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The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings

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Justice Clarence Thomas has been sworn in as the 106th Supreme Court Justice. He is the second African-American Justice. After weeks of televised confirmation hearings, extensive public debate among citizens and in the media, and the final Senate vote, questions still remain whether justice has been served. There has been massive broadcast and print coverage of these events, which captured the country's attention.¹

* © 1992 Adrienne D. Davis and Stephanie Wildman. Although recently changed in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (15th ed. 1991), conventional legal scholarship has used last names of authors in standard citation form. Fighting this convention, Carolyn Heilbrun and Judith Resnik observed that the use of only last names makes gender invisible. Carolyn Heilbrun & Judith Resnik, Convergences: Law, Literature, and Feminism, 99 YALE L.J. 1913, 1913 (1990).

What full names still fail to reveal, however, is that Adrienne Davis is African American and that Stephanie Wildman is Jewish and white. Race is not irrelevant in American culture, any more than gender is.

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¹ Even though the World Series was simultaneously broadcast, approximately twenty-seven million households opted to watch the first day of the hearings on October 11, 1991. Tony Mauro, Witness Deadlock: Hill, Thomas May Return Today, USA TODAY, Oct. 14, 1991, at A1. NBC and ABC covered the first day of hearings on October 11, 1991, and had a combined 26.5 rating; CBS, which “stuck with drab old baseball, got a 10.1, an all-time low for night-time postseason play.” Larry Steward, Rams-Raiders' Telecast? No Chance, L.A. TIMES, Oct. 18, 1991, at C3. PBS stations reported they were able to achieve “unusually high ratings” compared to the three major networks.
Television added a different dimension to the process, which became a human drama when Professor Anita Hill's sexual harassment claim and Justice Thomas's denial were aired. The nation watched mesmerized, waiting for a Perry Mason to rise and announce who lied, but no Perry appeared. We have only ourselves to assess credibility and to record history.

Even since the confirmation vote, the controversy over who told the truth has not been put to rest. Newspaper op-ed pieces, an episode of a popular prime time television show,\(^2\) and a *People Magazine* cover story\(^3\) only begin to illustrate the extent to which these events have touched a national nerve.

Having barely ascended the bench, Justice Thomas already has left a legacy of doubt. Beginning with doubts as to whether his qualifications merited confirmation and moving to doubts about his character because of sexual harassment allegations and implications of dishonesty, by the end of the confirmation process the doubts had broadened beyond Justice Thomas himself. Doubts remain as to whether those who have not experienced sexual harassment want to understand it. Depictions of women in society as sexually accessible objects disable efforts of those who do want to understand. Doubts remain as to whether the privileging and disempowering dynamics of race, experienced by each member of society, will ever be fathomed. The presence of an implicitly masculine gender in the symbol race confounds any effort to identify racism, white supremacy, and the dynamics of race. Doubts remain as to whether these events, as portrayed for popular consumption, distort even further the issues of racism, sexism, and decision making in this country. And finally, these doubts implicate the Senate's capacity as a male institution to effectively represent all Americans.
I. SEXUAL HARASSMENT, FEMALE COMMODIFICATION, AND CREDIBILITY

Recent legal scholarship has suggested that perceptions of women and men may differ regarding sexual harassment.\textsuperscript{4} Evidence that sexual harassment was regarded as unimportant by the Senate abounded in the events leading up to the hearings concerning Professor Anita Hill's charges. Her statement had been submitted to the full Senate Judiciary Committee on September 23, 1991,\textsuperscript{5} and the committee evidently had no plan to make the allegations known to their colleagues.\textsuperscript{6} Only when National Public Radio correspondent Nina Totenberg aired the complaint\textsuperscript{7} and \textit{Newsday} ran the story\textsuperscript{8} did a furor begin, culminating in demands that the committee regard these charges as a serious obstacle to

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The pattern of failing to take the charges seriously continued during the hearings. Not all evidentiary sources were explored. Testimony by two witnesses, Angela Wright and Rose Jourdain, would have described other incidents of sexual harassment by Justice Thomas. These witnesses never appeared in the televised hearings. Ann Rockwell & Paul Rockwell, \textit{"Thomas Was Obnoxious": Interview Transcripts Reveal Strong Support for Anita Hill's Charges by Two Key Witnesses the Senate Never Called to Testify}, \textit{S.F. Bay Guardian}, Nov. 13, 1991, at 25.


\textsuperscript{8} Phelps, \textit{supra} note 7.
confirmation.\textsuperscript{9} After the public outpouring indicated that many constituents regarded a charge of sexual harassment as serious, the Senate did delay the confirmation vote on Justice Thomas and agreed to further investigate the charges.\textsuperscript{10}

In spite of their public protestations to the contrary, a dismissive attitude toward the charges pervaded comments made by senators as well as the press.\textsuperscript{11} Among the most egregious was Senator Simpson's statement that during the course of the hearings Professor Hill would experience "real harassment," not just sexual harassment.\textsuperscript{12} This dismissal suggested that at least one senator on the Judiciary Committee considered this experience of sexual harassment to be a marginal issue at best. The failure of the Senate to call expert witnesses on the issue of sexual harassment during the hearings in order to inform themselves and to

\textsuperscript{9} Thousands of voters called senators, demanding a delay of the confirmation vote in order to allow for an investigation. Senator Dixon's (D-Ill.) office reported over one thousand calls, ten to one in favor of a delay. Senator Adams (D-Wash.) received four hundred calls, eighty percent favoring a delay, and Senator Specter's (R-Pa.) office received seven hundred calls, seven to one in favor of delay. Janet Crawley, \textit{Outcries Stall Votes on Thomas}, CHI. TRIB., Oct. 9, 1991, at 1. In addition, the senators' female colleagues, see Maureen Dowd, \textit{7 Congresswomen March to Senate to Demand Delay in Thomas Vote}, N.Y. TIMES, Oct. 9, 1991, at A1; Maureen Dowd, \textit{The Thomas Nomination: The Senate and Sexism}, N.Y. TIMES, Oct. 8, 1991, at A1, and even female law professors expressed concern and anger at the Judiciary Committee's procedural handling of the charges. See Letter from over 100 Women Law Professors to the U.S. Senate (Oct. 7, 1991) (copy on file with the authors). Finally, some Senate wives became involved. See Judith Weinraub, Arlen Specter's Rude Awakening: \textit{Women Have Sounded the Alarm for the Judiciary Committee "Hit Man"}, WASH. POST, Oct. 18, 1991, at D1 (reporting on Wanda Baucus contacting Arlen Specter and other senators); Mary McGrory, \textit{A Second Chance to Listen}, WASH. POST, Oct. 10, 1991, at A2 (describing how Senator James Exon (D-Neb.) opted for delay after "his wife... collared him on his way to the airport and ordered him into the house to listen to Hill's well-told tale.").

\textsuperscript{10} Richard L. Berke, \textit{Vote on Thomas Is Put Off as Senate Backing Erodes Over Harassment Charge}, N.Y. TIMES, Oct. 9, 1991, at A1. "The delay ... is important to the integrity of the Senate, the integrity of the confirmation process, the integrity of the Supreme Court and the integrity of the individuals involved," announced Senate Majority Leader George Mitchell (D-Me.) after the 6 p.m. deadline for the vote had passed. \textit{Id.}

\textsuperscript{11} For instance, Senator Arlen Specter, a member of the Senate Judiciary Committee was known for having a "strong voting record on women's issues." Weinraub, \textit{supra} note 9. However, he said one reason he hadn't planned to change his vote despite knowledge of the harassment charge was that, in light of "the lateness of the allegation, the absence of any touching or intimidation, and the fact that she moved with him from one agency to another, [he] felt [he] had done [his] duty." \textit{Quoted in Derrick Z. Jackson, Sexual Harassment, According to Teens, BOSTON GLOBE}, Oct. 13, 1991, at 83. Specter later said he didn't mean it. \textit{Id}. Juan Williams, \textit{Open Season on Clarence Thomas}, WASH. POST, Oct. 10, 1991, at A23 (Professor Hill "had no credible evidence").

\textsuperscript{12} So I think it's a cruel thing we're witnessing. It's a harsh thing, a very sad and harsh thing, and Anita Hill will be sucked right into the ... very thing she wanted to avoid most. She will be injured and destroyed and belittled and hounded and harassed, real harassment, different than the sexual kind. \textit{Quoted in Comments by Senators on Thomas Nomination}, N.Y. TIMES, Oct. 10, 1991, at B14. Senator Simpson evidently did not regard sexual harassment as injurious, destructive, or belittling.
place the issue in its legal and social context further evidenced the peripheral status of the allegations.¹³

The press gave only brief coverage to one astonishing example of the lack of importance with which senators viewed sexual harassment. Wanda Baucus, the wife of Senator Max Baucus, told the press that she telephoned many senators personally during the hearings.¹⁴ She herself had been harassed as a guest at Senate social functions and as a working woman. She thought that she could help the senators learn about sexual harassment. She found that the problem was not their lack of awareness of sexual harassment:

As I was calling various members of the Senate on both sides of the aisle last week, they were telling me things that made me fall off my chair. When I telephoned one of the people on the Democratic side over the weekend, who had already planned to and did vote for the nomination, he said, "Oh yes, I knew these things go on," somewhat with surprised amusement.¹⁵ Evidently the problem was not lack of knowledge, but lack of understanding or caring.¹⁶

Baucus's story demonstrates that sexual harassment and ignorance regarding its gravity is pervasive and not limited to the workplace, although its occurrence there is particularly insidious.¹⁷ Rather, sexual harassment is a phenomenon rooted in the exploitation of women that


¹⁴. See Weinraub, supra note 9.


¹⁶. Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991), which held that sexual harassment should be evaluated by the standard of a reasonable woman, shows that sexual harassment cannot be understood unless viewed from the victim's perspective. See also Wildman, supra note 4.

¹⁷. Sexual harassment in the workplace is actionable under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000(e) (1988). "The language of Title VII is not limited to 'economic' or 'tangible' discrimination. EEOC Guidelines fully support the view that sexual harassment leading to non-economic injury can violate Title VII. Here, respondent's allegations were sufficient to state a claim for 'hostile environment' sexual harassment." Meritor Savings Bank v. Vinson, 477 U.S. 57, 63-69 (1986). In her landmark book, *Sexual Harassment of Working Women*, Catharine MacKinnon says, Women employed in the paid labor force, typically hired "as women," dependent upon their income and lacking job alternatives, are particularly vulnerable to intimate violation in the form of sexual abuse at work. . . . The daily impact [of such abuse] upon women's economic status and work opportunities, not to mention psychic health and self-esteem, is beginning to be explored, documented, and increasingly, resisted.
occurs in every aspect of our society. Many, if not most, of the advertisements on national television that interrupted the Senate Hearings to sell products featured women portrayed as sexual objects. The national image of women as accessible for sex by men is a powerful stereotype that harms women, who are portrayed as commodified and accessible. Women are probably the most widely used marketing tool in the advertising industry; young, thin, unwrinkled, mostly white, women sell everything from beer to food to cars to the value of exercise. They don’t even need to speak: the idea implicitly conveyed is that if you buy this product, this woman, or one like her, will be attracted to you, just like to the man in the ad. Women are a commodity like any other, except they

CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN 1 (1979) (footnotes omitted).

Many educational institutions have enacted policies prohibiting sexual harassment and providing a framework in which to process complaints. Title IX has been interpreted to require that institutions receiving federal funding implement a sexual harassment policy. 34 C.F.R. § 106.8 (a)-(b) (1988). For law review articles analyzing these policies see, Martha Chamallas, Consent, Equality, and the Legal Control of Sexual Conduct, 61 S. CAL. L. REV. 777 (1988) (University of Iowa); Ronna Greff Schneider, Sexual Harassment and Higher Education, 65 TEX. L. REV. 525 (1987) (Rutgers, University of Washington, Duke, University of Cincinnati, and Brown); John T. Shapiro, Note, The Call for Campus Conduct Policies: Censorship or Constitutionally Permissible Limitations on Speech, 75 MINN. L. REV. 201 (1990); see also Charles R. Lawrence III, If He Hollers Let Him Go, 1990 DUKE L.J. 431 (Stanford); Sean M. SeLegue, Comment, Anti-Slur Regulations: Speakers, Victims, and the First Amendment, 79 CAL. L. REV. 919 (1991) (University of Michigan and University of California).

18. See, e.g., Carol M. Tucker, Distortions in Advertising: The Trivialization of American Women, 10 SOC. ACTION & L. 12 (1984). In a recent book of dialogues and interviews, bell hooks and Cornel West discuss the impact of market forces and increasing consumerism on communities. Much of their insight is of particular relevance to ways in which women are portrayed in the media.

A market culture will promote and promulgate an addiction to stimulation, it will put forward the view that, in order to be alive, one needs stimulation and he/she who is most alive is the person who is most stimulated. You see bodily stimulation projected through the marketing of sexuality, the marketing of sexual stimulation as the major means by which we construct desire.


19. Susan Faludi, the Pulitzer-Prize winning journalist, provides excellent insight into this phenomenon in her book, Backlash. Depictions of women in the media generally are negative and degrading, emphasizing women's status as objects to be instructed in appropriate behavior. SUSAN FALUDI, BACKLASH 75-111 (1991). In discussing commercials, Faludi notes that "in 1987, the American Women in Radio & Television couldn't award its annual prize for ads that feature women positively; it could find no ad that qualified." Id. at xxi.
don't cost anything.20 Women have become the unspoken yet assumed reward, the unmentioned "added value" of the product.21

Even within the workplace,22 perhaps especially within the workplace, part of the job that women as a group perform is to add a touch of femininity and decoration.23 Women are regularly evaluated on how attractive they are in addition to how well they perform. Many women internalize this standard thinking that the ideal "woman" must be "feminine" as defined by men. The billions of dollars women spend every year on make-up, clothes, and special youth creams cannot be because they are born wanting to look like some idealized image of beauty. At some point these women come to understand that they are viewed as commodities, deriving value from the marketplace of male desire, and as such

20. In one beer commercial a group of men say, "It just doesn't get any better than this." They then find a crate of lobster in the river, the Swedish bikini team lands in the area and starts gyrating, and, finally, the beer arrives. At least the women rated as more important than the lobsters. See also Edward Walsh, Stroh Workers Charge Ads Fuel Harassment: "Bikini Team" T.V. Spots Prompt Lawsuits, WASH. POST, Nov. 30, 1991, at A3 (describing sexual harassment suit brought by employees of the beer manufacturer).

21. This phenomenon operates so that men imagine "getting" the woman with the product; for women, they imagine becoming the woman and "being gotten." Cornel West and bell hooks again provide insight: "[M]arket forces have so fundamentally not only shaped our economy, but the way in which we understand value and use." HOOKS & WEST, supra note 18, at 35. "[W]hat you conceptualize yourself being able to produce is being shaped by market forces, namely through forms of stimulation." Id. at 96. Within the context of the Black community, hooks notes that commodification of images takes even celebratory depictions of Blackness and makes them into spectacle, available for consumption, not incorporation. Commercial depictions of African Americans makes "engaging Blackness a moment of transgressive pleasure," rather than a real encounter. Id. at 87.

22. See MACKINNON, supra note 17, at 18-23 (discussing sex-defined work).

23. The airline cases are perhaps the most notorious examples of corporations stating an explicit preference for sexualizing an entire category of service work through restricting it to only women, see, e.g., Diaz v. Pan American World Airways, 442 F.2d 385, 387 (5th Cir. 1971), cert. denied, 404 U.S. 950 (1971) (requiring flight attendants to be female was not a bona fide occupational qualification and violated Title VII), only attractive women, see, e.g., Gerdom v. Continental Airlines, 692 F.2d 602 (9th Cir. 1982) (Continental defending strict weight requirements for its "flight hostesses," a category composed of only women), and only available women, see, e.g., Stroud v. Delta Air Lines, 544 F.2d 892 (5th Cir. 1977) (The category of "flight attendant," composed of only women, had a "no marriage" policy); Sprogis v. United Air Lines, 444 F.2d 1194, 1198 (7th Cir. 1971), cert. denied, 404 U.S. 999 (1971) (defending policy of terminating female flight attendants who married, but not male ones). According to Judge Schroeder, Continental wanted to "create the public image of an airline which offered passengers service by thin, attractive women, whom executives referred to as Continental's 'girls.'" Gerdom, 692 F.2d at 604; see also EEOC v. Sage Realty, 24 Fair Empl. Prac. Cas. (BNA) 1521, 1528 (S.D.N.Y. 1981) (holding a requirement that only female lobby hostesses wear revealing uniforms to be discriminatory). In the professional context, see Price Waterhouse v. Hopkins, 490 U.S. 228, 235 (1989) (In denying a female accountant partnership, her male evaluators said she was "macho," "overcompensated for being a woman," should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry," and take "a course at charm school.").
may want to attain high value. In other words, you can choose not to play, but if you're going to play, you might as well win.

It is against this stereotype of male valuation and sexual availability that any woman will be measured when she complains of sexual harassment. Although it is false, the (usually) unspoken message is that only a "desirable" woman will be harassed. Ironically, as women seek to make themselves desirable to men, they are blamed for male response. This "blame the victim" attitude suggests that somehow the woman "asked for it," as if anyone would wish to be sexually harassed. Yet the

24. A particularly appalling example is to be found in an op-ed piece by Helen Gurley Brown, editor-in-chief of Cosmopolitan magazine. Brown described herself as a "devout feminist [who] . . . lined up firmly" with Professor Anita Hill. She went on to explain how, despite her commitment to feminism, she "resisted" publishing articles on sexual harassment in her women's magazine because when a man doesn't find you sexually attractive, "that's when you have to worry." She goes on to explain that she "know[s] about sexual harassment" and relates a horrible story about "scuttling" in an earlier job. Scuttling involved announcers and engineers (the professional men) chasing a secretary about the office and removing her underwear, although Brown notes, "Nothing wicked ever happened. Depantying was the sole object of the game." Because the women only "shrieked, screamed, flailed, blushed, threatened and pretended to faint," Brown concludes they didn't mind. She also notes these secretaries never reported the engineers or announcers to their bosses. Therefore, they didn't mind. Brown concludes her story by saying, "Alas, I was never scuttled," and goes on to describe how she was too unattractive.

Brown's op-ed piece is insidious and horrifying on a number of levels. First, that a woman who had the opportunity to reach thousands of women every month via magazine would "resist" the fact of sexual harassment in her readers' lives is troubling. Second, she relays a paradigmatic story of workplace harassment that affected all secretaries such that the category "secretary" became itself gendered (Were there any women who were not secretaries who were scuttled? Were there any women who worked there who were not secretaries?). Brown minimizes the misery and humiliation these women must have felt, denies their resistance as real, and plays into the ultimate power trap that if they didn't tell they weren't upset. Finally, she subverts her own point. She labeled the story "sexual harassment" and concludes it by expressing regret that she was not harassed. In a few words, Brown manages to send a clear message to readers of the Wall Street Journal that liberated "girls" welcome their own objectification. We wonder if she would still feel this way had she never made it out of the secretarial pool.

25. The game, however, may be rigged, because "women" are socially constructed. See, e.g., Catharine A. MacKinnon, Toward a Feminist Theory of the State (1989); Tracey A. Gardner, Racism in Pornography and the Women's Movement, in Take Back the Night 105-14 (Laura Lederer ed., 1980).

26. John Doggett made this message explicit when he testified before the Committee and stated, "'Quite frankly, Anita Hill is not worth that type of risk', . . . not good-looking enough to throw a career away on." Talk of the Town, The New Yorker, Oct. 28, 1991, at 29, 32 (letter commenting on how "a woman's attractiveness will always be held against her, . . . and a woman's unattractiveness will always be held against her, too.

27. Meritor Sav. Bank v. Vinson, 477 U.S. 57, 69 (1986) (stating that "sexually provocative" speech or dress may be relevant in determining whether advances, alleged to be sexual harassment, were actually welcome); see also Carole Goldberg-Ambrose, Theory, Practice and Perception in Rape Law Reform, 23 Law & Soc'y 949, 950 (1989) (reviewing Susan Estrich, Real Rape (1987) and Zsuzsanna Adler, Rape on Trial (1987)) (analyzing disparities in assessments of consent between men and women and describing law as male centered).
stereotype of women as sexually available leads to the perception that women wish for this kind of attention.\textsuperscript{28} For some, this image was enough to make them discredit Professor Hill's testimony.\textsuperscript{29} The term erotomania was used to describe women's desire for sexual involvement with men in powerful positions.\textsuperscript{30} Virginia Lamp Thomas, Justice Thomas's wife, offered as her explanation: Professor Hill "was probably . . . in love with my husband."\textsuperscript{31}

Like many viewers, we found Professor Hill's testimony credible.\textsuperscript{32} Those who did question her credibility repeatedly asked why she had not come forward sooner, why she moved with Justice Thomas from the Department of Education to the EEOC, and why she had maintained her connections to Justice Thomas by phone calls. We found Professor Hill's behavior absolutely consistent with her charge of sexual harassment.\textsuperscript{33}

\begin{itemize}
\item \textsuperscript{28} As commodities, women's value is derived from a market of desirability as defined by men. This valuation might be criticized for many reasons, including that it denies women's self-determination, it privileges men's definition of women, and it privileges heterosexism.
\item \textsuperscript{29} See, e.g., Mike Rokyo, \textit{Loving Thomas Like . . . a Brother?}, CHI. TRIB., Oct. 21, 1991, at C3 (quoting a woman who didn't believe Professor Hill); Suzanne Fields, \textit{Feminists Without Followers}, WASH. TIMES, Oct. 24, 1991, at G1 (noting class differences between women and asserting that feminist leaders could not convince many women that Professor Hill was a victim). For discussions of why Professor Hill might not have been believed, see Greenspan & Greenspan, supra note 13, at Z6 (noting that the abuse of psychiatry created unnecessary skepticism about Professor Hill).
\item \textsuperscript{30} Alessandra Stanley, \textit{Erotomania: A Rare Disorder Runs Riot—In Men's Minds}, N.Y. TIMES, Nov. 10, 1991, at S4, p. 2 (satirically suggesting that the real disorder may be in men's minds).
\item \textsuperscript{31} Thomas, supra note 3, at 111.
\item \textsuperscript{32} \textit{The National Law Journal}, in a survey conducted by Penn & Schoen Associates Inc., asked one hundred state and federal judges to "bring their skill and experience in weighing credibility and evidence to bear." Forty-one were more inclined to believe Professor Hill; twenty-two favored Justice Thomas; and thirty-seven were unsure who was more credible. \textit{Hearings Turn Off Judges; NLJ Survey Finds They Don't Want Top Spot}, NATL L.J., Oct. 28, 1991, at 1.
\item Recently Professor Anita Hill addressed a conference of several hundred female state legislators. Many sported "I Believe Anita Hill" buttons. When she spoke, dozens chanted, "We believe Anita!" Gwen Ifill, \textit{Conference Lauds Anita Hill, Exultantly}, N.Y. TIMES, Nov. 17, 1991, § 1, pt. 1, at 28. "The audience yelled, 'We believe you. We believe you,' after Professor Hill spoke about the letters she has received since her vivid testimony before the Senate Judiciary Committee." Susan Yoachum, \textit{Anita Hill Addresses Women Lawmakers: She Tells Cheering Audience of State Legislators that Sexual Harassment Laws Are Ineffective}, S.F. CHRON., Nov. 16, 1991, at A7.
\item \textsuperscript{33} Legal doctrine does not require victims of racial or sexual harassment to leave their jobs in order to prove the harassment. Title VII itself makes no mention of leaving employment or severing contacts with discriminators in order to make a claim. 42 U.S.C. § 2000(e) (1988). Nor does the new civil rights bill, which clarifies some aspects of the 1964 Act. Civil Rights Act of 1991, Pub. L. No. 102-166, Nov. 21, 1991 (slip copy). In a racial harassment case, the plaintiff, subjected to racial epithets in the workplace, would not be expected to quit to show harm. None of the sex or race discrimination cases which articulate what it takes to constitute a prima facie case mentions leaving employment. See, e.g, Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) (creating claim of disparate impact); Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 651, 653-61 (1989) (reformulating Griggs standard); Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 994 (1988) (disparate impact
First, Professor Hill did not initiate the contact with the Senate Judiciary Committee.\textsuperscript{34} In addition, it would be unreasonable to have expected Professor Hill to jeopardize her career by alienating Justice Thomas after leaving his employ. The importance of maintaining connection with someone who might be called as a reference cannot be minimized in this era of networking. It is not a coincidence that she waited to speak until after she had a tenured teaching position, which should make her job, at least, secure, although some press reports suggested that the University of Oklahoma was pressured to re-examine her tenure.\textsuperscript{35}

The attack on Professor Hill’s credibility relating to sexual harassment repeated a patriarchal cycle of devaluing women. Her treatment during the confirmation process more closely approximated “lynching” than the gentle treatment Justice Thomas received.\textsuperscript{36} Comparing gender to race discrimination is troubling because such comparisons tend to minimize the seriousness of race discrimination and also render invisible the experience of women of color, who cannot divide themselves and their experiences into a race part and a gender part.\textsuperscript{37} Yet the comparison is a useful one, because it serves to illustrate the seriousness of sex discrimination. “[O]ne is struck by certain parallels between Hill’s treatment by the male establishment and blacks’ treatment by white communities in the Old South.”\textsuperscript{38}

\begin{flushleft}34. Kaplan, supra note 5.
35. Just after the conclusion of the hearings, a state legislator in Oklahoma, Leonard Sullivan, wrote a letter to the president of the University of Oklahoma, urging Professor Hill’s dismissal. “We can’t afford to have a high profile professor on campus that millions of Americans . . . believe is a fantasizing liar.” \textit{Quoted in Hill Says Little About Confirmation}, N.Y. TIMES, Oct. 16, 1991, at A21; “We must get this left-wing extremist influence off the campus before it spreads,” \textit{quoted in Norma Greenaway, The Workplace Will Never Be the Same}, VANCOUVER SUN, Oct. 17, 1991, at A3.
36. Writing after Justice Thomas’s confirmation, Professor Steve Shatz asked the question, “Who Was Lynched?” He suggests that it was Professor Hill who was the victim of the confirmation process. He observed that Justice Thomas certainly did not emerge from this process “hanging from a tree.” Steven F. Shatz, \textit{Who Was Lynched?}, THE RECORDER, Oct. 28, 1991, at 8; see also G.M. Bush, \textit{Law Professor Speaks on the Hill Hearings}, S.F. DAILY J., Nov. 19, 1991, at 3 (quoting Professor Kimberlé Crenshaw: “The Democrats’ neutral fact-finding position left Anita Hill swinging in the wind.”).
38. Shatz, supra note 36, at 8. The metaphor of use of “lynching” should not be allowed to undermine the brutal, historic reality of lynching.
\end{flushleft}
Professor Hill’s treatment by the Senate Judiciary Committee suggested that she occupied an unprotected space in today’s society as did Blacks in the Old South. The Senate Judiciary Committee was “unwilling to seriously investigate Hill’s allegations.” This attitude paralleled the ethic in the Old South which mandated that no white person would question another white’s treatment of his slaves. Men on the Judiciary Committee were unwilling to ask Justice Thomas probing questions. When Professor Hill did testify, “her testimony was not truly considered.” Senators sought to dismiss her as delusional or engaged in fantasy. An analog exists to the Old South where during slavery Blacks were not even allowed to testify against whites and where, even after Reconstruction, it remained a rare event.

Lynchings were public events held for the purpose of delivering a message of intimidation to other blacks, promising that any explicit or implicit challenge or affront to a white person by a black person would result in the most extreme punishment. The message was clear: If Hill, a conservative, religious law professor telling a credible story of sexual harassment, could be dismissed out of hand, what recourse would any other women have? However, one of the lessons from this confirmation process is that women’s reaction may not conform to expectations. As more women become conscious that the treatment they have regularly endured is harassment and is illegal, they will come forward.

40. Shatz, supra note 36, at 8.
41. Id.
42. Id. at 9.
43. Id. Recall for example the concern in finding witnesses to testify after the brutal racial murder of Emmet Till, a fourteen-year-old Black child in Mississippi in 1955. One sixty-four-year-old Black man, Mose Wright, who was considering whether to testify received threats to take his family and leave town “before they all get killed.” Juan Williams, Eyes on the Prize 45 (1987). Wright testified anyway. “‘It was the first time in the history of Mississippi that a Negro had stood in court and pointed his finger at a white man as a killer of a Negro,’ said Michigan congressman Charles Diggs. . . . Actually, Wright’s testimony was not literally the first such instance, but it was indeed a rare and courageous act for that time and place.” Id. at 48. After his testimony “Mississippi’s NAACP field secretary, Medgar Evers, and reporter James Hicks worked together to get Mose Wright out of the state.” Id. at 52.
44. Id.
45. One Cleveland hotline, 9 to 5, offers counseling to women who are harassed at work. Its spokesperson, Barbara Otto, said that the hotline received hundreds of calls daily in the period immediately after Professor Hill’s allegations were aired, far more than the fifty daily calls it normally averages. Laurie Becklund, Women’s Old Angers Resurface, L.A. Times, Oct. 11, 1991, at A1. Likewise, Christine Rice, vice president for the New York City chapter of NOW, said calls reporting sexual harassment had soared that week. “We had one person staffing the help line. Now we have
Making the analogy between Professor Hill's treatment and the treatment of Blacks in the Old South emphasizes the continuing force of patriarchy in American society. The behavior of the male Senate Judiciary Committee and male Justice Thomas paralleled the role of white plantation owners. Thus maleness, regardless of race, entitles one to some of the benefits of patriarchy. Justice Thomas was thus legitimated by "being one of the boys," whose possible taste for pornography was placed in a protected zone of privacy and whose workplace conduct was not seriously questioned. This legitimation of Justice Thomas's male privilege was made even more complex by the Justice's own use of race, which emphasized his Blackness.

II. GENDERING THE SYMBOL "RACE" AND THE INVISIBILITY OF RACISM

Within the context of the hearings, a series of symbols mediated the public collective understanding of events. In modern society, symbols increasingly mediate relationships in a variety of ways, from how people learn history to how they purchase commodities. Symbols provide indicators for historians of the "essence" of historical eras, the main images of words, pictures, and sounds that people welcomed (or rejected) in their lives. Symbols have also become more prevalent through American culture's increased reliance on such visual media as magazines and, particularly, television. Manufacturers of products hire ad agencies to create that snappy, product-invoking image that will be ingrained in
the minds of the buying public. Symbols represent efforts to render understandable a complex world and to synthesize variant ideas and metaphors operating at multiple levels into a single, graspable entity.

To the extent that symbols filter understanding of events and in particular register the way in which history will record them, the ability to share in their creation and presentation is paramount to constructing reality. When Justice Thomas was first nominated, race became a prime symbol which served as a synthesis of questions over President Bush's motivations in nominating Justice Thomas, his qualifications, affirmative action, and his background.

Race as a symbol appeared in fora as diverse as popular comedy shows, political cartoons, news coverage, and intellectual debate. From the beginning, Justice Thomas controlled this symbol of race. He was the object, the referent of the symbol "Black." But unlike most objects, the press and the Bush Administration gave him substantial power to define himself and the symbolic value of his signifier. The manipulation of the symbol was amazing: it was formally discounted, and yet the continued references to its absence made attention focus on it all the more. Race as constructed by Justice Thomas became a symbol of making it on one's own; of searing poverty turned to economic privilege; of self-reliance over hand-outs. He attempted to depict as minimal any benefits of racial preferences he had received.

The symbolic value of race was temporarily replaced with that of gender when Professor Anita Hill alleged she had been sexually harassed while on Justice Thomas's staff. Women rallied to Professor Hill's support because of the powerful symbol of sexual abuse, familiar to many.

48. Faludi describes at length how one media expert, attempting to sell so-called mom foods, asserted there was a national trend toward "cocooning," or women returning to the home. Faludi notes there were no labor statistics to support this trend, yet the media promoted it. FALUDI, supra note 19, at 82-95.


50. Charley Roberts & Richard C. Reuben, Anti-Bias Plans Aided Thomas During Career: Affirmative Action Boosted Nominee at Critical Points: Hypocrisy is Charged, L.A. DAILY J., July 16, 1991, at 1 (detailing preferential treatment that Justice Thomas had been a beneficiary of, including a race-based scholarship to attend college, affirmative action acceptance to Yale Law School, employment by the Missouri attorney general, presidential appointments to two civil rights posts, nomination to the federal appeals court, and, most recently, nomination to the Supreme Court); see also Cynthia Tucker, Clarence Thomas Would Kick Away the Ladder He Climbed, L.A. DAILY J., July 26, 1991, at 6 (describing Justice Thomas as "one of affirmative action's success stories").
women. At this point those seeking to discredit Professor Hill transformed the image of gender oppression by sexual abuse into one of unrestrained sexuality. These two images, gender oppression and sexuality, were vying for primacy when Justice Thomas reintroduced the symbol of race, which then became the axis around which all subsequent discourse revolved.

Justice Thomas, a firm disbeliever in utilizing race as an excuse for one's behavior or as a reason for acting affirmatively to increase representation of underrepresented groups, invoked race with a vengeance against the Senate Judiciary Committee. In claiming he was the victim of a high-tech lynching, Justice Thomas claimed he was being accused because he was African American.

Consider the many valid reasons for which the senators should have called Justice Thomas to account for his conduct: Professor Hill's charges were supported by four different witnesses; the charges she brought would have exposed not only his character (as if that would not be enough), but his lack of respect for the rule of law; and if true the charges would have demonstrated that he had perjured himself. Justice

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51. See, e.g., William Safire, Myths of the Confirmation, N.Y. TIMES, Oct. 17, 1991, at A27 (calling Professor Hill's allegations "unsubstantiated sex charges"). But see Ellen Goodman, Honk If You Believe Anita, BOSTON GLOBE, Oct. 17, 1991, at 17 ("To accept Anita Hill's story, you had to believe only that Clarence Thomas would lie to salvage his honor in front of the country and his family. To accept Thomas's denial, you had to believe that Hill was a psychopath.").

52. I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious legal devices that only further and deepen the original problem. The Supreme Court: Clarence Thomas in His Own Words, N.Y. TIMES, July 2, 1991, at A14.

Based on an interview with then-Mr. Thomas, Paul Weyrich wrote: "Mr. Thomas personally disapproves of affirmative-action programs and the use of goals and timetables to remedy employment discrimination, but he insists that he enforced such measures during his tenure at EEOC." Weyrich notes that a number of civil rights advocates working with the EEOC under then-Mr. Thomas disagree. Paul Weyrich, Clarence Thomas: Here Comes the Judge, WASH. TIMES, Mar. 1, 1990, at E1.


53. As Chair of the EEOC, Justice Thomas was responsible for enforcing Title VII as well as the EEOC Guidelines prohibiting sexual harassment. Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11 (1990) (originally enacted on Nov. 10, 1980 (45 Fed. Reg. 74,677 (1980)) ("Harassment on the basis of sex is a violation of § 703 of Title VII.").
Thomas's invocation of race at this point in the confirmation process was truly ironic. His use of race in these hearings rested on the implicit assertion that he was called to answer Professor Hill's charges by virtue of the fact that he was an African American. Justice Thomas seemed to believe and to make others believe that he was called to answer only because of his race. Yet his accuser was also African American. The inconsistent treatment of the symbol "Black" as applied to Hill and Thomas revealed that the symbol was gendered. In this struggle, the symbol Black equalled male.\(^5\)

By saying he was being lynched, Justice Thomas implicitly claimed he would have been treated differently (better?), if he had been white. Yet senators treated him quite well, deferring to his demands and tirades. No one suggested he was misusing race. No one pointed out that to do as he had suggested, let the whole matter go, would fit an equally heinous and embarrassing racial paradigm, that of ignoring the claims of sexual abuse brought by African-American women. Instead, Justice Thomas declared that suddenly his Senate friends were out to get him and that the white people he had claimed would respect hard work and self-reliance were treating him as if he were—Black? Thus, in Justice Thomas's manipulation of the symbol race, Professor Anita Hill became, somehow, "de-raced" and partially erased. For Justice Thomas to have confronted the fact that his accuser was Black would have confused the racial point he was trying to make. Instead, in a stunning sleight of hand, he managed to convince all involved, including the Senate, that white racism, rather than a Black woman, had accused him of harassment.\(^5\)

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55. The tradition of viewing Black women as completely sexually accessible is a long and embarrassing one in the nation's history. Under slavery, the idea of the "true woman" served to construct both white and Black womanhood, the former as chaste, delicate, and pure, the latter as animalistic, primordial, and lusty. PAULA GIDDINGS, WHEN AND WHERE I ENTER 42-43, 50-55 (1984). Rape was something that could be done virtually without fear of legal prosecution to Black women under slavery. Scholars have been unable to find successful prosecutions of men (of any race) who raped Black women. See, e.g., SUSAN BROWNMILLER, AGAINST OUR WILL 126-31, 153-70 (1975) (discussing treatment of Black women under slavery and during Reconstruction); HIGGINBOTHAM, supra note 39, at 146, 282 (1978); A. Leon Higginbotham, Race, Sex, Education and Missouri Jurisprudence, 67 WASH. U. L.Q. 673, 680-88 (1989) (describing case in which a slave girl sought to defend killing her master as self-defense against rape); A. Leon Higginbotham & Barbara K. Kopytoff, Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia, 77 GEO. L.J. 1967, 2008-12, 2019-20 (1989) (comparing treatment of Black and white women under slavery); Barbara Omolade, Black Women, Black Men, and Tawana Brawley, 12 HARV. WOMEN'S L.J. 11, 12-14 (1989) (attributing silencing of Black women about sexual abuse to sexual exploitation.
Hill did not have. In an ironic twist of fate she became “Yale-educated female law professor” to Justice Thomas’s lynched Black man. She became a part of the white racist conspiracy that Justice Thomas asserted was after him. He had gained exclusive control over the content of the symbol race, giving it a gender that allowed Professor Hill no place within it, rendering her race invisible.

Professor Patricia Williams has commented on this modern inclination to present issues of race as invisible. She told the story of her late godmother’s bedroom, which she had cleared of furniture in order to paint. Even empty, the memories in the room had come flooding back to her; “the shape of the emptiness” confronting her each time she was about to enter.56

The power of that room, I have thought since, is very like the power of racism as status quo: it is deep, angry, eradicated from view, but strong enough to make everyone who enters the room walk around the bed that isn’t there, avoiding the phantom as they did the substance, for fear of bodily harm. They do not even know they are avoiding; they defer to the unseen shapes of things with subtle responsiveness, guided by an impulsive awareness of nothingness, and the deep knowledge and denial of witchcraft at work.57

Williams’s powerful description of racism as the phantom affecting everyone in society explains much about the Thomas hearing dynamic. The rendering invisible of Professor Anita Hill’s race, its exclusion from a discussion of her sexual harassment charge, meant racism/white supremacy58 was not discussed. Professor Hill made her charge as an

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57. Id.
58. Using “the term racism/white supremacy emphasize[s] the link between the privilege held by whites to ignore their own race and discriminatory racism.” Grillo & Wildman, supra note 37, at 398. Professor bell hooks has explained her realization that racism and white supremacy were connected: “The word racism ceased to be the term which best expressed for me exploitation of black people and other people of color in this society and . . . I began to understand that the most useful term was white supremacy.” BELL HOOKS, OVERCOMING WHITE SUPREMACY: A COMMENT, IN TALKING BACK: THINKING FEMINIST, THINKING BLACK 112 (1989).
African-American woman in a society dominated by white male values. The erasure of her race allowed racism to act as a phantom once again.

To try to avoid looking racist by refusing to ask Justice Thomas any hard questions, the senators deferred to the “unseen shape” of racism. Yet by deferring, they fostered racism and its companion in America, white supremacy. Professor bell hooks has explained that liberal whites do not see themselves as prejudiced or interested in domination through coercion, yet “they cannot recognize the ways their actions support and affirm the very structure of racist domination and oppression that they profess to wish to see eradicated.” The avoidance of race, the failure to talk about it or acknowledge its role in history, maintains and perpetuates racism/white supremacy. By avoiding race, we never have to confront the implications of change, and we default to the status quo which makes white the hidden referent to race. Failing to talk about race forces racism off limits, but it does not make either be gone. Like the phantom furniture in Williams's godmother's bedroom, we tiptoe around the dynamic of racism, keeping it intact.

Williams reported a chilling example of this denial of race in her own experience. She, a Black woman, was barred from admittance to Benetton's at Christmastime by a white clerk who refused to activate the buzzer that admitted shoppers. When she described this outrageous example of racism in a law review article, the editors edited out all reference to her race. When she retold this tale of law school editing, as showing the need to talk about race and to engage in affirmative action, her speech was reported as being against affirmative action. And finally when another law professor used this story in class, a rumor started that Williams had made up the story about her exclusion from Benetton's.

Thus her complaint about racism, exclusion from the store, was first distorted and then relegated by the white audience to the realm of fantasy, the ultimate denial of the presence of racism. The senators accused Professor Anita Hill of fantasy, denoting a similar attempt to deny the

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60. Williams, supra note 56, at 242-43 n.5.
61. Senator Strom Thurmond said, "I have been contacted by several psychiatrists suggesting that it is entirely possible that she is suffering from delusions, perhaps she is living in a fantasy world." Senate Judiciary Committee Hearing on the Supreme Court Nomination of Judge Clarence Thomas, available in LEXIS, Genfed Library, Nomine File, Capitol Hill Hearing Section, Oct. 15, 1991 (statement of Sen. Thurmond). Senator Leahy asked Judge Susan Hoerchner, testifying on behalf of Professor Hill, if Hill was "a woman that suffers from fantasies in any way . . . ." Senate Judiciary Committee Hearing on the Supreme Court Nomination of Judge Clarence Thomas, available in LEXIS, Genfed Library, Nomine File, Capitol Hill Hearing Section, Oct. 18, 1991 (statement of Senator Leahy). A lengthy discussion in the hearing between Senators DeConcini and Specter.
possible existence of discriminatory behavior. Is the fate of Black women who tell stories of racism and sexism, like Williams and Hill, that they will not be believed?

III. AN EXAMPLE OF THE TREATMENT OF RACE AND SEX IN POPULAR CULTURE

The primacy of symbols results in political events entering mass consciousness by representation and depiction in popular culture. By this use of symbols, society attempts to understand events in a comfortable way. Symbols gain potency in the context of their depictions in popular culture. The intersections between life, art, and politics, and how the first is influenced by the latter two, have become more clear in the post-Thomas confirmation era.

Struggling to make sense out of the Thomas confirmation process is difficult enough. The popularization of the hearings, indeed of Justice Thomas himself, by television broadcast marked a new era for the Supreme Court and the legal system. Television was a powerful force during the confirmation hearings, giving content to the pervasive symbols of race and sex. It is appropriate to consider the post hoc treatment of the Thomas confirmation by that mainstay of popular television, the half-hour prime time situation comedy.


Ellen Goodman suggested that in order to believe Justice Thomas, one would have to believe that Professor Hill was a psychopath. Goodman, supra note 51. For discussions of the misuse of fantasy during the hearings, see Rosenthal, supra note 13, at 23; Berke, supra note 10; Greenspan & Greenspan, supra note 13; Stanley, supra note 30.

62. See supra notes 47-52 and accompanying text.

63. John Denvir, Politics As Performance Art, THE RECORDER, Oct. 28, 1991, at 6 ("The emergence of television as the prime source of political information has created a context in which politics has become a performance art. . . . The president does his work in private, and can pick his own photo opportunities. Because Congress acts publicly, it is at a perpetual disadvantage, under the harsh glare of media scrutiny.").

Concerning the popularity with television viewers of the hearings compared to professional sports events, see supra note 1.
CBS's *Designing Women* dedicated an episode to "The Strange Case of Clarence and Anita." This broadcast signified a peculiar intersection between serious politics and popular art, embedded within a one half-hour show with a laugh track. The themes debated in the show reflected the battle of symbols, gender oppression versus unrestrained sexuality and the struggle over the gender of race, disputed during the hearing.

The loose plot of the show operated on several levels. At the most basic level, the characters (five white women and one African-American man) argued about the Hill-Thomas hearings, reducing the debate to an argument over whether "he did it" or "she lied." At another level, the female characters joked with the male character about their own harassment of him as their employee. On still another plane, two of the characters (the progressive white females who believed Professor Hill) appeared in a stage version of *Whatever Happened to Baby Jane?* Finally, these diverse themes merged in the final scene in which the characters reconvened at a pajama party to reflect on the day's events.

The characters' debates over the credibility of Justice Thomas and Professor Hill were striking in how they mirrored the actual discussions that had occurred in the media. Race and gender each were powerful symbols, present on the show as they had been in the media during the hearings. Yet the intersection of the two, made relevant by the very existence of Professor Hill—an African-American woman—was rendered invisible both in the hearings and by the media coverage. In this episode, art mirrored life (which had been performed on televised hearings anyway).

The white female characters argued at length about Justice Thomas and Professor Hill, using as their frame of reference the issue of sexual

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64. *See supra* note 2. *Designing Women* was created by and co-executive produced by Linda Bloodworth-Thomason and Harry Thomason. Set in Atlanta, it features four white female characters in their thirties and forties who own an interior design company. Susan Faludi refers to the show as one of the more positive television depictions of women in the eighties. Faludi also notes the show has survived due to its audience popularity despite repeated attempts by its network to "chase them off the set." *Faludi, supra* note 19, at 147-48.

65. Two key characters each wore tee-shirts emblazoned with these logos. At one point in the show they stood screen left and screen right with a confused female character in the middle, who was trying to make sense out of the whole debate. This character had mixed up Bart Simpson with Alan Simpson and Anita Hill with Anita Bryant, dismissing both Anitas as troublemakers with the same hairdo.


harassment. The white women did (or didn’t) identify with Professor Hill as a woman, failing to ever mention the possible impact of her race on her experience. She became again a woman unmodified, unable to avail herself of the unspoken referent “white.” She was without a race in art as she had been during the hearings.

Paralleling this distillation of Professor Hill into a raceless woman was the Black male character’s commentary on then-Judge Thomas. He suggested that Justice Thomas was not qualified, citing the poor American Bar Association report card that Justice Thomas had received. He did not mention the harassment issue or his view of the allegations by Professor Hill. He saw the issue as one of race, commenting that although Bush had denied it, Justice Thomas’s race was all that the Administration evidently liked about him.

Interrupting the dialogue in the middle of the show, the confirmation vote was taken and Justice Thomas was confirmed. Two of the white female characters responded that “women everywhere” were mad. They apparently did not perceive that this issue, being both about race and gender, would potentially arouse the rage of Black men (including their colleague) as much as it would women. The absence of any women of color on the show made it seem as if the angry women were all white, mirroring the media’s emphasis on (white) women’s reactions.

But the absence of the perspective of a Black woman on Designing Women merely reflected the almost complete absence of the Black female voice from the political discourse. In the law of discrimination, Black women have been forced to choose between claims of racial and sexual

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68. Neil A. Lewis, Bar Association Splits on Fitness of Thomas for the Supreme Court, N.Y. TIMES, Aug. 28, 1991, at A1. The American Bar Association committee evaluating Justice Thomas’s fitness to be a Justice found him qualified, with two members finding him unqualified. No one found him to be well qualified, the highest possible rating. Id.
discrimination. Courts doctrinally have resisted the reality that discrimination or harassment can occur because one is a woman of color. Once the choice between race and gender can be forced, then sex can be represented by white women and race by Black men. Although Professor Hill’s face is shown, her voice is not heard during the show. Thus, art mirrored life again as Professor Hill’s voice was distilled and filtered such that her views could be represented by white women and a Black man, but not by herself.

Other reflections from popular politics appeared in the show as well. The Black male character was silent through much of the show; during the female characters’ dialogue, there were frequent shots of his unspeaking face. When he did talk it was to speak first briefly about his lack of respect for Justice Thomas. When he spoke later, on the subject of sexual harassment, his comments were dismissed. He described how, like Professor Hill, he felt victimized by the repeated sexual references and comments of his female bosses. They were reluctant to believe him, and the older white female character made references to his anatomy: “Is it true what they say about Black men?” He “joked” back that it was true, serving to reinforce this horrible stereotype and to suggest to the viewer that it did not cause him pain.

He also appeared to undermine his own claim of harassment. He subsequently tried to get a white man to support his assessment, presumably for credibility, but was shown to have bribed him, undermining the seriousness of his harassment charge (and by implication Professor Hill’s?). His concern about sexual harassment was dismissed via laugh track. His perceived need for corroboration by the second (white) man, the harassment by one character, and the aura of skepticism surrounding his claim posited the entire discussion within a context of racial stereotypes about Black men and sexist stereotypes about sexual harassment.

69. See, e.g., DeGraffenreid v. General Motors, 413 F. Supp. 142 (E.D. Mo. 1976) (finding that Title VII didn’t create a new category “Black woman,” the court recommended that Black women consolidate their claim for sex and race discrimination with a pending racial discrimination suit). Even cases that did find that Black women could make claims based on race and sex discrimination still approached each plaintiff first as Black, then as women, refusing to address their claim as Black women, see Rogers v. American Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981), or described race as a “plus” to sex discrimination, see Jeffries v. Harris County Community Action Ass’n, 615 F.2d 1025 (5th Cir. 1980). For a description of the sex-plus doctrine, see BARBARA L. SCHLEI & PAUL GROSSMAN, EMPLOYMENT DISCRIMINATION LAW 403-16 (2d ed. 1983).

For further analysis of these cases and important scholarship discussing the intersection of race and sex discrimination, see Crenshaw, supra note 66; Paulette Caldwell, A Hair Piece, 1991 DUKE L.J. 365. For other related work, see also Regina Austin, Sapphire Bound!, 1989 Wis. L.J. 539; Judy Scales-Trent, Black Women and the Constitution, 24 HARV. C.R.-C.L. L. REV. 9 (1989).

70. Crenshaw, supra note 66, at 149.
As in the hearings, the presence and power of these stereotypes were left unchallenged and unaddressed.

In a troubling conclusion the feminist characters appeared in a stage version of *Whatever Happened to Baby Jane?* Oddly, the characters on the show were styled as Bette Davis and Joan Crawford rather than simply as the characters from the script. The *Designing Women* feminist characters remained in costume as Crawford and Davis for the rest of the show. They were angry about the confirmation and the aura of Crawford and Davis made them "feel macho." This bizarre construction of Crawford and Davis as signifiers of bitchy boldness, an image of them painted in the 1940s, was unexpected in a show attempting a fair portrayal of women's issues in the 1990s.

Finally, at the pajama party, the character dressed as a crazed Davis, face stage-painted white, thrust herself in front of a television news camera, to rant over the Thomas confirmation. This ending was an injustice to the feminism of the *Designing Women* character as well as a disservice to Davis. Feminists, Davis, and Crawford were portrayed through a 1940s Hollywood masculinist lens. When they decided to dance together, the fact that they both wanted to lead was passed off as a joke.

The episode's final scene used symbols to portray that nothing had changed in the status quo. The sole Black man was forced to continue dancing with one of the women, serving as a small reminder of the issue that will not go away. Yet race as a symbol had been presented as almost invisible again. The feminists, costumed as bitches, danced with each other. The world of *Designing Women* went on without any resolution of the credibility dispute, other than the imprimatur of the Senate, confirming Justice Thomas. And finally, the show ended with the words of the President at the swearing-in ceremony that "All men are created equal." These words resonated over the image of a silent (and silenced) Professor Anita Hill. Yet all the characters were at a party together. As a community that co-exists, we, like these characters, must continue to work to understand and to change the dynamics of racism, sexism, and their intersection.

**CONCLUSION: THE LEGACY OF DOUBT**

After watching the televised Senate hearings, each member of society should be extremely frightened about the insensitivity and lack of
concern by the Senate to the needs and lives of the majority of its population, women. This concern should also prompt examination of the Senate's record on broader gender and racial issues. Can the powerless in this country truly have a represented voice when all of the authority to which the Senate defers is male, white, heterosexual, and economically privileged?

After the allegations brought by Professor Hill became public, many watched in disbelief, realizing that our representative institution was in fact filled with people who did not or would not comprehend the substance and standards of sex discrimination law. As they proved in their comments to the press and in their questioning of Professor Hill, few, if any, members of the Senate Judiciary Committee know what constitutes sexual harassment. Senator Simpson distinguished sexual harassment from "real harassment."71 Senator Specter was unsure whether speech without physical contact was included in its ambit.72 The most elite electoral institution found itself floundering hopelessly when attempting to face the issue of sexism, a problem that plagues more than half the country's citizens. Consequently, because the senators could not fathom the issue of sexism, they certainly could not understand the intersection of sexism with racism.

More than fifty percent of the people in this country are females of all races. This fact is cited every time feminists (men and women) attempt to suggest political representation is uneven, insensitive, and arguably non-existent for this special interest, which happens to be a majority. In a nation where institutions overwhelmingly cater to the interests of power and money (if these things are separable), both of which are controlled by males, it is not surprising that more women's voices are not heard. Patriarchal structures govern access to advertising, the media, banks, and most jobs. Even when women are present, such as Senator Nancy Kassebaum, it is often because they have met and adopted male standards. Thus, Senator Kassebaum was able logically to say that she resented being forced to choose between being a senator and a woman: "Throughout my years here I have taken pride in the fact that I am a U.S. Senator, not a woman Senator."73 She unwittingly pointed out that a hidden referent in "senator" is male.

Media and money are all-important to politicians as they seek "image" and financing in search of constituents and power bases.

71. See supra note 12.
72. See supra note 11.
73. Senator Kassebaum continued:
Neither the media nor the economic institutions of the country have tended to value women for much other than as commodities used to sell most everything from beer to cars. Struggles for true valuation in areas such as comparable worth and child care and in corporate positions have proved elusive.

Thus, to say the Senate is male means not only that ninety-eight percent of its members are men, but also that its values and abstractions derive from male perspectives which influence its definitions of power and empowerment, and ultimately freedom. This should make women and feminist men across the country nervous as civil rights advocates reluctantly turn away from the federal courts and toward the legislatures for protection of the wavering right to reproductive freedom, the formulation of a national child care policy, a forum to address issues of battery and rape within and without the home, and sexual harassment. Why are these policies and laws, which are crucial to women's lives, given such short shrift in legislative forums?

Justice Thomas joins a Court that is often described as "conservative." Yet it has acted as a very radical body, overturning precedent without compunction. Justice Thomas's confirmation has not eased

When some of my male colleagues have suggested that I know nothing about national defense issues because I am a woman, I have been offended. In the same vein, I have to assume that many of my male colleagues are offended by the notion that they cannot begin to understand the seriousness of sexual harassment or the anguish of its victims. On the question before us, some women suggest that I should judge this nomination not as a Senator but as a woman, one of only two in the Senate. I reject that suggestion.


74. See supra notes 18-21 and accompanying text.

Justice Rehnquist wrote, "Stare decisis is a cornerstone of our legal system, but it has less power in constitutional cases, where, save for constitutional amendments, this Court is the only body able
doubts, about him, about the Senate, or ultimately about the system of justice. Is there a person in this nation who believes that Clarence Thomas never discussed Roe v. Wade with anyone?\textsuperscript{76} Is there a person in this nation who believed President Bush when he said that Clarence Thomas was the best qualified person for the job and that race had nothing to do with his nomination?\textsuperscript{77} As Justice Thomas played the race card, a card he had proclaimed was not in his deck, he raised more questions: How could he have been treated better? Should the claims of African-American women be ignored when they are brought against African-American men (as they frequently are)? Most importantly, how can society prevent the misuse of race? As we sift among the symbols, with how many more doubts are we now left?

\textsuperscript{76} Ruth Marcus, Thomas Refuses to State View on Abortion Issue: Nominee Steadfast Amid Senators’ Questions, WASH. POST, Sept. 12, 1991, at A1 (“Clarence Thomas yesterday said he had no opinion on whether the Constitution protects the right to abortion and had not discussed the issue, even in a private setting, in the 18 years since the court decided it.”).

\textsuperscript{77} John E. Yang & Sharon LaFraniere, Bush Picks Thomas for Supreme Court, WASH. POST, July 2, 1991, at A1 (“President Bush yesterday chose Clarence Thomas, a conservative black federal appeals court judge, to replace Thurgood Marshall on the Supreme Court, saying he is ‘the best person at the right time.’”); Derrick Bell, Choice of Thomas Insults Blacks, NEWSDAY, July 10, 1991, at 85 (It was “typically disingenuous” for Bush to nominate Justice Thomas and call him the best-qualified candidate when “there are at least a half-dozen other black judges whose accomplishments, both on the bench and before becoming federal judges, put those of Thomas to shame.”).