

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