

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.]