

NORMALIZING INJUSTICE: THOMAS, HILL, AND THE NECESSITY OF INTERSECTIONALITY IN RHETORICAL CRITICISM

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I. Introduction

“This is the new normal for me,” Professor Anita Hill said while speaking in front of an audience with *The New York Times* in 2019.¹ Nearly 30 years earlier, on September 25th, 1991, the trajectory of Hill’s life and career would change forever. As a former employee of Supreme Court nominee Clarence Thomas, Hill would come forward with an extensive recollection of sexual harassment allegations against the then-appellate judge that marred her tenure with Thomas at the Department of Education and Equal Employment Opportunity Commission (“EEOC”).² During that final chapter of the confirmation hearings, Hill testified in front of an overwhelmingly male and white Senate. Decades later, her testimony and bravery for bringing her allegations public continue to influence conversations regarding sexual harassment, holding lawmakers accountable, and accountability for future and current Supreme Court Justices.³ From a rhetorical standpoint, Thomas’ hearing also sheds light on the unique obstacles women of color, particularly black women, face when making allegations against black men—especially ones who are high-profile figures. Thomas’ weaponization of racism and usage of negative black women archetypes during his confirmation proceedings demonstrates the ways in which a male-centered conception of racism in America is not only problematic, but dangerous. Thomas famously referred to the allegations of sexual harassment leveraged against him by Hill, a black woman, as a “high-tech lynching” in which he would be “caricatured by a committee of the U.S. Senate, rather than hung from a tree.”⁴

This paper will attempt to deconstruct Thomas’ testimony in response to Hill’s claims to discern what rhetorical methods were used to persuade a majority of the Senate Judicial Committee to approve Thomas’ confirmation despite Hill’s allegations of sexual harassment. To account for Hill’s identity as a black woman, and Thomas’ identity as a black man, this paper will use an analysis that combines elements from both the racial and feminist approaches of rhetorical criticism. By adopting Kimberle Crenshaw’s theory of intersectionality, which was created as a critique of the dominant “single-axis framework” of racial and feminist rhetorical criticism, this paper seeks to reveal how racism and misogyny operate rhetorically in a public setting between two members of the same race with different genders. First this paper will provide an overview of the rhetorical artifact, Justice Thomas’ confirmation hearing transcript, focusing on the testimony immediately following Hill’s allegations. Second, the analysis will first give an overview of racial tropes associated with black women, and how Thomas weaponized these to undermine Hill’s credibility as a victim. Next, there will be a discussion on

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¹ *How History Changed Anita Hill*, THE NEW YORK TIMES (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/anita-hill-women-power.html>.

² THE NEW YORK TIMES, *supra* note 1.

³ Dahlia Lithwick & Gillian Thomas, “*National Group Therapy*” *How the Clarence Thomas confirmation hearings changed how America talks about sexual harassment*, SLATE.COM (Apr. 14, 2016).

⁴ *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States Hearings Before the Comm. on the Judiciary United States Senate*, 102nd Cong. pt. 4 at 158 (1991) [hereinafter *Confirmation Hearings*].

how Thomas used antiracist rhetoric and America's gruesome history of lynching to brand himself as a victim of racism during his testimony. Finally, this paper will analyze how Thomas claims to be a victim of negative black male stereotypes by using common antiracist rhetoric to defend misogyny, despite subjecting Hill to similarly negative archetypes based on her gender and race.

II. Justice Thomas' Confirmation Hearing: A "High-Tech Lynching" or A Somber Warning?

Just five years after the Supreme Court held that sexual harassment was illegal in the landmark *Meritor Savings Bank v. Vinson*, the country was still grappling with conflicting perceptions of what constituted sexual harassment.⁵ Professor Hill's allegations took place over several years during the time that she worked as Thomas' special assistant at the U.S. Department of Education in 1981 to her position as his assistant at the EEOC until leaving to become a law professor in 1983 in her home state of Oklahoma.⁶

Both Hill and Thomas defied racial stereotypes in their own right. Hill, a law professor at the University of Oklahoma, grew up on a farm as the youngest of 13 children.⁷ Despite not growing up with a lot of money, Hill described her childhood as one of "hard work" in a "religious atmosphere."⁸ Hill would eventually graduate university with academic honors before attending Yale Law School and receiving her J.D. degree in 1980.⁹ Thomas was born outside of Savannah, Georgia and was raised by his grandfather after his father left his family and his mother struggled financially after their home was lost in a fire.¹⁰ Thomas, originally wishing to become a Catholic priest, attended a Catholic boarding school and Conception Seminary.¹¹ After struggling with the Catholic Church's failure to address civil rights, Thomas transferred colleges and decided to pursue a career in law.¹² Thomas later went on to graduate from Yale Law School as one of the first black students admitted under a program aimed at enrolling more black students.¹³ Thomas would work as an attorney in various positions before being appointed as the Assistant Secretary for Civil Rights in the U.S. Department of Education.¹⁴

⁵ Caroline Forell, *Article: Essentialism, Empathy, And The Reasonable Woman*, 1994 U. ILL. L. REV. 788 (1994).

⁶ *Id.* at 780.

⁷ *Anita Hill's Testimony*

The testimony of Anita Hill to the Senate Judiciary Committee regarding the Supreme Court nomination of Clarence Thomas, NYHISTORY.ORG (1991), <https://wams.nyhistory.org/end-of-the-twentieth-century/the-information-age/anita-hills-testimony/>.

⁸ NYHISTORY.ORG, *supra* note 7.

⁹ NYHISTORY.ORG, *supra* note 7.

¹⁰ Erin Blakemore, *How Anita Hill's Confirmation Hearing Testimony Brought Workplace Sexual Harassment to Light*, *History.com* (2021), <https://www.History.com/news/anita-hill-clarence-thomas-sexual-harassment-confirmation-hearings>.

¹¹ Chantelle Lee, *'He's a Bundle of Contradictions': Why Clarence Thomas Left the Black Power Movement Behind*, PBS.ORG (2023), <https://www.pbs.org/wgbh/frontline/article/clarence-thomas-black-power-movement/>.

¹² Julia Ingram, *Clarence Thomas' Long Battle Against Affirmative Action*, PBS.ORG (2023), <https://www.pbs.org/wgbh/frontline/article/clarence-thomas-long-battle-against-affirmative-action/>.

¹³ *Clarence Thomas*, *Oyez.org* (2003), https://www.Oyez.org/oyez/resource/legal_entity/106/biography.

¹⁴ *Oyez.org*, *supra* note 13.

After Justice Thurgood Marshall, the first African American justice of the Supreme Court announced his retirement in July 1991, President George H.W. Bush nominated then 43-year-old Clarence Thomas, whom he had previously appointed as a judge to the U.S. Court of Appeals.¹⁵ Although then-Judge Thomas' professional reputation led to him receiving the prestigious Supreme Court nomination in the first place, the hearings marked what could be considered his introduction to the greater public. At first glance, Thomas seemed to conveniently appease two populations who were frequently at odds. On one hand, as a black man, Thomas represented a new opportunity for continued black representation on the Supreme Court bench, a feat only previously accomplished by Justice Marshall as the lone black Supreme Court justice for the 202-year-old institution at that time.¹⁶ On the other hand, as a staunch conservative, Thomas also seemingly appeased the conservative white Christian demographic that comprised then-President George H.W. Bush's constituency.¹⁷

After being contacted by several members of the Senate Judiciary Committee in the late summer of 1991 about possible instances of misconduct by Thomas, Hill felt it was her ethical responsibility to relay her personal experience while working for him.¹⁸ The allegations leveraged by Hill detailed Thomas incessantly asking her out and, after her refusal, graphic conversations discussing sex.¹⁹ In the live hearings, Hill was forced to discuss specificities of Thomas' comments—including porn stars, pubic hair, among other instances of Thomas' harassment.²⁰

Hill's calm, eloquent, and detailed recollection of her encounters with Thomas drew conflicting reactions from audiences across the country. Her narrative—a black woman allegedly sexually harassed by her supervisor, a black man—disrupted the public's beliefs around both race and gender and revealed a societal unwillingness to accept a black woman as a victim of such misconduct. When Hill's allegations were made public, Thomas' confirmation hearings were three-quarters of the way done. From October 11th through the 13th, 1991, the country became transfixed with the live coverage allowing an unprecedented look inside a case of intraracial sexual harassment.²¹

III. Rhetorical Approaches

Given race and gender are inextricably linked in this artifact, both the racial and feminist rhetorical approaches will be used to address the complexities of Professor Hill's status as a black woman accusing a prominent black man of sexual harassment. Specifically, this paper will analyze how Clarence Thomas used gendered, racial stereotypes of black women in reference to Professor Hill; established his own victimhood by repeatedly describing this situation as his own

¹⁵ Angela Mae Kupenda, *The Call And The Response: The Call, The 1991 Open Letter From Federal Judge A. Leon Higginbotham, Jr., # And The 25 Years Of Response From Justice Clarence Thomas*, 49 J. Marshall L. Rev. 940 (2016).

¹⁶ OYEZ.ORG, *supra* note 13.

¹⁷ OYEZ.ORG, *supra* note 13.

¹⁸ Terry Gross, *Anita Hill Started A Conversation About Sexual Harassment. She's Not Done Yet*, NPR.ORG (2021), <https://www.npr.org/2021/09/28/1040911313/anita-hill-belonging-sexual-harassment-conversation>.

¹⁹ Sarah Pruitt, *How Anita Hill's Testimony Made America Cringe—And Change*, HISTORY.COM (2021), <https://www.History.com/news/anita-hill-confirmation-hearings-impact>.

²⁰ HISTORY.COM, *supra* note 19.

²¹ HISTORY.COM, *supra* note 19.

lynching; and railed against the dangers of black male stereotypes of hypersexuality to ultimately overcome Professor Hill's allegations and gain the votes necessary for confirmation to the Supreme Court.

Racial rhetorical criticism is generally defined as "a scholarly project that maps the rhetoricity of race and whiteness."²² Unlike traditional methods of rhetorical criticism, however, racial rhetorical criticism is unique in that the analysis is not strictly defined.²³ This is partially due to the fact that what racism and white supremacy look like is constantly evolving.²⁴ Thus, marginalized communities should feel compelled to authentically critique rhetorical artifacts without such rigid constraints.²⁵ Like racial rhetorical criticism, the feminist rhetorical approach can also take many forms and is not constricted to a set formula.²⁶ At its core, feminist rhetorical criticism involves analyzing the ways in which hegemonies are disrupted and how such disruptions impact dominant ideologies and power structures.²⁷

In this paper, elements of racial and feminist rhetorical criticism will be combined by using an intersectional feminist rhetorical approach to analyze Thomas' rhetoric. Intersectional feminism—an expansion of feminism coined by Kimberle Crenshaw—is a concept that "challenges an entire structure of domination of which patriarchy is one part and directs our attention to systems of domination and the inter-relatedness of sex, race, and class oppression."²⁸ When Crenshaw first introduced the theory in her essay *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, as a law professor she sought "to examine how this tendency is perpetuated by a single-axis framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist politics."²⁹ After analyzing several early cases involving discrimination impacting black women, specifically, Crenshaw found that there was a rhetorical gap when it came to accounting for black women subjected to compounded racial and gender discrimination.³⁰ This sentiment was later echoed by racial rhetorical scholar Lisa Flores, who deemed obstinate intersectionality is necessary because "[w]ithout such critical intersectional practices, attempts at racial rhetorical criticism are likely, they conclude, to reinscribe whiteness, prompting 'drive-by-race' scholarship and fostering flat analyses."³¹ Thus, without accounting for the relationship between masculinity and racism, only considering a social actor's race ignores the complicated social realities of white supremacy's reliance on masculinity and its influence on intra-racial misogyny.

²² Lisa A. Flores, *Towards an insistent and transformative racial rhetorical criticism*, [2018] 14 COMM'C'N AND CRITICAL/CULTURAL STUDIES 349.

²³ Lisa A. Flores, *supra* note 22 at 350.

²⁴ Lisa A. Flores, *supra* note 22 at 350.

²⁵ Lisa A. Flores, *supra* note 22 at 350.

²⁶ Cheryl Glenn, *The language of rhetorical feminism, anchored in hope*, 6. OPEN LINGUISTICS at 336 (2020).

²⁷ Cheryl Glenn, *supra* note 26.

²⁸ Sonja K. Foss, *Rhetorical Criticism: Exploration and Practice* 142 (5th ed. 2018).

²⁹ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. OF CHI. F. 139, 139, 142 (1989)

³⁰ Kimberle Crenshaw, *supra* note 29 ("Thus, the court apparently concluded that Congress either did not contemplate that Black women could be discriminated against as 'Black women' or did not intend to protect them when such discrimination occurred.").

³¹ Lisa A. Flores, *supra* note 22 at 351.

To analyze this artifact from an intersectional feminist approach, this paper will first provide an overview of historic context regarding the negative stereotypes associated with black women and victims of sexual harassment who come forward with their allegations. Doing so will reveal Thomas' subtle references to these negative tropes to discredit Hill's allegations as a black woman. Next, this paper will use the concept of unmodified antiracism to demonstrate how Thomas relies on the dominant "male-centered" narrative of racism against black Americans to depict himself as a victim of racial violence in his response to Hill's allegations.³² Finally, this paper will expand on this dominant narrative as it applies to the history of the sexuality of black men in America and how this historical context has been weaponized by Thomas and other prominent black male figures to silence black victims.

IV. An Intersectional Analysis on Thomas' testimony responding to Hill's Allegations

A. How Thomas Cast Doubt on Hill's Testimony Through Gendered Stereotypes

"Forceful,"³³ "unyielding,"³⁴ "not as good,"³⁵ "aggressive,"³⁶ and "angry."³⁷ These are just a few examples of the words that Thomas used to describe Hill during his confirmation hearing. To dissect these words further, it is important to first acknowledge the long history of negative tropes associated with black women that have developed throughout American history. The most common of these tropes are the "Mammy, Sapphire and Jezebel."³⁸ First, the Mammy can be described as "[e]veryone's favorite aunt or grandmother, sometimes referred to as 'Aunt Jemima.'"³⁹ She is always "ready to soothe everyone's hurt, envelop them in her always ample bosom, and wipe away their tears," and faithfully "even more nurturing to her white charges than to her own children."⁴⁰ In the context of sexual harassment, the Mammy's claims would lack credibility "because no one would believe that a man would desire an asexual woman."⁴¹ The Jezebel, in contrast, is "the bad-black-girl."⁴² Pre-dating the arrival of black women to America, historically the Jezebel was depicted in the Old Testament as "a loose woman, who caused Elijah to be exiled."⁴³ The Jezebel is seen as hypersexual, "indiscriminately" mesmerizing, and luring men "into her bed, or very deliberately lures into her snares those who have something of value to her."⁴⁴ Consequently, any allegations of sexual harassment raised by a black woman portrayed as a Jezebel would be dismissed as false given her insatiable sexuality.⁴⁵ Finally, the Sapphire

³² Devon W. Carbado, *The Construction Of O.J. Simpson As A Racial Victim*, 32 Harv. C.R.-C.L. L. Rev. 49, 50 (1997).

³³ *Confirmation Hearings*, *supra* note 4 at 220-221.

³⁴ *Id.* at 168.

³⁵ *Id.*

³⁶ *Id.* at 186.

³⁷ *Id.*

³⁸ Marilyn Yarbough & Crystal Bennet, *Cassandra and the "Sistahs": The Peculiar Treatment of African American Women in the Myth of Women as Liars*, 3 J. Gender Race & Just. 625, 627 (2000).

³⁹ *Id.* at 635.

⁴⁰ *Id.* at 635-636.

⁴¹ *Id.* at 637.

⁴² *Id.* at 635.

⁴³ *Id.* at 636.

⁴⁴ *Id.*

⁴⁵ *Id.* at 637-638.

archetype is a “wise-cracking, balls-crushing, emasculating woman,” who “is usually shown with her hand on her hips and her head thrown back as she lets everyone know she is in charge.”⁴⁶ The polar opposite of the Mammy, the Sapphire woman is “portrayed as evil, bitchy, stubborn, and hateful.”⁴⁷ Similar to the Jezebel, if a woman depicted as a Sapphire were to make claims of sexual abuse, they would be “overshadowed by her ‘reputation for deception, lying and lack of loyalty.’”

Legal scholars have also argued that black women are more likely to suffer from a phenomenon called the “Cassandra curse,” a term derived from the myth of a mortal woman subjected to suffering after rejecting the sexual advances of the god, Apollo.⁴⁸ Because of her curse, Cassandra was ignored when she warned the Trojans of the Greeks hiding in the wooden horse that would result in the fall of Troy.⁴⁹ Throughout the tale of her tragic life, Cassandra’s accurate visions are repeatedly dismissed by her community who see her as a liar and “[c]onsequently, the male power structure’s disbelief of and failure to listen to Cassandra’s prophecies led to its own destruction.”⁵⁰ The concept of the “Cassandra curse” is frequently used by legal scholars to describe how in cases involving sexual harassment and assault, female victims have their credibility harshly scrutinized when speaking out about their perpetrators.⁵¹ Thus, this analysis will focus on the Cassandra curse in conjunction with negative African American stereotypes to understand how Thomas’ language in describing Hill gave him the votes necessary to overcome her testimony and be confirmed to the Supreme Court.

Throughout his testimony, Thomas constructs a caricature of Hill based on the Sapphire archetype, with a sprinkle of the Jezebel stereotype, and the Cassandra curse. First, Thomas incorporates the characteristics commonly associated with the Sapphire stereotype when describing Hill’s behavior at their workplace. When asked whether he would describe Hill as “meek,” Thomas quickly dismisses this descriptor by repeatedly testifying that Hill was argumentative, frequently got into arguments about her positions with coworkers, and threw “temper tantrum[s]” when others disagreed with her opinion.⁵² When responding to Hill being labeled as meek on another occasion, Thomas answered, “What I have attempted to do here is simply say to you that—you indicated that she was meek and suggesting that she was not an aggressive, strong person. I remember Anita as aggressive, strong and forceful and advocating the positions that she stood for. Again, there are others who worked with her and I suggest that you have them come before this committee and you ask them.”⁵³ In other words, Thomas wanted the audience to know that he was merely another victim to Hill’s stubborn and hateful attitude and rather than being her supervisor, he was the one tasked with “iron[ing] out” the aftermath of Hill’s explosive blowups.⁵⁴

⁴⁶ *Id.* at 636.

⁴⁷ *Id.* at 638.

⁴⁸ *Id.* at 645.

⁴⁹ *Id.* at 627.

⁵⁰ *Id.* at 628.

⁵¹ *Id.*

⁵² *Confirmation Hearings*, *supra* note 4 at 168.

⁵³ *Id.* at 186.

⁵⁴ *Id.* at 168.

Beyond being “angry” and “aggressive,” Thomas also wanted the audience to know that Hill was incompetent. Despite calling her “very bright,” Thomas frequently insinuated that Hill’s frustrations stemmed from her poor performance as compared to her colleagues and that this may have served as a basis for her allegations.⁵⁵ As Thomas explained, “I thought the work was good. The problem was that—and it wasn’t a problem—was, it was not as good as some of the other members of the staff.”⁵⁶ This portrayal of Hill as wholly incompetent is seemingly motivated by a desire to further call her credibility, and allegations, into question. Despite the hostile workplace that Thomas illustrates, he never provides documentation of complaints made regarding Hill’s job performance or behavior. In fact, the end of Hill’s employment came at her own volition when she accepted her position as a professor, with Thomas recommending her for the job.⁵⁷

Thomas also subtly alludes to Hill having Jezebel tendencies by insinuating that she was the one who was actually sexually interested in him, but he was uninterested. Although Thomas never overtly claims that Hill had pursued him romantically nor make references to her dating life—a departure from the sexual promiscuity that is paramount for the Jezebel stereotype—he speculates that Hill’s allegations were based on her jealousy of lighter complexioned women whom Thomas dated or promoted to higher positions.⁵⁸ He further drives home this point by indicating that Hill he not only did not want to date Hill, he was not attracted to her, and she retaliated when she was no longer able to work as closely with him.⁵⁹

Finally, the Cassandra curse is present throughout Thomas’ testimony regarding Hill’s allegations. Thomas repeatedly refers to Hill’s claims as inconsistent and made with ulterior motives. Although Thomas appears to have enough knowledge about Hill’s testimony to point out specific discrepancies, he seemingly contradicts this position by admitting that he has not listened to Hill’s testimony at all.⁶⁰ For example, Thomas claimed, “As a boss, as a friend, and as a human being I was proud that I have never had such an allegation leveled against me, even as I sought to promote women, and minorities into nontraditional jobs. In addition, several of my friends, who are women, have confided in me about the horror of harassment on the job, or elsewhere. I thought I really understood the anguish, the fears, the doubts, the seriousness of the matter. But since September 25[th], I have suffered immensely as these very serious charges were leveled against me.”⁶¹

On one hand, Thomas attempted to depict himself as a tireless ally for women. On the other hand, his testimony revealed a situation in 1983 where Thomas retracted calls to fire a colleague who was found to have engaged in frequent sexual harassment towards women employees.⁶² However, Thomas would allow the colleague to remain employed for 11 more months before his retirement.⁶³ When asked to explain this decision, Thomas responded that,

⁵⁵ *Id.* at 220-221.

⁵⁶ *Id.* at 168.

⁵⁷ *Id.* at 168-169

⁵⁸ *Id.* at 157,264.

⁵⁹ *Id.* at 157, 264.

⁶⁰ *Id.* at 221, 233.

⁶¹ *Id.* at 6.

⁶² *Id.* at 161.

⁶³ *Id.* at 158.

“his rights had much to do with the fact that he was a veteran and that we could not simply dismiss him” —seemingly insinuating that a statute protecting veterans from repercussions for sexual harassment exists.⁶⁴ At another point, Thomas minimized his personal contact with Hill stating, “I occasionally, with my personal staff as well as with my personnel, when I am going out to lunch, I will grab the first person available and say is anybody ready for lunch and walk out to either a local place or perhaps just a deli to grab a sandwich. That is customary with me, so I don't want to suggest that there wasn't an occasion when I would do something like that.” And yet, at another point, he conceded, “What I said was, when we were at the Department of Education, there were, as I recall, a number of instances in which I gave her a ride home and she asked me just to drop in to continue discussion, and I would have a Coke or a beer or something and leave. That was, again, nothing, I thought nothing of it. It was purely innocent on my part and nothing occurred with respect to that, other than those conversations.”

Even though Thomas’ testimony was littered with inconsistencies, he was able to dismiss Hill’s allegations as untrue despite refusing to listen to her testimony. Like members of Cassandra’s community failing to take heed of her warnings, because Hill’s community symbolically ignored her accusations and warnings by eventually confirming Thomas to the Supreme Court, the country has arguably suffered through the dismantling of initiatives to promote equality, bodily autonomy for women, and societal attitudes of sexual harassment to its detriment.⁶⁵ Through the usage of racial and sexist archetypes, Thomas was able to attack Hill’s credibility with little to no factual basis by using his status and privilege of being a man.

B. How Thomas Made Himself a Victim of Racial Violence

Even though his accuser also being black, Thomas frequently employed graphic language of racial violence throughout his testimony. This “male-centered” perspective of race is considered “unmodified antiracism,” which is often characterized by three elements.⁶⁶ First, unmodified antiracism purports to discuss the black community as a whole “when they are really only referring to Black men.”⁶⁷ Second, antiracist’s engage in discourse which “often ‘equates [black racial] freedom with [black manhood,’ suggesting that the fight against racism is really a fight about Black male subordination.”⁶⁸ Finally, if Black men and racism are specifically discussed by antiracist proponents, “they presume that their discussion reflects an understanding of Black women and racism.”⁶⁹ Moreover, unmodified antiracism uses “intentional sexism,” or “political or legal efforts within Black liberation movements to subordinate Black women’s experiences or that are based, at least in part, on explicit patriarchal notions of gender.”⁷⁰ This brand of sexism results in black men and their “cumulative experiences with white supremacy, particularly in the context of the criminal justice system, render them ‘endangered’ in a way that Black women are not.”⁷¹ Further, it treats black women’s experience with racism as a “subset” of black men’s—

⁶⁴ *Id.* at 159.

⁶⁵ Devon W. Carbado, *supra* note 32 at 50.

⁶⁶ *Id.* at 50.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 51.

⁷⁰ *Id.*

⁷¹ *Id.* at 56.

one that is only slightly different but “essentially the same.”⁷²As a result, black women who have publicly accused a black man of sexual aggression are perceived as “racial villains” and “traitors of the race.”⁷³

During his testimony, Thomas never acknowledges how Hill may be subjected to racism in her circumstances. Instead, he portrays himself as the sole victim of racial animosity. Thomas’ narrative is that of a well-meaning black man who has “been able, with the help of others and with the help of God, to defy poverty, avoid prison, overcome segregation, bigotry, racism, and obtain one of the finest educations available in this country.”⁷⁴ By referencing prison and segregation specifically, Thomas adopts additional rhetoric associated with unmodified antiracism and functional sexism discourse. Thomas’ testimony that he has avoided prison is essentially signaling that he is endangered in a way that Hill is not as a black woman, and therefore, she is in the wrong for her attempt to criminalize him through her allegations. Similarly, although segregation impacted both black men and women alike, through the lens of unmodified antiracism and functional sexism, segregation reflected a time that black men were robbed of their “authentic manhood.”⁷⁵In fact, Thomas goes so far as to explain that the allegations were not only an injustice to himself, but “a bigger injustice to this country.”⁷⁶

The most obvious example of Thomas’ reliance on male-centered antiracism is his recurring metaphorical language depicting his own lynching.⁷⁷Thomas makes several references to the hearings acting as a lynching. In his prepared statement, Thomas stated, “I will not provide the rope for my own lynching or for further humiliation.”⁷⁸ One quote, which garnered significant attention from the media, described the hearings as “a high-tech lynching for uppity-blacks” where if you don’t conform ideologically, “you will be lynched, destroyed, caricatured by a committee of the U.S. Senate, rather than hung from a tree.”⁷⁹ Another instance occurred in response to Senator Heflin questioning whether Thomas’ decision not to listen to Hill’s testimony constituted issues of judicial temperament, Thomas states that “there is a difference between approaching a case objectively and watching yourself being lynched. There is no comparison whatsoever.”⁸⁰ As for the perpetrators of his lynching, Thomas explains, “I have been harmed, my family has been harmed. I have been harmed worse than I have ever been harmed in my life. I wasn’t harmed by the Klan, I wasn’t harmed by the Knights of Camelia, I wasn’t harmed by the Aryan race, I wasn’t harmed by a racist group, I was harmed by this process, this process which accommodated these attacks on me.”⁸¹

As legal scholar Devon W. Carbado notes, “[t]he political force of the Black male lynching image cannot be overstated.”⁸²The force is so apparent, that no cultural symbol

⁷² *Id.* at 62.

⁷³ *Id.* at 100.

⁷⁴ *Confirmation Hearings*, *supra* note 4 at 9.

⁷⁵ Devon W. Carbado, *supra* note 32 at 88.

⁷⁶ *Confirmation Hearings*, *supra* note 4 at 251.

⁷⁷ *Id.* at 10, 202, 158.

⁷⁸ *Id.* at 10.

⁷⁹ *Id.* at 158.

⁸⁰ *Id.* at 161.

⁸¹ *Id.* at 205.

⁸² Devon W. Carbado, *supra* note 32 at 86.

associated with black women's subordination holds the same weight, which exacerbates "the invisibility of Black women's subordination" by making "it difficult for Black women to assert that they are racial victims, particularly when they are being victimized by Black men."⁸³ This disproportionate "political and legal focus on Black male subordination, without a similar focus on Black female subordination," perpetuates misconceptions where black men are considered "*significantly* more vulnerable, and *significantly* more 'endangered,' than Black women."⁸⁴ Therefore, it is unsurprising that even if Hill were to raise claims of racism as frequently as Thomas, the result would most likely remain the same. In short, because Thomas is a black man, he was viewed as more legitimate because "Hill's status as a woman undermined her status as a Black person because maleness is normalized in antiracist discourse; it is 'the default gender.'"⁸⁵ When Thomas repeatedly invoked graphic language regarding his own metaphorical lynching, this "ace" was used to "obscure Anita Hill's race and to highlight her gender," and consequently, "socializ[e]" her identity "out of existence."⁸⁶ In the end, after Hill's allegations were made public, Thomas "received more support from the Black community" and 'appeared to those supporters to be a Black man in trouble, which is perennially a cause for high levels of Black mobilization."⁸⁷

C. *How Thomas Made Himself A Victim of Gendered Racial Stereotypes*

Historically, black male sexuality has long "'constituted a potential threat to the establishment order of white supremacy."⁸⁸ In response to the violence that often accompanied this perceived threat, antiracist rhetoric towards sexual violence is predicated on the never-ending battle of protecting black male sexuality at all costs. Despite negative sexual stereotypes existing for both black men and women, because "Black men have often been falsely accused of raping white women underlies the antiracist defense of Black men accused of rape," or other forms of sexual violence, "even when the accuser herself is a Black woman."⁸⁹ Proponents of this belief point to the tragic story of Emmitt Till, a black boy lynched in 1955 for allegedly whistling at a white woman.⁹⁰ Moreover, the long-standing erasure of black women from feminist rhetoric has contributed to the institutions responsible for enforcing "disproportionate punishment for Black men who rape white women."⁹¹ This lack of visibility and accountability, when coupled with the negative stereotypes associated with black women and girls left unchallenged by dominant feminist and antiracist discourse, leads to disastrous results: where no black woman or girl can be a victim of sexual harassment or violence because they are either asexual, hyper-sexual, or vindictive, and every black man accused is the victim of negative sexual stereotypes associated with black manhood. The disparity in treatment towards a black victim subjected to intraracial sexual violence is nevertheless legitimized by the emasculation of black men during slavery, which "prevented Black men from 'controlling' Black women's

⁸³ *Id.* at 100.

⁸⁴ *Id.* at 56.

⁸⁵ *Id.* at 79.

⁸⁶ *Id.* at 100.

⁸⁷ *Id.* at 79.

⁸⁸ *Id.* at 83.

⁸⁹ Kimberly Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1274 (1991).

⁹⁰ *Id.* at 1272.

⁹¹ *Id.* at 1282.

sexuality in the way that white men controlled white women's and Black women's sexuality."⁹² This view is highlighted in a statement by Minister Louis Farrakhan, in which he concludes that because racism causes black men to commit domestic violence against black women—"and not interpersonal patriarchy"—black women are, therefore, "'fair game' for victimization by Black men."⁹³ Before discussing Thomas' testimony as it relates to antiracist rhetorical strategies used to refute allegations of sexual misconduct against black men, it is important to acknowledge several high-profile cases that span from the immediate aftermath of the Thomas nomination hearings to present day.

One example followed just after Thomas' confirmation. Mike Tyson's 1992 trial for the rape of Desiree Washington, which attracted over 400 broadcasters from the United States and around the world, once again brought discussions of Black manhood and sexuality to the forefront of the American psyche.⁹⁴ Washington, an 18-year-old vying for the title of 1991 Miss Black America when she met Tyson, testified that she was lured into Tyson's hotel room after an offer to tour the city.⁹⁵ Washington's testimony regarding Tyson's conduct was not an anomaly. Witness testimony—including Washington's fellow contestants and Tyson's own chauffeur (whom it would later be revealed Tyson also lured to his hotel room and exposed himself to)—revealed Tyson's incessant sexual and inappropriate remarks.⁹⁶ Despite the insurmountable evidence that led to a conviction, Tyson continued to garner the public support of the Black community and resumed his career once released. Prominent figures like African American novelist and essayist, Ishmael Reed commented, "millions of Americans -- black, white, brown, yellow, and red -- will continue to wonder, what was this Beauty Queen doing up in Mike Tyson's hotel room at 2:00 a.m.?"⁹⁷ In other words, even with a conviction, Washington was seen as incapable of being a victim while Tyson's persona of predatory behavior was condoned because "she knew what she was getting into."⁹⁸

The next example spans across nearly 30 years, with a conviction only as of 2022. The first widely known incident, however, transpired in 1994 when then-27-year-old singer, Robert Kelly, known more commonly as "R. Kelly," married his then 15-year-old singer and protégé, Aaliyah Haughton. When journalist Jim DeRogatis released an extensive article detailing R. Kelly's escapades that were well known in Chicago and often involved underaged low-income black girls, he was branded a racist by many, including associates of Reverend Jesse Jackson.⁹⁹ Despite mounting, damning evidence, the article would not prompt an investigation by law enforcement and DeRogatis would face years of legal and physical intimidation.¹⁰⁰ A year after publishing the article, DeRogatis received an anonymous videotape depicting R. Kelly engaging in sexual relations with an alleged underaged minor—who was black.¹⁰¹

⁹² Devon W. Carbado, *supra* note 32 at 83.

⁹³ *Id.* at 61.

⁹⁴ *A Lawyer's Look At The Mike Tyson Rape Trial*, INDIANAPOLIS MONTHLY (Feb. 10, 2017), <https://www.indianapolismonthly.com/longform/down-for-the-count-lawyers-look-mike-tyson-rape-trial/>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Devon W. Carbado, *supra* note 32 at 84.

⁹⁸ INDIANAPOLIS MONTHLY, *supra* note 94.

⁹⁹ Seth Stern, *A Frontline View Of The R. Kelly Investigation*, 36 CBA RECORD 12 (2022).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

Despite the existence of an Illinois statute that protected source material acquired by journalists as privileged, Judge Vincent Gaughan repeatedly declined to apply the procedural safeguards and excluded evidence of similar allegations made by other underage women against Kelly.¹⁰² Unsurprisingly, when the trial finally came to an end in 2008, Kelly was acquitted. Perhaps emboldened by his acquittal, Kelly became increasingly brazen in his treatment of women and girls, eventually drawing increased scrutiny. In response, his management dubbed the criticism as the “public lynching of a black man who has made extraordinary contributions to our culture” and it was just another instance of a black man being “lynched for having sex or for being accused of it.”¹⁰³ When pressed about accusations of R. Kelly running a “cult” of women and girls, critically acclaimed filmmaker, the late John Singleton, responded that Kelly “just has lots of girlfriends.”¹⁰⁴ Even after Kelly was sentenced to a total of 31 years in prison across several jurisdictions, many still struggle to comprehend how the disgraced singer was able to hide in plain site for so long.

The final example took place in 2020 at the height of the global pandemic when rapper Megan Pete, known as Megan Thee Stallion, suffered gunshot wounds during the early morning hours with a friend and fellow rapper, Daystar Peterson, known as Tory Lanez.¹⁰⁵ Both successful musicians, the pair initially attempted to suppress the speculation surrounding the situation by disclosing little detail, with Megan initially telling the cops that her injuries were due to stepping in glass.¹⁰⁶ Eventually, Megan would cite the recent police killing of George Floyd as the reason behind withholding the true cause of her wounds—an attempt to protect Lanez from the L.A.P.D. as a black man when racial tensions in the country were at an all-time high.¹⁰⁷

While Megan protected Lanez, the rapper, invoking familiar antiracist defenses, stoked the rampant lies by using his platform and paying gossip blogs to accuse Megan of trying to get attention, having jealousy towards his sexual relationships, blaming her friend for shooting her, and the system for oppressing him as a black man.¹⁰⁸ “I wish he would’ve just shot and killed me if I knew I’d have to go through this,” Megan told the court regarding her life following the shooting.¹⁰⁹ After extensive, and painful testimony from Megan, the Deputy District Attorney Alexander Bott ended his closing argument stating, “This is a case about a guy who shot a girl, then apologized for it in a tape-recorded call from jail hours later. If you believe Megan, that’s enough.”¹¹⁰ With overwhelming evidence supporting Megan’s account of events—from hospital

¹⁰² *Id.*

¹⁰³ Laura Snapes, *R. Kelly: Time’s Up Campaign against me is ‘attempted lynching of a black man,’* THE GUARDIAN (2018), <https://www.theguardian.com/music/2018/may/01/r-kelly-times-up-muterkelly>

¹⁰⁴ John Singleton *R. Kelly’s No Cosby Just Has Lots of Girlfriends*, TMZ (2017), <https://www.tzm.com/2017/07/24/john-singleton-defends-r-kelly-adult-girlfriends/>.

¹⁰⁵ Joe Coscarelli & Julia Jacobs, *Here’s What to Know About Tory Lanez and Megan Thee Stallion*, THE NEW YORK TIMES (2023), <https://www.nytimes.com/article/tory-lanez-trial-megan-thee-stallion.html>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Erin Keller & Jane Herz, *Tory Lanez on Megan Thee Stallion Shooting: ‘I refuse to apologize,’* NEW YORK POST (2023), <https://nypost.com/2023/08/10/tory-lanez-refuses-to-apologize-in-megan-thee-stallion-shooting/>.

¹⁰⁹ Audra Heinrichs, *Megan Thee Stallion: ‘I Wish He Would’ve Just Shot and Killed Me If I Knew I’d Have To Go Through This,’* JEZEBEL (2022), <https://jezebel.com/megan-thee-stallion-i-wish-he-wouldve-just-shot-and-ki-1849892054>.

¹¹⁰ Audra Heinrichs, *The Vilification of Megan Thee Stallion Feels Familiar*, JEZEBEL (2022), <https://jezebel.com/the-reaction-to-the-megan-thee-stallion-trial-feels-fam-1849924503>.

records to text messages, and forensic evidence from the firearm recovered at the scene—Lanez was ultimately sentenced to 10 years for the attack. Although Megan has taken steps to rebuild her life and career, her case was a painful reminder that black women, even celebrities with vast resources and fame, are simply collateral damage to proponents of antiracism when black manhood and sexuality are perceived as endangered.

Disappointingly, the rhetorical disempowerment that Hill experienced in 1991 caused by her identity falling “between the dominant interpretations of feminism and antiracism” is nearly indistinguishable from the treatment of Black women today.¹¹¹ While Thomas was not accused of physically sexually assaulting Hill, the underlying reasoning for why he felt emboldened enough to portray himself as the victim in this situation remains the same. This understanding is bolstered in his testimony where he discusses the “language about the sexual prowess” and “the sizes, et cetera” of “sex organs” of black men and how such language result in “charges that play into racist, bigoted stereotypes.”¹¹² Thomas further reinforces this ideology by emphasizing that these kinds of accusations play “into the most bigoted, racist stereotypes that any black man will face.”¹¹³

Moreover, in his testimony, Thomas strategically connects the symbols of black male sexuality to lynching, stating that, “the lynchings of black men, you will see that there is invariably or in many instances a relationship with sex—an accusation that that person cannot shake off. That is the point that I am trying to make. And that is the point that I was making last night that this is high-tech lynching. I cannot shake off these accusations because they play to the worst stereotypes we have about black men in this country.”¹¹⁴

To be clear, despite Thomas’ anguish from potentially being associated with negative black male stereotypes, he did not hesitate to repeatedly subject Hill to racially coded language rooted in gendered stereotypes. This double standard of the antiracist rhetoric ingrained in societal views on race is emblematic of why black men are considered the default racial victims. By invoking the dangerous rhetoric of unmodified antiracism and functional sexism, black women who bravely report black male perpetrators like Hill, Washington, Haughton, Pete, and countless others are subjected to systemic erasure. Not because the intersectional identities of black women and girls is inherently cumbersome, but because “[t]he most one could expect is that we will dare to speak against internal exclusions and marginalizations, that we might call attention to how the identity of ‘the group’ has been centered on the intersectional identities of a few.”¹¹⁵

V. Conclusion

¹¹¹ Kimberly Crenshaw, *supra* note 89 at 1298.

¹¹² *Confirmation Hearings*, *supra* note 4 at 202.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Kimberly Crenshaw, *supra* note 89 at 1299.

Professor Hill's allegations and the subsequent public reception underscore the rhetorical disparities black women and girls navigate when making allegations of sexual misconduct against black men. The rhetorical devices used by Thomas and antiracists to delegitimize such allegations reveal how black women and women of color are uniquely marginalized because they are neither considered the acceptable racial nor gender victim.

In response to Hill being called "meek," Thomas methodically cast doubt on her credibility by countering the positive adjectives that had been used to describe her with labels rooted in the negative Sapphire, Jezebel, and Cassandra archetypes. Because Hill is a black woman, the effects of the feminist trope Cassandra were heightened because Hill failed to meet the standard of white womanhood that feminism is centered on. The racial gendered stereotypes of Sapphire and Jezebel were similarly ineffective, because according to antiracist rhetoric, Hill was the wrong gender to be considered a racial victim. Thus, Thomas effectively stripped away the small likelihood that Hill could be seen as a victim of sexual harassment at all.

Next, Thomas portrayed himself as the actual victim with the powerful antiracist rhetorical defense of lynching, diluting Hill's shared status as a black person by asserting his privilege as a black male—America's designated victim of racism. By repeatedly employing graphic language reminiscent of the brutality of racism against black men throughout American history, he minimized Hill's narrative by painting her as a complicit actor in his demise and just another racial traitor looking to keep a successful black man down.

Finally, Thomas implored the Senate Judicial Committee and the American public to not associate him with negative black male stereotypes—again connecting his personal travesty with the extensive history of black men being lynched. The success of this antiracist rhetorical defense, while not always successful in the court of law, is nevertheless especially potent in activating a loyal supporter base for prominent black men, whether convicted of crimes against black women and girls or not. In contrast, black women and girls who make accusations are subjected to relentless public humiliation and skepticism.

Greater awareness on how rhetoric is regularly used to subjugate black women and girls is a necessary step in dismantling monofocal perceptions of race and gender. Such views only perpetuate the outcomes described in the artifact discussed. Additionally, it consistently renders black woman and girls invisible in the eyes of the law and broader audiences. Freedom from racial and gender oppression are not at odds, and both involve dismantling the power structures rooted in white supremacy and patriarchy. This understanding is crucial for putting an end to marginalized groups fighting amongst themselves while those actually in power continue to maintain the status quo.