it clear to you, I think you are a wonderful person, but I have absolutely no interest in you in anything other than professional terms. Did you ever say that to her?

Mr. DOGGETT. There was never a need to do that because we never got to the level where I had given her enough encouragement where she felt that it was appropriate to—

The CHAIRMAN. Well, give me more instances where she said things to you that this just wasn't the one instance where she said, you know, you led me on or you led women on.

Tell me another instance.

Mr. DOGGETT. Well, I think a perfect example of the conclusion that I came to when I was sitting at my computer in Austin, TX was the statement that she gave under oath, before you 2 days ago, that she had dated John Carr. And the statement that John Carr gave under oath today that he would not characterize their relationship as a dating relationship.

The CHAIRMAN. Now, wait a minute. John Carr said he went out with her.

Mr. DOGGETT. That's right, and I believe, as I understand it—

The CHAIRMAN. He said dating.

Senator THURMOND. Let him get through.

Mr. DOGGETT. Pardon?

The CHAIRMAN. I am worried about your instances. What did she ever say to you, you that led you to believe that she, in fact, had a clear understanding that you had no interest? You said that there were other instances, other than this occasion, where she said to you, I am very disappointed in you, you really shouldn't lead on women and then let them down.

Mr. DOGGETT. Right.

The CHAIRMAN. What else did she ever do or say?

Mr. DOGGETT. Nothing else, Senator.

The CHAIRMAN. That's it?

Mr. DOGGETT. Absolutely, Senator, and if she hadn't said it and hadn't been upset to some degree with—

The CHAIRMAN. Well, how was she upset again?

Senator THURMOND. Well, let him get through, let him get through, let him answer.

The CHAIRMAN. OK.

Mr. DOGGETT. It was her, she was intense. I do not believe she raised her voice, but this was not just, hey, guy, you know, be careful as you characterized it, this clearly bothered her. And I hear what you are saying, Senator, and I respect your opinion and I am not trying to argue with you but for me, in that time, in that room, that shocked me and maybe it would have not shocked you, it shocked me.

The CHAIRMAN. I appreciate that. I do appreciate that. I sincerely do. Let me tell you what I thought when I first was told about this.

Mr. DOGGETT. OK.

The CHAIRMAN. I thought it was the case of a woman walking up to someone she never had spoken to other than in passing business, watched him jog, said hello to them and then all of a sudden at a going away party walked up and called him aside and said, I don't know why you led me on like this.

That to me, if a woman did that to me, I may either think she is nuts or be flattered but I would wonder, at a minimum. I would walk away going "where did that come from?" Whether she called me or I called her, if I had agreed on one occasion to go to dinner with her, and if I had known that she had, if I felt that she had an

interest in me, if the dinner date was broken, if she called me to ask me why.

If I said nothing and remained silent, and did not say, look, I just don't want to go out to dinner with you, I was just polite and said nothing. And then she came up to me and said that one sentence, I don't know how, quite frankly, a reasonable man could conclude from that to be stunned and shocked that this woman is fantasizing because she has a male complex—what was your phrase about complex? Come on, earn your salary. There is some place in there where you say, this must mean that she is used to be, this is a complex from being rejected by men.

Mr. DOGGETT. It is on page 3.

The CHAIRMAN. The fact, you believe Ms. Hill's fantasies about my sexual interest in here were an indication of the fact she was having a problem with being rejected by men she was attracted to. It seems to me that is a true leap in faith or ego, one of the two. [Laughter.]

Senator SIMPSON. Are we playing to the audience now?

The CHAIRMAN. No, I am not.

Senator SIMPSON. Well, then let's stop the crowd from responding. You have done that before and they have responded about six times now.

The CHAIRMAN. If anyone else responds they are out and the reason I probably didn't is I am so intensely involved in this, I did not do that. Please, if anyone else responds I ask the police officers to move them out, I mean that sincerely.

Mr. DOGGETT. Would you like for me to respond to your question?

The CHAIRMAN. I would like you to say anything you want. I mean I truly would because I am having trouble understanding this one and I won't say anything more.

Senator THURMOND. Now, take your time and say what you please.

The CHAIRMAN. As long as you want.

Mr. DOGGETT. I appreciate your concern.

The CHAIRMAN. My confusion, not concern.

Mr. DOGGETT. I assumed you were concerned also.

The CHAIRMAN. No, I am not concerned.

Mr. DOGGETT. I appreciate your confusion and I will do what I can to try to clarify it. A, I clearly reacted to this event differently than you would and I respect our differences of opinion.

B, there were a number of occasions when Gil Hardy and others who were black Yale Law School graduates made an attempt to bring together those of us who were in town, including people like me who were not practicing law and who were not involved in the political process, so that we could have social fellowship. We had parties, and other get-togethers.

I observed from a distance—and I am not a psychiatrist, I am not an expert, just a man—Anita Hill attempting to be friendly with men, engage them in conversation, initiate conversation, elongate conversations, and people talking with her and eventually going away.

The CHAIRMAN. Can you name any of those men for us, for the record?

Mr. DOGGETT. Sir, 8 almost 9 years have gone by. If she had filed a sexual harassment charge—

The CHAIRMAN. That's not the issue—

Mr. DOGGETT [continuing]. I would be able to do that because we would be in 1983 or 1984 given the statute of limitations. Which is why you have created a statute of limitations. It is too long, I cannot, sir.

I also remember, sir, the first time I went to Clarence Thomas' office, I was going to talk to somebody who was a classmate of mine about why he had become a black Republican Reaganite, because I had some real concerns. And as I went into his outer office, Anita Hill happened to walk by and she tried to stop me and engage me in conversation and acted as though she thought that since we were all black Yale Law School graduates, I should say, well, let's go in and talk with Clarence, which I did not.

Clearly, people can disagree as to whether or not my observations and conclusions are ones that they would make. But I assure you that based on my experiences and my observations of Anita Hill, both in terms of how she related to me—and let's talk about the jogging incident, Senator. When I was running by I was timing myself with my watch and my interest was to run in place for maybe 30 seconds, be polite and keep going. The reason we continued to talk was because she wanted me to continue to talk. That is action on her part, sir.

The CHAIRMAN. Can I ask you a question, why didn't you keep running?

Mr. DOGGETT. Because the group of black Yale Law School graduates is a very small, a very close, and a very special group and it is like a family. Gil Hardy, the man who introduced Anita to Clarence Thomas was one of the leaders of that group. We did what we could to be as supportive as possible.

Senator I graduated in 1972. She graduated in 1980. She was significantly younger than me, she seemed to be lonely in this town. I was not going to try to make this woman feel that I was not going to be straightforward with her as a professional. There have been other women who have made it very clear that to me that they have been interested in me and I have said, I am not interested. Anita Hill did nothing to deserve me to slam the door in her face. She was one of the Yale Law School black fraternity and there are very few of them, Senator.

Now, I agree that others may interpret my conclusions differently but that's how I saw it and that's why I said what I said.

The CHAIRMAN. I appreciate that and I thank you very much.

Dean, did you work for Clarence—this is the first time I knew this, I should have read the record more closely—did you work for Clarence Thomas when you spent most time with Anita Hill, Professor Hill?

Mr. KOTHE. I would have to say it this way. I worked for Clarence Thomas after I worked with Anita Hill. She was a professor on our faculty. When I retired as Dean, I became special assistant to Clarence Thomas. I think in large part through what she did in initiating our arrangement.

The CHAIRMAN. Thank you.

Now, from your testimony I got the impression though that the time that you spent the most time with Anita Hill was in setting up that conference you referred to on harassment.

Well, let me not say most time. You said there was a conference that you were setting up on harassment and Anita Hill was participating in that. And you were surprised that if she had been harassed she would have said something to you at that time. Were you working for the man that she alleges harassed her when you were surprised that she did not say something about harassment?

Mr. KOTHE. Yes, sir, it was in 1987 and I had already been working with Thomas then—

Senator THURMOND. Talk into the machine so that everybody can hear you.

Mr. KOTHE. Yes, I had been working with Chairman Thomas at that time for probably two years.

The CHAIRMAN. So I want to just make sure I understand. You made a statement which I thought was fairly powerful and obviously accurate. You said that one of the things you pointed to as evidence of the fact that Anita Hill's assertions are probably not true is with regard to a conference on harassment she worked with you in setting up. And you said, and I am paraphrasing, that if she had been harassed why would she not say to me that she had been harassed when the purpose we were getting together for was to discuss harassment?

And I ask you, in light of the fact that you worked for the man who allegedly harassed her, would it surprise you that she would not confide in you? Sir, I mean that sincerely?

Mr. KOTHE. Well, precisely and that is what I said in my opening statement.

The CHAIRMAN. That's what I did not understand. Thank you.

Mr. KOTHE. How could it possibly be that a person was talking to me about being a featured speaker on the subject of sexual harassment and never, ever have said, I have been harassed, I have been exposed to this, I know if from personal experience, never ever?

The CHAIRMAN. Now, what I am saying Dean, as a trained lawyer, does it surprise you that a person who says they were harassed now, would not say to you she was harassed when she would then have to tell you that the man who harassed her was your boss?

Mr. KOTHE. It not only surprises me, it completely confounds me. How could it possibly be that a person as intelligent, as decent, as dignified as this young woman was could talk to me about having a program of sexual harassment and never say, I personally have experienced it?

The CHAIRMAN. Thank you, very much. My time is up and I yield to Senator Thurmond.

Senator THURMOND. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Doggett, we have been searching in the past week, and you are right when you talk as an experienced litigator, the speed with which this matter has been put together. I have never seen anything like it. I doubt that there has ever been as complex a matter as this put together in this kind of a hearing sequence, calling of

witnesses and examination as we have proceeded with overnight transcripts in trying to move through in an orderly process.

And we are doing it at the mandate of the Senate and those of us who are doing it, at least, this Senator has some concern about doing it at this speed. We are doing it the best we can. And we have been trying to figure this matter out.

And we have been going on the proposition most of the time, and it hasn't been very long, that either he is lying or she is lying. I have been trying to figure it out myself on the credibility issue or the perjury issue. And as the matter has evolved I have started to explore a third alternative. And that alternative was suggested to me when I read on the same day, which was last Thursday, the affidavits of Professor Kothe and the affidavit of Mr. Doggett.

And I had not seen, I still have not seen Professor Kothe's affidavit of the 10th. I have your affidavit of the 7th, where you had the word fantasy in, but as you say, you have changed it.

But I am fascinated, Mr. Doggett, by your pinpointing the John Carr issue. And I think that could bear some additional clarification because, as you testify about it, as I understand your testimony—

Senator THURMOND. Senator, you had better wait a few minutes, somebody is talking to your witness. And let him get through.

Senator SPECTER. Will somebody stop the clock.

The CHAIRMAN. I apologize. I asked that they speak up. I just wanted to give the Dean an opportunity, if he wanted to, to take a break at this moment if you want to and come back. I want the witnesses to know if they have to get up and leave and come back they can.

Mr. KOTHE. Mr. Chairman, I have a requirement at this time. I would have to have something, protein or something.

The CHAIRMAN. Yes, that's why I asked the staff to talk to you and, Dean, you are free to come and go. Or go. You don't have to come back. I sincerely mean it. The hour is late and you have a medical requirement and I understand that.

Mr. KOTHE. I don't want to miss this.

The CHAIRMAN. Senator Specter, understandably, says he needs the dean here to ask him questions.

Senator SPECTER. I need the dean here, because I am going to talk about the dean's statement—

The CHAIRMAN. Fair enough. Why don't we yield to some on the other side who can question, who does not have questions for the dean, but wishes to ask someone else questions, and then come back to you.

Senator SPECTER. What do I have left, 14 minutes?

The CHAIRMAN. No, you can have as much time as you want.

Senator SPECTER. OK. Thank you.

The CHAIRMAN. I yield to the Senator from Ohio.

Senator METZENBAUM. Mr. Doggett, I haven't had a chance to read the full transcript of your testimony that was given in the telephone interview with several staff members representing Senator Biden, Senator Heflin, Senator Thurmond, Senator Leahy and Senator Specter.

But let me read you some portions of it, because I think we are talking about Anita Hill, and I think we need to also talk a little bit about Mr. Doggett, and this is a question to you:

Now, since we have received your affidavit and since your statement has gone public, the majority staff has received word from an individual who said she worked with you at McKenzie. Answer: Yes.

And she has made some allegations concerning yourself. Answer: All right. And did she give you a name? Answer: She did. And we will move to that. I wanted to let you know where this line of questioning was going, to turn at this time. Answer: All right. I am not surprised. Question: This morning, we spoke with a woman named Amy Graham, who said she worked with you—

Senator SPECTER. Excuse me, Senator Metzenbaum. Would you tell us where you are reading from?

Senator METZENBAUM. Yes, page 64.

Senator SPECTER. Thank you.

Senator METZENBAUM [reading:].

Who said she worked with you at McKenzie & Company, and I believe you started down there in August of 1981. Answer: That is correct. Let me tell you generally what her allegations were, and then I will ask you some questions, and then I will turn back to Ms. DeOreo, to follow up with some questions. Answer: All right.

Question: Ms. Graham indicated that, on her first day of work, when she met you, along with other people in that office; first of all, very succinctly, do you remember Ms. Amy Graham? Answer: I do not. Question: You do not? Answer: I do not. Question: She claims that, on her first day at work, at some point in the day, I believe she said—I don't have the transcript available yet, but at some point during the day you confronted her in the hall, in front of an elevator, and kissed her on the mouth and told her that she would enjoy working with you very well. She also—Answer: You know, I also got—I deny that. I didn't remember the woman, and that is outrageous. I also got a message on my answering machine after you guys went public with my affidavit, saying "This is your Texas whore from five years ago." Somebody, I don't know, never met, who decided that she was going to claim to be my whore. Question: Mr. Doggett, let me just tell you generally her allegation, and then I will give you adequate opportunity to respond. I think that, in all fairness, that you need to know what she said, and then you can respond overall. She also claimed that, during the time that she worked there—she was 19 years old when she began work, she is 29 years old now—she also claimed that at times, in front of the copying machine—and again, I am just going from my recollection, I don't have the transcript—that you would rub her shoulders at the copying machine. At the time, you suggested to her, "Oh, you are making copies, that is sort of like reproduction, isn't it?" She also said that some of your conversation dealt with sexual innuendo, there was sexual overtone in your talk. But what struck me, though, is she also said that you weren't in the office very much. So, first, if you could respond to Ms. Graham's allegations, and then I have some questions I want to discuss with you.

I am still reading:

Answer: I do not remember Amy Graham. If she was there, she was not there as an associate or as a researcher or as a consultant, but was there as a part of the secretarial staff. I never made any comments or statements to anybody like that. I never did anything like that, so I categorically deny it. I am, quite frankly, not surprised that somebody has come out of the woodwork to make a claim like this. That's the nature of this business.

That is on page 76.

We now turn over to page 77, again the question—I was not present at this and I am only reading from the transcript: "Question: Okay. Fine. So, I understand that you didn't have much conversation with Mr. Chisholm. Let me ask you, do you recall the name Joane Checci? Answer: Joane Checci, yes, I do remember that name. She designed business cards for me and stationery for me, when I was getting ready to leave the firm and become an independent consultant. Question: Do you recall ever touching Joane

Checchi? Answer: I never recall doing anything other than standing next to her. I may have brushed her when I was standing next to her, as she was designing business stationery, but I never remember. Question: Do you remember giving any neck massages? Answer: I don't remember, but if she had asked for one, I would have."

Then we go over to page 84:

Question: Mr. Doggett, so I don't leave one more thing hanging out there that has been alleged against you, I want you to have an opportunity to clear your name. I recall one other thing Ms. Graham said. She said that, subsequent to your leaving McKenzie, she bumped into you on the street one afternoon or one day, and that she was still at McKenzie. She told you she had since that time received a promotion and that you responded, "Well, whom did you sleep with to get the promotion?" Answer: All right. *Question:* Did that occur? Answer: I absolutely categorically completely deny that.

Mr. Doggett, you have an interesting series of questions and answers in this transcript. I wonder if you would care to tell us what are the facts with respect to these several ladies who have raised questions concerning your own conduct?

Mr. DOGGETT. Senator, your comments about this document are one of the reasons that our process of government is falling apart.

First of all, Senator, I have a copy of the statement that this person met—it is called a transcript of proceedings. But, Senator, if you read this, it is as telephone conversation that she has with some staff members pro and against Mr. Thomas, and she is not under oath. I did not do any of the things that she alleged. In fact, the first time any of these issues were raised was the day before I was supposed to come here, 8½ years later.

I knew when I put my information into the ring, that I was saying I am open season. For anybody to believe that, on the first day of work, for a woman working in the xerox room, who is 19 years old, a 33-year-old black man would walk up to a 19-year-old white girl and kiss her on the mouth as the first thing that they did, whoever believes that really needs psychiatric care.

But let me talk about the facts, since you brought up this statement, which was not made under oath, which was not made consistent with any of the rules that you Senators are supposed to be responsible for, since this is the Judiciary Committee, let me talk about that, since you asked the question and went on and on and on.

During that time that she—I have read this statement. If she had made it under oath, Senator, I would go to court, but—

Senator METZENBAUM. This isn't her statement. I am reading from your statement, Mr. Doggett.

Mr. DOGGETT. The statement that you read from was a discussion with me, and consistently your staff people said, "I don't have the transcript, I don't remember the exact facts." Well, I have the transcript and the exact facts show this woman to be a profound liar who does not even remember the facts accurately.

She said—Senator, I would suggest we all turn to "Transcript of Proceedings of Ms. Amy Graham," the woman who has accused me, the liar, page 6: "I met John Doggett the first day I started there, which I remember correctly was probably Monday, March 20, 1982."

Senator SPECTER. Mr. Doggett, what page are you on, please?

Senator METZENBAUM. I don't have that.

Mr. DOGGETT. Page 6 of the unsworn telephone conversation that Ms. Graham had with some staffers.

The CHAIRMAN. Excuse me, let me interrupt for a minute.

Mr. DOGGETT. I'm pissed off, sir.

The CHAIRMAN. It is totally out of line with what the committee had agreed to—

Mr. DOGGETT. I'm sorry.

The CHAIRMAN [continuing]. For there to be entered into this record any unsworn statement by any witness who cannot be called before this committee, and I rule any such statement out of order.

Now, I apologize for being out of the room. Was there any—

Senator METZENBAUM. I was only reading from Mr. Doggett's own statement.

Mr. DOGGETT. My statement was not under oath, sir. That was a telephone conversation and they said we staffers would like to talk with you, we have a court reporter there. I'm a lawyer, sir, it was no deposition, it was not under oath, as Ms. Graham's comments were not under oath. And since you have brought this up, I demand the right to clear my name, sir.

Senator METZENBAUM. I was only reading from his statement, not from—

Mr. DOGGETT. I demand the right to clear my name, sir. I have been trashed for no reason by somebody who does not even have the basic facts right. This is what is going on with Clarence Thomas, and now I, another person coming up, has had a "witness" fabricated at the last moment to try to keep me from testifying.

Senator METZENBAUM. Well, Mr. Doggett—

Mr. DOGGETT. I am here, I don't care, she is wrong, and I would like to be able to clear my name, sir.

Senator METZENBAUM. Please do.

The CHAIRMAN. Sir, you will be permitted to say whatever you would like to with regard to, as you say, clearing your name. If there was no introduction of the transcript of Amy Louise Graham in the record, then that is a different story. I was under the impression that had been read from. That has not been read from.

Senator METZENBAUM. I did not read from that at all.

The CHAIRMAN. It has not been read from, and I don't know what else took place, but—

Senator METZENBAUM. I read from Mr. Doggett's questions asked of him—

The CHAIRMAN. Mr. Doggett, please, as much time as you want to make—

Senator METZENBAUM [continuing]. By the staff of Senator Biden, Senators Heflin, Thurmond, Leahy and Specter. My staff was not even present. I am just asking you if you would please go ahead and respond in any manner that you want to clear your name.

Mr. DOGGETT. Yes, sir.

Senator SPECTER. Mr. Chairman, you were not here, but what happened is that Senator Metzenbaum was reading to Mr. Doggett from Mr. Doggett's unsworn statement of the telephone interview—

Senator METZENBAUM. That's correct.

Senator SPECTER [continuing]. And that statement involved questions from Ms. Graham, who was questioned similarly in an unsworn statement over the telephone, and for Mr. Doggett to reply to what Senator Metzenbaum had asked him, since Senator Metzenbaum was basing his questions on what Ms. Graham had said, it is indispensable that Mr. Doggett be able to refer to what Ms. Graham said—

The CHAIRMAN. It is appropriate for Mr. Doggett to refer to whatever he wishes to refer to at this point, in light of where we are at the moment.

Mr. DOGGETT. Thank you, Mr. Chairman.

The CHAIRMAN. So, Mr. Doggett, proceed.

Mr. DOGGETT. I will tell you, Senators, before I talk about the specifics, I debated, myself and with my wife, whether or not to start the process that resulted in me being here, because this is vicious, and I knew, since anything I said was going to raise the question about the credibility of Professor Anita Hill, as a lawyer, that meant my character was open season.

I have never been involved as a candidate, although I have always said you can't complain about the process, if you're not willing to put your ass on the line—pardon me, I am sorry. I am sorry about that.

Senator METZENBAUM. Mr. Chairman—

Mr. DOGGETT. But I have said if you don't like the way the political process is, then you have to get into it and you have to get into the fray.

So, I said, okay, if I submit this information to this committee, then I am open season and people are going to shoot at me, and I do not care. I have information I think the committee needs to hear. If they feel it is relevant enough for me to be here, I will be here and I will take whatever occurs.

But I will tell you, sir, I have had lawyers and professional people in Texas and around the country say that I was insane to subject myself to the opportunity to have something like this crawl out from under a rock. They have said I should have just stood on the sidelines and let it go by.

I am an attorney, sir—

Senator METZENBAUM. Mr. Doggett—

Mr. DOGGETT [continuing]. I am a businessman and I cannot allow this process of innuendo, unsworn statements and attacks on characters to continue, without saying it is unacceptable.

Now, specifically, page 6 of her unsworn telephone conversation with Senate staff, dated the 12th of October, 2 days ago, says, "I met John Doggett the first day I started there, which, if I remember correctly, was probably Monday, March 20, 1972. At that"—

The CHAIRMAN. I will let you continue, but you ought to seek your own counsel for a minute here. No one has read anything into the record, as I understand—

Mr. DOGGETT. Now—

The CHAIRMAN. No, wait, let me finish.

Mr. DOGGETT. Yes, sir.

The CHAIRMAN [continuing]. That you may be about to read into the record. Let me say that anyone who asks you—that I think it is unfair—that you were in a telephonic interview, whether it is

sworn or unsworn, are asked about an uncorroborated accusation that is not sworn to, and then in open session you are asked from your statement about that same statement, that's no different than as if it was introduced without—if the original statement were introduced, which is inappropriate.

Now, all I am saying to you is this: I believe you are entitled to say whatever you wish to say here, and I believe we are beyond the bounds here.

Mr. DOGGETT. I understand.

The CHAIRMAN. The question I want you to think about is whether you want to further give credence to an unsubstantiated, unsworn to statement of someone that may be completely lying. It is up to you to make that judgment. That is your call, but I would think about it.

Mr. DOGGETT. I appreciate your comments and I apologize for getting angry.

The CHAIRMAN. No, you have no reason to apologize.

Mr. DOGGETT. No, I am going to apologize, sir. This is a difficult process. I have only been up here for a short period of time and you have been here, as I understand it, for a very long period of time.

Let me say, without reading the statement or putting in that "evidence," since I am under oath, comments made by this person, that they are wrong, that at the time the allegations, the unsworn allegations were made, I was in the midst of a major project with McKenzie & Company regarding the Comptroller of the Currency, where we had just found, from a computer analysis, that bank deregulation would result in bank failures and savings and loan failures that exceeded the historical limits of bank failures over the past ten years.

We were in the midst of that analysis, we were frightened by the information that we had found, and we were doing everything we could do to prove ourselves wrong, and it is in the context of that time that this person, whom I do not remember, claims that I would walk up to her and do that.

At the same time, Senator, I had just started a relationship with an attorney, a very intense relationship. The facts are wrong.

Second, that person, as read by Senator Metzenbaum, alleges that I was getting ready to leave the firm at that time. Senator, after I finished that Comptroller of the Currency study, in approximately April of 1982, in May of 1982, McKenzie & Co. sent me to Copenhagen, Denmark, to spend the summer working for our Danish office. That is not exactly an exit strategy, sir. That was one of the most prized assignments that the firm had.

The facts in this uncorroborated, unsworn to statement are not even consistent with the facts of my life. So, without trying to put this thing into the record, all I can say is that I expected somebody to do something like this, because that is what this process has become, and one of the reasons I am here is to work with you gentlemen to try to take the public process back into the pale of propriety.

Now, second, when I was the director of the State Bar of California's Office of Legal Services, I had the opportunity to hire two deputies. Both of those people were women. In fact, when I knew

that I was going to leave the state bar to go to Harvard Business School, the person I hired to replace me was a woman.

I have a very clear long record of commitment, sensitivity and support for women having the greatest role possible, but I am afraid that the outlandish allegations of Anita Hill are going to result in us feeling that it is inappropriate for us to be human beings with people if they happen to be women. Nobody would ever question me if I put my hand around this man, who I have never met.

The CHAIRMAN. He might.

Mr. DOGGETT. Well, maybe he would. [Laughter.]

But I hope we don't get to the point where if anybody by any way, accidentally or purposely, innocently touches somebody of the opposite sex, that becomes sexual harassment.

The CHAIRMAN. I would really like this to end. Let the record show, and I am stating it, there is absolutely no evidence, none, no evidence in this record, no evidence before this committee, that you did anything wrong with regard to anything, none. I say that as the chairman of this committee. I think your judgment about women is not so hot, whether or not people fantasize or don't. You and I disagree in that.

Mr. DOGGETT. Yes, sir.

The CHAIRMAN. But you did nothing. There is no evidence, the record should show, the press should show, there is absolutely no evidence that you did anything improper, period.

Mr. DOGGETT. Thank you, Senator.

Senator THURMOND. Mr. Chairman, would it be proper to expunge from the record, then, that information that came out?

The CHAIRMAN. Well, fine, but Senator, I would hope you would read from his statement of questions asked of him. It is a little bit like if someone asked me over the telephone, "Are you still beating your wife?" and I answer yes or no, it doesn't matter. I am still in trouble. And then someone says, "I am reading only from your statement, Mr. Biden. You are the one that mentioned your wife." I never did.

And I know that is not what the Senator intended, but that is the effect. It is no different than just putting this unsubstantiated material in, and I want the record to show I don't think anything that is unsworn and I don't think anything in an FBI record is anything—up until the time it is sworn or the person is here to be cross-examined—is anything but garbage.

Mr. DOGGETT. Thank you, sir.

The CHAIRMAN. Senator, I apologize for the interruption—

Senator THURMOND. Mr. Chairman?

The CHAIRMAN. Yes?

Senator THURMOND. Would it be proper for you to explain for the record those parts that you feel were improper?

The CHAIRMAN. Yes, and I will.

Senator THURMOND. Thank you.

The CHAIRMAN. Now, Senator, please continue, not along the lines of what someone said he said, and he had to respond to what they said.

Senator METZENBAUM. I am not saying what somebody said he said. I am asking him what he said. He said that he did not remember Ms. Amy Graham, that he did not know Amy Graham.

You also indicated that she was white and 19. How did you know that?

Mr. DOGGETT. Senator, when your staff or the staff of the committee—

Senator METZENBAUM. My staff has not been in touch—

Mr. DOGGETT. Excuse me. When the staff of the committee—I corrected myself—made these allegations to me, one of the things I said, and if you read my complete statement, you will realize it is there, is that although I do not remember this person, that does not mean this person was not there; that it is possible that she did work at McKenzie and Company. I just do not remember her. I said that. OK?

The second thing I did after the staffers of committee hung up was to call an associate of mine who started at McKenzie in the company with me, at the same time, a man named Carroll Warfield, and I asked him if he remembered this woman because I did not remember her name at all. I did not remember her face. Nothing about her came into my mind, but I knew it was possible she could have been there. Senator, it has been eight or nine years and I, even I can forget people.

He said, "Oh, yes, I remember her," and he was the one who indicated to me that she was white. That, as far as the age 19, I believe you read that when you read statements that I responded to from the Senate Judiciary Committee staff, and that is how we got the age 19, sir.

Senator METZENBAUM. No, I think it was your statement, but we will just drop it, Mr. Chairman.

The CHAIRMAN. All right. Thank you. Now let me make one other thing clear. The exception to unsworn statements being placed in the record is when the witnesses stipulate that they are admissible, when the parties mentioned in the statements stipulate they are admissible, and when the committee stipulates they are admissible, which is the case of the Angela Wright stipulation. That is different, so no one is confused later, that there is a fundamental distinction.

Now, Senator, who had the—

Senator THURMOND. The distinguished Senator from Pennsylvania.

Senator SPECTER. Well, thank you, Mr. Chairman. I was in the midst of questioning Mr. Doggett and Professor Kothe when we had to take a brief recess for Professor Kothe, so I shall resume at this point.

I think it is worth noting, Mr. Chairman, to amplify what Mr. Doggett has said—if I could have the attention of the chairman for just a moment—

The CHAIRMAN. Yes. I'm sorry.

Senator SPECTER. Late yesterday evening when we caucused and the chairman stated his intention to try to finish the hearings today—

The CHAIRMAN. Yes.

Senator SPECTER [continuing]. I then reviewed what had to be done, and at about 6:45 this morning called Duke Short and said we ought to have Mr. Doggett here, and that is why he was called this morning at about 7 o'clock, he said—

Mr. DOGGETT. 6:30, sir.

Senator SPECTER [continuing]. 6:30 central time, so he has been on that track to accommodate our schedule so we could finish today.

Mr. DOGGETT. I don't mind staying here as long as you need, sir.

Senator SPECTER. Well, that is probably going to happen. [Laughter.]

Mr. DOGGETT. I sense that.

Senator SPECTER. I want to explore with you what conceivably—I don't want to overstate it—could be the key to the extremely difficult matter we are looking into. And I had said, shortly before my line of questioning was interrupted, that we have been working on the proposition that either Anita Hill is lying or Judge Thomas is lying.

And we have explored earlier today, with a panel of four women who favor Judge Thomas but who knew Professor Hill very well, the possibility that there could be in her mind that these things happened when they really didn't. And I developed that question after talking to a number of my colleagues, because we have been discussing this matter all day, and it originated with the two affidavits or statements, your affidavit, Mr. Doggett, and Professor Kothe's statement that was not sworn to, where the word "fantasy" was used.

And it may be that we are not limited to the two alternatives, one, that he is lying; two, that she is lying. Perhaps they both think they are telling the truth, but in Professor Hill's case she thinks it is true but in fact it is not. And you testified to a very interesting approach when you referred to the testimony of Mr. John Carr, whom you said you went to graduate school at Harvard with, where you made a key distinction between the way Professor Hill viewed the relationship and the way John Carr viewed the relationship. And I think it would be worthwhile if you would amplify that, as you had started to articulate it earlier.

Mr. DOGGETT. Senators, at every step—in fact I remember when I was at Yale Law School seeing Senator Kennedy give a speech to people at Yale, back in the early seventies—at every step of my education, at Claremont Men's College, at Yale Law School, at Harvard Business School, one of the things I tried to do was to provide assistance to make sure that black law students and Hispanic law students would have the best possible opportunity to do as well as possible, because I had something to prove, Senators. I had had people tell me that I could not be good because I was black, and I was out to prove them wrong.

Because of that, I was asked by my colleagues at Harvard Business School, in part because I was an older student and in part because of my commitment to excellence, to be the Education Committee chairperson for the African-American Student Union, and to organize tutorial study groups and other support activities to make sure that every one of our people had the best possible

chance to do as well as possible, to excel. That is how I met John Carr.

I know John Carr, and I think I know him well. I definitely know him better than I know the judge and I know the professor. I saw John Carr this May at Harvard Business School for our 10th Harvard Business School Alumni reception, reunion, and we talked.

In those 10, 12 years, John Carr has never mentioned Anita Hill to me. We have talked about women John Carr has had relationships with. I have called him up at times and said, "Hey, man, haven't you gotten married yet?" because we were that close, and he would say, "Well, you know, there really hasn't been anybody special." We have talked about the issue of John Carr's personal life, and her name never came up in the way that she described herself.

I, as the Senator asked me, am not a psychiatrist, I am not a psychologist, and so maybe I am not qualified to use the term "fantasy" from a professional standpoint, but as a lay person and an individual, that is what I felt. And given what John Carr has said and has not said, given what the Professor has said, given that she has described a series of activities where Clarence Thomas was obsessed with her—every time she said no, he would try to get her to relent and go out with him, over a period of years, obsessed with her—I have to deal with the realities that if he was so obsessed with her, why did he never talk to me about her or anybody else about her?

One of the things, Senator, that stunned—I won't use that word again—that amazed me about the testimony of the women who worked with Anita Hill and Clarence Thomas, is that they came up with conclusions very similar to what I put in my affidavit, and these are women I have never met. These are women who knew both of the people involved in this hearing at this stage far better than I did.

I was going to a gut sense, on male intuition. They were saying the same thing, without any communication between the four of them and myself, based on years of observation. I find that amazing.

Senator SPECTER. Mr. Doggett, you heard the testimony of the panel with Ms. Berry on it? You were in the hearing room at that time today?

Mr. DOGGETT. Hearing room at the end, and I was at the hotel looking at it on TV, sir.

Senator SPECTER. So you saw the panel with Ms. Alvarez, Ms. Fitch, Ms. Holt—

Mr. DOGGETT. I saw most of what they said, although I missed part of it as I was coming here to appear before you gentlemen.

Senator SPECTER. Did you hear the part where Ms. Berry testified to amplify an interview which she had given to the New York Times, that Professor Hill was rebuffed by Judge Thomas?

Mr. DOGGETT. I do not remember the exact facts, but I heard most of her response to the New York Times—

Senator SPECTER. Well, I think it would be worthwhile for you to refer to whatever you heard of their testimony, in terms of their statements as to the relationship between Judge Thomas and Pro-

fessor Hill, because their testimony was extensive as it relates to the approach you are articulating.

Mr. DOGGETT. Right. My experience with Clarence Thomas and Anita Hill was inconsistent, as I said, with what she was alleging, and based on my experiences over a period of a year and a half with Anita Hill and over a period of 7 or 8 years with Clarence Thomas, I came to some conclusions as a lay person, as an individual, as an untrained non-professional, where I used the words "fantasies" and I talked about her possibly reacting to being rejected. I did that sitting in Austin, Texas, Thursday afternoon, on my computer with my word processing software.

Today, gentlemen, as you know, four women I have never met and have never talked with came to the same conclusion based on extensive experience and observations with Anita, with Professor Hill and Judge Thomas. Mine was just intuition, gentlemen. Theirs was based on experience, and we both came, all five of us came to essentially the same conclusion. That surprised me, but now I am not surprised.

Senator SPECTER. Mr. Doggett, what similarities, if any, do you see between the description you have made of your own relationship with Professor Hill, where you categorized in your affidavit her response to being rejected, and the relationship which Professor Hill had with John Carr, where she had exaggerated the relationship as you have testified from your personal knowledge of the two of them, and the relationship with Judge Thomas, where she has represented the kind of a relationship which Judge Thomas has flatly denied and others who know the two of them think totally implausible?

Mr. DOGGETT. In my case, Senator, which I obviously can talk about the clearest, she came up to me before we left—before she left for Oral Roberts University, and basically chastised me for leading her on, and gave me in effect advice that I should not in the future lead women on. I felt at the time, and the good chairman of this committee notwithstanding, I still feel at this point and I will always feel that that was totally inappropriate, given everything I tried to do to be a supportive, older upper-classman, part of the Yale Law School group.

Regarding Mr. Carr, John Carr, Attorney Carr, my friend, I have had a series of conversations with this man over the past decade. He has never, ever said that he was dating Anita Hill. When he was here under oath he said, to paraphrase him, "I would not define our relationship as a dating relationship."

Regarding Judge Clarence Thomas I have the least information, because he never, ever at any time mentioned this woman to me. And at the time, the one time that I have concrete observation about her perception of how she thought she should be treated by me vis-a-vis Judge Thomas, she wanted to go into Judge Thomas' inner office at EEOC because she felt that was appropriate, and for me it didn't make any sense at all.

So in those three instances—my own personal experience, a statement by a business school colleague and friend of mine, and my one observation about Anita Hill and Clarence Thomas back, I believe, in 1982, there is a consistency in a perception of something that did not exist.

Senator SPECTER. Mr. Doggett, do you think it a possibility that Professor Hill imagined or fantasized Judge Thomas saying the things she has charged him with?

Mr. DOGGETT. You know, part of what makes this so unpleasant for all of us is that her charges are so clear, explicit, and extreme. I know how difficult it has been for me to even remember what happened back in 1982, so one of the things I did was take some time off from work to look at Anita Hill when she was testifying before this committee, and I will tell you gentlemen, she looked believable to me, even though the words she was saying made absolutely no sense.

I believe that Anita Hill believes what she has said. I believe, and I am saying this under oath, that there is absolutely no truth to what she has said. But I believe that she believes it.

I was impressed with her confidence, her calm, even though the things she was saying in my mind were absolutely, totally beyond the pale of reality.

Clarence Thomas told me in his office that "These people are going to shoot at me. I have a target on my back. It is one of my jobs to make sure that I am not going to be the black in the Reagan Administration that gets tarred and feathers."

Doing what she alleges that he did with her was a prescription for instant death. Clarence is not a fool. And quite frankly, Anita Hill is not worth that type of risk.

Senator SPECTER. Thank you very much, Mr. Doggett. Very powerful.

Professor Kothe, just a question or two, and this is following up on what Senator Biden had asked you, and it relates to the testimony which you had given that Professor Hill was very complimentary about Judge Thomas. There has been considerable testimony given by people who have tried to explain Professor Hill's activities in the sense that she was controlled by Judge Thomas when she worked for him, and that even after she left him she needed him for a variety of assistance.

But my question to you is did there come a point where she had sufficient independence from Judge Thomas so that a continuation of laudatory, complimentary comments which you have testified about would tend to undercut her credibility that he had said these dastardly things to her early on?

Mr. KOTHE. I am not so sure that I grasped the essence of your question. I don't know that she was ever dependent upon him for adulation. She had a continuing relationship, I think of a professional nature, with the EEOC. She was doing some studies and getting materials from them, and the things that we were working on together, we both derived information from the EEO office.

Just how extensive was her continued interaction with Chairman Thomas, I really don't know.

Senator SPECTER. Well, let me break it down for you, Professor Kothe, to this extent. You have testified that you thought her charges were inconceivable, as I think you have earlier said. Is that correct?

Mr. KOTHE. Yes. Absolutely.

Senator SPECTER. And you have based that on your testimony that when you would talk to her about Judge Thomas she would consistently compliment Judge Thomas. Correct?

Mr. KOTHE. Correct.

Senator SPECTER. So, is it your conclusion that if she consistently said complimentary things about him that it could not be true that he had done these dastardly deeds?

Mr. KOTHE. Yes, that would be my conclusion. It is just so utterly incongruent and inconsistent that a person that would speak of him almost reverently as a hero, as a person—a remarkable person, she would say, as a person of untiring energy, she spoke of him, as I said earlier, as a devoted father.

I have never heard her speak of him but in pretty much relatively glowing terms. Never have I heard her say anything critical about him, even when we were discussing the subject of sexual harassment.

So, in that situation with a person that I respected and a person that I admired, I just cannot in my mentations equate how utterly impossible, grotesque statements could be made about this person that she spoke of to me with such high admiration.

Senator SPECTER. The follow-up question to that is some have sought to explain her continuing association with Judge Thomas on the basis that she needed him, that he was her benefactor. And my question to you is would it be necessary for her to go as far as she did in the kind of complimentary statements she made to you on a personal basis to maintain that kind of an association where she could go back to him, for example, for letters of recommendation?

Mr. KOTHE. Well, certainly she needed no further letters of recommendation after she established herself as a teacher. She was a good teacher.

This is not a young woman that is obsequious and fawning and retiring. She was a very positive person. In our faculty meetings she was forthright. She was always a strong person. She didn't need Clarence Thomas to continue in her career of teaching, which she has done and become tenured at the University of Oklahoma.

Senator SPECTER. So your conclusion was when she complimented Judge Thomas she meant it?

Mr. KOTHE. I had no reason to believe she didn't.

Senator SPECTER. And, if she complimented Judge Thomas, it would be totally inconsistent with his having said these terrible things to her?

Mr. KOTHE. Utterly inconsistent.

Senator SPECTER. And the final point is the one where Senator Biden asked you would she have been reluctant to talk to you in truthful derogatory terms considering the fact that you were in a sense an employee of Chairman Thomas?

Mr. KOTHE. I wouldn't think there was any basis for her having a reluctance to disclose to me anything that was of that nature if, indeed, it were a fact. I think that our relationship was such that she could have confidence in me.

I didn't need the position with Clarence Thomas. She didn't need Clarence Thomas to keep the position she had. We were both ad hoc in that sense, working on something that was avocational with us, from the point of view of our then situation.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. The Senator from Massachusetts indicates he would like to question.

Senator KENNEDY. Just for a moment, Mr. Doggett. When you were at Harvard, did you say you headed the Afro students' organization for student assistance?

Mr. DOGGETT. Senator, what I said was that in the second year I was asked by my co-students to be the chairman of the Education Committee, of what at that time was called the Afro-American Student Union.

Senator KENNEDY. And that was a tutorial program for kids in Cambridge, or what was that?

Mr. DOGGETT. No. Harvard Business School has a program to weed out people that it does not feel deserve an Harvard MBA. It is called hitting the screen. It is one of the most intense academic experiences that they have.

The Afro-American Student Union is a membership organization of black American students at Harvard Business School, and those of us who are second-years organized programs to do what we can, not only to prevent first-years from hitting the screen, but to do everything possible to make it possible for them to excel.

My fellow students asked me to be the chairperson of this committee and to organize programs for Harvard Business School MBA students in their first year.

Senator KENNEDY. Well, that is fine. I was just interested in whether you were working through the Phyllis Brooks House or community programs. Because the Business School, I believe, has a program. I just wanted to see whether you were associated with it.

Mr. DOGGETT. No, sir.

Senator KENNEDY. Thank you very much.

The CHAIRMAN. Senator Brown?

Senator THURMOND. Senator Brown?

Senator BROWN. Thank you, Mr. Chairman.

The CHAIRMAN. I am sorry. I am sorry.

Senator LEAHY. Mr. Chairman, we go 20 some odd minutes on that side, 38—I am sorry, 48 seconds on this side. Just a couple of questions.

Senator THURMOND. Are we next over here?

The CHAIRMAN. Well, apparently Senator Kennedy yielded the remainder of his five minutes.

Senator THURMOND. Hold off for just a minute then.

Senator BROWN. OK.

Senator LEAHY. Mr. Doggett, you said that in the years that you have known John Carr, he never mentioned knowing Anita Hill. You are not suggesting that John Carr didn't know Anita Hill, are you?

Mr. DOGGETT. Absolutely not, Senator.

Senator LEAHY. OK.

Mr. DOGGETT. It is clear that he did.

Senator LEAHY. The fact that he didn't mention her to you is one thing.

Mr. DOGGETT. Senator, I asked John Carr specifically about who he was going out with and whether or not he was getting married.

Senator LEAHY. I understand. I think, though, that we should perhaps go by Mr. Carr's sworn statement here this afternoon. It might be the best testimony, rather than whether he thought it necessary to discuss it with you whether he knew her or not.

Now, in your statement you talked about how much you have known Professor Hill. You met her at a social function in 1982. You had two or three phone conversations in which you were primarily interested in having her get you in touch with Harry Singleton. You met outside, I think, Clarence Thomas's office. You bumped into each other jogging, and you explained how you jog in place, so you couldn't talk to her there. Somehow, other plans to go out fell through. Then you saw each other at a party and, according to you, Professor Hill said, "I'm very disappointed in you. You really shouldn't lead on women and let them down."

Now, you have described these contacts with her as minimal. Professor Hill, incidentally, testified she has little or no recollection of you. When I pressed her—and I asked her specifically—she said she thinks she recalls that you were tall.

Now, based on such minimal contacts with Professor Hill, how could you conclude that she had fantasies about your sexual interest in her, or do you just feel that you have some kind of a natural irresistibility?

Mr. DOGGETT. My wife says I do.

Senator LEAHY. Well, Anita Hill apparently doesn't say you do, Mr. Doggett.

Mr. DOGGETT. Sir—

Senator LEAHY. She doesn't even remember you.

Mr. DOGGETT. No, she didn't say that, sir.

Senator LEAHY. She said she barely remembers you. When I asked her to describe you she had some difficulty and thought that you were tall.

Mr. DOGGETT. I looked at Anita Hill's face when you folks mentioned my name. She remembers me, Senator, I assure you of that.

Now, to answer your question, the reason I thought her statements were so bizarre was because our contact was so limited. If we had had much more contact with each other, and as the good Senator Chairman had said, she had come up to me at the end and said, "John, you know we've been seeing, running into each other time and time again," then her comment would have been much more understandable. Since we had had so little contact, I found it to be a bizarre comment.

Senator LEAHY. You have remarkable insight into her: You are able to watch her face and know when we mentioned your name, "By golly! John Doggett's name gets mentioned, this woman is, Wow!"

It really triggered a bell; is that what you are saying? I don't understand. Mr. Doggett, I know this has been an interesting experience for you. You have talked about how Tom Brokaw's office is looking forward—

Mr. DOGGETT. Sir, it has not been interesting. It has been very painful, been very difficult. It has interfered with my life. It has resulted in me getting threats and obscene phone calls on my telephone, people approaching me and accosting me in public. This is not fun, sir.

Senator LEAHY. But, Mr. Doggett, what I am saying is you had these very minimal contacts. Yet you have been able to analyze Anita Hill from just jogging in place and talking to her, and from talking to her on the phone a couple of times when you asked her to set up a meeting with somebody else, you are able to figure out that she has a problem with being rejected by men, and that she has fantasies about sexual interest in her.

Are you able to make such thorough judgments about everybody you meet for such a short period of time? And I mean that seriously.

Mr. DOGGETT. I understand, Senator. I appreciate your question and I think it is a very fair question. Let me do what I can to try to assist you in understanding how I could say what I said.

The jogging incidence, I wanted to jog in place for a few seconds and then move on. She made it very clear that she would like the conversation to be more involved by her body language, by her questions: Well, where do you live? Why are you jogging in this neighborhood? I stopped jogging and we had a conversation that lasted between 5 or 10 minutes. I don't remember exactly how long it was. It is a long time ago.

As I remember it, she was the one who initiated the suggestion that we have dinner. I also observed her from time to time at the Black Yale Law parties that we had. As she had conversations with me, my sense, unprofessional, limited as it was, was that she was trying to engage people in conversations and to prolong conversations. Based on my experience, it suggested an interest. I never saw any of those conversations result in people continuing to talk with her.

Now that is totally unscientific and it is just a point of view.

Senator LEAHY. You don't have an aversion to long conversations, do you, Mr. Doggett?

Mr. DOGGETT. When somebody is trying to, to use the terminology "hit on somebody," and the result is people walk away, and you see that happen more than one time, it leads you to believe, Senator, that maybe something is not working.

Senator LEAHY. You said in your sworn affidavit that Anita Hill was frustrated not being a part of Clarence Thomas's inner circle.

Mr. DOGGETT. That is correct, Senator.

Senator LEAHY. From these minimal contacts, you were able to deduce that?

Mr. DOGGETT. The look on Anita's face when we were in the outer office of Clarence Thomas's office at EEOC when I did not say, "I'm getting ready to talk with Clarence, why don't you come on in with me," the look on her face is the basis for that decision.

Now, you and anybody else may feel that I did not have sufficient information to justify making that opinion, but that is what I said and that is what I felt.

Senator LEAHY. Let me make sure I understand this. By her body language, you knew that she was concerned about not being part of Thomas's inner circle? From the look on her face outside of Thomas's office when you spoke to her, you are able to discern what was in her mind? And then watching her on television, by the look on her face when I mentioned your name, you are able to draw other conclusions about her remembrance of you?

Mr. DOGGETT. That is my sense, sir.

Senator LEAHY. That is all right. I just want to make sure I understand your ability of perception.

And, Dean, you have testified that the Clarence Thomas you knew could not possibly have made the statements Anita Hill claims he made, and I understand that. You stated that very forcefully, sir.

Do you believe that the Clarence Thomas you knew could enjoy talking about pornographic movies? I mean, that is one of the things that was alleged. Anita Hill alleged that he talked to her about pornographic movies. Are you saying that the Clarence Thomas you knew wouldn't even enjoy talking about pornographic movies?

Mr. KOTHE. I can't believe it. I can't just believe that this man would even think in terms of pornographic movies. All of my relationship with him was at such a high level, talking about books of religion and philosophy and the things that he was reading. I can't imagine this man would have any diversion in the area that you describe. I just can't.

Senator LEAHY. I understand. I understand, Dean.

You are aware, however, that a supporter, a Ms. Coleman, has been quoted in the New York Times as saying that at law school he didn't talk about religion or philosophy, that he talked about pornographic movies?

Mr. KOTHE. I didn't get that. Will you please say it again?

Senator LEAHY. I said you said that the man you know would talk probably about books and religion, but you could not conceive of him talking about pornographic movies. You knew that one of his supporters, strong supporters—she has written a letter to me, in fact, in support of him—a Ms. Coleman, has been quoted in the New York Times as saying that Judge Thomas used to talk about pornographic films at law school?

Does that surprise you at all?

Mr. KOTHE. It does.

Senator LEAHY. Thank you. And you have—just very quickly, you have no way of knowing from your own personal knowledge whether Anita Hill is telling the truth about what Clarence Thomas said to her?

Mr. KOTHE. No.

Senator LEAHY. And, Mr. Doggett, would your answer be the same? You know of nothing from your personal knowledge whether she is telling the truth or not? I know your opinion which you have expressed here. But of your personal knowledge, do you know?

Mr. DOGGETT. I have absolutely no information.

Senator LEAHY. And, Mr. Stewart, of your own personal knowledge?

Mr. STEWART. My personal knowledge of Clarence Thomas would lead me to conclude that she was, in fact, lying.

Senator LEAHY. But, of your own personal knowledge, you don't know whether Clarence Thomas sexually harassed Anita Hill?

Mr. STEWART. No. I don't know that we, the term sexual harass or said the things she said. I think we are confused about all of that.

I will restate my statement and say that my personal knowledge of Clarence Thomas would make it incredible for me to believe the things she has alleged.

Senator LEAHY. Do you know that Judge Thomas said that if somebody did the things that Anita Hill claims that he did, if somebody did that, Judge Thomas freely admits that that would be sexual harassment. But you don't know of your own personal knowledge whether that happened or not, is that correct?

Mr. STEWART. I don't know that it happened. I conclude that Clarence Thomas did not do it.

Senator LEAHY. Thank you.

Now, Mr. Grayson, of your personal knowledge, you don't know whether Clarence Thomas sexually harassed Anita Hill?

Mr. GRAYSON. I have no personal knowledge.

Senator LEAHY. Thank you.

Senator HEFLIN. I will just ask 1 minute and that will do it. Dean, Clarence Thomas wrote a letter of recommendation for Anita Hill to you and she became a member of the law school at the Oral Roberts University.

And is it correct that you wrote a letter of recommendation to the Dean of the University of Oklahoma Law School when she went there to teach at the University of Oklahoma?

Mr. KOTHE. I think I talked to Dean Swank, I don't remember writing the letter.

Senator HEFLIN. Well, he wrote, Clarence Thomas wrote you?

Mr. KOTHE. Yes.

Senator HEFLIN. Did you, in talking to the Dean of the University of Oklahoma Law School, did you give her a good recommendation?

Mr. KOTHE. Oh, yes.

Senator HEFLIN. A great recommendation?

Mr. KOTHE. Yes.

Senator HEFLIN. All right, thank you.

Senator SIMON. Mr. Chairman, just one 30-second comment to Mr. Doggett. When your counselor suggested the Illinois Institute of Technology rather than MIT or Cal Tech let me tell you, that counselor was recommending an excellent, superb school in Illinois. It was not a put down.

Mr. DOGGETT. All right.

Senator LEAHY. The only trouble with that, Senator Simon, is that there is probably no one up at this hour of the night to see you say that plug, but we will make sure that you have a certified copy of the record in the morning.

Senator THURMOND. Professor Kothe, I have two very brief questions. Knowing Clarence Thomas as you do, and knowing Anita Hill as you do, do you give any credibility to her charges against Clarence Thomas?

Mr. KOTHE. The last part?

Would I what?

Senator THURMOND. Do you give any credibility to her charges against Clarence Thomas?

Mr. KOTHE. No, the answer is I do not.

I can't believe that she would even say that. I can't believe that she would put that kind of words in her mouth and I can't believe that she would ever say that about Clarence Thomas.

Senator THURMOND. Well, do you give credibility to the charges or not?

Mr. KOTHE. I do not.

Senator THURMOND. What?

Mr. KOTHE. I do not.

Senator THURMOND. You do not.

The next question. You have had a close relationship with Clarence Thomas and Anita Hill. Do you believe the serious charges made against Judge Thomas by Professor Hill are true?

Mr. KOTHE. I do not believe they are true.

Senator THURMOND. You do not, that's all. I will yield to the Senator Simpson.

Senator SIMPSON. It's been a long night and thank you so much Professor, and Mr. Doggett, and Mr. Stewart and Mr. Grayson. I bet you two gentlemen wish you hadn't gone to the ABA convention in Atlanta if it was going to cost you this kind of a night, did you?

Mr. STEWART. It's well worth it, Your Honor, to clear the name of Clarence Thomas.

Senator SIMPSON. Let me tell you, it is true, you have to break it with levity because it does get so, it is so stunning. But I do ask you both, you two are really quite critical. And you have been asked very little but the questions you have been asked have been very important.

But you two are probably the two who have seen her most recently, and got an idea of her state of mind about Clarence Thomas in the midst of his travail. In other words, he has been in the tank now for 106 days. And you saw her in August and you spent 30 minutes with her, right?

Mr. STEWART. If not longer.

Senator SIMPSON. If not longer, and you talked about Clarence and lots of other things as we do, we lawyers at bar conventions.

Mr. STEWART. Mostly Clarence, because that is what we had in common.

Senator SIMPSON. And that was in an informal way, you are having a drink or just sitting, talking or just that was it?

Mr. STEWART. The former.

Senator SIMPSON. And she was very pleased about Clarence Thomas?

Mr. STEWART. Yes.

Senator SIMPSON. Or indicated that?

Mr. STEWART. Yes, Senator.

Senator SIMPSON. Proud of him, was she proud of him?

Mr. STEWART. There seems to be—there was such euphoria, I would assume she was proud of him.

Senator SIMPSON. You recall that and her voice and her demeanor?

Mr. STEWART. Laughing, smiling, warm.

Senator SIMPSON. And saying, isn't it great about Clarence?

Mr. STEWART. And how much he deserved it and that, essentially in other tones that his hard work was paying off.

Mr. GRAYSON. Senator, if I could comment. That particular afternoon was the first, and only time I have met Anita Hill and Mr. Stewart and Ms. Hill really spent a few moments sort of reminiscing, they both worked together. So, sort of as an observer, I clearly walked away from that meeting with the clear sense that Ms. Hill shared the excitement about Judge Thomas' nomination, and was, indeed, very supportive of it.

Senator SIMPSON. Well, and I am sure you found her testimony here incredible.

Mr. STEWART. Well, I think the reason we are here is incredible. It doesn't surprise me that she would say that after making all of these other allegations.

Mr. GRAYSON. I would have to say on my end, I was a bit surprised by it. I am not a student of people but I think to the extent of watching the interaction and the discussion, I was indeed surprised that the reaction was that she Carlton's enthusiasm for the Judge and didn't want to—I don't remember her exact words—but basically didn't want to ruin the mood of the little meeting that took place. If that is, in fact, the case, my response would be that she is very good because that was not clear in my perception of the conversation that took place.

Senator SIMPSON. Well, I thank you, very much for coming. And I realize the serious reason that you are both here. And Mr. Doggett, you have been dealing with the issue of what you saw of her and what she said to you. I accept your summary of your affidavit and your testimony as something you feel very strongly about. And apparently if someone else does not that is truly a difference of opinion.

But to you, from your background and the way you describe it, I understand your reaction and I believe it sounds like a natural reaction to you. And you, Professor, thank you. You have been very kind and very patient, and I would like to, if I were in law school, I would have loved to be under your tutelage. I had some rugged rascals that nearly drive me insane. I needed kindness, I needed kindness and sweetness that you could have given to me.

Senator LEAHY. They succeeded, Alan.

Senator SIMPSON. And as for Leahy—

Senator LEAHY. Alan, I think you succeeded in that insanity drive.

Senator SIMPSON. You see what happened to Leahy and I, we were in a hearing here one day and a courier came in and he said, I am looking for a bald-headed guy with gray hair and glasses and homely as hell and they said there are two of them, meaning myself and Leahy.

So I want to tell you if we all started to trot out what we did in law school that ought to be a riot for the American public. I don't know what Clarence Thomas did in law school, but I got a hunch about it. And I believe Playboy came out while I was in law school and I remember reading it for its articles and its editorial content. So maybe we can just drop all reflections of what we did in law school, what we watched. It is like doctors going to medical school and calling their cadaver certain names, you know, and lawyers doing all the black humor and the white humor and the ghostly

humor and the grotesque and the drinking. Well, some of you may have missed law school.

Anyway I thank you for coming and—

Mr. STEWART. Senator, may I make one comment?

Senator SIMPSON. Yes, sir.

Senator THURMOND. I believe we have six minutes left on this round.

Senator SIMPSON. Mr. Stewart had a comment.

Senator LEAHY. One thing I do want to say in fairness to the professor when I quoted from the New York Times Ms. Coleman's discussion of the x-rated films, the professor obviously had not seen that article. I am not going to go back to it—but out of fairness to him, could somebody from the staff just give that to the professor, please?

Senator SIMPSON. Mr. Stewart had a question.

Mr. STEWART. I would just like to make one comment. I understand the need for levity at this late hour but we are here for a very, very serious matter. I think we need not lose sight of the fact that separate and apart from Supreme Court confirmation, Clarence Thomas is a sitting Federal Judge. This process has treated him, in the last several days, like he is a foreman in a manufacturing plant. We are dealing with claims that are that's a nullity at law.

Allegations come in 10 years, eight years, whatever, way beyond the statute of limitation and I think we need to keep these things in focus and in vogue when we are trying to make a decision about who is telling what. We have two witnesses today for Ms. Hill who were told two different things. Two were told that she was being sexually harassed by her supervisor and two were told by her boss.

We still don't know who they are. There were giant leaps in logic to conclude that it was Clarence Thomas, but that is clearly not the case. Many were asked the question of why we are here? We are here because of a leak, not because of allegations, but because of a leak. This is publicized because of a leak by the committee, somebody on the committee.

Clarence should not be the person who receives the brunt of this. The very same rights that they accuse him of being against, they took from him by leaking this information.

That's all I have.

Senator THURMOND. I have propounded the question to Professor Kothe and I want to ask a second one and I just put one question to you three gentlemen.

Even though Anita Hill may believe what she said was true, in your opinion, is there any merit in the charges made by her against Clarence Thomas?

Mr. GRAYSON. In my judgment, Senator, absolutely not.

Senator THURMOND. Mr. Stewart?

Mr. STEWART. In my judgment, Senator, absolutely not. Whether they are lies or a product of fantasy, they should be dismissed.

Senator THURMOND. Mr. Doggett?

Mr. DOGGETT. Absolutely not. Clarence has been trying to do some things that are extremely important for this country and for any of the things that Anita said to have been true would have totally made it impossible for him to be successful.

Senator THURMOND. I believe, Dean Kothe, you have already answered that question.

Mr. KOTHE. Yes, I share with those views.

The CHAIRMAN. Are we prepared to dismiss this panel.

I am sorry, Senator Brown?

Senator BROWN. Mr. Chairman, I have a few brief questions and I will try to make them brief.

Dean Kothe, your statement indicates that you saw Professor Hill and Judge Thomas together on a number of occasions. Do you remember how many occasions?

Mr. KOTHE. I don't think I said a number of occasions. I said I saw them in Washington, in my home, at the seminar, that was about it.

Senator BROWN. Could you characterize for us the nature of the conversations between them, the way they acted toward each other?

Mr. KOTHE. Oh, it was most friendly. And, in fact, it was a matter of joviality and a lot of laughter. You know, when you are around Clarence Thomas in a relaxed mode, it is a time of joy. And they would reminisce about certain situations that I was not privy to in their experience in Washington and people that they would talk about and they would talk and laugh. But it was always one of pleasure.

Senator BROWN. Did you detect any latent hostility in the relationship?

Mr. KOTHE. Oh, no, you couldn't possibly have.

Senator BROWN. Did you have any occasion in the time you knew Clarence Thomas to see him off-guard, see him in relaxed situations?

Mr. KOTHE. I tried to convey that. I have ridden with him in a car for 3 hours down in Georgia, right in the swamps where he said he was reared. I have been in offices with him. I have been on several college campuses with him. I have been with faculty. I have been with students. I have been in my home when we just stripped down and getting ready for bed and in my library and just talking for a couple of 3 hours.

Senator BROWN. In those relaxed situations, did his vocabulary include any of the words we have talked about in these hearings?

Mr. KOTHE. I said this over and over again, I never ever heard this man use a profane word. And like I am experienced with other lawyers and other men and in a long discourse inevitably there is a story somebody wants to tell. I never heard him tell a dirty story, so to speak, or make an off-color remark.

It just has to be that this man in the situations I have seen him in would have to be the greatest actor in history to have disguised this part of his nature that has been described here, this totally unreal.

Senator BROWN. Thank you.

Mr. Doggett, I liked your reaction to something. In reading through the transcript or reading through your testimony, your statement, it has been some time since I have been in a situation as an unmarried person, so I am not sure I am an expert on this at this point, but the conversation that took place seemed to me could be nothing more than someone flirting with you.

Specific, the language, the conversation that you had with Professor Hill at the time, Anita Hill at the time, that the words could have been simply a way of flirting, not terribly serious in their content other than engaging. Would you comment on that?

Mr. DOGGETT. I never perceived Anita to be flirting with me. I perceived her to, as a man, be indicating that if I was interested in getting to know her better that she would be interested.

Senator BROWN. You thought the words were quite serious, not—

Mr. DOGGETT. Sir, the comments that she made at the going away party, to me, seemed to be very, very serious and that is how I took them.

Senator BROWN. Mr. Stewart, one thing, Professor Hill here indicated that it was you who made the comment about Judge Thomas being, at least my recollection is that Judge Thomas being so well suited for the Court and wasn't it wonderful, and so on. And that rather than her instigating those remarks, that she merely maintained a politeness during that period without formally objecting but without her uttering those words.

Are you quite certain that those words came from Professor Hill?

Mr. STEWART. I am absolutely certain that not only did they come from Ms. Hill but that they were surrounded by euphoria and a continuation of kudos for Judge Thomas that lasted more than a few minutes, that lasted almost over 30 minutes.

The one thing Anita Hill and I had in common was Judge Thomas. That was the subject of conversation. There were no negatives, there were all positives and Mr. Grayson was there and he had not met Ms. Hill before that very instant.

Senator BROWN. Thank you.

Mr. Chairman, I want to yield back but if I could just make a note about the legal research that Senator Simpson did in law school.

We had a student in Colorado's law school, who did legal research, because he took certain pictures out of the magazine and appended them to his answer in torts and in two or three places he received the highest grade in the class.

I will yield back.

The CHAIRMAN. It is time to end this panel. Thank you, very much.

Senator SIMPSON. Mr. Chairman, I just have something to enter into the record because my friend from Vermont talked about Lavita Coleman in a rather negative way and I wish that he had finished the sentence.

She also said that neither she nor the other students were offended by his amusing comments about pornographic material and then she said, Ms. Coleman, now a lawyer in Washington continued:

Indeed we would have been hypocrites to have been offended since very few of us failed to attend one or more similar films that were shown on the Yale University campus while we were in school.

We did not even do that in Laramie. So that shows you how far behind the curve we were, but then she went on to say and I end

with this sentence, she called, this is the same woman about this pornographic stuff, she called him, calling Clarence Thomas—

Particularly sensitive and caring regarding the professional and personal concerns of the women he knows and with whom he has worked and she seriously doubted that he harassed Professor Hill.

That is what is wrong with this process, right there.

Senator LEAHY. Well, Mr. Chairman, as the Senator from Wyoming knows, I prefaced that by saying that Ms. Coleman is a very strong supporter of Clarence Thomas.

And the only reason I brought it up and sent the whole newspaper is that it would be in context for Professor Kothe because he had said that he just could not imagine under any circumstances Judge Thomas going to an X-rated movie. That was the sole point of it. But as I have also stated, Ms. Coleman is a strong supporter and has written to me strongly in support of Judge Thomas.

The CHAIRMAN. Thank you, gentlemen. I truly appreciate your willingness to be here as long as you have. There is only one consolation you all have; there is a panel of nine people to follow you. Just be thankful you're not among them.

Thank you very much.

Senator THURMOND. We thank you very much for your appearance.

The CHAIRMAN. Our next and last panel—it is almost inappropriate to say welcome at this hour of the night, but I thank you all very much for your willingness to be here, and particularly for your willingness to be here at this late hour.

As I indicated to you a moment ago, we are going to insist on the 3-minute rule that was announced beforehand, notwithstanding the fact, I am told, there are two witnesses who were going to be here, and for understandable and appropriate reasons, in light of the hour, are not here.

But let me ask the timekeeper, when the clock goes on, will the yellow light go on, with 1 minute to go? So, when the amber light goes on, you will have a minute. One of you asked me how will you know when we are getting near 3 minutes, and Ms. Johnson indicated to me that she was pregnant and due at any moment, and so I strongly urge my colleagues not to have it that they be responsible for her being here any longer than is necessary. If I can't convince you, on my behalf, to stop questioning, I hope that you will have some consideration for Ms. Johnson, who has not asked for any. I am using you as a ploy, Ms. Johnson, to try and see if we can move this thing along.

Now, our panel is made up of Patricia Johnson, Director of Labor Relations at the EEOC; Pamela Talkin, former chief of staff for Clarence Thomas at the EEOC; Janet Brown, former press secretary for Senator John Danforth; Linda Jackson, research associate, Department of Education; Nancy Altman, formerly of the Department of Education; Anna Jenkins, a former secretary at the EEOC; Lori Saxon, former assistant for congressional relations of the Department of Education; and Connie Newman, Director, Office of Personnel Management.

Thank you all very much.

Now, I was asked by the panel, they apparently have decided how they would like to proceed, and I would just yield to the panel to proceed in 3-minute intervals seriatim, and we will finish.

I beg your pardon, I am required to swear you all in, I am sorry.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. JOHNSON. I do.

Ms. TALKIN. I do.

Ms. BROWN. I do.

Ms. NEWMAN. I do.

Ms. JACKSON. I do.

Ms. ALTMAN. I do.

Ms. JENKINS. I do.

Ms. SAXON. I do.

The CHAIRMAN. Thank you very much.

TESTIMONY OF A PANEL CONSISTING OF PATRICIA C. JOHNSON, DIRECTOR OF LABOR RELATIONS, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; LINDA M. JACKSON, SOCIAL SCIENCE RESEARCH ANALYST, EEOC; JANET H. BROWN, FORMER PRESS SECRETARY, SEN. JOHN DANFORTH; LORI SAXON, FORMER ASSISTANT FOR CONGRESSIONAL RELATIONS, DEPARTMENT OF EDUCATION; NANCY ALTMAN, FORMERLY WITH DEPARTMENT OF EDUCATION; PAMELA TALKIN, FORMER CHIEF OF STAFF, EEOC; ANNA JENKINS, FORMER SECRETARY, EEOC; AND CONSTANCE NEWMAN, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Ms. JOHNSON. Good morning, Chairman Biden, Senator Thurmond and other members of this committee.

I am Patricia Cornwell Johnson, and I currently work as the Director of Labor Relations of the Equal Employment Opportunity Commission. I received my bachelor's degree from the American University here in Washington, and my law degree from the Georgetown University Law Center. I am a member of the bar of the District of Columbia, the U.S. Supreme Court, the U.S. Court of Appeals for the District of Columbia Circuit, as well as the majority of other U.S. Courts of Appeals.

I received my labor relations training at the National Labor Relations Boards. I moved from there to corporate America, then to a major transit authority, before going to the EEOC. I work in an area that is dominated by men and I have never met a man who treated me with more dignity and respect, who was more cordial and professional than was Judge Clarence Thomas.

Shortly after joining the Commission—and I must apologize to my mother for making this statement on worldwide TV, and I am grateful that she is asleep—then Chairman Thomas became aware that I used profanity in some exuberant exchanges with union officials. Chairman Thomas made it clear to me that that was unacceptable conduct which would not be tolerated. I was shocked because up until that time, such language had indeed been acceptable, almost expected—it made me “one of the boys.” Chairman Thomas insisted that his managers conducts themselves in a

manner that was above reproach and he held himself to that same high standard.

I had occasion to meet with Chairman Thomas alone to discuss labor relations and strategies. He was always professional. As a labor attorney with approximately 15 years of experience, I have drafted policy statements concerning sexual harassment, I have trained managers concerning what constitutes harassment, how to deal with such allegations.

Furthermore, with a previous employer, I was a victim of sexual harassment. It was the most degrading and humiliating experience of my professional career. I confided in friends and family concerning the best manner to confront it. I did confront it and I eventually left that position. But I must tell you that, during the time I had to continue to work with the perpetrator, I avoided contact, especially one-on-one contact with him, and since leaving that position I have never had any further contact with that man.

I do not believe these allegations that have been leveled against Judge Thomas. Moreover based on my professional experience, as well as my personal experience, I do not believe that a woman who has been victimized by the outrageously lewd, vile and vulgar behavior that has been described here would want to have, let alone maintain, any kind of relationship with a man that victimized her.

The CHAIRMAN. Thank you very much, and thank you for staying within the time.

Whoever is next please move forward.

TESTIMONY OF LINDA M. JACKSON

Ms. JACKSON. Chairman Biden, Senator Thurmond and members of the committee: I would like to correct the record. I am employed as a social science research analyst at the EEOC.

When I first met Clarence Thomas in 1981, he was Assistant Secretary for Civil Rights in the Department of Education. My work required him to contact his office to secure certain data and information. After finding out the type of information I needed, Clarence Thomas indicated that any followup contact I had with his office should be through his aide, Anita Hill. He described her as someone who would help me navigate and put me in touch with the right people at OCR. He spoke in terms any mentor would use, explaining she was very bright and knowledgeable about the workings of OCR.

During that time, Anita and I began to have lunch and discuss both work and personal things. She referred to Clarence Thomas with admiration, and never once mentioned anything was going wrong at work. She seemed excited to be a special assistant to a very visible public official. I never saw any strained relations between them, whenever I saw them together in the workplace or at a meeting. She would generally look at him with a smile on her face and have the kind of positive demeanor that would suggest she respected and liked him as a person.

We often discussed the social scene in Washington. In the context of such discussions, it seems that she would have mentioned something, if she were having a problem at the office, even if she did not name a specific person. Subsequent discussions I had with

Anita also yielded no mention of anything improper on the part of Clarence Thomas.

It is difficult for me to believe that Anita would follow her supervisor to another agency, if he was subjecting her to the things she has alleged. I remember Anita Hill as an intelligent woman and one who would have found some way to retain her job at the department or find another in either the public or private sector, if she were unhappy.

After meeting Clarence Thomas through my job, I ran into him in the hallway of my apartment building and found we lived in the same place. We began to have numerous conversations about work, politics and personal issues. We became very good friends in the process.

I believe I know the basic nature of this man better than most people in this room. I believe, unequivocally, Clarence Thomas' denial of these allegations. This is a very honorable man who has the highest respect for women. He always treated me with utmost respect and was more sensitive to women than most men I know. He never engaged me in discussions of any kind that could be considered demeaning to women.

He was often troubled by those women he knew, both professionally and women, who were having difficulties with personal problems, particularly treatment by male friends, coworkers or spouses. He and I had numerous conversations about abuse of women, physically, emotionally and verbally. You see, Senators, he helped me pick up the pieces of my own crushed spirit, after I left an abusive marriage.

His sensitivity and honor, his respect for women, his helping attitude toward all people in need, makes these allegations even more ludicrous.

The CHAIRMAN. Thank you very much.

Who is next?

TESTIMONY OF JANET H. BROWN

Ms. BROWN. My name is Janet Brown, Mr. Chairman.

Senator HATCH. Would you pull your microphone over, Ms. Brown?

Ms. BROWN. Yes, I will.

Senator HATCH. I would love to hear you.

Ms. BROWN. This will be very brief.

I have known Clarence Thomas very well for 12 years. We worked for 2 years very closely here in the Senate on Senator Danforth's staff. He is a man of the highest principle, honesty, integrity and honor in all of his personal and professional actions.

A number of years ago, I was sexually harassed in the workplace. It was a demeaning, humiliating, sad and revolting experience. There was an intensive and lengthy internal investigation of his case, which is the route that I chose to pursue. Let me assure you that the last thing I would ever have done is follow the man who did this to a new job, call him on the phone or voluntarily share the same air space ever again.

Other than my immediate family, the one person who is the most outraged, compassionate, caring and sensitive to me was Clar-

ence Thomas. He helped me work through the pain and talk through the options. No one who has been through it can talk about sexual harassment dispassionately. No one who takes it seriously would do it.

I don't subscribe to the belief that men, because they are men, don't understand sexual harassment. My husband, my father and my brother understand it. Clarence Thomas understands it. And because he understands it, he wouldn't do it.

Senator KENNEDY [presiding]. Ms. Saxon?

TESTIMONY OF LORI SAXON

Ms. SAXON. I worked at the Department of Education in the Office for Civil Rights from September 1981 until September 1982. I was 24 years old at the time. I was the confidential assistant to Clarence Thomas. In that capacity, I handled congressional relations and public affairs. My office was just down the hall from Anita Hill's during her tenure at the Department of Education.

I never saw any harassment go on in the office. The office was run very professionally. Clarence Thomas and Anita Hill were always very cordial and friendly in their relations. There was never any evidence of any harassment toward any of the female employees. I dealt with Anita Hill on a daily basis in performing my duties. She was happy in her position and she liked working for Clarence Thomas.

Anita Hill never indicated to me that he was harassing her. Clarence Thomas generally left the door of his office open, so if he had any meeting with Hill or any other employees, they were in view. He operated with an open-door policy with every member of the staff, regardless of gender. I never saw him meet in private with a female employee, without someone else present. Unless it was a group meeting and there were many staffers present, the door would be open and his secretary would be right outside the door.

Anita Hill was the only special assistant who accompanied Clarence Thomas to the Equal Employment Opportunity Commission, upon his appointment in August of 1982. Anita told me that she was very excited about the opportunity to work for the Chairman of the EEOC. She related to me that she was pleased that Clarence was taking her with him.

I believe Anita Hill's statements that she felt pressures to accompany Clarence Thomas to EEOC, because of fears of losing her job, are simply untrue. I and the rest of the senior staff of the Office for Civil Rights found other positions within a few months. That is how the process of being a political appointee worked.

I was Clarence Thomas' confidential assistant for a year. My job required that I meet with him at least once a day. He never made an inappropriate advance, uttered an off-color remark, or used coarse language in my presence. I was younger and more politically active than Anita Hill. I introduced him to my friends in Washington, the political community and very social settings. I was the first person to bring and introduce him to a luncheon with Thomas Sowell and others at the Capitol Hill Club. During this entire period, he never made any inappropriate actions toward me or any other female with whom I saw him.

I understand what women in this country go through in the area of sexual harassment. There is no place for sexual harassment in the workplace. I experienced perhaps a different kind of harassment, by being a victim of a violent crime. I know what it is to have one's face violated. I know what it feels like to feel helpless and humiliated.

Let me assure you in no uncertain terms that no harassment took place in the workplace at the Office for Civil Rights.

Senator KENNEDY. Thank you very much.

Ms. Altman.

TESTIMONY OF PATRICIA C. ALTMAN

Ms. ALTMAN. My name is Nancy Altman. I consider myself a feminist. I am prochoice. I care deeply about women's issues. In addition to working with Clarence Thomas at the Department of Education, I shared an office with him for 2 years in this building. Our desks were a few feet apart. Because we worked in such close quarters, I could hear virtually every conversation for 2 years that Clarence Thomas had. Not once in those 2 years did I ever hear Clarence Thomas make a sexist or offensive comment, not once.

I have myself been the victim of an improper, unwanted sexual advance by a supervisor. Gentlemen, when sexual harassment occurs, other women in the workplace know about it. The members of the committee seem to believe that when offensive behavior occurs in a private room, there can be no witnesses. This is wrong.

Sexual harassment occurs in an office in the middle of the workday. The victim is in a public place. The first person she sees immediately after the incident is usually the harasser's secretary. Coworkers, especially women, will notice an upset expression, a jittery manner, a teary or a distracted air, especially if the abusive behavior is occurring over and over and over again.

Further, the women I know who have been victimized always shared the experience with a female coworker they could trust. They do this to validate their own experience, to obtain advice about options that they may pursue, to find out if others have been similarly abused, and to receive comfort. Friends outside the workplace make good comforters, but cannot meet the other needs.

It is not credible that Clarence Thomas could have engaged in the kinds of behavior that Anita Hill alleges, without any of the women who he worked closest with—dozens of us, we could spend days having women come up, his secretaries, his chief of staff, his other assistants, his colleagues—without any of us having sensed, seen or heard something.

Senator KENNEDY. Thank you very much.

Ms. Jenkins.

TESTIMONY OF ANNA JENKINS

Ms. JENKINS. Chairman Biden, Senator Thurmond and other members of the committee, my name is Anna Jenkins, and I reside in Silver Spring, MD. I am a staff assistant in the Office of Policy Development at the White House. I was not asked by the White House to give a statement. I went to them and asked if it was okay for me to give a statement.

I have been a Federal employee since December 1965 and worked for the Equal Employment Opportunity Commission from May 1970 to September 1989, with intermittent details to the White House under the Carter and Reagan administrations.

I was employed as a secretary in the EEOC's Office of the Chairman in the Executive Secretariat as a staff specialist. During my tenure with the Office of the Chairman, I served under five chairpersons, William Brown, John Powell, Lowell Perry, Eleanor Holmes Norton, and Clarence Thomas. In September 1989, I left the EEOC to join the Bush administration, Office of Policy Development.

When President Reagan appointed Clarence Thomas as Chairman of the EEOC, I was the only employee left in the Chairman's office from the previous administration. Upon Judge Thomas' arrival at the agency, I worked directly for him as his secretary until his confidential assistant Diane Holt and legal assistant Anita Hill came onboard. He brought them from the Department of Education.

Prior to Anita Hill joining the staff, she appeared quite anxious to work for the EEOC. In fact, she called Judge Thomas several times to inquire about the status of her appointment.

I recall the first day Ms. Hill reported to work at EEOC. She was very pleased and excited about being able to select an office with a big picture window overlooking the Watergate Hotel and the Potomac River.

I had daily contact with Anita Hill and Judge Thomas. We shared a suite of offices consisting of a reception area, conference room, kitchen, and five offices. Judge Thomas' conduct around me, Anita Hill, and other staffers was always proper and professional. I have never witnessed Judge Thomas say anything or do anything that could be construed as sexual harassment. I never witnessed him making sexual advances toward any female, nor have I witnessed him engaging in sexually oriented conversations with women.

I have witnessed Judge Thomas and Anita Hill interact in the office. At no time did the relationship appear strained nor Anita appear uncomfortable with the relationship.

I understand that at Anita's press conference she denied knowing Phyliss Berry. I was confused by her denial, since Phyliss Berry often visited the office while Anita worked there. I have seen them exchange greetings.

In closing, I wish to emphasize that I have the highest regard and respect for Judge Thomas. In light of my experience with him and the way I have seen him conduct himself around other females, I find this harassment allegation unbelievable.

Senator KENNEDY. All right.

Ms. Newman.

TESTIMONY OF CONSTANCE NEWMAN

Ms. NEWMAN. Constance Newman. I appreciate the opportunity to appear before you.

I am both saddened and optimistic as a result of these proceedings. I am saddened because of the way in which the raw nerves of

America have been touched, the raw nerves of racism and sexism, leading to too much mistrust between too many of us. Many of these feelings are just below the surface of this great Nation, and we are all victims of it. We are all hurt in some way by the side of America that allows bigotry and unfairness to exist. We must come to terms with what is unfair in this basically fair Nation.

I am saddened for my friend, Judge Clarence Thomas, and his family. All who are in public life must sympathize with their plight.

I am saddened for Professor Anita Hill. Her life will never be the same. I don't know her, but I must believe that she must be a talented and conscientious woman, or she would not have completed the tough educational requirements of Yale Law School or be a tenured professor at a major law school. She must be a concerned black woman, or she would not have chosen to work in civil rights.

What was her motivation? Frankly, I do not know. I do not even want to try to speculate.

The waters are muddy around sexual harassment now, but I am optimistic. I am optimistic because I believe that as a result of these proceedings, you will know what I know about Judge Thomas. He is competent, he has integrity, he has true grit, and I do believe that these proceedings will make him even stronger and even more sensitive.

I have known him for 10 years. That does not mean that we have not disagreed. We have. We have argued. Through the years he has changed his mind some; I have changed mine a little. But I have not changed my view about the basic decency and integrity of this man. I know him and have worked with him. I have worked in the halls of EEOC. Not once did I hear a hint of improper conduct. I would have heard. I heard of disagreements, but not improper conduct.

Finally, I am optimistic that positive change will take place as a result of these proceedings. America has seen and understood some of the delicate issues that we must face and will appreciate the governmental process, painful though it may be.

[The prepared statement of Ms. Newman follows:]

STATEMENT OF CONSTANCE BERRY NEWMAN
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
OCTOBER 13, 1991

MR. CHAIRMAN, SENATOR THURMOND AND MEMBERS OF THE COMMITTEE: I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THE CONFIRMATION OF JUDGE CLARENCE THOMAS AS AN ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT.

I AM BOTH SADDENED AND OPTIMISTIC AS A RESULT OF THESE PROCEEDINGS. I AM SADDENED BECAUSE OF THE WAY IN WHICH THE RAW NERVES OF AMERICA HAVE BEEN TOUCHED. THE RAW NERVES OF WHICH I SPEAK ARE SEXISM, AND RACISM, ~~DISCRIMINATION AGAINST OUR~~ LEADING TO MISTRUST BETWEEN TOO MANY OF US. MR. CHAIRMAN, MANY OF THESE THE FEELINGS MOVE JUST BELOW THE SURFACE OF THIS GREAT NATION. WE ARE ALL VICTIMS . . . WE ARE ALL HURT IN SOME WAY BY THE SIDE OF AMERICA THAT ALLOWS BIGOTRY AND UNFAIRNESS TO EXIST. WE MUST COME TO TERMS WITH WHAT IS UNFAIR IN THIS BASICALLY FAIR NATION OR WE WILL BE DESTROYED.

I AM SADDENED FOR MY FRIEND, JUDGE CLARENCE THOMAS AND HIS FAMILY. ALL WHO ARE IN PUBLIC LIFE MUST SYMPATHIZE WITH THEIR PLIGHT. ALL WHO CHOOSE PUBLIC SERVICE AS A PROFESSION UNDERSTAND THAT THE PUBLIC HAS A RIGHT TO KNOW WHETHER WE ARE COMPETENT. THE PUBLIC HAS A RIGHT TO DEMAND THAT WE HAVE INTEGRITY AND THAT WE DO NOTHING TO BRING SHAME TO THE OFFICES IN WHICH WE SERVE. THE PUBLIC HAS A RIGHT TO DEMAND THAT WE BE FAIR TO ALL . . . THAT WE NOT ENGAGE

IN BEHAVIOR SUCH AS SEXUAL HARASSMENT OR DISCRIMINATION OF ANY KIND. IN FACT, THE PUBLIC HAS A RIGHT TO EXPECT THAT PUBLIC SERVANTS WILL USE ALL OF THEIR RESOURCES TO INSURE THAT THE DIVERSITY OF THE NATION IS REPRESENTED AT ALL LEVELS IN THE PUBLIC SERVICE AND THAT THE POLICIES OF THE NATION WILL RESULT ON ALL SHARING IN THE NATION'S GREATNESS. THOSE WHO CHOOSE PUBLIC SERVICE EXPECT THAT A CERTAIN AMOUNT OF OUR PRIVACY MUST BE RELINQUISHED WHEN WE TAKE THE OATH OF OFFICE. BUT THE PUBLIC DOES NOT HAVE THE RIGHT TO EXPECT THAT WE ARE STRIPPED OF ALL OF OUR RIGHT TO PRIVACY. THE PUBLIC DOES NOT HAVE THE RIGHT TO EXPECT THAT PUBLIC SERVANTS RELINQUISH THE GUARANTIES THAT UNDERLIE THE RIGHT TO PRIVACY SUCH AS THOSE RELATING TO FREEDOM OF SPEECH AND RELIGION AND PROTECTION AGAINST SELF-INCRIMINATION. THE DAY THAT IS EXPECTED OF PUBLIC SERVANTS IS THE DAY THAT THE NATION WILL NOT BE ABLE TO ATTRACT THE BEST TO PUBLIC SERVICE.

I AM SADDENED FOR PROFESSOR ANITA HILL. HER LIFE WILL NEVER BE THE SAME. I DO NOT KNOW HER BUT I MUST BELIEVE THAT SHE MUST BE A TALENTED AND CONSCIENTIOUS WOMAN OR SHE WOULD NOT HAVE COMPLETED THE TOUGH EDUCATIONAL REQUIREMENTS OF A YALE LAW SCHOOL OR BE A TENURED PROFESSOR OF A MAJOR LAW SCHOOL. SHE MUST BE A CONCERNED BLACK WOMAN OR SHE WOULD NOT HAVE CHOSEN TO WORK IN CIVIL RIGHTS AT THE DEPARTMENT OF EDUCATION AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. WHAT THEN WAS HER MOTIVATION. FRANKLY, I DO NOT KNOW AND WILL NOT EVEN TRY TO SPECULATE. I DO BELIEVE THAT PROFESSOR HILL WAS CAUGHT IN A WHIRLWIND NOT OF HER MAKING AND WAS SWEEPED ONTO

THE PUBLIC STAGE WHERE THE THIRTY AND SIXTY SECOND SOUND BITES CONTROL. SHE WAS THEN IN POSITION WHERE SHE HAD TO MOVE FORWARD . . . SHE COULD NOT TURN BACK THE CLOCK. HOW THE POWER TO TURN BACK THE CLOCK WOULD BE HELPFUL TO US ALL ON OCCASION.

I AM SADDENED BECAUSE I BELIEVE THAT THE WATERS ARE MUDDIER AROUND THE IMMORAL AND ILLEGAL PRACTICE OF SEXUAL HARASSMENT. EVEN IN THIS DAY OF ENLIGHTENMENT IN EMPLOYMENT PRACTICES, WOMEN IN THE WORKPLACE CONTINUE TO SUFFER FROM PRACTICES OF INTIMIDATION. EVEN TODAY, THERE ARE MALE MANAGERS AND EXECUTIVES IN THE WORKPLACE WHO BELIEVE THAT THEIR ONLY RESPONSIBILITY IS TO REFRAIN FROM SEXUAL HARASSMENT THEMSELVES. THEY DO NOT ACCEPT THE RESPONSIBILITY FOR INSURING THAT ALL IN THEIR ORGANIZATIONS UNDERSTAND THAT SEXUAL HARASSMENT WILL NOT BE TOLERATED. I AM SADDENED BECAUSE LITTLE OF THE DISCUSSION OF SEXUAL HARASSMENT THAT I HAVE HEARD SO FAR CONSIDERS THE RIGHTS OF THE ACCUSED. I KNOW THAT IS NOT THE INTENT OF THE WOMEN'S MOVEMENT . . . OF WHICH I HAVE BEEN A PART. THE WOMEN'S MOVEMENT IS SEEKING EQUALITY AND FAIRNESS, BUT NOT BY THE IMPOSITION OF AN UNFAIRNESS AGAINST THE ACCUSED.

MR. CHAIRMAN, I AM ALSO OPTIMISTIC AS A RESULT OF THE PROCEEDINGS. I BELIEVE THAT AS A RESULT OF THE HEARINGS, JUDGE THOMAS WILL BE CONFIRMED BECAUSE OTHERS WILL KNOW WHAT I KNOW - HE HAS THE COMPETENCE, THE INTEGRITY, THE "TRUE GRIT," AND THE SENSE OF FAIRNESS THAT SHOULD BE PRESENT IN A JUSTICE OF THE SUPREME COURT. I ALSO BELIEVE THAT THIS PROCESS HAS MADE HIM AN EVEN BETTER

FINALLY MR. CHAIRMAN, I AM OPTIMISTIC THAT POSITIVE CHANGE WILL TAKE PLACE AS A RESULT OF THIS PROCEEDING BECAUSE SEXISM AND RACISM HAVE BEEN ~~ADDRESSED~~ ^{DISCUSSED} IN A VERY CLEAR MANNER IN THE GIVE AND TAKE BETWEEN ~~YOU AND THE OTHER~~ ^{THE} MEMBERS OF THE COMMITTEE AND THOSE WHO HAVE TESTIFIED BEFORE YOU. I BELIEVE THAT, ~~MORE~~ ^{NOT} AMERICANS NOW MORE THAN EVER BEFORE ~~WILL~~ UNDERSTAND THAT THE ISSUE OF SEXUAL HARASSMENT IN THE WORKPLACE MUST BE ADDRESSED. I BELIEVE THAT MORE AMERICANS THAN EVER BEFORE WILL UNDERSTAND THAT THE ISSUE OF RACISM AND STEREOTYPING OF ONE ANOTHER MUST BE STOPPED. AND I BELIEVE THAT MORE AMERICANS WILL IN THE END APPRECIATE THAT THIS AMAZING GOVERNMENTAL PROCESS DOES WORK - PAINFUL THOUGH IT MAY BE.

The CHAIRMAN. You are a great optimist, Ms. Newman, but I am so delighted to hear somebody say that.
Ms. Talkin.

TESTIMONY OF PAMELA TALKIN

Ms. TALKIN. As chief of staff of the EEOC for 3 years, I reported directly to then-Chairman Thomas. We worked very closely. We traveled together frequently, and we spent innumerable hours alone together and as many hours in the company of other women.

Judge Thomas was adamant that the women in the agency be treated with dignity and respect, and his own behavior towards women was scrupulous. There was never a hint of impropriety, and I mean a hint; never a gesture, never a look, never a word, never body language, none of the things that we women have a sixth sense about and that very few men have any sense about. [Laughter.]

The CHAIRMAN. Thank you. [Laughter.]

Ms. TALKIN. Needless to say, there was nothing explicit or coarse in his language. Judge Thomas viewed such conduct, and I quote, as "repugnant," "reprehensible," "deplorable," and "despicable." He would not tolerate it.

I have been in the work force for over 30 years. During that time I have endured varying degrees of sexual harassment, sometimes serious, sometimes subtle. I view myself as very alert to this; some of my men friends say, overly sensitive. It is in that context that I tell you that I have never met a man as sensitive. He has a feminist's understanding of sexual politics. He is a man who loathes locker room talk.

This is a man who, when I had momentary lapses of language, looked discomfited and never responded in kind.

This is a man who looked at his shoes when other men were craning their necks to look at a woman.

This is a man who spent countless hours talking to me about his efforts to raise his adolescent son to be a decent, dignified, reverent man of women, and urging his son to treat his teenage female companions with dignity and respect despite his raging hormones.

This is a man who understood the inherent imbalance of power in the work place between men and women, and frowned upon even consensual romantic relationships because he did not want one woman in the agency to even mistakenly believe that her dignity had been compromised.

I have spent over 18 years enforcing laws against employment discrimination, and I can tell you that I have never worked in a work environment where any individual, man or woman, was more committed to establishing a work place free from discrimination and harassment. It is the saddest of ironies to me that the behavior that Judge Thomas found most abhorrent is the behavior that he is now being accused of.

[The prepared statement of Ms. Talkin follows:]

Testimony of Pamela Talkin

As Chief of Staff of the Equal Employment Opportunity Commission from 1986 - 1989, I reported directly to then-Chairman Clarence Thomas. We worked very closely, traveled together frequently and spent innumerable hours together, both alone and in the company of employees. In all that time, Judge Thomas never acted with less than the utmost professionalism and courtesy toward me and other women.

It was Judge Thomas' unequivocal, and oft-repeated, policy that sexual harassment, even in its most subtle forms, would not be tolerated. And it was not. If Clarence Thomas was most intolerant of any behavior, it was the very behavior of which he is now being accused.

Without exaggeration, I would say we discussed the issue at least 100 times. Judge Thomas viewed such inappropriate behavior, even if it did not rise to the level of unlawful conduct, as (and I quote) "reprehensible", "despicable", "repugnant", and "disgusting". And these were the more charitable terms he used.

Judge Thomas was adamant in demanding that all female employees be treated with dignity and respect. He was

always scrupulous in his approach to women and his behavior was absolutely above reproach. In the years I worked with and observed him, he invariably conducted all his interactions with women employees in a highly appropriate manner, with never even a hint of impropriety.

As someone who has endured varying degrees of offensive behavior from men in the workplace, I view myself as reasonably alert to such misconduct. It is in this context that I say that I have never known any other man who was as sensitive to and careful about the subtle issues and potential problems arising from relationships between men and women in the workplace. This was a man who had a feminist's understanding of "sexual politics".

Judge Thomas was acutely aware that sexual harassment could occur even where a woman was not imposed upon physically or did not have her livelihood affected or threatened. Before it became the common view, Judge Thomas clearly understood and firmly believed that subjecting women to unwelcome attentions or inappropriate remarks also constituted sexual harassment. Early on, he foresaw and argued that conduct which creates a hostile working environment for women constituted a violation of Title VII of the Civil Rights Act. As we all know, that position was

later adopted by the U.S. Supreme Court in the case of Meritor Savings Bank v. Vinson.

Judge Thomas was rigorous in ensuring high standards of conduct from all male employees of the Agency, particularly those men in supervisory and management positions. I witnessed his outrage and know that he took immediate action when inappropriate conduct occurred. He would not and did not condone even casual, inadvertent, or potential mistreatment of female employees.

Not only were male supervisors or managers forbidden to engage in any unlawful conduct, but Judge Thomas made it clear to them that the inherent imbalance of power between supervisors and employees required that persons in authority not act in any manner that could be even unintentionally coercive or make employees believe, even mistakenly, that their dignity was being compromised or that unfair advantage had been taken of them. To that end, Judge Thomas did not permit even consensual relationships between male supervisors and female subordinates.

Judge Thomas is a man of the highest integrity and character. In my 24 years of public service, over 18 of which have been spent enforcing laws against discrimination

in employment, I have never encountered any other individual who was more committed to the establishment of a work environment free from all forms of discrimination and harassment.

The CHAIRMAN. A very powerful statement, Ms. Talkin.

I apologize for being out of the room while some of you were testifying. I don't believe there are any questions from the panel. Your statements speak for themselves.

Before I dismiss this panel, though, I have an announcement to make, and that is that having spoken with Senator Danforth, and Senator Danforth representing, and that is enough for all of us, that he has spoken with Clarence Thomas—no, has not?

Senator DANFORTH. Mr. Chairman, I have not. If you would like me to call him on this matter, I will—

The CHAIRMAN. I think before I—

Senator DANFORTH [continuing]. But I can absolutely guarantee what the answer will be.

The CHAIRMAN. Well, I think it may be useful to call.

Senator DANFORTH. All right.

The CHAIRMAN. And I think that out of an excess of caution, because this is of such consequence, not that I doubt your judgment on this, but it is—I will withhold. I will excuse the panel, but we will just recess in place for a minute here, and I ask everyone to wait just a minute because I will have an announcement, depending on the phone call, about tomorrow's proceedings that will—today's proceedings. Yes, I am sorry, it is 2 o'clock.

Senator HATCH. You may want to wait, as well. You may just want to wait.

The CHAIRMAN. Well, this 2 o'clock is better than 2 o'clock 2 nights ago. Then I was sitting in a dentist's chair, so it is getting better. At least we are in good company.

Let me suggest once again that Judge Thomas is indeed fortunate to have such friends and supporters as all of you women that are here, and again I thank you, truly thank you, for being here, and particularly at the hour. This is an unusual time to be summoned to the committee—now you weren't summoned—to come to the committee, to testify anywhere in the world, let alone here in this old magnificent room. So thank you all, and you all are dismissed.

Senator THURMOND. If I may say a word?

The CHAIRMAN. I'm sorry. I beg your pardon. Senator Thurmond would like to say a word.

Senator THURMOND. Mr. Chairman.

On behalf of the Republican Senators I wish to commend you for your appearance and for the excellent statements you have made. And because you have made such outstanding statements, we have no questions on this side of the aisle.

The CHAIRMAN. I won't characterize why anybody has no questions, but nonetheless, seriously, thank you all very, very much for being here.

Excuse me. Yes?

Senator METZENBAUM. Mr. Chairman, I just said the Chairman made a valiant effort to justify to the American people why we got a salary increase. We have been here until 2 o'clock.

The CHAIRMAN. No, I learned a long time ago not to attempt to ever justify anything like that, and I am certainly not going to—

Senator SIMPSON. Mr. Chairman, if I may just, not a question, but it is very helpful to hear from women like we have heard over

these days, who have been victims of sexual harassment, which is a very important thing for us. We hear it, we know it, we have hearings, but to hear it from you and especially to hear your reaction to it, and what you do and what your network is, and what it is in the work place, and how that really works in real life, is very, very helpful and very, very informative for me. And I have a very enlightened woman that I have been living with for 37 years, but she has enlightened me a great deal more these last days.

So thank you again. Powerful statements.

Senator KENNEDY. I believe you are excused. Thank you. [Laughter.]

The CHAIRMAN. Gentlemen and ladies and everyone here, and members of the press who have been also equally as patient, both Judge Thomas and Professor Hill have decided that they do not wish to appear tomorrow.

Now there is one caveat. Senator Danforth has represented and indicated, with good reason, that having talked with Judge Thomas earlier, that if Ms. Hill didn't come back, he would not come back, and vice versa. But we formally haven't spoken to him this evening, so that if there were any change it would be 6 o'clock in the morning. There is no way to physically reach him. There is a recording on.

So, at any rate, I see no reasonable probability that anyone will change their mind. Based on that, this entire proceeding is ended.

[Whereupon, at 2:03 a.m., October 14, 1991, the committee was adjourned.]

APPENDIX

JOSEPH R. BIDEN, JR. DELAWARE CHAIRMAN
EDWARD M. KENNEDY MASSACHUSETTS STROM THURMOND SOUTH CAROLINA
HOWARD M. METZENBAUM OHIO ORRIN G. HATCH UTAH
DENNIS DECONCINI ARIZONA ALAN K. SIMPSON WYOMING
PATRICK J. LEAHY VERMONT CHARLES E. GRASSLEY IOWA
HOWELL HEFLIN ALABAMA ARLEN SPECTER PENNSYLVANIA
PAUL SIMON ILLINOIS HANK BROWN COLORADO
HERBERT KOHL WISCONSIN
RONALD A. FLAUM CHIEF COUNSEL
JEFFREY J. PECK STAFF DIRECTOR
TERRY L. WOOTEN MINORITY CHIEF COUNSEL
AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON DC 20510-6275

September 20, 1991

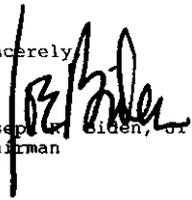
The Honorable Clarence Thomas
United States Court of Appeals for the
District of Columbia
Third Street and Constitution Avenue, N.W.
Washington, D.C. 20001

Dear Judge Thomas:

I submit the following written questions from Senator Levin and myself to clarify certain issues raised during your testimony before the Committee from September 10 through 16, 1991. Please answer these questions in writing as soon as possible.

Thank you for your cooperation.

Sincerely,


Joseph R. Biden, Jr.
Chairman

Enclosure

(605)

QUESTIONS FROM SENATOR BIDEN

1. After reviewing the transcript of your testimony, I am uncertain as to whether you unambiguously believe that single individuals have a fundamental liberty right which includes a right of privacy on matters of procreation. For example, on Thursday, September 12, 1991, at page 50 of the transcript, you and I had the following exchange:

"The Chairman. ... Now, you said that the privacy right of married couples is fundamental, and as I understand it now, you told me -- correct me if I am wrong -- that the privacy right of an individual on procreation is fundamental. Is that right?

Judge Thomas. I think that is consistent with what I said and I think consistent with what the Court held in Eisenstadt v. Baird."

Shortly thereafter -- on the same day -- you had the following response to a question asked by Senator Kennedy, at page 82 of the transcript:

"Judge Thomas. Senator, without commenting on Roe v. Wade, I think I have indicated here today and yesterday that there is a privacy interest in the Constitution, in the liberty component of the Due Process Clause, and that marital privacy is a fundamental right, and marital privacy then can only be impinged on or only be regulated if there is a compelling State interest. ..."

Because you spoke only about the marital right of privacy with Senator Kennedy, I returned to the issue the next day, at page 119-20 of the transcript.

"The Chairman. Judge, very simply, if you can, yes or no: Do you believe that the Liberty Clause of the Fourteenth Amendment of the Constitution provides a fundamental right to privacy for individuals in the area of procreation, including contraception?

Judge Thomas. Senator, I think I answered earlier yes, based upon the precedent of Eisenstadt v. Baird.

The Chairman. Well, you know, what folks are going to say is that Eisenstadt v. Baird was an equal protection case. All right? That is not the question I am asking you. Let me make sure and say it one more time. Do you believe the Liberty Clause of the Fourteenth Amendment of the Constitution provides a fundamental right to privacy for individuals in the area of procreation, including contraception?

Judge Thomas. I think I have answered that, Senator.

The Chairman. Yes or no?

Judge Thomas. Yes, and --

...

Judge Thomas. I have expressed on what I base that, and I would leave it at that."

To clarify the statements you made during the hearing concerning the right of privacy, I ask you to answer the following question:

Do you believe that the due process component of the Fourteenth Amendment's liberty clause -- independent of the equal protection clause or the case of Eisenstadt v. Baird -- provides a fundamental right of privacy for individuals, both married or single, that includes a fundamental right of privacy with respect to procreation and contraception?

2. With respect to the First Amendment's protection of free speech, and specifically the protections accorded to conduct that is part speech and part action, please answer the following series of questions:

- (a) While on the Court of Appeals, you joined the opinion of Judge Sentelle in Community for Creative Non-Violence ("CCNV") v. Lujan, in which the court upheld the National Park Service's denial of a request by CCNV to include its statue in the christmas pageant of peace.

The Park Service had rejected the statue because it was not a "traditional" Christmas symbol. The Court of Appeals upheld this decision because it was made "without regard to [CCNV's] message" and thus the First Amendment was not implicated.

Doesn't a decision that a statue is not a "traditional" christmas symbol involve its content and thereby implicate the First Amendment?

- (b) Assume animal rights activists wanted to stage a silent sit-in on the public sidewalks in front of a research clinic at which experiments involving animals were performed. A city ordinance prohibited any person from sitting on the sidewalks in commercial areas because such activity might obstruct the flow of pedestrian traffic.

Does the First Amendment protect this conduct?

Would you permit the city to apply its ordinance to the protestors, or would you require the city to permit the sit-in, albeit with certain requirements -- perhaps ensuring a lane was kept clear for passing pedestrians?

3. This past term, the Supreme Court decided Rust v. Sullivan, which involved a challenge to regulations adopted by the Secretary of Health and Human Services that prohibited women's health clinics which receive federal funds from counseling patients about abortion, or from referring a patient elsewhere for such information, even if the patient asked the doctor for such information.

In fact, if asked, doctors in such clinics were instructed to inform patients that the clinic did not think abortion was an appropriate method of family planning.

Chief Justice Rehnquist, in upholding the regulations, concluded that:

"the government can, without violating the constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternate program which seeks to deal with the problem in another way. In so doing, the government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of another."

Rust v. Sullivan, 111 S.Ct. 1772 (1991).

Without addressing the issue of reproductive freedom, do you believe that the First Amendment does or does not protect the conduct -- doctors communicating with their patients -- at issue in Rust?

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D.C. 20001

CLARENCE THOMAS
UNITED STATES CIRCUIT JUDGE

September 24, 1991

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Chairman Biden:

I have enclosed responses to your written questions that accompanied your letter of September 20, 1991. Pursuant to the agreement between Jeff Peck of your staff, and John Mackey at the Department of Justice, I will provide answers to Senator Levin's written questions as soon as possible.

Sincerely,



Clarence Thomas

Attachments

cc: Honorable Strom Thurmond
Ranking Minority Member
Senate Judiciary Committee

1. As I sought to make clear in my testimony, I believe that Eisenstadt was correct on both the privacy and equal protection rationales.

2. (a) The court's holding in Community for Creative Non-Violence ("CCNV") v. Lujan, 908 F.2d 992 (D.C. Cir. 1990) (R.B. Ginsburg, Sentelle, Thomas, JJ.), did not involve the First Amendment, because CCNV did not raise a constitutional challenge to the Park Service's decision. Rather, CCNV's challenge was based on, and the case decided under, the Administrative Procedure Act. The Park Service had issued a Policy Statement describing its administration of the Christmas Pageant of Peace; it followed that statement when deciding on the inclusion of proposed displays in the pageant. CCNV claimed that its proposed display was within the category of displays described by the Policy Statement and therefore was eligible for inclusion. It did not claim that the statement violated the First Amendment. In the Policy Statement the Park Service said that the pageant was designed to present traditional American symbols of Christmas. CCNV contended that its proposed display both communicated a traditional Christmas message and constituted a traditional Christmas symbol (i.e., a particular way of communicating the message). Because of the stated purpose of the pageant, the Park Service considered only the question whether the display was a traditional symbol, and concluded that it was not. Reviewing this determination under the deferential standard set forth in the Administrative Procedure Act, the court held that the Park Service's decision was not arbitrary or capricious.

In explaining that the Park Service's decision was not based on the display's message, the court was referring to the distinction between specific symbols and more general messages that underlay the Park Service's Policy Statement. The question whether the Park Service's decision was "content based" in the constitutional sense did not arise because CCNV did not raise it. Although First Amendment issues had been considered in earlier litigation, see CCNV v. Hodel, 623 F.Supp. 528 (D.D.C. 1985), in this case CCNV did not challenge the Policy Statement on constitutional grounds.

(b) A set of facts much like the one described in this question could easily come before the Court, so I must be circumspect in my answer. I will assume that the sit-in would constitute expressive conduct of the kind protected by the First Amendment, see, e.g., Brown v. Louisiana, 383 U.S. 131 (1966), and that the ordinance and its application would be found to be content-neutral. I will also assume that the sidewalk at issue, although public property, constitutes a "traditional public forum," see, e.g., Frisby v. Schultz, 487 U.S. 474, 480-81 (1988). All of these conclusions depend on the facts of a particular case, and therefore could be otherwise. Under these circumstances, the Court has held that the government may enforce

reasonable time, place, and manner restrictions if they are "narrowly tailored to serve a significant government interest" and "leave open ample alternative channels of communication." Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1990). See also United States v. O'Brien, 391 U.S. 367 (1968).

This balancing is fact-based and thus its application would require more information than is presented in the question. It is likely that the government's interest in maintaining the sidewalk for its primary purpose -- pedestrian traffic -- would be found to be significant. Whether the restriction is narrowly tailored would depend on facts such as the width of the sidewalk and the usual level of traffic. Moreover, it would be necessary to inquire into the availability of alternative channels of expression.

3. The First Amendment clearly protects communications between doctor and patient. The Constitution limits the extent to which the federal government may directly regulate such communication.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D.C. 20001

CLARENCE THOMAS
UNITED STATES CIRCUIT JUDGE

September 30, 1991

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Chairman Biden:

I have enclosed responses to the written questions of Senator Levin that accompanied your letter of September 20, 1991. By copy of this letter to Senator Levin, I am also providing copies of my responses directly to him.

Sincerely,



Clarence Thomas

Attachments

cc: Honorable Strom Thurmond
Ranking Minority Member
Senate Judiciary Committee

Honorable Carl Levin
United States Senate

Questions from Senator Levin for Judge Thomas

1. You've said that your personal political opinions would not taint you as a Supreme Court justice. Please list two Supreme Court cases in which you disagree personally with the effect or policy implications of the court's decisions, but believe were correctly decided?
2. Do you believe the Supreme Court's decision in Moore v. City of East Cleveland was correctly decided?
3. Which two U.S. Supreme Court justices of the last fifty years do you most admire, and why?
4. In the area of affirmative action, do you personally draw a distinction between goals and quotas?
5. Do you personally oppose a company's policy of setting nonbinding goals (i.e. not fixed quotas) for the promotion of minorities in a work force that was historically without any minority promotions?
6. When you said that Chief Justice Rehnquist "failed all Americans" in upholding the special prosecutor law, did you personally believe what you were saying or were you just reflecting what you perceived to be the executive branch's position?
7. You were quoted in 1980 regarding your sister as saying that "she gets mad when the mailman is late with her welfare check," and that "What's worse is that now her kids feel entitled to the check, too. They have no motivation for doing better or getting out of that situation." Were those three statements factually true when you made them?
8. You have been quoted as saying that Congress is "a coalition of elites which failed to be a deliberative body that legislates for the common good or the public interest," and that Congress is "no longer primarily a deliberative or even a law making body," and that "Congress is out of control," and that there is not "a great deal of principle in Congress itself." Did you personally believe those statements when you wrote or spoke them? Do you believe those statements today?
9. In 1987 you told the Heritage Foundation that "I, for one, do not see how the government can be compassionate...." Is this also your current position?
10. In 1989 you wrote that "Faced with enemies more ruthless and zealous than those in Jefferson's time, can this nation possibly go forward without a science of the rights of man?" Do you believe the rights of man is a science?

1. In stating that the personal views of judges should play no role in judicial decisionmaking, I believe that I was stating a truism. I believe that proper judicial decisionmaking requires a judge to determine first what his or her role is in a particular case, and then to discharge his or her responsibilities in an impartial manner.

Although there may be Supreme Court decisions that involve policy implications with which I may have disagreed while a policymaker, but which were correctly decided, as a general matter I do not believe that it is appropriate for me to endorse the results in specific cases. I also believe that the policy implications of decisions are matters for the political branches. A judge's objective must always be to determine the intent of the legislature.

2. As I explained during the hearings, I believe it generally would be inappropriate for me to identify precedents I do or do not believe are correctly decided. I have no agenda of precedents I wish to revisit. However, in response to a question from Chairman Biden, I explained that I believe the notion of family is one of the most personal and private relationships we have in this country, and that had Moore been decided differently it could have had ramifications for those in the same situation I was in as a child, living with my grandparents. As I indicated to the Committee, I have no reason to disagree with the method of analysis applied in Moore.

3. It is difficult to state categorically that I most admire any particular justice. I have great admiration for the second Justice Harlan for his principled decisionmaking and his constant efforts to identify the appropriate role of the Supreme Court in relation to the other two branches of government. I also greatly admire Justice Thurgood Marshall for his courageous efforts to assure that the rights of all citizens were protected.

4. Yes. A goal can differ from a quota in at least two ways. First, it can be less absolute: a quota must be met, whereas a goal can be flexible. Second, a goal can be implemented with differing methods. For example, a goal that was pursued through expansion of the applicant pool and outreach programs would differ significantly from a goal that was pursued through the use of direct preferences at the selection stage; the latter would be more like a quota than the former.

5. In general, no. "Nonbinding" goals can be very useful as a management tool to determine the effectiveness of an employer's efforts to promote equal employment opportunity.

6. The tone and phrasing of my remarks, and my willingness to address such an issue, reflected my position in the executive branch. As to the substance of my comments, it was of personal importance to me that my audience understand that the system of separated powers, including the accountability of the political

branches, is a basic protection of our most treasured rights and liberties. That point is important whether or not one agrees with the majority's decision in Morrison.

7. I made the unfortunate remark concerning my sister to a single reporter seated next to me at a luncheon in December 1980 in an effort to explain how much I cared about the unintended consequences of certain social programs. I was dismayed to see the statement in print. I immediately traveled to Savannah from Washington, D.C. to discuss the statement with my sister and my family. The statement was not made in a public forum. The statement was not intended to show any resentment toward my sister, with whom I am very close.

8. Again, the tone of my comments reflected my position in the executive branch and several difficult but unrepresentative experiences with the congressional oversight process. I shared with many observers, both within and without Congress, the fear that Congress was devoting too much attention to the day-to-day operations of executive agencies and not enough to the formulation of public policy. In my testimony, I gave the decision on military action in the Persian Gulf as an example of Congress at its best: the great issues of war and peace were powerfully debated, and each Senator and Representative took a public stand on the ultimate question.

9. I believe that remark to have been seriously misunderstood. It was not an objection to government programs of aid to the needy. As I attempted to explain in response to questions from Senator Simon, my comment rested on my philosophical understanding of the proper role of government. To my way of thinking, programs of public assistance rest on our obligation as an organized society to the disadvantaged: as part of its basic function, government must provide for the least fortunate, just as it is obliged to protect us from private violence. I regard the fulfillment of that obligation as a basic responsibility, not an act of compassion.

10. I did not mean to suggest that the study of the rights of man is a "science" in the sense that physics is a science. Rather, my point was that, as a matter of political theory, organized societies can rationally conclude that all persons are inherently equal. As I attempted to make clear in my testimony before the Judiciary Committee, I believe that a judge must separate political theory from law.

ROBERT C BYRD WEST VIRGINIA, CHAIRMAN

DANIEL K. ROONEY NEWYORK
 ERNEST F. HOLLANDS SOUTH CAROLINA
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JAMES H. ENGLISH STAFF DIRECTOR
 J. KITH KENNEDY MINORITY STAFF DIRECTOR

United States Senate
 COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-8025

October 3, 1991

The Honorable Joe Biden
 Chairman
 Committee on the Judiciary
 Suite 224, Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Joe:

I would appreciate your submitting the following two questions to Justice Clarence Thomas on my behalf:

1. Do you believe that a Presidential line-item veto is constitutional? Please elaborate as much as possible.
2. If you believe that a line item veto is constitutional, please Cite the authority under which you conclude that it is.

If at all possible, I would like to have a response by Monday, October 7, 1991.

Sincerely,



Robert C. Byrd

RCB:chw

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON D.C. 20001

CLARENCE THOMAS
UNITED STATES CIRCUIT JUDGE

October 7, 1991

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Chairman Biden:

You have asked that I respond to the questions of Senator Byrd concerning my views, if any, as to the constitutionality of a line-item veto. As I understand them, the questions assume a set of circumstances where the Congress has not acted to give the President a line-item veto.

I have not examined the question whether as a matter of constitutional law the President has inherent line-item veto authority. I will say, however, that I know of no historical examples of the exercise of such authority by a President. Let me reemphasize, however, that I have not had occasion to examine the issue.

Sincerely yours,

Clarence Thomas
Clarence Thomas gsk

STANFORD LAW SCHOOL. STANFORD, CALIFORNIA 94300-8610

THOMAS C. GREY
NELSON BOWMAN SWEITZEH AND MARIE B SWEITZER
PROFESSOR OF LAW

(415) 733-3070

October 29, 1991

Jeffrey J. Peck, Staff Director
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

Dear Mr. Peck,

Enclosed is a version, revised for publication, of my oral testimony to the Committee given on Monday, September 16. I would be most grateful if you could print this in lieu of the transcript of my remarks, delivered orally from notes. I have preserved the order, content, and approximate length of my remarks, while correcting some of the roughness that shows up in a transcript of extemporaneous remarks.

It was a privilege to testify before the Committee. My - thanks to you and to Chris Schroeder for helping to make it possible, and to Senator Biden for his exceptional courtesy as Chairman.

Sincerely,



Thomas C. Grey

Oral Version of Thomas Statement

Thomas C. Gray
Switzer Professor of Law,
Stanford Law School
9/16/91

Thank you, Mr. Chairman. You know that all three of us, along with a number of other law professors, have signed a statement which expresses our views in writing, and I hope the senators will read it.

I will try to be even more brief than my colleagues. Frank Michelman said something of what I wanted to say on the role of the Senate, so I will shorten what I had to say about that.

On that score, though, I do want to point out something that I think is wrong in the Washington Post editorial endorsing Judge Thomas' confirmation, which Senator Thurmond entered into the record. The editorial says: "It is still pretty widely accepted that a president has a right to choose justices who reflect his own philosophical predisposition, and that if the nominee is to be rejected, it should be on some other grounds, grounds of moral, mental, or professional disqualification."

Now I think that is not the understanding of the Constitution held by most scholars who have studied the nomination and confirmation process. It's not the one verified by our history; it's not the one backed up by the original intent, as best that can be ascertained; and it's not one that has consistently been followed by the Senate.

The confirmation process was meant to be and has been a political process. That doesn't mean that adjudication is itself political in the same sense. It rather means that the Constitution sets up a political process to screen who will become lifetime federal judges. This screening process is in the hands of two kinds of politicians: the President on the one hand, and the senators on the other. These politicians are supposed to exercise their political judgment on the question whether a person should become a federal judge -- in this case, a Supreme Court justice.

As others have pointed out, judges -- this particular justice, if confirmed -- will serve for a whole generation. The law of the United States for a generation or more is at stake in proceedings like these. And it seems to me that this body has a responsibility for the outcome equal to that of the President, and so must exercise its independent judgment on whether this nominee is appropriate for this job.

This doesn't mean that senators should necessarily vote

Grey -- Thomas Statement

against confirming any judge they wouldn't have appointed themselves. That would probably be an unworkable system.

It does mean, though, that senators should apply the same criteria to confirmation as the President applies in nominating judicial candidates. I ask you to consider for yourselves what criteria -- political criteria -- this President has applied in this case, and in other cases.

Then, I would suggest that senators take essentially the same attitude toward the confirmation vote as you think the President should appropriately take toward the question whether to veto or sign legislation. The President doesn't veto every bill he would rather not have seen passed. That would be unworkable. But he does consider the same criteria that the Congress has consulted in deciding whether to pass the legislation in question.

I think the analogy of the presidential veto provides a historically attested way of looking at the advice and consent power. It suggests a role for the Senate that is appropriate given the theory of our institutions -- appropriate as a guide to this body in carrying out its function of checking the President in the appointment of a Supreme Court justice.

Now I am going to move along to the question of natural law. Senator Leahy said a lot of people were asking him about it in Vermont over the weekend, and a lot of people have been asking me as a law professor: what is this natural law business that they are talking about in the Thomas hearings?

I don't think the concept is quite as arcane as some have tried to make it seem. In a broad sense, for a judge to follow natural law is simply to do justice, and there is nothing wrong with the idea that judges are there to do justice while they apply law in deciding cases. If that's all it means, natural law is an idea that I think most senators would endorse. I would certainly endorse it.

In this broad sense, natural law simply means the practical application of human reason to difficult questions of right and wrong -- the application, I would add, in all humility, given what we know about the limitations of human reason.

Let me say what I think has frightened some Americans about the idea that Judge Thomas will be a judge who will apply natural law in constitutional adjudication. I will come back in a moment to his statement that he does not plan to do so.

What has frightened people comes from another approach to

Grey -- Thomas Statement

natural law that lurks in the background. This other approach to natural law is not necessarily a bad thing when an individual uses it in making personal decisions about right and wrong. But, in contrast to the broad notion of natural law as attempting to do justice by applying reason, this approach does seem inconsistent with the attitude toward deciding cases we expect from our judges.

This is the approach that we see in Judge Thomas' repeated references, in speeches and articles, to self-evident truths. Now the Declaration of Independence does declare certain truths to be self-evident, of course, and in some sense, indeed, it is perhaps self-evident that people have human rights, including the rights of life, liberty, and the pursuit of happiness.

But I think it's fair to say that no lawsuit that ever comes before the Supreme Court -- or perhaps any other court -- simply involves the application of self-evident truths. The answers in the cases judges have to decide can't be deduced simply and dogmatically from clear, self-evident moral premises.

It's the attitude that natural law is something simple and self-evident that frightens people when it shows up in some of Judge Thomas' speeches and writings, the speeches he gave before he went on the bench. This attitude says, first, that natural law is God's law. There is, of course, nothing wrong with that, taken by itself. At the same time, though, natural law is also said to be, as Judge Thomas puts it in a number of places, "a science of the rights of man." I quote from the end of his article in the Harvard Journal of Law and Public Policy: "Can this nation possibly go forward without a science of the rights of man?"

"A science of the rights of man"! Now I don't know what that science is. I don't have access to any such science. I don't think most Americans believe they have any access to any "science of the rights of man." They may believe there are rights of man, they may even be convinced they personally know what those rights are. But I think they regard their beliefs as essentially matters of commitment, of personal belief -- not as matters for proof, not as scientific truths.

The point is that belief in this kind of natural law -- a combination of God's law and scientific truth -- gives great and indeed excessive confidence to a person whose views he thinks have this status. Such a person says: There is a natural right to life or liberty; the Declaration of Independence tells us so. The right to life or the right to liberty means X -- whatever this person believes strongly. It is totally clear to this person what these rights are. They are God's truth. They are the higher law. They are the brooding omnipresence in the sky.

Grey -- Thomas Statement

It is this attitude, brought to the judiciary, which I think is inappropriate, and which seems to me frightening when joined to the actual views on public issues, constitutional issues no less, that we know Judge Thomas has already expressed in his writings.

Now Judge Thomas has said to this committee that in fact he will not apply natural law to constitutional adjudication -- or so some people think. But if you actually go back and look at what he said during these hearings on this question, you will find he did not quite say that. He did not say that natural law is for him simply a matter of philosophical musing or political theory.

What he did say in his testimony, several times, is that he would not directly apply natural law. He would, however, regard natural law as the background for his decisions on questions of what is life, liberty, and property.

As he put it in his Harvard article, when discussing Justice Harlan's dissent in Plessy v. Ferguson: "Justice Harlan's reliance on political principles was implicit rather than explicit, as is generally appropriate for Supreme Court opinions." Implicit rather than explicit -- this is what he said before he became a judge, and I think this helps explain what he meant when he said here that he does not believe in appealing "directly" to natural law.

He means that he does not think natural law can overrule the Constitution itself. However, he clearly does believe that natural law -- meaning of course his convictions about the self-evident content of natural law -- should inform the construction of the broad, majestic phrases of the Constitution, those guaranteeing liberty, equal protection, protecting the privileges and immunities of citizens, and the like.

And we know what those convictions are. My predecessors on this panel have spoken about them. The Lehrman speech provides the most striking example. Remember what Judge Thomas said about that speech -- that it was a splendid example of applying natural law to a constitutional question. What Lewis Lehrman did was to go straight from a natural human right to life to the right of every fetus to absolute legal protection from the moment of conception.

Translating this view into constitutional doctrine would mean something more radical than any nominee for the Supreme Court has heretofore proposed -- something more radical than Judge Bork proposed, and he was rejected by the Senate.

Grey -- Thomas Statement

Basically, Judge Thomas' kind of "implicit" or "indirect" or "background" use of natural law is all anyone needs to give him full freedom in adjudicating cases -- anyone, that is, who holds sufficiently firm, simple, dogmatic convictions about the content and method of natural law reasoning. His formulation leaves him all the room he needs to translate his most deeply held personal convictions into the law of the land.

Judge Thomas' own deep personal convictions include much of the agenda of the far right portion of the American political spectrum. I think it would be a great mistake -- I think it would be a tragedy -- if the Senate confirmed someone who held those views, and who has strongly implied his intention to implement those views as a judge, to be a justice of the Supreme Court.

Thank you, Mr. Chairman.

JOHN WARNER
 VIRGINIA
 COMMITTEE
 ARMED SERVICES
 SELECT COMMITTEE ON INTELLIGENCE
 ENVIRONMENT AND PUBLIC WORKS
 RULES AND ADMINISTRATION

United States Senate

225 RUSSELL SENATE OFFICE BUILDING
 WASHINGTON, DC 20510-4601
 (202) 224-3000

CONSTITUENT SERVICE OFFICES:

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270 FEDERAL BUILDING
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 (703) 828-0188

DOMINION BANK BUILDING
 213 S. JEFFERSON ST. SUITE 1000
 ROANOKE, VA 24001-1714
 (703) 983-4976

September 19, 1991

The Honorable Strom Thurmond
 Ranking Minority Member
 Committee on the Judiciary
 148 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Senator Thurmond:

One of my most valued constituents, Mrs. Thomasina Jordan of Alexandria, Virginia, has been kind enough to provide the attached endorsements supporting the confirmation of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

Mrs. Jordan, an acknowledged leader of the Native American community, has requested that these resolutions and letters from prominent Native American organizations and individuals be included as a part of the confirmation hearing record. It is, therefore, my privilege to provide the endorsements for your attention and that of your fellow distinguished members of the Judiciary Committee. The record of this most important confirmation hearing will be significantly strengthened by this splendid demonstration of support by these Native American leaders.

With my thanks for your continuing good efforts, I am

Sincerely,



John W. Warner

JWW/rtd

Attachment

ENDORSEMENTS RECEIVED BY THE AMERICAN INDIAN ALLIANCE ON BEHALF
OF THE HONORABLE CLARENCE THOMAS, NOMINEE TO BE ASSOCIATE JUSTICE
OF THE UNITED STATES SUPREME COURT

Alabama Intertribal Council -- Montgomery, Alabama
All Indian Pueblo Council -- Albuquerque, New Mexico
Fond Du Lac Reservation -- Cloquet, Minnesota
Lower Sioux Indian Community -- Morton, Minnesota
Mashpee Wampanoag Community -- Mashpee, Massachusetts
Menominee Nation -- Wisconsin
Shakopee Mdewakanton Sioux Community -- Prior Lake, Minnesota
United Sioux Tribes of South Dakota -- Pierre, South Dakota
Andrea L. Barlow -- Member, Shoshone-Bannock Indian Tribes
Henry M. Buffalo, Jr. -- Member, American Indian Alliance
Douglas K. Lemon, Sr. -- Member, Leech Lake Reservation,
Minnesota

ALABAMA INTERTRIBAL COUNCIL
 889 South Lawrence Street
 Montgomery, Alabama 36104

Cherokees of the Northeast

Cherokees of the Southeast

Nechoe Cherokees

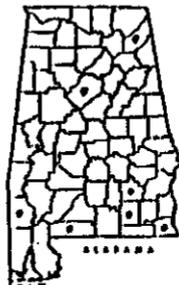
McNis Lower Creek Indians

MOWA Band of Choctaws

Star Clan of Muscogee Creeks

September 9, 1991

FAX TO: 703/820-3531



American Indian Alliance for Clarence Thomas
 Suite D-5 Brndise Office Building
 3543 W. Braddock Road
 Alexandria, VA 22302

RE: Nomination of Hon. Clarence Thomas to U.S. Supreme Court

Greetings:

Your efforts have recently come to the attention of the Alabama Intertribal Council and its leadership. As the President of the Council, I am writing to express to you some of the feelings of support for Judge Thomas among our people here in Alabama. While our Council has not formally discussed this and therefore has not adopted an official position, it is proposed for the agenda of the next Council meeting.

At a community gathering a few days ago some of our tribal leaders and prominent tribal members discussed this upcoming matter informally. It was the general consensus that Judge Thomas has many fine and unique qualifications and that in view of your efforts we should at least convey our support to you for your efforts in including Indian concerns among the matters for consideration in his nomination.

We sincerely hope that you will maintain, and even strengthen, the longstanding relationship of protection and trust between the United States and its Indian nations.

Yours very truly,

Pennie Wright

(Mrs.) Pennie Wright
 Chief - McNis Creek
 President - Alabama Intertribal Council

cc: All Chairmen & Chiefs
 Hon. Callanwood Weaver, Chairman of AIAC
 Sen. Howell Heflin
 Sen. Richard Shelby



JAMES S. HENA, Chairman
 BENNY ATENCIO, Vice-Chairman
 DANIEL L. SANCHEZ, Secretary/Treasurer



ALL INDIAN PUEBLO COUNCIL

OFFICE OF THE CHAIRMAN

3028 San Pedro, N.E., Suite E • Post Office Box 9998 • Albuquerque, New Mexico 87160 • (505) 961-1998

**STATEMENT OF SUPPORT
 FOR JUDGE CLARENCE THOMAS
 BY THE
 ALL INDIAN PUEBLO COUNCIL
 ALBUQUERQUE, NEW MEXICO**

The All Indian Pueblo Council representing nineteen Pueblo Indian Governments in New Mexico endorse the appointment of Judge Clarence Thomas to the United States Supreme Court.

Because decisions of the U.S. Supreme Court often impact the Federal-Indian relationship, it is appropriate that one who as experience personal growth and development as envisioned by the founding fathers of this Nation, be placed on the Court, to insure consideration for the unique and special relationship between Indian Tribes and the U.S. Government. This may be more probable from a person that has experienced poverty and found the means to survive then from someone who has not had such traumatic experiences.

Moreover, Judge Thomas' philosophy regarding opportunities for minorities may change for the better once he assumes this awesome responsibility. Men change due to challenge and circumstances and especially when consideration entail the masses.

For Indian tribes, the hope must be that the Court can be persuaded to judge in favor of the tribes and their prayers because our governments pre-existed the formation of the United States Government.

Sincerely,

ALL INDIAN PUEBLO COUNCIL

James S. Hena

James S. Hena, Chairman

Fond Du Lac Reservation Business Committee

105 University Road,
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146



Chairman
Robert B. Peacock
Secretary/Treasurer
Peter J. Defoe
Dist. I Councilmen
Clifton Rebidoux
Dist. II Councilmen
Norman Wise
Dist. III Councilman
George Dupuis
Executive Director
I. Jean Mulder

RESOLUTION #1070/91

The Fond du Lac Reservation Business Committee on behalf of the Fond du Lac Band of Lake Superior Chippewa enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, possessed of the jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation, and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation under the Treaty of 1854 and the Indian Self-Determination Act, P.L. 93-638, 25 U.S.C. section 450 et seq., to assume responsibilities of Self-Government, and

WHEREAS, the President has nominated Clarence Thomas to the Supreme Court of the United States; and

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa has reviewed the nomination of Mr. Thomas;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Band hereby supports the nomination of Clarence Thomas to the Supreme Court of the United States.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 2 for, 0 against, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on 9.22.91 in Cloquet, Minnesota.

Robert B. Peacock Peter J. Defoe, Jr.
Robert B. Peacock, Chairman Peter J. Defoe, Jr., Sec./Treas.

Lower Sioux Indian Community

PHONE 507 697-6165

RURAL ROUTE 1 - P. O. BOX 306
MORTON, MINNESOTA 56270RESOLUTION NO: 3B-91

WHEREAS, the Lower Sioux Community Council is the governing body of the Lower Sioux Indian Community of Minnesota; and

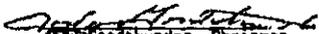
WHEREAS, the President of the United States has nominated Mr. Clarence Thomas to become the next justice of the U.S. Supreme Court; and

WHEREAS, the Lower Sioux Community Council has reviewed this nomination.

THEREFORE BE IT RESOLVED, the Lower Sioux Community Council hereby establishes its support for the nomination of Mr. Clarence Thomas and directs its Chairman to communicate the Council's support to the President of the United States.

Certification; we do hereby certify that the foregoing Resolution Number 3B-91 was duly presented and enacted upon the Lower Sioux Community Council by a vote of 4 for and 0 against with a quorum being present. This meeting was held on September 9, '1981.

9-9-81
Date


Judy Goodthunder, Chairman


Betty Lee, Secretary

MASHPEE WAMPANOAG COMMUNITY
ECONOMIC DEVELOPMENT CORPORATION, INC.
FISH HOUSE HILL
MASHPEE, MASSACHUSETTS 02648

The American Indian Alliance,
Suite D 5,
Bradlee Office Building,
3543 West Braddock Street,
Alexandria, Va. 22302

Fax: 703-820-3537

To whom it may concern:

The Mashpee Wampanoag Community Economic Development Corporation, Incorporated, wish to confirm our endorsement and support President Bush's nominee Clarence Thomas for the United States Supreme Court.

Our prayers and good wishes go out to the president in this endeavor.

Yours sincerely,


Bernard M. Boardley
President

MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
RESOLUTION 91-72

WHEREAS, the Menominee Tribal Legislature is the governing body of the Menominee Indian Tribe of Wisconsin and is empowered to act on behalf of the Tribe; and

WHEREAS, the Menominee Indian Tribe is keenly aware of the decisions and recommendations the United States Senate has to support a nominee for the Supreme Court of the United States; and

WHEREAS, the Menominee Tribal Legislature is of the understanding that to become a nominee for this high honor that one's intelligence, qualifications, integrity and understanding of this great nation's laws is a prerequisite for a successful nomination; and

WHEREAS, the United States has a member of its federal judiciary, the Honorable Clarence Thomas, who has these credentials to positively promote the interests of justice for this great nation;

NOW, THEREFORE, BE IT RESOLVED by the Menominee Tribal Legislature that it hereby supports the nomination of the Honorable Clarence Thomas for Justice on the United States Supreme Court.

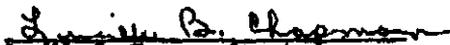
CERTIFICATION

The Undersigned Officers of the Menominee Tribal Legislature hereby certify that at a meeting held on September 9, 1991, duly adopted the above resolution. The Undersigned also certify that the above has not been amended or rescinded in any way.



Glen T. Miller, Chairman
MENOMINEE INDIAN TRIBE OF WISCONSIN

DATE: 9/9/91



Lucille B. Chapman, Secretary
MENOMINEE INDIAN TRIBE OF WISCONSIN

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail NW, Prior Lake, Minnesota 55372
 Tribal Office (612) 445-8900
 FAX: (612) 445-8906



OFFICERS
LEONARD PRESCOTT
 Chairman
ALLENE ROSS
 Vice Chairman
MELVIN CAMPBELL SR.
 Secretary/Treasurer

American Indian Alliance
 Suite D-5
 Bradlee Office building
 3543 West Braddock Road
 Alexandria, Virginia 22302

Gentlemen:

I am pleased to offer my support for the nomination of Clarence Thomas to the Supreme Court of the United States. By his rise from poverty to prominence, Judge Thomas is an example and a model for Indian people in America. Hard work, education, self-reliance and perseverance are among the fundamental tools needed to overcome poverty, oppression and racism.

In my view, Judge Thomas' conservative theory of jurisprudence will contribute to the Supreme Court's tradition of recognizing -- and respecting -- the sovereign-to-sovereign nature of the relationship between the federal government and Indian tribal governments.

I hope that one day we will return to the White House to endorse the nomination of an American Indian to join Judge Thomas on the Supreme Court.

Respectfully,

Leonard Prescott
 Chairman

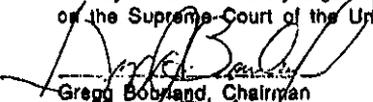
UNITED SIOUX TRIBES
 OF SOUTH DAKOTA
 DEVELOPMENT CORPORATION
 PO BOX 1193, PIERRE, SOUTH DAKOTA 57501
 SEPTEMBER 9, 1991

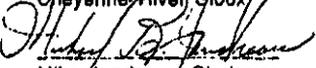
THOMASINA JORDAN, CHAIRMAN
 AMERICAN INDIAN ALLIANCE
 SUITE D.S.
 BRADLEE OFFICE BUILDING
 3543 W. BRADDOCK ROAD
 ALEXANDRIA, VIRGINIA 22302

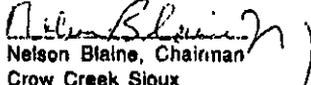
DEAR MS. JORDAN:

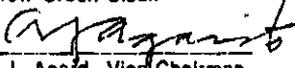
We, the undersigned, Tribal Chairman from the Lakota/Dakota Nation, do support the appointment of Clarence Thomas to the Supreme Court of the United States.

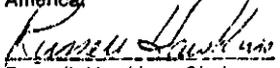
We feel that with Judge Thomas's humble beginnings he can relate to the challenges facing the Native American Nations throughout this country. We collectively urge the Senate to confirm and place Mr. Thomas on the Supreme Court of the United States of America.

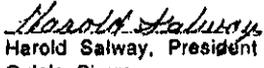

 Gregg Bobland, Chairman
 Cheyenne River Sioux

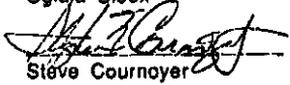

 Mike Jandreau, Chairman
 Lower Brule Sioux


 Nelson Blaine, Chairman
 Crow Creek Sioux


 A.J. Agard, Vice Chairman
 Standing Rock Sioux


 Russell Hawkins, Chairman
 Sisseton-Wahpeton


 Harold Salway, President
 Oglala Sioux


 Steve Cournoyer
 Yankton Sioux


 Clarence Skye, Director
 United Sioux Tribes

September 9, 1991

The Honorable Chairman
 U.S. Senate Judiciary Committee
 c/o Mrs. Thomasina Jordan
 Co-Chairman of the American Indian
 Alliance for the Honorable
 Clarence Thomas

To the Honorable Chairman:

I am a member of the Shoshone-Bannock Indian Tribes of southeastern Idaho and a very loyal supporter of the Honorable Clarence Thomas. The confirmation of Judge Thomas would be a positive mandate for one of America's finest individuals. I fully support him and request that he be confirmed by the United States Senate as a member of the United States Supreme Court.

The Honorable Clarence Thomas will bring a broad spectrum of talents and abilities with him. Also, a greater appreciation and understanding of true Americanism, that of being a member of a minority group. He will have my unwavering support. I would request that you favorably support his appointment.

Sincerely Yours.

Mrs. Andrea Barlow

Mrs. Andrea L. Barlow
 American Indian Alliance
 for the Honorable
 Clarence Thomas

Route #1, Laughran Road
 Pocatello, Idaho 83202

Henry Martin Buffalo, Jr.

ATTORNEY AT LAW
1026 Valley Drive
Duluth, Minnesota 55804
(218) 879-1251

September 6, 1991

American Indian Alliance
Mr. Clarence Thomas, Esq.
Suite D5
Bradlee Office Building
3543 W Braddock Road
Alexandria, Virginia 22302

DELIVERED BY FAX

Dear Sir:

I would like to extend my support for the nomination of Mr. Clarence Thomas to the Supreme Court of the United States. If I can be of any further assistance, please advise.

Respectfully,



Henry M. Buffalo, Jr.
Attorney at Law

HMB/lao

EXPRESS 
BUSINESS SERVICES

1433 EAST FRANKLIN AVENUE
SUITE 1
MINNEAPOLIS, MINNESOTA 55404
(612) 870-0428
FAX (612) 870-0082

September 10, 1991

American Indian Alliance
Suite D-5
Bradley Office Building
3543 W. Braddock Rd.
Alexandria, VA 22302

To Whom It May Concern:

I am an American Indian business owner. I am enrolled
at Leech Lake Reservation in Minnesota. I have reviewed
the qualifications of Judge Thomas and I support the
President's nomination.

Very truly yours,



Douglas K. Leson, Sr.
President

The Honorable Joseph R. Biden, Jr.
The Honorable Strom Thurmond
Senate Judiciary Committee
Washington, D.C. 20510

Dear Senators Biden and Thurmond:

As law school deans, teachers of law, and citizens vitally interested in constitutional and civil rights, we are writing to express our serious concerns about the nomination of Clarence Thomas to be an Associate Justice of the United States Supreme Court. Judge Thomas, in our view, lacks the experience, the commitment to fundamental constitutional rights and liberties, and the respect for law which are necessary prerequisites for elevation to this important position.

A decision to oppose confirmation of a nominee to the Supreme Court is never an easy one to reach. Judge Thomas has a compelling personal history of overcoming poverty and discrimination. He is only the second member of a racial minority group ever to be nominated to the Supreme Court, an institution where diversity of membership is significant. These factors, however, cannot qualify him for a lifetime seat on the most important Court in the land in light of the serious problems evident in his record and his philosophy.

Former Solicitor General Erwin Griswold recently commented that in replacing Thurgood Marshall on the Court, the President "should have come up with a first-class lawyer, of wide reputation and experience," but "that, it seems to me obvious, he did not do." Dean Griswold noted that Judge Thomas "has no breadth of experience at all." Indeed, Judge Thomas has been on the Court of Appeals for only 18 months. He does not have extensive experience as a practicing lawyer in the federal courts, where he has never argued a case, or as a legal scholar who has researched and taught concerning constitutional and legal issues. Prior to his appointment to the court, Judge Thomas' experience consisted almost exclusively of serving as director of the Office for Civil Rights (OCR) of the Department of Education and the Equal Employment Opportunity Commission (EEOC). Far from supporting his qualifications for the Court, however, that experience raises troubling concerns about his commitment to the rule of law and to civil rights protections for all Americans.

For example, while at OCR during 1981-82, Judge Thomas admitted in federal court that he was violating "rather grievously" a court order governing the processing of civil rights cases. At EEOC, he allowed over 13,000 age discrimination cases to lapse by failing to act on complaints filed with the agency. A federal court found in 1987 that his failure to act with respect to pension rights of older Americans was "entirely unjustified and unlawful" and "at worst deceptive to the public." Also at EEOC, he sought to abandon affirmative remedies for job discrimination that had been provided by Congress and upheld by

the courts, first by claiming that the change was dictated by the Supreme Court's decision in the Stotts case and then, when that claim was demonstrated to be erroneous, by stating his "personal disagreement" with such remedies. Indeed, fourteen members of Congress, including 12 chairs of committees with oversight responsibility over EEOC, concluded in 1989 that Judge Thomas'"questionable enforcement record" at EEOC "frustrates the intent and purpose" of Congressional civil rights legislation and that he had demonstrated an "overall disdain for the rule of law."

In a series of articles and speeches over the past decade, moreover, Judge Thomas has expressed a deep hostility towards key Supreme Court precedents protecting fundamental individual rights and upholding Congressional authority in our constitutional system. At the same time, he has espoused a judicial philosophy based on "natural law" that provides no reliable anchor for constitutional adjudication and that could result in dramatic reversals of important Court precedents.

One important manifestation of the nominee's hostility towards fundamental rights has been his sharp criticism of a series of Court decisions implementing the school desegregation requirements of the Supreme Court's landmark decision in Brown v. Board of Education and of other Court decisions upholding the use of race-conscious remedies where necessary to remedy job bias and its effects. He has attacked a number of such precedents not simply as wrong, but as "egregious" or "disastrous." Indeed, he has specifically urged the overruling of the Court's decision in Johnson v. Transportation Agency, commenting that he hoped that the dissent in the case would "provide guidance for the lower courts and a possible majority in future decisions."

With respect to the right of privacy, Judge Thomas has criticized the Court's landmark decision in Griswold v. Connecticut, in which the Court struck down a Connecticut law banning the sale of contraceptives. In particular, he has attacked opinions in Griswold which relied upon the Ninth Amendment as a basis for the right of privacy, claiming that the decision represented the improper "invention" of the Ninth Amendment which would "likely become an additional weapon for the enemies of freedom."

At the same time that he has attacked the use of the Ninth Amendment as a basis for recognizing unenumerated rights implicit in the Constitution, however, Judge Thomas has espoused a "natural law" philosophy which claims that there are fixed objective truths derivable from higher law that somehow override the Constitution or other written law. The dangers of such a philosophy were illustrated during the Lochner era over 50 years ago, when a majority of the Supreme Court used it to invalidate minimum wage laws and health and safety regulations and to uphold such practices as excluding women from the practice of law. Since that time, courts and scholars have thoroughly repudiated this

brand of constitutional decision-making.

Unfortunately, Judge Thomas' writings suggest that his "natural law" views are much more than simply abstract philosophy. He has asserted that the Supreme Court is justified in overturning the decisions of "run-amok majorities" as long as it adheres to natural law. Judge Thomas strongly endorsed an article that condemned Roe v. Wade on grounds that natural law requires the outlawing of abortion, calling the article a "splendid example of applying natural law." He co-authored a 1986 report that not only sharply criticized Roe, but also attacked other Court decisions protecting privacy rights by invalidating laws which forbade unmarried people from using contraceptives and prohibited a grandmother from living in extended family fashion with her son and grandsons. The report specifically noted that such "fatally flawed" decisions could be "corrected" by "the appointment of new judges and their confirmation by the Senate."

Our concerns about Judge Thomas are strongly reinforced by the persistent and vehement attack on legislative authority in his speeches and writings. Recently, he assailed the Supreme Court's near-unanimous decision upholding the authority of Congress to appoint special prosecutors to investigate charges of serious misconduct by executive branch officials. Judge Thomas claimed that Justice Rehnquist's opinion for the Court "failed not only conservatives but all Americans." Similarly, he has severely criticized Court precedent in Fullilove v. Klutznick upholding Congressional authority to enact legislation to remedy past discrimination. These views correspond all too closely with his harsh criticism and personal failure to cooperate with Congress in its execution of its oversight responsibilities over the EEOC, indicating a clear lack of respect for the legislative branch. For a potential Supreme Court justice charged with faithfully interpreting Congressional legislation and determining Congress' authority in our constitutional system, such views and actions are extremely troubling.

We do not contend that there are no respectable arguments to be mustered for some of the positions that Judge Thomas defends. Overall, however, his clear hostility to judicial protection for fundamental constitutional and civil rights and to Congressional authority is extremely troubling. This is particularly true with respect to the current Court, on which several members have already expressed interest in overruling prior Court precedents protecting individual liberty and mounting what Justice Marshall, in his final dissent on the Court, called a "far-reaching assault" on the Bill of Rights. Based on his record and his clearly expressed philosophy and beliefs, we are concerned that Judge Thomas would join in such a dangerous attack on our rights and liberties.

We urge you and the other members of the Senate to examine closely the record on Judge Thomas, particularly the findings of

federal judges and Congressional committee chairs concerning how the nominee has performed his responsibilities. If you and other Senators conclude, as we have, that the nominee lacks the experience, the commitment to fundamental constitutional values, and the respect for the rule of law necessary, we urge you to fulfill your constitutional responsibility to withhold the consent of the Senate to the nomination.

Sincerely yours,

**CONSTITUTIONAL LAW PROFESSORS AND LAW SCHOOL DEANS
IN OPPOSITION TO THE THOMAS NOMINATION:**

David E. Aaronson	Professor	American Univ.
Kathryn Abrams	Professor	Boston Univ.
Lee A. Albert	Assoc. Dean	SUNY Buffalo
George J. Alexander	Professor	Santa Clara Univ.
Gregory S. Alexander	Professor	Cornell Univ.
Norman Amaker	Professor	Loyola Chicago
Anthony G. Amsterdam	Professor	New York Univ.
Frank Askin	Professor	Rutgers Univ.
Hope Babcock	Professor	Georgetown Univ.
C. Edwin Baker	Professor	Univ. of Pennsylvania
Joan E. Baker	Professor	Cleveland State Univ.
Vicki Lynn Been	Professor	New York Univ.
Terence H. Benbow	Dean	Univ. of Bridgeport
Paul Bender	Professor	Arizona State Univ.
Susan D. Bennett	Professor	American Univ.
Arthur L. Berney	Professor	*Boston Col/NY Law School
Barbara Black	Professor	Columbia Univ.
Louis D. Billionis	Professor	Univ. of North Carolina
Alfred Blumrosen	Professor	Rutgers Univ.
John Charles Boger	Professor	Univ. of North Carolina
Michael H. Botwin	Professor	NY Law School
Judith Olans Brown	Professor	Northeastern Univ.
John M. Burkoff	Professor	Univ. of Pittsburgh
Haywood Burns	Dean/Professor	City Univ. New York
Scott Burris	Professor	Temple Univ.
Burton Caine	Professor	Temple Univ.
Paulette M. Caldwell	Professor	New York Univ.
Charles R. Calleros	Assoc. Dean	*Arizona/Stanford Univ.
Norman Cantor	Professor	Rutgers Univ.
Erwin Chemerinsky	Professor	Univ. S. Cal.
Richard H. Chused	Professor	Georgetown Univ.
David D. Cole	Professor	Georgetown Univ.
Drew S. Days, III	Dean/Professor	Yale Univ.
Robert D. Dinerstein	Professor	American Univ.
Father Robert Drinan	Professor	Georgetown Univ.
Peter B. Edelman	Assoc. Dean	Georgetown Univ.
Christopher F. Edley Jr.	Professor	Harvard Univ.
David Filvaroff	Dean	SUNY Buffalo
Nancy H. Fink	Professor	Brooklyn
Gary Francione	Professor	Rutgers Univ.
Laura Gasaway	Professor	Univ. of North Carolina
Diane Geraghty	Professor	Loyola Chicago
Steven Gey	Professor	Florida State Univ.
Howard A. Glickstein	Dean/Professor	Touro College
David Goldberg	Professor	Ohio State
Steven Goldstein	Professor	Florida State Univ.
Joseph R. Grodin	Professor	Univ. of Cal. Hastings

Phoebe A. Haddon	Professor	Temple Univ.
Mark M. Hager	Professor	American Univ.
Robert W. Hallgring	Professor	Northeastern Univ.
Leora Harpaz	Professor	Western New England
Hendrik Hartog	Professor	Univ. of Wisconsin
Susan N. Herman	Professor	Brooklyn
Bill Ong Hing	Professor	Stanford Univ.
Isaac C. Hunt, Jr.	Dean	Univ. of Akron
Nan D. Hunter	Professor	Brooklyn
Alan Hyde	Professor	Rutgers Univ.
George R. Johnson, Jr.	Professor	Howard Univ.
Sheri Lynn Johnson	Professor	Cornell Univ.
James E. Jones, Jr.	Professor	Univ. of Wisconsin
David H. Kairys	Professor	Temple Univ.
Howard I. Kalodner	Dean	Western New England
Pamela S. Karlan	Professor	Univ. of Virginia
Katheryn Katz	Professor	Albany
Robert B. Kent	Professor	Cornell Univ.
Patrick E. Kehoe	Professor	American Univ.
Muhammad Kenyatta	Professor	SUNY Buffalo
Sylvia Law	Professor	New York Univ.
Charles R. Lawrence	Professor	*Stanford/Univ. S. Cal.
Arthur S. Leonard	Professor	NY Law School
James S. Liebman	Professor	Columbia Univ.
Richard B. Lillich	Professor	Univ. of Virginia
Peter Linzer	Professor	Univ. of Houston
Robert J. Lipkin	Professor	Widener Univ.
Jules Lobel	Professor	Univ. of Pittsburgh
David A. Logan	Professor	Wake Forest Univ.
Hugh C. Macgill	Dean/Professor	Univ. of Conn.
Diane C. Maleson	Professor	Temple Univ.
Holly Maguigan	Professor	New York Univ.
Martin B. Margulies	Professor	Univ. of Bridgeport
Richard A. Matasar	Dean/Professor	Chicago-Kent
Finbarr McCarthy	Professor	Temple Univ.
Michael Meltsner	Professor	Northeastern Univ.
Carlin Meyer	Professor	NY Law School
Binny Miller	Professor	American Univ.
Elliott S. Milstein	Dean/Professor	American Univ.
Wade J. Newhouse	Professor	SUNY Buffalo
Charles Ogletree	Professor	Harvard Univ.
Laura Ellen Oren	Professor	Univ. of Houston
John Payne	Professor	Rutgers Univ.
Nancy D. Polikoff	Professor	American Univ.
Daniel H. Pollitt	Professor	Univ. of North Carolina
James G. Pope	Professor	Rutgers Univ.
John W. Poulos	Professor	Univ. of Cal. Davis
Burnele V. Powell	Assoc. Dean	Univ. of North Carolina
Margaret Radin	Professor	Stanford Univ.
Mark C. Rahdert	Professor	Temple Univ.
Jamin B. Raskin	Professor	American Univ.
Deborah L. Rhode	Professor	Stanford Univ.

Paul R. Rice	Professor	American Univ.
Henry J. Richardson III	Professor	Temple Univ.
John C. Roberts	Dean	De Paul Univ.
Michelle F. Robertson	Professor	Univ. of North Carolina
Yale Rosenberg	Professor	Univ. of Houston
Richard A. Rosen	Professor	Univ. of North Carolina
Albert J. Rosenthal	Professor	Columbia Univ.
Laura Rothstein	Assoc. Dean	Univ. of Houston
David Rudovsky	Professor	Univ. of Pennsylvania
Elizabeth Schneider	Professor	*Brooklyn/Harvard Univ.
Michael P. Seng	Professor	John Marshall
Ann Shalleck	Professor	American Univ.
Sally Burnett Sharp	Professor	Univ. of North Carolina
Theodore M. Shaw	Professor	Univ. of Michigan
Annamay Sheppard	Professor	Rutgers Univ.
Steven H. Shiffrin	Professor	Cornell Univ.
Allen E. Shoenberger	Professor	Loyola Chicago
William H. Simon	Professor	Stanford Univ.
Nadine Taub	Professor	Rutgers Univ.
Andrew E. Taslitz	Professor	Howard Univ.
Kim A. Taylor	Professor	Stanford Univ.
William W. Taylor	Professor	Univ. of North Carolina
Paul Tractenberg	Professor	Rutgers Univ.
William H. Traylor	Professor	Temple Univ.
Robert M. Viles	Dean	Franklin Pierce
Burton D. Wechsler	Professor	American Univ.
Hazel Weiser	Professor	Touro College
Welsh S. White	Professor	Univ. of Pittsburgh
Christina B. Whitman	Professor	Univ. of Michigan
David C. Williams	Professor	Cornell Univ.
Susan Williams	Professor	Cornell Univ.
Wendy W. Williams	Assoc. Dean	Georgetown Univ.
Richard J. Wilson	Professor	American Univ.
Judith A. Winston	Professor	American Univ.

* Indicates visiting professorship at second school listed.

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3534 North Lake Shore Drive #1D
Chicago, Illinois 60657

(312) 248-4192

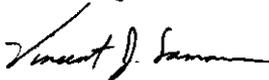
August 16, 1991

Senator Joseph Biden
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

Enclosed please find copies of an article I wrote on why Clarence Thomas's natural law views are incompatible with constitutional protections for women and gays. Would you please distribute a copy to each member of the judiciary committee and enter one into the official record. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Vincent J. Samar". The signature is written in dark ink and is positioned above the printed name.

Vincent J. Samar

**THE PROBLEM WITH SUPREME COURT NOMINEE CLARENCE THOMAS'
NATURAL LAW VIEWS**

by Vincent J. Samar*

I. INTRODUCTION

Supreme Court nominee Clarence Thomas adopts the judicial philosophy known as Natural Law theory. The theory can be used to provide a basis for deciding whether a particular constitutional interpretation is just and therefore whether it is properly part of the constitution. In its traditional formulation, the theory is at odds with privacy rights for gays and lesbians and choice for women. Additionally, the theory is unsound on its own merits and better theories are available.

II. BACKGROUND

On the surface, Thomas's views on constitutional interpretation appear expansive. In two law review articles,¹ he says that the institution of slavery and the doctrine of "separate but equal" education were wrongful because they violated the higher law principle of equality as found in the Declaration of Independence. The Declaration is looked to as the framer's embodiment of Locke's concept of natural right. However, nothing in either of these articles suggests any broader expansion of constitutional equality to other than racial minorities and, even then, never under the guise of affirmative action. More importantly, Thomas's natural law views suggest that the constitution may not protect privacy or equal protection rights for gays and lesbians or abortion for woman.

In his latter article, Thomas tries to clarify the privileges and immunities clause of the Fourteenth Amendment by stating that the fundamental rights of the Declaration ("those of life, liberty and property") were "given to man by his Creator, and did not simply come from a piece of paper."² (Interestingly, Thomas does not use "life, liberty or happiness". Instead, he follows an earlier draft of Jefferson's that borrowed on Locke's use of "property", suggesting that Thomas views property rights on par with life and liberty rights.)

In the earlier article, Judge Thomas offers an interpretation of these fundamental rights. He avoids Jefferson's more open ended reliance on "self-evidence" in favor of a paraphrase of St. Thomas Aquinas. "A just law is a man-made code that squares with the moral law or the law of God.... An unjust law is a human law that is not rooted in eternal law or natural law."³ This is the only method Judge Thomas mentions.

III. NATURAL LAW

In contradistinction to the randomness associated with modern evolutionary and quantum theories, Aquinas's 14th Century theory of natural law presupposes a purposive deterministic view of the universe. Even from a secular reading, the theory provides that morality requires conformity of human actions with

the widest design of nature. For instance, the most important moral rule is that human action conform to what all nature has in common--namely, continuation in existence.⁴ Consequently, rules against murder are justified, but also rules prohibiting abortion. The latter is justified under the interpretation that termination of a pregnancy is not in conformity with continuation of the species.

The second most important rule is for human action to conform to what all animal nature has in common--that being, procreation and the rearing of offspring.⁵ Consequently, rules that protect the privacy of marital relations but allow states to prohibit adult consensual homosexual (or nonprocreative heterosexual) "sodomy" are justified.

Least important on the list is what conforms only to the unique nature of man.⁶ While this natural law principle would support rules protecting religious freedom (something animals have no part in), it would not recognize the legitimacy of arguments such as the one David A. J. Richards makes that humans express sexuality for love, recreation or procreation.⁷

IV. PROBLEMS WITH NATURAL LAW

Principally, there are two types of problems with natural law theories: conceptual and logical.

A. Conceptual:

Here the problem is with defining the word natural. Is natural to mean statistically average, found among lower animals, oriented to preserving the species, oriented to uniquely human nature, or moral. With respect to interpreting "natural" to mean statistically average, the argument leads to the ridiculous conclusion that it is morally better to be a "C" student than an "A" student, since being a "C" student is more average of what most students are. With respect to found among lower animals, the theory would have to give up its prohibition against homosexuality since "[v]irtually every animal whose activity has been studied in detail shows some forms of homosexual behavior."⁸

As to preserving the species, studies show that in nonindustrial societies, gay men often provide home support which aids close relatives to reproduce efficiently.⁹ In industrial societies, the issue of one parent care is not unusual and lesbians or gays could be allowed to adopt or become parents in their own right. Clearly, gays and lesbians have contributed and are a part of human culture.¹⁰

The last possibility of saying that unnatural is immoral begs the question.¹¹ Even if homosexuality were unnatural, that would not by itself show that it is immoral? The problem is one of going from an is to an ought.

B. Logical:

Aquinas's version of natural law claims that "one must not kill" may be derived from the natural law principle that "one should do harm to no man."¹² No mention is made of any exceptions for killing the guilty nor could the theory on its own

merits support such a claim. Yet, Aquinas allows human law to specify the death penalty based on a determination of the natural law principle that "the evil-doer should be punished."¹³ The trouble is that relating human law to natural law in this way creates rather than avoids inconsistencies.¹⁴ Indeed, the same inconsistency occurs with Jefferson's list of natural rights as indicated by his own acceptance of capital punishment.

V. A BETTER APPROACH

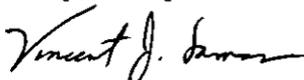
While it is not my intention to engage in comparative theory, I do think it is important to show that not all judicial theories are subject to the same questionable results as natural law. In contrast to Aquinas, Ronald Dworkin's theory tells the judge to give deference to the best principle based on considerations of fit and political morality.¹⁵ Fit means that the judge must develop a theory of the settled case law, constitutional provisions and requisite statutes that not only is coherent but is able to provide determinative answers in hard cases. In the abortion case, for example, the principle that the unborn is not a person fits better with other parts of our law and also our sense of how related issues should be decided than does the alternative.¹⁶ We would probably not want a mother held criminally liable if due to negligence she has a stillbirth. Nor is it likely that we would want IUDs and birth control pills that act as abortifacients outlawed? My own theory on privacy shows that the Supreme Court was mistaken in not extending the coverage of the constitutional right to privacy to protect adult consensual homosexual activity in the home.¹⁷

On the issue of political morality (and this applies only if fit does not produce a determinative result), the point is to show which theory of law better recognizes the rights people actually have. A right to control one's part in procreation finds support in the principle of a society truly committed to individual liberty and dignity. It closely relates to other privacy decisions, and serves to guarantee the moral, social and economic freedom of women, gay people and others.¹⁸

VI. CONCLUSION

For the aforesaid reasons, whatever other considerations might exist, the United States Senate should seriously question Judge Clarence Thomas as to his judicial philosophy. If indeed he holds to the natural law theory of St. Thomas Aquinas, he should not be confirmed.

Respectfully submitted,



Vincent J. Samar

NOTES

*Vincent J. Samar is instructor of law at the Illinois Institute of Technology, Chicago/Kent College of Law and a lecturer in philosophy at Loyola University of Chicago. A practicing attorney, he is a former political candidate for 46th Ward Alderman and a long time activist in Chicago's Gay and Lesbian communities.

1. "The Higher Law Background of the Priveleges and Immunities Clause of the Fourteenth Amendment," 12 Harvard Journal of Law and Public Policy 63-70 (Winter 1989); "Toward a "Plain Reading" of the Constitution--The Declaration of Independence in Constitutional Interpretation," 30 Howard Law Journal 691 (Fall 1987).
2. 12 Harv. J. of L. and Pub. Pol'y at 68.
3. 30 How. L. J. at 697.
4. Summa Theologiae I-II, Q. 94, A. 2.
5. Ibid.
6. Ibid.
7. David A. J. Richards, Sex, Drugs, Death and the Law: An Essay on Human Rights and Overcriminalization (Totowa, N.J.: Rowman and Littlefield, 1982), p. 38.
8. Michael Ruse, "The Morality of Homosexuality" in Philosophy and Sex Robert Baker and Frederick Elliston eds. rev. ed. (Buffalo, N.Y.: Prometheus Books, 1984), p. 379.
9. Ibid. pp. 380-81.
10. Ibid. p. 381.
11. Ibid. pp. 381-82.
12. Summa Theologiae I-II, Q. 96, A. 2.
13. Ibid.
14. Alan Gewirth, Reason and Morality (Chicago: University of Chicago Press, 1978), p. 279.
15. Ronald Dworkin, "Hard Cases," 88 Harvard Law Review (1975).
16. _____, "The Great Abortion Case," The New York Review of Books (June 29, 1989), pp. 49-54.
17. Vincent J. Samar, The Right to Privacy: Gays, Lesbians and the Constitution (Temple University Press, 1991), Ch. 2.
18. Dworkin, "The Great Abortion Case."



C. D. COLEMAN
Senior Bishop

PATRON
Women's Missionary Council

CHRISTIAN METHODIST EPISCOPAL CHURCH
EIGHTH EPISCOPAL DISTRICT HEADQUARTERS

OFFICE 2323 W Illinois Avenue
Dallas, Texas 75224
(214) 339-5129

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20 August 1991

President George Bush
The Whitehouse
1600 Pennsylvania Avenue
Washington, DC 20006

Dear Mr. President:

We commend you for your sensitivity to the diverse cultural make-up of our nation, and the principles of the founding fathers that all are created equal under God. And we are pleased that you took these factors into consideration as you made your nomination for an associate justice of the Supreme Court in the Honorable Judge Clarence Thomas.

We have carefully studied the writings, decisions, and judicial contributions of Judge Thomas; and in our considered judgment he possesses all the skills, preparation, and judicial expertise that would suit him to be a most efficient Supreme Court judge. He is worthy of such an honor in the light of his distinguished career accomplishments.

As Senior Bishop/Chief Executive Officer of the Christian Methodist Episcopal Church, I represent a denomination which has a rich history of promoting positive and progressive improvements, and is composed of a constituency who have oft times been the victims of the vicious treacheries acted out upon a powerless people confined within a limited mobility. It is our sincere prayer that as Judge Thomas assumes this awesome challenge, that he will possess a compassionate zeal to empower the downtrodden, socially outcast, underprivileged, disenfranchised, and poverty stricken masses which are desperately seeking to achieve the American Dream.

President George Bush
August 20, 1991
Page 2

Our nation is in need of persons in the seat of government who are caring and committed to the cause of Liberty and Justice for all. I have good hope that the Honorable Judge Clarence Thomas will continue to bring the judicial integrity and expertise which he possesses together with the sense of caring inherent in his heritage.

Very truly yours,



C. D. Coleman,
Senior Bishop/CEO

CDC:rw

cc: Senator Lloyd M. Bentsen
Senator Phil Gramm

Frederick D. Gray
Chairman, Iwo Jima Black Veterans
6712 Hastings Drive
Capitol Heights, MD 20743
August 21, 1991

Honorable Joseph R. Biden
Chairman, Senate Judiciary Committee
Washington, DC 20510

Dear Mr. Chairman:

As chairman of the Iwo Jima Black Veterans group, I was asked by the membership to submit to your committee their names in support of Judge Thomas's nomination to the Supreme Court. This is in addition to my letter of August 20, 1991.

Mr. Leroy Davis
7414 Bel Haven Court
Landover, MD 20785

Mr. Lyman Brent
P.O. Box 74011
Baton Rouge, LA 70874

Mr. Bertrand Patterson
5206 Broadway Avenue
Shreveport, LA 71109

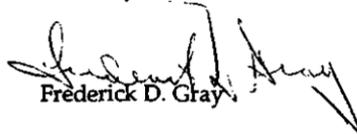
Mr. Haywood Johnson
314 Oneida Street, N.E.
Washington, DC 20011

Mr. Sam Green
4345 McCord Circle
Shreveport, LA 71109

Mr. Thomas Perrin
3212 G Street, S.E.
Washington, DC 20019

Mr. Artie Coleman
3125 Ashton Street
Shreveport, LA 71103

Sincerely,


Frederick D. Gray

My name is Frederick Douglass Gray. I live at 6712 Hastings Drive, Prince George's County, Maryland 20743. First, I would like to thank the members of this committee for permitting me to appear before you today. On this very date 46 years ago, I was walking the volcanic ashes of Iwo Jima happy as one could be that the war had ended, and, I, along with millions of other young veterans, would be coming home.

Now, 46 years later, having survived one of the worst battles in military history, I come before you asking this committee to look favorably and fairly upon the information you have before you concerning Judge Thomas's appointment to the Supreme Court. I believe Judge Thomas will prove to be what some are saying he is not. He will be a justice for all Americans. He will carry out the laws of this land to the best of his ability.

Yes, he comes from rural Georgia, and I come from rural Southern Maryland from the town of St. Leonards in a little county called Calvert. We both understand hardship. We both believe in the true American way: working for a living. We both *do not* believe in handouts. We both *do not* believe in quotas. So, Mr. Chairman, if the above is reason to deny a seat on the Supreme Court to Judge Thomas, so be it.

Judge Thomas would never let his personal beliefs in any way interfere with his ability to render a just and fair decision for all Americans. I thank you, again, Mr. Chairman and the members of this committee.

Frederick D Gray

**INSTITUTO PUERTORRIQUEÑO DE DERECHOS CIVILES**

Calle Julián Blanco Núm. 11, Río Piedras, Puerto Rico 00925
Teléfono (809) 754-7390 Fax: (809) 753-9829

August 29, 1991

Senator Joseph Biden
Chairperson
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

The Instituto Puertorriqueño de Derechos Civiles (Puerto Rican Institute for Civil Rights) is a non-profit Puerto Rico-based civil and human rights organization which conducts litigation in federal and local courts. We respectfully request that the attached position paper, "Opposition to the Nomination of Judge Clarence Thomas to the Supreme Court of the United States," be entered into the record during the upcoming hearings in September.

For your information I am also enclosing a statement we presented before the Energy Committee of the Congress in June of 1989 concerning the proposed plebiscite vote. The introduction of this statement will give you a better idea of who we are and what we do.

We would appreciate, at your earliest convenience, confirmation of your having received the attached position paper and also of its inclusion into the official record. Thank you for your time and consideration.

Sincerely,

Ralph Rivera
General Coordinator

"Trabajando porque tus derechos se respeten"



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***OPPOSITION TO THE NOMINATION
OF JUDGE CLARENCE THOMAS
TO THE SUPREME COURT OF THE UNITED STATES***

22 July 1991

"Trabajando porque tus derechos se respeten"

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INTRODUCTION

As an organization formed to defend, preserve and expand civil rights and liberties in Puerto Rico, the Puerto Rican Institute of Civil Rights (Instituto Puertorriqueño de Derechos Civiles) opposes the nomination of Judge Clarence Thomas to the Supreme Court of the United States.

For the Puerto Rican people, the selection of a U.S. Supreme Court Justice is of considerable importance. Over two million Puerto Ricans reside in the United States, of which close to 34% live below the poverty level. Although U.S. citizens, Puerto Ricans are often the victims of widespread and deeply rooted discrimination and are in particular need of a Supreme Court that will be responsive to their plight.

The U.S. judicial system arrived with the U.S. naval invasion of 1898. And like the Navy, it also has never left. Indeed, the U.S. court system has played a crucial role in the island's history. Of its different branches, the Grand Jury in particular has been used as an instrument of repression against Puerto Rico's independence movement. Because we continue to be subjected to the U.S. Constitution and its laws, we are subject to the decisions of the U.S. Supreme Court, the final arbiter of these doctrines. The following outlines our position regarding Judge Clarence Thomas' nomination to the U.S. Supreme Court.

Choosing a judge for the highest court of the United States requires in depth investigation as to his/her ability to uphold the United States Constitution and laws and should not be based solely upon the nominee's race or political philosophy. We find that the nominee falls far below the necessary qualifications for such a position. Unfortunately, our investigation shows that Judge Clarence Thomas will carry out his political goals, goals which often contravene with the preservation and expansion of civil rights, despite his sworn duty to uphold the U.S. Constitution and laws.

Our research has confirmed our fears that Judge Clarence Thomas is not qualified to serve in the United States Supreme Court. First, because of his extremely short service on the bench, 15 months in the Washington D.C. Court of Appeals and no federal district court service nor even state court service, we must base most of our analysis of his ability to uphold the law on his eight years as Chair of the Equal Employment Opportunity Commission (EEOC), as well as his various speeches and publications. Upon careful analysis of this record, we find that Judge Thomas did not understand or decided to ignore laws which he was employed to carry out as Chairman of the EEOC, behavior which is unfit for the highest court of the United States.

Second, Judge Thomas has shown himself capable of evading the law which does not fit his political philosophy. His political speeches and actions, or often the lack of the latter, show an insensitivity to the Constitutional rights of those who would come before him. We see no evidence that he will not continue to do the same as a Supreme Court Justice, and thus fail to uphold the civil rights of those seeking judicial redress and the millions affected by such decisions.

After some background information on Judge Thomas, we will first discuss his employment record and why such practices signal that he is not qualified to serve as a Supreme Court Justice. Second, we will examine his speeches and political philosophy which his record shows he will allow to interfere with his interpretations and rulings of the law, to the detriment of the Constitutional rights of not only those who come before the Supreme Court, but the millions of others affected by such precedent.

Biographical and Employment Background

Clarence Thomas grew up in Georgia under state-enforced segregation: "I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition". He graduated from Holy Cross College in 1970 and received his J.D. from Yale Law

School in 1974. He served as assistant attorney general in Missouri for the then attorney general John Danforth, specializing in tax and finance matters. In 1977 he began working for the chemical company Monsanto. He went to Washington D.C. in 1979 to work for U.S. Senator Danforth as his aide on energy and environmental matters. In 1981, President Reagan appointed Mr. Thomas to head the Department of Education's civil rights division. A year later President Reagan named him to chair the Equal Employment Opportunity Commission (EEOC), where he served for two terms.

In October 1989, President Bush nominated Mr. Thomas to the Court of Appeals for the District of Columbia. Despite his mediocre rating of "qualified" from the ABA judicial screening committee, the expression of serious concerns or outright opposition from the Alliance for Justice, the American Way, the American Association of Retired Persons, the National Council on Aging, the House Congressional Black Caucus, the Chair of the Senate Committee on Aging, the Chair of the House Judiciary Subcommittee on Civil and Constitutional Rights, the Chair of the House Select Committee on Aging and various civil rights organizations, he was confirmed in February 1990 where he has been serving until the present. His judicial history spans a mere 15 months, during which he has written 19 opinions, fewer than any other judge on that court.

CLARENCE THOMAS' RECORD

Normally in evaluating a nominee for the highest court of the United States one extensively reviews the judicial record of the nominee. To the extent possible, we have done so, but as stated above, it is brief and thus tells us very little. Therefore, we focus most of our analysis on his record as chair of the EEOC.

Clarence Thomas' Record as EEOC Chair

The most significant and revealing part of Clarence Thomas' record is his 1982 - 1990 tenure as chair of the EEOC. His record is marked with problems, at times so severe as to require Congressional and judicial action to remedy.

The EEOC is responsible for enforcing various federal statutes guaranteeing equal employment opportunity including Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, Section 501 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap), Section 717 of Title VII of the Civil Rights Act (covering equal employment opportunity for federal employees) and the Fair Labor Standards Act Amendments of 1974 (which prohibit age discrimination in federal employment)¹.

In addition, the EEOC is responsible for "leadership and coordination to the efforts of Federal departments and agencies to endorse all Federal statutes, Executive orders, regulations and policies which require equal employment opportunity". In other words, the EEOC is the lead agency for coordinating all Federal EEO programs.

Despite the EEOC's necessarily affirmative role in upholding the rights of workers who are victims of discrimination while insuring that such claims are valid, Thomas allowed the EEOC to lose its effectiveness as such a law enforcement agency. A letter from the American Way to Senator Joseph Biden, chair of the Senate Judiciary Committee, stated the following, regarding Thomas' nomination to

¹Govan and Taylor, One Nation, Indivisible, Report of the Citizens' Commission of Civil Rights, August 1989.

²Order No. 12,067 §1-201 (June 30, 1978). Despite this order, Thomas gave in to White House pressures when there was a conflict. The Civil Rights Commission noted this misunderstanding. "The EEOC's coordination role under executive order 12067 has been far less significant than was intended" See U.S. Commission on Civil Rights Clearinghouse Report, Federal Enforcement of Equal Employment Requirements 10 (1987).

the D.C. Circuit Court of Appeals:

Thomas has attempted, through regulatory or administrative policies, to weaken the very anti-discrimination laws that he was sworn to uphold. In short, Mr. Thomas' service at the EEOC raises serious questions concerning his respect for the law, a respect that is a sine qua non for a federal judge'.

In fact, in one instance it was necessary for the court to order the EEOC to carry out its obligations under the Age Discrimination in Employment Act (ADEA) to require employers to make pension contributions for the benefit of those of their employees who continue to work past "normal" retirement age. American Association of Retired Persons v. EEOC, 655 F.Supp. 228 (D.D.C. 1987). In holding that the EEOC unreasonably delayed in carrying out its duties, Judge H. Greene stated the following.

Although it is among the Commissions duties under law to eradicate discrimination in the workplace and to protect older worker's against discrimination, that agency has at best been slothful, at worst deceptive to the public, in the discharge of these responsibilities. These Commission derelictions are estimated to affect hundreds of thousands of older Americans, and to cost these individuals in lost pension benefits as much as \$450 million every year'. Id at 229.

What is distressing is that this is the very organization formed to protect the rights of such plaintiffs. Noting this, Judge Greene remarked.

It is worth recalling in this connection that the government agency which has engaged in these tactics detrimental to workers over 65 is not one, such as the Department of Commerce, which might perhaps legitimately have an outlook favorable to business interests, but, sadly, a commission created by the Civil Rights Act of 1964, charged by law with the eradication of discrimination in the workplace on the basis of age, race, national origin, sex and religion, one of whose responsibilities is thus to protect the older worker. Id at 240-241.

The following details how, under Thomas, the EEOC substantially lost its effectiveness in opposing discrimination in the workplace despite the United States Constitution, case-law and statutorily-mandated-action contrary to Thomas' policies.

- 1) Thomas misunderstood or blatantly ignored the law he was employed to uphold for eight years.

³The EEOC conceded that its delay in implementing rules on pensions for older workers may cost such workers \$450 million per year in benefits. Id at 229 n.2.

2) Thomas failed to perform the EEOC's statutorily - mandated responsibilities regarding federal anti-discrimination plans⁴.

3) Despite prevailing case-law to the contrary, Thomas attempted to weaken federal employee selection guidelines⁵.

4) Thomas failed to follow Supreme Court precedent in seeking remedies for victims of employment discrimination⁶.

5) Under Thomas, the EEOC also failed to support the civil rights of women in the workplace.

6) Thomas not only failed to enforce the Age Discrimination in Employment Act, he frequently took positions opposing the rights of elderly workers⁷.

7) Thomas evidenced further disrespect for the law in his evasiveness towards Congress and retaliatory actions towards employees who aided Congress.

1) Thomas Misunderstood or Blatantly Ignored the Law He was to Uphold for Eight Years.

In the confirmation hearings to place Thomas on the bench in the D.C. Circuit Court of Appeals, Senator Metzenbaum emphasized the following.

I am not here saying that Mr. Thomas should not be confirmed because thousands of age discrimination charges lapsed between 1984 and 1988, which required Congress to enact legislation to restore the rights of older workers. And I am not here because he failed to act with respect to the 1,500 subsequent cases that lapsed after [Congress passed special legislation to remedy the EEOC wrong], I am here today because I believe that Mr. Thomas' answers to me in committee prove conclusively that he does not know the law he was responsible for administering for the last 8 years. 136 Cong. Rec. S2013, S2016.

Federal law provides that charges filed with the State agencies which have work-sharing agreements with the EEOC are regarded as charges filed under both State and Federal law. Regarding charges filed with the Fair Employment Practice Agencies (FEPAs), Mr. Thomas stated that the "the charges filed with the State agencies are filed under state law and, to our knowledge, none of these State laws have statutes of limitation. So there cannot, by definition, be lapses in those agencies".

Senator Metzenbaum noted three disturbing points from Thomas' remarks. First, that "he did not understand for 8 years that these were Federal rights, not State rights; and that they were paying the State agencies to handle the claims of individuals under the Federal law" id at S2016.

Second, Federal law provides that the EEOC may enter into agreements with state or local fair

⁴See American Way Action Fund letter of 1 February 1990 to Senator Joseph Biden, Jr. Chair of the Senate Judiciary Committee.

⁵Id

⁶Id

⁷Id

employment practices agencies...and may engage the services of such agencies in processing charges assuring the safeguard of the federal rights of aggrieved persons. 29 CFR 1626.10 (a). Yet Mr. Thomas did not know that older workers lose their right to pursue Federal age discrimination claims when State agencies fail to act in a timely manner. As Senator Metzenbaum pointed out, we only have to look at the special Congressional law passed to remedy such inaction to note that Thomas was wrong in stating that "there cannot be lapses in the State agencies". Third, Mr. Thomas stated that the "EEOC does not supervise or regulate State agencies", thus supposedly absolving the EEOC of responsibility for the many lapsed claims. He was unaware of his own regulations stating that the EEOC in fact has the legal responsibility to ensure that these State agencies process Federal age discrimination charges in a timely manner. (29 CFR 1626.10).

As Senator Metzenbaum noted, "if he did not understand that elementary idea...that law...what will he understand when he reads complicated briefs that come before him...".⁸ At best, Thomas misunderstood the laws regulating his work for eight years, at worst he was pursuing a political agenda of his own. Neither is fitting for a justice of the U.S. Supreme Court.

2) Thomas failed to perform the EEOC's statutorily - mandated responsibilities regarding federal anti-discrimination plans.

Thomas' lack of enforcement of the law reduced the power of the EEOC. Title VII, section 717 makes the EEOC responsible for enforcing the adoption of effective anti-discrimination programs. Thomas claimed the EEOC lacked enforcement powers when several federal agencies repeatedly refused to comply, yet he did not support a Congressional proposal to expand the EEOC's power to obtain such anti-discrimination plans.

Further weakening the EEOC's power, in 1987 the Commission issued a Management Directive (714) which shifted the primary responsibility for anti-discrimination plans to the heads of each individual agency.

Thomas' failure to carry out the EEOC's Title VII duties to collect and evaluate anti-discrimination plans from federal agencies substantially weakened the EEOC's ability to eradicate discrimination in the workplace and again raises questions about Thomas' ability to abide by law contrary to his political beliefs.

3) Despite prevailing case-law to the contrary, Thomas attempted to weaken federal employee selection guidelines.

The Uniform Guidelines provide employers, employees and all other interested parties with a description of the law on selection practices for employment decisions such as educational requirements, application forms and standardized tests. The Guidelines are used so that an employer may not use selection criteria which have an "adverse impact" on the hiring or promotion of women and people of color unless the criteria are proven to be job-related. They represent a statement of the prevailing law to the courts. Although there had been no change in the controlling law,⁹ Thomas stated in an interview that changing the Uniform Guidelines was the "number one item on my agenda" in order to de-emphasize the use of statistical evidence to demonstrate disparate impact.

Leading Members of Congress noted that Thomas lacked a proper understanding of Title VII, its purpose, policy and case law. The Lawyers' Committee on Civil Rights testified the following.

Efforts by the current leadership of the EEOC to change [the Uniform Guidelines] are based solely

⁸136 Cong. Rec. S2013, S2017

⁹See Wards Cove Packing Co. v. Antonio, 109 S.Ct. 2115 (1989)

on the extreme personal views of its highest officials, without regard to any practical consideration and without regard to the commands of the law.

Thomas eventually backed down. Attempts such as this lead us and many others to question Thomas' respect for established law.

4) Thomas failed to follow Supreme Court precedent in seeking remedies for victims of employment discrimination (lack of enforcement of affirmative action laws).

Although the EEOC's own guidelines on affirmative action sanction the use of goals and timetables¹⁰, in 1986 the EEOC announced that it would no longer seek to include goals and timetables in the consent decrees that it negotiated with employers. During his reconfirmation hearings in the Senate, after severe criticism and pressure from civil rights organizations and Congress, Thomas promised to withdraw the policy.

Thomas stated in the Regulatory Program of the United States that the use of goals and timetables was a "fundamentally flawed approach to enforcement of the anti-discrimination statutes". Leading Members of Congress objected to the EEOC's unilateral decision not to seek certain legally permissible remedies for victims of discrimination with its policy of no goals and timetables. Thomas responded to the House Education and Labor Subcommittee that he believed the Stotts decision prohibited the use of goals and timetables in all circumstances, Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984) (though he earlier had written to Congress that the "Stotts decision does not require the EEOC to reconsider its stated policies with respect to the availability of numerical goals and similar forms of affirmative, prospective relief in Title VII cases"). Yet the Supreme Court held that goals and timetables could be included among remedies for employment discrimination in appropriate circumstances¹¹.

Interestingly enough, at his reappointment confirmation hearings, Thomas acknowledged the Supreme Court reaffirmation that goals and timetables are appropriate remedies and promised to seek all appropriate remedies in his future work. Yet once again, Thomas renewed his lack of support for goals and timetables when he joined Attorney General Meese and Assistant Attorney General Reynolds in seeking to have President Reagan abrogate the executive order requiring federal contractors to have minority hiring goals and timetables. Bipartisan opposition, from a list including the Secretary of State, Secretary of Labor, Secretary of Transportation, 69 Senators and 180 House Members, caused the Administration to give up changing the law.

As part of such a policy contrary to affirmative action, Thomas focused on one-to-one cases in an effort to shift from what he called an "emphasis...on obtaining broad remedies for a theoretical group that had not filed charges". As a result he was criticized for "new procedural issuances [which] have focused on one-to-one cases that have virtually no impact on the phenomenon of discrimination"¹².

Such a lack of enforcement and further attempts to change affirmative action laws supported by Supreme Court precedent raise serious questions as to Thomas' ability to respect established law which may conflict with his personal political agenda.

¹⁰Guidelines designed to protect employers who voluntarily take affirmative action measures received protection from charges of "reverse discrimination" under the EEOC Guidelines on Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as amended, 29 CFR 1608 (1988).

¹¹See Wygant v. Jackson Board of Education, 476 U.S. 267 (1986); Local 28 of the Sheet Metal Workers' International Association v. EEOC, 478 U.S. 421 (1986); and Local Number 93, International Association of Firefighters v. City of Cleveland, 478 U.S. 501 (1986).

¹²See EEOC Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination, 25 Daily Lab. Rep. (BNA) at E1 (Feb. 6, 1985).

5) Under Thomas, the EEOC failed to support the civil rights of women in the workplace.

The EEOC frequently filed briefs contrary to the rights of those the Commission was formed to protect in sexual harassment and pregnancy discrimination cases. In *Miller v. Aluminum Company of America*, 679 F.Supp. 495 (W.D. Pa.), *aff'd mem.*, No. 88-3099 (3d Cir. 1988), the EEOC's brief stated that "favoritism toward a female employee because of a consensual romantic relationship with a male supervisor is not sex discrimination within the meaning of Title VII. Yet 29 C.F.C. § 1604.11(g) states that where employment opportunities or benefits are granted because of an individual's submission to the employer's advances or request for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity benefit.

Regarding pregnancy discrimination, in *California Federal Savings and Loan v. Guerra*, 479 U.S. 272, 107 S.Ct. 683 (1987), the EEOC said that a California law providing unpaid leave for up to four months for employees disabled by pregnancy, but not other disabilities, violated Title VII. Yet the Court upheld the California law with the support of women's legal groups.

6) Thomas Failed to Enforce Age Discrimination Laws and EEOC Opposition to Elderly Workers' Rights.

The EEOC's handling of age discrimination cases was one of the most controversial areas of Thomas' tenure. The controversy was not limited to severe criticism from members of relevant Congressional committees who often found it necessary to have Thomas defend his policies and criticism from senior citizens groups, at different occasions, Congressional legislation and court orders were necessary to correct EEOC action or lack thereof. A letter from the House of Representatives' Judiciary Committee to President Bush stated the following.

As members of [the] Congressional Committees with oversight responsibilities for the EEOC, we believe Mr. Thomas has developed policy directives and enforcement strategies which have undermined the effectiveness of the Age Discrimination in Employment Act (ADEA) and Title VII.

In 1987 and 1988, the EEOC allowed more than 13,000 ADEA claimants to lose their right to bring their cause of action in federal court by not taking action within the two year statute of limitations, adversely affecting thousands of older workers. As a result, Congress ultimately passes legislation to reinstate the rights of those older workers. At the congressional hearings on Clarence Thomas' nomination to the D.C. Circuit Court of Appeals, Senator Metzenbaum noted that even since the special law was enacted to take care of the cases upon which the EEOC failed to act, another 1,700 age discrimination charges filed with the Federal agency and the State agencies under contract to the EEOC, which were not covered by the law passed in 1988, had not been processed within the necessary 2-year statute of limitations and were thus lost claims in federal court. Senator Pryor, chairman of the Aging Committee also has spoken on the floor on the recurring problem of inaction by the EEOC and State agencies and the serious consequences to the individuals who lost their Federal rights to sue for age discrimination.

Not only did Thomas allow such losses to elderly workers, the EEOC adopted positions that contradict the letter and spirit of the Age Discrimination in Employment Act (ADEA). Often the EEOC sided with the employer in cases involving early retirement plans with programs that coerce older workers into taking early retirement, plans the ADEA was formed to prohibit. For example, in *Paolillo v. Dresser Industries Inc.*, 821 F.2d 81 (2d Cir. 1987), the EEOC filed an amicus brief in support of the employer to request a modification of the decision, *after* the plaintiffs had prevailed. The EEOC supported a higher standard for demonstrating coercion and argued that plaintiffs should carry the burden of proof regarding voluntariness.

Also in opposition to elderly workers interest was EEOC regulatory policy. For example, prior to 1987 an employer had to receive EEOC approval in order to ask an employee to waive ADEA. In 1987 the EEOC issued a rule permitting waivers that were knowing or voluntary without EEOC approval, shifting the burden of proof of showing coercion to the employee and destroying the barriers to waiving ADEA rights. That is, the effectiveness of the ADEA was weakened. As a result of severe objection by senior citizens groups, Congress placed riders on the 1988, 1989 and 1990 EEOC appropriations to prevent implementation of the rule, yet Thomas continued to state that EEOC supervision of waivers was unduly burdensome for the EEOC, employer and employee.

The American Way stated the following in its letter regarding Thomas' D.C. Circuit confirmation hearings to Senator Joseph Biden, Chair of the Judiciary Committee:

Mr. Thomas' record has been marked by an unwillingness to vigorously enforce the laws protecting older workers...[c]onstant Congressional vigilance and prodding has been necessary to ensure that the EEOC fulfills even its most basic obligations under the ADEA.

Equally disturbing was Mr. Thomas' response to Congress, which was evasive as to how many age discrimination claims were lost.

7) Thomas was Evasive to Congress and Retaliated Against EEOC Employees Who Aided Congress.

In Congress' investigation of the lapsing of age discrimination cases problem, it called upon Thomas to reveal how many cases had lapsed due to the lack of EEOC action. First Thomas responded that 78 cases had lapsed. He later revised that figure to approximately 900, then 1608, then over 7,500, and finally over 13,000. Simultaneously, he refused to provide Congress with the necessary documents for its independent determination. As a result, the Senate Aging Committee had to subpoena certain EEOC records to get a full accounting of the lapsed cases.

In addition, after talking to the press and Congress about the EEOC's failure to process backlogged age discrimination cases, Lynn Bruner, a district director in the EEOC's St. Louis office, received an unsatisfactory performance review in 1988 criticizing her for talking "to the press on a national and volatile issue" and that her quotations "present the chairman in a negative light". The Office of the Special Counsel commenced investigating whether Thomas' plans to demote Bruner constituted retaliation (which, as the Chair of the House Judiciary Subcommittee on Civil and Constitutional Rights and Chair of the House Select Committee on Aging stated would be a violation of federal law). Less than a month before President Bush announced Thomas' nomination to the Court of Appeals, Thomas sent her a memo that although he believed no EEOC officials had treated her unfairly, he was dropping plans to demote her¹³.

Another example is that of Frank Quinn, director of the Los Angeles office. Thomas attempted to transfer Quinn to Birmingham two months prior to his retirement because Quinn had allegedly made statements to the press critical of agency policy. Quinn filed court action claiming retaliation and successfully prevented the transfer.

Judge Thomas' Record on the Bench

We hesitate to read too much into such a small record. We note only his possible desire to

¹³The Reporters Committee for Freedom of the Press (including members from the Wall Street Journal, Los Angeles Times, Washington Post, Walter Cronkite, Peter Jennings, Tom Brokaw, and more) took special note of the demotion proposal in its report to the editor of 3 July 1991.

combat crime at the expense of privacy rights by ruling in favor of questionable searches and seizures, as well as warrantless searches, and his tendency to rule against environmental concerns. Both are areas of great concern to the Institute. The fact that his record is so brief is also of great concern since clearly there are other much more well qualified and experienced judges currently on the bench whom President Bush would find agreeable. Nonetheless, politics, rather than judicial experience, seems to be the primary criterion for Bush nominees.

Criminal Law and Procedure

Judge Thomas held the following in United States v. Halliman, 923 F.2d 873 (1991): 1) Exigent circumstances justified the warrantless search of a hotel room even though police officers were informed about the suspect's use of the room before leaving the police station to go to the hotel, and had obtained a warrant to search three other rooms which the suspect had rented. 2) Officers had an 'independent source' for the drugs and other evidence seized so that defendant's invalid consent was not fatal to admissibility; and 3) Even though drugs found in the hotel room were admissible only against one of the two defendants, the district court did not err in refusing to sever their trials.

In United States v. Harrison; United States v. Black; United States v. Butler, 931 F.2d 65 (1991), Judge Thomas rejected defendant Butler's argument that there was insufficient evidence to convict him of using or carrying a firearm during a drug crime. Even though the only firearms confiscated were on the persons of the other two defendants, Butler had constructive possession of a gun because he could have either easily obtained a gun or instructed the others to use one.

Environmental Law

In Citizens Against Burlington v. Federal Aviation Administration, 1991 U.S. App. LEXIS 12036 (June 14, 1991), an alliance of individuals living near the airport contended that the FAA violated several environmental statutes in failing to consider the alternative sites. Judge Thomas rejected this argument, finding that the FAA's action was not arbitrary and capricious under the applicable statutes even though it did not consider the feasibility of alternative sites. In Judge Buckley's dissent-in-part, he stated that the FAA had "sidestepped its obligations" to prepare a detailed statement on alternative courses of action.

In Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission, F.2d, 1991 WL 73244 (May 10, 1991), the court upheld the Interstate Commerce Commission's decisions that the transportation service in question was a "ferry service" and thus exempt from the Commission's jurisdiction. Judge Thomas concurred in the decision but dissented on the issue of Cross-Sound's standing. He held that Cross-Sound could not challenge the Commission's decision under either the National Environmental Protection Act (NEPA) nor the Coastal Zone Management Act (CZMA). Yet the majority stated it had "serious doubts" about Judge Thomas' interpretation of the national transportation policy which led to Judge Thomas' legal conclusion on standing.

Because Thomas allows his political philosophy to interfere with his upholding of the law, we must also carefully examine these views.

THOMAS' SPEECHES AND POLITICAL PHILOSOPHY: THOMAS' RECORD REVEALS THAT HE OFTEN IS NOT WILLING TO UPHOLD THE CONSTITUTION AND ESTABLISHED LAW WHICH IS CONTRARY TO HIS BELIEFS

Thomas' lack of enforcement of the law which he was to uphold and blatant opposition to the rights of those he was to protect reflect his political philosophy as clearly expressed in his speeches and interviews. Time and again, Thomas' record demonstrates his ability to ignore law contrary to his beliefs. Willfully or not, Thomas has consistently applied the Constitution and laws of the United States in a

manner detrimental to civil rights. We believe he will continue this practice to the detriment of the civil rights of those who come before the Supreme Court and the millions of others adversely affected.

The Fundamental Right to Privacy

Shortly after President Bush announced the nomination of Judge Clarence Thomas to the U.S. Supreme Court, the National Abortion Rights Action League (NARAL) and Catholics for a Free Choice separately stated their opposition. NARAL stated that the Senate has an obligation to uphold the U.S. Constitution and thus must "refuse to confirm Judge Thomas unless he explicitly repudiates the positions he has taken against the right to privacy and affirmatively states his support for the principles protected in Griswold and Roe".¹⁴

In his June 18th, 1987 speech to The Heritage Foundation, Thomas specifically praised Lewis Lehrman's essay on "the Declaration of Independence and the Right to Life" as a "splendid example of applying natural law". Lehrman's essay referred to Roe v. Wade as "a spurious right born exclusively of judicial supremacy without a single trace of lawful authority, implicit or explicit, in the actual text or history of the Constitution itself". Thomas' agreement with such an essay reveals that he blatantly fails to recognize the Constitutional right to privacy. How far he would let his view of "natural law" cloud his ability to uphold the Constitution, we shall regret discovering through the tyranny it will place on individual rights.

Affirmative Action

Besides his direct action at the EEOC contravening affirmative action, Thomas has made numerous comments clearly stating his opposition to affirmative action. Apparently tired of the criticism for his anti-affirmative action policies, he stated "I am tired of the rhetoric - the rhetoric about quotas and about affirmative action. It is a supreme waste of time. It precludes more positive and enlightened discussion, and it is no longer relevant"¹⁵. He even compared affirmative action to South African apartheid:

those who insist on arguing that the principal of equal opportunity...means preferences for certain groups have relinquished their roles as moral and ethical leaders in this area. I bristle at the thought, for example, that it is morally proper to protect against minority racial preferences in South Africa while arguing for such preferences here¹⁶.

He stated in his speech to the Heritage Foundation on "Why Black Americans Should Look to Conservative Policies" that under the Reagan Administration, "we began to argue consistently against affirmative action. We attacked welfare and the welfare mentality. These are positions with which I agree", and in the same speech he stated that he had "lived the American dream; and that I was attempting to secure this dream for all Americans". Clearly Thomas has worked extremely hard against poor odds. But can Thomas really believe affirmative action did not help him overcome some of the discriminatorily placed obstacles he faced, such as his entrance into Yale Law School? Does he not regard this nomination as a quota fulfillment?

¹⁴ Griswold v. Connecticut protected the right to use contraception. Roe v. Wade protected the fundamental right to choose.

¹⁵ "The Equal Employment Opportunity Commission: Reflections on a New Philosophy," Stetson Law Review, Volume XV, nr. 1, 1985, pp 34.

¹⁶ Id

In this same speech, he referred to the state-enforced segregation, under which he was raised, as not only a lack of government support, but the complete opposite, governmental opposition to his and other's exercising of their individual rights. To this we strongly agree; clearly such repressive practices constituted governmental opposition. Yet his actions against the elderly and affirmative action constitute government opposition to the rights of individuals in another form.

It seems that Thomas' personal success has blinded him to the needs of others. Though he was raised under institutionalized racism and class discrimination, he stated the following in the same speech about his household:

[It] was strong, stable, and conservative...[i]those who attempt to capture the daily counseling, oversight, common sense and vision of my grandparents in a governmental program are engaging in sheer folly. Government cannot develop individual responsibility, but it certainly can refrain from preventing or hindering the development of this responsibility.

He even stated the following:

I, for one, do not see how the government can be compassionate, only people can be compassionate and then only with their own money, their own property and their own effort, not that of others.

Does Thomas believe those living without such a sturdy family life, or perhaps living in an abusive family should not receive government assistance? Will his tendency to ignore the Constitution and laws of the U.S. which are contrary to his political philosophy prevent him from protecting these people's rights?

Lulann McGriff, president of the San Francisco, California branch of the NAACP stated this concern clearly:

It serves us no good for someone to come from a humble background and not understand how he got where he is - through the blood, sweat and tears of other Afro Americans.

In the same speech to the Heritage Foundation, Thomas stated "equality of rights, not of possessions or entitlements, offered the opportunity to be free, and self-governing". What does such a right mean when not supported by the means to enjoy that right, when not supported by a Supreme Court of the United States that will protect these rights?

CONCLUSION

Even more than his minimal judicial service, Judge Clarence Thomas' record of EEOC leadership shows he is not qualified to rule in the Supreme Court of the United States. This is evidenced by his undermining of the effectiveness of the law he was to uphold for eight years, his failure to carry out statutorily - mandated responsibilities, his attempts to weaken employee selection guidelines used to prevent adverse impact, his failure to follow Supreme Court precedent, his opposition to the civil rights of women, his disastrous record regarding the rights of elderly workers, his evasiveness to Congress and his retaliatory actions.

Numerous civil rights groups have raised serious doubts about his ability to serve and numerous

groups actively oppose his nomination. In a press release dated July 7, 1991, the League of United Latin American Citizens (LULAC), the oldest and largest Hispanic organization in the United States, stated the following.

[Thomas] has shown by word and by deed to be insensitive to the issues of concern to Hispanics such as affirmative action, equal employment opportunity, and civil rights protection.

Because of his decisions ignoring laws contrary to his beliefs, persistently demonstrated as the EEOC chair, we see no evidence that Thomas will not continue to let such insensitivity to civil rights obstruct his reading of the United States Constitution and laws.

While we look forward to the day when the Supreme Court is representative of the people whom it serves, we must bear in mind Thurgood Marshall's comment regarding his successor, that we must beware of "a black snake as well as a white snake - they both bite". Both by word and deed, Thomas has shown his disregard for the struggles and often bloody sacrifices which have resulted in the civil rights advances of the last century.

We Puerto Ricans have been and will continue to be a part of that struggle and will therefore oppose Judge Clarence Thomas, or any other United States Supreme Court nominee, who puts at risk the ideals and values we treasure most.



TESTIMONY OF

PAT TAYLOR
 NATIONAL PRESIDENT
 BUSINESS AND PROFESSIONAL WOMEN/USA

The National Federation of Business
 and Professional Women's Clubs, Inc.
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before the
 SENATE JUDICIARY COMMITTEE
 ON THE NOMINATION OF CLARENCE THOMAS TO THE SUPREME COURT

SEPTEMBER 1991

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on the nomination of Clarence Thomas to the Supreme Court. As the president of Business and Professional Women/USA, I speak on behalf of working women across the nation who strongly believe that Clarence Thomas should not be confirmed to the Supreme Court.

BPW/USA was founded in 1919 to improve the status of women in the workforce and continues today to be the world's preeminent organization for working women. BPW/USA is a diverse bi-partisan organization of men and women of all racial, ethnic, and religious backgrounds who are brought together by their common interest in promoting economic self-sufficiency, equity, and full participation for working women. Comprised of 100,000 members in 3,000 clubs nationwide, BPW/USA is represented in every Congressional district in the United States.

The United States has reached a juncture where many of the advances realized by working women over the past several decades are threatened. There is a real danger of these advances being diluted or eliminated completely by laws that make it difficult, worthless, or even impossible to prove discrimination. BPW believes America needs a Supreme Court Justice who understands the necessity for and the appropriate role of the law in addressing the broad issues of discrimination and injustice. Simply speaking, Clarence Thomas is not a worthy heir to Thurgood Marshall's legacy.

Clarence Thomas undoubtedly knows great personal struggle, and I join Americans across the country in recognizing Judge Thomas for his ability to overcome the tremendous obstacles he has faced. I agree that his personal story is truly compelling and moving. Unfortunately, his story of a successful rise from an impoverished childhood is still all too rare.

Today, however, we must determine whether Clarence Thomas is qualified to sit on the Supreme Court. And although his background may give him unique insight, we must look beyond this to determine what his personal experiences have taught him, and whether he is qualified to serve on the Supreme Court.

As business professionals, we view the nomination process as being similar to the hiring practices of a private corporation. Clarence Thomas is applying for an important and powerful job, and the Senate is the interviewing team. The selection of a Justice is much more significant, however, because unlike elected officials and other workers across the nation, the person who is selected to sit on the Supreme Court will be there for a lifetime. Once confirmed, no one has the authority to fire a Justice--not the President, not Congress, and not the American people. I encourage you to carefully scrutinize Clarence Thomas' record, for this may be the last job application he may ever fill out.

You have heard from many distinguished witnesses, as well as Judge Thomas himself, who have discussed many issues with you. Unfortunately, however, numerous questions remain and new questions come to light as a result of these hearings. Judge Thomas has made a calculated effort to avoid questions, give non-answers, and deny his past record. As elected officials, you are held accountable for your record, and BPW asks that you hold Judge Thomas accountable for his.

While we do not expect Judge Thomas to prejudge the cases he may hear if confirmed to the Supreme Court, his legal interpretation of the Constitution is not only a valid question--but it is a critical part of the nomination process. The framers of our Constitution conferred upon the U.S. Senate and the President equal roles in the selection of Justices to sit on the U.S. Supreme Court. It is simply one of the checks and balances established to balance the power among the branches of government. The Senate is no more obligated to defer to the President on judicial appointments than the President is obligated to defer to the Congress on legislation. We all know that the President has repeatedly exercised his right to veto legislation passed by Congress.

Furthermore, BPW is concerned about the ease with which Judge Thomas cast away his previous writings, endorsements, speeches, and comments during the confirmation hearings. He dismisses many of his controversial views as the musings of a "part-time political theorist." On other occasions, Judge Thomas discards his comments as insincere, claiming that they were made simply to win the trust of his audience. With this in mind, I must question the honesty of his testimony before the Judiciary Committee.

Having traditionally supported and sought to protect individual rights and freedoms for all people--and particularly for women--BPW members unanimously passed a resolution to oppose the confirmation of Judge Clarence Thomas to the Supreme Court. BPW's opposition to the confirmation of Clarence Thomas is based on four concerns: his limited qualifications; his views on the right to privacy; his contempt for Congress and existing laws; and his opposition to equal opportunity.

QUALIFICATIONS

Like many of you, I was taught that the Justices of the Supreme Court were some of the nation's "best and brightest." They were people who exhibited a thorough understanding of the legal system, our laws, and our Constitution, and their extensive knowledge of the judicial system was to be admired and respected. Unfortunately, I do not believe Clarence Thomas has this comprehensive experience...and his peers agree. As you know, the American Bar Association has given Judge Thomas the lowest "qualified" rating it has--the lowest rating of any Supreme Court nominee in the history of the ABA rating system. This "qualified" rating is similar to the rating that Judge Thomas received when he was first nominated to the federal bench in 1990. However, since being on the court, Judge Thomas' ABA rating has actually declined, with two ABA board members now calling him "unqualified" to sit on the Supreme Court.

Judge Thomas has limited experience with Constitutional law and limited experience in the judiciary, having served on the U.S. Court of Appeals for the District of Columbia Circuit for less than eighteen months.. At this critical stage in the development of law and policy, we need a Supreme Court Justice with significantly more experience.

RIGHT TO PRIVACY

BPM is also concerned about Judge Thomas's views on the Constitutional right to privacy. Although Thomas has refused to clearly state his position on basic individual rights and reproductive freedom while testifying before the Judiciary Committee, his previous record paints a clear picture. He has been critical of the constitutional right to privacy as it is stated in the Griswold decision, which provided the foundation for Roe v. Wade.

Throughout his work, Thomas has advocated a consideration of "natural" or "higher" law in interpreting the Constitution. He praised Lewis Lehrman's article "on the Declaration of Independence and the right to life" as "a splendid example of applying Natural Law." While this provides considerable information on his predisposition toward a woman's right to choose, it also invokes a theory, Natural Law, which has long been used to prevent the advancement of women on the basis of their "natural" roles as mother and care-taker.

Clearly, Judge Thomas' beliefs show evidence of a willingness to restrict individual liberties, including a woman's right to make her own reproductive choices. BPM members believe that a woman can only be in control of her economic life in so far as she is in control of her reproductive life.

CONTEMPT FOR CONGRESS AND EXISTING LAWS

As an appointed official, Thomas demonstrated his disregard for the laws that he was charged with implementing. Specifically, Thomas failed to provide full and fair interpretation and enforcement of existing civil rights laws throughout his career.

When Thomas headed the Education Department's Office of Civil Rights (OCR), a federal judge found that OCR was both misinterpreting and inadequately enforcing Title IX, the statute that prohibits gender discrimination in federally-funded education programs and institutions.

Thomas served as the head of the Equal Employment Opportunity Commission (EEOC) from 1982 to 1989. Despite Congress' mandate that the EEOC initiate class-action suits in employment discrimination cases, Thomas openly opposed such suits and defied the Congressional mandate, allowing his personal beliefs to interfere with his duty to uphold the law. Also as head of EEOC, Thomas permitted the backlog of cases to double from 31,000 to 81,686 and the delay in processing discrimination charges to slow dramatically from five and a half months to nine months. In fact, Thomas failed to process more than 13,000 age discrimination claims before their statute of limitations ran out, requiring Congressional intervention in order to ensure the victims their right to prove discrimination and seek retribution.

I find it unconscionable that our nation is considering appointing a person to the Supreme Court who has such a blatant disrespect for the law, legislative intent, and the legislative branch of our government as a whole.

OPPOSITION TO EQUAL OPPORTUNITY

BPW actively promotes full participation, equity and economic self-sufficiency for all. Although Judge Thomas claims to support these issues, as we say in the Midwest, "his talk isn't his walk."

Despite the personal benefits Thomas derived from affirmative action in his own admission to Holy Cross and Yale Law School, Thomas puts his faith solely in personal self-reliance. In embracing the idea of "pulling oneself up by the bootstraps," Thomas seems to overlook some of the things that distinguished him from other disadvantaged people in enabling him to be self-reliant. Certainly the loving, motivating and hard-working example set by his grandparents, the \$300 dollars given to him anonymously which enabled him to take a reading course, and his above-average intelligence contributed to his success.

In fact, Clarence Thomas has been an adamant critic of efforts to ensure equal opportunity in the workplace. Not only

did Thomas oppose most affirmative action plans as the head of the EEOC, but he continued to oppose these plans even after findings of discrimination. Thomas characterized a 1987 Supreme Court ruling upholding an affirmative action program that promoted female workers as "just social engineering" and stated that he did not "think the ends justify the means." Under Thomas leadership in 1985, the EEOC ruled that federal law does not require equal pay for jobs of comparable value--a finding that contradicts the Supreme Court's 1981 Gunther decision, and a finding which is an affront to the working women of America. Apparently, equality in the workplace is not something Thomas sees as vital.

Although significant strides have been made toward equality in the workplace, discrimination against women and minorities remains. Only one month ago, the U.S. Department of Labor released a study that clearly documents a "glass ceiling" which prohibits women and minorities from entering into top management positions in companies. The study found this ceiling to be pervasive throughout corporate America, and at lower levels than previously believed.

BPW continues efforts to work with corporations to develop initiatives designed to enable women to break through the glass ceiling, to encourage adoption of model programs developed by leading edge companies, and to work with corporate America to change employee attitudes toward women and minorities. These efforts are not always successful, however, and legal remedies must remain an option for women faced with discrimination--particularly in cases where the discrimination is deliberate and intentional.

We seek level playing grounds, not special treatment. And we firmly believe that corporations with more women at the top of their management structure will improve their bottom line. If 98 out of 100 U.S. Senators were women, if 98 out of 100 Directors of Fortune 500 companies were women, if 98 out of every 100 CEOs in America were women, I don't think the men in this country would feel as though they were full participants.

The judicial system, and in particular the Supreme Court, is often given the task of sorting out the complexities of these and other difficult problems and questions. The handling of these societal problems is our nation's blueprint for the future. We must continue on the path to a better society which permits equal opportunity for all. BPW/USA believes that the confirmation of Clarence Thomas would turn back the clock on important progress already made toward this goal.

BPW/USA strongly urges the Senate to oppose the nomination of Clarence Thomas to the Supreme Court. Again, thank you for the opportunity for to share our views with you.

CATHOLICS
FOR A
FREE CHOICE

Natural Law and the Nominee

What Natural Law Does Clarence Thomas Defend?

by
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A report prepared for

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September 6, 1991

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Natural Law and the Nominee What Natural Law Does Clarence Thomas Defend?

by Anthony Battaglia

Natural law is both familiar and strange. In its long history it has accumulated enough shadings to be a part of several conversations at the same time -- among theologians, philosophers, judges, lawmakers, social reformers, people on the street. Natural law is an integral element of our American political tradition, but it can be fraught with threats to liberty, perhaps especially for women. The Declaration of Independence contains three strands of natural law thought: sweeping transcendent claims, the enunciation of natural human dignity, and specific rules of natural morality. All three generate controversy on theoretical grounds. All have practical consequences that are troublesome.¹

The ringing phrase "The Law of Nature and of Nature's God," inscribes the most fundamental -- and most abstract -- natural law idea into our national consciousness. The most elevated of natural law theories explain the way in which morality is a part of the universe itself. They usually run philosophy and religion together so that they are really indistinguishable. The writers of the Declaration appeal to a moral authority so great that it legitimizes the political rebellion the document announces; no merely human authority can withstand such power. This transcendent kind of natural law claim provides a basis for civil law, but it also suggests that civil law can be overridden. It is the most abstract and also the most powerful kind of natural law.

The middle level of natural law is articulated in the Declaration's often quoted phrase, ". . . that all men are created equal, that they are endowed by their creator with certain unalienable rights." While still abstract, this middle kind of natural law assertion is more firmly within the realm of human investigation. In this context we find the most familiar

natural law vocabulary, the language of rights developed in the late 17th century and associated with English philosopher John Locke.

This central category, abstract but not transcendental, is the area where most discussion of natural law in legal theory takes place. The Bill of Rights takes its name and content from this kind of natural law and has enshrined appeals to natural rights in the American tradition. A characteristic reverence for this kind of language has recently popularized discussion of the "rights" of animals, the "rights" of nature, etc. Such new applications of what is essentially old language show the vitality of a certain kind of natural law theory. Nevertheless, the language of rights is at best metaphorical when taken out of the context of civil law, from which it sprung.

The third strand of natural law in the Declaration, the most specific, is the kind which tells us what human behavior is natural (and therefore moral) and which is not. It is established in the phrase, ". . . that among these are life, liberty and the pursuit of happiness. . ." This is the area of greatest difficulty, not only historically and theoretically, but also with regard to a specific nominee to the high court like Judge Clarence Thomas.² Here the airier elements of natural law come down to earth. Despite frequent assertions to the contrary, even in natural law the influence of history and culture is unavoidable. More than we sometimes think, claims to what is natural -- and therefore naturally moral -- must be adapted over time. Thus, for example, John Locke (and more recently, Pope Leo XIII) thought that private property was a matter rooted in the law of nature. With greater caution, the writers of the Declaration confined themselves to the far vaguer formula we all know. They did not assert a natural right to property but rather to the "pursuit of happiness."

The problem with this third line of thought -- specific rules -- is in the determination of what is natural. It is easy to become too specific and describe particular behavior as

natural – and therefore good -- when it is actually only what we are used to, the actions that "come naturally" to us, even though they are shaped unavoidably by our class, race, gender, and so forth. If we do that, we elevate the practices we grew up with, or which are unquestioned in our particular society, into nature itself. The unreflective judgments of people on the street can thus become enshrined in high sounding moral theories. If these opinions and prejudices were simply the matter of street corner and dinner table conversation, they would be of little interest to us. But they are not. They have politically powerful advocates. Personal moral convictions are easily transformed into judgments about how everyone should behave, and natural law seems to facilitate this transformation.

Citizens, of course, will differ on definitions of moral behavior. And each of us has the right to promote his or her morality according to the democratic political process. It is not the valid application of democracy that is troublesome here. But in choosing justices for the Supreme Court, we are deciding who shall be the final interpreters of what the law means. We should take care that we are not inviting interpretations of the law which short-circuit the democratic process in the name of inappropriate ideas of natural morality.

II

Nowhere has the danger of turning prejudice into law been more real than in the matters of human sexual and reproductive behavior. A brief history exposes the background of this danger. Concepts similar to our notion of natural law can be found in many different cultures. Our present-day usage goes back to ancient versions in both Greek and Roman cultures. The Greek Stoics held a variation of transcendent natural law - it provided them with an understanding of the reason in the universe and a belief that morality was a part of the nature of things. The Roman version, much more juridical and less philosophical, institutionalized a universal "law of nature" that underlay the diversity

of laws among the many peoples of the empire. This law of nature was very vague, and often seems to have been a combination of what we would call due process and a generous dose of common sense.¹

Natural law was not a widely used category in the middle ages until relatively late. It is rightly associated with the most important intellectual of the era, St. Thomas Aquinas. He used natural law as a bridge between the churchy, authority-based morality of the time and an ethic based more on ordinary experience. It was both traditional and reasonable. It was a daring move and had far-reaching effects. St. Thomas's understanding of natural law was that it is our human, intelligent, "sharing" in the "eternal law" of the universe.²

But along with his convictions about the moral nature of the universe, he found room in his system for an application that has been invoked ever since as a justification for all sorts of highly questionable prescriptions about sexual and reproductive morality. When dealing with human sexuality, St. Thomas invoked a phrase that came to him from Roman times, the saying of a second century Roman jurist named Ulpian, that natural law included "what nature teaches all animals."³

Even to us, so many years later, this formula has a familiar ring. But underneath its apparent clarity, it actually tells us nothing. In nature, a wide variety of mating habits abound. And animal behavior in other respects -- with regard to aggression, for example-- is not normative for humans. We have difficulty specifying what in nature justifies the exclusive emphasis upon the possibility of reproduction in each and every sexual act that became the meaning of the phrase in the Medieval Christian tradition. Moreover, this emphasis on reproduction was made the justification for lifelong monogamy, for the submission of women to men, and for absolute prohibitions of various kinds of sexual activity that abound in observable nature even though nature does not follow these rules. What the phrase was taken to mean was much more specific than the words themselves

would indicate -- an early example of the problems of natural law interpretation. What got added to natural law as a result of this formula, in fact, was what the interpreter wanted to add, the sexual/marital system in which men had more rights than women, and sexuality was entirely oriented toward reproduction, a system that is often called simply "patriarchy." Arguably, patriarchy is consistent with the social world of feudalism, in which power seemed to flow downward from God to the King, and continued descending down through the lower, clearly defined divisions in which human beings were organized -- the very world view the Declaration of Independence would declare **unnatural**. But in medieval times this pattern was the standard for everyone.

The medieval understanding of human sexuality continued to be normative even here in the United States until very recent times. A world in which women were not allowed to vote and were expected to stay out of public life, where divorce was difficult and women had little recourse against an abusive or philandering husband, where laws prohibited contraception as well as adultery and fornication, not to mention homosexuality -- these were all a part of the natural order of things that came down to us from our historical forebears.

Ideal natural law, not the nature that could be observed, pushed this morality into something much more absolute than the evidence suggests. What was natural was not merely recommended or praiseworthy, but became a rule which allowed no blameless exceptions. Natural sexual behavior was supposed to be perfect in a way not found in nature and not forced on people in other areas of human behavior. The impossibility of reading this system back into observable nature was simply ignored. The goal of procreation -- increasingly with emphasis on the very minimum, namely conception -- was eventually taken by church authorities to be the single-minded aim of nature. From this decision about the purpose of sexuality it was possible to define normal human sexual

activity. Each and every sexual act was justified or condemned according to whether it could be seen as leading to the impregnation of a woman. All other sexual morality fell into place around this simplification.

Even this brief summary of medieval sexual morality would be superfluous except that this understanding of human life continues to influence the law in the United States even today. Slogans like "a woman's place is in the home" harken back to this medieval moral system and the belief that patriarchy is what "nature itself" teaches us.

Cases that come before courts bearing on these issues involve the rights of women -- in matters of rights to economic and legal equality, fairness and equal opportunity in the workplace, as well as with issues of rights to privacy and the right to bodily integrity. The emphasis on women's gender roles and the importance of childbearing has not led the natural law tradition to be sensitive to such rights.

Indeed, the idea of women's rights is highly suspect within the religious traditions most likely to talk the language of natural law. The leadership of the Roman Catholic church publicly opposes virtually any changes that would alter the familiar patriarchal sexual morality outlined above. In many people's minds it is identified with natural law thinking and its use of that tradition deserves at least a mention here. Two recent examples illustrate the persistence of natural law reasoning in the sense of specific rules about sexual and reproductive morality and the status of women. In 1987 the Vatican issued a policy statement on Human Life and Reproduction that banned all forms of artificial fertilization, even for married couples.⁴ Using deductive reasoning, the document relies upon "the natural moral law" to arrive at its conclusions, a use of medieval methodology that was criticized widely, even by mainstream Catholic commentators. For example, the document states that medical technology cannot be a substitute for the "conjugal act" but must rather be an aid to it. Commentators were quick to notice that only one possibility fulfilled the

stringent conditions the Vatican set out. The husband's sperm could be used in one (and only one) kind of technology to assist fertility, as long as both contraception and masturbation were avoided. The obligation imposed by "natural moral law" could be met if the husband's sperm were to be gathered in a specific way: sexual intercourse in which a perforated condom is used. To avoid masturbation, intercourse must take place; to avoid contraception, an "unnatural sex act," in which a barrier to reproduction has been used, the condom should be defective. (The use of condoms even to avoid the spread of disease is not permissible in official Catholic teaching.) The regulations reveal how little the medieval thinking involved has changed.

In a second context, the U.S. Catholic bishops have been trying for several years to write a national policy on the rights of women in the church. In formulating the pastoral letter, the prelates gathered testimony from women in their dioceses. The bishops have been hampered again and again by the Vatican, and their document has gone through a number of drafts, each less egalitarian than the former.⁵ During a recent summons to Rome for further consultations on the matter, the U.S. bishops were told that if they must write such a statement, they should rely more upon the tradition -- the very natural law tradition we have been talking about -- and less upon the real life testimony of actual women. In that tradition, women have had no real power, not even nuns manage their own lives. The exclusion of women from economic or political power in the secular world has been extended within the church to exclusion from becoming priests and, unofficially, from all forms of leadership roles. Asking women's opinions about such treatment would lead to predictable demands for change; therefore their opinions should not be heard, Rome must have thought. As we see, natural law provides some partisans a way to bypass the procedures of democratic lawmaking in the religious sphere. Rather than learning from experience and from evaluating evidence, they seem able to leap effortlessly to the right

conclusion. And then conclusions arrived at in this manner are often presented in secular contexts as universal and natural rather than as the partisan statements they are.

In fact, official Roman Catholic teaching can serve as an example of the problems associated with natural law in many people's minds. The Catholic use of natural law contrasts sharply with the use in the Declaration of Independence. Instead of questioning the past in the light of the best reasoning in the present, the opposite occurs too often: the past is given special authority as more natural than the present. Moreover, the administrators of the church often write and speak as though they had special access to the law of nature and special privileges to be its interpreters. Transcendent natural law is seen as reinforcing the specifically religious elements of the Catholic tradition and extending the authority of church officials to all humanity. Natural rights and dignity have occasionally been called upon in new ways to establish the rights of workers, but more often than not these rights are seen as proving that the way things have been done over the centuries are in accord with nature itself.

These errors do not characterize all Catholic uses of natural law, but such usage is frequent enough. It is the kind of natural law thinking that worries those who recognize the strengths of natural law but who also see that it can be used to resist change and to preserve the authority of those who already have power. No application of natural law is immune to abuse.

III

Many people, not only Catholics, think of natural law only as specific rules. Judge Thomas's present relation to the Catholic church is unknown, but a good deal of his education took place in Catholic schools and in a Catholic seminary. When he refers to natural law, we should reflect on the context in which he is likely to have learned about it.

Questions that must be answered about the candidate's adherence to natural law theory then become clear. What exactly are the human rights that natural law explains? Are there such rights that override the body of civil law? What are they? What is the relationship between secular law and the natural law? Does Judge Thomas's adherence to a natural law standard mean that he can -- or even must -- disregard the duly constituted laws of the land in order to preserve the natural law as he understands it? The possibility of judicial activism in defense of a natural law must be probed.

Knowing the judge's position is especially vital in light of the many cases facing the court involving the rights of women, especially in the context of reproduction, the rights of gay people, issues regarding sterilization, issues of discrimination based on pregnancy, and the like. The tendency to describe some actions as natural and others as unnatural -- and to try to turn these descriptions into law -- continues in our society, even outside the context of Roman Catholicism. In some such cases, parties have claimed a right to privacy or some other right grounded in their dignity as persons. The climate of decision-making in such cases is made more emotional and less rational because of the claim that homosexual behavior is unnatural or the assumption that pregnancy is natural and moral while abortion is not.

Along with the problem of knowing in too much detail, there is the problem of knowing too certainly. Among its many uses, natural law calls us to behave according to a morality written in the nature of things. It also tells us that any law that is not in accord with nature is provisional, suspect, even immoral. As is commonly said in the natural law tradition, "An unjust law is no law at all." Here the usually cool voice of human reason speaks with the fiery urgency of the biblical prophets. This truly revolutionary use of the law of nature is, in fact, the use to which the founders put it in 1776; the law of nature entitled them to declare their independence from England. Such an example may lead us

to forget that appeals to nature have been used for other, undesirable purposes. True, Martin Luther King, Jr. used natural law arguments to explain that segregation violated a higher law. But his opponents had exactly contrary convictions, that nature did not intend races to interact as equals. The Greek philosopher Aristotle, in a lapse from his usual reliability as a guide to ethical behavior, concluded that non-Greeks -- Barbarians, they were called -- were naturally inferior to Greeks, were "natural slaves" in fact.¹ This assertion has been cited by racists through the centuries.² Nothing human is beyond corruption; natural law theory is no exception.

The majesty of natural law has been the source of a certain dynamism in the American political tradition. Belief in natural law has even served as a source of hope for improvement in the future. But in case after historical case we are reminded that it does not lift us out of our ordinary human condition. A decade after writing the reverberating words of the Declaration of Independence that insist so stirringly on human equality, Thomas Jefferson was all too aware of the limitations of that document. Thinking about slavery, he wrote "I tremble for my country when I reflect that God is just"³ It was not the prospect of the Christian Last Judgment that worried him -- countries have no standing in that vision -- but natural consequences, ones that would, in time, include the Civil War, and that continue with us to this day.

After all, no matter how revolutionary and "natural" they wanted to be, the Founders were locked into the mindset of their own time and place. The "all men" that the Creator had endowed with such "unalienable rights" as "liberty" turned out to be, sad to say, only white males. Indeed, not even all white males. It was only the ones who belonged to the propertied class who would be given the vote in the original constitution thirteen years later. We can learn a great deal about the limitations of natural law, whether dealing with political equality or sexual morality, by noticing the context in which it entered American

political life. The road to universal suffrage and human equality stretched out on a strife-torn and bloody road ahead of the Founders, though they did not know it. The road stretches out ahead of us still. The Declaration of Independence thus turns out to be an exemplary natural law document not only in its strengths, but also in its weaknesses.

In assessing the qualifications of Judge Thomas for the Supreme Court, it will not be enough to gauge whether or not he believes in natural law as a lofty generalization. We need much more specific information about what his adherence to a natural law philosophy actually means. Does Judge Thomas believe that human dignity extends equally to women as well as men? Or does he believe the opposite, that women have a special responsibility to stay at home and raise children and that economic and social equality would undermine their natural childraising mission? Does he believe that he can decide on the basis of abstract theory that abortion is wrong? Where does he, in fact, differ from the natural law sexual morality that is so controversial in our society? Abstract adherence to a natural law perspective can seem as American as the Fourth of July. The nominee should be asked to go beyond such abstractions to explain the real impact of natural law convictions on his understanding of individual rights. What does he really think of the natural sexual morality and natural gender roles?

It is not natural law as such that is the problem here. In fact, the enforcement of these pre-modern roles does not deserve to be included within natural law today. They are no more natural than the theories of the divine right of kings that flourished at the same time as that earlier, less democratic use of natural law. We should not elevate to the Supreme Court judges who would defend a medieval understanding of human beings in the guise of an otherwise honorable tradition.

NOTES

SECTION I

1. Among the many books on natural law available, three could usefully serve as further introduction. John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections on the American Proposition* (Garden City: Doubleday Image, 1964), remains the classic work combining the best of the American and the Catholic versions of the tradition. A.P. D'Entreves, *Natural Law* (2nd Edition; London: Hutchison, 1970), is a useful historical introduction to the philosophical issues, while Paul Sigmund, *Natural Law in Political Thought* (Lanham, MD: University Press of America, 1982), provides the orientation its title promises. In addition, see Anthony Battaglia, *Toward a Reformulation of Natural Law* (New York: Seabury, 1981), for a fuller version of the author's position.

2. Judge Clarence Thomas's ideas on natural law are set out in his lecture at the Heritage Foundation, June 18, 1987, "Why Black Americans Should Look to Conservative Policies."

SECTION II

1. An angry but accurate history of Roman Catholic sexual ethics and its roots in the ancient and medieval worlds is provided by Uta Ranke-Heinemann, *Eunuchs for the Kingdom of Heaven: Women, Sexuality, and the Catholic Church* (New York: Doubleday, 1990).

2. The quotations from St. Thomas are from *Summa Theologica* I-II, Q.91, A.2 and Q.94, A.3. In the second of these he quotes Ulpian without naming him.

3. On the difficulties of getting from Ulpian's understanding of nature to medieval sexual ethics, see John Boswell, *Christianity, Social Tolerance and Homosexuality* (Chicago: University of Chicago Press, 1981).

4. The full text of the Vatican document banning "artificial reproductive methods" was published in *The New York Times*, March 11, 1987. The next day, "Catholic medical authorities" were quoted explaining the use of a "condom deliberately pierced with holes" to avoid the ban as described. "It shows how precise is the Catholic teaching," said one authority. (*New York Times*, March 12, 1987, p. B-11). Jesuit Richard A. McCormick was not the only Catholic to "find such casuistry debasing and repugnant" (*America*, March 28, 1987, p. 248).

5. On the Vatican's attempts to derail the U.S. Bishops' pastoral letter on women, and its advice to the bishops, see *The National Catholic Reporter*, June 7, 1991, p.6.

SECTION III

1. Aristotle draws his conclusion about natural slaves in *The Politics*, 1254a-1255b.

2. Lewis Hanke, *Aristotle and the American Indian* (Bloomington: Indiana University Press, 1959), describes the use of these ideas in sixteenth century Spain and America.

3. Jefferson's well-known statement was made in the only book he published, *Notes on the State of Virginia* (1787), in Query XVIII, "Manners."

IN SUPPORT OF CONFIRMATION OF
CLARENCE THOMAS
AS ASSOCIATE JUSTICE OF
THE UNITED STATES SUPREME COURT

JUDICIARY COMMITTEE
U.S. SENATE
WASHINGTON, D.C.
September 10, 1991

BY BOBEY B. STAFFORD, ESQUIRE
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FOR THE UNITED STATES SENATE JUDICIARY COMMITTEE HEARING ON
CLARENCE THOMAS - By Bobby B. Stafford, Esquire,
Alexandria, Virginia,
September 10, 1991

If I were given the opportunity to appear before the Senate Judiciary Committee, I would say - This is a great moment in history for me and the social group from whence I come to be present and testify on the question: Whether or not Clarence Thomas should be confirmed by the advice and consent of the United States Senate?

A commonality of Southern, ethnic and religious heritage preordained my alignment in support of Judge Clarence Thomas. It is easy for me to empathize with Clarence Thomas since we both have deep roots from the same geographic section of the deep South. I, one of eleven (11) sons and two (2) daughters of Edward, a railroad attendant and Katheryn, a housewife, became a product of an education struggle by parents whose total commitment in the rural area of Kingstree, South Carolina was to educate all of their children through college; they achieved this level and in addition, most have received post graduate professional degrees. Or, in the Clarence Thomas' case, in excerpts taken from his commencement address, Savannah State College, June 9, 1985, he states that "I watched the strongest man in the world endure go that he could raise his two grandsons, go that he could make something of his life; and go that his two grandsons (my brother and me) could do the same with ours. I watched a quiet strong grandmother slave away in the kitchen,

clean house, cook and endure, so we could make it. I watched through a child's eyes as my young mother, Miss Mariah, Miss Bec, Miss Gladys, Miss Gertrude, Cousin Hattie, Cousin Bea, Cousin Julie all worked countless hours in other peoples' kitchens, with aching feet and pain filled heads for little pay and no benefits - but they endured so that we who watched them could make it."

Though there were degrees in the manner in which harsh segregation rules and laws were administered and though these harsh segregation policies and laws put a different strain on the impact that each of us felt by virtue of their placing a different tenor on the same experience; nevertheless, the oppression struck our hearts and souls the same way.

Also, we were both directed and guided to a pathway of necessity for pursuing an education to its fullest extent as a way to escape total destruction and ultimately, to reach a highway to a meaningful and successful life.

To be sure, we are now parked in the State of Virginia; for Clarence Thomas, it was Pin Point, Georgia and for me, it was Kingstree, South Carolina. It has been said of such experiences that we have had that they are not worth a "nickel"; however, I would wager that neither Judge Thomas nor I would be willing to sell all of these experiences for a million dollars.

Similarly, both of us are lawyers, though our law degrees were earned at different law schools, his at Yale University Law School and mine at Howard University School of Law. Contrary to

any other school of thought in our social group, I, like Clarence Thomas, subscribe to the theory that there is a way to succeed, and if you will, promote "Civil Rights", without being per se, offensive. These methods are unique for they do not embrace or countenance with "selling out" our social group.

The protagonist for our social group who so vociferously hollows "no confirmation" contends that you must offend "The Man" in order to pursue "Civil Rights". Let us be a little mindful of 1st Peter, 2nd Chapter, verses 4 thru 9 - "Coming to Him as to a living stone, rejected indeed by men, but chosen by God and precious." It is thusly said that

"The stone which the builders rejected
Has become the chief cornerstone. "

A warning, we must be careful not to kill the messenger.

Notwithstanding other non-ethnic voices opposing confirmation, we must look to the body politic of America Majority who don't find Clarence Thomas per se, offensive to them as a Supreme Court Justice. For this reason, these various interest groups have to depend and rely upon the protagonist from our ethnic group to pull "their chestnuts out of the fire for them, lest they would seriously offend their own body politic."

In closing, what I have come to say: I stand absolutely for the confirmation of Clarence Thomas as an Associate Justice of the United States Supreme Court. His confirmation is in the best interest of all of the people of the United States.

The naysayers or dissenters will ultimately come to learn that the United States Senate, if it finds it to be its proper discretion, exercised a wise judgment in its confirmation of Clarence Thomas as history unfolds itself. This is my faith in my brother from the South, a black man, a good role model for our little boys and girls...



National Committee on Pay Equity

1201 Sixteenth Street, Northwest • Washington, D.C. 20036 • 202/622-7304

September 10, 1991

The Honorable Joseph R. Biden, Jr.
Senate Judiciary Committee
Senate Dirksen Office Building Room 224
Washington, D.C. 20510

Dear Senator Biden:

The National Committee on Pay Equity (NCPE) opposes the confirmation of Judge Thomas to the U.S. Supreme Court.

Enclosed please find the written testimony of the National Committee on Pay Equity concerning Judge Thomas' nomination. NCPE would appreciate your submitting this testimony into the record of the Confirmation Hearings of Judge Thomas.

It was after careful scrutiny that the Board of the National Committee on Pay Equity voted to oppose Judge Thomas' nomination. The opposition is based on Judge Thomas' record on wage discrimination during his tenure as Chair of the EEOC. Attached to the testimony is a list of the Board members of NCPE who support this statement.

Thank you in advance for including this testimony in the record.

Sincerely,

Claudia E. Wayne
Executive Director

Statement by The National Committee on Pay Equity

Before the Senate Judiciary Committee

Concerning the Confirmation Hearings of

Judge Clarence Thomas to the United States Supreme Court

September 10, 1991

Introduction

The National Committee on Pay Equity (NCPE), formed in 1979, is a coalition of labor, women's and civil rights organizations working to eliminate gender- and race-based wage discrimination and to achieve pay equity. Since its inception NCPE has monitored the activities of federal agencies on the issue of wage discrimination. We have testified at congressional oversight hearings, met with agency policymakers, and commented on agency policies regarding wage discrimination. Based on its experience in monitoring the Equal Employment Opportunity Commission under the leadership of Chairman Clarence Thomas, NCPE has grave concerns regarding the nomination of Judge Clarence Thomas to the U.S. Supreme Court. Accordingly, we believe that Judge Thomas' record on the enforcement of the laws prohibiting wage discrimination while EEOC Chair should be carefully scrutinized.

Pay Equity

The term pay equity means that compensation for jobs should not be based on the race or sex of workers, but according to legitimate job factors such as skill, effort, responsibility, and working conditions. Although the term pay equity has been used interchangeably with the term "comparable worth" for the proposition that race or gender should not be a factor in setting wages, opponents have attempted to describe "comparable worth" as an esoteric notion involving the intrinsic value of jobs. Pay equity, quite simply, is a remedy for wage discrimination based on race or sex. Wage discrimination can be challenged under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964.

The EEOC and Wage Discrimination

The EEOC Prior to Judge Thomas. Prior to Judge Thomas' tenure as Chair, the Equal Employment Opportunity Commission played an active role in the movement to end wage discrimination and to achieve pay equity. Under the leadership of Eleanor Holmes Norton, the Commission held extensive hearings on wage discrimination.¹ Further, the Commission helped shape litigation strategies to enforce Title VII's ban on wage discrimination and filed amicus curiae briefs in support of workers charging sex-based wage discrimination under Title VII in County of Washington, Oregon v. Gunther, 452 U.S. 161 (1981) and IUE v. Westinghouse, 631 F. 2nd 1094 (3rd Cir. 1980). Finally, the EEOC commissioned a National Academy of Sciences study on gender-based wage discrimination.²

In 1981 the Supreme Court held in Gunther that Section 703 (h) (the "Bennett amendment") of Title VII did not limit sex-based wage discrimination claims to those involving substantially equal work (an Equal Pay Act limitation), but rather was meant to prohibit discrimination in pay even where the jobs being compared were totally different. The Court made clear, however, that the fact that two different jobs were of equal value or "comparable worth" (based, for example, on a comparison of the skill, effort, responsibility and working conditions) did not necessarily prove a violation of Title VII. Rather, the plaintiffs would have to produce evidence to show that the disparity in pay resulted from discrimination. The Court also stated that it was not dealing in Gunther with the issue of

¹ Hearings before the United States Equal Employment Opportunity Commission on Job Segregation and Wage Discrimination, Washington, D.C. April 28-30, 1980.

² H. Hartmann & D. Treiman, eds. Women, Work and Wages: Equal Pay for Jobs of Equal Value.

"comparable worth".³ The Court stated that the affirmative defenses of the Equal Pay Act were incorporated in Title VII, but it did not explain what evidence would be necessary to establish that the disparity in pay resulted from race or sex discrimination.

After the Gunther decision the EEOC under the leadership of Acting Chairman J. Clay Smith, Jr. issued a 90 day notice on September 15, 1981 to the agency's field offices.⁴ The notice provided important information on the Gunther decision and on how to investigate charges of wage discrimination. The policy also identified several issues which were to be considered "non-CDP" (non-Commission Decision Precedent). Among these were "claims of sex-based wage discrimination brought under Title VII that may be based on... 'comparable worth'". Although the notice stated that the Gunther decision had left unclear the likelihood of success or failure of "comparable worth" claims, it did make clear that wage discrimination charges were to be investigated thoroughly.⁵

³ The Court referred to "comparable worth" as a concept "under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the community". 452 U.S. at 166. However, there was no evidence heard by any court in Gunther on "comparable worth".

⁴ *Notice Adopted by the EEOC to Provide Interim Guidance to Field Offices on Identifying and Processing Sex-Based Wage Discrimination Charges under Title VII and the Equal Pay Act.*

⁵ Investigators were instructed that the following information should be secured for respondent's work force or an appropriate segment of the workforce, in documentary form, where

available, and analyzed using investigative principles developed in equal pay cases...

1. A breakdown of the employer's work force by sex in terms of job classifications, assignments, and duties;
2. Written detailed job descriptions and, where appropriate, information gathered from an on-site inspection and interviews in which actual job duties are described;
3. Wage schedules broken down in terms of sex showing job classifications, assignments, and duties;
4. Any documents which show the history of the employer's wage schedules such as collective bargaining agreements which were previously in effect;
5. All employer justification of, or defenses to, the sex-based wage disparity;
6. If a job evaluation system is the basis for the sex-based wage disparity, the EOS should obtain copies of the evaluation and, if available, an analysis of its purpose and operation;
7. If market wage rate is the basis for the sex-based wage disparity, determine the underlying factors relied upon by the employer and the methods the employer used to determine the market wage rate;
8. If union collective bargaining agreements are the basis for the sex-based wage disparity, the EOS should obtain

The EEOC Under Judge Thomas. Judge Thomas became Chair of the EEOC in May of 1982. The Commission's efforts to eliminate wage discrimination came to a standstill. Under Judge Thomas' leadership, the EEOC did nothing with the wealth of information acquired from their earlier hearings, except publish the transcripts. Nor did the Commission act on the results of the NAS study, which documented the extent of wage discrimination and provided guidance for evaluating sex bias in job evaluation systems. The agency was positioned after the hearings and the study to take a variety of actions. It could have, for example issued findings or implemented new initiatives to alleviate wage discrimination. It did neither.

The Commission did renew regularly the 90 day notice. However, it appeared that even the 90 day notice was not being carried out. In the field, charges were mishandled; they were dismissed for no cause, or were not investigated at all.⁶

copies of those agreements; and

9. Any evidence which shows that the employer or the employer and union have established and maintained sex-segregated job categories.

⁶ See Oversight Hearings on the Federal Enforcement of Equal Employment Laws: Hearings Before the House Subcommittee on Employment Opportunities, 98th Cong. 1st Sess. (1984). Testimony of Nancy Reder and Claudia Withers on behalf of the National Committee on Pay Equity. Nancy Reder, then Chair of NCPE, also testified that on at least one occasion, NCPE had been informed that a complainant who tried to file a wage discrimination charge in the Chicago District office was told that the office had no

In 1983 NCPE issued a set of Recommendations to the EEOC, in which we called upon the Commission to:

1. Vigorously enforce the "90 day notice" in order to provide adequate guidance to field regarding the identification and processing of gender-based wage discrimination charges under Title VII and the Equal Pay Act.
2. Give specialized review and processing to wage discrimination charges.
3. Establish a mechanism to ensure that wage discrimination charges received by field offices are referred to EEOC headquarters so that proper monitoring could take place.
4. Provide, on a quarterly basis, information to NCPE regarding wage discrimination charges and cases.
5. Establish an EEOC Headquarters Task Force that would target wage discrimination cases for possible litigation, ensure that wage discrimination cases are a Commission priority, and designate individuals in headquarters who would be responsible for review of all wage discrimination cases.⁷

The EEOC declined to follow any of our recommendations.

The Subcommittee on Manpower and Housing of the Committee on Government Operations, concerned that all activity on wage discrimination ceased after the appointment of Clarence Thomas to EEOC, held oversight hearings on February 29 and March 14, 1984 and

policy for handling such cases. NCPE provided a copy of the 90-day notice to the individual so she could show it to the investigator in Chicago.

⁷ National Committee on Pay Equity, "Summary of Recommendations to the Equal Employment Opportunity Commission" (1983).

issued the following finding on May 22, 1984:

The Equal Employment Opportunity Commission has taken no action on charges and cases of sex-based wage discrimination other than straight Equal Pay Act cases, since the June, 1981 Supreme Court decision in *Gunther* determined that charges involving dissimilar jobs could be brought under Title VII. At the time of the Subcommittee hearing, EEOC had no policy on handling these types of cases, yet the Commission believes it needs to adopt such a policy before any charges can be processed and cases can be filed. By its insistence on a policy in this area prior to taking action and then refusing to adopt a policy, the Commission has denied relief to victims of discrimination and has failed to provide guidance for the courts and for employers in this area.⁸

On May 1, 1984, in a likely response to the Subcommittee's investigation and impending report, the Commission adopted Section 633 of the Compliance Manual, which clarified for field staff how to investigate and handle some wage discrimination charges. Section 633 divided all wage discrimination charges into three categories: equal pay for substantially equal work, intentional wage discrimination and "comparable worth" charges. Section 633 instructed field staff to continue sending all "comparable worth" charges to EEOC Headquarters. The Commission also submitted a written response to the Committee Report.⁹

⁸ Committee on Government Operation's Thirty-Ninth Report, "Pay Equity: EEOC's Handling of Sex-Based Wage Discrimination Complaints", at p.3, H.R. Rep. No. 98-796, 98th Cong., 2d Sess. (1984).

⁹ The Commission indicated that charges were not languishing in Washington, D.C.; rather, the Commission was engaged either in active consideration of a number of charges, or was requesting additional information before determining what to do. Response of the Chairman of the Equal Employment Opportunity Commission To the Committee on Government Operation's Thirty-Ninth Report, "Pay

However, three years after the Gunther case was decided, the EEOC had still not taken a definitive position on how to handle wage discrimination charges involving jobs that were different under Title VII.

In 1985, the Commission finally issued a "Commission Decision Precedent," which it characterized as its "first decision on comparable worth." The charge at issue alleged that a municipal housing employer paid the administrative staff (85% female) less than maintenance staff (88% male) even though the duties performed by the women required equal or more skill, effort, and responsibility than those performed by men. The female employees also charged that the employer intentionally set wage increases for female-dominated jobs at lower levels than the prevailing rate of increase for such jobs in local municipal agencies, while giving men wage increases that equaled the prevailing rate for their jobs. The EEOC found that the case was a "comparable worth" case and thus not within the agency's jurisdiction.¹⁰

NCPE disagreed with this decision. We challenged the adequacy of the investigation, which led to the decisions, as well as the overly restrictive reading of Gunther.¹¹ The 1985

Equity: EEOC's Handling of Sex-Based Wage Discrimination Complaints", at 6. (August 1984).

¹⁰ The EEOC adopted the Gunther terminology regarding "comparable worth" as claims involving "increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community." Gunther, 452 U.S. at 166.

¹¹ See Unpublished statement of Claudia Wayne, Executive Director of the National Committee on Pay Equity (June 1985); "Justice Denied: The Equal Employment Opportunity Commission

decision went too far in categorizing all charges where there is no evidence of intentional discrimination as "comparable worth" charges. It appears that after the Commission issued the 1985 decision, field investigators did not investigate wage discrimination charges that were filed. Instead, they turned away charging parties who alleged wage discrimination because they were paid less than comparable male-dominated or predominantly white jobs on the theory that the agency lacked jurisdiction to handle such cases. Because these cases were turned away for lack of jurisdiction, they could not be appealed under the EEOC's "Determinations Review Program," which allowed charging parties to appeal "no cause" decisions to EEOC headquarters. Charging parties, including those individuals alleging intentional wage discrimination, were thus denied access to EEOC's administrative process because intake officers were encouraged to treat these charges as "comparable worth" charges.

For example, in wage discrimination charges brought by the Fairfax Library Association against Fairfax County, the EEOC dismissed the charge because "...comparable worth is not an issue over which the agency has jurisdiction." This decision was made notwithstanding the fact that charging parties specifically alleged that "Fairfax County intentionally discriminated against me on the basis of sex in compensation and other terms and conditions of employment." In declining even to investigate this and other potential wage discrimination charges the Commission failed to follow federal court precedent. In every wage discrimination lawsuit where defendants have attempted to characterize claims as "comparable worth" claims, the courts have denied motions to dismiss complaints.¹²

Under the Reagan Administration" at 21-22, Women Employed Institute (February 1986).

¹² See ANA v. State of Illinois, 783 F. 2d 716,727 (7th Cir. 1986) ("[a] complaint that alleges intentional sex

Even Equal Pay Act litigation languished while the EEOC was under the leadership of Judge Thomas. The Equal Pay Act standard is clear and uncontroverted. Yet the number of Equal Pay Act cases that EEOC filed in court fell from 79 cases brought in fiscal year 1980 to just 7 cases in fiscal year 1989.¹³

Conclusion

As Chair of the EEOC, Judge Clarence Thomas was charged with enforcing the laws against employment discrimination. The record clearly demonstrates that in the area of wage discrimination, he failed to adequately enforce the laws for which he had primary responsibility. He was regularly called before congressional oversight committees who had to

discrimination...even though the discrimination is between different job classifications...cannot be dismissed..."); IUE v. Westinghouse, 631 F.2d 1094 (3rd Cir. 1980) cert. denied 452 U.S. 967 (1981); District Council 33 v. City of Philadelphia, C.A. #85-7418 (E.D. Pa. 1986); CSEA v. State of California, No. C84-7 245MHF (N.D. Calif. Sept 13, 1985) p. 27, fn.1; AFSCME v. County of Nassau, 37 FEP 1424, 1436 (E.D. N.Y. 1985); St. Louis Newspaper Guild, Local 47 v. Pulitzer Publishing Company, 618 F. Supp. 1468,1470 (E.D. Mo. 1985); Hawaii Government Employees Association v. State of Hawaii, 38 FEP Cases 1126 (D. Hawaii 1985) and Connecticut Employees Association v. State of Connecticut, 31 FEP Cases 191 (D. Conn. 1983).

¹³ Women Employed Institute, EEOC Enforcement Statistics (1991).

constantly prod him to take action.

Judge Thomas, and the EEOC during his tenure, treated wage discrimination cases as a political issue in which he adopted opponents' overly restrictive distinctions between wage discrimination and comparable worth. By focussing on issues such as the "intrinsic value" of different jobs rather than on the need to eliminate wage discrimination, the EEOC under the leadership of Judge Thomas failed to address the needs of working women and their families. Instead of exhibiting leadership in the elimination of discrimination from wage setting systems in this country, Judge Thomas gave voice to those who would deny women and people of color fair pay for their work.

The following members of the Board of Directors of the National Committee on Pay Equity endorse this statement:

9 to 5: National Association of Working Women
 American Association of University Women
 American Federation of Government Employees
 American Federation of State, County and Municipal Employees
 Coalition of Black Trade Unionists
 Coalition of Labor Union Women
 Displaced Homemakers Network
 Equal Rights Advocates
 Industrial Union Department, AFL-CIO
 International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers
 Mexican American Women's National Association
 National Association for the Advancement of Colored People
 National Education Association
 National Women's Law Center
 Service Employees International Union
 United Auto Workers
 Women's Alliance for Job Equity
 Women's Legal Defense Fund

**STATEMENT BY
THE CENTER FOR LAW AND SOCIAL JUSTICE
OF MEDGAR EVERS COLLEGE
ON THE NOMINATION OF
JUDGE CLARENCE THOMAS TO THE SUPREME COURT**

**Presented to the
United States Senate Judiciary Committee
Honorable Joseph Biden, Chair**

September 10, 1991

**The Center for Law and Social Justice
Medgar Evers College/City University of New York
1473 Fulton Street
Brooklyn New York 11216-2597
(718) 953-8400
Fax: (718) 467-1399**

The Center for Law and Social Justice (CLSJ) at Medgar Evers College, CUNY, strongly opposes the nomination of Judge Clarence Thomas to the United States Supreme Court. CLSJ is a legal research and advocacy institution which conducts litigation and public policy projects on matters involving pressing civil and human rights issues. CLSJ is opposed to Thomas's nomination because 1) he is blatantly unqualified to hold the position, 2) he is incapable of separating his political views from jurisprudential precedent, and 3) his nomination is an affront to all who have struggled and continue to struggle for realization of the democratic ideals on which this country is supposed to be based. For these reasons, which are more fully explored below, we urge the Senate Judiciary Committee to reject Clarence Thomas as a candidate for the United States Supreme Court.

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QUALIFICATIONS

Although Judge Thomas may be qualified to serve as a Supreme Court justice in the view of President George Bush, his nomination represents a cunning plan to place a lifetime appointee with a black face on the high court whose primary qualifications are his race and an apparent oath of fealty to an anti-civil rights, affirmative action, and abortion rights agenda. Long after Mr. Bush is gone from office, America, especially Black America, will feel the devastating diminution of civil and individual rights which Judge Clarence Thomas will affect, if confirmed.

Clarence Thomas is a product of Catholic elementary and secondary schools. He attended St. Benedict the Moor, an all-Black grammar school run by white nuns, one of whom still refers to the students she taught as "nigger children."¹ These early years impacted greatly upon Thomas's development, instilling both a strong affinity for the work ethic espoused by the nuns, and the negative stereotype of Blacks as niggers. Self-hatred and the resultant desire not to be identified by his race would become an obsession for him and a recurring theme throughout his life.

For example, he took great pains to avoid being identified as a Black student while at Yale Law School, sitting in the back of classes and opting to take courses such as tax and business law that he felt would in no way invoke issues related to race. Upon graduation from Yale, he intentionally avoided contact with any work that would associate him with

racial issues. He even went so far as to tell an interviewer that accepting a job at an agency that focused on civil rights, such as the EEOC, would irreparably ruin his career.² Needless to say, Thomas was able overcome his disdain for race issues when it proved advantageous to his career: rejecting an offer to join the White House policy staff handling energy and environmental issues and four months later accepting a position as head of the Office of Civil Rights in the Department of Education. Ten months later, in 1981, President Reagan named him chair of the Equal Employment Opportunity Commission, the same agency he predicted would ruin his career.

Thomas's attitudinal shifts, which suggest opportunism, are also evidenced by his sharp change from a liberal Democrat to a conservative Republican. Note that he was a registered Democrat, having voted for George McGovern in 1972, but switched to the Republican party shortly after accepting a position with then Missouri Attorney General, John Danforth in 1974. One wonders if Thomas would have switched so quickly had he received prestigious law firm offers like so many of his classmates? Or if the Missouri Attorney General had been a Democrat? It appears that Thomas was as eager to please those who seemed to accept him as he was eager to distance himself from Blacks. In essence, Judge Thomas seems to be an individual who has longed to be accepted by whites on their terms and in their institutions. He seems to feel ashamed by the discrimination and racism Black Americans have experienced, much as an abused child experiences anger and shame for their parents' abusive behavior.

While at the EEOC, he acted as an anchorless ideologue, sitting on thousands of lawsuits and rejecting goals and timetables while publicly stating that his reservations were

"purely personal."³ These practices serve as predictors of future performance and foreshadow what could be a four decade tragedy on the Supreme Court.

Judge Thomas's record on the federal bench is not much better. He has served for just over a year and has written 20 opinions that do little to distinguish him with respect to legal philosophy or judicial skills. If confirmed, Judge Thomas would have less legal experience than all but one other Justice and would have less actual judicial experience than all who have preceded him on the Supreme Court.⁴ By his own admission, he does not have an "individual, well-thought-out constitutional philosophy" and has told colleagues that he wished that this nomination had come five years from now.⁵ The American Bar Association gave him its lowest acceptable rating and two members rated him as "unqualified."⁶ He obviously lacks the necessary qualifications, particularly when compared with other Black jurists. For example, Amalya Kearse, a noted litigator, a former partner in a major Wall Street law firm, and a long-standing member of the Republican Party, has been a federal appellate judge for over a decade. Similarly, Judge Harry Edwards, who sits on the same circuit as Thomas, is a former professor at Harvard and Michigan Law Schools, has published several books on the law, and has also sat on the bench for nearly a decade. There are others, but the main difference between Thomas and these jurists, aside from their superior qualifications, is his vociferous opposition to civil rights and affirmative action. These factors not only disqualify him, but also make him a dangerous choice for the Supreme Court because they demonstrate a lack of judicial sensitivity to those classes traditionally protected by the Constitution.

LEGAL PHILOSOPHY

The political views of a candidate for the Supreme Court are relevant only to the extent that those views influence the candidate's legal philosophy and thereby reveal the degree to which the candidate, if confirmed, will engage in judicial activism. In reviewing Judge Thomas's record, it is clear that his political ideology is his legal philosophy. It is also clear that his ideology often contravenes established constitutional law.

For example, Judge Thomas has asserted repeatedly his belief in a natural rights or natural law basis for individual rights. According to Judge Thomas, "...the thesis of natural law is that human nature provides the key to how men ought to live their lives....[o]ur political way of life is by the laws of nature, of nature's God, and of course presupposes the existence of God, the moral ruler of the universe, and a rule right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and of government."⁷ These fundamental rights of nature are derived, according to Thomas, from the Declaration of Independence which proclaims the existence of "inalienable rights" such as life and liberty.

Judge Thomas's natural rights philosophy is an outright rejection of positivism which declares that the law is only what is set forth in the Constitution, statutes, or court decisions. Positivism has been the basis of our legal system for at least the last century. Yet, as Judge Thomas would have it, there exists some, as yet, undefined body of rights which nature has bestowed upon humans, and, to which, even the United States Constitution must defer. Who determines what these rights are and their scope? Apparently, they are whatever Judge

Thomas says that they are. Not surprisingly, this has caused concern among many legal scholars and among those who fear that a woman's constitutional right to choose abortion will be viewed by Thomas as inconsistent with his natural rights theory.

Unfortunately, those fears are not unfounded. Judge Thomas has been quoted praising an article authored by Lewis Lehrman who argued that natural law mandated that abortion be outlawed.⁸ Lehrman proclaimed that fetuses have a God-given inalienable right to life which supersedes a women's constitutional right to privacy as articulated by the Supreme Court in Roe v. Wade.⁹ Thomas found Lehrman's article to be "a splendid example of applying natural law" with no criticism of the fact that it contravened established constitutional law.¹⁰ That Judge Thomas opposes abortion is obvious, but, irrelevant. More important is his inability to set aside his personal views in the face of constitutional mandates. Yet, this is precisely what a jurist, particularly a Supreme Court jurist is required to do as an integral part of the position. S/he must uphold the law as established by the Constitution, statutes and judicial precedents. To ignore constitutional protections whenever one's politics differ, is wholly inappropriate behavior for a Supreme Court justice. In articulating his natural law philosophy, Thomas demonstrates his contempt for legal precedents and his unworthiness to sit on this country's highest court.

Thomas's contempt for the law is evidenced also by his conduct while chairperson of the Equal Employment Opportunity Commission (EEOC) during 1982-1989. During his tenure, the EEOC intentionally failed to pursue class based discrimination cases.¹¹ On Thomas's order, regional EEOC attorneys failed to include goals and timetables in case settlements, and failed to enforce the goals and timetables established in existing settlement

decrees.¹² This dereliction of duty attitude which the agency adopted under Thomas directly mirrored Thomas's political views on affirmative action. Thomas has been quoted as saying that he is "unalterably opposed to programs that force or even cajole people to hire a certain percentage of minorities."¹³ In his view, affirmative action programs breed dependence and stigma. Apparently believing his personal views to be above the law, Thomas ignored statutory and judicial precedent authorizing the use of goals and timetables as remedial measures for proven class based discrimination. Indeed, so blatant was his refusal to uphold and enforce the law, that it prompted five members of Congress to openly protest, stating that the "Commission is forfeiting the most effective tool to combat centuries of discrimination."¹⁴

It took the urging of Congress and no less than three Supreme Court decisions upholding the use of affirmative remedies, to induce Thomas to agree to change the Commission's policy back to pursuing class based discrimination.¹⁵ During the eight years of Thomas's reign at the EEOC, the backlog of cases rose from 31,500 to 46,000.¹⁶ The number of cases closed due to inadequate investigation rose 30 percent¹⁷. But, the worst representation provided by the EEOC undeniably was that given to age discrimination claims. The EEOC was not merely reluctant to bring these claims, but openly hostile, allowing 13,000 such claims to perish due to lapsed statutes of limitation¹⁸. Thomas was forced to admit responsibility for this atrocity in testimony before Congress on the abominable performance of the EEOC. Yet, even his admission was tainted since Thomas, on two occasions, told Congress that the number of stale age discrimination cases was only 78 or a few hundred¹⁹. If Thomas is unafraid to place his politics above the law while in a position from which

dismissal or removal is relatively easy, then is there any reason to expect that he would not do the same or worse as a Supreme Court justice who serves a life tenure? Ethical questions about Thomas's judicial demeanor have already surfaced despite his short tenure on the federal bench.

For example, recently, Judge Thomas ruled that Ralston-Purina did not have to pay a \$10.4 million fine or attorney fees imposed for false health benefit claims it made about its Puppy Chow products²⁰. Senator John Danforth owns at least \$7.5 million in Ralston-Purina stock, a company founded by his grandfather, and his brothers are on the board and control almost 5% of its shares²¹. Judge Thomas and Senator Danforth are close friends. Indeed, Sen. Danforth hired Thomas in 1974 as an assistant attorney general while Danforth was attorney general, and again in 1979, Danforth hired Thomas as his legislative assistant. Sen. Danforth actively aided Thomas's nomination to the federal appeals court, and upon request of President Bush, is personally guiding Thomas through the present confirmation hearings. It would seem if for no other reason than good judgment, that Judge Thomas would have recused himself from ruling on a case which so deeply involves Sen. Danforth and his family. But, good judgment aside, judicial ethics require a judge to disqualify himself or herself from a case whenever the mere appearance of impartiality might be questioned. In this instance Judge Thomas not only failed to recuse himself, but he also wrote the opinion which threw out the fine against Ralston-Purina. Once again Thomas's disdain for the law reveals itself. Clearly, this is not appropriate behavior for any judge, and it would be most abhorrent in a Supreme Court justice.

POLITICAL IMPLICATIONS

It is no surprise that President Bush has nominated a conservative judge to replace Justice Thurgood Marshall on the Supreme Court. Indeed, Bush only follows in the footsteps of past presidents by offering someone who is like-minded to himself. Rather, what makes the nomination of Clarence Thomas so distasteful, is the fact that it is actually insulting to Blacks. Thomas's concept of the self-help doctrine not only denies his personal reality of benefitting from the civil rights movement and affirmative action policies, but also denies the societal reality in which Blacks die disproportionately more than whites, receive far inferior educational training, and generally suffer from the ills of poverty to a greater degree than whites.²²

Moreover, Thomas's nomination is insulting because it constitutes a bastardization of affirmative action. Affirmative action regarding race is supposed to mean that employers, educators, etc., may consider race as a positive factor in their hiring and admission practices. Such policies are necessary to overcome centuries of discrimination during which Blacks and other people of color and women have been shut out from jobs and schools. Affirmative action has not meant, as its opponents would claim, that race is the only factor to be considered to the exclusion of other qualifying criteria. Yet, both opponents and proponents of affirmative action must declare that Judge Thomas's nomination is nothing more than a perversion of that policy. Since Judge Thomas lacks sufficient qualifications to be a Supreme Court justice, there can be no other reason for his nomination but the fact that he is Black.

Judge Thomas's role on the Supreme Court would be to give legitimacy to attitudes, beliefs, and ideals that absolve anyone other than Blacks of responsibility for the current state

of that community. He would be the point person on all issues concerning race and, if past performance is any predictor of future performance, would not fail to deliver opinions that resonate primarily in the conservative community. If there were any chance that Judge Thomas would do anything other than what Senator Danforth and other conservatives in this country expect, he would not be before the Senate Judiciary Committee today, and he would not currently be on the federal bench. Thomas's identification with and desire for acceptance from whites assures us that he will eagerly adopt whatever stance or opinion will make that acceptance a reality.

CONCLUSION

If Judge Thomas is confirmed, he could well be a jurist shaping laws that will affect the lives of our grandchildren. His nomination represents a reward for a lifetime of faithful service to those who have advanced his career, rather than the ideals of the offices for which he was chosen. His role will be to hold back the civil and human rights tide as America's complexion rapidly darkens in the coming century. Judge Thomas is contemptuous of those who would taint his accomplishments with their inability to do all he has done. He has limited judicial experience and legal scholarship and ironically represents what white conservatives fear most about affirmative action: a Black person who obtained a position over more qualified whites solely because of his race.

Judge Thomas's prior legal experience and political ideology are outstanding only to the extent that they so vividly demonstrate his unworthiness to sit on this country's highest court. CLSJ strongly encourages the Senate Judiciary Committee members to question Judge

Thomas vigorously concerning his ability to uphold the Constitution given his failure to do so while chair at the EEOC, his willingness to acknowledge the appropriateness of class based remedies for proven systemic discrimination, and his understanding of how the natural law thesis relates to the Constitution and the rights and protections which derive from it. It is our belief that after a thorough investigation into these matters, the only possible conclusion is that Judge Thomas's nomination should be rejected.

ENDNOTES

1. *NY Newsday*, July 2, 1991. Bush picks Supreme Court Nominee.
2. "The crowning Thomas affair", *US News and World Report*, September 16, 1991, p. 30.
3. "Supreme Mystery," *Newsweek*, September 16, 1991, p. 30.
4. *Albany Times Union*, "Experience isn't Thomas's strength. July 14, 1991.
5. "The crowning Thomas affair," *US News and World Report*, September 16, 1991, p. 25.
6. *Ibid.*
7. Juan Williams, "A Question of Fairness," *Atlantic Monthly*, February 1987, p. 79.
8. Judge Clarence Thomas, "Why Black Americans Should Look to Conservative Policies," a speech given to the Heritage Foundation on June 18, 1987.
9. Lewis E. Lehrman, "The Declaration of Independence and the Right to life," *The American Spectator*, April 1987, p. 22.
10. Statement of the Alliance for Justice on the Nomination of Clarence Thomas to the U.S. Court of Appeals for the District of Columbia (hereafter Alliance for Justice), February, 16, 1990, p. 4.
11. *Ibid.*
12. *Time*, July 25, 1991, p. 19.
13. Alliance for Justice, p. 4.
14. *Ibid.*
15. *Ibid.*, p 2.
16. Juan Williams, "A Question of Fairness," *Atlantic Monthly*, February 1987, p. 79.
17. *Ibid.*
18. Alliance for Justice, p. 2.
19. *Ibid.*
20. *Alpo Pet Food, Inc. v. Ralston-Purina Co.*, 913 Fed 958 (C.A. D.C. 1990).
21. *Daily Challenge*, July 23, 1991, p. 3.
22. Gerald Jaynes and Robin M. Williams, Jr. ed., *A Common Destiny: Blacks and American Society*, Committee on the Status of Black Americans, National Research Council, Commission on Behavioral and Social Sciences and Education, National Academy Press, 1989.

Coalitions for America

Paul M. Weirich
National Chairman

Eric Licht
President

Library Court
Social Issues

Stanton
Defense & Foreign Policy

Kingson
Budget & Economic Policy

721 Group
Judicial & Legal Policy

Senators Group
Catholic Coalition

The Omega Alliance
Young Activist Coalition

Resistance Support Alliance
Freedom Fighter Policy

Jewish/Conservative Alliance

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Hon. Joseph R. Biden, Jr.
Chairman

Hon. Strom Thurmond
Ranking Member

Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senators:

We write to express our strong support for President Bush's nomination of Judge Clarence Thomas to be an associate justice of the Supreme Court of the United States.

Judge Thomas sees a vigorous yet defined role for the judiciary. He wrote in 1989 of "a judiciary active in defending the Constitution, but judicious in its restraint and moderation." The courts, in his view, are one of several players in our political system. Legislatures, both federal and state, are another.

As the *Washington Post* (7/14/91, p.C3) recently observed, states are increasingly having to grapple with serious issues and problems we once thought the federal government or an unelected judiciary would handle for us. In many ways, however, this avoids the accountability that is essential to a vital and participatory political process.

We believe that with Judge Thomas on the Supreme Court, the political process will be more active, all people will have more choice about how they wish to be governed, and we as state legislators will be able to do our job better. Wholly apart from his views on specific issues, Judge Thomas' judicial philosophy gives the people more of a say in how things are run. Self-government, after all, is the genius of America.

Judge Thomas brings a virtually unique set of personal and professional qualities to the Supreme Court. He is literally a product of the American dream. We urge your committee and the full Senate to consent to his appointment.

Sincerely,

STATE LEGISLATORS SUPPORTING CLARENCE THOMAS
Partial List (Sept. 16, 1991)

<u>State</u>	<u>House Member</u>	<u>Senate Member</u>	<u>Position</u>	<u>Party</u>
AL	Horace Powell (D) Perry Hooper Al Knight			
AK	Mark Hanley Terry Martin Ramona Barnes Larry Baker Mary Miller Loren Leman	Rick Vehling Lorents Grosfield	Minority Whip	
AR	Jerry E. Hinshaw Lloyd C. McCuiston, Jr. Doug Wood			
AZ	Pat Blake Tom Smith Greg Patterson Brenda Burns Lela Steffey Kyle Hindman Robert W. Williams	Lester N. Pearce Janice K. Brewer	Judiciary Comm. Judiciary Comm. Judiciary Comm. Judiciary Comm.	
CA		Bill Leonard		
CO	Norma Anderson Michael H. Coffman Tom Blickensderfer Michelle Lawrence Bradley J. Young	Richard F. Mutzebaugh Ray Powers Mary Anne Tebedo Jim Roberts Mike Bird		
DE	Tina Fallon	James Neal		
FL	Debby P. Sanderson Bruce Hoffman Buddy Johnson Dixie N. Sansom		Judiciary Comm. Rep. Floor Leader	

IA	<p> Jim Hahn Steve Grubbs Horace Daggett Roger A. Halvorson Ken De Groot Bill Royer </p>	<p> Judiciary & Law Enf. Comm. </p>
		<p> Richard Vande Hoef Ray Taylor </p>
ID	<p> Donna Jones Michael K. Simpson Richard L. Davis Michael McEvoy Jo An E. Wood </p>	
		<p> George Vance </p>
IN	<p> Dean Mock Floyd Grabb </p>	
		<p> Richard Worman Robert Meeks </p>
IL	<p> Jay Ackerman Bernard Pedersen Terry Parke Penny Pullen </p>	<p> Asst. Minority Leader </p>
		<p> Roger A. Keats </p>
KS	<p> Kenneth King </p>	
KY	<p> Kenneth Harper </p>	
		<p> Dick Roeding Tim Philpot John Rogers Tom Buford </p>
MA	<p> Augusta Hornblower </p>	
MD	<p> James M. Harkins Martha S. Klima </p>	<p> Judiciary Comm. </p>
MI		<p> Wm. Van Regenmorter Chairman, Judiciary Comm. Joanne Emmons Jon Cisky </p>
	<p> Gary Randall Rick Bandstra Alvin Hoekman Carl F. Gnodtke Michael Nye Donald Van Singel </p>	<p> Republican Floor Leader </p>
MN	<p> Phil Heir Gary Schafer Dennis Newinski Steven Wenzel Linda Runbeck Bob Haukoos </p>	

MN	Kevin Goodno Gil Gutknecht Gene Hugoson Greg Davids	Gen Olson Pat Pariseau	
MO	David C. Hale Dale Whiteside Ken Legan Carson Ross Larry Thomason	Franc Flotron John Russell	Minority Whip
MS	Charles Waldrup Bill Denny Gary Staple	Roger F. Wicker	Judiciary Comm.
MT		Bob Brown	Judiciary Comm.
NC	David T. Flaherty, Jr. Steve Wood Theresa H. Esposito Peggy Wilson Julie Howard Brad Ligon John W. Brown Harold Brubaker Joe Hege	Bob Shaw	Minority Leader Minority Whip
ND	Joe Whalen John Dorso		
NE		Lowell Johnson Richard Peterson	
NH	Harry Accornero Gary Daniels Mary Anne Lewis David Wheeler Mary Holmes Larry Emerton Beverly Rodeschin	Eleanor Podles	
NV	John Marvel		
NY		Serphin R. Maltese Owen Johnson	Crime and Correction Comm.

OH		Eugene J. Watts Merle G. Kearns Cooper Snyder	Asst. Pres. Pro Tem
	Dale N. Van Vyven Lynn R. Wachtmann Joe Haines Sam Bateman John Bara Robert E. Netzley		
OK	Jim Reese Mary Fallin	Ben Robinson	
OR		Bob Kintigh	
PA	George E. Saurman Richard D. Olasz Art Hershey	Doyle Corman	
SD	Harvey Krautschun Thomas G. Ries Marie Ingalls		Asst. Majority Whip
TN	John Chiles Bob Harrill		Republican Leader
TX	A.R. (Augie) Ovard Kent Grusendorf Glenn Repp Bill Carter Talmadge Heflin Robert R. Turner William N. Thomas Mike Jackson		Vice Ch., Cr. Jur. Comm.
UT	Fred R. Hunsaker		
VA	S. Vance Wilkins	Joseph B. Benedetti	Ch., Jt. Rep. Caucus R
VT	Betty M. Ferraro Richard H. Smith Ruth Smith Gwendolyn Bronson Roland Burroughs		
WA	George M. Paris, Sr. Mike Padden Jeannette Wood John A. Moyer Harold Hochstatter Todd Mielke Rose A. Bowman	Ellen Craswell	Judiciary Comm. Asst. Minority Whip

WA

Bob Martin
Steve Van Luvan
Jeannette Wood
Art Broback
Peggy Johnson
Duane Sommers
John Betrozoff
Gary Chandler
Fred May
Jim Horn
John Wynne
Darwin Nealy

WI

Susan B. Vergeront
Dave Zien

Don Stitt
Carol Buettner

Judy Klusman
Jim Ladwig

WY

Kelly Mader
Bob LaLonde

Coalitions for America

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National Chairman
Eric Licht
President
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Young Activist Coalition
Resistance Support Alliance
Freedom Fighter Policy
Jewish/Conservative Alliance

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A UNIQUE CONTRIBUTION TO AMERICA

**An analysis of
President George Bush's nomination of
CLARENCE THOMAS
to be an associate justice on the
Supreme Court of the United States**

**by Thomas L. Jipping, M.A., J.D.
Legal Affairs Analyst**

July 1991

A UNIQUE CONTRIBUTION TO AMERICA

On July 1, 1991, President George Bush exercised his power under Article II, Section 2' of the U.S. Constitution and nominated U.S. Circuit Judge Clarence Thomas to be an associate justice on the Supreme Court of the United States. He would replace Thurgood Marshall, who announced his retirement on June 27, 1991, after 24 years on the Court.

This preliminary analysis and any that follow are intended to assist the Senate in fulfilling its constitutional role of advice and consent.

THE NOMINEE'S BACKGROUND

This analysis bears the title "A Unique Contribution to America" because Clarence Thomas would bring to the Supreme Court, and hence to America, a unique combination of personal and professional experience. His personal background of growing up poor in the segregated South differs from that of any sitting Justice. His professional record of work in both private and public law practice, in both state and federal government, and in all three branches at the federal level, is practically unique. This first section reviews Clarence Thomas' background.²

Clarence Thomas was born with the assistance of a midwife on June 23, 1948, in a small wood frame house in the rural town of Pinpoint, Georgia, nine miles southeast of Savannah. His father left while Clarence was still a toddler and Clarence saw him just once during his childhood. For nearly seven years, Clarence lived in the house where he was born with his mother, her aunt and uncle, and Clarence's older sister and younger brother. That house had no indoor plumbing and the family shared an outhouse with several neighbors. They carried water in buckets from a common pump. The women of Pinpoint typically cleaned houses for whites who lived nearby and the men were day laborers. Everyone worked.

Clarence started the first grade at the segregated Haven Home School in 1954, the same year the Supreme Court declared segregated education unconstitutional in *Brown v. Board of Education*.³ Mid-way through the school year, Clarence and his brother Myers moved to Savannah to live with their mother. They lived in one room of a tenement with

¹ Article II, Section 2 states in part that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...Judges of the Supreme Court."

² This account is excerpted from "The Good, the Bad and the Judges," *Family, Law & Democracy Report*, October 1989, at 12.

³ 347 U.S. 483.

a common kitchen and common toilet outside. Their mother worked long hours as a maid, making \$20 every two weeks. Clarence completed the first grade at Florance Street School, though he had poor attendance and often wandered the Savannah streets.

In the summer of 1955, Clarence and brother moved again to live with their maternal grandparents, Myers and Christine Anderson, who had an ice delivery and fuel oil business. Myers Anderson had gone to the third grade and Christine Anderson had a sixth grade education. Mr. Anderson was a proud, disciplined man who believed that everyone who could work should work. He had never known his own father, and his mother died when he was just nine years old. He lived first with his grandmother, who he said was freed from slavery as a young girl, and then with his uncle, a hard man who led a family of about 16 children. Myers Anderson's hard life, without father or mother, no education, in an era of segregation and Jim Crow laws, made him determine that his grandson would learn how to work and to survive, no matter what happened in the world around them.

All of life in the world of Clarence's youth was segregated. Schools, libraries, water fountains, movies, lunch counters, and public restrooms were segregated. One time, the family was traveling and stopped for gasoline. Myers Anderson asked whether his wife could use the restroom. When the attendant said there was no "colored" restroom, Mr. Anderson replied that if his wife could not use their restroom, he could not use their gas.

Clarence and his brother worked with their grandfather delivering fuel or whatever else he was doing. During the school year, they had to be dressed and ready for work at 3:00 p.m., half an hour after the close of the school day. They worked in the yard, on old houses their grandparents owned, on trucks and cars, painting, roofing, and plumbing. Clarence's grandfather taught them that they could do anything. During 1957-58, they helped build a house on some family farm land and then began to farm, clearing land and raising chickens, pigs, and cows. They built garages, barns, and fences, plowed, hauled logs, and raked hay. They worked from sun-up to sun-down since their grandfather believed that the sun should never catch anyone still in bed. If the boys ever slept past sun-up, their grandfather would observe that they must have thought they were rich since a poor man could not afford to sleep that late.

Clarence's grandparents were honest, hardworking, and deeply religious people. They taught the boys decency and respect for others. For example, Clarence and his brother were never allowed to refuse to do an errand for a neighbor or to argue with an adult. They were to address adults in a respectful manner. And honest, hard work was the constant lesson. Myers Anderson told his grandson that if they did not work they did not eat. He reminded them daily of his goal to "raise them right," to teach them "to do for yourselves." He wanted them to be self-sufficient, able to survive in a hostile, segregated world where the odds seemed so heavily stacked against them.

Clarence and his brother Myers attended St. Benedict's Grammar School, a segregated Catholic school, and were taught by Franciscan nuns. They missed just one-half day of school during the years they lived with their grandparents. Their grandfather felt Catholic schools were better because there was strict discipline, corporal punishment, and school uniforms. He could not understand how children could properly be taught

without these. Clarence also attended St. Benedict's Catholic Church, where he served as an altar boy and where the nuns also pushed the students to excel. They taught him that all people are inherently equal.

Clarence attended the segregated St. Pius X High School for the 9th and 10th grades and in 1964 transferred to St. John Vianney Minor Seminary near Savannah, where he repeated the 10th grade to take three years of Latin. He graduated in 1967 from St. John's, where he was the only black student in his class - his first regular contact with whites. One indication of his drive to excel at St. John's comes from the statement his classmates chose to place under his year book picture: "Blew that exam, only got a 98."

Clarence was the first person in his family to attend college. He spent his freshman year at Immaculate Conception Seminary in Conception Junction, Missouri, and then transferred to Holy Cross College in Worcester, Massachusetts. He graduated with honors in 1971. At Holy Cross, he helped found the Black Students Union and served as an officer for three years. He worked in the Free Breakfast Program and tutored in the Worcester community. He financed his college education through a combination of scholarships, loans, and work study income.

From 1971-74, Clarence attended Yale Law School in New Haven, Connecticut. He worked for New Haven Legal Assistance during school and for two summers. During the summer of 1973, he worked for a small integrated firm back in Savannah financed, in part, by a grant from the Law Students Civil Rights Research Council.

John C. Danforth, then Attorney General of Missouri, hired Clarence as an assistant in 1974. Three days after being sworn in as a member of the Missouri bar, Clarence argued his first case before the Supreme Court of Missouri. Over the next 2 1/2 years, he represented the state in many cases before all levels of the Missouri courts in matters ranging from criminal law to taxation.

From 1977-81, Clarence first worked in the legal department of the Monsanto Company on general corporate legal matter including antitrust, contract, and governmental regulations. Then he re-joined John Danforth, this time in Washington as a legislative assistant to Senator Danforth. Clarence supervised work on issues including energy, the environment, federal lands, and public works.

President Ronald Reagan first nominated Clarence to be Assistant Secretary of Education for Civil Rights in 1981 and a year later to be the eighth chairman of the Equal Employment Opportunity Commission. He began service on May 17, 1982 and was renominated and reconfirmed in 1986. For most of his tenure at the agency, Clarence was a single parent. His first marriage had ended in divorce and he received custody of his son Jamal. His second wife, the former Virginia Bess Lamp, is now a Deputy Assistant Secretary of Labor.

THE NOMINEE'S RECORD

I. Equal Employment Opportunity Commission

A. Enforcement philosophy

Chairman Thomas' record at the EEOC has both qualitative and quantitative dimensions. On the qualitative side, he implemented a fundamental shift of focus in enforcement philosophy. The previous "rapid charge" approach was geared toward negotiated no-fault settlements and was actually **not enforcement at all**, since no effort was made to determine the merits of discrimination charges. Frivolous and meritorious claims received the same treatment. Few cases were actually investigated and decided on the merits. In fact, about 50% of charges brought to the agency were settled in this manner.

The new chairman changed this philosophy to require that each discrimination charge be investigated and, if necessary, litigated. This shifted the focus from generating statistics to credible, effective enforcement of the civil rights laws. His approach sought to maximize the relief available under the applicable statutes, eliminate discrimination from the workplace, and make the discrimination victim whole.

Making actual enforcement a reality required a series of policy initiatives. The 1984 *Enforcement Policy* required that all charges failing conciliation were to be forwarded to the full Commission, rather than given to the staff. The 1985 *Remedies Policy* required seeking maximum statutory remedies rather than minimum negotiated settlements. The 1987 *No Cause Review Policy* allowed independent review of no cause determinations.

B. Enforcement statistics

On the quantitative side, the EEOC's record under Clarence Thomas' leadership speaks for itself. The number of discrimination charges considered for litigation authorization rose from 401 in fiscal year 1982 to 764 in 1988 and approximately 800 in 1989. The number of cases granted such authorization likewise grew from 241 in fiscal year 1982 to 554 in 1988.

Merit resolutions, including simple settlements and both successful and unsuccessful conciliations, declined. Resolutions on the merits after full investigations, however, increased from 38% of total resolutions in 1982, when Clarence Thomas became chairman, to 50-60% by 1986-88. These statistics directly reflect the change in enforcement philosophy discussed above. Table 1 following shows these statistics from before Chairman Thomas took office and throughout his tenure.

Table 1

Fiscal Year	Total Resolutions	Merit Resolutions	Resolutions After Full Investigations
1981	71,690	26,507	23,596
1982	67,052	21,675	25,432
1983	74,441	22,039	33,135
1984	55,034	13,588	27,803
1985	63,567	10,935	37,092
1986	63,446	9,613	38,877
1987	53,482	8,114	30,990
1988	70,749	10,641	37,086

Under Chairman Thomas, the EEOC steadily increased the number of suits filed and, by the close of his tenure, was filing more than at any time in the agency's history.

Table 2

Fiscal Year	Suits Filed
1981	444
1982	241
1983	195
1984	310
1985	411
1986	526
1987	527
1988	555

The agency now publicly discloses an annotated list of all lawsuits filed along with their docket numbers.

C. Public recognition of EEOC performance under Chairman Thomas

There can be no better testimony to Chairman Thomas' leadership, effectiveness, and dedication to the cause of civil rights than the editorial appearing in the liberal *Washington Post* on May 17, 1987. The *Post* lamented that the overall civil rights enforcement picture was dismal. The U.S. Commission on Civil Rights "no longer seems to be fulfilling a function" and the Department of Education's Office of Civil Rights since 1984 "has been unable to move against many kinds of discrimination that had been its responsibility before."⁴ However, the *Post* cheered that "things are markedly different at the Equal Employment Opportunity Commission." The editorial offered as proof some of what has been discussed here. Citing "the quiet but persistent leadership of Chairman Clarence Thomas," the *Post* observed that "the caseload is expanding and budget requests are increasing."

The *Detroit News* noted that EEOC enforcement actions under Chairman Thomas were 60% ahead of the pace under President Carter. "He also obtained more than twice the level of damages collected during the Carter years," the *News* declared. Indeed, "Mr. Thomas' EEOC processed an average of more than 15,000 age discrimination cases a year, 50 percent higher than the average under President Carter." Finally, the *News* opined that the "hypocrisy of the left's attack on Mr. Thomas is revealed by the fact that under his leadership the Reagan administration sought some \$30 million more in EEOC funding (1983-89) than Congress was willing to approve."⁵

II. U.S. Court of Appeals

President Bush announced his intention in early 1989 to nominate Clarence Thomas. He did so on October 30, 1989. The Senate Judiciary Committee finally held a hearing on February 6, 1990 and voted 13-1 on February 22 to approve the nomination. The full Senate consented to the appointment on March 6 by unanimous consent.

A. Endorsement of the nomination

Just as he was appointed to the EEOC by a conservative President and received rave reviews by the liberal media, Judge Thomas' 1989 nomination to the U.S. Court of Appeals was endorsed by both conservatives and liberals.

⁴ Clarence Thomas left his position as Assistant Secretary of Education for Civil Rights in 1982.

⁵ Editorial, "Thomas: The Next Target," *The Detroit News*, August 1, 1989.

Paul M. Weyrich, National Chairman of Coalitions for America, stated the day after the nomination that "[d]uring more than seven years as chairman of the Equal Employment Opportunity Commission, Clarence Thomas demonstrated superb management ability, leading that agency out of the doldrums in which it had languished."

William T. Coleman, Jr., former Secretary of Transportation and Board Chairman of the NAACP Legal Defense Fund, stated the same day that "I think this is a fine appointment and that Mr. Thomas will add further luster and judicial ability to the Court." To his legal abilities, according to Secretary Coleman, Judge Thomas "adds the drive and understanding of human frailties which those who have not always had it easy had to have to reach important positions of public service."

Albert Nelson, president of the International Association of Official Human Rights Agencies, stated on October 5 that "we believe that Chairman Clarence Thomas would bring to the Federal judiciary a sense of fairness, a passion for fundamental commitment to the rule of law, and a temperament that would bring great credit to our system of justice." The IAOHRA represents "over 160 civil and human rights law enforcement agencies...which receive, initiate, investigate, mediate, and resolve complaints of discrimination in their individual jurisdictions." This organization is active in actual, hands-on law enforcement and had continuous opportunity to observe and interact with the EEOC under Chairman Thomas' leadership.

Senator John C. Danforth, Republican of Missouri, praised Clarence Thomas from the floor of the U.S. Senate when he said: "I know him to be an absolutely first-rate lawyer, and beyond that, I know him to be a first-rate human being."⁶

B. Opposition to the nomination

The civil rights establishment did not oppose Judge Thomas' nomination. The *Baltimore Sun* noted that "the Leadership Conference [on Civil Rights] does not appear to have arrived at a consensus."⁷ The *Washington Times* later observed that "[c]ivil rights groups are not united in opposition."⁸ The Associated Press likewise reported that the Leadership Conference "has not adopted a position thus far."⁹ This was despite the fact that President Bush announced his intention to nominate Judge Thomas more than five months before; potential opponents had nearly half a year to probe, investigate, and analyze.

⁶ *Congressional Record*, October 31, 1989, at S14388.

⁷ Parsons, "Debate Over Judicial Post for EEOC Chief Begins," *Baltimore Sun*, September 10, 1989.

⁸ Weyrich, "Conservatives Mobilize Behind Court Nominee," *Washington Times*, November 3, 1990, at A11.

⁹ "Liberals Ready 'To Do Job' on Nominee, Senator Says," *Washington Times*, November 1, 1989, at A3.

The opposition that did surface was centered not on qualifications or the facts about Judge Thomas' record as EEOC Chairman, but on ideological differences. Indeed, there was "acknowledgement from both sides of Mr. Thomas' keen intellect,"¹⁰ and "Mr. Thomas...is commonly described as brilliant."¹¹ Rather, the opposition stemmed from a liberal demand that Clarence Thomas walk in some kind of ideological lock-step. This prompted Senator Danforth to urge his colleagues not to "attack Clarence Thomas because of some stereotype of what they think a black lawyer should believe."¹²

The nature of the opposition spoke volumes of its legitimacy. In a letter dated July 17, 1989, fourteen of the most liberal members of the U.S. House of Representatives expressed "concern about the possible nomination of Clarence Thomas." Disregarding the plain facts about the EEOC's enforcement record, this letter referred to "Mr. Thomas' questionable enforcement record." Ignoring Chairman Thomas' successful effort to shift the EEOC's enforcement policy toward accomplishing genuine law enforcement, the letter contended that "Mr. Thomas has demonstrated an overall disdain for the rule of law." An appropriate response was issued two days later by 52 members of the House in a letter expressing "strong support for the nomination of Clarence Thomas." It stated:

The record of the EEOC speaks for itself, however, we would like to point out that the number of discrimination cases processed since Mr. Thomas became Chairman has increased significantly as has the number of legal actions filed. This record of achievement has taken place during a period of budget cutbacks and a lower profile of the civil rights movement. Claims to the contrary are nothing more than political posturing.

To some, "the rule of law" means little more than "our agenda." The *Washington Times* noted¹³ that in September 1989 a group called the Alliance for Justice told the American Bar Association's controversial Standing Committee on Federal Judiciary that Judge Thomas "has shown a disregard for the rule of law." The Alliance for Justice is a paper organization devoted to enforcing conformity with the liberal political agenda. The International Association of Official Human Rights Agencies, in contrast, is actually involved with enforcing the civil rights laws, stated emphatically that "Chairman Clarence Thomas would bring to the Federal judiciary a...passion for fundamental commitment to the rule of law."

¹⁰ *Id.*

¹¹ Parsons, *supra* note 6.

¹² *Congressional Record*, October 31, 1989, at S14388.

¹³ Weyrich, *supra* note 7, at A11.

Clarence Thomas has always been forthright and open about his personal positions on civil rights issues. He has never attempted to change EEOC policies, however, in any manner inconsistent with proper administrative procedures. This demonstrates a commitment to, rather than a disregard of, the very essence of the "rule of law," though it might not pass the ideological litmus test of some interest group.

The Alliance for Justice's September 22, 1989 memorandum to the ABA assaults Mr. Thomas' published articles for such deep and fundamental flaws as not citing enough (by the Alliance's measure) cases or for failing to discuss the Alliance's preferred topics. It says that he did not develop "a potentially substantive topic" and discussed others "without linking them to his thesis." These are the comments of someone editing a college term paper, not a meaningful substantive evaluation of an individual's qualifications for the federal appellate bench.

C. Judicial performance

Judge Thomas' tenure on the appellate bench has allowed him to write opinions on a wide variety of subjects including antitrust, civil procedure, constitutional law, criminal law, labor relations, and trade regulation. These opinions are thorough, well-written, and consistently observe the appropriate limits on the role of a federal appellate court. Their breadth of subject matter required application of various kinds of authorities including the Constitution, federal statutes, agency regulations, court decisions, authoritative texts and treatises, and court records and transcripts. Judge Thomas' opinions certainly belie the Alliance for Justice's outrageous claim to the ABA that he could not write well. Summaries of representative cases follow.

a. antitrust

*United States v. Baker Hughes, Inc.*¹⁴ In this decision for a unanimous bench,¹⁵ Judge Thomas affirmed the district court's denial of an injunction sought by the United States against a Finnish manufacturer's acquisition of a French manufacturer of underground drilling rigs. He held that the district court was correct that the acquisition would not undermine competition.

¹⁴ 908 F.2d 981 (D.C. Cir. 1990).

¹⁵ Judges Ruth Bader Ginsburg and David Sentelle joined the opinion.

b. civil procedure

*Western Maryland Railway Co. v. Harbor Insurance Company.*¹⁶ In a decision for a unanimous bench,¹⁷ Judge Thomas held that railroads suing insurers in two separate actions were not indispensable parties in each others' lawsuits and therefore did not have to be joined.

c. constitutional law

*National Treasury Employees Union v. United States.*¹⁸ In this case, federal employees argued that a statutory ban on receiving honoraria violated their First Amendment rights. Writing for a unanimous bench,¹⁹ Judge Thomas affirmed the district court's denial of a preliminary injunction against the ban on the ground that the employees would not suffer irreparable harm by complying with it. This allowed the constitutional challenge to the ban to continue in the district court.

*United States v. Halliman.*²⁰ Writing for a unanimous bench,²¹ Judge Thomas affirmed convictions for possession of cocaine and crack with intent to distribute. He held that exigent circumstances justified a warrantless search of a hotel room, that officers had properly seized drugs and other evidence even though a defendant's consent to search was invalid, and that improper admission of drugs at trial against a second defendant did not unfairly prejudice that defendant. This case involved multiple defendants, complicated facts, and narrow points of law regarding search and seizure as well as joinder and severance. During his extremely careful analysis, Judge Thomas was again careful to identify questions he felt it unnecessary to answer²² and to explain how the law of his circuit differed from that in other jurisdictions on important points.²³

¹⁶ 910 F.2d 960 (D.C. Cir. 1990).

¹⁷ Judges Harry Edwards and David Sentelle joined the opinion.

¹⁸ 927 F.2d 1253 (D.C. Cir. 1991).

¹⁹ Chief Judge Abner Mikva and Judge David Sentelle joined the opinion.

²⁰ 923 F.2d 873 (D.C. Cir. 1991).

²¹ Judges Ruth Bader Ginsburg and David Sentelle joined the opinion.

²² *Id.* at 881 n.5: "[W]e need not decide whether the district court erred in predicating its probable cause determination on the collective knowledge of the police force as a whole."

²³ *Id.* at 883 n.7 (distinguishing D.C. Circuit rule that the government need not demonstrate propriety of joinder decisions on face of indictment from rule in 11th, 5th, and 8th Circuits).

d. criminal law

*United States v. Whioie.*²⁴ A convicted drug dealer appealed, claiming entrapment. Writing for a unanimous bench,²⁵ Judge Thomas affirmed the conviction. He noted that the "Supreme Court has stressed that the [entrapment] defense centers on...a person's predisposition to commit a crime, not on the government's conduct."²⁶ In this opinion, Judge Thomas carefully explained the appropriate standard of review and avoided answering unnecessary questions or addressing non-essential issues.

*United States v. Rogers.*²⁷ A jury convicted John Rogers of possessing crack with intent to distribute within 1,000 feet of a school. Writing for a unanimous bench,²⁸ Judge Thomas affirmed the conviction. He rejected various arguments, among them that the trial court improperly admitted evidence of the defendant's prior distribution of crack. In doing so, he construed the Federal Rules of Evidence using "traditional tools" of statutory construction and began, "as we do with any statute, with the language of the rules themselves."²⁹ He refused to stretch these rules beyond their intended scope.³⁰ Finally, he ruled that sufficient evidence supported the conviction. Again, Judge Thomas refused to decide unnecessary issues.³¹

*United States v. Poston.*³² In this appeal of a conviction for aiding and abetting possession of the drug PCP, Judge Thomas, writing for a unanimous bench,³³ addressed several statutory, evidentiary, and constitutional issues before affirming the conviction.

²⁴ 925 F.2d 1481 (D.D. Cir. 1991).

²⁵ Judges James Buckley and Stephen Williams joined the opinion.

²⁶ *Id.* at 1483.

²⁷ 918 F.2d 207 (D.C. Cir. 1990).

²⁸ Chief Judge Patricia Wald and Judge Ruth Bader Ginsburg joined the opinion.

²⁹ *Id.* at 209.

³⁰ *Id.* at 211: "Rule 609(d) governs only the admissibility of evidence introduced for impeachment of a witness. Evidence not introduced to attack a witness's credibility falls outside the rule's scope."

³¹ *Id.* at 214: "We need not decide here which interpretation of section 845a(a) is correct."

³² 902 F.2d 90 (D.C. Cir. 1990).

³³ Judges Ruth Bader Ginsburg and Lawrence Silberman joined the opinion.

Judge Thomas was careful to note the limited nature of the appellate court's role³⁴ and rejected the invitation to contort a criminal statute to achieve a certain result.³⁵ Even though the defendant had retained a new lawyer just one day before trial began, Judge Thomas rejected the argument that this constituted ineffective assistance of counsel. He did so by a candid reading of relevant Supreme Court precedents,³⁶ rather than making up a rule of his own. This is a particularly careful, exhaustive opinion.

*United States v. Long.*³⁷ In this appeal of convictions for firearms and drug offenses, Judge Thomas showed his attention to jurisdictional as well as substantive legal issues. Writing for a unanimous bench,³⁸ Judge Thomas refused to consider the arguments by one appellant because her notice of appeal was filed one day late. He remanded her case to the district court to decide whether she should be granted an extension.³⁹ As is his practice, Judge Thomas carefully outlined the limited role of the appellate court.⁴⁰ In reviewing the conviction for using a firearm in the commission of a drug offense, Judge Thomas, after a very careful analysis, gave the word "use" a concrete and logical definition, rather than a "loose, transitive" one.⁴¹ He then reversed the conviction on that count but emphasized the narrowness of that conclusion: "[W]e reverse Long's conviction because the government failed to adduce *any* evidence suggesting that Long actually or constructively possessed the revolver."⁴² After rejecting the appellant's remaining claims, Judge Thomas affirmed the conviction for possessing cocaine with intent to distribute.

³⁴ *Id.* at 94 ("This court's role in assessing a sufficiency of the evidence claim on appeal is sharply circumscribed. We are not a second jury weighing the evidence anew and deciding whether or not we would vote to convict the defendant."); at 96 ("A trial judge enjoys great discretion in ruling on a motion for a continuance....an appellate's court's role is limited to determining whether the judge 'clearly abused' his discretion.").

³⁵ *Id.* at 94.

³⁶ *Id.* at 98.

³⁷ 905 F.2d 1572 (D.C. Cir. 1990).

³⁸ Judges Lawrence Silberman and David Sentelle joined the opinion on this point. Judge Sentelle wrote a concurring opinion on another issue.

³⁹ *Id.* at 1575.

⁴⁰ *Id.* at 1576: "Overturning a jury's determination of guilt on the ground of insufficient evidence is not a task we undertake lightly. As an appellate court, we owe tremendous deference to a jury verdict."

⁴¹ *Id.* at 1576-77.

⁴² *Id.* at 1578.

e. labor relations

*Otis Elevator Co. v. Secretary of Labor.*⁴³ This brilliant opinion is a model of judicial restraint. A company servicing the elevators of two mining companies challenged citations issued by a Mine Safety and Health Administration inspector for safety violations. Writing for a unanimous bench⁴⁴ in this complicated case, Judge Thomas carefully avoided answering unnecessary questions,⁴⁵ sorted through difficult questions concerning application of canons of statutory construction,⁴⁶ distinguished inapplicable precedents from other courts,⁴⁷ and declined the invitation to decide the case on purely policy grounds.⁴⁸ Judge Thomas first concluded that the elevator company was an "operator" within the meaning of the Federal Mine Safety and Health Act. He then affirmed the citation received at one mine after determining that the Administrative Law Judge's similar finding was supported by substantial evidence.⁴⁹ Finally, he refused to address the merits of the second citation because the elevator company had failed to pursue proper procedures for contesting it earlier.

f. trade regulation

*Alpo Petfoods, Inc. v. Ralston Purina Company.*⁵⁰ In this case involving a claim and counterclaim for false advertising, Judge Thomas, writing for a unanimous bench,⁵¹ affirmed the district court's decision that both companies were guilty of false advertising. But he reversed the district court's judgment awarding attorney's fees to Alpo, allowing the district to redetermine the amount of damages.

⁴³ 921 F.2d 1285 (D.C. Cir. 1990).

⁴⁴ Chief Judge Patricia Wald and Judge David Sentelle joined the opinion.

⁴⁵ *Id.* at 1288 (avoiding question whether standard from *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984) that agency's reasonable construction of statute must be upheld applies in present case); *id.* at 1288 n.1 (same as to standard from *Donnovan v. Carolina Stalite Co.*, 734 F.2d 1547 (D.C. Cir. 1984)); *id.* at 1290 n.3 (avoiding question whether independent contractor under different set of acts would constitute a mine "operator").

⁴⁶ *Id.* at 1289 (discussion of canon of *eiusdem generis*, holding it inapplicable).

⁴⁷ *Id.* at 1289-90 (distinguishing *National Industrial Sand Assoc. v. Marshall*, 601 F.2d 689 (3d Cir. 1979)).

⁴⁸ *Id.* at 1291 ("This court is ill-equipped to make the kind of expert policy judgment necessary to evaluate the relative merit of these competing accounts.).

⁴⁹ *Id.* at 1292.

⁵⁰ 913 F.2d 958 (D.C. Cir. 1990).

⁵¹ Judges Harry Edwards and David Sentelle joined in the opinion.

CONCLUSION

Other analyses of Judge Thomas' record and judicial philosophy will follow. This preliminary report demonstrates that he will bring a unique combination of professional and personal features to the Supreme Court of the United States.

The arguments against his nomination to the Court of Appeals were laughable and proven to be without merit. They have no more merit today. Indeed, he has added to his impressive qualifications a set of outstanding opinions while a U.S. Circuit Judge. He deserves swift approval.

Coalitions for America

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President
Library Court
Social Issues
Stanton
Defense & Foreign Policy
Kingston
Budget & Economic Policy
721 Group
Judicial & Legal Policy
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A RESPONSE TO JUDGE THOMAS' CRITICS

A REPORT PREPARED FOR COALITIONS FOR AMERICA

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September 1991

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A RESPONSE TO JUDGE THOMAS' CRITICS

By now, everyone knows that President Bush's nomination of U.S. Circuit Judge Clarence Thomas to replace Supreme Court Justice Thurgood Marshall has caused some controversy. Organizations have announced their support or opposition, though the former outnumber the latter by about 3-to-1.¹ The purpose of this report is to respond to the central arguments raised by the opposition.

Judge Thomas' opponents make the same fundamental errors we have seen in past nomination battles. The left cannot distinguish private opinions on policy or politics from an individual's judicial philosophy. Perhaps they cannot conceive of judges who do not mistake their personal opinions for the dictates of the law. The left cannot distinguish criticism of legal reasoning from criticism of case results. In short, the left sees judges as politicians and judicial nominees as congressional candidates. By doing so, they imperil not only the independence of the judiciary but the very notion of a judiciary at all.

I. Why Ignore a Judicial Record in the Search for One?

Every report, press conference, and public statement by Judge Thomas' opposition has ignored his judicial record. Listening only to the opposition, an uninformed observer would have no idea that Clarence Thomas is in fact a sitting federal appellate judge who has actually authored his own judicial opinions and participated in many others.

For example, the Mexican American Legal Defense and Educational Fund (MALDEF) based its opposition and report solely on Judge Thomas' "extrajudicial writings and speeches."² People for the American Way Action Fund (PAWAF) cites only the relative brevity of Judge Thomas' judicial record.³ Americans for Democratic Action (ADA) completely ignores that record.⁴ The NAACP Legal Defense and Educational Fund

¹ A list of organizations supporting the nomination is attached.

² Mexican American Legal Defense and Educational Fund, "Natural Law: Not On Our Supreme Court," August 14, 1991, at 6 (hereinafter *MALDEF Report*).

³ People for the American Way Action Fund, "Judge Clarence Thomas: 'An Overall Disdain for the Rule of Law,'" July 30, 1991, at 3,4 (hereinafter *PAWAF Report*).

⁴ Americans for Democratic Action, "Nomination of Judge Clarence Thomas to the Supreme Court of the United States: A Legal Analysis," July 23, 1991 (hereinafter *ADA Report*).

(LDEF) bases its opposition and report on "Judge Thomas' writings and speeches."⁵ The nominee's judicial record likewise goes completely unnoticed in the reports by the Women's Legal Defense Fund (WLDF)⁶ and the National Abortion Rights Action League (NARAL).⁷ The AFL-CIO focuses exclusively on Judge Thomas' "public statements" and non-judicial writings.⁸ Neither the American Civil Liberties Union of Southern California (ACLU/SC)⁹ nor the National Association for the Advancement of Colored People (NAACP)¹⁰ mention the nominee's judicial record. The National Women's Law Center (NWLC) completely ignores it as well,¹¹ as does the American Association of University Women (AAUW).¹² Two reports prepared by law professor Erwin Chemerinsky for opposition groups also ignore that record.¹³

This pattern of selective examination is very significant and perhaps says as much about Judge Thomas' opponents as their own reports do. They claim his past non-judicial record tells us, with an apparently high degree of confidence, what his future judicial record will be. But why do the nominee's opponents pass up the opportunity to test whether the views Judge Thomas has expressed as a private citizen or agency administrator on policy issues influence, determine, or otherwise are reflected in his work as a judge on legal issues? Why do they ignore the judicial record of a judicial nominee?

⁵ NAACP Legal Defense and Educational Fund, "An Analysis of the Views of Judge Clarence Thomas," August 13, 1991, at 1 (hereinafter *LDEF Report*).

⁶ Women's Legal Defense Fund, "Endangered Liberties: What Judge Clarence Thomas' Record Portends for Women," July 30, 1991 (hereinafter *WLDF Report*).

⁷ National Abortion Rights Action League, "Judge Clarence Thomas' Record on the Fundamental Right to Privacy," July 24, 1991 (hereinafter *NARAL Report*).

⁸ AFL-CIO, "Background Paper on Judge Clarence Thomas," July 31, 1991, at 1 (hereinafter *AFL-CIO Report*).

⁹ ACLU of Southern California release, "City-Wide Coalition Gathers, Announces Stand on Supreme Court Nominee," July 23, 1991 (hereinafter *ACLU/SC Report*).

¹⁰ NAACP release, "Statement by Dr. William F. Gibson, Chairman the National Board of Directors of the NAACP on the Nomination of Judge Clarence Thomas to the U.S. Supreme Court," July 31, 1991 (hereinafter *NAACP Report*). This statement is treated herein as the NAACP's report. The NAACP board did have a secret report, excerpts of which were published in *Legal Times*, August 5, 1991. Separate reference will be made to that document.

¹¹ National Women's Law Center, *Judge Clarence Thomas: A Record Lacking In Support of Women's Legal Rights*, August 20, 1991 (hereinafter *NWLC Report*).

¹² American Association of University Women, *Five Reasons AAUW Opposes the Nomination of Clarence Thomas to the U.S. Supreme Court*, August 1991 (hereinafter *AAUW Report*).

¹³ Memorandum to ACLU/SC Board of Directors, July 17, 1991 (hereinafter *Chemerinsky I*; Chemerinsky, "Clarence Thomas' Natural Law Philosophy," released by People for the American Way Action Fund, July 30, 1991 (hereinafter *Chemerinsky II*).

One leftist group let slip the answer. Within days of the nomination, the Alliance for Justice issued a document titled "Alliance for Justice Preliminary Report on Clarence Thomas," dated July 1, 1991.¹⁴ It included summaries of Judge Thomas' opinions and concluded:

"His decisions overall do not indicate an overtly ideological [sic] tilt, although they generally are conservative, especially his criminal law and procedure decisions."

When the Alliance announced its opposition to Judge Thomas' nomination on July 29, 1991, it released four documents. One of them was titled "Alliance for Justice Preliminary Report on Clarence Thomas," dated July 1, 1991. It included summaries of Judge Thomas' opinions and purported to be the same document the Alliance had earlier released. Curiously, however, this July 1 opinion summary differed from the first July 1 opinion summary. The positive evaluative statement quoted above had mysteriously disappeared.

The Alliance owes everyone an explanation. Which is the real July 1 report? Do Judge Thomas' opinions suddenly tilt because the Alliance does? This approach of doctoring documents resembles turning the odometer back on a used car and raises serious questions about the Alliance's credibility. Not surprising, the same media which had investigated the flag Clarence Thomas had on his desk nearly 20 years ago¹⁵ never raised an eyebrow over such tactics.

The Alliance was, in fact, right the first time. Judge Thomas' opinions are not ideological. Rather, in the words of one legal analyst, they are "textbook examples of judicial restraint."¹⁶ No one who candidly examines Judge Thomas' entire record can honestly conclude that he imposes his personal views about policy or politics when performing his judicial function.

Quite the contrary, Judge Thomas believes in "a judiciary active in defending the Constitution, but judicious in its restraint and moderation."¹⁷ The judiciary, in his view, has a vigorous yet defined role. His opinions reflect such a traditional commitment to judicial restraint and the rule of law in several ways.

¹⁴ The Alliance acknowledges that many of the decisions it reviewed are *per curiam* decisions not authored by Judge Thomas.

¹⁵ See Clymer, "About That Flag on the Judge's Desk," *New York Times*, July 18, 1991.

¹⁶ Crovitz, "The Views of Justice Thomas, According to Judge Thomas," *Wall Street Journal*, July 3, 1991, at A7.

¹⁷ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,63-64 (1989).

- * He adheres to precedent,¹⁸ even when it produces liberal political results.¹⁹
- * He consistently avoids answering questions or addressing issues unnecessary for deciding the particular case before the court.²⁰
- * He has declined the invitation to decide cases on purely policy grounds.²¹
- * He pays close attention to issues affecting the court's jurisdiction.²² Judge Thomas' leftist opponents, of course, characterize the desire to ensure that the court properly has jurisdiction as "limiting access to the courts."²³
- * He emphasizes a properly narrow role for an appellate court.²⁴
- * He utilizes traditional standards of construction and interpretation.²⁵

Judge Thomas' opponents ignore his judicial opinions because that record undermines rather than advances their case against him. They must ignore the most relevant part of his record in order to pursue their campaign. For them, no distinction exists between politics and law, between politicians and judges. For them, raw results are

¹⁸ See, e.g., *United States v. Halliman*, 923 F.2d 873 (D.C. Cir. 1991) (applying D.C. Circuit rule after distinguishing it from rule in other circuits).

¹⁹ See, e.g., *Action for Children's Television v. Federal Communications Commission*, 932 F.2d 1504 (D.C. Cir. 1991) (joining Chief Judge Mikva's opinion striking down FCC's 24-hour ban on indecent programming). Judge Thomas listed this decision on his Senate Judiciary Committee questionnaire as a significant opinion on a federal constitutional issue in which he participated.

²⁰ See, e.g., *Otis Elevator v. Secretary of Labor*, 921 F.2d 1285 (D.C. Cir. 1990).

²¹ See, e.g., *id.* at 1291.

²² See, e.g., *United States v. Long*, 905 F.2d 1572 (D.C. Cir. 1990) (late filing of notice of appeal deprives court of jurisdiction); *Doe v. Sullivan*, No.91-5019 (July 16, 1990) (Thomas, J., dissenting) (mootness); *Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission*, No.90-1053 (May 10, 1991) (Thomas, J., dissenting) (standing).

²³ *PAWAF Report* at 5.

²⁴ See, e.g., *United States v. Poston*, 902 F.2d 90,94 (D.C. Cir. 1990); *United States v. Harrison*, No.89-3152 (May 16, 1991).

²⁵ See, e.g., *United States v. Rogers*, 918 F.2d 207,209 (D.C. Cir. 1990) (construing Federal Rules of Evidence using "traditional tools," beginning with "the language of the rules themselves"); *Buogiomo v. Sullivan*, 912 F.2d 504 (D.C. Cir. 1990) (examining the text of agency rule to determine reasonableness); *United States v. Shabazz*, No.90-3244 (May 28, 1991) (intent of Congress the guiding principle in reviewing the federal sentencing guidelines, natural reading of text first focus).

more important than objective and dispassionate application of the law to the facts of a particular case. Judge Thomas believes otherwise and his judicial record shows it, so they look the other way and move on.

Judge Thomas' opponents will no doubt claim that his judicial record is relatively brief. And so it is. He has to date authored 20 opinions and participated in approximately 170 cases during his tenure on the U.S. Court of Appeals. Nevertheless, relative brevity does not mean irrelevance. Again, the supposed goal is to determine what Clarence Thomas will do on the bench in the future; it is fundamentally irresponsible, therefore, to ignore what he has done on the bench in the past. That tactic can only be a deliberate attempt to distort the nominee's record.

People for the American Way actually claims that Judge Thomas' brief judicial tenure is itself sufficient reason for the Senate to withhold its consent to his appointment.²⁶ The American people will wait in vain for that group to announce that liberal Chief Justice Earl Warren, who had absolutely no judicial experience prior to taking the Supreme helm in 1953, should never have been appointed. But, then, PAWAF agrees with most of Chief Justice Warren's activist decisions.

The opposition will also contend that Judge Thomas' judicial record is irrelevant because, as a lower court judge, he was constrained by Supreme Court precedent.²⁷ On the highest court in the land, they contend, he will be unshackled to do as he pleases. Just when the left discovered this sudden devotion to judicial restraint remains a bit unclear. Nevertheless, by their logic, no one who has not previously served on the Supreme Court should be considered for appointment to that bench. Actually, this is not logic at all. Nor does it have any basis in reality. Judge Thomas' leftist critics have the burden of proof on this point. They have yet to provide a single shred of evidence that he lacks respect for precedent. He has already shown, albeit through the judicial opinions the left consistently ignores, that he knows the difference between his personal views and the requirements of the law.

II. Affirmative Action: Why Won't Anyone Read His Record?

It may serve to create some hysteria or raise some money, but tactics such as "the sky is falling" rarely have anything to do with the truth. Judge Thomas' opponents have made enormous general statements about his supposed opposition to "affirmative action." They have also refused to define that term so that the American people can have some idea of what they are talking about.

²⁶ PAWAF Report at 3.

²⁷ See, e.g., NWLC Report at 35: "As a lower court judge, Judge Thomas was duty-bound to follow Supreme Court precedent."

It appears that the chorus of critics are reading off a single lyric sheet, at least on some of the songs. The choirmaster appears to be law professor Erwin Chemerinsky. Compare, for example, a passage on the affirmative action issue taken from his memorandum to the ACLU/SC Board of Directors and the MALDEF report:

Chemerinsky memo - July 17, 1991

p.1 "The most pervasive theme in Clarence Thomas' writings is his vehement opposition to all forms of affirmative action, even affirmative action taken to remedy clearly proven past discrimination. He expresses a view that the Constitution requires that government be color-blind under all circumstances."

MALDEF report - August 14, 1991

p.6 "One of the most frequently-repeated themes in Clarence Thomas' writings and speeches is his steadfast opposition to affirmative action in all forms, including affirmative action ordered by the courts to remedy proven past discrimination. Clarence Thomas' opposition to affirmative action is based on his belief that the Constitution must in all circumstances be colorblind."

Others repeat the same party line. The most outrageous comes from Americans for Democratic Action, which states that "his numerous publications and speeches dealing with affirmative action show that he is opposed to even non-numeric approaches (i.e., special outreach and recruiting efforts) to enhance employment opportunities for minorities and women."²⁸ The NAACP claims that Judge Thomas' "position on affirmative action shifted dramatically" after 1986.²⁹ They, of course, offer no evidence for this claim.

Such sweeping generalizations can only be attributed to a desire to inflame passions because they have nothing to do with Judge Thomas' record. In fact, they are directly contradicted by that record, which has been consistent on this point for nearly a decade. In an April 1983 article in the *Labor Law Journal*, EEOC Chairman Thomas wrote: "Much of the heated debate and public confusion over affirmative action, in fact, stems from the confusion between flexible goals and inflexible quotas, and the use of these two distinct terms interchangeably."³⁰

On August 17, 1983, Chairman Thomas delivered a speech in Chicago and drew the distinction between the general notion of affirmative action and rigid programs such as quotas. He stated:

In light of real world facts of life, there should be no reasoned disagreement over the underlying premise of affirmative action: that is, that we simply must do more than just stop discriminating if we are ever going to stop the effect of a history of discrimination. But, we must have the courage to recognize that there is room

²⁸ *ADA Report* at 2.

²⁹ *NAACP Report* at 3.

³⁰ Thomas, "Current Litigation Trends and Goals at the EEOC," 34 *Labor Law Journal* 208,212 (1983).

to question the effectiveness and legality of certain affirmative action programs and policies.³¹

Similarly, in an opinion piece for a major newspaper, Chairman Thomas distinguished between affirmative action and quotas. Failing to draw this distinction, he wrote, "we will fail to address the real issues and condemn the most disadvantaged individuals in our midst to an even bleaker future."³² In a book chapter published three years later, he again distinguished between "affirmative action policies as they have developed" in the form of racial set-asides or preferences and "reducing barriers to employment, instead of trying to get 'good numbers.'" Those who have been in the government know the artificial barriers to hiring someone you want. That is the sort of practice we should be seeking to eliminate. That is the sort of affirmative action I practice at my agency.³³ He is right. As EEOC Chairman, his hiring practices looked like this:

* Hired 49 individuals who reported directly to him - 53% women, 67% minorities

* 9 Office Directors	* 29 Special/Exec. Assts	* 11 personal support staff
5 women	14 women	7 women
5 black	15 black	10 black
	1 Hispanic	
	2 Asian	

* Hired 28 individuals as District Directors - 10 women, 10 black, 4 Hispanic

More recently, in a 1989 interview, Chairman Thomas was even clearer. He said:

I believe in affirmative action; my problem is with 'preferential treatment' because in there it assumes that I am not the equal of someone else, and if I'm not equal, then I'm inferior....I know what it feels like. I'm not a white male out there telling you that it ought to feel that way and it ought to do this and that. I'm telling you how it actually felt to me.³⁴

When Senator Sam Nunn (D-GA) announced on July 16, 1991 that he would introduce Judge Thomas to the Judiciary Committee when it begins considering the nomination on September 10, he noted that in their private meeting the nominee continued

³¹ Thomas, "Discrimination and Its Effects," 21 *Integrated Education* 204,206 (1983).

³² Thomas, "Abandon the Rules; They Cause Injustice," *USA Today*, September 5, 1985, at 8A.

³³ Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," in *Assessing the Reagan Years* (ed. D. Boaz) (Washington, D.C.: The Cato Institute, 1988), at 397.

³⁴ Quoted in Perry, "Clarence Thomas: Protecting People's Rights," *Minorities & Women in Business*, Sept./Oct. 1989, at 26.

to draw this same distinction "between affirmative action, which he supports, and the affirmative action quota type that he doesn't support."³⁵

Allen Moore wrote: "When he gets a chance to fully explain his views in Senate hearings, he will challenge his listeners to think beyond platitudes and conventional orthodoxy. Clarence Thomas has always supported the idea of giving preferential treatment to the truly disadvantaged, especially minorities, rather than to those from middle- or upper middle-class backgrounds who happen to be members of a targeted minority. To do otherwise risks stigmatizing those favored--to make it appear as if they are incapable of competing fairly."³⁶

Judge Thomas' opposition just hate mentioning that Arthur Fletcher, Chairman of the U.S. Commission on Civil Rights and the architect of affirmative action in this country, has publicly endorsed the nomination. He stated:

If anything should occur to diminish the effectiveness or eliminate opportunities in [employment or education], I would have as much, if not more, to lose than anyone....After reading all I could find written about him...and after talking to people who have known him 'up close' for a decade or more....I am convinced that in his heart of hearts, he knows that he has benefited from the fallout of the Brown Decision, and that he also has benefited from the dramatically improved opportunities environment created by the employment affirmative action enforcement movement; and that he has ridden it all the way to the top....I support the nomination.

III. What's Good for Marshall is Good for Thomas

Judge Thomas has most often cited the American natural rights tradition when discussing the case against slavery, segregation, and discrimination - practices he repeatedly connects and condemns. In so doing, he has aligned himself with the dissenting opinion by Justice John Marshall Harlan in *Plessy v. Ferguson*,³⁷ the decision legitimating the "separate but equal" doctrine. He has called that dissent "one of our best examples of natural rights or higher law jurisprudence."³⁸ As a result, he has criticized the decision in *Brown v. Board of Education*,³⁹ which correctly repudiated the doctrine, because the Court based its opinion

³⁵ *Washington Times*, July 17, 1991, at

³⁶ Moore, "The Clarence Thomas I Know," *Washington Post*, July 16, 1991, at A19.

³⁷ 163 U.S. 537 (1896).

³⁸ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,66-67 (1989).

³⁹ 347 U.S. 483 (1954).

not on the enduring natural rights principles in Justice Harlan's *Plessy* dissent, but on social science data and psychological theories.

Judge Thomas' opponents frequently cite his criticism of the reasoning in *Brown v. Board of Education* as a reason to oppose his nomination.⁴⁰ By their failure to distinguish criticism of legal reasoning from criticism of case results, these folks who themselves have never endured segregation apparently intend the incredible suggestion that Judge Thomas supports the practice! Judge Thomas' record completely repudiates this offensive notion.

Americans for Democratic Action compares Judge Thomas to Judge Bork. The group might as well have compared him to Justice Thurgood Marshall who in *Brown* argued before the Court for the same position that Judge Thomas today says the Court should have adopted - one based on enduring natural rights principles rather than social science data and psychological theories. Legal analyst Gordon Crovitz writes that "when it comes to the Supreme Court's most important civil-rights case, Clarence Thomas is another Thurgood Marshall."⁴¹ But then, selective memory seems to be standard operating procedure in this debate.

These fundamental principles of equality and liberty in fact formed an essential part of the legal assault on slavery, segregation, and discrimination. The brief for Oliver Brown in *Brown v. Board of Education*, filed by then-attorney Thurgood Marshall, is very instructive. Marshall summarized the issue at the very heart of this landmark case as "whether a nation founded on the proposition that 'all men are created equal' is honoring its commitments...when it...confers or denies benefits on the basis of color or race."⁴² His assault on the *Plessy* doctrine was based squarely on Justice Harlan's dissent in that case. Marshall wrote:

*While the majority opinion [in Plessy] sought to rationalize its holding on the basis of the state's judgment that separation of races was conducive to public peace and order, Justice Harlan knew all too well that the seeds for containing racial animosities had been planted....'Our Constitution,' said Justice Harlan, 'is colorblind, and neither knows nor tolerates classes among citizens.' It is the dissenting opinion of Justice Harlan, rather than the majority opinion in Plessy v. Ferguson, that is in keeping with the scope and meaning of the Fourteenth Amendment.*⁴³

⁴⁰ See, e.g., *ADA Report* at 3; *Chemerinsky I* at 4; *NWLC Report* at 32.

⁴¹ Crovitz, "On *Brown v. Board of Education*, Call Him Thurgood Thomas," *Wall Street Journal*, July 31, 1991, at A11 (emphasis in original).

⁴² Brief for Appellants, *Oliver Brown v. Board of Education of Topeka*, Supreme Court of the United States, October Term 1953, at 16.

⁴³ *Id.* at 41.

Thurgood Marshall argued that the "first Section of the Fourteenth Amendment is the legal capstone of the revolutionary dream of the Abolitionists to reach the goal of true equality."⁴⁴ The "central rallying point" for the Abolitionists, in turn, was the Declaration of Independence. "The philosophy upon which the Abolitionists had taken their stand," Marshall argued, "had been adequately summed up in Jefferson's basic proposition 'that all men are created equal' and 'are endowed by their Creator with certain inalienable Rights.'"⁴⁵

Marshall must have anticipated the charge that his natural rights argument and appeal to the Declaration's principles of equality and liberty would be labeled "outside the mainstream" or "reactionary" because he took great pains to trace the deep "roots of our American equalitarian ideal."⁴⁶ The philosophers of centuries past who laid the foundation "rested upon the basic proposition that all men were endowed with certain natural rights."⁴⁷ The Founding Fathers, Marshall argued, considered these "self-evident truths" to be the basis for America itself. It was, he said, "the only political theory they knew" with roots extending "[l]ong before the Revolution."⁴⁸ This political theory was "popularly regarded as the marrow of the Constitution itself"⁴⁹ and the drive against slavery and for women's suffrage "was based fundamentally on Judeo-Christian ethic and was formulated in terms of equalitarianism and natural rights."⁵⁰

Some of Judge Thomas' opponents seem blinded by their rage against this nominee to the facts of history. MALDEF, for example, cites Judge Thomas' criticism of *Brown* but makes the astonishing charge against "his apparent willingness to reject the legal arguments advanced by all the parties in a case and to legislate his own views instead."⁵¹

First, as detailed above, Judge Thomas' criticism of the reasoning in *Brown* simply mirrors a central legal argument advanced by the appellant in the case. Perhaps MALDEF has never read the briefs. Second, a private citizen offering an evaluation or opinion of the *Brown* decision more than 30 years after it was rendered is not the same as "rejecting" legal arguments and "legislating his own views instead." Indeed, the meaning of this legislating notion is a complete mystery.

⁴⁴ *Id.* at 69.

⁴⁵ *Id.*

⁴⁶ *Id.* at 201.

⁴⁷ *Id.*

⁴⁸ *Id.* at 202.

⁴⁹ *Id.* at 203.

⁵⁰ *Id.* at 204.

⁵¹ MALDEF Report at 14.

IV. Age Discrimination Cases: Liars Figure and Figures Lie

Perhaps the most persistent charge against Judge Thomas has been the lapse of a certain number of age discrimination charges beyond their statute of limitations, thus precluding relief in federal court. This is certainly an example of where a number takes on a life of its own and, if repeated often enough, lives on unchallenged. What it actually represents and whether it has any basis in reality is beside the point.

The EEOC's 50 field offices receive, investigate, and resolve charges of employment discrimination. To do this, EEOC contracts with 46 state and local Fair Employment Practices Agencies (FEPAs), which pre-date the 1964 Civil Rights Act creating the EEOC. Individuals can file charges of discrimination with either the EEOC or a FEPA. The right to sue in court lapses when neither the EEOC/FEPA nor the individual alleging discrimination initiates court action within two years of the alleged violation. Discrimination "charges" become discrimination "cases" only when actually taken to court.

Judge Thomas' opponents have invented numbers out of thin air, confused discrimination charges with discrimination cases, and lumped together actions handled by EEOC field offices and FEPAs to concoct a case against him.

The following table lists the opposition reports discussing this issue, the number of lapses they allege, the labels they use for the matters at issue, and the sources they provide.

<u>Organization Report</u>	<u>Label</u>	<u>Number</u>	<u>Source</u>
<i>ACLU/SC Report</i> , p.2	"claims"	"upwards of 15,000"	none
<i>MALDEF Report</i> , p.20	"cases"	13,000	none
<i>ADA Report</i> , p.7	"charges"	13,000	none
<i>WLDF Report</i> , p.44	"charges"	"thousands"	letter from PAWAF
<i>PAWAF Report</i> , p.12	"cases"	"more than 13,000"	letter from members of Congress
<i>NAACP Report</i> , p.3	"complaints"	"over 13 thousand"	none
<i>LCCR Report</i> , p.3	"charges"	"more than 13,000"	none
<i>NWLC Report</i> , p.72	"charges"	"thousands"	none
<i>Chemerinsky I</i> , p.9	"claims"	"over 13,000"	letter from PAWAF
<i>AAUW Report</i> , p.1	"complaints"	"more than 13,000"	none

Even this cacophony of sourceless numbers does not reveal the sloppy nature of this attack on Judge Thomas. PAWAF claims the EEOC allowed more than 13,000 cases to lapse and cites a letter from 14 members of Congress to President Bush dated July 17, 1989. That letter never mentions the number 13,000.⁵² A virtually identical letter from 11 of those members of Congress to Senator Biden dated February 28, 1990 also fails to mention this number.⁵³ The source of this figure remains a mystery.

Lapses did occur, both in EEOC field offices and in FEPAs. These are the facts for the period from April 8, 1988, to June 30, 1990 (three months after EEOC Chairman Thomas became Judge Thomas), according to the U.S. General Accounting Office:⁵⁴

	<u>Resolved Charges</u>	<u>Lapsed Charges</u>	<u>Ratio of Lapsed to Resolved</u>
EEOC Field Offices	39,626	348	.88
FEPA Offices	12,796	2453	19.17

Between January 1, 1984, and April 7, 1988, a total of 4377 lapses occurred among charges filed with either EEOC or FEPA offices.⁵⁵ A breakdown of this figure to determine the number for which the EEOC was responsible is unavailable, but it is clear that FEPAs were responsible for the vast majority of lapses and that the total was far less than Judge Thomas' critics have alleged.

The only reason we are now aware of the nature and extent of this lapsing problem at all is because of the case management and litigation tracking improvements initiated by Chairman Thomas. The problem had no doubt existed for a long time, but Chairman Thomas' commitment to real law enforcement made it possible to identify and finally correct the problem.

Of course, none of Judge Thomas' critics ever mention that both EEOC field offices and FEPAs are involved in this process and that many lapses occurred in the FEPAs. As part of his attempt to move the EEOC from an advocacy organization to a true law

⁵² *Confirmation Hearings on Federal Appointments*, No.J-101-6, Part 4, at 399-400.

⁵³ *Id.* at 458-59.

⁵⁴ Letter from Linda G. Morra, Director, Human Resources Policy and Management Group, U.S. General Accounting Office, to U.S. Representatives Edward R. Roybal, Augustus F. Hawkins, and Matthew G. Martinez, dated October 5, 1990.

⁵⁵ Letter from Deborah J. Graham, Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, to U.S. Senator Edward M. Kennedy, dated May 1, 1989, at 1; see also *Confirmation of Federal Appointments*, *supra* note 52, at 267.

enforcement agency, Chairman Thomas initiated several policy changes which offered parties charging discrimination more opportunities for relief than the law itself requires. He activated the "dual filing" system, whereby a party can file a discrimination charge with the EEOC if he or she was dissatisfied with how a FEPA is processing a claim. Chairman Thomas thereby heightened his agency's responsibility in protecting the rights of charging parties beyond what is required by law.

This commitment to protecting individual rights beyond what the law requires is hardly the mark of the typical bureaucrat; it was motivated by Clarence Thomas' personal commitment. He increased his agency's involvement and responsibility and, as a result, increased the potential points of criticism. And it was Chairman Thomas who brought this problem to the public's attention, accepted full responsibility for it before congressional committees,⁵⁶ and supported measures to correct the problem. He took the agency a long way from the days when no one even knew just how bad the problems were, let alone found ways to solve them.

Judge Thomas' opponents also will never reveal certain other facts about his record of fighting age discrimination. In fiscal year 1981, before Chairman Thomas' tenure, the EEOC recovered less than \$30 million in benefits for victims of age discrimination; in fiscal year 1989, the agency recovered nearly \$61 million. In 1981, the EEOC filed 89 lawsuits under the Age Discrimination in Employment Act; in 1989, the agency filed 133. This dramatic increase in litigation and benefit recovery for the victims of age discrimination occurred during a period when the agency's manpower decreased by 10%.⁵⁷

V. What Stream Are They In Anyway?

Judge Thomas has written and spoken about the fundamental principles that underlie the sweeping guarantees of the Constitution and give that compact its moral and legal force. He has argued for a deeper appreciation of the Declaration of Independence in understanding the Constitution. In short, he has embraced the "natural rights" tradition on which this country was founded.

The Declaration of Independence reflects this tradition when it states as a "self-evident truth" that "all men are created equal, and are endowed by their Creator with certain unalienable rights." The Constitution, which along with the Declaration is one of the "organic laws of the United States" according to the U.S. Code, implements these truths. Judge Thomas has indeed called the Constitution "a logical extension of the principles of

⁵⁶ The *Chicago Tribune* editorially praised Chairman Thomas on January 30, 1988 this way: "No excuses, no bellyaching about the other guy, no flabby claim that it's difficult--or impossible, as bureaucrats and elected officials increasingly bleat in sticky situations--to assess blame. Everybody makes mistakes. Too few people in public life own up to them, much less pledge uncompromisingly that they will be corrected. Bless you, Mr. Thomas, for straight talk in an age of waffling."

⁵⁷ *Confirmation Hearings on Federal Appointments*, *supra* note 52, at 269.

the Declaration.⁵⁸ This fact about Judge Thomas' record makes unintelligible AAUW's claim that Judge Thomas believes "that the 'inalienable rights' cited in the Declaration of Independence are a higher authority than the U.S. Constitution."⁵⁹

Judge Thomas' critics appear completely unaware of American history, especially when they attribute these principles to him. For example, the Alliance for Justice states that "Judge Thomas also displays a strong adherence toward 'natural law' theory, which he says stems from a belief in 'the laws of nature and of nature's God.' (Speech to the Pacific Research Institute)."⁶⁰ Similarly, the National Women's Law Center states that "Judge Thomas grounds his constitutional theory in the 'laws of nature and nature's God.'⁶¹ Perhaps the quoted phrase never rang a bell for anyone at either the Alliance or NWLC, but those words come from the Declaration of Independence.

In fact, Judge Thomas is in good company in embracing the American natural rights tradition. Throughout American history, statesmen and judges, liberals and conservatives, have embraced this view.

* In 1987, after the defeat of Judge Robert Bork's nomination to the Supreme Court, Senate Judiciary Committee Chairman Joseph Biden (D-Del.) said that "I have certain inalienable rights because I exist, [not]...because my government confers them on me."⁶²

* Dr. Martin Luther King, Jr., whom Judge Thomas cites more often than any other individual in this regard, said in his 1961 address at Lincoln University that the best expression of the American dream is the "sublime" statement of self-evident truths in the Declaration of Independence.⁶³

* Abraham Lincoln regularly attacked the Supreme Court's decision in *Dred Scott v. Sanford*, which denied citizenship to black Americans, by reference to the inherent equality of all human beings.

⁵⁸ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63, 64 (1989).

⁵⁹ *AAUW Report* at 1.

⁶⁰ *AFJ Report* at 2.

⁶¹ *NWLC Report* at 25, citing Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," in *Assessing the Reagan Years* (ed. D. Boaz) (Washington, D.C.: Cato Institute, 1988), at 400. The proper quote reads: "the laws of nature and of nature's God."

⁶² Quoted in Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,68 (1989).

⁶³ See Thomas, "The Calling of the Higher Law," *Congressional Record*, February 3, 1987, at E339.

* Natural rights thinking was the basis of the shared political philosophy of the Founding Fathers. Both the Declaration of Independence and the Constitution are based firmly on it and, indeed, are inexplicable without it.

* Judge Thomas has cited James Madison, Alexis de Tocqueville, Winston Churchill, and Booker T. Washington as other prominent figures in this long tradition. Attorney Patrick Riley likewise notes that this history of "natural law jurisprudence runs from Cicero...through Bracton, Coke and Blackstone -- some of the greatest names in the law. It is a long, constructive and noble history...In embracing a jurisprudence of natural law, Clarence Thomas puts himself in the best tradition of ancient Rome, of the great jurists, both Catholic and Protestant, and of our Founding Fathers."⁶⁴

Now Judge Thomas' opponents make the astonishing claim that embracing the fundamental principles which served as the principal weapon against slavery, segregation, and discrimination, is reason to **oppose** his nomination! The Leadership Conference on Civil Rights says it is "radical and places him well outside of the judicial mainstream."⁶⁵ The Alliance for Justice says it is "dangerously out of the mainstream."⁶⁶ The National Women's Law Center repeats that "Judge Thomas's theory sets him far outside the mainstream of legal thinking."⁶⁷ The NAACP dismisses it out of hand as "reactionary."⁶⁸ The Women's Legal Defense Fund says it is cause for "serious concern," "alarm," and "considerable discomfort."⁶⁹ They and others claim that Judge Thomas' support for natural rights means he will not adhere to the 14th Amendment.⁷⁰ Americans for Democratic Action claims flatly that, because Judge Thomas embraces this core American tradition, he "will not enforce the U.S. Constitution"⁷¹ and "[o]n this basis alone he is unqualified to serve

⁶⁴ Riley, "Thomas' Nod to Natural Law Is No Crime," *Los Angeles Times*, July 22, 1991. See also Hittinger, "Natural Law and Marshall," *Washington Times*, August 8, 1991, at G3: "Insofar as Judge Thomas has held that there exist certain inalienable rights, including equality before the law, he stands not only in the political and moral mainstream of our polity, but also in the mainstream of our judicial history--one that Justice Marshall himself helped to shape and articulate."

⁶⁵ *LCCR Report* at 2.

⁶⁶ *AFJ Report* at 1.

⁶⁷ *NWLC Report* at 23.

⁶⁸ *NAACP Report* at 1.

⁶⁹ *WLDF Report* at 55,57.

⁷⁰ *NWLC Report* at 13.

⁷¹ *ADA Report* at 9.

as a Justice on the Supreme Court of the United States.⁷² NARAL tries to cast this American tradition as existing only as Catholic Church doctrine since the 13th century.⁷³ People for the American Way claims it "has been widely discredited."⁷⁴

What has happened to the judicial selection process when an interest group receives anything but derision for claiming that a judicial nominee will not enforce the Constitution because he embraces the principles in the Declaration of Independence? The American people have every right to demand that the NAACP brand Martin Luther King as a reactionary for embracing these same principles. Fat chance.

Judge Thomas' opponents, of course, have every right to repudiate the entire American political and legal tradition, reject the Declaration of Independence, and claim that James Madison and the Founding Fathers, Abraham Lincoln, the Abolitionists, and Martin Luther King are "outside the mainstream." But they should have the guts to do so up front. One wonders what stream, main or otherwise, the leftist opposition must be traveling in if it excludes the very principles underlying the American system of law and politics.

The central fallacy in the leftist assault on Judge Thomas is its claim that he will use the American natural rights tradition not as a means to understand the Constitution but as a tool to interpret the Constitution. NARAL claims that belief in natural rights is "central to Judge Thomas'...approach to constitutional interpretation."⁷⁵ The Women's Legal Defense Fund says it is "a theory of jurisprudence to be applied by the Supreme Court."⁷⁶ In characteristically extreme fashion, Americans for Democratic Action claims that "Judge Thomas has been bold in asserting that he will interpret the U.S. Constitution on the basis of natural law."⁷⁷ People for the American Way states that "Mr. Thomas has written and spoken extensively about natural law or higher law as being a necessary part of constitutional interpretation."⁷⁸ The National Women's Law Center likewise refers to "Judge Thomas's writings on 'Natural Law' as the basis for constitutional interpretation."⁷⁹

⁷² *Id.* at 10.

⁷³ *NARAL Report* at 3.

⁷⁴ *PAWAF Report* at 3.

⁷⁵ *NARAL Report* at 2.

⁷⁶ *WLDF Report* at 55.

⁷⁷ *ADA Report* at 9.

⁷⁸ *PAWAF Report* at 3.

⁷⁹ *NWLC Report* at 22.

Anyone who has studied Judge Thomas' record will scratch her head wondering who these folks are talking about. Judge Thomas has discussed the American natural rights tradition as political philosophy, not a blueprint for judicial review. He has gone further to explain the difference:

The best defense of limited government, of the separation of powers, and of the judicial restraint that flows from the commitment to limited government, is the higher law political philosophy of the Founding Fathers....Moreover, without recourse to higher law, we abandon our best defense of judicial review--a judiciary active in defending the Constitution, but judicious in its restraint and moderation. Rather than being a justification of the worst type of judicial activism, higher law is the only alternative to the willfulness of both run-amok majorities and run-amok judges.⁸⁰

To believe that natural rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law.⁸¹

Justice Harlan's reliance on political principles was implicit rather than explicit, as is generally appropriate for Supreme Court opinions.⁸²

One can easily see the consistency in Judge Thomas' judicial philosophy. A judiciary "active in defending the Constitution" will be a hedge against "run-amok majorities" and a judiciary "judicious in its restraint and moderation" will guard against "run-amok judges."

One analyst recently concluded that Judge Thomas' views "have been not only caricatured but turned on their head. Far from being a judicial activist, Thomas has repeatedly criticized the idea that judges should strike down laws based on their personal understanding of natural rights. Far from being bizarre or unpredictable, Thomas's view of natural rights is deeply rooted in constitutional history."⁸³ He points out that the liberal groups opposing Judge Thomas today because he does take the American natural rights tradition seriously also opposed Judge Robert Bork in 1987 because he did not take that tradition seriously.⁸⁴ This writer has also drawn the same distinction outlined above: "But in Thomas's case, fears of judicial activism seem to be unfounded. Like many liberals, Thomas believes in natural rights as a philosophical matter, but unlike many liberals, he

⁸⁰ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,63-64 (1989) (emphasis added).

⁸¹ *Id.* at 66.

⁸² *Id.* at 68.

⁸³ Rosen, "Thomas's Promise," *The New Republic*, September 9, 1991, at 18.

⁸⁴ *Id.*

does not see natural law as an independent source of rights for judges to discover and enforce....Natural law for Thomas, then, is a way of providing 'moral backbone' for rights that are explicitly listed in the Constitution, rather than a license for creating ones that aren't."⁸⁵

The real issue is that Judge Thomas will indeed enforce the U.S. Constitution, but not the leftists' political agenda. They seem to mix those up most of the time.

VI. Unenumerated Rights: Shooting Themselves in the Foot

In complete disregard of Judge Thomas' record, his opponents claim his embrace of the American natural rights tradition describes his judicial philosophy rather than his political philosophy. They claim that he will therefore be an activist, giving meaning to constitutional provisions based on his personal predilections. They say this will be the same "substantive due process" approach the Supreme Court once used but has rightfully abandoned. The Alliance for Justice uses as an example of the approach Judge Thomas will supposedly champion the Court's 1905 decision in *Lochner v. New York*⁸⁶ striking down a law prescribing maximum hours for work in bakeries.⁸⁷ The Leadership Conference on Civil Rights⁸⁸ and others⁸⁹ make this same comparison.

As we have already seen, Judge Thomas does not embrace the American natural rights tradition as a blueprint for judicial review; as such, all the accusations, speculations, and predictions about where this view would take him simply miss the point. That minor hurdle aside, however, the nominee's leftist critics shoot themselves in the jurisprudential foot. They claim he will do what the Supreme Court did in *Lochner*. They say that's bad. Yet the Supreme Court in *Roe v. Wade*⁹⁰ did exactly what it had done in *Lochner*. They say that's good. Justice Potter Stewart acknowledged this fact in his *Roe* concurrence.⁹¹ Moreover, Professor John Hart Ely, whom Judge Thomas' critics frequently cite with approval when discussing the nominee's judicial philosophy,⁹² has written: "The Court

⁸⁵ *Id.* at 20.

⁸⁶ 198 U.S. 45 (1905).

⁸⁷ *AFJ Report* at 2.

⁸⁸ *LCCR Report* at 9.

⁸⁹ See, e.g., *Chemerinsky II* at 11.

⁹⁰ 410 U.S. 113 (1973).

⁹¹ *Id.* at 167-68 (Stewart, J., concurring).

⁹² See, e.g., *Chemerinsky II* at 3-4,7; *NWLC Report* at 23 n.64, 33 n.106.

continues to disavow the philosophy of *Lochner*. Yet as Justice Stewart's concurrence admits, it is impossible candidly to regard *Roe* as the product of anything else."⁹³

Just why the left ventures into this thicket is a mystery. Judge Thomas' record, both on and off the bench, could not be clearer. He is hardly a judicial activist who will simply pour his personal opinions into open-ended constitutional provisions. Yet even if he were, his critics are caught between a rock and a hard place. How can *Lochnering* be bad should he do it but just fine when the Court in *Roe* does it? If Judge Thomas will not do what they predict, they are now simply blowing more smoke. If Judge Thomas will do what they predict, they cannot criticize him without criticizing the foundation for their most prized "privacy" precedents.

VII. I Thought They Said Too Many Rich White Guys?

Another strawman popular with the left has also fallen. Last year, leftist critics including the Alliance for Justice and People for the American Way attacked President Bush for appointing too many rich white males to the federal bench.⁹⁴ Conservatives responded that if the federal judiciary were stacked with liberal activists, the left would not care about race or wealth. The Thomas nomination shows which side was right.

The left claims that the "archetypal Bush judicial nominee is a white man...with a net worth upwards of \$1,000,000."⁹⁵ Clarence Thomas is black and, according to the information he submitted to the Senate Judiciary Committee last year, his net worth was \$91,978.16.⁹⁶ He grew up in segregated Southern poverty. If race and wealth really mattered, the left would cheer a nominee so different from the "archetypal" norm. Their opposition lays bare the fact that this too is a strawman. They want liberal activists. Judge Thomas is neither.

VIII. Whatever Happened to Sensitivity?

On September 14, 1990, during the hearing on the nomination of then-Judge David Souter to replace Supreme Court Justice William Brennan, Senator Paul Simon (D-IL) said to the nominee: "I want you to understand perhaps a little more than you now do some of

⁹³ Ely, "The Wages of Crying Wolf: A Comment on *Roe v. Wade*," 82 *Yale Law Journal* 920,939 (1973).

⁹⁴ See, e.g., Moran, "In His Own Image," *Legal Times*, December 3, 1990, at 1.

⁹⁵ *Id.* at 14.

⁹⁶ *Confirmation Hearings on Federal Appointments*, *supra* note 52, at 243.

the aches of America." Doing so, Simon said, would make someone "a better United States Supreme Court justice." Senator Simon recommended spending some time in "the West Side of Chicago, maybe an Indian reservation." He quoted Justice Benjamin Cardozo to the effect that a justice gets an important component of the knowledge he needs "from experience and reflection; in brief, from life itself." On September 17, Senator Simon again emphasized the need "to understand a little more the desperation of some in this country."

Clarence Thomas spent more than 15 years in poverty. He lived in tenements with no plumbing. His world was entirely segregated by race; he entered the first grade the year the Supreme Court outlawed segregation in education but had to endure the practice for years thereafter. Not until college did he interact regularly with white people. Nearly half a lifetime in segregated poverty certainly trumps a few days on an Indian reservation. Where are the sensitivity police today? If sensitivity and compassion are really what they mean, they should be out in front cheering for this nominee. If sensitivity and compassion are merely another smokescreen for the drive toward liberal activism, they will oppose him.

Judge Thomas told the Senate Judiciary Committee: "The reason I became a lawyer was to make sure that minorities, individuals who did not have access to this society, gained access. Now, I may differ with others as to how best to do that, but the objective has always been to include those who have been excluded." Others who have known Judge Thomas know that he retains the sensitivity and compassion born from life itself:

* William Robinson, dean of the District of Columbia School of Law, said in an interview that "Clarence Thomas has felt the lash of injustice. He's old enough to have experienced the pre-1964 apartheid system in this country."

* James Clyburn, a black member of the South Carolina Human Affairs Commission, says the nominee "has a great deal of sensitivity for his background and upbringing....He said he understood what it's like to be poor."⁹⁷

* Senator John Danforth (R-MO) says that Clarence Thomas is "a first-rate human being" and "a compassionate kind of conservative, not rigid or ideological in his views. His every motive is that he empathizes with ordinary people; he's one of them."

* The late Althea Simmons, long-time director of the NAACP's Washington bureau, met with Clarence Thomas at the time of his first judicial nomination and concluded that "he had not forgotten his roots or Black folk....I gained a new meaning of Clarence Thomas and feel that he will help us. He's a very dedicated man."⁹⁸

⁹⁷ Quoted in Wiggins, "Friends in South Carolina Say Thomas Is His Own Man," *The State*, July 5, 1991, at 14A.

⁹⁸ "Clarence Thomas Rises From Poverty to Supreme Court Nominee," *Jet*, July 22, 1991, at 9.

* Margaret Bush Wilson chaired the NAACP from 1975 to 1984. She has known Clarence Thomas for nearly two decades. She wrote recently that "Clarence Thomas knew how to listen as well as talk....Even when we disagree, I have found him to be a sensitive and compassionate person trying to do what is right, working to make the world a better place....On a personal level, he knows the struggle and hardship blacks and the impoverished of every race grapple with daily....I asked him to promise that if he were ever in a position to reach out and help others that he would do it, just as some had done for me and as I had done for him. He promised he would, and Judge Thomas has been keeping his word ever since, looking out for the vulnerable and victimized on the job, in the community and at the court. I know that as a Supreme Court justice Clarence Thomas will continue to defend and protect the rights of the needy."⁹⁹

* Allen Moore, a long-time policy advisor to Senator Danforth and a friend of Judge Thomas' for more than a decade, wrote: "The Clarence Thomas I know is a caring, decent, honest, bright, good-humored, modest and thoughtful father, husband and public servant who has already come farther in 43 years than most of us will in a lifetime....Thomas' professional and personal life, not to mention his conscience, wouldn't permit him to forget his roots if he wanted to. Neither would the world around him."¹⁰⁰

* Constance Newman, director of the U.S. Office of Personnel Management, wrote that Judge Thomas is "a person who will be fair and sensitive to the struggles of all Americans....He has a special understanding of those poor striving for political and economic empowerment."¹⁰¹

IX. Confirmation Conversion: The Left Calls for Judicial Restraint and Moderation

The left's sudden discovery of judicial restraint and its call for "moderation"¹⁰² fool no one. They have never believed in these principles and only appear to embrace them now in the hope of achieving the singular objective of defeating Judge Thomas' nomination. Their opportunism and hypocrisy just won't fly.

The Alliance for Justice takes the transparently simplistic view, at least for the moment, that being willing to "overturn Supreme Court precedent on Constitutional issues" automatically makes one an "activist."¹⁰³ The American people will wait in vain for the

⁹⁹ Wilson, "The NAACP Is Wrong on Thomas," *Washington Post*, August 16, 1991, at A15.

¹⁰⁰ Moore, "The Clarence Thomas I Know," *Washington Post*, July 16, 1991, at A19.

¹⁰¹ Newman, "Talking With Thomas for 10 Years," *Washington Post*, July 17, 1991, at A23.

¹⁰² *AFJ Report* at 5.

¹⁰³ *Id.* at 2.

Alliance to denounce the Warren Court and its upsetting of the precedential applear. This double standard is, of course, explained by which precedents the Alliance likes and which ones it doesn't.

But the Alliance is more than hypocritical; it is also pathetically uninformed. The Supreme Court itself, through both its liberal and conservative members, has repeatedly held that the doctrine of *stare decisis*, or respecting prior decisions, is *least* binding in constitutional cases. Justice Louis Brandeis explained more than a half century ago that "in cases involving the Federal Constitution where correction through legislative action is practically impossible, this Court has often overruled its prior decisions. The Court bows to the lessons of experience and the force of better reasoning."¹⁰⁴ Justice Brandeis cited 28 decisions by which the Court changed its own prior interpretations of the Constitution. Writing 35 years later, Professor Albert Blaustein identified 60 constitutional law reversals.¹⁰⁵ The Court overturned nearly 50 constitutional decisions between 1960 and 1979.¹⁰⁶ The Library of Congress in 1987 identified 184 Supreme Court reversals of its prior rulings.¹⁰⁷

The appendix to the annotated version of the Constitution published by CRS shows that the Court overruled more than 260 of its prior decisions of all types, in whole or in part, through 1988. While Eleanor Holmes Norton, Judge Thomas' predecessor at EEOC, has said that the Court had never overruled more than the five decisions it did last term, as a law professor she should know better. Analyst Terry Eastland points out that this tally has been exceeded many times before the Rehnquist Court began - for example, in 1964 (11 overruled), 1967 (7 overruled), 1968 (6 overruled), 1970 (6 overruled), 1976 (9 overruled), 1978 (11 overruled).¹⁰⁸

Justice Hugo Black wrote that "[a] constitutional interpretation that is wrong should not stand."¹⁰⁹ Justice Felix Frankfurter stated that "[t]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."¹¹⁰ Even

¹⁰⁴ *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393,410 (1932) (Brandeis, J., dissenting).

¹⁰⁵ Blaustein & Field, "Overruling' Opinions in the Supreme Court," *57 Michigan Law Review* 151,167,184-94 (1958).

¹⁰⁶ Maltz, "Some Thoughts on the Death of Stare Decisis in Constitutional Law," *1980 Wisconsin Law Review* 467,494-96.

¹⁰⁷ Congressional Research Service, *The Constitution of the United States, Analysis and Interpretation* (1987), at 2115-27 and supplement.

¹⁰⁸ Eastland, "260 Precedents That Bit the Dust," *Wall Street Journal*, July 10, 1991, at A12.

¹⁰⁹ *Connecticut General Co. v. Johnson*, 303 U.S. 77,85 (1938) (Black, J., dissenting).

¹¹⁰ *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466,491-92 (1939) (Frankfurter, J., concurring).

Justice William Douglas, author of the cherished *Griswold v. Connecticut*¹¹¹ decision that the left wants so badly to preserve, said that the doctrine of *stare decisis* is "tenuous" where a prior decision may conflict with the Constitution itself:

*A judge looking at a constitutional decision may have compulsions to reverse past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put upon it.*¹¹²

Apparently, an "activist" is one willing to apply this long-standing view only to precedents the left would rather keep on the books. Gordon Crovitz described the left's new "stare-decisis litmus test" this way: "[C]onservative judges are supposed to follow precedents, no matter how unprincipled the earlier rulings, while liberal judges are free to ignore even the most firmly rooted constitutional precedents."¹¹³

The Alliance for Justice ends its report with an unprecedented call for "moderation." It wants a Court that reflects "the rich texture and complexity of American society itself."¹¹⁴ It defies the imagination, not to mention reality, how any group of nine individuals can reflect the "texture" (whatever that means) of any society. That minor problem aside, the Alliance's smokescreen could not be more obvious. They cannot simply demand "nine like me" up front so they cast it in terms of an institution reflecting "the diversity of viewpoints representative of American society."¹¹⁵

The suggestion that the Supreme Court be a representative institution is hardly moderate; it is radical. The Founding Fathers created a governmental structure with three branches, two of which would be political and reflect textured diversity, and the third which would be insulated from politics. It would be guided by law, not passion or public opinion. It would protect the rights even of minorities against majorities - that is, it would buck the political tide when the law required it. A "representative" institution is a majoritarian institution and cannot guarantee protection of individual rights.

Judge Thomas himself provided the best response to this radical idea. He wrote that "the founders purposely insulated the courts from popular pressures, on the assumption that they should not make policy decisions. The judiciary was protected to ensure justice for individuals. This required insulating judges from other groups or interests in society, even

¹¹¹ 381 U.S. 479 (1965).

¹¹² Douglas, "Stare Decisis," 49 *Columbia Law Review* 735,736 (1949).

¹¹³ Crovitz, "Reverse a Precedent, Protect the Constitution," *Wall Street Journal*, July 10, 1991, at A13.

¹¹⁴ *AFJ Report* at 5.

¹¹⁵ *Id.* at 6.

the interests of the majority. However, it was unthinkable that courts would take the side of particular groups in the policymaking arena....By turning Supreme Court nominations into power struggles, they transform the Court into another majoritarian institution. How, then, can it protect the rights of politically unpopular minorities?"¹¹⁶

Columnist Charles Krauthammer recently wrote:

*And what exactly is Thomas's offense? Whether a judge calls what he believes natural law or something else, every justice brings a certain intellectual structure and understanding of rights to his interpretation of the Constitution. Thomas is simply more ingenuous than most: He spells out what it is he appeals to--the classical tradition of natural law and the explicit words of the Declaration of Independence. The nation is far safer entrusting its future to such a justice than to the kind that pulls new rights out of a hat and declares them penumbral emanations.*¹¹⁷

X. Who Wrote *Griswold* After All?

Judge Thomas' opponents ignore his lengthy record on many substantive issues and try to create one that simply does not exist on others. Americans for Democratic Action, for example, makes a claim that will no doubt surprise both Judge Thomas and anyone who has actually read his record: "Judge Thomas has publicly stated his position on the issue of reproductive freedom."¹¹⁸ NARAL claims to have uncovered "strong evidence" that is "overwhelming" about exactly what he would do in this area on the Supreme Court.¹¹⁹ AAUW states flatly that Judge Thomas "has said that he believes the *Griswold* decision...was wrongly decided."¹²⁰ They offer neither source nor citation for this notion and none exists; he has never said any such thing.

These critics claim that Judge Thomas has criticized the Supreme Court's decision in *Griswold v. Connecticut*.¹²¹ Professor Chemerinsky, in contrast, admits that the nominee

¹¹⁶ Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," in *Assessing the Reagan Years* (ed. D. Boaz) (Washington, D.C.: Cato Institute, 1988), at 394-95.

¹¹⁷ Krauthammer, "Look Who's Discovered Judicial Restraint," *Washington Post*, July 19, 1991.

¹¹⁸ *ADA Report* at 3.

¹¹⁹ *NARAL Report* at 2.

¹²⁰ *AAUW Report* at 1.

¹²¹ 381 U.S. 479 (1965).

"has not expressly discussed abortion."¹²² This confusion is the inevitable result of attempting to create something that just is not there.

The only way they can build their case is to take Judge Thomas' skepticism about "judicial activist use of the Ninth Amendment"¹²³ and link it to the completely false idea that *Griswold* is based on the Ninth Amendment. AAUW says that *Griswold* "was based on the Ninth Amendment."¹²⁴ The National Women's Law Center says that the Court held in *Griswold* that the "right to privacy" is found in the "penumbras" of the Bill of Rights and is "protected by the Ninth Amendment."¹²⁵ One will read the Court's opinion in vain looking for this "protection" idea.

The fact remains that the *Griswold* decision is not based on the Ninth Amendment. Neither is *Roe v. Wade*, which is based on the due process clause of the Fourteenth Amendment. In fact, the Court explicitly rejected the lower court's conclusion in that case that the "right to privacy" was based on the Ninth Amendment.¹²⁶ The Supreme Court has never held that the Ninth Amendment is a open-ended repository of substantive constitutional rights which judges are free to discover, announce, and use to invalidate undesirable legislation. The left perhaps wishes that were the case, but it is not.

XI. Grasping at Straws: Separation of Church and State?

The Women's Legal Defense Fund argues that "critical questions about the separation of church and state" would arise if a Supreme Court justice were motivated at all by personal religious beliefs.¹²⁷ Likewise, AAUW states that "Thomas' statements about 'natural law' raise serious doubts about his commitment to maintain separation of church and state."¹²⁸ The First Amendment to the U.S. Constitution reads in part: "Congress shall make no law respecting an establishment of religion." It boggles the mind how the subjective motivation of an individual member of the judicial branch can somehow violate a constitutional provision directed at the results of actions by the legislative branch!

¹²² *Chemerinsky I* at 5.

¹²³ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,63 n.2 (1989).

¹²⁴ *AAUW Report* at 1.

¹²⁵ *NWLC Report* at 38.

¹²⁶ *Roe*, 410 U.S. at 153.

¹²⁷ *WLDF Report* at 55 n.113.

¹²⁸ *AAUW Report* at 2.

Attorney Thurgood Marshall argued before the Supreme Court in *Brown v. Board of Education* that the drive to achieve suffrage for women "was based fundamentally on Judeo-Christian ethic"¹²⁹ and constituted "an ethico-moral-religious-natural rights argument."¹³⁰ The American people will wait in vain for the Women's Legal Defense Fund to argue that the suffrage movement raises "critical questions about the separation of church and state."

This argument has been rejected by both liberals and conservatives. Professor Laurence Tribe once argued that laws against abortion were unconstitutional because legislators often voted for them out of religious conviction. He said that a constitutional problem exists "whenever the views of organized religious groups have come to play a pervasive role in an entire subject's legislative consideration."¹³¹ Even he later recanted this view: "But, on reflection, that view appears to give too little weight to the value of allowing religious groups freely to express their convictions in the political process."¹³² Justice Antonin Scalia wrote in 1987 that "political activism by the religiously motivated is part of our heritage."¹³³ This view applies with equal force to the personal beliefs or motivations of judges.

This argument is really no different than the comments by Virginia Governor Douglas Wilder,¹³⁴ NOW Massachusetts president Ellen Convisser,¹³⁵ and others suggesting that Judge Thomas' nomination should be more carefully scrutinized because he supposedly was raised a Catholic. This is, at its root, religious bigotry and anyone who fosters it should be repudiated outright. The Founding Fathers were correct when they prohibited, in Article VI of the Constitution, a religious test for public office. The Women's Legal Defense Fund is scraping the bottom of the tactical barrel by attempting to impose one.

Judge Thomas' opponents have refined their approach, to be sure, but continue trying to exploit bigotry in a number of ways. NARAL tries to suggest that the American natural rights tradition actually has existed nowhere but in Catholic Church doctrine for more than 600 years!¹³⁶ Professor Chemerinsky points out that "Thomas' view of natural

¹²⁹ Brief for Appellants, *supra* note 42, at 204.

¹³⁰ *Id.* at 205.

¹³¹ Tribe, "The Supreme Court, 1972 Term--Foreword: Toward a Model of Roles in the Due Process of Life and Law," 87 *Harvard Law Review* 1,22,23 (1973).

¹³² L. Tribe, *Constitutional Law* (Mineola, NY: The Foundation Press, 2d ed. 1988), at 1350.

¹³³ *Edwards v. Aguillard*, 107 S.Ct. 2573,2594 (1987) (Scalia, J., dissenting).

¹³⁴ "Gov. Wilder Is Questioning Role of Thomas's Religion," *Wall Street Journal*, July 3, 1991.

¹³⁵ Kennedy, "Liberals Troubled by Nomination," *Boston Herald*, July 2, 1991, at 2.

¹³⁶ *NARAL Report* at 3.

law is openly religious."¹³⁷ The National Women's Law Center likewise states that "Thomas's views of natural law include a strong religious emphasis."¹³⁸ The Women's Legal Defense Fund is more heavy-handed. Compare their claim and the truth:

WLDF Report, p.55 n.112

"Judge Thomas, paraphrasing St. Thomas Aquinas, has further explained that 'an unjust law is a human law that is not rooted in eternal law and natural law.'"

The Center Magazine, November/December 1987, at 21.

The Center Magazine, Nov./Dec. 1987, p.21

"In his 1963 book, *Why We Can't Wait*, Dr. King, citing St. Thomas Aquinas, notes that 'an unjust law is a human law that is not rooted in eternal law and natural law.'"

Judge Thomas provided the same reference to Dr. King's reliance on Aquinas in a 1987 speech at the Department of Justice commemorating the Martin Luther King, Jr. holiday.¹³⁹ Yet the NAACP's secret report to its board insists that "[t]he natural law of which Clarence Thomas speaks has...a great deal to do with the sectarian and highly theological writings of medieval scholastic philosophers like Thomas Aquinas."¹⁴⁰

Goodness, the Rev. Martin Luther King sounds pretty motivated by religious values. Perhaps his leadership during the civil rights movement raises "critical questions about the separation of church and state." One wonders why the NAACP has not similarly dismissed Dr. King as "sectarian and highly theological."

XII. Do They Want a Stealth After All?

President Bush nominated someone who has written and spoken extensively on a wide array of issues. Because the left knows they cannot come forward and say they oppose Judge Thomas simply because of the substance of his views, they attack the nominee's attitude in expressing his opinions. The AFL-CIO charges him with "intemperance" for not affirmatively recognizing "the legitimacy of competing ideas."¹⁴¹ Maybe he disagrees with those ideas! Judge Thomas' opponents, including the AFL-CIO, certainly devote little ink to recognizing the legitimacy of his ideas. Does that make them similarly intemperate?

¹³⁷ *Chemerinsky II* at 2.

¹³⁸ *NWLC Report* at 25.

¹³⁹ "The Calling of the Higher Law," *Congressional Record*, February 3, 1987, at E339.

¹⁴⁰ Quoted in "NAACP: Doubting Thomas' Commitment," *Legal Times*, August 5, 1991, at 17.

¹⁴¹ *AFL-CIO Report* at 2.

The Alliance for Justice claims that Judge Thomas' supposed "animosity to views different from his own" is evidence of "lack of compassion."¹⁴² Are they kidding? Committee chairman Joseph Biden offered the right response back in 1977, during the hearing on the nomination of former U.S. Representative Abner Mikva to be a U.S. Circuit Judge:

*I frankly do not know how we could approve any Members of the U.S. Senate, U.S. Congress, a member of any legislative body, or anyone who ever served in a policy position, who has taken a position on any issue, if the rationale for disqualifying you is that you have taken strong positions. That is certainly not proof of your inability to be objective and avoid being a policymaker on the bench. If we take that attitude, we fundamentally change the basis on which we consider the appointment of persons to the bench.*¹⁴³

XIII. Additional Specific Responses

A. Response to National Women's Law Center

The National Women's Law Center first tries its best to paint the so-called "Rehnquist Court" as activist. But the Center can't seem to get its facts straight. It claims that in *Webster v. Reproductive Health Services*,¹⁴⁴ "Chief Justice Rehnquist wrote for five justices in upholding the preamble."¹⁴⁵ In *Webster*, the Court expressly refused to rule on the constitutionality of the statute's preamble.¹⁴⁶

The Center next claims that Judge Thomas "cites both *Roe* and *Griswold v. Connecticut*...as examples of activist judicial use of the Ninth Amendment in violation of higher law principles."¹⁴⁷ This is false for two reasons. First, the text which the Center cites proves them wrong. In a speech to the Federalist Society, Judge Thomas said that the "expression of unenumerated rights today makes conservatives nervous, while at the same

¹⁴² *AFJ Report* at 2-3.

¹⁴³ *Nomination of Abner Mikva to be Circuit Judge, United States Court of Appeals for the District of Columbia Circuit*, 95th Cong., 1st Sess. (1977), at 402-03.

¹⁴⁴ 109 S.Ct. 3040 (1989).

¹⁴⁵ *NWLC Report* at 40.

¹⁴⁶ *Webster*, 109 S.Ct. at 3050.

¹⁴⁷ *NWLC Report* at 45.

time gladdening the hearts of liberals."¹⁴⁸ This is, of course, a factually correct statement. In a footnote, he offered an example: "The current case provoking the most protest from conservatives is *Roe v. Wade*, 410 U.S. 113 (1979), in which the Supreme Court found a woman's decision to end her pregnancy to be part of her unenumerated right to privacy established by *Griswold v. Connecticut*, 381 U.S. 479 (1965)."¹⁴⁹ In a subsequent paragraph in that footnote, he referred to another of his writings as discussing his "misgivings about activist judicial use of the Ninth Amendment."¹⁵⁰ No one who reads this footnote can conclude that Judge Thomas cited either *Roe* or *Griswold* as examples of judicial activist use of the Ninth Amendment.

Second, neither *Roe* nor *Griswold* are based on the Ninth Amendment. *Griswold* is based on the notion that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."¹⁵¹ It was Justice Goldberg's concurrence that argued for grounding the decision in the Ninth Amendment. The Court in *Roe* specifically held that its decision was based on "the Fourteenth Amendment's concept of personal liberty" and not on the Ninth Amendment, as the district court in that case had concluded.¹⁵²

The Center next contends that, in Judge Thomas' view, "allowing, restricting, or...requiring abortions are all matters for a legislature to decide."¹⁵³ It provides the following as the source for this notion: "Thomas, Notes on Original Intent, unpublished paper, at 2 (emphasis in original)."¹⁵⁴ The misquoted fragment does appear, though without any emphasis, in the cited paper, which was devoted largely to a critical evaluation of the "original intent" approach to constitutional interpretation. Here it is in context:

Recall Judge Bork's problems before the Judiciary Committee, when he tried to explain his views about privacy and the proper interpretation of the Ninth Amendment. His reading of the Amendment appeared to be a legalistic means or eliminating what most Americans believe they hold: a right of privacy.

¹⁴⁸ Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 63,63 (1989).

¹⁴⁹ *Id.* at 63 n.2. Technically, Judge Thomas was incorrect on one point. *Griswold* was based on the penumbral emanations of the Bill of Rights and *Roe* was based on the due process clause of the Fourteenth Amendment.

¹⁵⁰ *Id.*

¹⁵¹ *Griswold*, 381 U.S. at 484.

¹⁵² *Roe*, 410 U.S. at 153.

¹⁵³ *NWLC Report* at 46.

¹⁵⁴ *Id.* at 46 n.153.

Restricting birth control devices or information, and allowing, restricting, or (as Senator Kennedy put it) requiring abortions are all matters for a legislature to decide; judges should refrain from "imposing their values" on public policy.

Surprise! In context, the Center's fragment of choice is not an expression of Judge Thomas' view at all, but what appeared to some in 1987 to be the implication of Judge Robert Bork's view of the Ninth Amendment. Oops! Wrong judge.

While the Center claims he is the author of this unpublished paper, Judge Thomas did not write it. While he was head of EEOC, Judge Thomas regularly had his staff draft memoranda and make arguments to explore various legal issues. The paper on original intent which the Center, and even the *Washington Post*,¹⁵⁵ claims he wrote was in fact authored by a member of his staff.

Fourth, the Center insists that "[a]ccording to Judge Thomas, the Constitution should be interpreted by examining the Declaration of Independence to discern the 'original intent' of the Framers."¹⁵⁶ The simple fact is that Judge Thomas has never said any such thing, and the Center provides no source for this notion. This report has already discussed how Judge Thomas has embraced the American natural rights tradition as a matter of political philosophy, not as a tool for judicial review. Indeed, the connection the Center's attempts to draw between "natural law" (a phrase Judge Thomas has rarely used) and "original intent" would probably confuse other jurists who have embraced the latter. Judge Bork, perhaps the most widely known proponent of interpretivist jurisprudence, has written negatively about reliance on natural law in constitutional interpretation.¹⁵⁷ During his September 1990 nomination hearing, Justice David Souter openly embraced the need to determine the meaning originally given a legal document by its drafters without ever mentioning natural law principles. This configuration remains a figment of the Center's imagination.

Disregarding the facts, the Center claims that the EEOC during Chairman Thomas' tenure inadequately handled individual discrimination cases.¹⁵⁸ It cites a General Accounting Office report claiming that between 41% and 82% of the discrimination charges closed by EEOC offices had not been fully investigated.¹⁵⁹ Even the untrained observer

¹⁵⁵ Marcus, "How Thomas, Conservatives Are at Odds," *Washington Post*, August 14, 1991, at A6.

¹⁵⁶ *NWLC Report* at 13.

¹⁵⁷ R. Bork, *The Tempting of America: The Political Seduction of the Law* (New York: The Free Press, 1990), at 66,209-10.

¹⁵⁸ *NWLC Report* at 71.

¹⁵⁹ *Id.* at 72 n.240.

should question why the GAO's conclusion appears to have a 100% margin of error. This is because it was based on just 3.28% of the cases investigated and closed during just three months in early 1987 and focused on only six of 50 EEOC field offices.¹⁶⁰

B. Response to AFL-CIO

The AFL-CIO makes a charge that, like so many others, flies directly in the face of Judge Thomas' record. The union's report states: "Judge Thomas has aligned himself with the theorists who not only accept the harshness and inequality of the unfettered market, but claim that such markets provide the answer to every social problem and that mute acceptance of their harshness and inequality is the very essence of human liberty."¹⁶¹

This is what Judge Thomas has actually said: "Surely the free market is the best means for all Americans, in particular those who have faced legal discrimination, to acquire wealth. Yet the marketplace guaranteed neither justice nor truth. After all, slaves or drugs can be bought and sold. The defense of equal opportunity to compete in a free market is a moral one that presupposed the Declaration....In striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, of rights, or else it becomes part of the problem instead of part of the solution."¹⁶²

Pursuing this theme of fundamental rights providing the need to temper the excesses of the unfettered marketplace, Judge Thomas elsewhere has criticized libertarians who would go too far in unshackling that marketplace.¹⁶³

¹⁶⁰ Chairman Thomas repeatedly pointed out the basic flaws in the GAO report's methodology and also its refusal to compare the agency's performance before and after a series of fundamental substantive and procedural changes in its operations. See, e.g., Thomas, "EEOC Counters the GAO," *Miami News Weekender*, November 19, 1988; Thomas "EEOC Responds," *St. Petersburg Times*, November 17, 1988; Thomas, "Biased' Job Report," *Detroit News*, November 27, 1988; Thomas, "Against Discrimination," *St. Louis Post-Dispatch*, November 19, 1988; Thomas, "EEOC Criticism Based On a Misleading Report," *Denver Post*, November 20, 1988; Thomas, "A Misleading Report," *Los Angeles Daily Journal*, December 6, 1988; Thomas, "EEOC Chief Defends Agency," *Miami Times*, December 22, 1988; Thomas, "EEOC's Work Defended," *Milwaukee Journal*, December 23, 1988.

¹⁶¹ *AFL-CIO Report* at 2.

¹⁶² Thomas, "What the Declaration Offers Conservatives," *Winston-Salem Journal*, April 18, 1988, at 11.

¹⁶³ See, e.g., Thomas, "A Second Emancipation Proclamation," *Policy Review*, Summer 1988.

C. Response to Americans for Democratic Action

On July 12, 1991, the *Dallas Times Herald* reported that Judge Thomas had praised Nation of Islam leader Louis Farrakhan in two 1983 speeches.¹⁶⁴ Given Farrakhan's reputation for bigotry, the left tries casting Judge Thomas the same way. Americans for Democratic Action states that "in 1983, Thomas referred to Louis Farrakhan 'as a man I have admired for more than a decade.'"165 That tactic has already flopped. In 1983,¹⁶⁶ Judge Thomas knew only about Farrakhan's emphasis on black self-help. On July 12, 1991, Judge Thomas flatly repudiated Farrakhan: "I am and have always been unalterably and adamantly opposed to antisemitism and bigotry of any kind, including by Louis Farrakhan. I repudiate the antisemitism of Louis Farrakhan or anyone else."¹⁶⁷ In an interview with *Catholic Twin Circle* magazine in early 1989, Judge Thomas was asked whether hate groups "such as the skinheads...represent a growing trend of racism?" He responded: "Of course, you never want to have hate groups in your society--whether it's Farrakhan or the skinheads."¹⁶⁸

D. Response to Professor Chemerinsky

Professor Chemerinsky offers perhaps the most outrageous accusation in his July 17 memorandum to the ACLU of Southern California board. He asserts, in the ambiguous manner characteristic of those who have absolutely no evidence to back them up, that "Thomas appears to have intentionally omitted his most controversial article from the listing of his publications submitted to the Senate at the time of his appointment to the D.C. Circuit."¹⁶⁹ Because Judge Thomas did list many other publications, the professor says, "there is an inference that this chapter was intentionally omitted because of its controversial content."¹⁷⁰

¹⁶⁴ Arvidson, "Speeches of Court Nominee Cite Admiration for Farrakhan," *Dallas Times Herald*, July 12, 1991, at A-1.

¹⁶⁵ *ADA Report* at 2.

¹⁶⁶ Marcus, "Nominee Thomas Distances Himself From Farrakhan," *Washington Post*, July 13, 1991, at A7: "Thomas's positive reference to Farrakhan came before the Nation of Islam leader attracted national publicity the next year during the presidential campaign of Jesse L. Jackson. Jackson refused to repudiate Farrakhan."

¹⁶⁷ Quoted *id.*

¹⁶⁸ Reprinted in *Catholic Twin Circle*, July 28, 1991, at 10.

¹⁶⁹ *Chemerinsky I* at 11.

¹⁷⁰ *Id.* at 12.

Whether that article is controversial is a matter of opinion, but Professor Chemerinsky's opinion that it is does not then question Judge Thomas' candor. Absolutely no evidence exists of any intentional omission. None. Period. Judge Thomas did submit the article in question in its original speech form, containing all the supposedly controversial material, to the Senate Judiciary Committee.

XIV. Conclusion

The left has pulled out the stops to defeat Judge Thomas' nomination to the Supreme Court. This report examines the results of their efforts. They must ignore entirely the most relevant part of the nominee's record and completely distort the rest just to be in the ballpark. But when all the smoke and mirrors are removed, what remains is a fully qualified individual whose judicial philosophy is restrained and with whom some leftist fringe groups differ on some matters of substantive policy.

Nothing has happened since the Senate voted nearly unanimously to approve Judge Thomas' appointment to the federal appellate bench to make the result of this current process any different. Indeed, what has happened is the judicial record the left refuses to examine. Judge Thomas is more qualified to sit on the Supreme Court in 1991 than Chairman Thomas was to sit on the U.S. Court of Appeals in 1990.

**Organizations Supporting Clarence Thomas'
Nomination to the Supreme Court**
(partial list, 9/19/91)

Accuracy in Academia
African American Freedom Alliance
Agudath Israel of America
Alabama Family Advocates
All Indian Pueblo Council
American Association of Black Women Entrepreneurs
American Association of Christian Schools
American Conservative Union
American Family Association
American Indian Alliance
American Road and Transportation Builders Association
Americans for a Balanced Budget
Americans for Clarence Thomas
Americans for Tax Reform
Asian American Fund
Asian American Voters Coalition
Asian Pacific American Chamber of Commerce
Asian Pacific American Heritage Council
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Association of Christian Schools International
Association of Retired Americans
Catholic Golden Age
Christian Advocates Serving Evangelism
Christian Coalition
Christian Methodist Episcopal Church
Citizens Against Government Waste
Citizens Committee to Confirm Clarence Thomas
Citizens for a Sound Economy
Citizens for Educational Freedom
Coalitions for America
College Republican National Committee
Compton, California Branch of NAACP (unanimous 32-0 vote)
Concerned Citizens of Florida
Concerned Women for America
Congress of Racial Equality
Conservative Campaign Fund
Conservative Caucus
Conservative Victory Committee
Cook County (Ill.) Republican Ethnic Minority Advisory Committee
Council of 100
Cuban American National Foundation
D.C. Black Police Caucus
Eagle Forum

Family Life Ministries
Family Research Council
Federal Investigators Association
Fraternal Order of Police
Freedom Alliance
Hispanic American Builders Association
Hispanic Attorneys for Judge Thomas
Heartland Coalition for the Confirmation of Judge Clarence Thomas
Improved, Benevolent and Protective Order of Elks of the World
Indian American Forum for Political Education
International Association of Chiefs of Police
International Church of the Foursquare Gospel
International Mass Retail Association, Inc.
International Narcotics Enforcement Officers Association, Inc.
Knights of Columbus
Landmark Center for Civil Rights
Liberty County (Georgia) Branch of NAACP
Lincoln Legal Foundation
Michigan Family Forum
National Association of Black Women Attorneys
National Association of Evangelicals
National Association of Wholesaler-Distributors
National Association of Resident Management Corporations
National Association of Truck Stop Operators
National Black Chamber of Commerce
National Black Nurses' Association
National Black Republican Council
National Catholic Education Association
National Center for Neighborhood Enterprise
National Center for Public Policy Research
National Coalition for Self-Reliance
National Council of Young Israel
National Deputy Sheriffs Association
National District Attorneys Association
National Family Foundation
National Family Institute
National Family Legal Defense Foundation
National Federation of Independent Business
National Jewish Coalition
National Republican Heritage Groups Council
National Sheriffs Association
National Small Business United
National Tax Limitation Committee
National Troopers Coalition
Orthodox-Hasidic Jewish Community
Pennsylvania Parents Commission
Pennsylvanians vs. Pornography
Polish American Congress
Religious Roundtable

Republican Black Caucus
 Republican National Lawyers Association
 Republican National Hispanic Assembly
 Rutherford Institute
 Save America's Youth
 Save Our Schools
 Seniors Coalition
 Students for America
 Teenage Republicans
 Traditional Values Coalition
 United Conservatives of America
 United Families of America
 United Seniors
 U.S. Business and Industrial Council
 U.S. Chamber of Commerce
 U.S. Hispanic Chamber of Commerce
 U.S.-Mexico Foundation
 Victims' Assistance Legal Organization
 Washington Legal Foundation
 Washington Policy Group
 Women for Judge Thomas
 Young Americans for Freedom
 Zeta Phi Beta Sorority

College and University Presidents Supporting Thomas

Dr. Julius Becton - Prairie View A & M University, Prairie View, Texas
 Dr. Oswald Bronson - Bethune Cookman College, Daytona Beach, Florida
 Dr. Hazo Carter - West Virginia State College, Institute, West Virginia
 Dr. Leonard Dawson - Voorhees College, Denmark, South Carolina
 Dr. Norman Francis - Xavier University, New Orleans, Louisiana
 Dr. William Harvey - Hampton University, Hampton, Virginia
 Dr. John Henderson - Wilberforce University, Wilberforce, Ohio
 Dr. Ernest Holloway - Langston University, Langston, Oklahoma
 Dr. William Hytche - University of Maryland (Eastern Shore), Princess Anne, MD
 Dr. Jimmy Jenkins - Elizabeth City State University, Elizabeth City, North Carolina
 Dr. Alan Keyes - Alabama A & M University, Normal, Alabama
 Dr. James Lyons - Bowie State Univ., Bowie, Maryland
 Dr. McKinley Martin - Coahoma Community College, Clarksdale, Massachusetts
 Dr. Wesley C. McClure - Virginia State Univ., Petersburg, Virginia
 Dr. Joseph McMillan - Huston-Tillotson College, Austin, Texas
 Dr. Warren Morgan - Paul Quinn College, Waco, Texas
 Dr. Henry Ponder - Fisk Univ. Nashville, Tennessee
 Dr. Wendell Rayburn - Lincoln Univ. Jefferson City, Missouri
 Dr. Talbert O. Shaw - Shaw Univ. Raleigh, North Carolina
 Dr. Niara Sudarkasa - Lincoln Univ. Lincoln, Pennsylvania
 Dr. Arthur E. Thomas - Central State Univ. Frankfort, Kentucky
 Dr. John T. Wolfe - Kentucky State Univ., Frankfort, Kentucky
 Dr. Cordell Wynn - Stillman College, Tuscaloosa, Alabama

LAWYERS FOR A DEMOCRATIC ALTERNATIVE

September 16, 1991

Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

For the past week, we have looked on as the Judiciary Committee has begun to grapple with the nomination of Clarence Thomas to serve as an Associate Justice of the United States Supreme Court. If past hearings are any guide, the Committee will be hearing in the next week from the proponents and opponents of Judge Thomas. There will be calls for speedy confirmation of an "outstanding nominee," for "continued scrutiny" of the nominee's commitment to civil rights, privacy rights, and gender equality, and, no doubt, for outright rejection of Judge Thomas.

We are writing to you with a plea of a different sort-- not a plea to confirm or to reject Judge Thomas, but a plea to you and your Democratic colleagues to take a different approach:

It is time to stand together and insist on the appointment of a highly respected, well-qualified, moderate Supreme Court Justice.

Put another way, the Democrats in the Senate should draw up their own list of candidates for the Supreme Court, and call on the President to select a nominee from it.

Drawing up a list of Democratic alternatives is something that Senate Democrats have the constitutional power to do, have the political power to do, and that might even do some good for the Democratic Party. This would be a list of men and women that any bar committee would find well qualified to serve on the nation's highest court. It would be a list of people who could add some balance to a Court that is now skewed heavily to the right. It probably would not be a list composed entirely of avowed liberals. Rather, it would be a list of eminent and outstanding lawyers and judges that any American would be proud to have on the United States Supreme Court.

It is not hard to think of candidates for the list. Judge Ruth Bader Ginsburg is one. Judge Ginsburg has been a judge of the District of Columbia Circuit Court for almost a dozen years (not 18 months, like Judge Thomas), and has distinguished herself there as outstanding judge who is neither an ideological liberal nor an ideological conservative. Before joining the Court, Judge Ginsburg was a professor at one of the most prestigious law schools in the country, who had written extensively on important legal questions and had been repeatedly honored for her work. Judge Ginsburg was also a well-respected advocate, and an active participant in numerous bar organizations.

Another example is Judge Jose Cabranes, who serves as a federal District Judge in Connecticut. Judge Cabranes has also been on the bench for a dozen years, and has been described by members of the bar as a simply brilliant judge. In earlier years, Judge Cabranes served as Counsel to the Governor of Puerto Rico, as General Counsel of Yale University, and also was a founder of the Puerto Rican Legal Defense and Education Fund. Judge Cabranes has written widely on law and international affairs, and in 1988 was appointed by the Chief Justice as one of five federal judges to develop a long-range plan for the future of the federal judiciary.

A third example is Judge Amalya Kearse of the Second Circuit Court of Appeals, who has also come to be known as outstanding judge who is both moderate and open-minded. When she was appointed to the bench in 1979, Judge Kearse was a partner of one of the largest and most prestigious law firms in New York. She was also a board member of the Lawyer's Committee for Civil Rights Under Law and the Legal Defense and Education Fund-- in other words, an active and accomplished lawyer, a well-respected judge, and a clearly qualified candidate for the United States Supreme Court.

The constitutional premise for the development of a Senate list is plain from the language of the Constitution. Article II requires the Senate not simply to consent to judicial nominations, but to give advice and consent. For most of the 200 years since the Constitution was ratified, the Senate has routinely used the "advice" power to urge the appointment of judges to the lower federal courts. This advice has been given, received, and accepted hundreds, if not thousands of times. The Senate has also, although less often, used the power to urge the appointment of Justices to the Supreme Court. A prominent example is Justice Benjamin Cardozo, who was appointed by a reluctant President Herbert Hoover at the insistence of the Senate and many vocal members of the bar.

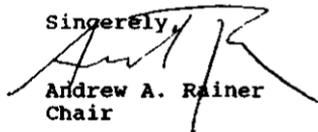
The political practicality of offering such advice lies in two facts. First, a majority of the American people trust the Senate, more than the President, to decide who should sit on the Supreme Court. In a recent New York Times/CBS poll, when respondents were asked whom they trusted more to make the right decisions about who should sit on the Court, 55 percent said the Senate, while only 31 percent said the President. Second, Democrats hold 57 of the 100 seats in the United States Senate. If the Democratic members were to put together their own list of moderate, respected candidates for the Supreme Court, and agreed to reject any nominee who was not on that list, they would have the power to make it stick.

Even more important, a list of alternatives would give Senate Democrats something positive and constructive to stand for, instead of simply playing a nay-saying role. Over the last decade, many Americans have begun to wonder what our Party has to offer. By drawing up our own list of candidates, Democrats would be standing for quality and balance on the Supreme Court, not "against Clarence Thomas."

Although President Bush has claimed that he picked Judge Thomas because he is the person best qualified to fill the current vacancy on the Supreme Court, the evidence certainly does not support this claim. Rather, it is clear that the President picked Judge Thomas because of a political philosophy Judge Thomas has vocally espoused for years.

The Democrats in the Senate therefore have every right to insist on a different philosophy-- to insist on quality and balance on the Supreme Court-- and to offer a list of strong and respected alternatives. We urge you and your colleagues to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew A. Rainer". The signature is stylized with a large, sweeping "R" and a long horizontal line extending to the left.

Andrew A. Rainer
Chair

LAWYERS FOR A DEMOCRATIC ALTERNATIVE

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Duke UniversityDURHAM
NORTH CAROLINADEPARTMENT OF HISTORY
104A WEST DUKE BUILDINGPOSTAL CODE 27708
TELEPHONE (919) 684-3626

September 16, 1991

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Senate Building
Washington, DC 20510

Dear Senator Biden:

I urge you to vote against the confirmation of Judge Clarence Thomas to become an Associate Justice of the United States Supreme Court. There is no compelling reason why Judge Thomas should have a seat on the nation's highest court. He has not achieved distinction either as a lawyer or as a judge. I am certain that you will join me in saying that the United States Supreme Court deserves the very best justices that the nation can provide.

The President has done a disservice to the nation by claiming that Judge Thomas is the "best man" for the post. This claim cannot be substantiated on any grounds. The President insists that we should be color-blind in matters of race; yet this appointment has all the earmarks of being race-based. If this is so, and there is every indication that it is, then the President could still have maintained the highest professional standards by appointing any one of a number of truly distinguished, highly qualified African American federal judges or attorneys, several of whom are Republicans. Under the circumstances, the President satisfied those who wanted him to assign a seat or fill a "quota" for African Americans on the high court, but his action did not conform to the affirmative action standards envisioned in the Civil Rights Act of 1964, which does not compromise on quality. After all, programs of affirmative action, seriously and effectively enforced, would preclude reaching as far down as the President did in this case for, clearly, more qualified candidates were passed over.

I sincerely hope that you have had an opportunity to examine the record of Judge Thomas when he was Assistant Secretary for Civil Rights in the Department of Education and Chairman of the Equal Employment Opportunity Commission. In both positions his conduct raised serious doubts about his fitness even for those positions, to say nothing of his fitness for a place on the United States Supreme Court. He neglected

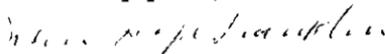
Honorable Joseph R. Biden, Jr. 2

September 16, 1991

the mandated duties of his position as Assistant Secretary to the point of possibly being held in contempt of court, as the judge in one case threatened. As Chairman of the E.E.O.C. he simply declined to process thousands of complaints where the aggrieved individuals claimed they had suffered discrimination based on age, sex, or race. If Judge Thomas truly believes in relief for individuals rather than for classes or groups, this was his opportunity to provide it. He did not. It has been suggested that Judge Thomas is an ideal role model for young African Americans. I would hope that young African Americans would not be invited to emulate a role model who breaks the law with impunity in refusing to carry out the duties of his office.

You may count me among those citizens who recognize that under the Constitution the Senate has a co-equal responsibility with the President in the appointment and confirmation process. I sincerely hope that you will exercise that responsibility not only in scrutinizing the candidate with the utmost care but also in saying to the President that you decline to confirm on grounds that are much more substantial and defensible than the vague and indefensible grounds on which he made the nomination. Best wishes to you.

Sincerely yours,



John Hope Franklin
James B. Duke Prof. of History Emeritus
Professor of Legal History,
Duke University Law School

Federal Focus, Inc.
11 Dupont Circle
Washington, D.C. 20036
(202) 797-6368

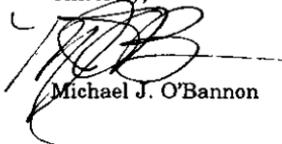
September 17, 1991

Senator Joseph R. Biden, Jr.
Chairman Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510

Dear Senator Biden:

Attached is my testimony for the record. I was unfortunately called out of town before I could give my testimony orally. This testimony is of course pro Clarence Thomas.

Sincerely,



Michael J. O'Bannon

Enclosure

Federal Focus .

STATEMENT BY MICHAEL J. O'BANNON
PRESIDENT, FEDERAL FOCUS, INC.
WASHINGTON, D.C.
BEFORE THE SENATE JUDICIARY COMMITTEE
SEPTEMBER, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM PLEASED TO APPEAR BEFORE THE COMMITTEE IN ORDER TO DISCUSS MY INDIVIDUAL AND PERSONAL REASONS FOR SUPPORTING THE CONFIRMATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT OF OUR COUNTRY.

THE NATIONAL DEBATE SURROUNDING THE PRESIDENT'S NOMINATION OF JUDGE THOMAS TO SIT ON THE COURT AND THE NOMINEE'S QUALIFICATIONS TO DISCHARGE THE DUTIES OF ASSOCIATE JUSTICE ARE BOTH:

- OF GRAVE CONCERN TO ME ALONG WITH MANY OTHER AMERICANS, BUT ALSO
- INDICATIVE OF THE "PROGRESS" THE "MINORITY BODY POLITIC" HAS MADE IN THIS COUNTRY.

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WHEN JUSTICE THURGOOD MARSHALL WAS APPOINTED, AND LATER CONFIRMED, THERE WERE BUT A FEW THAT WORRIED ABOUT HIS POLITICAL PHILOSOPHY OR HIS LIKELY INTERPRETATION OF CONSTITUTIONAL ISSUES. HOWEVER, EVERYONE FOCUSED ON HIS RACE. WORDS HEARD THROUGHOUT THE COUNTRY WERE -- A NEGRO ON THE SUPREME COURT -- CAN YOU BELIEVE IT?

TODAY, THE MAJORITY OF THE MINORITY COMMUNITY OF THIS COUNTRY SUPPORTS JUDGE THOMAS. HOWEVER, THE LEADERS OF THE "MINORITY BODY POLITIC" LARGELY DO NOT SUPPORT HIM. THERE IS A GREAT DISPARITY BETWEEN THE WILL OF THE PEOPLE AND ITS LEADERSHIP.

THE "PROGRESS" IS THAT ALL AMERICAN'S (THE PEOPLE) UNDERSTAND JUDGE THOMAS'S STRUGGLE TO ACHIEVE RESPECT AND PERSONAL FREEDOM. AND IN SPITE OF THE OVERT RACISM AND PREJUDICE WHICH HE HAD TO OVERCOME, HIS NOMINATION TO THE SUPREME COURT IS NOW A REALITY.

MY GRAVE CONCERN IS THAT MANY STILL BELIEVE JUDGE THOMAS WAS APPOINTED BECAUSE HE IS AN AFRO-AMERICAN WITH A CONSERVATIVE PHILOSOPHY ANTTITHETICAL TO THE LIBERAL VIEW

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OF CIVIL RIGHTS. IT IS THIS ATTITUDE WHICH IS PREVALENT AMONG THE LEADERSHIP REFERRED TO EARLIER.

TO THE PEOPLE, THIS ATTITUDE AND BELIEF IS NOTHING MORE THAN DISRESPECT AND REFLECTS THE ASSUMPTION THAT JUDGE THOMAS IS NOT "FREE" AND THEREFORE NOT CAPABLE OF INDEPENDENT AND OBJECTIVE INTERPRETATION OF THE CONSTITUTIONAL ISSUES WHICH LAY AHEAD.

ON THE OTHER HAND, THE VIGOROUS DEBATE RAISES SUBSTANTIVE CONCERNS WITHIN THE MINORITY COMMUNITY WHICH CLEARLY HARKEN THE DAY THAT NO AMERICAN CAN ALLEGE THAT AFRO-AMERICANS LOOK, SOUND, OR THINK ALIKE! THE STRATIFICATION OF THOUGHT WITHIN THE "MINORITY BODY POLITIC" DEMONSTRATES THAT THE AFRO-AMERICAN COMMUNITY IS STRONG, VITAL, INDEPENDENT AND WORTHY OF EVERYONE'S RESPECT. THE AFRO-AMERICAN COMMUNITY IS NOT:

- **REPULSED BY THE AMERICAN POLITICAL PROCESS ANY LONGER;**
- **HELD OUTSIDE OF THE AMERICAN POLITICAL PROCESS ANY LONGER;**

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- **FEARFUL OF EXPRESSING DIFFERENT POINTS OF VIEW ANY LONGER; AND**
- **BEING CONTROLLED OR ENSLAVED BY CERTAIN PHILOSOPHICAL IMPERATIVES ANY LONGER.**

SO YOU CAN SEE WHY MY "GRAVE CONCERN" AND "OPTIMISM" BOTH APPEAR IN CONSIDERATION OF THIS PROCESS. THIS DEBATE SAYS THAT JUDGE THOMAS CAN BE CONFIRMED AS A JUSTICE OF THE SUPREME COURT BY A U.S. SENATE WHICH:

- **ACKNOWLEDGES HIS UPBRINGING;**
- **COMPREHENDS HIS PRACTICAL EXPERIENCE IN PURSUING THE IDEALS EMBODIED IN THE CONSTITUTION;**
- **UNDERSTANDS THE BENEFITS OF HIS TENURE IN THE PRIVATE SECTOR, STATE AND LOCAL GOVERNMENT; AND**
- **RECOGNIZES THAT THEY FOUND HIM QUALIFIED AND CONFIRMED HIM FOR HIGH GOVERNMENTAL OFFICE THREE TIMES BEFORE.**

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THE CONTROVERSY -- PHILOSOPHICAL DIVISION, PARTISAN DIVISION, AND RACIAL DIVISION -- THAT MANY RAISE IN CONJUNCTION WITH THIS NOMINATION IS IMMATERIAL TO ME AND OTHER AMERICANS KNOWLEDGEABLE OF THE RECORD JUST DESCRIBED. WE BELIEVE THAT JUDGE THOMAS IS WORTHY OF OUR RESPECT AND IS CAPABLE OF INDEPENDENT AND JUST INTERPRETATION OF OUR CONSTITUTION.

NATURAL LAW AS SOME SEEK TO USE IT IS ANTI-THETICAL TO ALL AFRO-AMERICANS WHO HOLD DEAR THEIR LOYALTY TO THE CONSTITUTION AND ITS INTERPRETATION THAT SET US FREE. INDEED, THOSE INTERPRETATIONS HAVE FACILITATED OUR CAPABILITY TO LEARN AND THINK AND DECIDE OUR INDIVIDUAL DESTINY WITHOUT INFRINGEMENT OF OUR RIGHTS.

YES, THE CONSTITUTION IS DEAR TO ALL AFRO-AMERICANS:

- WE KNOW ITS POWER;
- WE KNOW ITS INFLUENCE; AND

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- WE KNOW THAT IN SPITE OF IT THERE IS STILL SUBTLE DISRESPECT TO PERSONAL FREEDOM WHICH EMANATES FROM SOME WHO CHARGE THAT SOMEHOW NATURAL LAW COULD BE INTERPRETED TO RULE OUR THOUGHTS.

I SUGGEST THAT THE ISSUES OF NATURAL LAW, ABORTION, RACE, LIBERALISM, OR CONSERVATISM ARE SUBTERFUGE TO THIS CONFIRMATION PROCESS. THIS MAN, CLARENCE THOMAS, SHOULD BE ACCORDED THE SAME LEVEL OF RESPECT AS OTHER NOMINEES BEFORE HIM, SUCH AS DAVID SOUTER, SANDRA DAY O'CONNOR AND, YES, THURGOOD MARSHALL.

THE KEY QUESTIONS: DOES JUDGE THOMAS' BACKGROUND AND HIS RECORD AS AN AMERICAN DEMONSTRATE HIS LOYALTY TO OUR CONSTITUTION AND HIS KNOWLEDGE OF OUR SYSTEM OF GOVERNANCE -- OF, FOR AND BY THE PEOPLE? I HOPE YOU WILL ALL SAY YES, AS I DO.

SECOND, DOES HIS PERSONAL STRUGGLE, HIS FORMAL EDUCATION AND HIS PRACTICAL EXPERIENCE QUALIFY HIM TO INTERPRET THE CONSTITUTION AS JUSTICES GONE BEFORE? I HOPE YOU WILL ALL SAY YES, AS I DO.

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FINALLY, AS OUR ELECTED REPRESENTATIVES, WHO WILL SHORTLY VOTE ON THIS IMPORTANT NOMINATION, I LEAVE YOU WITH THIS CHARGE -- A CHARGE IN WHICH EVERY AMERICAN WOULD CONCUR -- DO NOT PRACTICE PARTISAN, RACIAL, OR PHILOSOPHICAL POLITICS WITH THIS CONFIRMATION PROCESS FOR THE SUPREME COURT. RATHER, REAFFIRM THE PROGRESS AND INTEGRITY OF THE "MINORITY BODY POLITIC" BY CONFIRMING CLARENCE THOMAS.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.
THANK YOU VERY MUCH FOR YOUR ATTENTION.

Maurice A. Dawkins

CONSULTANT

GOVERNMENT RELATIONS
&
BUSINESS DEVELOPMENT

5 Poui Hill Rd., Lady Chancellor,
Port of Spain, Trinidad & Tobago.

September 17, 1991

BY HAND

Honorable Joseph Biden, Chairman
Honorable Strom Thurmond, Ranking Minority
U.S. Senate Judiciary Committee
Dirksen Senate Office Building
First and Constitution Avenues
Washington, D.C.

Dear Sirs:

I wish to go on record as supporting the nomination of Judge Clarence Thomas and urging a strong positive recommendation to the Senate as a whole.

I am living overseas and could not get my testimony delivered by mail quickly enough, so I have brought it by hand to the Committee office.

My determination to submit testimony for the record was triggered by the highly visible, vocal and widespread media coverage of civil rights groups' opposition to President Bush's nominee.

I have a long and well known record as a civil rights activist. I was the founder of the Western Christian Leadership Conference that supported Dr. Martin Luther King in 11 western states in the 1960's. I was a founding member and co-chairman of the National Republican Task Force on civil rights in the 1980's. The struggle for equal economic opportunity in the 1970's found me working as Executive Vice Chairman to Rev. Leon Sullivan and serving as National Coordinator of the Pilgrimage to Washington to put job training and employment on the minds and hearts of America.

I deeply resent the attempt to gloss over the fact that 59% of Black Americans have indicated their support for Judge Thomas' confirmation. The idea that the civil rights lobby can speak on behalf of all Black Americans is unfortunately an old-fashioned idea. It just is not true in 1991 in this particular case.

Honorable Joseph Biden
Honorable Strom Thurmond
September 17, 1991
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Therefore I am writing to testify that the historical precedents clearly indicate that national elective office and Supreme Court appointment will shape a man and influence his growth beyond his previous level of thinking. I see Judge Thomas growing continuously and in the tradition of Justice Hugo Black and President Lyndon Johnson making history as an advocate for equal justice under the law. He is and will be his own man, dedicated to serving the American people -- preserving democracy and freedom and conserving the principles of the founding fathers and the legacy of the judicial history of the Supreme Court.

As a Black Jeffersonian Conservative, I stand 100% in favor of civil rights and constitutional rights. I served as a member of the advisory committee on constitutional rights to the Attorney General of California.

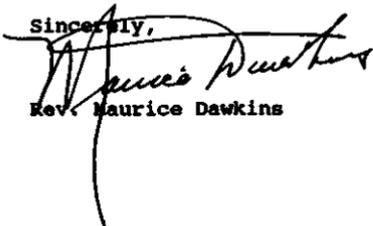
As a civil rights activist I want you to know that there are many like myself who will be grateful to you if you let the record show that this man has a sizeable vote of both Democrats and Republicans in favor of his confirmation. History should tell the next generation that his was not just a vote of response to a wide array of either right wing or left wing groups -- barely getting by with a small margin.

The nation should know that the mainstream thinking evaluating the man and his potential prevailed. The judgment of the Senate should reflect our faith that the democratic process can produce a product of which we can all be proud.

The President's nomination and the Senate's advice and consent works well when we respond to our faith rather than to our fears.

Thank you for your prayerful consideration.

Sincerely,



Rev. Maurice Dawkins

"AN ANTI-RACIST, ANTI-SEXIST, ANTI-AGEISM ACTIVIST TESTIMONY

for

J U D G E C L A R E N C E T H O M A S

ADVOCATING CONFIRMATION".

Presented to:

THE SENATE JUDICIARY COMMITTEE
UNITED STATES SENATE
WASHINGTON, D.C.

By

REV. MAURICE A. DAWKINS
Business and Government Relations Consultant
President, The United States Partnerships Company
Former Candidate for United States Senate
From the Commonwealth of Virginia

++*

An Anti-racist, Anti-sexist, Anti-ageism Activist testifiesfor Judge Clarence Thomas Confirmation

My name is Maurice Dawkins, I am a militant black patriot whose life has been dedicated to fighting racism and sexism. I am 70 years young, advocate of equal opportunities for senior citizens. My track record in the 1960's was one of fighting the good fight for civil rights with A. Phillip Randolph, Adam Clayton Powell, Roy Wilkins, Whitney Young, Martin Luther King, Dorothy Height Franklin Williams, Walter Reuther and the Leadership of the National Council of Churches, the American Jewish Committee and the National Catholic Conference of Social Welfare.

I cite my own personal experience in the struggle to gain equal justice under the law because a strong civil rights lobby has chosen to oppose Judge Clarence Thomas confirmation by the Senate Judiciary Committee.

An unsung hero of the American Civil Rights Movement, the West Coast Executive Director of the NAACP nominated me to be named as a member of the Advisory Committee to the Attorney General of California when I served as the West Coast Chairman of the NAACP Regional Convention and President of the Los Angeles NAACP Branch.

-2-

I cite this particular role that I played in those days to indicate my orientation with the legal realities that the judiciary branch of State government must deal with. This particular Attorney, Stanley Mosk, went on to become a member of the State Supreme Court. Like many Californians, I maintained my contact and followed the record of his decisions at that time.

This kind of personal involvement and commitment is relevant I believe to justify my coming forward at this time to defend President Bush's Nominee to fill the vacancy of what we in the Civil Rights Movement regard with genuine reverence, the historic Thurgood Marshall seat on the Supreme Court of the United States.

Like Ben Hooks and the membership of the largest, oldest and most effective civil rights organization in America, The National Association for the Advancement of Coloured People, I have deep emotional feelings about the fantastic contribution to Black Progress and the Democratic process that Judge Marshall has made. Like many of the traditional Civil rights advocates, I agree that Judge Clarence Thomas is no Thurgood Marshall. Unlike many of these fellow freedom fighters however I do not feel that this disqualifies him or prevents him from doing a good, or even an excellent job as a judge on the Supreme Court.

-3-

Having lived through the debates about Justice Hugo Black, former Klu Klux Klan member who became a strong and respected advocate for equal justice under the law, I do not buy the theory that a man's actions and public position on issues prior to his appointment to the Supreme Court prevent him from becoming a new man or born again civil rights champion.

None of us in the movement will ever forget how this same civil rights lobby, then under the leadership of our revered hero, the 101st Senator Clarence Mitchell, opposed Lyndon Johnson as the nominee of the late President Kennedy and the Democrat Party for the Vice Presidency.

As the Senate's records will show, I testified for the nomination of President Gerald Ford to the Vice Presidency when this same civil rights lobby campaigned and testified against him because of his checkered civil rights record.

I remember saying then, as I think should be stated now - Lyndon Johnson became a champion for the rights of black Americans and the late Adam Clayton Powell Jr., who had supported him in 1960 couldn't get into the White House to see him without stumbling over the civil rights leadership who had opposed him in 1960.

-4-

I cite this story to illustrate how history has shown that men are often made and their attitudes and decisions shaped by the position to which they are elected by the American People or appointed with the advice and consent of the United States Senate.

Mr. Chairman, my testimony is designed to remind the members of the Committee that we have no reason to believe, based on historical precedent, that Judge Clarence Thomas could not or would not become an outstanding Supreme Court Judge.

Judge Warren Burger was not appointed by a Democratic President, yet Democrats recognize that his record was an honourable one that Americans can understand even though there may be differences of opinion about specific decisions.

When President Johnson appointed Judge Tom Clark, Republicans were not rejoicing, but they recognized that the President has the right and the responsibility to exercise his own best judgement in his nominations for a seat on the Supreme Court.

Put another way democracy works best when we have faith in a process that produces a unity that permits diversity.

We can agree to disagree agreeably in our American Democracy. We can debate and win or debate and lose. Yet once the debate is over we can come together and work together for a common cause.

The debate in Congress concerning the Gulf War against Saddam Hussein is a case in point. There are always extremists on the right and the left who go all out to show how the nation will be endangered unless their extreme position prevails. However the mainstream provides a balance representing a majority of the citizens which through the years has given us the best democracy in the world.

Mr. Chairman, today I strongly recommend that the majority of your committee look objectively at the legal requirements for a Supreme Court Judge and dispassionately at the human rights record of Judge Thomas. I urge the Confirmation of this nominee of President George Bush as a demonstration of our faith in democracy and the Christian principles which have undergirded our government since the founding Fathers and the Declaration of Independence promised future Americans, all Americans an equal opportunity to secure the rights of liberty and justice.

-6-

Surely a Clarence Thomas can be granted an equal opportunity with the other nominees who have become members of the Supreme Court. His record is not perfect. His detractors say he was judged 'qualified' by the A.B.A. rather than 'well qualified', and Judge Bork, Judge Souter, Justice Rhe..quist, were all given this highest possible rating. The Committee should call the role in their minds of other Justices who were not given the 'highest possible' rating by A.B.A. They served and served democracy well and the Nation has survived and succeeded in maintaining a balance through the years, the decades, the generations.

Some of our Justices have been appointed by Democrat Presidents, some by Republican Presidents. Some have been more conservative than others. Some have been more liberal than others - But through it all we have come to trust our system of Presidential nomination and Senatorial advice and consent.

To the members of the Committee I would also like to point out some of the flaws in some of the arguments that are being used to try and persuade you to reject this President's nominee.

I do not claim that some of their arguments are not valid - However I strongly submit to you that all of them are not valid and some of them are half truths and distortions of the truth and on balance the positive record outweighs the negative criticism. Let us look, together for a moment at a few illustrations.

His opponents cite his "Hostility to the Civil Rights Movement", this is a broad generality. He has vigorously opposed that part of the leadership of the movement which marches lock-step with liberal ideology because he is a conservative. But gentlemen, believe it or not there are legitimate, fully committed, 100% Civil Rights Advocates who are conservative on fiscal policies, foreign policy, social welfare policy and political philosophy. I am a Black Conservative. I call myself a Jeffersonian Conservative or a Bob Dole Conservative. Yet Thomas Jefferson gave us the guidelines for democracy. Cabinet members Jack Kemp and Senator Robert Dole are consummate practitioners of Democracy. They have earned blue ribbons or gold medals or whatever the symbols of appreciation Black Americans can give to proven fellow-fighters for freedom.

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His opponents say he was a beneficiary of affirmative action and yet condemns such programs for others. This is a specious argument, partly true, leaving out important dimensions of his track record with reference to affirmative action. Surely the voluntary adoption of fair employment practices by corporations has worked well. The Thomas Chairmanship and tour of duty at EEOC does not show him tearing down this pragmatic demonstration of determination to provide corrective medicine for past injustices. However his position on "class action suits" or dependence on legal appellate approach to solving the problem of racial injustice is one about which has always been differences of opinion, within the civil rights movement, within the EEOC Agency, the U.S. Civil Rights Commission and within the rank and file grassroots of Unions and Management in America.

Isn't that what makes America great - Honest Differences of Opinion - hammered out on the Anvil of Debate.

Surely Judge Thomas has a right to take a position and debate it as an individual. My knowledge of him as a person of integrity and commitment to principle makes me know that he would not as a member of the highest court in the land fail to abide by principles and refuse to compromise the fundamental principle of equal justice under the law.

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I do not believe that as a ~~man~~ of principle he will be found supporting racism, sexism or ageism. If I thought for a moment he would disappoint me, a veteran in the wars against racism and the battles to win equal rights for women and older Americans - I would be arguing against his Confirmation.

It is my view that too many people have made up their minds that a conservative can't be honestly and sincerely in favor of equal Justice under the law. They do not want to be confused by any new facts. They are not willing to reexamine and reevaluate their own positions in the light of new discoveries and new information. They only want to use scientific method of analyzing when it suits their purpose. They simply look for data to support their originally pre-conceived idea about a man or an argument.

Before I die I would like to see a new dimension to the Civil Rights Movement - A recognition that two-party politics provides a racial minority with the best opportunity to get the best results in a democratic society. Such recognition would lead to the admission that you don't have to be a liberal democrat to be 100% committed to civil rights and you can be a conservative Republican and be 100% committed to civil rights.

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I see myself as an illustration of this dimension. I see Judge Thomas as a catalyst and these confirmation hearings as a catalytic force making people look more closely at the issues involved. The National Urban League looks more closely when it takes a position of neutrality on the nomination because they see 'blackness' as more important in the long run than conservative or liberal ideology when black progress is the goal.

The 59% of minority reported by Jet Opinion Poll as supporting Judge Thomas nomination and the 41% reported as opposing it reflect what I am talking about. Black Americans or Afro-Americans as Thurgood Marshall prefers to call us, are not monolithic in their thinking. Both the 59% and the 41% are sincere, they sincerely disagree. Their votes and their letters to the editors indicate that they are just like white Americans; they have varieties of opinions on almost everything.

This becomes an important factor when you are making your deliberations. You as committee members should be able to rise above the temptation to think you will have a better chance to get black voter support if you oppose or support Thomas.

You should be able to rise above the temptation to oppose the Thomas Nomination either because a wide array of right wing groups are in favor or a wide array of left wing groups are opposed to the nomination.

You should be able to rise above the temptation to base your decision on the attitudes, biases, or judgements of various Deans of various Law Schools.

I submit that you must look at the man. Here ye him. Consider where he comes from. He is a product of our democratic process - yours and mine and all Americans. He is a man of sensitivity and courage who is not afraid to take a stand, even if it is unpopular and he may be misunderstood. As long as he is consistent with his principles he is at peace with himself. Perhaps poetically he fits the Admonition "To Thine Ownself Be True and Thou Canst Not Be False to any Man".

I have talked to this man personally - I have heard him say proudly I am not in a popularity contest. I have heard him protest vigorously against the highly visible failure of the U.S. State Department to have enough black Ambassadors, Deputy Chiefs of Mission, Political and Economic officers and equal opportunity for Civil Service and Foreign Service Employees.

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I know this man just as Adam Powell knew Lyndon Johnson. I know that given a choice between two sets of facts regarding equal justice he can be trusted to come down on the right side..

I do not expect you, gentlemen to know him as I do. I do not expect you to have the same amount of faith in him that I have. However I do hope that my testimony will help you assess objectively the merit of granting your consent to the President's Nomination.

Surely this President these past years and especially in the matter of world affairs and the peace-process has earned your confidence and mine.

Surely this President in his own personal commitment from college days through his tour of duty in the congress and in key appointed positions in Government earned our faith in his belief that all men are created equal and entitled to life, liberty and the pursuit of happiness.

Surely this President would not send you a nominee whom he did not feel would serve the nation well and protect the basic rights of all the American People. Surely this President deserves the opportunity to name his own nominees as other Presidents have done - I urge you to support the President and recommend Judge Clarence Thomas to the Full Senate for Confirmation.

NATIONAL COMMITTEE FOR CONSTITUTIONAL INTEGRITY

7490 Lake Hazel Road
BOISE, IDAHO 83709
208-362-0342

SEP 18 1991

Please address reply to:
John B. Minnick
11509 Starbridge Court
Fredericksburg, VA 22407

The Honorable Joseph R. Biden, Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Subject: Confirmation Hearing on the Nomination of
Judge Clarence Thomas to be an
Associate Justice of the Supreme Court:
Separation of Powers v. Delegation of Powers or
The Rule of Law v. The Rule of Men.

Dear Mr. Chairman:

Some audiences may not get excited about separation of powers, especially yours. On the other hand, some do, especially ours.

Whatever happened to the Subcommittee on Separation of Powers? Why was it dropped? What are you trying to hide?

Your committee's line of questioning and Judge Thomas's responses disclose an effort to perpetuate judicial legislation not sanctioned by the Constitution.

In any case, please accept this letter as our statement in opposition to confirmation of Judge Thomas to be an Associate Justice of the Supreme Court on the grounds that he has exhibited not only a disdain for the principle of separation of powers but also a total misconception of our constitutional system of checks and balances.

Please also include this letter in the public record of the hearing on his nomination and give him a copy.

Definition and Reasons for Separation of Powers

Separation of powers means keeping our powers of government separate and distinct so that one branch shall not exercise the powers nor perform the functions of the other two or either of them. See also, James Madison's definition. 1 Am. 435-436.

Separation of powers is not only the basis for the rule of law (as distinguished from the rule of men), but also it is the foundation of American freedom and democracy under the Constitution and Bill of Rights.

We, the people, have three powers of government vested in us by operation

Biden

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of natural law. That is we have legislative, executive and judicial powers. Each one of our natural powers of government is vested by the Constitution in a separate and distinct branch. In the absence of a specific article on separation of powers, the only way to keep our powers of government separate and distinct is not to give any away.

The principal reason for keeping our natural powers of government separate and distinct is a simple matter of the rules. That is, the rules of one branch do not work in the other two or either of them.

For example, the legislative branch (Congress) operates under the rules of parliamentary procedure including Jefferson's Manual. The rules of parliamentary procedure do not work in the executive nor in the judicial branch.

The executive branch (the President and his Departments) operate under administrative rules and regulations including executive orders. Administrative rules and regulations do not work in the legislative nor in the judicial branch.

The judicial branch (the Supreme Court and lower federal courts) operate under rules of court subject to the rules of evidence. Rules of court and evidence do not work in the legislative nor in the executive branch.

A second reason for keeping our natural powers of government separate and distinct is really a matter of function. That is, the function of the legislative branch is to make laws in pursuance of the Constitution. Cf., Const., Art. VI, second paragraph. It is the function of the executive branch to enforce laws made in pursuance of the Constitution. The function of the judicial branch is to apply the laws made in pursuance of the Constitution.

The third reason for keeping our natural powers of government separate and distinct is essentially a matter of policy. That is, the legislative responsibility of Congress is to make national policy. The executive responsibility of the President and his Departments is to enforce national policy (not to make it!). The judicial responsibility of the Supreme Court and lower federal courts is to apply national policy (not to make it!).

When all three branches get involved in making, enforcing and applying national policy under the wrong rules, we, the people, become unduly burdened by unregulated bureaucracy, astronomical public debt fueled by deficit spending, and perennial budgetary imbalances to the detriment of local, state and national economy.

Historical Analysis

When both sides were deadlocked during Virginia's ratification convention, John Marshall took the position that "this Constitution" would ensure regulated democracy. His position took for granted that our powers of government would remain separate and distinct. the deadlock was broken

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and Virginia ratified the Constitution by ten votes.

During the initial debates of the First Congress under the Constitution, James Madison declared that the principle which separates our powers of government "is the most sacred principle of the Constitution, indeed of any free constitution." 1 Ann. of the First Congress 116.

The documentary history of American government shows conclusively that the Constitution, Bill of Rights and our constitutional system of checks and balances are all based upon the principle of separation of powers.

Flagrant Violations of the Principle of Separation of Powers

Congress has violated the principle of separation of powers time and time again, but the most flagrant violations occurred in 1946 and 1949. Public Law 404, 79th Cong., 2d Sess., Ch. 324, June 11, 1946, Sec. 2 (c), 60 Stat. 237; and Public Law 72, 81st Cong., Ch. 139, May 24, 1949, Sec. 102, 63 Stat. 104. Public 404, supra, now 5 USC 551, et seq., is known and cited as the Administrative Procedure Act. Public Law 72, supra, amended Title 18, entitled Crimes and Criminal Procedure, and Title 28, entitled Judiciary and Judicial Procedure, of the United States Code. Title 28 is also known as the Judicial Code of the United States.

Public Law 404 Administrative Procedure Act

Public Law 404, Section 2 (c), supra, gave the executive branch the power to "prescribe law or policy" by regulation without sanction of a constitutional amendment. Likewise, the Administrative Procedure Act, Public Law 404, supra, gave the executive branch a wide range of judicial functions without sanction of a constitutional amendment. See also, the Attorney General's Manual on the Administrative Procedure Act (1947). Making law and policy are functions of the legislative branch. Performing judicial functions is the responsibility of the judicial branch. Public Law 404, supra, contains two flagrant violations of the principle of separation of powers even though members of Congress knew or had reason to know better.

Legislative History

In 1935, the Supreme Court held the National Industrial Recovery Act unconstitutional because among other things it violated the principle of separation of powers. That is, the NIRA gave legislative powers to the executive branch without sanction of constitutional amendment. Schechter v. United States, 295 U.S. 495 (1935). President Roosevelt immediately appointed a blue-ribbon commission to study the problem of administering the Federal Government. His letter transmitting the Commission's report to Congress pointed out among other things that if Congress continued to delegate powers of government it would create a "fourth branch" not

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sanctioned by the Constitution. Members of Congress ignored the warning and passed the Administrative Procedure Act, Public Law 404, supra. President Truman signed it into law.

Public Law 72
Technical Amendment

An obscure technical amendment added to the Judicial Code of the United States gave legislative powers to the Supreme Court without sanction of a constitutional amendment. Public Law 72, supra, Section 102, 63 Stat. 104, now 28 USC 2071. President Truman signed it into law. Making law is the function of the legislative branch. Public Law 72 contains a flagrant violation of the principle of separation of powers.

Historical Analysis

The judicial power of the United States is defined in Article III, Section 2, of the Constitution. After describing the Court's jurisdiction, the second sentence of the second paragraph of Section 2 goes on to provide that the Court shall have appellate jurisdiction both as to law and fact "with such exceptions, and under such regulations as the Congress shall make." That particular check on the Court's otherwise unlimited judicial power was given away by the 1949 technical amendment without sanction of a constitutional amendment. The 1949 technical amendment is a deliberate and flagrant violation of the principle of separation of powers. Members of Congress should have known better.

The Judicial Code of the United States was enacted by the First Congress of the United States in pursuance of the Constitution. Cf., Const., Art. VI, second paragraph. Subsequent amendments developed the substantive rules governing the practice and procedure in the Supreme Court. Such rules were made pursuant to the legislative power reserved to Congress by the express proviso contained in the second sentence of the second paragraph of Section 2 of Article III of the Constitution. The 1949 technical amendment gave the substantive rule-making power to the Court without sanction of a constitutional amendment.

Subsequent History

After the Court was empowered to make its own substantive rules governing its practice and procedure, it discarded the old rules made by Congress and adopted new rules of its own without sanction of a constitutional amendment.

The old rules made by Congress in pursuance of the Constitution became an integral part of the supreme law of the land by operation of the definition in the second paragraph of Article VI. The new rules promulgated by the Court do not form any part of the supreme law of the land nor are they sanctioned by the Constitution.

Among the old rules discarded by the Court were the rules relating to evidence. Since the Court was given appellate jurisdiction both as to law and fact, rules of evidence are necessary and advisable.

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In place of the old rules relating to evidence, however, the Court substituted new rules based on oral argument. The new rules do not meet the constitutional definition of the supreme law of the land nor are they sanctioned by the Constitution.

**Destruction of Our Constitutional System of
Checks and Balances**

Our constitutional system of checks and balances is based upon the principle of separation of powers. When our powers of government are not kept separate and distinct, our constitutional system of checks and balances breaks down.

Public Law 404, supra, which gave legislative powers and judicial functions to the executive branch not only violated the principle of separation of powers, but also broke down our constitutional system of checks and balances without sanction of a constitutional amendment.

Public Law 72, supra, which gave legislative powers to the Supreme Court not only violated the principle of separation of powers, but also broke down our constitutional system of check and balances without sanction of a constitutional amendment.

Those two laws as signed by President Truman destroyed our constitutional system of checks and balances. The destruction has been compounded by Congressional and Presidential acquiescence in the exercise of executive powers by the judicial branch. The destruction has been compounded further by the exercise of all three powers of government by Congress.

**Judicial Legislation Not Sanctioned
By the Constitution**

As demonstrated above, Congress gave its constitutional legislative responsibility to the Supreme Court without sanction of a constitutional amendment. Likewise, when the Court was given the power to make its own substantive rules, it discarded the old rules made by Congress. Acting under its newly delegated authority, the Court adopted new rules to govern its substantive practice and procedure. The new rules do not fit the constitutional definition of the supreme law of the land, nor are they sanctioned by the Constitution.

Among the old rules discarded by the Court were the rules relating to evidence. The new rules are based on oral argument without reference to the rules of evidence. In legal effect, the 1949 technical amendment of the Judicial Code opened the door to judicial legislation not sanctioned by the Constitution. Moreover, laws not made in pursuance of the Constitution, even though signed by a President, cannot qualify nor be substituted as constitutional amendments. In any case, since the Court is operating under substantive rules not sanctioned by the Constitution, some, if not all, of the Court's recent opinions have no constitutional validity whatsoever.

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The most flagrant piece of judicial legislation not sanctioned by the Constitution is the infamous case of Brown v. Board of Education (and related cases), 347 U.S. 483 (1953).

Brown Revisited

At the outset it should be noted that Brown and the related cases were treated as if they had been brought under the new rules even though those rules were not published until after the fact.

The official public record of Brown and the related cases shows on its face that the entire legislative history of public education in the United States was not only left out of the picture, but also totally ignored. The scenario was such that nine justices of the Supreme Court and all of their law clerks, including now Chief Justice William Rhenquist, the Attorney General of the United States and his Staff, the Solicitor General of the United States and his Staff, the Attorneys General of the several States and their Staffs, and private counsel and their associates all failed or otherwise neglected to look in the indexes to the United States Code, Statutes at Large and the Congressional record to find out what the law was and when, how and why it was made. In any case, the laws of the United States made in pursuance of the Constitution for such cases were not raised, briefed, cited, argued, presented or otherwise put in issue. At this juncture, it should also be noted that Congress specifically reserved the power to enforce the Fourteenth Amendment by appropriate legislation and that it did. Under the circumstances, the Court did not have jurisdiction to decide the issue.

The record shows further that the plaintiffs filed a stipulation of equality. Accordingly, the case was moot on its facts. It was also moot because the City of Topeka, Kansas had ended separate schools. Chief Justice Earl Warren denied defendant's motion for dismissal. In United States v. Grant, 345 U.S. 629, 632, Associate Justice Felix Frankfurter reaffirmed the general rule that the defendant in a moot case is entitled to dismissal as a matter of right.

The record shows further that Chief Justice Earl Warren was dissatisfied with the first round of argument and ordered the cases to be set down for reargument. His order, however, arbitrarily limited the inquiry to the ten-year period immediately following ratification of the Fourteenth Amendment, 1868-1878. The issue was not resolved until 1890. Third Morrill Act, 51st Cong., 1st Sess., Ch. 841, August 30, 1890, 26 Stat. 417, now 7 USC 323; 109 Cong. Rec. 6332-6351, 6369-6371; see also, Act to admit the State of Oklahoma (1906), 34 Stat. 271.

The record also reveals that the Solicitor General of the United States advanced false and misleading arguments in response to questions put by Associate Justices Reed and Jackson. That is, the Solicitor General argued that Congress had not acted upon the question of separate schools in public education. His argument was false because Congress had acted after nearly a quarter of a century of debate on the issue. Third Morrill Act, supra;

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see also, 109 Cong. Rec. 6371; and the Act to admit the State of Oklahoma, supra. The Solicitor General then compounded his own error by arguing that because Congress had done nothing (which was false), the Court had concurrent jurisdiction to do something (which was doubly false). The principle of separation of powers does not admit concurrent jurisdiction to do anything.

**Perpetuation of Judicial Legislation
Not Sanctioned by the Constitution**

Members of Congress have demonstrated a predilection to perpetuate judicial legislation not sanctioned by the Constitution as evidenced by the progeny generated by Brown and the related cases. Presidents have perpetuated judicial legislation not sanctioned by the Constitution by signing such measures into law. All of which indicate Congressional abdication of its legislative responsibility.

**Abdication of Constitutional Responsibility:
Creation of an Unmanageable Form of Government**

Instead of maintaining a regulated democracy based separation of powers as sanctioned by the Constitution, Congress has created a "fourth branch" of government not sanctioned by the Constitution based on delegation of powers. That is, Congress has created an unregulated bureaucracy which has mushroomed out of proportion to our ability to deal with it. In short, the end result of flagrant violations of the principle of separation of powers is a government out of control. In legal effect, Congress has created an unmanageable form of government not sanctioned by the Constitution.

Separation of Powers v. Delegation of Powers

Congress has turned the American dream of regulated democracy based on separation of powers into a nightmare of unregulated bureaucracy based on delegation of powers.

Separation of powers means the rule of law and not of men.

Delegation of powers means the rule of men and not of law.

Separation of powers is the foundation of American freedom and democracy under the Constitution and Bill of Rights.

Delegation of powers circumvents American freedom and democracy by violating the principle of separation of powers, destroying our constitutional system of checks and balances, and perpetuating judicial legislation not sanctioned by the Constitution.

Separation of powers not only provides us with the key to our constitutional system of checks and balances, but also is sanctioned by the Constitution.

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Delegation of powers is not only the key to the destruction of our constitutional system of checks and balances, but also it is not sanctioned by the Constitution.

The Trillion Dollar Question

If confirmed, how can Judge Thomas conscientiously give his oath to support and defend the Constitution against all enemies, foreign and domestic, without reservation or purpose of evasion if he knew or had reason to know that the Supreme Court is operating under substantive rules of practice and procedure not sanctioned by the Constitution?

If your Staff had granted my request to be heard, that is the final question I would have asked.

Arbitrary and Capricious Discrimination

Failure to grant my request to be heard is tantamount to arbitrary and capricious discrimination.

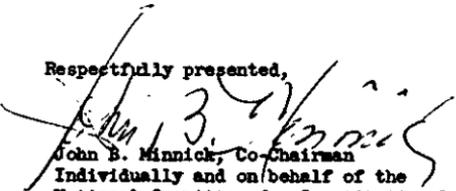
Statement for the Record

Your Staff informed me that I could file a statement for the record and for the Senators to read.

Please include this statement in the public record of the hearing on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court and give him a copy.

Please also distribute copies among the members of your Committee.

Respectfully presented,


John B. Minnick, Co-Chairman
Individually and on behalf of the
National Committee for Constitutional Integrity

P.S. This statement was typed with one hand on an IBM one-handed keyboard. Please pardon the erasures, strike-overs and typos.



To: Biven

From: Royale Ledbetter

HOWARD UNIVERSITY

WASHINGTON, D.C. 20062
 Office (202) 806-5078/6800
 Home (202) 966-2003
 September 19, 1991

THE GRADUATE SCHOOL OF ARTS AND SCIENCES

The Honorable Joseph R. Biven, Jr.
 Chairman, Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, D. C. 20510--6275

Re: The Honorable Clarence Thomas
Confirmation Hearings

Dear Mr. Chairman:

This letter is submitted respectfully in response to the obviously able and brilliant four Black law professors who testified against Judge Thomas's confirmation in the above hearings. You unquestionably have been chairing excellently and fairly the confirmation hearings. However, I am disturbed by the possible misleading and unintended or inadvertent impression that all Black Constitutional Law scholars are against the confirmation of Judge Thomas. I emphatically support the confirmation of Judge Thomas. Although my main position is now Distinguished Professor of Higher Education, a significant part of my background is in Constitutional Law, Theory, and History as the attached Resume makes clear. Therefore, I humbly request that you make my views a part of your record which I briefly outline as follows:

1. Special deference should be given to the Supreme Court nominations of the President where the nominee is a good example of or consistent with the type of nominee the President promised in his campaign for President. The Presidential political campaign process will be delegitimized and trivialized if the President's campaign promises are ignored or abandoned, except for very compelling reasons, such as an emergency or serious crisis. See Tollett and James, "Neo-Federalism: Taking Liberties With the Constitution," *ISEP MONITOR* 5:4 (December 1981):13-16. For a strong argument that Congress is the superordinate branch of government in the United States Constitution's scheme of separation and balance of powers, also see Kenneth S. Tollett, "William Winslow Crosskey and the Constitution," (M. A. Dissertation, University of Chicago, 1958).

2. It is inconceivable to me that President George Herbert Walker Bush will nominate anyone with a significantly or measurably different or more liberal jurisprudence than that of Judge Thomas. Indeed, if he did, he would violate his campaign promises and exacerbate cynicism about Presidential politics.

To: Biden

From: Royale Ledbetter

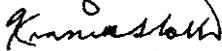
The Honorable Joseph R. Biden, Jr. -2- September 19, 1991

3. It is also inconceivable to me that Judge Thomas totally has lost his Black identity such that if confirmed, he would not make decisions sensitive to the needs, interests, and rights of Blacks and other disadvantaged or deprived groups. For a reference to the importance of biography in constitutional law analysis from the Black perspective, see Kenneth S. Tollett, "The Viability and Reliability of the U.S. Supreme Court As An Institution for Social Change and Progress Beneficial to Blacks--Part II," *The Black Law Journal* 3 (1973):5-50, 6.

4. Judge Thomas is hardly an extremist or outside the mainstream of Constitutional Law, even considering his problematic views about natural law and rights in political theory or philosophy, with which I disagree as I disagree with many of Judge Thomas's other views, especially on affirmative action. For an illuminating "Note: Natural Law and the Supreme Court," see Stone, Seidman, Sunstein and Tushnet, *Constitutional Law* (1986), 62-65. Nevertheless, the failure to confirm Judge Thomas will appear inescapably to indicate that, as has so often happened in the experience of Blacks, the rules of the game are changed when Blacks have mastered them and put themselves into a position to profit from them, as has been the case with Judge Thomas. For a discussion of "the paradoxes and ironies" of the Black experience and how "the rules of the game seem to change when blacks master them and begin to benefit" from them, see Kenneth S. Tollett, "Commentary," in *Between Two Worlds: A Profile of Negro Higher Education*, by Frank Bowles and Frank A. DeCosta (1971), 251-271, 252, 253.

Hoping that the above will assist you in coming to a fair and reasonable decision in the confirmation hearings of the Honorable Judge Clarence Thomas, I am

Respectfully yours,



Kenneth S. Tollett
Distinguished Professor
of Higher Education

Enclosure: Kenneth S. Tollett: Resume
(09/19/91)

To: Eiden

From: Royale Ledbetter

KENNETH S. TOLETT: RESUME (09/19/91)

1. Dr. Kenneth S. Tollett, Distinguished Professor of Higher Education at Howard University since 1971, received his A.B., J.D., and M.A. (Political Science, dissertation on "William Winslow Crosskey [Politics and the Constitution, 2 vols] and the Constitution") degrees from the University of Chicago. He was both Chairman of the National Advisory Board and Director of the Institute for the Study of Educational Policy (ISEP) at the University from March 1974 to March 1985. He supervised or directed the writing and publication for ISEP of fourteen major books or monographs, six occasional papers, seven volumes of the ISEP Monitor, three Primers (75,000 Bakke Case), two ISEP Perspectives, et al. He practiced law three years (1955-58) in Chicago, Illinois, and served as a Precinct Captain and President of the Fifth Ward Young Democrats. At 28, two years after joining the Faculty of the Texas Southern University (now Thurgood Marshall) School of Law in 1958, he became Acting Dean June 1960 and served as Dean until June 1970.

He served as Visiting Fellow (twice) at the Center for the Study of Democratic Institutions, Visiting Professor at the University of Colorado School of Law 1970-1971, and member of the Carnegie Commission on the Future of Higher Education 1969-73. Professor Tollett also is, was, or served as a member of several organizations, associations, committees, or commissions (61, currently 20), among which are or were American Bar Association (including the Task Force and later Special Committee on Professional Utilization); American Section (AMINTAPHIL) of the International Association for Philosophy of Law and Social Philosophy (IVR); the Visiting Committees, the College and the Graduate School of Arts and Sciences, Harvard University, and the Law School, University of Chicago; Chairman (former), District of Columbia Commission on Post-Secondary Education; Council on Legal Education Opportunity (CLEO) (a founding and organizing member); the Texas Constitutional Revision Commission (member of The Education and The Bill of Rights Subcommittees); Co-chairman (former) and presently Treasurer of the National Council (a.k.a. Conference) on Educating Black Children.

2. He has presented over **NINETY MAJOR PAPERS** for meetings and conferences, e. g., "Supreme Court Justice Thurgood Marshall: Mr. Civil Rights Advocate," Dedication Ceremonies for North Carolina Central University School of Law, Durham, North Carolina, September 20, 1980 and "Race Consciousness and Community: The Need for a Variety of Black Perspectives in the Civic or Public Deliberative Discourse," Biennial Meeting, AMINTAPHIL, University of Utah (October 1990). He has authored over **EIGHTY PUBLICATIONS**, e. g., "Verbalism, Law and Reality," and "Political Questions and the Law," University of Detroit Law Journal (1959 and 1965); "The Viability and Reliability of the U.S. Supreme Court as an Institution for Social Change and Progress Beneficial to Blacks," Parts I & II, Black Law Journal (1972 and 1973); **The Right to Education: Reaganism, Reaganomics, or Human Capital?** (ISEP, 1983); "The Propriety of the Federal Role in Expanding Equal Educational Opportunity," *Harvard Educational Review* (1982); "Affirmative Action in Law Schools: The Declining Concern for the Interest of Blacks," *Harvard Blackletter Journal* (Spring, 1987); "Universal Education, Blacks, and Democracy," *Race* (1989); "Racism and Race-Conscious Remedies," *The American Prospect* (1991). He has appeared on several radio and television programs, e.g., the "Today Show" twice to debate the Bakke Case and "The Advocates" to debate Liberal Arts for the Masses and received many awards, e.g., **The University of Chicago Alumni Association's Professional Achievement Award** in 1972; the **National Association for Equal Opportunity in Higher Education (NAFEO) BLACK COLLEGE ACT AWARD** for "longstanding commitment to strengthening Black Colleges and Universities" in 1987; and grants, totalling nearly \$3 million.



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TESTIMONY OF

THE ORGANIZATION OF CHINESE AMERICANS

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**CONCERNING THE NOMINATION OF
CLARENCE THOMAS TO THE U.S. SUPREME COURT**

SUBMITTED SEPTEMBER 19, 1991

TESTIMONY OF
THE ORGANIZATION OF CHINESE AMERICANS
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBMITTED SEPTEMBER 19, 1991

INTRODUCTION

The Organization of Chinese Americans, Inc. (OCA) welcomes the opportunity to submit the following testimony before this Committee on the nomination hearing of Judge Clarence Thomas to the United States Supreme Court.

Founded in 1973, OCA is a national, non-profit, non-partisan network of concerned Chinese Americans. Since its formation, OCA has been dedicated to promoting the active participation of Chinese Americans in civic affairs at all levels and securing justice, equal treatment and equal opportunities for Chinese Americans and Asian Americans. With 41 chapters throughout the country and one chapter in Hong Kong, OCA is the only national Chinese American civic organization with headquarters in Washington, D.C.

STATEMENT

OCA and two of its affiliates - the Chinese American Forum and the Chinese American Alliance - express grave concerns about the nomination of Judge Thomas to the highest bench. We base our decision on Judge Thomas' record as chairman of the Equal

Page 2

Employment Opportunity Commission (EEOC) for eight years, his limited tenure as a Federal District Court judge and his extrajudicial writings.

Because Mr. Thomas' tenure at EEOC represents approximately one-half of his professional career and was more than twice as long as his next longest position, great weight should be given to his performance and accomplishments at EEOC.

OCA is concerned that under Mr. Thomas' leadership, the EEOC appears to have attempted to unilaterally change federal rules based on existing case law and federal law, failed to follow Supreme Court precedent, and failed to perform statutorily mandated responsibilities.

Of particular concern is Judge Thomas' views on employment discrimination and the use of goals and timetables. Notwithstanding the stereotype that Asian Americans excel academically and have above average incomes, not all Chinese Americans and Asian Americans are succeeding. We must ensure that everyone receives an equal opportunity through the proper use of goals and timetables. Employment discrimination still abounds and OCA receives a steady stream of calls from Chinese Americans throughout the country who seek advice and assistance on their employment discrimination complaints.

Shattering the glass ceiling for all levels of employment opportunities is a priority issue for Chinese Americans and Asian Americans. Judge Thomas' opposition to affirmative action in any

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form, including affirmative action ordered by the courts to remedy past discrimination, would leave Chinese Americans and Asian Americans, confronted by the societal problems of the "glass ceiling", with few, if any, effective means of redressing employment-related grievances.

In explaining his steadfast opposition to affirmative action and the concept of a "colorblind Constitution", Judge Thomas cites Justice Harlan's dissenting opinion in Plessy v. Ferguson as "one of our best examples of natural rights or higher law jurisprudence." It is distressing to note Judge Thomas' failure to confront the clear racial bias evident in such dissent, specifically, the attitude expressed by Justice Harlan:

there is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with a few exceptions absolutely excluded from our country. I allude to the Chinese race.

The attitude was and is deeply held and manifesting itself by the reluctance of this nation not to lift the bar on Asian immigration until 1965 and today, is typified by the marked increase in anti-Asian violence.

While it is clear that this country cannot now deny Chinese Americans equal rights under the law, it may still deny us equal justice under the law. Thus, while no immigration ban bars us from this country because we are an economic threat, the more subtle barrier, the glass ceiling, now replaces the ban.

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CONCLUSION

While OCA is heartened that President Bush would nominate a person of color to diversify the bench, we must ensure that the next U.S. Supreme Court justice is sensitive to the concerns of all Americans including the Chinese American and Asian American communities. For the foregoing reasons, the Organization of Chinese Americans, the Chinese American Forum and the Chinese American Alliance urge the United States Senate not to confirm Clarence Thomas to the United States Supreme Court.

United Electrical, Radio and Machine Workers of America

WASHINGTON OFFICE Suite 600 • 1800 Diagonal Road
Alexandria, VA 22314 • (703) 684-3123 • FAX (703) 548-9446



Washington Office

NATIONAL OFFICE 2400 Oliver Bldg • 535 Smithfield St
Pittsburgh, PA 15222 • (412) 471-8819 • FAX (412) 471-8999

September 20, 1991

Sen. Joseph R. Biden, Jr., Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

RE: Submission for Hearing Record on Thomas Nomination

Dear Chairman Biden:

Please find enclosed a resolution passed at the 56th annual convention of the United Electrical, Radio and Machine Workers of America (UE) which we submit as our testimony in the ongoing Judiciary Committee hearings on the nomination of Clarence Thomas for the U.S. Supreme Court. Please enter it into the official hearing record.

This resolution was approved in August 1991 in Pittsburgh, Pa., by delegates representing approximately 80,000 UE members nationwide. We urge the committee to consider our views.

Sincerely,

Robert Kingsley
Political Action Director

* Resolution of the 56th Convention of the United Electrical, Radio and Machine Workers of America (UE)

REJECT THE CLARENCE THOMAS NOMINATION

Judge Clarence Thomas has been nominated by President Bush to fill the Supreme Court seat vacated by Justice Thurgood Marshall. Thomas, an African-American, is an opponent of affirmative action for racial minorities and women. This position he justified by saying, "I was raised under the totalitarianism of segregation not only without the active assistance of government, but with its active opposition."

In fact, Thomas himself was the direct beneficiary of laws, rulings, and programs which required affirmative action. It is doubtful whether Thomas could have attended either Holy Cross College or Yale Law School without the existence of minority preference admissions policies. He is like a "freeloader" in a union shop who enjoys all the benefits of a union contract, but bad-mouths the union because he just doesn't want to pay his union dues.

Thomas opposes affirmative action on the grounds of opposing any government role in bringing about equality of opportunity. Seated on the Supreme Court, Thomas could extend this doctrine to its natural conclusion: to oppose government help to the children of workers seeking higher education, to lower-income people seeking to purchase a home, to those who have lost their livelihood through no fault of their own, to those needing medical care without the ability to pay. Such are the true targets of those in the crusade against affirmative action: the working poor and, through them, all workers.

Thomas' views are well known due to his seven-year tenure as head of the Equal Employment Opportunity Commission (EEOC). As EEOC Chairman, Thomas refused to enforce the Age Discrimination Act and allowed suits involving thousands of older workers to languish. He has also criticized minimum wage laws and the Brown vs. the Board of Education desegregation case, challenged the separation between church and state, and hinted that he would like to see abortion outlawed.

These views and others have already led many to oppose the Thomas nomination, including the Congressional Black Caucus, Americans for Democratic Action, the League of United Latin American Citizens, the National Organization for Women, the AFL-CIO, and the NAACP.

THEREFORE, BE IT RESOLVED THAT THIS 56TH UE CONVENTION:

1. Urges the Senate to oppose the nomination of Clarence Thomas to the United States Supreme Court and to demand that President Bush nominate a qualified jurist who will restore balance to the Court;
2. Urges those who opposed the nomination of Robert Bork to mobilize once again to oppose this nomination;
3. Urges all locals and districts to alert UE members to the dangers of the Thomas nomination; to mobilize UE members in letter-writing campaigns; and to work in coalitions with other unions and anti-Bush forces to defeat this dangerous nomination.

SUMMARY OF WRITTEN TESTIMONY
OF
MR. CONNIE MACK HIGGINS,
CHAIRMAN OF DISTRICT OF COLUMBIA
BLACK REPUBLICAN SCHOLARSHIP FUND, INC
1612 "K" STREET N.W.
SUITE 1000
WASHINGTON, DC 20005

BEFORE

THE SENATE JUDICIARY COMMITTEE

SEPTEMBER 20, 1991

Mr. Chairman, members of the committee, and guests, my name is Connie Mack Higgins. I am Chairman and President of the Omega Group, Inc. and Chairman of D. C. Black Republican Scholarship Fund, Inc.

It is my pleasure to appear before you to testify in support of the nomination of Judge Clarence Thomas to the Supreme Court.

I have known Clarence Thomas for over ten (10) years and the respect I have for him is not solely based upon on political affiliations. But out of the commonality of background, Judge Thomas in his youth knows rural poverty and the ever present shadow of separate but, certainly not equal, justice. I too am a product of poverty but not rural poverty, but urban proverty, public housing and Aid to Dependent Children.

Like Judge Thomas, I too had a strong parental hand. My mother was from Mississippi and had a fourth grade education. Like Judge Thomas, I too was taught the value of hard work and that in America all things are possible.

Those of us who are politically active sometimes forget that we should give back to our community. In 1985 a group of us in the D.C. Black Republican Council was searching for a vehicle to make an impact in our immediate community. Consequently, we decided to

invest in our future and created a tax exempt 301(d) organization called the D.C. Black Republican Council Scholarship Fund, Inc.

The scholarship fund was created to assist graduates of the D.C. Public Schools regardless of their party affiliation or political beliefs. During our inaugural fund raiser we didn't have a lot of "heavy hitters," yet Clarence Thomas unselfishly gave of himself to our cause. As a result, in our first year we were able to award eleven (11) scholarships in the amount of \$2,000 each to financially and academically deserving graduates of the D.C. Public Schools. The total scholarships awarded up to now has been sixty-six thousand dollars (\$66,000).

Mr. Chairman we need Judge Thomas to be confirmed because his experiences and background bring a sensitivity and vision on those matters of law that will clearly impact the fabric of our society.

In conclusion, the confirmation of Judge Thomas to the Supreme Court clearly is a symbol of all that is right about this great country of ours. No one doubts that there are still mountains to climb, but every journey begins with one step and each successive step brings the destination closer and clearer into view. Judge Thomas confirmation clearly brings the journey to the realization of the American Dream clearer for all. **THANK YOU.**

WASHINGTON POST 10/2/87
COURTLAND MILLOY

Scholarship Commitment

At a time when many professional and social organizations are awarding scholarships to D.C. high school students as their way of showing "commitment to the community," one group really stands out.

It is the D.C. Black Republican Council, which, with only 112 members, has given out \$42,000 in scholarships during the past 18 months.

Whatever you want to say about this small group of black Republicans in this overwhelmingly black Democratic town, they are hard to beat when it comes to supporting the education of this city's youth.

The group is among the top contributors for D.C. student scholarships, according to Florence Ridley, director of student affairs for the D.C. public schools. "They are making a very valuable contribution, far out of proportion to their numbers."

Ridley said 1,414 District students received about \$8.8 million in scholarships last year, with the largest scholarships coming from corporations, universities and one anonymous donor who gives \$40,000 each year.

The Black Republicans have been able to come up large amounts of cash by appealing mainly to black business leaders and private residents, Democrats and Republicans alike.

Although they do not expect these contributions to translate into any increase in political support, it does seem worthwhile to examine what it is about the Black Republicans that makes them so effective at raising money.

"First of all, it's important to understand that we are not 'black elites,' with a history of what you'd call being financially comfortable or 'manor born,'" said Connie Mack Higgins, chairman of the D.C. Black Republican Council.

"The black aristocracy is in the Democratic Party," he added. "We [the black Republicans] have, by and large, struggled very hard to get an education and get ourselves established in

business. We have a strong sense for what it takes to help others do the same."

The D.C. Black Republican Council came up with the idea for scholarships in 1968, the year the group was founded.

Like other organizations, the idea was to have an impact on the city in which they operated and education seemed the way to go. However, instead of holding conferences and seminars on the plight of education in the city, they set out to raise as much money as they could for scholarships.

"And the scholarships themselves would be different."

"What I like most about the Black Republicans is that they don't give money just to honor-roll students," Ridley said. "The students are not just college bound, either, but also looking for many kinds of postsecondary education."

"You see, in many instances the students who get the Black Republicans' scholarships also work and they don't always perform at peak levels in school because of other responsibilities. This money takes some of the pressures off and you'd be surprised as to how many of them take off and excel."

So far, 21 students have received \$2,000 each from the Black Republicans. And they expect to keep the award money flowing.

"I would say that black Republicans, along with black Democrats, too, believe that the salvation of our race is the building of an educated electorate, not just for political purposes but for the purposes of life," Higgins said.

"All of us want to expose our kids to the awards dinners, to the role models who can show them that they can make it without selling drugs, that they can be successful forces in the community without the negative."

The local Black Republicans are putting a lot of money and a lot of energy into this effort, and while they say no political rewards are expected, there can be little question that they are spreading the seeds of black Republicanism throughout the town.

The Washington Times



From left: Ann Heuser, Mack Higgins, Marilyn Tyler Brown, and William Beck.



Mary Lacey and Helen Steiner.



Members of the Glen Parker Robinson Dance Ensemble.

Barriers drop at fund-raiser

Democrats join Republicans to meet black scholarship goal

DC's black Republicans, a rare but by no means endangered species met their goal and raised some \$24,000 for college scholarships at their first annual fund-raiser Saturday.

City Councilwoman Charlotte Drew Jarvis, one of several Democrats among the 400 guests, declared that the night's goal "wasn't so political after all."

She recalled how her father, the late Dr. Charles Drew, (R-Ind.) is a surgeon; professor of surgery and pioneer in blood plasma research; got her a study-scholarship scholarship with assistance from his Amherst alma mater. Scholarships are now in even greater demand, she noted, because of federal cut cuts and the limited resources of the United Negro College Fund.

Marianne Swanson, a member of the D.C. Republican Committee who is a legislative clerk for the House, was not surprised at the number of Democrats in the audience. "They're responsive," she said. "They're not necessarily ready to change parties. But they're thinking about it."

Added about black Republicans is

just the GOP; the vivacious brunette, said "It takes a lot of courage to be outspoken on unpopular things, especially if you're a minor ty. But she added, things are changing. "My mother, who's been a Democrat forever since her ticket for the first time — she gave Mondale a sympathy vote, and then she voted for Warner."

The event, animatedly hosted since she began unsuccessfully in a business message, Secretary of Labor W. Lee Brock urged the gathering to "take responsibility" for "our children's future."

Then the Glen Parker Robinson Dance Ensemble erupted onto the stage. The troupe is sponsored by the Adolph Coors (brewing) Co., represented here by the public relations firm of another well-known D.C. Democrat, Mrs. Edith Perry. The Denver-based dancers demonstrated the audience with their powerful burlesque interpretations of song and word.

The finale, entitled "Mambo," and featuring men and women in flowing red skirts, drew a standing ovation, verifying what poet Salyern Quills said earlier: "From this seat, it's easy to see — there's a lot of soul in the LHM."

— Cheryl Weinstock



Lisa Robinson and "The Star-Spangled Banner."

THE WASHINGTON *Informer*

Washington's Prize Winning Weekly
A WEEKLY NEWSPAPER WITH EXCITING NEWS AND PICTURES

JUNE 26 — JULY 2, 1986

THE WASHINGTON INFORMER

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Scholarship Awards

Recipients of the District of Columbia National Black Republican Council's First Annual Scholarship Fund Awards are: First row, from left, Salyta Newsome, Cardozo High School; Karlene Kennedy, Washington Dix Street Academy; Nancy G. Hill, Dunbar High School; Diane Y. Robles, Cardozo High School; Bridgett A. Carrol, Roosevelt High School. Second row, from left, Javil G. Davis, McKinley High School; Gregory Butler, Anacostia High School; Angela R. Norman, H. D. Woodson High School; Mia F. Montgomery, Eastern High School; and of Yvonne Jones, Duke Ellington School of the Performing Arts. Each recipient received \$2,000 at a ceremony held at Lincoln Temple United Church of Christ on June 21.



**D.C. Chapter
National
Black
Republican
Council**

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C Mack Higgins

Vice Chairman

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Membership

John Jones

Political Action

C Mack Higgins

Public Affairs

Fred Laney

(202-882-8059)

Rules

Melvin Burton, Esq

Women's Affairs

Gwendolyn Moore

Youth Affairs

Randall Leverette

FACT SUMMARY

Event: First Annual D.C./BRC Scholarship Dinner

Date: Saturday, September 21, 1985

Time: 7:30 p.m.

Location: Ballroom
Sheraton Washington Hotel
2660 Woodley Road, Northwest
Washington, D.C.

Purpose: The D.C. Chapter of the National Black Republican Council is sponsoring a black-tie dinner to finance scholarships for deserving 1986 graduates of the District of Columbia Public Schools. These scholarships will be awarded to students who are interested in becoming entrepreneurs and will be part of a comprehensive program designed to:

- a) Identify potential business leaders early in their careers;
- b) Increase the interest in entrepreneurship among Black students; and
- c) Nurture their continued interest by providing financing for education and training through internships with successful business owners.

Keynote Speaker: The Honorable William E. Brock
Secretary
U.S. Department of Labor

Entertainment: Cleo Parker Robinson Dance Ensemble

Sponsoring Organization: The District of Columbia Chapter of the National Black Republican Council (NBRC) is the largest and most active of the 26 chapters of NBRC.

CONNIE MACK HIGGINS
Principal
The Omega Group, Inc.
1612 K Street, N.W.
10th Floor
Washington, DC 20006



SUMMARY OF BACKGROUND:

Fifteen (15) years of management and administrative experience at the executive level in the public and private sectors. Proven expertise in corporate strategic planning and implementation. Experienced in the development of national human resource development strategies.

Served on a presidential mission to Kenya, Zaire, The Ivory Coast, and Nigeria to establish the communication system and technical assistance delivery systems between the private sectors of these nations and the business sector of the United States.

SELECTED EXPERIENCE:

Over twenty years experience organizing and directing programs and organizations in the private and public sectors. Professional expertise in the following areas:

- . Management of Large Organization
- . Strategic Planning
- . International Economic Development

Management of Large Organizations

Appointed Administrator of a major component of the Executive Branch. Developed and directed the implementation of national programs for Management Services delivery and Financial management.

Founded and direct a management consulting firm specializing in technology transfer and management systems design, implementation and operation. Company is comprised of sixty professionals with a nationwide client portfolio.

Strategic Planning

Formulated the strategic plan for major elements of national presidential campaigns. Conducted the situation analysis, the planning goals and the implementation strategy for each campaign.

Development the long range plan for a major federal administration supporting the private sector. Implementation of the plan provides major support activity to private enterprise.



Baiyla Newcome
Cantosa
High School

Karlina Kennedy
Washington D.C.
Street Academy

Nancy Hill
Dumbear
High School

Otana Robles
Cantosa
High School

Bridgett Garrett
Rosenwald
High School

Javil Davis
McIntyre
High School

Gregory Butler
Anacostia
High School

Angela Norman
W D Woodson
High School

Mia Montgomery
Eastern
High School

Terrence Jones
Duke Ellington School
of the Performing Arts

1986 D.C. Black Republican Scholarship Recipients

General Information

The intent of the District of Columbia's Black Republican Scholarship Fund extends beyond its political interests. The program concept is predicated on the belief that "a genuinely free society cannot exist without participation from all groups." We further believe that disadvantaged youth should be provided opportunities for participation in this free society and have thereby, established a scholarship fund for that purpose.

Freedom Through Education

*The District of Columbia
Black Republican Council
Scholarship Fund, Inc.*

It is our view that education contributes to one's political experience. It is also our belief that man's social and educational experiences are intrinsically linked together—making one the total sum of his experience.

The District of Columbia Black Republican Scholarship Fund is dedicated to the provision of educational growth and development of qualified youth of the District of Columbia. Through our efforts we are happy to assist our young people in pursuing and achieving their dreams in the arts, sciences, business and politics.

Excellence is our motto. The District of Columbia Black Republican Scholarship Fund deems it a wise investment to help our youth soar to hitherto unknown heights and share in one of life's greatest political experiences—**EDUCATION.**

The purpose of the Black Republican Scholarship Fund is to provide scholarships to highly motivated disadvantaged youth enrolled in a District of Columbia Public Senior High School.

Currently, this country produces large numbers of skilled professionals. Unfortunately, few of this larger group includes disadvantaged young Americans. They are the group who must be

provided training in order that they be prepared to enter the world of work. This skill attainment will permit disadvantaged persons the freedom to enter the world of the free enterprise system.

Eligibility Criteria

Applications will be accepted from students in their senior year in the D.C. Public Schools. Each applicant must be at least 16 years of age with 23 being the limit for eligible participation. All applicants must be residents of the District of Columbia and enrolled in day or night school. Disadvantaged students are strongly encouraged to participate. Students must demonstrate an above average level of achievement in their high school careers, which includes community, civic, and academic leadership. Candidates must have an overall average of C and must also be accepted in an institution of higher learning.

The Selection Process

Applications will be filled out by each high school senior interested in the goals and objectives of the Fund. Applicants will be pre-screened by the Scholarship Selection Committee Division of Student Services, D.C. Public Schools, for general eligibility, and highly qualified applications will be forwarded to the Scholarship Fund Inc. Selection Committee. All applicants will then be screened and carefully and thoroughly reviewed by the Scholarship Fund Inc. The Selection Committee will choose 10 nominees for approval by the Board. The selection process by the Scholarship Fund Inc. is non-partisan and designed to identify minority and other disadvantaged young men and women who show promise of providing the kind of leadership that will influence the shape of our society for many years to come.

Remuneration Amount

Scholars will receive scholarships of \$2000.00. If for any reason the student cannot complete his/her studies the residual amount shall be returned to the Board of Directors of the D.C. Black Republican Scholarship Fund, Inc. This return of funds will be based on the policy of the College or Universities.

Board of Directors

Daniel Harrison
President

Warren E. Boyd, Jr.
Secretary Treasurer

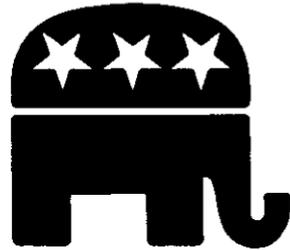
David Rice
Attorney

Frederick Laney
Director of Public Affairs

Charles Queen
Honorable DuBois Gilliam



**D.C. BLACK
REPUBLICAN**



**“Scholarship
Fund” Inc.**

International Narcotic Enforcement Officers Association, Inc.

DIAL 518 INEOA-32

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ALBANY, NEW YORK 12207-2023 U.S.A

JOHN J BELLIZZI
EXECUTIVE DIRECTOR

September 20, 1991

Senator Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Senator Biden:

Attached is a copy of my testimony in support of the confirmation of Judge Clarence Thomas as Justice of the United States Supreme Court.

Please include my statement in the official record of the Senate Judiciary Committee considering Judge Thomas' confirmation.

Sincerely,


John J. Bellizzi
Executive Director

JJB/clb

cc: Ronald A. Klain
Jeffrey J. Peck
Terry L. Wooten

TESTIMONY PRESENTED BY

JOHN J. BELLIZZI
EXECUTIVE DIRECTOR
INTERNATIONAL NARCOTIC ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE SENATE JUDICIARY COMMITTEE

CONSIDERING THE NOMINATION OF

JUDGE CLARENCE THOMAS

AS JUSTICE OF THE SUPREME COURT

As in my previous appearance before this committee, I wish to express my appreciation for granting me the opportunity to appear before you today to testify in these important hearings considering the nomination of Judge Clarence Thomas.

My name is John J. Bellizzi. Currently I serve as the Executive Director of the International Narcotic Enforcement Officers Association (INEOA) which is an organization composed basically of narcotic enforcement officers from all levels of government and from throughout the United States and 50 other countries.

I appear here today on behalf of 15,000 members and thousands of other drug enforcement officials throughout the United States.

Recently drug traffickers have suffered some serious setbacks as a result of an intensified and concentrated effort by law enforcement.

The impact of the multitude of seizures of drugs, money and other assets brought about by successful investigations, arrests and prosecutions has put such a dent in the illegal trafficking operations that by furious retaliation the traffickers are committing assaults, violence and murder on our drug agents and other officials responsible for drug enforcement.

Narcotic law enforcement agents have always operated under high risk conditions, but recent events have created a situation where their lives are at stake constantly and these men and women deserve to be recognized for their dedicated service.

The thousands of drug enforcement agents who risk their lives each time they set out on a drug investigation are dedicated. Notwithstanding the imminent risk they face, they are not the least dissuaded from performance of duty.

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These officers and their family members are very much concerned that they receive the same equal protection, the same constitutional rights, the same constitutional protection afforded to any suspect, defendant or prisoner charged with the commission of the crime.

I wish to make it clear that by this endorsement we do not seek to ingratiate ourselves with Judge Thomas or the court. We seek no favor, we seek no special privileges. What we do seek is protection of the constitutional rights of the accused and we also seek protection of the constitutional rights of our law-abiding citizens and of our law enforcement agents.

I submit that by his record Judge Thomas has demonstrated that he is capable and indeed willing to do just that - ensure equal protection to all regardless of race, color, sex, religious or social background.

Four times the United States Senate has confirmed Judge Thomas' appointment to high-ranking government positions. In 1981, Thomas was appointed Assistant Secretary for Civil Rights in the United States Department of Education. One year later, he was appointed Chairman of the Equal Employment Opportunity Commission; he was reappointed in 1986. The EEOC, an agency that employs 3,100 persons and has an annual budget of \$180 million, enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex, or national origin. The EEOC also enforces laws against discrimination based on age or disability. Thomas' tenure as chairman was the longest in the history of the Commission, and the Commission's new headquarters building is named after him.

On April 30, 1990, Thomas assumed his present position as a judge on the United States Court of Appeals for the District of

Columbia, to which he was appointed by President Bush. During his time on the bench, he has written opinions in criminal law, anti-trust law and trade regulation, constitutional law, and administrative law.

Throughout his distinguished career, Thomas has championed the principle that individuals should be judged on the basis of abilities and character, not on skin color. He believes that every American should have the same opportunity to stand up and be judged on his or her own merits. He has lucidly explained his views on a variety of issues, legal and otherwise, in his judicial decisions and in articles and speeches. He has been described in the press as smart, tough, a man who "speaks powerfully about overcoming racism and poverty in the deep South" and who "embodies the ideal of personal achievement rather than reliance on government programs for a leg up." As Senator Hatch has observed, Thomas "came up the hard way" and "understands the sting of oppression." Senator Danforth made a similar point when he observed that Thomas "is a person who knows discrimination. He has a real commitment to fighting injustice."

Judge Thomas is a tough, anti-crime judge. He takes a common-sense approach to questions of criminal law and procedure, and has recognized the practical problems that law enforcement officers face in combatting crime on the streets.

Commenting in 1985 on what should be done to solve the problems faced by America's inner cities, Judge Thomas remarked: "The first priority is to control the crime. The sections where the poorest people live aren't really livable. If people can't go to school, or rear their families, or go to church without being mugged, how much progress can you expect in a community? Would you do business in a community that looks like an armed camp, where the only people

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who inhabit the streets after dark are the criminals?" Black America Under the Reagan Administration: A Symposium of Black Conservatives, The Heritage Foundation Policy Review (Fall 1985).

In another context Judge Thomas asserted: "We should be at least as incensed about the totalitarianism of the drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern bloc countries." Why Black Americans Should Look to Conservative Politics, Heritage Foundation Reports (June 18, 1987).

Judge Thomas' opinions in the field of criminal law demonstrate a deep understanding of the community's interest in deterring crime. He has resisted efforts to impose unreasonably burdensome requirements on the police and prosecutors or to overturn criminal convictions on technicalities not required by the Constitution, while guarding against infringements of the fundamental rights of criminal defendants.

Judge Thomas has affirmed judgments of conviction in all but one of the seven criminal appeals for which he wrote opinions while on the Court of Appeals. Of the eighteen additional criminal appeals considered by Judge Thomas, he joined the majority in upholding sixteen criminal convictions and/or sentences.

Judge Thomas has rejected the argument that a conviction for aiding and abetting narcotics distribution should be reversed because the defendant's involvement was limited to giving a drug dealer a ride to the site of the illegal transaction. (United States v. Poston, 902 F.2d 90 (D.C. Cir. 1990).

Judge Thomas has rejected arguments that a trial judge erred in admitting police testimony as to the contents of a telephone call, answered by police during a search of a defendant's apartment, which tended to show that the defendant was dealing in narcotics.

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(United States v. Long, 905 F.2d 1572 (D.C. Cir.), cert. denied, 111 S. Ct. 365 (1990). Similarly, he has upheld the admission at trial of evidence of a defendant's prior drug dealing activity. (United States v. Rogers, 918 F.2d 207 (D.C. Cir. 1990).

In a case involving narcotics dealers who conducted their illegal trade out of several rooms in a hotel, Judge Thomas rejected the argument that police had seized evidence against them in violation of the Fourth Amendment. In response to the contention that the warrantless search of one of the rooms was unlawful, Judge Thomas held that it was justified by exigent circumstances, and noted that, although "the police carefully investigated the suspicious hotel guests for more than a week and sought warrants for all the rooms that they could link to [defendant]," the defendant "tried to frustrate the warrant process by hopping from room to room." Following recent Supreme Court precedent, he further ruled that evidence seen by the police during an unlawful search was nonetheless admissible at trial on the grounds that it was subsequently acquired on the basis of an independent and lawfully procured search warrant. (United States v. Halliman, 923 F.2d 873 (D.C. Cir. 1991).

Judge Thomas ruled against a defendant who argued that, at his trial, the judge had improperly instructed the jury as to his entrapment defense. In so holding, Judge Thomas observed that "the government [had] introduced overwhelming evidence of [defendant's] eagerness to sell crack, enough, we are certain, for the government to have carried the burden of proof it needed to defeat [defendant's] entrapment defense." (United States v. Whoie, 925 F.2d 1481 (D.C. Cir. 1991).

Judge Thomas is not, however, excessively deferential to the prosecution at the expense of fairness toward criminal defendants.

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In United States v. Miller, 904 F.2d 65 (D.C. Cir. 1990), Judge THomas joined an opinion by Judge Silberman overturning defendants' conviction for wire fraud on the ground that the trial court had excluded admissible exculpatory evidence.

The matter of Judge Thomas' nomination and record was reviewed by the 50 members of the Board of Directors of INEOA and the General Membership at our 32nd Annual International Drug Conference held in Montreal, Canada, September 1-7, 1991, and Judge Thomas received the unanimous endorsement for his appointment to serve as Justice to the United States Supreme Court.

Thank you.



CALIFORNIA
WOMEN
LAWYERS

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From the office of

September 20, 1991

Senator Joseph R. Biden, Jr.
Chairman
United States Senate
Committee on the Judiciary
Room 224
Dirkson Senate Office Building
Washington, D.C. 20510

Re: Confirmation of Clarence Thomas

Dear Senator Biden:

CALIFORNIA WOMEN LAWYERS OPPOSES CONFIRMATION OF THOMAS

California Women Lawyers (CWL) is a statewide organization of women lawyers whose mission is to speak out on issues substantially affecting the 25,000 women lawyers in the State of California. After extensive review of Judge Clarence Thomas' record we urge the Senate Judiciary Committee not to confirm the appointment of Judge Clarence Thomas to the United States Supreme Court.

Of particular importance in this judicial confirmation proceeding are our rights to "Choice" and to equality in the work place. Judge Thomas's report card on these basic issues, despite his recent "opportunistic" conversion, shows that he has failed.

Judge Thomas has failed to grasp the application of basic constitutional privacy rights to women. His past alignment with conservative reactionaries combatting the freedoms upheld in Roe v. Wade alienates him from women north and south, women of color and women not of color.

Judge Thomas has failed to accept the concept that women belong in the workplace. His "cultural differences" excuse for the continuance of the historic pay and job inequities for women is insensitive and reveals a lack of scholarship in this significant constitutional area.

We may never know for sure just what he personally believes on the issues of "choice" and discrimination against women in the work place. We do know from his record, however, that he will do the job expected of him by President Bush,

AFFILIATES: Black Women Lawyers Association of Los Angeles; Butte County Women Lawyers & Judges; Fresno County Women Lawyers; Inland Counties Women of Law; Kern County Women Lawyers; Lawyers Club of San Diego; Los Angeles Lesbian or Gay Minority County Women Lawyers; Orange County Women Lawyers; Queen's Beach; San Fernando Valley Women Lawyers; San Francisco Women Lawyers Alliance; San Joaquin County Women Lawyers; Women Lawyer's Section; San Mateo County Bar Association; Santa Barbara Women Lawyers; Solano County Women Lawyers; South Bay Women Lawyers; Women Lawyers Commission; Santa Clara County; Women Lawyers of Alameda County; Women Lawyers of Contra Costa; Women Lawyers of El Dorado County; Women Lawyers of Fresno County; Women Lawyers of Inyo County; Women Lawyers of Santa Cruz County; Women Lawyers of San Luis Obispo County; Women Lawyers of Ventura Co.; Women Lawyers Association of Los Angeles; Napa County Women Lawyers; Women's Section - Contra Costa County Bar; Marin County Women Lawyers; Mendocino Women Lawyers; Nevada & Yuba Women Lawyers.

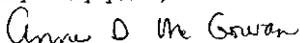
Senator Joseph R. Biden, Jr.
Re: Confirmation of Clarence Thomas
September 20, 1991
Page 2

but certainly not by the women of America. This record leaves no conclusion, despite his current protestations, but that when faced with the opportunity, he will overrule Roe v. Wade, and that he will furthermore provide a lackluster if not damaging performance in correcting the historic pay and job inequities between men and women in the work place. Judge Thomas's recent back-pedaling and recanting is clearly that of a person who believes the "end justifies the means." The Supreme court appointment that has been offered to him has become the pole star guiding his each and every utterance during these confirmation hearings.

We challenge each of you in your own review of Judge Thomas' report card to first cast aside any consideration of the political exigencies of the moment. Use as your pivotal point the support for the constitutional right to "choice" by the vast majority of your women constituents, a support that crosses party lines. Next, resolve to support the constitutional requirement of equal protection to bring about the termination of the inequities for women in the work place. Then review Judge Thomas' report card - the evidence of his lack of commitment to the legal status of women - and contrast it with your own support and with your own resolve. We further challenge each of you to vote your conscience on this candidate's commitment to the legal values the Supreme Court is entrusted to protect. In view of Judge Thomas' demonstrated wavering, we believe your conscience will dictate a decision that will protect a woman's choice and support the removal of the barriers holding back women from equal pay and professional status.

Judge Thomas is not the only candidate in the vast talent pool from which our President can choose. Let President Bush use this opportunity to appoint a person to the bench who not only is eminently qualified, but who is attuned to the basic rights of the women voters of America. Clarence Thomas never was and never can be such a person. You and the President of the United States can do better, and we challenge you to do so.

Very truly yours,



Anne D. McGowan
President

TESTIMONY BY REP. PATSY T. MINK
BEFORE THE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF JUDGE CLARENCE THOMAS
SEPTEMBER 20, 1991

Thank you for giving me the opportunity to make my case against the confirmation of Judge Clarence Thomas to the United States Supreme Court.

I come before you as a woman, legislator, and a citizen to ask you to consider the implications of Judge Thomas' appointment as Associate Justice of the Supreme Court for women's equality and women's opportunities. Judge Thomas' record as chief of the Office of Civil Rights and of the Equal Employment Opportunity Commission reveals his disregard for women's legal rights to equal treatment in education and in employment.

At the helm of the Office of Civil Rights, Judge Thomas sought to narrow and to weaken women's Title IX guarantees of non-discrimination and equity in education. Placing his views and his agenda above existing law, he worked to narrow the scope and quality of Title IX safeguards available to women in educational institutions. He sought permission from the Justice Department to repeal established regulations, most especially including Title IX protections for women employed in educational institutions. He defied a court order to enforce Title IX through timely compliance reviews. He weakened enforcement of Title IX by retrenching OCR's monitoring role, accepting mere promises of remedial action by institutions against which complaints had been filed rather than demanding that institutions demonstrate compliance with the requirements of Title IX. He substituted his own interpretation of Title IX for established regulations governing admissions, employment, athletic, and counseling practices which have an adverse impact based on sex. Judge Thomas imposed an intent standard on Title IX enforcement, making it difficult to prosecute broad violations of women's educational rights. As a result, during Judge Thomas' short tenure at OCR, the remedies available to women aggrieved by discrimination in education were narrowed. The agency responsible for protecting women's rights in education instead made it easier for educational institutions to discriminate.

As one of the original authors of Title IX I am acutely disturbed by Judge Thomas' contempt for the law of educational equity. Title IX is the fountainhead of women's equality of opportunity, not only in education but in employment and public life, as well. Education opens doors, and more important, creates choices. Judge Thomas' narrow view of the problem of

discrimination, combined with the benefit of the doubt he extended to institutions against which claims were made, showed his lack of commitment to women's opportunities and choices. More significant still, Judge Thomas' decision to eschew precedent, evade court orders, and shun legislative history with respect to Title IX enforcement is part of a larger pattern of imposing his own agenda upon the law and at the expense of the civil rights of women.

This pattern is further revealed if we look at Judge Thomas' records at the Equal Employment Opportunity Commission. Commissioner Thomas left a legacy of neglect for women's wage and job discrimination claims at EEOC. In 1988 the General Accounting Office concluded that Thomas' EEOC typically closed cases without adequately investigating employee's claims: by FY 1989, in fact, more than half of the individuals who filed complaints with EEOC got no relief. (By comparison, only 29% of complainants got no relief in FY 1980).

Most women who filed discrimination complaints against employers' fetal protection policies were ignored by Judge Thomas' EEOC. The agency charged with protecting working women's rights simply defaulted on enforcing Title VII's prohibition against intentional, sex-based discrimination. When the EEOC issued guidelines on fetal protection policies in 1988, it weakened women's Title VII protections by expanding employer defenses. Several years earlier, Judge Thomas' EEOC had participated in lower court cases, arguing that the stringent BFOQ (bona fide occupational qualification) test need not be met by employers implementing fetal protection policies. Rather, the EEOC argued, "business necessity" might be argued to justify the policy. Lower courts so ruled in two cases, creating precedents that the EEOC then incorporated into its own guidelines. Under Judge Thomas, then, the agency charged with enforcing Title VII lowered employers' threshold defense for at least one form of blatant, facial discrimination.

Working women aggrieved by wage discrimination fared no better than women aggrieved by fetal protection policies when they sought relief from Judge Thomas' EEOC. Judge Thomas may have convinced this committee that he didn't mean it when he quoted Thomas Sowell -- arguing that women don't have the skills for or interest in better-paying jobs, that they choose low-wage labor, that they choose to be unreliable workers because they choose to have babies. But his record at EEOC shows that he did mean it. He warehoused more than 250 disparate impact wage discrimination claims for more than three years while the EEOC tried to develop a policy. Meanwhile, straightforward Equal Pay Act cases -- where women and men performing the same work received different pay -- did not receive vigilant attention.

More strikingly, in the most important wage discrimination case pursued by the EEOC in recent years -- the Sears case -- Judge Thomas publicly disparaged his own agency for bringing the suit on behalf of women employed by Sears. The fact that Judge Thomas' EEOC did not initiate the case -- the Carter Administration EEOC filed the suit in 1979 on behalf of women segregated into lower-paying jobs -- did not absolve him of his ethical professional obligation to the EEOC's clients, the women workers at Sears. Judge Thomas was resoundingly criticized for his comments about the case, including by the esteemed former Chair of the House Education and Labor Committee, Augustus Hawkins, and by the trial judge. The EEOC lost the case, never appealed, and, under Judge Thomas, ceased to take on cases on behalf of large numbers of women.

Judge Thomas' conduct during the Sears case, clearly privileged his own views and agenda over the precedents and legal responsibilities of the EEOC. The Sears case is not an isolated example of Judge Thomas' disregard for law and government. His record on affirmative action while at EEOC and his public criticism of the Supreme Court's decision in *Johnson v. Santa Clara County* also expose the Judge's proclivity for rule by opinion and his disregard for the rule of law. Under Judge Thomas, the EEOC in 1985 effectively banned the use of goals and timetables in any settlements in which the EEOC was involved, and stopped enforcing goals and timetables in existing consent decrees. Thomas promised to lift the ban under pressure of his reconfirmation hearings in 1986. Though he promised to lift the ban, he continued to speak out against affirmative action. He condemned the Supreme Court's decision in *Johnson*, embraced Justice Scalia's very troubling dissent, and stated his hope that Scalia's dissent would provide a basis for overturning the decision. This raises serious questions not only about Judge Thomas' substantive views, but about his respect for **share decisis**.

Judge Thomas' approach to discrimination law as the country's chief anti-discrimination officer bespeaks a man with a clear political agenda, an agenda which has filtered his interpretation and driven his non-enforcement of rights and remedies. So, too, does his list of heroes from whom he quotes or to whom he approvingly points: Lewis Lehrman, Thomas Sowell, Oliver North.

Now he asks you to believe that his record of actions, speeches, and writings is not a record at all, but merely a series of random quotations, philosophical musings, and highly context-specific decisions by a politically purposeless bureaucrat. In his testimony before this committee, Judge Thomas labored hard to show himself to be everywhere and nowhere, to have uttered words but not to have had opinions, to have taken stands but not really to have meant anything by them.

The confusion Judge Thomas has deliberately created about who he is, about what he thinks, and about how he thinks, ought to disqualify him from ascent to the High Court. He fails as a nominee on the merits of his own case. No one who cannot or will not articulate his view of constitutional interpretation, who cannot or will not share his view of fundamental rights, who cannot or will not admit to having a view of *Roe v. Wade*, and who cannot or will not show enough courage to stand by the convictions that have driven his actions and writing...no one, in short, who is a legal and jurisprudential vacuum deserves appointment to the body that guards our democratic rights and processes.

It is unfair to wise and courageous jurists -- female or male; black, latino, asian, indian, or white -- to settle for this appointment to the Court. It is unfair to the people who place their trust in law and democracy to give the power and responsibility to write judicial opinions to an unseasoned judge and sloppy reasoner who does not even read (by his own admission) the materials which he approvingly cites. And it is a grave injustice to the women of America to place the future of reproductive choice in the hands of someone who has habitually placed himself above law and precedent, who refuses to disclose what the reproductive rights "controversy" to which he has alluded is about, who will not explain how he approaches constitutional adjudication, and who will neither affirm nor deny that *Roe* is or should be settled law.

The reproductive rights questions that Clarence Thomas so clumsily ducked during five days of questioning are not trivial or inappropriate questions to ask of a Supreme Court nominee. Women's full equality and personhood depend on our ability to make reproductive choices. Women's health and women's lives depend on continued protection of reproductive decision-making as a realm of fundamental liberty. We should not ask how Clarence Thomas will rule in a particular case given particular facts. But we rightfully demand an answer when we ask of him: Does the fundamental right to privacy encompass a woman's right to terminate a pregnancy as handed down in *Roe*? And we deserve to know whether he believes -- not whether the Court has stated -- that the due process clause of the 14th Amendment encompasses a fetal right to life. The public has a right to know how a prospective Justice approaches rights, how he interprets the Constitution, and how he relates both to gender equality. Much is at stake here. The first right ever to be withdrawn from the American people may well be withdrawn by the Rehnquist Court. The reproductive right. And it will be taken away from American women.

Choice and personal welfare strike to the core of what's at issue in the Thomas nomination. Choice -- educational, occupational, and reproductive -- has been this society's chosen

pathway toward equality. But choice must be tied to the fairness and support that underpins personal welfare. It is not enough for a woman to have the choice to attend a university, if her educational welfare in the university is put at risk because law Title IX enforcement means that sexual harassment goes unpunished and unpunished. It is not enough for a woman to have the choice to be a nurse, if her economic welfare is put at risk because she hasn't chosen a less skilled, but male-dominated, and higher-paying job. And it is not enough for a woman to have the choice to seek a back alley abortion -- for women will find ways to make reproductive choices even if Roe is overturned -- if her health is put at risk by unlicensed practitioners in unsanitary locations. It is this range of women's choices and the legal protections that must accompany them for which the Clarence Thomas we know best -- as head of OCR and the EEOC and as "part-time political theorist" -- lacks understanding and commitment.

I urge you to reject Judge Thomas' nomination to the Supreme Court.

HOWARD UNIVERSITY

2900 VAN NESS STREET, N.W.
WASHINGTON, D.C. 20008

SCHOOL OF LAW

September 20, 1991

The Honorable Joseph R. Biden
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
Attn.: Ron Klain, Chief Counsel

Dear Senator Biden:

I am writing for the expressed purpose of clarifying issues raised concerning the Equal Employment Opportunity Commission (EEOC)-issues that have dominated the confirmation hearings of Judge Clarence Thomas, United States Supreme Court nominee. The period at EEOC prior to Judge Thomas' tenure as Chairman, based on the agency's record, would appear to be in dire need of clarification.

Denigrating language has been used during the hearings to describe an agency in shambles when Chairman Thomas arrived. I submit, the agency was not in shambles. Far from it, EEOC was doing quite well, having fended off an unprecedented assault by persons who would have liked to have seen EEOC closed. The agency's budget had been targeted for severe reduction which caused the staff to have to fight to save the agency at the very door steps of the Office of Management and Budget. This action can be easily found in EEOC's records.

EEOC won its fight to have the budget restored, even during a time when it was without a quorum for 81 days, the first time in the agency's history when it had only two commissioners.

During the confirmation hearings of Judge Thomas, there have been several references to the Commission prior to Chairman Thomas' arrival, mostly negative. In fact, to my knowledge the record reveals no responses from the nominee or from former members of EEOC defending the Commission and its faithful and productive employees during some very trying times prior to Judge Thomas' confirmation a Chairman.

I was appointed to the Equal Employment Opportunity Commission as a Republican in 1977 by President Jimmy Carter and as acting chairman by President Ronald Reagan on March 3, 1981. I served as acting chairman until I resigned on March 3, 1982.

I was succeeded by Cathie A. Shattuck, also a Republican, who served for a short period as acting chair until Clarence Thomas was confirmed by the Senate. Clarence Thomas was nominated as a Commissioner and designated as Chairman by President Reagan the day after I tendered my resignation as acting chairman in order to start my transition out of government.

I feel compelled to provide two reports for the record that I issued on October 8, 1981 (Year-End (FY '81) Report on EEOC Activities) and on January 13, 1982 (Report To Field Directors). These reports reflect the state of the Commission immediately before Chairman Thomas was confirmed by the Senate.

As the reports are contemporaneous with Chairman Thomas' appointment by President Reagan, I will not editorialize on them beyond the text of the reports. I do, however, want to laud the faithful staff at the Commission in 1982 without whose assistance and guidance the agency may have been irreparably crippled by the Office of Management and Budget.

I respectfully request that these reports be entered into the record of the hearings of Judge Clarence Thomas for the United States Supreme Court. The purpose of this tender is to show that EEOC was operating at high standards when Judge Thomas assumed leadership of EEOC.

Sincerely,



J. Clay Smith, Jr.
Professor of Law

JCS:jah

Enclosures

DR. J. CLAY SMITH, JR.
ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
REPORT TO THE CIVIL RIGHTS AND BUSINESS COMMUNITY

October 8, 1981

YEAR-END (FY '81) REPORT ON EEOC ACTIVITIES

Several prominent civil rights groups, members of the business community and the House Subcommittee on Employment Opportunities chaired by the Honorable Augustus Hawkins, have asked me in my capacity as head of the Equal Employment Opportunity Commission to report to them on those matters which might be of interest concerning the on-going activities of the agency.

The Equal Employment Opportunity Commission is alive and well at this time, but I kid you not when I say that we are in a desperate fight for survival. The President has stated on several occasions that he is firmly committed to equal job opportunity for all Americans. I have not been informed that he has wavered, changed or altered this view. Yet there is that underlying perception, fear and apprehension that things are not the same and that there will not be continued vigorous enforcement of civil rights laws.

To allay some of the existing pessimism, I thought it would be appropriate for me to issue a first time ever report to the civil rights and business communities on the current status of the Commission's activities. So what will follow here will be a chronological play-by-play of the various program areas in the agency, followed-up by an urgent concern which faces us today. This report covers the following subjects:

- 2 -

Compliance Activity

Charge processing figures for the first three quarters of Fiscal Year 1981 show a continued climb in the area of production and benefits. During this period the Commission received for processing 40,293 charges. Our field offices have resolved 54,482 charges or 35% more charges than we have taken in. This represents a one-third increase in production over comparable figures for Fiscal Year 1980.

In the Title VII area, the Commission took in 31,751 charges and resolved 45,456 or almost 45% more than we have taken in. The Commission's Title VII backlog, which stood at almost 70,000 charges as of January 1979, is now below 24,000 charges.

More important, Commission processes continue to provide substantial relief. Despite the extraordinary number of resolutions, the Title VII rapid charge settlement rate is holding at 43%. The settlement rate for Age discrimination charges has risen to 25% and Equal Pay settlements have gone up to 27%.

Through nine months of 1981, approximately \$60 million in relief was obtained for 36,682 people. These figures exceed benefits attained for all of Fiscal 1980.

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LITIGATION

The Commission's litigation program continues on the upswing. During the fiscal year, the legal activity of the Commission is reflected as follows:

Staff Litigation Recommendations

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
Title (VII)	247	291
Age (ADEA)	53	93
Equal Pay (EPA)	<u>93</u>	<u>67</u>
	<u>393</u>	<u>451</u>

Approvals by the Commission

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
TITLE (VII)	195	199
Age (ADEA)	53	69
Equal Pay (EPA)	<u>74</u>	<u>55</u>
	<u>322</u>	<u>323</u>

Actual Cases Filed*

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
TITLE (VII)	200	208
Age (ADEA)	47	66
Equal Pay (EPA)	<u>79</u>	<u>46</u>
	<u>326</u>	<u>320</u>

*Cases filed include interventions and requests for temporary preliminary relief under Section 706(f)(2), and does not include subpoena enforcements.

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Litigation Costs/Monetary BenefitsA Comparison of Half-Year
Statistics

	<u>FY 80</u>	<u>FY 81</u>	<u>% Changed</u>
Obligated Litigation Costs	\$ 736,500	\$1,250,166	+70%
Monetary Benefits	2,064,250	3,897,705	+89%

Court and Administrative Hearings Handled this fiscal year through
9/15/81 243

Lawsuits Currently Pending	Federal EEO
EEOC (Employees)	21
19	Title VII
FOIA (Freedom of Information Action)	33
6	Other
	4

Cases against EEOC decided between June 30 and Sept. 15, 1981

<u>Won</u>	<u>Lost</u>	<u>Settled</u>
16	0	4

- 5 -

This would make the cumulative figures

<u>Won</u>	<u>Lost</u>	<u>Settled</u>
34	2-1/2	9

Not included in the above is the fact that on September 11, 1981, EEOC reached an agreement with Nabisco, Incorporated, who agreed to establish a settlement fund for the benefit of a nationwide class of female bakery employees. The settlement, upon final approval by the District Court in Pittsburgh, Pennsylvania, will exceed \$5 million. Nabisco, Incorporated, agreed to the following significant provisions of the settlement:

- (1) assign all new production trainees to perform tasks in both traditionally male and traditionally female entry level jobs to afford exposure to the duties of both jobs;
- (2) conduct, semi-annually, a training program for the purpose of training female production employees to fill temporary openings in higher-paying job classifications;
- (3) allow female employees the opportunity to work overtime without imposing certain conditions that interfered with overtime opportunities in the past;
- (4) eliminate all differences in work rules between production departments;
- (5) implement a sex-sensitivity program for management personnel to be monitored by counsel for plaintiffs and counsel for the EEOC;
- (6) take steps necessary to discourage harassment of female employees--establish a procedure by which females' grievances of sexual harassment will be promptly resolved and take disciplinary action against any employee who engages in such harassment;
- (7) post openings for all production jobs bakery-wide rather than departmentally;
- (8) include in all job postings a description of the job, a statement that the successful bidder will be trained, and a statement that the successful bidder has a right to return to her former classification without loss of seniority;

- (9) engage in good faith efforts to recruit women to fill at least 60 percent of the vacancies that occur in the assistant foreperson position and at least 60 percent of the vacancies that occur in the foreperson position at each bakery;
- (10) immediately promote certain long-term female supervisory personnel to higher level positions;
- (11) post in all bakeries, for a period of six months, a notice, to be approved by counsel for plaintiffs and counsel for EEOC, highlighting the affirmative relief provisions;
- (12) provide the EEOC with reports which will be used to monitor compliance with the terms of the agreement;
- (13) evaluate management employees and use as a criterion for promotion their performance in securing and enforcing equal employment opportunities for female employees;
- (14) abolish the practice of allowing employees in male-dominated jobs to have first choice in bidding on most desirable shifts before the jobs are posted for bid bakery-wide;
- (15) have no rules prohibiting the carry over of seniority between departments or classifications.

The agreement resolved a lengthy and complex litigation matter which arose out of a complaint filed in 1975 by two employees at the Nabisco Bakery in Pittsburgh.

The EEOC intervened in the lawsuit in 1977, following an investigation of the numerous charges of sex discrimination filed by the Pittsburgh bakery women on behalf of themselves and all other female employees working in the production departments of the bakery.

The settlement, one of the most far-reaching in EEOC history, may impact as many as 8,000 women. The settlement fund will be distributed to all female employees working in production departments at the 11 bakeries any time on or after January 21, 1983.

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Nabisco will bear the cost of notifying all eligible claimants and distributing awards.

We also signed a settlement agreement with Sears, Roebuck and Co., that resolved four EEOC employment discrimination suits against this nation's largest retailer. The terms of the agreement were directed at insuring that Sears would implement procedures to monitor its own hiring practices in ways that should assure compliance with the law. We believe then and now that the agreement will enhance minority opportunities at Sears, and we hope to observe signs that will justify that belief in the near future.

The suits, filed in October 1979, alleged that Sears used discriminatory hiring practices involving race and national origin at seven facilities in Atlanta, Memphis, Montgomery and New York. This suit largely involved procedural issues. A few days prior to the settlement the U.S. Court of Appeals in New York affirmed a lower court's dismissal of the New York suit. It ruled that the Commission had not adequately negotiated the practices of the facilities named in that suit.

The settlement agreement called for Sears to modify its personnel practices at every facility throughout the nation. While the agreement recognizes Sears' voluntary affirmative action efforts, it required amendment of Sears' affirmative action program.

According to the agreement, Sears will have to give greater attention to the minority composition of applicants and establish procedures to monitor, at several levels, the comparison of a minority group's composition of applicants and the group's composition of hires in order to insure there is no discrimination at any stage of the hiring process.

The agreement has a duration of five years during which, if Sears complies with the agreement, the EEOC will not sue to seek class-wide relief for hiring discrimination, although the EEOC may seek relief for individuals alleged to be victims of hiring discrimination. The agreement does not affect the rights of private parties to seek individual or class-wide relief for allegations of hiring discrimination.

The settlement agreement does not affect the EEOC's nationwide sex discrimination suit against Sears which was also brought in October 1979. A Federal judge recently ordered the parties to be ready for trial in that case by June 1982.

Office of Systemic Programs

The Office of Systemic Programs has made significant progress during the latter half of FY '81. A number of new charges were issued, and charges which had been previously issued began moving through the administrative process at a much more rapid pace. The program is now fully staffed and operating at its projected workload. The Office anticipates continued progress leading to a significant number of settlements and the initiation of as many as 15 lawsuits in the coming year, depending on budgetary constraints.

During the latter half of FY '81, OSP issued 23 Commissioner Charges, bringing its total to date to 130. Included in the last group of new charges was the first charge ever issued by the Headquarters Unit. This is especially significant since it reflects substantial progress in the processing of the large number of backlogged pattern and practice charges inherited by that unit at its inception.

The process of issuing charges was more firmly structured with the completion of OSP's targeting model which compares the employment profiles of similar employers within a given area. This system permits OSP units to concentrate their limited resources on specific targets. The targeting model will be updated this year as soon as the most current EEO-1's are placed on computer, and will be expanded to permit the review of the employment membership practices of unions and joint apprenticeship programs. We believe that this expansion will represent a major advance in the area of efficient resource allocation.

Of the 104 charges issued prior to FY '81, 20% have now been fully investigated, most of these in the past six months. During the 4th quarter of FY '81, the Commission issued its first 7 decisions based on systemic charges and achieved settlement of one additional charge. The 7 decided charges are now in conciliation, and will either result in settlement or be referred for litigation early next fiscal year. An additional 8 charges have been fully investigated, with decisions drafted, but are being held pending settlement discussions and 4 other decisions are presently undergoing headquarters review. Moreover, a number of charges pending in the investigative phase are the subject of ongoing settlement discussions. We project that more than 50% of the present charge load (i.e., that which has not yet reached the decision stage) will either reach decision or settle prior to decision during the next fiscal year.

OSP's Technical Services Division has continued in its role as expert advisor to field and headquarters investigative and legal units. The Technical Services Division has assumed a particularly important role with respect to the Uniform Guidelines on Employee Selection Procedures. During the 4th Quarter, the Division compiled its first comprehensive data on review of test validation studies and found that approximately 75% of such studies have been approved either in whole or in part. This information has been published in a number of EEO newsletters in order to allay employers' concerns that the UGESP standards are exceedingly difficult to meet. Additionally, in keeping with EEOC's position that the UGESP should

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be consistent with current professional standards on test validation, TSD staff members have been active participants in the American Psychological Association's current review of its standards.

In the area of litigation, the Office has achieved several major resolutions this fiscal year. Early in 1981, we entered into a \$1.1 million settlement with the Commonwealth Oil Refining Company. The Commission's suit against CORCO had alleged pervasive sex and national origin discrimination by the Puerto Rican refinery. Two other settlements were tendered to district courts within the past six months, but final decrees have not been entered. An Office of Systemic Programs lawsuit against the Alabama Power Co. and IBEW was settled for approximately \$2.2 million and included increased job opportunities for minorities and women, company-wide. Most recently, the Office settled a major portion of its protracted litigation against the Operating Engineers unions in New York City. Total monetary relief in that case was \$81,500. More importantly, in the light of current ongoing discussions relating to a changing policy pertaining to affirmative action requirements, the settlement provided for preferential work referrals for identified victims of past discrimination. These referrals are especially significant as the funding of the West Side Highway project in New York insures the availability of jobs and the opportunity to acquire necessary skills.

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The Litigation Enforcement Division filed four new actions during 4th Quarter FY '81 and these, along with its existing docket, will proceed in FY '82. The major focus of the Division's resources over the next several months, however, will be the nationwide sex discrimination action against Sears, Roebuck & Co., which is scheduled for trial in June 1982. Preparation for this trial has been a major activity during the past six months. Such activity, coupled with the ongoing and intensive settlement negotiations with another major corporation and union, makes it extremely likely that FY '82 will see all of the backlogged SICD charges resolved.

Office of Policy Implementation

One of the issues that has increasingly attracted the interest of both the public and private sector is the need for regulatory reform. Depending upon one's political or economic perspective, the term "regulatory reform" may have many different meanings. Regardless of the philosophical perspective of who is addressing this issue, almost everyone will agree that the issue of regulatory reform is one that needs to be addressed in a very systematic and intelligent manner, with an eye to developing a less burdensome regulatory framework without dismantling the underlying rationale which initially dictated the need for such government interest. I will attempt to bring you up to date on the past and present efforts on the part of the Commission to reduce the burdensomeness of government regulations and to clarify some common misconceptions that currently exist about Commission regulatory activity.

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It seems in order at this time to make a general comment about the terminology often used by individuals when discussing this general area of governmental regulations. This misuse of terminology alone can often lead to unnecessary misunderstandings when discussing regulatory reform. First of all, when Congress passed the Civil Rights Act of 1964, it specifically rejected proposals authorizing EEOC to issue substantive regulations. Congress only authorized the Commission to issue procedural regulations to carry out the provisions of Title VII,^{1/} and in addition, gave us power to provide technical assistance to persons subject to Title VII.^{2/} Accordingly, the Commission has historically chosen the vehicle of interpretative guidelines to provide such technical assistance. This distinction is not a minor one and needs to be kept in mind, at least by our critics, when discussing the issue of regulatory reform. Guidelines, unlike regulations, create no legal rights or obligations, have no binding effect, and do not in and of themselves have the force of law. Guidelines instead play the important role of educating and advising employers about the day-to-day application of a complex statute that can have far-reaching consequences for employers. The guidelines are based primarily upon court rulings regarding the application of the statute to the specific issue discussed in the guidelines, or if there is little, if any, legal precedent on the issue, what Courts have held in the application of general Title VII principles.

1/ The Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e - 8(c).

2/ Id., 42 U.S.C. §2000e - 4(g).

Even though guidelines create no substantive legal obligations on the part of employers, the Commission is keenly aware of the fact that the guidelines are regarded very seriously by the Commission, employers and the courts, because they articulate EEOC's enforcement position in regard to employers' practices and policies. Because of this, proposed guidelines are always published in the Federal Register with an invitation to the public to submit written comments on the proposed guidelines. The comments are then reviewed by Commission staff, and often addressed in the preamble to any guidelines the Commission might issue or used as the basis of revisions to the proposed guidelines. Sometimes the Commission may also schedule a public hearing on the subject matter of proposed guidelines. A recent example is the Guidelines on Discrimination Because of Religion where the Commission held public hearings in April and May of 1978 in New York City, Los Angeles and Milwaukee.

As pointed out above, the guidelines create no substantive legal obligations on the part of the employer. However, the guidelines themselves are sensitive to the fact that very rigid criteria would often be particularly burdensome for employers, especially

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those who may wish to voluntarily pattern their employment practices after those suggested in the Commission guidelines for purposes of creating equal job opportunities for all workers and for protecting themselves from possible Title VII liability. For example, the Uniform Guidelines on Employee Selection Procedures (UGESP) include a less stringent recordkeeping requirement for employers with less than 100 employees. UGESP also adopted the "bottom line" approach, meaning that even if certain components of the employer's total selection process might have an adverse impact on a class protected by Title VII, the Commission would look only at the final result, i.e., did the selection process as a whole have an adverse impact. Alternative methods of test validating are also permitted by the UGESP so that an employer is free to choose whatever method of validation it prefers. Like other Commission guidelines, the UGESP advises employers by what criteria their employee selection procedures will be evaluated should they be charged with a violation of Title VII.

Executive Order 12291 requires that each federal executive agency publish in April and October of each year a semi-annual agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to the Executive Order.

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In August of 1981 the Vice President's Task Force on Regulatory Relief announced a list of government regulations that would be subjected to review under Executive Order 12291. This list contains two of the Commission's guidelines, namely, the Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures. The Vice President has identified the Sexual Harassment Guidelines because of public comments criticizing them for failing to provide adequate guidance to employers on such questions as to what constitutes unwelcome sexual advances or prohibited verbal sexual conduct under the statute. As to the Uniform Guidelines on Employee Selection Procedures, the burdensomeness and the utility of the record-keeping requirements are the subject of review. The Task Force requested that we submit workplans for the review of these guidelines by September 15, 1981. After meeting with the Task Force representatives and under my direction, our proposed workplans were delivered to the Task Force on September 9, 1981. We expect to begin working on these reviews in the near future.

The semi-annual agenda that has been approved by the Commission for publication in the Federal Register during the month of October describes current Commission regulatory activity. Although the Commission is of the opinion that none of its proposed guidelines or procedural regulations fall within the Executive Order's definition of a "major rule," the Commission, nevertheless, chose to include all of the items that appear in the October semi-annual regulatory agenda because of its desire to keep all interested parties fully informed of Commission activities and to provide parties an early opportunity

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to comment on proposed Commission policy statements, regulations or guidelines, as early as possible.

The first category of guidelines appearing on the October semi-annual agenda lists the current Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures, both of which have been targeted for review by the Vice President's Task Force, as discussed above.

The second category of Commission regulatory activity included on the semi-annual agenda as required by E.O. 12291 contains an itemized list of proposed regulations and guidelines that are currently pending before the Commission. Each of the items has been published in proposed form at least once in the Federal Register for the purpose of soliciting written comments from interested parties. Most of the items are procedural regulations governing the processing of Title VII charges or areas of EEOC's enforcement responsibility, such as the Equal Pay Act and the Age Discrimination in Employment Act, which were transferred to the Commission under the President's Reorganization Plan of 1978 (43 FR 19807). Five of the items are procedural regulations to expedite the processing of federal sector complaints of discrimination. Included are:

1. Employment Discrimination; Procedure for Handling Complaints

The EEOC and the Department of Justice jointly issued proposed rules (published on April 17, 1981, in 46 FR 22395) setting forth procedures for the handling of complaints of employment discrimination which are

filed with Federal fund granting agencies under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and other provisions of Federal law which prohibit discrimination on the grounds of race, color, religion, age, sex or national origin in programs or activities receiving Federal financial assistance. The regulations allow the fund granting agency to refer complaints to the Equal Employment Opportunity Commission (EEOC). For complaints covered both by Title VII of the Civil Rights Act of 1964, as amended, or other statutes within EEOC's jurisdiction and by Title VI of the Civil Rights Act or Title IX, the regulations contemplate that most complaints of individual acts of discrimination will be referred to EEOC for investigation and conciliation, while most complaints of systemic discrimination will be retained by the fund granting agency. Employment discrimination complaints which are not covered by Title VI or Title IX will be transferred to EEOC. 46 FR 22395 (April 17, 1981). The period for submitting written comments ended on June 16, 1981.

2. Non-Discrimination on the Basis of Handicap Federally Assisted Programs

These proposed regulations (published on November 29, 1979, at 44 FR 68482) set forth procedures and policies to assure non-discrimination on the basis of handicap. The regulations define and forbid acts of discrimination against qualified handicapped individuals in employment and in the operation of programs and activities receiving assistance from the Equal Employment Opportunity Commission. These proposed regulations implement Section 504 of the Rehabilitation Act of 1973, as amended, in compliance with Executive Order 11914, April 29, 1976. The proposed regulations have been approved in final form by the Commission and are now in inter-agency coordination pursuant to E.O. 12067.

3. Equal Employment Opportunity in the Federal Government; Complaints of Handicap Discrimination

The Equal Employment Opportunity Commission (pursuant to notice published in 45 FR 24130 on April 9, 1980) proposes to amend its regulations concerning complaints

of handicap discrimination in order to authorize awards of back pay to applicants for Federal employment. The proposed regulations also make clear that a complainant has the right to file suit in Federal court if dissatisfied with final agency action, or failure to act, on a complaint of handicap discrimination. These changes are necessary in order to conform to the 1978 amendments to the Rehabilitation Act of 1973. Final regulations have been approved by the Commission and are currently in the clearance process under E.O. 12291.

4. Equal Opportunity in the Federal Government; Remedial Relief Under Section 717

Interim regulations, effective April 11, 1980, were published in 45 FR 24130 on April 9, 1980, revising EEOC's regulations on equal opportunity in the Federal government (29 CFR 1613) to provide that an agency or the Commission may award a complainant reasonable attorney's fees and costs and backpay when a complaint of discrimination under Section 717 of Title VII of the Civil Rights Act of 1964, as amended, is resolved in favor of the complainant.

5. Procedures; Age Discrimination in Employment

On January 30, 1981, in 46 FR 9970, the Commission published for comment proposed procedural regulations (29 CFR 1626) advising the public as to those proposals to follow in processing charges and issuing interpretations and opinions under the Age Discrimination in Employment Act. These regulations will complement the Commission's existing procedural regulations under Title VII of the Civil Rights Act of 1964, as amended. The Commission hopes to schedule a vote on final regulations before the end of 1981.

6. 706 State and Local Agencies

On July 21, 1981, in 46 FR 37523, the Commission published notice of its proposal to revise its procedural regulations by the addition of §§1601.75, 1601.77, 1601.78, 1601.79 and 1601.80 to 29 CFR Part 1601. These sections set forth procedures whereby the Commission and certain State and local fair employment practices agencies (706 agencies) are relieved of the present Commission individual, case-by-case review of cases processed by these agencies under contract with the

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Commission, as provided in Section 709(b) of Title VII of the Civil Rights Act of 1964, as amended. These sections set forth the procedures by which the Commission may certify certain 706 State and local agencies which meet prescribed criteria. These regulations are expected to become final in October 1981.

Four of the items on the semi-annual regulatory agenda required by E.O. 12291 discuss recordkeeping requirements proposed by the Commission.

1. Recordkeeping Regulations

Pursuant to notice of proposed rulemaking published in 43 FR 32280 on July 25, 1978, the Commission proposes to revise its recordkeeping regulations to require certain employers and labor unions to retain lists of applications for employment for 2 years. This action is taken because the Commission has found itself in a position of being unable to secure specific relief for the victims of discriminatory hiring or referral practices. The Commission believes that a recordkeeping requirement would assure more adequate redress for the victims of discrimination. The period for recordkeeping of other documents is proposed to be extended. In addition, the definition of "employee" for reporting purposes is proposed to be modified. 3/

2. Collection of Applicant Data for Affirmative Action Purposes

This interim regulation was published in 46 FR 11285 on February 6, 1981, effective immediately. This amendment will permit agencies to collect handicap information from applicants in order to implement and evaluate

3/ The Regulatory Flexibility Act of 1980 also requires that executive agencies publish a semi-annual agenda listing proposed regulations that will have an impact on small entities as defined in the Act. The only item appearing on EEOC's October semi-annual as required by the Regulatory Flexibility Act of 1980 is the proposed recordkeeping regulations.

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special recruitment programs undertaken for affirmative action purposes. Specifically, agencies will be allowed to invite applicants, on a voluntary basis, to identify themselves as handicapped and specify the nature of their disabilities. Agencies will be permitted to use this information only for purposes related to affirmative action and equal employment opportunity.

3. Privacy Act of 1974; Proposed Privacy Act System of Records

On April 14, 1981, in 46 FR 21819, the Commission published notice of its proposal to establish a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The proposed system, EEOC-1, Age and Equal Pay Act Discrimination Case Files, will contain information on individuals who file charges or complaints of discrimination under the Age Discrimination in Employment Act or the Equal Pay Act. 4/

4. Privacy Act Regulations

On April 14, 1981, in 46 FR 21784, the Commission published notice of its proposal that pursuant to subsection (k)(2) of the Privacy Act, the Commission is exempting System EEOC-1, Age and Equal Pay Act Discrimination Case Files, from certain provisions of the Act. The Commission is concerned that the lack of this exemption would impede law enforcement activities of the Commission.

The Reorganization Plan of 1978 (43 FR 19807) transferred to EEOC the responsibility of enforcing the Equal Pay Act and Age Discrimination in Employment Act. Currently pending before the the Commission are proposed interpretations of these two acts.

4/ The proposed Privacy Act System of Records and the Privacy Act Regulations each require separate Commission action but are related matters.

1. The Equal Pay Act; Interpretations -

On September 1, 1981, in 46 FR 43848, the Commission published its proposed interpretations with respect to the enforcement of the Equal Pay Act. These interpretations would replace those issued by the Department of Labor at 29 CFR Part 800. Comments on the proposed regulations must be received on or before November 2, 1981. The Commission proposes to consider the submissions for a period of at least ten days thereafter before adopting any final regulations.

2. Proposed Interpretations of the Age Discrimination in Employment Act

On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, 623, 625, 626-633 and 634 (ADEA) was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The Commission assumed enforcement of the ADEA on that date. Prior to the assumption of jurisdiction, the Commission commenced an in-depth review of all existing interpretations of the ADEA which were promulgated by the Department of Labor. See 44 FR 37974 (June 29, 1979). On November 30, 1979, the Commission published in the Federal Register its proposed interpretations of the ADEA. See 44 FR 68858 (November 30, 1979). On September 29, 1980 in 45 FR 64212, the Commission rescinded its earlier proposed interpretation. In August of 1981 the Commission approved the interpretation originally proposed in November of 1979 which will rescind the interpretations issued by the Department of Labor. Final interpretations are expected to be published by October of 1981.

Pursuant to a request of the Office of Management and Budget (OMB) under the authority of the Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, EEOC is seeking OMB approval of the recordkeeping requirements contained in the Uniform Guidelines on Employee Selection Procedures (UGESP). EEOC's completion of this survey has been made a condition for OMB clearance. As defined by OMB, this Survey will focus on the practical utility of the UGESP recordkeeping requirements.

In September 1977, EEOC entered into an agreement with NAS pursuant to which NAS's Committee on Occupational Classification and Analysis was to thoroughly examine the question of what methods can be developed to assess the validity of principles used to establish and apply compensation systems.

Subsidiary questions that were to be explored by the Committee included: what systems are currently available or could be envisioned that would objectively measure the comparability of jobs; to what extent are systems of job analysis and classification currently in use biased by traditional stereotypes and by other factors; and in what ways have other nations developed approaches to deal with the structural bias in compensation systems.

On September 1, 1981, the National Academy of Sciences (NAS) presented to the Commission its final report on the subject of job segregation and wage discrimination.

The report was prepared by NAS's Committee on Occupational Classification and Analysis and is entitled, "Women, Work and Wages: Equal Pay for Jobs of Equal Value." The report represents an important milestone in the EEOC's continuing review of the complex issue of whether wages for historically segregated jobs have been

discriminatorily depressed because those jobs are held predominantly by minorities and women. This issue is one of the largest and most complex left unresolved under Title VII today." The final report of NAS is only one part of the Commission's comprehensive and systematic review of this issue.

Public hearings were held before the Commission on this issue in Washington, D. C., on April 28, 29 and 30, 1980; and NAS submitted an interim report on this subject entitled, "Job Evaluation: An Analytic Review" to the Commission in February 1979.

Although the report was prepared by NAS under a contract with EEOC, the report does not necessarily reflect the official opinion or policy of EEOC. The National Academy of Sciences is solely responsible for the contents of the report which was written by a distinguished and balanced group chosen by NAS, and will be carefully studied by the Commission.

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Office of Interagency Coordination

The Commission's coordination role, under Section 715 of the Civil Rights Act of 1964 and Executive Order 12067, has been extremely active during my tenure.

On July 1, 1981, we responded to OFCCP's request for pre-publication consultation pursuant to Executive Order 12067 on OFCCP's proposed withdrawal of its regulations dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies.

On previous occasions the Commission had stated its position that such payments constitute a violation of Title VII of the Civil Rights Act. We noted, however, the Department of Labor's acknowledgment in the proposed preamble that it had authority to address instances of employment discrimination which may arise from contractors' use of private clubs in the absence of a specific rule such as Section 60-1.11.

The Commission did not object to the withdrawal of the rule, provided that the following sentence was added to the preamble to the withdrawal:

Accordingly, the Department will act upon complaints alleging that the payment by contractors of fees to private clubs which discriminate in membership has resulted in employment discrimination against an employee or applicant for employment (individual complaints received by OFCCP normally are forwarded for handling to the EEOC pursuant to a Memorandum of Understanding between the two agencies), and the Department will include an analysis of contractors' private club policies and practices as part of compliance reviews where appropriate.

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The purpose of our recommended addition was to affirm that OFCCP and EEOC will investigate these matters in response to complaints.

In the crucial area of review of agency regulatory issuances, the Commission met and was able to issue a timely response to OFCCP's Notice of Proposed Rulemaking dealing with its affirmative action regulations for Federal contractors. While I strongly endorsed the need for regulatory reform and paperwork reduction, I expressed concern and a willingness to negotiate a few of the substantive changes proposed by OFCCP.

In July I wrote OMB concerning my desire to ensure that coordination of Federal equal employment programs remain as effective as possible.

Shortly thereafter, in August, based on OMB's response, EEOC and OMB entered into an agreement governing the sequence of reviews of agency regulatory issuances concerning equal employment opportunity. The agreement, which strengthens the effectiveness of Executive Order 12067, requires that EEOC complete its analysis of agency NPRMs (Notice of Proposed Rulemaking), final rules and information collection instruments under Executive Order 12067 prior to their submittal to OMB for review under Executive Order 12291 and the Paperwork Reduction Act. On August 26, I sent a memorandum outlining the new procedures to the Heads of All Federal Agencies. Submissions recently reviewed by OIC staff include proposals from the Department of Education, the Legal Services Corporation, the Office of Personnel Management, Office of Revenue Sharing, and the Environmental Protection Agency.

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Progress was also made in another important area. EEOC and the Department of Justice have completed review of public comments on and are moving ahead with a proposed regulation which requires funding agencies to forward individual complaints of employment discrimination to EEOC for processing. This regulation, which I personally support, will eliminate duplication in the handling of complaints and provide faster service to employers and complainants.

In order to assist those covered by equal employment laws, the Commission recently issued a bibliography of Federal agency publications on that subject. The Commission also has approved for publication a report covering the last two years' activities of its Office of Interagency Coordination. That report also contains the results of the Commission's survey of agency equal employment programs and its questionnaire survey of a representative sample of private and public sector employers. In addition, the report describes present Commission activities designed to resolve the problems of inefficiency, inconsistency and duplication identified in the two surveys.

Office of Government Employment

During January 1981, EEOC issued advanced instructions to all Federal agencies for the implementation of the multi-year affirmative action plans through our Management Directive (M.D. 707). This plan will cover the period from FY '82 to FY '86.

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After the issuance of M.D. 707, several factors came to light which forced us to consider alternative immediate action to effect the Federal Affirmative Action Program. Prominent among these was the denial of clearance for our reporting requirements by the National Archives and Records Services (NARS). NARS concluded that the data to be developed by Federal agencies under M.D. 707 essentially duplicated the data which is reported to and retrievable from the Central Personnel Data File (CPDF), maintained by the Office of Personnel Management (OPM). However, the retrieval capability of CPDF, as it presently exists, is too limited to provide appropriate breakouts of data for affirmative action purposes. The Equal Employment Opportunity Commission cannot fully utilize the CPDF until the system has been redesigned. However, OPM's Director, Donald J. Devine, notified us that his agency lacks the necessary resources to permit the immediate redesigning and use of the CPDF for affirmative action purposes.

This complex situation required from us immediate action to provide guidance to all agencies to continue the development of their plan. Our Office of Government Employment conferred with representatives of some thirty agencies to explain the situation and to seek recommendations for a solution of the problem. Based on these recommendations, on June 15, 1981, I wrote to all Federal agencies spelling out a more flexible framework in which they could continue the development of their plans and reluctantly

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postponed the date for the initial submission of affirmative action plans.

After several meetings with NARS and OPM personnel, NARS recognized the impossibility of using the CPDF and granted clearance for our M.D.-707, as amended by a June 15 memorandum. On August 12, 1981, I once again wrote to all Federal agencies requesting them to complete their planning at the first possible moment to meet the operative date of October 1, 1981.

To obtain NARS clearance and because for the last two years EEOC has acknowledged the benefits of the CPDF, we made a commitment to find a solution for the better use of CPDF for affirmative action purposes. We have therefore continued our conversations and meetings with OPM personnel in an effort to find ways to support program needs. However, our efforts have just reached a critical point based on budgetary considerations. For on September 21, 1981, Mr. Devine wrote to me advising that while they are prepared from a management point of view to provide CPDF data support service to the Commission, the FY '82 budget reductions directed by OMB have caused OPM to reduce the level of resources allocated to the CPDF. He therefore requested that EEOC make whatever arrangements are necessary to allocate to OPM the necessary fund and ceiling required to support our program. We are presently preparing a response to Mr. Devine for the purpose of advising him of our lack of resources to provide these funds and of our ongoing efforts to obtain the necessary amount from the Office of

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Management and Budget. OMB, however, has been conducting a study of the CPDF on its own and cannot make any money immediately available to the project at this time.

Another recent activity of our Federal Affirmative Action (FAA) division has been the development of our Management Directive (M.D.)-710 with instructions to Federal agencies on their affirmative action accomplishment report for minorities and women for FY '81. These will be the last instructions concerning the two years' transition period which allowed agencies to "learn" the new planning process as we moved away from the annual planning concept to the multi-year approach (M.D.-707). M.D.-710 has just been properly cleared for presentation to the Commission for approval.

Handicapped Individuals Program

The week of October 5, 1981, is National Employ the Handicapped Week, thus in this, the International Year of Disabled Persons, we should also take this opportunity to reflect on problems of the handicapped in all spheres of the republic.

There are approximately 35 million disabled persons in the United States, or about 15% of the total population. The Department of Labor reports that there are 7.2 million severely disabled persons of working age, or about 6% of the national work force.

OPM's Central Personnel Data File (CPDF) indicates that in 1979 there were 134,026 disabled Federal employees, who comprised 6.4% of the total Federal non-postal work force.

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For the EEOC, this is not just a week to listen to speeches and then return to business as usual. We have substantive responsibility for government-wide handicapped efforts. The EEOC in July 1979, under the Civil Rights Reorganization Plan No. 1 of 1978, became the Federal agency responsible for federal sector affirmative action planning. The EEOC is also responsible for hearings, the oversight of the processing of EEO complaints and appeals of agency decisions on EEO complaints, including handicap issues.

Our Office of Government Employment recently issued a Management Directive (M.D.)-708 transmitting instructions for reporting the accomplishments of FY 1980 affirmative action programs and for preparing affirmative action program plans for the last half of FY 1981. A proposed management directive, M.D.-709, has also been drafted, and the document, although not a multi-year, moves to a longer period of planning. It covers the accomplishment reports for FY 1981, the affirmative action program plans for FY 1982 and the accomplishment report covering the same period. M.D.-709 has already been cleared by SCIP and NARS. We expect to obtain the Commission's approval next week.

During the development of M.D.-709, an issue was raised concerning our authority to handle the Disabled Veterans Program (Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974) together with the Handicapped Individuals Program (Section 501 of the Rehabilitation Act of 1973). The President's Reorganization Plan No. 1 of 1978 transferred to EEOC the responsibility for administering

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several affirmative action programs, but no mention was made of Section 403 of the Veterans Assistance Act. Later, when Congress amended this same Act, it did not substitute EEOC for the Civil Service Commission as the agency with authority to handle the program. However, there has been a generally implied understanding of all the parties concerned that EEOC was to also handle this program. The situation is complicated by the fact that the Act requires each agency to include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals (Section 501), a separate specification of plans for the disabled veterans. Once the issue was raised, the Office of Government Employment met with OPM staff to discuss the problem while the legal offices of both agencies developed opinions. OPM staff gave us to understand that they wanted EEOC to continue with the program; however, Mr. Devine publicly announced that OPM was going to take charge of the program. Meanwhile, our proposed M.D.-709 has instructions for the disabled veterans affirmative action program. Within the last few days we have reached an agreement with OPM by which EEOC will continue with this program during FY '82 but advising agencies through our M.D.-709 that thereafter OPM will assume responsibility for the program. We are currently developing modifications to M.D.-709 concerning this matter.

The Office of Government Employment has been in general conducting other activities such as the development of a staff guide for our programs and a conference held during September in Dallas with our Federal Affirmative Action Field Managers, several District Directors and Headquarters personnel.

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BUDGET

Last, but by no stretch of the imagination least, is the critical status of our current and future year budget. The fiscal health of this Commission can be summarized in a few words, uncertain and desperate. The changes in the federal budget with the resulting changes in the Commission's budget point to a return of the mid-seventies without any corresponding reduction in EEOC's obligation to provide relief/services under its governing status for Title VII, Age, Equal Pay, Federal Sector Complaints and the State & Local Grants Program.

I was scheduled to attend the meeting at OMB on September 22, 1981, to present and defend the Commission's 1983 budget request, at a time when the base of fiscal year '82 funds have not yet been postponed for a second time. I was informed that the meeting was cancelled by OMB principally because they (OMB) had not formally presented to us their "new" reduced 1982 Budget for Congressional approval.

I have reason to believe, based on my staff discussion with the OMB Examiner, that OMB plans to reduce EEOC's FY '82 budget by 17 million, from \$140 million to approximately \$123 million. The reduction in positions has not been determined. However, we cannot adequately support the existing staff and/or even the authorized FY '82 staff years with a \$123 million budget. I am praying and hoping that what appears to be the worst scenario ever will not prevail and that someone in a position of authority will come to our aid.

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Unfortunately, I cannot announce to you or speculate as to what our 1982 operating budgets will be until the Executive and Congressional Branches have approved an interim or final FY '82 budget for EEOC. However, as of now we have been told that a minimum 12% will be formalized and presented to us. Thus, if this severe reduction remains firm, it appears fairly evident that if we are required to operate at the \$123,542,000 level instead of the \$140,389,000 as planned, it will result in the immediate following effect:

- .Staff year (SY) will be reduced from 3,376 to 2,971
a reduction of 405 staff years equalling positions;
- .State & local grant funds will most likely be
reduced from \$19,000,000 to \$16,720,000; and,
- .A reduction in the Salary & Expense funds from
\$121,389,000 to \$106,822,000.

We have just been notified that our employment targets for FY '82, FY '83, and FY '84 are those set forth below, and under certain circumstances may be even lower.

	<u>Full-time Equivalent</u>		
	<u>FY 1982</u>	<u>FY 1983</u>	<u>FY 1984</u>
Total employment, excluding disadvantaged youth and personnel participating in the Worker-Trainee Opportunity Program (WTOP)	3,000	3,040	2,970
Full-time permanent employment, excluding personnel participating in WTOP	2,955	2,994	2,924

A reduction of the foregoing magnitude occurring right after a recently completed agency-wide reduction-in-force of 287 positions and an absorption of increases in operating support costs, would seriously weaken the Commission's ability to meet its statutory and programmatic responsibilities and commitments.

Of the previously approved level of \$140 million, \$96 million would have been expended for personnel compensation, \$18 million for Fair Employment Practices Agency grants, \$16 million for fixed operational support expenses, and \$10 million for critical program-related expenses. Having reviewed a number of comprehensive alternatives modifying this set of assumptions, the Commission would be left with limited flexibility. In the area of staff, for example, our analysis reveals that the \$6.8 million severance and unemployment compensation costs associated with a reduction-in-force would minimize any net savings. Fair Employment Practice Agencies program funds are earmarked and, therefore, cannot be used for other purposes. Operational support costs such as space, telephone and postage are controlled by the General Services Administration. Thus, the Commission will be forced to absorb the bulk of its \$17 million reduction through sizable decreases in critical program-related costs such as case processing, essential travel, litigation support and data processing services.

The collective impact on operations will be: (1) an inability to process the Title VII, Age Discrimination in Employment Act (ADEA), and Equal Pay Act (EPA) complaint inventories within a reasonable

timeframe; (2) a dramatic reduction in the number of cases filed for litigation; and (3) reduced efficiency in the critical staff functions of policy direction, program guidance, coordination, and monitoring and evaluation of the Commission's charge processing and litigation programs.

Our major concern is that the Commission's inventory of Title VII complaints will grow by 65 percent, from 37,000 complaints, or 8-1/2 months of workload, to 62,200 complaints, or 12 months of workload during FY '82. Similarly, the Fair Employment Practices Agency inventory will rise from 36,000 complaints to 48,000 complaints. Moreover, without adequate resources, the Commission will not be able to eliminate the pre-1979 Title VII backlog by the end of 1983 as planned. In addition, ADEA complaints will rise by over 50 percent to 10,000 complaints, or a 13-month inventory by the end of FY '82; EPA complaints will rise by 40-45 percent to 2700 complaints, or a 15-month inventory by the end of FY '82.

In the past, the Commission has been heavily criticized by Congress and the private and public sectors for not eliminating its Title VII backlog and thus, stretching out the charge processing timeframes. To address this issue, the Commission has already restructured its organization and has overhauled its charge processing procedures. As a result, charges are now settled on the average within 115 days. The negotiated settlements success rate is nearly 45 percent nationwide. Individual remedies amounted to over \$59 million during the first nine months of FY '81.

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This rapid charge approach has been applauded and supported by business and protected classes because swift processing lessens the burden on employers and provides reasonable remedies to charging parties. The system has worked so well that other government agencies which have similar responsibilities have adopted these procedures. In recognition of the development and implementation of these workload management and processing systems and procedures, OMB praised EEOC's overall managerial effectiveness in its management publication. Further, in its January 1981 report, the Government Accounting Office (GAO) noted a high level of employer satisfaction with the Commission's expedited charge processing procedures. Seventy-three percent of the employers were satisfied with the procedures used by the Commission to investigate charges; 72 percent overall were satisfied with the way complaints were resolved.

While these dramatic improvements have benefited all of the parties concerned, the Commission would be hard-pressed to effectively deliver its essential services at the proposed reduced level. Under these constraints, it will take the Commission a year to address a charge, as contrasted with the present six month figure. Every analysis the Commission has conducted shows that without speedy resolution, there is little likelihood of settlement. Moreover, the Commission, under law, must investigate a case if it does not settle; thus, delaying final resolution even further.

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Another concern is that the Commission may have to abolish a large number of field offices across the country. Many are located within major cities and, therefore, serve a large segment of the American people. Such a cutback would further hinder the Commission's ability to process charges in a timely manner and will probably result in more independent court suits being filed by charging parties. This workload will become an additional burden to an already overloaded court docket thereby shifting the costs from this agency to the courts which are not prepared to accept this burden.

With respect to the Commission's litigation program, additional cuts will force the Commission to release legal staff and dramatically reduce litigation support funds. From an original projected need of \$3.4 million to fund current cases pending in federal courts, and a modest docket of new cases, the current projection would amount to \$2.2 million, or 1/3 less funds for litigation support and a corresponding reduction in staff. Nearly 1/2 if these funds are needed immediately to pay for pending litigation support contracts generated by some of our largest and most complex cases. At the reduction budget level, the number of cases the Commission could file would be reduced by 40-45 percent from FY '81.

Currently, EEOC has more than 800 cases in litigation. They represent enforcement actions under Title VII, Age Discrimination in Employment Act and Equal Pay Act. Approximately 1/3 of these cases are class-action suits. The development of most of these cases will

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be seriously underfunded, affecting the relief for those who are protected by these statutes.

In conclusion, a budget reduced by the amount being contemplated for EEOC would significantly impair the Commission's charge processing and litigation programs and as such, would have an adverse impact on the business community and on minorities and women who have filed charges. Employers would have to retain records and maintain active case files for a prolonged period of time at great expense. Relief for those charging parties whose charges have merit would be irreparably delayed and jeopardized. The court system would become intolerably backlogged with cases which would otherwise be settled at the administrative level. State agencies would also be burdened with a huge backlog. If the case and complaint processing system and enforcement mechanisms are adversely affected, the ability to obtain voluntary compliance would be seriously impaired.

We at EEOC are prepared to assume our fair share of the economic burden. However, anything that goes beyond a 5% reduction will be too severe for us to sustain. In the family of agencies, EEOC is a small unit of the republic. Its mission is to enforce the law in cases where various forms of discrimination exist in the workplace. The proposed reduction in the Commission's budget will send a signal to the American people that EEOC will be unable to enforce the law whenever the business community violates the prohibitions against discrimination. We do not believe that this signal should be sent - however unintentional.

REPORT TO FIELD DIRECTORS
BY ACTING CHAIRMAN, DR. J. CLAY SMITH, JR.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C.

January 13, 1982

As all of you are aware, I report to you not because it is required by law or Commission procedure, but because I look upon this agency as one big family in which you not only work for me and the Commission, but I work for you, and the many beneficiaries of the various laws and statutes which we are charged with enforcing. Thus, if we are to achieve our assigned tasks in a meaningful manner we must continue to work together as a unit in effectuating the goals and true spirit and purpose of Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067. The only way I can see this being done is through periodically informing you as to the things I do and must do in order to provide the support you need to productively carry out your assignments and responsibilities. When I or anyone else holding this position cannot communicate with you in an open and above board fashion as I seek to do, you may have cause to worry. We may not always agree on the procedure and techniques utilized, but we should forever have a commonality of purpose. That commonality of purpose is not only to uphold the laws of the United States but it includes carrying out our official duties and the fair enforcement of the established laws. Employers, public and private, companies and unions mind you, expect no less. If we are to be understood, we must speak clearly and not with forked tongue or act with multi-conflicting goals or purposes.

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One thing I learned early in life is that you cannot serve two masters and expect to go to heaven. No matter what, you must be true to yourself and whatever cause you serve. Most of you through your unwavering dedication, proven loyalties and sustained productivity reflect the high level professionalism that do me great honor as I attempt in turn to represent yours and the President's best interest in carrying forth with the mission of this great agency.

There is much on a positive note to report since you were here last. I will briefly touch on some but not necessarily in the chronological order of their importance.

The first thing I want to say is that the Commission now has three members, thanks to the President -- Cathie A. Shattuck, was sworn in by me as a member of the Equal Employment Opportunity Commission on December 21, 1981 after being given a recess appointment by President Ronald Reagan. He had made known on December 7th his intention to nominate her for the term expiring July 1, 1985, that had been previously held by Ethel Bent Walsh.

Ms. Shattuck, who received a BA degree in 1967 and her J.D. in 1970 from the University of Nebraska at Lincoln, was in the private practice of law in Boulder where she represented both employees and employers in labor law and on other matters. She had several years ago served as a trial attorney for the EEOC in Denver.

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Ms. Shattuck was also a special hearing officer for the Colorado State Personnel Board. She was a lecturer and instructor in employment and employee relations and taught Continuing Legal Education in Colorado. She was formerly a legislative aide to the speaker of the Nebraska Unicameral, and assistant law librarian at the Nebraska University College of Law and a law clerk in the Office of the Attorney General of the State of Nebraska. Ms. Shattuck is a native of Salt Lake City, Utah.

With the swearing in of Ms. Shattuck, the Commission now has three members on board which terminated the delegation of authority given to me on October 1, 1981. Thus, the Commission on yesterday held its first meeting in 107 days at which time we were able to get into policy issues, approved 30 cases for litigation, and on motion of Commissioner Rodriguez they adopted the attached resolution crediting me with certain achievements during the 81 days the EEOC was without a quorum. Whatever accomplishments were made during these critical days at EEOC, you are equally responsible for any of my accomplishments.

On November 2, 1981, the U.S. Senate unanimously confirmed the nomination of Michael J. Connolly, a former corporate labor counsel with General Motors Corporation in Detroit, to become general counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Connolly was nominated for the four-year term position

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by President Ronald Reagan on July 7, 1981.

At his confirmation hearing, Connolly promised committee members that, if confirmed, he would "continue the momentum that has been built by previous general counsels," and that "no stone will be left unturned in the battle to eradicate employment discrimination."

Connolly, is the seventh and, at 32, the youngest General Counsel ever to serve the Commission.

Now turning our heads to the programmatic side of the agency:

COMPLIANCE ACTIVITY

Charge processing figures for Fiscal Year 1981 show a continued climb in the area of production and benefits. In 1981, the Commission field offices resolved 71,690 cases. This represents a 25% increase over last year's figure of 57,327. The ratio of charges resolved to charges taken is 134%.

Just looking at Title VII alone, the Commission took in 42,372 charges and resolved almost 62,000 charges. Frontend inventory is now down to about 20,000 charges. More importantly, Commission processes continue to provide substantial relief. Despite the extraordinary number of resolutions, the Title VII rapid charge settlement rate is holding at 43%. The settlement rate for Age Discrimination charges has risen to 25%. These figures far exceed benefits obtained through the compliance process in any prior year.

REPORT TO FIELD DIRECTORS - 5

while our Age and Pay programs are on the upswing, we still have a few problems in some offices. Specifically, these offices have been slow to integrate Age and Equal Pay into our management apparatus. This must be corrected immediately and the Director of Field Services will be working with you on this problem.

On October 31, 1981, in 46 FR 50366, the Commission published notice of final rulemaking of its revisions to procedural regulations by the addition of §§1601.75, 1601.77, 1601.78, 1601.79 and 1601.80 to 29 CFR Part 1601. These sections set forth procedures whereby the Commission and certain State and local fair employment practices agencies (706 agencies) are relieved of the present Commission individual, case-by-case review of cases processed by these agencies under contract with the Commission, as provided in Section 709(b) of Title VII of the Civil Rights Act of 1964, as amended. These sections set forth the procedures by which the Commission may certify certain 706 State and local agencies which meet prescribed criteria. These regulations became final last year and 48 agencies have now been certified.

With respect to ADEA charges jurisdictional under state law, on May 26, 1981, the Commission adopted standards for the processing and funding of charges by FEP agencies filed under the Age Discrimination in Employment Act and under comparable state laws. The procedures call for dual filing and worksharing, much like

REPORT TO THE FIELD DIRECTORS - 6

our Title VII procedures. State agencies are funded on the basis of charges produced. Contracts were approved for fiscal 1981 committing the state agencies to 2,235 resolutions.

LITIGATION ACTIVITY

The following summary provides comparison statistics of our direct litigation activities excluding systemic and the monetary benefits obtained through its enforcement program for fiscal years (FY) 1980 and 1981.

For the purpose of this report, areas of comparison include: litigation recommendations, approvals by the Commission, number of cases filed, settlements and monetary benefits.

During FY 81, the Commission's district offices recommended 469 litigation actions to the Office of General Counsel. This represents a 19 percent increase in the number of recommended cases over the prior year's statistic of 393.

Of the total number of recommended actions, the Commission approved 364 cases. This was a 13 percent increase over the prior year of 322 cases. The most significant percent change occurred under the Age Discrimination in Employment Act, with an 89 percent increase in the number of recommended suits and a 68 percent increase in the number of approvals. More Age Act cases were filed in FY 81 than in any previous 12-month period of federally initiated litigation under the Act.

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RECOMMENDATIONS TO THE GENERAL COUNSEL

	FY 80	FY 81	%Changed
Title VII	247	307	+24%
ADEA	53	100	+89%
EPA	93	62	-33%
TOTAL	393	469	+19%

APPROVAL OF SUITS BY THE COMMISSION

	FY 80	FY 81	%Changed
Title VII	195	218	+12%
ADEA	53	89	+68%
EPA	74	57	-23%
TOTAL	322	364	+13%

There was a 13 percent increase in the total number of lawsuits filed during FY 81 compared with the prior year. In the Title VII area, statistics show an increase from 200 to 229 lawsuits or an overall increase of 15 percent. The number of age suits significantly increased in FY 81 to 89, which is an 89 percent increase over the prior year's total of 47.

CASES FILED

	FY 80	FY 81	%Changed
TITLE VII	200	229	+15%
ADEA	47	89	+89%
EPA	79	50	-37%
TOTAL	326	368	+13%

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The number of settlements also increased during this past fiscal year to 237 from 192, for an overall increase of 23 percent.

SETTLEMENTS

	FY 80	FY 81	%Changed
TITLE VII	141	172	+22%
ADEA	42	22	-48%
EPA	9	43	+378%
TOTAL	192	237	+23%

Monetary benefits obtained for the victims of employment discrimination, principally backpay awards, declined by 23 percent from almost \$21 million in FY 80 to slightly more than \$16 million in FY 81. This decline is only superficial since the \$5 million difference is because of substantial FY 80 recovery in the Motorola case. Other than backpay, additional remedies the Commission secured included training programs, apprenticeship funds and affirmative action programs.

MONETARY BENEFITS

	FY 80	FY 81	%Changed
TITLE VII	\$18,674,901	\$13,145,403	-30%
ADEA/EPA	2,261,126	3,071,357	+36%
TOTAL	20,936,027	16,216,760	-23%

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11A
FV-51

Cases Recommended for Litigation	ATLANTA	BALTIMORE	BIRMINGHAM	CHARLOTTE	CHICAGO	CLEVELAND	DALLAS	DENVER	DETROIT	HOUSTON	INDIANAPOLIS	LOS ANGELES	MEMPHIS	MIAMI	MILWAUKEE	NEW ORLEANS	NEW YORK	PHILADELPHIA	PHOENIX	SAN FRANCISCO	SEATTLE	ST. LOUIS	HQ./LSB	TOTAL	Cases filed:					
																									-Direct Sales	-Indirect Sales	-S 206(F)(1)(2)	-S 201	-Other	Settlements
16	9	22	16	14	26	37	17	30	26	17	36	17	11	15	17	14	35	21	21	27	18	29	3	469	390	16	26	26	76	
7	15	14	16	16	16	19	13	25	20	15	20	13	8	12	13	14	29	15	23	12	26	3	364	12	8	0	0	0	0	
9	12	12	12	17	17	20	16	19	18	15	20	11	9	12	9	11	21	20	22	22	8	24	3	350	0	0	0	0	0	
1	0	0	0	0	4	0	1	5	0	0	4	0	0	0	1	1	7	0	0	0	0	0	0	16	0	0	0	0	0	
1	1	0	0	0	1	2	1	2	1	2	4	1	0	2	1	1	2	0	0	0	0	1	5	26	0	0	0	0	0	
3	2	1	11	10	1	4	1	3	4	0	1	3	11	3	6	0	10	3	4	4	0	5	76	0	0	0	0	0	0	
1	1	0	0	1	1	2	0	4	1	0	1	0	1	2	1	0	0	0	0	0	0	0	0	24	1	0	0	0	23	
1	2	0	0	0	1	3	2	1	2	0	1	1	2	0	1	0	1	1	1	1	0	0	0	0	0	0	0	0	0	
9	17	8	11	12	17	20	9	6	15	3	16	16	6	6	9	9	25	8	13	6	12	6	291	9	0	0	0	0	0	
3	2	7	0	0	2	0	0	0	2	3	0	7	0	3	2	1	7	1	9	0	0	0	0	49	0	0	0	0	0	0
\$198,168	\$1,055,014	\$125,049	\$66,192	\$1,541,700	\$430,139	\$569,092	\$97,700	\$528,600	\$465,662	\$29,208	\$231,914	\$413,710	\$38,900	\$108,750	\$124,406	\$489,400	\$819,081	\$624,900	\$2,237,537	\$123,511	\$363,127	\$5,535,000	\$16,216,760	0	0	0	0	0	0	

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OFFICE OF SYSTEMIC PROGRAMS

During the first quarter of FY 82, OSP continued its progress in processing Commissioner charges. Two more decisions were circulated to the Commissioners, a number of pre-decision settlements initiated and several cases moved into the conciliation process. To assist in this process, guidance on conciliation matters has been finally prepared for distribution.

Two major charge settlements were accomplished during the quarter. One settlement was achieved by the Headquarters unit on a backlogged multi-facility charge. The settlement provides goals, back pay and preferential job offers at three large manufacturing facilities. OSP's second field PDS resulted in affirmative relief plus approximately \$250,000 in back pay.

The technical Services Division continued its revision of the targetting selection model and prepared its position paper on Determination of Underutilization. Technical Services Division continued to provide assistance in a number of cases, and provided expert witness testimony both in Jurgens v. EEOC and in the Denver District Office's successful trial in EEOC v. Trailways. TSD staff were also extremely active in developing position papers in support of EEOC's position on Uniform Guidelines on Employee Selection Procedure.

In the area of litigation OSP concluded negotiation of settlements in two major cases. On December 22, 1981, the Commission and private plaintiffs obtained preliminary approval of a settlement with the United States Fidelity and Guaranty Company. The

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settlement, which resolves two private lawsuits in which the EEOC intervened as well as a nation-wide Commissioner Charge, provides for payment of \$3.5 million in back pay and other relief valued at several million dollars; it will benefit in excess of 25,000 minority and female employees and rejected applicants nationwide.

Other aspects of the settlement include:

1. the establishment of goals for minorities and women in professional positions and for minorities in clerical positions;
2. development of a job posting system for professional and clerical positions;
3. development of a career counseling program;
4. development of a supervisory training program including EEO counseling;
5. development of a new performance appraisal system; and
6. implementation of a compliance monitoring system including annual review by the Special Master.

The second major resolution involved the Commission's charge and a private lawsuit against Dean, Witter, Reynolds, Inc.

On December 17, 1981, the EEOC reached agreement in principle on all substantive issues with Dean, Witter, Reynolds, Inc. The agreement was memorialized in a Memorandum of Understanding signed that date, a courtesy copy of which was submitted to the Court on December 22, 1981. The agreement provides for back pay of

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\$1.8 million to be distributed to female, Black and Hispanic applicants and present and former employees in sales, professional or managerial positions between January 1, 1976 and December 31, 1981. As the fund was transferred to an interest bearing escrow account on December 18, 1981, the amount actually available for distribution will most likely be in excess of \$2 million.

The agreement also sets forth specific five year hiring goals for females, Blacks and Hispanics in the Account Executive position, which accounts for one-third of Dean Witter's approximately 10,000 person workforce. Additionally, the ultimate goal to be achieved before the expiration of the decree were set for most of the approximately 900 other positions at Dean Witter.

In addition to the funds transferred for back pay, Dean Witter has committed to expend at least \$2.88 million for the implementation of other affirmative action efforts, including:

1. Advertising and recruitment directed at females, blacks and Hispanics;
2. Establishment of a Vice President level EEO official;
3. EEO training for all managers and supervisors, as well as any other employee who is involved in the selection/promotion process;
4. Implementation of an employees' skills inventory, designed to identify females, blacks, and Hispanics with promotion potential;
5. Implementation of a method to evaluate supervisors' and managers' contribution to EEO efforts;

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6. Implementation of a job evaluation and salary wage program to ensure uniform requirements and salary structure throughout the company's 250 branch offices;
7. Implementation of posting job vacancies throughout the company and establishment of mechanism for employees to apply for promotions;
8. Establishment and implementation of policy that persons discharging female, black or Hispanic Account Executives will have to set forth the reason for such discharge in writing.

OFFICE OF POLICY IMPLEMENTATION

Executive Order 12291 requires that each Federal executive agency publish in April and October of each year a semi-annual agenda of proposed regulations that the agency has issued or expects to issue, and current effective rules that are under agency review pursuant to the Executive Order.

Under Executive Order 12291, all notices of proposed and final rulemaking, interpretive guidelines, and general statements of policy must be cleared by the Office of Management and Budget prior to publication. OPI has been assigned the responsibility of obtaining OMB clearances under Executive Order 12291. During 1981, OPI submitted eight such documents for clearance to OMB, all of which were cleared by OMB for publication in the Federal Register.

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As I mentioned before, in August of 1981 the Vice President's Task Force on Regulatory Relief announced a list of government regulations that would be subjected to review under Executive Order 12291. This list contained two of the Commission's guidelines, namely, the Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures. As to the Uniform Guidelines on Employee Selection Procedures, the alleged burdensomeness and the utility of the recordkeeping requirements are the subject of review. The Task Force requested that we submit workplans for the review of these guidelines by September 15, 1981. After meeting with the Task Force representatives and under my direction, our proposed workplans were delivered to the Task Force on September 9, 1981.

As a part of the Uniform Guidelines on Employee Selection Procedures review process, OPI has prepared six different survey questionnaires which are planned to be sent to employers, unions, attorneys, psychologists and public interest groups. These questionnaires have recently been submitted to the Vice President's Task Force on Regulatory Relief, the Office of Management and Budget, the Government Accounting Office, the Census Bureau and the Federal agencies who co-signed the Uniform Guidelines. Final approval of the survey questionnaires is expected in early 1982. After final approval is obtained, OPI will send the survey questionnaires to approximately 4,000 survey respondents. Also, as a part of this review, the Office of Interagency Coordination is conducting a survey of all Federal EEO Regulations to determine

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the feasibility of initiating uniform EEO recordkeeping requirement throughout the Federal government. If it were feasible, the adoption of such uniform requirements would further alleviate burdens on employers and others.

The task force of the Vice President identified the Sexual Harassment Guidelines because of public comments criticizing them for failing to provide adequate guidance to employers on such questions as to what constitutes unwelcomed sexual advances or prohibited verbal sexual conduct under the Guidelines, implementing Title VII. With respect to our review of the Sexual Harassment Guidelines, OPI has prepared a proposed Federal Register notice inviting comments on the Guidelines. In October 1981, informal interagency coordination under E.O. 12067 was completed on the proposed notice. Because of the lack of a Commission quorum in the latter part of 1981, the notice has not yet been approved by the Commission for publication in the Federal Register.

As noted in my earlier report to you, on September 1, 1981, in 46 FR 43848, the Commission published its proposed interpretations with respect to the enforcement of the Equal Pay Act. These interpretations would replace those issued by the Department of Labor at 29 CFR Part 800. Comments on the proposed regulations were to be received by November 2, 1981. The Office of Policy Implementation and the General Counsel's Office are reviewing the public comments for the purposes of finalizing these interpretations.

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On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) the Commission assumed enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, 623, 625, 626-633 and 634 (ADEA). Prior to the assumption of jurisdiction, the Commission commenced an in-depth review of all existing interpretations of the ADEA which were promulgated by the Department of Labor. See 44 FR 37974 (June 29, 1979). On November 30, 1979, the Commission published in the Federal Register its proposed interpretations of the ADEA. See 44 FR 68858 (November 30, 1979). On September 29, 1980 in 45 FR 64212, the Commission rescinded its earlier proposed interpretation. In August of 1981 the Commission approved the interpretation originally proposed in November of 1979 which will rescind the interpretations issued by the Department of Labor. Final interpretations were published in the Federal Register on September 29, 1981, (46 FR 47724).

The transcript of the oral testimony and written testimony submitted at the Commission's hearings on job segregation and wage discrimination held in Washington, D.C., in April of 1980, and the interim report of the National Academy of Sciences entitled "Job Evaluation: An Analytic Review," have been placed on microfiche and microfilm. These materials are available in the Commission library for public reading and Commission use. Copies of the microfiche and microfilm have also been distributed to all Commission District and Area Offices.

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In further review of this issue, the Commission prepared an interpretative memorandum, issued in the form of a ninety-day notice, specifically addressing the recent Supreme Court decision in County of Washington v. Gunther, 101 S. Ct. 2242 (1981). This notice, N915, dated September 30, 1981, which has been continued in effect, provides interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination, including those raising the issue of comparable worth.

In October 1981, I testified before the House Subcommittee on Employment Opportunities, the Committee on Education and Labor. Under my direction, OPI prepared an extensive report on the subject of affirmative action which was submitted by me to the Subcommittee. The report deals with and clarifies certain misconceptions that surround this issue, and also offers some estimates of costs and benefits relating to affirmative action.

Since July 1965, the Commission has issued almost 10,000 Commission Decisions under Title VII (outside the decisions issued by the Office of Review and Appeals in the federal sector). Other than a few hundred of these Decisions that have been published in the commercial publications, most of these Decisions have been inaccessible to both the public and the Commission staff. OPI undertook the mammoth task of collecting, verifying and chronologically arranging all these Decisions. In early 1981, all Commission Decisions through fiscal year 1979 had been placed on microfiche. However, because these Decisions have not been indexed by subject matter as yet, OPI proposed that these Decisions be placed on

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a computerized data base which would enable the Commission to have efficient access to this large volume of materials. I placed a very high priority on this project. Therefore, I approved the proposal to load approximately 10,000 Commission decisions into the JURIS computerized data base, to produce a decisional index, and sanitize these decisions. Over a quarter of these materials have been delivered to the contractor for this purpose. Copies of the JURIS-produced decisional index, when completed, will be distributed to each District and Area Office to enable it to have access to all Commission decisions. When the system is fully operational, the Commission will have direct access to the JURIS data base via a terminal located in OPI. This will enable the Commission and OPI to respond promptly to Freedom of Information Act and other such requests for Commission decisions. The existence of these materials in the JURIS data base will also enable the Commission staff to do sophisticated research in Commission decision precedents in evolving areas of the law.

The Office of Policy Implementation issued 29 decisions during FY 81. Some of these decisions reiterated prior EEOC policy; however, most of them set forth new policies in such areas as seniority, sexual harassment, affirmative action, religious accommodation, tenure, and speak English-only rules. Further, OPI returned to field offices 652 charges which originally had been called into headquarters for a review of non-CDP issues. OPI received 487 charges containing non-CDP issues in FY 81, more than one-half of which involved the issue of sexual harassment.

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The Office of Policy Implementation began a project to computerize all of the charges it receives. This project should be completed in the second quarter of FY 82 and will allow OPI to give the field offices status reports on the charges they have pending in that office.

As you know, the Commission's success in investigating and resolving charges of discrimination depends in large part on the effectiveness of the EEOC Compliance Manual in providing up-to-date guidance on charge processing and on Commission policy. As presently published, Volume I (procedural) and Volume II (interpretative) of the Compliance Manual deal only with Title VII matters. However, both Volumes are being revised not only to update Title VII material but, also importantly, to include guidance on the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967, as amended (ADEA).

The Office of Policy Implementation is currently drafting, reviewing, and/or editing amendments to the existing Title VII part of Volume I on an as-needed basis. It is also reviewing, editing, and finalizing proposed EPA and ADEA sections for Volume I. Of these, the Commission has already approved revised §15 on Title VII, §§101 through 184 on EPA, and §§201 through 284 on ADEA.

In addition, OPI is preparing a completely revised Volume II which will cover all three statutes. Sections dealing with Title VII which have been approved by the Commission include: §601, Introduction; §603, Identifying and Processing Charges which Raise Issues Not Covered by a Commission Decision Precedent;

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§604, Theories of Discrimination; §607, Affirmative Action; §615, Harassment; §619, Grooming Standards; and §622, Citizenship, Residency Requirements, Aliens, and Undocumented Workers.

OFFICE OF GOVERNMENT EMPLOYMENT

During my earlier report it was noted that in January 1981, EEOC issued advance instructions to all Federal agencies for the implementation of the Multi-Year Affirmative Action Plans through our Management Directive (M.D. 707). This plan covers the period from FY 82 to FY 86. Some problems arose with respect to the issuance of M.D. 707 but after several meetings with National Achieves Record Services and OPM personnel, the matter was temporarily resolved and clearance for our M.D. 707, as amended by the June 15 Memorandum was finally granted. On August 12, 1981, I once again wrote to all Federal agencies requesting them to complete their planning at the first possible moment to meet the operative date of October 1, 1981.

Another activity of our Office of Government Employment was the issuance of our Management Directive (M.D. 710) with Federal Affirmative Action (FAA) instructions to Federal agencies on their affirmative action accomplishment report for minorities and women for FY '81. These will be the last instructions concerning the two years' transition period which allowed agencies to "learn" the new planning process, as we moved away from the annual planning concept to the multi-year approach (M.D. 707). Handicapped Week, thus in this, the International Year of Disabled

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Persons, we took the opportunity to reflect on problems of the handicapped in all spheres of the republic.

The Department of Labor reports that there are 7.2 million severely disabled persons of working age, or about 6% of the national work force.

OPM's Central Personnel Data File (CPDF) indicates that in 1978 only 0.76% of the total Federal non-postal work force were severely disabled persons. There is gross under-representation of severely disabled persons throughout the Federal government, in all occupations and at all levels.

The Office of Government Employment has also issued Management Directives (M.D. 708 and 709) dealing with the handicapped. The former transmitted instructions for reporting the accomplishments of FY 80 affirmative action programs and for the program plans for the last half of FY 81.

The latter, although not a multi-year plan, moves to a longer period of planning. It covers the accomplishment reports for FY 81, the affirmative action program plans for FY 82 and the accomplishment report covering the same period.

During the development of M.D. 709, an issue was raised concerning our authority to handle the Disabled Veterans Program (Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974) together with the Handicapped Individuals Program (Section 501 of the Rehabilitation Act of 1973). The President's Reorganization Plan No. 1 of 1978 transferred to EEOC the

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responsibility for administering several affirmative action programs, but no mention was made of Section 403 of the Veterans Assistance Act. Later, when Congress amended this same Act, it did not substitute EEOC for the Civil Service Commission as the agency with authority to handle the program. However, there has been a generally implied understanding of all the parties concerned that EEOC was to also handle this program. The situation was complicated by the fact that the Act requires each agency to include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals (Section 501), a separate specification of plans for the disabled veterans. Once the issue was raised, the Office of Government Employment met with OPM staff to discuss the problem while the legal offices of both agencies developed opinions. OPM staff gave us to understand that they wanted EEOC to continue with the program; however, the Director of OPM announced that OPM was going to take charge of the program. Meanwhile, our proposed M.D. 709 contains instructions for the disabled veterans affirmative action program. We finally reached an agreement with OPM by which EEOC will continue with this program during FY '82 but advising agencies through our M.D. 709 that thereafter OPM will assume responsibility for the program.

The Office of Government Employment has been conducting other activities such as the development of a staff, a system for the review of agency plans, Headquarters-Field coordination, desk-officer responsibilities for our programs, and a consultation in

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September in Dallas with our Federal Affirmative Action Field Managers, the District Directors of the ten Federal Regions and Headquarters personnel. In the fourth quarter, we initiated on-site program reviews for the 501 (handicapped) effort. This will be expanded in 1982 to cover the sex and minority program.

OFFICE OF INTERAGENCY COORDINATION

The Commission's coordination role, under Section 715 of the Civil Rights Act of 1964 and Executive Order 12067, has been extremely active during 1981.

In the crucial area of review of agency regulatory issuances, the Commission met and was able to issue a timely response both to OFCCP's Advance Notice and Notice of Proposed Rulemaking dealing with the affirmative action regulations for Federal contractors. I strongly endorsed the need for regulatory reform and paperwork reduction, and expressed a desire to negotiate a few of the substantive changes proposed by OFCCP. OFCCP expects to coordinate its preliminary proposals on the subject with the Commission in late January.

In July 1981, the Commission agreed with a significant stipulation to OFCCP's proposed withdrawal of its broad regulation dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies. The Commission recommended that OFCCP amend its withdrawal statement to include a commitment to investigate instances in which payment of club dues results in illegal discrimination. OFCCP

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has yet to submit to the Commission a proposed final decision on this issue. While the Commission has successfully negotiated a joint equal employment opportunity poster with OFCCP and DOJ it has been unable to move forward with the implementation of the EEOC/OFCCP Memorandum of Understanding because of OFCCP's heavy program of regulatory reform. I recently wrote to the Secretary of Labor urging him to accelerate his agencies progress in designing procedures to fulfill the promise of the Memorandum of Understanding.

Regulatory proposals also were received from a large number of other agencies, including the Department of Education, the Office of Revenue Sharing, the General Services Administration, the Environmental Protection Agency, and the Office of Management and Budget. Several issuances were submitted by the Office of Personnel Management, the most consequential of which was a complete revision of its regulations governing the operation of state merit system programs. In addition, I have written to the Secretary of Health & Human Services concerning the failure of that agency to include appropriate equal employment provisions in the proposed regulations it published to govern its new block grant programs. In order to further cooperate among agencies in the design of equal employment regulatory policy, the Commission will issue a quarterly bulletin of agency issuances under development.

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As a result of a dialogue I initiated with OMB, an agreement was reached in August which strengthens the effectiveness of Executive Order 12067 by requiring that EEOC complete its analysis of agency Notices of Proposed Rulemaking, final rules and information collection instruments under Executive Order 12067 prior to their submittal to OMB for review under Executive Order 12291 and the Paperwork Reduction Act. Shortly thereafter, I sent a memorandum outlining the new procedures to the heads of all federal agencies. The Commission is now prepared to publish final changes to its coordination regulations to conform them to the provisions of the agreement. The Commission worked closely with the Office of Management and Budget on two other matters. It has reviewed the relevant portions of agency budget estimates and supporting data to ensure that they are complete and appear factual, and is in the process of conducting a detailed assessment of the estimates and data provided by three major cabinet departments. In conjunction with OMB, the Commission has investigated charges of duplication of compliance activity by EEOC, the Office of Revenue Sharing and the Department of Housing and Urban Development. As a result of this analysis, HUD is revising its data collection instruments.

Important activities now underway include a study of methods for improving the relationship between state human right agencies and Federal equal employment activities. In addition, an options paper outlining various approaches to the need for training of Federal equal employment officials was circulated to the agencies

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for comment. Commission staff also are reviewing the possibility of revising the equal employment provisions of the regulations dealing with treatment of the handicapped. This analysis is being conducted in conjunction with the Department of Justice's revision of the government wide regulations prohibiting discrimination against the handicapped in the provision of Federal and federally financed services.

BUDGET

When you were here before we were confronted with the gloomy prospect of having to operate with the agency on a substantially reduced budget of \$123,542,000 which would have caused major RIF's and furloughs, and devastating program overhaul. Now things are much better and I am indeed moderately optimistic. The changes in the federal budget with the resulting changes in the Commission's budget emphasize the need for planning, establishing options and alternatives within our priorities and a total awareness of cost vs charge resolution for Title VII, Age, Equal Pay, Federal Sector Complaints and the State and Local Grants Program.

During the 1st quarter of FY 82, I attended several meetings at OMB to present and defend the Commission's 1982 and 1983 budget requests. As a result of these meetings, I have reason to be optimistic and to a large extent pleased, although not completely satisfied with the end results.

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I have discussed these concerns with you before and at this time I am awaiting the President's pronouncement in his budget to the U.S. Congress sometime this month or in February.

OFFICE OF REVIEW AND APPEALS

Fiscal 1981 was the second full year of operations for the Office of Review and Appeals. The principal activity during FY 81 was to process as many cases as possible within the severe professional and clerical constraints of the hiring freeze. The office continued to apply private sector precedent to federal sector decisions towards the end of FY 81 the Commission was planning to add ORA decisions to the JURIS system and to begin a compliance program. Our budgetary posture, however, may temporarily affect resources for those two areas.

Appeals pending on 9/30/80	1907
Appeals docketed during FY 81	3175
Decisions written during FY 81	2611
Appeals pending on 8/30/81	2471

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Our responsibility to uphold the principles of equal employment opportunity and to aggressively enforce the anti-discrimination jurisdictions with which we are charged must begin at home. We cannot expect the employer community to hold stock in the Commission's activities if our own employees are left wanting or their rights not fully protected.

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In our agency that task is particularly exacting since most of our professional employees could be considered experts in the jurisdictions which we enforce. A difficult task indeed, yet one which, as the lead civil rights enforcement agency, we must meet and lead the way for all employers.

In Fiscal year 1981 the Office of EEO complaints of discrimination for processing increased. That fact, coupled with an ever shrinking EEO staff, has led that office to seek alternative methods in processing its caseload. In close consultation with various headquarters offices, the District Directors EEO Subcommittee and the union, the Office of EEO has developed a pilot program for processing complaints using rapid charge processing techniques. The cornerstone of the pilot program will be a more intensified effort to settle or resolve complaints at the earliest possible stage. Once underway, the pilot will be tested on a trial basis in a limited number of offices. If successful, this program could have a far reaching impact throughout the Federal community.

Recently, that office has issued an Agency Directive on the prevention and elimination of sexual harassment in the workplace. Although less than 3% of all complaints filed with the Office of EEO in FY 81 alleged sexual harassment, it is nonetheless a subject which we as managers must be fully prepared to deal with should the need arise.

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It should be noted that in several more days we will mark the anniversary of the late Dr. Martin Luther King's birth, January 15, 1929, with appropriate observances. Also, next month the Federal community will commemorate National Black History Month. You will be receiving appropriate materials shortly to assist you in planning meaningful observances.

Finally, the Office of EEO has recently issued instructions to all field and headquarters offices for the development and implementation of the agency's multi-year affirmative action plan which will cover a period from FY 81 thru FY 86. I think we all realize that, given our present fiscal posture and staff limitations, new hiring will be extremely limited during this period. However, affirmative action planning during such times can present an ideal opportunity for utilizing existing staff through job enrichment programs, development of bridge positions, implementing the Commission's upward mobility program and taking full advantage of the part-time employment program.

OFFICE OF PUBLIC AFFAIRS

This office has been one of the busiest in the agency since September. We have issued 10 publications and several news releases. On January 28th and 29th, the Office of Public Affairs is coordinating a symposium for the elderly in Los Angeles at the Convention Center. We expect an attendance of 1500. In addition the 15th Annual Report is at the press, the 16th Annual Report is being prepared for the first draft. This is signi-

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ficant when you take in the fact that since May 1981 four annual reports have been issued and with the production of the 16th Annual Report EEOC will be current in its annual reports to Congress. The Office of Public Affairs during this three month period has produced five training films in addition to EEOC Highlights which have been distributed to various offices. I am glad to report that we are current on our in-house publication MISSION, the staff is currently working on the next edition to be published on March 1st. The Office of Public Affairs is responding to mail inquiries within a five day time frame work while in May there was a 2,000 backlog in the response to mail inquiries.

LITTLE KNOWN OR RECOGNIZED FACTS

The Commission has one of the largest constituency groups of any agency in government. Specific data derived from the Bureau of Labor Statistics publication "Employment and Earnings, January, 1981", reflect the following:

Civilian Labor Force (age 16 and above)

Total CLF	104,719,000
Total Female	44,574,000
Black --	10,597,000
Hispanic --	5,484,000
Other Non-White --	<u>1,950,000</u>
Total Minority	18,031,000

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Black Female --	5,098,000 (est.)
Hispanic Female --	2,123,000 (est.)
Other Non-White Female --	<u>931,000 (est.)</u>
Minority Female	8,152,000 (est.)
Non-Minority Female	36,422,000 (est.)
Minority Male	9,879,000 (est.)
Female, age 40-69 --	16,247,000
Male, age 40-69 --	<u>23,492,000</u>
Total, Age 40-69	39,739,000
Total CLF	104,719,000
Non-Minority males age 16-39 & 70 +	<u>30,406,000 (est.)</u>
Total Women, Minorities & Persons Age 40-69	74,313,000 (est.)

Based on the above, the total civilian labor force averaged almost 105 million during 1980. Women, minorities and persons age 40 to 69 represented more than 74 million of this total. In particular, there were approximately 45 million women, 18 million minorities, and 40 million workers age 40 to 69 in the nation's civilian labor force in 1980.

A conservative estimate suggests approximately 70% of the total CLF is employed at employers, both public and private, covered by Title VII. This factor could therefore be applied to the above figures to obtain estimates of employment at Title

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Distribution of Title VII Charge Receipts By Bases
FY 76 - FY 80

<u>Year</u>	<u>Race</u>	<u>Religion</u>	<u>Sex</u>	<u>National Origin</u>	<u>Color</u>
1976	53.9%	2.4%	31.1%	10.5%	2.0%
1977	55.2%	2.3%	30.1%	10.9%	1.5%
1978	55.7%	2.1%	30.0%	11.2%	1.0%
1979	52.0%	6.2%	30.1%	10.6%	1.1%
1980	52.6%	2.2%	33.4%	10.2%	1.6%

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VII-covered employers -- e.g., for women it would be 31.2 million and for minorities 12.6 million.

Unfortunately, recent generalized references to the Commission by political, civil rights and business community voices tend to suggest that critics only view us in a white male vs black male context. However, it is clear that statistics support our position that under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067 we touch on the lives of 100,000,000 voting Americans.

A MATTER OF PRIORITY

One of the top priorities of this Commission for FY 82 and FY 83 has to be improvement in our financial management. Early in my tenure as Acting Chairman, I began to suspect that the agency had serious problems in financial management and procurement activities. These suspicions were verified by both reviews and audits by our internal audit staff and by GAO staff which had been requested to review our financial and accounting operations. The Acting Executive Director, Ms. Issie Jenkins and I have spent an unusual amount of management time in the financial and budget area. There is no doubt that this agency has problems, and all of us have contributed to them by not following proper procedures and paying enough attention to the administration of this responsibility in each of our offices. These problems cannot and must not continue. We are being looked

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at by oversight committees, by GAO, and others, and will continue to be looked at until we have corrected our deficiencies.

The Acting Executive Director has set in motion a number of corrective actions and controls to correct our problems. She has my full support. No longer can we tolerate failure to follow prescribed procurement procedures, failure to properly document expenditures of funds, failure to timely initiate payments for vendors, failure to promptly cuff expenditures, and failure to timely reconcile records. Nor will we tolerate failure by headquarters operations to provide timely feedback to office directors on errors and inadequate documentation. We will provide as much guidance as possible, and training to help you and your office meet these demands; we will also, however, take appropriate disciplinary action where procedures are not followed, or where they are circumvented. Office Directors are directly responsible for supervision of staff carrying out these responsibilities, and Office Directors will be held personally accountable. It can be no other way. As we attempt to make our financial management and accountability sound, I will count on your cooperation. You and your staff have shown what you can do in the compliance and litigation area. It is time to show our efficiency in the financial management area.

CONCLUSION

In conclusion, I wish to thank the District Directors and the Regional Attorneys for your continued support and the dedication you continue to give to EEOC. Political appointees such as

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me come -- hopefully to do their job without selling out for fame or gain -- and then we leave the government to the professional managers, such as yourselves. You, the professionals of government remain. You are the government, regardless of your political persuasion. You are the best friends that the public have -- regardless of what people or politicians say about you. You keep the light of freedom burning so that the people can elect the leadership of a freedom loving society. On behalf of the Administration, I want to thank you for the job that you are doing.

I am but a person like you. But, I respect each one of you for your dedication to principle and your loyalty to the mission of EEOC. If you ever lose your commitment to EEOC, I trust that you will have the courage to leave the agency rather than to sell out at the expense of millions of restless hearts and wounded souls for whom the people, through the Congress enacted, Title VII, and allied statutes.

Finally, I want to thank Commissioner Armando Rodriguez for his counsel and support. He is a man of integrity and dependability. Commissioner Rodriguez must be given as much credit as anyone for his cooperation during the period that EEOC was quorumless. His daily inquiries and his wit have been exceedingly important to me.

J. Clay Smith, Jr.

J. Clay Smith, Jr.

COMMISSION RESOLUTION

From October 1, 1981, to December 21, 1981, the Equal Employment Opportunity Commission was without a quorum, as set forth in the statute, and it became the responsibility, under a delegation of authority granted September 25, 1981, of Acting Chairman J. Clay Smith, Jr., in consultation with Commissioner Armando M. Rodriguez, to act upon those matters which would normally have been acted upon by the Commission as a collegial body. To the credit of Acting Chairman Smith, during this period of absence of a quorum, the first time in the Commission's history, the Equal Employment Opportunity Commission continued to operate smoothly and carry out its compliance and enforcement responsibilities under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, and Executive Order 12067.

Notable among the accomplishments of the Acting Chairman during this period are:

- (1) The successful closure of Fiscal Year 1981 in which Commission productivity was at an all-time high. Benefits to charging parties were increased, service to charging parties, employers, and other entities was improved by reducing the time for processing complaints: all of which furthered the public interest in eliminating employment discrimination.

Specific accomplishments for Fiscal Year 1981 included the securing of relief for 38,000 persons: a 60% increase in benefits obtained over the previous year; a 25% increase in closure of charges, from 57,000 to 72,000 charges closed: a 4% increase in charge receipts from Fiscal Year 1980, up from 56,000 to 59,000 charges, filing of 368 cases in federal court, up from 326 in Fiscal Year 1980; and a 23% increase in litigation settlements.

- (2) The successful defense of the Commission's budget request for Fiscal Year 1982. Through his untiring and relentless efforts at OMB, the White House, and before Congressional Committees, he effectively and repeatedly presented the Commission's need for both budget and staff to adequately carry out its mandate to eliminate employment discrimination. As a direct result of his personal involvement and direction of the preparation of numerous written justification documents, the Commission's budgetary mark was increased from an original OMB mark of \$123,000,000 and 3000 staff years, to \$140,000,000 and 3376 staff years, alleviating the present need for severe reductions in force and enforcement program cuts.

In addition, at his direction, cost reductions in administrative and support costs have been mandated in an effort to save resources for program operations and to save staff necessary to carry out those programs.

- (3) The effective representation of the Commission's views on policy matters before Congressional Oversight Committees and in interagency coordination matters. On October 1, 1981, Acting Chairman Smith submitted a written statement to the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service, providing the Commission's views on Equal Employment Opportunity in the Federal Sector; and on October 7, 1981, the Acting Chairman testified before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, on Commission Policy with respect to Affirmative Action.

During this period he has also forcefully presented the Commission's position in issues raised by the Office of Federal Contract Compliance Program's proposed Regulations and on issues regarding sexual harassment and the Uniform Selection Procedures Guidelines.

- (4) The careful and close attention to Commission financial operations to address deficiencies identified by requested audits and reviews. As a result, closer supervision, accountability, and necessary staff training are being implemented.
- (5) The expeditious consideration of those matters involving statutory deadlines, or involving time frames the lapse of which could have been viewed as unreasonable should the Commission have failed to act. As a result of his swift and prudent actions, he therefore, preserved the rights of charging parties and complainants, and lessened the build-up of potential monetary liability of employers.

For the efforts and actions described herein, and for all of the activities necessary to keep the Commission not only operational, but effectively carrying out its mandate, be it resolved that Acting Chairman J. Clay Smith, Jr., be commended for his unprecedented effort on behalf of equal employment opportunity.

Be it also resolved that his fellow Commissioners and staff of the agency are appreciative of the selfless manner in which he has conducted the affairs of the agency during a period of uncertainty regarding resources and leadership; seeking always to bring assurances of stability and positive direction. At a time when circumstances could have led to a decline in morale, and a virtual standstill in operations and programs, under his leadership there has been no decline in the Commission's efforts to address the problems of employment discrimination.

Signed: This 12th day of January, 1982

Armando M. Rodriguez, Commissioner

Cathie A. Shattuck, Commissioner

The
Nationalist
Movement



(601) 985-2288

PO Box 2000
Learned MS
39154

Mrs. Jamie Fine
US Senate Judiciary Committee
Senate Office Bldg.
Washington DC

[Handwritten signature]

September 23, 1991

Dear Mrs. Fine:

Thank you for your call. Enclosed please find the text of the statement you kindly allowed me to present in regard to the pending Thomas nomination to the Supreme Court.

I would appreciate your acknowledging it and sending me a copy of the record, when it is available.

With regards, I am

Yours sincerely,

[Handwritten signature: Richard Barrett]

RICHARD BARRETT

rb:hs
Encl.

"AN AMERICAN SEAT"

On August 7, 1991, Richard Barrett asked the United States Senate Judiciary Committee to be placed on the agenda to speak on the subject of the Clarence Thomas nomination to the Supreme Court. On September 19, 1991, permission was given for a statement to be submitted for the record. The following is that statement presented on September 25, 1991 by the Honorable Richard Barrett in behalf of The Nationalist Movement, PO Box 2000, Learned, Mississippi.

Mr. Chairman:

The debate is not just who will occupy a seat on the United States Supreme Court, but: Who will be the office holders, the team captains, the shop foremen, of this nation. No, in the larger sense, the question is: Who will man the trenches, pilot the space ships and forge the steel of this country. Indeed, whose days will be long upon this land?

As I rise in behalf of a better court, a nobler justice, a greater day, I sheathe the sword of ill-will toward any man. Cognizant that the course of the nation may as well be set by what proceeds from my lips as by the didactic of my opponents, I endeavor to dust off from my coat any lint of ignorance so that I may present myself to you clothed entirely in the linen of logic.

A SINGLE THREAD BINDS TOGETHER

Mr. Chairman, it is not meanness to insist that a single

thread bind together the fabric of America. Rather, it is upright to urge that every hole be patched, every rip be sewn, by that miraculous yarn spun by Puritans and pioneers, Pilgrims and patriots, knitted at beachheads, dyed on battlefields, and handed down to us as that incomparable strain, the American Way of Life.

Some looking back on this day will find it strange that the perfume of Nationalism and democracy fills the air abroad, while the mold of sectionalism and privilege scents this place. Come now. Should a Russian present himself as a candidate for, say, the Lithuanian Supreme Court, what sentiments leap from your lungs when he is rejected in favor of a Lithuanian? Do you cheer on popular government? Do you shout that the Spirit of '76 impels independence and self-government for our friends even as for our ancestors? Do you fete majority rule as you would a most welcome guest?

And well you should.

Well, then, if Henry Kissinger presented himself for the Presidency of the United States, would you not remind him that our own codification of nationality, the Constitution of the United States, prohibits one foreign-born from serving in the highest office in the land?

LOVE OF AMERICA IS NOT HATRED

Is it hatred of Mankind to cleave to American nationality?
To love the American Way of Life?

Of course not.

For if one foreign-born -- no matter how magnanimous his

temperament, no matter how stellar his exploits -- were given sway over us, a shuddering sense of loss would replace our bubbling spirit of opportunity. Forbid it, Mr. Chairman; the littlest American engine must be given to climb not only to this hilltop or that, but to reach the highest plateau, under its own steam.

If it is conceded, therefore, that a resident of a row house may become a denizen of the White House, the Clarence Thomas nomination begs the question: Why not be considered for a seat on the Supreme Court, here and now, as well?

I did not say, at some future time, after the storm of controversy has passed. I said, now. At the very moment when an Iowa farmer, looking out over fields plowed by his forbearers, fenced out by interests far away and beyond, signals his discontent and dispossession. As a Pennsylvania factory worker, surveying stilled engines fueled by his forbearers, padlocked out by cliques afar and aloof, beckons his displeasure and desperation.

ALIEN IN WORTH

One need not be foreign in birth to be alien in worth.

O, mothers of America, nurturing and now presenting your sons who have never abused a trust, never broken a law, never shunned a duty: May the tremors of your discontent become the earthquakes beneath our feet, until every idol of privilege, each graven image of dispossession, quivers and falls before your own heroes of the American Way of Life, your own bearers of the American Dream.

Champions spreading our language and learning. Gladiators

contending for our morals and progress. Titans lifting up our work ethic and freedom.

What an opportunity, Mr. Chairman, to debunk the notion that only the few are fit to govern, that only the favored may occupy this very seat. Spread, instead, the banquet of American opportunity before American farm boy and American factory worker here, alike, declaring: This land is your land, these jobs are your jobs, this court is your court, this seat is your seat.

An unhappy populace did not always have such an enviable choice as you do. Witness, through tear-filled eyes, the blood, the rivers of blood, of the Old World in its wars of royalty and dynasty.

ARISTOCRACY VERSUS CITIZENRY

Kings draped in purple upon golden thrones who spoke not a word of the language of the people, in the name of nobility. And peasants storming castle walls to wrest their country from such tyranny. Glittering coronations of louts and ignoramuses who propped up gilded courts, in the name of aristocracy. And the common people forging moats with fists of fury to carve their name "citizen" above the inner sanctums where "subjects" could not tread.

One would have thought that Providence had spared the New World such "wars of the roses" when the Spirit of Union accepted the unconditional surrender of nullification, when the flags of antebellum "peculiar institutions" were struck down from the ramparts of power.

Good men were given to hope that America would be one resplendent nation, one transcendent people, one incomparable Way of Life.

Forward-striding men were given to expect that the pathway of the common good was swept clean of the rusty nails of privilege and parochialism, leading upward to the greatest good for the greatest number.

Until now.

For Clarence Thomas presents himself for confirmation to the highest court in the land.

Mr. Chairman, the American people is entitled to office holders who reflect, in every way, the glistening facets of the gem of its nationality. Its virtues. Its values. Its justice. Its morality. Its language. Its religion. Its work. Its families. Its hopes.

Such a nominee is then qualified to serve.

QUALIFICATIONS FOR CONFIRMATION

The nominee must be an American -- not a minority -- for the American people is the majority of this, a democratic nation.

He must be a family man -- not a divorcee -- because the stable home is central to the morality and aspirations of the majority of the American people.

He must be a military man -- not a draft shirker -- because patriotic service at the risk of one's own life is the offering laid upon the altar of the nation by the majority of the American people.

He must be of stellar character -- not a marijuana user -- because respect for the law is the hallmark of the majority of the American people.

He must be law-upholding -- not a supporter of Malcolm X -- because the majority of the American people reject violence and hate.

He must be exemplary -- not a miscegenationist -- because the majority of the American people practices traditional American family values.

He must be a product of the commonweal -- not a quota -- because the majority of the American people achieves by work and merit.

He must be honest -- not a hypocrite -- because the majority of the American people is straight-forward, fair and just in dealings between our countrymen and all mankind.

MINORITY CAN DO NO WRONG?

Mr. Chairman, any one of these defects would seemingly call forth the three nails -- social pervert, political misfit or moral pariah -- which you would drive into the coffin of any other nominee. But instead of the ghoul of privilege reposing, it arises, and lifting the crown of favoritism to its own head, intones: "The minority can do no wrong."

Such a horrible wail cannot be confined behind these walls. It echoes out across the land, summoning free men to the proper armaments of stable and democratic government: the spoken word, the voice of reason.

The fisherman at his net, the carpenter at his bench, shout back: "No favors for the few." You can hear them even now -- in the happy whistles from the trucker joking beside one who speaks his same American language, who follows his same American work ethic. Or in the cheery jibes from the mother prattling beside one who practices her same American morality, who cherishes her same American family values.

But they were not invited to speak here, today. So, I must and I shall raise their voices, too, and, in doing so, I may surprise you, but I will not deceive you.

WHAT DID HE DO; HOW DID HE DO IT?

May I, therefore, ask the Watergate conundrum, so often repeated in Congressional hearings nowadays: "What did he know and when did he know it?"

What of Clarence Thomas' drug use? When did he do it and how did he do it? From whom did he make his illegal purchases? Or, did he grow the unlawful weeds himself? Did he pander his perversion to others? Who were they and how have their lives been corrupted, as a consequence?

What of his blank military record? Why did he not serve in uniform and what did he do, instead? Was he a pacifist opposed to all wars or only the Vietnam War? Were his convictions the result of deeply held religious scruples, cowardice or sympathy for the Viet Cong? What good works did he undertake as an alternative or were his motives purely self-serving?

But, it is said, "The seat of Thurgood Marshall is a minori-

ty seat which must be filled at all costs by a minority."

The nuances of such a premise were placed before the voters of New York State when it was claimed that the Senate seat of Jacob Javits was a "Jewish seat," and rejected. The Massachusetts electorate faced a like decision when the Senate seat of Edward Brooke was characterized as a "Negro seat," and likewise rejected.

AN AMERICAN SEAT

A seat on the United States Supreme Court, Mr. Chairman, is an American seat.

You say, but "Mr. Barrett, you are in the minority here today." Then, Mr. Chairman, I appeal directly to the American people, saying: Arise. Arms embraced. Tongues united. Hands clasped. Hearts entwined.

Down with favors.

Up with freedom.

Perhaps Clarence Thomas, himself, could add a tail of character to the comet of his controversy. He could excuse himself from consideration by renouncing the very inconsistency which thrust his nomination upon you. Let him candidly say that his appointment was the result of the very quotas he opposes and that, consequently, he withdraws.

School children would immediately be given to candor, not compromise, on their examinations. Enlivened professors would increase their instruction on the values of honesty over hypocrisy. And Clarence Thomas could join the ranks with Robert Bork, bidding the American people to weigh his words and judge his

opinions: not as one lording over the citizenry with a gavel, but as one speaking with integrity to persuade the commonwealth.

I prepared to persuade you, today, Mr. Chairman, not by delving in some clammy library, but by walking through the piney woods, out back of the house in rural Mississippi. Some songbirds flew overhead, momentarily distracting me, but their melodious strains perked up my ears and lifted my spirits. O, to sing the sweet songs of honesty with the least of our people, rather than to join the dour chorus of hypocrisy with the most exalted of the powerful.

THE CAUSE: MAJORITY RULE

Nonetheless, Mr. Chairman, I choose to inveigh in the fury of the desert storm for the cause of majority rule, suffering even some sand in the eye, rather than to calmly contemplate the circuits of larks in some solitary forest.

And so, I extend the choice: The ruinous policies of the past -- to be swept aside, or the inspiring agenda for change -- to be energized.

The more sluggish will exclaim, "But transformation of the court cannot be so sudden. Perhaps over time Americanization can be put in place."

Wait? Suppose you concede to continuing the "minority seat" on the grounds that Clarence Thomas says he rejects the "minority agenda" of increased favors, privileges and largess for the few? What shall be your response should an atheist be presented: That he is acceptable if he expresses no objection to Christianity?

Or, what if a homosexual is offered? Shall he be confirmed if he says he is neutral on the subject of men marrying men?

TOWARD A HAPPY PEOPLE

By voting to reject the Thomas nomination, you debunk the notion of "group" happiness and you advance the very foundations of happiness itself: the cleaving together of a kindred people, the ennobling of a common spirit, the perfecting of a national union.

The American people. Tranquil within its borders. Safe upon its streets. Joyful in its opportunities. Free in its institutions. Merry in its adventures. Confident in its government. Singing on its journey. Bountiful in its livelihood. True in its justice. Rejoicing in its abundance. Prolific in its beneficence.

Mr. Chairman, one generation chafed under the concept that the state is secure in the hands of royalty, alone. But the crown of princely privilege was toppled by the common men of the American Revolution. In so doing, they poured their measure into the chalice of the Universal Rights of Man, overflowing, with the promise: Not by birth, but by worth.

The cup was passed. But ardor cooled.

The next generation grappled with the notion that government is safe in the hands of businessmen, alone. Then the sand castle of wealthy privilege was pushed over by the laboring men of the New Deal. And, thereby, they added still another measure to the vessel of true equality, brimming, with the pledge: Not by gold,

but by goodness.

The cup was passed, again. And, again, ardor cooled.

Today, it is suggested that the court is secure in the hands of a minority, alone. But the shell game of minority privilege is being knocked aside by the working men of a Nationalist Resurrection. And, should you join them, you will add your portion to the cup of American Opportunity, profuse, with the credo: Not by status, but by merit.

May your cup run over.

AN AMERICAN IS ENOUGH

Two civil servants were passing by a new government office building one day. One turned to the other and asked: "How many work there?" His friend quipped back: "About half of them."

Some, though with decided less felicity, would ask you the same question, "How many work there?" but expect your reply in numbers of minorities, with seats reserved for the "Black Caucus", "Gay Advocates" or "La Raza." Some call it affirmative action. Or "civil rights." Or quotas.

The majority calls it oppression.

So, may you split the sky with the thunder of your vote, by the lightning of your reply.

"Who works in that building?" "Who sits on that court?"

"Americans."

It is enough.

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STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, N. Y. 10271

ROBERT ABRAMS
ATTORNEY GENERAL

September 23, 1991

Senator Joseph R. Biden, Jr.
Chairman of the Senate Judiciary Committee
United States Senate
Russell Senate Office Building
Room 221
Washington, D.C. 20510

Dear Senator Biden:

I write to urge that the Judiciary Committee of the United States Senate, and the Senate as a whole, vote against the confirmation of Judge Clarence Thomas to be an Associate Justice of the Supreme Court. While I believe that there are several grounds for rejection, my principal reason for urging that course is that Judge Thomas's confirmation could weaken the right to privacy enjoyed by all Americans and destroy the fundamental right of every woman to choose whether or not to terminate her pregnancy.

The continued vitality of the right to choose is a basic concern of millions of women and men in this nation. It is also one of my longstanding concerns. During my tenure as New York's Attorney General, my office has filed briefs in the Supreme Court in many of the important abortion cases of the last decade. When such important rights are at stake, the Senate has the constitutional obligation carefully to weigh the President's nominee. And when confirmation threatens to undermine our cherished liberties, the Senate must withhold its consent.

Eighteen years ago, a seven-member majority of the Supreme Court concluded in Roe v. Wade that the Constitution protects a woman's right to terminate her pregnancy. It was a purely legal determination of bipartisan justices appointed by Presidents Roosevelt, Eisenhower, Johnson, and Nixon. That decision was in the best tradition of American constitutional jurisprudence: a truly independent judiciary, acting free of political influence, building incrementally on a line of cases stretching back over eighty years. Indeed, even Justice Rehnquist's dissent praised the majority opinion for its "wealth

of legal scholarship."¹ It is well to remember the words of the seven-member majority, which recognized that its task was "to resolve the issue by constitutional measurement, free of emotion and of predilection."²

The opponents of choice have turned the legal issue of fundamental rights into a political battle, and have made the question of where a Supreme Court nominee stands on this issue a litmus test for appointment.³ The unfortunate politicization of this legal issue of fundamental rights makes it necessary for this Committee to scrutinize closely a nominee's views.

The right to privacy, to be let alone, is a cherished liberty, and it is not of recent origin. For decades, majorities of the Supreme Court have agreed that it creates a zone of personal decision-making free from government encroachment in the areas of marriage, child rearing and education, family relationships, procreation, and contraception. As the Roe Court stated, the right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."⁴ Like the right to speak, to worship, to face one's accuser, or to be judged by a jury of one's peers, that right is fundamental. The majority in Roe held that only a compelling state interest can justify its infringement.

We should remember that abortion was not illegal when the Constitution was adopted. Laws prohibiting abortion did not come into vogue until the 19th Century. Roe v. Wade ended a period of harsh regulation by the states, which had devastating effects on the lives and health of women. After Roe, a state could no longer use its criminal laws to command a woman to carry to term a pregnancy, or force her to seek out in desperation the services of back-alley quacks and butchers. And while no legal issue has engendered more debate in the last two decades, a majority of the justices who have served since Roe have thus far declined to abandon its principles. With the Supreme Court appointments of the last two administrations, however, the fate of Roe now hangs in the balance.

Judge Thomas has declined to reveal to this committee whether he considers the right to choose a fundamental right and

¹ Roe v. Wade, 410 U.S. 113, 171 (1973) (Rehnquist, J. dissenting).

² Id., 410 U.S. at 116.

³ Since 1980, the Republican Party platform has contained a plank supporting the appointment of judges who would oppose the precepts of Roe.

⁴ 410 U.S. at 153.

has refused even to discuss his views on the constitutional analysis in *Roe*, a now eighteen-year old precedent. In contrast, he has not shown the same reticence when asked to discuss other constitutional matters which will likely be considered by the Supreme Court in the coming years, including controversial issues involving freedom of religion, the participation of crime victims in criminal sentencing proceedings, protection against sex discrimination, the imposition of the death penalty, and the right of habeas corpus. Judge Thomas's carefully orchestrated decision to remain mute on the critical question of whether a woman has a fundamental right to choose means that his written record must be examined to shed light on how he would treat that right on the Supreme Court. Here, however, Judge Thomas has also tried to elude the committee's concerns entirely. He has, in effect, asked the committee to disregard his written views on the right to privacy, including the entire corpus of his writings and speeches expressing his legal philosophy that natural or higher law should guide constitutional adjudication. He has asserted to this Committee that the views he expressed in the past about natural law were mere political theorizing and that he would not resort to his natural law ideas in deciding constitutional cases.

Judge Thomas's speeches and writings call those assertions into question. Those writings specifically commend Supreme Court opinions which relied on natural law, and criticize others which did not. Judge Thomas has said, "The higher law background of the American Constitution, whether explicitly appealed to or not, provides the only firm basis for a just, wise and constitutional decision."⁵ Only two years ago he wrote in the Harvard Journal of Law & Public Policy that "without recourse to higher law, we abandon our best defense of judicial review" and that "higher law is the only alternative to the willfulness of run-amok majorities and run-amok judges."⁶ The public domain contains not merely one Thomas article or speech urging conservatives to embrace higher law jurisprudence, but at least a half-dozen.

⁵ Speech to Harvard Federalist Society (April 7, 1988) at 5.

⁶ Thomas, The Higher Law Background of the Privileges and Immunities Clause of the Fourteenth Amendment, 12 Harv. J. of Law and Public Pol. 63, 64 (1989) ["Higher Law"].

⁷ See also, Thomas, Civil Rights as a Principle Versus Civil Rights as an Interest, in Assessing the Reagan Years (D. Boaz, ed. 1988) ["Civil Rights as an Interest"]; Thomas, Toward a "Plain Reading" of the Constitution - The Declaration of Independence in Constitutional Interpretation, 30 Howard L. J. 983 (1987); Thomas, Notes on Original Intent; Thomas, Why Black Americans Should Look to Conservative Policies, 119 Heritage Lectures (June 18, 1987); Thomas, How to Talk About Civil Rights: Keep it Principled and

Judge Thomas's views about how to interpret the Constitution radically conflict with modern constitutional doctrine. He resurrects a natural law theory of constitutional interpretation that slipped into disrepute a half-century ago. Central to his approach is the desire to limit the courts' ability to recognize or vindicate personal rights. In one article, Judge Thomas warns against the "maximization of rights", admonishing that the Supreme Court might strike down a law that violates a personal right, or that Congress might use its power to protect a recognized right.⁸ At the same time, he would enhance protections given to the economic "rights" of businesses and property owners and, in the process, undermine health and safety legislation which has protected our citizens for fifty years.⁹

The personal right Thomas has singled out most for attack is the right to privacy. He has expressed his "misgivings"¹⁰ about the majority and concurring opinions in the Griswold case, which protects the right to use contraception, and, in an article appealing to conservatives to use natural law, described Roe v. Wade as the case "provoking the most protest from conservatives."¹¹

Not long ago Judge Thomas made a speech to the Heritage Foundation praising an article written by Lewis Lehrman.¹² That article, as the committee knows, contends in an elaborate analysis that natural law accords an unborn fetus an inalienable right to life, a conclusion that would not merely permit state prohibition of abortion, but require it. Judge Thomas called it "a splendid example of applying natural law". Judge Thomas now claims that his description of the Lehrman article as "splendid" was not an endorsement, but merely a "throw-away line" intended to win over his conservative audience to a general natural law approach to

Positive (Keynote Address Celebrating the Foundation of the Pacific Research Institute's Civil Rights Task Force, August 4, 1988).

⁸ Civil Rights as an Interest, at 399.

⁹ Thomas, Address for Pacific Research Institute (August 10, 1987); Thomas, Thomas Sowell and the Heritage of Lincoln: Ethnicity and Individual Freedom, 8 Lincoln Review 7 (1988).

¹⁰ Civil Rights as an Interest, at 398-99; Higher Law, at 63 n.2.

¹¹ Id.

¹² Lehrman, The Declaration of Independence and the Right to Life: One Leads Unmistakably from the Other, The American Spectator 21, 23 (April 1987).

civil rights.¹³ But the speech did not refer casually to the article; it praised the very contents of the essay, which Judge Thomas described as the "meaning of the right to life." Moreover, the analysis in the Lehrman article, which identifies the Declaration of Independence as the source for a natural law theory of constitutional interpretation, is nearly identical to the analysis of natural law in several of Judge Thomas's writings and speeches.

In fact, the essay is strikingly similar to some of the writings of Professor Harry V. Jaffa of Claremont Institute's Center for the Study of the Natural Law, who appears to be a source for both Judge Thomas' and Mr. Lehrman's views on natural rights jurisprudence.¹⁴ As the Committee may know, two of Professor Jaffa's former students are credited for their assistance in preparing Judge Thomas' articles expounding his natural law interpretation of the Constitution. Like Judge Thomas and Mr. Lehrman, Professor Jaffa finds in the Declaration of Independence the source for his species of natural law jurisprudence, and like Mr. Lehrman, he concludes that natural law contains a command to bar abortion.¹⁵ These views of the Constitution are far more extreme than those of any modern justice or nominee.

The right to privacy and the particular right of a woman to control her bodily destiny are central concerns of this nomination. In his testimony, Judge Thomas sought to distance himself from his past statements about those rights. But, if Judge Thomas disavows what he said so recently and if he also declines to answer the committee's questions on such critical issues, what is the record that the Senate can review to determine whether he merits appointment to the highest court in the land? I respectfully urge this distinguished committee to withhold its

¹³ Transcript of Hearings on Nomination of Clarence Thomas to be an Associate Justice of the Supreme Court before the Committee on the Judiciary of the United States Senate (September 10, 1991) at 196-97.

¹⁴ See Thomas, Speech at Harvard Federalist Society Meeting, at 3; Higher Law, at 64; Lehrman, On Jaffa, Lincoln, Marshall and Original Intent, 10 U. Puget Sound L. Rev. 343 (1987).

¹⁵ Jaffa, Judicial Conscience and Natural Rights: A Reply to Professor Ledewitz, 11 U. Puget Sound L. Rev. 219, 231 (1988).

consent to Judge Thomas' nomination, for the conclusion is inescapable that his confirmation would put the fundamental rights of Americans, and especially of women, in grave jeopardy.

Respectfully,

A handwritten signature in black ink that reads "Robert Abrams". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

ROBERT ABRAMS

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • 15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5332
St. Newhouse Center for Law and Justice

ALFRED W. BLUMROSEN
Thomas A. Cowan Professor of Law

September 24, 1991

The Honorable Joseph Biden, Jr.
U.S. Senate
Washington, DC 20510

Dear Senator Biden:

I am enclosing two copies of my testimony concerning Judge Thomas Nominations, what I filed last week, for your use. It makes one major point which I do not believe was noted by the witnesses. I hope you will personally review it.

Sincerely,



Alfred Blumrosen
Professor of Law

AB:rpc

Enclosures



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ALFRED W. BLUMROSEN
Thomas A. Cowan Professor of Law

TESTIMONY OF
ALFRED W. BLUMROSEN
THOMAS A. COWAN PROFESSOR OF LAW

RUTGERS LAW SCHOOL,
15 WASHINGTON ST.
NEWARK, NEW JERSEY
201 648 5332

SEPTEMBER, 1991
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
CONCERNING THE NOMINATION OF CLARENCE THOMAS
TO THE SUPREME COURT OF THE UNITED STATES

My name is Alfred W. Blumrosen. I am the Thomas A. Cowan Professor of Law, Rutgers Law School, Newark New Jersey. My field is employment discrimination law. I have served every federal administration during the period of 1965-1980, while a bi-partisan Equal Employment Opportunity Program was developed and implemented. In the Johnson administration, from 1965-1967, I was Chief of Conciliations for the Equal Employment Opportunity Commission. During that time I organized the conciliation process under Title VII. In 1968, I was a Special Attorney in the Civil Rights Division of the Department of Justice. During the Nixon-Ford administration, I served as consultant to the Assistant Secretary of Labor for Employment Standards, Arthur Fletcher, conducted a research program to improve state fair employment practice agency performance and organized a conference at Rutgers Law School on the first ten years of Title VII in 1975 with the support of the EEOC. During the Carter administration, I was a consultant to EEOC Chair Norton. I assisted in the reorganization of the EEOC, the development of new procedures, and the development of Guidelines on Affirmative Action. I was the EEOC's representative to the committee which developed the Uniform Guidelines on Employee Selection Procedures-1978.

Both of these Guidelines are still in force.

I have lectured and written extensively in the EEO field. Several of my articles have been cited by the Supreme Court. I have litigated concerning EEO matters on behalf of the Federal government, and on behalf of workers, unions and employers.

I appeared before you last year, questioning the qualification of Judge Thomas to serve on the Court of Appeals. My concern was that, as Chair of the EEOC, he had privately directed his acting general counsel to disregard the agency's own guidelines on Affirmative Action. I was concerned that Chair Thomas, as a judge, would be likely to permit agencies to disregard their own rules, because he had done so. Agencies must comply with their own regulations, or change them through appropriate procedures, if there is to be effective oversight of their activities. This is a fundamental rule of administrative law. I will not repeat the details of my analysis. I have attached a copy for your convenience. It is important to your consideration of his nomination to the Supreme Court. Today, however, I wish to make a different point.

Your task is to assess how Judge Thomas will respond if confirmed, to the most important issues which will come

before the Supreme Court during the next generation. Let me state what one of these issue is, and how I think Judge Thomas will respond to it.

At stake is the basic economic and social configuration of American society. Will the outrageous concentration of wealth and income which took place during the 1980's be preserved and perpetuated-- or will the principle of an expanding middle class be restored as the basic organizing structure of the nation?

The massive--and obscene-- concentration of wealth and income during the Reagan era has been eloquently documented by the leading conservative political theorist Kevin Phillips, in *The Politics of Rich and Poor: Wealth and the American Electorate in the Reagan Aftermath*. (Random House, 1990). Even Mr. Phillips is disgusted with the decline from what he views as the realistic assertion of conservative values in the 70's, into the swamp of greed and glitz of the 1980's.¹

Legislation which favors the poor and lower middle classes cannot now be enacted. President Bush has used his veto on these matters so as to avoid the majority rule

1. Phillips, 154-209.

principle. A two-thirds vote is now required to pass civil rights, family leave, workers rights or unemployment compensation legislation. So long as his supporters command 1/3 of the votes in the Senate, the will of the Congress is disregarded.

But the people will ultimately refuse to support a society so crudely operated for the benefit of the rich, and will insist that we reinvigorate the principle of an expanding middle class, in part so that the poor may realistically look forward to a better future. The people will either replace the President, or elect more senators who share their vision. When either event happens, legislation will be passed to revive and expand the middle class. This will be done partly at the expense of the very rich--probably by increased taxation of income and wealth--and partly through other measures which will enhance the ability of the less wealthy to influence social and economic matters.

These laws will then be challenged in the last legal bastion in which the rich will seek to preserve their positions--the Supreme Court. The Court will be asked to declare these new acts unconstitutional, or to interpret

them so narrowly that the obligations which Congress intends to impose will be minimized.

The older technique which the Court once used to protect the wealthy-- declaring that the constitution protects the advantage which wealth gives--is now out of fashion. Less than 100 years ago the Court said that due process prohibits a legislature from altering the economic relations between rich and poor.² There are some who would have the court return to that view. But the more recent history suggests that the Court will take a different tack.

The newer method of frustrating the will of Congress was tested by the Supreme Court with great success in 1989 in cases involving the Civil Rights to equal employment opportunity of minorities, women and older workers.³ That technique is to interpret legislation in a narrow and technical way so as to frustrate the legislative will. These decisions are then defended as "merely technical" or

². *Coppage v. Kansas*, 236 U.S. 1 (1915).

³. See Blumrosen, *The 1989 Supreme Court Rulings Concerning Employment Discrimination and Affirmative Action: A Minefield for Employers and a Goldmine for Their Lawyers*, 15 *Employee Relations Law Jour.* 175 (1989).

on the grounds that Congress was not clear enough about its intention. The Court adopted the narrowest view of the law, and ignored both precedent and legislative history. The citizenry did not get exercised about "technical" decisions, and the Presidential veto of the 1990 Civil Rights Act, done under the banner of opposing "quotas," was sustained in the Senate. The media never asked the President what he meant by that term. The net result is that the impact of the equal employment laws has been reduced, in a manner inconsistent with its original interpretation.

This is a methodology which the Court will use to preserve the new structure of wealth and influence.⁴ It is more subtle, more difficult to address than a blunt holding that laws are unconstitutional.

When laws which try to revive the middle class, and open opportunities for the poor come before the Supreme Court, how will Judge Thomas react? Does he have deep

⁴. For an example in 1991, see *Litton Financial Printing v. NLRB*, 111 S. Ct. 2215 (1991) in which the Court rejected, 5-4, the presumption of arbitrability of disputes under a collective bargaining agreement which has been built into Labor Law over the last thirty years.

sympathy for the poor and disadvantaged because he struggled with poverty and discrimination himself? Or has he so far identified himself with the interests of the wealthy that he will join the Court in frustrating the efforts of Congress to restore the American dream of an expanding middle class?

Let us look at his record as Chair of the EEOC to help answer this question. This record does not demonstrate sympathy for the disadvantaged.⁵ The EEOC was established by Congress in the 1964 Civil Rights Act to conciliate claims of employment discrimination where there was "reasonable cause" to credit those claims. Judge Thomas reduced by half the chances for a minority or woman to secure assistance from the EEOC in settling their discrimination claims. In FY 1981 and 1982, EEOC settled 35,000 of the 88,000 claims filed, for \$ 133.6 million dollars. In FY 1987 and 88, after Judge Thomas had been

5. He surrendered the government wide policy-making function of the EEOC, created in President Carter's executive order and reorganization plan, to William Reynolds, Assistant Attorney General for Civil Rights, who was a staunch advocate of restricting the scope of civil rights law--without any overt objection, or insistence on formalizing the loss of influence by the EEOC. Reynolds then conducted the Reagan program to narrow the bi partisan program of the previous 15 years.

managing the EEOC for several years, it settled 12,800 of the 90,000 claims filed, for a total of \$72 million dollars. In those two years alone, his agency refused to assist 23,000 people and saved employers 61 million dollars. In short, after Judge Thomas took over the EEOC, it settled one third of the number of claims for half the amount of money in that two year period. Between 1983 and 1988 he withheld such relief from 80,000 people.⁶

The EEOC's own statistics tell the story.⁷ The chances that a minority or female complainant would be helped by EEOC conciliation if they brought a claim to the EEOC declined from 40% in 1980-81 to 20% in 1987-88. Two out of five such claims filed in 1980 and 1981 were conciliated with benefits to the complainants. By the time Judge Thomas' term was nearly over, that figure was down to one out of five, and the amounts recovered were reduced by 61 million dollars.⁸ This is the most telling

6. See appendix, note 1, *infra*.

7. The appendix to this paper contains a summary of those statistics.

⁸Source: EEOC Annual Reports, 1980-1988. These figures cannot be explained by extrinsic circumstances. The proportion of Age Discrimination claims settled did not change during the period, and the settlement rates for race and sex cases in the state agencies were higher than

point in connection with the question of where his sympathies lie.

Race and sex cases are more likely to involve poor and lower middle class people--minorities and women-- than are age discrimination cases.⁹ Age discrimination cases are more likely to involve middle class and sometimes even upper income class white males. ¹⁰ The chances that a person bringing an age discrimination claim would be benefited by EEOC conciliations remained constant during his term, in contrast to these race and sex cases,. It was 20% in 1980 and 20% in 1988. (This is not to say that those concerned about age discrimination were happy with his work. They speak for themselves.) This reduction in assistance to women and minorities who

EEOC. See note to appendix, infra.

9. The average settlement of a race, sex, national origin or religion case was \$3,763 in 1981-82, and \$5,639 in 1987-88. See appendix.

10. Discharge cases constituted nearly 50% of all claims filed with the EEOC in 1988. EEOC Ann. Rep. 1988, p. 20. Age discrimination claimants are apt to be discharged from higher paying jobs than are Race/sex discrimination claimants, so their monetary losses will be greater. The average settlement in an age case in 1981-82 was \$15,398 and in 1987-88 was 19,422.

claimed discrimination was caused by policy changes adopted by the EEOC.¹¹

The technique by which this was accomplished was procedural. Technical changes were made in EEOC regulations in 1984 which gave more deference to employer arguments. Congress had decreed that the EEOC should try to settle discrimination claims if it found "reasonable cause" to believe there had been discrimination. Judge Thomas' EEOC in 1984 redefined "reasonable cause" to mean only those cases where it thought the complainant would win in court. Thus it denied conciliation efforts to the thousands who had reasonable grounds to complain. That is a much stricter standards than had previously been used, and resulted in the denial of EEOC conciliation assistance to thousands of complainants who would have received it in earlier years.¹² The technique used by Judge Thomas at

11. The reduction settlements in sex and race discrimination matters by the EEOC did not take place with respect to age discrimination claims, nor with claims filed with state fair employment agencies. See Appendix, note 2. Therefore the statistics cannot be explained on the basis of increased hostility of employers to settling discrimination claims in general. The EEOC conducted training programs to assure that agency personnel would follow the more restrictive procedures. See, e.g., EEOC Annual Report for 1986-1988, p. 5.

12. Congress did not intend that EEOC conciliate only

the EEOC is the very same techniques that the Supreme Court used in 1989 to narrow the scope of the Equal Employment Opportunity Laws.¹³ From this history, it is clear that Judge Thomas will not be sympathetic to Congressional efforts to aid the poor and middle class.

Judge Thomas held the Chairmanship of the EEOC for seven years. The net effect of his performance in that job has been to reduce the chances that minorities or women would get the assistance of the EEOC in trying to settle their claims of discrimination. A person with that record should not be placed on the Supreme Court.

Finally, there is his position concerning affirmative action. He personally benefited from the helping hands given him by the Nuns, Holy Cross, Yale Law School and

where complainants would win in court. The basis for conciliation in the statute is "reasonable cause" to believe there was discrimination, not proof by a preponderance of the evidence, which is the standard used in court. The EEOC is not a court, and does not have the power to hold adjudicatory hearings.

13. Compare the judicial technique for narrowing the scope of the equal employment laws in *Wards Cove Packing Co. V. Atonio*, 109 S. Ct. 2115 (1989) with the narrowing of the definition of "reasonable cause" by the EEOC during the Thomas administration.

Sen. Danforth, while he developed his talents and abilities. I applaud all of those efforts. They demonstrate how affirmative action should work.

Affirmative action seeks to counter the lasting legacy of discrimination--the tendency to ignore or underestimate the talents of minorities and women. Affirmative action does seek out those minorities and women with talent and ability, and tries to further their development.

Decisions as to who to choose from among the large pool of qualified persons, have traditionally been made using race or sex stereotypes. "Goals" are a mechanism to assure that these talented and able women and minorities are in fact sought out, and that the employer does not simply give lip service to the idea of equality. It is a fine tribute to all of those institutions and individuals--and to the work which Judge Thomas has done-- that his career has brought him to this hearing room.

Judge Thomas does not buy this analysis. He appears to believe that people "make it" alone, based on hard work and talent. In this, of course, he is in fundamental error. Demonstrating abilities or talent by hard work is necessary, but it only gets you into the pool from which

those who will be advanced are identified. None of us have "made it on our own." All of us--all of you and myself--have had helping hands along the way. Judge Thomas was assisted by such programs to develop and demonstrate his abilities. But he does not believe that affirmative action is a part of the way the world works. He wishes to believe in a world in which people "make it on their own." As a consequence, he is likely to be tough on the poor, because they did not work hard enough to get out of poverty, and to look skeptically at programs designed to open middle class opportunities.

You may test this thesis by asking his views on the merits of *Wards Cove Packing Co. v. Atonio*, *Patterson v. McLean Credit Union*, *Lorance v. AT & T*, *Martin v. Wilks*, *Price Waterhouse v. Hopkins* and *Betts v. Ohio*, the 1989 cases in which the Supreme Court cut back on the scope of the Civil Rights Acts. In these cases, and others, the Court said it would ignore what Senators and Congressmen write in reports, and what they say in the floor debates on legislation, and even what its predecessors have said. Where does he stand on the question of taking legislative

history, including committee reports and legislative debate into account? Restricting the use of these materials is a fundamental element of the new Supreme Court technique. The "new" Supreme Court will ignore what Congress said and did in the course of developing legislation. This is the way the Court will try to mutilate efforts of Congress to help the poor and middle classes. Judge Thomas has already demonstrated that he can interpret a statute so as to reduce the help it will give to workers. That is what he did when he reinterpreted the concept of "reasonable cause" under Title VII. On this record, he is likely to join the group on the court who are hostile to Congressional efforts to restore the middle class and give hope to the poor.

Of course, it is appropriate for the Senate to inquire into his views on any issue which is likely to come before the Court. The Court is a policy making body, operating within a loose framework of the Constitution and statutes. The Senate is entitled to examine the policy views of nominees. That is different from asking a prospective justice to decide whether A or B should win a particular law suit. These policy issues concerning

constitutional and statutory interpretation are the lifeblood of the work of the court, and any effort to evade discussion of them should result in rejection of the nominee.

Unless his answers convince you that he will honor the judgment of Congress, not only as found in the so called "plain meaning" of the words, but in the sense of the will of the majority derived from all appropriate and relevant sources, his record of lack of sympathy for the poor should lead you to reject his nomination.

APPENDIX

STATISTICS FROM EEOC ANNUAL REPORTS, 1980-1988

	CHARGES FILED	SETTLEMENTS			Total (000)
		#	%	Average	
1981-82					
Race, sex, Natl. origin, Religion	88,747	35,512	40	\$3,763	\$133,667
Age	17,308	3,847	22	15,398	59,238
1983-84					
Race, sex etc.	97,640	27,328	27	6,104	167,782
Age	26,193	4,534	17	9,652	43,762
1985-86					
Race, sex etc.	102,613	14,219	13.8	6,773	96,303
Age	26,543	3,340	12.5	11,812	39,451
1987-88					
Race, sex etc.	90,480	12,820	14.2	5,639	72,294
Age	23,081	3,387	14.7	19,422	65,784

NOTE 1. The settlement rate for 1981-82 in race, sex, national origin and religion cases was 40%. Between 1983 and 1988, EEOC received 290,663 complaints concerning these types of discrimination. If it had settled 40% of those cases, it would have settled 116,265. In fact, it settled 29,777, or 86,488 fewer than it would have resolved under the earlier standards. This is the basis for the estimate that the Thomas administration at EEOC denied settlement assistance to 80,000 people.

NOTE 2: in 1985-86, State Fair Employment Practice Agencies settled 26% of the race, sex, national origin and religion cases which came before them, and 16% of the age discrimination cases. In 1987-88, the state agencies

settled 22% of the race, etc. cases and 20 % of the age cases. The settlement rates in the race, sex, etc. cases for the state agencies were higher than the settlement rates for similar cases at the EEOC.



CLERK OF
J. RADLEY HEROLD
JUDGE

COUNTY COURT OF THE COUNTY OF WESTCHESTER
WESTCHESTER COUNTY COURTHOUSE
111 GROVE STREET
WHITE PLAINS, N.Y. 10601

Personal & Unofficial

September 24, 1991

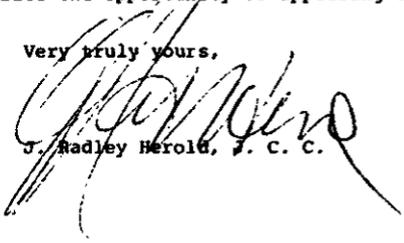
Hon. Joseph R. Biden, Jr., Chairman
United States Senate Judiciary Committee
Washington, D. C. 20510-6275

Dear Senator Biden:

Enclosed is my statement for insertion in the record of the proceedings dealing with the nomination of the Hon. Clarence Thomas as an Associate Justice of the United States Supreme Court. I have taken the liberty of enclosing 13 copies for distribution to the other members of the Committee.

I further note with interest that you plan to hold hearings on the procedures involved in future confirmation proceedings. I would appreciate the opportunity of appearing as a witness in that regard.

Very truly yours,


J. Radley Herold, J. C. C.

JRH:mh
Enclosures

I wish to acknowledge my appreciation to the Committee for its kindness in permitting me to make a written statement for insertion in the record of the proceedings dealing with the nomination of the Hon. Clarence Thomas as an Associate Justice of the United States Supreme Court. This statement will consist of observations not related solely to the hearings which have just been concluded but also to some study of hearings in the past decade and the history of the process before that. To the extent that any of my observations contain any criticism it is meant to be constructive only and for the future use and benefit of the Legislative and Executive branches as well as future nominees. Furthermore, the observations made and the opinions expressed are solely my own and are not to reflect any official opinion - nor could they - of the Court of which I am a member. And lastly, I have stated no opinion - as it may be inappropriate to do so - as to whether Judge Thomas should be confirmed or not. My purpose in the making of this statement is to set forth my observations and concerns with regard to the confirmation process with a view toward ensuring that the most qualified persons are nominated and confirmed as Justices of the United States Supreme Court.

A Judge, regardless of the manner by which chosen or the Court for which chosen, must possess the following

qualities: Integrity, judicial temperament, an open mind and the willingness to listen, a background of diversified experience, extensive contact with people and an appreciation of the human consequences of his or her decisions, the discipline necessary to decide issues on the facts presented and an interpretation of the law as they apply to those facts, scholarly qualities and a sense of humor.

The first quality, integrity, is the most important for without it all of the others are of little value. The last, a sense of humor, often spoken of but never made a criterion, should be made one. A Judge possesses enormous authority and power and must deal every day with the most serious of issues affecting other human beings. A sense of humor will guarantee that these issues are put into proper perspective. It will further show the necessary ingredient of humanity in all of the decisions. And lastly a sense of humor will cause the Judge to realize that no matter how serious the issues may be that he or she must never take himself or herself too seriously.

It is readily acknowledged that both the President and the Senate have serious and important roles in the process of selecting Supreme Court Justices which should not be ignored or diminished. It is further acknowledged that both the Executive and Legislative branches are political in

nature and respond accordingly to their respective constituencies. That is altogether proper under our Law and our system of Government. But the Judicial branch is and should remain non-political. It is, by its nature, a non-democratic body responsible only to interpret the constitutional mandates and duly enacted legislation. It is not a body answerable to the will of the People expressed by a majority vote. Its loyalty is and must remain to the Law.

In recent years the proceedings involving nomination and confirmation of Supreme Court Justices have taken on features which are of concern to me. And this is so regardless of the political environment that may have motivated the appointment or its connection, if any, to the "direction" the Executive branch may wish the Court to go.

Every citizen expects that their Judges will view a legal dispute with an open mind, listen to all of the evidence in an impartial manner and after hearing all of the arguments, make a decision based on the facts as determined and an interpretation of the applicable law. No one wants a Judge to prejudge the matter and decide the case before it is heard.

As Senators you have the solemn responsibility of deciding whether or not to consent to the nomination after hearing all of the testimony of the nominee and the various witnesses. Yet in recent years, on some occasions, some

members of the Judiciary Committee and of the Senate as a whole, following the nomination and at the beginning of the hearings have publicly stated their opinion of the nominee and how they intend to vote. This should not be taken as meaning that a Senator does not have a right to express an opinion and vote as they see fit. They clearly have those rights which must not be diminished. It is the timing with which they exercise those rights which is of concern to me.

They are taking part in a procedure by which a judicial nominee will or will not be confirmed. They are properly concerned that the judicial nominee, if confirmed, will be impartial and render legal decisions only after hearing the case. Yet some Committee members, by announcing their decisions before hearing the "case", both for and against the nominee, are exhibiting an appearance of partiality and consequently diminishing the integrity of the Committee and the Senate as a whole. It may well be that such announcements are engaged in as a result of some tradition with respect to such hearings or without any in-depth thought as to the consequences but nonetheless they leave an impression on the public at large of a prejudgment by such Senators.

There are both valid and inappropriate areas of inquiry by the Committee of a judicial nominee. The personal background of the nominee, education, employment,

any judicial or litigation experience, the published writings, and, if already a Judge, the opinions of the nominee, as they are now, should be examined.

The general legal philosophy of the nominee may also be explored to the extent that it reveals the knowledge the nominee has of the areas of law which may come before the Court. More importantly, it will reveal and the nominee should be asked about the method by which he or she will go about studying the issues and reaching a decision. This should be asked regardless of whether a nominee is already a Judge or not.

The questioning of the nominee by the Committee as to his or her prior writings and opinions in connection with their general legal philosophy is entirely proper for another reason. It will assist the Committee in determining the integrity of the nominee. The Committee must be aware, however, of the capacity in which the nominee wrote or spoke. It is one thing to express your own personal views. It is quite another to advocate a position on behalf of an employer or client. And it must not be forgotten that the personal views of a nominee, published or otherwise, although given on research by the nominee, are without the benefit of a pending lawsuit and the input of opposing counsel for the parties. Other than this reasonable distinction little else will justify a nominee in his or her

explanation of contradictory opinions or statements except a sincere and acknowledged change of mind or opinion. This may come about from the intellectual growth of the nominee. No nominee should be concerned about honestly changing their opinion about a subject. It is a sign of maturity and growth - not otherwise. What is not acceptable is an attempt to reconcile or to deny that various statements are contradictory when, in fact, no other reasonable conclusion could be drawn.

The most difficult area of inquiry for the Committee is where they inquire as to those issues which are likely to be before or are before the Court.

It is a clear violation of the Canons of Judicial Conduct for a nominee, whether already a Judge or not, to express an opinion on a matter in dispute or likely to be before the Court. And the members of the Committee - who are lawyers - should know that better than anyone else. For a nominee to answer such a question not only violates the Canons but also establishes a basis upon which he or she may rightfully be asked to recuse himself or herself from a matter which is or comes before the Court. In so doing the nominee deprives the Court and the Country of both a vote and a voice on a matter, no matter what the outcome.

While the nominee must be the judge of when to draw the line it does little good for the members of the

Committee to continually ask questions which they must realize cannot be answered by any nominee who wants to abide by the Canons.

Let us theorize a future situation: the composition of this Committee were Republican by majority, Roe v. Wade had been reversed some 10 years before, the White House was occupied by a Democrat perceived to be liberal and the nominee to the Supreme Court was perceived to be a liberal with a "pro-choice" paper trail. Would that entitle the "conservatives" on the Committee to demand to know how the nominee would vote on a pending case likely to reinstate Roe v. Wade? The answer is clearly: No. Neither the Canons nor basic common sense should change dependent on the political makeup of the Executive or Legislative branches or the political climate of the country. These questions must not be asked by the Committee but if asked must not be answered by the nominee. And this theoretical example with regard to Roe v. Wade can also be applied to other "landmark" decisions, Miranda v. Arizona, Mapp v. Ohio, New York Times v. Sullivan and Texas v. Johnson to name just a few.

The nominees should also be aware that their conduct before the Committee may also raise serious concerns. With the present day emphasis on the "paper trail" of a nominee, some nominees may possess a minimal

trail or none at all. If such a nominee were still to come before the Committee claiming no opinions, published or otherwise, on any of the landmark decisions of the Supreme Court, that position could reasonably cause Committee members to conclude a number of things about the nominee: (1) he or she has too little life experience to be a member of the Supreme Court; (2) the nominee is lacking in truthfulness and basic integrity; or (3) the nominee does not possess the intellectual capacity to be a member of the Court.

The nominees ought to be aware that they should not appear to choose among the areas likely to be before the Court as to which they will speak about and which they will not. They should decline to answer all in that category lest they violate the Canons on Judicial Conduct and give an appearance, if not an actuality, of seeking to curry favor with certain Committee members on a matter in which the latter have a known interest and view.

It also seems apparent that it is almost expected of a nominee that he or she must disavow all of their previously held personal views. Judges do not ask that of jurors at trials. Jurors are asked to put aside their personal views on the law and other subjects for the purpose of the matter before them but not otherwise. Judges should not be asked to do more than that. To ask Judges to do so

is to strip them of their intellectual abilities and their independence of thought.

Any forthright Judge will tell you that they approach cases with a considerable number of thoughts in mind because they have read the court file beforehand. But if asked what their decision is going to be at that point they have none. And though they will have tentative reactions during the case they will never know what their decision will be until after all of the evidence is in, the briefs re-read and the arguments heard. And this is so whether a Judge has strongly held personal beliefs or not. Qualified Judges possess a discipline by which they instinctively put their personal views aside and decide the case on its merit or lack of merit as determined by the applicable law.

The Executive branch, as part of its role in the process, has taken to extensive preparation of the nominees. There is nothing inherently wrong with that. There is much to be learned from such sessions as to the procedures of the Committee so long as the "handlers" do not "spoon feed" the nominee resulting in repetition of that information to the Committee. The nominee should be as tactfully courteous as possible with the "handlers", listen politely, do his or her own homework as well and then speak frankly to the Committee.

It has been reported that in some circles that every question asked must be answered by the nominee in some fashion. It is hoped that this does not mean that a nominee must attempt an answer in areas with which he or she is not familiar. Any such advice, if it is being given, should cease. Anyone with any common sense knows that there will be areas of the law about which a nominee will be unfamiliar. There is no shame or disqualification for a nominee to admit such unfamiliarity. The public expects no different and any other approach will only court disaster.

While the Executive branch has every right to nominate whomever they want they must be mindful of the reason why they nominate an individual. While it may be to pursue a certain philosophy or change the direction of the Court it may not "sell" as being "too obvious". And history nevertheless tells us that there is no predictability as to the decisions which will be made by the Judges no matter what the Executive branch may hope or expect. Associate Justice Hugo Black, who once had a minor association with the Klu Klux Klan, established himself as a renowned Justice with his opinions on the breadth of various Constitutional freedoms. Earl Warren, a California prosecutor, who urged the incarceration of Japanese-Americans after the attack on Pearl Harbor, wrote the unanimous opinion in Brown v. Board of Education and the majority opinion Miranda v. Arizona.

Felix Frankfurter, regarded as liberal by some, dissented in the Mapp v. Ohio decision which mandated the exclusionary rule on state courts in criminal cases. If nothing else this shows that if perchance confirmed nominees who may have had no apparent feel for independence when they arrived on the Court gained it by growing on the Court.

These are but a few of my observations. But I believe them to be significant and worthy of consideration by the Committee, the Executive branch and future nominees not only to the Supreme Court but to other Federal Courts as well. Once again I appreciate the opportunity given me by the Committee to submit this statement on a very important matter - ensuring that the most qualified persons are nominated and confirmed as Justices of the United States Supreme Court and other Federal Courts.

SAMUEL L. EVANS
SUITE 1200
117 SOUTH SEVENTEENTH STREET
PHILADELPHIA, PA 19103

September 25, 1991

Senator Joseph R. Biden, Chairman
U.S. Senate Judicial Committee
224 Dirksen Building
Washington, DC 20510

Dear Senator Biden:

I regret that my letter of July 18, 1991, requesting the opportunity to speak before your committee for the Confirmation of Judge Clarence Thomas was not accepted, probably due to the large number of requests. Nevertheless, I had the opportunity to listen to the full hearing by television. Therefore, I am listing below the presentation I would have made as if I was appearing in person, before your committee.

IN THE U.S. SENATE JUDICIARY COMMITTEE HEARING

THE CONFIRMATION OF JUDGE CLARENCE THOMAS
FOR
ASSOCIATE JUSTICE - U.S. SUPREME COURT

MR. CHAIRMAN AND MEMBERS OF THE U.S. SENATE JUDICIARY
COMMITTEE:

I APPRECIATE THIS OPPORTUNITY TO APPEAR FOR THE
CONFIRMATION OF JUDGE CLARENCE THOMAS FOR ASSOCIATE JUSTICE,
U.S. SUPREME COURT. MY NAME IS SAMUEL L. EVANS. I AM
CHAIRMAN AND FOUNDER OF: THE AMERICAN FOUNDATION FOR NEGRO

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AFFAIRS; CHAIRMAN - THE NATIONAL COUNCIL OF PUBLIC AUDITORS;
CHAIRMAN - THE FAMILY OF LEADERS (REPRESENTING 180 LEADERS OF
ORGANIZATIONS IN THE DELAWARE VALLEY (COVERING PENNSYLVANIA,
NEW JERSEY AND DELAWARE). I AM ALSO CHAIRMAN OF AFNA
NATIONAL EDUCATION AND RESEARCH FUND, THE AFNA PLAN -NEW
ACCESS ROUTES TO PROFESSIONAL CAREERS IN: MEDICINE, LAW,
COMPUTER SCIENCE, BUSINESS TO THE HUMANITIES (TO AID
DISADVANTAGED AND MINORITY STUDENTS TO MEET THE ACADEMIC
REQUIREMENTS OF THE SCHOOL HE OR SHE IS ATTENDING)...SINCE
ITS INCEPTION, OVER 4,500 STUDENTS HAVE ENROLLED IN THE
PLAN...HOWEVER, TODAY, I SPEAK TO THE COMMITTEE AS AN
INDIVIDUAL, AND NOT FOR THE ABOVE ORGANIZATIONS.

MR. CHAIRMAN, I CAME TO PHILADELPHIA OVER 70 YEARS AGO.
HOWEVER, YOU CAN TELL BY MY VOICE AND DIALECT THAT I STILL
CARRY THE VOICE OF THE "DEEP SOUTH". MR. CHAIRMAN, THERE IS
SOMETHING ABOUT THE SOUND OF THE SOUTHERN VOICE THAT
EXPRESSES CONFIDENCE AND TRUST (VOID OF HYPOCRISY), THAT "A
MAN'S WORD IS HIS BOND". MR. CHAIRMAN, FOR OVER 60 YEARS, I
HAVE LIVED AND WORKED ON THE CUTTING EDGE OF A MULTITUDE OF
AMERICAN ACTIVITIES ON THE COMMUNITY, STATE AND NATIONAL
LEVEL OF GOVERNMENT AND HUMAN AFFAIRS.

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MR. CHAIRMAN, THERE IS SOMETHING WRONG WITH A PEOPLE WHO SELECT TO MAKE, AS THEIR PRIORITY, A CAMPAIGN TO STOP A POOR BLACK BOY, WHO PULLED HIMSELF UP WITHOUT EVEN A "BOOT STRAP"; A BOY WHO SUFFERED, DURING HIS EARLY LIFE, FROM RACE AND RELIGIOUS BIGOTRY. MR. CHAIRMAN, THESE LEADERS CAME BY PLANES, BUSES AND "STRETCH" LIMOUSINES, AND LODGING AT LUXURY HOTELS, LIKE VULTURES -- "BIRDS OF PREY" THAT SITS ON HIGH PEAKS OF MOUNTAINS; LIMBS OF TREES, WAITING TO ATTACK THEIR VICTIMS AT THEIR WEAKEST MOMENT. MR. CHAIRMAN, I WATCHED JUDGE THOMAS SIT IN THE CHAMBER BEFORE THE COMMITTEE AND LISTEN TO: THE MANY DEGRADING REMARKS, THE ANGER AND THE EXPRESSED DETERMINATION TO "GET HIM" AND DRAG HIM DOWN AT ANY COST. INDEED THIS WAS IN ITSELF, AN AWESOME BURDEN FOR JUDGE THOMAS TO BEAR FROM HIS OWN RACE. YET, HE SAT THERE WITH DIGNITY, NOR DID HE REFLECT ANGER, HATE OR REGRET...HE SEEMS, MR. CHAIRMAN, TO HAVE BEEN INSULATED BY A "HIGHER ORDER"; INSULATED WITH A FEELING THAT HIS CONSCIOUS WAS CLEAR AND HIS SPIRIT, SATISFIED.

MR. CHAIRMAN, I AM NOT HERE TO TAKE EXCEPTION TO THE MANY CHARGES AND STATEMENTS MADE AGAINST JUDGE THOMAS BY CIVIC AND RELIGIOUS LEADERS REGARDING THE POSITION HE HAS TAKEN IN THE PAST...HOWEVER, I AM HERE TO TAKE EXCEPTION TO THE ABILITIES OF THESE LEADERS TO DETERMINE WHAT JUDGE THOMAS

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WILL DO IN THE FUTURE...INDEED, MR. CHAIRMAN, I LISTENED WITH SHARP ATTENTION AS THESE LEADERS INTRODUCED THEMSELVES, CLAIMING THEIR MILLIONS OF MEMBERS AND THE ORGANIZATIONS THEY REPRESENTED. INDEED, MR. CHAIRMAN, ORGANIZATIONS AND LEADERS WITH SUCH POWER AND STATURE COMPELLED ME TO RAISE A POINT OF PERSONAL INQUIRY...

- 1) I ASK YOU MR. CHAIRMAN AND THE PEOPLES OF AMERICA...
"WOULDN'T IT BE MORE BENEFICIAL TO AFRICAN-AMERICANS AND TO THE IMAGE OF OUR NATION IF THESE LEADERS WOULD DEMONSTRATE AN EQUAL COMPASSION AND CONCERN FOR SETTING-UP THE ESSENTIAL ORGANIZATIONAL STRUCTURE TO HARNESS THE OVER THREE HUNDRED BILLION DOLLARS (\$300,000,000,000) A YEAR THAT THIS COUNTRY PROVIDES FOR AFRICAN AMERICANS?"...
- 2) "WOULDN'T IT BE WONDERFUL IF THESE LEADERS, WITH THEIR MILLIONS OF MEMBERS, WOULD DEMONSTRATE THE SAME COMPASSION AND ZEAL TO SET-UP A NATIONAL CASKET COMPANY TO BURY THEIR OWN DEAD OF THREE HUNDRED FIFTY THOUSAND (350,000) AFRICAN AMERICANS WHO DIE EACH YEAR, AND TO OWN THEIR CEMETERY TO BURY THEM IN?"
- 3) "WOULDN'T IT BE WONDERFUL, MR. CHAIRMAN, IF THESE LEADERS WOULD GET TOGETHER AND DEMONSTRATE THE SAME

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INTEREST TO ORGANIZE A NATIONAL CATERING COMPANY TO SERVICE THE 105 BLACK COLLEGES AND UNIVERSITIES, WHO SPEND THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) A YEAR IN THE DISTRIBUTION OF FOOD TO STUDENTS AND STAFF?...NOT COUNTING, MR. CHAIRMAN, THE CATERING NEEDS OF 30 MILLION AFRICAN AMERICANS."

- 4) "FURTHER, MR. CHAIRMAN, WOULDN'T IT BE WONDERFUL IF THESE LEADERS WOULD DEMONSTRATE THE SAME COMPASSION AND ZEAL TO AID THE THOUSANDS OF STUDENTS, MANY OF THEM FROM THE "BOWELS OF POVERTY" TO OBTAIN PROFESSIONAL EDUCATION...WOULD IT NOT BE WONDERFUL IF THESE LEADERS WOULD DEMONSTRATE THE SAME ZEAL AND COMPASSION TO AID STUDENTS TO MEET THEIR COLLEGE AND UNIVERSITY TUITION, WHICH IS \$10,000 - \$18,000 ANNUALLY?"

MR. CHAIRMAN, WITH ALL THE HOMELESS, THE SICK, THOSE WHO ARE AFFLICTED WITH AIDS, AND THE THOUSANDS OF SINGLE PARENTS...INDEED, ONE WONDERS HOW THESE SUPPOSEDLY INTELLIGENT LEADERS COULD HAVE SELECTED THE DESTROYING OF JUDGE CLARENCE THOMAS AS THEIR SINGLE PRIORITY.

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LET ME SAY HERE, MR. CHAIRMAN, THAT I BELIEVE IN THE CHURCH; I WAS BROUGHT UP IN THE CHURCH...MY FATHER WAS A MINISTER AND MY UNCLE, GEORGE LONDON, AND HIS SON ORGANIZED CHURCHES THROUGHOUT GEORGIA AND FLORIDA...MY BROTHER, THE REVEREND PERRY E. EVANS, IS FOUNDER AND PASTOR OF THE FAITH BAPTIST CHURCH AND FORMER TREASURER OF THE NATIONAL BAPTIST CONVENTION...AND, MAY I ADD, MR. CHAIRMAN, I AM A TRUSTEE IN HIS CHURCH; I MAKE ANNUALLY, THOUSANDS OF DOLLAR IN CONTRIBUTIONS TO THE BLACK CHURCH. BUT, MR. CHAIRMAN, THE PREACHERS WHO TESTIFIED BEFORE THIS COMMITTEE WERE NOT DEMONSTRATING THE KIND OF RELIGION OF WHICH MY FATHER PREACHED, MY BROTHER PREACHED, NOR THE KIND THAT THE GREAT BELIEVERS IN THE PAST PREACHED.

MR. CHAIRMAN, THESE PREACHERS, SEEMS TO ME, ARE FOSTERING "AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH" PHILOSOPHY. THIS IS INDEED CONTRARY TO THE OLD TIME RELIGION, WHICH OUR FOREFATHERS TAUGHT US. WE WERE TAUGHT THE RELIGIOUS PHILOSOPHY -- "PROP ME UP ON EVER LEANING SIDES". SO, IF JUDGE THOMAS HAS A "LEANING SIDE", WHICH I DOUBT, WE SHOULD PROP HIM UP...NOT CUT HIM DOWN. THESE PREACHERS AND LEADERS SEEMED TO BE CONCERNED MORE BECAUSE CLARENCE THOMAS HAS VIOLATED A SACRED LAW, LAID DOWN BY THEM, AS THE UNANOINTED LEADERS OF AFRICAN AMERICANS, THAT THEY MUST MAKE AN EXAMPLE OUT OF THOMAS AS A LESSON THAT WHAT THEY

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BELIEVE AND SPONSOR MUST BE SUPPORTED BY BLACK PEOPLE. YOU SEE, MR. CHAIRMAN, JUDGE THOMAS'S ACTIONS WAS DISMANTLING THE POWER OF A SELECT GROUP, THAT THREATENED THEIR MIDDLE CLASS LIVING.

THE PREACHERS AND LEADERS EXPRESSED FEAR THAT MR. THOMAS HAD LEFT THE BLACK RACE; THAT HE HAD FORGOTTEN THEM. MR. CHAIRMAN, FOR MR. THOMAS TO WALK AWAY FROM HIS RACE, WOULD BE IN DIRECT VIOLATION OF TWO SUPERNATURAL PHENOMENONS AND AN ACHIEVEMENT, NEVER ACCOMPLISHED BY LIVING CREATURES ON PLANET EARTH...

- 1) "BIRDS OF A FEATHER SHALL FLOCK TOGETHER". THIS IS A SUPERNATURAL LAW OF WHICH NO LIVING CREATURE HAS BEEN ABLE TO ESCAPE.
- 2) THE OTHER SUPERNATURAL PHENOMENON IS SELF PRESERVATION. MR. CHAIRMAN, IT IS NATURAL FOR EACH GROUP TO STRUGGLE FOR SURVIVAL AND PROTECT THEMSELVES, BUT IT SHOULD NOT BE AT THE EXPENSE OF OTHERS.

MR. CHAIRMAN, IN MY OPINION, JUDGE THOMAS HAS NOT LEFT HIS RACE, BUT RATHER, THROUGH HIS PATTERN OF BEHAVIOR, THOUGHTS, ACTIONS, BELIEFS AND PHILOSOPHY, HE HAS RAISED HIMSELF ON

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THAT HIGH RAREFIED PLATFORM, THAT HOLDS ONLY GREAT AMERICANS,
AND HAS SHED HIS "RACIAL BLINDERS", THEREBY BELIEVING IN ONE
GOD AND ONE HUMANITY.

MR. CHAIRMAN, YOU KNOW, I KNOW AND THE MANY LEADERS WHO
TESTIFIED AGAINST HIM AND FOR HIM KNOW THAT THE FIGHT TO KEEP
JUDGE THOMAS OFF THE SUPREME COURT IS NOT THE MAJOR ISSUE.
THE MAJOR ISSUE IS "POWER" TO SUSTAIN A DEGRADING "HAT IN
HAND" PHILOSOPHY THAT HAS DONE MORE THAN ANYTHING ELSE TO
MAKE AFRICAN AMERICANS SECOND CLASS CITIZENS, AND TO
PROPAGATE DIS-INFORMATION OVER THE WORLD, REGARDING BLACK
AMERICANS. MR. CHAIRMAN, THE IDEA OF FIGHTING FOR CIVIL
RIGHTS AND SPECIAL PRIVILEGES HAS BECOME A MAJOR PROFIT
INDUSTRY, WHERE 16% OF AFRICAN AMERICANS ARE LIVING OFF 84%
OF THOSE LIVING ON THE LEVEL OF POVERTY; STRUGGLING FOR FOOD,
SHELTER AND CLOTHING. THIS GROUP SEE THEIR MIDDLE CLASS
KINGDOM THREATENED WITH DESTRUCTION. THEY ARE MAKING A STAND
HERE, TO PROTECT THEIR PRIVATE AND PERSONAL INTEREST.
MR. CHAIRMAN, THIS GROUP KNOWS OF THE STORY OF JUDGE HUGO
BLACK, PRESIDENT JOHNSON, AND GEORGE WALLACE...THEY KNOW WHAT
THEY DID OR SAID BEFORE AND WHAT THEY DID OR SAID AFTER. SO,
MR. CHAIRMAN, SO THAT THEIR NAMES WILL NEVER DIE AND REMAIN
ON THE LIPS OF AMERICANS EVERYWHERE AS TO THE UNKNOWN EXTENT

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OF HUMAN ACTIONS, BUT FOR ONLY THE FUTURE DOUBTERS, LET US
REPEAT AGAIN AND AGAIN...

WHEN JUSTICE HUGO BLACK, ALLEGED TO BE A KU KLUX KLAN
LEADER WAS SWORN INTO THE UNITED STATES SUPREME COURT,
THE BLACK PEOPLE ACROSS THIS COUNTRY ROSE UP AS ONE
AGAINST HIM. THE BLACK PRESS PRINTED HIS PICTURE WITH
THE KU KLUX KLAN HOOD ON...AND YET, MR. CHAIRMAN, TO THE
GLORY OF GOD, HUGO BLACK CONTRIBUTED MORE TO THE
ADVANCEMENT, EQUALITY AND JUSTICE FOR ALL AMERICANS THAN
ANY OTHER JUSTICE THAT EVER HELD THAT OFFICE.

ANOTHER EXAMPLE, MR. CHAIRMAN...

IN HIS BOOK, "VANTAGE POINT", PRESIDENT LYNDON
JOHNSON, THEN A U.S. SENATOR, SAID HE HAD A BLACK MAN
AND HIS WIFE WORKING FOR HIM FOR 25 YEARS. HE SAID THAT
THEY WERE GETTING READY TO DRIVE BACK TO TEXAS FROM
WASHINGTON, AND WHEN THEY WERE LOADING THE CARS, HE
WENT TO THE BLACK MAN AND SAID, "YOU TAKE THE DOG WITH
YOU THIS TIME." THE BLACK MAN LOOKED AT HIM AND SAID,
"DO I HAVE TO, BOSS?"...AND SENATOR JOHNSON SAID, "YES,
THE DOG LIKES YOU AS WELL AS HE DOES ME". JOHNSON SAID,
"DO YOU HAVE A PROBLEM WITH THAT?"...AND THE MAN SAID,
"YES SIR, IT'S BAD ENOUGH FOR BLACK PEOPLE TO TRAVEL

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THROUGH THE SOUTH ALONE WITHOUT TAKING A DOG WITH US...WE GET ON THE HIGHWAY AND DRIVE AND DRIVE...AND TO FIND A LAVATORY, WE HAVE TO GET OFF THE HIGHWAY AND DRIVE 2 OR 3 MILES TO FIND A BLACK NEIGHBORHOOD WHERE WE CAN USE THE LAVATORY. WE GET BACK ON THE HIGHWAY; WE DRIVE AND WE DRIVE...THEN, WE WANT SOMETHING TO EAT. WE HAVE TO GET OFF THE HIGHWAY AND GO BACK INTO THE BLACK NEIGHBORHOOD TO GET SOMETHING TO EAT."...AND JOHNSON SAID, "AFTER HE TOLD ME THIS, I VOTED AGAINST CIVIL RIGHTS SIX TIMES, AND EVERY TIME I VOTED, MY HEART GOT WEAKER AND WEAKER...BUT, IF I HAD VOTED FOR CIVIL RIGHTS ONE TIME, I WOULD NOT BE PRESIDENT OF THE UNITED STATES TODAY", HE SAID. "NOW I AM THE PRESIDENT OF THE UNITED STATES AND BY GOD, THE BLACK PEOPLE OF THIS COUNTRY SHALL WALK THROUGH EVERY GATEWAY, DOORWAY AND HIGHWAY WITH EQUALITY AND JUSTICE." PRESIDENT JOHNSON PASSED MORE CIVIL RIGHTS LEGISLATIONS THAN ANY OTHER PRESIDENT IN UNITED STATES HISTORY.

LET'S TAKE ANOTHER EXAMPLE, MR. CHAIRMAN...

GOVERNOR GEORGE WALLACE STATED THAT HE WAS FOR "SEGREGATION TODAY, SEGREGATION TOMORROW AND SEGREGATION FOREVER". GOD BROUGHT HIM DOWN TO A WHEEL CHAIR AND HE WENT ABOUT CAMPAIGNING FOR THE RIGHTS OF BLACKS AND IN

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HIS LAST ELECTION, HE SECURED 85% OF THE BLACK VOTE.

MR. CHAIRMAN, THAT IS FORGIVENESS -- THE AMERICAN WAY --
THE RELIGIOUS WAY.

MR. CHAIRMAN, THE CONSTITUTION OF THE UNITED STATES
GOVERNMENT, AS IT STANDS TODAY, HAS A MESSAGE FOR ALL
AMERICANS AND PEOPLE OVER THE WORLD, THAT "DEMOCRACY IS A
VEHICLE BY WHICH AN INDIVIDUAL OR A GROUP MAY WORK OUT THEIR
OWN WAY OF LIFE WITHOUT HINDRANCE, THREATS, INTERFERENCE AND
WITHOUT DESTRUCTIVE ATTITUDES TOWARDS OTHER OTHERS".

I WILL PREDICT, MR. CHAIRMAN...IF THERE EVER BE AN
AFRICAN AMERICAN PRESIDENT OF THE UNITED STATES OF AMERICA,
HE WILL BE MORE LIKE CLARENCE THOMAS, BELIEVING IN ONE GOD
AND ONE HUMANITY, AND NOT ONE OF THOSE WHO SPEND THEIR LIVES
PROPAGATING AND SPONSORING THE ADVANCEMENT OF ONE GROUP OR
ONE RELIGION.

MR. CHAIRMAN, NEVER BEFORE, ON NATIONAL TELEVISION, HAVE
AMERICANS, AND PROBABLY THE WORLD, HEARD AND LISTENED TO SUCH
A THREAT AND CHALLENGE TO THE U.S. SENATE AND JUDICIAL
COMMITTEE, COMING FROM THE LIPS OF A BLACK PREACHER, WHEN HE
SAID, "YOU SENATORS COME HANGING AROUND THE BLACK CHURCH WHEN
YOU NEED OUR SUPPORT." MR. CHAIRMAN, THAT WAS A DIRECT

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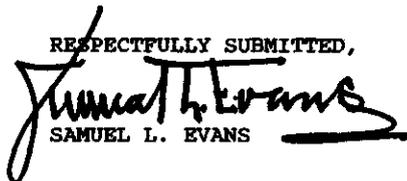
THREAT TO THE UNITED STATES SENATE, WHICH IMPLIED -- "IF YOU DON'T VOTE AS WE SAY, WE WILL BE OUT TO GET YOU, AS WE ARE OUT TO GET THOMAS, IN YOUR NEXT ELECTION!"

MR. CHAIRMAN, I APPRECIATE AND COMMEND THE BIDEN COMMITTEE FOR NOT SLAPPING THAT PERSON DOWN, AT THAT TIME. IT REFLECTED THEIR HIGH QUALITY OF LEADERSHIP. BUT, MR. CHAIRMAN, LET IT BE SAID THAT, "THE LEADERS, (THE SENATORS) OF OUR COUNTRY, WOULD NEVER BOW AND FORSAKE A PRINCIPLE FOR THE SAKE OF SECURING A VOTE FOR HIS OWN SECURITY".

NOW, I COME BACK, MR. CHAIRMAN, WHERE I BEGAN WITH THAT SOUTHERN DIALECT THAT REFLECTS TRUST AND CONFIDENCE...IT IS BECAUSE, MR. CHAIRMAN, OUR MOTHER TAUGHT US THAT SHE WOULD RATHER SEE US "EAT DIRT WITH A KNITTING NEEDLE", THAN TO SUBSTITUTE A PRINCIPLE TO MEET A SELFISH NEED.

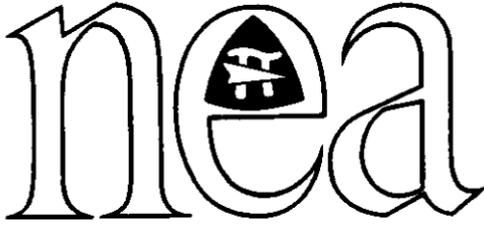
GOD GRANT THAT THE UNITED STATES SENATORS WILL RISE TO THE OCCASION.

RESPECTFULLY SUBMITTED,



SAMUEL L. EVANS

SLE/YS



**LEGISLATIVE INFORMATION
STATEMENT
OF THE
NATIONAL EDUCATION ASSOCIATION
ON
THE NOMINATION OF CLARENCE THOMAS
TO THE U.S. SUPREME COURT**

**PRESENTED TO THE
JUDICIARY COMMITTEE
OF THE
U.S. SENATE**

SEPTEMBER 25, 1991

Clarence Thomas: An Appraisal

Overview

The United States Supreme Court has a profound impact on the quality of public education and the lives of America's educators. Fundamental constitutional principles, as spelled out by the Court, have helped shape the open academic inquiry and broad rights of access that have made free, universal, public education a central element in our nation's success.

The National Education Association has a longstanding commitment to these values. We have worked to maintain and expand free speech, preserve religious liberty through separation of church and state, and protect the human and civil rights of all Americans.

The nomination of Judge Clarence Thomas to the U.S. Supreme Court causes NEA members grave concern. His reliance on a concept of "natural law" opens the doors to radical shifts in interpretations of the U.S. Constitution. His avowed support for tuition tax credits and vouchers indicates a willingness to undermine the constitutional separation of church and state. His antipathy to group remedies to compensate for prior discrimination could undo substantial progress made over the past half century in the area of civil rights. His disparaging views of a constitutional right to privacy could lead to a marked preference for the rights of the State over the rights of individuals.

Based on his abysmal record as chair of the Equal Employment Opportunity Commission, NEA opposed Thomas's nomination to the U.S. Court of Appeals for the District of Columbia in 1990. His record, his writings, and his rulings offer no basis to reverse that opposition. Therefore, NEA opposes the nomination of Judge Clarence Thomas to the Supreme Court.

Disdain for the Rule of Law

In July 1989, 14 key Congressional committee chairs and members who had long experience working with him as EEOC chair, wrote to President Bush urging him not to nominate Thomas to the U.S. Court of Appeals, concluding that he has "an overall disdain for the rule of law."

Thomas has exhibited that disdain time and again throughout his career. Thomas demonstrated a contempt for Congressional authority in his tenure at the EEOC, both in his defiance of its oversight and his praise of Oliver North -- who also claimed a higher authority than the law. Noted Thomas in a 1987 speech before the Cato Institute: "as Ollie North made it perfectly clear last summer, it is Congress that is out of control."

Thomas showed blatant disregard for judicial authority while at the Department of Education's Office of Civil Rights, as NEA knows through first-hand experience.

NEA was one of the parties to litigation, WEAL and Adams v. Bell, in which various organizations sued the federal government over its failure to process civil rights complaints against educational institutions in a timely fashion. Initiated in 1970, the lawsuit charged that the Department of Health, Education, and Welfare engaged in a "deliberate policy of nonenforcement" of Title VI, which prohibits racial discrimination. The suit was later expanded to include challenges to the nonenforcement of discrimination on the basis of gender (Title IX) and disability (section 504) and to add the Departments of Education and Labor as defendants.

In 1977, the Carter Administration settled the lawsuit by agreeing to a consent order that established specific timelines for processing civil rights complaints. In 1982, while Thomas was head of the Department of Education's Office of Civil Rights, the Reagan Administration asked the court to vacate the order.

At a hearing conducted to investigate the Department of Education's failure to meet the court-established timelines in processing and enforcing discrimination claims, Thomas was asked, "So aren't you, in effect, substituting your judgment as to what the policy should be for what the court order requires?" Thomas answered, "That's right."

Even the Reagan Justice Department, which had sought to vacate the order, took steps to urge Thomas to expedite processing of discrimination claims, and yet he took no action to rectify the situation.

Age Discrimination

In 1988, the Government Accounting Office found that from one-half to four-fifths of all discrimination charges filed with the Equal Employment Opportunity Commission or state and local agencies were closed without full investigations. Thomas first attempted to blame one of the regional offices, then complained of insufficient funds, and finally dismissed the GAO report as a "hatchet job."

But the most blatant example of Thomas's insensitivity to equal rights protection is his conduct, while at EEOC, on age discrimination claims. Thomas allowed more than 13,000 age discrimination claims to lapse because of foot-dragging on investigation. Even after Congress took action to extend the statute of limitations, EEOC allowed those timelines to expire.

Thomas's conduct during Congressional investigation into the matter raises questions about his judgment and candor. In a hearing held in 1987 before the Senate Special Committee on Aging, Thomas first reported that 78 age discrimination cases had lapsed, even though the EEOC's own information

revealed that more than 1,000 cases had lapsed. Eventually, the Senate Aging Committee subpoenaed EEOC's records to find that 13,000 cases had been allowed to expire.

In a number of age discrimination cases on early retirement plans that were, in fact, programs designed to coerce older workers into taking early retirement, EEOC sided with the employer. In 1987, EEOC issued new rules that shifted the burden of showing coercion to the employee and allowed employees to waive rights under the Age Discrimination in Employment Act without supervision by the EEOC.

The National Council on Aging, in its statement opposing Thomas's nomination to the Court of Appeals, stated "people cannot properly take an oath to enforce certain laws and, once in office, work consistently to undermine them."

Experience

Having served as an appellate judge since only February 1990, Thomas's experience as a judge is extremely limited. More than half his professional career has been as chair of the Equal Employment Opportunities Commission (EEOC), where his tenure was marked by laxity of enforcement and blatant disregard for statutory and regulatory law.

Thomas's other experience includes a stint as assistant attorney general in Missouri where he handled tax and finance matters. He worked for the Monsanto chemical company in St. Louis for two years. In 1979, Thomas moved to Washington, D.C., to serve as an aide to Sen. John Danforth (R-MO) on energy and environmental matters. He joined the Reagan Administration in 1981 as assistant secretary of the U.S. Department of Education's civil rights division. Shortly thereafter, he was named chair of the EEOC where he served for eight years. In 1990, he was nominated and confirmed as a judge on the U.S. Court of Appeals for the District of Columbia.

On August 28, the American Bar Association, by a vote of 13-2, determined Thomas "qualified" for the Supreme Court. Virtually all Supreme Court nominees have been determined "well qualified," the highest ABA ranking; the two dissenting votes for Thomas's nomination deemed him "not qualified."

As longtime Supreme Court observer and former Solicitor General Erwin Griswold has stated: "This is a time when (President) Bush should have come up with a first-class lawyer, of wide reputation and broad experience, whether white, black, male or female. And that, it seems to me obvious, he did not do."

Affirmative Action

Judge Thomas has expressed the strongest disapproval of any kind of group remedies to discrimination, in particular affirmative action goals and timetables adopted by public or private employers. As EEOC chair, he was in a

unique position to implement goals and timetables to remedy previous discrimination. Instead, Thomas prevented the adoption of these necessary steps.

Thomas argued that goals and timetables had been rendered unlawful by the 1984 Supreme Court decision in Firefighters v. Stotts, 467 U.S. 561 (1984). In 1985, he ordered EEOC regional attorneys not to seek such remedies in proposed settlements. However, after the Supreme Court ruled in 1986 that such remedies were lawful, and when pressed by members of the Senate at his reconfirmation hearings, Thomas promised to reinstate the policy.

Thomas's views on affirmative action are articulated in a 1987 article in the Yale Law and Policy Review where he advocates pursuing individual discrimination cases that seek as a remedy hiring, reinstatement, back pay, and/or fines and other penalties for discriminatory employers as an alternative to affirmative action goals. In the article he states, "I continue to believe that distributing opportunities on the basis of race or gender, whoever the beneficiaries, turns the law against employment discrimination on its head."

Moreover, Thomas attempted to revise the Uniform Guidelines on Employee Selection Procedures, which had been in use since 1978 to help employers comply with federal antidiscrimination laws. Thomas was not successful in efforts to dismantle the Guidelines -- against resistance of employers, the civil rights community, and even the Reagan Administration -- but he continued to discourage EEOC enforcement of them.

Employers, the Congress, and federal courts, including the Supreme Court, have maintained that affirmative action goals are still an effective means of addressing the employment discrimination. While individual discrimination cases must be advanced, employment discrimination remains far too pervasive an element of American society to be pursued solely on a case-by-case basis.

Church and State

Thomas has given strong indication that he does not hold with a strict definition of the First Amendment requirement for a separation of church and state. Speaking before the Heritage Foundation in 1985, Thomas said, "My mother says that when they took God out of the schools, the schools went to hell. She may be right. Religion is certainly a source of positive values, and we need as many positive values in the schools as we can get."

In various writings, Thomas has bemoaned the absence of a religious element in education and in the law. Any person who characterizes the Supreme Court ruling on prayer and religious instruction in public schools as "taking God out of the schools" is likely to look favorably on efforts to restore sectarian elements in public education.

Moreover, Thomas has expressed support for tuition tax credits and school vouchers that would provide unconstitutional public funding of religious instruction and worship. In a 1980 profile in the Washington Post, Thomas expressed support for vouchers and was quoted as saying that he sends his son to a private school because "the public schools don't educate people -- they teach them they can get by without working." In a 1984 interview in the Washington Times, Thomas was asked his opinion on President Reagan's tuition tax credit proposals. Thomas said, "I think it's excellent...They can send their kids to a parochial school for several hundred dollars a year and they can get a tax break of a few hundred bucks. Take it!"

In other words, Thomas has not hesitated to assert that public funding of sectarian schools would be legal under the Constitution.

Privacy Rights

For many years, Thomas has held that the Supreme Court "invented" the right to privacy in Griswold v. Connecticut through a misleading interpretation of the Ninth Amendment ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.").

Perhaps his strongest statement against reproductive freedom itself was an endorsement of the argument advanced by Lewis Lehrman in an 1987 article published in the American Spectator. Lehrman asserted that because the Declaration of Independence assures the right to life, abortion must be constitutionally prohibited.

Said Thomas, speaking before the Heritage Foundation, "Lewis Lehrman's recent essay...on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."

"Natural Law"

It has been 80 years since natural law--universal moral principles that are external to the text of the Constitution--was relied on as an authority by the Supreme Court. It was cited as an argument supporting the economic rights of employers to be free of minimum wage laws and health and safety regulations. In 1873, the Court denied women the right to practice law on the grounds that the "paramount destiny and mission of woman is to fulfill the noble and benign offices of wife and mother. That is the law of the Creator." (Bradwell v. Illinois, 83 U.S. 130 (1873))

Thomas has argued in speeches and articles for a return to the authority of natural law. In a speech before the Heritage Foundation in 1987, Thomas stated, "The need to reexamine nature law is as current as last month's issue of Time on ethics. Yet it is more venerable than St. Thomas Aquinas. It both transcends and underlies time and place, race and custom. And, until recently, it has been an integral part of the American political tradition."

On the other hand, according to Professor Laurence Tribe of Harvard Law School, "The philosophy that fundamental liberties are to be implied from one's personal reading of religious sources and the Declaration of Independence represents a departure from both liberal and conservative thought that has characterized the past half-century."

The value of living with the rule of law, a Western tradition going back to King Hammurabi, circa 1750 B.C., is that the law is there for all to know. Individuals should be guided by high moral principles, but a pluralistic society cannot allow a particular religious doctrine to supplant or supersede democratically established law.

The Doctrine of Stare Decisis

Over the past 20 terms, the Court overruled 33 of its earlier constitutional decisions -- an average of 1.65 per term. In the 1990-91 term, the Court overruled five precedents. Thurgood Marshall warned the nation, just hours before his retirement, "The implications of this radical new exception to the doctrine of *stare decisis* are staggering. The majority today sends a clear signal that scores of established constitutional liberties are now ripe for consideration."

Many court observers have noted that the Rehnquist Court will not hesitate to reexamine the validity of earlier precedent. Indeed, recent Supreme Court decisions indicate a willingness to "legislate from the bench," particularly in the area of criminal law. Many fear that dramatic changes are possible in other areas such as abortion, school prayer, affirmative action and free speech.

Throughout his career, Thomas has given indications that he would be a willing participant in efforts to overrule a broad array of critical decisions affecting every aspect of our national life. Conservatism, in judicial terms, describes a tendency to favor the rights of the state over the rights of individuals and to refrain from acting on matters that are properly the province of legislative bodies.

According to that standard, recent actions on the Court to overrule precedents and to invite litigation that will address particular issues, such as rules of evidence, abortion rights, and church-state issues, could be described as more radical than conservative. Until now, the activist elements of the Court, particularly Chief Justice William Rehnquist and Justice Antonin Scalia, have had to moderate some of their ruling in order to gain a 5-4 or 6-3 ruling. With Thomas on the bench, Rehnquist and Scalia would have greater leeway to make dramatic reversals of established law, and go much further than they might with a more moderate justice.

Separation of Powers

The Constitution invests the Congress with the power "To make all laws which shall be necessary and proper..." And yet, with an activist Court and a

trend on the Court to ignore legislative intent, the protections established by the separation of powers is sharply eroded.

In Thomas's short time in the federal judiciary, he has rejected the use of speeches, committee reports, and other materials that would illuminate legislative intent, relying instead on the Administration's interpretation as the final authority. He has criticized the Congressional investigations into the EEOC handling of age discrimination complaints as "overreaching" and praised Oliver North, who violated laws prohibiting U.S. aid to Nicaraguan contras, saying that "North did a most effective job of exposing congressional irresponsibility."

This tendency to undermine Congressional authority is disturbing in itself, but it is also inconsistent with Thomas's stated adherence to the principle of "original intent," which interprets the Constitution on the basis of other writings by the framers, i.e. their legislative intent.

Conclusion

The Thomas nomination comes at a critical juncture in the direction of the Supreme Court. No one expected President Bush to nominate an individual with the stature or views of Thurgood Marshall. And, admittedly, a solid Reagan-Bush appointed conservative majority on the Court has already demonstrated its willingness and ability to change the direction of the Court -- and the nation.

The issue before the Senate in the nomination of Clarence Thomas is what liberty will the Rehnquist Court feel it has to overturn cases dealing with such essential issues as whether public school teachers are entitled to due process in termination decisions or whether school employees can be fired for engaging in free speech activities -- such as criticizing the school administration, joining a union, or belonging to a particular political party. Other questions are equally pressing: can states spend grossly disproportionate amounts to educate children in different school districts within a state? Can the government subsidize religious worship and instruction in sectarian schools?

Thomas's views on these questions raise serious doubts as to whether he can be an impartial jurist and give primacy to stated law, rather than his personal views. He has supported abolition of the minimum wage, claiming that it is "too high for black teenagers." He led efforts at the EEOC to rule that federal law does not require employers to give men and women equal pay for different jobs of comparable worth, and agreed with the assertion of Thomas Sowell that women tend to choose lower paying jobs. His advocacy of a case-by-case approach to addressing employment discrimination is similar to the "all deliberate speed" that has kept school integration a goal, rather than a reality, for almost 40 years.

The President has appointment power, but the framers of the Constitution gave the Senate confirmation power for a reason. The Senate should exercise its authority to preserve a balance on the Court and vote against the confirmation of Judge Thomas.



National Council of Jewish Women
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Joan Bronk
National President

Iris Gross, CAE
Executive Director

**Testimony of the National Council of Jewish Women
Submitted to the Senate Judiciary Committee
September 27, 1991**

The National Council of Jewish Women (NCJW), the nation's oldest Jewish women's organization, represents 100,000 volunteers in 500 communities. Our members are active in a combined program of community service, education and advocacy serving the needs of women and their families.

Last year, NCJW testified before the Judiciary Committee in opposition to the confirmation of then-Judge David Souter, expressing our concern about the dangers of destroying the traditional balance on the Court--a balance that had served to foster healthy and creative debate among the Justices. This resulted in, for the most part, the protection of the constitutional rights and individual liberties so vital to our democratic way of life.

Now, a year later, we return again to submit this written testimony explaining our opposition to Judge Clarence Thomas' confirmation. The balance on the court has indeed shifted. Confirmation by the Senate of Judge Thomas would tilt the scales so much further that we fear that our constitutional rights would be seriously jeopardized.

Of all of the rights we prize, perhaps the most fragile is the fundamental right to privacy as it relates to reproductive rights. Recent Supreme Court decisions, most notably in Rust v. Sullivan have indicated to us that the Court is on the brink of overturning Roe v. Wade and, perhaps, rethinking other related cases. Therefore, Judge Thomas' writings opposing Roe and abortion rights were alarming to us. Despite his efforts during the hearings to distance himself from his past record on this issue and his incredible assertion that he has never discussed or formed an opinion on Roe, we were not reassured that he would respect precedent in respect to these rights. NCJW, as a strong advocate of women's reproductive rights, cannot take the risk of supporting a nominee with a record which repudiates these crucial rights.

With regard to other rights, during Judge Thomas' eight-year tenure as Chair of the Equal Employment Opportunity Commission, there was extensive erosion of anti-discrimination protection, especially in the area of age discrimination. NCJW has a long history of community service and advocacy on behalf of the aging ranging from its pioneering Golden Age Clubs, launched in 1946, to its current work with employers in the area of eldercare. Given this on-going concern, NCJW is deeply distressed that, under Judge Thomas' Chairmanship, 13,000 aging discrimination claims were allowed to lapse. During that same period, inaction on the part of the EEOC in the area of pension accruals cost elderly employees millions in benefits per year.

In addition to this, Judge Thomas' opposition to affirmative action in both word and deed as EEOC Chairman call into question his willingness to continue efforts the Supreme Court has made to eliminate and compensate for discrimination. We were not reassured by his testimony before the Committee which did little to explain his past actions at the EEOC or elucidate his views on affirmative action.

We are grateful to the Committee for the opportunity to share this explanation of the National Council of Jewish Women's opposition to the confirmation of Judge Clarence Thomas.



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ELIZABETH HOLTZMAN
COMPTROLLER

September 30, 1991

Hon. Joseph Biden, Jr.
Chair
Senate Judiciary Committee
SR-221
Washington, D.C. 20510

Dear Senator Biden:

At the suggestion of Committee counsel, I am writing to oppose the nomination of Judge Clarence Thomas as an Associate Justice to the United States Supreme Court and to oppose the Judiciary Committee's forwarding this nomination to the Senate.

There are a number of reasons to reject Judge Thomas's nomination to the Supreme Court. I would like to focus only on a few of the more salient ones.

Although Judge Thomas said he believed in a right to privacy, he did not explain what he believed a right to privacy encompasses. The right to privacy is a fundamental right of all Americans. It protects people from forced sterilization (Skinner v. Oklahoma, 316 U.S. 535 (1942)), assures that married and unmarried couples can use contraception (Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972)), and guarantees a woman's right to choice (Roe v. Wade, 410 U.S. 113 (1973)). The right to privacy creates a zone of personal freedom surrounding such personal decisions as child bearing and protects individuals from governmental and political interference with those decisions. If Judge Thomas had said he would not protect that right, that alone would have been grounds for rejecting him. His failure to answer clearly merits the same response.

Judge Thomas refused to state his view, or even his understanding, of Roe v. Wade. He claimed that would be inappropriate since cases concerning abortion will come

Hon. Joseph Biden
September 30, 1991
Page Two

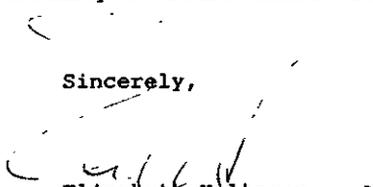
before the Court. So will the death penalty, religion and the state, and other subjects, which the Judge discussed in considerable detail.

Further, Judge Thomas asserted that he has not thought about or had conversations about Roe v. Wade in the past eighteen years. This statement is incredible. Moreover, Judge Thomas has referred to Roe v. Wade on several occasions. A justice of the Supreme Court should have the highest integrity. Judge Thomas's lack of candor is insulting to the Committee and to the American people, and provides sufficient grounds to reject his nomination.

Forwarding this nomination to the Senate creates an unfortunate precedent. Future nominees will know that there are no consequences if they are silent or evasive about such fundamental issues as the right to privacy. The American people, and the Senate, have a right to know the answers to a nominee's views on central constitutional questions, as well as issues relating to character, intellect, financial probity and personal integrity.

I appreciate the opportunity to share these views with you.

Sincerely,



Elizabeth Holtzman
Comptroller

EH:DN

ADVIR

AGE DISCRIMINATION VICTIMS REPARATIONS REGISTRY
 P. O. Box 1939, Church Street Station
 New York, New York 10008-1939, U.S.A.

Statement of the
 Age Discrimination Victims Reparations Registry
 to the Senate Judiciary Committee
 Against the Confirmation of Clarence Thomas
 to the Supreme Court of the United States

I appear here today on behalf of the Age Discrimination Victims Reparations Registry. I believe the name of our organization says it all, but we will get into a little more detail about ADVIR, the acronym by which we are known. We hope ADVIR will soon become a household word.

Judge Thomas has been promoted as a conservative. Sounds good but what is it? Conservatism conserves the wealth of the wealthy. Conservatism conserves the power of machine politicians and their handpicked patronage judges, all of whom serve the wealthy at everybody else's expense. Conservatives, and especially Judge Thomas, protect the violators of human rights laws and their profits, and they protect especially age discrimination which is the most profitable form of violation and the most devastating for the victims. Minorities and women can frequently relocate but nobody is out looking to hire age victims. Conservatism is wonderful and should be supported without hesitation by all the wealthy and their judges and politicians, all of whom together are about 1% of the population. But why should the unrich, and we are 99% of the population, support conservatism and conservatives, or even tolerate their abuses any longer? Are we the only victims who recognize our senseless and needless plight? Judge Thomas is a conservative alright, but we should all realize that the word conservative should be the most damning word in the language, and not a code word nor an excuse for human rights abuses.

Growing numbers of people realize that patronage justice is the opposite of justice. Throughout history, patronage justice has been a political tool for protecting the excessive wealth of the wealthy and the abuse of power by the politically powerful. Like all politicians, patronage judges are far from independent or objective. They simply

serve the regime. Were it not so, judges could have long ago awarded damages in effective deterrent amount against one or two major age discriminators, but they did not. We also know from the personal experience of several of our registrants that judges who appear to be sympathetic to the plight of age discrimination victims are simply not assigned any more age discrimination cases. It doesn't matter much, really, because any pro-victim decision, judgment or order is sure to be overturned by appellate patronage judges, which brings us to the nominee at hand. Having bared his teeth on numerous occasions on the public record, his patrons can now trust him to uphold the absolute right of age discriminators to violate the civil and human rights laws with impunity.

Since patronage nominees are politically selected and utilized, it is not only proper but imperative to ask them the most probing and specific questions on issues that will or may come before the Supreme Court, although here we should make an exception because Clarence Thomas's age discrimination record is only too well known to the nation and mankind from his chairmanship at the counterproductive U.S. Equal Employment Opportunity Commission. Others have and will detail the chamber of horrors into which the nominee converted the EEOC and the 145 state and local agencies EEOC finances to emotionally batter and to discourage the few complaining victims from pursuing their cases. In his opposition to the Thomas nomination, Congressman Edward Roybal, chair of the House Select Committee on Aging, summarized the nominee's misdeeds just in the field of age discrimination, under five headings:

1. Judge Thomas allowed thousands of age discrimination complaints to expire and to run afoul of the statute of limitations;
2. Judge Thomas issued unsupervised waiver regulations to enable age violators to coerce or to trick older workers into signing away their basic rights and nominal protections under the Age Discrimination in Employment Act of 1967;

3. Judge Thomas failed to take action to prohibit employers from discriminating against older workers with regard to pension benefits;
4. Judge Thomas defended the use by violators of coercive forced early retirement programs that were age discriminatory; and
5. Judge Thomas supported the use of age limits in apprenticeship and job training programs that exclude older workers.

Detached viewers could say that Clarence Thomas was the answer to the prayers of human rights violators, and he was. But those prayers were directed to Reagan and Bush and not to heavens. Verbal contortions, pretenses and mendacity notwithstanding, we hope it is obvious to all that Thomas is a Big Business front man serving his masters for a patronage judgeship. The NAACP Legal Defense and Education Fund, Inc., study (N.Y. Times, 8/14/91 p.A14) even pinpoints when he became this way: in 1986, when he began assailing Supreme Court decisions upholding affirmative action. Thus he sealed his Faustian bargain with the Reagan regime.

Of all his achievements in protecting and encouraging civil and human rights violators, Supreme Court nominee Clarence Thomas has achieved greater results in age discrimination than in any other field, because that is by far the most profitable of all forms of job discrimination. You cannot replace a black or Hispanic or woman by a comparably qualified white male at half pay. But you can replace a 50 or 60-year old managerial or professional employee with a youngster at half as much pay and less than half as costly fringe benefits. In fact, this has been done many millions of times in recent years, and Thomas has been one of the violators' most effective defenders and protectors.

The N.Y. Times reports that "It was [Thomas's] opposition to preference programs for members of minority groups, friends say, that first brought him into the orbit of a small group of black conservatives who delighted in questioning the views of the traditional civil rights groups. Eventually he came to the attention of the Reagan Administration" (7/2/91 p.A15). Clearly Thomas is one of a small group

waiting to strike a Faustian bargain, charitably put. More frankly, he is a hypocrite who is selling himself as a racism victim to cover for his "conservative" misdeeds in violating the civil rights laws he swore to enforce. Directly and indirectly, Thomas is responsible for an estimated 10 million victimizations by age discrimination alone.

Since everybody in this room knows everything that I have said so far, only decorum prevents me from calling these hearings a charade. On second thought some people take offense when someone belabors the obvious.

At the risk of restating the obvious, it is essential to defeat not only Thomas but also the whole farm system of future judges and politicians subservient to the human rights violators and exploiters of the American people. It is true that the President has the right to nominate anyone he chooses but it is equally true that the Senate has the obligation to confirm only such nominees as will serve the public interest, not just the wealthy and the powerful. With Thurgood Marshall gone, we now have eight injustices just on the Supreme Court, and we cannot afford another injustice. We expect the Senate to muster the courage to send Judge Thomas to join Judge Robert Bork. We believe firmly that the Supreme Court needs to be purged of conservatives, not packed further with the likes of Clarence Thomas.

And here is another thing to consider. So far the Bush regime has vetoed 21 pieces of major social legislation, that were not overridden. For this, we believe the Senate owes Bush a rejection and should send Judge Thomas scurrying to join Judge Robert Bork.

As for America's age victims, our claims are fully documented beyond dispute in the Social Security database and should not require litigation in patronage courts. The monies taken from us illegally and wrongfully have been invested by the discriminators and are in the violators' retained earnings accounts together with profit and interest they earned on our money, and thus available immediately for the payment of reparations at no public expense. In contrast to Willy Lohman, we will not relent nor rest until we collect our due. Thank you.

2—GUARDIAN—SEPTEMBER 11, 1991

 **Letters****THOMAS HITS OLD AGERS**

Age Discrimination Victims Reparations Registry (ADVIR), New York City: Publication of Earl Ofari Hutchinson's opinion on Clarence Thomas (Aug. 28) was a great disservice to your readers and the nation. Verbal contortions, pretenses and mendacity notwithstanding, it should be obvious that Thomas is a big business front man serving his masters for a patronage judgeship. The NAACP Legal Defense and Education Fund study, reported in the *New York Times* (Aug. 14), also shows when he became this way: in 1986, when he began assailing Supreme Court decisions upholding affirmative action. Thus he sealed his Faustian bargain with the Reagan regime.

Of all his achievements in protecting and promoting civil and human rights violations, Thomas has achieved greater results in age discrimination than in any other field, because that is by far the most profitable of all forms of job discrimination. You cannot replace a Black, Latino/a or woman by a comparably qualified white male at half pay. But you can replace a 50- or 60-year-old managerial or professional employee with a youngster at half as much pay and less than half as much in costly fringe benefits.

This has been done many thousands of times in recent years, and Thomas has been one of the violators' most effective defenders and

protectors. Directly and indirectly, Thomas is responsible for an estimated 10 million victimizations by age discrimination alone.

We have written Sen. Joseph Biden asking that we be scheduled to testify at the Thomas confirmation hearings, and we have a postal return receipt from Biden's office. We doubt that Biden or the regime has the courage to let us testify and to let the whole truth out for all the nation to see.

TESTIMONY BEFORE THE JUDICIARY COMMITTEE OF THE UNITED STATES
SENATE IN OPPOSITION TO THE CONFIRMATION OF CLARENCE THOMAS
AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
BY THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

INTRODUCTION

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, protects the rights of Asian Americans through impact litigation, legal advocacy, and community education. Current priorities include voting rights, anti-Asian violence, immigrants' rights, employment/labor rights, and redress for Japanese Americans incarcerated during World War II. AALDEF conducts year-round student internship training and counsels thousands of Asian Americans each year at free legal advice clinics.

Based on an analysis of Clarence Thomas's writings, court decisions (as a judge on the Court of Appeals for the District of Columbia Circuit), and record at two administrative agencies (Chairperson at the Equal Employment Opportunity Commission from 1982 to 1990 and Assistant Secretary for Civil Rights in the Department of Education from 1981 to 1982), AALDEF finds that the interests of the Asian American community will not be served by his confirmation as Associate Justice on the Supreme Court of the United States, and therefore respectfully requests that this Committee and the entire Senate vote to deny his confirmation.

THE ASIAN AMERICAN COMMUNITY

The 1990 census shows over seven million Asian Americans living in the United States, with a variety of occupations and lifestyles as widely different as the language, culture, diet and other differences they bring from their homelands (where their relatives constitute almost two-thirds of the world's total population). More than 20 Asian and Pacific Islander subgroups were identified in the 1990 census, compared to just five in 1970, when they were broken out of the "other" category for the first time. Also significant is that just 1.5 million Asian Americans were reported by the census in 1970, so there has been more than a 400 percent increase in population in just twenty years. Looking towards the future, while Asian Americans represent only three percent of the United States population today, by the year 2000, projections show them representing almost four percent of the U.S. population, or 9.9 million. By the year 2050, the Population Reference Bureau estimates that they will represent 6.4 percent of Americans-- the same proportion that Hispanics represented in 1980.

Asian Americans, like all people, suffer from poverty, substance abuse, homelessness, mental illness, domestic violence, and other problems. Unfounded media misperceptions about their

wealth, education and opportunities, however, have created the twin problems of inter-minority group resentment and denial of access to needed social services, which disproportionately affect the Asian American poor. In times of economic contraction, like those we see today, resentment and racial hostility frequently flares up into physical violence, and denial of access to needed resources becomes a sentence of death or unending misery to those already on the brink of disaster.

1990 census figures indicate that the poverty rate for all Asian Americans is between 14 and 17 percent, double that of the eight percent figure for non-Hispanic whites. Compounding the difficulties of the poorest Asian Americans are problems that also plague the poor of other communities: 1) racially-motivated violence at the hands of individual bigots, youth gangs, and insensitive police officers; 2) harassment by immigration officials based on appearance or accent, even if legal papers are in order; and 3) for the many who become naturalized Americans, disenfranchisement based on lack of bilingual ballots or redistricting processes that include little or no Asian Pacific American representation.

While individual Asian Americans have been part of the American scene since the mid-1700's, most scholars view the large influx of Chinese gold miners to California after 1848 as the beginning of today's Asian American community. In successive waves, shaped by restrictive immigration laws, market forces, the needs of individual laborers, and other factors, large Chinese, Japanese, and Filipino communities were formed on the West Coast, and smaller communities of Indian, Korean and other immigrants were also present. Vietnamese, Cambodian, Laotian and other communities are more recent in derivation, coming to these shores as a result of refugee policies stemming from the Vietnam War and its aftermath.

For reasons beyond the scope of this testimony, Asian Americans have suffered from institutional and individual discrimination from the time we arrived here until the present day. For example, discriminatory laws, such as the federal Chinese Exclusion Act of 1882, were passed on federal, state and local levels soon after the first large wave of immigration in the late 1840's and early 1850's. A half century later, in 1942, the federal government participated in the mass removal and detention of all mainland Japanese Americans, a civil liberties nightmare that was not remedied until a successful redress movement in the late 1980's resulted in passage of appropriate remedial legislation and individual money damage awards to former internees. The California Foreign Miner's Tax of 1850 and Alien Land Law of 1913 restricted employment opportunities and land ownership opportunities, respectively. Similar laws were passed in most

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Western states. San Francisco, like other West Coast cities, passed a number of oppressive ordinances, such as those aimed at Chinese laundries in the 1850's. These were challenged in Yick Wo versus Hopkins (1886) and other landmark Supreme Court vindications of equal protection rights for all Americans. After 1965, when immigration law changes brought in both more professional and more unskilled Asian Pacific Americans, the discrimination suffered by all Asian Pacific Americans took on new forms. Physical violence in response to perceived economic threats continued unabated. Burning of Chinatowns, lynchings, massacres and other brutalities were well-documented realities of nineteenth and early twentieth century American life. Recent pistol-whippings, baseball bat clubbings, and shots fired by the Klan at Vietnamese fishermen in the Gulf of Mexico continue the American tradition of beating up Asians in times of economic downturns.

**CLARENCE THOMAS'S NEGATIVE IMPACT
ON THE ASIAN AMERICAN COMMUNITY**

Confirmation of Clarence Thomas as Associate Justice on the Supreme Court of the United States will negatively impact Asian Americans in three ways: 1) denial of access to affirmative action and other equal justice remedies won by the civil rights movement over the years, 2) denial of access to privacy rights and abortions, and 3) creation of a false spokesperson for the legal needs of people of color in this country. Each of these three impacts will be explored individually.

Despite the fact that he is himself African American, Judge Thomas has proven by his words and actions in public life that he is no friend of affirmative action and other equal justice remedies won by the civil rights movement, including Asian Americans, over the years. When he served as Chairperson of the Equal Employment Opportunity Commission from 1982 to 1990, Thomas refused to litigate class-based, industry-wide cases of discrimination, which had proved to be a more effective tool for ending discrimination than waiting for individual complainants. He also let 13,000 age discrimination claims expire by not processing them before the end of a two-year statute of limitations. Only special Congressional legislation saved those claims, which is why the National Council of Senior Citizens, the Older Women's League, and similar groups oppose his candidacy. In addition, a General Accounting Office investigation in 1988 found that the EEOC had refused to aggressively follow its mandate by allowing from 40 to 87 percent of its cases to close due to lack of investigation.

While benefitting from affirmative action himself at schools such as Yale Law School and jobs such as the Chairpersonship of the EEOC, Judge Thomas wants to close the door of opportunity behind

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him. While he acknowledges that racial barriers persist in this country, he refuses to support the one policy that has led to real change in education, employment, and other arenas. He believes that race should not be a factor in interpreting the "color-blind" Constitution, but fails to suggest alternate ways to overcome the effects of past and continuing discrimination such as that suffered by Asian Americans.

In the area of abortion rights, privacy rights and family issues, Judge Thomas maintains that natural law and the Declaration of Independence inform the interpretation of Constitutional rights. He has maintained that natural law protects the unborn and usurps the woman's right to choose an abortion to terminate a pregnancy. These views, when extrapolated, can be seen in the 1987 report of President Reagan's Working Group on the Family, of which Judge Thomas was a member. The report called for traditional nuclear families, divorce that is harder to obtain, restriction of teen sexuality, and encouragement of women staying home to care for children. This moralism and imposition of one set of values on all people was mirrored in Thomas's article in a book assessing the Reagan years, where he expressed unease even about Griswold versus Connecticut, the pathbreaking 1965 decision that gave married couples the right to obtain legal contraceptives.

Judge Thomas's views are of concern to Asian Americans for two reasons. First, the imposition of natural law and moralistic rationalizations for laws have been at the heart of anti-Asian American and other xenophobic sentiments for 150 years. Restrictions on our ability to immigrate to this country and our ability to live where and how we chose were rationalized because we were considered dirty or less than human. It was not "natural" to look like us, worship our non-Christian gods, or eat our Asian-derived foods. Second, the right to an abortion has given Asian American women the freedom to plan their family lives and, when necessary, make the difficult decision to terminate a pregnancy. Overturning Roe versus Wade, which Judge Thomas almost certainly will vote to do if elevated to the High Court, will be a major setback for these women.

Aside from having concerns about his views on legal issues, Asian Americans have deep concerns about Judge Thomas's candidacy because of the fact that, if he ascends to the High Court, he will become the highest ranking judicial spokesperson for all people of color in this country the way Justice Thurgood Marshall was over the last several decades. Through lectures, articles, and court decisions, he most certainly will undermine affirmative action and other programs that have opened the door to opportunity in this country, and will provide the appearance of African American and other minority community support for the regressive opinions the High Court is certain to write on the rights of criminal

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defendants, employees facing discrimination, and women seeking abortions.

CONCLUSION

As an organization devoted to the rights of Asian Americans, it is very difficult for us to express reservations about a fellow person of color. The Supreme Court most certainly needs the insights that a jurist of color could bring to it and, because President Bush seems to be embracing affirmative action in his decision to nominate a candidate of African American ancestry, his next candidate should be another of the thousands of experienced African American lawyers and judges presently working in this country. However, to accept a person whose actions and views have been and continue to be harmful to one's interests just because that person is of a particular racial heritage is to be patronizing and wrong. Judge Thomas has gotten where he has because he has betrayed the interests of Asian Americans and other people of color, so to honor him by this elevated post is to dishonor others who continue to struggle for the privileges Judge Thomas now enjoys.

On behalf of the Asian American community, therefore, AALDEF respectfully recommends that the Judiciary Committee and full Senate vote to reject the nomination of Judge Thomas to serve as an Associate Justice of the Supreme Court of the United States. Thank you for this opportunity to address you.

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THE RECORD OF JUDGE CLARENCE THOMAS

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1. Civil Rights.

Judge Thomas' record in seven and one-half years as chairman of the Equal Employment Opportunities Commission (EEOC) and his views expressed in numerous speeches and articles demonstrate an extreme hostility to civil rights laws and the remedies to correct discrimination based on race, sex, age and disabilities. His record is replete with his stated position, and action as head of the EEOC, in opposition to affirmative action, minority set-asides, goals and time tables. He has opposed the use of statistical proof as evidence of discrimination. Dr. William F. Gibson, chairman of the National Board of Directors of the NAACP has stated that "it is particularly disturbing that one who has himself so benefitted from affirmative action now denigrates it and would deny these opportunities to other Blacks." Arthur Kropp, president of the People for the American Way Action Fund has stated that their evaluation and review of Judge Thomas' record shows "a man with a singular disrespect for the rule of law, an apparent indifference to fundamental civil liberties, contempt for Congress and the judiciary and a painfully cramped view of government's role in repairing the damage of discrimination." While Judge Thomas was chairman of the EEOC, the commission failed to act on more than 13,000 cases charging violations of the Age Discrimination in Employment Act. Judge Thomas was less than candid in admitting this lapse. When Judge Thomas was nominated for the Court of Appeals for the District of Columbia, fourteen members of Congress who had served on committees with oversight responsibilities for the EEOC wrote to President Bush, asking that Judge Thomas not be nominated to the federal bench. The letter stated that Judge Thomas' "questionable enforcement record" at the EEOC "frustrates the intent and purpose" of the Civil Rights Act of 1964. The letter further referred to Judge Thomas' lack of candor in dealing with the oversight

committees, and concluded that Judge Thomas "has demonstrated an overall disdain for the rule of law." Judge Thomas has criticized many of the leading Supreme Court cases upholding enforcement remedies for violations of civil rights such as Green vs. County Board of Education 391 U.S. 430 (1968) and what he called "a disastrous series of cases [after Green] requiring busing and other policies that were irrelevant to parents' concern for a decent education."

2. Civil Liberties.

Based on his writings and speeches it is extremely doubtful that Judge Thomas would recognize a constitutional right of privacy. He has strongly criticized both Griswold vs. Connecticut, 381 U.S. 479 (1965) and Roe vs. Wade, 410 U.S. 113 (1973). He has praised a speech by anti-abortion activist Lewis Lehrman that states not only that Roe vs. Wade was wrongly decided and should be overruled, but that abortion is in fact prohibited by the Constitution and cannot be legally permitted by either Congress or the states. Judge Thomas' position on abortion rights would appear to be more restrictive than that of any present member of the United States Supreme Court (See discussion under "Judicial Philosophy" *infra*).

Judge Thomas has also suggested disagreement with Supreme Court decisions on school prayer. In the Fall 1985 issue of Policy Review, Judge Thomas stated, in response to a question as to whether he favored President Reagan's initiatives on school prayer, that "as for prayer, my mother says that when they took God out of the schools, the schools went to hell. She may be right. Religion is certainly a source of positive values, and we need as many positive values in the Constitution as we can get."

3. Judicial Philosophy.

Judge Thomas has on many occasions expressed his belief in natural law as a judicial philosophy. Constitutional law expert, Professor Laurence Tribe of Harvard Law School, has said that Judge Thomas "is the first Supreme Court nominee in 50 years to maintain that natural law should be readily consulted in constitutional interpretation." Commenting on Judge Thomas' belief in natural law as appropriate in constitutional interpretation, Geoffrey Stone, dean of the University of Chicago Law School said "I think, in all candor, he fairly could be labeled strange...not in terms of right or wrong, but in being further outside the mainstream of constitutional interpretation than Bork is." Judge Thomas has praised as a "splendid example of applying natural law" the argument by Lewis Lehrman that abortion violates the "right to life" guaranteed by the law of God in the Declaration of Independence and therefore is not permitted by the Constitution.

Judge Thomas has a record of challenging congressional authority both as chairman of the EEOC and as director of the

Office of Civil Rights (OCR) at the Department of Education. (See discussion under "Civil Rights" *supra*.) He has admitted violating a court order in the Adams vs. Bell litigation while he was director of the OCR. The order directed the Department of Education to speed up enforcement action on complaints of discrimination.

4. Legal Qualifications and Experience.

Judge Thomas has very little experience as a practicing attorney and less than a year and one-half as a Federal Court of Appeals judge. Professor Derrick Bell of Harvard Law School called President Bush's claim that Judge Thomas was "the best person for the job on the merits" laughable. Congressman John Conyers of Michigan, a leader of the Black Caucus, listed five black Federal Court of Appeals judges that he said were more experienced and better qualified. Twenty-four of the 25 members of the Black Caucus have voted to oppose the confirmation of Judge Thomas. With respect to the appointment, former Harvard Law School Dean and former Solicitor General of the United States Erwin Griswold (who has argued more cases before the Supreme Court than any other person) recently said: "this is a time when [President] Bush should have come up with a first-class lawyer, of wide reputation and broad experience, whether white, black, male or female. And that, it seems to me obvious, he did not do."

When Judge Thomas was nominated for the Court of Appeals for the District of Columbia, the American Bar Association Judicial Evaluation Committee gave him its lowest approval rating--"qualified." He did not receive the highest rating of "well qualified." The committee has recently released its report on its evaluation of Judge Thomas as a nominee to sit as an Associate Justice of the United States Supreme Court. A majority of the committee found Judge Thomas "qualified" and two members found him "not qualified." No member of the committee found him to be "well qualified." A New York Times story commented on this lukewarm endorsement by noting that "of the last nine justices confirmed going back to 1969, there were no votes of unqualified." The last two Supreme Court Justices confirmed, Justices Anthony Kennedy and David Souter, received unanimous "well qualified" ratings from the committee. It would seem clear that persons proposed for the Supreme Court should receive the highest rating of "well qualified."

5. Character

While Judge Thomas' rise from poverty is admirable and should give him a perspective and experience which would be an asset on the Supreme Court, it does not make him qualified to be an Associate Justice of the Supreme Court at this time in view of his record on constitutional issues involving civil rights and civil

liberties, his "natural law" judicial philosophy and his meager legal experience as a lawyer and judge.

There are also troubling questions raised by some of his past actions and the Senate Judiciary Committee should question him thoroughly on these. Judge Thomas failed to list one of his most controversial articles in responding to the Department of Justice questionnaire at the time the Senate was considering his nomination to the Court of Appeals. The omitted writing was a chapter titled "Civil Rights as a Principle Versus Civil Rights as an Interest" in Assessing the Reagan Years, a book published by the Cato Institute in 1988. In the article, Judge Thomas strongly criticizes the Supreme Court's decisions approving affirmative action.

Judge Thomas also failed to list in the questionnaire his participation as a member of the 1986 White House Working Group on the Family which issued a report stating, among other things, that Roe vs. Wade and Planned Parenthood vs. Danforth 428 U.S. 52 (1976), holding invalid a Missouri law which provided that a husband's consent was necessary before a woman could obtain an abortion, were wrongly decided. Judge Thomas also failed to list on the questionnaire the fact that he has served since 1981 as a member of the Editorial Advisory Board of the Lincoln Review, a conservative journal offering an African-American perspective on public policy issues. The Lincoln Review has published anti-choice articles opposing Roe vs. Wade during the time Judge Thomas has been on the Editorial Advisory Board.

As noted above ("Civil Rights" supra), Judge Thomas was not candid and cooperative with the congressional oversight committees seeking to ascertain the facts on alleged age discrimination claims that had lapsed while Judge Thomas was chairman of the EEOC. Initially, Judge Thomas claimed there were only 78 cases which had expired. This figure was later revised upward to over 13,000 cases in which the EEOC had permitted the statute of limitations to run.

August 30, 1991



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**TESTIMONY IN SUPPORT OF THE NOMINATION OF THE HONORABLE
CLARENCE THOMAS TO THE UNITED STATES SUPREME COURT**

Judge CLARENCE THOMAS, presently sitting on the UNITED STATES CIRCUIT COURT OF APPEALS for the District of Columbia, was born June 23, 1948, in Pin Point, Georgia, a small, at that time rundown, rural community South of Savannah, Georgia, in a house without electricity or plumbing. His mother was then eighteen (18) years old and was eking out a living by picking crabs for five (5) cents a pound. Judge THOMAS' father abandoned Judge THOMAS, his mother, and his sister while his mother was pregnant with a third child. The family then moved in with an aunt in a wooden shack surrounded by live oaks and water snakes. Judge THOMAS and his brother, MYER THOMAS, moved to Savannah, Georgia when the Judge was seven (7) years old. Though barely literate, their grandfather put together the money to send them to a local Catholic elementary school, where Judge THOMAS learned a lifelong lesson of self-reliance and pride.

That lesson followed Judge THOMAS through seminary, college, and law school, during which he was the victim of racial prejudice and the recipient of, arguably, the rewards of reverse discrimination. It is undenied that Judge THOMAS is a shining example of someone who, despite racism and poverty, has "bootstrapped" himself into the forefront of American legal circles.

Those opposing the nomination of Judge THOMAS to the UNITED STATES SUPREME COURT have cited a number of purported reasons for their opposition.

One of those reasons is his claimed lack of sufficient legal experience. I would point out that twenty-five (25) of the forty-eight (48) Justices who have served on the UNITED STATES SUPREME COURT since 1900 have arrived with little or no judicial experience. LOUIS BRANDEIS, ABE FORTAS, and LEWIS POWELL had no judicial experience at all. HUGO BLACK had almost no judicial experience. FELIX FRANKFURTER was a high ranking government bureaucrat. WILLIAM O. DOUGLAS was Chairman of the SECURITIES AND EXCHANGE COMMISSION. EARL WARREN had been the Governor of the State of California. Yet, depending on your political perspective, these are widely admired jurists.

Judge THOMAS' nomination has also been opposed on the grounds that he is, allegedly, nothing more than a "lackey" for white racists, with the inference being that those white racists are embodied in the administrations of Presidents REAGAN and BUSH. However, this position ignores reality. Judge THOMAS, while head of the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, opposed attempts by the United States Justice Department, under President REAGAN, to overturn local Court-ordered quota plans. He criticized the White House for supporting the tax-exempt status of a racially separatist university. He fought to uphold civil rights laws so much that there was talk of dumping him at the end of President REAGAN's first term. To quote DEBRA G. SAUNDERS, a columnist for the LOS ANGELES DAILY NEWS, "Those who insinuate that Thomas has made a career of slavish servitude to white oppressors are wrong: He has been independent from all factions...but his views are not of the mainstream. His views are too independent. He thinks for himself."

Opposition to the nomination of Judge THOMAS has also been based upon his refusal to discuss issues that may come before him sitting as a Justice on the UNITED STATES SUPREME COURT. However, to quote United States Senator TED KENNEDY, "We will have to respect that any nominee...will have to defer any comments on any matters which are either before the Court or is very likely to appear before the Court. This has been a procedure which has been followed in the past and is one which I think is based on sound legal precedent." Of course, those remarks were made by Senator KENNEDY during the nomination hearings on UNITED STATES SUPREME COURT Justice THURGOOD MARSHALL, a black liberal, whereas Judge THOMAS is a black conservative.

The nomination of Judge THOMAS has also been opposed due to his opposition to reverse discrimination in the form of racial quotas. Such quotas are part of the "liberal agenda" to which opposition is considered treason when that opposition is from a black or hispanic. "Left-wing interest groups are uncomfortable with blacks like Judge Thomas who refuse to bend the knee to the transient gods of liberalism. They will attack his nomination and they will fail. They will fail because this man's independence and refusal to stay in his place on the Liberal Plantation will capture the hearts of the American people." These, the words of RICHARD F. DUNCAN, Professor of Constitutional Law at the UNIVERSITY OF NEBRASKA COLLEGE OF LAW.

The opponents to Judge THOMAS have also claimed that he will be nothing more than a follower of the so-called conservative bloc on the UNITED STATES SUPREME COURT. However, the record speaks otherwise. While on the UNITED STATES CIRCUIT COURT OF APPEALS, Judge THOMAS joined with RUTH BADER GINSBURG seven (7) of seven (7) times in her opinions, PATRICIA WALD six (6) of six (6) times, HARRY EDWARDS three (3) of three (3) times, and ABNER MIKVA five (5) of six (6) times. All of these were President CARTER's appointees. This hardly indicates that Judge THOMAS will "fall into line" behind whatever the conservative Justices on the UNITED STATES SUPREME COURT desire.

What appears to most gall those in opposition to the nomination of Judge THOMAS is not that he is a conservative, but that he is a black conservative! With the exception of Judge ROBERT BORK, who became a "cause celebre" for the left, the nominees to the UNITED STATES SUPREME COURT for the past eleven (11) years have "sailed" through their nominations with little or no trouble. These individuals have, without exception, been as conservative as, or more conservative than, Judge THOMAS. Judge THOMAS flies in the face of the liberal position that all blacks must blindly follow the liberal agenda put forward by the ACLU, the NEW YORK TIMES, etc., thereby destroying the liberal charade that all conservatives are white males. According to Professor DUNCAN, "Thomas is a new kind of a role model for young people from all racial backgrounds. His message to these youngsters is: 'Don't look to government preferences and handouts to solve your problem; look to self-reliance, personal effort and equal opportunity as the best path to success in contemporary America.'" However, of course, this type of thinking, if widely promulgated, will destroy the welfare state, reduce the need for the bureaucracy that supports it, reduce the need for our ever-increasing burden of taxes, and result in the destruction of the liberal mythology as to what is necessary to "save" the UNITED STATES OF AMERICA.

According to BESTY HART of the HERITAGE FOUNDATION, "Thomas...will challenge the 'moral monopoly' the Left has exercised over blacks, other minorities, and women. The monopoly views to classify people according to their alleged group 'victimization' status and then present each group as a monolith in its thinking. The problem for the left is that Clarence Thomas stands to expose such follies."

Despite attacks by the liberal media, including the NEW YORK TIMES, that Judge THOMAS is "out-of-step" with other black leaders concerning the issue of quotas and of reverse discrimination, he is in step with black leaders such as W.E.B. DuBOIS, BOOKER T. WASHINGTON, T. THOMAS FORTUNE, and others who have emphasized the need for blacks and other minorities to help themselves, as opposed to looking for handouts such as the liberal agenda would foster.

Despite her apparent opposition to the nomination, CYNTHIA TUCKER, Associate Editor of the ATLANTIC CONSTITUTION's Editorial Pages said, "His qualifications are obvious. Though his politics during his tenure in the Reagan White House left much to be desired, there is nothing to suggest that his stewardship of the Equal Employment Opportunity Commission displayed incompetence. Nor is there evidence that he lacks the profound and learned grasp of the legal theory necessary to serve on the High Court. In scholarly articles, his reasoning is lucid and often persuasive."

For these reasons, and more, I would urge you to join with GUIDO CALABRESI (Dean of the YALE LAW SCHOOL), the Compton, California branch of the NAACP, Georgia State Representative TYRONE BROOKS of Atlanta (State Director of JESSE JACKSON's presidential campaigns), Georgia Labor Commissioner AL SCOTT (the highest ranking black in the Georgia State Executive Branch), ARTHUR A. FLETCHER, Chairman

of the UNITED STATES COMMISSION ON CIVIL RIGHTS, and numerous other individuals in supporting the nomination of Judge CLARENCE THOMAS as a Justice on the UNITED STATES SUPREME COURT.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Keep', written over the typed name.

Gary G. Keep
Executive Director
United States Justice Foundation

PEPPER, HAMILTON & SCHEETZ

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October 21, 1991

Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Professor Anita Hill

Dear Senator Biden:

I write to correct an unfair and false impression of Professor Anita Hill's performance at the law firm of Wald, Harkrader and Ross created by the affidavit of John Burke, Esquire, a former Wald, Harkrader and Ross partner, filed with the Committee on October 13, 1991.

During Professor Hill's tenure at Wald, Harkrader and Ross in 1980-1981, I was chairman of the firm's Associate Development Committee, which was responsible for associate evaluation. I accordingly have direct knowledge of Professor Hill's performance evaluation. On October 14, 1991, I learned through inquiries from the press, that Senator Danforth had released a statement to the effect that a former partner of Wald, Harkrader and Ross had told the Committee on the Judiciary that Professor Hill's performance had not been satisfactory and that she had been asked to leave the firm. I immediately prepared and sent to you my own affidavit which stated that Professor Hill's performance at the firm had not been unsatisfactory, that she was not asked to leave the firm, and that she had left of her own volition to pursue an alternative professional path. I said that my memory of the events was clear and that I had contacted the other two members of the Associate Development Committee and they concurred in my recollection. My interest in submitting the affidavit was not to oppose the nomination of Judge Thomas but to assure that in the Committee's consideration of the nomination

PEPPER, HAMILTON & SCHEETZ

Honorable Joseph R. Biden, Jr.
October 21, 1991
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Professor Hill received fair treatment. A copy of my affidavit is enclosed for your convenience.

At the time I submitted my affidavit, I had not seen the affidavit of Mr. Burke. I have now obtained a copy which I enclose. I have also had an opportunity to examine further the remaining files of Wald, Harkrader and Ross, which merged with my present firm in 1987.

The firm's records show that:

- 1) Contrary to Mr. Burke's affidavit, there is no indication that Professor Hill ever worked on any legal matter with Mr. Burke or under his direct or indirect supervision or on assignment for him.
- 2) Professor Hill did perform a brief assignment for another partner more senior to Mr. Burke in the field of law in which Mr. Burke practices. Professor Hill's work was favorably reviewed by that partner.
- 3) There was another first-year African-American woman associate who did work with Mr. Burke during the time described in his affidavit, who was given an unsatisfactory evaluation and who was asked to seek other employment.

At the time set forth in his affidavit, Mr. Burke was a new, quite junior partner in the firm. My recollection is that he had joined the firm only two or three months before Professor Hill. He was not then, or at any time prior to his withdrawal from the firm in 1985, a member of the Associate Development Committee nor was he at any time given authority to act on the firm's behalf to terminate associates.

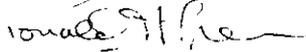
I consider Mr. Burke a friend and regret the necessity of disputing his affidavit. An effort has been made to bring the information from the firm's records to his attention. I hope that he will correct his affidavit but, in any event, I wanted the Committee to have this additional information. If you

PEPPER, HAMILTON & SCHEETZ

Honorable Joseph R. Biden, Jr.
October 21, 1991
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believe it desirable, I am prepared to restate the information in
affidavit form.

Respectfully,

A handwritten signature in dark ink, appearing to read "Donald H. Green", written over a horizontal line.

Donald H. Green

DHG:iar
Encls.

cc: Professor Anita Hill
John Burke, Esquire

Members of the
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

October 13, 1991

Dear Senators,

I worked as a Special Assistant to Clarence Thomas at the EEOC from 1985 to 1986. I am writing because I am amazed and outraged at the "fatherly ambience" that he is getting away with projecting as an image of his office. Let me make it clear: I am not claiming that I was the victim of sexual harassment.

Clarence Thomas pretends that his only behavior toward those who worked as his special assistants was as a father to children, and a mentor to proteges. That simply isn't true. If you were young, black, female and reasonably attractive, you knew full well you were being inspected and auditioned as a female. You knew when you were in favor because you were always at his beck and call, being summoned constantly, tracked down wherever you were in the agency and given special deference by others because of his interest. And you knew when you had ceased to be an object of sexual interest -- because you were barred from entering his office and treated as an outcast, or worse, a leper with whom contact was taboo. For my own part, I found his attention unpleasant, sought a transfer, was told one "just doesn't do that," insisted nonetheless and paid the price as an outcast for the remainder of my employment at EEOC.

I can understand why some of his special assistants are coming forward to his defense: he is the most powerful black man they know and possibly, the most influential they will ever know. They want to retain contact because they will need it to survive and to advance in a very tough world. But the atmosphere of absolute sterile propriety permeated by loving, nurturing but asexual concern is simply a lie. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt about that dimension in Clarence Thomas' office. I have told all of this to Senate staff including the Chairman's staff in the weeks following the nomination. But in light of the importance which both ambience (in his office) and credibility have now assumed in these hearings, I felt obliged to communicate this in writing in order to put this on the record publicly.

Sincerely,


Sukari Hardfield

517 Rock Creek Church Road N.W.
Washington, D.C. 20010

AFFIDAVIT

District of)
)
 Columbia)

Sukari Hardnett, having been duly sworn, make the following statement:

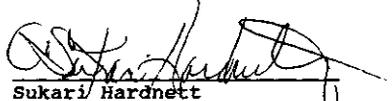
1. I worked as a Special Assistant to Clarence Thomas at the EEOC from 1985 to 1986.
2. I am amazed and outraged at the "fatherly ambience" that he is getting away with projecting as an image of his office.
3. I am not claiming that I was the victim of sexual harassment.
4. Clarence Thomas and those who have testified on his behalf would have us believe that his only behavior toward those who worked as his special assistants was as a father to children, and a mentor to proteges. That simply isn't true.
5. If you were young, black, female, reasonably attractive and worked directly for Clarence Thomas, you knew full well you were being inspected and auditioned as a female.
6. You knew when you were in favor because you were always at his beck and call, being summoned constantly, tracked down wherever you were in the agency and given special deference by others because of his interest.
7. You knew when you had ceased to be an object of sexual interest -- because you were barred from entering his office and treated as an outcast, or worse, a leper with whom contact was taboo.
8. For my own part, I found his attention unpleasant, sought a transfer, was told one "just doesn't do that," insisted nonetheless and paid the price as an outcast for the remainder of my employment at EEOC. That is why I resigned and left the EEOC.
9. Statements made under oath by Clarence Thomas' staff were simply untrue. They asserted I had been dismissed because of failure to pass the bar. Untrue. They characterized my position as a kind of law student internship. Untrue. I held the position of Special Assistant and my desk was located in the Chairman's suite.
10. I believe I understand why some of his special assistants are coming forward to his defense: he is the most powerful black man they know and possibly, the most influential they will ever know. They want to retain contact because they will need it to survive and to advance in a very tough world.
11. But as respects the atmosphere of absolute propriety, they were

either totally unaware of the reality or they engaged in active misrepresentation. It is certainly possible that some were in fact accorded the genuine respect they described.

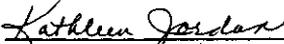
12. To maintain that Clarence Thomas' office was untainted by any sexuality and permeated by loving, nurturing but asexual concern is simply a lie.

13. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt about that dimension in Clarence Thomas' office. I know it. Clarence Thomas knows it. And I know he knows it because he discussed some of the females in his office with me.

14. I have told all of this to Senate staff including the Chairman's staff in the weeks following the nomination. In light of the importance which both ambience (in his office) and credibility have assumed, I felt obliged to communicate this in writing in order to put this on the record publicly.


 Sukari Hardnett
 517 Rock Creek Church Road N.W.
 Washington, D.C. 20010

Subscribed and sworn to
 before me this 14th day
 of October, 1991.


 Notary Public

My commission expires

My Commission Expires October 31, 1994.

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