

Senator SIMON. Thank you, Mr. Chairman.

Judge Thomas, most of us have made the decision on the basis that you have asked for. There are, I think it is safe to say, a few Members of the Senate who have not made the decision yet, and what is happening here may be the decisive factor. I read in one of the morning newspapers where Senator Brown was quoted as saying, "We have two very credible witnesses." I think there are those who, whether they are reporters in this room or people viewing it on television, have come away with a good impression of both of you; but obviously one person is telling the truth and one is not, and it is difficult to determine that.

And you look at factors that weigh on either side that, in a small way, may be measurable. Let me just outline for you some of these factors, and if you would correct me if I am leaving out anything on your side of the fact. First, that she followed you from one job to another. I understand her statement that the harassing ceased and she needed the job, but she did follow.

Second, the phone calls, 11 phone calls in 7 years. Some of them can be explained, maybe all of them can be, I don't know. And some additional contact with you, limited, but some additional contact. While psychiatrists say for those who have sexual abuse, this is not an uncommon occurrence, nevertheless, it seems to me those weigh on your side.

On the other side is, first of all, the much discussed question of motivation. She is clearly a reluctant witness and, as I sense it, her motivation may be public service. It is very difficult. You can stretch, but it is hard to find other motivation.

Second, the detailed facts that she comes up with could be created, but it is difficult to imagine that. I don't happen to be a fan of lie-detectors, but she volunteered to the FBI that she would take a lie-detector test. I don't find generally that people who are not telling the truth volunteer to take lie-detector tests.

Finally, she experienced stomach pains only one time in her life, due to job stress, she says, and her physician at least apparently partially confirms, and that was during this period that she was working for you.

Now, none of these factors alone is enough, and maybe in combination they are not enough. But what would you say to my colleagues in the Senate who are trying to weigh this thing and say what are some more objective criteria that can be used, as you weigh this?

Judge THOMAS. Senator, I don't think there are objective criteria in weighing evidence. That is why you have rules of evidence and procedures in courts of law. This is not a court of law. That is why you have judges and finders of fact. That is why you have a careful review process. That is why you have statutes of limitations. That is why you have cross-examination by experienced trial counsel. That is why you have precedents. That is why you have a judicial system.

Senator SIMON. Let me ask you another question about the process. If you were on this committee and we came up with another similar situation, would we be better off having such a hearing in executive session, without cameras, without reporters, without television sets in executive session?

Judge THOMAS. Senator, I think you should in these instances trust the FBI or experienced investigators. If you don't like their reports, I think you should stop relying on them. I don't think that this body can serve as a judicial system.

Senator SIMON. But we have to make judgments.

Senator THOMAS. I don't think that this body can serve—this is a political body, I don't think it can serve as a judicial system.

Senator SIMON. I guess, again, the FBI does not draw conclusions, as you know, as you have seen FBI reports, and we have to make judgments and I don't think the—I don't know how we are going to improve the process.

Judge THOMAS. I think that this is clearly wrong.

Senator SIMON. I think we are in agreement that the process has to be improved.

Judge THOMAS. No, Senator, in the strongest terms, this process can only go in one direction and that is improvement. This is clearly wrong.

Senator SIMON. I have no further questions, Mr. Chairman.

The CHAIRMAN. The Senator from Colorado, Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Specter has already asked questions. If he has any more, we will go to him later.

Senator BROWN. In trying to review what we have had before us, it strikes me that we have taken on a question that, by any measure, is very difficult. It is not just that we have had two very persuasive people before us, but I have tried to make some notes as to what it is we are looking at. We are looking at a very serious charge. We are looking at a charge about activities, about very repugnant statements of an extreme nature, and the case is one where there are no witnesses.

Normally, when you have a disagreement, you have got some witnesses, but we don't have any witnesses here. There is no documentation here. There is nothing we can check, in terms of the documents, because there are no documents that were made up at the time. There was no notification. Normally, with an event like this occurred, someone would bring a charge and there would be a notice to the person who is accused. There is no notification here.

We are looking at a charge that is 10 years old. It wasn't done yesterday, it wasn't done last week, it wasn't done 6 months ago or 5 years ago, it was done 10 years ago. That is some 20 times beyond the statute of limitations. The statute of limitations, as I understand it, is a number of days, or in some events as long as 6 months. This is 20 times the statute of limitations.

Basically, what we are called upon to prove or you are called upon to prove is a negative. You are called upon to prove that 10 years ago you didn't do something. I am not sure how you do that. I am not sure how you prove a negative.

One thing I guess that does come to mind is that you could call in every woman that has worked closely with you and show this committee whether or not you have exhibits that type of activity with others. That is, it is difficult to prove a negative, but that is one thing to do. As I understand our rules, we have requested that those women be called in, and the committee has not allowed that. I don't fault the chairman with that. I believe the chairman has