October 11, 1991

MEMORANDUM FOR BRINKLEY BRIEFING BOOK

FROM: JUDY BIVIANO

SUBJECT: CLARIFICATION OF SCHEDULE A STATUS

Senator Specter's line of questionining regarding whether or not Anita Hill would be fired once Clarence Thomas made the move from EEOC to Education and visa versa, is legitimate.

Ms. Hill is testifying as if she thought she was a Schedule C political appointee. Schedule C appointees serve at the "pleasure of the President" or "pleasure" of whomvever her supervisor is. These employees can be fired at any time.

Ms. Hill's status at Education was a Schedule A attorney. The Schedule A status gives supervisors a different authority to hire. These employees are part of the career/civil service system. The only way Ms. Hill would have been removed from her post would be for non-performance or a poor performance review from her supervisor. There is no indication she ever received such a review, and as such there is no reason for her to believe she would have lost her job.

Her decision to follow Clarence Thomas from Education to EEOC was her own.

Thank you.

38 AP 10-11-91 16:11 EDT 46 Lines.
AM-KS--Dole-Thomas, Bjt,0350<

Dole Still Predicts Senate Confirmation of Thomas Nomination<

By BARRY MASSEY=
Associated Press Writer=

WASHINGTON (AP) Senate Minority Leader Bob Dole, R-Kan., continued Friday to predict the Senate would confirm Clarence Thomas' Supreme Court nomination.

But Dole assailed Democrats for conducting an ``inquisition'' on sexual harassment allegations against the nominee.

``I still think Clarence Thomas will win,'' Dole said on the first day of hearings by the Judiciary Committee on the sexual harassment allegations against Thomas.

He predicted 55 to 60 senators would support Thomas' confirmation when the Senate votes on the nomination next Tuesday.

Thomas, he said, delivered a ``very powerful'' opening statement to the committee.

Dole maintained the committee hearings were unnecessary because they were unlikely to resolve the conflicting statements made by Thomas and Anita Hill, the University of Oklahoma law professor who made the sexual harassment allegations.

She alleges Thomas harassed her with talk of sex and pornographic movies when she worked with him at two federal agencies during the 1980s. Thomas maintains none of the allegations are true.

Dole said the committee hearings will produce ``a lot of bitterness, a lot of acrimony.''

``This isn't a hearing. This is a trial of Clarence Thomas. It is an inquisition,'' Dole said. ``And my view is he's been treated shabbily by the committee and I don't think there will be much improvement'' in the new round of hearings.

Despite that, Dole said the televised hearing would play a critical role because undecided senators ``are probably going to make up their mind based on what reaction they get from the voters at home.''

Telephone calls to Dole's offices in Kansas on Thursday ran 2-to-1 in support of Thomas, he said.

The committee should force testimony by Democratic Senate staff members who first contacted Hill to determine ``if they offered her any incentive to give this information,'' Dole said.

He also said Hill would ``reap a big reward'' by making the allegations against Thomas.

``She'll be on the talk shows, making speeches for big money. I think it's going to advance her career,'' Dole said. But he quickly added, ``I don't say that she did it for that reason.''

MEMORANDUM

TO: SENATOR DOLE

FROM: Bob Dove

RE: The Confirmation Process

DATE: October 11, 1991

The process by which the FBI report was leaked to the press is clearly covered by Rule 29. The rule speaks of documents furnished by the President or the head of any department at the request of the Senate or any commitee.

The rule in part is attached and the paragraph paraphrased is paragraph 6.

The relevant wording of the Constitution and the views of James Madison are also attached.

SENATE RULE 29

3. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret . . . .

6. Whenever, by the request of the Senate or any committee thereof, any documents or papers shall be communicated to the Senate by the President or the head of any department relating to any matter pending in the Senate, the proceedings in regard to which are secret or confidential under the rules, said documents and papers shall be considered as confidential, and shall not be disclosed without leave of the Senate.

5. Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

CONSTITUTION

The Constitution, in article II, section 2 provides simply that the president shall nominate, and "by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court."

The text of the Constitution provides that although the power to present a candidate for the Court is vested solely in the president, the power of appointment is exercised concurrently with the Senate.

The Constitution says nothing about the criteria upon which the Senate may base its decision.

James Madison disliked the idea of permitting the Congress or any numerous body to deal with judges, but he was inclined to give it to the Senatorial branch, as a branch of the legislature small enough to be confided in; and as being sufficiently stable and independent to follow their deliberate judgments.

That of course, was a Senate of 26 members.

J. MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, 68, (1976).

TO: Senator Dole
FR: Kerry

RE: Brinkley

*If you get the chance, you might want to put in a mention of Juan Williams' column in the Post...Here's a liberal columnist saying that he got insistent phone calls from staff members of Democrats asking for gossip and rumors or anthing to "stop Thomas."

*Clearly the process has moved from looking at ones qualifications to one of character assassination.

*As Williams said, this whole incident is "an abuse of the Senate confirmation process, an abuse of Senate rules, and an unforgivable abuse of a human being named Clarence Thomas."

Juan Williams

Open Season on Clarence Thomas

The phone calls came throughout September. Did Clarence Thomas ever take money from the South African government? Was he under orders from the Reagan White House when he criticized civil rights leaders? Did he beat his first wife? Did I know anything about expense account charges he filed for out-of-town speeches? Did he say that women don't want equal pay for equal work? And finally, one exasperated voice said: "Have you got anything on your tapes we can use to stop Thomas."

The calls came from staff members working for Democrats on the Senate Judiciary Committee. They were calling me because several articles written about Thomas have carried my byline. When I was working as a White House correspondent in the early '80s, I had gotten to know Thomas as a news source and later wrote a long profile of him.

The desperate search for ammunition to shoot down Thomas has turned the 102 days since President Bush nominated him for a seat on the Supreme Court into a liberal's nightmare. Here is indiscriminate, mean-spirited mudslinging supported by the so-called champions of fairness: liberal politicians, unions, civil rights groups and women's organizations. They have been mindlessly led into mob action against one man by the Leadership Conference on Civil Rights. Moderate and liberal senators, operating in the proud tradition of men such as Hubert Humphrey and Robert Kennedy, have allowed themselves to become sponsors of smear tactics that have historically been associated with the gutter politics of a Lee Atwater or crazed right-wing self-promoters like Sen. Joseph McCarthy.

During the hearings on his nomination Thomas was subjected to a glaring double standard. When he did not answer questions that former nominees David Souter and Anthony Kennedy did not answer, he was pilloried for his evasiveness. One opponent testified that her basis for opposing him was his lack of judicial experience. She did not know that Supreme Court justices such as liberal icons Earl Warren and Felix Frankfurter, as well as current Chief Justice William Rehnquist, had no judicial experience before taking a seat on the high court.

Even the final vote of the Senate Judiciary Committee on whether to recommend Thomas for confirmation turned into a shameless assault on Thomas by the leading lights of progressive Democratic politics. For example, in an incredibly bizarre act, Chairman Joseph Biden stood up after a full slate of testimony and said Thomas would make a "solid justice," but then voted against him anyway.

At the time of the vote, two of the committee's Democrats later explained to me, the members of the Judiciary Committee figured it would make no difference, since Thomas had the votes to gain confirmation from the full Senate. So, they decided, why not play along with the angry roar coming from the Leadership Conference? "Thomas will win, and the vote will embarrass Bush and leave [the Leadership Conference] feeling that they were heard," explained one senator on the committee.

Now the Senate has extended its attacks on fairness, decency and its own good name by averting its eyes while someone in a position to leak has corrupted the entire hearing process

BY RAY LUSTIG—THE WASHINGTON POST

by releasing a sealed affidavit containing an allegation that had been investigated by the FBI, reviewed by Thomas's opponents and supporters on the Senate committee and put aside as inconclusive and insufficient to warrant further investigation or stop the committee's final vote.

But that fair process and the intense questioning Thomas faced in front of the committee for over a week were not enough for members of the staffs of Sens. Edward M. Kennedy and Howard Metzenbaum. In addition to calls to me and to people at the Equal Employment Opportunity Commission, they were pressing a former EEOC employee, University of Oklahoma law professor Anita Hill, for negative information about Thomas. Thomas had hired Hill for two jobs in Washington.

Hill said the Senate staffers who called her were specifically interested in talking about rumors involving sexual harassment. She had no credible evidence of Thomas's involvement in any sexual harassment, but she was prompted to say he had asked her out and mentioned pornographic movies to her. She rejected him as a jerk, but said she never felt her job was threatened by him, he never touched her, and she followed him to subsequent jobs and even had him write references for her.

Hill never filed any complaint against Thomas; she never mentioned the problem to reporters for The Post during extensive interviews this summer after the nomination, and even in her statement to the FBI never charged Thomas with sexual harassment but "talked about [his] behavior."

Sen. Paul Simon, an all-out opponent of Thomas, has said there is no "evidence that her turning him down in any way harmed her and he later recommended her for a job [as a law professor]." Hill did say that because Thomas was her boss, she felt "the pressure was such that I was going to have to submit . . . in order to continue getting good assignments." But by her own account she never did submit and continued to get first-rate assignments.

The bottom line, then, is that Senate staffers have found their speck of mud to fling at Clarence Thomas in an alleged sexual conversation between two adults. This is not the Senate Judiciary Committee finding out that Hugo Black had once been in the Ku Klux Klan (he had, and was nonetheless confirmed). This is not the Judiciary Committee finding that the nominee is an ideologue incapable of bringing a fair and open mind to the deliberations of the court. This slimy exercise orchestrated in the form of leaks of an affidavit to the Leadership Conference on Civil Rights is an abuse of the Senate confirmation process, an abuse of Senate rules and an unforgivable abuse of a human being named Clarence Thomas.

Further damaging is the blood-in-the-water response from reputable news operations, notably National Public Radio. They have magnified every question about Thomas into an indictment and sacrificed journalistic balance and integrity for a place in the mob. The New York Times ran a front-page article about "Sexism and the Senate" that gave space to complaints that only two of the 100 members of the Senate are female. The article, in an amazing leap of illogic, concluded that if a woman had been on the Judiciary Committee, more attention would have been given to Professor Hill's report. But attention was given to what she said. A full investigation took place. Why would a woman senator not have reached the conclusion that what took place did not rise to the level necessary to delay the vote on Thomas in the committee or to deny him confirmation?

To listen to or read some news reports on Thomas over the past month is to discover a monster of a man, totally unlike the human being full of sincerity, confusion, and struggles whom I saw as a reporter who watched him for some 10 years. He has been conveniently transformed into a monster about whom it is fair to say anything, to whom it is fair to do anything. President Bush may be packing the court with conservatives, but that is another argument, larger than Clarence Thomas. In pursuit of abuses by a conservative president the liberals have become the abusive monsters.

Sen. Charles E. Grassley said on the Senate floor Tuesday that the smears heaped on Thomas amounted to the "worse treatment of a nominee I've seen in 11 years in the Senate." Sen. Dennis DeConcini said it "is inconceivable, it is unfair and I can't imagine anything more unfair to the man." And Sen. Orrin G. Hatch described the entire week's performance as a "last-ditch attempt to smear the judge."

Sadly, that's right.

Juan Williams writes for Outlook and The Washington Post Magazine.

FOR IMMEDIATE RELEASE
FEBRUARY 21, 1991

CONTACT: WALT RIKER
(202) 224-5358

WOMEN'S EQUAL OPPORTUNITY ACT OF 1991

MR. PRESIDENT, I JOIN TODAY WITH MY DISTINGUISHED COLLEAGUES, SENATORS SIMPSON, THURMOND, COCHRAN, KASTEN, BURNS, D'AMATO, LUGAR, McCAIN, MURKOWSKI, ROTH, SEYMOUR, STEVENS AND WARNER, IN INTRODUCING THE "WOMEN'S EQUAL OPPORTUNITY ACT OF 1991."

COMPREHENSIVE IN APPROACH, THIS BILL SEEKS TO REAFFIRM OUR NATION'S HISTORIC COMMITMENT TO AN IMPORTANT PRINCIPLE -- THE PRINCIPLE OF EQUAL OPPORTUNITY FOR ALL AMERICANS.

MR. PRESIDENT, AS WE SEE AMERICAN WOMEN ON THE FRONT-LINES IN THE PERSIAN GULF, WE MUST ALSO OPEN OUR EYES TO THE BATTLES WOMEN MUST FIGHT TODAY HERE AT HOME.

IT'S JUST PLAIN COMMON SENSE THAT THE WOMEN OF AMERICA CANNOT SHARE FULLY IN THE PROMISE OF EQUAL OPPORTUNITY IF THEY ARE SEXUALLY HARASSED IN THE WORKPLACE.

THEY CANNOT HAVE EQUAL OPPORTUNITY IF THEY ARE THE VICTIMS OF VIOLENT CRIME -- AT HOME AND ON THE STREETS.

AND THE WOMEN OF THIS COUNTRY CANNOT HAVE EQUAL OPPORTUNITY IF THEY MUST STRUGGLE TO OVERCOME ARTIFICIAL -- AND SOMETIMES INSURMOUNTABLE -- BARRIERS TO JOB PLACEMENT, JOB PROMOTION, AND JOB ADVANCEMENT.

MR. PRESIDENT, THE WOMEN'S EQUAL OPPORTUNITY ACT OF 1991 CONFRONTS THESE ISSUES HEAD-ON. IT EXPANDS FEDERAL CIVIL RIGHTS PROTECTIONS AGAINST SEXUAL HARASSMENT. IT ATTACKS DOMESTIC AND STREET CRIME VIOLENCE. AND IT TAKES A HARD AND CLOSE LOOK AT EXPANDING EMPLOYMENT OPPORTUNITIES FOR WOMEN -- NOT ONLY IN THE EXECUTIVE BOARD ROOM, BUT ALSO ON THE CONSTRUCTION SITE.

SEXUAL HARASSMENT IN THE WORKPLACE

AS SOMEONE WHO WAS SMACK IN THE MIDDLE OF LAST YEAR'S DEBATE ON THE SO-CALLED CIVIL RIGHTS ACT OF 1990, I CAN ATTEST TO THE INTENSITY OF CONVICTION ON BOTH SIDES OF THE AISLE.

THE CIVIL RIGHTS DEBATE GOT HOT, AND AT TIMES, IT WAS ANYTHING BUT CIVIL.

BUT DESPITE ALL THE PARTISAN BICKERING AND ALL THE HEATED RHETORIC, I MUST ADMIT THAT I LEARNED A FEW THINGS LAST YEAR.

I LEARNED, FOR EXAMPLE, ABOUT THE MEANING OF "PARITY." I LEARNED THAT FEDERAL LAW TREATS VICTIMS OF SEXUAL HARASSMENT DIFFERENTLY -- LESS FAVORABLY -- THAN THE VICTIMS OF RACIAL HARASSMENT.

AND I LEARNED THAT -- IN MANY CASES -- THE ONLY REMEDY THAT A VICTIM OF SEXUAL HARASSMENT CAN OBTAIN UNDER THE CIVIL RIGHTS ACT OF 1964 IS DECLARATORY AND INJUNCTIVE RELIEF -- A REMEDY THAT IS HARDLY ADEQUATE, AND ONE THAT IS PARTICULARLY UNFAIR FOR THOSE VICTIMS OF SEXUAL HARASSMENT WHO MAY SUFFER MEDICAL AND PSYCHOLOGICAL HARM.

MONETARY REMEDY. TITLE I OF THE WOMEN'S EQUAL OPPORTUNITY ACT ATTEMPTS TO CLOSE THIS GAP IN THE LAW BY PROVIDING -- FOR THE FIRST TIME IN OUR NATION'S HISTORY -- A COURT-ORDERED MONETARY REMEDY FOR INTENTIONAL SEXUAL HARASSMENT IN THE WORKPLACE -- UP TO $100,000 FOR FIRST OFFENSES, AND UP TO $150,000 FOR EACH SUBSEQUENT ACT OF SEXUAL HARASSMENT.

THESE ARE MAXIMUM PENALTIES -- PAYABLE TO THE AGGRIEVED PARTY -- THAT A COURT MAY ADJUST IN LIGHT OF THE EMPLOYER'S FINANCIAL CONDITION AND ITS HISTORY OF RESOLVING SEXUAL HARASSMENT COMPLAINTS THROUGH INTERNAL GRIEVANCE PROCEDURES.

FAST-TRACK RELIEF. TITLE I ALSO RECOGNIZES THAT PROLONGED EXPOSURE TO WORKPLACE SEXUAL HARASSMENT CAN HAVE LASTING DETRIMENTAL EFFECTS ON THE VICTIM. AS A RESULT, TITLE I DIRECTS THE COURTS TO GIVE EXPEDITED -- FAST-TRACK -- RELIEF TO THOSE PERSONS CLAIMING SEXUAL HARASSMENT ON-THE-JOB.

TECHNICAL ASSISTANCE FOR SMALL EMPLOYERS. AND, FINALLY, TITLE I DIRECTS THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO ESTABLISH TECHNICAL ASSISTANCE PROGRAMS TO EDUCATE OUR SMALL EMPLOYERS ON THE LAW OF SEXUAL HARASSMENT.

UNLIKE LARGE CORPORATIONS, MOST SMALL EMPLOYERS CANNOT AFFORD THE COST OF COMPLIANCE ADVICE FROM PRIVATE LAW FIRMS AND CONSULTANTS. AN EEOC TECHNICAL ASSISTANCE PROGRAM WILL HELP FILL THIS VOID AND WILL PRODUCE SOME VERY DESIRABLE RESULTS -- A REDUCTION IN THE NUMBER OF SEXUAL HARASSMENT COMPLAINTS AND A REDUCTION IN THE QUANTITY OF LITIGATION FOR AN ALREADY OVER-BURDENED COURT SYSTEM.

VIOLENCE AGAINST WOMEN

MR. PRESIDENT, THE SECOND TITLE OF THIS BILL ADDRESSES THE

THE WOMEN'S EQUAL OPPORTUNITY ACT OF 1991

Introduced by Senators Dole, Simpson, Thurmond, Cochran, Kasten, Burns, D'Amato, Lugar, McCain, Murkowski, Roth, Seymour, Stevens, and Warner

Title I -- Federal Civil Rights

a. Establishes a court-ordered remedy under Title VII for on-the-job sexual harassment -- up to $100,000 for the first act of sexual harassment and up to $150,000 for each subsequent act. Under current law, the only remedies that a victim of sexual harassment can obtain are back-pay and declaratory and injunctive relief.

b. Allows persons alleging sexual harassment to seek temporary or preliminary injunctive relief, without regard to any period of time following the filing of a charge of unlawful discrimination and without obtaining a right-to-sue letter from the Equal Employment Opportunity Commission. Directs the courts to expedite sexual harassment cases to the greatest extent practicable.

c. Directs the Equal Employment Opportunity Commission to establish technical assistance programs for small employers (employers with fewer than 50 employees) on the law of sexual harassment.

d. Overturns the Supreme Court's decisions in Patterson v. McLean Credit Union and Lorance v. AT&T Technologies, Inc.

e. Extends the protections of Title VII to all employees of Congress.

Title II -- Domestic and Street Violence Against Women

a. Amends the Crime Awareness and Campus Security Act of 1990 to require colleges and universities to disclose sex crime statistics to 1) local and state police authorities, and 2) the parents or guardians of students.

b. Authorizes capital punishment for murders committed in connection with sexual assaults and child molestations.

c. Doubles the penalties for recidivist sex offenders.

d. Doubles the penalties for distributing controlled substances to pregnant women.

e. Incorporates the Pornography Victims Compensation Act, which was originally introduced by Senator Mitch

McConnell in the 101st Congress. The Pornography Victims Compensation Act creates a federal cause of action for the victim of a sex crime against the producer and distributor of obscene material and child pornography, if the material was a proximate cause of the crime.

f. Amends the federal restitution statute to allow victims of federal sex offenses to seek restitution for medical expenses related to sexually-transmitted diseases and for child care, transportation, and other costs to the victim from involvement in the investigation and prosecution of the crime.

g. Amends the Federal Rules of Evidence to ensure that evidence about prior sexual offenses is admissible in court for any relevant purpose.

h. Proposes new standards for professional conduct by lawyers to prohibit any trial tactic that has no substantial purpose other than to embarrass, harass, or humiliate a person alleging a sex offense. Requires lawyers to disclose client information if disclosure is necessary to prevent the commission of a crime of sexual assault or child molestation.

i. Requires the States to give full faith and credit to valid protective orders.

j. Requires HIV-testing of any person charged with a federal sex offense at the time of the pre-trial release determination and directs the United States Sentencing Commission to provide enhanced penalties for offenders who know, or who have reason to know, that they are HIV-positive.

k. Amends the Victims' Rights and Restitution Act to require payment to the victim of up two HIV tests and one counselling session by a trained medical professional on the accuracy of the HIV test and on the risk of transmission of the HIV virus.

l. Establishes a 10-member "National Task Force on Violence against Women" appointed by the Attorney General.

m. Authorizes $25 million for rape prevention and education programs for each of fiscal years 1992, 1993, and 1994. These programs will be administered under the Victims of Crime Act of 1984.

n. Authorizes $60 million under the Family Violence Prevention and Services Act for each of fiscal years 1992, 1993, and 1994. The Family Violence Prevention and Services Act provides funding for private and state-

run shelters for victims of domestic violence.

Title III -- Employment Opportunities

a. Establishes 17 member Glass Ceiling Commission (5 appointed by President, 3 jointly appointed by the Speaker of the House and the Majority Leader of the Senate, 1 appointment for each Leader, 2 Members of House and 2 Members of Senate appointed jointly by respective Leadership, and Secretary of Labor who is Chairperson of Commission).

b. Directs the Glass Ceiling Commission to conduct a study due 15 months after enactment addressing why the glass ceiling exists and making recommendations with respect to policies for business which would promote opportunities for the advancement of women and minorities and lead to the removal of artificial barriers to such advancement.

c. Establishes the "National Award for Diversity and Excellence in American Executive Management" to be made by the President annually to a business which has made substantial efforts to break down the glass ceiling.

d. Directs the Secretary of Labor to establish an outreach and education program directed at getting women and minorities into registered apprenticeship programs and authorizes $2 million for such program and the study referred to in (f) below.

e. Authorizes $8 million for grants to groups for outreach and education program and $15 million for grants to registered apprenticeship programs for the preapprenticeship training of women and minorities; further provides that Secretary of Labor may set aside 5% of funding for discrimination and affirmative action enforcement purposes.

f. Directs the Secretary of Labor to conduct a study relating to the participation of women and minorities in apprenticeship programs.

g. Provides that it is the sense of the Congress that OPM has made commendable efforts to develop and expand alternative work schedule programs for federal agencies and their employees and that such efforts should be continued to assist workers in balancing their family and work responsibilities.