

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.]