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S. HRG. 102-1084/PJ-4/ERRATA-2

S. HRG. 102-1084, Pt. 4

[ERRATA]

**NOMINATION OF JUDGE CLARENCE THOMAS TO
BE ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES**

GOVERNMENT

Storage



HEARINGS

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

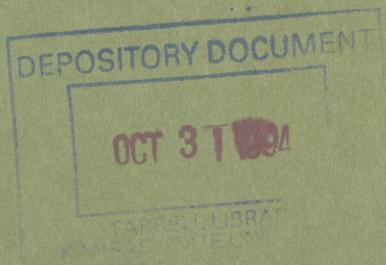
THE NOMINATION OF CLARENCE THOMAS TO BE ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES

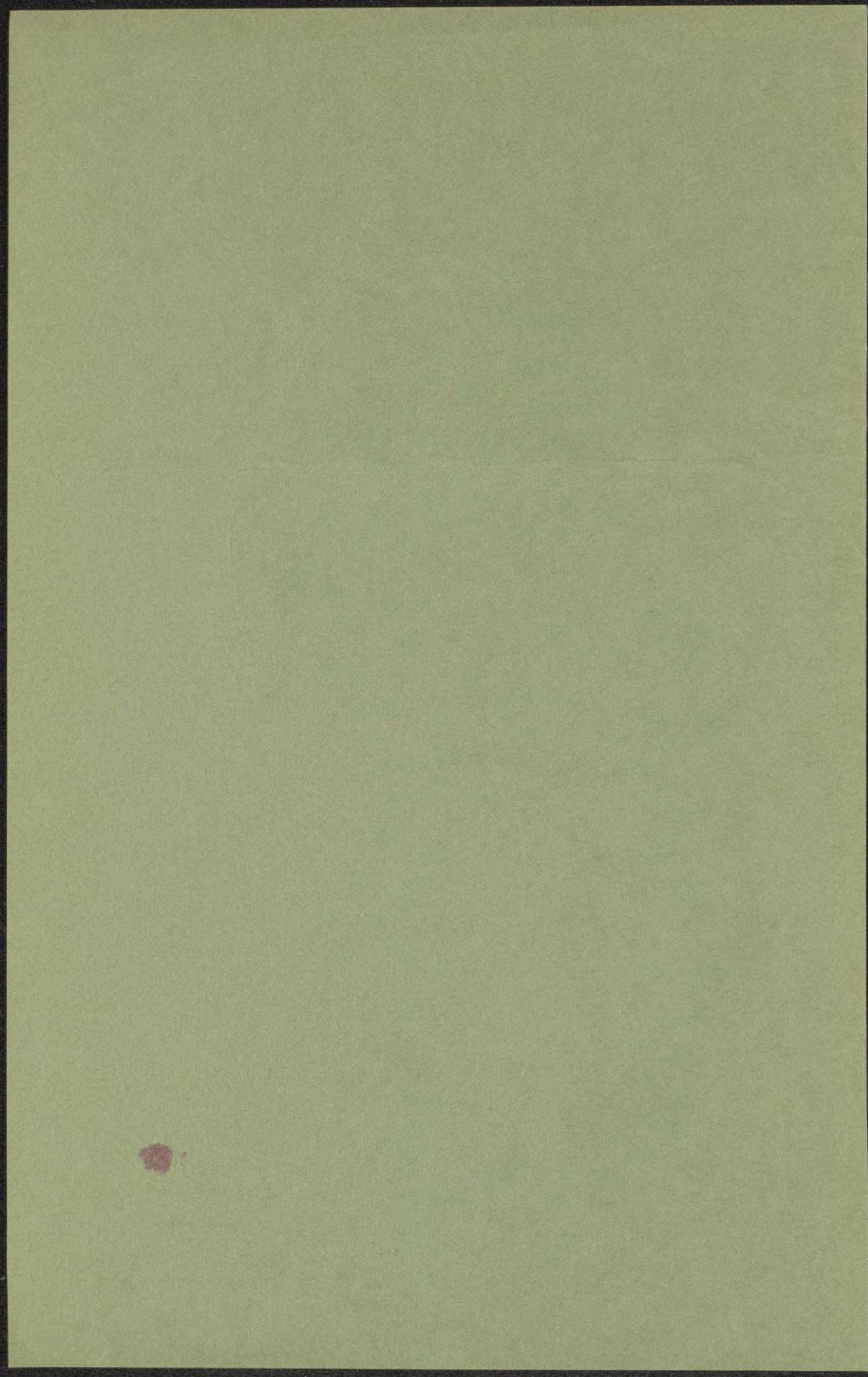
OCTOBER 11, 12, AND 13, 1991

Part 4 of 4 Parts

J-102-40

Printed for the use of the Committee on the Judiciary





[ERRATA]

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ERRATA

Material in this publication was inadvertently omitted from S. Hrg. 102-1084, part 4, "Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States."

This publication is intended to supplement that record.

CONTENTS

HEARINGS HELD

	Page
Friday, October 11, 1991	1
Saturday, October 12, 1991	191
Sunday, October 13, 1991	271

OPENING STATEMENTS OF COMMITTEE MEMBERS

Biden, Chairman Joseph R., Jr	1
Thurmond, Hon. Strom	4

FRIDAY, OCTOBER 11, 1991

CHRONOLOGICAL LIST OF WITNESSES

Thomas, Judge Clarence, of Georgia, to be Associate Justice of the U.S. Supreme Court	5, 157
Hill, Anita F., professor of law, University of Oklahoma, Norman, OK	36

ALPHABETICAL LIST AND SUBMITTED MATERIAL

Biden, Chairman Joseph R., Jr.: Biographical information of Ms. Anita F. Hill	31
Hatch, Hon. Orrin G.: Excerpts of telephone logs of Judge Thomas from 1983 to 1991	169
Heflin, Hon. Howell: Several newspaper articles	138
Hill, Anita F.: Testimony	36
Prepared statement	41
Simpson, Hon. Alan K.: Federal Bureau of Investigation report of Anita F. Hill, dated Oct. 11, 1991	125
Thomas, Judge Clarence: Testimony	5
Prepared statement	11

SATURDAY, OCTOBER 12, 1991

WITNESS

Thomas, Judge Clarence, of Georgia, to be Associate Justice of the U.S. Supreme Court	191
---	-----

ADDITIONAL MATERIAL

Hatch, Hon. Orrin G.: Article from the Washington Post, by Juan Williams, entitled "Open Season on Clarence Thomas"	208
---	-----

SUNDAY, OCTOBER 13, 1991

CHRONOLOGICAL LIST OF WITNESSES

Panel consisting of: Ellen M. Wells, project manager, American Welfare Association, Washington, DC; John W. Carr, Esq., New York, NY; Susan Hoerchner, Worker's Compensation Judge, Norwalk, CA; and Joel Paul, associate professor, American University Law School, Washington, DC	273
---	-----

Panel consisting of: J.C. Alvarez, River North Distributing, Chicago, IL; Nancy E. Fitch, Philadelphia, PA; Diane Holt, management analyst, Office of the Chairman, Equal Employment Opportunity Commission, Washington, DC; and Phyllis Berry-Myers, Alexandria, VA	337
Panel consisting of: Stanley Grayson, vice president, Goldman Sachs Law Firm, New York, NY; Carlton Stewart, Stewart Law Firm, Atlanta, GA; John N. Doggett III, management consultant, Austin, TX; and Charles Kothe, former dean, Oral Roberts University Law School	428
Panel consisting of: Patricia C. Johnson, Director of Labor Relations, Equal Employment Opportunity Commission; Linda M. Jackson, social science research analyst, EEOC; Janet H. Brown, former press secretary of Senator John Danforth; Lori Saxon, former assistant for congressional relations, Department of Education; Nancy Altman, formerly with Department of Education; Pamela Talkin, former chief of staff, EEOC; Anna Jenkins, former secretary, EEOC; and Constance Newman, director, Office of Personnel Management	586

ALPHABETICAL LIST AND SUBMITTED MATERIAL

Altman, Patricia C.: Testimony	590
Alvarez, J.C.: Testimony	337
Biden, Chairman Joseph R., Jr.:	
Letter to Ms. Angela Wright, a potential witness	440
Telephone interview of Angela Wright	442
Telephone interview of Rose Jourdain	512
Berry-Myers, Phyllis: Testimony	344
Brown, Janet H.: Testimony	588
Carr, John W.: Testimony	274
Doggett, John N., III: Testimony	431
Fitch, Nancy E.: Testimony	342
Grayson, Stanley: Testimony	436
Hoerchner, Judge Susan: Testimony	276
Holt, Diane: Testimony	343
Jackson, Linda M.: Testimony	587
Jenkins, Anna: Testimony	590
Johnson, Patricia C.: Testimony	586
Kennedy, Hon. Edward M.:	
Polygraph test information	389
Repeat of previous testimony re perjury	390
Kothe, Charles: Testimony	428
Metzenbaum, Hon. Howard M: Letter to Chairman Biden in support of witness Anita Hill	420
Newman, Constance:	
Testimony	591
Prepared statement	593
Paul, Joel: Testimony	277
Saxon, Lori: Testimony	589
Simpson, Hon. Alan K.: Letter to Chairman Biden, from Andrew S. Fishel, Managing Director, Federal Communications Commission, dated Oct. 10, 1991, stating some of Ms. Hill's testimony was untrue	416
Stewart, Carlton: Testimony	435
Talkin, Pamela:	
Testimony	598
Prepared statement	599
Wells, Ellen M.: Testimony	273

APPENDIX

Responses of nominee to written question by:	
Biden, Chairman Joseph R., Jr.	606, 609
Levin, Hon. Carl	612
Byrd, Hon. Robert	616
Prepared statements, letters, and other correspondence:	
Thomas C. Grey, professor, Stanford Law School, Stanford, CA, revised testimony	618
Letters of support of the nominee from the native American community ...	624
Letter in opposition to the nominee signed by several constitutional law professors and law school deans	637

Prepared statements, letters, and other correspondence—Continued		Page
Article by Vincent J. Samar, attorney, Chicago, IL, re natural law		644
Christian Methodist Episcopal Church, Senior Bishop C.D. Coleman		649
Iowa Jima Black Veterans, Chairman Frederick D. Gray		651
Instituto Puertorriqueno de Derechos Civiles, Ralph Rivera, general coordinator		653
The National Federation of Business and Professional Women's Clubs, Inc., Pat Taylor, president		668
Catholics for a Free Choice, Dr. Anthony Battaglia, a report on natural law		673
Bobby B. Stafford, Esq., of Raby & Stafford, Alexandria, VA		687
National Committee on Pay Equity, Claudia E. Wayne, executive director		692
The Center for Law and Social Justice of Medgar Evers College		705
Coalitions for America		719
"A Unique Contribution to America"		725
"A Response to Judge Thomas' Critics"		740
Organizations supporting Clarence Thomas' nomination		775
Lawyers for a Democratic Alternative, Andrew A. Rainer, chair		778
John Hope Franklin, professor of legal history, Duke University Law School		783
Federal Focus, Inc., Michael J. O'Bannon, president		785
Rev. Maurice Dawkins, Port of Spain, Trinidad & Tobago		793
National Committee for Constitutional Integrity, John B. Minnick, co-chairman		808
Kenneth S. Tolleff, professor, Howard University		816
Organization of Chinese Americans, Inc.		819
United Electrical, Radio and Machine Workers of America, Robert Kingsley, political action director		824
D.C. Black Republican Scholarship Fund, Inc., Connie Mack Higgins, chairman		826
International Narcotic Enforcement Officers Association, Inc., John J. Bellizzi, executive director		836
California Women Lawyers, Anne D. McGowan, president		884
Hon. Patsy T. Mink, U.S. Representative		846
J. Clay Smith, Jr., professor, Howard University Law School		851
The Nationalist Movement, Richard Barrett, Learned, MS		929
Hon. Robert Abrams, attorney general, State of New York		941
Alfred W. Blumrosen, professor, Rutgers Law School		947
Hon. J. Radley Herold, judge, county court of the county of Westchester, NY		966
Samuel L. Evans, Philadelphia, PA		978
National Education Association		990
National Council of Jewish Women, Joan Bronk, president		998
Elizabeth Holtzman, comptroller, city of New York		999
Age Discrimination Victims Reparations Registry		1001
Asian-American Legal Defense and Education Fund		1006
Lawyers for the Judiciary		1011
U.S. Justice Foundation, Gary G. Kreep, executive director		1015
Donald H. Green, of Pepper, Hamilton & Scheetz, Washington, DC		1019
Sukari Hardnett, former special assistant, EEOC		1022

COLLOQUY

Biden, Chairman Joseph R., Jr.:

Alvarez, J.C.	366-367, 380, 427
Berry-Myers, Phyllis	364, 367-368, 380, 409, 427
Carr, John W.	282-283, 297-298, 325-329
Doggett, John N., III	556-560, 565-569
Fitch, Nancy E.	365-366, 370-373, 380-381, 425-427
Hill, Anita F.	36, 49-58, 62-63, 84-87, 93, 95-96, 106, 127, 157
Hoerchner, Judge Susan	279-282, 285, 325, 327, 329
Holt, Diane	364, 367, 380-381, 427
Kothe, Charles	560-561
Paul, Joel	278-279, 284-285, 302, 325-328
Thomas, Judge Clarence	188-189, 215-227, 237, 243-244, 252-253, 266-270
Wells, Ellen M.	283-284, 325-329

VI

	Page
Brown, Hon. Hank:	
Alvarez, J.C.	411-413
Berry-Myers, Phyllis.	411-413
Carr, John W.	308
Doggett, John N., III.	584
Fitch, Nancy E.	411-412
Hill, Anita F.	131-133
Hoerchner, Judge Susan.	308
Holt, Diane.	411-413
Kothe, Charles.	583
Paul, Joel.	308
Stewart, Carlton.	584
Thomas, Judge Clarence.	260-262
Wells, Ellen M.	308
DeConcini, Hon. Dennis:	
Alvarez, J.C.	406-407
Berry-Myers, Phyllis.	406-407
Carr, John W.	309
Doggett, John N., III.	437
Fitch, Nancy E.	405, 407
Hill, Anita F.	120-123, 255-257
Hoerchner, Judge Susan.	310-311
Holt, Diane.	405, 407
Kothe, Charles.	436-437
Paul, Joel.	311
Wells, Ellen M.	310
Grassley, Hon. Charles E.:	
Alvarez, J.C.	377-378
Berry-Myers, Phyllis.	376-378
Carr, John W.	306
Fitch, Nancy E.	377-380
Hill, Anita F.	129-131
Hoerchner, Judge Susan.	306, 329
Holt, Diane.	377-378
Paul, Joel.	306-307, 330
Thomas, Judge Clarence.	258
Wells, Ellen M.	306, 329-330
Hatch, Hon. Orrin G.:	
Alvarez, J.C.	8-9,* 348, 351, 359-362, 408-409
Berry-Myers, Phyllis.	8-9,* 348, 351-352, 357-358, 361-362, 409
Fitch, Nancy E.	8-9,* 348, 351, 358-362, 365, 408-409
Holt, Diane.	8-9,* 346-351, 360, 362-363, 408
Paul, Joel.	331
Thomas, Judge Clarence.	161-169, 180-185, 188-189, 199-207, 211-214, 244, 248-252
Heflin, Hon. Howell:	
Berry-Myers, Phyllis.	354-356
Carr, John W.	299
Hill, Anita F.	87-91, 158-161
Hoerchner, Judge Susan.	298-300
Holt, Diane.	352-354, 356-367
Kothe, Charles.	579
Paul, Joel.	299-300
Thomas, Judge Clarence.	185-188, 239-241
Wells, Ellen M.	299-300
Kennedy, Hon. Edward M.:	
Doggett, John N., III.	575
Hill, Anita F.	118
Kohl, Herbert:	
Alvarez, J.C.	424-425
Berry-Myers, Phyllis.	423-425
Carr, John W.	322-323, 332-333
Fitch, Nancy E.	423
Hill, Anita F.	131
Hoerchner, Judge Susan.	321-323, 332-333

*Page numbers with asterisks refer to pages in Errata publication.

VII

	Page
Kohl, Herbert—Continued	
Holt, Diane	423
Paul, Joel	322-323, 332-333
Thomas, Judge Clarence	262-264
Wells, Ellen M.	322-323, 332-333
Leahy, Hon. Patrick J.:	
Alvarez, J.C.	1-5,* 410
Berry-Myers, Phyllis	2-6*
Carr, John W.	291-293
Doggett, John N., III	575-578
Fitch, Nancy E.	1-6*
Grayson, Stanley	579
Hill, Anita F.	68-77, 112-116, 133-134
Hoerchner, Judge Susan	289-293
Holt, Diane	2-5,* 7-8,* 352, 409
Kothe, Charles	578
Paul, Joel	292-293
Stewart, Carlton	578-579
Thomas, Judge Clarence	191-199, 237-239, 242, 265-266
Wells, Ellen M.	291-293
Metzenbaum, Hon. Howard M.:	
Alvarez, J.C.	376
Berry-Myers, Phyllis	375-376, 419
Doggett, John N., III	562-566, 569
Fitch, Nancy E.	376, 418
Hoerchner, Judge Susan	305
Holt, Diane	376, 418
Thomas, Judge Clarence	236-237
Wells, Ellen M.	304-305
Simon, Hon. Paul:	
Carr, John W.	316-317
Doggett, John N., III	579
Fitch, Nancy E.	413
Hill, Anita F.	128-129
Hoerchner, Judge Susan	316-317
Holt, Diane	413-414
Paul, Joel	317-318
Thomas, Judge Clarence	259-260
Wells, Ellen M.	316-317
Simpson, Hon. Alan K.:	
Alvarez, J.C.	374-375
Berry-Myers, Phyllis	375
Carr, John W.	303
Grayson, Stanley	581-582
Hill, Anita F.	95-96, 127-128
Hoerchner, Judge Susan	303, 324-325, 332
Holt, Diane	373, 375
Paul, Joel	301-303
Stewart, Carlton	580-582
Thomas, Judge Clarence	253-255
Wells, Ellen M.	303
Specter, Hon. Arlen:	
Alvarez, J.C.	383, 385-386
Berry-Myers, Phyllis	382-384, 386
Carr, John W.	296-297, 313-321
Doggett, John N., III	554-555, 565-566, 569-573
Fitch, Nancy E.	382, 385
Grayson, Stanley	438, 553
Hill, Anita F.	58-68, 77-84, 92, 96-98, 102-110, 116-119, 134-135
Hoerchner, Judge Susan	285-289, 293-296, 318-321
Holt, Diane	381-385
Kothe, Charles	438, 553-554, 573-574
Paul, Joel	313-314, 320-321
Stewart, Carlton	438, 553
Thomas, Judge Clarence	227-234, 264-265
Wells, Ellen M.	311-313, 320-321

*Page numbers with asterisks refer to pages in Errata publication.

VIII

	Page
Thurmond, Hon. Strom:	
Alvarez, J.C.	414-415
Berry-Myers, Phyllis.....	363, 414
Carr, John W	318
Doggett, John N., III	582
Fitch, Nancy E	363, 410-411, 414-415
Grayson, Stanley	582
Hill, Anita F	135
Hoerchner, Judge Susan	318
Holt, Diane	414-415
Kothe, Charles	579-580, 583
Paul, Joel	318
Stewart, Carlton	582
Thomas, Judge Clarence	227, 257-258
Wells, Ellen M	318

ERRATA

In the nomination hearing of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, held October 13, 1991, published by the Senate Committee on the Judiciary, some pages were inadvertently omitted from being printed.

These omitted pages are printed in this publication and would have appeared in S. Hrg. 102-1084, part 4, p. 346, after the fifth line.

The material is reproduced here to provide a complete record of proceedings.

* * * * *

Three, Anita Hill has asserted the Department of Education was going to be abolished and that was one factor in her decision to accept a position with Clarence Thomas at the EEOC.

Well, at that same time, there was much discussion in Congress about the abolition of EEOC, as well. It was seriously suggested that title VII enforcement functions and Age Act responsibilities be redistributed to other agencies of the Federal Government, and that the Commission, itself, should be abolished. Anyone involved with the confirmation proceedings of Clarence Thomas to the EEOC Chairmanship, as Anita Hill was, surely would have been aware of this.

I have known Clarence Thomas in times of his darkest moments, and in his shining triumphs. I have had a role in most of his confirmation battles, none of which have ever been easy. In that capacity, I have been privy to the most intimate details of his life. In all that time, never, never has anyone raised allegations such as Anita has.

Clarence Thomas, whom I admire and greatly respect, is a fine and decent man. He does not deserve this savaging of his character, of his reputation, of his honor. He does not deserve this.

The CHAIRMAN. Thank you, very much, Ms. Myers.

The Chair yields to the Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, what is the—

The CHAIRMAN. We will work the way we did in the past. We will have two 15-minute rounds on either side, a total of four 15-minute rounds if it is the desire of the primary questioners to go that long and then we will move to 5-minute rounds.

Senator LEAHY. Thank you, very much.

Ms. Alvarez, prior to giving it here, had you discussed your statement with anybody else, before you delivered it here?

Ms. ALVAREZ. Oh, no.

Senator LEAHY. Thank you.

And, Ms. Fitch.

Ms. FITCH. I discussed it with counsel, procedural matters, and was simply advised, the only advice I was given was to tell the truth and that's what I tried to do.

Senator LEAHY. Did anybody ask to change any part of your statement?

Ms. FITCH. No, I had my statement with me. It was simply typed up.

Senator LEAHY. Ms. Holt.

Ms. HOLT. No. As Ms. Fitch indicated, I also talked to counsel on procedural matters and was simply told to tell the truth.

Senator LEAHY. And nobody asked you to make any changes in your statement?

Ms. HOLT. No.

Senator LEAHY. Thank you.

And Ms. Berry.

Ms. BERRY. I talked with staff. I am not known as a woman that anybody can tell real easily—

Senator LEAHY. That's not my question.

Ms. BERRY [continuing]. What to do. And nobody changed anything on my testimony, asked me to change anything, just asked me to tell the truth and the facts as I know them.

Senator LEAHY. Now, Ms. Berry, just for the confusion, I saw a list on a panel earlier that Phyllis Myers was going to be here and you say your name you always use professionally is Phyllis Berry. You made some reference earlier to the fact that Professor Hill said she didn't know you. Wasn't that a case where she was asked about Phyllis Myers, and said she didn't know Phyllis Myers, and said later she understands it was Phyllis Berry and said, yes, she does know Phyllis Berry, and that she was confused by the name?

Ms. BERRY. I am not aware of that.

Senator LEAHY. Let me ask Ms. Alvarez, when you worked with Clarence Thomas, how much of a typical day did you spend with him?

Ms. ALVAREZ. Sometimes I saw him once a day, sometimes I didn't see him at all, sometimes more than once. There was really no typical day. We did not spend a lot of time in his office or with him.

Senator LEAHY. And you certainly did not see him all day long, though, that's my point?

Ms. ALVAREZ. No; I mean I would see him come into the office. I would occasionally see him during the day, not all day.

Senator LEAHY. And so there could have been times he could have had discussions with Anita Hill that you would not have been there?

Ms. ALVAREZ. Oh, absolutely.

Senator LEAHY. So you don't know, from personal knowledge, whether Professor Hill is telling the truth or not, from personal knowledge?

Ms. ALVAREZ. No, sir.

Senator LEAHY. Thank you.

And Ms. Fitch, when you worked with Clarence Thomas, how much of a typical day did you spend with him?

Ms. FITCH. My schedule was rather unusual because I was out in research libraries and out in the school system so there were

days, there might be weeks when I did not see him or touch base with Ms. Holt to let her know what I was doing.

Senator LEAHY. So it would be fair to say that, from personal knowledge, you would not know whether Ms. Hill was telling the truth or not?

Ms. FITCH. Personal knowledge, no.

Senator LEAHY. And Ms. Holt, you probably were as close to Judge Thomas as anybody, you were his personal secretary, is that correct?

Ms. HOLT. That's correct.

Senator LEAHY. And the door between your office and his——

Ms. HOLT. I am sorry?

Senator LEAHY. I said there was a door between your office and his?

Ms. HOLT. Yes.

Senator LEAHY. And there were times when people would go in and meet with him, the door would be closed, is that correct?

Ms. HOLT. That's true.

Senator LEAHY. And times when Anita Hill, for example, might be in the office and it would be just the two of them and the door would be closed, is that correct?

Ms. HOLT. That's correct.

Senator LEAHY. And so you would not know, from personal knowledge, whether Professor Hill was telling the truth or not?

Ms. HOLT. No, I would not.

Senator LEAHY. And Ms. Berry, how about you, would you have, from personal knowledge, knowledge of whether Professor Hill is telling the truth or not?

Ms. BERRY. I would not have personal knowledge.

Senator LEAHY. Now, let me ask this of each of you. As I told Judge Thomas, and I think other people who are here did, I don't really have any interest in what he does in the privacy of his home, nor do I have of any of the rest of you, but as you are probably aware, a supporter of his, Lavita Coleman, is quoted in the New York Times as saying that at Yale Law School Judge Thomas "At least once humorously described an X-rated film to me and other colleagues." Then the Times story continues and says, "elaborating beyond the statement, she acknowledged that this had occurred more than once."

I will start with you, Ms. Alvarez, have you ever heard Judge Thomas engage in such conversation with colleagues in the work place?

Ms. ALVAREZ. No, never.

Senator LEAHY. Ms. Fitch.

Ms. FITCH. Never, ever.

Senator LEAHY. Ms. Holt.

Ms. HOLT. Never.

Senator LEAHY. Ms. Berry.

Ms. BERRY. Absolutely not.

Senator LEAHY. Have you ever heard or do you have others that will tell you of Judge Thomas talking about pornographic films, Ms. Berry?

Ms. BERRY. Absolutely not.

Senator LEAHY. Ms. Holt.

Ms. HOLT. No.

Senator LEAHY. Ms. Fitch.

Ms. FITCH. No.

Senator LEAHY. Ms. Alvarez.

Ms. ALVAREZ. No, Senator.

Senator LEAHY. Now, did Judge Thomas ever engage—let me be more specific, I want to speak of social activities with the staff—did he ever go out to lunch with members of the staff, Ms. Alvarez?

Ms. ALVAREZ. Yes; he went to lunch with members of the staff, that was not unusual, but not frequently, very rarely.

Senator LEAHY. Would you ever go out—Ms. Fitch, you said you were gone a lot, but would your answer be the same?

Ms. FITCH. There were occasions when I was in the office, and I would be walking through and he would look for someone to go accompany him to lunch so two or three of us might accompany him at that time.

Senator LEAHY. And, Ms. Holt, that was your experience also?

Ms. HOLT. Absolutely.

Senator LEAHY. And Ms. Berry?

Ms. BERRY. The same.

Senator LEAHY. Did you ever go out for beers or drinks or socialize after work, Ms. Alvarez?

Ms. ALVAREZ. Yes, very, then again, very infrequently. It would be something like, you know, it would be 5:30 or 6 o'clock and we would still be talking over something and we would just go grab a beer.

Senator LEAHY. Ms. Fitch.

Ms. FITCH. I am not aware of that.

Senator LEAHY. Ms. Holt.

Ms. HOLT. Not with me, sir.

Senator LEAHY. Ms. Berry.

Ms. BERRY. No; the only social functions that we had at all would be in connection with my job when I became Director of the Office of Congressional Affairs and there was some reception or something like that that we had to attend.

Senator LEAHY. Did you ever know of Judge Thomas dating any member of the staff, Ms. Alvarez?

Ms. ALVAREZ. No, sir.

Senator LEAHY. You never dated him, for example?

Ms. ALVAREZ. No, sir.

Senator LEAHY. Ms. Fitch.

Ms. FITCH. No, sir, and I never dated him either.

Senator LEAHY. Same answer. Ms. Holt.

Ms. HOLT. No, sir.

Senator LEAHY. And Ms. Berry.

Ms. BERRY. I never dated him and I guess my husband would have a lot to say about that if I did. [Laughter.]

Senator LEAHY. I just didn't want to leave—I knew what your answer would be but I didn't want, having asked the same question of the other three, to leave you out and leave some inference.

Ms. BERRY. That's a legitimate question.

Senator LEAHY. But did you ever know of him dating anybody else—

Ms. BERRY. No, never.

Senator LEAHY. Either at EEOC or at the Department of Education?

Ms. BERRY. Or at the Department of Education, no.

Senator LEAHY. And your answer from each of the rest would be the same.

Now Professor Hill, I think by the feelings of most people here, was a quite believable witness and so now we hear a lot of Judge Thomas' supporters saying that well, that it must be the press or it is some kind of outside groups, or who are really the villains in this process. At least the telephone calls to my office seem to be this and I hear a number of his supporters speaking virtually from the same fire book in that regard. We even had a suggestion that her testimony was lifted from the "Exorcist," I guess this is sort of the "Devil made me do it" defense here.

Do you have any personal knowledge that Professor Hill is a part of a conspiracy to stop this nomination, Ms. Alvarez?

Ms. ALVAREZ. No personal knowledge, sir.

Senator LEAHY. Ms. Berry?

Ms. BERRY. I don't have any personal knowledge that Anita is a part of a conspiracy. I think she has allowed herself to become a pawn in this process.

Senator LEAHY. And Ms. Holt.

Ms. HOLT. No, sir, I don't.

Senator LEAHY. Ms. Fitch.

Ms. FITCH. No personal knowledge, no.

Senator LEAHY. Ms. Myers, in the statement that you issued in response to Anita Hill's press conference, you said—and I want to make sure I am quoting you correctly—"At the Commission I was Clarence Thomas' political eyes and ears and that meant that I knew a great deal about his personal life, as well."

Is that an accurate characterization of what you said?

Ms. BERRY. Yes, it is.

Senator LEAHY. Thank you.

Ms. BERRY. It's exactly what I said.

Senator LEAHY. Do you know Angela Wright?

Ms. BERRY. I certainly do.

Senator LEAHY. And in what—let me ask you this—Angela Wright attributed the following comment about Judge Thomas, and attributed this to you in her statement to the committee, and she attributed you as having said this, "Well"—speaking of Clarence Thomas—"he's a man, you know, he's always hitting on everybody."

Did you ever make that comment to Angela Wright?

Ms. BERRY. Absolutely not. By the time—I know Angela Wright in this way. Angela and I are from North Carolina and Angela and I both served on the staff of Congressman Charlie Rose. I was responsible for getting Angela a position at the Republican National Committee. I was not responsible for her having a position at the Equal Employment Opportunity Commission. By the time Angela was hired at the EEOC she and I were not friends.

One thing that I am not in the habit of doing in the capacity of being Clarence Thomas' political eyes and ears and sharing many confidences with him, is discussing him with anybody. I was not in the habit of discussing Clarence Thomas with anybody.

Senator LEAHY. Did you—

Ms. BERRY. And I certainly was not in the habit of saying anything to Angela Wright. Her staff and my staffs could confirm that we were barely on professional speaking terms.

Senator LEAHY. So you would say that the comment that she attributes to you, that, "Well, he's a man, you know, he's always hitting on everybody," you never made that comment either to her first, yes or no, you never made that comment to her?

Ms. BERRY. No.

Senator LEAHY. Did you ever say anything even like that to her?

Ms. BERRY. That doesn't even sound like me.

Senator LEAHY. Or to anybody else.

Ms. BERRY. Never.

Senator LEAHY. Now, Ms. Fitch, one of the things that all of us have asked in here, and I am sure that you and everybody else has gone through in their mind is what motivates all of this? And if a woman—well, just let me ask you this—you know Professor Hill very well.

Ms. FITCH. I know Professor Hill, we were collegial and friendly. I never said I knew her very well, but we were friendly, yes.

Senator LEAHY. She worked hard to get where she was—

Ms. FITCH. I am sorry?

Senator LEAHY. Would it be a fair statement that she worked hard to get where she was?

Ms. FITCH. I think she did, yes.

Senator LEAHY. Did you ever witness at any time when she would take an action that would jeopardize her career?

Ms. FITCH. No, I never did.

Senator LEAHY. And did you ever have an occasion where she lied to you?

Ms. FITCH. No.

Senator LEAHY. What can she possibly gain from speaking out against Judge Thomas? I mean what could she possibly gain by making up a story and speaking out against him?

Ms. FITCH. Senator, I have no idea. I am not a psychiatrist, though I admit I wanted to be one for a long time. But I have no idea. I cannot speak to her motivation. It may very well be that Professor Hill believes what she says.

That's not to say that, therefore, she's telling a falsehood, but it doesn't mean that the situation ever happened. Those two things can exist together.

Senator LEAHY. Well, we have two such diametrically opposed stories. There is one thing that both agree on in testimony here. Professor Hill agrees that what she has described would be sexual harassment. I asked Judge Thomas exactly the same question. I said, on these set of facts, of course he categorically denies them, but on these set of facts would that be sexual harassment? And he said, yes, it would. So they both agree on that.

Is it possible that each of them believes he or she is telling the truth?

Ms. FITCH. Of course, it is possible, Senator.

Senator LEAHY. I mean you know them both.

Ms. FITCH. I know them both. I believe because of his past performance, because of the way he has treated me, I have been at meetings with him in his office with the door both closed and open.

When I do come back from my sojourns in libraries, we did talk about my reports. I believe him to be telling the truth. There has never been anything in his character, or in his interaction with me or anyone else that I saw him interacting with, that would suggest even the remotest possibility that this could be true.

Senator LEAHY. And, Ms. Holt, you have known Professor Hill, would you say she worked hard to get where she was?

Ms. HOLT. I would say she worked hard, yes.

Senator LEAHY. Did you ever see her do something that would jeopardize her career during the time that you knew her?

Ms. HOLT. Not to jeopardize her career, no.

Senator LEAHY. Did she ever lie to you that you know of?

Ms. HOLT. Not that I know of.

Senator LEAHY. What does she gain by doing this?

Ms. HOLT. I have no idea. I think she would be the only person that could answer that question for you.

Senator LEAHY. Now, you have not worked for Judge Thomas for some time. When did you stop working for him?

Ms. HOLT. September 1987.

Senator LEAHY. Of 1987?

Ms. HOLT. Yes.

Senator LEAHY. Thank you.

Now, he was nominated in the first part of July, the 4th of July weekend, I believe it was, and after he was nominated when was the first time that anyone showed you phone logs or any portion thereof or talked to you about phone logs?

Ms. HOLT. After he was nominated?

Senator LEAHY. He was nominated in July and there have been discussions of phone logs that you kept. When was the first time that somebody came to you and said, hey, by the way, I want to talk to you about these phone logs?

Ms. HOLT. It was last week.

Senator LEAHY. Last week, that was the first time?

Ms. HOLT. Right.

Senator LEAHY. And who first showed the phone logs to you?

Ms. HOLT. I don't know who first showed them to me. I was shown the phone logs by a person from the Justice Department and I was also shown the phone logs by the Vice Chairman at the EEOC.

Senator LEAHY. And who is that, please?

Ms. HOLT. Ricky Silberman.

Senator LEAHY. Do you know where the Vice Chairman obtained the pages she showed you or how she determined they were pertinent?

Ms. HOLT. I have no idea.

Senator LEAHY. Now, you said in your staff interview that the Vice Chairman asked you if a caller were returning a Clarence Thomas call you would have entered returned your call.

Now, callers did not always indicate whether they were returning his call or not, did they?

Ms. HOLT. Usually they did, sir.

Senator LEAHY. But not always.

Ms. HOLT. I can't think of an instance when one didn't.

Senator LEAHY. Did you ever use a tear-out pad or a phone message book with individual message sheets and carbons?

Ms. HOLT. I never did.

Senator LEAHY. When Vice Chairman Silberman brought you pages from the log, were any particular messages asterisked, did they have some asterisks on them?

Ms. HOLT. Asterisked? No.

Senator LEAHY. None?

Ms. HOLT. You said an asterisk?

Senator LEAHY. Yes. Or a special mark?

Ms. HOLT. There were messages with check marks and with X's.

Senator LEAHY. Were those check marks that you had made?

Ms. HOLT. Yes.

Senator LEAHY. Were there any marks on the pages that they brought back to you that you do not recall having made?

Ms. HOLT. No, there is a phone call, a message that I did not take.

Senator LEAHY. I notice my time is up. Mr. Chairman I—I know you are going to keep all questioners to tight time limits, I will wait until the next go-around.

The CHAIRMAN. Thank you very much, Mr. Chairman.

What I suggest now is Senator Thurmond will assign somebody to question you for 15 minutes.

Senator THURMOND. Mr. Chairman, I have asked Senator Hatch to question this panel.

Senator HATCH. Well, thank you, Senator Thurmond.

Welcome to these proceedings. I am just going to ask a series of questions I would like to get out of the way first. All four of you have worked very closely with Clarence Thomas, is that right?

We will start with you, Ms. Alvarez, and just go across the table.

Ms. ALVAREZ. Yes, sir.

Ms. FITCH. Yes, sir.

Ms. HOLT. Yes, sir.

Ms. BERRY. That's correct.

Senator HATCH. Bring your mikes a little bit closer so that everybody can hear you. Tell me the number of years each of you have worked closely with Chairman Thomas, Ms. Alvarez?

Ms. ALVAREZ. I worked closely with him for 4 years and have known him for 13 years.

Senator HATCH. Four years and have known him, yes, that's good, give both.

Ms. FITCH. I worked for him for 7 years and have known him in the subsequent 2 years, 9 years.

Senator HATCH. So, 9 years.

Ms. HOLT. I was his personal secretary for a total of 6 years, but I have known him for 10.

Senator HATCH. OK, Ms. Berry.

Ms. BERRY. I have known him since 1979 but I worked most closely with him at the Equal Employment Opportunity Commission and that was about 5 years.

Senator HATCH. Have any of you ever seen anything or seen him do anything or have heard him accused of doing anything like what Professor Hill has articulated here, before this committee, Ms. Alvarez?

Ms. ALVAREZ. No, sir.
Ms. FITCH. No, sir.
Ms. HOLT. No, sir.
Ms. BERRY. No, sir.

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