

February 2021

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Recommended Citation

Penelope E. Bryan, Holding Women's Psyches Hostage: An Interpretive Analogy on the Thomas/Hill Hearings, 69 Denv. U. L. Rev. 171 (1992).

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HOLDING WOMEN'S PSYCHES HOSTAGE: AN INTERPRETIVE ANALOGY ON THE THOMAS/HILL HEARINGS

PENELOPE E. BRYAN*

She sat before the TV alone—intently staring at the screen—a half empty beer bottle clenched in one hand. Littered with the dirt of neglect, the apartment reflected her distraction of the past few days. It was Sunday evening and the Thomas/Hill hearings were coming to a close. Grippled by a morbid fascination, Betty had watched the entire proceeding. At times during the testimony—especially when the TV camera moved from Anita Hill's solitary face to the wall of impassive white male faces on the committee—Betty felt weak and short of breath. When Senators Hatch and Specter attacked Ms. Hill, Betty could not contain her anxiety. She paced her small apartment asking the empty room why no one defended Professor Hill, how this could happen to a respected professional and, if it could happen to Ms. Hill, what it meant for Betty. She felt the old familiar nausea again.

On the Sunday evening the Senate Judiciary Committee concluded its investigation into Anita Hill's sexual harassment allegations against Clarence Thomas, Betty felt despondent and trapped. She was a forty-five year old white woman who had spent most of her adult life living with and caring for her aged parents. But they had died within the past two years leaving Betty without companionship, marketable skills or resources. She had turned to her relationship with her male friend for comfort but Frank had proved psychologically and physically abusive. After ending her relationship with Frank, Betty felt more isolated and less confident than ever. In addition to Betty's social alienation, lack of confidence, minimal employment skills and middle age, she was overweight. Recognizing her apparent limitations Betty felt fortunate to have found employment at a plumbing supply store in the city.

She was not altogether fortunate however. In her job Betty was sexually harassed. Upon her arrival in the mornings male employees characteristically greeted her with comments like, "Well, Betty's here—now the gang bang can begin." Throughout the day they openly and degradingly discussed her physical anatomy. A favorite was, "Hey, sweetie, how can a guy get it in past all that fat?" At the day's end the four male employees typically gathered in the central office where Betty worked. They jostled her around, asked if she "had any" lately, suggested their

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willingness to relieve her sexual frustrations and sometimes touched parts of her body. Betty frequently left work sick to her stomach—vomiting when she arrived at home.

Several times during the past year Betty had not been able to make herself get out of bed and go to work. She stayed at home—her head hidden beneath her pillow—escaping from life in sleep. Her employer complained of her absences. Fearful of provoking worse behavior from male employees and of losing her job, Betty said nothing of the harassment and promised to be more regular. A customer who overheard some of the sexually explicit comments directed at Betty expressed his outrage to her. The customer's validation finally gave Betty the courage to complain. Her employer responded by telling her that if she wanted any job working with "the guys" she would have to become more thick-skinned. As she had feared, when the male employees heard of Betty's complaint, their harassment intensified and they urged the employer to fire Betty. A week later he did.

When Betty filed for unemployment benefits her employer objected. He said he fired her because of excessive absences and she therefore was not entitled to unemployment benefits. When Betty went to see a legal aid lawyer he told her the employer was right. The lawyer did not ask the reason for Betty's absences and she was too embarrassed to tell a male attorney how she had been treated.

The hearing on Betty's right to unemployment benefits was scheduled for the Wednesday after the Sunday conclusion of the Thomas/Hill hearings. Before watching the hearings Betty had worked hard to overcome her embarrassment and had planned to tell the hearing officer the reason she had missed work, hoping he would understand. Instead, when the Thomas/Hill hearings ended, Betty turned off her television, deliberately took an overdose of sleeping pills, and died.

Too dramatic, too sensational, the reader may think. Yet it happened¹—and my struggle to comprehend Betty's death and its larger meaning motivated me to write this essay. Hoping to find some clue, I began my search for understanding by listening to other women's responses to the hearings. Some women were angry with the Senate Judiciary Committee, the Senate and the Bush Administration for their insensitive and one-sided treatment of the parties and the issues. Over time some of these women remained angry, while the anger of others seemed to dissipate, replaced by a quiet withdrawal. Another group of women angrily insisted that Anita Hill had lied and had gotten what she deserved during the hearings. No man in Thomas's position, they insisted, would behave the way Professor Hill said Thomas behaved. They further expressed their horror at what Professor Hill had done to Thomas and his family. Other women emphatically insisted that even if Thomas had sexually harassed Anita Hill she should have complained,

1. I have, of course, deliberately altered some facts of Betty's story to preserve her privacy and dignity. I have not, however, altered the essence of her personal struggle nor the reality of her reaction to the Thomas/Hill hearings.

quit her job or not followed Thomas to the EEOC. At the very least, since she had not come forward earlier, Professor Hill should have remained silent. My monitoring of women's diverse reactions thus initially did little to increase my understanding of Betty's behavior.

Yet as I puzzled over this diversity and sorted through my own reactions to the hearings I began to think that many of these different reactions, including Betty's, might have the same etiology. In this essay I argue that the unanticipated trauma women felt in the wake of the hearings explains many of their diverse responses. In developing this theme I analogize the trauma induced in women by the Senate Judiciary Committee's treatment of Anita Hill to the trauma experienced by prisoners of war (POWs) at the hands of their captors. I then explore how many women's reactions to the hearings are similar to POWs responses to their captivity. Throughout, I discuss the negative implications for the women's movement of these reactions.² I conclude with some preliminary thoughts on how to minimize the damage.

Before beginning I want to acknowledge that the perspective presented in this essay supports the negative side of the debate over the hearings' effect on the women's movement. While I recognize that the Senate Judiciary Committee's treatment of Anita Hill and insensitivity to women's concerns spurred some women to greater activism, I present this negative view because I am concerned that some members of the women's movement have persuaded themselves that the effects of the hearings mainly are positive.³ While underestimating the damage done by the hearings may enable some to preserve their morale and continue working, it nevertheless diminishes the movement's ability to confront and dispel the disillusionment and hostility of many women who reacted differently. With the hope of contributing to the movement's ability to represent and integrate all women, this essay confronts the darker side of the hearings reflected in many women's responses.

I. WOMEN AS PRISONERS OF WAR

POWs experience devastating trauma that precipitates emotional and behavioral reactions bearing a striking resemblance to some women's reactions to the hearings. Thus, to develop the analogy between war prisoners' reactions to captivity and women's responses to the hearings it is necessary to first explore the similarities between the trauma suffered by POWs and the trauma inflicted upon women by the Senate Judiciary Committee during the hearings. Certainly most women never experience the physical and psychological torture and the extreme deprivation of necessities like food, shelter, and medical attention that cap-

2. For purposes of this essay I perceive the women's movement as comprised of individuals who openly call themselves feminists and actively engage in promoting women's equality to men in the family and throughout society.

3. Leaders in the women's movement talk of detecting an increase in women's activism as a result of the hearings, yet rarely or fleetingly mention women's disillusionment. E.g., Nina Burleigh, *Now That It's Over: Winners and Losers in the Confirmation Process*, 78 A.B.A. J. 50, 53 (1992).

tors commonly inflict upon POWs.⁴ Yet many women in this society do experience physical abuse, psychological terror,⁵ and the deprivation of food, shelter and medical care that attends their ever-increasing poverty. For these women this essay's analogy draws tightly.

Acknowledging the above distinction does not negate other uncanny similarities between the causes of war captivity stress and the causes of women's trauma during the hearings.⁶ This section thus explores these common causes: unexpected immersion in a hostile envi-

4. For instance, Korean Conflict POWs experienced sudden subjugation, arbitrary killings, forced marches, frequent relocations, extreme and continuous nutritional deprivation, death threats, physical torture, solitary confinement, disease with limited medical attention and mass indoctrination. Patricia B. Sutker et al., *Assessment of Longterm Psychosocial Sequelae Among POW Survivors of the Korean Conflict*, 54 J. PERSONALITY ASSESSMENT 170, 171 (1990). See also Bruno Bettelheim, *Individual and Mass Behavior in Extreme Situations*, 38 J. ABNORMAL & SOC. PSYCHOL. 417 (1943)(describing experiences of Nazi concentration camp prisoners).

5. I. Lisa McCann et al., *Trauma and Victimization: A Model of Psychological Adaptation*, 16 COUNSELING PSYCHOLOGIST 531, 533-34 (1988). As McCann et al. note, assuming the current rape rate does not change, a 46 percent likelihood exists that an American woman will experience attempted or completed rape in her lifetime. Approximately one-third of all women experience sexual abuse in childhood and projected statistics suggest that up to 1.8 million wives suffer physical abuse each year. Consequently, while many women's lives do not capture the full range or intensity of the abuse endured by POWs, parallel experiences do exist for many women.

6. I confess I have chosen in this essay to develop the more dramatic of two possible analogies: prisoner of war or posttraumatic stress disorder (PTSD). I have done so to maximize the power of imaging. Moreover, PTSD explains reactions to traumatic events that have ended. I chose the POW reaction to captivity to explain women's reactions to the Thomas/Hill hearings because, while traumatizing in themselves, I think the hearings made clear the continued captivity, rather than the repatriation, of women. For those who find my textual analogy stretches too far however I offer this footnote.

Rather than use POWs' reactions to their captivity experience to explain women's diverse responses to the hearing, I easily could have employed PTSD. *The American Psychiatric Association's 1980 Diagnostic and Statistical Manual of Mental Disorders (DSM III)* describes PTSD as a group of symptoms that occur in response to an unusual traumatic event that would normally cause significant distress. McCann et al., *supra* note 5, at 536. The DSM-III's list of specific symptoms however has evoked criticism as too restrictive because they focus more on reexperiencing the trauma rather than denial. *Id.* at 531.

Moreover while interest in understanding the behaviors of repatriated POW originally encouraged research on and official recognition of PTSD, the disorder is now acknowledged as a common response to a large variety of life stressors: observation of another person experiencing a seriously threatening event, Philip A. Saigh, *The Development of Post-traumatic Stress Disorder Following Four Different Types of Traumatization*, 29 BEHAV. RES. THERAPY 213, 213 (1991); death of a loved one, John P. Wilson et al., *A Comparative Analysis of Post-Traumatic Stress Syndrome Among Individuals Exposed to Different Stressor Events*, 11 J. SOC. & SOC. WELFARE 793, 793 (1984); personal injury, J. Krupnick & M. Horowitz, *Stress Response Syndromes: Recurrent Themes*, 38 ARCHIVES GEN. PSYCHIATRY 428 (1981); rape, Frances K. Marton, *Defenses: Invincible and Vincible*, 16 CLINICAL SOC. WORK J. 143 (1988); Edna B. Foa et al., *Processing of Threat-Related Information in Rape Victims*, 100 J. ABNORMAL PSYCHOL. 156 (1991); divorce, Wilson et al., *supra*, at 808; a natural disaster, Peter Steinglass & Ellen Gerrity, *Natural Disasters and Post-traumatic Stress Disorder: Short-Term versus Longterm Recovery in Two Disaster-Affected Communities*, 20 J. APPLIED SOC. PSYCHOL. 1746 (1990); work-related injuries, Billie Zeller Lawson, *Work-Related Post-Traumatic Stress Reactions: The Hidden Dimension*, 12 HEALTH & SOC. WORK 250 (1987); wife battering, e.g., Mary Romero, *A Comparison Between Strategies Used on Prisoners of War and Battered Wives*, 13 SEX ROLES 537 (1985); and war captivity, John F. Russell, *The Captivity Experience and Its Psychological Consequences*, 14 PSYCHIATRIC ANNALS 250, 251 (1984); Robert Joseph Ursano & James Ray Rundell, *The Prisoner of War*, 155 MIL. MED. 176 (1990). In essence, an individual may experience PTSD as a result of any traumatic incident that erodes her faith in the world's safety and in her own invulnerability. Lawson, *supra*, at 252. PTSD also seems a more likely response when

ronment, unanticipated loss of status and support systems, and indoctrination.

A. *Experiences Common to POWs and Women*

1. Unexpected Immersion in a Hostile Environment

One of the first and most intense stressors encountered by POWs is the destruction of their innate sense of invulnerability that occurs when they unexpectedly confront a hostile environment.⁷ Understanding how the hearings similarly encouraged women to confront their previously unacknowledged vulnerability requires deciphering the surprisingly hostile messages broadcast to women by the Senate Judiciary Committee, the Senate and the Bush Administration.

During the hearings, Betty and other women throughout the United States watched as Republican committeemen attacked Anita Hill and Democratic committeemen failed to defend her.⁸ Moreover during the proceedings women heard that the Bush Administration and the Republican party had mobilized their considerable resources to uncover

the traumatized person suffers injury or betrayal by other human beings, especially those she trusted. *Id.*

The symptoms of PTSD closely parallel the POWs' reactions to their captivity the essay discusses—loss of self (destruction of one's sense of invulnerability and loss of status), *e.g.*, Wilson et al., *supra*, at 796 (depending on one's psychosocial development, a stressor event can precipitate identity diffusion); Marton, *supra*, at 145-46, 151 (loss of sense of invulnerability can result in a traumatic neurosis); shock, *e.g.*, *id.*, at 146 (panic can result when the ego is overwhelmed by a threatening danger); denial (avoidance), *e.g.*, Foa et al., *supra* (providing a cognitive explanation of denial); Marton, *supra*, at 144, 152; Steinglass & Gerrity, *supra*, at 1752-53, Wilson et al., *supra*, at 799; apathy (passive compliance), *e.g.*, Marton, *supra*, at 151 (noting the sense of hopelessness that develops in a rape victim who can no longer count on protecting herself); Zahava Solomon et al., *Negative Life Events, Coping Responses, and Combat-Related Psychopathology: A Prospective Study*, 97 J. ABNORMAL PSYCHOL. 302, 306 (1988) (the higher the level of PTSD in POWs the less likely they would engage in active problem solving behavior); Wilson et al., *supra*, at 798-99 (helplessness develops when one experiences a loss of control); displaced anger, Solomon et al., *supra*, at 312 (suggesting that veterans with PTSD express anger and hostility towards others in order to avoid accepting personal responsibility for their postwar maladjustment); identification with those causing the trauma (identification with captors), Susan Lee Painter & Don Dutton, *Patterns of Emotional Bonding in Battered Women: Traumatic Bonding*, INT'L J. WOMEN'S STUD. 363, 364-65 (1985) (comparing the bonding of captives with their captors to the bonding of battered women with their batterers); self-destructive behaviors, Marton, *supra*, at 145 (rape victims may blame themselves); *id.* at 152-53 (rape victims sometimes turn their rageful impulses against themselves); Zahava Solomon et al., *supra*, at 306 (the more severe the PTSD the greater the number of negative life events the victim experiences); and resistance (no symptoms of PTSD), Steinglass & Gerrity, *supra*, at 1759 (approximately only 15 to 20 percent of studied victims of natural disaster exhibited PTSD four months after the disaster). The finding that women experience PTSD more frequently than men, *id.* at 1760-61, also has relevance in this essay.

7. *E.g.*, Robert S. Andersen, *Operation Homecoming: Psychological Observations of Repatriated Vietnam Prisoners of War*, 38 PSYCHIATRY 65, 65-66 (1975); Richard H. Rahe & Ellen Genender, *Adaptation to and Recovery from Captivity Stress*, 148 MIL. MED. 577, 577-78 (1983).

8. F. Lee Bailey notes the vicious ineptness of Republican Senators Hatch and Specter and the passive incompetence of the Democratic Senators Biden, Heflin and Leahy. F. Lee Bailey, *Where Was the Crucible? The Cross-Examination that Wasn't*, 78 A.B.A. J. 46 (1992). The cross-examination by Republicans Specter and Hatch ultimately was as poor as the cross-examination by Democrats Biden, Heflin and Leahy in terms of discovering what happened between Hill and Thomas. Yet the Republicans' ineptness did not erase the messages sent by the Republicans' viciousness toward women and the Democrats' unwill-

whatever compromising information they could about Ms. Hill.⁹

MESSAGE: Speaking against a (powerful) male provokes mobilization of male power against you—and you will face the attack alone.

Although the purported purpose of the hearings was to investigate the truthfulness of Anita Hill's allegations against Clarence Thomas, women witnessed the vicious distortion of Anita Hill's testimony by Senators concerned more with achieving their political objective than with discovering the truth.¹⁰

ingness to defend. The tele-electronic images of attack and defenselessness remain indelibly etched on women's psyches.

I do not mean to imply that Anita Hill was totally defenseless. For many who watched the hearings her quiet dignity and strength of character were her ultimate defenses against the Senate Judiciary Committee's disgraceful behavior. As one commentator noted, "[b]ut Anita Hill also won: She maintained her dignity in the face of unimaginable pressure. The Republican smears were too ridiculous to affect her daily life or reputation." Joe Klein, *Joe Klein on the Clarence Thomas Follies: Tabloid Government*, NEW YORKER, Oct. 28, 1991, at 29, 31. While Professor Hill admirably defended herself, she had to withstand the Republican assault alone. In contrast Thomas received the Democrats' respectful deference and the Republicans' vehement support. Many victimized women lacking Anita Hill's strength and impeccable character would not fare as well against such odds, as the William Kennedy Smith rape trial graphically illustrated.

9. Before the hearings began *The New York Times* noted, "[t]he White House, for its part, is hunkered down, preparing to make a heavy assault against Professor Hill." Maureen Dowd, *The Thomas Nomination; Facing Issue of Harassment, Washington Slings the Mud*, N.Y. TIMES, Oct. 10, 1991, at A1. Despite the employment of such resources the Republican party and the Bush administration produced no credible evidence negatively implicating Anita Hill's character or stability. See *infra* note 26 discussing the Republican's ineffective attempt to prove Anita Hill's allegations resulted from her sexual fantasy about Thomas.

Thomas proponents also claim his character suffered unfair attack during the entire confirmation process by what President Bush affectionately called "special interest" groups. Burleigh, *supra* note 3, at 52. Whether or not one agrees with this perspective, the televised image of massive power mobilized against a solitary woman remains the same.

10. The most noteworthy example of this was Senator Specter's accusation that Professor Hill had committed perjury. As well stated by F. Lee Bailey:

Specter sanctimoniously declared that Hill was a perjurer, calling upon his not very illustrious experience as a prosecutor to make that judgment. Had he had the temerity to hurl that accusation in Hill's face, she might have used what Thomas termed her 'willingness to fight' to destroy the senator with a phrase used by Boston lawyer Joe Welch in the demise of Sen. Joe McCarthy: 'Have you no decency?' Had Specter made that gratuitous declaration anywhere but in the protective cocoon of a Senate chamber, many a lawyer would have offered to take up the cudgel for Hill and fry his rump in a jury skillet.

No lawyer reading the record of these proceedings would even consider, on any objective basis, that a case of perjury could be made against Hill without some much more compelling evidence.

Bailey, *supra* note 8, at 48-49.

The Democrats as well had their objectives. Meaningfully exploring the propriety of Clarence Thomas's confirmation took a backseat to overcoming their embarrassment at initially having trivialized Anita Hill's allegations and to defending their staffs from Republican allegations of violation of the Senate rules of confidentiality. See Dowd, *supra* note 9 (suggesting the public's mystification at the Senate's greater focus on defending its rules than on defending either Thomas or Hill).

The current controversy regarding the "leak" and the race to find the culprit seems equally misdirected. Rather than search its soul and ask why it initially found Anita Hill's allegations insufficiently important to warrant in-depth review, why it failed to understand how those allegations spoke to Thomas's capacity to serve as a Supreme Court Justice, why Senators from both parties behaved so poorly during the hearings, how it violated wo-

MESSAGE: The very people given the responsibility to determine the truthfulness of your story against a man inevitably will distort your expression—your reality remains unacknowledged and unknown.

Our society's laws and rhetoric imply that men cannot treat women with whom they work in a sexually degrading and dehumanizing fashion. Thus when a woman complains of such behavior her concerns at least should be taken seriously. Yet the Senate Judiciary Committee trivialized Anita Hill's concerns by initially refusing to investigate thoroughly her allegations. The President of the United States followed suit by declaring his unwavering support for Clarence Thomas before even hearing Anita Hill's story.¹¹

MESSAGE: You are not the first class citizen you thought you were—your legal rights are subject to male whim.

Contrary to what would be allowed in a formal trial of a sexual harassment claim, women watched as Senate Judiciary committeemen used factually unsupported innuendo and unchallenged biased nonexpert testimony¹² to impugn Professor Hill's character. Testimony that Clarence

men's faith, and ultimately whether it erred in confirming Clarence Thomas to the Supreme Court, the Senate instead diverts attention to procedural issues—hoping to encourage the public to ignore its substantive indiscretions. Moreover it seems curious that no one has suggested the staffer who leaked the information might have engaged in time-honored civil disobedience, rather than an easily discredited breach of the rules. Certainly information vital to an individual's capacity to serve as a Justice on the United States Supreme Court demands careful consideration. Perhaps social conscience rather than political expediency motivated the leak.

11. Before the Thomas/Hill hearings began, President Bush strongly supported his nominee: "I support him 100 percent, no fear of contradiction. I am strongly for him." Adam Clymer, *The Thomas Nomination: Conflict Emerges Over A 2nd Witness*, N.Y. TIMES, Oct. 11, 1991, at A1. Even former EEOC press secretary Angela Wright's statement that corroborated Anita Hill's allegations did not influence President Bush's support for Thomas. As The Washington Post noted just before the hearings began: "Judy Smith, a deputy White House press secretary, said last night that Wright's allegations have not caused the White House any second thoughts about Thomas: 'Absolutely not. Judge Thomas had and has our full support. At the end of this process, he will be confirmed.'" Ruth Marcus & Ann Devroy, *2nd Woman Tells Committee of Incidents With Thomas*, WASH. POST, Oct. 11, 1991, at A1.

Some speculated that Thomas's personal White House connections encouraged President Bush to ignore Anita Hill's allegations even before they became public. Ann Devroy, *White House Pins Hopes on Pledged Senate Votes: Benefit of Doubt is Sought for Thomas*, WASH. POST, Oct. 14, 1991, at A1. An alternative explanation however suggests the White House and Republican Senators simply exhibited an incredible insensitivity to women's issues and miscalculated their resulting political vulnerability. See Dowd, *supra* note 9 (political operatives indicated surprise at the White House and Republican Congressmen's unawareness of their political vulnerability because of women's anger).

12. For instance FED. R. EVID. 701 sets out the criteria for admission of opinion testimony by a lay witness. The rule requires opinions or inferences of a lay person to be rationally based on the witness's perceptions. During the hearings Thomas's women witnesses speculated, largely without challenge, that Professor Hill was: (1) a spurned lover; (2) a victim of fantasy; (3) a schizophrenic and (4) a liar, while simultaneously admitting that they never had heard Professor Hill speak of Thomas in anything but an admiring professional manner, that she had never shown signs of fantasy or any type of mental instability, and that she never had behaved in any unethical manner. Because their opin-

Thomas had not sexually harassed other female coworkers, inadmissible at trial,¹³ was introduced. Women also were left wondering what happened to relevant and admissible evidence against Thomas: the coworker who claimed Clarence Thomas had expressed himself in sexually inappropriate manners to her¹⁴ and Thomas's Yale Law School class-

ions lacked a perceptual base, Rule 701 would find them inadmissible. The United States Supreme Court reflects this consideration in *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67-68 (1986), where it recognizes the potential admissibility of fantasy evidence if the plaintiff has verbally expressed the fantasies.

Another of Thomas's witnesses, Mr. Doggett, testified on the basis of minimal contact with Ms. Hill that she had sexual fantasies about his interest in her. Instinctively recognizing the lack of rational connection between Mr. Doggett's perceptions and the requirements of Rule 701, Senator Biden could not contain himself, labeling Mr. Doggett's conclusions preposterous. See *infra* note 26 for more detailed discussion of the exchange between Senator Biden and Mr. Doggett.

The admissibility of the foregoing testimony also can be challenged under Rule 702 that requires qualification of the witness as an expert before she can comment on situations requiring specialized knowledge, such as delusional fantasies or schizophrenia.

13. FED. R. EVID. 404(b) precludes admission of prior bad acts to prove the character of a person in order to show action in conformity with the prior bad act. Likewise, Rule 404(b) prevents the admission of prior good acts to prove the character of a person and suggest conformity with the prior good acts in the present situation. To reason otherwise would allow a defendant accused of murder to attempt to prove he did not commit the crime at issue by having witnesses testify he had not killed them. Moreover Rule 404(a) generally bars character evidence offered to prove action in conformity with one's character on a particular occasion. Consequently the testimony of Thomas's women coworkers that Thomas had never sexually harassed them arguably lacked admissibility in the hearings addressing Anita Hill's accusations of sexual harassment. But see *infra* note 14 suggesting that Rule 404(b)'s exceptions to the inadmissibility of character evidence based on acts frequently provide creative counsel successful argument for admissibility.

14. The committee did enter into the record a transcript of an unsworn telephone interview with Angela Wright. During that interview Ms. Wright indicated Thomas pressured her to date him while she worked at the E.E.O.C. in 1984. Adam Clymer, *The Thomas Nomination; Parade of Witnesses Support Hill's Story, Thomas's Integrity*, N.Y. TIMES, Oct. 14, 1991, at A1. According to Ms. Wright, Thomas also commented on the size of her breasts and arrived unannounced one evening at her apartment; Ruth Marcus, *4 Testify Hill Spoke Years Ago of Harassment; Others Assert Her Picture of Thomas is False*, WASH. POST, Oct. 14, 1991, at A1. Ms. Wright decided to share her experiences with Thomas after watching Anita Hill's initial press conference. She explained, "I knew I felt from my experience with Clarence Thomas that he was quite capable of doing what she [Anita Hill] said." Clymer, *supra*. FED. R. EVID. 404(b) states that evidence of a prior bad act is inadmissible to prove the character of a person in order to show action in conformity with the prior bad act. Thomas's alleged behavior with Angela Wright is a prior act similar in kind to his alleged behavior with Anita Hill. Moreover, the alleged behavior with Angela Wright implicates Thomas's character and suggests his propensity to engage in the actions of which Ms. Hill accused him. Rule 404(b) thus seems to preclude Ms. Wright's testimony. However Angela Wright's testimony is not relevant solely to Thomas's character—it also tends to establish the existence of a hostile environment, a basis for a sexual harassment claim against an employer. Linda J. Krieger and Cindy Fox, *Evidentiary Issues in Sexual Harassment Litigation*, 1 BERKELEY WOMEN'S L.J. 115, 136-39 (1985). Rule 404(b) should not control its admissibility. Unsurprisingly many court decisions reflect the admissibility of such evidence. E.g., *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 59 (1986); *Henson v. City of Dundee*, 682 F.2d 897, 911-12 & n.25 (11th Cir. 1982); *Bundy v. Jackson*, 641 F.2d 934, 940 & n.3 (D.C. Cir. 1981).

Furthermore if Rule 404(b) were found to control the admissibility of Ms. Wright's testimony, the rule contains exceptions to the inadmissibility of character evidence. For instance, if Angela Wright's testimony were offered to prove Thomas's intent to sexually harass Anita Hill, the Rule should allow the testimony constrained only by Rule 403's concern with undue prejudice, e.g., Kit Kinports, *Symposium in Honor of Edward W. Cleary: Evidence and Procedure for the Future: Evidence Engendered*, 1991 U. ILL. L. REV. 413, 440 n.157.

mate who acknowledged the nominee's long-standing appreciation of pornographic movies.¹⁵

MESSAGE: You cannot know how to play the game because men create and alter the rules to advantage themselves—the playing field is never level—you cannot win—do not try.¹⁶

As Professor Kinports notes, attorneys generally succeed in fitting character evidence into one of Rule 404(b)'s exceptions and securing its admission. *Id.* at 426-27 & n.82 and 85.

Ms. Wright declined to label Thomas's behavior toward her sexual harassment. Rather she labeled it annoying and obnoxious, describing herself as very strong-willed and not easily intimidated. Clymer, *supra*. Irrespective of Ms. Wright's perception, however, her testimony corroborates that of Anita Hill. Although the press later released Ms. Wright's unsworn statements, women watching the hearings remained uninformed regarding Ms. Wright's potential corroborating testimony.

Moreover, although Senator Biden suggested the Committee spared Angela Wright the burden of testifying because of the late hour, *Transcript of Senate Judiciary Committee Hearing on the Supreme Court Nomination of Judge Clarence Thomas*, Oct. 13, 1991 (Lexis)[hereinafter *Transcript*] his explanation rings hollow because the threatening tone of the hearings invites an interpretation of her absence more consistent with that tone. Without knowing more, women could speculate that Angela Wright did not testify because she received overt or covert threats. Women also could surmise that Ms. Wright's character or past behavior could not withstand the unfair scrutiny to which Anita Hill's character and behavior was subjected. See Clymer, *supra* (committee aides indicated Democrats were uncertain of Ms. Wright's credibility); Marcus, *supra* (Thomas fired Ms. Wright allegedly for referring to homosexuals as "faggots"). Both these conclusions—that Angela failed to appear because of threats or potential exposure to unfair ridicule—deepen the perception of threat the hearings created in women.

15. *The New York Times* quoted Ms. Lovita Coleman, a former Yale Law School classmate and strong supporter of Thomas, as stating that during law school Clarence Thomas had often patronized x-rated movie houses, and had more than once humorously described an x-rated film to her and others. Lovita Coleman also said that neither she nor the other students were offended by Thomas's amusing comments. Michael Wines, *The Thomas Nomination: Stark Conflict Marks Accounts Given by Thomas and Professor*, N.Y. TIMES, Oct. 10, 1991, at B14.

An exchange between Senator Leahy and Mr. Kothe, the former Dean of Oral Roberts Law School, beautifully illustrates the relevance of this excluded information to the credibility of Clarence Thomas:

SEN. LEAHY: And, Dean, you have testified the Clarence Thomas you knew could not possibly have made the statements Anita Hill claims he made. And I understand that you stated that very forcefully, sir. Do you believe that the Clarence Thomas you knew could enjoy talking about pornographic movies? I mean, that's one of the things that was alleged—Anita Hill alleged that he talked to her about pornographic movies. Are you saying that the Clarence Thomas you knew couldn't—wouldn't even enjoy talking about pornographic movies?

MR. KOTHE: I can't believe it. I can't believe that this man would even think in terms of pornographic movies. All of my relationship with him was at such a high level, talking about books of religion and philosophy and things that he was reading. I can't imagine that this man would have any diversion in the area that you described. I just simply can't.

Transcript, supra note 14, Oct. 13, 1991. Senator Leahy then informed Mr. Kothe of Ms. Coleman's statement. Mr. Kothe admitted his surprise. *Id.*

16. At the beginning of the hearings Naomi Wolf noted that women's outrage sent the Senate Judiciary Committee scrambling to appear concerned. She suggested that if the committee also were to respond to Anita Hill's allegations with appropriate gravity, business as usual could not continue. If the Senate were to demean the seriousness of Anita Hill's charges, she argued, women would have been told that "20 years into the battle for a level playing field, they can play the game the boys' way or go home." Naomi Wolf, *Sex, Lies and Silence: Feminism and Intimidation of the Job: Have the Hearings Liberated the Movement?*, WASH. POST, Oct. 13, 1991, at C1. Because the Senate did not take the allegations seriously enough even to conduct a balanced, fact-finding hearing, Ms. Wolf's negative premonition seems correct. Women now know the playing field is not level and, because they

Betty and women across the country watched other women give painful and moving accounts of their own experiences of sexual harassment. Women heard as women explained their continued sense of vulnerability and shame that kept them silent.¹⁷ Afterwards they listened as Senate Judiciary committeemen continued to express ignorance of and insensitivity to the reality and psychological dynamics of sexual harassment.

MESSAGE: The powerful males who sit in judgment of you do not have and will resist acquiring sympathetic understanding of your reality—for them your reality is fiction.

As the hearings drew to a close Senate Judiciary committeemen took turns acknowledging the seriousness of sexual harassment and expressing their gratitude for the sensitization they had experienced. But women then heard those same relieved committeemen fondly recall their college years and their Playboy magazines.¹⁸

unsuccessfully played the game the boys' way, they should go home and business as usual can continue.

17. According to her testimony Anita Hill remained silent because, "I wanted to stay in civil rights. I thought I had something to add." Other professionals like law professor Emma Coleman Jordan have advised, "keep silent or risk destroying the hard-won gains of years of education and rigorous training." Anita Hill's silence then hardly seems unusual.

Naomi Wolf explains:

No woman should be judged for whatever decision leads her to keep silent. I've been hearing variations of such silence across America. It extends far beyond the tolerance of specific episodes of sexual harassment, and into many women's public disavowal of attitudes that could be construed by their employers as feminist. While traveling from state to state, to listen to audiences of ambitious, educated middle-class women explore why they often don't identify with the women's movement, I have begun to ask them about professional punishment for holding feminist beliefs.

It is at this point that heads begin to nod in affirmation. If I am interviewing women in an office building, it is also at this point that I'm drawn behind closed doors. They tell me their stories and ask not to be named. Wolf, *supra* note 16.

Susan Estrich, a law professor at the University of Southern California, stated that women who brought sexual harassment claims based on a hostile environment usually did so only if they quit the job or suffered dismissal. Karen DeWitt, *The Thomas Nomination; The Evolving Concept of Sexual Harassment*, N.Y. TIMES, Oct. 13, 1991, at A28. Thus if continuing relations seem important because they provide career recommendations, women seem disinclined to raise sexual harassment issues.

In a 1987 survey of federal workers by the United States Merit Systems Protection Board, 42% of the female federal workers indicated they experienced sexual harassment, whereas only 14% of men reported sexual harassment. Only five percent of all sexually harassed respondents however formally complained. Many believe women underreport sexual harassment because of the stigmatization they experience upon complaint. *Id.*

18. In an attempt to minimize the importance of Clarence Thomas's appreciation of pornographic movies during his law days, Senator Simpson stated the following:

[I] want to tell you, if we all started to trot out what we did in law school, that ought to be a riot for the American public. I don't know what Clarence Thomas did in law school, but I've got a hunch about it. And I believe Playboy came out while I was in law school, and I remember reading it for its articles and its editorial content. (Laughter)

Transcript, supra note 14, Oct. 13, 1991. Mr. Stewart, one of Clarence Thomas's witnesses, did not appreciate Senator Simpson's humor and reminded the committee of the gravity of its task. *Id.* After Mr. Stewart's plea the Committee returned to the business of examining Mr. Doggett. However when given an opportunity to speak, Senator Hank Brown refused

MESSAGE: These proceedings—in the end—have been only a joke to these men—despite your expressed pain—nothing has changed.

And, finally, at the conclusion of the hearings women heard committee members call for a time of healing in the Senate.

MESSAGE: After our public display of sensitivity to women's concerns we men shall close ranks—nothing can compromise our male solidarity.

Cumulatively these messages transmit the image of a male dominated society overtly hostile and covertly demeaning to women. Moreover they brutally expose women's vulnerability to male power. These messages shocked me and left me feeling vulnerable in a way I have not experienced since I was a young child chased by neighborhood bullies whose hatred I neither expected nor understood. Then, as during the hearings, I felt captive in a foreign culture—prisoner of a war I had not fully known existed. In the face of all the advances many women thought had been made during the past two decades, the Senate Judiciary Committee made certain women understand they exist subject to their male captors' approval. Male tolerance of women, the messages read, still demands women's good behavior—women's complicity, in essence, in their own oppression. I believe many other women felt the same traumatic vulnerability Betty and I did in response to the unexpected hostility toward women broadcasted throughout the hearings—a trauma closely paralleling that inflicted upon POWs.

2. Unexpected Loss of Status

In addition to their abrupt confrontation with a hostile environment, war captives experience a dramatically traumatizing transformation of their status as person to that of object¹⁹ ultimately eroding the longterm captive's independent and integrated personality.²⁰ Analogously, when the Senate Judiciary Committee treated Anita Hill and the women testifying on her behalf as though their experiences did not occur or acknowledged the reality of their experiences while simultaneously denigrating its importance, it stripped women of identity and

to be outdone by Senator Simpson. Senator Brown concluded his brief questioning of Mr. Doggett with:

Mr. Chairman, I want to yield back, but if I could just make a note about the legal research that Senator Simpson did in law school. We had a student in Colorado's law school—I don't—it was not Yale, but it was Colorado—who did legal research, I understand, with Playboy, because he took certain pictures out of Playboy and appended them to his answer in torts. In two or three places, he received the highest grade in the class. I will yield back.

Id. The transcript indicates no additional laughter.

19. John F. Russell, *The Captivity Experience and Its Psychological Consequences*, 14 *PSYCHIATRIC ANNALS* 250, 251 (1984). See also Robert Joseph Ursano & James Ray Rundell, *The Prisoner of War*, 4 *MIL. MED.* 176 (1990).

20. Russell, *supra* note 19, at 251.

dignity—transforming them, in essence, from individuals into objects.²¹ Upon bombardment with the Committee's objectifying messages some women who internally experienced themselves as persons waived and suffered a diminished sense of status.²² Others in this society listening to such messages also might comprehend and ultimately treat women as inferior.

Moreover, as Patricia Williams eloquently persuades, acknowledging legal rights for persons who have existed without them affirms the individual's internal sense of identity.²³ Women know they have a legal right to bring sexual harassment claims. Yet the way the Senate Judiciary Committee conducted the hearings suggested that any such right was a mere fiction. As noted earlier, inadmissible evidence was introduced²⁴ and highly probative material was excluded.²⁵ Witnesses with no expert knowledge were allowed to make psychological diagnoses even when no facts supported those diagnoses.²⁶ Senator Specter

21. Republican Senator Simpson exemplifies the inability or refusal of the Senate Judiciary Committee to hear the women who testified for Anita Hill. He continued to express his disbelief that a woman would not complain if subjected to Clarence Thomas's behaviors despite the testimony of women relating their own experiences of sexual harassment and their subsequent failure to come forward. The sexist jokes made by Senators Simpson and Brown at the end of the hearings provide yet another example of the Judiciary Committee's inability to comprehend the seriousness of the women's issues they allegedly addressed. See *Transcript*, *supra* note 14, Oct. 13, 1991.

22. Many women with whom I spoke during and after the hearings talked of feeling an identity loss as a result of the Senate Judiciary Committee treatment of Anita Hill. Because the men on the committee so obviously viewed women differently from the way these women viewed themselves, the women found themselves compelled to adjust their view of themselves as independent and powerful personalities—and as worthwhile persons. Some talked of feeling insecure in their professional environments, wondering anew what the men with whom they worked really thought of them. Others spoke of feeling more at the mercy of the men for whom they worked, vowing to be more careful in the future of what they said and did. As one female bartender I talked with stated, "Well, I have to say, I feel more like a piece of meat than I did before." For women with little sense of their independence and power the Thomas/Hill hearings would not have been traumatic—simply reinforcing.

23. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

24. See *supra* note 12.

25. See *supra* note 14 and accompanying text. The public was left wondering what happened to the other women who allegedly were going to testify about other instances of Thomas's inappropriate sexual behavior. Moreover, no one bothered to seek or introduce evidence of Thomas's prior or current practice of renting and discussing pornographic movies. This type of evidence had relevance to the credibility of both Anita Hill and Clarence Thomas.

26. A notable example of this occurred when Senator Specter attempted to establish Anita Hill's propensity for sexual fantasy through questioning Mr. Kothe and Mr. Doggett. In response to Senator Specter, Mr. Kothe read into the record a statement he had made on October 7, 1991. "I find the reference to the alleged sexual harassment not only unbelievable but preposterous. I am convinced that such is a product of fantasy." In his by then characteristically inept fashion, Senator Specter pursued Mr. Kothe who responded, "And the second statement I made in October 10—I left that off—that was a—that wasn't intended as words of art or scientific expression. It was just the instant reaction I had to this—awful event." Refusing to give up, Senator Specter posed another question, "Well, Professor Kothe, was there anything that you could point to in Professor Hill's conduct that would lead you in a—either an evidentiary or a feeling way to that conclusion of fantasy?" Mr. Kothe responded:

"No. I think perhaps my selection of words there was probably unfortunate. I've

twisted Anita Hill's testimony in order to make groundless charges of perjury against her.²⁷ Questioning of the principal actors was ineffective and unbalanced.²⁸ Senators grandstanded rather than probed for the facts. In essence the substantive issue—whether Clarence Thomas sexually harrassed Anita Hill—remained buried beneath a procedural trashheap, sending women the message that their legal rights and the portion of their identity reinforced by those rights remain ephemeral—not real.

To the extent women internalized these messages or realized that powerful actors in society see them as objects rather than individuals, the hearings did much to transform the status of women from person to object. Women's experience of the hearings thus again parallels that of POWs.

3. Loss of Important Support Systems

From the time of capture, POWs lose the social, physical and environmental supports upon which they previously relied.²⁹ Moreover POWs from Western countries usually expect law to protect their legal rights. When confronted in captivity with a system that fails to respect their personal freedoms they sometimes react with utter disbelief and disillusionment.³⁰ Similarly, from the time of the hearings women had to acknowledge that many of the societal supports upon which they counted did not exist. Men they had helped elect to an allegedly democratic Senate proved insensitive to their concerns. The hearings themselves failed to provide procedural justice.³¹ And, ultimately, a highly

never seen Anita Hill in a situation where she wasn't a decent person, a dignified person, a jovial person. I've never seen her in a situation where actually you would say she was fantasizing in that sense. I almost regret that I had used that in my first reaction."

Transcript, supra note 14, Oct. 13, 1991.

Giving up on Mr. Kothe, Senator Specter then unleashed his prosecutorial talents on Mr. Doggett. With Senator Specter's assistance Mr. Doggett established that he thought Anita Hill had difficulty dealing with men who rejected her, *id.*, because at a going away party for Ms. Hill she had approached him and stated she was disappointed in him for leading women on and letting them down. *Id.* Based on this contact, a chance meeting while he was out jogging, and a dinner date that fell through Mr. Doggett concluded Ms. Hill fantasized about his sexual interest in her. *Id.* In one of his rare moments of leadership, Senator Biden forcefully indicated he found Mr. Doggett's conclusions preposterous. In his examination of Mr. Doggett, Senator Biden established that no other communication whatsoever had occurred between Anita Hill and Mr. Doggett, that Mr. Doggett had no background in psychology, that Mr. Doggett knew of no other instance that would suggest Ms. Hill's propensity for fantasy, and that Ms. Hill had not raised her voice at the party when she allegedly claimed disappointment with Mr. Doggett. *Id.* Senator Biden ended his examination by stating he felt Mr. Doggett's conclusions about Anita Hill were "a true leap in faith or ego, one of the two." *Id.* In apparent agreement with Senator Biden, the audience laughed. Unfortunately Senator Simpson accused Senator Biden of playing to the audience and Senator Biden retreated. *Id.* See *supra* note 12.

27. See *infra* note 32 and accompanying text.

28. See *infra* note 33 and accompanying text.

29. Russell, *supra* note 19, at 251.

30. Rahe & Genender, *supra* note 7, at 578.

31. Senator Biden announced at their beginning that the hearings were not formal judicial proceedings. *Transcript, supra* note 14, Oct. 11, 1991. Yet many individuals lack the sophistication to determine how the hearings differed from court proceedings. Re-

suspect male was made a Justice on the nation's highest court,³² suggesting a severe compromise of substantive as well as procedural justice. Many women, similar to POWs, sat in disbelief and shock as a system

gardless of the forum, citizens of the United States expect any dispute resolution procedure to approximate procedural due process—a fair opportunity for both sides to present their case. See, e.g., JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975); Edith Barrett-Howard & Tom R. Tyler, *Procedural Justice as a Criterion in Allocation Decisions*, 50 J. PERSONALITY & SOC. PSYCHOL. 296 (1986); P. Christopher Earley & E. Allan Lind, *Procedural Justice and Participation in Task Selection: The Role of Control in Mediating Justice Judgments*, 52 J. PERSONALITY & SOC. PSYCHOL. 1148 (1987); Kwok Leung & E. Allan Lind, *Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preferences*, 50 J. PERSONALITY AND SOC. PSYCHOL. 1134 (1986). The Senate Judiciary Committee hearings violated that expectation, particularly for women.

32. The Thomas/Hill hearing pit the credibility of Professor Hill directly against that of Clarence Thomas: most agree one of them lied. Thomas's credibility seems highly suspect because he had obvious reasons to lie: (1) potential confirmation to the United States Supreme Court; (2) preservation of his professional reputation in order to continue serving as a federal appellate judge in the event the confirmation failed; (3) preservation of his marriage. Barbara Vobejda, *Who's Telling the Truth? Experts Say Answer May Never Be Known*, WASH. POST, Oct. 13, 1991, at A30 (in a courtroom Thomas would have faced questions about his motivation to lie because of the danger to his career, reputation, and relationships if Hill's allegations proved true); and (4) knowledge that his lying would go undetected because witnesses to his behavior did not exist. In contrast Professor Hill had nothing to gain and much to lose by coming forward and/or lying: (1) public ridicule; (2) diminished professional stature and opportunity; (3) loss of privacy; and (4) employment.

Moreover, Thomas seems far more prone to sexual fantasies than Professor Hill. Psychologists who work with divorcing people recognize that sexual behaviors intensify among separated people, e.g., JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* 32-33 (1980); JOY K. RICE & DAVID G. RICE, *LIVING THROUGH DIVORCE: A DEVELOPMENTAL APPROACH TO DIVORCE THERAPY* 121-126 (1986). Some of Thomas's alleged harrasing behavior took place during his separation from his wife.

Thomas also put his credibility into question during the initial confirmation proceedings by stating that he had never discussed *Roe v. Wade*, 410 U.S. 113 (1973), with anyone, *Executive Session: Nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the Supreme Court of the United States*, 137 CONG. REC. S14451 at 14459—an impossibility for any person actively engaged in the legal profession. Klein notes, ". . . the only memorable statement to emerge from the first Thomas hearings was the judge's incredible denial that he'd ever 'debated' the Supreme Court's *Roe v. Wade* decision. 'I'd guess he wasn't quite telling the truth there,' Nebraska Senator Bob Kerrey would later deadpan, 'which raised some questions in my mind about his character.'" Klein, *supra* note 8, at 29.

Finally, Thomas showed himself subject to delusion by labeling the hearings a racial lynching. In so doing he ignored the "reality" that he himself requested the hearing, that committee members strongly advocated for him, that the Bush Administration steadfastly supported him, and that the woman accusing him of sexual harassment was also an African-American.

Thomas correctly perceived his confirmation as racially discriminatory—but not in the way he meant. Rather the Bush Administration and the United States Senate discriminated against African-Americans by appointing a black man to the United States Supreme Court whose moral character, independence from the administration, and intellect remains suspect to many Americans. The racist message implicit in Thomas's appointment is that a black of questionable morality and intellect is the best we can find for a United States Supreme Court Justice. Surely in this country fine African-American judges exist who command the respect of all and whose appointment to the Supreme Court would enhance rather than diminish the status of Africans-Americans. In his open letter to Clarence Thomas, Judge Higginbotham eloquently expresses the agony felt by some African-Americans in the wake of the Thomas appointment. A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas From a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005 (1992). See also Tom Shales, *At The Senate Hearings, More of the Mortifying Spectacle*, WASH. POST, Oct. 14, 1991, at D1 (Roger Wilkins, a longtime civil rights activist and history professor, expressed his anger at Thomas's use of the term "lynching").

they had counted on to operate representatively and fairly evaporated before their eyes.³³ Because the system that failed was their own rather than a foreign country's, one legitimately can speculate that their disillusionment proved extreme.³⁴

Moreover many women had come to expect some degree of understanding from men on women's issues. Fellow travelers—be they men or women—could be counted on for empathy and support. Yet the very members of the Senate Judiciary Committee who claimed their dedication to liberal or women's issues in the end proved ineffective champions.³⁵ The passiveness of these allegedly supportive males in the face of Republican attack made male support generally suspect.³⁶ Thus the hearings strongly suggested to women the support systems they had counted on did not exist and, like POWs, these women experienced the stress associated with that loss.³⁷

4. Indoctrination

POWs frequently find themselves punished by their captors for maintaining their own country's social and cultural values. Simultane-

33. See Wolf, *supra* note 16. (noting that the Thomas/Hill hearings illustrated the political system's failure to work for women). See also Tom Shanes, *At The Senate Hearings, More of the Mortifying Spectacle*, WASH. POST, at D1, Oct. 14, 1991 (suggesting that a combination of ineptness and fear of being labeled racist disabled the Democrats and labeling the Senate's initial bungling response to Anita Hill's allegation as a betrayal of women).

Many men were also disillusioned by the way the Senate Judiciary Committee conducted the hearings. Their dissatisfaction seemed related to the the ineptness of the Senate Judiciary Committee members and the basic unfairness of the hearings.

34. In the haunting words of a Vietnam prisoner of war who was reacting to repatriation:

However, if a "friendly" system lets you down, is oppressive, or keeps you in a state of uncertainty, it is more devastating to you and makes you cynical of any environment, of anyone else. . . . You soon sense how far away you have been from a world you once took for granted.

Russell, *supra* note 19, at 253.

Not all women of course appreciate the procedural travesty the hearings represented. They might well think courts of law operate in this unfair and untrustworthy fashion. To the extent women now perceive courts this way, the hearings should prove a significant deterrent to their willingness to bring sexual harassment lawsuits. *The Wall Street Journal* recently reported a rise in sexual harassment claims within organizations but noted there was no corresponding increase in lawsuits. WALL ST. J., Feb. 25, 1992, at A1.

35. Senator Biden, for instance, proved extremely deferential to unethical Republican behavior, failed to control Republican abuse of process, seemed concerned primarily with protecting his reputation as Chairperson of the committee, and ultimately conceded that Clarence Thomas should have the benefit of the doubt in the event of ambiguity. Ruth Marcus, *Thomas, Allies Step Up Counterattack*, WASH. POST, Oct. 13, 1991, at A1. Senator Edward Kennedy, a recognized liberal, probably feeling constrained by his prior indiscretions with women, did not use his rhetorical skill to champion Anita Hill's cause. Dowd, *supra* note 9 (implying that Senator Kennedy's improprieties with alcohol and women led to his low profile before the hearings).

36. Many of my female friends and acquaintances have expressed their increased reluctance to trust men on any issue after the Thomas/Hill hearings.

37. One significant stress for Chinese and North Korean prisoners of war was the sequential experience of severe threat-followed by captors' promises of safety-followed by captors' arbitrary reintroduction of severe threat. Harvey B. Strassman et al., *A Prisoner of War Syndrome: Apathy as a Reaction to Severe Stress*, 112 AM. J. PSYCHIATRY 998, 998 (1956). Women should experience a similar trauma when confronted with threats from men interspersed with promises of support.

ously captors subject POWs to intense indoctrination and reward POWs when they accept the captor's ideology.³⁸ For instance, Chinese and North Korean POWs found that acceptance of the communist ideology or participation in collaborative activities earned increases in food, physical comforts and privileges, as well as promises of early repatriation.³⁹

Similarly the hearings indicate that women who deviate from patriarchal ideology are vulnerable to male power. Certainly Professor Hill, as an unmarried high status professional, deviates from the traditional patriarchal script for women. Moreover she dared to challenge a powerful man. For these acts of defiance she suffered attack. The messages of the hearings thus nicely reinforce the current ideological campaign to encourage women to return to their proper social position⁴⁰—subordinate to men.

Contrasting the hearings with the Tyson rape trial makes the message clearer. Tyson's successful antagonist, Desiree Washington, seemed to have an impeccable moral character similar to Anita Hill's. However, rather than defying patriarchal values, she fulfilled the acceptable script of beauty queen that, in turn, encourages the perception of women as sexual objects for men's pleasure.⁴¹ Whereas Anita Hill, the nonconforming antagonist suffered attack and defeat, the conformer met with success—Mike Tyson was convicted of rape.⁴² I do not mean to belittle Ms. Washington's courage or leave unacknowledged her challenge to patriarchy by bringing charges against a powerful male. Yet both Ms. Hill and Ms. Washington accused successful men, leaving them approximately equal on that score.⁴³ Safety for women, the message still reads, depends upon the extent of their compliance with patriarchal ideology⁴⁴—just as safety for POWs frequently meant acceptance of

38. *E.g., id.*; Sutker et al., *supra* note 3, at 171.

39. Strassman et al., *supra* note 37.

40. SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1991). In her book Faludi painstakingly sets out the campaign against American women found in the media, *id.* at 75-111; movies, *id.* at 112-39; television, *id.* at 140-68; fashion, *id.* at 169-226; politics, *id.* at 229-80; popular psychology, *id.* at 335-62; law, *id.* at 423-30; and writings of revisionist feminists, *id.* at 312-32.

41. Both Anita Hill and Desiree Washington were unmarried. However in contrast to Anita Hill's maturity, Desiree was only nineteen years old—too young for people to believe she deliberately decided to defy patriarchal values by remaining unmarried.

42. The juxtaposition in the text ignores the obvious differences between Clarence Thomas, the federal court judge, and Mike Tyson, the boxer, that also influenced the different outcomes. The dissimilarity between Thomas and Tyson dilutes but does not negate the message that greater safety for women accompanies acquiescence to patriarchal ideology.

Moreover, despite her more traditional life expression, Desiree Washington was not entirely safe. She and Anita Hill both met with hostility from African-Americans who felt they had broken faith with their race by accusing high-profile African-American men of wrongdoing. *Victim Offered '\$1 Million to Recant'*, *DENV. POST*, Feb. 21, 1992, at 2A.

43. Arguably Anita Hill's charges against a Supreme Court nominee threaten patriarchy more than Desiree Washington's charges against a boxing champion. A Supreme Court Justice still seems more important to the preservation of male supremacy than a violent athlete—although recent appointments give me pause.

44. This statement is consistent with research indicating that observers tend to blame rape victims more when the victims deviate from traditional sex role norms than when they comply. Alan C. Acock & Nancy K. Ireland, *Attribution of Blame in Rape Cases: The Impact of*

their captors' values.

B. *Reactions to Captivity*

The above sections argue that the captivity experience of POWs bears an uncanny similarity, in kind though not degree, to what many women confronted during the hearings. One might expect then their reactions to the hearings to parallel the reactions of POWs to their imprisonment. For many POWs the traumatic stress of captivity causes common symptoms. This section explores these symptoms, how they reflect the responses of Betty and many other women to the hearings, and what these responses mean to the women's movement's viability.

1. Passive Compliance

As explained above, the unanticipated loss of status and support, as well as immersion in a hostile environment, destroy the prisoner's prior sense of invulnerability⁴⁵ and generate fear.⁴⁶ The prisoner's immediate reaction is fight or flight.⁴⁷ For most prisoners however fight and

Norm Violation, Gender, and Sex-Role Attitude, 9 *SEX ROLES* 179, 187 (1983); Barbara Krahe, *Victim and Observer Characteristics as Determinants of Responsibility Attributions to Victims of Rape*, 18 *J. APPLIED SOC. PSYCHOL.* 50, 51 (1988).

45. See *infra* notes 19 and 20 and accompanying text.

46. Russell explains:

The prisoner, in many ways, reverts to the child who relies on others to control his life. The captors are seen as totally omnipotent. However, unlike the child-parent relationship, the controller is not the caring, loving authority, but rather is someone aggressive, punitive and unpredictable, even at times malicious. At best the controller is seen as unconcerned about the welfare or survival of the captive. Fear develops.

Russell, *supra* note 19, at 252. See also Rahe & Genender, *supra* note 7, at 578. The tendency for POWs to regress to childlike responses seems universal. See, e.g., Bettelheim, *supra* note 4, at 435-37, 444-47.

Regression sometimes is encouraged by the prisoners themselves. Bettelheim comments on this phenomenon in the context of Nazi concentration camps:

[T]his regression would not have taken place if it had not happened in all prisoners. Moreover . . . [the prisoners] asserted their power as a group over those prisoners who objected to deviations from normal adult behavior. They accused those who would not develop a childlike dependency on the guards as threatening the security of the group, an accusation which was not without foundation, since the Gestapo always punished the group for the misbehavior of individual members.

Id. at 444.

47. Russell, *supra* note 19, at 251. In addition to the panic reaction noted in the text, POWs frequently respond to their initial captivity with denial. E.g., Bettelheim, *supra* note 4, at 427, 431; Ursano & Rundell, *supra* note 6, at 177. Kitahara explains that the Japanese exhibited denial at their surrender and occupation after World War II similar to the denial found in newly arrived prisoners. Many Japanese did not believe the news of capitulation, or if they accepted the news, they distorted the contents to make it less painful. Michio Kitahara, *The Nazi Concentration Camp and Occupied Japan: Responses in Two Historical Situations*, 16 *J. PSYCHISTORY* 191, 194 (1988). Many women watching the hearings also may have responded to their initial perceptions of captivity by denying that status or by convincing themselves the situation was not as bad as first thought.

Among most prisoners, however, denial proves shortlived. Ultimately they confront and adapt to their captivity, or they, as Betty did, commit suicide. E.g., Bettelheim, *supra* note 4, at 425-27; Kitahara, *supra*, at 194-95. One might expect then the short duration of women's denial and their eventual willingness to adapt to their captivity through passive compliance and other mechanisms developed in the text.

flight prove impossible.⁴⁸ Their fatigue, depression and deep sense of vulnerability eventually promote their adaptation to captivity:⁴⁹ apathy and passive compliance results.⁵⁰ The compliant POW frequently chooses to minimize harassment by not challenging captors and by participating in mundane and safe, rather than meaningful but dangerous, activities. In essence, resignation to one's fate becomes the norm.⁵¹

Similarly, the unanticipated hostility of the messages broadcast during the hearings made clear women's vulnerability to male power and women's inability to control what happens to them. Like prisoners of war, women cannot escape their captivity in a hostile culture. Nor can they, as the hearings made evident, fight effectively against such odds.⁵² One might then expect their reaction to parallel that of the POW: passive compliance and reluctance or refusal to challenge their captors, especially on dangerous women's issues.

I believe this response is reflected in those women who initially re-

48. The circumstances surrounding imprisonment and the prior experiences of the captives also effect the prisoner's initial reaction to captivity. For instance, Bettelheim's observations made in Nazi concentration camps revealed that the group least able to withstand the initial shock of and comprehend their imprisonment were nonpolitical middle-class prisoners. He explained:

They had no consistent philosophy which would protect their integrity as human beings, which would give them the force to make a stand against the Nazis. They had obeyed the law handed down by the ruling classes, without ever questioning its wisdom. And now this law, or at least the law-enforcing agencies, turned against them, who always had been its staunchest supporters. Even now they did not dare to oppose the ruling group, although such opposition might have provided them with self-respect. They could not question the wisdom of law and of the police, so they accepted the behavior of the Gestapo as just. What was wrong was that *they* were made objects of a persecution which itself *must* be right, since it was carried out by the authorities. The only way out of this particular dilemma was to be convinced that it must be a "mistake." These prisoners continued to behave in this way despite the fact that the Gestapo, as well as most of their fellow prisoners, derided them for it.

Bettelheim, *supra* note 4, at 426. To the extent that an analogy exists between the initial shock of imprisonment in a Nazi concentration camp and women's shock at confronting their imprisonment within our hostile society, one might expect women who steadfastly have followed the cultural script laid down for them to have the most difficulty accepting the negative implications for women of the Thomas/Hill hearings.

In time, confronted with daily brutalities, the nonpolitical middle-class prisoners that Bettelheim observed came to accept their actual situation. Bettelheim, *supra* note 4, at 427. Women however who have steadfastly followed their cultural script usually are not subjected to the same obvious terrors experienced by the concentration camp prisoners. They may never acknowledge their imprisonment in a hostile culture.

49. Russell, *supra* note 19, at 252.

50. *E.g., id.*; Strassman et al., *supra* note 37, at 999 (1956); Ursano & Rundell, *supra* note 6, at 177; Robert J. Ursano et al., *Coping and Recovery Styles in the Vietnam Era Prisoner of War*, 174 J. NERVOUS & MENTAL DISEASE 707, 708 (1986).

51. *See, e.g.,* Russell, *supra* note 19, at 252; Strassman et al., *supra* note 37, at 999; Ursano & Rundell, *supra* note 6, at 177.

52. One of the most distressing aspects of the Thomas/Hill hearings was the inability of women to protect a woman who already possessed power based on her income, education, prestigious occupation and impeccable character. If the full support of the feminist community proved ineffective in protecting a woman with Anita Hill's positive attributes from an egregious use of male power, clearly the women's movement can do little to protect less powerful women from similar—or worse—abuse. This is not to say that the women's movement should possess the sole responsibility for protecting women from male abuse.

sponded passionately to the hearings but whose startled disbelief and anger eventually changed to withdrawn acceptance and unwillingness to discuss further what had occurred. Unless their response is acknowledged and addressed one can expect their political activism as well as their willingness to identify with the women's movement, to decrease rather than increase in the wake of the hearings.

2. Displaced Anger

Because POWs cannot express their rage against their captors safely they sometimes unconsciously displace their anger onto safer targets.⁵³ Similarly, women, angered by their vulnerability to male oppression highlighted during the hearings, may have recognized the danger of directing their outrage against their male captors. Rather, like POWs, some women unconsciously displaced that anger onto a safer target—Anita Hill, the individual providing women striking evidence of their threatening vulnerability.

Moreover women who have complained of sexual harassment and suffered retaliation or who have left their jobs to escape harassment might resent Anita Hill's delay in complaining against Thomas. Why should Ms. Hill, they might wonder, be able to avoid the costs they experienced simply by delaying her complaint until long after her job ended?⁵⁴ Projection of this anger against Anita Hill however ignores the true culprit: a system that provided these women no protection against retaliation or required resignation to avoid sexual harassment. Displaced, rather than deserved, anger thus might explain the hostility many women exhibited toward Anita Hill after the hearings.

Women's displaced anger decreases the women's movement's effectiveness. If women recognized the actual source of their anger they could meaningfully direct their efforts for change. For instance, those women angry at Anita Hill for failing to bring a harassment charge sooner and escaping the costs they experienced could be instrumental in changing women's oppressive workplace reality if they redirected their energy toward reforming the system that permitted sexual harassment and then provided women no protection from retaliation or no choice but to resign their jobs. Displacing their anger onto Anita Hill in contrast inhibits women's ability to detect the source of their discomfort and

53. Russell, *supra* note 19, at 253 (citing S. Wolf & H.S. Ripley, *Reactions Among Allied Prisoners of War Subjected to Three Years of Imprisonment and Torture by the Japanese*, 104 AM. J. PSYCHIATRY 180 (1947)).

54. This anger likely is exacerbated by the class difference between Professor Hill and most of these women. With less power and resources at their command (few were Yale Law School graduates) they had the courage to complain. If they faced risks to defend their dignity in the workplace, why should Professor Hill, who possessed power few of them could imagine, be allowed to avoid coming forward without suffering blame. This thinking unfortunately ignores Anita Hill's vulnerability while working for the head of the government agency responsible for eliminating the very behavior in which he allegedly engaged. At that time in history, who would have believed her? Even now her story seems incredible to many.

correspondingly cripples their ability to make meaningful changes in their oppressive reality.

Moreover, to the extent women with displaced anger perceive Anita Hill as associated with the women's movement,⁵⁵ one can predict their increased disaffection with the movement. They might be more difficult than ever to convince that the movement's goals reflect their best interests.⁵⁶ Setting aside flowover anger from Anita Hill, the women's movement itself probably attracted some women's hostility during the hearings. Leaders of the movement often have urged women to stand up and be heard. Yet when Anita Hill, a powerful woman compared to most, did so, the movement failed to protect her from male attack. Women thus might feel betrayed by the movement and less willing to listen to exhortations to continue struggling for women's equality. Again a chilling analogy exists in the war captivity experience. In his study of Nazi concentration camps Bettelheim found that prisoners frequently expressed irrational hostility toward family and friends outside the camps who were trying desperately, yet ineffectively, to rescue them.⁵⁷

Displacement however does not explain all women's anger with Anita Hill.⁵⁸ Commentators suggest that the anger of some African-American women stems from their belief that Anita Hill broke faith with

55. As one commentator noted, "[s]he [Anita Hill] has an enduring place in the Feminist Hall of Fame. Klein, *supra* note 8, at 29, 31.

56. As Faludi notes, the women's movement has suffered severe criticism for its alleged failure to recognize and work for the family interests allegedly exclusive to women. FALUDI, *supra* note 40, at 281-332. See also Scott Jaschik, *Philosophy Professor Portrays Her Feminist Colleagues as Out of Touch and 'Relentlessly Hostile to the Family'*, THE CHRON. OF HIGHER EDUC., Jan. 15, 1992, at A15 (noting how Clark University's philosophy professor Christina H. Sommers accuses elite feminist philosophers of shoddy work, insensitivity to most women's concerns, and hostility to the family, resulting in most women wanting nothing to do with feminism).

57. Bettelheim, *supra* note 4, at 439-43. Bettelheim lists several reasons for the prisoners' hostility toward their families: (1) inevitable changes in their families that thwarted prisoners' desire to return to the outside world as the same person who left, *id.* at 440; (2) concern that their families were not doing enough to free them, *id.* at 439; (3) their inevitable hostility that needed release, coupled with their inability to endure the additional hardship of blaming themselves for their captivity, *id.* at 441; and (4) their hatred of all those living on the outside who seemed to enjoy life in ignorance of the prisoners' plight, *id.* at 442. Over time the prisoners tended to cease directing their hostility towards those on the outside or the Gestapo. Instead they learned to direct aggression against themselves. *Id.* at 443.

58. In addition to the argument in the text, the discomfort some women felt at witnessing Anita Hill's courage might have precipitated their hostility toward her. Many women silently have endured experiences similar to Ms. Hill's. Anita Hill's courageous challenge of a powerful male is an inspiring example. Yet her behavior also implicitly suggests the deficiency of women who have silently accepted their plight. These women now must exhibit similar courage or face their own inadequacy. Anita Hill's behavior thus threatens these women's self-esteem and promotes their hostility toward her.

Professor Ehrenreich partially explains men's hostility to women in the workplace in a similar way. Women who refuse to accept the status quo and press for workplace reform challenge the complacency of male workers. Faced with assertive women role models, women heretofore considered inferior to men, the male workers see themselves as lacking in corresponding courage and ambition. This perception encourages their hostility toward women workers and their engagement in sexually harassing behavior. Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177, 1227-28 (1990).

her race by accusing a successful black man of sexual improprieties. Black men have experienced a long and difficult history of racism in the United States, making their success contingent upon overcoming nearly insurmountable obstacles.⁵⁹ Black men also have proven vulnerable to injustice when accused of sexual crimes.⁶⁰ When the successful Judge Thomas recharacterized the hearings as a racial lynching,⁶¹ he tapped these images of discrimination. He effectively implied that Anita Hill, by alleging sexual misconduct by a successful African-American man, was a traitor to her race.⁶²

Thomas ignored much of history in making that implicit charge. Historically black men did suffer unjust lynchings when accused of sex crimes—but only sex crimes allegedly committed against white women. That the hearings addressed charges by a black woman against a black man became lost in Thomas's purportedly anti-racist rhetoric. The racial and sexual stereotype of Anita Hill as the promiscuous and lascivious black woman⁶³ also went unrecognized. Nevertheless the spectre of a racial lynching of a black man undoubtedly generated anger against Anita Hill in some black women. Protecting a prominent black man seemingly came more naturally than protecting a black woman.⁶⁴

Certainly black women's hostility toward Anita Hill for breaking the racial faith poses problems for the women's movement. Although the racial issues in the hearings arguably should have promoted more protective instincts within the African-American community toward Anita Hill than Clarence Thomas, Thomas's anti-racist rhetoric struck a chord in many Blacks, whereas Anita Hill's feminist rhetoric did not. To the extent that Anita Hill personifies the women's movement, Ms. Hill's perceived breach of racial faith simply reinforces black women's preexisting suspicion that feminism fails to address minority women's unique concerns. If African-American women feel more alienated from the wo-

59. See, e.g., Estelle B. Freedman, *The Manipulation of History at the Clarence Thomas Hearings*, THE CHRON. OF HIGHER EDUC., Jan. 8, 1992, at B2; Ellen Goodman, *Year of Male-Female Power Struggles: Undertone of the Champ and Woman Who Brought Him Down*, DES MOINES REG., Feb. 14, 1992, at 13A.

60. Freedman, *supra* note 59.

61. Deep irony exists in Clarence Thomas's invocation of the image of racial discrimination to protect himself. As Judge Higginbotham states in his open letter to Clarence Thomas, Thomas has criticized and refused to support the very civil rights advocates responsible for removing racially discriminatory barriers to Thomas's own professional and personal successes. Higginbotham, *supra* note 32, at 1014-15.

62. Goodman, *supra* note 59.

63. Professor Freedman notes:

Viewing the Senate's response to Anita Hill in light of these historical precedents suggests that the predominant stereotypes influencing the outcome of the hearings were the stereotypes involving black women. Gender-specific racial myths placed Professor Hill in the tradition of the promiscuous, lascivious black woman. Furthermore, despite Ms. Hill's professional status, historical stereotypes of black women, still familiar to most white Americans, portray black women as either domestic servants or as welfare mothers.

Freedman, *supra* note 59. After identifying gender-specific stereotypes that worked against Anita Hill's credibility during the hearings, Professor Freedman asks, "[g]iven these stereotypes, just who was the 'uppity black' being punished in the Senate hearings?" *Id.*

64. *Id.*

men's movement as a result of the hearings, the movement has lost a powerful force.

3. Blaming the Victim

While the captivity experience may not cause the prisoner to blame himself for his plight, others may blame the victim. For instance Bettelheim notes that the German population generally proved unsympathetic to Germans who had family members in Nazi concentration camps. The German's strong need to trust that their world was governed by law and order led them to believe the prisoners must have committed outrageous crimes and thus deserved their fate.⁶⁵ Bettelheim's observation receives support from current research exploring how people sometimes blame the victim more than the perpetrator for the victim's misfortune.

Researchers explain the tendency to blame victims by citing people's need to protect themselves from psychic trauma and to perceive the world as just.⁶⁶ The Just World Theory posits that people struggle to retain their belief in a just world because to think otherwise implies a threatening lack of control over their environment.⁶⁷ The Defensive Attribution Hypothesis suggests that people attribute blame to the victim to avoid the suggestion that they themselves might be vulnerable to similar negative events.⁶⁸ Under this hypothesis, the greater the dissimilarity between the observer and victim, the more the observer tends to blame the victim.⁶⁹ Moreover the observer tends to search for differ-

65. Bettelheim, *supra* note 4, at 440-41.

66. E.g., Judith A. Howard, *Societal Influences on Attribution: Blaming Some Victims More Than Others*, 47 J. PERSONALITY & SOC. PSYCHOL. 494, 495 (1984); Kevin D. McCaul et al., *Understanding Attributions of Victim Blame for Rape: Sex, Violence, and Foreseeability*, 20 J. APPLIED SOC. PSYCHOL. 1, 1-4 (1990); Bill Thornton, *Defensive Attribution of Responsibility: Evidence for an Arousal-Based Motivational Bias*, 46 J. PERSONALITY & SOC. PSYCHOL. 721, 721-22 (1984).

67. McCaul et al., *supra* note 66, at 3.

68. As Thornton explains:

Moreover, these theorists claim that such undeserved victimization arouses a negative affective state in observers by threatening them with the prospect of similarly capricious misfortune occurring in their own lives just as unpredictably and uncontrollably. Thus, to maintain a sense of self-security, observers cognitively defend against the threat by distorting their perceptions of the victim's causal role in his or her own victimization. By determining that the individual was in some way responsible, the threat can be reduced and a sense of understanding and control over what would otherwise appear to be random, capricious events can be achieved.

Thornton, *supra* note 66, at 721.

69. McCaul et al., *supra* note 66, at 2. Thornton explains this phenomenon: Shaver further conceived of two distinct motives underlying defensive attribution: that people are motivated to defend cognitively against the threatening prospect of such unwarranted misfortune occurring to themselves; however, there is also a need to defend against the threatening possibility of being held personally responsible were they to succumb to a similar fate. Subsequently referred to as harm avoidance and blame avoidance motives, respectively, these two reactions are differentially aroused by the apparent similarity between observer and victim (e.g., attitudes, background, age, sex, etc.). Thus realizing situational similarity with a personally dissimilar victim, observers may defensively attribute personal responsibility to the victim in the interest of harm avoidance motives, acknowledging that they are personally different from or would behave differently than the victim and, consequently, could avoid a similar fate. Shaver proposed that

ences between herself and the victim in order to avoid acknowledging her similar vulnerability.⁷⁰

Combining this research with Bettelheim's observations may explain why some women seemingly ignored Anita Hill's victimization and instead blamed her for failing to come forward earlier, for not quitting her job and/or for following Thomas to the EEOC.⁷¹ They implicitly assume that had Anita Hill behaved differently she could have avoided victimization by Clarence Thomas. Thus the sexual harassment was Anita Hill's fault.⁷² These defensive assertions allow women to continue believing their world is just—Anita Hill got what she deserved because she failed to act properly.⁷³ They also encourage women to ignore the hostile male culture in which they live and to avoid seeing that a truly just world does not contemplate sexual harassment or at least appropriately punishes such behavior when committed. Instead, as the hearings made evident, sexual harassment is commonplace, alleged perpetrators may receive promotions and victims who complain all too often suffer ridicule and blame.

Attributing Anita Hill's victimization to her own behavior also promotes a false sense of security in these women. They can assure themselves that had they been in Anita Hill's position they would have

when personal similarity to the victim cannot be denied, however, observers would not be inclined to assign blame to the victim because they would not want to be held similarly responsible had they caused or succumbed to similar consequences. Indeed, to derogate or blame a personally similar victim under such circumstances is presumed to be much like devaluing or blaming oneself. (citations omitted)

Thornton, *supra* note 66, at 721-22.

70. *Id.*

71. Acknowledging the pain and humiliation of others can create emotional discomfort in the empathizing person. As a result people sometimes deny the severity or reality of the victim's pain. Meerloo explains, for instance, how some psychiatrists' reluctance to address the true horror of Nazi prison camps caused them to underestimate the psychological damage done to the prisoners of those camps. Joost A.M. Meerloo, *Persecution Trauma and the Reconditioning of Emotional Life; A Brief History*, 125 AM. J. PSYCHIATRY 1187, 1187 (1969). Women's failure to acknowledge Anita Hill's victimization further protects them by preventing painful empathy.

72. Pryor notes a study by Jensen and Gutek that found more traditional women tended to blame themselves and other women more for incidents of sexual harassment, believing they should have done something to prevent it. John B. Pryor, *The Lay Person's Understanding of Sexual Harassment*, 13 SEX ROLES 273, 276 (1985) (citing I. Jensen & B. A. Gutek, *Attributions and Assignment of Responsibility for Sexual Harassment*, 38 J. SOC. ISSUES 121 (1982)).

73. These defensive attributions ignore that had Anita Hill complained sooner, quit her job or rejected the EEOC opportunity she probably could not have avoided victimization. Young black female professionals were vulnerable to racial and gender discrimination at the time Anita Hill allegedly experienced sexual harassment by Clarence Thomas. There was no assurance that Anita Hill could easily have replaced her job. These attributions also are blind to the immediate financial vulnerability of quitting one's job when one lacks resources upon which to fall back. Moreover, had Anita Hill not followed Clarence Thomas to the EEOC she would have foregone the very opportunity for which she had worked so hard. This too is a form of victimization—allowing the perpetrator's offensive behavior to deprive the victim of the professional opportunities she deserves. The attributions of blame also ignore the impossibility of a young female associate successfully accusing the head of EEOC of sexual harassment in 1981. Even now, in a different social climate and with Anita Hill possessing significantly more power and status, that task proved impossible.

complained, quit their job or rejected the EEOC opportunity. Since they would have behaved differently, the defensive thinking goes, they would not have experienced sexual harassment or abuse by the Senate Judiciary Committee.⁷⁴ Their perceived differences from Anita Hill obscure their vulnerability—they believe, in essence, they are safe.

While these defensive attributions may quell the psychic storm in women who witnessed the hearings, they threaten the women's movement. Women who perceive their worlds as just will lack motivation to work for reform. Moreover women who rely on artificial distinctions between themselves and Anita Hill to promote feelings of safety deny their vulnerability to the abuses of male power exhibited during the hearings. Their ignorance not only makes their individual victimization more likely, it also weakens the solidarity needed among women for the movement's ultimate success. To the extent then that women's responses to Anita Hill reflect defensiveness they bode darkly for the women's movement.

4. Identification with Captors

The adaptation to captivity for some POWs leads to identification with their captors.⁷⁵ The prisoner sees his captors as benevolent⁷⁶ and sometimes attempts to emulate their behaviors and attitudes.⁷⁷ Identification with those who hold them prisoner can become so complete the prisoner ultimately refuses repatriation.⁷⁸ In criminal incidents hos-

74. People attribute more blame to rape victims who participate in occupations that violate traditional female scripts. Krahe, *supra* note 44, at 51. Analogizing rape to sexual harassment, perhaps Anita Hill's vulnerability to victim-blaming stems partly from her professional position in legal academia where black female professors are rare. See also Acock & Ireland, *supra* note 44, at 187 (study found subjects blamed raped women more when the women violated sex-role norms than when they complied).

75. E.g., Bettelheim, *supra* note 4, at 447-52; Kitahara, *supra* note 47 at 191; Russell, *supra* note 19, at 253. This phenomenon sometimes is referred to as the Stockholm Syndrome, named after an attempted robbery in Stockholm Sweden that resulted in a six day hostage incident. Russell, *supra* note 20, at 252. The bond the hostages formed with their criminal captors during their six days of captivity ultimately led them to condemn the police and defend their captors. Irka Kuleshnyk, *The Stockholm Syndrome: Toward an Understanding*, 10 Soc. ACTION & L. 37 (1984).

76. E.g., Bettelheim, *supra* note 4, at 451; Russell, *supra* note 19, at 253.

77. Bettelheim describes this phenomenon in Nazi concentration camp prisoners. Longterm prisoners eventually mimicked the Gestapo's aggressive verbal expressions. When put in charge of other prisoners, they sometimes behaved worse than the Gestapo. Prisoners who had been there for some time also implicitly accepted Gestapo ideology by sometimes becoming instrumental in getting rid of "unfit" prisoners—those whose weaknesses posed dangers for other prisoners. Prisoners adopted the Gestapo model of slow torturous killings in dealing with traitors. The identification of many longterm prisoners was so complete they attempted to make their uniforms look like those of the Gestapo.

Even when Nazi goals and values conflicted with the prisoners' best interests they accepted them. Prisoners, however, denied they accepted Nazi values and explained their Nazi-like attitudes in terms of German nationalism. While noting the strong tendency for longterm prisoners to identify with their Nazi captors, Bettelheim also makes clear that these prisoners sometimes defied the Gestapo with extraordinary courage. Bettelheim, *supra* note 4, at 447-51.

78. In describing longterm prisoners in Nazi concentration camps, Bettelheim notes that they mainly concerned themselves with how to survive as well as possible within the camps. Abandoning their initial denial, the old prisoners experienced everything as real.

tages sometimes have hesitated to testify against those who detained them⁷⁹ and have visited their captors in jail two years after the incident.⁸⁰

Kitahara provides a fascinating and instructive account of how, during the allied occupation after World War II, the Japanese came to identify with their captors. After overcoming their initial denial of their surrender, the Japanese tried to resist or trivialize the occupation.⁸¹ In order to induce the Japanese to take the occupation seriously, General Douglas MacArthur communicated a strong authoritarian attitude toward them by emphasizing their subservient position, inequality with the allied powers and their inability to reject or negotiate allied orders.⁸² MacArthur however combined this authoritarian attitude with paternalism, evidenced in his concern that the Japanese people have sufficient food and that they become civilized by learning democracy.⁸³

When they reached this stage they became afraid of returning to the outside world, acknowledging their loss of original self and doubting their ability to adapt. Bettelheim, *id.* at 437-38. Bettelheim relates the following:

The most drastic demonstration of this realization was provided by the case of a formerly very prominent radical German politician. He declared that according to his experience nobody could live in the camp longer than five years without changing his attitudes so radically that he no longer could be considered the same person he used to be. He asserted that he did not see any point in continuing to live once his real life consisted of being a prisoner in a concentration camp, that he could not endure developing those attitudes and behaviors he saw developing in all old prisoners. He therefore had decided to commit suicide on the sixth anniversary of his being brought into the camp. His fellow prisoners tried to watch him carefully on this day, but nevertheless he succeeded.

Id. at 439.

When Bettelheim questioned some of the old prisoners about their disinterest in talking about a future life outside the camp, they admitted to him they could no longer envision themselves living outside the camp. *Id.* at 439. Not surprisingly many prisoners of war experience high stress at repatriation. Ursano & Rundell, *supra* note 6, at 177.

Women who have experienced extended captivity in a hostile male culture might also experience a reluctance to accept freedom, distrusting their ability to adapt to a world that requires a new conceptualization of self and an acquisition of long forgotten or never-possessed skills. Particularly the reluctance of battered women to leave their captors might be understood more sympathetically from this perspective.

79. Kuleshnyk, *supra* note 75, at 38.

80. *Id.* at 40. The bonding that occurs between war or crime hostages and their captors parallels the traumatic bonding between beaten wives and their battering husbands. Painter & Dutton, *supra* note 6, at 364 (1985). See also Romero, *supra* note 6 (author argues that captors in both situations inflict psychological abuse in a violent context, create emotional dependency in the captive, isolate the captive from support systems and successfully destroy the captive's self-identity). Painter and Dutton suggest that two factors explain the traumatic bonding of the battered woman to her abuser: (1) a power imbalance between the abuser and the abused in which the abused sees herself as subservient to the abuser, and (2) the intermittent nature of the abuse. Painter & Dutton, *supra*, at 365.

Rather than diminishing her credibility, Anita Hill's continued contact with Clarence Thomas after she left the EEOC seems entirely consistent with research on the Stockholm Syndrome and the traumatic bonding of abused spouses.

81. Kitahara, *supra* note 47, at 195.

82. Specifically, Kitahara suggests MacArthur communicated his authoritarian attitude by consistently reiterating that: (1) Japan is not equal to the allied powers, (2) Japan has no right to occupy a position among civilized nations, (3) Japan has been defeated, (4) no negotiations can occur between the Japanese and their captors, and (5) the allied Commander gives orders to the Japanese government—negotiation occurs only among equals. *Id.* at 195.

83. *Id.* at 195-96.

Stopping here for a moment, the messages sent to the Japanese during the allied occupation and the messages sent to women during the hearings seem strikingly similar. Like the Japanese, women at first disbelieved and resisted acknowledging their captivity by challenging the Senate Judiciary Committee's refusal to take Anita Hill's allegations seriously. The Committee seemingly deferred to women's interests by consenting to hold hearings on Ms. Hill's allegations.⁸⁴ Yet rather than consider the allegations seriously, during the hearings the Committee seized the opportunity to send an authoritarian message to women quite similar to the one MacArthur sent to the Japanese: You are not equal; we shall not listen to your grievances and negotiate with you; you have no choice but to obey our commands.⁸⁵ Moreover the Senate Judiciary Committee, like MacArthur, sometimes mixed its messages to women, momentarily abandoning authoritarianism when members either paternalistically expressed their purported horror at sexual harassment or treated women witnesses with paternalistic kindness.⁸⁶

Kitahara argues the next step leading the Japanese to identify with their captors was demonstrating to the prisoners the decline in their emperor's power and the corresponding increase in MacArthur's power. The altered power positions became evident to the Japanese when the Japanese newspapers printed a picture of MacArthur and the Emperor together showing MacArthur relaxed and the Japanese Emperor rigid—accepting his inferior status. MacArthur emerged, in the eyes of the citizens, as the new Emperor of Japan.⁸⁷

The hearings likewise brought the power of the women's movement into question. While women successfully forced the Senate Judiciary Committee to entertain Anita Hill's allegations, they could neither prevent the Republican attack on Anita Hill, nor block the nomination of Clarence Thomas. In contrast, the male Senate Judiciary Committee flexed its muscles throughout the hearings and made evident the relative powerlessness of women leaders. The closing snapshot of the hearings depicted men as conquering emperors and women as their captives.

Kitahara argues the final ingredient that predisposed the Japanese to identify with their allied captors was their perception of authority relationships as similar to parent-child relationships.⁸⁸ Because of this understanding, the Japanese expected their authoritarian conquerors to act as father figures, ultimately protective of their captives. In obliging

84. As Naomi Wolf indicates, women's outrage forced the men on Capitol Hill to take Anita Hill's allegations seriously. Wolf, *supra* note 16.

85. See text *supra* pp. 7-9 for the messages sent to women during the Thomas/Hill hearings.

86. While MacArthur's paternalism might have reflected a true desire to help the Japanese, the Senate Judiciary Committee's desire to help women deal with sexual harassment seems suspect when one considers the Senate's self-created immunity from sexual harassment charges. Ironically the new civil rights act removes that immunity: a move the Senate can well afford after informing women through the Thomas/Hill hearings what they can expect if they dare to file sexual harassment charges against one of the powerful brethren.

87. Kitahara, *supra* note 47, at 196.

88. *Id.* at 196-97.

childlike dependency, the Japanese sought to please MacArthur by moving toward democracy.⁸⁹ The patriarchal society in which American women live similarly predisposes women to identification with their male captors because it fosters women's expectations that men will provide for and protect them. The analogy thus becomes complete and women's perceived dependency encourages their identification with their captors.

Women who express their dismay at Anita Hill's destruction of Clarence Thomas's personal and professional life, who indicate unquestioning acceptance of Thomas's statements, who believe the Senate Judiciary Committee acted benevolently or who exhibit hostility toward Anita Hill, thus may do so because they identify with their captors. The negative ramifications for the women's movement seem apparent. Women who identify with their male captors will resist acknowledgment of their captive status and participation in a movement antagonistic to their captives' concerns. Rather they will perceive those who imprison them as benevolent and remain loyal for years after the event that triggered awareness of their captivity: the Thomas/Hill hearings. Their support for the women's movement seems unlikely. Bringing these women into the fold may prove especially difficult because devoted feminists may look unfavorably upon women who have sympathized with their male captors⁹⁰—further discouraging these captives from joining the movement.

5. Self-Destructive Behaviors

When the reality of captivity can no longer be denied, some POWs commit suicide. The extreme stress created by their acknowledged helplessness and vulnerability as well as the disintegration of their individual integrity predisposes POWs to suicide.⁹¹ Generally their inability to direct anger safely at those responsible for their plight encourages cap-

89. *Id.* at 197-98.

90. As noted by Kuleshnyk, those experiencing the Stockholm Syndrome may have difficulty upon release because their family, friends, public and the courts may look unfavorably upon a hostage who has come to be sympathetic with captors. Kuleshnyk, *supra* note 75, at 41.

91. When the Japanese could no longer deny that they had surrendered and that they faced occupation, those who could not face reality committed suicide. Kitahara, *supra* note 47, at 194. Similarly middle-class prisoners in Nazi concentration camps proved least able to withstand the reality of imprisonment as evidenced by their comparatively high suicide rate. Bettelheim, *supra* note 4, at 427.

This predisposition does not end at repatriation. As Russell notes:

Data demonstrate that among the leading causes of death in former POWs are traumatic accidents, suicide, and homicide. That a person who, at one time and in many instances over a long period of time, had to use all his energy and determination just to survive would succumb to such behavioral trauma, carelessness, or disregard for life seems contradictory and presents evidence in and of itself of unresolved psychological conflict and psychiatric disorders. Keehn speculates that the high incidence of death from trauma could reflect failure of former POWs to resolve anxiety, the diminished sense of status, or the reduced sense of meaning or direction in life developed in the captive experience.

Russell, *supra* note 19, at 251.

tives to express their anger through self-destructive behavior.⁹²

And here my search to understand Betty's extreme reaction to the hearings ends. Already traumatized by the loss of her parents, her male companion, and job,⁹³ the hearings that cast in bold relief her vulnerability and the hopelessness of appealing to a male judge proved too much. Rather than continue to endure the pain and degradation of her captivity, like a demoralized POW, Betty understandably chose to end her life. Though Betty's extreme reaction to the hearings is unusual among women, the feelings her behavior expressed, as I argue throughout, are not.

6. Resistance

The comparison of women to POWs however does not necessitate an entirely negative diagnosis for the women's movement. Many POWs resist their captors.⁹⁴ Similarly some women heard clearly the Committee's intimidating and demeaning messages implying that a life of captivity in subservience to men defines women's fate, but resisted—expressing outrage and greater commitment to political activism.⁹⁵ Yet if the analogy of women as war captives has validity, only certain types of women will resist strongly. Research on Vietnam POWs indicates that resisters tended to be older, higher in rank, held captive longer, more nonconforming and more extroverted.⁹⁶ Anticipating women with simi-

92. Bettelheim, for instance, notes that in order to avoid getting into trouble with the Gestapo, prisoners who spent extended time in Nazi concentration camps directed much of their pent-up hostility against themselves rather than their captors or those on the outside. Bettelheim, *supra* note 4, at 443.

93. Stressful life events generally are associated with attempted suicide. Zahara Solomon et al., *supra* note 6 at 302 [citing E.J. Paykel, *Contribution of Life Events to Causation of Psychiatric Illness*, 8 *PSYCHOL. MED.* 245 (1978)]. See also Dennis L. Peck, *Post Traumatic Stress and Life-Destructive Behavior*, 11 *J. SOC. & SOC. WELFARE* 876, 890 (1984) (From a content analysis of investigative reports and suicide notes, the researcher concluded that the breakdown in intimate relationships, the nonacceptance of situations controlled by others and the recognition of one's powerlessness in effectuating one's interests provide motivation for suicide).

94. See generally Edna J. Hunter et al., *Resistance Posture and the Vietnam Prisoner of War*, 4 *J. POL. & MIL. SOC.* 295 (1976).

95. The recent rise in sexual harassment claims further illustrate women's resistance. As reported in the *Wall Street Journal*:

SEX HARASSMENT CLAIMS rise after Anita Hill's charges at Thomas hearings. General Motors Corp. reports a 50% increase in claims since last summer's hearings . . . (though it sees no increase in lawsuits). Claims filed at the Boston office of The Massachusetts Commission Against Discrimination tripled in November. Sex harassment charges filed with the Equal Employment Opportunity Commission increased to 1,244 in the first quarter of 1992 from just 728 a year earlier.

Labor Letter, WALL ST. J., Feb. 25, 1992, at A1.

While the increase in sexual harassment claims illustrates a level of resistance, it does not mean the complaining women would be willing to affiliate with the women's movement or resist their oppression in other areas.

96. Ursano et al., *supra* note 50, at 710; Ursano & Rundell, *supra* note 50, at 177. Perhaps, resistance occurs most frequently among higher ranked prisoners because they have more to lose if they acquiesce, they are less accustomed to degrading treatment, they are more uncomfortable with loss of control and their status promotes their internal sense of power.

Length of captivity also seems to positively correlate with resistance. Hunter et al., *supra* note 94, at 301. In this study, the longer the men were held captive the more likely

lar characteristics suggests that powerful elite women will be more inclined than less powerful women to resist.⁹⁷ This assertion provides little comfort.

Currently the women's movement suffers severe criticism for its alleged inability to relate to non-elite women.⁹⁸ Outspoken resistance by elite women thus might deepen the wedge between them and women who do not want to understand their vulnerable status as captives. The crucial task for feminists might be to shape resistance in a manner more palatable to the majority of women.

I do not see this suggestion as patronizing. Quite the contrary. Women's diverse reactions to the hearings graphically exposed the deep divisions between women in the United States. As the Senate nervously monitored opinion polls, most women told the Senators they could safely vote to confirm Thomas. This essay attempts to shed light on some reasons why so many women reacted this way.⁹⁹ Yet regardless of the reasons, what cannot escape recognition is that without the women who supported Thomas the power of the movement is anemic. Active attempts must be made by feminists to accommodate the diversity and division among women, or women's struggle for equality will grind to a halt. Accommodation thus need not be patronizing if it reflects a genuine interest in, if not agreement with, the perspectives of others.

Drawing yet another lesson from the POW experience, placement in a group, rather than solitary confinement, facilitates prisoner resistance.¹⁰⁰ From his study on Nazi concentration camps Bettelheim concluded that the best way to break the influence captors had over prisoners was to form democratic groups of resistance composed of independent, mature and self-reliant persons. For maximum effectiveness, he argued, each member of the group should back up every other

they would avoid behaviors that the captors could use for propaganda purposes and would avoid bargaining with the captors. *Id.* at 306.

97. Yet, while elite women have more power to exercise, they also have more to lose if challenges to male hierarchy prove unsuccessful. Moreover, they experience isolation in a masculine workforce where success pits them against one another. Wolf, *supra* note 16. These forces combine to reduce political activism in privileged women.

98. A recent poll conducted by TIME/CNN proves symptomatic. The results showed that 63% of American women do not consider themselves feminists, 54% think the women's movement has not improved their lives, and 50% believe the women's movement does not reflect the views of most women. Nancy Gibbs, *The War Against Feminism*, TIME, Mar. 9, 1992, at 50.

99. I realize this essay seems to patronize all women who supported Thomas's nomination because it suggests their support was motivated by fear rather than an unfettered assessment of the candidate. Certainly room exists for a genuine difference of opinion among women that is not borne of a defensive reaction to a traumatizing event. Yet while I acknowledge the likelihood of genuine differences, I remain haunted by the commonality between Betty's and my reaction, as well as the responses of many women with whom I have spoken. Perhaps not all women felt trauma during the Thomas/Hill hearing, but I remain convinced that many did, and that this essay can help us understand the commonality beneath our diversity.

100. Hunter et al., *supra* note 94, at 295, 301. In this study, resistance was measured by (1) propaganda avoidance; (2) compliance under duress; (3) bargaining with captor; (4) non-commitment; (5) [military] code non-utility; (6) non-revelation of information; (7) non-liability; and (8) belligerence. *Id.* at 306.

member's ability to resist.¹⁰¹ Support for Bettelheim's assertion comes from another study indicating that the formation of resistance groups by POWs in Vietnam proved healthy because it introduced an element of active mastery into the POWs captivity experience.¹⁰² The formation of women's groups thus should facilitate their resistance to oppression. Again however I note problems inherent in this suggestion.

Resistance groups already exist in feminist circles. Members must continue to recognize the critical importance of these groups in empowering individual members to confront oppression.¹⁰³ Yet, many women vehemently deny association with the feminist movement and claim the movement has betrayed and ignored the interests of most women. Persuading these women to acknowledge and struggle against oppression proves difficult. Rather than attempting to force their integration into preexisting feminist groups, concerned feminists might best begin the process of persuasion by infiltrating non-feminist women's groups and sharing information designed to raise consciousness on issues reflecting oppression. Many issues not obviously subversive reflect women's oppression—the sexual and physical abuse of women and children, the economics of divorce, workplace attitudes toward women (sexual and economic), parental leave and the stresses of single parenting. Sharing information on these issues, without demanding ideological commitment to feminism, might promote activism among women who now do not want to become members of the women's movement. Their activism would help alleviate oppression and ultimately increase their own awareness.

One last word of caution from the POWs experience—POWs who firmly resist their captors bear the brunt of the enemy's pressure.¹⁰⁴

101. Bettelheim, *supra* note 4, at 452.

102. Andersen, *supra* note 7, at 69.

103. Were it not, for instance, for the encouragement and support of my feminist (female and male) friends, as an untenured female law professor I doubt I would have written this essay.

104. Hunter et al., *supra* note 94, at 295. *See also* Andersen, *supra* note 7, at 67 (strong prisoner resistance brought the possibility of serious physical harm).