Why Anita Hill Lost

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WE mu_ simply have to accept, for the present, that no more than two people in the world can know with certainty whether Clarence Thomas said to Anita Hill what she says he did.

Shortly before the U.S. Senate was CO vote on his nomination to the Supreme Court in October 1991, Hill charged Thomas with sexually harassing her when she worked for him at the Department of Education and then at the Equal Employment Opportunity Commission .(EE0C), by asking her out and forcing her to listen to obscene talk; but the crime of harassment, as Hill explained, often has no witnesses. This central, crucial mystery did not mute the debate or make the advocates any more tentative in their arguments. Instead, the Hill-Thomas case became perhaps the biggest sex scandal in American history. Combatants on both sides attacked their opponents in an explosion of resentment and hate. Hill and Thomas were forced to testify publicly to the Senate Judiciary Committee about intimate aspects of their lives; they became contending gladiators in the arena, with us in the television audience poised to turn thumbs up or thumbs down. The Senate became an object of general contempt, since most of the Senators on whom we depended to question Thomas and Hill lacked either the skill to elicit the information we wanted or the moral stature to act as proper judges.

The case had its roots in recent American history, beginning with the battle over Robert H. Bork, whom President Ronald Reagan nominated to the Supreme Court in the fall of 1987.* Bork was not only a highly qualified nominee but one of the chief intellects of the American legal profession. He had *become* a symbol of American legal conservatism and its challenge to the liberalism dominating the upper reaches of the profession.

Bork's opponents attacked him with a campaign of unprecedented scope. Senator Edward Kennedy began it by sounding a call to arms, portraying Bork as an enemy of free speech and of the established rights of women and minority groups. Kennedy and other Democratic Senators helped put off hearings on the nomination in order to give liberal interest groups time to organize and launch a media campaign. Among the campaign's chief target audiences were black organizations throughout the South. This strategy was successful: fear of displeasure in the black community caused crucial Southern Democratic Senators to vote against Bork.

Politics in the selection of Supreme Court Justices was nothing new in this country's history, but the anti-Bork effort set a couple of precedents. For one thing, it buried the traditional, largely internal Senate politics of Supreme Court selection under mass-communications techniques developed for national political campaigns. Moreover, it was unabashed in its claim that Supreme Court Justices could legitimately be rejected for their ideology and political views. Thus during and after the anti-Bork campaign, its operatives were happy to give the press the details of their new and successful political tactics. We learned about their organized rallies, their telephone banks to generate mail to key Senators, their computer bulletin boards, their fundraising methods, and their choice of "opinion-making markets" for their TV advertising.

9tH modernSenate, without the strong leadership that might have resisted such tactics, showed in the Bork fight that it was extremely open to the new style of Supreme Court politics. So, when Clarence Thomas was nominated for the Supreme Court in 1991, some of the organizational veterans of the Bork fight geared up, as more than one of them put it, to "Bork" Thomas as welL People for the American Way reenlisted in the fight. So did the National Leadership Conference on Civil Rights, the Alliance for Justice, the National Abortion Rights Action League, the National Women's Law Center, the Women's Legal Defense Fund, the National Women's Political Caucus, and the National Organization for Women.

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• For a fuller discussion of the Bork nomination, see my article, "The War Against Robert H. Bork," COMMENTARY, January 1988.

But their strategy did not work the second time around. Because Thomas was a black conservative and an opponent of the more sweeping versions of affirmative action. much of the traditional civil-rights leadership harbored a special resentment toward him. Yet affirmative action was a dangerous issue to raise against Thomas, since it had become such an unpopular idea among the general public. Furthermore, even in the civil-rights Soups, many people identified with Thomas's rise from poverty, and the resulting ambivalence kept these organizations from exerting the force they had shown with the Bork nomination. In addition, Thomas supporters had learned a thing or two from the Bork battle and made sure that charges against their man did not go unanswered in the media. •

Finally, during his first confirmation hearings before the Senate Judiciary Committee, Thomas appeared to contradict or qualify his past conservative views more dramatically than Bork had done. Thomas escaped from the trap of declaring himself one way or the other on the abortion issue by saying that he had never debated the legal aspects of *Roe v. Wade.* The Senators of the Judiciary Committee, even as they asked Thomas repeatedly about abortion, accepted his evasions and denials. All parties knew, by that time, the necessary steps in the post-Bork ballet.

The Jurliriary Committee sent Thomas's nomination to the full Senate on a vote of seven-to-seven. In mid-October, on the eve of the Senate's final vote on Thomas, his confirmation looked like a sure thing. •

Meanwhile, as the chances of defeating the Thomas nomination grew smaller, both the press and the groups working against him grew ever more vigorous in their search for material to use against him. Employees at the EEOC reported getting repeated phone calls from journalists and Thomas opponents explicitly asking for "dirt." On Sunday, October 6, after the Senate Judiciary Committee had voted to send the Thomas nomination to the *Senate, Newsday* and National Public Radio reported that for a month the committee had had in its possession an affidavit from a woman named Anita Hill making charges of sexual harassment. --

This particular accusation, like the mobilization of interest groups against Thomas, had a recent history in American politics.

Political sex scandals have been a perennial feature of American life, but in the past quarter-century these scandals have begun to acquire a new character and meaning. As late as the mid-60's, politically active people who considered themselves liberal tended to be relatively tolerant in matters of sec and to accept the idea that every individual, *even a* politician, had a private sphere of life that was none of the public's business.

The women's movement changed all that. From the late 60's onward, we heard from movement writers that sex was more often a tool of oppression than a simple plaything, and that personal habits like a male politician's treatment of women were something the public bad every right to know about. By the time of Watergate we had developed not only a vast publicity machine capable of spreading such personal scandals across the land but a rationale that gave us, the high-minded voters, permission to pay detailed attention to these salacious matters.

The first consequence of this shift was an efflorescence of classic adultery scandals. But in the mid-1980's, a more important consequence of the new thinking appeared: we began to see many more scandals involving charges of sexual coercion or sex without full consent. *It was* only a matter of time before such matters would assume center stage in some confirmation drama. In this sense, the Thomas episode was a scandal waiting to happen.

ANrra Hni. certainly seemed an indi-vidual to be taken seriously. She was, like Thomas, black. Like Thomas also, she came from a rural background, having been raised on a farm in Oklahoma, the youngest of thirteen children. And, like Thomas again, she had attended Yale Law School. When Thomas was about to become Assistant Secretary of Education for Civil Rights, a mutual friend introduced the two of them, and Thomas offered her a job. She worked with him for nine months; he then resigned to become chairman of the EEOC. She went with him and worked at the commission until 1983, when she left to *take* a teaching job at Oral Roberts University in her home state.

In charging that Thomas had harassed her both at the Education Department and at the EEOC, Hill lacked any evident political motive: she was described as a Reagan appointee, a Bork supporter, and a conservative, though it later emerged that she had had political differences with the Reagan administration from the beginning and had criticized Thomas, to the FBI in July and to the press in September, for his position on affirmative action and the problem of black dependency.

A friend and former law-school classmate of Hill's said that she had told him, within days of the Thomas nomination in July, about the nominee's sexual harassment of her. Ricki Seidman, former legal director of People for the American Way and now an aide to Senate Judiciary Committee Democrat Edward Kennedy (though she was not on the Judiciary Committee staff itself), called Hill in early September to ask her about the harassment. Hill proved willing to talk further. James Brudney, an aide to Judiciary Committee member Howard Metzenbaum (though also not on the Judiciary Committee staff), and another former Yale Law School classmate of Hill's, called her and continued the conversation. The FBI finally began investigating Hill's charges on

September 23 and reported back to the committee on the 26th. a day before the scheduled vote on whether to send the Thomas nomination to the full Senate. Thus the committee had little time to consider the accusations.

Thomas supporters protested the introduction of a new charge against him, after so many other accusations had been leveled and failed, on the very eve of the confirmation vote. Thomas oppolients said that because not much was known about the charges, the vote should be postponed and Hill's story given a more thorough airing.

But the opponents said a great deal more as well. They claimed that the Senate, by its treatment of Hill, had already demonstrated men's outrageous indifference to the welfare of women and the fundamental incapacity of male elected officials to give proper political representation to their female constituents. If the Senators went ahead with their floor vote on Thomas as scheduled, they would compound the insult.

The anger of Thomas's critics drove out respect for procedural traditions and niceties. The Judiciary Committee had considered Hill's charges privately, in agreement with Hill's expressed wishes; but someone on some Senate committee staff decided that he or she was morally justified in overriding these rules of confidentiality and leaking Hill's affidavit, either directly to the press or to an intermediary, and subjecting both Hill and Thomas to a public airing of the issue.

After the leak, Thomas's supporters said that because he was to be effectively put on trial, he should be given the presumption of innocence: Hill should have to come up with some solid corroboration of her claim. Thomas's opponents dismissed this idea, explaining that since sexual harassment often took place in private, an absence of corroborating evidence was only to be expected. Asking for the conventional presumption of innocence under this circumstance would be nothing other than a fancy version of "blaming the victim."

The opponents evidently calculated that by bathing the whole affair in the light of publicity, they could undo the Judiciary Committee's verdict. And indeed, at first they seemed to succeed. But in the end, they succeeded too well. They forced a public event that featured Hill and Thomas facing off against each other directly and individually. They provided Hill with a phalanx of lawyers to match Thomas's White House handlers. They created, in other words, a forum that strongly resembled a criminal trial.

No, it was not an actual criminal trial; the Thomas hearings were meant to investigate a character question broader than issues of criminal guilt, and the rules were looser—so loose, it later turned out. as to seem nonexistent. But the hearing and its stakes were trial-like enough so that onlookers tended inexorably—like good products of a liberal society—to apply "presumption of innocence" standards as they watched the proceedings. This feature made Thomas measurably harder CO dislodge.

In addition, Thomas's opponents may have underestimated just how big an audience they would attract. The comparison with the Bork nomination is instructive: what most citizens knew of the earlier struggle came to them through television news, which had its own distinct biases. Watching the Hill-Thomas face-off, by contrast, was a mass activity.

People may have begun by tuning in the hearings for entertainment, but they stayed on to make sober judgments, and these judgments turned out to be radically different from those of the anti-Thomas activists who had first insisted on bringing the controversy out into the open.

To see how the huge audience engaged by the public hearings finally formed its opinions, we must first look to the center of the storm and the story Anita Hill told; for, in one of the many asymmetries of the case, it was Hill and not Thomas whose account became the focus of the controversy. The questions asked by the Senators helped shape what information Hill gave, of course, and the press influenced the way we saw her. Still, the public had a huge amount of direct access to Hill and what she said, and there is little reason to think that this public failed to make up its own mind.

Text most detailed version of Hill's case appeared in the opening statement she delivered on October 11 at the Judiciary Committee's first public session investigating her charges. In it she explained that three months after she had gone to work for Clarence Thomas at the Department of Education in 1981, he asked her out. She said no. He kept asking and started talking to her about sex. "He spoke," said Hill,

> about acts that he had seen in pornographic films involving such matters as women having sex with animals and films showing group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises or large breasts involving various sex acts. On several occasions, Thomas told me graphically of his own sexual prowess.

This talk, said Hill, then ended. When Thomas was made chairman of the EEOC, he invited her to follow him, and she did. There he resumed the sexual conversations and overtures. Once, in Hill's presence, he looked at a Coke can from which he was drinking and remarked, "Who has put pubic hair on my Coke?" He talked about the size of his penis and about oral sex. She began looking for other employment and finally left the EEOC in 1983 when she found her teaching job at Oral Roberts University. Since that time, she had seen Thomas only twice and had minimal phone contact with him. She had not spoken publicly about

the harassment until she was *asked* about it by Senate staffers investigating the Thomas nomination.

She told her story to the Senators in a calm and composed way. During the intense questioning that followed, she did not stumble or contradict herself in talking about the words that she claimed had passed between Thomas and herself.

Her testimony, however, did have inconsistencid...Some of these were of the sort one would expect from any account, even a truthful one, by a reluctant witness remembering events that took place years ago. For instance, during questioning Republicans pointed to the fact that Hill's charges against Thomas had changed over time, becoming more detailed from her first FBI interview (in July 1991) through her affidavit and second FBI interview in September to her considerably more elaborate testimony to the Judiciary Committee. While these variations could point to inventiveness on her part or openness to suggestions from the Senate staffers who had first contacted her, such changes can also take place as an individual remembers progressively more about a past event. They are not necessarily the result of lies.

On the other hand, most of-the inconsistencies and conflicts in and around Hill's testimony and statements were not of this random sort; they fell into a pattern. These conflicts, which might have seemed small or accidental or the product of animus if taken one by one, became more important because they so closely echoed one another. The inconsistencies all revolved around two questions: How personally and professionally ambitious was Hill? And how well did she usually look out for her own welfare and interests?

The first such problem arose in Hill's story of how it was that she came to give her information to the Judiciary Committee in the first place and of why the committee had delayed for almost a month in considering her charges. "I was approached by the Senate Judiciary Committee in early September," she said in the press conference she gave after her story became public. But it was not until September 20 "that an FBI investigation was suggested to me. . ."

"I suggested to the committee throughout," Hill emphasized, "that I wanted to make this information available to every member of the Senate committee for their consideration...."

She later said, "Reliving this experience has been really bad for me, . . . especially with the frustrations that I have felt with trying to get the information in the right hands."

A journalist asked, "Did you at some point offer to make these allegations by name? Did you discuss the removal of your request for confidentiality, and at what point did that occur?" Hill replied:

> The extent of my confidentiality was never to keep the committee members from knowing my name. The extent of my confidentiality was making sure that the names were not released to the public. . . . So at all times the Senate knew my name, the committee knew who I was. So that wasn't ever an issue.

Senator Joseph Biden, chairman of the Judiciary Committee, promptly issued a statement saying that the delay was not the committee's fault, the staff had been "guided by Professor Hill's repeated requests for confidentiality," The Biden statement provided a detailed chronology, based on documentation, of the committee's dealings with HilL It asserted that Hill did not make her first contact with the committee until September 12. A committee staffer told Hill then that her charge could be kept confidential, but that the investigation could go no further unless her name and accusations were given co Thomas so that he would have an opportunity to respond. "Professor Hill specifically stated," said the chronology, that "she did not want the nominee to know that she had stated her concerns to the committee."

A week later, on September 19, according to the committee staff, Hill called again:

> For the first time, she told full committee staff that she wanted all members of the committee to know about her concerns, and, if her name needed to be used to achieve that goal, she wanted to know. She also wanted to be apprised of her "options."

The next day the staff called Hill to explain again that before her accusations went to committee members, Thomas would have to be given her name and a chance CO respond in an FBI investigation.

Hill, according to the chronology, said she wanted to think about it and phoned the nett day to say that she would not agree to the FBI investigation. Two days after this refusal, though, she contacted the staff and agreed to the investigation. Three days after the FBI finally got to interview Hill, it finished its report.

Hr ...Cs account thus asserted that she had always been willing to use her name in any way necessary to bring her concerns to the committee members' attention. But only late in the game, according to her, did committee staffers inform her that she had to let the FBI investigate and let Thomas know her name before committee members could be told of her story.

In Senator Biden's version, by contrast, Hill was told from the beginning that in order to go forward and get her story to the committee members, she would have to give Thomas her name. She said no. She changed her mind and called the committee a week later—but when she was *again* told the conditions, she again said no. Then she changed her mind once more and finally agreed to the FBI investigation.

These two conflicting stories draw two quite different pictures of Anita Hill. In Biden's ac-

count, Hill decides to go to the committee b¬ut learns, only after making contact, that in order to pursue her charge she must confront her accuser and face the consequences—emotional, moral, and professional. She wrestles with this problem, under pressures whose nature we do not know, for almost ten days. She finally lets the investigation go forward, but at a late date that greatly lessens the chances of the committee's giving substantial (consideration to her concerns.

This picture that the Biden staff drew of Anita Hill does not portray her as particularly dishonorable. After all, the decision she had to reach was not easy, and the fact that she weighed her actions carefully does not necessarily make her a mendacious witness. Still, the Anita Hill in Biden's story, even while coming forward as a good citizen to aid the committee in its task, prudently protects her own interests. As a result, she is partly responsible for the delay that she criticized and that women's groups cited as evidence of the committee's dismissive attitude toward her.

The Anita Hill of her own account is quite different. She is not so smart as Biden's Anita Hill, not so quick to grasp legal and political complexities, not so capable of giVing deliberate, cautious thought to the personal consequences of the actions she contemplates, and more exclusively moved by the simple, uncomplicated desire to tell the truth and do her civic duty.

The very same conflict emerged when one of the Judiciary Committee's Republicans, Senator Arlen Specter, cross-examined Hill during her public testimony about her dealings with Senate aides in the days before she sent her statement to the Judiciary Committee.

According to a *USA Today* story published at the time of her testimony, Hill had been assured by one staffer that merely telling Thomas about the existence of her charges would make him withdraw, and that Hill would not have to come forward publicly. In other words, the story implied, Hill was playing a somewhat less heroic role than it might appear.

"Did anyone ever tell you," Specter asked, "that by providing the statement that there would be a move to press Judge Thomas to withdraw his nomination?"

"I don't recall any story about pressing—using this to press anyone," she answered.

Specter tried again: "Well, do you recall anything at all about anything related to that?"

"I think I was told," she said, "that my statement would be shown to Judge Thomas, and I agreed to that."

"But was there any suggestion, however slight," Specter asked a third time, "that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known, or for you to come forward under circumstances like these?"

"There was no—not that I recall." she said. "I don't recall anything being said about him being pressed to resign."

"I would ask you," Specter continued, "to press your recollection as to what happened within the last month."

"And I have done that, Senator," she said, "and I don't recall that comment."

"I'm asking you now," Specter finally said, "only if it did happen whether that would be the kind of statement to you which would be important and impressed upon you [so] that you could remember in the course of four or five weeks."

Hill said, "I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say this."

But in the afternoon session of the same day, without being asked the question again, Hill, talking generally about how she had come forward to the Judiciary Committee, offered the information that one of her conversations "even included something to the effect that the information might be presented to the candidate and to the White House. There was some indication that the candidate, or, excuse me, the nominee, might not wish to continue the process."

Later Specter pressed further: "So Mr. Brudney [Senator Metzenbaum's aide] did tell you Judge Thomas might not wish to go forward with his nomination if you came forward?"

"Yes," replied Hill.

Specter later claimed that Hill's morning testimony, had she not contradicted it, would have been "flat-out perjury." Hill supporters were outraged by the accusation, calling her misstep only a minor inconsistency. What is more certain than either of these interpretations is that Hill's corrected testimony in the afternoon session presented a picture of her that was congruent with the portrait in the Biden chronology: this was a woman who knew, discussed, and cared about her "options," and who gave thought to the means by which she could accomplish her goal while avoiding personal risk. Nothing in this was necessarily pejorative. So it is especially interesting to see how persistently Hill omitted this element from the picture she gave of herself during the morning's five successive rounds of questioning on the subject.

THE same discrepancy was more pronouncedd in other parts of Hill's speech and testimony—in the matter, for example, of why she went to work for Thomas at the EEOC. Hill contended that Thomas had harassed her in her first job with him, at the Department of Education; yet when he moved to the EEOC chairmanship in the spring of 1982, she chose to go along with him. In her initial press conference Hill explained this oddity. "There was a period" at the Education Department, she said, "[during] which the activity stopped." "Furthermore," she went on.

at that time I was twenty-five years old. . . . If I had quit, I would have been jobless: I had not built a résumé such that I could have expected to go out and get a job. And you'll recall that in the early 80's, there was a hiring freeze in the federal government. I wanted to stay in civil rights. I thought I had something to add.

Later, in her testimony to the Judiciary Committee, she said:

The work [at the EEOC] was interesting, and at that time it appeared that the sexual overtures which had so troubled me had ended. I also faced the realistic fact that I had no alternative job. While I might have gone back to private practice, perhaps in my old firm or at another, I was dedicated to civil-rights work and my first choice was to be in that field. Moreover, at that time, the Department of Education itself was a dubious venture. President Reagan was seeking to abolish the entire department.

She told Chairman Biden in later questioning, "My understanding from [Thomas] at that time was that I could go with him to the EEOC, that I did not have, since I was his special assistant, that I did not have a position at the Office for Education." She also said, "I was a special assistant of a political appointee, and therefore I assumed and I was told that that position may not continue to exist." And she said about the Education Department as a whole, "The Department of Education at that time was scheduled to be abolished. There had been a lot of talk about it, and at that time it was truly considered to be on its way out."

Biden said he . had been informed that Hill herself was not a political appointee at the Department of Education: she was a Schedule-A attorney, with job protection. Couldn't she have stayed at the department? "I believe I was a Schedule-A attorney," she said, but "I was the assistant to the Assistant Secretary of Education"; "I had not been interviewed by anyone who was to *take* over that position for that job; I was not even informed that I could stay on as a Schedule-A attorney."

"As a Schedule-A attorney," Biden persisted, "you could have stayed in some job."

"I suppose," Hill answered. "as far as I know, I could have. But I am not sure, because at the time, the agency was scheduled to *be* abolished."

She told Senator Specter:

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I didn't know who was going to be taking over the position. I had not been interviewed to become the special assistant of the new individual. I assumed that they would want to hire their own, as Judge Thomas had done.

In telling why she had followed Thomas to the EEOC, Hill got herself into a certain amount of evidentiary trouble. Believing that a Yale Law School graduate did not know anything about her Schedule-A job protection was as hard as thinking that a Yale Law School graduate would not have understood that the Judiciary Committee would require her to confront her accuser. As for Hill's going to the EEOC in order to stay in the civil-rights field, that was the field in which she was already working at the Department of Education and in which she could have remained. As for Hill's belief that she would not be kept on by Thomas's successor at the Department of Education, she could easily enough have asked: this successor was a friend of Thomas's, and Hill also had independent access to the new official through a mutual friend. And as for Hill's seriously thinking the Department of Education was "scheduled" to be abolished (it still exists), there cannot *have* been three people in the federal government who did not know that it would have taken a year and a half just to get the moving labels on the furniture. .

These contradictions were used to good account by Hill's enemies, yet they could easily have been resolved. Hill did not have to go to the EEOC in order to stay in the civil-rights field, but she did have to go there if she wanted to be at the center of the civil-rights action and keep herself hitched to the rising star of her boss, Clarence Thomas. Working for Thomas's successor or staying on in some Schedule-A position at the Education Department might have seemed like a perfectly good job to some, but it was not so good if one thought of it as being left behind instead of going on to a much better professional opportunity. Thus, Hill's reason for following Thomas to the EEOC in spite of harassment was perfectly plausible—if one only added, as Hill did not in her accounts, the notion that she was moved by *the* ambition to advance her career.

But Hill did not speak of her own ambition. As a result, in her account of her move to the EEOC she sounded as if she were offering too many reasons making too little sense.

SHE fell into the same kind of trouble when she talked about her relationship with Thomas after she left the EEOC in 1983 to teach at the law school of Oral Roberts University. Here is the way Hill, in her testimony, described how she got her job at Oral Roberts: "I participated in a seminar, taught an afternoon session in a seminar at Oral Roberts University. The dean of the university saw me teaching and inquired as to whether I would be interested." She said, "I agreed to take the job in large part because of my desire to escape the pressures I felt at the EEOC due to Judge Thomas." She said she told Thomas in July that she was leaving. "I got that job on my own," she asserted, explaining that she had asked Thomas for a recommendation only after she had landed the job and "only because the process required some kind of letter from an employer."

Here, in contrast, is what Thomas testified about the subject

In the spring of 1983, Mr. Charles troche contacted me to speak at the law school at Oral Roberts University in Tulsa, Oklahoma. Anita Hill, who is from Oklahoma, accompanied me on that trip. It was not unusual that individuals on my staff would travel with me occasionally. Anita Hill accompanied me on that trip primarily because this was an opportunity to combine business and a visit to her home. As I recall, during our visit at Oral Roberts University, Mr. Rothe mentioned to me the possibility of approaching Anita Hill to join the faculty at Oral Roberts University law school. I encouraged him to do so and noted to him, as I recall, that Anita Hill would do well in a teaching position. I recommended her highly, and she eventually was offered a teaching position.

Charles A. Rothe, then dean of the O.W. Colburn School of Law at Oral Roberts, said it was at Thomas's invitation that Hill attended the afternoon seminar she mentioned in her testimony. Roche said that when he learned Hill was from Oklahoma; he expressed interest in hiring her, asking Thomas what he thought of the idea. Thomas said, Rothe remembered, that Hill would make a good teacher.

In Hill's testimony, Thomas and his role are missing—his taking her on the Oklahoma trip in the first place, his inviting her to the Oral Roberts seminar, and his early role in recommending her for her new job. If Hill had included any of these things, they would not necessarily have shown her charges against Thomas to be false: a woman with job aspirations or professional ambitions might well decide to endure harassment to get something back from the harasser in the form of contacts or recommendations, just as such a woman might put up with disagreeable treatment for the benefit of an upward move. A woman making this type of trade-off would be, of course, one with personal and professional aims well beyond the need to put bread on the table. It was this sort of ambition that Hill's acount excised.

The same discrepancy appears elsewhere. A former Oral Roberts law professor said that Hill had suggested Thomas as a speaker for an employment-discrimination conference at the school; Hill denied that she had wanted Thomas there. Thomas said that when he did visit the school, Hill drove him to the airport, and Dean Rothe remembered that she had offered to do so. Hill disputed the recollection:

> I really don't recall that I voluntarily agreed to drive him to the airport. I think that the dean suggested that I drive him to the airport and that I said that I would. But at any race, one of the things I have said is that I intended—I hoped to keep a cordial professional relationship with that individual and so I did him the courtesy of driving him to the airport.

Specter asked, "Was it simply a matter that you wanted to derive whatever advantage you could from a cordial professional relationship?"

"It was a matter that I did not want to invoke any kind of retaliation against me professionally," Hill made the distinction. "It wasn't that I was trying to get any benefit out of it."

"Well," Specter followed, "you say that you consulted with him about a letter of recommendation. That would have been a benefit, wouldn't it?"

"Well," Hill resisted, "that letter of recommendation was necessary. The application asked for a recommendation from a former employer."

THIS tussle over the presence or absence of deliberative ambition as a force directing Anita Hill was waged most dramatically over the issue of the phone logs. Diane Holt, Thomas's secretary at the EEOC, remembered that Hill had phoned Thomas a number of times after leaving the agency. In fact, a hunt through Holt's phone logs revealed ten calls from Hill, including one to congratulate him on his marriage. Hill responded by telling the Washington *Post* that the phone logs were "garbage." She said she had called Thomas once in 1990 to make sure he had received an invitation initiated by others at the University of Oklahoma law school, her professional home after Oral Roberts, to speak at commencement. Apart from that, she said, "If there are messages to him from me, these are attempts to return phone calls." She went on: "I never called him to say hello. I found out about his marriage through a third party. I never called him to congratulate him."

The logs became a major subject of controversy during the hearings. In her testimony, Hill explained her calls to •Thomas by saying, "I have, on at least three occasions, been asked to act as a conduit to him for others." When this happened, said Hill, she would speak to Thomas's secretary, "and on some of these occasions undoubtedly I passed on some casual comment to then-Chairman Thomas." She added:

> In August of 1987, I was in Washington, D.C., and I did call Diane Holt. In the course of this conversation, she asked me how long I was doing to be in town, and I told her. It is recorded in the message as August 15. It was in fact August 20. She told me about Judge Thomas's marriage, and I did say "Congratulate him."

She claimed that what she had called "garbage" to the Washington *Post* was not the authenticity of the phone logs themselves but the use of the logs to attack her. She denied *the Post* story that quoted her as saying she had initiated no calls to Thomas.

But when Holt testified, she said that in addition to the uncompleted calls recorded in the logs, Hill had made still other calls—perhaps five or six—to Thomas. Holt said that the calls recorded in the logs were not returns of Thomas's calls, and they were not calls to Holt herself in which a message to Thomas was tacked on.

On the issue of the logs, Hill was forced to do some public backtracking. As with the questions about her Oral Roberts job, the question of whether and why Hill had initiated all those calls did not speak directly to the truth of her charge about Clarence Thomas and the obscenities he allegedly spoke. Thomas was Hill's mentor and a professionally rising star, and *she* clearly benefited from beim known as someone connected to him. Advances and obscenities or no, a professional woman under these circumstances might well have thought it prudent to *take* even elaborate steps to make sure the relationship stayed alive. Once again, all we need to reconcile her phone calls with her charges against Thomas is to assume that Hill was a woman of some ambiton; but *this* is the picture that Hill denied.

Frowitao the end of the hearings, one of Hill's attorneys announced that she had taken and passed a polygraph test. Nevertheless, the Americans who followed the Thomas controversy •told New York Times/CBS pollsters after the hearings that by a ratio of more than two-to-one, 58 percent versus 24 percent, they found Thomas more believable than Hill. This was about the same ratio of those who had favored confirming Thomas throughout the nomination process. After all the talk in the press about the unrepresentative nature of the "all-white, all-male Senate Judiciary Committee" that had made the original decision to vote on Thomas despite Anita Hill's charges, there was little difference, in the end, between men and women or between blacks and whites in their opinions.

There are, by now, scores of explanations of how this lopsided majority was built; dearly, people's answers to the question "Whom do you believe more?" were made up of many considerations. It is odd that we have seen virtually no after-the-fact polling that might help us distinguish among such theories.

The reason for the pro-Thomas verdict, one explanation went, was that Thomas had won the battle of images. Hill's performance had been too "cool" for the American public Thomas's passionate delivery style had simply played better to the audience. But looking at Hill's testimony suggests that "cool" was not quite the word for the disquieting quality that she displayed. Not only *the* Senate questioners but a series of witnesses portrayed Hill as a somewhat ambitious and calculating woman, certainly more ambitious and calculating than she let on. Her testimony on the subject seemed to show a lack of candor, and this fact alone may have been a basis for mistrusting her. But the problem lay deeper: Hill's perceived ambitiousness probably led many people to reject her description of herself as a victim of sexual harassment.

In the feminist view, such a proposition is cause for anger. After all, why couldn't Hill be both an ambitious professional and a woman humiliated and disempowered by sexual harassment? Wasn't failure to admit this possibility just another way of denigrating the importance of sexual harassment? But most people seem not to have shared this attitude, and we can get a clue as to why not by taking a look at the stories of sexual harassment that filled mass-circulation magazines like *Time, Newsweek,* and *People* during the crisis.

Some of these tales would curl your hair, and legitimately so. A female laborer and dump-truck driver for a municipal sewage department had to face persistent questioning by her supervisor about her sex life and her husband's *anatomy.* A restaurant manager who protested when her boss asked her to perform oral sex in front of another employee was tailed by a private detective and fired for not ringing up drinks correctly. A secretary had a supervisor who threatened to fire her if she did not sleep with him. A public-information officer at a state corrections department had a boss who made lewd comments about her and her one-year-old daughter and had her fired when she complained.

There can be disputes aplenty about the facts behind such charges, but the accusations themselves are clearly serious. They were made by working-class or lower-middle-class women occupying ordinary jobs rather than high professional positions. These women's situations involved firing or explicit threats of firing. Even when the accusations were of verbal rather than physical assaults, the attacks were aimed quite frontally at the women who were forced to listen.

In Anita Hill's case, there was no physical grabbing. Thomas's alleged obscene and pornographic words described himself and a set of movies, not any attributes of Hill herself or sexual acts to be performed by her. Hill's supporters noted that she was at the young and still-vulnerable age of twenty-five when the alleged offenses took place; but in the types of jobs held by many of the women who told their stories to the magazines, a twenty-five-year-old was nobody's baby. Such women were often extremely vulnerable to their supervisors' personal judgments, while Anita Hill had considerable employment protection. These women had limited job choices. while Anita Hill had a Yale law degree. To women like these, retaliation meant dismissal, or demotion, or bad reports, while when Anita Hill told the Senate about the retaliation she feared, she said she was afraid of not getting good enough assignments, being denied a letter of recommendation after *she* had left the EEOC and was already working in another job, or being cut off from a cordial, professional relationship.

FEDERAL law on sexual harassment says that such harassment can exist without any physical assault or explicit threat. It can occur when a supervisor or co-worker creates a "hostile environment" for the victim by actions "sufficiently severe and pervasive" to "alter the

conditions of employment and create an abusive working environment."

When it comes to judging whether or not the environment is hostile, the courts have even ruled that the matter should be viewed from the point of view of the "reasonable victim." If the victim is a woman, that means judging the case from the perspective of a "reasonable woman."

The ideas of a "hostile environment" and the "reasonable woman" have caused controversy:

..they seem to suggest that any woman will be able to collect damages from any man who speaks words that she finds offensive, even though he may not think them offensive at all. Certainly in the Thomas case some of Hill's supporters assumed that if Thomas spoke the words Hill said he did he had clearly harassed Hill, humiliated her, and damaged her.

But the dispute between Hill and Thomas was referred to a jury more than half made up of "reasonable women," the great majority of whom were less advantaged than Hill. Viewed from their situation, as from the situation of the "reasonable men" of the jury, Hill had a great deal of protection from Thomas's whims—so that any offensive language from him was less the threatening cause of a "hostile environment" in a legally significant sense than an invitation to tell the creep to get lost.

And what about the implied threat Hill felt to the progress of her career? The answer, in this same view, is that such a threat does not have a comparable moral significance or capacity to do psychological damage as the threat to deprive someone of all or part of her livelihood. If Hill decided to stay and move on and up with Thomas, it was out of calculation, not out of fear. In this sense, it follows, ambition made Hill acquiescent or complicit in the continuation of Thomas's alleged obnoxiousness. In her statements Hill herself, when she repeatedly omitted evidence of an ambition that other witnesses saw at work, seemed to recognize this distinction.

If sexual harassment consists of both the actions of the aggressor and the economic and psychological damage done to the victim, Hill seemed not to have given a true picture of the second half of the formula. So the words of Anita Hill's story give us a fairly dear idea of what could have made people uneasy with her account of Thomas's behavior and prompted them to reject it.

Some pro-Hill activists said after the hearings that Anita Hill's testimony would have looked better were it not for the Democratic Senators on the Judiciary Committee. According to these critics, the Democrats not only sat in silence during the hearings while Republicans viciously attacked Anita Hill, but failed to subject Thomas to anything like the same type of cross-examination. The Democrats' poor performance was said to have been caused not just by a lack of skill but by bad conscience and political vulnerability. Edward Kennedy was so notorious when it came to women that he could hardly open his mouth during the hearings. Joseph Biden had been charged with plagiarism during the 1988 presidential campaign. Dennis DeConcini was one of the Keating Five involved in the savings-and-loan scandal and, as such, had recently sat in Clarence Thomas's place during public hearings of the Senate Ethics Committee. It was no wonder they went easy on Thomas, the critics concluded; and this asymmetry between Republican and Democratic behavior had permitted him to avoid his just deserts and showed again the need for more women in positions of power.

C uc:ki asymmetry was at work, all right, but it came from more than personal failings and foibles: it also stemmed from the public quasi-criminal trial into which the Senate had allowed the proceedings to be cast. Anita Hill had charged Clarence Thomas with crimes to which she said there had been no witnesses. The normal courtroom defense to such charges is to try to even the score by eliciting details that damage the accuser's credibility and by testing various theories of her motivation. This chance to attack the accuser is a protection meant to balance the relative ease of making false charges in such "no-witness" cases. Thus the unequal situations of Hill and Thomas were to some extent part and parcel of this type of charge, not something created by Democratic weakness.

In addition, in order to give the concrete details of her charges, Hill had to provide the committee with a great deal of information about the short-term and long-term circumstances under which the alleged acts had .occurred. It was this information that gave the Republican cross-examiners material to work with—to probe, pick at, and examine for inconsistencies.

Clarence Thomas, by contrast, did not offer an alternative account of the incidents described by Hill. He did not say anything like, "Yes, I asked her out, but I never said those things to her." He did not answer, "Yes, I said those words, but I meant them as a joke." Instead, he defended himself by just saying "No." Thomas pointed out during the hearings that this position put him at a disadvantage: "You can't prove a negative," he said. But the same posture gave him one very large advantage: "No" is a very small target for a cross-examiner to shoot at. The possibilities for inconsistency and internal contradiction are much more limited than they are in a statement like Hill's. This difference, too, made the cross-examining asymmetrical in a way that needs no resort to Democratic wimpery to explain.

But, said some critics of the hearings, the Democrats need not hve restricted themselves to the narrow story that Clarence Thomas denied. For instance, Hill had charged Thomas with talking to her about pornographic movies. Why not ask Thomas whether he had ever rented such movies?

And, to help assess Thomas's general credibility, why not ask Hill whether the two of them had ever discussed *Roe v. Wade* in their years of working together?

The short answer is that Democratic committee members certainly knew, once they raised these questions, what kind of response they would get from the Republican side: why can't we probe mi deeply into Anita Hill's past and psyche to see whether she might indeed be delusional? And why can't we get some Senate staffers before the committee under oath, to see whether they might have suggested to Hill some of the juicy details of her charges?

Any of these questions might be deemed relevant under some rules of evidence. The problem is that the Senate has no such rules. It is not set up like a courtroom. in which professionals from each side would have questioned both Thomas and Hill before an impartial judge—and, it must be said, questioned both of them much more intensely than happened during these hearings. Neither did this Senate hearing operate with the benefit of anything like a grand jury, which sifts through raw data and decides which information is good enough to ,serve as a -legitimate basis for further government action. More informal procedures than those of the courtroom are fine for some types of hearings. But in public hearings on issues of individual guilt and innocence, the absence of rules means that the contest is drenched in free-floating poison. The odds are even slimmer than usual of ever finding a semblance of the truth.

13 AFTER the Senate vote on Thomas, he took his seat on the Court. His wife Virginia gave a cover interview to *People,* explaining how her religious faith had seen her through the ordeal. Anita Hill received an enthusiastic ovation from a conference of female state legislators when she "issued a ringing call to arms," according to the New York *Times,* on the issue of sexual harassment Meanwhile, politicians and journalists who had seen the Senate's disarray during the controversy talked about improving "the process." It was a convenient phrase, for it allowed the speaker or writer to express revulsion at the hearings without taking a position in behalf of either Thomas or Hill. Some took their worries about "the process" quite seriously: the Judiciary Committee has decided not only to hire outside counsel to investigate the Ieak of Hill's affidavit but to allow the FBI into the case. Chairman Biden has said he intends to hold hearings about how the process can be fixed so that a mess like this does not occur again.

But it was not faulty procedures that brought us this problem; it was, instead, the spirit in which some of the players used the procedures. Someone was so partisan and so certain of the righteousness of his or her opposition to Thomas as to feel fully justified in overriding those morally deficient elected officials in the Senate and leaking Hill's affidavit. And once it leaked, there were liberal organizations in Washington and feminists in the national media willing to treat the massively ambiguous news as a dear and patent outrage.

When it comes to the issue of staffing the federal courts, there is certainly enough partisanship to go around. Yet the spirit that manifested itself at the beginning of the Thomas scandal, the type of factional leftist partisanship that insisted on saddling our institutions with an impossible burden and putting the country through what we saw in those hearings despite dearly serious questions of fact, was truly breathtaking. Even in the bitter politics of federal judicial nominations, these people deserve special worry.

We should also worry about *the* politicians and journalists in the capital who proved so ready to fall into the now-settled routine of scandal politics, for it was this compliance that enabled the scandal's creators to capture the national agenda. Leaks have become such an ordinary way of doing business that a congressional staffer who has lost an internal battle will not think twice about continuing the fight by making it public. Few journalists will hesitate to publish unconfirmed charges. Those who hear the resulting news story simply assume that a cover-up has been narrowly averted. Politicians will do whatever they must to avoid being associated with this dread cover-up. No one in the system seems to have the power to say "No" and stop the machine.

This time around, with the Thomas scandal, Americans saw the process taking place with a compressed intensity. People managed to make their way through the chaos to some serious conclusions, but they were also forced to watch the scandal sausage being made, and they did not like either the product or the sausage-makers. Even in Washington there were small signs of revulsion. In the midst of the Hill-Thomas fight, the Washington *Post* reported, with an unusual skepticism, on the "increasingly symbiotic relationship between committee staffers, liberal interest groups, and the news media" in "a role once played almost exclusively by the Senate." Since the final vote, it has been reported that senatorial offices are, at least for the moment, no longer so friendly as they once were to some of these groups. The groups themselves are not coming forward, as they did after their Bork experience, to brag about and explain their tactics and strategies. They have not merely lost; they are in bad odor.

Unfortunately, this setback in reputation will not bother them. Having won the Bork fight, they exulted in the way the will of the people had been brought to bear in the battle; having lost the popular contest over Thomas, they will adopt other arguments and work via other means, including a continuing, assiduous use of the confirmation process, to gain what they have consistently failed in recent years to win at the polls.

ing on Israel promptly to withdraw from all *Palestinian* territory, recognize the PLO and "all the rights of the Palestinian people," including the right of "return," was passed by a vote of 93 nations [emphasis added].

The rescission, therefore, placed critics of the administration's hostility toward Israel on the defensive and sanitized the UN in the eyes of many, but left that organization just as hostile and thus even more dangerous to Israel than ever. . . .

KENNETH L.
GARTNER Mineola, New York

To THE EDITOR OF COMMENTARY:

Norman Podhoretz's frighteningly insightful article leads me to conclude that President Bush and Secretary of State Baker have little warmth or compassion for Israel.... When I look at the friends of this administration (former pals Sununu and Buchanan and current pals Syria and Iran), I am very concerned.

Should Bush and Baker continue to use Israel and American Jews as a scapegoat to shore up falling popularity polls, I trust that COMMENTARY will be in the vanguard, exposing this opportunism. SHELDON SELLER
Riverton, Connecticut

To THE EDITOR OF COMMENTARY:

Congratulations on Norman Podhoretz's fine article, "America and Israel: An Ominous Change."

As a somewhat eclectic conservative, I agree with all of it, every word, including his indictment of the feckless Bush administration for believing that some sort of settlement of the so-called Palestinian problem will bring peace to the Middle East. What a laugh.

I myself do not see how Israel can give up one inch of territory. As Napoleon somewhere said, strategy is geography. Without the West Bank, Israel is less than twelve miles wide at its waist. Once Iraq had (has?) the bomb, an Iraqi tank thrust through Jordan just might do the trick. but with the buffer of the West Bank, Israeli armor could certainly smash any such tank thrust. (If the other side had nuclear bombs, Israel could not use its nuclear deterrent.) As for giving up the Golan Heights, who is kidding whom? . . .

JEFFREY HART
Hanover, New Hampshire

NORMAN PODHORETZ writes:

It is Alan 0. Ebenstein, I fear, who "has it wrong." For insofar as Islamic fundamentalism is a factor in the Arab war against the Jewish state—and I agree with Mr. Ebenstein that it is—it makes a new Palestinian state even less likely to result in a peaceful resolution of the conflict. The reason is that the religiously based hostility to Israel is, if anything, more intransigent and less subject to possible compromise than the politically based opposition. To Islamic fundamentalists, the existence of a sovereign Jewish state, *no matter where its boundaries might be drawn, is* an abomination and a blasphemy. This is why the fundamentalists, unlike the Palestinian nationalists, cannot even pretend to favor trading land for peace or to settle for a two-state solution. In their eyes, the entire area belongs by divine right to Islam. Therefore a Palestinian state in the West Bank and Gaza could not possibly satisfy them; indeed, even if (as an Egyptian journalist once proposed) Israel were limited to one synagogue in Tel Aviv and the ten meters surrounding it, the Islamic fundamentalists would still consider it their religious duty to correct this violation of the divinely ordained natural order. Mr. Ebenstein, admitting that a new Palestinian state in Judea, Samaria, and Gaza would pose "great potential dangers for Israel," nevertheless thinks that it would be in the interest of the United States. Yet his own stress on Islamic fundamentalism belies that dangerous illusion.

If Tony Frank had paid more careful attention to some of my earlier writings, he would not have been so surprised to find me acknowledging that the Israeli Left and its American supporters believe that continued occupation of the territories in question has had and will continue to have a corrupting effect on Israel's democratic culture. I have said as much about the Left many times in the past. But I have also then gone on to express my strong disagreement with this belief. To me it seems obvious that Israel's democratic culture remains alive and well—amazingly so, given the strains of living in a state of siege and considering how other democracies, including our own here in America, have behaved in periods of national emergency.

Incidentally, my version of the "strategic-asset" argument has always rested less on Israel's contribution to the containment of Soviet power than on the value to the United States of a democratic ally in the Middle East; and it still does. Furthermore, I have always been convinced, and I still am, that people like Mr. Frank, who keep insisting that Israel is no longer a true democracy, are helping, in some cases (though not, I hope, in his) deliberately, to undermine the main basis of American support.

This is not to say that I consider the status quo pleasant or desirable. Yet the question must always be: compared to what? Unlike Mr. Ebenstein, Mr. Frank evidently thinks that a new Palestinian state poses no threat to Israel; to assert that it does is "baseless propaganda" and "embarrassingly outdated thinking." Well, I suggest that Mr. Frank take a look at Harry V. Jaffa's letter above, and especially the sections Mr. Jaffa quotes from the Palestinian National Charter. And with regard to the Arab world in general, I suggest that he also ask himself why Syria has been importing Scud-C missiles with the accuracy and the range to hit Israel's cities, and why the "moderate" Saudis are helping them pay for these missiles. Perhaps then he might begin to understand why so many of us—along with a great majority of the Israeli people—are convinced that, short of a change in the Arab world comparable to the one that has occurred in the former Soviet Union, there is no way Israel can withdraw from the territories in favor of a new Palestinian state without placing itself in mortal danger.

I thank the other correspondents for their kind words and their many interesting clarifications and additions. Among these, I am especially struck by Jeffrey Hart's passionate statement. Mr. Hart was Patrick J. Buchanan's campaign chairman in the New Hampshire primary, which only goes to prove (as I suggest elsewhere in this issue) that backing Buchanan does not necessarily imply approval of his hostility to Israel or of his advocacy of a new Palestinian state.

Hill vs. Thomas

To **THE EDITOR OF COMMENTARY:**

. . . Suzanne Garment's article. "Why Anita Hill Lost" [January], is one more in an endless stream of

commentaries that skirt the real issue underlying the Clarence Thomas-Anita Hill controversy. I refer to the unspoken issue of whether what Thomas allegedly did, even if true in each and every detail, reflects anything worthy of scrutiny, whether public or private. A man in his early thirties makes a verbal move toward an attractive female—who rejects, but protests not. . . .

It is over such as this that a nation stood transfixed for several weeks. All the actors on the stage—including the accused, even while denying it—condemned the dastardly conduct as beneath contempt and unbefittin one aspiring to such high office. Never mind that the alleged conduct was entirely verbal. Never mind that the so-called victim neither flinched nor protested, but over the years continued to nurture her relationship with her alleged tormentor. Never mind that in rites of passage, such acts as these are as commonplace as there are birds and bees on a summer day. . . . In spite of all this, the matter continues to be much discussed. But what has not been open to debate so far is the simple but honest street phrase that I am sure has occurred to many of us: so what!

I will nevertheless offer up my own opinion. Despite the fact that Hill was by far the more inconsistent, both in her statements during the hearing and in regard to her actions over the years, she captures my vote because of what she did not say, i.e., that Thomas had repeatedly cornered her and submitted her to physical indignities, that he threatened to fire her or reassign her to a less desirable position as punishment for her rejection, etc. Such actions would unquestionably constitute abuse. Had she wanted co invent a story to damage Thomas, surely she would have included in the mix some clearly outrageous and abusive conduct on his part. The very fact that nothing of this sort was included weighs heavily in her favor.

All of which is totally beside the point, the point being that Thomas's actions as depicted amounted to little more than Youthful indiscretions. His response to the committee should have been a resounding "it's none of your business." Unfortunately, in the present climate wherein the feminist movement has outlawed mother nature in the workplace, Thomas had but one choice to make out of regard for his good name. In my opinion, his response was both predictable and understandable in human terms, and therefore justifiable.

Mrs. Garment's analysis adds little to the debate. In addition to the litany of inconsistencies in Hill's conduct and testimony previously listed by just about everybody, she underscores the fact that Hill is an ambitious female, which attribute Hill artfully concealed. Again, so what! . .. Did Hill embellish or lie about (1) the extent of her ambitiousness; (2) the extent of the outrage and/or revulsion, if any, that she felt over Thomas's alleged licentiousness; (3) the full and true reasons she remained silent over the years? My guess is that she is probably guilty on all counts, for that is just the way it is with humans when outsiders attempt to pry into their innermost personal motives and conduct.

In short, it is most likely, on balance, that, as the exchange unfolded, both individuals found it necessary to retreat from a strict account of the facts in order to preserve their dignity, good names, and self-respect.

ARTHUR S. BAY Oklahoma City, Oklahoma

To THE EDITOR OF COMMENTARY:

Suzanne Garment is right on point, but she leaves unanswered the two most pertinent questions raised by observers: (1) Did Clarence Thomas do the things alleged by Anita Hill? In short. which one told the truth? (2) If Hill is to be believed, does that render Thomas unqualified to serve on the Supreme Court? . . .

HOWARD SALASIN Fort Washington, Pennsylvania

To THE EDITOR OF COMMENTARY:

Suzanne Garment offers a compelling analysis of Anita Hill's public posture. She deserves congratulations for a dispassionate article which will certainly not win her any friends in the feminist movement. I had, however, hoped for a little more attention to the role played by the media, since Mrs. Garment is a former member of the Fourth Estate and has contributed so valuably to the debate on major public issues.

Two main points are involved: The first. as Mrs. Garment notes in her opening sentence, is that none of us will ever know the truth. Only the two participants know. Thus, analysis, no matter how penetrating, is futile. The second point, it seems to me, is more important and could make a major difference in future controversies: why did the media use the story?

It is general practice in journalism not to use charge-denial stories which cannot be proven, regardless of the source. Indeed, even when a crime is involved, reporters generally do not use the material unless a warrant has been signed. Why were traditional journalistic rules violated in this instance? And will this violation set a pattern? Of course the story had tremendous "news value," since a Supreme Court nominee was involved and competition—fear of losing a "good story"—no doubt also played a part. Yet the question remains: why in this case were responsible principles abridged? . .

It does not seem to have occurred to the journalists involved that the agony so decried on the nation's editorial pages could have been avoided if whoever received the FBI-Hill material had simply said, "I can't use this."

While Mrs. Garment touches on the role of "leaks" at the end of her article and how they serve the interests of those who do the "leaking," her insights into the media's role and what needs to or should be done could have proved constructive and useful.

BERL FALBAUM
West Bloomfield, Michigan

To **THE EDITOR OF COMMENTARY:**

In her otherwise thoroughgoing article Suzanne Garment did not explore Anita Hill's "liberal credentials." The possibility that part of Hill's motivation in mounting a vendetta against Clarence Thomas might have been ideological was the subject of two articles in the wake of the controversy, one in the *Wall Street Journal*, the other in the Washington *Inquirer*. . . .

In her *Wall Street Journal* piece, Lally Weymouth . . . dismissed as nonsense the anti-Thomas camp's allegation that Hill had "no motive" for lying. She showed, on the contrary, that Thomas himself had once noted in a memorandum how he and his one-time employee, Anita Hill, "disagreed on positions [albeit] we were able to resolve disagreements professionally." And in an interview with the former dean of the Oral Roberts University Law School, Weymouth established that Hill "was far from [being] a conservative Republican: she tended to be liberal and feminist in her approach to things."

Weymouth also spent time on the campus interviewing Anita Hill's students, one of whom told her that "Miss Hill is not an innocent professor thrust into the situation by the media, . . . but rather a political activist furthering a cause she had so vehemently advanced in the past." Likewise, a former member of the University of Oklahoma's feminist group, the Organization for the Advancement of Women, for which Hill served as campus adviser, reported that Hill "is a liberal; she was for such things as 'comparable worth.' At our meetings. if it wasn't Reagan-bashing. tt was Bush-bashing. They were terrified of *Roe v. Wade* being overturned." . . .

ALBERT L. WEEKS
Sarasota, Florida

To **THE EDITOR OF COMMENTARY:**

. . . It is not necessary to attribute . . . Anita Hill's inaction in the face of alleged sexual harassment to any particular motive. . . . Any rational person—and presumably Anita Hill is such a person—will remain in an employment situation only if he or she believes it is advantageous to do so. The concept of a "hostile" work environment is inherently subjective. To one person, it may mean a cramped office, to another, a strict dress code, etc. In any case, the proper response to an intolerable workplace is to quit and find a more compatible one. Staying put implies that it is not really intolerable.

... An employee is no more justified in asking a court to order an employer to provide a less hostile work environment than an employer would be to ask that it direct an employee to be more productive. At its core, the "hostile-work-environment" issue hinges on whether or not people are capable of acting to maximize their own welfare. The Declaration of Independence affirms our unalienable right to pursue happiness. It is indeed sad that so many Americans have forsaken their birthright and instead look to legal remedies to improve their condition.

PHILLIP GOLDSTEIN
Brooklyn, New York

SUZANNE GARMENT writes:

Many thanks for the letters that said complimentary things about my article on Anita Hill and Clarence Thomas. I agree with the writers that there are interesting issues it did not address. The first of these questions is straightforward: whose story, in the end, should we believe?

I believe Clarence Thomas. I have met him and spoken with him; I have shrewd and insightful friends who are his friends as well; and in writing my most recent book I investigated at some length his personal performance as chairman of the Equal Employment Opportunity Commission. I do not believe him capable of the behavior Anita Hill described.

But the public record of the Hill-Thomas episode simply does not, by itself, settle the matter. Arthur S. Bay has studied the public materials and come to a conclusion very different from mine. Such differences spring from the record's ambiguities and silences.

A few good reporters have now begun the hard job of digging into Hill's life in search of new information that might finally settle this question of credibility. These journalists have already come up with interesting and disturbing circumstantial evidence involving Hill. But if the citizens who had to "vote" for Thomas or Hill did not have a clean and clear public record available to them when they made their choice, neither did they have the new information that is now starting to emerge. Members of the public had to pronounce judgment on the record as it stood then. If we want to know what the Hill-Thomas affair tells us about our political system and our citizenry, we must first deal with the scandal as it appeared at the time to those who had to evaluate it, and that is what I tried to do in my article.

Let me add a word of caution: in writing about American political scandals, I have repeatedly found that when a big scandal breaks, secondary charges tend to come pouring out of the woodwork. In particular, I have seen how Clarence Thomas's opponents, trying to sink his Supreme Court nomination through scandal politics, peppered him with allegations ranging from judicial conflict of interest to the excessive viewing of pornographic films. Some of the secondary charges that arise in affairs like these are true. some are false, and a great many are exaggerated. Winnowing is required. and in this case the work has vet to be done. I am eager to see additional journalists join in the task.

Howard Salasin asks another question: "If Hill is to be believed, does that render Thomas unqualified to serve on the Supreme Court?" In one sense the answer is, for me, easy enough: if the actions complained of in a case like this one turn out to be signs of some major character flaw relevant to public performance, they may indeed prove disqualifying. If the behavior seems to bear little relationship to anything else in a candidate's public character, however, it should not be enough to do him in, and making a public scandal of the matter serves only to scare the best people away from public service.

But the issue is not really so simple as all that. It is one thing to say that we should not pry into most kinds of private acts when we consider candidates for high office. It is quite another matter to say that if we do learn of objectionable private behavior by these can-

didates, we should just go ahead and confirm them as if we had never heard the news about them. In the first situation, we are merely ignorant; in the second, by contrast, we place a stamp of public tolerance, if not approval, on bad private behavior. We also unavoidably change, for the worse, the way we view these officials once they are in authority. We avoid acting unjustly toward candidates for office, but we do so at a cost to their moral authority and the tone of our civic culture.

That is why it is not enough to deal with conflagrations like the Hill-Thomas case simply by rejecting one charge or another as a basis for disqualifying a nominee. We must instead recognize that the problem lies deeper, in the modern notion that "the personal is political." It is a slogan that has permitted the use of the "character issue" in the service of the most bitter partisan politics, as an excuse for opening candidates' and nominees' personal lives to an examination that virtually no one can survive and remain capable of democratic leadership.

Finally, some of the letter-writers ask questions on which I wrote little because what I have to say is not novel.

For example, Berl Falbaum quite properly asks why the press abandoned its traditional standards of proof to chase after the ultimately unknowable matter of Thomas's private dealings with Hill. The reason, I think, is that those standards have been in the process of abandonment for the past 25 years. During the Vietnam era and beyond, as the press grew more antagonistic toward government, journalists became increasingly convinced that the "real" stories of American politics lay not in public documents or speeches by our leaders but in politicians' and officials' private interests, conspiracies, and gossip. In pursuing such stories, journalists got used to the idea of jettisoning old-fashioned notions like the necessity for named sources and corroborating evidence. The press coverage of the Hill-Thomas controversy was merely one striking example of the result.

In the same way, Albert L. Weeks asks why the press, without investigation, portrayed Hill as a conservative with no ideological motive for attacking Thomas. In this matter, too, the media behaved as they have done for quite some time. Hill's advocates, for obvious reasons, spoke of her as a conservative. A small but well-placed part of the press actively and fiercely supported Hill, and we can assume that these people deliberately chose to look no farther. Other journalists who failed to investigate Hill's views surely did so because they were afraid, consciously or not, to violate today's political stricture—among not only journalists but also other opinion-makers—against "blaming the victim." And still other press people, having little time and few resources, simply accepted the assumptions supplied by their fellow journalists. By this combination of manipulativeness and mindlessness are feeding frenzies shaped.

Suicide

TO THE EDITOR OF COMMENTARY:

Leon R. Kass's diatribe against euthanasia ["Suicide Made Easy," December 1991], reveals how obtuse, irrational, and, yes, evil are many arguments against euthanasia. Whereas some American jurors have demonstrated the equanimity and common sense to acquit mercy killers (see 0. Ruth Russell's *The Right to Die),* Mr. Kass relentlessly persecutes and prosecutes them. The mercy killers have had the temerity to advocate a thorough. considerate, respectful, and technically precise exit from life and from society. Should mercy killers be inconsiderate or sloppy when assisting suicide?

How sanctimonious of Mr. Kass to acknowledge "the anguish and fear of patients and families in the myriad matters surrounding decay and death." Do doctors cause this anguish by vowing "neither to give nor suggest a deadly drug'? Medical torturers and their accomplices first prolong suffering and then hector the victims to show greater courage in the face of debilitation and death.

Mr. Kass concludes that the taboos against homicide, suicide, and euthanasia are breaking down. Why make these subjects taboo? Does planning to kill inevitably lead to unnecessary death? Then years and years of war games mils-