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THE BLACK SCHOLAR

"RACE, GENDER AND POWER IN AMERICA
CONFERENCE" (GEORGETOWN UNIVERSITY LAW
CENTER, WASHINGTON, DC)

1992

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2017/193
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7/16/97

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\$1,000 is additional
to be received
TV
on publication



OXFORD UNIVERSITY PRESS

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April 9, 1993

Robert L. Allen
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The Black Scholar Press
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Dear Mr. Allen:

We have reached the final stages of an agreement between Anita Hill, Emma Jordan, and Oxford University Press to publish a book based on the Race, Gender, and Power in America conference given at Georgetown University. I'm delighted that you have agreed to contribute a chapter to the work.

I've enclosed three copies of the Contributors Agreement. Please sign all three copies and return all of them to me for our signature. We will send you a countersigned copy for your files.

I'm excited to be on our way with this project and look forward to receiving the signed agreement. If you have any questions, please feel free to give me a call.

done
4/14

Sincerely,

Laura Brown/cg
Laura Brown
Vice President &
Director, Trade Publishing

LB/cg
enc

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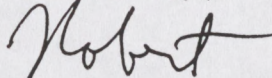
Dear Emma;

Enclosed is a slightly revised and corrected version of my paper for publication. Please send the honorarium to me at the above address. (If needed, my social security # is 259-62-7232.)

Thank you again for inviting me to participate in your historic conference.

Best wishes to you and your staff, and please convey my regards to Anita Hill.

Sincerely,



Robert L. Allen

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STOPPING SEXUAL HARASSMENT: A Challenge for Community Education

by Robert L. Allen

(REVISED VERSION)

(Prepared for "Race, Gender and Power in America" Conference)

There can be little doubt that an important outcome of last year's Senate Judiciary Committee hearings has been growing public recognition of sexual harassment as a major social problem. Virtually the entire nation has engaged in the public discourse around this issue, and this public engagement is to be welcomed.

Like many men in the aftermath of Senate Judiciary Committee testimony, I found myself hearing harrowing reports of sexual harassment from women relatives and friends, women who had previously felt constrained to remain silent. Women told me of awful things that had been said or done to them, on the job or in the streets -- sometimes recently or sometimes years ago. They spoke of their anger and humiliation, of their shame and feelings of self-blame, of their fear of the consequences of speaking out, or rebuking their harassers. Sexual harassment -- the imposition of unwanted sexual attention -- was experienced as a violation of their human dignity.

I listened and shared their expressions of outrage -- but I also found myself recalling things I had said or done to women in the recent or distant past, and the recollections were sometimes distinctly discomforting. I think an important value of these exchanges was the opportunity for men to learn from the personal testimony of women they love and respect how widespread sexual harassment is. At the same time the self-reflection and discussions between men that these exchanges sometimes provoked offered

an opportunity for men to recognize that harassing behavior is not simply an aberration nor is it exclusively the province of macho males; on the contrary harassing behavior is something that many of us men have engaged in at some point -- if not on the job, then on the streets or in school or even in our homes. We knew what we were doing because we knew the women involved were made to feel uncomfortable or humiliated by our words or actions. Why did we do it? Why do men harass women? Why was such behavior, until recently, generally acceptable in our culture -- that is, acceptable to men? Aside from punishment, what can be done to stop harassing behavior?

In my presentation I want to suggest two things for consideration as part of the discourse on sexual harassment.

1. Sexual harassment -- whether in the workplace, on campus, in the streets, or in our homes-- should not be dismissed as aberrant behavior, as "macho" mentality gone wild, or as the result of male biology, or as out of control sexual desire. On the contrary, sexual harassment, like child abuse and domestic violence, is an outgrowth of socialization into male and female gender roles in a sexist society. It is learned behavior.

2. If harassment, abuse and violence are forms of learned behavior, they can also be unlearned. I therefore argue that in addition to legal or punitive approaches to dealing with sexual harassment, it is imperative to adopt a preventive approach through community education. We must create an environment, not only in the workplace, but in our communities generally in which harassment, abuse and violence are no longer tolerated because men and women understand the damage that is done to all of us. This means adopting a social change perspective that is critical of the values of the dominant culture, a culture that is premised on inequality.

Gender roles are not foreordained by our biology or our genetic composition. We learn gender roles as part of our socialization into the culture. When a child is born the first question inevitably asked is, "Is it a boy or girl?" Our response to the child is then mediated by our knowledge of its genitals, and it is our actions that let the child know its gender identity and what behavior is appropriate for that identity.

In California I work with an organization called the Oakland Men's Project. Formed in 1979, the OMP is a non-profit multiracial organization of men and women devoted to community education around issues of male violence, sexism, racism and homophobia. Over the years we have worked with thousands of boys and men (and girls and women) in high schools, church groups, colleges, prisons, community groups and rehabilitation programs. We conduct workshops that involve interactive role playing and discussions that allow men and women to examine gender roles and the training we get in this culture to play various social roles.

In our workshops we ask young people what they think it means to be a man or a woman. It is remarkable how consistently the same set of expectations are expressed for appropriate male and female behavior. Men are expected to be in control, tough, aggressive, independent, competitive and emotionally unexpressive (with the exception of anger and sexual desire, which are allowable emotions for men). Women, on the other hand, are expected to be polite, dependent, emotional, sexy, not too smart or pushy, and to take care of others. In recent years we have noticed that sometimes girls will challenge these ideas and occasionally even a boy will object, but for the most part these role expectations remain widely accepted. Paul Kivel, who has written a book called Men's Work: How to Stop the Violence That Tears Our Lives Apart (Hazelden, 1992) -- a book that sums up the

experience of the Oakland Men's Project -- refers to these as "core expectations" that we, especially men, have regarding appropriate male and female behavior.

How do young men learn these role behavior expectations? To illustrate the socialization process we use role plays dramatizing common situations that we have discovered most boys and men have experienced

One of the role plays we use in our work at OMP involves an interaction between a father and his ten-year-old son. One of the facilitators plays the father and the other facilitator plays the son. The son is sitting at home watching television when the father comes in from work. The father demands that the boy turn off the TV and berates him for the messiness of the room. When the boy tries to explain that he was going to clean the room later, the father tells him to shut up and stop making excuses. The father then shoves the son's report card from school in his face and demands to know why he has gotten a D in math. The boy says he did the best he could. The father shames the son, telling him that he is stupid, and that D stands for dummy. The boy says that is not fair and begins to stand up. The father shoves him down, saying, "Don't you dare get up in my face, I didn't say you could go anyplace!" The boy is visibly upset, and begins to cry. The father gets even more angry: "Now what? You're crying? You little mama's boy! You sissy! You make me sick. When are you going to grow up and start acting like a man?" The father then storms out of the room.

When we do this role play it gets the undivided attention of everyone in the room, especially the boys. Almost every young person has had the experience of being harassed and shamed by an adult. Most boys have had the experience of being humiliated by an older male and being told that they were not acting like a man.

When we stop the role play we ask the boys how it made them feel to witness this scene between the father and son. There may be a moment of embarrassed silence but then the boys will speak up and say it made them mad, upset, angry, sad, etc. Often this is the first time they have articulated the feelings brought up by such an encounter, which sadly often replicates something that happened in their own lives. Indeed, the power of this role play is that it is so familiar.

We ask the boys what messages they got from such encounters. They will say things like: "A man is tough. A man is in control. A man doesn't cry. It's okay for a man to yell at someone. A man can take it. A man is responsible. A man is competent. A man doesn't take crap from anyone else." And so on.

As the young people speak we write their comments on a blackboard. Then we draw a box around it and label it the "Act Like a Man" box. Most males in this culture are socialized to stay in the box. We learn this from our fathers, older brothers, guys on the street, television, sports, movies and so on. We may also learn it from our mothers and grandmothers, or from the reactions of girls in school. The fact is that this notion of manhood is so pervasive in our culture that everyone knows the role and anyone can teach it to a boy.

We ask the boys what happens if you step out of the box, if you stop acting tough enough or man enough? They reply that you get called names. You're called sissy, wimp, nerd, tag, queer, mama's boy, punk, girl, loser, gay, etc. And what is the point of the name calling? The boys reply that the name calling is a challenge and you're expected to fight to prove that you're not what they called you. In other words, if challenged, boys are expected to fight to prove that they're in the box -- that they're tough and

not gay or effeminate. Homophobia and fear of being identified with women in any way is a strong message boys get from an early age.

We also ask about expectations of female behavior. The students will say things like "A girl should be polite and clean, doesn't argue, is pretty, doesn't fight, doesn't act too smart, helps others, is emotional" . . . and so on. We ask what happens when a girl refuses to be submissive and dependent? What happens to her if she is assertive, smart, doesn't kowtow to the boys, is independent? The students reply that she will be called names. She will be called a bitch, tomboy, dyke, whore, ball-breaker, cunt, etc. What is the point of the name-calling, we ask. To tell the girl she'd better start "acting right" is often the reply. In other words, the name-calling is like a slap in the face, reducing the girl to a despised sexual object, with the purpose of humiliating her and intimidating her to resume "acceptable" behavior. If a girl fights when called names, she may emerge the victor but this very success raises questions about her femininity.

Our forays into junior highs and high schools hardly constitute systematic research but it is remarkable how consistently we find the same core expectations of acceptable male and female behavior among young people. To be sure, there is a growing tendency to question these expectations, especially among young women, but the grip of traditional role expectations remains very strong.

Our work at OMP involves challenging these expectations by showing that male and female behaviors are not biologically determined nor due to "human nature," but are learned in the course of growing up from our interactions with significant others and from the culture at large. Our workshops and role plays give boys and girls and men and women a way of analyzing social roles, not abstractly, but by drawing insights from their own

experiences. Moreover, we show that social interactions involve making choices, and that we can break free of old roles by supporting each other in changing our choices of actions.

An important component of our work is to look at how power and inequality are structured into social relationships in our society. We ask workshop participants to think of their experiences with different groups of people in our society and to tell us which they think are more powerful and which are less powerful. Most often this will result in statements to the effect that men as a group are more powerful than women as a group, whites more powerful than people of color, parents more powerful than children, teachers more powerful than pupils, rich more powerful than poor, straights more powerful than gays, bosses more powerful than workers, and so on. If we ask how these inequalities are maintained we are told that it is done through rules and regulations, through laws, through discrimination, through stereotypes, and ultimately through force and violence. Indeed we all learn that people are not treated equally, that we have assigned places in the social hierarchy, and that violence is used to keep less powerful groups in "their place".

Thus, despite the rhetoric of equality in this society, our experience teaches us that not all men are equal, women not equal to men, people of color not equal to whites, young people not equal to adults, etc. This hierarchy of inequality is based on some groups having power over others, and it is sanctioned by differential treatment and ultimately force. The violence is also interlinked: violence against one targeted group encourages violence against other powerless groups. Moreover, the use of force and violence is made socially acceptable through the process of blaming the victim -- that is, the notion that somehow the victim brought it

on himself or herself, that somehow the victim "deserved" the mistreatment they experience. For example, in the Rodney King case we have the incredible argument presented that Rodney King was both "out of control" and "in control" at the same time. The jury was told that the police officers thought he was dangerous because he was "out of control," that is high on drugs, while at the same time the jury was persuaded that actually he was "in control" of the situation and deliberately taunting and manipulating the officers. Either way this meant that Rodney King "deserved" the brutal beating he received, and the policemen could be acquitted. Blaming the victims for their own victimization is a widely employed means of justifying abuse and violence of all forms.

Sexual harassment plays a part in reinforcing unequal power between men and women in our society. This is an important way in which harassment is different from flirtation or a simple mistake in judgment. For example, men may harass women when women step out of the roles that men expect them to play. In the workplace this means that women who are holding jobs traditionally held by men, or women who are regarded as "too" assertive, competent, competitive or emotionally reserved are likely targets for harassment. The object of the harassment is to humiliate an "uppity" woman by reducing her to an object that is sexually vulnerable to men. To the male this action re-establishes the expected power relationship between men and women. Men may also harass women who are not "uppity" almost as a kind of ritual that confirms male dominance and female submissiveness. Thus, the female secretary or domestic worker may be "teased" or pinched or subjected to sexual remarks which serve to remind her of her low status and vulnerability to men. She is expected to acquiesce to this treatment by laughing or otherwise acting as if the harassment is somehow okay, thereby

confirming the male's superior status and power. A woman worker, because of her relative powerlessness, may also become a target of harassment from a male worker who is angry at the boss, but fearful of the boss's power. The male worker regains a sense of his own power by humiliating the woman. Sexual harassment thus reinforces male dominant power relationships in the workplace. This is also true of sexual harassment of women on the streets -- it makes the woman aware of her sexual vulnerability to men and her relative powerlessness, and the male harassers have their sense of masculine power reaffirmed. Indeed, women's sexual vulnerability to men is a key locus of male power. Men learn to expect this vulnerability. As boys we learn it from stories of sexual "conquests" we hear from older males, we learn it from films, magazines, pornography, advertising. We live in a capitalist culture that promises women's sexual availability as a reward to the male consumer of everything from cars to cigarettes. It is not surprising then that men come to expect that every woman should be sexually available to any man. Sexual harassment is therefore both a manifestation and a reinforcement of an exploitive system in which men collectively and individually are socialized to expect to have power over women collectively and individually.

Moreover, of the thousands of women who experience sexual harassment every day a great many of them are women of color and poor women who are most vulnerable in the jobs which racist and sexist discrimination force them to take -- domestics, clerical workers, farmworkers, sweatshop and factory workers. Not only are these women especially vulnerable to sexual harassment, they also have less access to the levers of power needed to seek redress. Often harassment is not reported because they fear revenge from their employers or they know their

complaint will be dismissed. They are doubly oppressed: subjected to abuse and then constrained to remain silent about it.

Although sexual harassment victimizes women, it does so in a manner in which the victims can be blamed. Often there is a suggestion that the woman somehow provoked or invited the objectionable behavior by something she said or did, or simply the way she dresses. If the woman does not immediately object then the suggestion is made that she must have enjoyed the behavior, and any subsequent objections are questionable. In any case, the female victim's character is called into question and the male harasser is conveniently let off the hook, again reinforcing male dominance.

Of course, all men don't engage in sexual harassment, but we must ask why men who witness sexual harassment may fail to interrupt it. One reason is obvious: male bonding to maintain male dominance. Men who would not engage in harassing behavior may not object to others doing it because they agree that women must be "kept in their place." A second reason is more hidden; namely, men's fear of being shamed or even attacked by other men.

As boys most males learn that men are dangerous. How many of us were called names, or beaten up or humiliated by other males when we were young? How many of us were ridiculed and made to feel shame by fathers or older brothers or coaches or teachers? How many were sexually assaulted by another male? We protected ourselves in various ways. Some of us withdrew into a private world of our fantasies. Some of us became bullies. Some of us became alcoholics and addicts so we wouldn't have to feel the pain and fear. Most of us learned to camouflage ourselves: we took on the coloration of the men we feared, and we hoped that no one would challenge us. We never talked about our fear because that in itself was

dangerous and could mark us as a target for ridicule or violence from other men.

Instead we learned to keep our fear inside, a secret. In fact, we learned to keep most of our emotions bottled up inside because any sincere expression of emotion in front of other men was risky business that set you up for being put down. Only one emotion was considered manly: anger. Some of us learned to take other feelings -- pain, grief, sadness, shame, loneliness, depression, jealousy, helplessness, fearfulness, etc. -- translate them into anger and rage, and pass them on to someone weaker than us in the form of physical or psychological violence. We learned that the humiliation we experienced at work, the fear we experienced when hassled by cops, the grief we felt when a relationship ended, the helplessness we felt when we lost a job -- we learned to take these feelings, roll them into a heavy fist of rage, and slam it into our wives, our children, our lovers, women on the job or on the streets, or less powerful men.

Thus women and children often live in fear of men, and men frequently live in fear of each other. Most of us men won't admit this, but deep inside we recognize that harassment, abuse, rape and violence are not simply "women's issues" -- they're our issues as well. We know, but seldom admit, that if we didn't constantly protect ourselves, other men would do to us what we all too often do to women and children -- as men who have been imprisoned can attest. So those who are not abusers or harassers sometimes wear the camouflage suits, we try to be "one of the boys." We present a front of manly power and control no matter what we may be feeling inside. We jostle and joke and push and shove, we make cracks about women and boast of our conquests, and we haze any guys who are different. We go

along with harassers so as not to expose our own vulnerability, our fear of being shamed by other men -- the weak point in our male armor.

Nevertheless, men have a stake in challenging sexual harassment, abuse and violence, and the sexist role training that underpins these behaviors. In the first place, men are not unconnected to women. We form a community of men and women -- and children -- together. A woman who suffers harassment could be my mother, my sister, my niece. She could be your daughter, or your sister or your wife. A woman who is harassed, abused or raped is part of a community that includes male relatives, lovers and friends. Those men are also hurt by the injury done to her. Those men have a stake in stopping the abuse. Those men are us, the men in this room. We have a stake in stopping the violence because it is being done to our sisters, our wives, our daughters, our mothers, our friends, our lovers -- it is being directed against women we love and cherish.

I would argue that men have a further stake in challenging sexual abuse and the system of sexism on which it is based. Men are also damaged by sexism. A system that requires that we always act as though we were in control while repressing our emotions takes a heavy toll. It damages our sense of authenticity. It results in a loss of intimacy with women and children. It conceals but does not change our fear of other men. It produces stress that is a hazard to our health and shortens our life spans. It makes us sick in our souls and our bodies and it turns us into enemies of those we love and of ourselves.

In America, Black men and women historically have been victims of especially brutal and systematic violence. The lynching (and castration) of thousands of Black men by white men and the rape (and lynching) of thousands of Black women by white men have been methods of terrorizing

our community. Today white mob violence and police brutality continue unabated. African American men know intimately the violent capabilities of other men. It is a tragedy that many of us have internalized the violence of this oppressive system and brought it into our communities and our homes. The injuries done by racism to black men's self-esteem are sometimes devastating, but the expectations of manhood we have learned block us from revealing or acknowledging our pain. Instead, too often we transform our pain and hurt into rage and violence against those we love. This must end. African American men, as frequent victims of white male violence, have a particular stake in standing with women and children against all forms of violence.

How can men of all races be brought into the struggle against harassment, abuse and violence? This is the question which we have been seeking to answer through our work at the Oakland Men's Project. We have learned that it is extremely important for men to begin talking with each other about these issues. In our experience we have seen that there are growing numbers of men who are critical of sexism. All too often, however, these men as individuals are isolated and fearful of raising their concerns with other men. It is time for men who want to stop the violence to reach out to other men and break through the barrier of fear that has silenced us.

This is not an easy task, but, as we have learned at the Oakland Men's Project, it can be done. The male sex role, with its insistence on male emotional "coolness" and reserve, makes open and honest communication from the heart difficult between men. We can begin to break through this isolation by sharing the ways -- often painful and humiliating -- we as young boys were socialized into the male role. At OMP we have found that workshops using interactive role plays, like the father/son role play I

described earlier, are an effective method for opening up communication between men. This method gives us a way to examine how the male sex role often sets men up to be dominating, controlling, and abusive. In another role play we watch a bully harassing the new boy at school. We discuss what the bully gains or fails to gain by bullying. For example, the bully may be seeking to compel respect from the victim, but what the victim often feels is contempt. At the same time the bully models abusive behavior for the victim. The bully fails to get what he wants, but he may teach the victim how to bully someone else.

Through role plays like these and others we look at the training men get to take the hurt that has been done to them, translate this pain into anger, and direct the anger in the form of violence at a weaker person -- a woman or child or less powerful male. This is the cycle of violence. We see it, for example, in the fact that the great majority of child abusers were themselves abused as children.

Another role play we use recreates a high school dating scene in which a boy and girl are sitting in his car in a secluded spot at night. We recruit two students from the audience to play the roles. We tell them that the two are boyfriend and girlfriend, that the boy wants to have sex that night but the girl, although she likes him, does not want to have sex. We then ask them to play out the scene. Sometimes the two actors work out a resolution acceptable to both. Sometimes the girl gets out of the car and walks away. But often the tension simply escalates as the boy attempts to dominate and get his way while the girl tries to be responsive without giving in to his demands. We stop the role play and talk with the actors about the pressures they felt to act as they did in the situation. We relate these pressures to the male and female role expectations that we discussed earlier.

We also talk about the risk of the situation escalating into violence and rape, and the need to recognize danger signs to prevent this from happening. (For other examples of role plays and anti-violence exercises for teens, see Helping Teens Stop Violence, by Allan Creighton and Paul Kivel, Hunter House, 1992.)

Interrupting the cycle of violence requires that we unlearn sex roles that set us up to be perpetrators and victims of abuse. I am not talking simply about men who are harassers or batterers, or women who have been abused. I believe that in this culture most of us are at risk for abusive behavior because most of us have been socialized into traditional sex roles. The cycle of abuse and violence can be broken by challenging those roles and the institutions that support them -- that is, through a process of community education and social change.

It is important for men of all races to become involved in this process of educational and social change. Men can take responsibility for stopping the cycle of violence and offering alternatives to violence. Men working with boys can model supportive ways of interacting with each other, and constructive methods of using anger to bring about change. All of us constantly make choices about how we relate to others, and in the power of choice is the power of change, for we are not simply passive victims of our socialization. For African American men there is a special urgency to this work. Our sons are dying in record numbers, often at the hands of each other in angry acts of violence whose goal is to somehow prove their manhood. We need to be clear that anger itself is not the problem. In a racist society Black people and other people of color have good reason to be angry. The problem is in how the anger is expressed. Turning the anger against ourselves or others in acts of abuse and violence is self-destructive. Using

righteous anger to motivate challenges to racist and oppressive institutions empowers individuals and communities, creates the possibility of real change, and builds self-esteem. Black men's organizations such as Simba, the Omega Boys' Club, and 100 Black Men of America, are helping to develop new models of manhood among teenage Black males. We need organizations like these in every city.

Equally important, men working together can model a new version of power -- power with others to make change, as opposed to power over others to perpetuate domination. In our society power generally means the ability to directly control others, with violence as the ultimate means of control. Men (and sometimes women) are socialized to exercise this form of power in all our social relationships. But this kind of power necessarily sets up conflicts with others -- those whom we seek to control -- and it is alienating and isolating for the individual power-holder. Power with others breaks down the isolation we feel and makes it possible to relate as allies rather than as competitors or opponents. It allows us to recognize that we are a community of people -- men, women and children -- who are interdependent.

All of us have had the experience of powerlessness, for all of us have been children. As children we experienced what it meant to be controlled by others, and often we experienced what it meant to be humiliated and shamed by others. These experiences are painful and we may prefer to forget them, but, ironically, by "owning" these experiences we create the possibility of empowerment through establishing our connection with others who have had similar experiences. In this way it becomes possible for men to become allies of women and children, not out of guilt, but through insight into their own experience.

Harassment, abuse and violence arise from a system of sexual and racial inequality. To stop them requires us to challenge the socialization into gender roles, the institutions and the system of power upon which sexism and racism stand. This is a big task, but it is one which each of us can start in small ways -- in our homes, in our schools, in our communities. We can educate ourselves, and offer our children new models of male and female behavior. We can support each other in finding healing responses to the pain and hurt we have suffered. We can challenge the schools to educate young people about empowering ways to counter sexism and racism. We can confront institutionalized oppression and violence in our communities. We can support movements and organizations that work for progressive social change. In sum, working together with others as allies we can build community responses to the system of inequality and the cycle of violence that are so damaging to our lives.

Robert L. Allen is Senior Editor of The Black Scholar magazine and, with Robert Chrisman, is co-editor of Court of Appeal: The Black Community Speaks Out on the Racial and Sexual Politics of Thomas vs. Hill (Ballantine, 1992). Allen is also a former staff member and currently President of the Board of Directors of the Oakland Men's Project in California.

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GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

October 23, 1992

Robert L. Allen
The Black Scholar
485 65th Street
Oakland, California 94609

Dear Robert:

Thank you for participating in the "Race, Gender and Power in America" Conference. We have been deluged with rave reviews, and we are thankful to you for making the conference an enormous national success!

Your paper, and indeed your work, with young black men in Oakland, is so important. I've had occasion to mention your work several times in the last few days.

I will keep you posted on the Washington Post Outlook opportunity. Jodie Allen, the Editor of Outlook has commitments through the election, so we won't get a decision on either your paper or Adele's until early November.

As a token of our appreciation, we will send, under separate cover, a complete and complimentary set of video cassettes of the entire conference.

Warmest regards,

Emma Coleman Jordan

Anita F. Hill

ECJ:pri

THE **BLACK** SCHOLAR

Journal of Black Studies and Research

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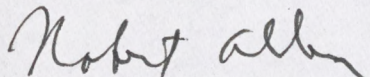
Prof. Emma C. Jordan
Georgetown University Law School
Washington, DC

October 19, 1992

Dear Prof. Jordan:

This will confirm our telephone conversation in which I granted you permission to submit my paper, "Stopping Sexual Harassment: A Challenge for Community Education," to the "Outlook" section of the WASHINGTON POST to be considered for publication.

Sincerely,



Robert L. Allen



GEORGETOWN UNIVERSITY LAW CENTER

TELEFAX NUMBER 1-202-662-9488

TELEFAX COVER MEMORANDUM

DATE:

19 Oct 92

NUMBER OF PAGES, INCLUDING TRANSMISSION SHEET: _____

TO:

~~Curtis Berger~~
~~Columbia Law School~~
~~(FAX) (212) 854-7946~~

Robert Allen

(510) 547-6633

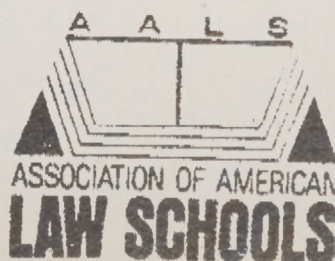
FROM:

Emma Coleman Jordan
TELEPHONE NUMBER: (202) 662-9064

COMMENTS: _____

THANK YOU

IF DOCUMENT IS ILLEGIBLE OR INCOMPLETE, PLEASE CALL (202) 662-9064
OR 662-9406.



1ST STORY of Level 1 printed in FULL format.

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October 18, 1992, Sunday, Final Edition

SECTION: OUTLOOK; PAGE C1

LENGTH: 1736 words

HEADLINE: Feminists v. Thomas;
The Anita Hill Crusaders' Double Standard

SERIES: Occasional

BYLINE: Ishmael Reed

BODY:

NOT SATISFIED with the humiliation of a black Supreme Court nominee -- his private parts paraded before the world -- white media feminists have decided to make the lynching of Clarence Thomas an annual event. Novelist and essayist Cecil Brown has compared it to Guy Fawkes Day: the celebration of the execution of a scoundrel.

The first anniversary of Anita Hill's charges of sexual harassment was marked by opinion polls noting her increased credibility. A U.S. News & World Report poll showed Hill and Thomas tied in the credibility race. The Gallup Poll gave Hill a four-point lead; the Wall Street Journal gave her a 10-point lead.

Unlike the polls of a year ago, no racial breakdown was provided. I suspect if one had been, the results would have shown that the majority of blacks still believe that Hill lied. A recent "Frontline" documentary on the Hill-Thomas extravaganza documented the perceptual gap between the average black citizen and the media-certified "talented-tenth" black elite, who claim to speak for blacks but who don't live among them. Though the show was generally favorable to Hill, the inter-views with grassroots blacks, men and women alike, revealed strong support for Thomas.

If there has been a shift in public opinion since a year ago, one can attribute it to a year of pro-Anita Hill effusions from white media feminists, including the producers of popular sitcoms. In the media, Hill is now portrayed as something of a saint. During a recent interview with Katie Couric on the "Today" show, none of the contradictions in her testimony or her actions was discussed. It was reminiscent of nothing so much as Barbara Walters's love-in disguised as an interview last spring with Desiree Washington, the woman whom Mike Tyson was convicted of raping.

The transformation of Anita Hill from obscure law school professor to feminist icon is not, contrary to the conventional wisdom, simply the result of the nation waking up to the realities of sexual harassment. It is also a bolstering, intentional or inadvertent, of the pervasive double standard regarding black and white males who have been accused of sexual harassment.

Last June, on the day that representatives of two feminist organizations were, in a fit of irrelevance, chastizing Thomas for his son's decision to attend an all-male military school, came new revelations about one of the most

The Washington Post, October 18, 1992

horrendous incidents of misogyny in recent years: the now-infamous Tailhook convention in Las Vegas where dozens of women were pawed, insulted, molested and assaulted.

As a black male, I'm still wondering why this incident involving white men hasn't become the symbolic cause celebre that Anita Hill has. The abuses at Tailhook, first reported a few weeks before the allegations against Thomas, were far worse than anything the Supreme Court nominee did or did not say. Yet Tailhook is not the subject of commemoration, perhaps because most of the women involved are from military backgrounds, far different from those of many middle-class feminists. Similarly, the case of a black woman allegedly raped by four white male students at St. John's University in New York did not become a feminist cause celebre.

It's not unreasonable to see a media double standard at work. According to a story in Vanity Fair, Hill was badgered into revealing details of her affidavit by Nina Totenberg, correspondent for the audaciously named National Public Radio (audacious because NPR's audience is about as integrated as your typical Georgia country club). Totenberg later told her fellow reporters on the TV show "Inside Washington" that she had received information on some high-profile Republican males who weren't living the family values that they preached. Maybe there are good reasons why Totenberg hasn't gone on the air with these allegations as quickly as she did with Hill's, but I've never heard them.

White middle-class feminists, suggests Bell Hooks, a leading black feminist intellectual, are harder on black men than on the white men who are able to provide them with career opportunities. Maybe that's why white feminists excused Anita Hill's zeal to get ahead, dismissing the fact that Hill continued working for the man whom she accused of harassing her, and waxing indignant any time anyone mentions that Hill was on very friendly terms with Thomas seven years after his alleged harassment. They could identify.

Ironically, one political power broker in San Francisco, supportive of the Anita Hill crusade, found himself in the same position as Clarence Thomas. Walter Shorenstein, a prominent real estate developer, held a fund-raising event for women Democratic candidates last May, during which Thomas was pilloried. A few weeks later Shorenstein's former assistant sued him, alleging that he had physically harassed her for seven years. Shorenstein denied the charges and recently settled the case out of court with no admission of wrongdoing. The two differences between Shorenstein, patron of the feminists, and Thomas, villain of the year, is that Shorenstein is white and he at least received due process.

In the background of the Hill-Thomas affair (and my own powerful reaction to it) is the ongoing hostility between feminists and the defenders of black men. I was described in the pages of Ms. magazine as a "ringleader" of black men allegedly opposed to black women writing about misogyny. I was also accused of calling such writers "traitors to the race," which, of course, I have never said. In fact, in my capacity as a magazine editor, I have published leading black critics of misogyny among blacks, and I'm supportive of feminist demands such as the right to choose, the Equal Rights Amendment and day care. I think that black men are no better or worse than other men when it comes to their attitudes about women. My problem with the gender-first faction on the feminist movement, compounded by the demonization of Clarence Thomas, is that it singles out black misogyny as if it were the only misogyny that exists.

The Washington Post, October 18, 1992

My suspicion that the mythology of the Hill-Thomas affair perpetuates a racial double standard is based on the revealing words of feminist leaders themselves. Gloria Steinem, one of Hill's most enthusiastic boosters, said that "The Color Purple," the novel by Alice Walker, "told the truth about black men," presumably meaning that they are rapists and that they sleep with their children.

Similarly, Susan Brownmiller, in her book on rape, "Against Our Will," writes that "the mythified specter of the black man as rapist, to which the black man in the name of his manhood now contributes [emphasis added]" poses a threat to all women, black or white. Brownmiller doesn't say "some black men"; she says "the black man," meaning me, Clarence Thomas and a whole lot of other people. Such sentiments have shaped public commentary around sexually and racially charged issues. Brownmiller, for example, supported the verdict that acquitted William Kennedy Smith of rape charges. But the morning after Mike Tyson was convicted on rape charges last March, she was interviewed on Pacifica Radio and sounded positively gleeful.

(It was later revealed that Desiree Washington had signed a deal with her attorney agreeing to give him one third of the proceeds of a civil case against Tyson. This lent credence to the boxer's defense that his accuser was planning to file a civil suit against him and reap a financial windfall from her accusations. The Rhode Island court said that withholding this information from the jury in Tyson's criminal trial may have influenced the outcome of the case. But since then not a word has been heard from Tyson's media judges, including Susan Brownmiller.)

Thus blacks are rightly suspicious of the Anita Hill phenomenon in the 1992 elections. Black leaders in Pennsylvania have not failed to notice that Lynn Yeakel, the Democratic senatorial candidate who says she decided to run after watching the all-male Judiciary Committee interrogate Hill, is mum on the issue of civil rights. Yeakel is so obviously trying to appeal to white suburban votes that many black leaders, in reaction, are supporting Arlen Specter. It is worth remembering that there weren't any black senators on the committee either, and that there were more white women on the Judiciary Committee's staff than blacks.

Another candidate from the Anita Hill party is Diane Feinstein, the former mayor of San Francisco who is now running for U.S. Senate in California. During Feinstein's tenure as mayor, a record number of complaints were filed against the police department by black citizens; Feinstein consistently took the side of the police in those disputes. When a reporter asked how she would have handled Clarence Thomas on the witness stand, Feinstein said she would have haunted the porno shops seeking information about the judge's video rental habits. Shades of the old KGB.

The feminist organizations that boast that Hill's case has brought millions of dollars into their coffers are discreet about the fact that they have few black women in their membership or in their leadership. This comes as no surprise. Black feminists have been accusing the feminist movement of racism for more than a century. Media feminists are reluctant to air this issue, despite the evidence that it is tearing the feminist movement apart. There are countless stories about women of color walking out of feminist organizations and conferences because they weren't placed in leadership roles or on panels or treated with respect. So heated was a clash between white and black feminists in Akron, Ohio, a few years ago that the governor's wife had to be summoned to

The Washington Post, October 18, 1992

mediate.

A year after the Hill-Thomas debacle, media feminists can't be relied upon to launch an open and candid discussion about racism in the movement. I also doubt whether the producers of "Murphy Brown," "The Trials of Rosie O'Neill" or "Designing Women" -- all of which did pro-Anita Hill shows -- will treat the subject. In "Black Women Abolitionists," an excellent study of racism in the 19th-century feminist movement, Shirley J. Lee accuses the early feminists of exploiting the rhetoric of black women while excluding them from the movement. The present-day feminist movement is using Anita Hill in the same manner.

Ishmael Reed is the author of a forthcoming novel, "Japanese by Spring."

GRAPHIC: ILLUSTRATION, WHITNEY SHERMAN FOR TWP

TYPE: NATIONAL NEWS, ANALYSIS

SUBJECT: SEX DISCRIMINATION; RACIAL DISCRIMINATION; WOMEN; BLACKS; WHITES; MEDIA

NAMED-PERSONS: ANITA F. HILL; CLARENCE THOMAS; ISHMAEL REED

ENHANCEMENT: SEXUAL-HARASSMENT



GEORGETOWN UNIVERSITY LAW CENTER

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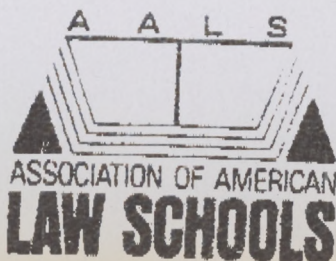
FROM:

Emma Coleman Jordan
TELEPHONE NUMBER: (202) 662-9064

COMMENTS:

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OR 662-9406.





GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

Ms. Jodie Allen
Editor
Outlook
Washington Post
1150 15th Street N.W.
Washington, D.C.

October 19, 1992

Dear Jodie:

I have enclosed a copy of a paper written by Dr. Robert Allen, author of the book on which the Emmy-Award winning documentary "The Port Chicago Mutiny" was based.

He wrote a tremendously powerful paper about black male socialization that leads to violent attitudes toward women and fosters acceptance of gender identity organized around an attitude of male violence.

I sought his permission (enclosed) to submit this for your review since it would make a wonderful companion to Adele Logan Alexander's (Clifford Alexander's wife) article: "She's no Lady, She's a Nigger...".

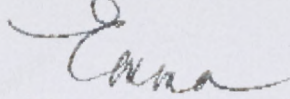
Allen's article is unique because he talks about vivid examples of father-son interaction in which men are taught that bullying and domination are expected male styles of interaction.

In light of Ishmael Reed's assumption in yesterday's piece that all feminists are white and female, Alexander (a black woman) and Allen's (a black man) pieces would constitute an important alternative perspective.

I've enclosed some information about the Race, Gender and Power Conference for which both of these papers were prepared. I strongly encourage you to publish these pieces. Within the African-American community, we are experiencing an historic dialogue on the nature of gender subordination within the black community. Wider circulation, through Outlook, would insure that the argument reaches beyond the

small circle of black intellectuals, to which it is now
confined.

Take care,

A handwritten signature in cursive script, appearing to read "Emma".

Emma Coleman Jordan

GULC-C.L.E.
Race, Gender and Power in America Conference
777 North Capitol Street, NE Suite 405
Washington, DC 20002-4239

FRIDAY • OCTOBER 16

1992

**RACE
GENDER
AND
POWER
IN AMERICA**



SPONSORED BY
GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON, DC

CONFERENCE DESCRIPTION

This conference has been organized to assess the impact of Professor Anita Hill's historic testimony on women in society. The conference will feature expert commentators who will explore changes in: the legal culture; political affairs; popular culture; and social norms for workplace interaction between men and women. The goal of the conference is to expand the public understanding of the currents of legal, political, and social change now coursing through America as a result of the Hill-Thomas sexual harassment hearings.

On October 15th, 1991, the U.S. Senate confirmed Justice Clarence Thomas by a vote of 52-48. In the year since Professor Anita Hill testified that she had been the object of unwanted sexual attention from her supervisor, we have experienced a revolution in the public discourse on sexual harassment.

In the aftermath of the hearings, the opportunities for women candidates who are willing to challenge pre-existing political arrangements have changed profoundly. The workplace has become a new frontier in advancing women's equality. For African American women especially, the hearings have initiated a painful, but long overdue, dialogue about the nature of gender subordination within our communities.

The conference will seek to expand the circle of conversation among those seeking solutions to some of the most urgent problems of: **Race, Gender and Power in America.**

Program Chairs

- **Emma Coleman Jordan**
Professor of Law
Georgetown University
Law Center
- **Anita F. Hill**
Professor of Law
University of Oklahoma
Law Center

Principal Paper

- **Adele Logan Alexander**
Independent Historian

Welcome

- **Judith Areen**
Dean, Georgetown
University Law Center

Participants

- **Robert L. Allen**
Senior Editor
The Black Scholar
- **A. Leon Higginbotham, Jr.**
Senior Judge,
former Chief Judge
U.S. Court of Appeals
Third Circuit

- **bell hooks (Professor Gloria Watkins)**
English and Women's
Studies
Oberlin College

- **Eleanor Holmes Norton**
Congresswoman, House
of Representatives
The District of Columbia

- **Orlando Patterson**
Professor of Sociology
Harvard University

- **Judith Resnik**
Orrin B. Evans
Professor of Law
University of Southern
California

- **Susan Deller Ross**
Professor
Georgetown University
Law Center

- **Anna Deavere Smith**
Performance Artist
Assoc. Professor of Drama
Stanford University

*Robert Allen
Senior Editor
The Black Scholar
485 65th St.
Oakland CA 94609*



RACE, GENDER AND POWER IN AMERICA

SPONSORED BY GEORGETOWN UNIVERSITY LAW CENTER

CONFERENCE SCHEDULE

FRIDAY • OCTOBER 16, 1992

8:00 - 8:45

- **Registration**
Moot Court Room Foyer
- Continental Breakfast

8:45 - 9:00

- **Welcome** - Dean Judith Areen,
Georgetown University Law Center
- **Introduction** - Professor Emma C.
Jordan, Georgetown University
Law Center

**Morning
Session**

Professor Anita F. Hill, University of
Oklahoma Law Center - MODERATOR

9:00 - 10:45

- **Principal Paper:**
Adele Logan Alexander, Historian
"She's no lady; she's a nigger":
The Demeaning Legacies and
Images of African American Women"
- **Commentators:**
 - bell hooks (Professor Gloria Watkins),
Oberlin College
 - Professor Judith Resnik,
University of Southern California
School of Law

10:45 - 11:00

- **Break** (Audience questions collected)

11:00 - 11:30

- **Discussion** between Alexander,
hooks and Resnik.

11:30 - 12:30

- **Panel** - Exchange and response to
audience questions and comments

12:30 - 2:00

- **Lunch** (On your own - List of local
restaurants enclosed)

**Afternoon
Session**

Professor Emma Coleman Jordan
-MODERATOR

2:00 - 2:15

- **Overview: The Post - Hill Law of
Sexual Harassment**
Professor Susan Deller Ross,
Georgetown University Law Center

2:15 - 3:30

- **Panel: Retrospective on the
Hill-Thomas Hearings**
- **Political Perspective:**
Congresswoman Eleanor Holmes
Norton, House of Representatives,
The District of Columbia

- **Legal Culture:**
Hon. A. Leon Higginbotham, Jr.,
Senior Judge, United States
Court of Appeals, Third Circuit

- **Popular Culture:**
Professor Anna Deavere Smith,
Stanford University

- **Social Commentary:**
Professor Orlando Patterson,
Harvard University
Robert L. Allen, Senior Editor,
The Black Scholar

3:30 - 3:45

- **Break** (Audience questions collected)

3:45 - 4:15

- **Personal Retrospective**
Professor Anita F. Hill

4:15 - 5:15

- **Panel** - Exchange and response to
audience questions and comments

5:15 - 5:20

- **Closing Remarks**

5:30

- **Georgetown University Law Center
Reception**

Registration Information

LIMITED SEATING
REGISTER EARLY

Registration Fee \$100.00 (Includes conference papers,
continental breakfast, coffee break refreshments and
reception)

REGISTRATION DEADLINE: SEPTEMBER 25, 1992

To register please complete the attached registration
form and mail with payment to GULC-RGPA, 777 N.
Capitol St., NE, Washington, DC 20002-4239

PLEASE MAKE CHECKS PAYABLE TO: "GULC"

• **Location: The Moot Court Room, Georgetown
University Law Center, 600 New Jersey Avenue, NW
Washington, DC 20001. Located between Union
Station Metro station (2 blocks east) and Judiciary
Square Metro station (2 blocks west).**

- Video and audio tapes may be ordered after the
conference
- Hotel and flight arrangements can be made by calling
1-800-220-2165 x35

Yes, I would like to register to attend the
**Race, Gender and Power In
America Conference**

No, I will **NOT** be able to attend the
**Race, Gender and Power In
America Conference**

however, I would like to order:

(indicate number of copies)

_____ audio tape(s) (@ \$ 35 each plus \$3.00 postage*)

_____ video tape(s) (@ \$ 80 each, plus \$3.00 postage*)

* add \$2 for international orders

Enclosed is \$ _____ for registration. Check no. _____

Enclosed is \$ _____ for conference tapes. Check no. _____

Name(First) _____ (Middle) _____ (Last) _____

Organization _____

Mailing Address _____

Telephone Number _____

Make checks payable to: GULC and send them with
this form to: **GULC-RGPA, 777 N. Capitol St., NE,
Washington, DC 20002-4239. * Registration
Deadline: Sept. 25, 1992**

• **LIMITED SEATING** - Registration accepted on first-
come, first-served basis

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Georgetown University Law Center
Race, Gender and Power in America Conference

cordially invites you

to a luncheon

in honor of

Professor Anita F. Hill

featuring

Luncheon Speaker

Professor Charles Ogletree, Harvard University Law School

"The Hill-Thomas Hearings: A Process in Need of Reform"

on

Friday, October 16, 1992
12:30 - 2:00 p.m.

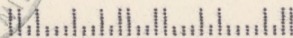
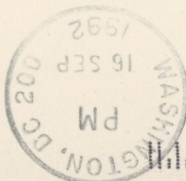
at

Georgetown University Law Center
Faculty Lounge
Fifth Floor

R.S.V.P.
Pamela Irwin
(202) 662-9406

Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C.

Robert L. Allen
The Black Scholar
485 65th Street
Oakland, CA 94609



09/16/92 WASHINGTON, D.C. 200 #67 17-19

GEORGETOWN UNIVERSITY LAW CENTER

600 NEW JERSEY AVENUE, N.W. WASHINGTON, D.C. 20001

THE **BLACK** SCHOLAR

Journal of Black Studies and Research

P.O. BOX 2869 • OAKLAND, CA • 94609 • (415) 547-6633

September 28, 1992

Professor Emma Coleman Jordan
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, DC 2001-2022

Dear Professor Jordan:

Enclosed is a draft of my paper for the upcoming conference on "Race, Gender and Power in America."

I also wish to confirm that I will be attending the luncheon in honor of Professor Anita Hill.

I look forward to meeting you and taking part in the conference.

Sincerely,

Robert L. Allen



GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

September 11, 1992

Robert Allen
Senior Editor
The Black Scholar
485 65th Street
Oakland, CA 94609


Dear Mr. Allen:

We are very much looking forward to your presentation at our conference on "Race, Gender and Power in America" on Friday, October 16 at the Georgetown University Law Center.

This letter is to remind you to send your biography and a photo to be used for publicity, and the release forms we sent earlier. We'll need these to assemble materials for the conference participants.

Emma

Sincerely,


Emma Coleman Jordan

ECJ:pri



GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

September 10, 1992

Robert L. Allen
The Black Scholar
485 65th Street
Oakland, CA 94609

Dear Mr. Allen:

I am writing to invite you to join me as a guest of Georgetown University Law Center, at a luncheon in honor of Professor Anita Hill on **Friday, October 16, from 12:30 p.m. to 2 p.m.** The luncheon has been arranged for members of Anita's support team during the hearings, and all of the presenters for the **Race, Gender, and Power in America Conference**, to be held at the Law Center on that day. You should have a conference brochure in hand by now. If you have not received a brochure, please contact my secretary, Pamela Irwin, at (202) 662-9406 to obtain a copy.

The luncheon will be a special occasion, during which those of us who served as members of Anita's support team, (witnesses, lawyers, press liaison, and other assignments) can reunite and renew our ties.

A highlight of the luncheon will be a presentation by Professor Charles Ogletree, who will suggest procedural reforms necessary to restore confidence in the process by which Supreme Court Justices are selected and confirmed.

I look forward to seeing all of you at the conference and the luncheon. You will receive a formal invitation from Georgetown in the next few days. I wanted to write separately to let you know how excited Anita and I are about the conference. We look forward to seeing you on October 16th.

Best regards,

Emma Coleman Jordan

ECJ:pri

Georgetown University Law Center

Race, Gender And Power In America Conference

cordially invites you

to a luncheon

in honor of

Professor Anita F. Hill

featuring

Luncheon Speaker

Professor Charles Ogletree, Harvard University Law School

"The Hill-Thomas Hearings: A Process in Need of Reform"

on

Friday, October 16, 1992

12:30 - 2:00 p.m.

at

Georgetown University Law Center

Faculty Lounge

Fifth Floor

R.S.V.P.

Pamela Irwin

(202) 662-9406

Georgetown University Law Center

600 New Jersey Avenue, N.W.

Washington, D.C.

RETURN BY SEPTEMBER 30, 1992

Race, Gender and Power in America
Georgetown University Law Center
October 16, 1992
Washington, DC

EQUIPMENT NEEDS:

- ☐ I will need no special equipment.
- ☐ I will need the following for my presentation: (Screens and a podium with microphone will be provided.)

___ 35 mm slide projector ___ overhead projector other (specify): _____
Special accessibility requirements: _____

- ☒ I will submit a full draft of my comments by **September 30, 1992**.
- ☒ I will submit a final completed copy of my comments for publication by **November 16, 1992**.

OUTLINE PRODUCTION AND PUBLISHING CLEARANCE:

☒ (we) hereby grant permission to photocopy and distribute copies of the draft of this work.

Signed: Robert L. Allen

Signed: _____

Author(s): _____

Title: Stopping Sexual Harassment: A challenge for
(Please indicate tentative title of your paper) Community Education

SPEAKER RELEASE:

☒ The Georgetown University Law Center conference on **Race, Gender and Power in America** may record my voice and image me at the above mentioned meeting in all appearances on that program. I understand that the audiotapes and videotapes will be made available for purchase to the general public as well as conference registrants. I further understand that this agreement in no way affects my ability to publish my presentation as I see fit, and makes no claim other than permission to record my voice and image with subsequent sale of tapes. I also understand that, upon request, I will receive a complimentary audio and/or video cassette of my presentation at the **Race, Gender and Power in America Conference**.

- ☐ I will not allow my presentation to be recorded.

Signed: Robert L. Allen Date: Sept 16, 1992

RETURN BY September 25, 1992 to: Professor Emma C. Jordan, Georgetown University Law Center, 600 New Jersey Avenue, N.W.a, Washington, DC 20001



GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

September 24, 1992

Robert L. Allen
The Black Scholar
485 65th Street
Oakland, California 94609

Dear Mr. Allen:

We are looking forward to your presentation on Friday, October 16, 1992 at our conference on **"Race, Gender and Power in America."** This letter will describe the travel and reimbursement guidelines for the conference and the deadlines for submitting your papers.

Travel Guidelines

As we stated in our letter of invitation, if you are traveling from out of town, we will reimburse you for round-trip coach airfare and one night's lodging and meals. For your convenience, we have reserved rooms in nearby hotels. Hotel and flight arrangements can be made by calling **1-800-220-2165, extension 35**. Please identify yourself to travel agent, Jane or Juliet, as a speaker in the **"Race, Gender and Power in America"** Conference. (After you have made your arrangements, drop me a note to let me know your flight numbers, time of arrival and departure, and hotel).

In order to ensure prompt reimbursement by Georgetown University Law Center, please be sure you keep **original** receipts for transportation (boarding passes, flight coupons and ground transportation receipts), hotels (check-out receipts), meals (original receipts). As soon as possible after the conference, please forward a written reimbursement request detailing expenditures and attaching original receipts to me.

Papers

A camera-ready, full draft of your paper is due in my office by **Friday, September 30, 1992**. Please be sure that you enclose, together with your paper, the release form we sent you in August. A copy of that form is enclosed with this letter for your convenience. Your paper will be included in a notebook of conference materials that will be distributed to all conference participants. Your remarks at the October 16 conference will be audio and video taped for future distribution.

Robert L. Allen
September 24, 1992
Page Two

By **November 16, 1992**, we need a final, publishable copy of your written paper. Upon receipt of your final paper, we will process your honorarium of \$1,000. If you have not already done so, please send us at your earliest convenience, a **black and white glossy photo** for publicity purposes, and a **one-page current biography**.

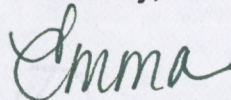
Media Coverage

As you might guess, the national press has been very interested in covering the conference. We've agreed to let The Pacifica Radio Stations and C-SPAN carry the entire conference live. We will keep you informed of our commitments as we go. Because we want to direct the focus of attention to include all of you, I encourage you to be responsive to media inquiries. We will be redirecting some press calls to you, as seems appropriate.

Parking

If you need parking, please let us know right away. Thank you so much.

Sincerely,



Emma Coleman Jordan

ECJ:pri

Enclosure

P.S. Enclosed please find a reprint of panelist Judith Resnik's article, "Hearing Women."

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GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

August 26, 1992

Robert Allen
Senior Editor
The Black Scholar
485 65th Street
Oakland, California 94609

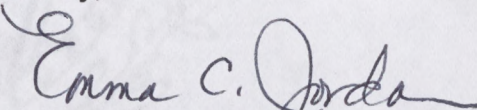
Dear Mr. Allen:

Got 9/11

This letter is to ask you to send your curriculum vitae, for use in preparing a biographical summary for the "Race, Gender, and Power" Conference. In addition, will also need an 8 x 10" glossy photograph of you.

If you have any questions, please do not hesitate to call my research assistant, Judith O'Sullivan. We can be reached at (202) 662-9064.

Sincerely,


Emma Coleman Jordan

ECJ:pri



GEORGETOWN UNIVERSITY LAW CENTER

Emma C. Jordan
Professor of Law

August 22, 1992

Robert L. Allen
The Black Scholar
485 65th Street
Oakland, California 94609

Dear Mr. Allen:

Thank you for accepting our invitation to participate in the Georgetown University Law Center's Conference on **Race, Gender and Power in America** to be held on Friday, October 16, 1992. Professor Anita F. Hill and I, as co-chairs, are particularly pleased that you will comment on the social implications of newly emerging norms for workplace interaction between men and women.

Please prepare a camera ready, full draft of your paper (approximately 15 pages on 8 1/2" by 11" paper) to be sent to my office by **Friday, September 30, 1992**. Your paper will be included in a notebook of conference materials that will be distributed to all workshop participants. A release form has been enclosed for you to complete, sign and return with your draft. In addition to the distribution of your paper, your remarks will be audio and video taped for future use and dissemination. Remember, a final copy of your paper will be due by **November 16, 1992**, for publication in an academic journal or book.

Your presentation is scheduled to be given in the afternoon after Anna Deavere Smith gives a commentary on popular culture. You should allow **fifteen minutes** for your remarks, at approximately 3:15 p.m. The full hour and a half segment has been allotted for the moderator to give introductions and make smooth transitions. Next, there will be a break in which audience questions be collected on index cards and organized for you and the other panel participants to discuss for approximately thirty minutes.

Under separate cover, you will receive a conference brochure and a formal invitation to the special reunion luncheon for Professor Hill's support team from the hearings.

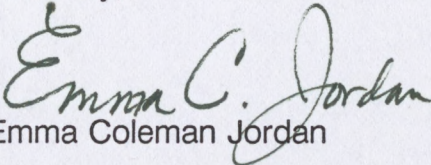
Robert Allen
August 22, 1992
Page Two

As previously indicated, if you will be traveling from out of town, we will reimburse you for round trip coach air fare and one night's lodging and meals. Reservations have been made at a hotel close to the Georgetown University Law Center. Please give my office a call, as soon as possible, to confirm the details of your travel and or accommodations. The number is (202) 662-9064 and feel free to ask for either of my assistants, Sunni Smith or Judith O'Sullivan.

This conference has been organized to consider the impact of the Hill-Thomas Hearings and the changes in the American understanding of sexual harassment. You will join an impressive list of participants who will examine how those changes have affected various aspects of our society.

I appreciate your willingness to contribute to this Conference. At this early stage, we have every indication that the conference will be well attended, if not over-subscribed. I am sure it will prove to be an enriching experience for both participants and attendees. If you have any questions about any aspect of the program, please do not hesitate to contact me.

Sincerely,



Emma Coleman Jordan

Enclosures

Race, Gender, and Power in America

Conference Description

This conference has been organized to assess the impact of Professor Anita Hill's historic testimony on women in society. The conference will feature expert commentators who will explore changes in: the legal culture; political affairs; popular culture; and social norms for workplace interaction between men and women. The goal of the conference is to expand the public understanding of the currents of legal, political, and social change now coursing through America as a result of the Hill-Thomas sexual harassment hearings.

On October 15th, 1991, the U.S. Senate confirmed Justice Clarence Thomas by a vote of 52-48. In the year since Professor Anita Hill testified that she had been the object of unwanted sexual attention from her supervisor, we have experienced a revolution in the public discourse on sexual harassment.

In the aftermath of the hearings, the opportunities for women candidates who are willing to challenge preexisting political arrangements have changed profoundly. The workplace has become a new frontier in advancing women's equality. For African American women especially, the hearings have initiated a painful, but long overdue, dialogue about the nature of gender subordination within our communities.

The conference will seek to expand the circle of conversation among those seeking solutions to some of the most urgent problems of: "Race Gender and Power in America."

Race, Gender, and Power in America

CONFERENCE

PARTICIPANTS LIST

Program Chairs

Professor Emma Coleman Jordan

Professor of Law
Georgetown University Law Center

Anita F. Hill

Professor of Law
University of Oklahoma
School of Law

Principal Paper

Adele Logan Alexander
Independent Historian

Welcome

Judith Areen
Dean
Georgetown University Law Center

Robert Allen

Senior Editor
The Black Scholar

Orlando Patterson

Professor of Sociology
Harvard University

A. Leon Higginbotham, Jr.

Senior Judge, former Chief Judge
United States Court of Appeals
Third Circuit

Judith Resnik

Orrin B. Evans Professor of Law
University of Southern California

bell hooks, (Professor Gloria Watkins)
English and Women's Studies
Oberlin College

Susan Deller Ross

Professor of Law
Georgetown University Law Center

Eleanor Holmes Norton

Congresswoman, House of
Representatives
The District of Columbia

Anna Deavere Smith

Performance Artist
Associate Professor of Drama
Stanford University

Race, Gender and Power in America

Friday, October 16, 1992

CONFERENCE SCHEDULE

8:00 - 8:45

- **Registration** - Moot Court Room Foyer
- Continental Breakfast

8:45 - 9:00

Welcome - Dean Judith Areen, Georgetown University
Law Center

Introduction - Professor Emma C. Jordan, Georgetown University Law Center

Morning Session

Professor Anita F. Hill, University of Oklahoma Law Center -
MODERATOR

9:00 - 10:45

Principal Paper: Adele Logan Alexander, Historian
"She's no lady; she's a nigger": The Demeaning Legacies
 and Images of African American Women"

Commentators:

- bell hooks (Professor Gloria Watkins), Oberlin College
- Professor Judith Resnik, University of Southern California School of Law

10:45 - 11:00

- **Break** (Audience questions collected)

11:00 - 11:30

Discussion between Alexander, hooks and Resnik.

11:30 - 12:30

Panel Exchange/Response to audience questions and comments

12:30 - 2:00

- **Lunch** (On Your Own - List of local restaurants enclosed)

Race, Gender, and Power in America
Conference Schedule
Page Two

Afternoon Session Professor Emma Coleman Jordan - MODERATOR

2:00 - 2:15 **Overview: The Post - Hill Law of Sexual Harassment**
Susan Deller Ross, Georgetown University Law Center

2:00 - 3:30 **Panel: Retrospective on the Hill-Thomas Hearings**

- **Political Perspective:** Congresswoman Eleanor Holmes
Norton, House of Representatives, District of
Columbia, United States
Congress

- **Legal Culture:** Hon. A. Leon Higginbotham, Jr.,
Senior Judge, United States
Court of Appeals, Third
Circuit

- **Popular Culture:** Professor Anna Deavere Smith,
Stanford University

- **Social Commentary:** Professor Orlando Patterson,
Harvard University

Robert L. Allen, Senior Editor,
The Black Scholar

3:30 - 3:45 • Break (Audience questions collected)

3:45 - 4:15 **Personal Retrospective** - Professor Anita F. Hill

4:15 - 5:15 Panel Exchange/Response to audience questions and comments

5:15 - 5:20 Closing Remarks

5:30 • **Georgetown University Law Center Reception**




Harvard Women's Law Journal

Volume 15
Spring 1992

Essay

Race, Gender, and Social Class in the Thomas Sexual Harassment
Hearings: The Hidden Fault Lines in Political Discourse

Emma Coleman Jordan





RACE, GENDER, AND SOCIAL CLASS IN THE THOMAS SEXUAL HARASSMENT HEARINGS: THE HIDDEN FAULT LINES IN POLITICAL DISCOURSE

EMMA COLEMAN JORDAN*

I. INTRODUCTION

The Thomas sexual harassment hearings were a Rorschach test of race, gender, and social class. A powerful swirl of visual and rhetorical images spilled into our living rooms like ink on a bone-dry blotter. What you saw depended on who you were. The fact that the central figures of this deadly linguistic duel, Judge Clarence Thomas and Professor Anita Hill, were both black was lost on no one.¹

In the pressure cooker of the marathon hearings the images and counterimages flowed fast and furious, soon blurring together in a frustrating set of impressions that had little to do with the

* Emma Jordan teaches at Georgetown University Law Center and served on Professor Hill's pro bono legal team. The other members of the legal team included John Frank, Warner Gardner, Janet Napolitano, Assistant Professor Charles Ogletree, Michele Roberts, Professor Susan Deller Ross, and Professor Judith Resnik.

I have written this Essay with full respect for my client's privilege of confidential communication with her attorney. I do not breach that privilege when I say here that I believe Anita Hill, and I am proud to have had the opportunity to serve her when she needed lawyers. I wish that all my clients taught me as much, or rewarded my efforts so generously.

I would like to thank Rajiv Parikh and Joan Pisarchik for valuable research assistance, and Susan Deller Ross for reading an early draft.

¹ A contest of veracity between black men and women about a claim of sexual misconduct is especially difficult, because both black men and women have been subjected to demeaning sexual stereotypes, and a public adjudication of the dispute provides fertile ground for reviving unflattering images. See generally PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA*, (1984) (exploring the relationship between racism and sexism, and the economic, social, and psychological forces supporting the exploitation of black women); see also CALVIN C. HERNTON, *SEX AND RACISM IN AMERICA* (1965) (a black male perspective on the sources of sexual stereotypes).

truth.² What actually happened between Professor Hill and Judge Thomas was more obscure at the close of the hearings than it was when the hearings began.

The elements of drama and conflict embodied in a credibility contest between two Yale-educated black lawyers are obvious. The pundits portrayed the Hill-Thomas hearings as a question of credibility,³ and Professor Hill sought to reverse the damage inflicted by the Senators' questions by taking and passing a polygraph test. Judge Thomas, by contrast, chose to rest his nomination on expressions of outrage and a general denial.⁴

Polls taken two days into the hearings found that fifty-five percent of the respondents disbelieved Hill's account.⁵ Polls

² Former Executive Editor of the *Washington Post* Benjamin C. Bradlee notes that modern political culture has "moved way beyond the granting or withholding of access to full-scale manipulation—lying." Benjamin C. Bradlee, *Access, Manipulation and the Large and Small Lies of America's Presidents*, WASH. POST, Nov. 17, 1991, at C1, C4. See also Harvey Simmons, *Lying in High Places Threatens Democracy*, TORONTO STAR, Dec. 29, 1991, at B1.

The cumulative effect of bold public lies by political figures as diverse as Presidents Dwight D. Eisenhower (U-2 spy plane), John F. Kennedy (Bay of Pigs), Lyndon Johnson (Gulf of Tonkin Resolution), Richard Nixon (Watergate), and George Bush (race irrelevant to Thomas selection), and former National Security Council staff member Colonel Oliver North, has been to create a climate of public indifference to the accuracy of the factual assertions on which the images of public figures rest. One consequence of the dilution of our expectation of veracity in public affairs is the emergence of a degree of "truth fatigue," my term for the confusion and contradictory beliefs that Americans have come to hold on matters of national importance.

The Thomas sexual harassment hearings crossed the line from the evasion traditionally expected in Supreme Court confirmation hearings. "[S]ome people believe we can tolerate . . . an even more debased variant of the political lies that we have become accustomed to in electoral politics." Mark Tushnet, *The Degradation of Constitutional Discourse*, (Feb. 1992) (unpublished manuscript, on file with the *Harvard Women's Law Journal*) (exploring several possible scenarios regarding the testimony of both Clarence Thomas and Anita Hill).

³ See generally Richard Morin & Thomas B. Edsall, *More Americans Believe Thomas Than Accuser, Poll Indicates*, WASH. POST, Oct. 13, 1991, at A21; *Dividing Lines: While Many Women Believed Thomas, Others Felt Betrayed—and Are Gearing Up for a New Political Fight*, NEWSWEEK, Oct. 28, 1991, at 24.

⁴ See Associated Press, *Thomas Excerpts*, L.A. TIMES, Oct. 13, 1991, at A14.

Senator Leahy: Did you ever have a discussion of pornographic films with Professor Hill?

Thomas: Absolutely not.

Leahy: Ever had any with any other women?

Thomas: Senator, I will not get into any discussions that I might have about personal life or my sex life with any person outside of the workplace.

Id.

⁵ Morin & Edsall, *supra* note 3. A poll taken after the hearings ended found that 35.5% of men and 39.9% of women believed Professor Hill's charges against Thomas; 37.8% of

taken after the hearings concluded reveal perplexing results. When respondents were identified by race and gender, the group that was most likely to believe Hill, at 39.8%, was white women,⁶ while white males constituted the group that was next most likely to believe her, at 35.5%.⁷ Contrary to what one might expect, the group least likely to believe Hill was black women,⁸ at 28.4%.⁹ Just slightly more credulous were black men, at 29.3%.¹⁰ When race, gender, and social class were combined, the poll found that the two groups most likely to believe Hill were blacks with incomes over \$50,000 and whites with incomes under \$8,000.¹¹ Sixty-four point seven percent of white men with incomes under \$8,000 believed Hill's allegations.¹²

In sharp contrast to the poll results from the general public, judges, experienced evaluators of credibility, disbelieved Thomas.¹³ "[T]wo conservative [Supreme Court] [J]ustices who watched the hearings told their clerks that they thought Thomas lied to the Judiciary Committee."¹⁴ A survey of one hundred randomly selected state and federal judges found that 41% found Hill more credible; only 22% found Thomas more credible.¹⁵ Seventy-two percent of those responding said Thomas's credibility had been damaged.¹⁶

To understand the public perception and interpretation of the testimony requires consideration of the structure of the hearings,

whites and 28.8% of blacks thought Professor Hill was telling the truth. Washington Post-ABC News Poll, survey conducted Oct. 16-21, 1991, Oct. 1991 Monthly Poll (sample size 1536, national random sample, telephone survey; sampling error \pm 3% overall).

⁶ Washington Post-ABC News Poll, *supra* note 5.

⁷ *Id.*

⁸ One explanation for this lack of support from black women might be that black women believe that those who report sexual misconduct to "white" authorities expose black men, and thus the entire community, to the violence and oppression associated with racism. See *infra* note 64 and accompanying text. A second explanation may be found in the small sample size for blacks in this survey. There were only 170 blacks in the sample of 1536. A polling expert concludes that the cell size for black women was probably too small to be reliable. Telephone interview with Sharon Warden of the *Washington Post* (Mar. 16, 1992).

⁹ Washington Post-ABC News Poll, *supra* note 5.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ David A. Kaplan with Bob Cohn & Paul McKelvey, *An Uncomfortable Seat: The Hearings Hurt Thomas's Credibility—and the Court's*, NEWSWEEK, Oct. 28, 1991, at 31.

¹⁴ *Id.*

¹⁵ *Hearings Turn Off Judges*, NAT'L L.J., Oct. 28, 1991, at 1, 22.

¹⁶ *Id.*

the lay person's limited understanding of the law, and presumptions based on race, gender, and social class.

II. PROCEDURE IS POWER

During the hearings, the single question which served as the foundation for evaluating the explosion of events occurring both inside and outside the Senate Caucus room became: "Do you believe her?"¹⁷ Thus framed, the hearings were transformed from a forum in which the Senate could determine Clarence Thomas's suitability to serve on the Supreme Court into a criminal "trial" in which Judge Thomas was portrayed as the defendant.

The ad hoc legal arrangements of the Senate Judiciary Committee offered fertile ground for the most powerful participants to manipulate the public's perception of events. During the hearings, three major legal constructs were deployed to Judge Thomas's advantage.

First, the Senators often treated the televised events as a trial. This characterization was especially detrimental to Professor Hill, because it led the public to expect that the proceeding would provide all of the customary protections of a judicial trial. Instead, the legislative hearings contained an inappropriate mixture of procedural guarantees, with Professor Hill receiving less protection than a court proceeding would have offered, and Judge Thomas receiving more than a confirmation hearing warranted.

Guided by the inappropriate analogy to a criminal trial, the Senators placed the burden of "proving" her allegations on Professor Hill.¹⁸ Senate Judiciary Committee Chairman Joseph Biden

¹⁷ See Morin & Edsall, *supra* note 3.

¹⁸ Senator Hatch: "I hope that nobody here, either on this panel or in this room is saying that Judge, you have to prove your innocence because I think we have to remember and we have to insist that Anita Hill has the burden of proof, or any other challenger and not you, Judge." *Hearing of the Senate Judiciary Committee*, FED. NEWS SERV., Oct. 11, 1991.

But cf. Senator Kohl: "Judge Thomas had a full and a fair opportunity to tell the [C]ommittee, the Senate and the American people why his professional qualifications, as opposed to personal accomplishments, justified his elevation to the Supreme Court. He failed to do that. He failed to discharge his burden of proof." *Excerpts From Remarks by Members of Senate Judiciary Panel on Thomas*, N.Y. TIMES, Sept. 28, 1991, at A8.

assured Judge Thomas, "[T]he presumption is with you."¹⁹ Similarly, Judge Thomas was accorded many of the procedural safeguards that criminal defendants enjoy, including the presumption that he was "innocent" unless the allegations against him were proven "beyond a reasonable doubt."²⁰

Additionally, the Senate allocated an unrealistically compressed time period for "pre-trial" factual development, discovery, identification and preparation of witnesses, and issue refinement. Once the hearings began, with a frail underpinning of factual development, the Senators, not the parties, were in control of the order of presentation of testimony. "[T]he process was very carefully managed . . . to ensure Thomas had the highest viewership and had the ability to contextualize the process."²¹

A second procedural element of the hearings working against Professor Hill was that, although the hearings were depicted as trial-like, the roles of the Committee members themselves were ill-defined. Each Judiciary Committee member was permitted to ask questions,²² make speeches,²³ and interject hyperbolic criticism²⁴ or praise²⁵ of the witnesses. The fluid, unstructured setting of the hearings placed a premium on political aggressiveness and a clear political agenda. For example, in their aggressive, well-orchestrated attacks, Senators Hatch, Specter, and Simpson suggested that Professor Hill suffered from a psychological disorder.²⁶

¹⁹ *Hearing of the Senate Judiciary Committee*, FED. NEWS SERV., Oct. 12, 1991. See also William Schneider, *Not Much Really Changed on Thomas*, 23 NAT'L J. 2578 (Oct. 19, 1991).

²⁰ See Schneider, *supra* note 19.

²¹ Judy Mann, *GOP Wins Sound-Bite Battle*, WASH. POST, Oct. 18, 1991, at C3 (quoting Kathleen Hall Jamieson, Dean of the University of Pennsylvania's Annenberg School of Communications).

²² HEARING BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, 102ND CONGRESS, 1ST SESSION, NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, (Oct. 11-13, 1991) (Committee print draft) [hereinafter Oct. Hearings]. See generally, Judith Weinraub, *Arlen Specter's Rude Awakening: Women Have Sounded the Alarm for the Judiciary Committee "Hit Man"*, WASH. POST, Oct. 18, 1991, at D1. Senator Specter was the lead Republican questioner of Anita Hill during the hearings.

²³ See, e.g., Oct. Hearings, *supra* note 22, at 3-4, 120-21, 125-26.

²⁴ *Id.* at 228, 235. Specter's attacks on Hill were viewed by many as outrageous. "The way he tried to destroy Anita Hill was a declaration of war against women." Weinraub, *supra* note 22 (quoting Betty Friedan).

²⁵ See, e.g., Oct. Hearings, *supra* note 22, at 119, 125, 199.

²⁶ See *infra* notes 97-99 and accompanying text.

Third, several Senators misstated the law of sexual harassment, further confusing the public.²⁷ One example of such misrepresentation was the extensive questioning by Senators Specter and Hatch about the 180-day statute of limitations for filing sexual harassment claims under Title VII.²⁸ "[The Senators' questions] gave the public the distinct impression that the short limitations period was created in response to sexual harassment claims . . . [implying] that a time-barred claim of sexual harassment is suspect on the merits."²⁹

It is not surprising, therefore, that the public was confused regarding both the law of sexual harassment and the fact that it was inapplicable to these proceedings. Sexual harassment is a relatively new legal concept.³⁰ Catharine A. MacKinnon first laid the theoretical groundwork for sexual harassment claims in 1979,³¹ and the Equal Employment Opportunity Commission (EEOC) first issued guidelines on the subject in 1980.³² The Supreme Court extended legal protection to sexually harassed workers in the 1986 case *Meritor Savings Bank v. Mechelle Vinson*.³³ In the five years since that decision, the public understanding of the nature of sexual harassment has grown slowly. Anita Hill dramatically accelerated the pace of public education. However, even she could not convince a majority of the U.S. Senate of the importance of her injury.³⁴

The hearings became an electronic plebiscite on sexual harassment in the American workplace. The subtly corrosive frame-

²⁷ "A more sophisticated form of gender abuse also appeared in the hearings . . . The Senators systematically twisted, distorted and tortured well-settled understandings of the law and subtext of sexual harassment. Never has one seen so much ambiguity snatched from the jaws of clarity with so little dexterity." Roy L. Brooks, *Will Hearings Stifle Harassment Claims?*, SAN DIEGO UNION, Oct. 20, 1991, at C3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Notwithstanding the novelty of the legal concept, the behavior that created the need for legal protection was well documented. A 1981 congressional study found that between May 1978 and May 1980, over 40% of female federal workers had experienced sexual harassment in the workplace. OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES, U.S. MERIT SYSTEMS PROTECTION BOARD, *SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE: IS IT A PROBLEM?* 35 (Mar. 1981).

³¹ CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

³² 29 C.F.R. § 1604.11.

³³ 477 U.S. 57 (1986).

³⁴ Thomas was confirmed on October 15, 1991, by a vote of 52-48, the largest negative vote against confirmation in this century. Helen Dewar, *Senate Confirms Thomas by 52 to 48 to Succeed Marshall on Supreme Court*, WASH. POST, Oct. 16, 1991, at A1.

work of media-amplified political theater shifted the focus away from Judge Thomas's fitness to serve on the Court to the credibility question, "Do you believe Anita Hill?" Laboring under a custom-fitted burden of persuasion, Professor Hill unsuccessfully sought to overcome the combination of political and procedural disadvantages.

III. THE INFLUENCE OF SOCIAL CLASS, RACE, AND GENDER

The cues to race, gender, and social class were oddly distorted in that super-heated weekend under the intensity of the klieg lights. Many pre-existing racial and sexual stereotypes undercut Professor Hill's credibility: a man does not commit sexual harassment unless the woman encouraged his sexual interests in some way; a charge of sexual harassment made against a man of high status by a woman of lesser status is to be viewed with suspicion because the woman has something to gain from publicity, no matter how unflattering;³⁵ sexual harassment charges are frequently concocted and therefore there must be independent corroboration of the events alleged; black women are unchaste;³⁶

³⁵ On the contrary, women often lose in such situations. For Anita Hill, the publicity brought a call for recission of her tenured professorship from State Representative Leonard E. Sullivan (R.-Oklahoma City): "We can't afford to have a high-profile professor on campus that millions of Americans, according to polls and national talk shows, believe is a fantasizing liar." *Hill Says Little About Confirmation*, N.Y. TIMES, Oct. 16, 1991, at A21.

Professor Susan Deller Ross describes the operation of this assumption in the case of American University President Richard Berendzen. Berendzen resigned "because of his 'verbal conduct of a sexual nature . . .'" He later pled guilty "to two charges of using indecent language while engaging in conversations over the telephone from his office . . ." Susan Deller Ross, *The Difficulties of Proving Sexual Harassment*, 65 S. CAL. L. REV. 2201 (forthcoming March 1992).

When the allegations involve men and women who are peers, the stakes are high enough that women who make such claims are often subjected to abrupt reductions in status. For example, when a woman executive at a major television network filed a confidential complaint against a corporate vice president, she was abruptly fired. Other women in the organization who were agitating for more equitable treatment found their career prospects substantially reduced by virtue of their association with the sexual harassment claimant. The women were understandably intimidated. "[We] backed off fast . . . It was like someone threw a snake in a barnful of horses and everybody jumped." SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* 377 (1991) (quoting an unnamed member of the group).

³⁶ See Charles R. Lawrence III, *Cringing at Myths of Black Sexuality*, L.A. TIMES, Oct. 15, 1991, at B7.

black women who report sexual misconduct by black men are traitors to the race and do not deserve community support.³⁷ Professor Hill found herself burdened by all of these stereotypes.

A. Social Class

Professor Anita Hill emerged from the hearings as a national figure of enormous stature,³⁸ widely admired for her courage and willingness to absorb the brutal innuendo of the Simpson-Specter-Hatch trio of Senatorial attackers. Her account of sexual harassment by a male supervisor rang true for many women, particularly those in the professions. Her story has since been echoed by a movie star,³⁹ a neurosurgeon,⁴⁰ a Peabody Prize-winning reporter,⁴¹ a Senator's wife,⁴² Senate and campaign staff mem-

³⁷ *Id.* ("There has been an unwritten code of silence that says we must not speak about this story outside of our communities because white men will use it against us Many of us have felt, and some of us have said, 'Why is she airing this dirty laundry?'").

³⁸ The awards Professor Hill has received since the hearings ended are one indication of the high regard that she has earned. *See, e.g.,* Ken Myers, *AALS Meeting: Appeal is Made on Methods; Anita Hill Speaks*, NAT'L L.J., Jan. 20, 1992, at 4.

³⁹ Esther Williams, a film star of the 1940s and 1950s publicly revealed for the first time that Billy Rose and Morton Downey, Sr. sexually harassed her when she was a 17-year-old in Hollywood. Williams said that she remembered Downey bragging about his organ size and describing in detail what he wanted the actress to do sexually. "I hated it, but I couldn't complain." "We kept our mouths shut . . . [o]therwise, we couldn't get another job." Eric Brace, *Personalities*, WASH. POST, Oct. 26, 1991, at D3.

⁴⁰ Dr. Frances Conley, a Stanford Medical School neurosurgeon, revealed that during her 25 years as a professional, she has suffered numerous instances of "gender insensitivity." Elizabeth Hommedieu, *Walking Out on the Boys*, TIME, July 8, 1991, at 52.

⁴¹ Kati Marton compared her own experiences as a 25-year-old reporter to those of Professor Hill:

I suppose the executive felt sure I would never talk about his abortive attempt at seduction. He was right. I never have, until now

There is more than personal catharsis at stake in owning up to this long-suppressed incident. I am writing this not only because the memory would not let go. I am writing because Professor Hill's voice moved me to do so. I wanted to say to the Senate panel, "Look, I know why she stayed on with the man who insulted her. So many of us have been there, not liked ourselves for it, but have stayed."

Kati Marton, *An All Too Common Story*, NEWSWEEK, Oct. 21, 1991, at 8.

⁴² Wanda Baucus, an artist and wife of Senator Max Baucus, telephoned Senators privately before the vote on the Thomas nomination to tell them about her own experiences with sexual harassment. As a 32-year-old doctoral student doing fellowship research in Washington, D.C., she became the object of persistent unwelcome overtures from a Senator. Later, as a Senator's wife attending a black-tie dinner, she experienced "unwelcome physical contact under the table" from another married Senator. Judith Weinraub, *Harassment on the Hill*, WASH. POST, Oct. 18, 1991, at D1, D8.

bers,⁴³ and other women journalists⁴⁴ who have told of similar experiences of verbal and physical sexual harassment.

Analyzing the social class variables that were at work during the hearings is difficult, because explicit discussions about socio-economic status are virtually taboo in polite conversation in America.⁴⁵ We all cherish the myth of our classless society. However, drawing subtle class distinctions between Hill and other women was an apparent part of the Thomas strategy to search and destroy his accuser.

This strategy exploited a complicated irony of women's upward mobility⁴⁶—the undercurrent of competition between women in jobs traditionally reserved for women, such as secretaries and administrative assistants, and women who aspire to break the glass ceiling by joining the executive ranks.⁴⁷ While virtually all women acknowledge that sexual harassment in the workplace exists, a sharp division among women regarding Professor Hill's allegations emerged based on socio-economic status.⁴⁸

The first four "character" witnesses for Judge Thomas—all women of color—sought to separate Professor Hill from the national audience of middle and working class women. These Thomas witnesses attempted to strip Professor Hill of her racial

⁴³ On March 1, 1992, Senator Brock Adams announced that he would not seek reelection. His decision was made public after eight unidentified women accused him of sexual harassment, including fondling and the use of drugs to make victims unconscious before a sexual assault. *Brock Adams Quits Senate Race Amid Sex Misconduct Allegations*, N.Y. TIMES, Mar. 2, 1992, at A1.

⁴⁴ See Howard Kurtz, *Post Reporter Williams Apologizes for 'Inappropriate Verbal Conduct': Harassment Investigation Finds Complaints 'Serious,' Editor Says*, WASH. POST, Nov. 2, 1991, at A4 ("Seven women said . . . that [Juan] Williams had repeatedly made hostile and sexually explicit comments . . . meant to embarrass them, . . . and most said that Williams persisted despite their protest.").

⁴⁵ See generally PAUL FUSSELL, *CLASS: A GUIDE THROUGH THE AMERICAN STATUS SYSTEM* (1983) (analyzing social class in present-day America).

⁴⁶ Joan Williams argues that "the power differential between men and women gets translated into conflicts among women. Thus single women (including . . . Anita Hill) get judged by norms that originate in domesticity. One such norm is the sense that women should not be too 'careerist' if higher values—sexual integrity or children's needs—are at stake." Letter from Joan Williams to author (Nov. 21, 1991) (on file with the *Harvard Women's Law Journal*). See also Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice* (Oct. 2, 1991) (unpublished manuscript, on file with the *Harvard Women's Law Journal*).

⁴⁷ "[L]awyers, human services professionals and politicians show[ed] strong sympathy for Professor Hill, [whereas] . . . women who keep house or bag groceries, nurse patients or work in construction" did not. Felicity Barringer, *Hill's Case is Divisive to Women*, N.Y. TIMES, Oct. 18, 1991, at A12.

⁴⁸ *Id.*

and working class identity, to sever her from her black, Baptist, farm-family origins. Her strengths were portrayed as faults. Her upward mobility from National Merit Scholar and class valedictorian in tiny, rural Morris, Oklahoma to Yale Law School and beyond became a basis for criticism.

J.C. Alvarez, a former Thomas special assistant, openly displayed her animosity toward Professor Hill's achievements.⁴⁹ Alvarez's testimony is a classic example of the subtle warfare that takes place in many offices across the nation. Alvarez testified that Hill was a "relentless debater . . . [who] always acted as if she was a little bit superior to everyone, a little holier than thou . . . mostly kept to herself . . . [and] only occasionally participate[d] in some of the girl talk among the women at the office"⁵⁰

For some women, "Hill's ambitiousness was a liability that shifted the burden of proof to her."⁵¹ The fact that "she was using him, as he was using her" led some to diminish the importance of her complaint.⁵² From this perspective she did not need the job to "put food on the table" and therefore was expected to quit at the first sign of trouble.⁵³ This provides one explanation for poll results that showed that women of lower socio-economic status disbelieved Hill's allegations.⁵⁴

Hill's ten-year delay in reporting, and her decision to follow Thomas from the Department of Education to the EEOC, are understandable⁵⁵ to a narrow band of women for whom ambition is a virtue, not a vice.⁵⁶ The choices such women make are driven

⁴⁹ See Alvarez: *'The Anita I Knew Before Was Nobody's Victim'*, WASH. POST, Oct. 14, 1991, at A14.

⁵⁰ *Id.*

⁵¹ Telephone interview with Professor Lani Guinier (a black Yale Law School classmate of Justice Thomas), University of Pennsylvania Law School (Oct. 23, 1991).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Cf. Telephone interview with Professor Roy Brooks, University of San Diego (Oct. 24, 1991) (Hill's delayed disclosure and job change with Thomas are "not atypical behavior on the part of the powerless. Even men have chosen to tolerate obnoxious, but powerful, persons in order to further their careers.").

⁵⁶ But see Katherine Boo, *The Organization Woman: The Real Reason Anita Hill Stayed Silent*, WASH. MONTHLY, Dec. 1991, at 44. Boo notes, "I believe Anita Hill. I believe

by recognition that in the highest levels of management and government service, a small group of highly influential mentors may enjoy a lifetime of input into one's career advancement. These "women who have ambition to get ahead, women who are not just looking for money, those who are looking for personal fulfillment, power, and influence in their line of work are especially vulnerable to a sexual harasser."⁵⁷ Professor Hill guessed correctly that Clarence Thomas's star would continue to rise and that he would therefore be one of a painfully small number of influential blacks in the Reagan and Bush administrations whose opinion of her could undo her hard won academic and professional achievements.

B. Reckoning With the Racial Realities

In the Hill-Thomas dispute, the fact that the central figures of this high-stakes dispute are both black was at once supremely important, and of no particular importance. For Judge Thomas, the process by which he had risen in the ranks of black conservatives⁵⁸ required him to carve a deep ravine between his

her recounting of implied threats, insinuating language, sexual pressure. I suspect Clarence Thomas is a dangerous man." However, Boo charges that Hill

chose to compromise herself to advance her own career

. . . . We've come to accept the moral calculus that undergirded [her choice]—the necessity of muting one's principles in the name of some future professional accomplishment. That alienating ethos, once largely the province of men in gray flannel suits, is now so entrenched in the working woman's world that few of us step back to examine its moral implications.

Id. at 45.

⁵⁷ Telephone interview with Vickie Golden (Oct. 25, 1991). Golden, an employment discrimination lawyer who represents sexual harassment victims, does not see the division among women solely in terms of social class. However, she does think that ambition makes it harder for the victim of sexual harassment to break the silence.

⁵⁸ Many black intellectuals are disdainful of black conservatives:

During the last ten years, you have often described yourself as a black conservative. I must confess that, other than their own self-advancement, I am at a loss to understand what is it that the so-called black conservatives are so anxious to conserve. Now that you no longer have to be outspoken on their behalf, perhaps

own views and the social and political preferences of a majority of black citizens.⁵⁹

Thomas was introduced to the American public by a President who was willing to assert boldly that Judge Thomas's race had nothing to do with his selection.⁶⁰ Two profoundly contradictory messages soon became apparent. On the one hand, he was a black man from Pin Point, Georgia, whose dramatic rise from poverty and the crushing limitations of racial segregation made him an icon of neo-conservatism, whose success could be cited as proof of the viability of self-help economics and the racial fairness of white conservatives who supported him. On the other hand, it was argued that because Judge Thomas's successes were achieved despite traumatic incidents of racism, he would bring a deep personal sensitivity to the resolution of the racial conflicts that often form the basis of Supreme Court litigation.⁶¹

Professor Hill's racial identity also rested on a foundation of ambiguous characterization. Thomas and his supporters sought

you will recognize that in the past it was white "conservatives" who screamed "segregation now, segregation forever."

A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas From a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005, 1018-19 (1992).

⁵⁹ Several noted scholars of African-American history and law have commented on the gap between Thomas's conservative political and judicial philosophy and the circumstances that affect the lives of the majority of African-American citizens. See, e.g., John Hope Franklin, *Booker T. Washington, Revisited*, N.Y. TIMES, Aug. 1, 1991, at A21 (decrying Justice Thomas's failure to embrace active measures to insure equal opportunity and accusing him of "plac[ing] [himself] in the unseemly position of denying to others the very opportunities and the kind of assistance from public and private quarters that have placed him where he is").

Judge Higginbotham pointedly reminds Justice Thomas that

[w]hen I think of your appointment to the Supreme Court, I see not only the result of your own ambition, but also the culmination of years of heartbreaking work by thousands who preceded you. I know you may not want to be burdened by the memory of their sacrifices. But I also know that you have no right to forget that history.

Higginbotham, *supra* note 58, at 1007.

⁶⁰ See Terry Atlas, *Bush Chooses Conservative for Supreme Court: Judge's Views on Abortion May Hold Key*, CHI. TRIB., July 2, 1991, at 1.

⁶¹ Cf. Justice Thomas's dissent from the 7-2 majority in *Keith J. Hudson v. Jack McMillian*, ____ U.S. ____ (1992); 1992 LEXIS 1372. The majority held that the Eighth Amendment's Cruel and Unusual Punishment Clause protected prisoners from being beaten while incarcerated, even if the beatings did not cause serious injury.

The dissent prompted wide comment because Justice Thomas had testified during his confirmation hearings that from the window of his D.C. Court of Appeals office he had watched federal prisoners being transferred, and had thought "there but for the grace of God go I." *The Youngest, Cruellest Justice*, N.Y. TIMES, Feb. 27, 1992, at A24.

to portray her as a "white" feminist who happened to be black, a tool of abortion-rights supporters who sought to bring down Thomas with a last-minute claim of sexual harassment.⁶²

This characterization was plausible because of the inflexibility of our models for race and gender debates. In the shorthand of public policy discourse about gender conflicts, we assume that all women are white⁶³ and that all blacks are men. When a black woman appears to speak for herself, these unspoken assumptions force her to shed one identity or the other. Moreover, when there are conflicts between a black man and a black woman, racism "trumps" sexism. The hierarchy of interests within the black community assigns a priority to protecting the entire community against the assaultive forces of racism. This conceptualization of the relationship between the entire community and the interests of its female members creates a powerful dynamic in which black women must subordinate matters of vital concern in order to continue to participate in community life. Women who break the expectation of silence may be made to feel disloyal, shunned, or vilified.⁶⁴

A new organization of black women, "African American Women in Defense of Ourselves," has sought to project a zone of political and cultural self-defense for black women by refusing to honor the expectation of silence regarding black male sexual

⁶² See Hearing of the Senate Judiciary Committee, *supra* note 19.

Thomas: I believe that someone, some interest group . . . came up with this story . . . to destroy me.

Biden: Got Professor Hill to say—to make up a story?

Thomas: I believe that in combination, this story was developed or concocted to destroy me.

See also Bob Cohn, *Dirt Trail*, THE NEW REPUBLIC, Jan. 6 & 13, 1992, at 16; Lally Weymouth, *Some Clues to Anita Hill's Motive*, WALL ST. J., Nov. 20, 1991, at A16 (arguing that Professor Hill's testimony was motivated by feminist "ideology"). But see Retraction, *A Correction*, WALL ST. J. Nov. 26, 1991, at A14.

⁶³ Some view the women's liberation movement as a dispute between white women and white men. See GIDDINGS, *supra* note 1, at 309. This is especially true when racial tensions are high. At such times "black women's feminist reactions tend to be muted." *Id.* at 311.

⁶⁴ See Rosemary Bray, *Taking Sides Against Ourselves*, N.Y. TIMES, Nov. 17, 1991, (Magazine), at 56 ("Anita Hill put her private business in the street and she downgraded a black man to a room filled with white men who might alter his fate—surely a large enough betrayal for her to be read out of the race."); see also Megan Rosenfeld, *After the Verdict, The Doubts: Black Women Show Little Sympathy for Tyson's Accuser*, WASH. POST, Feb. 13, 1992, at D1.

misconduct. They note that "[m]any have erroneously portrayed [the hearings] as [addressing] an issue of either gender or race. As women of African descent, we understand sexual harassment as both This country has never taken the sexual abuse of Black women seriously. [B]lack women have been sexually stereotyped as immoral, insatiable, [and] perverse" ⁶⁵

Complex racial and cultural arguments are now being developed, in a series of highly publicized controversies, in defense of black men who use obscene, often violent language and imagery in communicating with and about black women. One such argument is that obscenity is part of the black vernacular and should be understood by both black men and women as harmless, situationally appropriate repartee between the sexes.

An important recent contributor to this post-modern cultural defense of language that enshrines a culture of degradation and violence against black women is Henry Louis Gates, Jr., Chairman of the Afro-American Studies Department at Harvard University. Gates offered a cultural defense to the obscenity charges brought against the 2-Live Crew rap group.⁶⁶ Although the First Amendment is certainly broad enough to protect even the black-woman-hating lyrics of 2-Live Crew, the cultural acceptability of such language is a distinct question that cannot be answered solely with reference to black male subcultures.⁶⁷

Harvard sociologist Orlando Patterson extends Gates's argument, dismissing Hill's claim of sexual harassment as oversensitivity to a black male's "down-home style of courting."⁶⁸ Pat-

⁶⁵ *African American Women in Defense of Ourselves*, N.Y. TIMES, Nov. 17, 1991, (Campus Life), at 53.

⁶⁶ See Sara Riemer, *Rap Band Found Not Guilty in Obscenity Trial*, N.Y. TIMES, Oct. 21, 1991, at 1. Gates testified that 2-Live Crew were "literary geniuses." Drawing on his research into black folklore, he concluded that the often violent, misogynistic lyrics were within the tradition of parody within the black community. *Id.*

⁶⁷ Critiques of the cultural acceptability defense have come from men as well as women. See, e.g., Michael Wilbon, *Entitled to Everything He Got*, WASH. POST, Feb. 12, 1992, at B1 ("I'm sickened by the open-season-on-women atmosphere that would allow Tyson to fondle and grab and offend and frighten [women] for years.")

⁶⁸ Orlando Patterson, *Race, Gender and Liberal Fallacies*, N.Y. TIMES, Oct. 20, 1991, § 4, at 15.

This defense was also evident in the rape trial of former heavyweight boxing champion Mike Tyson. During the trial, Tyson's attorneys sought to portray him as a crude, unrefined "street dude" who courted women on the first meeting by asking them if they wanted to "f_____." Tyson offered a curious perversion of black male sexual stereotypes—seeking to immunize his behavior by asserting that any woman who conducted ordinary conversation and dating relationships with him would understand his sexual

terson thus joins the debate with the implausible assertion that the pornographic descriptions attributed to Thomas were within the cultural tradition of conversation between black men and women, and therefore "immediately recognizable to Professor Hill and most women of Southern working-class backgrounds, white or black, especially the latter."⁶⁹

Patterson argues that since the language Hill accused Thomas of using is part of

a verbal style that carries only minor sanction in [the black] subcultural context . . . Judge Thomas was justified in denying making the remarks, even if he had in fact made them, not only because the deliberate displacement of his remarks made them something else but on the moral utilitarian grounds that any admission would have immediately incurred a self-destructive and grossly unfair punishment.⁷⁰

This utilitarian argument, linked as it is with the black-culture defense, requires one to balance the damage to Professor Hill caused by Thomas's denial against the potential damage to Judge Thomas of telling the truth. In concluding that the balancing tips in favor of Judge Thomas's denial, Patterson demeans both the harm Professor Hill suffered from being forced to listen to Thomas's "dirty words," and the harm she suffered in being portrayed as a delusional liar.

Patterson's relativistic approach is also misguided. Cultural relativism in the workplace will quickly become a slippery slope if workers are permitted to carve cultural exemptions to Title VII. Moreover, even if one might want to take cultural factors into account, surely neither Judge Thomas, nor Patterson on his behalf, would want to argue that the early childhood conventions of Pin Point and Savannah, Georgia should be the standards by which then-EEOC Chairman Thomas's conduct should be measured.

"message" and would therefore be deemed to have impliedly consented to the full range of sexual contact with him. Tyson was convicted of one count of rape and two counts of deviate sexual conduct. See William Raspberry, *The Real Victim in Indianapolis*, WASH. POST, Feb. 14, 1992, at A25.

⁶⁹ Patterson, *supra* note 68. But see Brooks interview, *supra* note 55 (This argument "is alien to the black culture that I know. This is a bold and ridiculous assertion. It degrades black women to suggest that this is acceptable courting conversation.").

⁷⁰ Patterson, *supra* note 68.

1. The Lynching Metaphor

The single most intriguing aspect of the Hill-Thomas hearings was Thomas's complete abandonment of his earlier plea to be judged by the content of his character, not by the color of his skin.⁷¹ Like his fellow black conservative, author Shelby Steele, Thomas in his writings and speeches prior to nomination subscribed to the view that black people have developed a "victim-focused" identity⁷² which leads "us . . . to claim more racial victimization than we have actually endured."⁷³ Judge Thomas frowned on this "whining" from civil rights leaders. Yet, in his opening statement he charged the Senate Judiciary Committee with conducting a "high-tech lynching."⁷⁴ He told the Committee that stereotypes existed in the "language about the sexual prowess of black men, language about the sex organs of black men, . . . and these are charges that play into racist, bigoted, stereotypes, and these are the kind of charges that are impossible to wash off."⁷⁵ He went on to say that: "I wasn't harmed by the Klan. I wasn't harmed by the Knights of Camellia. I wasn't harmed by the Ar[y]an race. I wasn't harmed by a racist group. I was harmed by this process."⁷⁶

Because no one on the Committee responded to his lynching charge, the country was left with a distorted image of a racial victim. No one pointed out that it was a black woman who claimed he had victimized her. No one pointed out the terrible harms and stereotypes to which black women have been subjected.⁷⁷ Although the sexual stereotypes of all black people are damaging, "[t]he institutionalized rape of black women has never

⁷¹ See Rev. Martin Luther King, Jr., Address at the Lincoln Memorial, Aug. 28, 1963.

⁷² See SHELBY STEELE, *THE CONTENT OF OUR CHARACTER, A NEW VISION OF RACE IN AMERICA* 172 (1990) ("To retrieve our individuality and find opportunity, blacks today must—consciously or unconsciously—disregard the prevailing victim-focused black identity.").

⁷³ *Id.* at 67.

⁷⁴ *Hearing of the Senate Judiciary Committee*, *supra* note 19. See also Associated Press, *Thomas Excerpts: "I'd Rather Die Than Withdraw My Bid,"* L.A. TIMES, Oct. 13, 1991, at A14.

⁷⁵ *Hearing of the Senate Judiciary Committee*, *supra* note 19.

⁷⁶ *Id.*

⁷⁷ See *supra* note 65 and accompanying text.

been as powerful a symbol of black oppression [within the black community] as the spectacle of lynching."⁷⁸

2. Historical Resistance to Sexual Predation

Black women, like black men, have labored under corrosive myths of paranormal sexuality.⁷⁹ Stripped of cultural and legal protection from sexual predation, black women have had to construct a network of self-defense. Even after slavery, black women were "[r]egarded as immoral and loose [They] spent an inordinate amount of time . . . in attempts to establish themselves as virtuous women, as a rebuke to the rash of hypersexual images that flooded contemporary consciousness in those days, images that rationalized the routine sexual abuse of black women . . . by white men."⁸⁰

Historian Darlene Clark Hine asserts that during slavery, black women, vulnerable to rape and domestic violence, "resisted the misappropriation and [sought] to maintain the integrity of their own sexuality."⁸¹ The history of the struggle of black women has always contained an element of resistance to sexual predation. The most vivid illustrations of such self-defense are those of slave women who forcefully resisted the rape of slavemasters.⁸²

⁷⁸ HAZEL V. CARBY, RECONSTRUCTING WOMANHOOD: THE EMERGENCE OF THE AFRO-AMERICAN WOMAN NOVELIST 39 (1987). See also Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance*, 14 SIGNS 912, 917 (1989).

⁷⁹ "Black women as well as black men have been the subject of racist stereotypes in America. We must remember that the justifications for the rape of black women since the 17th century often lay in claims that they were 'asking for it' and that they were historically from a 'hot blooded and sensuous continent'" OFFICIAL STATEMENT TO ALL MEMBERS OF THE UNITED STATES SENATE—A Petition of African-American Professors of Social Science and Law (Oct. 12, 1991) (on file with the *Harvard Women's Law Journal*).

⁸⁰ Bray, *supra* note 64, at 95.

⁸¹ Hine, *supra* note 78, at 913.

⁸² See generally WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY, (Dorothy Sterling ed., 1984) (a collection of accounts of the lives of black women during the 19th century based on oral histories, interviews with ex-slaves, first-person reports in government records, letters, autobiographies, and newspaper stories). Sterling notes that:

Women who were strong enough sometimes fought off their attackers. In the Louisiana cane fields, the cutters sang, "Rains come wet me/Sun come dry me/

The story of Celia, a young slave woman who murdered her master, is one example.⁸³ John Newsom purchased Celia at age fourteen and raped her repeatedly. She had two children by him, but subsequently developed a stable relationship with a fellow slave named George. Celia then attempted, unsuccessfully, to terminate the abusive relationship with Newsom. She warned her master not to come to her private cabin, and when he disregarded her wishes, she struck him with a club, killing him. Celia was tried for murder. However, she was not permitted to testify on her own behalf, because a slave could not legally testify against a white person. Nor did the law recognize the crime of rape against a slave. However, a statute did make it a crime "to take any woman against her will."⁸⁴ Celia's lawyer introduced evidence of the ongoing rapes and made the innovative argument that "even a slave woman could resist sexual advances with deadly force."⁸⁵ Although the statute applied to "any woman," the court rejected the argument that it included slave women, because it would "threaten the very foundations of the institution of slavery . . . [to allow a slave woman legal entitlement] to use deadly force to protect her honor."⁸⁶ Since white women were barred from jury service, the "trial" was held before a jury of all white males. Under these circumstances, it should come as no surprise that Celia was found guilty and hanged.⁸⁷

Slave women were sexual property. The world they inhabited was bereft of legal protection for their sexual autonomy. Today,

Stay back, boss man/Don't come nigh me." In Tennessee Cherry Logue swung a club at a man who made "insulting advances."

Id. at 26. Another slave narrative recounts that in Virginia:

She used to cook for Miss Sarah Ann, but ole Marsa was always tryin' to make Sukie his gal. One day, Sukie was in the kitchen makin' soap. Had three gra' big pots o' lye jus' comin to bile when ole Marsa come in. He tell Sukie to take off her dress. She tole him no. [He then attempted to rape her.] She took an' punch ole Marsa an' made him break loose an' den she gave him a shove an' push his hindparts down in de hot pot o' soap. It burnt him near to death. He ran from de kitchen, not darin' to yell, 'cause he didn't want Miss Sarah Ann to know 'bout it.

Id. at 26-27.

⁸³ MELTON A. MCLAURIN, CELIA: A SLAVE (1991).

⁸⁴ *Id.* at 91.

⁸⁵ *Id.*

⁸⁶ *Id.* at 90-91.

⁸⁷ *Id.* at 114.

black women seek to claim that vital core of individual dignity, the right to determine one's sexual interactions. These efforts present complex challenges to the definitions of acceptable interaction between the genders. The slave legacy stands as a reminder that black women can successfully resist sexual imposition despite disabling legal doctrine.

3. The Power of Racial Memory

Judge Thomas's use of powerful racial imagery transformed him from sexual harasser to racial victim, perhaps the single most important element leading to his confirmation. His use of race worked to his advantage because "the critical segment of public opinion was the opinion of black voters in the black belt of the South. Thomas reminded black people that he was a black man who was in danger of being oppressed for being uppity, by going beyond his assigned station in life."⁸⁸

This perception tapped the widely shared belief among large segments of the black community that black politicians and other prominent leaders are subject to a double standard of morality.⁸⁹ Judge Thomas, like former Washington, D.C., Mayor Marion Barry, was able to tap a deep and "well-founded skepticism about the effort of the white power structure to embarrass prominent black men."⁹⁰

The Barry jury was deeply divided into two blocs. One consisted of older black women, many of whom had grown up in the segregated South and had personally experienced prejudice. They opposed conviction and were deeply distrustful of government prosecution of a prominent black man. The other, pro-conviction bloc consisted of younger black women. Class tensions occasionally erupted between the two groups. On one occasion, a pro-

⁸⁸ Interview with Professor Patricia King, Georgetown University Law Center, in Washington, D.C. (Oct. 24, 1991).

⁸⁹ See Alison Muscatine, *Answering Credibility Question: Accuser's Testimony Proof Enough; Tyson Caught by Words, Image*, WASH. POST, Feb. 12, 1992, at B3.

⁹⁰ Guinier interview, *supra* note 51. One concrete example of disparate treatment is the F.B.I. wiretaps of the private sexual activity of Dr. Martin Luther King, Jr., and the threat to disclose his private life, compared with the treatment accorded President Kennedy, who slept with a movie star and the girlfriend of a Mafia boss during the same period. The suspicion that black men who engage in sexual misconduct are more likely to be subjected to public pillorying therefore has a firm foundation in reality.

acquittal juror is reported to have told a college-educated, pro-conviction juror that she was "sick of you bourgeois blacks."⁹¹

I interviewed several members of the jury in Mayor Barry's trial⁹² to test the idea that pre-existing attitudes of racial solidarity and suspicion that prominent blacks have been targeted for unfair treatment might prompt some to disbelieve even credible and overwhelming evidence of wrongdoing by a black man.⁹³ The parallels in the jurors' attitudes toward Barry and Thomas were remarkable.

In both groups I sensed a shared skepticism about double-standards for blacks. However, the pro-conviction Barry group was willing to examine critically the actions of a black public figure, even when this meant breaking ranks with the community instinct to be protective of its leaders. One college-educated member of this group found Hill

completely credible, whereas I found [Thomas's] credibility to be completely lacking. First he said he had never discussed *Roe v. Wade*, in his entire life. To me that's an outright lie. If he could lie about something like that then he's probably lying about this harassment case as well. When he said that this was a high-tech lynching, he did that to put the weight back on the Committee.⁹⁴

A pro-Barry juror who watched most of the hearings also drew parallels between the two proceedings. However, she believed that both Barry and Thomas were being treated unfairly:

This was a political ploy. They wouldn't put anyone of another race in that position on prime time. It looked like a

⁹¹ Elsa Walsh & Barton Gellman, *Chasm Divided Jurors in Barry Drug Trial; Differing Outlooks Led to Deadlock*, WASH. POST, Aug. 23, 1990, at A1.

⁹² The Barry jury failed to reach a verdict on 12 of 14 counts, convicted Barry on a single misdemeanor count of cocaine possession, and acquitted him on another.

⁹³ The Barry trial, like the Thomas hearings, had a subtext of sexual misbehavior and embarrassing stereotypes about black male sexuality. "Thomas has called the nation's attention to one of its oldest and ugliest stories. This is a story of stereotypes about race and sex that are deeply embedded in the American psyche White America will hear this story not just as a lesson about the ubiquity of sexual harassment in the workplace. They will hear it as a story about over-sexed black men." Lawrence, *supra* note 36. See also Estelle B. Freedman, *The Manipulation of History at the Clarence Thomas Hearings*, CHRON. HIGHER EDUC., Jan. 8, 1992, at B2.

⁹⁴ Telephone interview with anonymous juror (Oct. 24, 1991).

set-up to me. They are trying to come down on prominent blacks. This should have been done behind closed doors. The Senators questioning him had some problems in their own background.

This juror especially objected to the fact that a black man was pitted against a black woman. She viewed this as "another part of the negative picture of black people. They were pitching the two against each other."⁹⁵

The Barry jurors' reaction is illustrative of the dilemma of the black community. Divided in reaction to a black conservative, we are left with the gut-wrenching decision of whether or not to support a flawed individual in order to protect the political power of our racial group. Racial solidarity and painful collective memories of selective prosecution of blacks have a powerful claim to the allegiance of all blacks who are asked to sit in judgment of one of our own.

C. A Gendered Understanding

Those who sought to discredit Professor Hill made use of a treacherous combination of stereotypes and myths about black and white women. The Freudian notion of women's hysterical fabrication of claims of sexual abuse⁹⁶ merged with the politico-psychiatric diagnosis of erotomania,⁹⁷ to provide a formidable tool with which to shape public opinion and diminish Professor Hill's powerful presentation. This Senatorial diagnosis of an hysterical, delusional female was then buttressed by the testimony of John Doggett, a witness who made the term erotomania come alive.⁹⁸

⁹⁵ Telephone interview with anonymous juror (Oct. 25, 1991).

⁹⁶ See SIGMUND FREUD, COLLECTED PAPERS 32-33 (Ernest Jones ed., 1959).

⁹⁷ See AMERICAN PSYCHIATRIC ASSOCIATION, WORK GROUP TO REVISE D.S.M. III, D.S.M.-III-R IN DEVELOPMENT, 2ND DRAFT (Aug. 1, 1986) (defining erotomania as "a delusional disorder in which the predominant theme of the delusion(s) is that another person of higher status is in love with him or her"). For a discussion of the political dimension of this diagnosis, see Alessandra Stanley, *Erotomania: A Rare Disorder Runs Riot—in Men's Minds*, N.Y. TIMES, Nov. 10, 1991, § 4, at 2.

⁹⁸ Alessandra Stanley wondered whether "another psychological disorder was in fact at work, erotomonomania, a male delusion that attractive young women are harboring erotic fantasies about them. Some who watched John Doggett, Jr. testify about his Svengali effect on women have also called it Doggett's Disease." Stanley, *supra* note 97.

This diagnosis was repeated and accepted by many, notwithstanding the absence of any scientific or medical support. Dr. Robert Spitzer, former Chair of the American Psychiatric Association Committee that developed the current diagnostic manual, asserts that while

[i]t is inappropriate to make a psychiatric diagnosis without actually conducting a psychiatric interview of the person being examined . . . it is possible to render a judgment, based on information that is not disputed about Professor Hill The diagnosis of *Erotomania* has been suggested based on the hypothesis that Professor Hill has a delusion that Judge Thomas is, or has been, in love with her. Patients with *Erotomania* do have the delusion that someone, who may barely know them, is in love with them. However, they do not believe that the person who is in love with them is harming them in any way *Therefore, this diagnosis is inconsistent with Professor Hill's charges of sexual harassment.*⁹⁹

Because Professor Hill is a black woman, she was portrayed not only as delusional, but also as Sapphire: the black, gonad-grinding woman "out of control."¹⁰⁰ The Sapphire image with all of its connotations of black male emasculation resonated within the black community. Hill's status as a black woman multiplied the possible lines of attack by making available additional stereotypes that could be used against her.

⁹⁹ Dr. Robert Spitzer, Memorandum to Greg Bloch[e], *Is Professor Anita Hill Crazy?*, Nov. 18, 1991 (emphasis added) (on file with the *Harvard Women's Law Journal*).

¹⁰⁰ Bray, *supra* note 64, at 94-95.

These skillful transformations of Anita Hill's character by some members of the Senate were effective because they were familiar, manageable images of African-American womanhood. What undergirds these images is the common terror of black women out of control. We are the grasping and materialistic Sapphire in an "Amos 'n' Andy" episode . . . the raging, furious, rejected woman.

Id. See also Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539. But see SHAHRAZAH ALI, *THE BLACKMAN'S GUIDE TO UNDERSTANDING THE BLACKWOMAN* (1989) (polemical endorsement of negative stereotypes of black women). Ali argues that Blackwoman's "main fault is that she wants to have her own way. It is not an unfair generalization to charge the Blackwoman with being out of control due to her rebellion against the authority of the Blackman." *Id.* at viii.

Hill's credibility was also challenged by the fact that she only revealed specific details of Thomas's pornographic references gradually. That such gradual revelation is the norm for women who have undergone traumatic experiences was a fact lost on both the Senators and the public.¹⁰¹

The public also found it incredible that a woman lawyer would be the target of harassment, especially from another lawyer. Even if harassed, a woman lawyer is expected to be able to handle it herself. Contrary to this expectation, one survey found that of the 918 female attorneys in large law firms who responded, sixty percent had been the object of unwanted sexual attention. Only seven percent reported these incidents.¹⁰² Ironically, even women who have been the victims of sexual harassment expect a woman lawyer to be more assertive in handling a workplace harasser.¹⁰³ Many members of the public view women lawyers as smarter and more aggressive than other women, and therefore able to take care of themselves. But, even women lawyers have supervisors whose displeasure can affect their career advancement.

IV. CONCLUSION: A PERSONAL EPILOGUE

The Thomas-Hill sexual harassment hearings left me drained but energized. Like Professor Hill, I too came to a moment of awakening when I realized that African-American women face a formidable challenge within our communities. The challenge is to speak without anger, to teach, and to discover the path to

¹⁰¹ Clients in sexual harassment cases rarely tell every detail the first time. "It is hard to get [my clients] to give all the details at once, they only give specifics when they trust me, it wells up, a lot is repressed." Golden interview, *supra* note 57. Golden represented Patricia Kidd, a District of Columbia government worker who successfully sued the city for its handling of her sexual harassment claim. See also Donna Britt, *The Grievance: To Keep Her Job, Pat Kidd Had To Sleep With The Boss. She Sued For Sexual Harassment, and Won. So Why Is She So . . . Lost?*, WASH. POST, May 5, 1991, at F1.

¹⁰² Rita Henley Jensen & Rorie Sherman, *More Female Lawyers Sue*, NAT'L L.J., Oct. 28, 1991, at 13. See also Marina Angel, *Sexual Harassment by Judges*, 45 U. MIAMI L. REV. 817 (1991) (exploring the extent of sexual harassment by members of the bench).

¹⁰³ Marlene Bonham, who was verbally harassed by the same supervisor who was the focus of Patricia Kidd's lawsuit, reacted to Hill's allegations, saying, "She is a smart and intelligent woman. She did get to move up. She needed to speak about it and work on it." Telephone interview with Marlene Bonham (Oct. 25, 1991).

restructure our community values in order to embrace black women as full citizens. If my two daughters find the world a better place because of our efforts, I will know that the discomfort we experienced was worth it. I remain committed to the goal, and optimistic that it will draw nearer to complete achievement each day that we are "willing to speak truth to power."¹⁰⁴

¹⁰⁴ This phrase, often repeated by Quakers during confrontations with official authority, reflects the spirit of moral commitment to change. See, e.g., Robert Myers, *Hans J. Morgenthau: On Speaking Truth to Power*, 29 SOCIETY 65 (Jan.-Feb. 1992).



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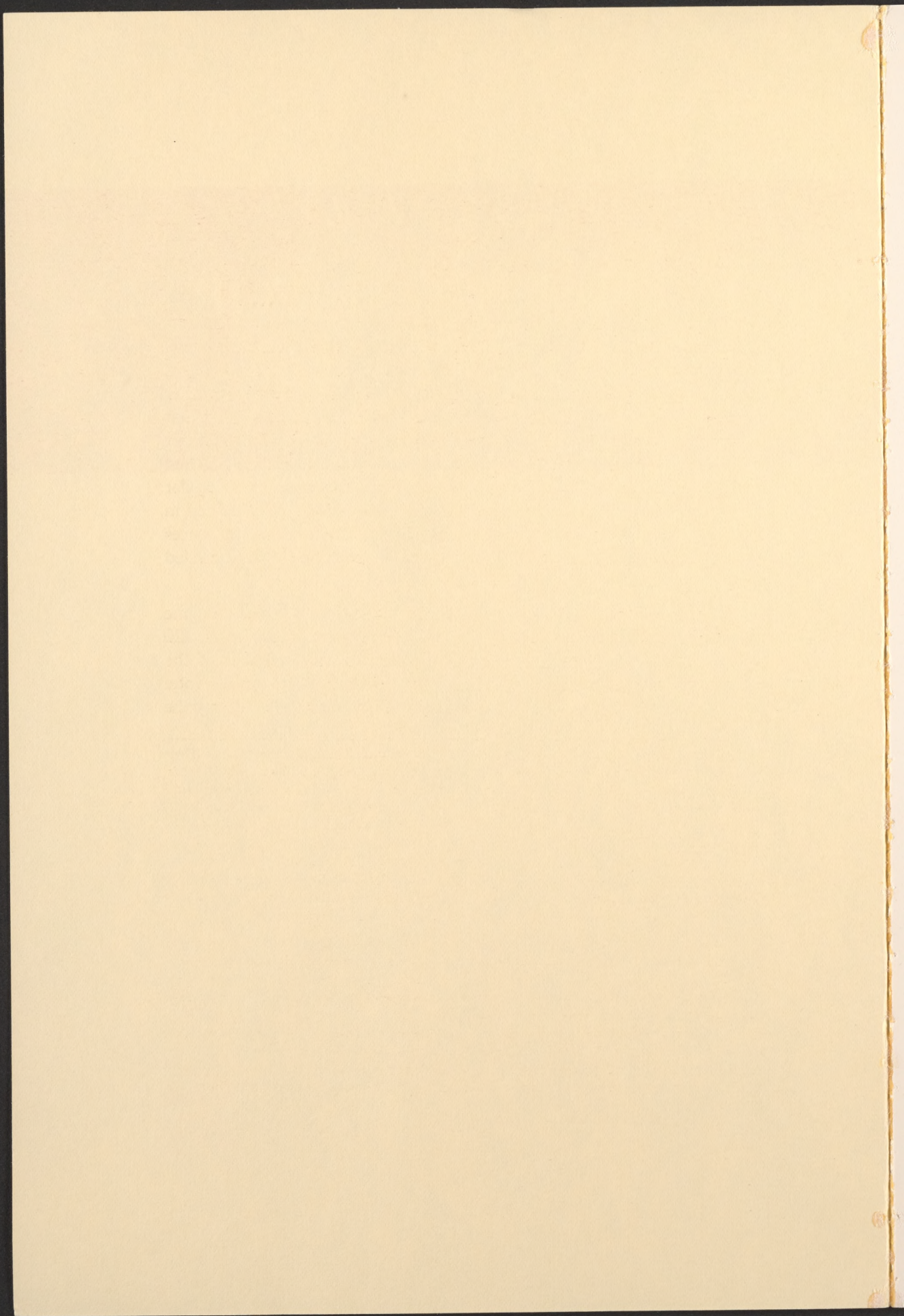
SOUTHERN CALIFORNIA LAW REVIEW

HEARING WOMEN

JUDITH RESNIK

Reprinted from
SOUTHERN CALIFORNIA LAW REVIEW
Volume 65, March 1992, Number 3
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HEARING WOMEN

JUDITH RESNIK*

On Monday, October the 7th of 1992¹, many anticipated that the confirmation vote on Clarence Thomas for the position of Associate Justice of the United States Supreme Court would go forward, as scheduled, on the following day. That morning, I received a call from another woman law professor. She told me that the press had just reported that Anita Hill, a professor of law at Oklahoma University and a former employee of the Equal Employment Opportunities Commission, had made accusations of sexual harassment against Clarence Thomas, for whom she had worked directly when he was the nation's chief official in charge of enforcing anti-discrimination laws. Preliminary responses from the Senate indicated a disinclination to postpone the scheduled vote.

My caller said that we needed to "do something"—and we, like many other people across the country, did. Within ten hours, some 120 women law professors signed a letter directed to each member of the Senate Judiciary Committee. We urged the Senate to postpone the vote, to "take this matter seriously" and to begin full investigation.¹ Early the

* Orrin B. Evans Professor of Law, University of Southern California Law Center. These comments are based on a talk first presented at a symposium organized by the University of Southern California Institute for the Study of Women and Men in Society. Thanks to Nan Aron, Kate Bartlett, Sandy Baum, Jan Carino, Kim Crenshaw, Dennis Curtis, Louise Fitzgerald, John Frank, Laura Geller, Carolyn Heilbrun, Deborah Hensler, Jan Hoffman, Chuck Lawrence, Marty Loebel, Mari Matsuda, Janet Napolitano, Steve Reinhardt, Ramona Ripston, Nancy Sherman, and Barrie Thorne, all of whom have shaped my understanding of the possibilities of friendships that encompass work and of work that begets friendship. Special thanks to USC Law Review members Veronica Gentili and Lee Seltman, who dropped all their activities this past October to help others hear what Anita Hill was saying, and to Heidi Binford, who helped this essay come into being.

I write about events in which I participated. In the fall of 1991, I helped Anita Hill obtain legal advice and worked on the Ad Hoc Committee on Public Education on Sexual Harassment. In 1987, I testified against the nomination of Robert Bork. In addition, I am a member of the Ninth Circuit Task Force on Gender Bias and on the Executive Committee of the Section on Women in Legal Education of the American Association of Law Schools.

1. Letter from Women Law Professors to the Senate (October 7, 1991) (on file with the author); see also Maureen Dowd, *The Thomas Nomination: The Senate and Sexism*, N.Y. TIMES, Oct. 8, 1991, at A1 (Katherine Bartlett, Duke law professor, sent letter, signed by many, to the "Senate leadership . . . calling on them to . . . 'fully and publicly' investigate [the] accusations . . .").

next day, Tuesday the 8th of October, another letter, from some 170 women and men law professors, also argued for delay.² The voices of law professors joined a chorus of other groups and individuals; the image the newspapers gave us was of seven Congresswomen marching up the steps to the ninety-eight men and two women of the Senate and demanding a delay.³

The spontaneous political energy worked. The outrage mounted as the Senate appeared willing to ignore claims that the person in charge of sexual harassment policies was himself a sexual harasser. On Tuesday, October 8th, the vote on the confirmation was delayed one week—until October the 15th. Also announced was the plan to hold a “hearing,” to start on Friday, October the 11th, which was also the beginning of the Columbus Day holiday weekend. Thus, on Thursday, October 10—the day before the hearing—Anita Hill met for the first time with the small group of volunteer lawyers who had been assembled over the preceding few days.⁴ The following day, she went before the Senate and, via the televised proceedings, the nation.

I begin this commentary with the events of October 7th because I think it important to remember that on that date, Congress wanted to ignore the statements of Anita Hill. But for collective political pressure, the vote would have occurred as scheduled, presumably with a confirmation vote of fifty-eight to forty-two. I believe it important to *mark* the delay—the moment in which, ostensibly, reconsideration of the nomination was on the agenda—for it denotes both the limits and the power of women’s concerns. In one sense, the short delay and the minimal role women played in shaping the “hearing” that followed underscore the little power that women have. At the same time, the confirmation delay demonstrates a new significance for accusations that judicial nominees (and implicitly other political appointments and office seekers) have caused harm to women. The “hearing” about Anita Hill’s testimony needs to be placed in the context of earlier confirmation disputes, to

2. Professors Norman Dorsen and Frank Michelman were principle organizers of the letter which “strongly urged[d] the Senate to delay action . . . until it could make a fully informed and considered appraisal of Professor Hill’s allegations.” Letter from Law Professors to the Senate (Oct. 8, 1991) (on file with the author).

3. Maureen Dowd, *The Thomas Nomination: 7 Congresswomen March to Senate to Demand Delay in Thomas Vote*, N.Y. TIMES, Oct. 9, 1991, at A1 (included were Barbara Boxer (California); Nita M. Lowey (New York); Patsy T. Mink (Hawaii); Eleanor Holmes Norton (nonvoting Delegate, District of Columbia); Patricia Schroeder (Colorado); Louise Slaughter (New York); Jolene Unsoeld (Washington)).

4. See Marianne Lavelle, *Legal Counsel for Anita Hill Had Uphill Battle*, NAT’L L.J., Oct. 28, 1991, at 22.

examine how "qualifications" for the Supreme Court have changed. The attention paid to the nominations for the Supreme Court needs to be contrasted with the inattention paid to the nominations of the hundreds of lower federal judges, all of whom also are appointed for life.

Finally, just as "women's issues" are starting to have relevance to an evaluation of the qualification of presidential appointees, "women's issues" are beginning to be on the agenda of courts. Specially-chartered commissions are seeking to learn how gender affects decision making, procedure, and outcomes in courts. The conclusions reached by some state court task forces on gender bias document that the inability of some members of the Senate to hear Anita Hill is paralleled every day in courts around the country, where judges do not listen to or hear women. Yet in those courts, as in the Senate, some are starting to think about learning how to hear women.

First, the limits of this "victory." The delay was far too short, and the "hearing" was unfair. Throughout the "hearing," two members of the Senate Judiciary Committee—Senators Hatch and Specter—acted as lawyers for Clarence Thomas. No member of the Committee took a comparable role to represent Hill. The televised inequalities were amplified by the lack of parity behind the scenes. Working on behalf of Thomas were the White House, the Department of Justice, and scores of others; working on behalf of Hill was a small crew of volunteers, scrambling to find phones, fax machines, and information.

In one sense, the Thomas-Hill dynamics resembled, indeed were, the paradigm of sexual harassment cases. He, the "employer," had resources, authority, access, and a presumption of credibility. She, the "employee," had few resources and little access. Yet in all but *this* sexual harassment case, the issue is not whether the alleged accuser will sit on the United States Supreme Court, and the television cameras are not recording the witnesses. Further, in sexual harassment cases, we imagine and aspire to decision makers sitting independent of the parties: to a judge who can hear the claims and be committed to assessing the credibility of the witnesses, to taking expert information when appropriate, and to finding facts.⁵ Indeed, as the law of sexual harassment has developed, some judges have even been willing to consider the viewpoint of the woman and to ask what a "reasonable woman" would have understood and experienced.⁶

5. See *Robinson v. Jacksonville Shipyards*, 760 F. Supp. 1486, 1491-1521 (M.D. Fla. 1991) (128 findings of fact).

6. See *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1990).

In contrast, the members of the Senate Judiciary Committee were not judges but combatants, struggling to keep an image of impartiality as they occupied many postures at once.⁷ Moreover, the resource imbalances between Thomas and Hill were echoed on the Judiciary Committee. Republican staff had their information augmented by White House assistants and many others. Democratic staff cast about for volunteers who helped, worked, ad hoc and sleeplessly, over the holiday weekend to assist Anita Hill. While real judges are sometimes faced with parties who have resources in excess of the judiciary, real judges have mechanisms (such as control over scheduling events) to enhance their capacity to be in charge. In the Thomas "hearings," no judge imposed any constraints on strategic exploitation; the Republicans used resources, time, and hostility to overwhelm the Democrats.

Some read the events of that week as a testimony to power and resources. Judge Thomas is now Justice Thomas. But there is more to be seen in the eight days than the power of those with resources. The power of the relatively less privileged was also impressive.⁸ Within three days of October 7th, an "Ad Hoc Committee on Public Education on Sexual Harassment" had been formed, and each member of the Senate received a "fact sheet" on the perceptions and the facts of sexual harassment.⁹ More than six hundred women from diverse academic disciplines joined together in attempting to inform Congress and the nation about the impact of sexual harassment on our lives. Despite the holiday weekend and the efforts by Thomas supporters to chill those who had already opposed his nomination from vocally joining in supporting Hill, six senators did change their votes,¹⁰ resulting in the narrowest confirmation approval in this century and the most negative votes that any confirmed

7. See Dennis E. Curtis, *The Fake Trial*, 65 S. CAL. L. REV. 1523 (1992).

8. As Anita Hill has subsequently described, almost all who participated were relatively privileged: she was a holder of tenure at a university, and many of those who helped her shared her status. Speech of Professor Anita Hill, upon being honored by the Section on Women in Legal Education of the American Association of Law Schools, San Antonio, Texas (Jan. 6, 1992).

9. Included, for example was:

PERCEPTION *Sexual harassment is not all that common, especially in professional work-settings. Hence the likelihood of Prof. Hill's allegations being true is low.* FACT ACCORDING TO THE MOST CONSERVATIVE ESTIMATES, 1 IN 4 WOMEN EXPERIENCE SEXUAL HARASSMENT AT SOME TIME DURING THEIR WORKING CAREERS. A study commissioned by Congress in 1981 found that 40 percent of female federal employees reported being sexually harassed on-the-job; when the study was repeated in 1987, the results were virtually identical.

Ad Hoc Committee on Public Education on Sexual Harassment, Fact Sheet on Sexual Harassment (Oct. 1991) (on file with the author).

10. Three Democrats (Joseph I. Lieberman of Connecticut, Richard H. Bryan of Nevada, and Henry Reid of Nevada) who had been supportive of Thomas changed their votes; three other Democrats (Bob Graham of Florida, Daniel Moynihan of New York, and Robert Byrd of West Virginia)

nominee has ever gotten.¹¹ In the face of the unbridled willingness of supporters of Thomas to attempt to smear Anita Hill,¹² truth was heard by many people, who now speak of a new awareness of the position women hold in workplaces and homes and of some understanding that that position is not uniform for all women, but varies with race, class, and sexual orientation.¹³ And, in many quarters, Hill is honored.¹⁴

Not only is it important to record the events as a mark of the progress women have made in the political sphere, it is also important to link the events of Anita Hill with precedents that have helped to change the criteria for high visibility presidential appointments. Not very long ago, it was permissible in politics, law, and the popular press to trivialize women and the problems we face. What today is sexual harassment was a few years ago just "the way it was." The "it" here refers both to jobs and personal relations. The terms and conditions of life for many women included, at the least, a verbal barrage of sexual comments. The challenge to that attitude can be marked in many forums and is of a piece with the contemporary women's movement. "It" became "sexual harassment," "violence against women," "date rape," "discrimination," and a host of other terms that have helped to name experiences and to link these private moments of discomfort, pain, and terror to political and legal wrongs.

The idea that nominees to high office should be responsible for (and could be questioned about) their conduct towards women is of very recent vintage. In the context of nominations to the United States Supreme Court, the debates about Robert Bork's nomination were, in my knowledge, the first in this century in which *women's* issues moved to center stage.¹⁵ For example, one of the controversial decisions of then-

who had "hinted" support for Thomas also voted against him. R.W. Apple, Jr., *The Thomas Confirmation*, N.Y. TIMES, Oct. 16, 1991, at A1.

11. *Id.* ("Not since Lucius Q.C. Lamar of Georgia, controversial as a Southerner while memories of the Civil War were fresh, has anyone moved into the Court with a confirmation margin as narrow as Judge Thomas's.").

12. See Leslie H. Gelb, *Untruths . . .*, N.Y. TIMES, Oct. 27, 1991, § 4, at 15 ("Washington is largely indifferent to truth . . . Sure, politics is the natural order of things. Yes, truth is elusive. But if a free people tolerates endless untruths, darkness descends permanently.").

13. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. L. FORUM 139.

14. For example, in San Antonio, Texas on January 6, 1992, Anita Hill was given an award by the Section on Women in Legal Education of the American Association of Law Schools, and was also invited to give the 1992 "Dean's Lecture" at Yale Law School.

15. For discussion of earlier confirmation disputes, see JOHN P. FRANK, CLEMENT HAYNSWORTH, *THE SENATE, AND THE SUPREME COURT* (1991); Robert F. Nagel, *Advice, Consent, and*

Judge Bork was when, as a member of a panel on the Court of Appeals for the District of Columbia, he wrote a unanimous opinion upholding a company's policy that required women of childbearing potential to be sterilized if they wanted to hold jobs exposing them to chemicals alleged to cause harm to reproduction.¹⁶ At the confirmation hearings, the question was less one of whether the opinion was correct as a matter of law, but more whether the text had acknowledged the outrageous option put to women workers: be fired, demoted, or sterilized. Judge Bork's opinion characterized the company's plan as an attempt to deal with a "distressing" problem, and, rather than fire the women, the company had given them the "unhappy choice" of sterilization.¹⁷ When questioned, Judge Bork commented that "some of the [women], I guess, didn't want to have children."¹⁸ Discussion also focused on *Griswold v. Connecticut*,¹⁹ which had challenged a statute making it a crime to prescribe contraceptives. Robert Bork had called the statute a "nutty law," and then, at the hearings, described the case as an "academic exercise."²⁰ Again, the concern was that, if not cavalier, the discussion did not respond to the somber realities of women's lives. Finally, in an opinion on sexual harassment, Judge Bork wrote of "sexual dalliance[s]"²¹ and "sexual escapades"²²—appearing to make light of an atmosphere in which sexual compliance is required.

Recall that much of the discussion about the Bork nomination, both before and after the hearings, centered on what were the *relevant* questions. One major debate was about the role of the Senate; could it really ask questions or was "advice and consent" supposed to mean consent? If

Influence, 84 NW. L. REV. 858 (1990); Paul A. Freund, *Appointment of Justices: Some Historical Perspectives*, 101 HARV. L. REV. 1146 (1988).

16. *Oil, Chem. & Atomic Workers Int'l Union v. American Cyanamid Co.*, 741 F.2d 444 (D.C. Cir. 1984). The underlying issue was resolved by the United States Supreme Court in *Automobile Workers v. Johnson Controls*, 111 S. Ct. 1196 (1991) (given the evidence of potential harm of exposure to lead to the reproduction systems of both men and women, Title VII and the Pregnancy Disability Act prohibit employers from banning women of childbearing capacity from certain jobs).

17. 741 F.2d at 450.

18. *Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States: Hearings before the Senate Judiciary Committee*, 100th Cong., 1st Sess. 468 (1987) [hereinafter *Bork Hearings*].

19. 381 U.S. 479 (1965).

20. *Bork Hearings*, *supra* note 18, at 114, 243; Stuart Taylor, Jr., *Bork Tells Panel He is Not Liberal, Not Conservative*, N.Y. TIMES (Conn. ed.), Sept. 16, 1987, at A1. See generally, Andi Rear-don, *Griswold v. Connecticut: Landmark Case Remembered*, N.Y. TIMES (Conn. ed.), May 28, 1989, § 12, at 6.

21. *Vinson v. Taylor*, 760 F.2d 1330, 1330 (D.C. Cir. 1985) (Bork, J., dissenting from the suggestion for rehearing *en banc*), *panel opinion aff'd in part and rev'd in part sub. nom. Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

22. 760 F.2d at 1332.

one thought the Senate could take a substantive role, the next brouhaha was about what *qualifications* were relevant to holding the office of judge; dare one actually ask about "judicial philosophy" or were "judicial temperament" and "professional competence" the only permissible topics? Reviewing the nominations since Bork, one finds that the first question, on the Senate's role, seems to have been settled (at least within this short time frame). The Senate asks questions and the nominee responds, some of the time. The second issue—what questions get asked and/or answered—remains contested.²³

But whether coming under the categories of "philosophy," "temperament," or "professional competence," a nominee's conduct and attitude towards women (who are often assumed to constitute a unitary category, rather than understood as themselves diverse in some respects) have moved onto the agenda. Commentators studying the Bork hearings remarked on the feminist voices, heard repeatedly during those hearings.²⁴ Many witnesses questioned the nominee's trivializing responses and his interpretations of constitutional doctrine that would have excluded women from the protections of the Fourteenth Amendment. Moreover, "women's issues" have not only been a factor in the context of the Bork proceedings. Months later, when Anthony Kennedy was nominated, he was questioned about his involvement in clubs that excluded women.²⁵

The appearance of "women's issues" has not been accompanied by a nuanced understanding of the many women in the category of women. As was apparent last fall, some women are also African-Americans. While women of all colors, classes, religions, and sexual identities have learned not to equate their own experiences with those of all women, we have been less successful at transforming that understanding into effective political action. In the debate over Robert Bork, women and blacks were allied, and political power emerged from that alliance.²⁶ In the

23. In addition, the President is attempting to increase his control over the information provided to the Senate. See David Johnston, *New Rules Are Said to Be Stalling Confirmations*, N.Y. TIMES, Jan. 20, 1992, at A12. On the Senate's role, see Charles L. Black, *A Note on Senatorial Considerations of Supreme Court Nominees*, 79 YALE L.J. 657 (1970).

24. See generally ETHAN BRONNER, *BATTLE FOR JUSTICE: HOW THE BORK NOMINATION SHOOK AMERICA* (1989); Martin Shapiro, *Interest Groups and Supreme Court Appointments*, 84 NW. U. L. REV. 935 (1990).

25. *Supreme Court Nominee Anthony M. Kennedy Said He Doubts Whether Congress Has the Power to Strip Jurisdiction . . .*, L.A. TIMES, Jan. 22, 1988, § I, at 2.

26. Several southern senators understood their political debt to Jesse Jackson's voter registration campaign. See BRONNER, *supra* note 24, at 286 (John Breaux of Louisiana and Wyche Fowler, Jr. of Georgia "had been elected with a minority white vote and more than 90 percent of the black vote.").

debate over Clarence Thomas, women and blacks intersected but had no longstanding joint political organization that linked race and gender and was dedicated to understanding the intersectionalities, as Kimberle Crenshaw puts it,²⁷ on which to build.²⁸

To the extent one can then claim progress—and I do call it that—it is both limited and not accidental. It is not an artifact of the particular nominees of the last few years or of the occasionally vivid insensitivity to or oppression of women. Women have gotten themselves into the category of “relevance” by working at it. Beginning in the late 1960s and early 1970s, women lawyers pressing cases on discrimination found that courts were not only a place for hearing such claims but were also places of discrimination. The Legal Defense and Education Fund of the National Organization for Women (NOW) created the National Judicial Education Project (NJEP), which was committed to educating judges about discriminatory assumptions and views, and which developed a program, in cooperation with the National Association of Women Judges (NAWJ), about “gender bias in the courts.”²⁹ In 1982, the Chief Judge of New Jersey committed that state to a study of gender bias.³⁰ On August 4, 1988, the Conference of Chief Justices of the State Courts resolved that “positive action by every chief justice to address gender bias and minority concerns in the state courts” was needed,³¹ and, by the fall of 1991, some thirty-three jurisdictions had put gender bias on their agendas.³² Thus, judges who had traditionally sat behind a mask of assumed neutrality committed themselves to a relatively radical inquiry aimed at recognizing institutionalized bias.

27. See Crenshaw, *supra* note 13; see also Linda Greene's presentation, at the 1992 Annual Meetings of the Association of American Law Schools, on Feminist Procedure, Joint Session held on Jan. 5, 1992, by the Section on Civil Procedure and the Section on Women in Legal Education, in which she discussed the absence of institutional reform litigation directed at the problems of women of color.

28. Such organizations may be in formation. A group, “African American Women In Defense of Ourselves,” provided commentary in an advertisement in the *New York Times*, Nov. 17, 1991, Campus Life Section, at 53. (Ad “represents a grassroots initiative of the 1603 women of African descent whose names” were listed.)

29. Norma J. Wikler, *Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts*, COURT REV., Fall 1989, at 6, 8-9. Dr. Wikler was the first director of the NJEP.

30. NEW JERSEY SUPREME COURT, TASK FORCE ON WOMEN IN THE COURT, REPORT OF THE FIRST YEAR (June, 1984).

31. Conference of Chief Justices, Resolution XVIII: Task Force on Gender Bias and Minority Concerns, COURT REV. Fall 1989, at 5.

32. See Lynn Hecht Schafran, *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 ARIZ. ST. L. REV. 237, 247 (1989).

The federal courts have been slower to take on the issue of discrimination within the court system. It was not until June of 1990 that the Court of Appeals for the District of Columbia appointed the first committee in any federal court to explore gender and race bias. Clarence Thomas was its chair, and at the time of his confirmation, no committee report had been made. Also in the summer of 1990, the Judicial Conference of the Ninth Circuit resolved to study the impact of gender on the federal courts, and in the summer of 1992, its work will result in a preliminary report. As of this writing, questionnaires have been sent to all the judicial officers and to some 6500 lawyers throughout the Ninth Circuit. In addition, advisory research groups are exploring if and how gender affects decisionmaking in an array of substantive areas (bankruptcy, federal benefits, criminal law, immigration, federal Indian law, and labor), and local working groups in Seattle, San Francisco, Los Angeles, and Phoenix are conducting focus group research.³³

The growing consciousness of the impact of gender on decisionmaking might well have informed the Senate Judiciary Committee, as it listened to the testimony of witnesses last fall. Here, the pictorial referent is the image of the Senate Judiciary Committee during the hearings: fourteen men, all white, surrounded by aides, a few of whom were women, again mostly white. That image, with only slight modification, fits the reality of many federal and state courts across the country. As of June of 1991, the ninety-four federal trial courts had 758 sitting, life-tenured judges—of whom 705 were men and fifty-three were women.³⁴ As of that date, sixty of those courts had no life-tenured women judges.³⁵ As of last June, four of the thirteen courts had no women appellate judges.³⁶ Were I creating, rather than reporting, these data, I would not have described either women or men as a unitary category. Unfortunately, the Equal Employment Office of the United States Courts divides its published data into information on "men" and "women," and then on people who are "white," "black," "hispanic," "asian," "american indian" and

33. Memorandum from the Honorable John Coughenour (chair of the Task Force) and Mark Mendenhall, Assistant Circuit Executive of the Ninth Circuit (Jan. 21, 1992) (on file with *Southern California Law Review*). For a discussion of why the federal judiciary has been slower to put gender issues on its agenda, see JUDITH RESNIK, *NATURALLY WITHOUT GENDER* (forthcoming 1992).

34. *Judges of the Federal Courts*, 923 F.2d at vii-xxx (1991) (This figure includes both "active" and "senior" judges.).

35. *Id.*

36. *Id.* at vii-xxx.

"handicapped."³⁷ As a consequence, I cannot report on how many persons, such as Anita Hill, have both a gender and a race that make them distinctive minorities within the federal judiciary. Further, the most recent "civil rights" legislation is also described as providing more for racial minorities than for "women, religious minorities, and the disabled."³⁸

These numbers reveal the poignancy in the public attention paid to Supreme Court nominations and the relative inattention paid to the nominees at the lower echelons. The Supreme Court, while powerful and able to do much harm or good, is only one place in which federal adjudication occurs. That court issues some 150 opinions a year;³⁹ the life-tenured appellate judges have a case load of about 40,000, and the federal trial courts hear more than 250,000 civil and criminal actions yearly.⁴⁰ One finds even a greater wealth of decision making when considering the work of the appointed-for-terms federal judiciary, which include some three hundred bankruptcy judges and an equal number of full-time magistrate judges.⁴¹ In 1990, more than 725,000 bankruptcies were filed.⁴² While once again a predominantly male judiciary, here the percentages of women are slightly higher; women are 12.8% of the federal bankruptcy judges⁴³ and 18.8% of the magistrate judges respectively.⁴⁴ But before assuming that the lower the level, the higher the number of women, consider yet another adjudicative layer, that found in federal agencies. Some 1050 "administrative law judges" work in the Social Security Administration, and fewer than five percent are women, in part because of the affirmative action, provided by virtue of the "veteran's

37. THE ANNUAL REPORT OF THE JUDICIAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FOR THE TWELVE MONTHS ENDED SEPTEMBER 30, 1990 (Preliminary Edition) [hereinafter EEO REPORT].

38. Michael Ross, *Bill Rekindles Fight over Bias Suits*, L.A. TIMES, Nov. 27, 1991, at A12. The 1991 legislation provided additional damage remedies for those injured under Title VII and imposed caps, while not imposing similar caps on the revisions made to enhance the remedies provided under 42 U.S.C. § 1981 (1988).

39. See 1990 ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 103, tbl. A-1 (The Supreme Court issued 146 full and *per curiam* opinions in 1989.) [hereinafter 1990 DIRECTOR'S REPORT].

40. *Id.* at 105, tbl. B (40,898 appeals "commenced during twelve month period ending June 30, 1990"), 133, tbl. C (217,879 civil cases commenced during same period), 174, tbl. D (47,962 criminal cases commenced).

41. EEO REPORT, *supra* note 37, at 8, tbl. I.

42. 1990 DIRECTOR'S REPORT, *supra* note 39, at 238, tbl. F (725,484 bankruptcy petitions "commenced during the twelve year period ending June 30, 1990").

43. EEO REPORT, *supra* note 37, at 8, tbl. I.

44. *Id.* at 7.

preference," for those veterans seeking to become administrative law judges.⁴⁵

The hierarchy of the federal courts, and the inattention paid to appointments at levels below the Supreme Court, has particular import in the context of last fall's events. Clarence Thomas was not a newcomer to the nomination process when he appeared before the Senate in the fall of 1991. He had been nominated *before* to be a judge on the Court of Appeals for the District of Columbia. While a few protested his nomination to that appellate court,⁴⁶ many took the attitude that, while not having a record that would commend him to be a jurist, the position was not "important" enough to warrant energetic opposition to confirmation. That was a mistake, not only in retrospect given the particulars of what has transpired, but also at the time—because it devalued the daily experiences of the litigants whose cases are decided not by the Supreme Court but by the appellate courts, and by judges of other lower courts. A nominee's views on women's rights and roles are relevant, whether that person is a nominee for the Supreme Court or for appointment to sit as an administrative hearing officer. Women are litigants in both places and in all the courts in between.

Having reviewed a bit of where we women were on October 7, 1991, and where we are, the title and image of a well-known Gauguin painting comes to mind: "D'où Venons-Nous, Que Sommes-Nous, Où Allons-Nous? (Where Do We Come from? What Are We? Where Are We Going?)"⁴⁷ Would that I could end this commentary on a cheerful note, confident that the Thomas confirmation was the footnote, and the uproar that surrounded it the main point. But although women's issues are tenuously on the public agenda, hearing what women say and caring about what one hears remains further away. Take one last example, again from the conversation between the Congress and the federal courts.

45. See 5 C.F.R. § 930.203 (1990); John C. Holmes, *ALJ Update: A Review of the Current Role, Status, and Demographics of the Corps of Administrative Law Judges*, 38 FED. BAR NEWS & J. 202 (1991); Memorandum from Joan Schaffner (Apr. 30, 1991) (on file with author).

46. See *Clarence Thomas Easily Confirmed to Appeals Court for D.C. Circuit*, 46TH ANN. CONG. Q. ALMANAC, 102D CONG., 2ND SESS. 518-519 (1990) ("nomination drew criticism from the National Council on Aging and from the Women Employed Institute," but the "anticipated fight failed to materialize"); see also Ethan Bronner, *Black Rightist Seen Winning Judgeship Bid*, BOSTON GLOBE, Feb. 6, 1990, at 3 ("No major liberal or civil rights group has taken a stand against Thomas."). On the opposition, see Marcia Coyle, Marianne Lavelle, & Fred Strasser, *Liberals Sound Alarm on D.C. Circuit Choice*, NAT'L L.J., July 24, 1989, at 5.

47. The painting, done by Gauguin in Tahiti in 1897, hangs in the Boston Museum of Fine Arts, and provides an apt visual metaphor, in part because of Gauguin's notorious relationship to women of color.

Several Senators and members of the House are sponsoring pending legislation, called the Violence Against Women Act,⁴⁸ that is aimed at responding to the "national tragedy" of violence against women—in homes, in the workplace, and on the streets.⁴⁹ The Act has many provisions, including one to create a National Commission on Violent Crime against Women; another to provide states with programs for victims of violence, and a third to respond to violence against women on college campuses.

But what has caught the attention of the Judicial Conference of the United States, the voice of the federal judiciary, are not these aspects but the two jurisdictional provisions of the proposed legislation. One section would provide a federal civil rights remedy to a person who is the victim of a "crime of violence, motivated by gender."⁵⁰ Another section would create a federal crime when a person travels across state lines to injure a spouse or intimate partner.⁵¹ In the fall of 1991, the Judicial Conference of the United States adopted a report of its special committee appointed to consider this legislation. While noting that the Conference would like to play a "constructive role in offering its assistance to Congress in the effort to fashion an appropriate response to violence directed against women,"⁵² the Ad Hoc Committee argued that violence against women was better handled in the state courts. Providing federal jurisdiction would, according to the report, "embroil the federal courts in domestic relations disputes"⁵³ and "flood [the federal courts] with cases that have traditionally been within the province of the state courts, particularly in the area of domestic relations disputes."⁵⁴

I am not confident that all of the Violence Against Women Act's provisions are wise. But I am dismayed at how the jurisdictional provisions are debated, for the federal judiciary's commentary underscores how little women are heard. The proposal is to give federal courts power and responsibility in an area particularly relevant to women. As the Senate Report on the Act notes and as we all were reminded this past fall, there are federal civil rights remedies for discrimination suffered by

48. The Violence Against Women Act of 1991, S. 15, 102d Cong., 1st Sess. (1991).

49. COMMITTEE ON THE JUDICIARY, THE VIOLENCE AGAINST WOMEN ACT OF 1991, S. REP. NO. 197, 102d Cong., 1st Sess. 39 (1991).

50. S. 15, 102d Cong., 1st Sess. § 301 (1991) ("Civil Rights").

51. S. 15, 102d Cong., 1st Sess. § 2261 (1991) ("Traveling to Commit Spousal Abuse").

52. REPORT OF THE JUDICIAL CONFERENCE AD HOC COMMITTEE ON GENDER-BASED VIOLENCE 6 (1991) (on file with author).

53. *Id.* at 1.

54. *Id.* at 7.

women in the workplace. However, there are no federal statutory remedies aimed at remedying violence against women, which is a form of discrimination against women that has been coated with a veneer of privacy.⁵⁵ The federal judiciary's opposition is based on a view that its jurisdiction needs to be preserved for matters in which there are "clear federal interest[s]." That opposition was echoed by the Chief Justice of the United States, who in his "1991 Year-End Report on the Federal Judiciary" urged that "the federal courts' limited role [be] reserved for issues where important national interests predominate,"⁵⁶ and that Congress carefully consider the Judicial Conference's opposition to the Violence Against Women Act.⁵⁷ Even if one shares the Conference's opposition to altering federal jurisdiction, it is difficult to explain the Conference's lack of an express endorsement of the section of the Act that would authorize funds for studying and educating the federal judiciary about gender bias.

Quietly and bravely, Anita Hill spoke truth to power. Women had the power to walk up to the Senate Office Building, to fax, phone, and write, and to help her receive a "hearing." Some people had the capacity and willingness to hear, but what state Gender Bias Task Force Reports describe to be true of courts was replicated in the Senate. In 1986, the Report of the New York Task Force on Women in the Courts concluded, that "Women uniquely, disproportionately and with unacceptable frequency must endure a climate of condescension, indifference, and hostility."⁵⁸ In the fall 1991, only occasional breaks in the clouds suggested that the weather might ever change.

55. One caveat may be in order, depending upon how the Supreme Court decides *NOW v. Operation Rescue*, 914 F.2d 582 (4th Cir. 1990), *cert. granted sub. nom. Bray v. Alexandria Women's Health Clinic*, 111 S. Ct. 1070 (1991) (whether the federal courts have jurisdiction over claims of discrimination by women invoking 42 U.S.C. § 1985(3) (1989) as protecting their right to seek access to health care facilities that perform abortions).

56. William Rehnquist, *Chief Justice's 1991 Year-End Report on the Federal Judiciary*, 24 *THIRD BRANCH* 1, 2 (1992).

57. *Id.* at 3.

58. *Report of the New York Task Force on Women in the Courts*, 15 *FORDHAM URB. L.J.* 15, 17-18 (1986-1987).



