

# 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-