

Senator LEAHY. You mean this one?

Ms. HILL. Not this one, but the prior one.

Senator LEAHY. Had you been contacted in the prior one?

Ms. HILL. I had not been contacted in the prior one.

Senator LEAHY. But you were contacted in this one?

Ms. HILL. I was contacted in this one, yes.

Senator LEAHY. I realize—and my time is virtually up—this requires speculation and you can or cannot answer as you see fit, but had you not been contacted would you have come forward on this occasion?

Ms. HILL. I cannot say that I would have.

Senator LEAHY. Mr. Chairman, I have a lot more questions, but my time is up and I will stop there.

Thank you.

The CHAIRMAN. We will give you an opportunity, Senator, to complete those.

Senator LEAHY. Thank you.

The CHAIRMAN. We now recognize the Senator from Pennsylvania, Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Hill, there is a report in the Kansas City Star of October 8, 1991, that says in an August interview with the Kansas City Star, Anita Hill offered some favorable comments regarding Clarence Thomas and some criticism. And then further on it says, quoting you, "judicial experience aside, the Clarence Thomas of that period"—referring to his days in EEOC early—"would have made a better judge on the Supreme Court because he was more open-minded."

Now, how is it that you would have said that Judge Thomas, in his early days at EEOC would have made a better judge, at least an adequate judge, considering all of the things you have said that he told you about, at the Department of Education and also at EEOC?

Ms. HILL. That opinion, Senator, was based strictly on his experience, his ability to reason. It was not based on personal information which I did not see fit to share with that reporter. I was trying to give as objective an opinion as possible and that's what that statement is based on.

In addition, very early on, I believe I was commenting on his time at Education. Very early on at Education I was not experiencing the kinds of things that I later experienced with Judge Thomas.

Senator SPECTER. But when you make a statement in August 1991 and say, that "judicial experience aside, the Clarence Thomas of that period would have made a better judge on the Supreme Court because he was more open-minded" you are making a comparison as to what Judge Thomas felt judicially early on before he changed his views on affirmative action. So that is the reference to, at that period.

But when you say that Judge Thomas would have made a better Supreme Court Justice, you are saying that, at one stage of his career, he would have made an adequate Supreme Court Justice.

Ms. HILL. Well, I am not sure that that's what I am saying at all. I am sure that what I was trying to give to that reporter was my

assessment of him objectively without considering the personal information that I had. Now, if I had said to him, I don't think he would have made a good judge because of personal information that I have, then I think I would have had to explain that or at least created some innuendo that I was not ready to create.

In addition, I think as a university professor, quoted as a university professor you have some obligation to try to make objective statements. And that's what I was doing. I was attempting to make an objective statement about the individual based on his record as a public figure and I was not relying on my own private understanding and knowledge.

Senator SPECTER. Well, let's take it the way you have just re-explained it. An objective evaluation, without considering personal information, as a law school professor to make a comment, on his record as a public figure. How could you conclude, in any respect, that he would be appropriate for the Court even if you say that was without considering the personal information, if you had all of this personal information?

Ms. HILL. I did not say that he would be appropriate for the Court, Senator. I said that he would make a better judge. I did not say that I would consider him the best person for the Supreme Court.

Senator SPECTER. Well, when you say he would have made a better judge at one point, are you saying that there is not an explicit recommendation or statement that, as you said earlier, on the basis of his intellect, aside from the personal information that you decided not to share, that he would have been a better Supreme Court Justice?

Ms. HILL. I am sorry, would you rephrase that?

Senator SPECTER. Sure. Isn't the long and short of it, Professor Hill, that when you spoke to the Kansas City Star reporter, that you were saying, at one point in his career he would have been OK for the Supreme Court?

Ms. HILL. No.

[Pause.]

Senator SPECTER. What were you saying as to Judge Thomas' qualifications for the Supreme Court when you spoke to the reporter in August?

Ms. HILL. We were speaking in terms of his being openminded. One of the comments that the reporter made was that some have complained that he has a set ideology and that he won't be able to review cases on their own. My comment went to whether or not he did have that set ideology and it was that now he did, whereas a few years ago, I did not find that to be so.

I found him to be more openminded. So in that sense, I believe that he was better suited for a judicial position at that time, than now. And that's all that I was referring to, that particular comment or my concern about the nominee's qualifications for being on the Court.

Senator SPECTER. Well, it is certainly true, Professor Hill, that your statement has a comparative that Judge Thomas would have been a better judge of the Supreme Court at an earlier point in his career, but if you stand on your statement that this interview does

not contain a recommendation for Judge Thomas, so be it. Is that your position?

Ms. HILL. Yes, it does, that is my position.

Senator SPECTER. Did you ever maintain any notes or written memoranda of the comments that Judge Thomas had made to you?

Ms. HILL. No, I did not.

Senator SPECTER. In your statement and in your testimony, here, today, you have said that you were concerned that "Judge Thomas might take it out on me by downgrading me, or by not giving me important assignments. I also thought that he might find an excuse for dismissing me."

As an experienced attorney and as someone who was in the field of handling sexual harassment cases, didn't it cross your mind that if you needed to defend yourself from what you anticipated he might do that your evidentiary position would be much stronger if you had made some notes?

Ms. HILL. No, it did not.

Senator SPECTER. Well, why not?

Ms. HILL. I don't know why it didn't cross my mind.

Senator SPECTER. Well, the law of evidence is that notes are very important. You are nodding yes. Present recollection refreshed, right?

Ms. HILL. Yes, indeed.

Senator SPECTER. Prior recollection recorded, right?

Ms. HILL. Yes.

Senator SPECTER. 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 your 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. Maybe I made the wrong choice in not making the notes. I am not a person—I was not interested in any litigation. I was not interested. If I had been dismissed, very likely I would have just gone out and tried to find another job. I was not interested in filing a claim against him, and perhaps that is why it did not occur to me to make notes about it.

Senator SPECTER. Well, I am not on the point of your being interested in making a claim. What I am on the point of is your statement that you were concerned that he might take retaliatory action against you, and therefore the inference arises that the notes would have been something which would have been done by an experienced lawyer.

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 was, 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, so I did do that in order to protect

myself, but I did not write down any of the comments or conversations.

Senator SPECTER. Well, when you comment about documenting your work to protect yourself because of concern of being fired, wouldn't the same precise thought about documentation have led you to document Judge Thomas' statements to you?

Ms. HILL. Well, I was documenting my work so that I could show to a new employer that I had in fact done these things. I was not documenting my work so that I could defend myself or to present a claim against him.

Senator SPECTER. Well, why would you need to document with precision the time the assignment came in and the time you completed the work for a new employer? Wouldn't that kind of documentation really relate to the adequacy and speed of your work at EEOC, contrasted with a finished product which you could show to a new prospective employer?

Ms. HILL. I'm sorry. I don't quite understand your question. Are you saying that the new employer would not be interested in knowing whether or not I turned my work around quickly?

Senator SPECTER. What is the relevancy as to when you got the assignment and how fast you made it, for a new employer?

Ms. HILL. Because it goes to whether or not I was slow in turning around the work product in a very fast-paced job situation.

Senator SPECTER. Professor Hill, as you know, the statute of limitations for filing a case on sexual harassment is 180 days, right?

Ms. HILL. Yes.

Senator SPECTER. A very short statute of limitations because of the difficulty of someone defending against a charge of sexual harassment, right?

Ms. HILL. Well, it is a short turnover time. I am not quite sure exactly why it is that short. That is one of the reasons that it is so short.

Senator SPECTER. Well, you are an expert in the field. *Delaware State College v. Ricks*, 101 Supreme Court Reporter, in 1980, *Johnson v. Railway Express Agency*, 421 U.S. Reports, comment about the short period of limitations because of the difficulty of defending against a charge of sexual harassment.

Ms. HILL. Yes, but I don't believe either of those cases say that that is the only reason. And let me clarify something: I consider myself to be an expert in contracts and commercial law, not an expert in the field of sexual harassment or EEO law. I don't even teach in that area any more.

Senator SPECTER. Well, you did teach civil rights law?

Ms. HILL. Yes, at one point.

Senator SPECTER. You taught civil rights law after 1980, right?

Ms. HILL. Yes, I have.

Senator SPECTER. Well, all right, it is one of the reasons for having a short period of limitations, to give someone an opportunity to defend himself against a charge of sexual harassment because they are hard to defend.

Ms. HILL. Certainly.

Senator SPECTER. The statute of limitations in a contract case is 6 years?

Ms. HILL. Well, in some States.

Senator SPECTER. Some States, 6 years?

Ms. HILL. The statute of limitations is not set. It is not a set thing. It varies from State to State.

Senator SPECTER. The Federal statute of limitations on crimes is 5 years?

Ms. HILL. I am not a criminal expert. I don't know.

Senator SPECTER. Do you know of any statute of limitations which is as short as 6 months, besides sexual harassment cases?

Ms. HILL. Do I know of any?

Senator SPECTER. Yes.

Ms. HILL. No, not offhand.

Senator SPECTER. Well, in the context of the Federal law limiting a sexual harassment claim to 6 months because of the grave difficulty of someone defending themselves in this context, what is your view of the fairness of asking Judge Thomas to reply 8, 9, 10 years after the fact?

Ms. HILL. I don't believe it is unfair. I think that that is something that you have to take into account in evaluating his comments.

Senator SPECTER. I had asked you this morning, Professor Hill, about a statement which was made by Ms. Barry, and I had asked you then in the context of your saying that she didn't know you and you didn't know her. You then expanded that to say that she didn't know your social life, but you did say that she had an opportunity to observe you and Judge Thomas at EEOC. I want to come back to that for just a moment, because the New York Times says this: "In an interview, Ms. Barry suggested that the allegations were a result of Ms. Hill's disappointment and frustration that Mr. Thomas did not show any sexual interest in her."

Now, aside from saying that Ms. Barry doesn't know about you on the social side, what about the substance of what Ms. Barry had to say?

Ms. HILL. What exactly are you asking me?

Senator SPECTER. Well, I will repeat the question again.

Was there any substance in Ms. Barry's flat statement that, "Ms. Hill was disappointed and frustrated that Mr. Thomas did not show any sexual interest in her"?

Ms. HILL. No, there is not. There is no substance to that. He did show interest, and I have explained to you how he did show that interest. Now she was not aware of that. If you are asking me, could she have made that statement, she could have made the statement if she wasn't aware of it. But she wasn't aware of everything that happened.

Senator SPECTER. Professor Hill, do you know a man by the name of John Doggett?

Ms. HILL. Pardon me?

Senator SPECTER. A man by the name of John Doggett?

Ms. HILL. John Doggett?

Senator SPECTER. John Doggett III.

Ms. HILL. Yes, I have met him.

Senator SPECTER. I ask you this, Professor Hill, in the context of whether you have any motivation as to Judge Thomas. What was your relationship with Mr. Doggett?

Ms. HILL. I don't recall. I do not recall. We were friends, but I don't—it wasn't anything. I just don't know.

Senator SPECTER. Well, before I pursue this question, I will give you a copy of his statement, give you an opportunity to read it before I ask you about that, and I will do that at a break.

Ms. HILL. Thank you.

Senator SPECTER. How close were you to Dean Charles Kothe of the Oral Roberts Law School?

Ms. HILL. He was the dean of the law school. I was there for a year. I believe he was the dean for a year while I was there. We worked together.

Senator SPECTER. One of the comments which was made by Dean Kothe related to your voluntarily driving Judge Thomas to the airport on an occasion when he came to speak at Oral Roberts Law School. My question is that in a context where you had responded to some people who asked you to make inquiries of Judge Thomas, in a context of his having said these things to you as you represent, being violations of the Civil Rights law, constituting sexual harassment, given that background, why would you voluntarily agree to drive Judge Thomas to the airport?

Ms. HILL. I really don't recall that I voluntarily agreed to drive him to the airport. I think that the dean suggested that I drive him to the airport, and that I said that I would. But at any rate, one of the things that I have said was that I intended to—I hoped to keep a cordial professional relationship with that individual, and so I did him the courtesy of driving him to the airport.

Senator SPECTER. Well, when you say you wanted to maintain a cordial professional relationship, why would you do that, given the comments which you represent Judge Thomas made to you, given the seriousness of the comments, given the fact that they violated the Civil Rights Act? Was it simply a matter that you wanted to derive whatever advantage you could from a cordial professional relationship?

Ms. HILL. It was a matter that I did not want to invoke any kind of retaliation against me professionally. It wasn't that I was trying to get any benefit out of it.

Senator SPECTER. Well, you say that you consulted with him about a letter of recommendation. That would have been a benefit, wouldn't it?

Ms. HILL. Well, that letter of recommendation was necessary. The application asked for a recommendation from former employers.

Senator SPECTER. Judge Thomas testified at some length this morning about his shock and dismay and anger, and specified a group of facts which he said in effect undercut your credibility: when you moved with him from the Department of Education to EEOC; when you went with him voluntarily, and I take it it was voluntary, to go to a speech which he made at Oral Roberts Law School; when you contacted him about the speech at the University of Oklahoma; when you asked him for his guidance and his advice.

Would you say, Professor Hill, that all of those contacts and the continuation of a cordial professional association, relationship, have no bearing at all on your representation that he made these disgusting comments to you and was guilty of sexual harassment in violation of the Civil Rights Act?

Ms. HILL. I wouldn't say that they have no bearing, but I believe that I have explained a number of those factors. I talked to you about why I went to the EEOC. I talked to you about—would you list those again? I have forgotten what representations you are suggesting.

Senator SPECTER. Well, I know that you have explained or given an explanation as to why you moved from the Department of Education to EEOC, and I know you have an explanation for the Oklahoma University invitation, but nonetheless you called him. I know you have an explanation for the Oral Roberts incident.

But in seeking to evaluate the credibility between you and Judge Thomas, I am asking, and I think you have already answered it, that it does have some relevancy as to whether you would maintain over a long period of time this cordial association if he had been so disgusting to you, had victimized you with sexual harassment and had violated the Civil Rights Act.

Ms. HILL. Well, the things that occurred after I left the EEOC, occurred during a time—any matter, calling him up from the university—occurred during a time when he was no longer a threat to me of any kind. He could not threaten my job; he already had tenure there. He could not threaten me as he had, implicitly at least, at the EEOC; I was no longer working with him at the EEOC. So I was removed from the harassment at that point. I did not feel that it was necessary to cut off all ties or to burn all bridges or to treat him in a hostile manner.

Moreover, I think that if I had done that, I would have had to explain in this, this whole situation that I have come for today. I think what one has to do is try to put oneself in the situation that I was in, and I think it is not an atypical situation. Perhaps all of those things, if you look at them without any explanation, might suggest that there was no harassment, but there is an explanation for each of those things. And given the judgment that I made at the time, that I did want to maintain some cordial but distant relationship, I think that there is no contradiction in what I am saying and those actions.

Senator SPECTER. All right. I am prepared to leave it at that. There is some relevancy to that continuing association questioning your credibility, but you have an explanation. I will leave it at that.

I want to ask you about one statement of Charles Kothe, Dean Kothe, because he knew you and Judge Thomas very well. I want to ask you for your comment on it. There is a similar reference in the Doggett statement which I am not going to ask you about because you haven't read the Doggett statement and you say you do not remember him. Out of fairness I want to give you a chance to read that first, but you do know Dean Kothe and he does know Judge Thomas.

And this is his concluding statement: "I find the references to the alleged sexual harassment not only unbelievable but preposterous. I am convinced that such are the product of fantasy." Would you care to comment on that?

Ms. HILL. Well, I would only say that I am not given to fantasy. This is not something that I would have come forward with, if I were not absolutely sure about what it is I am saying. I weighed

this very carefully, I considered it carefully, and I made a determination to come forward. I think it is unfortunate that that comment was made by a man who purports to be someone who says he knows me, and I think it is just inaccurate.

Senator SPECTER. Well, you have added, during the course of your testimony today, two new witnesses whom you made this complaint to. When you talked to the FBI, there was one witness, and you are testifying today that you are now "recalling more," that you had "repressed a lot." And the question which I have for you is, how reliable is your testimony in October 1991 on events that occurred 8, 10 years ago, when you are adding new factors, explaining them by saying you have repressed a lot? And in the context of a sexual harassment charge where the Federal law is very firm on a 6-month period of limitation, how sure can you expect this committee to be on the accuracy of your statements?

Ms. HILL. Well, I think if you start to look at each individual problem with this statement, then you're not going to be satisfied that it's true, but I think the statement has to be taken as a whole. There's nothing in the statement, nothing in my background, nothing in my statement, there is no motivation that would show that I would make up something like this. I guess one does have to really understand something about the nature of sexual harassment. It is very difficult for people to come forward with these things, these kinds of things. It wasn't as though I rushed forward with this information.

I can only tell you what happened, to the best of my recollection what occurred and ask you to take that into account. Now, you have to make your own judgments about it from there on, but I do want you to take into account the whole thing.

Senator SPECTER. Well, I will proceed with the question of motivation on my next round, because the red light is now on.

The CHAIRMAN. Thank you very much, Senator.

There is one-half hour still to use. I am going to yield the bulk of it to Senator Heflin, but I am going to ask for just a few minutes.

Would you prefer a break?

Ms. HILL. No.

The CHAIRMAN. Because you have been sitting there a long time.

Ms. HILL. I will take a break. I need to read the statement from Mr. Doggett.

The CHAIRMAN. Well, we are not going to go to Mr. Doggett now. Before we get back to Senator Specter, we will break and give you an opportunity to read that statement, which, I might add, we are reading for the first time ourselves.

Ms. HILL. OK.

The CHAIRMAN. But we are not going to break now, so there will be order. Order in here. We will break after Senator Heflin and I ask our questions, and then we will give you time to read the statement, and, as I said, give all us time to read the statement, because the statement is news to me as well as the rest of the committee, other than Senator Specter.

Senator Specter and all of us acknowledge that there is a need to understand the nature of sexual harassment and the way in which people respond to that harassment.