
ARTICLES

THE ATTEMPTED ANITA HILLIFICATION OF THE HONORABLE JUDGE KETANJI BROWN JACKSON: GOD OF OUR WEARY YEARS, GOD OF OUR SILENT TEARS

PATRICIA A. BROUSSARD & SHELLY TAYLOR PAGE*

A TIME TO SPEAK

When danger lurks in the shadows

And the enemy is unknown

The wisest way to survive

May be silence

Even when that silence is locked up in your soul

When danger presents itself in full face

And the enemy is known

The wisest way to survive

May be silence

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*Even when that silence is locked up in your soul
 When danger presents itself in full face
 And the enemy is known to all collective
 The wisest way to survive
 May be silence
 And to let that silence provide a space for others to speak
 For there is a time to speak
 To overcome the danger
 To defeat the enemy
 And to unlock the silence in our collective souls.¹*

Georgiana G. Taylor (“Gigi”) was born in Iberia Parish in Louisiana in 1940. She was one of eleven children and one of the older girls in the family. She and her older sister, Rita, used to have to walk to the store to get groceries that their mother sometimes would need for meals. There was a brutal history of white men finding Black girls and women and raping, torturing, and killing them, leaving their bruised, battered bodies on the sides of the roads. So when Gigi and Rita would walk to the store for their mother, they quickly learned that they had to walk along the route of the bayou and not along the side of the road. They knew that they ran the risk of being raped and killed if they were seen by the wrong white man. So they would take the bayou route until they reached the bridge that they had to cross over to get to the opposite side of the road. They felt safer crossing the bridge because cars were more plentiful in that area, but they knew that even if a car saw them being assaulted or harassed, many white people would not turn on other white people. Gigi and Rita would be scared out of fear for their lives each time they took the trip to the grocery store for necessities.

This essay is dedicated to my mother, Gigi, my Aunt Rita, and all the little Black girls who were raped, tortured, brutalized, terrorized, and murdered while just taking a walk to the grocery store.

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¹ PATRICIA A. BROUSSARD, UNTITLED (2023).

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INTRODUCTION – A TIME TO SPEAK

As we reflect on the condition of marginalized and oppressed American citizens, we marinate on the words of the powerful and iconic song, “Lift Every Voice and Sing.”² This song has a deep and spiritual meaning for many and speaks to the struggles that those that are victimized and prejudiced experience in their daily lives.³ The song was created by James Weldon Johnson and his brother, J. Rosamond Johnson.⁴ It was adopted as the National Anthem for Black people in 1919, a time when Black people needed a song that had the power in calling out a cry for freedom, liberation, and affirmation for Black people.⁵ This song has held,

² JOHN ROSAMOND JOHNSON & JAMES WELDON JOHNSON, LIFT EVERY VOICE AND SING (E.B. Marks Music Co. 1921).

³ See Smith College, *Lift Every Voice and Sing*, THE BODY IS MEMORY: AN EXHIBITION OF BLACK WOMEN ARTISTS, <https://sites.smith.edu/afr111-f19/lift-every-voice-and-sing> (last visited Dec. 20, 2023).

⁴ *Id.*

⁵ Faith Karimi & A.J. Willingham, *What Makes ‘Lift Every Voice and Sing’ So Iconic*, CNN (Sept. 10, 2020), <https://www.cnn.com/interactive/2020/09/us/lift-every-voice-and-sing-trnd/>.

for more than a century, a special place in American history, but it is greater than an anthem for Black people. It serves as a deeply personal history lesson for all people, a sounding board for unity, and a rallying cry in defense of citizens and all people to fight for and demand equality, freedom, equity, and justice.⁶ It reminds us of the basic principles this country was founded upon, but which were enumerated and only included wealthy white landowners: “We the people of the United States . . . in order to form a more perfect union”⁷ These words are etched into the collective psyche of the citizens of this great nation. These words, from the Preamble of the United States (U.S.) Constitution, have been interpreted in at least two main ways. Some scholars and observers of constitutional law interpret it to mean that the U.S. is, in fact, a perfect union, a stellar democracy, and a beacon of hope for all nations,⁸ while other scholars and observers of constitutional law have read this well-cited quote to be an aspirational mantra to keep the country on the path to attaining the status espoused by the former.⁹ The authors of this essay fall into the category of the latter scholars and assert that the U.S. is on a path that is rocky, has switchbacks, and more often than not repeats cycles of behavior that mire the nation in inequality, inequities, racism, and misogyny. Sadly, much of this regressive behavior is aimed at Black women.

We authors are Black women, licensed attorneys, and law professors who feel compelled to comment on the aggressive, disrespectful behavior demonstrated by some U.S. senators at Justice Ketanji Brown Jackson’s Senate hearings upon her nomination to the U.S. Supreme Court.¹⁰ To be clear, this is not a rant on the victimization of Black women. Rather, it is a clear-eyed observation buttressed by the events of two hundred plus years and more recently by the televised circus meant by some to demoralize, demonize, and diminish a brilliant, beautiful, accomplished Black woman Justice.¹¹ It is indeed a time to speak and demand that all citizens, especially those left out of and deliberately excluded in the U.S. Constitution, be treated as full citizens. We speak as Black women, with all

⁶ *Id.*

⁷ U.S. CONST. pmb.

⁸ See Erwin Chemerinsky & Michael Stokes Paulsen, *The Preamble*, NAT’L CONST. CTR., <https://constitutioncenter.org/the-constitution/preamble/interpretations/37> (last visited Dec. 28, 2023).

⁹ *Id.*

¹⁰ See Bruce C.T. Wright, *Ketanji Brown Jackson Can’t Avoid Republican Disrespect Even as Senate Confirms Her Nomination*, NEWSONE (Apr. 7, 2022), <https://newsone.com/4316053/senate-republicans-disrespect-ketanji-brown-jackson-confirmation/>.

¹¹ *Id.*

the privileges and rights endowed by our Creator to be full and free citizens of these United States of America.

I. THE VERIFIABLE HISTORY OF THE DENIGRATION OF BLACK WOMEN IN AMERICA 1.0

*We have come over a way that with tears have been watered, we have come, treading our path through the blood of the slaughtered . . .*¹²

History should contain the soul of a society. Therefore, it is imperative that it be accurate, unsentimental, and rooted in truth. It should not be buried behind labels intended to be divisive and pejorative¹³ but must contain a roadmap to building a better society. Thus, the history of the treatment of Black women by America should operate not only as a conductor of the truth but also as a tool to build an equal society that recognizes the personhood of all its citizens. Thus far, history has not been the motivating force that is so desperately needed for the “American vision” to continue and thrive and recognize Black women for who and what they truly have contributed to this country. Instead, we remain “others.”¹⁴

History tells us that Black women have been physically mistreated since their deliverance to the shores of this country.¹⁵ Rape, physical abuse, mistreatment, and maltreatment are well documented in the text.¹⁶ And although generally there is no longer physical bondage used as a baseline approach to disciplining them, one tool has survived slavery—the denigration and verbal demonization of them until they become caricatures of everything that is wrong with womanhood, motherhood, and Americans.¹⁷

¹² JOHNSON & JOHNSON, *supra* note 2.

¹³ An example of this divisiveness is the attack on “critical race theory,” a theory that few seem to understand. *See, e.g., Critical Race Theory Frequently Asked Questions*, LEGAL DEF. FUND, <https://www.naacpldf.org/critical-race-theory-faq/> (last visited Dec. 20, 2023).

¹⁴ *See* Kimberlé W. Crenshaw, *We Still Have Not Learned from Anita Hill's Testimony*, 26 UCLA WOMEN'S L.J. 17, 19 (2019). “Black women are vulnerable not only because of racial bias against them but also because of stereotypes – that they expect less nurturing, they are more willing, no one will believe them. This is what marks them as prey for men of all races.” *Id.*

¹⁵ *See generally* DEBORAH GRAY WHITE, *AR'N'T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH* (W.W. Norton & Co., rev. ed. 1999) (1985). Deborah Gray White says this about black enslaved women: “They were the only women in America who were sexually exploited with impunity, stripped and whipped with a lash and worked like oxen.” *Id.* at 162.

¹⁶ *See, e.g., id.* at 10, 163.

¹⁷ *Id.* at 8.

*A. In The Beginning: White Male Domination Over Black Women
From 1400 To 2022*¹⁸

Historians are quick to point out that the institution of slavery has been present in the world, in some form or another, since humans have waged wars and taken captives when victorious.¹⁹ This rationale is often given to explain and, in some instances, to justify American slavery with an “everyone did it” type of defense.²⁰ However, slavery in America was a crime against humanity in every sense of the phrase.²¹ Slavery in America was brutal for both men and women.²² However, the plight of enslaved Black women took a horrific turn when in 1662, the Virginia legislature enacted the following statute:

Whereas some doubts have arisen whether children got by any Englishman upon a Negro woman should be slave or free, be it therefore enacted and declared by this present Grand Assembly, that all children born in this country shall be held bond or free only according to the condition of the mother; and

¹⁸ In 2019, Journalist, Nikole Hannah-Jones, wrote a series of essays that were compiled into a book entitled *The 1619 Project: A New Origin*, which turned into a long-drawn-out controversy resulting in some state legislatures passing laws limiting the teaching of race in public school classrooms. This censure has resulted in a distortion and negation of the history of slavery and race in the United States. The book has been lauded by some and dismissed as an attempt to shame white Americans by others. The weakness in the book is the citing of the date of 1619 as the starting point for the story of one of the most inhuman and indefensible chapters in American history when enslaved Black persons were brought to Florida in the early 1500s. Although the region was not technically the “Colonies”, the kidnapping and importation of persons from the African continent set the groundwork for Slavery in the United States. *See generally* NIKOLE HANNAH-JONES, *THE 1619 PROJECT: A NEW ORIGIN* (Caitlin Roper, Ilena Silverman, & Jake Silverstein eds., 2021).

¹⁹ Patricia Muhammad, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law*, 19 AM. U. INT’L L. REV. 883, 888 (2003).

Some Europeans were appalled to hear that Africans ruled themselves and possessed their own system of government. This disgust was justified by claims that Africans were barbaric and uncivilized. Non-Africans, particularly Europeans, exploited the savage stereotype and justified enslaving Africans based on a religious pretext, therefore in the name of God. However, the basis for this justification was unsound, for the history of ancient Africa demonstrates the complexity of Africa’s government and civilization throughout its various empires.

Id.

²⁰ Laura Sockol, *How to “Feel Right:” Cognitive Dissonance in Uncle Tom’s Cabin*, SERENDIP, https://serendipstudio.org/sci_cult/courses/emotion/web3/lsockol.html (May 2, 2018, 10:51 AM).

²¹ Muhammad, *supra* note 19, at 884.

²² *See, e.g.*, Christine Kenneally, *Large DNA Study Traces Violent History of American Slavery*, <https://www.nytimes.com/2020/07/23/science/23andme-african-ancestry.html> (Sept. 20, 2021).

that if any Christian shall commit fornication with a Negro man or woman, he or she so offending shall pay double the fines imposed by the former act.²³

This statute assured a few things in how Black enslaved women would be regarded and treated in the ensuing centuries because it resulted in the following: First, contrary to English law which stated that the status of a child would follow the status of the father,²⁴ this law provided that a child born to an enslaved mother would have slavery as his or her birthright.²⁵ Second, it turned Black enslaved women into virtual baby-creating machines akin to breeding livestock and, in the process, creating wealth for the “owners” and assuring an ongoing supply of enslaved humans because one woman could have as many as twenty children in her lifetime.²⁶ One such purveyor of human beings was quoted as saying, “I purchased four women and ten children in whom I obtained a great bargain, for I really supposed they were my property, as were my brood mares.”²⁷ Having multiple pregnancies and children did not absolve enslaved women from performing the numerous chores assigned to them as free labor.²⁸ Lastly, it left Black women unprotected from rape and physical abuse because the slave owners saw them as their own property

²³ 2 WILLIAM WALLER HENING, *STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619*, at 170 (R. & W. & G. Bartow ed. 1823).

²⁴ See generally *Pater Familias Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/p/pater-familias/> (Sept. 3, 2023); Peter Wood, *Peter Wood on Inheriting the Mother’s Slave Status*, PBS, <https://www.pbs.org/wgbh/aia/part1/1i3000.html> (last visited Dec. 20, 2023).

²⁵ KWAME ANTHONY APPIAH, *BUYING FREEDOM: THE ETHICS AND ECONOMICS OF SLAVE REDEMPTION* 254 (Kwame Anthony Appiah & Martin Bunzl eds., 2007).

²⁶ Caren M. Holmes, *The Colonial Roots of the Racial Fetishization of Black Women*, 2 *BLACK & GOLD* 1, 8–9 (2016). It is evident that from the moment of initial European contact, black women have been sexualized within the imperialist narrative of the United States. The sexual debasement of black bodies and black women has been maintained through stereotypes, laws, and pseudo-science. The bodies of black women have been managed and controlled throughout all of American history, from the slave era to the modern era. While the tactics and legal frameworks have shifted to adapt to modern standards of political correctness, black bodies are still perceived as having inherently inferior value. The historical intersectionality of race and gender within the context of black female sexuality is incredibly complex. In American history, black women have always been sexually debased and dehumanized. From the auction block to the sex shop, black bodies remain byproducts of an ongoing manifest destiny. *Id.*

²⁷ A. Leon Higginbotham, Jr., *Race, Gender, and Power in America: The Legacy of the Hill-Thomas Hearings*, *WASH. POST* (1995), <https://www.washingtonpost.com/wp-srv/style/longterm/books/chap1/race.htm>.

²⁸ JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 158 (Alfred A. Knopf ed., 8th ed. 2000) (1947).

and were free to do what they wished with them.²⁹ The children became assets regardless of their paternity.³⁰ Therefore, white men reaped benefits as they raped Black women.³¹

To justify the treatment of Black enslaved women, slave owners had to convince themselves that of believing and espousing the lie that Black women were not human, but mere property, like the cow, the plow, and the table and chairs were.³² Therefore, both the dehumanization and domination of Black women took root on American soil and have flourished and produced fruit until this very day.³³ If this assertion appears

²⁹ Denise Lynn, *The Historical Erasure of Violence Against Black Women*, BLACK PERSPS. (Jan. 24, 2018), <https://www.aaihs.org/the-historical-erasure-of-violence-against-Black-women/>. Americans are hesitant to confront, let alone acknowledge the sexual assault of Black women was institutionalized during slavery and perpetuated under Jim Crow and beyond. *Id.*

³⁰ See, e.g., *The Life of Sallie Hemmings*, JEFFERSON MONTICELLO, <https://www.monticello.org/sallyhemmings/> (last visited Dec. 20, 2023); see also Wilma King, *Children and Slavery*, OXFORD RSCH. ENCYCLOPEDIA: AM. HIST. (Feb. 25, 2019), <https://oxfordre.com/americanhistory/display/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-628>.

³¹ Higginbotham, *supra* note 27.

³² See, e.g., MELTON A. MCLAURIN, CELIA, A SLAVE 33–34, 132–35 (Univ. of Ga. Press ed., 1991). This true story tells the tale of Celia, an enslaved girl who was raped and impregnated by her buyer at least three times before the age of eighteen. She was charged with killing him and hanged. The amazing fact of the story is that she stood trial and was not immediately lynched but, because of the political climate, was given a modicum of due process. *Id.*

³³ Lynn, *supra* note 29.

Rosa Lee Ingram was a 40-year-old widowed sharecropper with twelve children in Schley County, Georgia. On November 4, 1947, John Ethron Stratford, a white sharecropper who lived on the same property as Ingram, confronted her with a rifle. Stratford had harassed Ingram for years, but on November 4, he tried to “compel her” to have sex with him. She fought back, and her sons came to her aid. At the end of the fight, Stratford lay dead, and Ingram and four of her sons—Charles 17, Wallace 16, Sammie Lee 14, and James 12—were arrested and detained in separate locations. In a one-day trial on January 26, 1948, Rosa Lee Ingram and her two sons Wallace and Sammie Lee were found guilty and sentenced to death. Charles was tried separately and found not guilty based on insufficient evidence, and James was eventually released. Ingram’s mother, Amy Hunt, contacted local organizations for help. The NAACP began to rally for her defense, and the nationally syndicated Pittsburgh Courier carried the story on its front page. Ingram’s case now had a nationwide audience.

...

Rosa Lee Ingram and her sons, Wallace and Sammie Lee, spent twelve years in prison. The three were paroled in 1959. The NAACP helped the Ingrams get back on their feet and found work for them. As they tried to get their lives together, their case continued to resonate among activists. While tensions ran high between the

to be hyperbole, the words of Malcolm X, spoken almost one hundred years after the abolition of slavery, should lend some credibility to it: “The most disrespected person in America is the Black Woman. The most unprotected person in America is the Black woman. The most neglected person in America is the Black woman.”³⁴

Enslaved Black women were reduced to tropes and memes to not only control their behavior and treatment, but to also control the view that white America had of them.³⁵ These tropes and memes outlived enslavement and took on lives of their own which are pervasive today and greatly impact the view that white America has of Black women while exporting that view to the entire world.³⁶ “Portraying African American women as stereotypical mummies, matriarchs, welfare recipients, and hot mommas helps justify U.S. Black women’s oppression.”³⁷ In addition to being Mammy, Jezebel, and Sapphire, Black women are viewed as intellectually inferior even when holding important positions, preoccupied with sex even when there is no evidence as such, supporters of criminals even when they are judges and prosecutors, and liars even when the truth is self-evident.³⁸ White men have mastered the art of publicly shaming and denigrating Black women, and this has been on full display up until this very day.³⁹

NAACP and Communist-led organizations, those on the left saw in Ingram’s case the embodiment of American racism. As Claudia Jones argued, Black women’s sexual exploitation was not a rare occurrence, but a daily insult, and white women’s willful ignorance on the topic prevented real substantive change for all women.

Id.

³⁴ Feminista Jones, *Malcolm X Stood Up for Black Women When Few Others Would*, ZORA (Aug. 7, 2020), <https://zora.medium.com/malcolm-x-stood-up-for-black-women-when-few-others-would-68e8b2ea2747>.

³⁵ Ellen E. Jones, *From Mammy to Ma: Hollywood’s Favourite Racist Stereotype*, BBC CULTURE (May 31, 2019), <https://www.bbc.com/culture/article/20190530-rom-mammy-to-ma-hollywoods-favourite-racist-stereotype>.

³⁶ *Id.*

³⁷ PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 69 (Routledge, 2d ed. 2000).

³⁸ *Id.* at 5.

³⁹ *Here’s Every Word from the Fourth Jan. 6 Committee Hearing on Its Investigation*, NPR (June 21, 2022, 8:47 PM), <https://www.npr.org/2022/06/21/1105848096/jan-6-committee-hearing-transcript>. On June 21, 2022, the House Select Committee investigating the January 6, 2021, insurrection presented two witnesses who were election workers in Atlanta during the 2022 election. Wandrea “Shaye” Moss and her mother Ruby freeman testified on how the lies and disinformation disseminated about them by no less than the President of the United States and

his henchmen, changed their lives forever. The President of the United States in a recorded call to a Georgia state official President Trump said the following:

In Fulton County, Republican poll watchers were rejected in some cases physically from the room under the false pretense of a pipe burst – water main burst. Everybody leave. Which we now know was a total lie. Then election officials pulled boxes, Democrats, and suitcases of ballots out from under a table, you all it saw on television, totally fraudulent, and illegally scanned them for nearly two hours, totally unsupervised. Tens of thousands of votes. This act coincided with a mysterious vote dump of up to 100,000 votes for Joe Biden, almost none for Trump. Oh, that sounds fair. That was at 1:34 am. . . We had at least 18,000. That's on tape. We had them counted very painstakingly, 18,000 voters having to do with the Ruby Freeman. That's – she's a vote scammer, a professional vote scammer and hustler.

Id.

President Trump's private attorney, Rudy Giuliani said the following on tape that was broadcasted both nationally and internationally:

Tape earlier in the day of Ruby Freeman and Shaye Freeman Moss and one other gentleman quite obviously surreptitiously passing around USB ports as if they are vials of heroin or cocaine. I mean, it's our – it's obvious to anyone who's a criminal investigator or prosecutor they have engaged in surreptitious illegal activity again that day, and that's a week ago, and they're still walking around Georgia lying. They should have been – they should have been – should have been questioned already. Their places of work, their homes, should have been searched for evidence of ballots, for Ellis – evidence of USB ports, for evidence of voter fraud.

Id.

In addition, the FOX news network echoed the false narrative put forth by the President. This narrative was repeated on news cycle after news cycle until viewers were convinced that these dedicated poll workers were at their best, involved in voting fraud, and at their worst drug dealers. Black women are often described by one of three tropes, welfare queens, scam artists, or drug dealers. In some instances, they are accused of all three. Ms. Moss was asked "how has this experience of being targeted by the former president and his allies affected your life" and replied:

This turned my life upside down. I no longer give out my business card. I don't transfer calls. I – I don't want anyone knowing my name. I don't want to go anywhere with my mom because she might yell my name out over the grocery aisle or something. I don't go to the grocery store at all. I haven't been anywhere at all. I've gained about 60 pounds. I just don't do nothing anymore. I don't want to go anywhere. I second guess everything that I do. It's affected my life in a – in a major way. In every way. All because of lies. For me doing my job, same thing I've been doing forever.

Id.

The outrage at the revelation of this information was swift and condemning. Many observers were shocked that those with political clout and power would turn their wrath upon American citizens. Unfortunately, Black women were not shocked, surprised, or confused by these vicious acts. The vilification of Black women is a time-honored tradition in this country, just ask Anita Hill—she was not surprised. Wandrea "Shay" Moss and her mother, Ruby Freeman received the Anita Hill treatment, a tactic still in wide use today. These powerful people dusted off the Anita

II. THE DENIGRATION OF BLACK WOMEN 2.0 - THE LASHING OF ANITA HILL

*Bitter the chastening rod...*⁴⁰

*“The Black woman of today’s society is trying to transcend the stereotypes that have followed her for many years: mammy, a matriarch, sexual siren, or Jezebel, and the welfare mother or queen. These stereotypical images serve to support an oppressive patriarchal system that degrades and denigrates.”*⁴¹

It would be intellectually dishonest to not acknowledge that white women have also been publicly denigrated by white men.⁴² However, their purported “misbehavior” has not been extended to all white women in the way that similar charges against one Black woman have been extended to all Black women.⁴³ “Black women emerged from slavery

Hill playbook and used it with no hesitation, no remorse, and possibly no negative repercussions. In 2023, Rudy Giuliani was found guilty of defamation against Ruby Freeman and Shaye Freeman Moss and ordered to pay \$148 million in damages to the women. *See* Spencer S. Hsu et al., *Rudy Giuliani Ordered to Pay \$148 Million for False 2020 Election Claims*, WASH. POST (Dec. 16, 2023, 8:06 PM), <https://www.washingtonpost.com/dc-md-va/2023/12/15/giuliani-defamation-damages-trial-verdict-georgia-election-case/>.

⁴⁰ JOHNSON & JOHNSON, *supra* note 2.

⁴¹ La Toya A. Love, *The History of Black Woman in Society*, 1 LOVE GENDER & SEXUALITY STUD. STUDENT WORK COLLECTION 47 (2020).

⁴² The most recent being Christine Blasey Ford in 2018, who was a witness before the Senate Judiciary Committee testifying against then-Supreme Court nominee, Brett Kavanaugh. Blasey Ford testified that she had an encounter with Kavanaugh in which Kavanaugh groped her and tried to take off her clothing and she believed that he was going to rape her. The Committee did not question her but had a female former prosecutor do so. The unspoken conclusion was that Blasey Ford was a liar, but she was not stripped of her personhood by a herd of white men on national television. *See* Josh Dawsey & Felicia Sonmez, *Trump Mocks Kavanaugh Accuser Christine Blasey Ford*, WASH. POST (Oct. 2, 2018, 10:15 PM), https://www.washingtonpost.com/politics/trump-mocks-kavanaugh-accuser-christine-blasey-ford/2018/10/02/25f6f8aa-c662-11e8-9b1c-a90f1daae309_story.html.

⁴³ Higginbotham, *supra* note 27. The Hill-Thomas hearings represented a sequela of attitudes that in some ways were not very different from those of the antebellum “statesmen” and “judges” who regarded all women, and particularly Black women, as inferior persons. Thus, Anita Hill was treated far more harshly by the Senate committee than she would have been had she been white, and Clarence Thomas was treated far more generously than he would have been had the victim been a white woman. This is clearly demonstrated by analyzing three theoretical scenarios, with the principal roles in the hearings recast and all other factors being the same.

Scenario 1: If the nominee had been Clarence Thomas and the victim had been a white woman, either the Judiciary Committee would have rejected Clarence Thomas unanimously, or more probably, the president would have withdrawn his name the moment the evidence was submitted.

firmly enshrined in the consciousness of white America as ‘Mammy and the bad Black woman.’”⁴⁴

Scenario 2: If the nominee had been a white man and the victim had been a white woman, the white nominee would have been rejected by the Judiciary Committee and would never have been confirmed. It is worth recalling that the Armed Services Committee rejected Senator John Tower’s nomination as secretary of defense, even though, unlike Clarence Thomas, he would not have won a lifetime appointment. Part of the rejection was predicated on his alleged questionable relationships with white women.

Scenario 3: If the nominee had been a white man and the victim Anita Hill, he would have been overwhelmingly rejected. Some of the so-called civil rights leaders who supported Clarence Thomas would have been the first to demand the rejection of a white Supreme Court nominee accused of sexually harassing an African American woman.

In the scenario that was actually played out in October 1991, of course, the nominee was a Black man, and the victim was a Black woman. Suddenly the senators became more tolerant in evaluating the nominee.

Even before Professor Hill had completed her testimony, every member of the Judiciary Committee, those who had questioned her sanity as well as those who had failed to defend her, made sanctimonious little statements about how grateful they personally were that she had raised their consciousness on the issue of sexual harassment, and about how certain they were that history would judge her a true heroine in the fight for equal rights and equal opportunities for women in the United States. History, they seemed to be saying, would in the end treat her more kindly than they themselves had.

That many of these gentlemen made wild and unfounded statements about Professor Hill with apparent immunity says nothing about the extent of her sanity and everything about the degree of their own integrity, and about the measure of respect accorded Black women in this society. However, the fact that many of the white male members of the Judiciary Committee dismissed Professor Hill’s testimony by accusing her of being a liar and a delusional woman does not, in and of itself, mean that those senators are singularly dimwitted. They may or may not be, But the point here is that those senators were not the only ones who tended to doubt her testimony. After all, Clarence Thomas was confirmed to the Supreme Court precisely.

⁴⁴ COLLINS, *supra* note 37, at 72.

It also seems that the more powerful a Black woman appears to be, the greater is the urge to “put her in her place”⁴⁵ and publicly reduce her to an angry Black woman.⁴⁶

⁴⁵Mary-Francis Winters, *The Buzz: Women of Color: Angry, Ambitious Bitches*, THE INCLUSION SOL. (Aug. 13, 2020), <http://www.theinclusionsolution.me/the-buzz-women-of-color-angry-ambitious-bitches/>. “Since when did ambition become a negative attribute? Is it only a problem for the white power structure if a Black woman is ambitious?” *Id.* Kamala Harris is indeed ambitious. Many Black women are ambitious—even more so than white women. According to Women in the Workforce report by McKinsey, despite facing more pitfalls to advancement, women of color have higher ambitions to be a top executive than white women. Huang et al., *Women in the Workplace 2022*, MCKINSEY (Oct. 18, 2022), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>. Since when did ambition become a negative attribute? Is it only a problem for the white power structure if a *Black woman* is ambitious? I have heard from a number of Black women in the corporate world that they have been told that they are too ambitious and need to wait—that they must pay their dues before being considered for a promotion. Additionally, their ambition has been interpreted as pushy and aggressive. Ambition, as defined in the dictionary, is a strong desire to achieve something usually requiring hard work and determination. *Ambition*, OXFORD ENG. DICTIONARY (2022), https://www.oed.com/dictionary/ambition_n?tab=meaning_and_use#5564833. If we want to dismantle our white supremacist, racist society, it will surely take hard work and determination. And yes, Kamala Harris and many other Black women are the epitome of this.

⁴⁶Daphna Motro et al., *The “Angry Black Woman” Stereotype at Work*, HARV. BUS. REV. (Jan. 31, 2022), <https://hbr.org/2022/01/the-angry-black-woman-stereotype-at-work>. The angry Black woman stereotype has penetrated many parts of American culture, including the workplace. This pervasive stereotype not only characterizes Black women as more hostile, aggressive, overbearing, illogical, ill-tempered and bitter, but it may also be holding them back from realizing their full potential in the workplace — and shaping their work experiences overall. Notably, characterizing Black women as loud, irascible, too straightforward — and just plain angry — isn’t a new practice. In her book *Ar’n’t I a Woman?: Female Slaves in the Plantation South*, Rutgers University history professor Deborah Gray White notes that the angry Black woman image is deeply rooted in American culture and dates back to chattel slavery in the U.S. See generally WHITE, *supra* note 15.

Black women who are politicians,⁴⁷ scholars,⁴⁸ artists,⁴⁹ and businesswomen⁵⁰ have been chastened by white men for decades, but

⁴⁷ Former President Donald Trump appears to be comfortable denigrating Vice President Kamala D. Harris and has a worldwide platform to do so. See Juana Summers, *Trump Calls Harris a ‘Monster,’ Reviving a Pattern of Attacking Women of Color*, NPR (Oct. 9, 2020), <https://www.npr.org/2020/10/09/921884531/trump-calls-harris-a-monster-reviving-a-pattern-of-attacking-women-of-color>. He made these comments to a live audience in October 2020 after then Senator Harris debated Vice-President Pence in preparation for the 2020 national election. More recently, CBS News reports:

The replies to tweets from Vice President Kamala Harris, the nation’s highest-ranking Black female official, routinely include racist, sexist and graphic messages threatening her safety. A new report finds that hateful tweets directed at Harris are rampant, while Twitter has been slow to respond, and at times failed to act properly.

Musadiq Bidar & Dan Patterson, *Twitter Slow to Remove Racist and Sexist Tweets Targeting Vice President Kamala Harris, Report Finds*, CBS NEWS (June 9, 2022, 7:45 PM), <https://www.cbsnews.com/news/twitter-slow-to-remove-racist-sexist-tweets-targeting-vice-president-kamala-harris-report-finds/>.

⁴⁸ Justin Weinberg, *The Denigration of Black Women Philosophers and “Fields People of Color Specialize in,”* DAILY NOUS: ISSUES IN THE PHIL. PRO. (June 19, 2018, 2:42 AM), <https://dailynous.com/2018/09/6/19/denigration-black-women-philosophers-fields-people-color/>.

⁴⁹ See Christina Turner, *How Racism Pushed Tina Turner and Other Black Women Artists Out of America*, PBS NEWSHOUR (Apr. 22, 2021, 8:57 PM), <https://www.pbs.org/newshour/arts/how-racism-pushed-tina-turner-and-other-black-women-artists-out-of-america>.

⁵⁰ LeanIn.Org & McKinsey & Co., *The State of Black Women in Corporate America*, LEAN IN 3, 14 (2020), <https://leanin.org/research/state-of-black-women-in-corporate-america/introduction>.

In all of Lean In’s research on the state of women at work, we see the same general pattern: Women are having a worse experience than men. Women of color are having a worse experience than white women. And Black women in particular are having the worst experience of all...Black women experience a wider range of microaggressions—comments and actions that subtly demean or dismiss someone based on their gender, race, or other aspects of their identity—are a common experience for women at work. And since Black women face both racism and sexism, they experience a wider range of microaggressions than women overall. They are more likely to have their judgment questioned in their area of expertise and to be asked to provide additional evidence of their competence. They are also nearly two and a half times more likely than white women—and more than three times more likely than men—to hear someone in their workplace express surprise about their language skills or other abilities. Microaggressions may seem insignificant when viewed as isolated incidents. But when they occur day after day—as they often do—their impact builds up and takes a toll. Whether intentional or unintentional, these insults and invalidations signal disrespect. It’s hard for any employee to bring their best self to work when they’re often underestimated and slighted. Women who experience microaggressions are three times more likely to regularly think about leaving their job than those who don’t.

until the Supreme Court nomination hearing of Ketanji Brown Jackson, there had never been such a blatant showing of hateful, disrespectful, and denigrating behavior towards an accomplished Black woman broadcasted live on television, *with the exception of one*, Professor Anita Hill.⁵¹ Every trope historically used against women was revived and utilized to diminish and dismiss her personhood and dignity.⁵² The playbook on how to dehumanize a Black woman successfully and publicly was refined against Ms. Hill and resonates to this very day as witnessed at the hearings.⁵³ Bitter the chastening rod, indeed.

It is important to start at the beginning, the beginning meaning the end of the one hundred and seventy-eight years in which every man that served on the U.S. Supreme Court was a white man.⁵⁴ This ended in 1967 when Thurgood Marshall, the first Black person to grace the dais of the U.S. Supreme Court, was appointed by President Lyndon B. Johnson.⁵⁵

Id.

⁵¹ Judge Higginbotham wrote:

Had the senators been interested in the question of why Professor Hill was sexually harassed, they would have been forced to face immediately and directly the history of how black women have been dominated and denigrated by white males and by black males in this society. But much more than the history of domination and denigration of black women, these senators would have been forced to confront the present-day reality of how many but not all of them dominated and denigrated Professor Hill because she was a woman, and because she was a black woman. By ignoring and playing down the history and the story of black women in this country, the Senate Judiciary Committee effectively told Professor Hill and other women the same thing: that the law is the embodiment of what must senators represent and that Professor Hill's story had no place in it. With this volume, we may yet begin to tell them they were wrong.

Higginbotham, *supra* note 27, at 5.

⁵² See generally Grace Segers, *Here Are Some of the Questions Anita Hill Answered in 1991*, CBS NEWS (Sep. 19, 2018, 12:46 PM), <https://www.cbsnews.com/news/here-are-some-of-the-questions-anita-hill-fielded-in-1991/>.

⁵³ David Remnick, *Anita Hill Saw History Repeat Itself at Ketanji Brown Jackson's Supreme Court Hearings*, NEW YORKER (Apr. 8, 2022), <https://www.newyorker.com/news/q-and-a/anita-hill-ketanji-brown-jackson-supreme-court>.

⁵⁴ "Since the Supreme Court first convened in 1790, 113 justices have served on the bench. Of those, 107 have been white men." Jessica Campisi & Brandon Griggs, *Of the 115 Supreme Court Justices in US History, All but 7 have been White Men*, CNN POLITICS (Mar. 24, 2022, 8:23 AM), <https://www.cnn.com/2022/03/24/politics/supreme-court-justices-minorities-cec/index.html>.

⁵⁵ Andrew Glass, *BJ Nominates Thurgood Marshall to Supreme Court, June 13, 1967*, POLITICO (June 13, 2018, 12:16 AM), <https://www.politico.com/story/2018/06/13/lbj-nominates-thurgood-marshall-to-supreme-court-june-13-1967-636880>. On this day in 1967, President Lyndon B. Johnson nominated Thurgood Marshall to fill the seat of retiring U.S. Supreme Court

Justice Marshall was an acclaimed civil rights lawyer who, among other accomplishments, founded the NAACP Legal Defense and Educational Fund and served as one of the chief litigators in *Brown v. Board of Education*.⁵⁶ It is important to note that Justice Marshall was spared the same abuse that Black women had endured because the Dixiecrats did not want to appear to be “rude.”⁵⁷

As one would expect, Justice Marshall would be called “controversial” by some for his willingness to push the government, by way of the Court, to fulfill the promises made in the Constitution.⁵⁸ Justice Marshall served on the U.S. Supreme Court until his retirement in 1991.⁵⁹ With his retirement came the opportunity for President George H. W. Bush to appoint a new Associate Justice, and he selected Clarence Thomas.⁶⁰ Justice Thomas was a conservative who had served in high positions at a few federal agencies before being appointed to the U.S. Court of Appeals for the District of Columbia Circuit.⁶¹

Justice Thomas faced controversy after his Senate confirmation hearing, but the issues that plagued him were neither race- nor gender-based to the extent that these were the sources of controversy (although

Associate Justice Tom Clark. In announcing his choice, Johnson said it was “the right thing to do, the right time to do it, the right man and the right place.” *Id.*

⁵⁶ *Id.*; *History*, NAACP LEGAL DEF. FUND, <https://www.naacpldf.org/about-us/history/> (last visited Dec. 20, 2023).

⁵⁷ Robert Kuttner, *Cry, the Beloved Country*, THE AM. PROSPECT (Apr. 8, 2022), <https://prospect.org/blogs-and-newsletters/tap/cry-the-beloved-country-supreme-court-hearings/>.

The Dixiecrats who still dominated Southern Senate seats knew that history was not on their side. The momentum was with civil rights. They did not wish to seem rude or condescending to an eminent Black jurist. They were serious legislators, albeit defenders of a racist order, and they gave Marshall the respect of engaging him on serious legal issues, if only to build a record. It takes today’s Republicans to make yesterday’s racists look good.

Id.

⁵⁸ Sarah Paxton, *Top Ten Origins: Controversial SCOTUS Nominee*, ORIGINS: CURRENT EVENTS IN HIST. PERS. (Oct. 2018), https://origins.osu.edu/connecting-history/kavanaugh-blasey-ford-thomas-garland-marshall-controversial-scotus-nominees?language_content_entity=en.

⁵⁹ *Thurgood Marshall’s Unique Supreme Court legacy*, NAT’L CONST. CTR. (Aug. 30, 2022), <https://constitutioncenter.org/blog/thurgood-marshalls-unique-supreme-court-legacy>.

⁶⁰ Maureen Dowd, *The Supreme Court; Conservative Black Judge, Clarence Thomas, Is Named to Marshall’s Court Seat*, N.Y. TIMES (July 2, 1991), <https://www.nytimes.com/1991/07/02/us/supreme-court-conservative-black-judge-clarence-thomas-named-marshall-s-court.html>.

⁶¹ Marcus Hawkins, *Biography of Clarence Thomas, Supreme Court Justice*, THOUGHTCO. (May 8, 2021), <https://www.thoughtco.com/a-profile-of-clarence-thomas-3303419>.

Justice Thomas claimed that they were).⁶² At the conclusion of the confirmation hearings and before a final vote on his nomination, Justice Thomas was accused of sexual harassment by one of his staff members.⁶³ This accusation, which came from a leaked Federal Bureau of Investigation (FBI) interview, caused Justice Thomas' hearings to be reopened.⁶⁴ These facts set the stage for what was to become the demonization, dehumanization, and denigration of a young woman named Anita Hill.⁶⁵

A. *The Clarence Thomas Confirmation Hearings: More of the Same*

At the time of Clarence Thomas' confirmation hearing to become the Associate Supreme Court Justice nominee to fill the spot on the U.S. Supreme Court held by the esteemed Thurgood Marshall, Anita Hill was a thirty-five-year-old professional Black woman.⁶⁶ She averred that Clarence Thomas, while her boss, had said and done things to her that amounted to the textbook definition of sexual harassment.⁶⁷ To counter her accusations, Hill was painted as an experienced attorney who purportedly did not report the incidents that she testified to contemporaneously with their occurrences.⁶⁸ This characterization was used as evidence of her conniving and lying about the incidences of harassment, reasoning that as an experienced attorney she knew to report them when they occurred and if they occurred. However, the facts about her experiences are significantly different from the reality:

At the time of the incidents, Specter appeared to be attempting to achieve his goal of persuading the audience that she must not have been harassed

⁶² Neil A. Lewis, *Thomas Ends Testimony but Senators Grumble over Elusive Views*, N.Y. TIMES (Sept. 17, 1991), <https://www.nytimes.com/1991/09/17/us/thomas-ends-testimony-but-senators-grumble-over-elusive-views.html>.

⁶³ Liza Mundy, *I Rewatched Anita Hill's Testimony. So Much Has Changed. So Much Hasn't*, POLITICO (Sept. 23, 2018), <https://www.politico.com/magazine/story/2018/09/23/rewatched-anita-hill-testimony-kavanaugh-metoo-220526/>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Elise Viebeck, *Joe Biden Was in Charge of the Anita Hill Hearing. Even He Says It Wasn't Fair*, WASH. POST (Apr. 26, 2019, 12:49 PM), https://www.washingtonpost.com/politics/joe-biden-was-in-charge-of-the-anita-hill-hearing-even-he-says-it-wasnt-fair/2019/04/26/a9a6f384-6500-11e9-82ba-fcfeff232e8f_story.html.

⁶⁷ Mundy, *supra* note 63.

⁶⁸ Christopher E. Smith, *Politics and Plausibility: Searching for the Truth About Anita Hill and Clarence Thomas*, 19 OHIO N.U. L. REV. 697, 721 (1993).

because her behavior was inconsistent with what Specter asserted would be the behavior of an experienced attorney, i.e., making notes for evidentiary purposes. However, was Hill really an “experienced attorney” at that time? Hill graduated from law school in 1980 and she worked for Thomas at the Department of Education and the EEOC from 1981 through 1983. She was not at the time an experienced litigator who would be knowledgeable and concerned about preserving evidence. She was an inexperienced attorney who spent one year as an associate with a large Washington law firm before becoming the assistant to an administrator within federal government agencies. Given the nature of Specter’s attempt to enhance if not distort her experience and presumptive knowledge, it is interesting to ponder whether Specter, if he needed legal representation for litigation and sought the services of an “experienced attorney,” would hire someone only one or two years out of law school.⁶⁹

If there was anything good that came from the denigration of Anita Hill amid the onslaught of innuendos, accusations, and outright slander, it is that it shifted the conversation on sexual harassment in the workplace.⁷⁰ Unfortunately, this outcome almost exclusively benefitted white women.⁷¹ Black women have remained the “others.”⁷²

B. Anita Hill: Who the Senate Judiciary Committee Claimed She Was

“Three decades after Anita Hill brought sexual harassment allegations against Supreme Court nominee Clarence Thomas, Black women are still waiting for justice.”⁷³

⁶⁹ *Id.*

⁷⁰ See Amy E. Black & Jamie L. Allen, *Tracing the Legacy of Anita Hill: The Thomas/Hill Hearings and Media Coverage of Sexual Harassment*, 19 GENDER ISSUES 33, 33 (2001).

⁷¹ See generally *Women on the Campaign Trail*, HIST., ART, & ARCHIVES: U.S. H.R., <https://history.house.gov/Exhibitions-and-Publications/WIC/Historical-Essays/Assembling-Amplifying-Ascending/Women-Decade/> (last visited Dec. 20, 2023).

⁷² Michele Goodwin, *The Long Shadow of Anita Hill’s Testimony*, THE NATION (Oct. 11, 2021), <https://www.thenation.com/article/culture/anita-hill-30-years/>.

⁷³ *Id.*

Thirty years later, without a doubt, Hill brought widespread attention and legitimacy to claims of harassment and abuse on the job across the United States, not to mention ushering in a record number of women candidates for Congress. But despite all we’ve gained from Hill’s testimony and legacy, not one Black woman serves in the Senate or on the Supreme Court today. And still today, when Black women come forward to tell their stories about experiencing sexual harassment and violence, they are too often overlooked and forgotten. R. Kelly’s recent conviction may reflect a tipping point, but only in the way legal teams might fight against such horrific acts. In order for change to be fully realized, we all must take responsibility for the ways in which these abuses continue unchecked. For Anita Hill represented one of many, and justice has yet to be served.

Many of the tropes and stereotypes that had been used against Black women for generations were utilized by the all-white/all-male Senate Judiciary Committee that questioned Anita Hill after she reluctantly came forth and publicly denounced Clarence Thomas for his sexual harassment behavior towards her and purportedly other women.⁷⁴ The Hill-Thomas

Id.

⁷⁴ Segers, *supra* note 52.

1. Specter claims that discussing ‘large breasts’ in the workplace is common behavior:
 Sen. Arlen Specter (R-Pennsylvania): ‘You testified this morning that the most embarrassing question involved – this is not too bad – women’s large breasts. That is a word we use all the time. That was the most embarrassing aspect of what Judge Thomas had said to you.’
2. Heflin asks Hill if she is a ‘scorned woman,’ or ideologically opposed to Thomas:
 Sen. Howell Heflin (R-Alabama): Now, in trying to determine whether you are telling falsehoods or not, I have got to determine what your motivation might be. Are you a scorned woman?
 Hill: No.
 Heflin: Are you a zealot civil rights believer that progress will be turned back, if Clarence Thomas goes on the court?
 Hill: No, I don’t—I think that—I have my opinion, but I don’t think that progress will be turned back. I think that civil rights will prevail, no matter what happens with the Court.
 Heflin: Do you have a militant attitude relative to the area of civil rights?
 Hill: No, I don’t have a militant attitude.
 Heflin: Do you have a martyr complex?
 Hill: No, I don’t. (Hill and audience laugh, Heflin remains stone-faced.)
 Heflin: Well, do you see that, coming out of this, you can be a hero in the civil rights movement?
 Hill: I do not have that kind of complex. I don’t like all of the attention that I am getting, I don’t—even if I liked the attention, I would not lie to get attention.
3. Specter says Thomas never asked Hill to specifically watch pornographic movies with him or have sex with him:
 Specter: Professor Hill, you testified that you drew an inference that Judge Thomas might want you to look at pornographic films, but you told the FBI specifically that he never asked you to watch the films. Is that correct?
 Hill: He never said, ‘Let’s go to my apartment and watch films,’ or ‘go to my house and watch films.’ He did say, ‘You ought to see this material.’
 Specter: But when you testified that, as I wrote it down, ‘We ought to look at pornographic movies together,’ that was an expression of what was in your mind when he —
 Hill: That was the inference that I drew, yes.
 Specter: The inference, so he —
 Hill: With his pressing me for social engagements, yes.

Specter: That was something he might have wanted you to do, but the fact is, flatly, he never asked you to look at pornographic movies with him..

Specter: Professor Hill, you said that you took it to mean that Judge Thomas wanted to have sex with you, but in fact he never did ask you to have sex, correct?

Hill: No, he did not ask me to have sex. He did continually pressure me to go out with him, continually, and he would not accept my explanation as being valid.

Specter: So that when you said you took it to mean, 'We ought to have sex,' that that was an inference that you drew?

Hill: Yes, yes.

4. Specter questions Hill's credibility:

Specter: The question which I have for you is, how reliable is your testimony in October 1991 on events that occurred 8, 10 years ago, when you are adding new factors, explaining them by saying you have repressed a lot? And in the context of a sexual harassment charge where the Federal law is very firm on a 6-month period of limitation, how sure can you expect this committee to be on the accuracy of your statements?

5. Biden asks about specifics of Thomas's alleged comments:

Sen. Joe Biden (D-Delaware): Now, again, for the record, did he just say I have great physical attributes or was he more graphic?

Hill: He was much more graphic.

Biden: Can you tell us what he said?

Hill: Well, I can tell you that he compared his penis size, he measured his penis in terms of length, those kinds of comments.

6. Leahy asks what Hill has to gain:

Sen. Patrick Leahy (D-Vermont): Do you have anything to gain by coming here? Has anybody promised you anything for coming forth with this story now?

Hill: I have nothing to gain. No one has promised me anything. I have nothing to gain here. This has been disruptive of my life and I have taken a number of personal risks. I have been threatened and I have not gained anything except knowing that I came forward and did what I felt that I had an obligation to do and that was to tell the truth.

7. Simpson questions why Hill didn't come forward with her allegations earlier:

Sen. Alan Simpson (R-Wyoming): But let me tell you, if what you say this man said to you occurred, why in God's name, when he left his position of power or status or authority over you, and you left in 1983, why in God's name would you ever speak to a man like that the rest of your life?

Hill: That is a very good question, and I am sure that I cannot answer that to your satisfaction. That is one of the things that I have tried to do today. I have suggested that I was afraid of retaliation, I was afraid of damage to my professional life, and I believe that you have to understand that this response—and that is one of the things that I have come to understand about harassment—that this response, this kind of response, is not atypical, and I can't explain. It takes an expert in psychology to explain how that can happen, but it can happen, because it happened to me.

hearings represented a sequela of attitudes that in some ways were not very different from those of the antebellum “statesmen” and “judges” who regarded all women, but particularly Black women, as inferior persons.⁷⁵ Thus, Anita Hill was treated far more harshly by the Senate committee than she would have been had she been white, and Clarence Thomas was treated far more generously than he would have been had the victim been a white woman.⁷⁶

Ms. Hill’s denigration was accomplished on national television and beamed worldwide.⁷⁷ She was asked questions ranging from if she was a scorned woman, to if she was leveling charges against Clarence Thomas as a scam to reap personal benefits.⁷⁸ It is important to note that Ms. Hill was a reluctant witness stating, “It would have been more comfortable to remain silent.”⁷⁹ She continued to be publicly denigrated after the televised hearings.⁸⁰ Hill was pilloried for coming forward. Conservative

Simpson: Well, it just seems so incredible to me that you would not only have visited with him twice after that period and after he was no longer able to manipulate you or to destroy you, that you then not only visited with him but took him to the airport, and then 11 times contacted him. That part of it appalls me. I would think that these things, what you describe, are so repugnant, so ugly, so obscene, that you would never have talked to him again, and that is the most contradictory and puzzling thing for me.

Id.

⁷⁵ See Noelle Trent, “...they had no rights which the white man was bound to respect...”, BLACK PERSPS. (Jan. 2, 2015), <https://www.aaihs.org/they-had-no-rights-which-the-white-man-was-bound-to-respect/>; *White Southern Responses to Black Emancipation*, PBS AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-white-southern-responses-black-emancipation/> (last visited Dec. 22, 2023).

⁷⁶ Higginbotham, *supra* note 27.

⁷⁷ See generally Amanda Cochran, *Anita Hill: Clarence Thomas Hearings 23 Years Ago Unfair*, CBS NEWS (Mar. 13, 2014, 12:57 PM), <https://www.cbsnews.com/news/anita-hill-clarence-thomas-hearings-23-years-ago-unfair/>.

On October 11, 1991, people in more than 20 million homes tuned in to watch a young, black law professor named Anita Hill. She testified before an all-white, all-male Senate Judiciary Committee. Hill said she endured repeated acts of sexual harassment while working for Supreme Court nominee Clarence Thomas 10 years earlier, at two government agencies.

Id.

⁷⁸ Segers, *supra* note 52.

⁷⁹ Julia Jacobs, *Anita Hill’s Testimony and Other Key Moments From the Clarence Thomas Hearings*, N.Y. TIMES (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/us/politics/anita-hill-testimony-clarence-thomas.html>.

⁸⁰ Elise Viebeck, *Here’s What Happened When Anita Hill Testified Against Clarence Thomas in 1991*, CHI. TRIB., <https://www.chicagotribune.com/nation-world/ct-anita-hill-clarence-thomas-20180927-story.html> (Sept. 27, 2018, 1:34 PM).

(at the time) writer David Brock called her “a little bit nutty and a little bit slutty.”⁸¹

Hill was ripped apart by the Senate Judiciary Committee during her testimony, specifically by its GOP members. She had her private sex life framed as suspect – Senator John Danforth suggested Hill might have ‘erotomania,’ a condition where an individual harbors a delusion that someone more powerful is in love with her.⁸² “Professor Hill ended up fighting an octopus of charges: that she was an erotomaniac, that she was a ruthless careerist, that she was a disgruntled, vindictive woman, that she was insane, and that she was a zombie-like pawn of liberal interest groups.”⁸³

Professor Kimberle Crenshaw,⁸⁴ who was a member of Anita Hill’s support team during Hill’s 1991 Senate Judiciary Committee hearing, used her first-hand account of the unfair treatment of Hill to address an issue that the U.S. largely ignores: the unique vulnerability of Black women.⁸⁵ Black women are vulnerable, not only because of racial bias against them, but they are also largely dismissed because of stereotypes.⁸⁶ Professor Crenshaw argued that, despite most people recognizing how bad it looked for a Black woman to be defending herself against sexual harassment against a group of white men, the real devastation of the 1991 hearings came from the false tension between feminist and antiracist movements.⁸⁷

Feminists and antiracists were the two most visible groups during the hearings.⁸⁸ Judge Clarence Thomas asserted his racial victimhood despite being “an apostle of individualist self-help” and an opponent, rather than an ally, for civil rights leaders and Black women.⁸⁹ He placed these two

⁸¹ Mundy, *supra* note 63.

⁸² Emma Gray, *Why Anita Hill’s 1991 Testimony Is So Haunting Today*, HUFFINGTON POST (Apr. 15, 2016, 01:58 PM), https://www.huffpost.com/entry/anita-hill-matters-hbo-confirmation_n_570fb8f9e4b0ffa5937e5e72.

⁸³ Smith, *supra* note 68, at 710.

⁸⁴ Crenshaw, *supra* note 14, at 17.

⁸⁵ *Id.*

⁸⁶ *Id.* at 19.

⁸⁷ *See generally id.* at 17.

⁸⁸ *Id.*

⁸⁹ Goodwin, *supra* note 72.

During a period in which Black women endured being stereotyped and vilified because they lived in poverty due to systemic inequalities, Thomas picked up the needle Ronald Reagan threaded during his political campaigns and portrayed his sister as a notorious welfare queen, siphoning off precious government resources

groups at odds with one another.⁹⁰ Rather than standing together in solidarity and support of a Black woman, the two groups clashed and tore Hill down in the process.⁹¹ White feminists engaged in “colorblind feminism,” which painted Hill as an accomplished lawyer whose race was immaterial.⁹² At the same time antiracists, many of whom believed that Judge Thomas was guilty of the accused harassing conduct, were outraged that Hill dared to turn on a fellow African American at the cusp of enormous judicial power.⁹³

Notwithstanding the clash between the feminists and the antiracist groups, the greatest damage came from the Senators on the panel, and Hill’s unfair treatment extended to other Congressmen and pundits who later commented on her testimony.⁹⁴ Hill was painted with the familiar denigrating brush that has been utilized against accomplished Black women to a greater degree than any other group based on gender and race.⁹⁵ Hill was painted as an angry and sexually deranged woman who was at the same time sexually repressed while being oversexed.⁹⁶ Republican Senators described her as having nefarious motives and a dubious background.⁹⁷ Unfortunately, the Senate panel relied upon outdated caricatures of Black

and taxpayer dollars. This despite the fact she worked two low-wage jobs, ‘while her brother was attending Yale law school...’

Id. at 5.

⁹⁰ Kimberlé Crenshaw, *We Still Haven’t Learned from Anita Hill’s Testimony*, N.Y. TIMES (Sept. 27, 2018), <https://www.nytimes.com/2018/09/27/opinion/anita-hill-clarence-thomas-brett-kavanaugh-christine-ford.html>.

⁹¹ See Crenshaw, *supra* note 14, at 17–18.

⁹² *Id.* at 19.

⁹³ Goodwin, *supra* note 72.

Hill was mocked and derided for coming forward and providing testimony that Thomas sexually harassed her while she worked for him at the Department of Education and later at EEOC. most painfully, I recall the sexism and condescension of Black men who rallied in Thomas’s defense, rationalizing that even if he has sexually harassed Hill, she and other Black women should shut their mouths, because Thomas would play an important future role on the court. Black women simply needed to be patient – and take a hit for the team.

Id. at 5.

⁹⁴ *Id.*

⁹⁵ See *id.*

⁹⁶ Gray, *supra* note 82 (“Hill was ripped apart by the Judiciary Committee during her testimony, specifically its GOP members. She had her private sex life framed as suspect – Sen. John Danforth suggested Hill might have “erotomania,” a condition where an individual harbors a delusion that someone more powerful is in love with her.”).

⁹⁷ Vieback, *supra* note 66.

women in its questioning and the conclusion it reached about who Anita Hill was.⁹⁸

The white male senate thus failed to grasp much more than the pervasiveness of sexual harassment; it also missed the historical pattern in which race and gender discrimination operate simultaneously for Black women, making them vulnerable not only to sexual assault but also to disbelief and silencing. Anita Hill bore striking witness to this dual vulnerability.⁹⁹

Support for Hill, however, came from feminist Black women in the form of a scathing full-page advertisement in the *New York Times*.¹⁰⁰ This advertisement, titled “African American Women in Defense of Ourselves,” contained 1,600 signatures of women and used the unfair treatment of Hill to point out how Black women are often disbelieved and undervalued.¹⁰¹

Correcting these mistakes means placing Black women at the center of the fight against sexual predation, resurrecting the feminist legacies of iconic figures of the civil rights movement, and prioritizing the abuse of Black women against police violence and gender-based violence. The Honorable A. Leon Higginbotham, Jr. concluded the following in an essay he penned for the *Washington Post* on the Hill-Thomas hearings:

As I look back on the Senate Judiciary Committee hearings of October 1991, the words of Samuel Johnson in 1775 again have meaning to me: just as he said of the conduct of white colonialists, the performance of many members of the Judiciary Committee was “too foolish for buffoonery and too wild for madness.” As I watched the members of the committee during the hearings, I could not help but feel that most of the “good Senators” just did not “get it.” It seemed to me then, just as it seems to me today, that in focusing exclusively on the issue of sexual harassment in the “workplace,” the Judiciary Committee was only interested and only mildly so in learning what took place between Professor Hill and Clarence Thomas. They certainly were not interested in what happened. Had the senators been interested in the question of why Professor Hill was sexually harassed, they would have been forced to face immediately and directly the history of how Black women have been dominated and denigrated by white males and by Black males in this society. But much more than the history of domination and denigration of Black women, these senators would have been forced to confront the present-day reality of how many but not all of them dominated and denigrated Professor

⁹⁸ Estelle B. Freeman, *The Manipulation of History at the Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1361, 1361, 1363–65 (1992).

⁹⁹ *Id.* at 1364–65.

¹⁰⁰ Elisa Barkley Brown et al., *African American Women in Defense of Ourselves*, N.Y. TIMES (Nov. 17, 1991), <https://artsandculture.google.com/asset/african-american-women-in-defense-of-ourselves-elsa-barkley-brown/AAF7Js3zn1rVjA?hl=en>.

¹⁰¹ *Id.*

Hill because she was a woman and because she was a Black woman. By ignoring and playing down the history and the story of Black women in this country, the Senate Judiciary Committee effectively told Professor Hill and other women the same thing: that the law is the embodiment of what most senators represented and that Professor Hill's story had no place in it. With this volume, we may yet begin to tell them they were wrong.¹⁰²

In the final analysis, the only conclusion that can be reached, despite some apologies issued forth to Anita Hill after a few decades, the message that resonates loud and clear is that it is permissible for white men¹⁰³ to publicly embarrass, badger, and harangue an esteemed, educated, erudite, accomplished, and above reproach Black woman on worldwide media — even when her name is Ketanji Brown Jackson.¹⁰⁴ In the words of

¹⁰² Higginbotham, *supra* note 27.

¹⁰³ *See id.* Not only can white men denigrate Black women with no consequences, but apparently so can white women:

Virginia Thomas, the wife of Supreme Court Justice Clarence Thomas, left a voicemail last weekend for Anita Hill, who accused her husband of sexual harassment during confirmation hearings, reports the New York Times. The message was left at the office of Hill's office at Brandeis University, where she is a professor. "Good morning, Anita Hill, it's Ginni Thomas" said the message on Hill's voicemail, the contents of which were first reported by ABC News. "I just wanted to reach across the airwaves and the years and ask you to consider something. I would love you to consider an apology sometime and some full explanation of why you did what you did with my husband. So give it some thought and certainly pray about this and come to understand why you did what you did. Okay have a good day."

Clarence Thomas' Wife Called Anita Hill, CBS NEWS (Oct. 20, 2010, 3:40 PM), <https://www.cbsnews.com/news/clarence-thomas-wife-called-anita-hill/>.

¹⁰⁴ *The Historic Nomination of Ketanji Brown Jackson to the Supreme Court*, NAACP, <https://naacp.org/resources/historic-nomination-ketanji-brown-jackson-supreme-court> (last visited Dec. 20, 2023).

Judge Jackson has extraordinary legal credentials. She is a magna cum laude graduate of Harvard University and a cum laude graduate of Harvard Law School. She clerked for three federal judges: Judge Patti Saris on the District of Massachusetts; Judge Bruce Selya on the First Circuit; and Supreme Court Justice Stephen Breyer, whose seat she would now fill. Over the course of her career, she worked for four different prestigious law firms, located in Boston and Washington D.C.

Id.

Judge Jackson will be the first public defender ever to serve on the Supreme Court. She would be the first justice since Thurgood Marshall to bring any expertise in criminal defense to the Court. For two years, she served as an assistant public defender in Washington DC, where she handled appeals for people convicted of federal crimes who could not afford counsel. She argued successfully on behalf of a defendant who was denied his right to an impartial jury. She protected a

Kimberle W. Crenshaw, “We still have not learned from Anita Hill’s testimony.”¹⁰⁵

defendant against infringement of his right against self-incrimination. She represented a Guantanamo detainee seeking habeas review of his classification as an ‘enemy combatant.’ At her Senate confirmation hearing in 2021, she told the Senate that she was ‘struck’ by how little her clients understood about the legal process and that as a trial judge, she took “extra care” to make sure that defendants knew what was happening to them and why.

Id.

Importantly, Judge Jackson worked for six years with the U.S. Sentencing Commission, a bipartisan agency created by Congress to reduce disparities in sentencing. She served as assistant special counsel and later was appointed by President Obama to serve as commissioner and vice-chair. She strongly supported amending sentencing guidelines to reduce disparities in penalties that harshly impact Black and Brown defendants. In 2011, she participated in a unanimous decision to make retroactive a law passed by Congress, the Fair Sentencing Act of 2010, to reduce penalties for crack cocaine offenses to more closely track penalties for powder cocaine offenses. As a result, approximately 12,000 federal prisoners were eligible for a reduction in sentence, and 85 percent of those eligible were Black. When the decision was announced, then-Sentencing Commission Vice-Chair Jackson stated: ‘I believe that the commission has no choice but to make this right. I say justice demands this result.’

Id.

¹⁰⁵ Crenshaw, *supra* note 14, at 17.

We can still redress the shameful legacy of the Hill-Thomas confrontation by placing Black women in their rightful place at the center of the fight against sexual predation on and off the job. Black plaintiffs like Sandra Bundy, Mechelle Vinson, and Pamela Price, for example, led the way for sexual harassment to be recognized as sex discrimination in landmark cases. Eleanor Holmes Norton was at the vanguard of this work when she was the director of the Equal Employment Opportunity Commission. Righting the history would also mean resurrecting the feminist legacies of the iconic figures of the civil rights movement. It would mean freeing Rosa Parks from that lonely seat on a Montgomery bus and placing her on the damp soil of rural Alabama where she undertook the dangerous job of defending Recy Taylor, a Black woman gang-raped by white men who were never held accountable. It would mean giving the proper due to the unsung legal genius, Pauli Murray, whom Ruth Bader Ginsburg credited with advancing the logic of race and gender parallelism that opened up gender discrimination to constitutional scrutiny. Correcting the record would also mean that movements against police violence and gender-based violence should prioritize the abuse of Black women, which has long been a distant afterthought in both.

Id. at 20.

III. THE “OUT LOUD AND IN YOUR FACE” ATTEMPT TO DESTROY JUSTICE KETANJI BROWN JACKSON AND WHY IT CANNOT STAND

*Stony the road we trod ...*¹⁰⁶

Once Justice Stephen Breyer announced his intention to leave the Bench, President Joe Biden began an in-depth search for his replacement.¹⁰⁷ The President stated early on that he would seek an individual “with exceptional credentials, unimpeachable character, and unwavering dedication to the rule of law.”¹⁰⁸ The President made it known that he was seeking a jurist who would be committed to achieving equal justice under the law and a justice who understands the deep impact that Supreme Court decisions would have on the daily lives of the American people.¹⁰⁹

As President Biden began his cursory search for a nominee, it is reported that he considered Leondra Kruger, who is seen as a moderate and has served on the California Supreme Court since 2015; J. Michelle Childs, who currently serves as a federal appeals court judge on the U.S. Court of Appeals for the District of Columbia Circuit; Sherrilyn Ifill, who leads the NAACP and is a highly respected civil rights attorney and not a traditional U.S. Supreme Court nominee in that she has not served as a judge; Melissa Murray, who is also outside of the judicial tract and a law professor at New York University; Holly Thomas, who was recently appointed to the U.S. Court of Appeals in the Ninth Circuit and only the second African American woman to sit on that Court; Eunice Lee, who was appointed to the U.S. Court of Appeals in the Second Circuit and was lauded as being groundbreaking as an appointee because of her previous background as a former federal defender; Candace Jackson-Akiwumi, who was recently appointed to the U.S. Court of Appeals for the Seventh Circuit in the summer of 2021; and Wilhelmina Wright, the only jurist in Minnesota’s state history who has served in the state district, appellate and

¹⁰⁶ JOHNSON & JOHNSON, *supra* note 2.

¹⁰⁷ *The Senate Confirms Ketanji Brown Jackson to Serve on the U.S. Supreme Court*, WHITE HOUSE, <https://www.whitehouse.gov/kbj/> (last visited Dec. 20, 2023). For more information regarding the Supreme Court nomination process, see *Activity: Dissecting the Questions Senators Are Asking Nominee Ketanji Brown Jackson*, PBS CLASSROOM (Mar. 23, 2022, 8:37 AM), <https://www.pbs.org/newshour/classroom/2022/03/activity-inquiry-based-supreme-court-hearings-dissecting-the-questions-senators-are-asking-nominee-ketanji-brown-jackson/>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

state Supreme Court and was sworn in six years ago to the federal bench, making history as the state's first Black female federal judge; and finally Justice Ketanji Brown Jackson.¹¹⁰

Each of these candidates was well qualified to serve on the highest court in the U.S. but ultimately, President Biden selected the Honorable Ketanji Brown Jackson to be the next nominee to the U.S. Supreme Court.¹¹¹ Justice Brown Jackson has a storied, impressive judicial history that began when she earned her undergraduate degree, *magna cum laude*, from Harvard-Radcliffe College in 1992.¹¹² She later earned her law degree, *cum laude*, from Harvard Law School in 1996.¹¹³

Given this illustrious background to an impeccable legal career, and the fact that Justice Brown Jackson has gone successfully through the Senate confirmation process (in a bipartisan vote) three times,¹¹⁴ one would think that her latest confirmation process would go off without a hitch. When it comes to appointing the first African American woman to the highest court in the land, the standards and vetting process are different. We can also go back in time and peruse the line of questioning Thurgood Marshall received in his nomination process. Justice Marshall was faced with a barrage of racially motivated questions in his hearing on July 13, 1967.¹¹⁵ Prior to this nomination by President Lyndon B. Johnson, Justice Marshall had served as a judge on the Second Circuit and was currently serving as Solicitor General.¹¹⁶ The record is replete with questions directed at Justice Marshall that deal with rising crime and the dangers of rising crime as it relates to national security.¹¹⁷ When pressed

¹¹⁰ Jessica Gresko & Colleen Long, *Who's Who Among Some Possible Top Supreme Court Contenders*, U.S. NEWS (Jan. 27, 2022), <https://www.usnews.com/news/politics/articles/2022-01-27/whos-who-among-some-possible-top-supreme-court-contenders>.

¹¹¹ *The Senate Confirms Ketanji Brown Jackson to Serve on the U.S. Supreme Court*, *supra* note 107.

¹¹² *Judge Ketanji Brown Jackson on Her Path to the Bench*, HARV. L. SCH. DEMOCRATS, <https://orgs.law.harvard.edu/democrats/event/judge-kentaji-brown-jackson-on-her-path-to-the-bench/> (last visited Dec. 20, 2023).

¹¹³ *Id.*

¹¹⁴ *President Biden Nominates Judge Ketanji Brown Jackson to Serve as Associate Justice of the U.S. Supreme Court*, WHITE HOUSE (Feb. 25, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/25/president-biden-nominates-judge-ketanji-brown-jackson-to-serve-as-associate-justice-of-the-u-s-supreme-court/>.

¹¹⁵ See generally *Hearings Before the Committee on the Judiciary United States Senate Ninetieth Congress First Session on Nomination of Thurgood Marshall, of New York, to be an Associate Justice of the Supreme Court of the United States*, 90th Cong. 1 (1967).

¹¹⁶ *Id.* at 1–2 (statement of Sen. Jacob K. Javits).

¹¹⁷ *Id.* at 3–5 (statement of Sen. Robert F. Kennedy).

repeatedly with what was essentially the same question, Justice Marshall stated over and over that whatever solutions the government came up with, it would have to be “within the framework of the U.S. Constitution.”¹¹⁸ Senator McClellan goes on to say to Justice Marshall that he did not want to vote to confirm someone who “would contribute to a menace that threatens our society.”¹¹⁹ When Justice Marshall refuses repeatedly to answer the same question he had stated it is improper for him to speak on, the Senator states flatly that the refusal to answer is somehow nefarious.¹²⁰

It must also be noted that appointments to the U.S. Supreme Court for 127 years required no confirmation hearings.¹²¹ All that an appointee needed was to be appointed, and he was all but guaranteed a seat on the highest court in this nation.¹²² Another point of clarification is that even with the nomination and hearing process, the nominees did not have to appear at the confirmation hearing.¹²³ They had teams of individuals supporting their nomination.¹²⁴ Those people would show up in support of the candidate.¹²⁵ It was not until 1939 when the second Jewish man was nominated, Felix Frankfurter, that the candidate was required to be physically present at the nomination hearing.¹²⁶ Justice Frankfurter was born in Vienna, Austria, and was a very controversial nominee because of

¹¹⁸ *Id.* at 6.

¹¹⁹ *Id.* at 8–12 (statement of Sen. McClellan). Senator McClellan was attempting to get Justice Marshall to agree that cases like *Miranda* were weakening law enforcement and making life easier for criminals. Justice Marshall repeatedly stated that he had argued one of the cases and he was certain that the cases would go all the way to the Supreme Court. He stated, as have practically all nominees before and since him, that it would be imprudent for him to pass judgement on cases that he would potentially rule on as a Justice. *Id.*

¹²⁰ *See id.* at 13. On the *Miranda* line of questioning, Senator McClellan asks, “Do you subscribe to the philosophy that the fifth amendment right to assistance of counsel requires that counsel be present before the police can interrogate the accused?” Justice Marshall states, “That is part of the *Miranda* rule.... And as I say, I can’t comment, because it is coming back up.” McClellan, “I have to wonder, from your refusal to answer, if you mean the negative.” Marshall, “Well, that is up to you, sir. But I have never been dishonest in my life.” McClellan, “I did not say that. But you lead me to wonder why I cannot get the answer.” *Id.*

¹²¹ Guy Raz, *A History of Supreme Court Confirmation Hearings*, NPR (July 12, 2009, 4:00 PM), <https://www.npr.org/templates/story/story.php?storyId=106528133>; *Justices 1789 to Present*, SUPREME CT. OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx (last visited Dec. 20, 2023).

¹²² Raz, *supra* note 121.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See id.*

his support and commitment to “the poor, the downtrodden, the persecuted, and the wrongly convicted.”¹²⁷

Oddly, during his nomination hearing, Justice Frankfurter refused to answer any questions from the members of the Senate Judiciary Committee.¹²⁸ When asked any question, he would only respond with the fact that his public record would speak for itself and that he refused to add or subtract from it.¹²⁹ He essentially answered no questions at all other than to repeat the same statement.¹³⁰ He was confirmed without a single dissenting vote and appointed to the U.S. Supreme Court.¹³¹

It was not until 1959 with the nomination of Potter Stewart that it became the rule that a nominee must show up and answer questions.¹³² But like Felix Frankfurter, Potter basically did not supply any substantive answers to the Senate Judiciary Committee’s questions.¹³³

Many Senators asking Justice Brown Jackson questions often asked her queries that caused her to respond with the fact that she could not answer because that question of law might come before her if she is appointed to the Court.¹³⁴ She was treated in a rude, curt, disrespectful, and dismissive manner.¹³⁵ Many acted as if she was out of bounds or wrong for not answering these questions, but many justices prior to Justice Brown Jackson did the same and were allowed to not answer without ridicule or disdain.¹³⁶ Justice Scalia, when asked whether he considered *Marbury v. Madison* to be settled law, refused to answer stating the

¹²⁷ See *id.*; James R. Belpedio, *Felix Frankfurter*, MIDDLE TENN. STATE UNIV.: FREE SPEECH CTR., <https://www.mtsu.edu/first-amendment/article/1330/felix-frankfurter> (Nov. 29, 2023).

¹²⁸ Raz, *supra* note 121.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Felix Frankfurter*, OYEZ, https://www.oyez.org/justices/felix_frankfurter (last visited Dec. 20, 2023).

¹³² See Raz, *supra* note 121.

¹³³ *Id.*

¹³⁴ Clare Foran & Alex Rogers, *Supreme Court Nominee Ketanji Brown Jackson Faces Intense Questioning on Second Day of Confirmation Hearings*, CNN (Mar. 22, 2022, 9:08 PM), <https://www.cnn.com/2022/03/22/politics/ketanji-brown-jackson-confirmation-hearings-day-two/index.html>.

¹³⁵ Amy Davidson Sorkin, *The Republican’s Wild Attacks at Ketanji Brown Jackson’s Confirmation Hearing*, NEW YORKER (Mar. 24, 2022), <https://www.newyorker.com/news/daily-comment/the-republicans-wild-attacks-at-ketanji-brown-jacksons-confirmation-hearing>.

¹³⁶ *Id.*; Raz, *supra* note 121.

question might come before him as a justice.¹³⁷ *Marbury v. Madison* has been settled case law since 1803.¹³⁸ The likelihood that it would come before the Court again is nearly impossible. Other examples of nominees refusing to answer questions on similar grounds are Justice Ginsburg and Justice Souter, who refused to answer whether the Korean War was a war.¹³⁹

It cannot be debated that the racial overtones that surrounded the hearing of Justice Brown Jackson were present and permeated the process throughout the questioning by Republican Senators.¹⁴⁰ The method we have in this country to nominate an individual to the U.S. Supreme Court has a sordid history of classifying people that do not fit the mold of white, Protestant, and male. With the noted exception of Roger B. Taney, the first Roman Catholic to serve on the Court, all the remainder of the white male Justices were Protestant.¹⁴¹

When President Wilson nominated a Jewish man to the Court, white people lost their minds and revolted.¹⁴² They demanded that the nominee, Brandeis, have a hearing to be confirmed.¹⁴³ This was the first time the Committee would allow witnesses for and against the candidate's nomination.¹⁴⁴ Brandeis' nomination process took an unbelievable four months but opened the door for an intense investigation into a nominee's life, belief system, religious faith, any prior legal decisions made as a judge, any affiliations professionally or privately, and even their sex life.¹⁴⁵

¹³⁷ Raz, *supra* note 121.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See, e.g., Peniel E. Joseph, *The Racist, Sexist Mudslinging at Ketanji Brown Jackson is Disgraceful*, CNN (Mar. 23, 2022, 3:24 PM), <https://www.cnn.com/2022/03/23/opinions/ketanji-brown-jackson-hearing-racism-joseph/index.html>.

¹⁴¹ Kayla Epstein, *The Discriminatory History of the Senate Confirmation Process that Started When a Jewish Person was First Nominated for the Supreme Court in 1916*, INSIDER (Mar. 24, 2022, 6:01 PM), <https://www.businessinsider.com/racist-history-of-senate-scotus-confirmation-hearings-ketanji-brown-jackson-2022-3>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Thomas Excerpts: 'This Today Is a Travesty. I Think That It Is Disgusting', L.A. TIMES (Oct. 12, 1991, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1991-10-12-mn-155-story.html>; Terry Gross, *Reporters Dig into Justice Kavanaugh's Past, Allegations of Misconduct Against Him*, NPR (Sept. 16, 2019, 3:29 PM), <https://www.npr.org/2019/09/16/761191576/reporters-dig-into-justice-kavanaughs-past-allegations-of-misconduct-against-him>.

In questioning Justice Brown Jackson, white Republican Senators multiple times asked questions regarding interracial marriage and slavery and the legal theories as the basis for those cases.¹⁴⁶ They even questioned her about whether she would be lenient on criminals convicted of heinous crimes such as child pornography.¹⁴⁷ Senator Marsha Blackburn (R-TN) questioned Justice Brown Jackson in a derogatory and disrespectful manner by asking questions and repeatedly not allowing the nominee to finish her answer.¹⁴⁸ In such an absurd moment during the hearing process, and there were several unbelievable moments, Senator Blackburn asked Justice Brown Jackson to define, “woman.”¹⁴⁹ Senator Blackburn, a white, conservative, Republican woman is quoted as saying that Justice Brown Jackson has a “hidden agenda,” that focuses on critical race theory, that she supports the “progressive indoctrination of our children,” and that Justice Brown Jackson is trying to put vicious criminals on the streets to harm Americans and to allow child predators to receive minimal to no punishment.¹⁵⁰

Most of the questions posed by Republican Senators were not designed to understand Justice Brown Jackson’s judicial philosophy or her understanding of legal decisions and legal reasoning, but to demean, degrade, diminish, belittle, and embarrass her.¹⁵¹ Senators Lindsey Graham and Ted Cruz are the classic examples of questioning that was put forth to further their political careers and appease their conservative, right-leaning base.¹⁵² Senator Cruz and Justice Brown Jackson attended

¹⁴⁶ *Jackson Confirmation Hearing, Day 2 Part 2*, C-SPAN, at 00:14:46 (Mar. 22, 2022), <https://www.c-span.org/video/?518342-10/jackson-confirmation-hearing-day-2-part-2>; see also Epstein, *supra* note 141.

¹⁴⁷ *Jackson Confirmation Hearing, Day 2 Part 3*, C-SPAN, at 1:40:10 (Mar. 22, 2022), <https://www.c-span.org/video/?518342-11/jackson-confirmation-hearing-day-2-part-3>.

¹⁴⁸ *Jackson Confirmation Hearing, Day 2 Part 6*, C-SPAN, at 1:19:00–1:20:13 (Mar. 22, 2022), <https://www.c-span.org/video/?518342-102/jackson-confirmation-hearing-day-2-part-6>.

¹⁴⁹ *Id.* at 1:21:31.

¹⁵⁰ Khaleda Rahman, *Marsha Blackburn Accused of Racism over Ketanji Brown Jackson Questions*, NEWSWEEK (Mar. 22, 2022, 10:30 AM), <https://www.newsweek.com/marsha-blackburn-racism-ketanji-brown-jackson-questions-scotus-1690453> (discussing how Blackburn went on to ask whether Judge Brown-Jackson intended “to restrict parental rights and expand government’s reach into our schools and our private family decisions? Is it to support the radical left’s attempt to pack the Supreme Court?”).

¹⁵¹ Solomon Jones, *Confirming Ketanji Brown Jackson Is Confirming the Value of Black Womanhood*, WHY? (Apr. 5, 2022), <https://why.org/articles/ketanji-brown-jackson-supreme-court-confirmation-value-of-black-womanhood/>.

¹⁵² *Compare Jackson Confirmation Hearing, Day 3 Part 2*, C-SPAN, at 00:02:15–00:34:00 (Mar. 23, 2022), <https://www.c-span.org/video/?518343-102/jackson-confirmation-hearing-day-3-part-2>, with *Jackson Confirmation Hearing, Day 3 Part 3*, C-Span, at 00:01:47–

law school together and were on Law Review at the same time.¹⁵³ Senator Ted Cruz went so far as to bring up a book written for children by authors unknown to Justice Brown Jackson to ask her about the content.¹⁵⁴ The sole connection was the book is on the “reading list” of a school¹⁵⁵ where Justice Brown Jackson serves on the Board.¹⁵⁶ Senator Cruz asked Justice Brown Jackson specifically about a list of books that are, in his estimation, critical race theory textbooks, and how these topics are appropriate for children in Pre-kindergarten.¹⁵⁷ Justice Brown Jackson explains to Senator Cruz that the Board that she serves on does not control the curriculum or focus on books assigned on the school’s reading list.¹⁵⁸ Senator Cruz uses specific examples from textbooks and questions Justice Brown Jackson about critical race theory and how it differentiates from the principles espoused by Dr. Martin Luther King, Jr.¹⁵⁹ This is the same Dr. King that was maligned, ostracized, alienated, jailed, and beaten by the then sitting Ted Cruz’s of this country.¹⁶⁰ He was ultimately murdered by a white man and the U.S. government was found guilty of conspiring to have Dr. King killed.¹⁶¹ To have white politicians habitually laud Dr. King as the shining example of what Black people should stand for and reconcile the fact that he was slaughtered by white Americans is the epitome of outrageous hypocrisy.

00:25:37 (Mar. 23, 2022), <https://www.c-span.org/video/?518343-103/jackson-confirmation-hearing-day-3-part-3>.

¹⁵³ *Ketanji Brown Jackson Possibly Too Qualified to Be a Supreme Court Justice*, THE SNAPPER (Mar. 31, 2022), <https://thesnapper.millersville.edu/index.php/2022/03/31/ketanji-brown-jackson-possibly-too-qualified-to-be-a-supreme-court-justice/>.

¹⁵⁴ Adrienne Westenfeld, *All the Books Ted Cruz Freaked Out About at Judge Ketanji Brown Jackson’s Hearing*, ESQUIRE (Mar. 23, 2022), <https://www.esquire.com/entertainment/books/a39513187/ketanji-brown-jackson-ted-cruz-reading-list/>.

¹⁵⁵ *Jackson Confirmation Hearing, Day 2 Part 3*, *supra* note 147, at 01:14:50–01:16:30.

¹⁵⁶ *Id.* at 01:14:00.

¹⁵⁷ Perry Stein, *The Elite D.C. Prep School at the Center of Ketanji Brown Jackson’s Confirmation Hearing*, WASH. POST (Mar. 23, 2022, 2:23 PM), <https://www.washingtonpost.com/education/2022/03/23/ketanji-jackson-georgetown-day-school/>.

¹⁵⁸ *Jackson Confirmation Hearing, Day 2 Part 3*, *supra* note 147, at 01:19:14–01:19:25.

¹⁵⁹ *Id.* at 01:05:22–01:13:07.

¹⁶⁰ Jennifer Schuessler, *Ted Cruz Invokes Dr. King, and Scholars See a Familiar Distortion*, N.Y. TIMES (Mar. 23, 2022), <https://www.nytimes.com/2022/03/23/arts/ted-cruz-mlk-critical-race-theory-supreme-court.html>.

¹⁶¹ Kirsten West Savali, *Did You Know? US Gov’t Found Guilty in Conspiracy to Assassinate Dr. Martin Luther King, Jr.*, NEWSONE (Jan. 18, 2021), <https://newsone.com/2843790/did-you-know-us-govt-found-guilty-in-conspiracy-to-assassinate-dr-martin-luther-king-jr>.

It is always rather perplexing when an African American person is being considered for a position of authority, how many times they are confronted with Dr. Martin Luther King, Jr., and his positions on certain issues in American life.¹⁶² The question must be asked: why are similarly situated white candidates not also questioned about Black historical figures? If the principles raised by these individuals seem to be qualities that are noble and just and honorable, why not question all candidates with the same historical figures? Many of those questioning Black people, who are attempting to foray into a segment of society not filled with many Black people, use the notion that the fact that the Black person is being considered for an esteemed position shows how great America is and that this country is the greatest in the world, given the fact that Black people have been able to rise above the innumerable challenges placed by people that look and act just like the ones questioning them.¹⁶³ In his questioning of Justice Brown Jackson, Senator Cruz comments on the “journey” that Justice Brown Jackson (and her family) has taken to become a judge “demonstrates the incredible promise and incredible opportunity this nation offers all of us.”¹⁶⁴ He then goes on to ask a barrage of insulting questions about her thoughts on slavery, “revisionist history,” and Nikole Hannah-Jones’ *1619 Project*.¹⁶⁵ Senator Cruz then goes on to ask Justice Brown Jackson about critical race theory.¹⁶⁶ She repeatedly says that critical race theory is a subject that has not come up in her works as a judge and that it is not something she would rely on as a justice on the Supreme Court.¹⁶⁷ No other white U.S. Supreme Court nominee has been questioned on critical race theory, racism, sentencing on criminals, and

¹⁶² See generally Bev-Freda Jackson, *Ketanji Brown Jackson and the Color Blind Society of Martin Luther King Jr.*, THE CONVERSATION (Apr. 8, 2022), <https://theconversation.com/ketanji-brown-jackson-and-the-color-blind-society-of-martin-luther-king-jr-180490>; George E. Condon Jr. & National Journal, *How Obama Is Heeding the Lessons of Martin Luther King Jr.*, THE ATLANTIC (Aug. 1, 2013), <https://www.theatlantic.com/politics/archive/2013/08/how-obama-is-heeding-the-lessons-of-martin-luther-king-jr/442923/>; *Thomas Confirmation Hearing Day 1, Part 2*, C-SPAN, at 00:09:11, <https://www.c-span.org/video/?21107-1/thomas-confirmation-hearing-day-1-part-2> (last visited Dec. 22, 2023).

¹⁶³ Sahar Aziz, *Judge Brown Jackson and America’s Moment of Racial Reckoning*, AL JAZEERA (Apr. 7, 2022), <https://www.aljazeera.com/opinions/2022/4/7/judge-jackson-and-americas-current-moment-of-racial-reckoning>.

¹⁶⁴ *Jackson Confirmation Hearing, Day 2 Part 3*, *supra* note 147, at 01:09:57–01:32:00.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

their views on rising crime, other than Justice Thurgood Marshall and now Justice Brown Jackson.¹⁶⁸

Senator Cruz then goes on to ask Justice Brown Jackson about her sentencing history as a judge of sex offenders.¹⁶⁹ The point was to show that she is somehow light or lenient on criminals and was going to be the kind of justice who allows criminals to reign free in our country.¹⁷⁰ All these questions were based on a law school note¹⁷¹ that Justice Brown Jackson wrote almost thirty years ago. The note was written on sex offender registration laws, which were new in 1996.¹⁷² Justice Brown Jackson explains calmly, clearly, and confidently that law students look for new developments in the law and attempt to analyze them.¹⁷³ Justice Brown Jackson stated that this type of analysis makes for good “fodder.”¹⁷⁴ Senator Cruz’s attempts to paint Justice Brown Jackson as soft on crime fell flat and were clearly his attempt to showboat and aggrandize in the eyes of his base.¹⁷⁵ To show that she is supported across the aisle by a wide array of judges and highly esteemed legal minds, Justice Brown Jackson received a supportive letter from Harvard Law School in which they addressed criticism “leveled at Judge Brown Jackson’s record on child pornography sentencing.”¹⁷⁶ The supporters in the letter make it clear that Justice Brown Jackson’s record “is entirely consistent with the record of

¹⁶⁸ Margaret M. Russell, *The Race-Baiting Parallels Between Ketanji Brown Jackson, Thurgood Marshall’s SCOTUS Confirmation Hearings*, NEWSONE (Mar. 24, 2022), <https://newsone.com/4308762/ketanji-brown-jackson-thurgood-marshall-confirmation-hearings-compared/>.

¹⁶⁹ *Jackson Confirmation Hearing, Day 2 Part 3*, *supra* note 147, at 01:32:00–01:38:36.

¹⁷⁰ Jonathan Weisman & Jazmine Ulloa, *Judging a Judge on Race and Crime, G.O.P. Plays to Base and Fringe*, N.Y. TIMES (Mar. 22, 2022), <https://www.nytimes.com/2022/03/22/us/politics/ketanji-brown-jackson-race.html>.

¹⁷¹ *Jackson Confirmation Hearing, Day 2 Part 3*, *supra* note 147, at 01:32:00–01:38:36.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Janell Ross, *Ketanji Brown Jackson’s Confirmation Was a Referendum on Who Gets to Have Power in America*, TIME (Apr. 7, 2022, 3:24 PM EDT), <https://time.com/6164254/ketanji-brown-jackson-affirmative-action-power/>.

¹⁷⁶ Letter from Hon. Nancy Gertner, Senior Lecturer of L., Harv. L. Sch., to Sen. Dick Durbin, Chairman, S. Comm. on Judiciary, and Sen. Chuck Grassley, Ranking Member, S. Comm. on Judiciary 1 (Mar. 21, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Nancy%20Gertner%20Letter%20on%20Judge%20Ketanji%20Brown%20Jackson.final.pdf>.

other district court judges across the country (and appointed by presidents of both parties) as well as with the position of the Department of Justice.”¹⁷⁷

The judicial process to which Justice Brown Jackson was subjected was designed to harm her chances of acquiring a seat on the highest court in the land.¹⁷⁸ Those efforts failed spectacularly, and she is now seated on the U.S. Supreme Court.¹⁷⁹ But why must this kind of sexist and racist character assassination cease? Why should a civilized society seek to make these kinds of attacks at judicial hearings stop? To keep it plain and simple: it is unfair, it is wrong, and it is unproductive to our judicial system.

Biased, discriminatory, and unfair nomination judicial processes discredit and detract from a fair and independent judiciary.¹⁸⁰ “All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.”¹⁸¹ When we allow racism, sexism, politics, and political theatrics to override and inundate our judicial nomination process, we cheapen and weaken our judicial system greatly. We call into question the credibility of the entire system, thereby making a mockery of judges and justices and those who are appointed to be impartial triers of fact.

Having a secure and unbiased judiciary is a cornerstone, a bedrock, of our democratic system of government.¹⁸² In order to ensure that the rule of law is followed and adhered to, the judiciary must remain fair and independent of political influence and undue sway by various factors.¹⁸³ This ensures that judges will rule on legal matters and facts, independent

¹⁷⁷ *Id.*

¹⁷⁸ *See* Ross, *supra* note 175.

¹⁷⁹ *Id.*

¹⁸⁰ E. Donald Elliott, *Fixing a Broken Process for Nominating U.S. Supreme Court Justices*, THE CONVERSATION (Oct. 15, 2018), <https://theconversation.com/fixing-a-broken-process-for-nominating-us-supreme-court-justices-104629>.

¹⁸¹ Ziaullah Ranjah, *Independence of Judiciary*, THE FRIDAY TIMES (June 26, 2020), <https://www.thefridaytimes.com/2020/06/26/independence-of-judiciary/> (statement of President Andrew Jackson).

¹⁸² *Why a Fair and Independent Judiciary Matters*, 2007 ANNUAL REPORT OF DELAWARE JUDICIARY 4 (2007), <https://courts.delaware.gov/aoc/AnnualReports/FY07/doc/FairandIndependentJudiciary.pdf>.

¹⁸³ Seventh U.N. Cong. on the Prevention of Crime & Treatment of Offenders, *Basic Principles on the Independence of the Judiciary*, OFF. OF U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> (last visited Dec. 22, 2023).

of other outside inappropriate measures, coming to bear on their decision-making.¹⁸⁴

As a fledgling democracy, having a fair and independent judicial branch was a crucial factor recognized by the founders of this country.¹⁸⁵ There were numerous grievances against King George III, as enumerated in the Declaration of Independence, but one germane to this discussion was to make sure that judges were independent and free from royal (or any kind of) influence.¹⁸⁶ To see that this was not an issue, the Framers went out of their way to stipulate the importance of a free and fair judiciary.¹⁸⁷

We honor and recognize the judiciary as a coequal branch of the government.¹⁸⁸ They are independent of and separate from the executive and legislative branches contained in a system of checks and balances.¹⁸⁹ This branch would be accountable to the public and capable of self-governance.¹⁹⁰

The judiciary is responsible for enforcing and patrolling the ethical conduct of judges within its ranks, ensuring that there is fairness throughout the appeals process, and effectively operating and managing the Court within the bounds of its budgetary constraints.¹⁹¹

As we review and contemplate this separation of powers among the various branches of government, recognizing our process of checks and balances, and public accountability, this all serves as a keystone of

¹⁸⁴ *Independent Judiciary*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_education/resources/independent-judiciary-resources (last visited Dec. 22, 2023).

¹⁸⁵ *Judicial Independence*, JUD. LEARNING CTR., <https://judiciallearningcenter.org/judicial-independence/> (last visited Dec. 22, 2023).

¹⁸⁶ *Why a Fair and Independent Judiciary Matters*, *supra* note 182.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See *ArtI.S1.3.1 Separation of Powers and Checks and Balances*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/ (last visited Dec. 22, 2023).

¹⁹⁰ See *Why a Fair and Independent Judiciary Matters*, *supra* note 182.

¹⁹¹ See *Strategic Plan for the Federal Judiciary*, ADMIN. OFF. OF U.S. CTS. (Sept. 2020), <https://www.uscourts.gov/statistics-reports/strategic-plan-federal-judiciary>.

democracy.¹⁹² “There is no liberty if the power of judging is not separated from the legislative and executive powers.”¹⁹³

When we allow politics, vitriolic squabbling, vicious lies, and exaggerations to permeate our process of nominating judicial figures, we have lost that independence that the Framers sought, and thought would make this nation a great nation. Our judiciary, especially the U.S. Supreme Court, should look like and reflect the great population it originates from. It currently does not.

IV. HOW THESE TWO BLACK WOMEN HAVE RISEN ABOVE ABUSE, INSULTS, AND MISTREATMENT AT THE HANDS OF INFERIOR WHITE MEN IN PUBLIC SPACES

*Felt in the days when hope unborn had died*¹⁹⁴

*“The civil rights history of tomorrow is being written today. Judge Jackson’s nomination has opened new ground for women’s representation at the highest level of a judicial system that for too long tilted against the very community she hails from.” – Meghan Markle, The Duchess of Sussex*¹⁹⁵

As we do a mental review of past U.S. Supreme Court judicial nominees, sadly, we can only visualize one Black woman.¹⁹⁶ Justice Ketanji Brown Jackson has a unique experience in this country, given her experience of navigating uncharted waters as a Black woman nominated to the highest court in the country. Her experience of being interrogated by rude, aggressive, domineering, loud, and belligerent white men, runs parallel to the experience of Anita Hill.

¹⁹² See Lisa James et al., *Checks and Balances: What Are They, and Why Do They Matter?*, CONST. UNIT BLOG (Jan. 19, 2023), <https://constitution-unit.com/2023/01/19/checks-and-balances-what-are-they-and-why-do-they-matter/>.

¹⁹³ Paul Halsall, *Montesquieu: The Spirit of the Laws, 1748*, FORDHAM UNIV.: INTERNET MOD. HIST. SOURCEBOOK, <https://sourcebooks.fordham.edu/mod/montesquieu-spirit.asp> (last visited Dec. 22, 2023) (referencing 1 MONTESQUIEU, THE SPIRIT OF THE LAWS 221–37 (Thomas Nugent trans., London, J. Nourse 1777)).

¹⁹⁴ JAMES WELDON JOHNSON, COMPLETE POEMS (Sondra Kathryn Wilson ed., 1st ed. 2000) (Lyric from James Weldon Johnson’s famous song, “*Lift Every Voice and Sing*”).

¹⁹⁵ Anita Hill, *Anita Hill: Ketanji Brown Jackson’s Nomination to the Supreme Court Signals Historic Change*, NATIVE NEWS ONLINE (Feb. 28, 2022), <https://nativenewsonline.net/opinion/anita-hill-ketanji-brown-jackson-s-nomination-to-the-supreme-court-signals-historic-change>.

¹⁹⁶ See *id.*

Anita Hill is a professor, attorney, and author.¹⁹⁷ She became well-known when she accused then-nominee of the U.S. Supreme Court, Clarence Thomas, of sexual harassment.¹⁹⁸ Ms. Hill attended Yale Law School and graduated in 1980 with honors.¹⁹⁹ Ms. Hill had worked previously with Clarence Thomas at two separate jobs.²⁰⁰ Anita Hill worked for Clarence Thomas when he was the Assistant Secretary of the U.S. Department of Education's Office of Civil Rights.²⁰¹ She then worked for him again when he served as Chairman of the U.S. Equal Opportunity Commission (EEOC).²⁰² In 1991, Clarence Thomas was nominated by President George Bush to the U.S. Supreme Court.²⁰³ It was at that point when Ms. Hill felt compelled to let the nominating committee know that, years earlier when she worked for Clarence Thomas, he had sexually harassed her.²⁰⁴ Additionally, four individuals swore and testified under oath that Professor Hill told them that she had been propositioned by Clarence Thomas and that he made inappropriate sexual comments to her.²⁰⁵ She confessed that the sexual harassment forced her to resign from her position at the EEOC.²⁰⁶ These comments were made to the friends at least ten years prior to Clarence Thomas being nominated to the U.S. Supreme Court.²⁰⁷

¹⁹⁷ See Amy Tikkanen, *Anita Hill: American Attorney and Educator*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Anita-Hill> (July 18, 2023).

¹⁹⁸ See *id.*

¹⁹⁹ See Tikkanen, *supra* note 197.

²⁰⁰ See Robert Suro, *The Thomas Nomination; A Law Professor Defends Integrity*, N.Y. TIMES, Oct. 8, 1991, at A21.

²⁰¹ See *id.*

²⁰² Julia Jacobs, *Anita Hill's Testimony and Other Key Moments from the Clarence Thomas Hearings*, N.Y. TIMES (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/us/politics/anita-hill-testimony-clarence-thomas.html?smid=url-share>.

²⁰³ Andrew Glass, *President Bush Defends Clarence Thomas, Oct. 9, 1991*, POLITICO (Oct. 9, 2017, 12:01 AM), <https://www.politico.com/story/2017/10/09/president-bush-defends-clarence-thomas-oct-9-1991-243573>.

²⁰⁴ See Jacobs, *supra* note 202.

²⁰⁵ See Nina Totenberg, *A Timeline of Clarence Thomas-Anita Hill Controversy as Kavanaugh to Face Accuser*, NPR (Sept. 23, 2018, 5:00 AM), <https://www.npr.org/2018/09/23/650138049/a-timeline-of-clarence-thomas-anita-hill-controversy-as-kavanaugh-to-face-accuse>.

²⁰⁶ Nesrine Malik, *Anita Hill on Sexual Harassment and Survival: 'You Have to Think: What is My Life For?'*, THE GUARDIAN (Sept. 28, 2021, 7:00 AM), <https://www.theguardian.com/lifeandstyle/2021/sep/28/anita-hill-on-sexual-harassment-and-survival-you-have-to-think-what-is-my-life-for>.

²⁰⁷ See Totenburg, *supra* note 205.

Anita Hill, a 35-year-old law professor,²⁰⁸ was placed under a glaring spotlight and made to look like a liar and a “scorned” woman. She was interrogated by an all-white, all-male Senate Judiciary Committee who berated, mistreated, and denigrated her over her sexual misconduct allegations against the second Black man nominated to the Court.²⁰⁹ Ms. Hill was asked embarrassing and humiliating questions about a porn star,²¹⁰ the size of Clarence Thomas’ penis, large-breasted women, and pubic hair on a soda can.²¹¹ Ms. Hill was treated in a way that attempted to strip her of her humanity, decency, and rights as an individual with valid, credible claims of harassment.²¹² These accusatory, white-male Senators tried to make Professor Anita Hill seem as if she had no rights to bodily autonomy and to be free from unwelcomed, unsolicited sexual advances from a man in a position of authority. This was tragic, given the history of sexual attacks, sexual assaults,²¹³ and sexual prowess and domination²¹⁴ that white men have had over the Black female body since the days of slavery in America. Americans were riveted in 1991, as they watched televised hearings where Professor Hill was made to look like a liar and a woman who was simply trying to impede the ascension of Clarence Thomas to the Supreme Court.²¹⁵

²⁰⁸ Jocelyn Noveck, *Anita Hill Still Waits for Change, 30 years After Testimony*, ASSOCIATED PRESS (Sept. 27, 2021, 11:46 AM), <https://apnews.com/article/anita-hill-waits-for-change-30-years-after-testimony-c60059b82560e0fdadaf0ef1d1510e91>.

²⁰⁹ See Sarah Pruitt, *How Anita Hill’s Testimony Made America Cringe—And Change*, HISTORY (Sept. 26, 2018), <https://www.history.com/news/anita-hill-confirmation-hearings-impact>.

²¹⁰ Bill Press, *The Return of Long Dong Silver*, CNN: INSIDE POL. (July 5, 2001, 12:35 PM), <http://www.cnn.com/2001/ALLPOLITICS/07/05/billpress.column/> (discussing the porn reference to Long Dong Silver, as Ms. Hill accused Clarence Thomas of mentioning the porn actor while at work; the name became infamous in political lore).

²¹¹ Pruitt, *supra* note 209.

²¹² Martin Tolchin, *The Thomas Nomination; Hill Said to Pass A Polygraph Test*, N.Y. TIMES (Oct. 14, 1991), <https://www.nytimes.com/1991/10/14/us/the-thomas-nomination-hill-said-to-pass-a-polygraph-test.html>.

²¹³ Rosalind Bentley, *Four White Men Raped a Black Coed and Her Case Became a Landmark*, ATL. J.-CONST. (Feb. 26, 2018), <https://www.ajc.com/news/crime-law/four-white-men-raped-black-coed-and-her-case-became-landmark/KtXxVi9H6QajxPQpuLUdjL/>.

²¹⁴ Chelsea Hale & Meghan Matt, *The Intersection of Race and Rape Viewed Through the Prism of a Modern-Day Emmett Till*, AM. BAR ASS’N (July 16, 2019), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/summer2019-intersection-of-race-and-rape/>.

²¹⁵ Jane Gross, *The Thomas Nomination; Americans Riveted by Lesson in Civics*, N.Y. TIMES (Oct. 12 1991), <https://www.nytimes.com/1991/10/12/us/the-thomas-nomination-americans-riveted-by-lesson-in-civics.html>.

One can look at the way that Black women are portrayed in the media, movies, print, and in our society.²¹⁶ Black women are stereotyped as promiscuous, drug addicts, welfare recipients, maids, or other subservient roles.²¹⁷ Malcolm X stated, “The most disrespected person in America is the Black woman. The most unprotected person in America is the Black woman. The most neglected person in America is the Black woman.”²¹⁸ These words were spoken in 1962 and are still applicable, relevant, and true today. Black women’s bodies have been open for amusement, scorn, ridicule, and lustful, unnatural desires by white men, Black men, and white women.²¹⁹

Even though Black women make up 64% of all Black people earning college degrees, they are tarnished with the image of being underachievers or less intelligent.²²⁰ The numbers are higher for Associates Degrees.²²¹ Black women have historically been the heads of households when the “war on drugs,”²²² disproportionately sent millions of Black men to prison or caused them to be entangled with the criminal justice system, to the point of not being gainfully employed and able to financially support their families.²²³ Black women have found the strength to continue in the face of unprecedented hurdles, obstacles, and attempts to discourage success

²¹⁶ Ariel Chung, *Black Women’s Progress Collides with Media Stereotypes*, U.S.A. TODAY (Feb. 11, 2015, 8:48 PM), <https://www.usatoday.com/story/news/2015/02/11/black-history-black-women/23266115/>.

²¹⁷ Keoosha T. Bond et al., *Race-Based Sexual Stereotypes, Gendered Racism, and Sexual Decision Making Among Young Black Cisgender Women*, 48 SPECIAL ISSUE: HEALTH EDUC. & BEHAV. 295, 295–305 (2021).

²¹⁸ Malcolm X, *Who Taught You to Hate Yourself* (May 5, 1962).

²¹⁹ Petiri Ira, *Black Women Are the Most Unprotected and Disrespected People in Society*, GOOD MEN PROJECT (Aug. 11, 2020), <https://goodmenproject.com/featured-content/black-women-are-the-most-unprotected-and-disrespected-people-in-society/>.

²²⁰ *Fast Facts: Women of Color in Higher Ed*, AM. ASS’N OF UNIV. WOMEN, <https://www.aauw.org/resources/article/fast-facts-woc-higher-ed/> (last visited Dec. 22, 2023); Gavin Evans, *The Unwelcome Revival of ‘Race Science’*, THE GUARDIAN (Mar. 2, 2018, 1:00 PM), <https://www.theguardian.com/news/2018/mar/02/the-unwelcome-revival-of-race-science>.

²²¹ Rachael Davis, *New Study Shows Black Women Are Among the Most Educated Group in the United States*, ESSENCE, <https://www.essence.com/news/new-study-black-women-most-educated/> (Oct. 27, 2020).

²²² Aaron Morrison, *50-Year War on Drugs Imprisoned Millions of Black Americans*, PBS (July 26, 2021, 12:55 PM), <https://www.pbs.org/newshour/nation/50-year-war-on-drugs-imprisoned-millions-of-black-americans>.

²²³ Tamara Gilkes Borr, *How the War on Drugs Kept Black Men Out of College*, THE ATLANTIC (May 15, 2015), <https://www.theatlantic.com/education/archive/2019/05/war-drugs-made-it-harder-black-men-attend-college/588724/>.

and attainment.²²⁴ The burdens taken on by Black women have included raising children alone, being caregivers for aging parents, raising grandchildren, being employed and attending school, running for and supporting those running for political offices.²²⁵

Black women have had to find the courage and fortitude to forge ahead, succeed, and in many cases, simply survive. Black women are constantly told they are not beautiful, desirable, or

sexy.²²⁶ If one googles “beautiful women/woman,” nothing but white women show up in the search results.²²⁷ Try it and see. Use any search engine and the results are the same. Black women are never pictured as being elegant, intelligent, or worthy of adoration or desire.²²⁸ Images that are considered beautiful emanate from European images and standards of “beauty.”²²⁹ When you google, you will notice that there is little diversity in what is seen as “beautiful” in these images.²³⁰ None look like Anita Hill or Justice Ketanji Brown Jackson. Black women are very rarely portrayed in movies as one’s worthy of being saved or fought for.²³¹ For centuries,

²²⁴ Michele Hanson, *Six Successful Black Women to Share Their Stories of Overcoming Obstacles, Breaking Barriers and Effecting Change*, E.I.N. PRESSWIRE (Dec. 2, 2020, 1:15 PM), https://www.einnews.com/pr_news/531874873/six-successful-black-women-to-share-their-stories-of-overcoming-obstacles-breaking-barriers-and-effecting-change.

²²⁵ Aisha Adkins, *The Cycle of Care: How Generational Caregiving Disproportionately Impacts Black Women*, AM. SOC. ON AGING (Aug. 30, 2022), <https://generations.asaging.org/how-generational-caregiving-impacts-black-women>; see also Jazmine Ulloa, *More Black Women Run for Office, but Prospects Fade the Higher They Go*, N.Y. TIMES (Mar. 8, 2023), <https://www.nytimes.com/2023/03/08/us/politics/black-women-senate-governor-house.html>.

²²⁶ Ebony M. Smith, *Society Thinks Black Girls Are Ugly*, THE HARV. CRIMSON (Feb. 10, 2022), <https://www.thecrimson.com/article/2022/2/10/smith-bhm-oped/>.

²²⁷ Caitlin Dewey, *Study: Image Results for the Google Search ‘Ugly Woman’ Are Disproportionately Black*, WASH. POST (Aug. 10, 2016, 1:36 PM), <https://www.washingtonpost.com/news/the-intersect/wp/2016/08/10/study-image-results-for-the-google-search-ugly-woman-are-disproportionately-black/>.

²²⁸ *Representations of Black Women in Hollywood*, GEENA DAVIS INST. ON GENDER IN MEDIA, <https://seejane.org/research-informs-empowers/representations-of-black-women-in-hollywood/> (last visited Dec. 22, 2023).

²²⁹ Tatiana Walk-Morris, *How Eurocentric Beauty Standards Harm Black Women*, SHAPE (Nov. 9, 2021), <https://www.shape.com/lifestyle/mind-and-body/mental-health/eurocentric-beauty-standards-black-women>.

²³⁰ Dewey, *supra* note 227.

²³¹ Joe Wilkes, *We Need Black Women on Screen, We Need the Woman King*, NEW AM. (Sept. 19, 2022), <https://www.newamerica.org/the-thread/we-need-black-women-on-screen-we-need-the-woman-king/>.

Black women have learned to fight for themselves.²³² Black women are not waiting on a hero to save them. They are their own hero.

Anita Hill is a hero. She stood firm in the face of ugly, brutal racism and sexism even as her credibility and integrity were called in question.²³³ She calmly and sternly told her truth and did not allow the vicious accusations coming from the all white-male Senators to thwart her objective of telling what she knew to be the facts—Clarence Thomas had sexually harassed her, and he did not deserve a seat on the U.S. Supreme Court.²³⁴ Anita Hill's reputation took a hit after the 1991 confirmation hearings, and to this day, she is dogged by the accusations that she lied against Clarence Thomas.²³⁵ But she has never wavered from her truth, and she has stood firm on what happened to her by a man who has historically never supported Black women publicly.²³⁶ Clarence Thomas has historically lectured against affirmative action but was admitted into Yale Law School by way of affirmative action.²³⁷ Clarence Thomas has habitually voted against marginalized and oppressed groups²³⁸ but will take advantage of rights and laws created to help people like him.²³⁹ Clarence Thomas even went so far as to vote for the evisceration of the Voting Rights Act in *Shelby County v. Holder*.²⁴⁰ Clarence Thomas'

²³² Martha S. Jones, *Black Women's 200 Year Fight for the Vote*, PBS (June 3, 2020), <https://www.pbs.org/wgbh/americanexperience/features/vote-black-women-200-year-fight-for-vote/>.

²³³ Liza Mundy, *supra* note 63.

²³⁴ Maureen Dowd, *With Each Round of Testimony, the Mood at the Hearing Sways*, N.Y. TIMES, Oct. 14, 1991, at A11.

²³⁵ See Mundy, *supra* note 63.

²³⁶ Zach Linley, *Surprise, Surprise: Clarence Thomas Is Married to a Woman Tied to Organizations That Tried to Suppress Black and Brown Votes*, NEWSBREAK (Feb. 2, 2022), <https://www.newsbreak.com/news/2523539948981-surprise-surprise-clarence-thomas-is-married-to-a-woman-tied-to-organizations-that-tried-to-suppress-black-and-brown-votes>.

²³⁷ Devin Dwyer, *Justices Thomas and Sotomayor, Who Say They Benefitted from Affirmative Action, Divide on Its Future*, ABC NEWS (June 29, 2023), <https://abcnews.go.com/Politics/justices-thomas-sotomayor-benefitted-affirmative-action-divide-future/story?id=99838065>.

²³⁸ John Blake, *The Clarence Thomas Myth That Refuses to Die*, CNN (Dec. 7, 2019), <https://www.cnn.com/2019/12/07/us/clarence-thomas-white-conservatives-blake/index.html> (“But it's Thomas' voting record that has cemented the cynicism many blacks feel toward him. Critics say he has consistently voted against black people as well as other marginalized groups: women, LGBTQ people, religious minorities and death row inmates.”).

²³⁹ See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967).

²⁴⁰ John Schwartz, *Between the Lines of the Voting Rights Act Opinion*, N.Y. TIMES (June 25, 2013), <https://archive.nytimes.com/www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html>.

voting record on the U.S. Supreme Court hurts Black people and many marginalized, oppressed groups.²⁴¹ The fact that Professor Hill saw him for who is truly is, before he sat on the Supreme Court, speaks to the quality and keenness of her judge of character. She was correct in her assessment of his integrity and the fact that he did not (and does not) deserve a seat on the U.S. Supreme Court. Despite the unprecedented nature of her testimony and what she had to endure then and now, Professor Hill did the right thing and did not let the vicious mob of Senators detract or dissuade her from her testimony.

Justice Ketanji Brown Jackson faced a similar mob of accusers more than thirty years later. The factors that should be evaluated to get a seat on the Supreme Court are credentials, qualifications, legal acumen, and abilities.²⁴² None of these qualities were being questioned by her skeptics in the U.S. Senate.²⁴³ Instead, they used their time to question Justice Ketanji Brown Jackson on crime and other stereotypical topics that would appeal to their base.

Justice Ketanji Brown Jackson, in the face of race-baiting, grandstanding, and theatrical line of questioning stood firm, calm, and composed in her well-thought-out, reasoned answers.²⁴⁴ She showed why she is at the level she is because she is a thoughtful, deliberate, intelligent, hard-working Black woman who is more qualified than most of the men and women on the Supreme Court. It is still a shame that Black women must work twice as hard to get half as far and that they do it under the scrutiny of men and women not nearly as qualified or competent.

²⁴¹ Tayo Bero, *Kentaji Brown Jackson's Confirmation Hearing Is a Disgrace to Her Qualifications*, THE GUARDIAN (Mar. 24, 2022), <https://www.theguardian.com/commentsfree/2022/mar/24/ketanji-brown-jacksons-confirmation-hearing-is-a-disgrace-to-her-qualifications>.

²⁴² Ariane De Vogue, *How Kentaji Brown Jackson Is Preparing for Questions About Her Record on Crime*, CNN (Mar. 21, 2022), <https://www.cnn.com/2022/03/19/politics/ketanji-brown-jackson-criticism-soft-on-crime/index.html>.

²⁴³ See J. Jarpa Jawuni, *Reflections on the Confirmation of Kentaji Brown Jackson from the Center for Women, Gender and Global Leadership and Female Leaders Around Campus*, HOW. UNIV. (Apr. 11, 2022), <https://thedig.howard.edu/all-stories/reflections-confirmation-ketanji-brown-jackson-center-women-gender-and-global-leadership-and-female>; see also Bero, *supra* note 241.

²⁴⁴ Domenico Montanaro, *GOP Questions for Jackson in Her Hearings Were About Midterm Messaging – 4 Takeaways*, NPR (Mar. 23, 2022, 5:33 PM), <https://www.npr.org/2022/03/23/1087238896/ketanji-brown-jackson-hearing-gop-midterm-messaging>.

V. STANDING IN THE BREACH

*Sing a song full of the faith that the dark past has taught us, sing a song full of the hope that the present has brought us, Facing the rising sun of our new day begun Let us march on till victory is won.*²⁴⁵

As Black women live and exist in a society that many times is hostile and antithetical to our very being, we recognize the racism, sexism, bigotry, and misogynoir that we face daily.²⁴⁶ The term misogynoir was initially coined in 2008 by Moya Bailey.²⁴⁷ The verbiage refers to “the anti-Black racist misogyny that Black women experience.”²⁴⁸ It describes a Black woman’s experiences with gender and how both anti-Blackness and racism distort that experience dramatically from white women.²⁴⁹ Misogynoir is a reality for Black women daily and in every sphere in which we operate. From Serena Williams’ body being compared to a male’s body,²⁵⁰ to the brutal, unjustified, murder of Breonna Taylor,²⁵¹ the young 15-year-old enslaved female child who allegedly poisoned the white family she worked for with rat poisoning and was lynched as a result,²⁵² for Black women like Henrietta Lacks whose cells were stolen and used by White medical professionals to enhance and improve the lives of millions of

²⁴⁵ JOHNSON & JOHNSON, *supra* note 2.

²⁴⁶ Stephen J. Lewis, *From the Combination of Racism and Sexism, Here Is the Story of a New Word*, NW. NOW (May 4, 2023), <https://news.northwestern.edu/stories/2023/05/professor-coins-new-word-misogynoir/>; Joseph Kwarteng, *A Focus on Misogynoir – The Anti-Black Forms of Misogyny that Black Women Experience*, OPEN UNIV., <https://www.open.edu/openlearn/education-development/face-and-ethnicity-hub/a-focus-on-misogynoir-the-anti-black-forms-misogyny-black-women-experience> (Sept. 30, 2022).

²⁴⁷ Shawrina Salam, *What Is Misogynoir?: Unpacking the Intersectional Layers of Racism and Misogyny*, FEMINISM IN INDIA (Dec. 6, 2021), <https://feminisminindia.com/2021/12/06/what-is-misogynoir-unpacking-the-intersectional-layers-of-racism-and-misogyny/>.

²⁴⁸ Joseph Kwarteng et al., *Understanding Misogynoir: A Study of Annotators’ Perspectives*, PROC. OF 15TH ASS’N OF COMPUTING MACH. WEB SCI. CONF. 2023, at 271 (Apr. 2023), <https://dl.acm.org/doi/pdf/10.1145/3578503.3583612>.

²⁴⁹ *Id.*; Rhea Boyd, *Who Will Stand Up for Black Women?*, THE NATION (Oct. 2, 2020), <https://www.thenation.com/article/society/black-women-racism-sexism/>.

²⁵⁰ Hannah Ryan, *How Misogynoir Is Oppressing Black Women Athletes*, CNN (Aug. 3, 2021), <https://www.cnn.com/2021/08/02/sport/misogynoir-black-women-athletes-cmd-spt-intl>.

²⁵¹ Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor’s Death*, N.Y. TIMES (Dec. 13, 2023), <https://www.nytimes.com/article/breonna-taylor-police.html>.

²⁵² David V. Baker & Gilbert Garcia, *An Analytical History of Black Female Lynchings in The United States, 1838-1969*, 8 QUALITATIVE CRIMINOLOGY 83 (Oct. 1, 2019), <https://www.qualitativecriminology.com/pub/v8i1p5/release/1m>.

people worldwide,²⁵³ to the countless enslaved Black women used for “medical research” by Dr. James Marion Sims whose bodies were tortured and brutalized for the sake of medical advancements.²⁵⁴

Black women, while being among the most educated in America,²⁵⁵ are still discriminated against and lack pay equity.²⁵⁶ Black women earn 58 cents for every dollar earned by a white man.²⁵⁷ This kind of misogynoir amounts to creating a permanent underclass for Black people given the number of households led by Black women.²⁵⁸ The earning difference is stark and startling in its clear discriminatory message: equal work and credentials do not amount to equal financial compensation.²⁵⁹

Black women have continually found a myriad of ways to overcome and succeed in the face of seemingly insurmountable odds.²⁶⁰ We rejoice and remember iconic Black women such as Myrlie Evers,²⁶¹ Rosa

²⁵³ *Henrietta Lacks: A Donor's Immortal Legacy*, NPR (Feb. 2, 2010), <https://www.npr.org/2010/02/02/123232331/henrietta-lacks-a-donors-immortal-legacy>.

²⁵⁴ *Medical Exploitation of Black Women*, EQUAL JUST. INST. (Aug. 29, 2019), <https://ejl.org/news/history-racial-injustice-medical-exploitation-of-black-women/>; see generally HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* (Doubleday 2007).

²⁵⁵ See Davis, *supra* note 221.

²⁵⁶ Robin Bleiweis et al., *Women of Color and the Wage Gap*, CTR. FOR AM. PROGRESS (Nov. 17, 2021), <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>.

²⁵⁷ *Black Women and the Pay Gap*, AM. ASS'N OF UNIV. WOMEN, <https://www.aauw.org/resources/article/black-women-and-the-pay-gap/> (last visited July 24, 2023).

²⁵⁸ Kimanzi Constable, *More Black Women Head Households—These Expert Tips Help Them Earn*, PARENTS (Apr. 18, 2023), <https://www.parents.com/more-black-women-head-households-these-expert-tips-help-them-earn-6833347>; Eric Levitz, *America Will Only Remain 'Majority White' if Blacks Remain an Underclass*, N.Y. MAG. (May 3, 2018), <https://nymag.com/intelligencer/2018/05/for-america-to-be-white-blacks-must-be-an-underclass.html>.

²⁵⁹ As calculated by the Brookings Institute, the median income for Black women is approximately \$35,000, while the median incomes for Black men, white women, and white men are approximately \$40,000, \$42,000, and \$53,000, respectively. Andre M. Perry, *To Protect Black Women and Save America From Itself, Elect Black Women*, BROOKINGS INST. (July 2020), <https://www.brookings.edu/articles/to-protect-black-women-and-save-america-from-itself-elect-black-women/>.

²⁶⁰ See, e.g., *infra* notes 260–336.

²⁶¹ See *Myrlie Evers, Chairman Emeritus*, MEDGAR & MYRLIE EVERS INST., <https://eversinstitute.org/about/our-board/myrlie-evers/> (last visited Dec. 22, 2023).

Parks,²⁶² Janet Collins,²⁶³ Eva Jessye,²⁶⁴ Bertha Knox Gilkey,²⁶⁵ Alice Walker,²⁶⁶ Cicely Tyson,²⁶⁷ Katherine Dunham,²⁶⁸ Barbara Jordan,²⁶⁹ Toni Morrison,²⁷⁰ Althea T. L. Simmons,²⁷¹ Maxine Waters,²⁷² Johnnetta Betsch Cole,²⁷³ Norma Merrick Sklarek,²⁷⁴ Gwendolyn Brooks,²⁷⁵

²⁶² See Arlisha Norwood, *Rosa Parks 1913–2005*, NAT'L WOMEN'S HIST. MUSEUM (2017), <https://www.womenshistory.org/education-resources/biographies/rosa-parks>.

²⁶³ See Desiree Houston, *Celebrating Black History Month: Spotlight on Janet Collins*, ATL. BALLET, <https://www.atlantaballet.com/news/celebrating-black-history-month-spotlight-on-janet-collins> (last visited Dec. 22, 2023).

²⁶⁴ See Davi Napoleon, *All the World's a Stage*, UNIV. OF MICH., <https://historyofum.umich.edu/all-the-worlds-a-stage/> (last visited Dec. 22, 2023).

²⁶⁵ See *Bertha Knox-Gilkey, March 18, 1948–May 24, 2014*, ALL. OF PARENTS & CHILD. FOR EDUC. EMPOWERMENT, <http://www.apcee.org/bertha-knox-gilkey.html> (last visited Dec. 22, 2023).

²⁶⁶ See Alexis Pauline Gumbs et al., *Alice Walker Official Biography*, ALICE WALKER'S GARDEN, <https://alicewalkersgarden.com/about/> (last visited Dec. 22, 2023).

²⁶⁷ See Robert D. McFadden, *Cicely Tyson, an Actress Who Shattered Stereotypes, Dies at 96*, N.Y. TIMES (Feb. 15, 2021), <https://www.nytimes.com/2021/01/28/obituaries/cicely-tyson-dead.html>.

²⁶⁸ See Vicky J. Risner, *Katherine Dunham: A Life in Dance*, LIBR. OF CONG., <https://www.loc.gov/item/ihas.200152685/> (last visited Dec. 22, 2023).

²⁶⁹ See *Jordan, Barbara Charline*, U.S. H.R.: HIST., ART & ARCHIVES, <https://history.house.gov/People/Detail/16031> (last visited Dec. 22, 2023).

²⁷⁰ See Margalit Fox, *Toni Morrison, Towering Novelist of the Black Experience, Dies at 88*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/books/toni-morrison-dead.html>.

²⁷¹ See *Althea Simmons, NAACP Official, Dies*, WASH. POST (Sept. 15, 1990), <https://www.washingtonpost.com/archive/local/1990/09/15/althea-simmons-naacp-official-dies/4356515f-16ba-4fde-9ecb-04fb3bc3c7b8/>.

²⁷² See *Congresswoman Maxine Waters Serving California's 43rd District, Biography*, U.S. H.R., <https://waters.house.gov/about-maxine/biography> (last visited Dec. 22, 2023).

²⁷³ See *About Johnnetta B. Cole, Ph.D.*, SPELMAN COLL., <https://www.spelman.edu/about-us/office-of-the-president/past-presidents/johnnetta-cole> (last visited Dec. 22, 2023).

²⁷⁴ See Patricia Morton, *Pioneering Woman of American Architecture, Norma Merrick Sklarek*, BEVERLY WILLIS ARCHITECTURE FOUND., <https://pioneeringwomen.bwaf.org/norma-merrick-sklarek/> (last visited Dec. 22, 2023).

²⁷⁵ See *Gwendolyn Brooks, 1917–2000*, POETRY FOUND., <https://www.poetryfoundation.org/poets/gwendolyn-brooks> (last visited Dec. 22, 2023).

Leontyne Price,²⁷⁶ Althea Gibson,²⁷⁷ Ernestine Anderson,²⁷⁸ Unita Blackwell,²⁷⁹ Jewel Plummer Cobb,²⁸⁰ Clara McBride Hale,²⁸¹ Ellen Stewart,²⁸² Beah Richards,²⁸³ Carrie Saxon Perry,²⁸⁴ Charlayne Hunter-Gault,²⁸⁵ Constance Baker Motley,²⁸⁶ Oprah Winfrey,²⁸⁷ Sonia Sanchez,²⁸⁸ Georgia Montgomery Davis Powers,²⁸⁹ Daisy Bates,²⁹⁰ Marva

²⁷⁶ See Peter Clark, *Leontyne Price: A Legendary Met Career*, METRO. OPERA, <https://www.metopera.org/discover/archives/notes-from-the-archives/leontyne-price-a-legendary-met-career/> (last visited Dec. 22, 2023).

²⁷⁷ See *Althea Gibson, Biography*, INT'L TENNIS HALL OF FAME, <https://www.tennisfame.com/hall-of-famers/inductees/althea-gibson> (last visited Dec. 22, 2023).

²⁷⁸ See Paul de Barros, *Jazz Great Ernestine Anderson Dies*, SEATTLE TIMES (Mar. 14, 2016, 4:52 PM), <https://www.seattletimes.com/seattle-news/obituaries/jazz-great-ernestine-anderson-dies/>.

²⁷⁹ See *Unita Zelma Blackwell (1933–2019)*, NAT'L PARK SERV. (July 5, 2023), <https://www.nps.gov/people/unitablackwell-1933-2019.htm>.

²⁸⁰ See *Jewel Plummer Cobb*, CONN. WOMEN'S HALL OF FAME, <https://www.cwhf.org/inductees/jewel-plummer-cobb> (last visited Dec. 22, 2023).

²⁸¹ See Madalyn Mentor, *Clara McBride Hale (1905–1992)*, BLACKPAST (Feb. 1, 2009), <https://www.blackpast.org/african-american-history/hale-clara-mcbride-1905-1992/>.

²⁸² See A.A. Cristi, *Celebrating Black History Month: Spotlight on Ellen Stewart, Founder of La MaMa Experimental Theatre Club*, BROADWAY WORLD (Feb. 1, 2021), <https://www.broadwayworld.com/article/Celebrating-Black-History-Month-Spotlight-on-Ellen-Stewart-Founder-of-La-MaMa-Experimental-Theatre-Club-20210201>.

²⁸³ See *Beah Richards, Actress Born*, AFR. AM. REGISTRY, <https://aaregistry.org/story/beah-richards-award-winning-actress/> (last visited Dec. 22, 2023).

²⁸⁴ See Katharine Q. Seelye, *Carrie Saxon Perry, Barrier-Breaking Mayor, Dies at 87*, N.Y. TIMES (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/us/politics/carrie-saxon-perry-dead.html>.

²⁸⁵ See *Charlayne Hunter-Gault*, THE HISTORYMAKERS, <https://www.thehistorymakers.org/biography/charlayne-hunter-gault-41> (last visited Dec. 22, 2023).

²⁸⁶ See *Constance Baker Motley: Judiciary's Unsung Rights Hero*, U.S. CTS. (Feb. 20, 2020), <https://www.uscourts.gov/news/2020/02/20/constance-baker-motley-judiciarys-unsung-rights-hero>.

²⁸⁷ See *Oprah Winfrey*, FORBES, <https://www.forbes.com/profile/oprah-winfrey/?sh=5544335d5745> (last visited Dec. 22, 2023).

²⁸⁸ See *Sonia Sanchez*, SONIA SANCHEZ, <https://soniasanchez.net/> (last visited Dec. 22, 2023).

²⁸⁹ See Joseph Gerth, *Civil Rights Leader Georgia Powers Dies at 92*, COURIER-J. (Jan. 30, 2016, 7:09 AM), <https://www.courier-journal.com/story/news/local/2016/01/30/civil-rights-leader-georgia-powers-dies-92/79529572/>.

²⁹⁰ See Arlisha Norwood, *Daisy Bates*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/daisy-bates> (last visited Dec. 22, 2023).

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²⁹¹ See *Marva Collins, Educator Born*, AFR. AM. REGISTRY, <https://aaregistry.org/story/educator-marva-collins-born/> (last visited Dec. 22, 2023).

²⁹² See *Lena Horne Biographical Timeline*, PBS (Jan. 14, 2021), <https://www.pbs.org/wnet/americanmasters/lena-horne-biographical-timeline/16659/>.

²⁹³ See *Willie Mae Ford Smith*, NAT'L ENDOWMENT FOR THE ARTS, <https://www.arts.gov/honors/heritage/willie-mae-ford-smith> (last visited Dec. 22, 2023).

²⁹⁴ See *About Mrs. Coretta Scott King*, THE KING CTR., <https://thekingcenter.org/about-tkc/about-mrs-king/> (last visited Dec. 22, 2023).

²⁹⁵ See *Jewell Jackson McCabe*, NYU WAGNER, <https://wagner.nyu.edu/community/faculty/jewell-jackson-mccabe> (last visited Dec. 22, 2023).

²⁹⁶ See *Mary Frances Berry*, PENN ARTS & SCIS. DEP'T OF HIST., <https://live-sas-www-history.pantheon.sas.upenn.edu/people/faculty/mary-frances-berry> (last visited Dec. 22, 2023).

²⁹⁷ See *Inspired by a Grandmother's Love*, RUBY'S ACAD. CHILDCARE & PRESCHOOL, <https://www.rubysacademy.com/miss-ruby> (last visited Dec. 22, 2023).

²⁹⁸ See Dinitia Smith, *Jean Hutson, Schomburg Chief, Dies at 83*, N.Y. TIMES (Feb. 7, 1998), <https://www.nytimes.com/1998/02/07/arts/jean-hutson-schomburg-chief-d>.

²⁹⁹ See Emma Rothberg, *Anna Arnold Hedgeman*, NAT'L WOMEN'S HIST. MUSEUM (Mar. 2021), <https://www.womenshistory.org/education-resources/biographies/anna-arnold-hedgeman>

³⁰⁰ See *Author: Johnnie Tillmon*, MS. MAG., <https://msmagazine.com/author/jtillmon/> (last visited Dec. 22, 2023).

³⁰¹ See *Lena Horne Biographical Timeline*, PBS (Jan. 14, 2021), <https://www.pbs.org/wnet/americanmasters/lena-horne-biographical-timeline/16659/>.

³⁰² See *Angela Y. Davis*, RADCLIFFE INST. FOR ADVANCED STUDY AT HARV. UNIV., <https://www.radcliffe.harvard.edu/schlesinger-library/collections/angela-y-davis> (last visited Dec. 22, 2023).

³⁰³ See *Simone Biles*, SIMONE BILES, <https://simonebiles.com/> (last visited July 22, 2023).

³⁰⁴ See *Dr. Betty Shabazz*, NAT'L PARK SERV., <https://www.nps.gov/people/shabazz.htm> (last visited Dec. 22, 2023).

³⁰⁵ See Keisha N. Blain, *Audley Moore, Black Women's Activism, and Nationalist Politics*, BLACK PERSPS. (Feb. 25, 2019), <https://www.aaihs.org/audley-moore-black-womens-activism-and-nationalist-politics/>.

³⁰⁶ See Lori Van Pelt, *Liz Bird, First Black Woman in Wyoming's Legislature*, WYOHISTORY.ORG (May 24, 2015), <https://www.wyohistory.org/encyclopedia/liz-byrd-first-black-woman-wyoming-legislature>.

³⁰⁷ See Debra Michals, *Shirley Chisholm*, NAT'L WOMEN'S HIST. MUSEUM (2015), <https://www.womenshistory.org/education-resources/biographies/shirley-chisholm>.

Tyus,³⁰⁸ Ruby Dee,³⁰⁹ Leontine T.C. Kelly,³¹⁰ Margaret Walker Alexander,³¹¹ Rachel Robinson,³¹² Gloria Dean Randle Scott,³¹³ Marian Wright Edelman,³¹⁴ Elizabeth Catlett,³¹⁵ Jackie Torrence,³¹⁶ Autherine Lucy,³¹⁷ Alexa Canady,³¹⁸ Yvonne Brathwaite Burke,³¹⁹ Dorothy Irene Height,³²⁰ Sarah Vaughn,³²¹ Josephine Riley Matthews,³²² Niara

³⁰⁸ See Allison Torres Burtka, *Wyomia Tyus: The Original Athlete Activist Hiding in Plain Sight*, THE GUARDIAN (Dec. 23, 2021, 11:25 AM), <https://www.theguardian.com/sport/2021/dec/23/wyomia-tyus-athlete-activism-usa-olympics>.

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³¹⁰ See *Leontine T.C. Kelly*, NAT'L WOMEN'S HALL OF FAME, <https://www.womenofthehall.org/inductee/leontine-tc-kelly/> (last visited Dec. 22, 2023).

³¹¹ See *Margaret Walker*, JACKSON STATE UNIV., <https://www.jsu.edu/margaretwalkercenter/margaret-walker/> (last visited Dec. 22, 2023).

³¹² See Analis Bailey, *Rachel Robinson, Jackie's widow and baseball's First Lady, is celebrating her 100th birthday*, USA TODAY (July 19, 2022, 9:13 P.M.), <https://www.usatoday.com/story/sports/mlb/2022/07/19/rachel-robinson-100th-birthday-jackie-foundation/10099294002/>.

³¹³ See *Gloria Scott*, THE HISTORYMAKERS, <https://www.thehistorymakers.org/biography/gloria-scott-41> (last visited Dec. 22, 2023).

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³¹⁵ See *Elizabeth Catlett*, NAT'L MUSEUM OF WOMEN IN THE ARTS, <https://nmwa.org/art/artists/elizabeth-catlett/> (last visited Dec. 22, 2023).

³¹⁶ See Myrna Oliver, *Jackie Torrence, 60; Storyteller Focused on Cultural Lore*, L.A. TIMES (Dec. 12, 2004, 12:00 A.M.), <https://www.latimes.com/archives/la-xpm-2004-dec-12-metorrence12-story.html>.

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³¹⁸ See *Dr. Alexa Irene Canady*, CHANGING THE FACE OF MED., https://cfmedicine.nlm.nih.gov/physicians/biography_53.html (last visited Dec. 22, 2023).

³¹⁹ See *BURKE, Yvonne Brathwaite*, HIST., ART & ARCHIVES: U.S. H.R., [https://history.house.gov/People/Listing/B/BURKE,-Yvonne-Brathwaite-\(B001102\)/](https://history.house.gov/People/Listing/B/BURKE,-Yvonne-Brathwaite-(B001102)/) (last visited Dec. 22, 2023).

³²⁰ See Arlisha Norwood, *Dorothy Height*, NAT'L WOMEN'S HIST. MUSEUM (2017), <https://www.womenshistory.org/education-resources/biographies/dorothy-height>.

³²¹ See *Sarah Vaughan*, NAT'L ENDOWMENT FOR THE ARTS, <https://www.arts.gov/honors/jazz/sarah-vaughan> (last visited Dec. 22, 2023).

³²² See Brian Lanker, *Josephine Riley Matthews, c. 1980*, NAT'L GALLERY OF ART, <https://www.nga.gov/collection/art-object-page.170334.html> (last visited Dec. 22, 2023).

Sudarkasa,³²³ Wilma Rudolph,³²⁴ Odetta,³²⁵ Cora Lee Johnson,³²⁶ Eleanor Holmes Norton,³²⁷ Ophelia DeVore-Mitchell,³²⁸ Sherian Grace Cadoria,³²⁹ Priscilla L. Williams,³³⁰ Leah Chase,³³¹ Elizabeth Cotton,³³² Marian Anderson,³³³ Winson and Dovie Hudson,³³⁴ ,³³⁵ Maya Angelou,³³⁶ and Septima Poinsette Clark.³³⁷

It is upon the backs and shoulders and sweat and sacrifices and tears and lives that people like Kamala Harris and Justice Ketanji Brown Jackson can ascend to the heights of the first Black woman in the Vice Presidency and justice on the U.S. Supreme Court. Black women have always been the nurturers and sustenance of this country. When enslaved women were forced to nurse and suckle White babies and forego their own, it was Black

³²³ See *Obituary: Niara Sudarkasa*, UNIV. OF MICH.: UNIV. REC. (June 14, 2019), <https://record.umich.edu/articles/obituary-niara-sudarkasa/>.

³²⁴ See *Wilma Rudolph*, OLYMPICS, <https://olympics.com/en/athletes/wilma-rudolph> (last visited Dec. 22, 2023).

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³²⁷ See Biography of Eleanor Holmes Norton, H.R., <https://norton.house.gov/about/full-biography> (last visited Dec. 22, 2023).

³²⁸ See Margalit Fox, *Ophelia DeVore-Mitchell, 92, Dies; Redefined Beauty*, N.Y. TIMES (Dec. 22, 2014), <https://www.nytimes.com/2014/03/13/nyregion/ophelia-devore-mitchell-91-dies-redefined-beauty.html>. 1

³²⁹ See *Sherian Grace Cadoria*, HORATIO ALGER ASS'N, <https://horatioalger.org/members/member-detail/sherian-grace-cadoria> (last visited Dec. 22, 2023).

³³⁰ See LANKER, *supra* note 326, at 152.

³³¹ See *Chef Leah Chase*, NEW ORLEANS & CO., <https://www.neworleans.com/restaurants/chefs/chefleah-chase/> (last visited Dec. 22, 2023).

³³² See *Elizabeth Cotten: Master of American Folk Music*, SMITHSONIAN FOLKWAYS RECORDINGS, <https://folkways.si.edu/elizabeth-cotten-master-american-folk/music/article/smithsonian> (last visited Dec. 22, 2023).

³³³ See *Marian Anderson "A Dream, A Life, A Legacy"*, NAT'L MARIAN ANDERSON MUSEUM, <https://marianandersonhistoricalsociety.weebly.com/biography.html> (last visited Dec. 22, 2023).

³³⁴ See Constance Curry, *Winson Hudson*, MISS. ENCYCLOPEDIA (Apr. 14, 2018), <https://mississippiencyclopedia.org/entries/winson-hudson/>.

³³⁵ See LANKER, *supra* note 326, at 161.

³³⁶ See *Maya Angelou*, BIOGRAPHY (May 10, 2021), <https://www.biography.com/authors-writers/maya-angelou>.

³³⁷ See *Clark, Septima Poinsette*, STAN. UNIV: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/clark-septima-poinsette> (last visited Dec. 22, 2023).

women who stood in the breach.³³⁸ When Black women were the impetus in the indomitable form of Harriet Tubman who freed thousands of enslaved people through the underground railroad, it was a Black woman who stood in the breach.³³⁹ One cannot forget Sojourner Truth, who was the first Black woman to win a lawsuit against a White man, as she fought for equality and her basic human rights.³⁴⁰ We reminisce on Black women working and strengthening the Civil Rights³⁴¹ and the Black Power movement³⁴² as they stood in the breach. When we saw countless unarmed Black men being killed in the streets, it was Black women who formed the Black Lives Matter movement and stood strong in the breach.³⁴³ It was the courageous Stacey Abrams who helped turn a red Georgia into a blue Georgia, paving the way for Raphael Warnock to become the first Black man nominated to the Senate in Georgia.³⁴⁴ Black women are the backbone of this country and have consistently shown that they are resilient, tenacious, determined, intelligent, hard-working, fortuitous, industrious, talented, multi-faceted, and phenomenal.

Because Black women stand at multiple intersections that face discriminatory treatment,³⁴⁵ they can empathize and work towards freedom and equality for other marginalized groups.³⁴⁶ Black women have always been the backbone for underrepresented and oppressed groups, and they are the ones that have continually fought for liberation for all,

³³⁸ Kamna Kirti, *The Tragic Plight of Enslaved Wet Nurses*, MEDIUM (Aug. 2, 2020), <https://medium.com/lessons-from-history/the-tragic-plight-of-enslaved-wet-nurses-b1c80b73f290>.

³³⁹ *Harriet Tubman*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/harriet-tubman> (last visited Dec. 22, 2023).

³⁴⁰ *Sojourner Truth*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/sojourner-truth> (last visited Dec. 22, 2023).

³⁴¹ *Women in the Civil Rights Movement*, NAT'L PARK SERV. (Aug. 6, 2021), <https://www.nps.gov/articles/women-in-the-civil-rights-movement-historic-context-statement-and-aacr-listing-guidance-african-american-civil-rights-network.htm>.

³⁴² *Women in Black Power*, NAT'L ARCHIVES, <https://www.archives.gov/research/african-americans/black-power/women> (last visited Dec. 22, 2023).

³⁴³ *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/herstory/> (last visited Dec. 22, 2023).

³⁴⁴ Veronica Stracqualursi, *Warnock Will Make History as Georgia's First Black Senator*, CNN (Jan. 6, 2021, 9:02 AM), <https://www.cnn.com/2021/01/06/politics/warnock-georgia-first-black-senator/index.html>.

³⁴⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139 (1989).

³⁴⁶ *Id.*

even when they are not the ones who truly have benefitted at the end of that fight.³⁴⁷

CONCLUDING THOUGHTS

Thus far, this essay has outlined the mistreatment of Black women which has had a continuum that spanned centuries.³⁴⁸ Maybe it is purposeful to view this horrific history of mistreatment and maltreatment through a different lens to fully comprehend and interpret it. To get to the root of why White America feels the need to shrink and diminish Anita Hill, Ketanji Brown Jackson, Kamilah Harris, Ruby Freeman, Shaye Freeman Moss, and countless other Black women, perhaps a closer look is needed. Is it possible that centuries-old myths, memes, and maltreatment are grounded in fear? Is there fear because Black women are a force of nature not to be reckoned with, fear because they have endured the unendurable? Fear because of the knowledge that their uteri produced “Black gold”³⁴⁹ that literally built a nation, thereby, destroying the myth of the mighty white man? Is it the power exuded by Black women that threaten the status quo of White America and potentially debunks the myth of white superiority? Is it easier to relegate Black women to welfare queens instead of just seeing them as queens?

In the final analysis, Black women want to be viewed as simply whole and valued human beings whose worth is not calculated in a group text and who are allowed to rise or fall on their own merit, just like White men and women. Neither Anita Hill, Ketanji Brown Jackson, nor the next Black woman to speak before any group should be subjected to debasement and mistreatment. White America knows better and they must do better.

³⁴⁷ *Id.*

³⁴⁸ *See, e.g.*, Baker & Garcia, *supra* note 252, at 91–109.

³⁴⁹ Russell Bruce, *Black Gold: The Trade in Human Life*, NEWSNET (July 7, 2020), <https://newsnet.scot/commentary/black-gold-the-trade-in-human-life/>.