

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

tried very hard to be fair. We do have time limitations. Nevertheless, we are faced with trying to prove this question and not be able to listen to them.

Now, I also followed up with a letter to ask that we at least require the FBI to take statements from these women who we don't have time to hear, and that request was turned down by this committee. I think that evidence is important and should be taken, but that evidence was turned down by this committee. I have asked and the chairman has allowed to allow statements, if these women want to make them, to be entered in the record, and I think that will be helpful.

I have also asked that the staffers who there is reason to believe has evidence to offer here be called. In talking with Professor Hill and in listening to her testimony, it became very clear that the reason she came forward with these charges is because these staffers told her there were rumors about sexual harassment and there was an implication that she was involved in those rumors, and part of the reason I believe she came forward was in response to the stories they told her, and to not take that testimony I just think is wrong. We have made that point and that request has been turned down.

The bottom line I think is it is tough to decide this case. I think there are two avenues that we can look at: One, if the event took place, what kind of conduct would it have engendered in her and what kind of conduct would it have engendered in you. I haven't got a complete list, but I think there is a possibility, if the very severe conduct took place, that it could have resulted in a complaint from her. It did not. No complaint was made. Is that determinate? No. There are certain reasons that complaints would not be brought forth, but it is one question to look at.

No notes were made of the incident. There was no effort at the time of the incident to find another job. There was no effort at the time of moving to the EEOC to find another job. Even though she indicated that she didn't want to continue on, she made no effort to check for another job at the Department of Education or in the private sector.

Even after the incident, there was no effort to cut off contacts, either in terms of finding another job or in terms of even, after having left the job, contacts continued. Now, it strikes me that the incident, as vile as it is described, took place, that there may well be a reason to not continue contacts.

There was no mention of these charges when you were up for confirmation in 1982. There was no mention of these charges when you were up for re-confirmation in 1984. No one came forward. There was no mention of these charges when you were up for confirmation for the Circuit Court of Appeals.

There are even some reports that have come of her praise of you after the incidents. Now, none of these by themselves determine the issue, but all of them I think bear on the question of whether or not it happened. Because if it did happen, as vile conduct as is described, it surely must have affected these nine specific examples, and I suspect more.

That brings me to what I hope you will search your mind for: It strikes me, if this incident happened, it would not only affect her

conduct toward you, but it would affect your conduct toward her. What is alleged is that you repeatedly asked her out and she refused. What is alleged is that you uttered very vile words, and she did not react the way you wished her to.

I would like you, if you are willing, to itemize for us decisions you had to make about Professor Hill in terms of job references, in terms of retention for jobs, in terms of pay, in terms of evaluation, in terms of references, and in terms of assistance, what did you do in terms of your conduct after this alleged event took place.

Judge THOMAS. Senator, my treatment of Anita Hill was consistent throughout. As I have indicated, her allegations are false. She repeatedly received promotions, as scheduled, as far as I can remember. In fact, she may have been promoted on an accelerated basis. Her assignments, for her age and experience at that time, I think were fairly aggressive.

I certainly made sure that when she decided to leave, that I assisted her and I have kept contact with her, not on a regular basis, but certainly returned her calls and, whenever she needed help, responded to that. That is during and after. My conduct is consistent with my treatment of all of my special assistants, particularly those who do a good job. There is nothing in my conduct toward her that would indicate any negative events.

Her conduct toward me over the years has been precisely the same, it has always been warm and cordial, professional. This is the first I have heard of any allegations and, certainly, as I have indicated, or two and a half weeks ago, certainly as I indicated, it did not occur. But my conduct toward her is the same as my conduct toward my other special assistants who were successful or who performed well.

I would look for, if these events had happened, some disparity in that, and there is no disparity in that. My relationship with her I think at this time or prior to this event was pretty much the same as my relationship with my other former special assistants.

Senator BROWN. Is there anything you can think of in your conduct that would suggest you retaliated?

Judge THOMAS. Absolutely not, Senator.

Senator BROWN. I yield back. Thank you.

The CHAIRMAN. Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

Judge, all of our hearts and our concerns and our sympathies go out to you and your family, for the travail which you have undergone here, and I think it is important to recognize that it is a collective travail—that extends to institutions of government, the American people and Anita Hill. This has been a very damaging affair and many, many people have gotten hurt. I don't know as there is anybody in our country who has been helped by this unhappy situation.

I would like to offer the observation and get your response to it, that, regardless of all the other reasons that brought us here—including things like leaks which should not have occurred—there is a single most important reason without which we would not be here today, and that is Professor Hill, an African-American, hired by you, trained by you, promoted by you, a person that you have