

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