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Honorable Women: Mediating Justice After Feminism

A dissertation submitted in partial satisfaction of the

Requirements for the degree Doctor of Philosophy

in Film and Media Studies

by

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For my parents, Cynthia and Harold

And

For Sharon

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Honorable Women: Mediating Justice After Feminism

by

Sarah E. Lerner

Honorable Women: Mediating Justice After Feminism examines the relationship between female judges, real and fictional, and their mediation in US popular culture since second-wave feminism. While the first women entered the legal profession in the mid-1800s, it was only the advances of legislation for equal representation and the denial of sex discrimination arising from the civil rights and feminist movements that opened the doors for women's legal education in the United States. Crucial to these advances were the establishment of Titles VII and IX of the Civil Rights Act (1964 and 1972) and the Supreme Court cases *Reed v. Reed* (1971) and *Frontiero v. Richardson* (1973). Beginning in 1970 and extending its analysis to the current moment, my dissertation considers the impact of the feminist movement on women in the judiciary and the role of popular culture in the circulation of media formats that address how women enact the law. In pursuing a range of media including film, television, internet fandom, and art, I consider how women have used media tactically to amplify their voices as agents of their mediation, and how American popular culture grapples with women who have legal authority. In doing so, I emphasize feminist media historiography and the intersections between gender and race. I analyze how popularly circulating images represent female judges and extend this analysis beyond questions of representation, building an account of how women judges use popular culture, and how popular culture mediates women judges. Following Stuart Hall's notion that popular culture is about the "double movement of

containment and resistance," I argue that it is only through popular media that the American popular imagination can understand women with legal authority.

I begin my dissertation through feminist legal historiography, illuminating the role of women's law associations in supporting women in the profession. I focus on women's tactical use of media in support of their rights. Each chapter elaborates on women, race, and feminist media historiography, analyzing how women judges' representation and agency in the law circulates through popular media. Some of my primary examples include *The First Monday in October* (dir. Ronald Neame, US, 1981), which foreshadows Sandra Day O'Connor's appointment to the Supreme Court in 1981; television judge Lola Carmichael on *All Rise* (CBS, 2019–21; OWN, 2022–), Rebecca Wright on *Bad Judge* (CBS, 2014–2015); and media surrounding Justice Ketanji Brown Jackson's nomination to the US Supreme Court, including a series of *Saturday Night Live* sketches.

Honorable Women: Mediating Justice After Feminism

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Introduction

Feminist Legal Action:
Tactics of Mediation from the Bar to the Bench



Figure 1. Kate McKinnon as Ruth Bader Ginsburg (*Saturday Night Live*, 2017) (top) and Cecily Strong as Jeanine Pirro (*Saturday Night Live*, 2021) (bottom).

"*Gins-burned*!" Kate McKinnon exclaims to a *Saturday Night Live* crowd as they cheer her on in her recurring performance of Supreme Court Justice Ruth Bader Ginsburg. A year later, in 2018, Justice Ginsburg announced to the Sundance Film Festival crowd upon the release of the eponymous documentary *RBG* (dir. Betsy Cohen and Julie West, US), in which she stars, "I liked the actress who portrayed me [on *Saturday Night Live*] . . . and I would like to say 'Gins-burned!' [the crowd erupts in laughter] sometimes to my colleagues." Things look less rosy for the foremost judge in the conservative court of popular opinion, Jeanine Pirro, than for Ginsburg. *Saturday Night Live* takes a jab at Pirro in the "Weekend Update" sketch featured below titled "Jeannine Pirro on the United States-Mexico Border" (fig. 1), in which Cecily Strong stars. Common to Strong's portrayal of Pirro is that Pirro is always intoxicated, typically has an alcoholic beverage proudly displayed in her hand, and shouts political theories at the top of her lungs.

Pirro jubilently yells to "Weekend Update" co-hosts Colin Jost and Michael Che, "I did take some time off recently. I went down to the most luxurious place on Earth, Mar-A-Lago. Oh, it's like being on a cruise ship that's permanently docked in the hottest part of Florida in between two classy strip clubs. You know—where the gals wear ball gowns. There's an endless buffet of rubbery shrimp, and the air smells like a bathroom stall that's been freshly sprayed with Poo-Pouri."[1] The jury of popular culture churns away, perhaps now more than ever, working through how to think about women with legal authority. Evident in the examples of Ginsburg and Pirro, media portrayals of women in the legal arena sometimes depict women in divergent ways that align with the binary oppositions through which women tend to appear

[1] "Jeannine Pirro on the United States-Mexico Border," *Saturday Night Live*, 22 May 2021, YouTube, www.youtube.com/watch?v=TEbtOSXmY0c&t=60s (accessed 16 February 2022).

in popular culture (e.g., virgin/whore, sexy/ugly, demonic/angelic). Yet something more is at stake when it comes to women who exercise judicial power because it is tied to the formation of national identity, which was mediated from the start. From television programs to theater performances, film, and online fandom, to name a few sites—women, law, and popular culture in the United States is a site of flourishing activity.

Honorable Women: Mediating Justice After Feminism begins with the question: How does American culture express its desires, anxieties, and struggles with women exercising legal authority? To answer this question, I look to popular culture, considering how women in the judiciary—women who powerfully and visibly enact the law—perform and embody legal authority across a variety of media. The feminist movement, central to women's entry into the legal profession and to women's strategies of mediation, leads me to analyze how discourses about intersectional feminism (focusing on gender and race) map onto how popular realms understand women in the judiciary. The answer to this question extends beyond popular culture as a category. When women enact the law, they restructure imaginaries of identity through mediation, disrupting the fabric of a country whose legal system overwrites women.

In this dissertation, I consider the popular cultural logic that underpins collective understandings of women's legal authority, examining the cultural, social, and political significance of women judges' and justices' mediation since 1970. The advances of legislation for equal representation and the denial of sex discrimination that arose from the civil rights and feminist movements opened the doors for women's legal education in the United States at that time. Crucial to these advances were the establishment of Titles VII and IX of the Civil Rights Act (1964 and 1972) and the Supreme Court cases *Reed v. Reed* (1971)

and *Frontiero v. Richardson* (1973). Complicating and expanding scholarship that addresses law and popular culture as well as women's legal history and media representation, I engage with women in the judiciary across multiple media forms. I extend my analysis beyond film and television, also looking to archives, fandom, and art to take up conversations about women and the judiciary through film and media studies, cultural studies, and feminist legal history.

Existing accounts of law and popular culture largely pass over women in the judicial arena even while there is rich interest in law, popular culture, and mediation in many humanistic fields. When women enter as subjects of these conversations, it is usually through feminist legal history (which generally ignores mediation and popular culture), courtroom reality television and the female judge, or the frame of legal scholars interested in feminist jurisprudence (which tend not to partake in conversations about mediation and popular culture). Scholars in as diverse fields as television studies, performance studies, and sociology are attentive to the significance of the confluence between popular culture and legal studies. A key intervention I make is in the analysis of the role of feminism, gender, and the feminist movement in relation to women in the judicial sphere, and to do so through an interdisciplinary approach that values different media forms.

In analyzing mediation across formats, it isn't only that different formats help conceptualize women's mediation, representation, and historiography in popular culture. Crucially, these formats comprise the American popular imaginary, negotiating how popular discourse constitutes women in the judiciary. Media is often the primary way that the public gains familiarity with women in the legal profession. This is especially relevant for judges since not many people know a judge—let alone a woman on the bench. Since women's

position as purveyors of legal authority goes against the grain of how the United States imagined itself both through mediation and the law from the start,[2] then following from Stuart Hall's notion that popular culture is about the "double movement of containment and resistance," it is only through these media formats that the American popular imagination can contemplate women who exercise legal authority.[3] The productive tension between resistance and containment in popular culture is mirrored in the US Constitution's tension between oppression and liberation which is another form of resistance and containment. Feminist legal scholar Joan Hoff writes with regard to the Constitution that there is "potential for both oppressing *and* liberating all those disadvantaged persons and segments of society who were not represented at (or in) its creation. This is also a basic feature of most liberal texts: they engender 'contradictory feelings of [both] oppression and liberation' in disadvantaged groups, such as women, because they assist in the construction of legal discourses that define the parameters of both sides of the argument, thus permitting discussion but not questioning of the basic promises of liberal legalism."[4] Taken together, the paired logics of popular culture and the law are a complex nexus for cultural work.

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[2] With regard to mediation, consider the abiding founding mythology of the United States that is highly visible in the American Western, a genre built on men's legal authority and ability to conquer terrain and which pervades literature, magazines, film, television, comics, and other popular cultural forms. As for the law's own inability to grapple with women who have legal authority, it is noteworthy that the American Constitution accounts for a "mythic" "We the People," that often excludes many. Joan Hoff remarks, "Such legal texts [the US Constitution and other foundational legal documents] do not simply exist to communicate the order of power relationships in society. Additionally, they turn patriarchy and liberal legalism normative into immutable 'myths' or functional 'givens.'" Joan Hoff, *Gender, Law, and Injustice*: *A Legal History of US Women* (New York: NYU Press, 1990), 22.

[3] Stuart Hall, "Notes on Deconstructing 'the Popular,' in *Cultural Theory and Popular Culture: A Reader, Third Edition*, ed. John Storey, 443.

[4] Hoff, *Gender, Law, and Injustice*, 22.

There are a few interventions in Film and Media Studies that are important to this project. First, feminist legal history, a sub-discipline of critical legal history, is part of a historical project grounded in the archival excavation of women figures and their work that "prompts us to rethink dominant narratives of legal history and the role of law in producing and reflecting cultural and social norms."[5] Beyond the act of recovering women's existence in the legal profession and their role in shaping legal history, law professor Felice Batlan notes that "[e]ngendering legal history means more than just writing women into the dominant history of law. Rather, it produces a new history, creating possibilities of re-narrations and the potential for fresh interpretations."[6] Feminist legal historians, including Batlan, Tracy A. Thomas, and Tracey Jean Boisseau, indicate that while feminist legal history came rather late to the broader field of legal history—emerging within the past twenty years—and is expansive in method and topic, there is "an understanding that analyzing gender changes our received understandings of American legal history."[7] In close alignment with feminist historical thinkers like Joan Scott, feminist legal historians have developed more nuanced understandings of gender that move beyond biological categories to interrogate the relational power of hierarchies between men and women.[8]

Representative of recent scholarly work in this area is Thomas and Boisseau's edited collection, *Feminist Legal History*. It draws on Batlan's insights about "engendering history" to argue that, contrary to more conventional women's legal histories that are less critical of

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[5] Felice Batlan, "Engendering Legal History," *Law and Social Inquiry* (2005): 823.
[6] Batlan, "Engendering Legal History," 823.
[7] Batlan, "Engendering Legal History," 824 and Tracy A. Thomas and Tracey Jean Boisseau, "Introduction: Law, History, and Feminism," in *Feminist Legal History: Essays on Women and the Law*, ed. Tracy A. Thomas and Tracey Jean Boisseau (New York: NYU Press, 2011), 1–2.
[8] Batlan, "Engendering Legal History," 824–25.

the practice of historical writing, women's legal progress did not move forward on a linear timeline. Instead, polarized responses to women's interventions that proceeded in a one-step forward, one-step back fashion characterized their progress. They also argue that women in the legal profession altered the legal landscape by "shap[ing] the law in their own image."[9] Common to the area, essays in the collection endeavor to create legal change through "discussions of the law and policy decisions of today in ways that promote women's rights, women's interests, and women's empowerment" and, more specifically, address women's interventions in the legal profession and the judicial arena.[10]

Similar to feminist legal historians, feminist media historians—especially those who pursue work on women in the silent film industry—have encountered strikingly parallel historiographical questions in the course of their research yet tend to address them in more detail, sustaining reflexive interrogations about historiographic methods. I draw on the work of feminist media scholars for their focus on different types of mediation, a concept also central to my project. Prominently, for feminist media historians, the question "Where are all of the women in the silent film industry?" and its counterpart, which followed decades later, "Why didn't we know about all of the women in the silent film industry?" mirror each other. Feminist media historians were not only concerned with the number of women—but they also wanted to know how their contributions shaped and supported the industries they worked in. By replacing the term "silent film industry" with the "legal profession," a parallel set of questions about the conclusions of archival research and historiographical issues related to writing women's histories emerges between disparate fields. Whereas scholarship

[9] Thomas and Boisseau, "Introduction," 2.
[10] Thomas and Boisseau, "Introduction," 1.

that excavates women's role in the film industry now flourishes, as the addition of several noted edited volumes and monographs attest, the same cannot yet be said about feminist legal history, which is still emerging.[11]

I use historiographic insights from feminist media historians as I bridge feminist legal history and feminist media studies. Just as I desire to bring insights from feminist media studies to bear on feminist legal studies, I also desire to bring insights from feminist legal studies to bear on feminist media studies. I follow Jane Gaines and Monica Dall'Asta's work on silent cinema for their consideration of historical revision and the process of working in archives that often unevenly document (if they document at all) women's histories. Gaines and Dall'Asta are prominent voices in women's film history, and they interrogate possibilities for the delayed archival discovery of the many women who worked in the silent film industry in their coauthored prologue to *Doing Women's Film History*.[12] Their scholarship prompts me to think about two key topics. The first topic addresses historical revisions that replace or modify one narrative (the "no women" narrative) with another (the "more women than at any other time" narrative in the case of silent cinema). The second

[11] Invested in archival research, some of the most recent, acclaimed contributions to women's film history include *Silent Cinema and the Politics of Space*, ed. Jennifer M. Bean, Anupama Kapse, and Laura Horak (Urbana: University of Illinois Press, 2014), Jane M. Gaines, *Pink-Slipped: What Happened to Women in the Silent Film Industries?* (Urbana: University of Illinois Press, 2018), Erin Hill, *Never Done: A History of Women's Work in Media Production* (New Brunswick, NJ: Rutgers University Press, 2018), and Laura Horak, *Girls Will Be Boys: Cross-Dressed Women, Lesbians, and American Cinema, 1908–1934* (New Brunswick, NJ: Rutgers University Press, 2016).

[12] Jane Gaines and Monica Dall'Asta, "Prologue—Constellations: Past Meets Present in Feminist Film History," in *Doing Women's Film History: Reframing Cinemas, Past and Future*, ed. Christine Gledhill and Julia Knight (Urbana: University of Illinois Press, 2015), 14–15.

topic, tied to the first, addresses the inevitable question about the shape of historical time that emerges from archival excavation projects.

For Gaines and Dall'Asta, the space between the two radically different historical narratives about women in the silent film industry outlined in the previous paragraph "is an issue because we are not satisfied with a theory of historical revisionism whereby what we call 'history' (meaning the events as well as their narration) is continually being updated and called 'history' all over again."[13] Their assertion about the problem that re-narrating history through a corrective replacement then leads to a search for a method that begins to account for the problems attendant to uncritical historical revision. The steps Gaines and Dall'Asta make as they move from identifying a problem to a possible solution lead to the second topic I address that is threaded throughout this dissertation: the shape of historical time.

For Gaines and Dall'Asta, the solution is a meta-historical approach that recognizes that "the present is itself historical. This is why it no longer makes sense to me [Gaines] to think of the intellectual history of our field—that of feminist academics and their discourse—as separate from the history of women who worked inside as well as outside silent era national film industries. . . . We are constellated [following Walter Benjamin's use of the term] with women makers then and now in relation to the unfinished business of world feminism."[14] In evoking Walter Benjamin's "constellation," they propose that historical time is far from linear and progressive—it is asymmetrical, ruptured, and unevenly aligned in ways that place the historical present in conversation with the past.[15] While this

[13] Gaines and Dall'Asta, "Prologue," 15.
[14] Gaines and Dall'Asta, "Keynote Address—*Doing Women's Film History* Conference Draft with New Title, Constellations: When Past and Present Collide in Film History," 13.
[15] See Walter Benjamin, "Theses on the Philosophy of History," *Illuminations*, ed. Hannah Arendt, trans. Harry Zohn (New York: Schocken Books, 1969).

conceptualization of historical time is not radically different from that of feminist legal historians', more recent feminist legal studies collections indicate that feminist media historians tend to be more invested in elaborating and tangling with temporality and history while engaging in archival work. This fascination with temporality that historical research yields is wedded to the work of film and media studies scholars since the convergence of media and temporality is generative for theorists, historians, critics, and filmmakers. Taken together, the work of feminist legal historians and media historians moves me toward two interventions—one in feminist legal history and another in feminist media studies.

The first intervention, connected to feminist legal history, regards what counts as important historical terrain. It is still the case that women are not well-represented in the judiciary even though women now account for approximately 50% of law school graduates.[16] According to 2022 statistics, during the past calendar year, women accounted for 33% of justices on the US Supreme Court (and only five women have been appointed out of one-hundred-and-fifteen justices), 36.57% of judges on the Circuit Court of Appeals, and 35.09% of Federal District Court Judges.[17] Women don't fare better at the state level, accounting for 33% of all state general jurisdiction court judges in the US.[18] At the Federal court level, there has recently been a gain in representation and the diversity of women now serving as

[16] "A Current Glance at Women in the Law, January 2018," *American Bar Association Commission on Women in the Profession*, www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf.
[17] "Diversity of the Federal Bench," American Constitution Society, www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench/ (accessed 15 January 2022).
[18] "2022 US State Court Women Judges," *The American Bench 2022*, Forster-Long, LLC, statistics published by the National Association of Women Judges, www.nawj.org/statistics/2022-us-state-court-women-judges (accessed 15 January 2022).

President Biden appointed women for 78% of open positions. Thus far, Biden's nominations comprise forty-two confirmations, and of those, about fifty-seven percent are from racially, ethnically, or gender-diverse backgrounds.[19] He has nominated eight Black women to the US Courts of Appeals, and five have already been confirmed as of January 2022. As Candice Norwood puts it, "If the remaining three are confirmed, Biden would have doubled the total number of Black women to ever serve on federal appeals courts from eight to 16."[20] This suite of nominations is part of a Biden campaign promise to diversify the bench after former President Trump nominated women for a paltry 23% of his two-hundred-and-thirty-four nominations for a total of fifty-six women.[21] Biden also plans to keep a campaign promise to nominate the first Black woman to the Supreme Court following Justice Steven Breyer's recent retirement announcement in January 2022. While the addition of a Black woman to the Court won't change the court's balance (as so many news outlets are almost too quick to point out), it would be a long-overdue confirmation that matters just as much as her potential ability to balance the Court. Representation matters on the courts because it provides a wider perspective and different lens for reading the law. Performance studies scholar Joshua Takano Chambers-Letson puts it this way: "From its inception, US jurisprudence has constructed a purportedly neutral national subject position that is, in fact, white, male, economically privileged, and heteronormative. While this observation is not novel, it bears repeating in this context insofar as it helps to understand the types of anxieties displayed

[19] Candice Norwood, "Biden Has Nominated 8 Black Women to Appellate Courts, Laying Groundwork to Fulfill Campaign Promise," 19thenews.org, 21 January 2022, 19thnews.org/2022/01/biden-black-women-appellate-judges/.
[20] Norwood, "Biden Has Nominated 8 Black women to Appellate Courts."
[21] "Diversity of the Federal Bench."

around the slow integration of women and people of color onto the Supreme Court."[22] The potential and actual impact of representation on the courts in relation to popular culture is a repeated area of inquiry in my dissertation, and scholars should approach it from an interdisciplinary angle. *Shortlisted*, an important book that explores the stories of women before Sandra Day O'Connor who were placed on the shortlist for the Supreme Court but not selected, also engages with the question of representation but from the view of feminist legal historians who also argue for the significance of an interdisciplinary approach.[23]

While the number of women in the judiciary is still too few, women have made large gains in the legal field as women supported other women in law school and in the professional field. This brings me to feminist legal history. For the most part, scholarly work in feminist legal history doesn't emphasize the role that women's legal associations play in women's professional gains. Some notable exceptions to this include Phyllis Eckhaus's "Restless Women: The Pioneering Alumnae of New York University Law School," Judith Richards Hope's *Pinstripes and Pearls: The Women of the Harvard Law Class of '64 Who Forged an Old Girl Network and Paved the Way for Future Generations*, and Laura Kalman's *Yale Law School and the Sixties: Revolt and Reverberations*, which document the societal contributions of early alumnae and students from NYU, Harvard, and Yale who formed networks and were activists before the widespread existence of institutionally-based women's law collectives. Yet these legal histories don't account for the broader influence of women's collectives through the frame of mediation since their focus is legal history.

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[22] Joshua Takano Chambers-Letson, "Embodying Justice: The Making of Justice Sonia Sotomayor," *Women and Performance: A Journal of Feminist Theory* 20, no. 2 (2010): 150.
[23] Hannah Brenner Johnson and Renee Knacke Jefferson, *Shortlisted: Women in the Shadows of the Supreme Court* (New York: NYU Press, 2020), 1–4; see also Preface and Preface to the Second Edition, (New York: NYU Press, 2021).

The second intervention, connected to feminist media studies, sets the stage for my work on women judges in popular culture by accounting for how women who were and are part of the legal profession use media tactically. Taking cues from feminist media historians, I engage with historiographical questions that archives generate, and count equally as critical documentation ephemera that scholars, including Amelie Hastie, have argued are just as necessary for constructing historical accounts as more traditional documentation is—especially when the archive may not contain a robust collection of traditional documents.[24] Important to this endeavor is considering how these groups mobilize media including letters, newsletters, and podcasts to bolster their activism. For example, the *Harvard Women's Law Association Newsletter* and the newsletter *Out/Law* are representative of the types of activism occurring in women's legal associations from the late-1960s, which continue today. These efforts are worth studying for how they position women's engagement with media as an essential component of their entry into and rise through the professional ranks. As *Out/Law* recounts in 1971 about students' struggle with the law school Dean to institute a course on Women and the Law,

> We had guidelines for topics, among which were abortion and birth control; employment discrimination; family law; and welfare. We had access to the syllabi of Barbara Bowman and Diane Schulder, teachers of similar courses at Yale and NYU respectively. We had strong expressions of interest, and firm teaching commitments from faculty members.

[24] See Amelie Hastie, *Cupboards of Curiosity: Women, Recollection, and Film History* (Durham, NC: Duke University Press, 2007) for Hastie's crucial intervention in validating different types of documentation in archival research.

> Our efforts were dogged by two things: Dean Bok's unwillingness to admit that our ideas were feasible and easy to implement; and the uncanny 'spiriting away' of crucial people at unfortunate times. . . Dean Bok, in apologizing to us, said that 'If it had been anything else,' our meeting would not have been postponed.'[25]

The article goes on to indicate that there were sit-ins in the Dean's office over his unwillingness to institute a course on women in the law and, despite such efforts, he eventually refused to institute the course. In 1988, the *Harvard Women's Law Newsletter* made note of a tenure denial case of law school faculty member Clare Dalton. Harvard Law School, now under the leadership of President Bok (who was Dean Bok in 1975), enters the spotlight again: "President Bok announced Thursday, March 10, that he was denying tenure to HLS professor Clare Dalton. The number of tenured women will now remain *at five* for another year. WLA members are involved in a committee forming to protest the Dalton decision. Watch around campus for details. Also, see page 5 of this Newsletter."[26]

The historiographical development of women's gains in the legal profession points to the fact that there are issues beyond increasing the number of women on the bench that matter for women's equity. While this is not a new idea, it is a key facet of the way my project approaches women's mediation and the judiciary. For example, simply having more women on the courts does not automatically translate to more equality in judicial cases or in reading the law itself. As Letson argues, "radical critiques of institutional and structural injustice . . . must continue to be attentive to structures and institutions of power that produce subordination and exploitation along lines including, but not limited to, race, gender,

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[25] Rikki Grubb (1L), "Women's Law Out," *Out/Law* (1971): 1.
[26] *Harvard Women's Law Association Newsletter* No. 6 (1988): 3.

sexuality, ability, and class."[27] At the same time, equity issues, like those Chambers-Letson describes, are often introduced and led by women in the profession who are acutely aware of cultural and systemic issues facing women and other marginalized people. In 1978, the establishment of the Federation of Women Lawyers' Judicial Screening Panel (FWL), for example, reviewed and tirelessly lobbied for Justice Sandra Day O'Connor's Supreme Court confirmation as well as Justice Ruth Bader Ginsburg's appointments to the Washington DC Circuit Court and the Supreme Court.

Tactics of Mediation from the Bar to the Bench

As I was conducting research for this project in the archives, one thing stood out: Women are now on the bench in larger numbers (although not nearly large enough numbers) because of the ongoing labor and support of other women in the profession. This is prominent in the archives of the Federation of Women Lawyers Judicial Screening Panel; the Association of American Law Schools, Section on Women in Legal Education; the National Organization for Women, Legal Defense Fund; the National Association for Women Judges; and the Lynn Hecht Schafran papers. The existence of these professional organizations speaks to how women have organized in support of other women who aspire to serve as judges and justices. In fact, the history of this labor and tactical organizing set the stage for the first Black woman's nomination to the Supreme Court. Its historical resonance is important to understand it as the crucial moment it is, and I discuss this in Chapter 3.

One of the barriers to women's appointment and confirmation on US benches is a

[27] Chambers-Letson, "Embodying Justice," 151.

practice known as "shortlisting," wherein someone is "qualified for a position but not selected from a list that creates the appearance of diversity but preserves the status quo."[28] As Hannah Brenner Johnson and Renee Knacke Jefferson confirm, "Our empirical research revealed that women are, in fact, portrayed in explicitly gendered and often unfavorable ways, specifically in the context of appearance, marital status, motherhood, and sexuality. The media frequently commented on the female nominees' attire, childlessness, dating life, and sexual preferences, among other topics completely unrelated to their competency for judicial office, in stark contrast with coverage of their male counterparts. We concluded that the gendered media coverage of nominees serves as a proxy for how women fare in the legal profession and all workplaces" (xii).

In 1971, President Nixon had to fill two Supreme Court seats when Justices Hugo Black and John Marshall Harlan retired (Nixon previously filled two additional seats). After the Senate rejected two of his choices, Clement Haynsworth and Harrold Carswell, he shortlisted Justice Mildred Loree Lillie, who was serving on the California Court of Appeals, and judge Sylvia Bacon, serving on the DC Superior Court. Lillie was only the second woman to hold a position on the California Court of Appeals, and she ultimately served forty-four years. Lillie was "sufficiently qualified but not ultimately selected from a list that creates the appearance of valuing diversity but preserves the status quo [because] Nixon faced immense political pressure to place a woman on the Court but personally believed women belonged only in the home—he did not think women should even be allowed to vote!"[29] After an American Bar Association (ABA) vote of 11–1 (comprised of only white

[28] Johnson and Jefferson, *Shortlisted: Women in the Shadows of the Supreme Court* (New York: NYU Press, 2020), 1.
[29] Johnson and Jefferson, *Shortlisted*, 3.

men) that unjustly deemed Lillie "unqualified" to serve as Supreme Court justice, a letter from the Supreme Court Chief Justice Warren Burger indicating that he would resign if Nixon appointed a woman to the Court, and other obstacles, Lillie's name was removed from consideration.[30] According to the audio transcripts of the conversation, Nixon was thrilled that the ABA considered Lillie unfit for the position.[31] John Mitchell, then-Attorney General, described the Chief Justice's complaint to Nixon this way:

> On Wednesday, he wrote the letter that I mentioned the other day, that talked in general terms about the strengthening of the Court. It pointed out that there was no qualified woman to be on the bench, he said that [Herschel] Friday [an attorney on Nixon's list] was great, he reaffirmed that, and went on to the point that he thought the only way to strengthen the Court was to put on somebody who was nationally known in the judiciary. And he went back over the same bunch of names, all of them sixty-five- and sixty-nine-year-olds . . . We had a good hour and a quarter of hard talk. I told him that there was no way that he could deliver an ultimatum to you, that if he resigned he was doing the very thing to the Court that he was trying to protect it against" (179–80).

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[30] John W. Dean, *The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court* (New York: Simon and Schuster, 2001), 150–95.

[31] "The President Calling: Richard M. Nixon Choosing Rehnquist," Part 4, *American Public Media*, americanradioworks.publicradio.org/features/prestapes/f4.html (accessed 15 February 2022). An excerpt of the conversation between Nixon and John Mitchell went this way: "Nixon: The woman thing, that's got to get out [to the press] some way. I mean, naturally, the [ABA] vote will get out, won't it? Everything else has leaked out of there. Now believe me, we're going to leak this out if they don't. . . . And I think the eleven to one is brilliant, because it's a stacked jury. All men. Huh? . . . And [the committee said] that she's the best qualified woman, but she's not qualified for the Supreme Court. Jesus, that's great."

In September 1971, feminist lawyer and civil rights activist Pauli Murray, who was foundational to Ginsburg's thinking, wrote to Nixon in order to put herself forward for Justice Hugo Black's open seat. Anticipating that the administration would use the "no qualified women available" argument, she provided an extensive list of her qualifications for the Supreme Court and ended with her main goal: "It should be of passing interest that I represent the largest group of minority status in the United States—namely, female. The Circuit would be more representative of the composition and interests of the population of the United States if a qualified woman were appointed. My application is to forestall the popular misconception that no qualified women applied or are available."[32]

In October, Nixon's planned nominations for the Court were leaked to the press (the Administration speculated by a member of the ABA Committee), and Lillie's name appeared along with the other names Nixon provided to the ABA in the *New York Times* and the *Washington Post* on Thursday, October 14th (160).

The way the *New York Times* covered Lillie was unabashedly misogynist. In recounting Lillie's biography alongside the other leaked names, the *Times* wrote: "[She] has no children . . . In her mid-50s, she still has a bathing beauty figure."[33] As Johnson and Jefferson recount, the article received a sharp rebuttal that appeared in the opinion section:

> To the Editor:
>
> Your description of the 'qualifications' of Judge Mildred Loree Lillie (biographical sketches of Supreme Court nominees (Oct. 14) illustrates perfectly the absurd sexist

[32] Pauli Murray, letter to President Richard Nixon, 10 September 1971, in "Richard Nixon and the Supreme Court," Nixon Library, 22 September 2021, www.nixonlibrary.gov/news/nixon-and-supreme-court.
[33] "Potential High Court Nominees," *New York Times*, 14 October 1971, 39 (accessed 7 February 2022).

> prejudices to which all women are persistently subjected. Why did you choose to objectify this woman and diminish her accomplishments by including such a totally irrelevant and subjective item? You implied that Judge Lillie's body was just as significant as any single professional attribute she possesses. There was no discussion of the health—much less the physique—of any of the other possible nominees. Perhaps you could rectify this inequality by printing a discussion of the extent to which Senator Byrd has retained his schoolboy figure or the manner in which Herschel Friday fills his swimsuit.
>
> --Barbara B. Martin, "Sketch of Judge Lillie," *New York Times*, October 23, 1971[34]

While shortlisting in this example is clear, it also played a role at an especially crucial juncture for women and the Court—one that is less documented in popular public media. Shortlisting, as the practice Jefferson and Brenner describe, had a significant role during the nomination process of Justice Ruth Bader Ginsburg to the DC Circuit Court. The particularly striking thing about Ginsburg's case is that she was eventually placed on the DC Court because people—particularly feminist legal associations, including the FWL and other women in prominent positions—lobbied in support of her nomination. Without this strong support, Ginsburg's nomination would have been lost, and with it, she probably would not have become an Associate Justice of the Supreme Court. In terms of feminist historiography, the archival letters that detail how women's feminist legal associations lobbied for Ginsburg exemplify my first point that without feminist legal associations (women supporting other women), the gains in women's representation on the Courts would be far fewer.[35] It also

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[34] Johnson and Jefferson, *Shortlisted*, 1.

[35] In 1959, Ginsburg was also shortlisted in another way: Upon graduating from Columbia Law school and ranked first in her class, "none of the twelve firms with which she

foreshadows the last chapter of the dissertation in which I analyze the popular media surrounding President Biden's nomination of the first Black woman to the Supreme Court. Without women in the legal profession tirelessly advocating for Ginsburg, O'Connor, and many others, President Biden wouldn't have made a campaign promise to nominate the first Black woman to the Supreme Court. Such foreshadowing could be perceived from this early vantage point as an uncomplicated, positive trajectory for women's progress and representation on the Courts, this dissertation as a whole demonstrates that this is far from the whole story. As such, it gets to the heart of the idea that I treat historical time as non-linear and full of constellations.



Figure 3. Lynne Hecht Schafran, feminist attorney foundational to NOW, Legal Momentum, and the project of supporting a more diverse judiciary

interviewed offered her a position—rejections that the superbly credentialed lawyer found 'depressing.'" Tomiko Brown-Nagin, *Civil Rights Queen: Constance Baker Motley and the Struggle for Equality* (New York: Pantheon Books, 2022), 304.

In 1978, the Carter Administration created an initiative called the Omnibus Judgeship Act to expand the federal bench by appointing 152 new judges in one year. That number, alongside the normal turnover, accounted for almost one-third of the federal judiciary.[36] At the time, there were only eleven women seated on the federal bench.[37] Lynn Hecht Schafran, the National Director of the Federation of Women Lawyers' Judicial Screening Panel, describes the work of the Panel, which was created in response to the Judgeship Act and the number of women on the federal bench, in these terms:

> For the first time, a panel of women attorneys, the Federation of Women Lawyers' Judicial Screening Panel ("FWL"), has undertaken a comprehensive screening of all individuals nominated by the President for lifetime appointments as federal district and circuit court judges. FWL focuses exclusively on whether these nominees meet President Carter's new guidelines requiring judicial candidates to 'possess and have demonstrated equal justice under law.' FWL believes that by insisting that candidates for the federal bench have demonstrated commitment to equal justice before their appointment, the quality of the judiciary can be significantly improved, particularly its response to women's rights law reform efforts (Schafran).

Of course, there were some men serving on the federal bench at the time who didn't think the FWL screening panel was necessary "because the increase in women graduating from law

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[36] Lynn Hecht Schafran, "Panel of Women Attorneys Screens Judicial Nominees for Commitment to Equal Justice," *Now Times* (September/October 1979), Schlesinger Library Archives, Federation of Women Lawyers' Judicial Screening Panel, Carton 1, Folder 2.
[37] Phyllis N. Segal, "Choosing Women Judges," NOW (National Organization for Women) Legal Defense and Education Fund, unpublished article draft, 3 July 1979. Schlesinger Library Archives, Federation of Women Lawyers' Judicial Screening Panel, Carton 1, Folder 2, article page 1.

school will naturally lead to more female appointments to the bench."[38] Women in the profession knew then just as they do now that this logic doesn't play out because of gender inequality. By the time the September/October 1979 issue of *Now Times* was published, the Screening Panel was in full force. "To date," Schafran reports, "FWL has received the names of 123 judgeship nominees from the Department of Justice, completed reports on 57 of these nominees and submitted ratings for 27 candidates to the Judiciary Committee. FWL has testified in opposition to one of those nominees, Edward C. Reed, Jr., candidate for District Court Judge in the District of Nevada" (Schafran).

The same year, Ginsburg's name was on the official shortlist for two federal district courts to which she submitted nomination paperwork to the screening committees—the Second Circuit Court and the Washington DC Court of Appeals. That her name was on the lists as an attorney who had the qualifications for a judgeship resulted from a national search based on merit and was followed by a strong lobby from the National Organization for Women (NOW, which housed the FWL) (3). It is of no small consequence that Ginsburg was nearly passed over that year by the Carter Administration despite his initial commitment to appointing women and minority candidates to the federal bench for nominations. Further, once her name was forwarded to the nomination committees for the Second District Court and the D.C. Circuit Court, she was not yet in the clear for an appointment.

Phyllis Segal, Legal Director of NOW Legal Defense and Education Fund, described the problem of appointments with the Carter Administration as the result of qualified women

[38] Emily Couric, "Self-Promotion Necessary: Women Judges Aim to Boost their Numbers, Prestige," *Legal Times of Washington*, 13 October 1980, 16. NOW (National Organization for Women) Legal Defense and Education Fund, Schlesinger Library Archives, Federation of Women Lawyers' Judicial Screening Panel, Carton 1, Folder 2.

being overlooked in an attempt to draw attention to it before the last federal appointments were made. She concluded that many qualified women were overlooked in the appointment process by the Administration because of "an apparent bias against lawyers with backgrounds in public interest practice," (4) Carter's "defer[al] to the Department of Justice, which appears to be relying extensively on the traditional 'old boy' network. . . . [Therefore], an attitude of tokenism has prevailed so that no matter how many women are qualified in a given judicial circuit, generally only one at a time will be recommended to and/or selected for the President for each court," (4–5) and last, that "in some states, inadequate efforts have been made to seek out qualified women and minority candidates. . . . Neither Senators nor commissions have been required to account publicly for the efforts that have been made" (5). Segal was outraged that, at the time of writing on June 30th, 1979, there were only nine federal judgeships still open for recommendations, and attorneys like Ginsburg weren't already appointed: "One notable example [of an attorney the President has overlooked for nomination] is Ruth Bader Ginsburg, Professor at Columbia Law School, outstanding attorney, leading advocate of women's rights, and general counsel to the American Civil Liberties Union. Prof. Ginsburg is often discussed as the first [potential] woman Supreme Court Justice and was recommended for an appellate court judgeship by the only merit selection commission that searched nationwide for the most qualified judicial candidates" (3–4).



Figure 4. Phyllis Segal, attorney and Legal Director of NOW Legal Defense and Education Fund

In November 1979, there were still a few seats open on federal appellate courts and NOW was busy lobbying to place Ginsburg's name on the Presidential shortlist, which would materialize from a judicial panel screening from the courts with openings and a recommendation to President Carter. At this point, Ginsburg was passed over by the Second Circuit Court of Appeals, which presides over the District of Connecticut, all four districts of New York, and the District of Vermont. Her rejection from the position seems to be a case of the Circuit screening panel trying to cover its own back from political scrutiny or bias. The rejection letter Ginsburg received from Judge Lawrence Walsh, Chair of the Selection Committee, in part, reads:

> Dear Ruth:
>
> Congratulations on your inclusion among those recommended for the Court of Appeals for the District of Columbia. Today the Panel for the Second Circuit is sending forward its recommendations. You will find none of those recommended for

> the Court of Appeals for the District of Columbia were recommended for the Court of Appeals for the Second Circuit. Although no member of the Second Circuit Panel objected to dual applications, a number were concerned by the possible unseemliness of our concurring, selectively or in blanket form, in the District of Columbia recommendations. Under these circumstances in addition to the other problems of selection, there are no overlapping recommendations."[39]

I note that Ginsburg previously inquired about this issue before submitting her application materials to the Second Circuit. I can only imagine that she was intensely frustrated with the entire process upon receiving the rejection letter. Earlier in the year, she wrote to Segal, "Last week I received a letter from the D.C. Cir. Commission asking me to apply. Spoke to Ed [Lawrence] Walsh, who advised me to respond, saying it would not detract from 2d Cir. Consideration. Mailed off yesterday the oppressively long and detailed 2d Cir. Questionnaire and will complete the D.C. application, overlapping in large part, but even more burdensome, by the end of the week."[40] It is noteworthy that Ed Walsh served as the head of the ABA Committee that rejected Justice Lillie under the Nixon administration and also served as the Independent counsel for the Iran-Contra Scandal.[41]

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[39] Lawrence Walsh, unpublished letter to Ruth Bader Ginsburg, 3 March 1979, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–08, Box 129, Folder 14, 1979–80.

[40] Ruth Bader Ginsburg, unpublished letter to Phyllis Segal, 16 January 1979, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–80, Box 129, Folder 14, 1979–80. I can confirm the complex and lengthy nature of the DC application—a copy is located in the Ruth Bader Ginsburg Collection at the Library of Congress.

[41] "The President Calling," Part 3, *American Public Media*, americanradioworks.publicradio.org/features/prestapes/f3.html (accessed 15 February 2022).

When NOW received the news, they requested that members send letters to the Carter Administration. Letters to Carter with Attorney General Griffin Bell and others in the Administration from members of NOW read,

> I respectfully urge the appointment of Professor Ruth Bader Ginsburg to the Second Circuit or D.C. Circuit Court of Appeals. She was selected by the only merit selection commission which conducted a nationwide search for the most qualified candidates for judgeships. Despite the surprising exclusion of Professor Ginsburg from the list of candidates submitted by your second circuit commission, her selection by the D.C. Commission speaks clearly to her superior qualification for either circuit court bench. Her brilliance, humanitarianism, idealism and professionalism are without peer. Your expressed commitment to merit selection and to the importance of a candidate's 'demonstrated commitment to equal justice' surely points to the appointment of Ruth Bader Ginsburg as a circuit court judge."[42]

In addition to the form letters, longer personalized letters of support were sent to the administration by Lynn Hecht Schafran, among others, and women's legal organizations joined together to strategize.

> Ruth Abram suggested that the power pressure strategy should involve maneuvering support for Ruth G. [F]rom: Law Schools, Corporations (particularly those represented by Walsh's & Garment's firms), Big Law Firms, Criminal Justice Law Types. Also, we added: Women's Groups (particularly civic-straight groups like

[42] Muriel Fox, example of an unpublished letter to President Jimmy Carter, 8 March 1979, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–08, Box 129, Folder 14, 1979–80.

League W. Votes, "Y," Junior League, etc., Civil Rights Groups, namely ACLU, 'poor people's law' i.e. Legal Aid, Legal Services Corp, etc.

Between Lynn Schafran and Ruth A. (via her father) they personally felt they could cover most of the territory of contacting people in the above areas. They also both seemed to be limitless resources of who's who in the professional/law/[J]ewish power block of New York. . . . Ruth did suggest that 'my part' could be to make sure all NOW components in [N]ew York and [C]onnecticut come forward for [R]uth [G.]."[43]

In November 1979, there was also some stirring in Washington about a potential vacancy on the Supreme Court coming soon from Justice William J. Brenner or Justice Thurgood Marshall's retirement (neither of which had announced an official retirement plan yet). News outlets speculated that upon the next Supreme Court vacancy, the first woman would be nominated.[44] A *New York Times* article ran in late November about a potential opening that quoted Susan Ness providing the outlet with an unofficial list of names of some qualified women for the Supreme Court—Ginsburg's name was oddly absent. Ginsburg read the article and wrote a brief note to Susan the day after it was published:

Dear Phyllis[,] No delusions of grandeur but was surprised Susan Ness supplied a list without my name. Would appreciate it if you could find out why. Thanks, Ruth.[45]

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[43] Noreen Connell, unpublished letter to Phyllis Segal, undated, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–80, Box 129, Folder 14, 1979–80.
[44] "Choice of a Woman on High Court Seen: First in History Expected as Result of Feminists' Movement and Gains in Lawyers' Ranks," *New York Times*, 25 November 1979, 55 (accessed 10 February 2022).
[45] Ruth Bader Ginsburg, unpublished letter to Phyllis Segal, 26 November 1979, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–08, Box 129, Folder 14, 1979–80.

The following day, Phyllis wrote back to Ginsburg:

> Ruth—Susan Ness was as surprised as we are to see the so-called 'list' of S. Ct. [Supreme Court] candidates attributed to her in the N.Y. Times A.P. story. She reconstructs the context by explaining she was probably asked about names, pointed to the *Redbook* article, and went on from there (although I note that [Barbara] Jordan is an overlap).
>
> In any event, Susan feels quite badly about the attribution, and tells me her talk list is quite different—and definitely includes you. She is also busy making calls re the D.C. Circuit [where Ginsburg would ultimately be appointed first]. Phyllis"[46]

We know from this historical vantage point that Ginsburg was appointed to the DC Court of Appeals and later to the Supreme Court by President Bill Clinton. That she was nearly shortlisted and not ultimately confirmed to the Second Circuit Court of Appeals parallels the trajectory of so many qualified women who came before her.

In the context of the chapters to come, the story of how Ginsburg was nearly passed over and eventually rose to prominence in popular culture as the Notorious R.B.G. foregrounds the difficulties women continue to face in the legal profession to gain recognition for their work. Justice Ruth Bader Ginsburg was not always the Notorious RBG who had operas and documentaries to her name despite being well-known within the legal sphere. The gains that women in the legal profession have made are the result of ongoing labor and conversations about diversity and inclusion on the bench. This is still abundantly

[46] Phyllis Segal, unpublished letter to Ruth Bader Ginsburg, 27 November 1979, Schlesinger Library, NOW Legal Defense and Education Fund, Records, 1968–08, Box 129, Folder 14, 1979–80.

clear today in the Senatorial rhetoric surrounding Biden's Supreme Court pick to appoint the first Black woman justice.

This story also illustrates how archives like the NOW collection at Schlesinger Library shape my understanding of the archives I engage with in this dissertation. As Kate Eichorn describes, the archive "is where academic and activist work frequently converge. Indeed, the creation of archives has become integral to how knowledges are produced and legitimized and how feminist activists, artists, and scholars make their voices audible."[47] I define the feminist archive as one that is more expansive than what traditionally has been labeled as an archive or as archival material. This is in part because archives are now often spread out over analog and digital sources, upsetting the idea of the archive as a place one travels to unearth historical materials,[48] and partly because women's archives are not always institutionalized, and therefore, don't necessarily reside in traditional locations of historical research.

Here, central to the feminist rendering of the archive is an interest in a turn beyond geographic, physical locations, and historical documents as defined in a strict sense to account for a diversity of materials and practices. I designate as part of the feminist archive both the materials I encountered at institutional libraries like Schlesinger that pertain to women's history, and I also consider the feminist archive as a theoretical concept much like Eichorn does. However, where Eichorn's focus is on theorizing archives as spaces that negotiate genealogical politics between generations of feminists, I alternatively position the

[47] Kate Eichorn, *The Archival Turn in Feminism: Outrage in Order* (Philadelphia: Temple University Press, 2013), Kindle location 84.
[48] Paula Hamilton and Mary Spongeberg, "Twenty Years On: Feminist Histories and Digital Media," *Women's History Review* 26, no. 5 (2017): 784.

materials that shape the following pages as an internal feminist archive because the works of scholarship we produce as academics are themselves archival constructions. They engage in the production of historiography, activism, and preservation that archival technologies enact. In my view, the archive is not only about recovering the past—it is about engaging the present and the past simultaneously.

Each of the chapters in *Honorable Women* focuses on a woman or group of women in the judicial sphere (even if they are not themselves on the bench) who have captivated the American popular imagination. I illustrate how mediation impacts women's judicial representation and how women use media tactics in popular culture. I use the term "tactics" in the spirit of Michel De Certeau, wherein tactics emerge as a form of resistance to power.[49] I don't address every woman currently serving on the Supreme Court in this dissertation in detail because the scope of how women serve in the judiciary is wider than the Supreme Court alone and their cultural impact extends beyond women who are on the bench. Further, women serving on federal and district court benches tend to receive less attention in comparison to media that focuses on the High Court. The contributions of women working on other US courts are consequential, and in need of continuing analysis.[50] Here, I balance the analysis of women in the judiciary between several courts and different media formats.

Chapter 1 provides the groundwork for thinking about women and intersectionality through the lens of the Supreme Court. I analyze how Anita Hill's 1991 testimony of sexual harassment played out across popular media as she fought against the nomination of Justice

[49] Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984).
[50] See *Shortlisted* for more about how this disparity has historically played out and for examples of correctives to the ways in which women are shortlisted and then not nominated.

Clarence Thomas and the historiographic implications of the event over a span of thirty years. In Chapter 2, I continue thinking about feminist media historiography, gender, race, and the judiciary, analyzing how COVID-19 impacted women serving on the bench and how the legal profession's popular media imaginary dealt with a pandemic on *All Rise* (CBS, 2019–2021; OWN 2022–). Finally, in Chapter 3, I explore the afterlives of justice in popular media to understand the circumstances surrounding President Joe Biden's nomination of the first Black woman Supreme Court Justice, Ketanji Brown Jackson. I constellate her nomination and the popular media of the hearings with Judge Constance Baker Motley's confirmation hearings to the federal bench, linking their experiences with racism and misogyny. Ultimately, I place media afterlives alongside the potential for feminist futures—accounting for the push and pull of popular culture, its dark side, and its promise that "the arc of the moral universe is long," but I trust that "it bends toward justice."[51]

[51] Dr. Martin Luther King, Jr. famously said, "We shall overcome because the arc of the moral universe is long but it bends toward justice." "Remaining Awake Through a Great Revolution," National Cathedral, speech, 31 March 1968.

Chapter 1

"But, Really, What Does Sex Have to Do with Being A Judge?": Supreme Court Confirmation Hearings After Televisual Mediation

> SENATOR 1: Do you think that your decisions on the High Court will be influenced by the fact that, well, you're a woman?
> SUPREME COURT NOMINEE RUTH LOOMIS: I hope so. . . . For two centuries, this Court has expressed men's opinions and perhaps it's time for the majority of the population to have one voice in nine in the rulings of the Supreme Court.
> SENATOR 2: Is the lady implyin' that male justice is perverted?
> [Cut to Supreme Court Justice's wife intently watching confirmation hearing on television]
> SUPREME COURT NOMINEE RUTH LOOMIS**:** Haven't we outgrown those fears about the periodic instability of the female species? Eggs are not the seeds of insanity. A woman can ovulate and think at the same time. . . . But, really, what does sex have to do with being a judge?
> —*The First Monday in October* (dir. Ronald Neame, US, 1981)

At first read, the above exchange between a Senator serving on the Senate Judiciary Committee and a Supreme Court nominee almost seems like a plausible Senatorial line of questioning for the first woman appointed to the United States Supreme Court. After all, the American public would want to know how the first woman nominated to the Court understands the role that sex plays in reading the law. This is not simply because the nominee is the first woman, although that is one reason for the public interest, but also because the question of women's rights and bodily autonomy was at the forefront of politics in 1981: the right to an abortion was a pressing topic, and both the Senators and the public wanted to know how the nominee's embodied experience of identity would impact her judicial philosophy. While the scene described above did not play out before the Senate Judiciary Committee in quite the same way during Justice Sandra Day O'Connor's Supreme Court

confirmation hearing, it did play out in another public venue—the cinema— less than two months before O'Connor's hearing in *The First Monday in October*.[1]

First Monday imagines what the experience of joining the Court would be like for the first woman appointed to the bench, and what would happen if the new Associate Justice was conservative. The screenwriters must have thought that this plot would be a way for the antagonist, liberal Justice Daniel Snow (Walter Matthau), to bicker with Judge Ruth Loomis (Jill Clayburgh) on issues that the writers imagined could be paradoxically drawn along the lines of conflicting positions between gender and identity politics, and still allow the co-stars to befriend each other.



Figure 1. Justice Sandra Day O'Connor at her confirmation hearing in 1981 (left) and Justice Ruth Loomis at her confirmation hearing in *The First Monday in October* (dir. Ronald Neame, US, 1981) (right)

The non-fiction parallel to the scene depicted in *First Monday* starred Sandra Day O'Connor and Senator Arlen Specter (R-Pennsylvania), both seated before the Senate

[1] At first, the close alignment of the film's release and President Reagan's announcement of Sandra Day O'Connor's nomination to the Supreme Court was not planned. However, following Reagan's nomination announcement, the film premiere was moved to August so that it would coincide with O'Connor's confirmation hearing. Rob Edelman and Audrey Kupferberg, *Matthau: A Life* (Lanham, MD: Taylor Trade Publishing, 2002), 227.

Judiciary Committee at O'Connor's confirmation hearing. Their conversation about diversity on the Court proceeded as follows:

> SENATOR SPECTER: Do you think there is any basis at all for appointing a Supreme Court Justice with a view to diversity on account of sex, race, religion, or geography; or would you think it preferable to appoint the nine most qualified people that could be found for the job, even if they all came from Stanford in the same year and lived in Arizona?[2] . . . Do you think though that there is any realistic basis to look for diversity—more than one woman; perpetuating, if I may say, a black seat on the Supreme Court; or seeking geographical balance in the appointments to the Court?
>
> JUDGE O'CONNOR: Senator, I think the Court traditionally has reflected some effort to achieve diversity. Anyone who is skilled in the political arena knows that it is often desirable for political reasons to see that diversity in any given body in which the appointment process is being exercised reflect a certain amount of diversity. I would expect the political process to always take that into account to some extent.
>
> At the same time, I think it is quite possible, even though one might want to have diversity, whether it is of geography, race, or sex, to all select people of

[2] Senator Specter's selection of Stanford University and Arizona as examples reference Chief Justice Rehnquist and O'Connor's shared alma mater, graduation year, and period of overlap in Arizona residence. Rehnquist and O'Connor dated for a time while they were at Stanford, and as Evan Thomas chronicles, "Sandra was less swept away [by Rehnquist than Rehnquist was with O'Connor], but she did invite him home to meet her parents. . . . The trip did not go well. Harry greeted his daughter's latest suitor by cooking a bull's testicle over the branding fire and offering it to Rehnquist to eat." Evan Thomas, *First: Sandra Day O'Connor, An Intimate Portrait of the First Woman Supreme Court Justice* (New York: Random House, 2019), 37.

> competence, ability, and quality, because I think people of that capacity abound in all races, in both sexes, and in all parts of the country.[3]

While O'Connor's response is considerably more measured in tone than Loomis's frustrated response, it reflects a question on the minds of many Americans about the relationship between sex (commonly used in the legal arena as an umbrella term for sex and gender, which, unfortunately, collapses them) and the role of judges and justices as they carry out the rule of law. In 1981, women accounted for less than seven percent of the Federal judiciary. To bolster O'Connor's appointment and make a historical argument for the necessity of diversity in the courts, Senator Edward Kennedy described the legal statistics on women appointed to the Federal bench for his colleagues at O'Connor's hearing. He said,

> In two centuries of Federal judicial history, only 50 women have been appointed to the lower Federal courts, and 44 of them are still serving there today. In fact, 33 of them were approved by this committee during the past Congress [the Jimmy Carter administration]. All of us who care about this issue look forward to the day when appointments to the Federal bench and other high public offices will not stand out as an historic event simply because the appointees are women.[4]

Just as *First Monday* anticipated O'Connor's nomination, it similarly kept apace of the hearing's public mediation. Supreme Court confirmation hearings were not yet televised when the film was released on 21 August 1981; nevertheless, Judge Loomis's confirmation

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[3] "Nomination of Sandra Day O'Connor: Hearings before the Committee on the Judiciary United States Senate, Ninety-Seventh Congress, First Session on the Nomination of Judge Sandra Day O'Connor of Arizona to Serve as an Associate Justice of the Supreme Court of the United States," 9, 10, and 11 September 1981, Library of Congress, www.loc.gov/law/find/nominations/oconnor/hearing.pdf.

[4] "Nomination of Sandra Day O'Connor," 6.

hearing is depicted as a media event, if not yet the televisual spectacle that ensued upon O'Connor's confirmation hearing. O'Connor's hearing was the first to air live on cable television and garnered press credential requests that surpassed the Watergate Committee Hearings in 1973.[5] Tens of millions of viewers tuned in to the hearing with more than a hundred million viewers watching three network evening news programs that headlined with the event.[6] *First Monday* presaged the first woman on the Court, her ascendance into the realm of popular media, and the conversations that conservatives and liberals would engage in upon O'Connor's nomination. As the film engaged with issues related to gender and framed the resulting conversations as conflicts that arose from the confluence of gender and political affiliation, it set the stage to address how the American public was poised to view Supreme Court confirmation hearings in 1981 and in years to come.

This chapter reframes *First Monday*'s central question, "but, really, what does sex have to do with being a judge?" within an intersectional framework that addresses the mediation of Supreme Court confirmation hearings when women's rights are at stake. In the US legal system, race is all too often ignored in discourse and practice, yet it has always been pressing, even in the history of Supreme Court confirmation hearings well before O'Connor. It is largely due to the racial politics surrounding Justice Hugo Black's rushed confirmation and subsequent scandal (he was a card-holding member of the KKK—a fact revealed to the Senate and, supposedly, President FDR, only days after his expedient confirmation) that the Senate confirmation process looks the way it does today.[7] From this historical vantage point,

[5] Thomas, *First*, xi.
[6] Thomas, *First*, 140–41.
[7] The Supreme Court confirmation process was not always an extended affair with questioning by the Senate Judiciary Committee. Justice Louis Brandeis, the first Jewish Supreme Court Justice, was the first nominee to have public hearings about his nomination

it is clear that the intersectional network of identity that coalesces around every person governs how, when, and where women's voices can resonate and how different media forms circulate and shape images and discourses about women in relation to the Court.

Since the 1980s, fictionalized and fact-based media have become more intertwined as televisual and fictional realities converge around the politics of women and the Supreme Court. This condition results in what I refer to as the *fictional and factual popular* of nomination hearings and their afterlives as they circulate among media formats. In analyzing the fictional and factual popular—the terms I use to emphasize the double nature of the fictional embedded in the factual and the factual embedded in the fictional—media and their linked histories are important, but so too, are the publics and institutions that create and view them. This position emphasizes that mediation (or what media can say or do) is at stake as is the changing historical landscape as it alters public relationships with media and its cultural work over time. Historically, the media culture that facilitated a greater convergence between the fictional and factual include the rise of the 24-hour news cycle following its creation at CNN on 1 June, 1980; the hazy lines between American historical reality and its Hollywood counterparts;[8] and the rise of political talk radio, reality television, and the subsequent

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because Republicans opposed it forcefully. Brandeis was not required to attend the hearings. Justice Harlan Stone was the first nominee to attend his own hearings in 1925. Before the appointment of Justice Hugo Black, the nominee was not required to appear before the Senate. After the debacle surrounding Black's confirmation, future Supreme Court nominees appeared for their hearings and answered questions. For a more complete history of changes associated with the Supreme Court confirmation process, see Scott Bomboy, "Early Supreme Court Hearings Little Resembled their Modern Counterparts," National Constitution Center, 13 March 2017, constitutioncenter.org/blog/early-supreme-court-hearings-little-resembled-their-modern-counterparts. For details on the Justice Black scandal and his membership with the Klan, see Gerald T. Dunne, *Hugo Black and the Judicial Revolution* (New York: Simon and Schuster, 1977), 60–81.

[8] For example, President Reagan upheld an image of himself as the Hollywood cowboy he used to perform. For an account of the Reagan Presidency, Hollywood, and the United States

"'reality televisualization' of political formations" that as Lynne Joyrich describes "involved a televisual epistemology and affect, meshing modes of thinking and feeling."[9] More than a historical backdrop, the blending of fictionalized and fact-based media lay the groundwork for how representations and discourses about women and the Supreme Court entangle with Stuart Hall's concept of the double movement of resistance and containment inherent in popular culture.[10] Just as factual and fictional popular media converge in ways that do not produce stable readings, the accounts of the confirmation hearings I write about similarly produce tension between resistance and containment of discourses about women and race. The hearings I discuss are media events in their own right, marking moments when the American public gained televised access to Supreme Court nominees. When these hearings intersect with popular media, the convergence between fictional and factual popular media comes into focus as a way that mediation structures conversations about women's rights.

Justice O'Connor, Justice Clarence Thomas, Justice Brett Kavanaugh, and Judge Amy Coney-Barrett's confirmation hearings reveal how fictional and factual popular media of their confirmation hearings engage with feminism and how they saturated media in historically specific ways. I include the hearings of Thomas, Kavanaugh, and Coney-Barrett alongside O'Connor's (rather than, say, Elena Kagan's) hearings because these hearings

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as a mythic frontier, see Alexandra Keller, "Historical Discourse and the American Identity in Westerns since the Reagan Administration," *Film and History: An Interdisciplinary Journal of Film and Television Studies* 33, no. 1 (2003): 47–54.

[9] Lynne Joyrich, "TV Trumps," in *Unwatchable*, ed. Nicholas Baer, Maggie Hennefeld, Laura Horak, and Gunnar Iversen (New Brunswick, NJ: Rutgers University Press, 2019), 293. Television scholar Michael McKenna dates the first influential wave of reality television, which dates from the early 1980s into the early 1990s, to the broadcast of NBC's *Real People* (1979–84). *Real People and the Rise of Reality Television* (Lanham, MD: Rowman and Littlefield, 2015), viii.

[10] Stuart Hall, "Notes on Deconstructing the 'Popular,'" in *Cultural Theory and Popular Culture: A Reader, Third Edition*, ed. John Storey, 443.

defined watershed moments in American conversations about gender and intersectionality. They all bring to public view examples of the continuing struggle based on women's rights, often confronting the persistent power of structural inequalities related to gender and race. I analyze *Confirmation* (dir. Rick Famuyiwa, US, 2016) in relation to Anita Hill's 1991 testimony, a series of print photographs of Hill and Thomas, a *Saturday Night Live* cold open sketch featuring Matt Damon as Brett Kavanaugh (NBC, Season 44, Episode 1, 2018), and internet memes from Coney-Barrett's confirmation hearing. Each of these examples demonstrates the ways that women's rights intersect with the Court's confirmation hearings and their mediation as they traverse different forms of popular media.

Trajectories of Equity: Fictionalized and Fact-Based Media between the News and the Popular

While it might be tempting to conclude from the confirmations of Thomas and Kavanaugh to the Court despite the overwhelming credibility of Hill and Blasey-Ford's testimonies, that women's rights have not progressed on sexual harassment and assault in the twenty-seven-year gap between the confirmations, it is important to take a view that exceeds the hearings and confirmations. Legal and historical progress is not linear and does not happen in stepwise trajectories. On the contrary, the path to equity is never evenly paved in the direction of gains or losses. For example, on the one hand, the year following Hill's testimony is sometimes referred to as "the Year of the Woman" because more women ran for Congress and won seats than ever before, Congress bolstered the Civil Rights Act to allow people who brought allegations of sex discrimination to trial, the EEOC (Equal Employment Opportunity Commission) recorded significantly higher numbers of sexual harassment charges—signaling

that more people were willing to report—which continued for a decade. Also, Congress passed the Government Accountability Act which placed Congress under the discrimination laws of the United States for the first time.[11] Similarly, many commentators now refer to 2018 as another "Year of the Woman"—since, as the *New York Times* put it, "It [was] defined by historic political victories in the United States, #MeToo-fueled uprisings around the world, and women, like Blasey-Ford, who pushed fear aside to be heard."[12] On the other hand, although President Reagan was the first to nominate a woman to the Supreme Court, his administration was not amenable to women's judicial advocacy groups. The Federation of Women Lawyers' Judicial Screening Panel and the National Bar Association, which under President Carter, successfully sent the administration names and screening documents of qualified women for judicial positions, could not do so during the Reagan Administration.[13] He went on to have such a "poor record" for judicial appointments for women and minorities that "the Senate Judiciary Committee, under Democratic Senator Edward M. Kennedy's leadership, convened a hearing . . . [in which] several women's groups testified, including Estelle Rogers, executive director of the Federation of Women Lawyers' Judicial Screening Panel."[14]

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[11] "The Year of the Woman, 1992," *History, Art, and Archives: United States House of Representatives*, (accessed 5 January 2020), history.house.gov/Exhibitions-and-Publications/WIC/Historical-Essays/Assembling-Amplifying-Ascending/Women-Decade/; Florence George Graves and E. J. Graff, 7 April 2014, *Boston Globe*, www.bostonglobe.com/opinion/2014/04/07/anita-hill-legacy/4o7P6BqAh7MU0nAxYd5wqI/story.html.

[12] Maya Salam, "2018: Year of the Woman, in 5 Powerful Quotes," *New York Times*, 28 December 2018, www.nytimes.com/2018/12/28/us/women-2018-biggest-stories-me-too.html.

[13] Mary L. Clark, "Changing the Face of the Law: How Women's Advocacy Groups Put Women on the Federal Judicial Appointments Agenda," *Yale Journal of Law and Feminism* 14 (2002): 252.

[14] Clark, "Changing the Face of the Law," 252.

Much in the same way that historical and legal progress are not linear nor constantly bent towards justice, such is the case with the convergence of media discourses and representations of gender and race that I chart in this chapter. The convergence of the fictionalized and fact-based do not progress linearly even as certain media hew towards a larger arc of blending modes and genres. I elaborate on each of the confirmation hearings and popular media texts articulating this relationship through a changing historical mise-en-scène. Fictionalized and fact-based media—especially moving image media—have always overlapped, as Rodolphe Gahéry's research into the early relationship between still and moving images of news events demonstrates: "Contrary to received opinion, the first informational moving pictures were not mere adaptions of what had already been printed in newspapers. . . the roots of the earliest informative films lay not in educational or pedagogical systems of representation, as was the case with still images of current events, but rather in live entertainment, in particular the theater."[15] Yet it is also true that the trend has been towards greater overlap that is sometimes detrimental to democracy when fiction carries more weight than fact-based news reporting.

This brings me to the category of fictionalized media composed of mis- and disinformation now widely referred to as fake news. Fake news varies in the definition because it sits between the popular and news media I discuss, and it is useful to position it against the fictional, popular media in this chapter that depicts real events because it is a refracting mirror of today's media landscape—the insertion of fictions into the realm of the factual. Complicating the definition and stakes of fake news is that in the era of the Trump

[15] Scott Curtis, Philippe Gauthier, Tom Gunning, and Joshua Yumibe, ed., *The Image in Early Cinema: Form and Material* (Bloomington: Indiana University Press, 2018), 4.

presidency, what some conservatives, including Trump, have condemned as "fake" or "failing" news reports and outlets are not fictionalized or failing—they are fact-based news media as reported on network television or other reputable outlets by journalists including professionals at the *New York Times* and *CNN*. The online circulation of fake news matters not only at the level of platforms and fact-checking but also at the aesthetic analysis level and the ways it circulates. Fake news is nothing new for adults of any age in the US. In the history of US journalism, fake news extends to 1690 when two papers closed after producing "wildly differing" accounts of a murder.[16] Media scholar Andie Tucher explains that this example from print media engaged with the emotional realm of their readership, writing to their audience in a style that their readerly public would most appreciate. Accompanying aesthetic choice, however, came fabricated reporting: "'They [the newspapers] both looked at the same crime and had entirely different interpretations based on what they thought their readers would prefer to hear . . . Different newspapers had different audiences, so journalists catered to the tastes and sympathies of their particular readerships."[17]

That the distinction between fictional media (including fake news) and fact-based media is not always clear tells of complex, saturated news and social media environments, and also of strong ties between televisual fact-based news media and other forms of popular media that play out today. As Joyrich puts it,

> [for] good or for bad, fact and fiction have always been blurred on television: both tend to be treated through similar conventions and tropes (such as that of 'the update'

[16] For more on the history of fake news in the US, see: Shankar Vedantam, Rhaina Cohen, and Tara Boyle, "Stop the Presses! Newspapers Affect Us, Often in Ways We Don't Realize," *NPR*, 4 April 2019, www.npr.org/2019/04/04/709554779/stop-the-presses-newspapers-affect-us-often-in-ways-we-dont-realize.
[17] Vedantam, Cohen, and Boyle, "Stop the Presses!"

> on 'the situation,' keeping us aware both of news stories—which are stories—and of the latest hijinks of your favorite sitcom family). Whole genres are based on the pleasures and perils of confusing, as well as attempting to disambiguate, fantasy and reality in TV's blur."[18]

The nature of the entanglements between fact and fiction in media, therefore, is not a unidirectional one wherein, over time, news media blurs more intensely with modes of fiction. Instead, both fact-based media and fictional media intertwine with each other, utilizing traits of the other form to the extent that they blend and blur as a mixture.

On the one hand, news media blurs with popular television when, for example, President Trump appears on television showcasing a performance that heavily relies on codes of televisual mediation and genre. Joyrich asserts, during the days when Trump appeared for COVID-19 news briefings, he "[tried] to win over the public by turning to the conventions of TV drama (hospital shows with heroic doctors, procedurals in which one lays down the law so as to get order, and, of course, political dramas featuring in-command presidents, from *The West Wing*, *24*, and *Commander in Chief* to *Battlestar Galactica* and *Scandal*."[19] On the other hand, fictional television, film, and other media blur with fact-based news media through popular legal dramas, procedurals, true crime, and other productions that depict real events or their fictionalized counterparts. Recently released shows in this vein include *American Crime Story: The People v. O. J. Simpson* (FX, US, 2020), *Don't Fuck with Cats* (Netflix, US, 2020), and *Tiger King* (Netflix, US, 2020). While each of these programs depicts real events, the media formats differ in their claims to verisimilitude—for a while

[18] Joyrich, "Watching Television in a Pandemic," *Los Angeles Review of Books*, 8 April 2020, lareviewofbooks.org/article/watching-television-in-a-pandemic/.
[19] Joyrich, "Watching Television in a Pandemic."

documentary true-crime might first come to mind as the de facto mode for making truth claims, many shows feature actors and fictional, narrative cinema in place of documentary verité style, thereby utilizing other cinematic modes, genres, and methods to assert historical specificity and accuracy whether or not those claims bear out.

But beyond the codes and cycles of genres on television, performative modes of acting intertwine among media forms, both factual and fictional. The rise of talk radio in the 1980s and television news programs such as Fox News demonstrates that an important part of the convergence between fact-based and fictionalized media falls on the continuum between what performance studies scholar Michael Kirby theorizes as "non-matrixed" and "complex acting." Non-matrixed performance is "not-acting" (much like Allan Kaprow's 1960s art Happenings).[20] Complex acting is "acting" as the public commonly refers to it, in a way that indicates the number of elements added to it. At times, it also indicates the level of technical difficulty (for example, speech with mime is more complex than mime alone).[21] Kirby's continuum between the two poles provides ways of understanding grey zones that exceed the performative space of fiction, some of which occurs in reality—as the reporting of news media does. Referencing real-life situations and the continuum of performance, Kirby writes:

> At what point does acting appear? At the point at which the emotions are 'pushed' for the sake of the spectators. This does not mean that the speakers are false or do not believe what they are saying. It merely means that they are selecting and projecting an element of character—emotion—to the audience.

[20] Michael Kirby, *A Formalist Theatre* (Philadelphia: University of Pennsylvania Press, 1987), 3.
[21] Kirby, *A Formalist Theatre*, 11.

> In other words, it does not matter whether an emotion is created to fit an acting situation or whether it is simply amplified. One principle of 'method' acting—at least as taught in this country—is the use of whatever real feelings and emotions the actor has while playing the role. . . . It may be merely the use and projection of emotion that distinguishes acting from not-acting (8).

While the register of many professional news outlets is signaled to audiences through a distanced reporting style that features an anchor or correspondent displaying a lack of affect, most often, news anchors nevertheless still have trained authorial voices and dress according to the professional role they perform for audiences. By contrast, ideologically-branded news media in the US tends toward a combination of melodrama and heightened gender codes, thereby revealing matrixed performances.

This is a persistent trend derived from popular political talk radio through the "reality televisualization" of today's news media. Going only as far as Howard Stern and Rush Limbaugh's conservative radio shows of the 1980s and other programs of the so-called "shock jocks" presents this trend's historical continuity as white men responded to second-wave feminism with anger. Radio scholar Susan Douglas describes how talk radio had an important role in the men's movement of the 1980s, thereby blending gender hierarchies with newly affective, matrixed on-air performances. With the impulse for the gendered revolution of the men's movement in political talk radio came heightened expressions of emotion that were not simply coded as masculine, but also as feminine.[22] These talk shows worked to

[22] Susan Douglas, "Letting the Boys Be Boys: Talk Radio, Male Hysteria, and Political Discourse in the 1980s," in *Essays in the Cultural History of Radio Reader*, ed. Michele Hilmes and Jason Loviglio (New York: Routledge, 2002): 499. There is a difference between Howard Stern's rhetoric and Rush Limbaugh's because they don't use melodrama in the same way. Stern wants to be identified with women and other marginalized groups. For more

"restore masculine prerogatives to their position before the women's movement. After all, over 80% of the hosts, and a majority of the listeners, particularly to political talk radio, are male. . . . There were different masculinities enacted on radio, from Howard Stern to Rush Limbaugh, but they were all about challenging and overthrowing, if possible, that most revolutionary of social movements, feminism."[23] Their radio shows sit squarely in the realm of the melodramatic, using melodrama as a mode of expression that, in this case, shifts the paradigm for talk radio deeper into the category of matrixed performance. In doing so, radio shows like Limbaugh's and Stern's altered the terrain of affective performance in political talk radio in relation to their historical antecedents (487–88).

Such entanglements between news media, popular media, and performance are also borne out on television news, infamously with programming at Fox News, established in 1996. Reece Peck argues that the power of Fox is not its conservative ideological branding but is instead rooted in its "*cultural-stylistic referents* [that] Fox producers and pundits use to make such talking points socially meaningful. . . . Like their nineteenth-century ancestors, partisan news outlets in the twenty-first-century exhibit different kinds of expressive politics complete with their own signature story themes, aesthetic inclinations, and performative qualities."[24] Questions of style and aesthetics on Fox, like earlier media counterparts of many kinds (explicitly founded on political positionality or not), are situated in the realm of popular culture.[25] Before Fox's establishment, the conservative National Empowerment

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on this, see Constance Penley, "Crackers and Whackers: The White Trashing of Porn," in *White Trash: Race and Class in America,* ed. Matt Wray and Annalee Newitz (New York: Routledge, 1997), 89–112.

[23] Douglas, "Letting the Boys Be Boys," 485.

[24] Reece Peck, *Fox Populism: Branding Conservativism as Working Class* (New York: Cambridge University Press, 2019), 16.

[25] Peck, *Fox Populism*, 20.

Television aired as a "C-Span with attitude,"—a channel that "its detractors call . . . the political equivalent of televangelism."[26] Like Fox, it too was popular media just as much as it was conservative-branded news programming. "The channel, it seems, is supposed to do for conservative political views what Court TV has done for the legal system: make them a fixture of popular culture."[27] In making them fixtures of popular culture, matrixed performance is introduced as a way to heighten the program's affinities with other modes of matrixed performance that regularly draw on codes of medium and cultural specificity.[28] Since the zones on the "non-matrixed" to "complex acting" continuum overlap, and because there is a blending of non-matrixed and matrixed performance in news media, it can make it more difficult for spectators to discern fact from fiction in reporting. Even in theater shows, Kirby asserts, audiences are sometimes purposefully deceived during the performance to the point where some spectators could no longer discern the difference between reality and fiction. "True and complete illusion is possible in theatre; acting may actually 'lie,' be believed, and be seen as not being acting at all."[29]

The alignments between fact-based and fictionalized media speak to the power of the popular—of its ability to thrive even within domains including news media. But while the convergence between the popular and fact-based can lead to an alignment between style and

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[26] Elizabeth Kolbert, "TV Channel Plans Conservative Talk, All Day, All Night," *New York Times*, 27 November 1993, 1.
[27] Kolbert, "TV Channel Plans Conservative Talk," 1.
[28] These aesthetic, popular media alignments are not limited to conservative programming. The Young Turks are an example of a liberally aligned online news outlet that aesthetically resonates with Fox News even as it departs from it ideologically. Anchors on Young Turks often display intense, melodramatic affects including anger, and the outlet utilizes popular music including hip-hop in its programming. Reece Peck, "From Fox News to The Young Turks," *Television, Politics, Publics*, 21 February 2020, University of California Santa Barbara.
[29] Kirby, *Formalist Theatre*, 12.

ideologically-driven news (because style and content create meaning), it is nevertheless important not to condemn popular culture or popular aesthetics as the root of problems related to the erosion of a widespread belief in facts as evidence-based information.[30] I don't believe that the entanglement between fictionalized and fact-based media is always detrimental. It is often the opposite—the entanglement between fictionalized and fact-based media enables spectators to learn about themselves and the world through fears, desires, anxieties, and a range of other states.[31] These entanglements allow critics, scholars, and spectators to conduct difficult social work, as cinema and media scholars have long known. Here, I ask what happens when the fictionalized and fact-based converge around Supreme Court hearings and women's intersectional identities. As a mode of discourse and representation that traverse fictionalized and fact-based media, how can we understand the changing atmosphere around women and the Court?

[30] Peck, *Fox Populism*, 1–39, 151–154.
[31] Joyrich agrees with the idea that the blurring of fact and fiction is not always detrimental, noting that, "This blurring, of course, can yield troubling confusions, with a high potential for misinformation (or, in the worst of cases, purposeful disinformation for political ends. But it can also, in the best of cases, inspire imaginative resources and responses, creative problem solving, and productive ways of thinking, feeling, and working through difficult times." Joyrich, "Watching Television in a Pandemic."

Clarence Thomas, Anita Hill, and *Confirmation*: Historiographies of the Fictional and Factual Popular



Figure 4. Anita Hill (left) and Kerry Washington portraying Anita Hill in *Confirmation* (HBO, 2016) (right) take the oath before the Senate Judiciary Committee.

In an interview about the then soon-to-be-released HBO film, *Confirmation*, actress Kerry Washington discusses her approach to portraying Anita Hill during the trying days of the Clarence Thomas Supreme Court confirmation hearing for which she provided two full days of testimony for her allegation that Thomas sexually harassed her while she worked with him at the US Equal Employment Opportunity Commission office (EEOC). In the interview, Washington cites an article in an edited collection as one of the texts that inform her performance:

> [t]here's so much footage from the hearings and the press conferences, and I studied and was really inspired by [playwright-actress and Stanford University professor] Anna Deavere Smith [who contributed an essay to Hill and Emma Coleman Jordan's *Race-ing Justice, Engendering Power in America* collection of essays], whom I

admire a great deal, and the way that she worked from real video. I used a little of her approach in terms of studying Anita from the footage that we had, again and again.[32]

Here, it is important to know that Deavere Smith, who is Black, creates her plays based on historical subjects in which she performs all of the roles regardless of gender, race, or ethnicity.[33] Her acting method contrasts with Hollywood actors' more common method acting techniques which rely on the actor and their psychological involvement in a character's development to inhabit and create a role.[34]

By contrast, Deavere Smith's method holds tension between realism and Brechtian distancing as she ultimately comes as close as she can to represent other people's "figure, voice, and gesture" even as she can never fully be absorbed into all of the roles (50). As Charles and James Lyons describe, "her preparation includes repetitive listening to the recorded voices in which she speaks with the tape, attempting to capture inflection and rhythm, attempting to inhabit the voice of the other . . . Smith deliberately attempts to resist the temptation to internalize the other, as a subject in the world external to her, and reconfigure that image as an aspect of her own interiority" (50). Washington's immersive approach to portraying Hill, then, is also informed by spectatorial tension between the realism she brings to her performance of Hill as a real-life protagonist and the inherent

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[32] Lesley Goldberg, "Kerry Washington Defends HBO's 'Confirmation'" It's Not A Propaganda Movie," *Hollywood Reporter*, 14 April 2016, www.hollywoodreporter.com/live-feed/kerry-washington-defends-hbos-confirmation-883672.

[33] *Fires in the Mirror* is one poignant example of Deavere Smith's work in this regard. Her work often deals with politics and unrest based on news events like the Rodney King beating. For more on her work about performance, see Ann Pellegrini, *Performance Anxieties: Staging Psychoanalysis*, *Staging Race* (New York: Routledge, 1997), 67–88.

[34] Charles R. Lyons and James C. Lyons, "Anna Deavere Smith: Perspectives on her Performance within the Context of Critical Theory," *Journal of Dramatic Theory and Criticism* (1994): 50.

distance Washington provides as an established star, thereby combining modes of the fictional and factual popular through her acting technique.

Washington's investment in performing Hill illustrates another way that fact-based and fictionalized media converge in *Confirmation*: Washington's television performance as Hill is informed by the media coverage of the hearings, by critical/scholarly literature, and by interviews and public conversations with Hill. In fact, Hill served as an Executive Producer. In turn, Washington's performance as Hill is a crucial node in structuring the bends of historical consciousness about the hearings in the United States. Hill's televised performance informs Washington's acting in *Confirmation* to appear as thinly matrixed as Hill's testimony. Her performance is naturalized in the process of re-enacting the historical record, conforming with the aesthetics of verisimilitude at the same time that it rewrites it as a reimagined inscription of *what could have been* if Americans listened to Hill—a historical corrective whereby Hill narrated her story and her voice mattered (even if the outcome of Thomas's confirmation didn't change). As the film does so, the historiographic possibilities of the confirmation hearing shift with its remediation from televisual news media to a made-for-television film. Wrapped in Washington's performance is not only the specter of Hill, who Washington performs with an uncanny likeness but also the specter of Olivia Pope, Washington's most recognized and mostly beloved character as a fixer and US Presidential mistress on the hit series *Scandal* (ABC, 2012–18), ongoing during the film's production and release.

Nevertheless, as I watched *Confirmation*, I was struck by how the film elides Thomas's role as it avoids making claims about his intentions. I was confused by what I perceived as the film's failure to take a stand against Thomas's behavior—after all, films like

Confirmation which depict historically significant events are about, implicitly and sometimes explicitly, the ways that collective identities and histories are fashioned and refashioned for new audiences, often attempting to pull a lot of weight as historical revision when they appear years after the events in question. Brandy Monk-Payton asserts, "Indeed, the television screen has increasingly come to serve as a complex threshold for images of blackness across genres. What could be termed 'televisual reparations,' therefore, emphasizes the medium's attempts to address the paradox of black 'unfreedom' and provide redress for continuing race-related grievances, especially those connected to histories of violence."[35] How could it be, then, that a film with Kerry Washington at the height of stardom working as the starring actor and producer alongside Anita Hill, who spoke with Washington for hours about her experience, at the helm of the project didn't loudly condemn Thomas?

Confirmation is embedded in multiple televisual histories of the Thomas/Hill hearings, emerging from Hollywood production history alongside a history of onscreen representations of gender and race on major television networks. Televisual reparations are not solely about what is depicted in the film's frame but extend to "levels of television industry, text, and audience."[36] These reparations may not be registered at all of those levels in equal ways. Additionally, while today's post-Kavanaugh and Hollywood Time's Up movements might have produced a script that comes down harder on Thomas—*Confirmation* still intervenes in the media history of the confirmation in important ways. The "reality televisualization" of the Thomas/Hill hearings is not a simple matter of remediation—the

[35] Brandy Monk-Payton, "Blackness and Televisual Reparations," *Film Quarterly* 71, no. 2 (2017): 12.
[36] Monk-Payton, "Blackness and Televisual Reparations," 12.

transfer of the event from one media format to another[37]—nor is it only a matter of Washington's representation of Hill and Pierce's representation of Thomas. The impact and resonance of media repeating historical events is embedded in the differences that emerge upon reimagining them: the distortions, amnesias, fantasy echoes, and *longue durées* realized as a result of historical contexts, production histories, and mediations.[38] This idea yokes scholarly thinking about performance, memory, and history, to mediation, memory, and history. Just as Ann Pelligrini bridges performance and historical repetition, noting that "to reiterate [reperform], is not, in any straightforward way, to mirror: it is to reflect back with a difference,"[39] film and media studies scholars including Thomas Elsaesser similarly argue that history has "entered a conceptual twilight zone, not least because it has become a past that cinema and television can 'master' for us by digitally remastering archival material. . . . With the audio-visual media effortlessly re-representing that site [the site of memory left behind after those who remember are gone], however, the line where memory passes into history has become uncertain."[40] As such, the analysis of *Confirmation* in this chapter is layered, traversing production histories and screen representations, network histories of race and made-for-television films, and the politics and possibilities of reperforming historical events onscreen.

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[37] Richard Grusin and Jay David Bolter, *Remediation: Understanding New Media* (Cambridge, MA: The MIT Press, 1999).

[38] These ways of reimagining historical events over time are widely theorized in media historiography. For example, see Joan W. Scott, "Fantasy Echo: History and the Construction of Identity," *Critical Inquiry* 27, no. 2 (2001): 284–304; Fernand Braudel, "History and the Social Sciences: The *Longue Durée*," in *On History*, trans. Sarah Matthews (Chicago: University of Chicago Press, 1980); Andreas Huyssen, *Twilight Memories: Marking Time in a Culture of Memory* (New York: Routledge, 1995).

[39] Pelligrini, *Performance* Anxieties, 78.

[40] Robert Burgoyne, "Memory, History and Digital Imagery in Contemporary Film," in *Memory and Popular Film*, 223.

Kerry Washington and Black Women Producers in Hollywood

Despite Washington's stardom and acclaim before she played Hill, Washington had not yet produced a film or television series until *Confirmation*. As Washington describes in a conversation with Hill at Brandeis University about her experience with *Confirmation*:

> I love working with HBO—they're the most unbelievably creative and supportive company to work with and for—but nobody was sitting around at home going, 'You know what we should do? We should do an Anita Hill movie with Kerry Washington. We should do a movie about the Thomas/Hill hearings. It would be amazing.' That wasn't happening. So, for me, this is also an important part for me to say, 'I don't just want to be in Hollywood and wait at home to be invited to the next party because somebody's producing or directing something and they want me to be there. I want to be part of the person who's having the party and deciding who gets to come. I have to be telling stories. I don't just want to sit at the table. I want to make the table.'[41]

Washington's assertion that she wants to "make the table" and her ability to finally do so as a female, Black actress is important. It marks a moment in an industry that has historically done a poor job with gender and racial diversity on and off-screen. It denotes a time when issues of race and the abysmally low numbers of representation for above and below-the-line workers were at the forefront of public consciousness. At first blush, it strikes me as odd that this opportunity came not from *Scandal*—the show that Washington starred on for four years and that catapulted her to fame with a strong fan following and had a Black showrunner—but from HBO on the occasion of her first collaboration with the network. Part of Washington's

[41] "Anita Hill and Kerry Washington in Conversation at Brandeis University," *YouTube*, 6 March 2016, www.youtube.com/watch?v=aGkIWiOhanI.

desire to produce media stems from her understanding of the history of race in Hollywood and the difficulty of assessing how to voice her opinion when issues of race in the industry tend not to be as binary as public conversations tend to paint them. She says:

> I think there are a lot of people who decided they were going to boycott the Oscars and I would say, 'Are you aware that the Oscars has a Black producer this year? And so, by not watching the Oscars, the first time we have this Black producer and a Black host—this is an extremely powerful position to be producing the most-watched show on television (and he is a prolific producer who produced the movie I was in, *Django*, who has produced twenty years in Hollywood)—if we don't support him in this moment, how are we impacting the larger story of African-American producing and African-American story-tellers in Hollywood if his Oscars fails? So, it's another part—you really have to do the research before you decide where to take the stand . . . that's one of the reasons why I wanted to produce this film.

Consequently, Washington pressed me to reframe my thinking about the film's limits, and consider how her contribution as a producer fit into a long lineage of Black women producers who champion ideas and voices that are often lost. Framed this way, *Confirmation*'s import is doubly stated: it provides a new generation of viewers with Hill's story from her perspective, valuing her experience as a Black woman, and it introduced Washington as a producer, and soon after, as a director. Her work as a producer on *Confirmation* then allowed her to gain eleven producing credits and three directorial credits, including on *Scandal*, over the next four years.

In US television history, Bill Cosby was the first African American "showrunner" for *The Bill Cosby Show* (KTVT, 1969).[42] As Robin Means Coleman and Andre Cavalcante explain, "between 1969 and 1990, Black control rose minimally, remaining between zero and 5 percent, with the most modest of gains seen when upstart networks UPN and WB arrived on the scene in the 1990s with a lineup of Black situation comedies" (41). Even while the 1990s brought with it a rise in Black representation on TV, nearly doubling, this rise in overall representation did not translate to the number of Black women protagonists nor Black women behind the camera.[43] When there were Black, female producers who were showrunners, as there was on *A Different World* (NBC, 1987–91), they were often met with pushback from the network on issues related to race. Paradoxically, the network hired Allen as a showrunner starting in the second season because the network received feedback that the show wasn't doing a good job depicting life at a fictional, Historically Black Women's College (the premise of the entire show) (39). *Entertainment Weekly* reported, "[t]he verdict from those on the show was almost as harsh [as the critical reviews]. 'We tried to follow the Cosby model: Pretend it's timeless. Make no references to current events. Make no references to race,' says Susan Fales, a first-season staff writer who now serves as co-executive producer. 'And we were under orders from NBC to stay away from anything

[42] Robin R. Means Coleman and Andre M. Cavalcante, "Two Different Worlds: Television as a Producer's Medium," in *Watching While Black: Centering the Television of Black Audiences*, ed. Beretta E. Smith-Shomade (New Brunswick, NJ: Rutgers University Press, 2012), 41.
[43] Beretta E. Smith Shomade, *Shaded Lives: African American Women and Television* (New Brunswick, NJ: Rutgers University Press, 2002), 19–23.

academic—they felt that was alienating. So we had a show about a [B]lack college that wasn't about college and couldn't be [B]lack.'"[44]

Once Allen joined the show, she made changes behind and in front of the camera that brought the show success. However, as Coleman and Cavalcante describe, Allen's success with the show was incongruent with the network's vision for the plot.

> Almost immediately Allen's vision came into conflict with lingering racial antagonisms, as well as corporate strictures, when she pitched to the network an interracial romance storyline for Marisa Tomei's leading character, Maggie, Denise's white roommate: 'I thought that [Maggie] and Dwayne would be really good friends and we could do an episode where she eventually goes home with him for Thanksgiving, and it would be 'Guess Who's Coming to Dinner.' And then his mama would not like him coming home with a little white girl. I thought this would be great to show the reverse racism and those kinds of challenges. Well, they [the execs] didn't like that idea. . . . Not only was the story rejected, the network's response serves as an important reminder of how media corporations place preeminence on commercial interests. Fearful of a miscegenation-centered story, the network executives removed Tomei from the series entirely, a decision that left the actress in tears.[45]

Lest audiences believe that stories like this are situated firmly in the past, a June 2020 account from actress Sandra Oh in conversation with Washington demonstrates the longstanding difficulties actors and showrunners face as they attempt to balance their desires

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[44] Mark Harris, "From the EW Archives: The Evolution of *A Different World*," *Entertainment Weekly*, 12 April 1991, ew.com/article/1991/04/12/evolution-different-world/.
[45] Coleman and Cavalcante, "Two Different Worlds," 39.

with what networks will accept on issues of race—even for stars like Sandra Oh and influential Black showrunners like Shonda Rhimes, who has built her company, Shondaland, into an empire of television programming across several networks. Oh describes a situation that developed on the set of *Grey's Anatomy* (ABC, 2003–), the show she starred on in its ensemble cast as Cristina Yang since its inception, when she wanted to push for a depth of content related to her character's storyline. Here, she also places it in relation to *Killing Eve* (BBC, 2018–2022), the show she currently stars on as the titular character:

> When we did 'Grey's,' [with Rhimes] for at least the first 10 seasons we would not talk about race. We would not go into race, and that was purposeful. And, whatever, it was the right thing to do when it was. In Season 3, [Preston] Burke [Isaiah Washington] and Cristina were getting married and there were the two mothers, the Asian mother and the Black mother, and I'm like, 'Come on, there is a lot of story that we can do here!' But they didn't want to touch it, for whatever reason. . . .
>
> So even at the beginning of Season 3 for 'Killing Eve,'[the point at which the series starts to layer in aspects of Eve's Korean identity into the mise-en-scène] I had pitched Suzanne Heathcote, our showrunner. I was like, 'Listen, I see Eve on a moped in Cambodia.' It was very important for her to feel anonymous.[46]

It was not only television programs like *Grey's Anatomy*, that feature a diverse cast and a Black showrunner but paid little attention to race. Maryanne Erigha details how although creators like Rhimes are outstanding regardless of race and gender, and series like *Scandal* stars an African American woman, Rhimes's series nevertheless are still bound by and follow

[46] Ramin Setoodeh, "Sandra Oh and Kerry Washington on What They Learned from Shonda Rhimes," *Variety*, 26 June 2020, variety.com/2020/tv/features/sandra-oh-kerry-washington-shonda-rhimes-1234648588/.

"the preconditions of success for black creative workers at major media organizations: namely, '[B]e [B]lack but not too [B]lack.'"[47] As Erigha argues, this trend goes well beyond Rhimes's shows and is a common Hollywood branding to reassure networks that their programs will appeal to white audiences, too. She indicates that "crossover phenomena" in Hollywood "simultaneously embrace and transcend [B]lackness, albeit paradoxically. Though [B]lacks are visible in above-the-line positions—as actors in front of the camera and as behind-the-scenes creators, directors, and producers, and writers—crossover works distance themselves from blackness. Crossover television, in an effort to appear racially non-threatening, especially to a middle-class white audience, submerges race in the televisual landscape, thereby obscuring the presence of race or the persistence of racial inequality."[48]

Behind the camera, there are similar barriers to racial representation. When Black women create their own shows featuring Black women, they are most often aired on networks that reach smaller audiences.[49] In a parallel argument about casting practices in Hollywood, media scholar Kristen J. Warner argues that even while colorblind casting might provide opportunities for minority actors to gain employment, if "roles are written for white actors but are cast cross-racially, they often do not allow for cultural specificity, relegating the minority actor to a normative white viewpoint."[50] Beyond television, Hollywood has long

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[47] Maryanne Erigha, "Shonda Rhimes, Scandal, and the Politics of Crossing Over," *The Black Scholar* 45, no. 1 (2015): 10.
[48] Maryanne Erigha, "Shonda Rhimes," 12.
[49] Erigha writes, "Mara Brock Akil, creator of *Girlfriends* and *The Game*, finds her black-cast programs limited to niche-audiences on BET and the former UPN network. Queen Latifah, creator of *Single Ladies* on VH1, experiences the same confines of exhibition. The reliance upon black productions' crossover appeal sets constraints for acceptable black creativity in Hollywood and restricts the kinds of black-created works that can succeed" (14).
[50] Kristen J. Warner, "A Black Cast Doesn't Make a Black Show: City of Angels and the Plausible Deniability of Color-Blindness," in *Watching While Black: Centering the*

embraced "colorblindness" as a practice and ideology that, as Justin Gomer reveals, "proved instrumental in organizing colorblind rhetoric around a unified ideology that disguised white backlash politics beneath a veneer of pro-civil rights rhetoric. . . . Hollywood offered the race-conscious visuality left ambiguous by race-neutral colorblind discourse."[51] Over time, this Hollywood rhetoric, which was especially prevalent starting in the 1970s, when paired with political rhetoric, had consequences which played out in initiatives including the elimination of affirmative action in California (5). This Hollywood system was so strong and prevalent that "movies mythologized colorblindness" and in so doing, "marks a new racial formation that united white liberals and conservatives and the 'national popular' behind their 'possessive investment in whiteness'" (6–7).

On the whole, this snapshot of ways that Hollywood and major networks have dealt with race uniquely positions HBO made-for-television films, as it placed Washington in front of the camera as the star and behind it as a producer on a major cable network. Considering HBO films from a historical standpoint also metes out this conclusion. Even while HBO, a network that included specialty programming via subscription operated under a different financial model than the major public networks, it nevertheless invested in showcasing a more diverse range of topics on screen. This investment has a history that extends to the beginning of HBO's television and telefilm history, which Dana Heller traces through the emergence of HBO films from HBO Showcase in 1986, at that time, a separate entity from HBO's films made-for-television fare:

Television of Black Audiences, ed. Beretta E. Smith-Shomade (Rutgers University Press, 2012), 53.

[51] Justin Gomer, *White Balance: How Hollywood Shaped Colorblind Ideology and Undermined Civil Rights* (Chapel Hill: University of North Carolina Press, 2020), 3.

> This venture [HBO Showcase] earned HBO its first prime-time Emmy Awards . . . Ten years later, HBO Showcase expanded and was renamed HBO NYC Productions. The move aimed to strengthen HBO's investment in producing 'edgier and more diverse projects, and it led to the presentation of *If These Walls Could Talk* (1996), a film that examined the personal lives of three American women confronting the controversial public and private politics of abortion in three different time periods and social climates. Four years later, HBO followed up with *If These Walls Could Talk II* (2000), a film that traces the conflicts and desires of three different sets of lesbian occupants in a single California bungalow over a forty-year span . . .
>
> At the same time, the cable company continued making 'safer' dramatic fare under the banner of HBO Pictures, producing a total of 115 features and securing HBO's dominant position at the annual Emmy Awards.[52]

While HBO's NYC Productions films at one time placed "more diverse projects" under another arm of the company, in a way that reflects other networks' placement of series created by Black women on niche stations, in order to procure Emmy Awards and conform to a safer business model, NYC Productions films eventually became HBO Films after a series of mergers and ownership changes.[53]

Confirmation sits easily alongside more recent serial programming on HBO that include shows that have won accolades for their representations of gender and race onscreen as well as paradigmatic HBO made-for-television films. Prominent HBO series including *The*

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[52] Dana Heller, "Films," in *The Essential HBO Reader*, ed. Gary R. Edgerton and Jeffrey P. Jones (Lexington: University Press of Kentucky, 2008), 43.
[53] Chris Purcell, "HBO Films Taps Exex," *Variety*, 16 November 1999, variety.com/1999/biz/uncategorized/hbo-films-taps-exex-1117758117/.

Wire (2002–08), a crime drama depicting relationships in a Baltimore neighborhood between drug dealers and police; *Girls* (2012–17), a comedy/drama following a group of women in their twenties as they navigate New York; and *Treme* (2010–13), a drama set in New Orleans in the aftermath of Hurricane Katrina, are examples of how HBO treats gender and race onscreen. The network's concept of "cinematic originality" in narrative content plays on all of the major story points of *Confirmation*, ultimately supporting the idea that the film aligns with their programming on the whole. Some of these characteristics include narratives about "unrepresented figures of history; their use of multiple-perspective . . . their experimentation with the conventions of cinematic realism . . . and their unabashedly progressive vision of the 'lessons' generated by the past."[54]

The screenplay for the film also aligns with the narrative arc of HBO's concept of original programming, but even as it does, it structurally conforms to the idea that depicting multiple perspectives is the best strategy when covering cultural moments that have public debate or controversy associated with them. This strategy potentially defrays public perceptions of partisanship when depicting historical cultural events, but it is also a financial and legal strategy that keeps more viewers interested in the program, working to de-emphasize the role of any particular person who might still be alive and at the time of the program's release. When a network airs programming on controversial topics, it can have the added effect of perpetuating structural inequality in the event's representation. The screenplay's production elaborates on all of these points.

Screenwriter Susannah Grant, who won a 2017 Writer's Guild of America West award for the screenplay, followed HBO's multi-perspective strategy and describes how she

[54] Heller, "Films," 50.

crafted a script that features Hill's story but also includes multiple viewpoints of the events as they unfolded. Her remarks about the screenplay reveal both a commitment to the topic and a way in which she avoids committing to her own perspective on the hearings. She says, "I had read everything, and there was a lot written about it. My hotel room became a sort of lending library . . . I've never been on one [a movie] where all the conversation between takes and at the craft services table was always about the subject of the movie."[55] Her desire to make a film that is "fair," a desire that has undertones of writing a script without an authorial opinion about the subject matter it addresses, hews to a network model that wants to keep its audience and air a program that might not have found a home elsewhere. While including many perspectives doesn't preclude the programming from taking a position on an issue like racialized and gendered workplace harassment, in this case, such a position on the screenplay upholds a structural inequality in the industry about whose voices are heard and who is believed when they come forward.

Before the film's release, Grant conducted extensive interviews with people who were involved with the hearings and she provided some lawmakers with an early draft of the screenplay. Nevertheless, two prominent Republican lawmakers who had been interviewed, Simpson and Danforth, threatened legal action against HBO in relation to their coming screen representation based on an early draft of the screenplay: "Simpson and Danforth both brought up the possibility of legal action if the script they saw is the same one used in the movie when it airs in April, though Simpson acknowledged that as a public figure, it would be a hard case to win. And Mark Paoletta, the former White House lawyer who worked on

[55] Megan Angelo, "*Confirmation* Writer-Producer Susannah Grant Reveals the Most Fascinating Thing Anita Hill Told Her," Glamour, 15 April 2016, www.glamour.com/story/confirmation-anita-hill-quotes.

Thomas' confirmation, wrote a letter to HBO threatening legal action if certain parts of the script he had seen remained in the film."[56] So, while the specter of legal action may sometimes be present when writing a script about public figures who are still in the spotlight, such specters do not have strong teeth. This leads me to conclude that while HBO supported a Black woman producer in front of and behind the camera, advancing her career, HBO shied away from standing assertively for Hill even as it focused on her life during the confirmation hearings more so than Thomas's.

Much in the same way that *A Different World*, *City of Angels*, *Grey's Anatomy*, *Killing Eve*, and many other shows in television history attest, even if there is diverse representation amongst the cast, it does not always mean that those voices and histories are portrayed through the screenplay. Yet it still strikes me that as Washington was preparing for her role as Hill, actors Rashida Jones, Eva Longoria, and Reese Witherspoon called on Washington to join the Hollywood TIME'S UP Movement, which was in the early stages of formation.[57] Had TIME'S UP already had a strong presence in the industry fighting against sexual harassment for all workers and had Washington already had producing or directing credits, perhaps she might have taken up the script's overall politics of identification with Grant and the network. For even while viewers are invested in Hill's perspective of the hearings, *Confirmation*'s screenplay doesn't affirm her voice over Thomas's. As Sandra Oh said, "[It] was the right thing to do when it was."

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[56] Hadas Gold, "HBO's 'Confirmation' Film Rattles Some Washington Power Players," *Politico*, 18 February 2016, www.politico.com/story/2016/02/hbo-confirmation-219408.
[57] Terry Gross, "'She Wrote Her Own Rules': Kerry Washington's 'Little Fires' Role Reminds Her of Mom," *NPR*, 6 April 2020, www.npr.org/2020/04/06/827968714/she-wrote-her-own-rules-kerry-washington-s-little-fires-role-reminds-her-of-mom.

Television, Photography, and the Possibilities of Seeing at a Distance

If until this point in the section I have focused on the ways that *Confirmation* extends and challenges the television production history of Black women producers as a form of "reparations," I now turn to an analysis that more directly addresses the textuality of the hearings and *Confirmation* as they relate to each other over time. I analyze the possibilities inherent in television—a word that etymologically derives from the Greek words "tele" and "vision"—which together mean "seeing at a distance"—and the ways that the media afterlives of the hearings frame new ways of thinking about them across media formats.[58] In this case, I place the televisual hearing in conversation with photographic images of Hill and Thomas. I take "television" to refer to seeing at a physical distance and seeing (understanding) at a temporal distance, thereby exploring the possibilities inherent in new media contexts and reading opportunities for spectators, bringing the media history of the Thomas/Hill hearings into view amidst a shifting mise-en-scène. In this context, the series of photographic images of the hearings that form one of its media afterlives and *Confirmation* is a site where past, present, and future readings meet spectatorship.

Critiquing the prevalence of analyses that take the representation of "positive" and "negative" images at face value, thereby failing to consider how context and reading practices alter interpretations of the same images over time, Racquel J. Gates writes: "if one were to eschew the politics of respectability altogether and disregard the notion that media representations directly support or challenge racism, where would that leave the categories of

[58] Thanks to Zoë Shacklock's "Two of a Kind: Revaluing the Work of Acting Doubles in *Orphan Black*," *Journal of Film and Video* 68, nos. 3–4 (2016): 76–77, for bringing this televisual etymology to my attention.

positivity and negativity?"[59] Of course, she notes, this isn't to say that representation isn't important, or that the categories of "positive" and "negative" representation easily or even should completely disappear. Instead, it indicates that image representations are rooted in ideology, which Ann duCille argues "is to consider critically the practical consequences of what media theorists have contended for decades in claiming television as a major conveyance through which prevailing notions of racial, class, and gender difference are both constituted and carried out into the main and minor streams. Race matters at least in part because TV matters, because images matter."[60]

While Deavere Smith asserts that the hearings were one of the first places where gender relationships were directly raised outside the realm of popular culture,[61] I consider the hearings as one of the first places where gender relationships were directly raised in the realm of the factual popular, and in doing so, embodied melodrama—a cornerstone of theater and Classical Hollywood cinema, among other fiction-based forms. Media scholars argue that one of melodrama's essential traits is "its recognition of the personalized virtues and vices of characters whose actions have consequences for others. The context between them is not played out according to fixed moral values; rather, it enacts a struggle for a felt sense of

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[59] Racquel J. Gates, *Double Negative: The Black Image in Popular Culture* (Durham, NC: Duke University Press, 2018), 11–12. Along similar lines, feminist media scholars have argued that analyses of women's representation in media do not take the field far enough overall because of varied reading practices, changing historical contexts, and the fixity implied in what was known as the "images-of-women" approach, however complex such analyses were. This was a foundational principle for the *Camera Obscura* collective, which championed new methods and theories in feminist media studies. See the *Camera Obscura* collective's introduction, "*Camera Obscura* at Thirty: Archiving the Past, Imagining the Future," *Camera Obscura*, no. 1 (2006): 23–24.

[60] Anne duCille, *Technicolored: Reflections on Race in the Time of TV*, A *Camera Obscura* Book (Durham, NC: Duke University Press, 2018), 19.

[61] Deavere Smith, "The Most Riveting Television," 252.

justice that operates differently within different generic worlds."[62] Because melodrama easily slides between genres and media formats, its presence during the hearings becomes doubly inflected over time—it renders the televised Thomas/Hill hearings as a blend of the factual and fictional popular and later inflect *Confirmation* in the same way but from the basis of the fictional popular.

Before Hill provided testimony to the Senate Judiciary Committee on 11–13 October 1991, Thomas's initial confirmation hearings (10–16 September 1991) proceeded smoothly and aired on National Public Radio (NPR) and the Public Broadcasting Service (PBS) with some segments broadcast on the major television networks.[63] Despite these relatively smooth initial hearings, the legal profession was much more conflicted about Thomas's nomination. The American Bar Association (ABA), the premiere association of the legal profession, gave him "their lowest rating ever" and the Leadership Conference for Civil Rights stated that he "'let his personal opinions interfere with his constitutional and statutory responsibilities to enforce civil rights laws' and 'demonstrated a consistent hostility to many of the Supreme Court's most fundamental civil rights decisions.'"[64] It was only after news correspondent Nina Totenberg broke the news about Hill's allegations that a public outcry began, finally rattling the Senate into action on their failure to address the issue as the votes to confirm Thomas became contentious.[65] Smith-Shomade argues in her assessment of Hill's testimony that, much like the earlier televised cultural event of Vanessa Williams' de-crowning as the first African-American Miss America after a scandal involving nude images of Williams

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[62] Christine Gledhill and Linda Williams, ed., *Melodrama Unbound: Across History, Media, and National Cultures* (New York: Columbia University Press, 2018), 5.
[63] Smith-Shomade, *Shaded Lives*, 130.
[64] Anita Hill, *Speaking Truth to Power* (New York: Anchor Books, 1997), 100.
[65] Smith-Shomade, *Shaded Lives*, 130.

appeared in *Penthouse* magazine, "the same intersections of gender, race, and the televisual joined the law to silence and marginalize yet another African-American woman through historical, ideological, and technical means. . . . Hill posed a critical threat to political and media power structures because of her perceived class status, her credibility, and the confluence of blackness and womanhood" (128). Unlike the initial hearings, Hill and Thomas's October hearings aired live on television and were picked up as the leading story on all the major networks from the 6th–15th (130). By positioning Hill and Thomas's statements in the context of televisual history, Shomade argues for the way that the hearings immediately merged the fact-based and the fictional via televisual mediation at the moment of their airing. In short, the hearings were embedded in "reality televisualization" from the start: "television news, like the videotape format it uses," she writes, "asserts a hierarchy of evidence and meaning. It presents a vantage point of an ephemeral objectivity that purports to distinguish between fact and opinion. As it professes to center issues, it perpetually adds bias. This (de)centering of Hill along with the senators' questions led viewers to conclude that she was untruthful" (133). Using television's visual vocabulary, including close-ups of Hill that made her appear alone despite the presence of her family and others who gave statements on her behalf, and medium-shots of Thomas that made him appear surrounded by family and supporters, the mediation of the hearings effectively positioned Hill as the person not-to-be-trusted (130–32).



Figure 5. Hill (top) and Thomas (bottom) give live, televised testimony on 11 October 1991.

Throughout the hearings, many Senators posed questions to Hill that elided her allegations of harassment and focused instead on sex and race, drawing on racial stereotypes about Black women that are often found in films. These stereotypical depictions include “the

black-woman-as-whore" and "the figure of the oversexed-black-Jezebel."[66] Thomas also drew on racial stereotypes in his statement to the Senate, accusing Hill of being "an uppity Black" and went on to accuse the Senate of engaging in a "high-tech lynching." In casting his remarks along these lines, Thomas retracted his position on civil rights, "in which he had castigated black civil rights advocates for whining about racist oppression. . . . But once a black woman accused him of abusing his power as a man and an employer, he quickly slipped into the most familiar role in the American iconography of race: that of the victim."[67] Legal scholar and critical race theorist Kimberlé Crenshaw describes the hearings in a way that gets to the heart of the intersection between race and gender, posing Hill's predicament before the Senate in terms that describe how she was pushed into an impossible bind:

> caught between the competing narrative tropes of rape (advanced by feminists) on the one hand and lynching (advanced by Thomas and his antiracist supporters) on the other, the race and gender dimensions of her position could not be told. This dilemma could be described as the consequences of antiracism's essentializing Blackness and feminism's essentializing womanhood. But recognizing as much does not take us far enough . . . In Hill's case, for example, it would have been necessary to assert those

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[66] Nell Irvin Painter, "Hill, Thomas, and the Use of Racial Stereotypes," in *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality*, ed. Toni Morrison (New York: Random House, 1992), 210.
Painter provides examples of films that feature these tropes, which are pervasive in the 1980s and 1990s, and include *She's Gotta Have It* (dir. Spike Lee, US, 1986), *Jungle Fever* (dir. Spike Lee, US, 1991) and *City of Hope* (dir. John Sayles, US, 1991). For a history of these tropes in film, see Linda Williams, *Playing the Race Card: Melodramas of Black and White from Uncle Tom to O. J. Simpson* (Princeton, NJ: Princeton University Press, 2002).
[67] Painter, "Hill, Thomas, and the Use of Racial Stereotypes," in *Race-ing Justice, En-gendering*, 201.

> crucial aspects of her location that were erased, even by many of her advocates—that is, to state what difference her difference made.[68]

These narrative tropes are embedded in mainstream cultural productions, not only through news media, but also crucially via other forms of popular culture. The hearings' blend of the factual and fictional popular was evident in the hearings themselves, as Senators referred explicitly and implicitly to racial and sexual tropes from pornography to fiction film and television, and in the Black community's response.[69] For some in the community, "the whole episode was 'an embarrassment to the race,' and . . . whatever the truth of her allegations, [she] should have kept her mouth shut. Many Black women were angry at her, not because they disbelieved her, but because she had spoken out where they had kept silent."[70]

The bind Hill faced attached to competing discourses in Congress in the late 1980s and early 1990s about another form of popular culture: art. In particular, these Congressional debates focused on censorship and cutting government funding for art that was deemed objectionable. This argument played out between the conservative Christian right and the progressive left and is commonly referred to as the "culture wars." Michele Wallace argues that while race tends to be absent from discussions about the culture wars, what she calls the "race wars" are important to them and the Hill/Thomas hearings. They describe, in different terms from Crenshaw, how the public was divided between Hill and Thomas. "They [the

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[68] Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1298–99.
[69] An article that ran in the *New York Times* on 15 October 1991 also referenced the popular culture of the hearing: "In Dramatic Hearings on Thomas, No Soap Opera Fan Need Feel Cheated."
[70] Deavere Smith, "The Most Riveting Television: The Hill-Thomas Hearings and Popular Culture," in *Race-ing Power, En-gendering Justice*, ed. Toni Morrison (New York: Random House, 1992), 252.

white media] provided a mouthpiece for every antipornography feminist they could find, which stirred confusion in both [B]lack and white feminist circles. . . . Some [B]lack women, a fair number of them academics and intellectuals, hastily organized themselves into a group called 'Black Women in Defense of Ourselves,' and took out an ad in the *New York Times* supporting Anita Hill's right to publicly declaim her harassment. But the ad was also meant to let it be known that no matter what some white feminists said, large numbers of [B]lack women did not support Thomas's nomination. Suddenly, progressives were pitted against one another in an endless series of irresolvable quandaries, revolving around the definition of sexual harassment and how much should be tolerated. These debates bump up against similar quandaries having to do with freedom of expression, namely, is sexual harassment more akin to pornography (which involves a consensual freedom of expression) or more like rape (that is, a form of violence?)"[71]

An illustrative example of how the intersection between the "race wars," the "culture wars," and the Thomas/Hill hearings emerged as popular culture plays out through photographic images of Hill and Thomas. These images restage the hearings, mediating them in ways that produce different political meanings for different spectators, but nevertheless, call upon what André Bazin refers to as the "reality effect" of photographic representation, blending its claims to reality with principles of narrative fiction—especially melodrama. The first example is a vexed image, as Wallace recounts how upon organizing the 1991 Black Popular Culture conference, the poster image that juxtaposed Hill and Thomas garnered

[71] Michele Wallace, "The Culture War within the Culture Wars: Race," 178–79.

censorship:[72] "I was told that it would be impossible to display the conference poster in Harlem. The Studio Museum, which helped to sponsor the conference, even tried to suppress the poster altogether on the slim pretext that the conference was already sold out and that the poster would therefore constitute false advertising. The poster had no apparent or explicit sexual content but featured photographic images of Supreme Court nominee Clarence Thomas and his accuser Anita Hill in the act of testifying at Thomas's Senate confirmation hearings."[73] In the still form of the photograph, the image channeled the power of the *punctum*—"this element which rises from the scene, shoots out of it like an arrow, and pierces me. . . . this wound, this prick, this mark made by a pointed instrument . . . that accident which pricks me (but also bruises me, is poignant to me."[74]

For the Studio Museum, the *punctum*'s "bruise" inherent in the images of Hill and Thomas exceeded the capacity of the photograph to "embalm" a fleeting moment in history.[75] Instead, this image and others of Hill and Thomas that circulated soon after the hearings are of a piece with their televisual circulation. Far from serving only as a reminder of an event that is over, it activated the ongoing presence of the image and what it signified for viewers. In this conceptualization of the photographic image as ongoing, photographs are better understood by "watching" them instead of "looking" at them, Ariella Azoulay argues, since watching "entails dimensions of time and movement that need to be reinscribed in the

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[72] I would describe the image in further detail and include it here, but I am not able to locate the poster image, which seems to indicate that The New Museum was successful in censoring it.
[73] Wallace, "The Culture War within the Culture Wars: Race," 174–75.
[74] Roland Barthes, *Camera Lucida*, 26–27.
[75] André Bazin, "The Ontology of the Photographic Image," in *What Is Cinema*?, vol. 1, trans. Hugh Gray (Berkeley: University of California Press, 2005), 9.

interpretation of the still photographic image."[76] For many of these images' viewers, the photographs must have stirred the recent memory of their televisual counterparts. Viewers likely did not "look" at these images for long before they remediated them as moving images similar to those they recalled seeing on television as an interplay between photography and cinema played out.

While the Studio Museum did not want the poster image of Hill and Thomas to circulate, a similar image was included in the Whitney Museum's *Black Male: Representations of Masculinity in Contemporary American Art* and in a striking image on the cover of *Time* Magazine wherein the subjects gaze intently at each other. In both of these renderings, Hill and Thomas are displayed in documentary photographic style. That these images remain both photographic and realist as they appeared in the museum and on the cover of *Time*, un-remediated by another artist, indicates that the status of the event already signified as a representation of itself, laying bare divisions and injustices, as signifying more and less than the image conveys. But where the image from the Whitney hewed more towards documentary photographic conventions, *Time* Magazine departed from them with a tabloid-like headline that proclaimed: "Sex, Lies, and Politics: America's Watershed Debate on Sexual Harassment." The photographs emerged as what Azoulay refers to as "excess" and "lack" that define the photograph's relationship to its subjects: "This excess and lack are, of course, not shared by all those who took part in the encounter: it is impossible to subject all of them to the point of the view of any single one."[77] In this sense, photographs, like their moving image counterparts, are available for several critical interpretations. That I can now

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[76] Ariella Azoulay, *The Civil Contract of Photography (*New York: Zone Books, 2008), 14.
[77] Ariella Azoulay, "What is a Photograph? What is Photography?" *Philosophy of Photography* 1, no. 1 (2010): 12.

read the *Time* magazine image as melodramatic—charged by conventions of excess—is partly a product of my historical location. For if a viewer saw that image on a newsstand in 1991, it might not have registered as melodramatic. Depending on the viewer, it might even have registered as a photographic document of the event, complete with a gritty headline that aligned with the rhetoric of the hearing.



Figure 6. The Whitney Museum's *Black Male: Representations of Masculinity in Contemporary American Art*, photographic image of Hill and Thomas on the right panel.

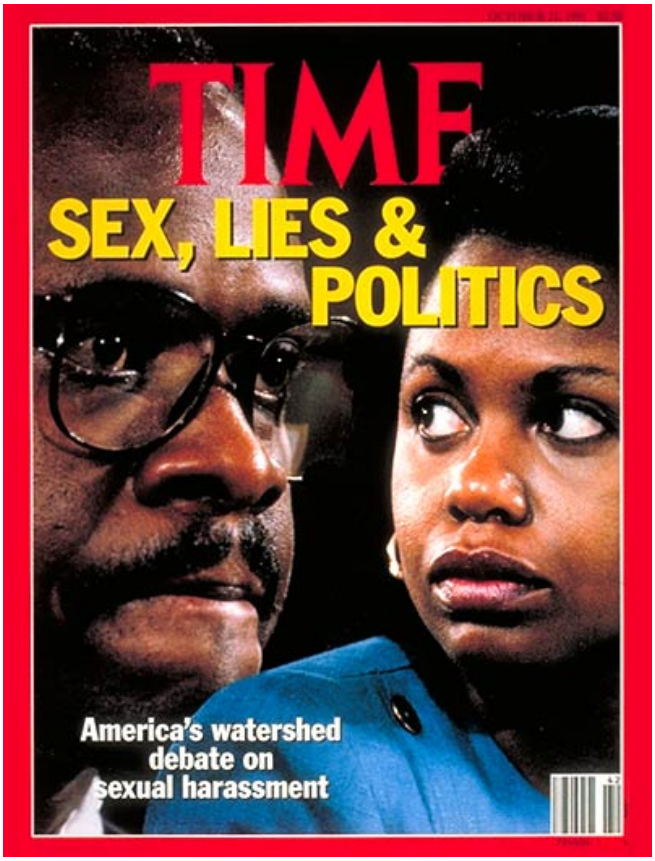


Figure 7. Anita Hill and Clarence Thomas on the cover of *Time* Magazine (1991)

Like Cindy Sherman's *Untitled Film Stills* (1977–80), which depict stereotypical cinematic portrayals of women (all performed by Sherman) that reference genres, scenes, actresses, directors, and films, yet are not film stills from any film in existence, these photographic images depict Hill and Thomas in a hearing you've seen but have never witnessed as they appear, for Hill and Thomas were not in the room together during their testimonies. More consequentially, the compositional act of positioning dramatic photographic images beside each other produces conventions of "reality televisualization," blending the factual and fictional popular, revealing an expanded, intermedial field between television and photography. Because the *Film Stills* are not really film stills, which by definition are staged on a film set and composed for greatest effect (sometimes portraying a

scene that doesn't appear in the film), they conceptually align with the images of Hill and Thomas as examples more invested in portraying melodrama and performance than in the actual conditions of the hearing. As such, the *Film Stills* also straddle an expanded media field—moving between photography and cinema. But where many of Sherman's images are more easily deconstructed as critiques of gendered images in cinema, the same isn't true of the Hill/Thomas images above.



Figure 8. Cindy Sherman, *Untitled Film Still #2* (1977)

Contrasting the documentary photographic images of Hill and Thomas that circulated near the hearings, the portrait of Hill featured on the cover of *Time* Magazine for the 100 Influential Women of the Year project (2020), aligns with the depiction of Hill in *Confirmation*. In a departure from the previous images I discuss, which position Hill and Thomas side-by-side, artist Alexis Franklin created a photo-realist digital portrait of Hill based on a photograph by Mark Reinstein. Hill appears calmly seated at the confirmation

desk in this image, hands folded, eyes gazing straight ahead. The slightly wrinkled texture of her blue suit stands out against a purple and blue background. The "reality effect" of the original photograph is tempered by a digital image that looks like an oil painting. "1991 Anita Hill: Courage to Speak," the understated, small-lettered headline reads. The artist's rendering of Hill in a digital painting that recalls oil painting, and specifically portraiture, provides Hill with a place in history. It signifies that her image and what she stands for should be remembered, much in the same way that oil portraits once commemorated generations of nobility and aristocrats who commissioned artists to save their likeness for the future. Hill's image, absent both Thomas and a salacious headline, calls not upon the melodrama of conflict and a fight for justice embedded in the first *Time* Magazine image. Instead, it evokes the legacy of her role in speaking against sexual violence. Unlike the 1991 image, which is subject to a wider set of potential readings, this portrait of Hill is steadfast in a commitment to her resolve—her "courage." When it blends the documentary photograph with the portrait, it positions her in a new light for a new generation who may not have seen the hearings in 1991.



Figure 9. Anita Hill on the cover of *Time* Magazine, 100 Influential Women of the Year project

Much like the 2015, *Time* Magazine image displays Hill in different generic terms than the 1991 image in a way that brings Hill to a new generation of readers and viewers, so too, does *Confirmation*. Whereas the photographic images described above blend conventions of the factual and fictional popular, *Confirmation* also has moments of explicitly fused media conventions where archival news-film is inserted to cement the film's claims to reality even as the act of fusion and/or alteration undermines film's claims to indexicality.[78] Film historian Robert Burgoyne writes that this relationship between archival footage and fiction film challenges the status of history and memory.

[78] For a full discussion of the receding nature of film's claims to the indexical and the impact of digital imagery in film, including archival news films, see Robert Burgoyne, "Memory, History and Digital Imagery in Contemporary Film," in *Memory and Popular Film*, ed. Paul Grainge (Manchester, UK: Manchester University Press, 2003), 220–36.

> Film appears to have acquired, more than ever, the mantle of meaningfulness and authenticity with relation to the past—not necessarily of accuracy or fidelity to the record but of meaningfulness, understood in terms of emotional and affective truth. Cinema, in effect, seems to evoke the emotional certitude we associate with memory for, like memory, film is now, to a greater extent than before, associated with the body; it engages the viewer at the somatic level, immersing the spectator in experiences and impressions that, like memories, seem to be burned in.[79]

These fused images are sharp tools of historical revision, for not only do they call on imagination to read with or against a new grain, and often address new generations of spectators, but they do so through sensorial affect. In this, the images are open to forming "prosthetic memory," or "the way mass cultural technologies of memory, such as film, enable individuals to experience, as if they were memories, events through which they themselves did not live."[80] The archival video embedded in the film and the photographic images above both mark the mediation of the hearings through the factual and fictional popular as "events" rather than sealed entities.[81] This intermedial network not only connects the hearings through formal elements of media, like the expanded fields that Sherman's *Film Stills* and the photographic images of Hill and Thomas, but also is crucially part of how the factual and fictional popular mediate the hearings at different historical moments for new spectators.

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[79] Burgoyne, "Memory, History and Digital Imagery in Contemporary Film," 223.
[80] Burgoyne, "Memory, History and Digital Imagery in Contemporary Film," 223.
[81] Azoulay, "What is a Photograph?" 12–13.

From Brett Kavanaugh and Christine Blasey-Ford to Amy Coney-Barrett: The Unwatchable Factual Popular and Reprieves of the Fictional



Figure 10. *Saturday Night Live* (NBC, Season 44, Episode 1, 2018) sketch featuring a satire of Brett Kavanaugh's (Matt Damon) testimony (left) and Brett Kavanaugh at his hearing (right).

If Clarence Thomas's confirmation hearing debacle had long receded into the political background by 2018 as several comparatively smooth Supreme Court confirmations followed, including those of Chief Justice John Roberts and Associate Justices Samuel Alito, Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagen, and Neil Gorsuch, suddenly the Thomas-Hill hearing was once again common parlance on nearly every television news program in the country. After President Donald Trump nominated Judge Kavanaugh to the Court, Professor Christine Blasey-Ford wrote a confidential letter to Senator Dianne Feinstein (D-CA), alleging that Kavanaugh sexually assaulted her in attempted rape at a high school party in Maryland in the early 1980s. Over the next few days, the story became public without her consent. After initially refusing to speak to the media on-the-record, she hired lawyer Debra Katz to make statements on her behalf. But over the coming weeks, her identity

leaked to the press. "Now I feel like my civic responsibility is outweighing my anguish and terror about retaliation," she said.[82] On the morning of 27 September, 2018, Ford testified before the Senate Judiciary Committee. By this point in the hearing process, like Hill, she had already taken a polygraph test about the incident with results that indicated she was telling the truth.

News of her testimony consumed the news media around the clock as the date approached. All six major news networks covered the hearing and 20 million viewers tuned in.[83] The event was a melodrama before it even began, partly because the Hill hearings' specter loomed, and partly because of the subject matter during a plagued presidency. That there had been an extensive media build-up to the event as the public waited to see if Blasey-Ford would testify intensified the hearing's atmosphere. From the outset, the hearing was already unwatchable for many viewers; it asked them to bear witness to trauma in an environment where she would likely be treated with little respect from Republican Senators. Their only goal was to place Kavanaugh on the Court, no matter the cost. I use the term "unwatchable" in relation this event to refer to a hearing that is so painful, sad, and difficult to watch that *many* viewers had to turn off the television or abstain from watching entirely.[84] Trauma researcher and professor of psychiatric epidemiology at Harvard's Chan School of

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[82] Emma Brown, "California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out about her Allegation of Sexual Assault," *Washington Post*, 16 September 2018, www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html.

[83] David Bauder, "More Than 20 Million People Watched Kavanaugh Hearing," *Associated Press*, 28 September 2018, apnews.com/article/caa510f21dcd4c569a4c8ea91f587a44.

[84] This event forms a nexus of three categories of the "unwatchable" (out of fifteen) that editors Nicholas Baer, Maggie Hennefeld, Laura Horak, and Gunnar Iversen lay out in the Table of Contents: Bearing Witness, Reality Trumpism, and The Triggered Spectator. See *Unwatchable*.

Public Health, Karestan Koenen, called it "one of the largest public 'triggerings' of modern times."[85] Leading up the hearing, the National Sexual Assault Hotline saw a 57% percent increase in call volume, and on the day of the hearing, call volume reached a saturation of 201% of the average.[86] While the Republican Senators learned a lesson in the optics of questioning from the Hill hearing, and hired outside investigator Rachel Mitchell to do the questioning for them, they did not learn a lesson of substantive respect for the person testifying.

As the hearing progressed, it became more unwatchable. "Some women reported being shocked by the degree of grief they felt, bursting into unexpected tears even at work. Others expressed surprising anger. Still others, forced to painfully relive encounters that had long played in the darkest reaches of memory, suffered a sense of helplessness all over again."[87] The public did not know what to expect from Blasey-Ford's account of the events—they knew some details from media reporting—like the fact that an inebriated Kavanaugh held her down on a bed and tried to strip off her bathing suit as she struggled to get away—but it is an affectively different experience to bear live, audiovisual witness to this account. It revealed horrible details about that night and beyond—the trauma impacted the rest of Blasey-Ford's life through the time of testimony, which itself imparted new trauma.[88]

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[85] Sue Treiman, "Ford-Kavanaugh Hearing Triggers Trauma in Sexual Assault Victims," Everyday Health, 16 October 2018, www.everydayhealth.com/ptsd/ford-kavanaugh-hearing-triggers-trauma-sexual-assault-victims/.

[86] Statistics reported by Sara McGovern, the Rape, Abuse, and Incest National Network (RAINN) Press Secretary. See Danielle Campoamor, "Kavanaugh Case Opens Old Wounds for Many Survivors," *CNN*, 28 September 2018, www.cnn.com/2018/09/27/opinions/how-ford-kavanaugh-hearings-are-triggering-ptsd-danielle-campoamor/index.html.

[87] Treiman, "Ford-Kavanaugh Hearing Triggers Trauma."

[88] The new trauma included (to name only a few impactful events): 1) Blasey-Ford received credible death threats from members of the public that forced her to relocate with her family several times; 2) Providing public testimony about her sexual assault to people who were not

Blasey-Ford, whose academic expertise is in the area of trauma studies and psychology explained the ongoing effects of the assault on her life: "for me personally, anxiety, phobia, and PTSD-like symptoms are the types of things I've been coping with. More specifically, claustrophobia, panic, and that type of thing."

When Kavanaugh testified after Blasey-Ford, many viewers reached their viewing limits. According to one viewer who was also a sexual assault survivor, "I had to tune out the second he began to get hysterical. . . . I had flashbacks to the way my ex-boyfriend would yell at me. Even through the TV, it terrified me."[89] Contrary to acting in a collected judicial manner that addressed Blasey-Ford respectfully, Kavanaugh at turns spoke, yelled, and cried with rage as the questioning from Democratic Senators intensified. At some points, he looked as though he was barely holding himself back from screaming at committee members about his perception of the hearing as an injustice. Everything about the event played out as television melodrama: the over wrought mise-en-scène of cameras and reporters flanking the front of the Judiciary Committee tables, the struggle for justice between two competing protagonists portrayed largely in the binary terms of "good" and "evil," and a situation whose result could place another man who does not respect women's bodily autonomy on the Court for a lifetime term.

In its unwatchable nature, the hearing led to my own viewing fatigue—that drained feeling resulting from pushing yourself to watch something that in other circumstances—say,

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entirely sympathetic or understanding; 3) Being bullied by President Trump on television and attacked by Republicans as a liar

[89] Deborah Bloom, "Sexual Assault Victims are Reliving their Trauma, 'Triggered' by Brett Kavanaugh's Hearing," *Independent UK*, 29 September 2018, www.independent.co.uk/news/world/americas/brett-kavanaugh-supreme-court-vote-christine-ford-sexual-assault-victims-a8560911.html.

if it were a reality television show or a serial melodrama—you would not watch. After it concluded, I waited for Saturday night with anticipation, for the fictional popular became the only way I could digest any more of the hearings and what they might mean for Kavanaugh's place on the Court. In short, I wanted *Saturday Night Live* to relieve the anguish of watching the factual popular—political satire as a salve for the week's events, a way to imagine a different hearing. Moreover, since the unwatchable always relies on the viewer's perspective, it was already widely known (because Trump tweeted about it) that he finds *SNL* sketches related to his presidency unwatchable, and therefore, watching was also a way of affirming a critique that he would note, if not begrudgingly watch.[90] If nothing else, Trump understands and communicates with the language of television most fluently in its reality-TV and melodramatic modes.[91] As such, the *SNL* cold open sketch emerged in the season 44 opener as a much-needed reprieve from the collective difficulty of watching the hearings in their factual popular form.

The 13-minute-long cold open sketch features Matt Damon as bristling, beer-loving Kavanaugh, and fully embraces the melodramatic nature of the hearing. Instead of featuring Blasey-Ford and Kavanaugh, the sketch takes full aim at Kavanaugh. (This is a departure from a parallel 1991 Hill-Thomas hearing cold open sketch [NBC, season 17] that briefly features Hill and Thomas together during the hearing. While Hill doesn't have lines of note

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[90] Trump has tweeted his disapproval of SNL multiple times. His claim to its "unwatchability" reads this way: "Just tried watching Saturday Night Live-unwatchable! Totally biased, not funny and the Baldwin impersonation can't get any worse. Sad" (3 December 2016).

[91] "The Trump presidency does seem very melodramatic, with its hyperbolic rhetoric, spectacles of (im)morality, and orchestration of emotion. One might thus argue that the Trump presidency has gone from a reality competition to a soap opera." See Joyrich, "TV Trumps," in *Unwatchable*, 295–96.

in the sketch, she postures to Thomas, dropping her right hip and staring at him as she walks out of the hearing in a way that suggests a "Gotcha!") (fig. 11) An uncanny Kavanaugh, Damon dials up Kavanaugh's anger to the explosive yelling fit that Kavanaugh seemed seconds away from in the hearing, exaggerating its details. Perhaps most striking is that the sketch didn't need to push far to move from reality to fiction. In observing Damon's performance of Kavanaugh, it seems likely that he, like Washington, employed observation and repetition techniques before he took the stage. His expressions, gestures, and rage mirror Kavanaugh's so expertly that Damon, the actor, recedes from view in a way that is atypical for *SNL* sketches, which tend to retain the reflexivity of the actor's persona even as they portray real people.



Figure 11. Anita Hill stares at Clarence Thomas as she departs the hearing in *Saturday Night Live* cold open sketch (NBC, Season 17, 1991)

While the Blasey-Ford-Kavanaugh cold open sketch made the hearing's unwatchable nature into something watchable, even enjoyable, two years later, Justice Coney-Barrett's Supreme Court hearing was, for me, entirely unwatchable following the death of Justice

Ginsburg. While another woman appointed to the Court should be a positive development, it is not when that person does not believe in the rights of others to make choices about their own body, as one among many issues. The only way I was able to view the Coney-Barrett hearing was through the mediation of the fictional popular. The circumstances surrounding her hearing were bleak. President Trump nominated Coney-Barrett, a judge who follows the strict ideals of Constitutional Originalism, much as Justice Scalia did, to the Court less than a week after Ginsburg's passing. This was only six weeks before Election Day, 2020, and Ginsburg, who is the first woman to lie in State, was still situated at the Supreme Court when Coney-Barrett's hearing was scheduled. Two weeks later, at a large gathering on the White House Rose Garden lawn for Coney-Barrett's confirmation announcement, more than two dozen people contracted COVID-19, including President Trump, First Lady Melania Trump, and many others in the President's inner circle, thereby putting other people at risk because they didn't want to wear a mask.[92] The fact that Coney-Barrett does not believe in upholding the Affordable Care Act (ACA) or legislation protecting women or other marginalized people's rights is enough to make her confirmation hearing unwatchable. That it arrived tripping on the heels of Ginsburg's passing, in the shadow of the Kavanaugh hearing, rendered Coney-Barret's confirmation too much to view as a live event.

I experienced key moments in the hearings through the fictional popular, specifically, through "notepad memes" inspired by Coney-Barrett's response to Senator John Cornyn's (R-TX) question, "most of us have multiple notebooks and things like that in front of us, can

[92] For a list of all of the individuals with confirmed COVID-19 cases as a result of the Rose Garden super-spreader event, see Larry Buchanan, Lazaro Gamio, Lauren Leatherby, John Keefe, Christoph Koettl, and Amy Schoenfeld Walker, "Tracking the White House Coronavirus Outbreak," *New York Times*, 14 October 2020, www.nytimes.com/interactive/2020/10/02/us/politics/trump-contact-tracing-covid.html.

you hold up what you've been referring to and answering our questions from?" At that point, Coney-Barrett raised her blank US Senate notepad and smiled proudly at the Judiciary Committee. The Senator responded, "that's impressive." Almost immediately, the internet seized on this moment which is easily read in a positive light by her supporters (she is so informed that she doesn't need notes), and negatively by her opponents (she isn't answering the questions—she should have brought notes). Perhaps unsurprisingly, the resulting memes did not limit themselves to her hearing. They drew on the figure of the handmaid from the popular Margaret Atwood novel and recent Hulu series by the same name, to make a point:



Figure 12. *The Handmaid's Tale* (Hulu, US, 2017–) Notepad meme in support of Amy Coney-Barrett's confirmation.

The image (fig. 12), authored by Twitter-user David Reaboi, whose Twitter bio states that he is a "Right-wing [T]witter pugilist," the image casts Coney-Barrett's confirmation as a harbinger of Atwood's dystopian novel. In protests staged that morning against Barrett's confirmation, people dressed as handmaids and sat outside the Court. The figure of the handmaid emerged as a direct rebuff to overturning laws like *Roe v. Wade*. For Barrett's supporters, the image reflects a fear that she has, in fact, had a conversation with President

Trump about how she would rule on a case (specifically *Roe v. Wade*), and her response would be to overturn it.



Figure 13. *Handmaid's Tale* (Hulu, US, 2017–) Protestors against Amy Coney-Barrett's confirmation attend with signs that memorialize Ginsburg

As memes circulate online, just like any other media form, they take on a life of their own. Just as the Kavanaugh cold open sketch reanimated his hearing in a way that made it watchable, the memes from the Coney-Barrett hearings provided reprieve from the barrage of increasingly awful news. The fictional popular, in its intertextual combination of reality and melodrama (in this case), allowed me to experience the hearings as a participant who didn't have to witness the live coverage of a confirmation hearing for a judge who would soon sit on the Court as an Associate Justice.

Trajectories of Equity and Media Afterlives for the Future

Kavanaugh and Coney-Barrett's confirmation hearings mark a lugubrious moment in the trajectory of legal equity, but it is important not to stay lodged in the darkness. Trajectories of equity in pursuit of justice are arduous, long journeys. If some Republican Senators did not learn from the Hill hearings, the same cannot be said about wider, more public conversations about sexual harassment in the US. The Hill hearings brought that conversation to a larger public and created substantial changes in the composition of the Senate, in policy, and in the way that workplace harassment is handled more generally. In this concluding section, I point to an example of a shift in the initial photographic and artistic depiction of the Kavanaugh-Blasey-Ford hearing on the cover of *Time* magazine. This media example foregrounds historical progress in the reception of sexual assault as it is embodied by the Kavanaugh-Blasey-Ford hearing and the Thomas-Hill hearing with respect to my earlier analysis.

Two weeks after Blasey-Ford testified, the October cover of *Time* magazine featured one of the most recognized and highly circulated images from the hearing in an illustrated rendering. In the original photograph, Blasey-Ford stands in the Senate hearing room, right hand raised as she took the oath, her eyes closed (fig. 14). In the illustration of that moment created by artist John Mavroudis, the shape of poignant words Blasey-Ford spoke to the Judiciary committee form the contours of her image. The headline reads more like the 2020 Hill cover image than the 1991 headline. "Her Lasting Impact," the headline proclaims of Blasey-Ford's testimony.





Figure 14. Professor Christine Blasey-Ford testifies (top) and *Time* magazine typographic cover by John Mavroudis (bottom)

In contrast to the way that Hill was initially depicted with Thomas on the cover of *Time* in 1991, the image of Blasey-Ford in this illustration uses a typographic portrait to convey support for her testimony, highlighting some of its most intense moments. The words that comprise the portrait call upon the impact of her live testimony, placing the image's viewer back in the space of televisual witnessing.

The first time I saw the cover, I was standing in the checkout line at a grocery store. Each kiosk headlined with the image that faced the interior aisles. Instead of being an "unwatchable" photograph, this image was a breath of air. The portrait embodied the voice of the public majority instead of the voice of a Senate that would ultimately confirm Kavanaugh. According to *NPR* polling soon after the hearing, 45 percent of Americans believed Blasey-Ford, 33 percent believed Kavanaugh, and 22 percent remained unsure. Along the lines of gender, 39 percent of men believed Kavanaugh, 37 percent believed Blasey-Ford, 52 percent of women believed Blasey-Ford, and 27 percent believed Kavanaugh. Consequently, 48 percent of Americans opposed Kavanaugh's nomination. After the Hill-Thomas hearings, a similar CBS/*New York Times* poll relayed that 58 percent of the public believed Thomas and only 24 percent believed Hill.[93] This cover image is a representation of public grief and empathy on behalf of Blasey-Ford and for the nation—it simultaneously referenced movement in public understanding of sexual assault and acknowledged that there is a long way to go until we take assault seriously.[94] In 2019, the

[93] Domenico Montanaro, "Poll: More Believe Ford Than Kavanaugh, A Cultural Shift from 1991," *NPR*, 3 October 2018, www.npr.org/2018/10/03/654054108/poll-more-believe-ford-than-kavanaugh-a-cultural-shift-from-1991.
[94] RAINN reports that one in six women and one in ten men will experience sexual assault at some point in their lives. Campoamor, "Kavanaugh Case Opens Old Wounds for Many Survivors."

image won the 2018 “Cover of the Year” Award from the American Society of Magazine Editors.

Taken together, the confirmation hearings and their mediations that I discuss in this chapter give rise to a way of envisioning the historical shape of equity in relation to feminism and the Supreme Court. While the blending of the factual and fictional popular are historically rooted, they also serve to assess, analyze, and revise media historiographies. The media history of *First Monday* and its connection to the O’Connor hearing was predictive of how the public would come to use different media forms to work through political issues concerning women and the Court. Where genres and modes can be problem-solving in aspiration—the public acts on those aspirations. When made-for-television films, including *Confirmation*, accept this challenge as a type of reparations, news outlets demonstrate changes in representation over time, and *Saturday Night Live* challenges President Trump on a Supreme Court nominee, the factual and fictional popular become tools that facilitate new ways to mediate justice after feminism.

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Chapter 2

Justice Still on the Bench:
Pandemic Media, Women's Labor, and the Constellations of Media History



Figure 1. The cast of *All Rise* (CBS, season 1, Episode 24, 2020) starring Judge Lola Carmichael (Simone Missick) in the first COVID-19 pandemic episode.

The previous chapter of *Honorable Women* lays the groundwork for considering how the US Supreme Court, in the wake of live televisual confirmation hearings, is a site of mediation for women's rights and media historiography. The media events that I discussed surpass any single historical moment—they live on through media afterlives that media industries, audiences, and creators construct. This chapter extends an intersectional analysis to women judges (real and fictional), on and off television, underscoring how representation is only part of the equation despite an evolving representational landscape for women judges on television. Feminist media studies historically reveals this insight as the field shifted from focusing on representational analyses to those that also accounted for women's roles in

spectatorship and media history.[1] This chapter also takes a tack that is wider than representation. It connects media technologies and histories with gendered discourses that extend to the ongoing pressures exerted on women judges and justices.

I bring together the CBS (now OWN) legal drama *All Rise* (2019–), starring Simone Missick as newly-elected Judge Lola Carmichael, with the gendered history of the television as a media technology situating them amid the complexities of the COVID-19 pandemic on women judges and justices. In situating these media histories, I show that longstanding assumptions about technological facility are bound to gendered discourses about how women use technology. These discourses and assumptions extend to women judges and justices, as well as to the legal sphere in general.[2] From the start, *All* Rise paid attention to race and gender as Judge Carmichael faced challenges based on her identity as an African-American woman who had not served on a court. Her introduction to the Los Angeles County Superior Court was rife with tension as she balanced what her colleagues and local critics referred to as "activist" impulses with the demands of her first year on the court. When COVID-19 emerged in the US, the series was the first to air a pandemic episode—shifting its mode of production to online platforms. This change shifted the actors' and below-the-line workers' labor behind the scenes to an online platform yet still featured the series on air during its regular timeslot. It was a a television-meets-Zoom screening moment. Thus, the first

[1] For example, the feminist media studies collective *Camera Obscura: Feminism, Culture, and Media Studies* is foundational to these methodological shifts in the field. See also Erin Hill, *Never Done: A History of Women's Work in Media Production* (New Brunswick, NJ: Rutgers University Press, 2016).

[2] One of the most recognizable ways judges resist technological facility in mainstream culture is the Supreme Court's rejection of video recording. The Court instead relies on the justice's written briefs, transcripts, and an audio recording for public dissemination of oral arguments. For access to the Supreme Court's oral argument materials, see supremecourt.gov/oral_arguments/oral_arguments/aspx.

pandemic episode features the Zoom screen not simply as an aesthetic choice about how the show would represent the legal system during a pandemic but crucially served as a direct correlation of the series' conditions for further production based on California's pandemic health guidelines. Together, these histories and analyses enact what Jane Gaines and Monica Dall'Asta refer to as "constellating history," realigning and repositioning different historical moments so that they cast light on each other in new ways.[3] While the COVID-19 pandemic is the most immediate and ongoing historical event that informs this chapter, it is also a historical magnifying glass: it amplifies the conditions of gendered labor for women in the judiciary, and in Hollywood, technological media discourses, and representations of women judges. This chapter is not a historical overview of how women judges have been represented on television, although it does refer to that history. Instead, I use the specifics of a time, series, and global health status to show the linkage among women in the judiciary, mediated gender, labor, and justice.

"I'm Washing My Dishes and Making a Movie": Gendered Dynamics of Labor and Media Creation in a Pandemic

Feminist filmmaker Anne Charlotte Robertson proclaimed in *Five Year Diary* (US, 1982), "I'm washing my dishes and making a movie."[4] Robertson's film is a diary film, which generically seeks to document the filmmaker's life. For Robertson, this resulted in a prolific diary project that included "written, audio, food, and cinematic diaries kept between the ages

[3] Jane Gaines and Monica Dall'Asta, "Prologue: Constellations: Past Meets Present in Feminist Film History," in *Doing Women's Film History: Reframing Cinemas Past and Present*, ed. Christine Gledhill and Julia Knight (Urbana: University of Illinois Press, 2015), 13–28.

[4] Anjo-marí Gouws, "'I'm Washing my Dishes and Making a Movie': Anne Charlotte Robertson and World-Making as Women's Work," *Camera Obscura* 105, no. 3 (2020): 75.

of eleven and roughly fifty-one, [which] . . . are arguably unmatched by any other diary practitioner, including Jonas Mekas, the filmmaker most associated with the cinematic diary" (61). Consequentially, Robertson's films showcased a fusion of work, creative labor, and the domestic realm, much like that of other feminist filmmakers and collectives, including the work of Joyce Chopra, the Newsreel Collective, Chantal Akerman, Martha Rosler, Joyce Wieland, Judy Chicago, and Miriam Schapiro, among others (71, 77). Anjo-marí Gouws argues that when Robertson combines the labor of media creation with the domestic, she "highlights the fact that the making and remaking of the world at large is always already rooted in and dependent on the world-making of the domestic realm" (75). Gouws's argument emphasizes the feminist adage that "the personal is political," since the ability to make or remake the world also depends on the types of labor, actions, bodies, and voices that are valued, amplified, and given space to exist.

A few significant ideas arise from Robertson's diary film and, more broadly, feminist filmmaking for thinking about labor and media creation during a pandemic. Roberston's exclamation that she is "washing [her] dishes and making a movie" indexes historical constellations between feminist film and media creation and the gendered conditions of the pandemic. I extend this analysis to *All Rise*'s pandemic episode and the conditions for women in the judiciary. Some of these judges must work from home during the pandemic, and others must show up at the courthouse for hearings in settings that vary widely in their COVID-19 safety protocols. While Robertson is one example of many feminist media-makers whose work joins domestic labor with the creative labor of media production, Robertson's statement is poignant for the connections I draw between how *All Rise* deals with the pandemic onscreen and off and the parallel conditions for judges and justices whose

live appearances are now on the mediated screen. Robertson usefully bridges this chapter's thematic emphasis on the renewed simultaneity of women's attempts to complete several types of labor at the same time, in the same space, and wrangle the still-gendered discourses and materiality that these jobs bring. First, she emphasizes that the domestic space is not only a place where the filmmaker's camera can bear witness to women's daily labor but is also a place where the filmmaker's creative labor emerges alongside other kinds of domestic labor. In other words, Robertson calls attention to her creative practice as another form of labor that exists in parallel to the routine labor she completes. Second, she foregrounds the boundaries between the many types of labor in the domestic realm—between her work as a filmmaker, her household chores, and her bodily labor that consisted of exercising and dieting (60–87). Last, her statement calls upon gendered discourses and materialities of televisual media, which cast women as simultaneous viewers and laborers. In 1952, this idea went as far as a new invention from the Western-Holly Company called a TV-stove that included an oven with a window that sat below a television screen.[5] The implications for women of the cyclical nature of household work are consonant with the "flow" of daytime television—it is crucial to the entire functioning of women's labor at home.[6] For Tania Modleski, "a distracted or distractable frame of mind is crucial to the housewife's efficient functioning in her real

[5] For example, see Lynn Spigel, *Make Room for TV: Television and the Family Ideal in Postwar America* (Urbana, IL: University of Chicago Press, 1992), 73–99 for some of the ways advertising joined women's domestic labor with televisual spectatorship and more on the TV-stove.

[6] Tania Modleski, "The Rhythms of Reception: Daytime Television and Women's Work, in *Regarding Television: Critical Approaches*, ed. E. Ann Kaplan (University Publications of America, 1983): 67.

situation, and at this level television and its so-called distractions, along with the particular forms they take, are intimately bound up with women's work."[7]

For many women in the workforce, the COVID-19 pandemic means that the home, which was once physically separated from the workspace and from time on the clock, is now the place of daily workforce labor. It has also resulted in a disproportionate number of women leaving the workforce entirely because of longstanding gender disparities that the pandemic dramatically exacerbated. The US Labor Department reports that 2.5 million women left the workforce from the beginning of the pandemic to February 2021 compared to 1.8 million men.[8] For women who are employed and working from home, the majority of their labor is now concentrated in the confines of their domestic space regardless of type. For some women, all labor exists beneath the long penumbra of domestic labor during pandemic time. Ultimately, women's labor is always historically connected to domestic labor, and the pandemic magnifies gendered inequalities.

The spatial (re)coupling of women's domestic time with work time and its proximity to mediated screens brings feminist conversations about these topics into view once again—for those lines of inquiry have much to reveal about the logics of labor and production set against the strains and terrors of COVID-19. While feminist thinking about labor, space, and mediation never disappeared from the disciplinary purview of film and media studies, a few earlier conversations are worth revisiting and contextualizing anew. For even when the pandemic's strictures and complex medical structures ease or cease to exist, the cultural and

[7] Modleski, "Rhythms of Reception," 74.
[8] Katie Rogers, "2.5 Million Women Left the Work Force During the Pandemic. Harris Sees A 'National Emergency,'" *New York Times*, 18 February 2021, www.nytimes.com/2021/02/18/us/politics/women-pandemic-harris.html.

social conditions it leaves behind will, much like the virus, be endemic for some time. In considering what feminist film and media studies can teach us about these subjects, I approach a post-pandemic feminist future of the screen as a tool that extends beyond the women judges who are now, like Robertson and many other feminist media creators, washing their dishes and making media.

From Televisual Imaginaries to Zoom Screens: Constellating a Feminist Historiography

Before I turn to *All Rise*'s pandemic episode and how it mobilizes pandemic media issues alongside race and gender, I first turn to a related history that I re-imagine for the present. I connect early televisual imaginaries about the medium to later feminist thinking about the role of television and labor. After connecting these contexts, I assert that the video meeting, now used in courtroom cases and Hollywood filmmaking alike during the pandemic—and which is often represented today by platforms like Zoom—inherits the history and gendered discourses of older media forms.[9] As cultural critics and academics have pointed out, video meeting platforms can exacerbate gendered dynamics online, including who is heard or credited for ideas.[10] Despite some critics' earlier notions that video meetings might be an

[9] This line of thinking about older media and the ways their newer media counterparts figure into discourse and practice follows media historiographers like Carolyn Marvin and Lisa Gitelman. Marvin argues that "new media, broadly understood to include the use of new communications technology for old or new purposes, new ways of using old technologies, and, in principle, all other possibilities for the exchange of social meaning, are always introduced into a pattern of tension created by the coexistence of old and new, which is far richer than any single medium that becomes a focus of interest because it is novel." Carolyn Marvin, *When Old Technologies Were New: Thinking About Electric Communication in the Late Nineteenth Century* (New York: Oxford University Press, 1988), 8. See also Lisa Gitelman, *Always Already New: Media, History, and the Data of Culture* (Boston: The MIT Press, 2006).

[10] See, among others, Mary Shapiro, Stacy Blake-Beard, and Susan Halter, "The Gendered Impact of COVID 19 and Remote Work on Women and Organizations," Simons University

equalizer (typically discussed as a gender equalizer) in the workplace, not only do gendered dynamics persist in the age of the video meeting, but race, class, and ability often exacerbates them.[11] However, despite the gendered history of these media discourses, women and other marginalized communities have long employed media tactics to subvert and reclaim spaces of their own on various platforms. From telephones to cinema screens and video games, cultures of appropriation, resistance, subversion, and creation remake gendered discourses and practices.[12] These strategies are vital to understanding how gendered media historiographies change over time even as constellated media histories amplify similar structural discourses, not limited to gender, that persist throughout history. As Carolyn

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Institute for Inclusive Leadership, www.inclusiveleadership.com/app/uploads/2021/03/Gendered-Impact-of-COVID-19.pdf (accessed 27 April 2021); Alisha Haridisani Gupta, "It's Not Just You: In Online Meetings, Many Women Can't Get a Word In," *New York Times*, 14 April 2020, www.nytimes.com/2020/04/14/us/zoom-meetings-gender.html.

[11] Floyd Cheung, Cynthia Ganote, and Tasha Souza, "Microresistance as a Way to Respond to Microaggressions on Zoom and in Real Life," Faculty Focus, 7 April 2021, www.facultyfocus.com/articles/academic-leadership/microresistance-as-a-way-to-respond-to-microaggressions-on-zoom-and-in-real-life.
At the same time, I want to note that for some people, working from home and using video conferencing allows them to participate at work in ways that they would not previously be able to. For people with chronic illnesses, the affordance of saving energy by working from home may allow them to continue working on days when they might otherwise need a day off. For a longer discussion of chronic illness, video conferencing, and work, see Hannah Olson, "COVID-19 Shows that Accessibility and Productivity Aren't Mutually Exclusive," HR Dive, 25 August 2020, www.hrdive.com/news/covid-19-shows-that-accessibility-and-productivity-arent-mutually-exclusiv/583820/.

[12] For a sampling of the ways women and other communities use media tactics to subvert gendered discourses on different platforms, see Constance Penley's writing on slash fandom and *Star Trek*, the "Queerness and Games" dossier in *Camera Obscura*, and Lisa Nakamura's work on gender, race, and video games: Constance Penley, "Brownian Motion: Women, Tactics, and Technology," in *Technoculture*, ed. Constance Penley and Andrew Ross (Minneapolis: University of Minnesota Press, 1991), 135–62; Queerness and Games," ed. Teddy Pozo and Bonnie Ruberg in *Camera Obscura* 95, no. 2, 153–92; Lisa Nakamura, "Gender and Race Online," in *Society and the Internet: How Networks of Information and Communication are Changing our Lives*, ed. Mark Graham and William H. Dutton (New York: Oxford University Press), 81–95.

Marvin describes, "The early history of electric media is less the evolution of technical efficiencies in communication than a series of arenas for negotiating issues crucial to the conduct of social life; among them, who is inside and outside, who may speak, who may not, and who has the authority and may be believed."[13] These issues persist over the *longue durée* of history:[14] "for women, the past is always present . . ."[15]

The present-ness of the past is also apparent when analyzing how media technologies emerge and develop—even how discourses surrounding them play out over time. In the following analysis, I connect early imaginaries about television to gendered politics concerning women's relationship to technology. When media scholars analyze disciplinary work on television history, television is commonly considered an altogether technologically different and later development from cinema. Breaking from this way of thinking about film and television history as separate and linear in historical trajectory, Doron Galili argues that by considering how early discourses and writings about moving image transmission technology (what would become the television) operated and converged with cinema, "moving image transmission media appear not as mere abstract dreams on inexistent machines but, rather, as an inherent part of a cultural-technological discourse that was very much grounded in its time. The period of the late 1870s and the early 1880s, when the first publications about the prospects of moving image transmission came out, also marked the

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[13] Marvin, *When Old Technologies Were New*, 4.
[14] The *longue durée* of history refers to something not merely in place for a short historical period. Instead, it is about duration—almost to the point of no end. "Far beyond this second account [of traditional narrative history's timespans] we find a history capable of traversing even greater distances, a history to be measured in centuries this time: the history of the long, even of the very long time span . . ." Fernand Braudel, "History and the Social Sciences: The Longue Durée," in *On History*, trans. Sarah Matthews (Chicago: University of Chicago Press, 1980), 27.
[15] Hill, *Never Done*, 6.

beginning of the large-scale application of electricity in industry, transportation, leisure activities, and ultimately in the domestic sphere."[16] This technological moment grew alongside discourses about cinema that reached beyond the technological. Galili continues, "Long before the visual medium became practically feasible, a collective vision about its identity and anticipated capacities was in place, serving as a frame of reference not only for literary and journalistic speculations but also for the ongoing technical efforts to construct visual transmission devices. Such historical feedback loops of influences between imaginary ideas and technological design existed by the 1880s and 1890s, when some technicians working on schemes for image transmission devices openly admitted to have been influenced by fictional depictions of such technologies . . . " (26–27).

The emerging confluence between the technologies leads Galili to examine the imaginaries at work in early television and cinema. While many ideas circulated in newspapers about how the technology might be put to good use in the future, it is striking that it falls in line with the way video calling and web browsing function today. In short, many early imaginaries about what became television describe a more intermedial form that aligns with the foundations of Zoom conferencing, web browsing, web-based surveillance cameras, and online shopping than it does to broadcast television.

> Already in 1877, an American newspaper report noted that apart from allowing people to see their relatives and loved ones from afar, the novel technology could also allow merchants to exhibit their goods to customers worldwide, police authorities to identify fugitive criminals in any part of the world, painters to exhibit their works in

[16] Doron Galili, *Seeing By Electricity: The Emergence of Television* (Durham, NC: Duke University Press, 2020), 26.

> multiple galleries simultaneously while still in the studio, scholars to consult manuscripts from any museum, and operas and plays to be reproduced in any given theater. . . . the emerging technology could be of use for train dispatchers in overseeing railway traffic and avoiding collisions, by jailors for observing prison cells, and by doctors for examining patients from their home (24).

For Galili, surveillance is the thread that holds these technologies together. He continues, "Whether they evoked the moving image transmission medium in order to signify a utopian or dystopian future, and whether they located it in a bourgeois living room or in a prison cell, all these scenarios fantasize a medium that functions as a universal optical network and provides visual mastery by allowing its users to see everything, everywhere, at all times. By doing so, they relate the conceptions of the medium to a principal modern cultural obsession with obtaining visual mastery" (39). The modern obsession with "visual mastery" leaked into technological discourses. While surveillance is an important concept that binds the technologies—and it persists today—visual mastery also includes colonialist and misogynist thinking that draws on desires for surveillance. In other words, from the desire for surveillance also comes colonialist and misogynist impulses and *vice versa*.

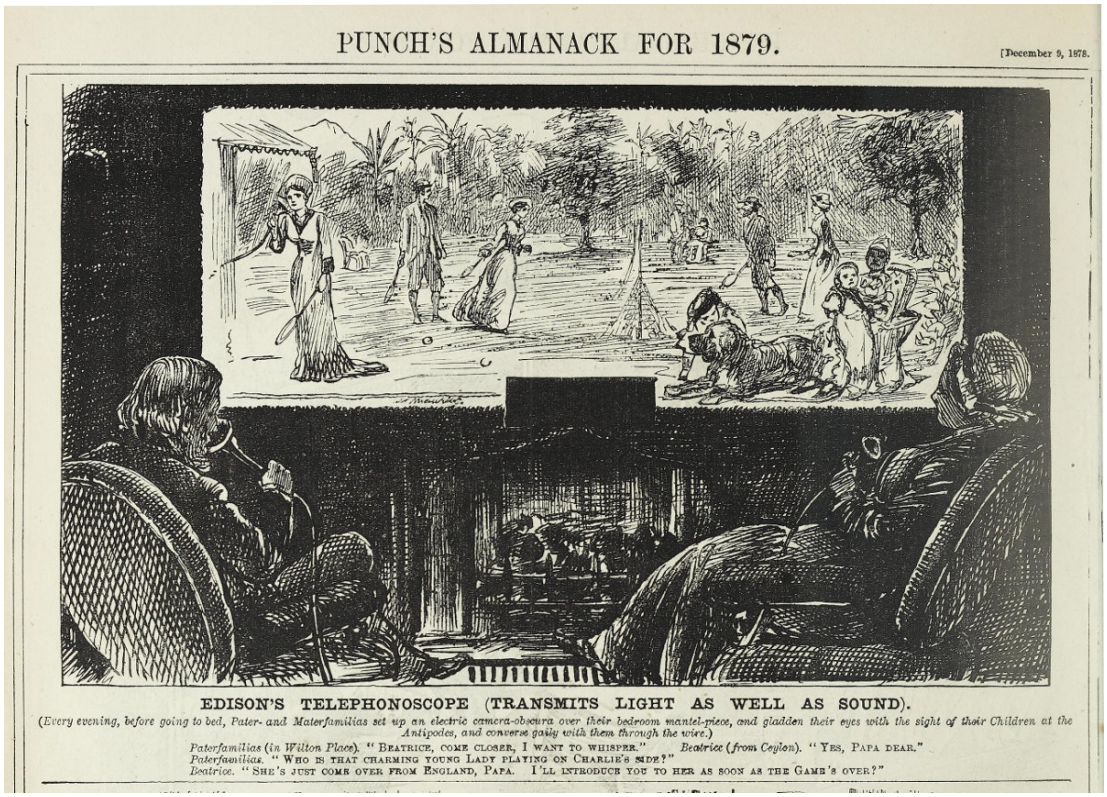


Figure 2. The cartoon printed in *Punch's Almanack* (1879) depicts a family from England using a telephonic device with a screen to speak with their daughter in Ceylon, India.

The cartoon featured here reveals a historically situated discourse about the telephone's uses and imaginaries about television's communication capabilities as they coalesced in an Edison invention called the telephonoscope. The cartoon uses sexist and colonialist ideas about the technology in ways that resonate through history. This rhetoric is evident in the scene above, set in India, and is displayed onscreen for the couple sitting side by side in the cartoon. In the image caption, the father says to the daughter (who is on the other end of the phone line, onscreen), "Beatrice, come closer, I want to whisper," and then he indicates his sexual interest in another young woman onscreen when he says to his daughter (in front of his wife, but whispered into the telephonoscope so she cannot hear), "Who is that charming young lady playing at Charlie's side?" (30–32) It is important to

consider that even before the television appeared on the market, one of the ways it entered the public imaginary was as a method of accessing moving images of women from afar where they didn't pose a threat to the family despite the device's visibility. The gaze is both colonial and gendered, focused on an event or "attraction" (a cricket match that lacks a narrative form),[17] yet it is also invested in the scopic pleasure of "surveillance" the husband and wife share as they watch others without being spotted in return as a medium-specific benefit (30–31).

The telephonoscope's setup and imagined use, where one person has sonic and visual access to others who may not have the same capacity to return the gaze, anticipates a genre of erotic exhibitionist silent films in its non-narrative content but seems to diverge from them in ways that delineate gendered agency along the lines of medium specificity.[18] Yet what the following examples demonstrate is not that early cinema provided more agency for women and the early television less agency. Instead, the examples draw lines between the popularly circulated discourses and their attendant imaginaries about how certain technologies would be used in the future once they were in public circulation. Moreover, these examples align with one of the workings of media historiography as they point to other examples of women's work with the telephone and the uses of emerging media. These women are not

[17] Film scholar Tom Gunning would describe a silent film cinematic "attraction" as one "that bases itself on the quality that Léger celebrated: its ability to *show* something. Contrasted to the voyeuristic aspect of narrative cinema analyzed by Christian Metz, this is an exhibitionist cinema." Gunning, "The Cinema of Attraction: Early Film, Its Spectator, and the Avant-Garde," *Wide Angle* 8, no. 3 and 4 (1986): 65.
[18] Gunning, "The Cinema of Attraction," 65.

commonly acknowledged in popular narratives, or sometimes worse; their contributions are overlooked for generations or lost altogether.[19]

In the early cinema, exhibitionism was sometimes gendered and erotic in composition: "As Noël Burch has shown in his film *Correction Please: How We Got into Pictures* (1979), a film like *The Bride Retires* (France, 1902) reveals a fundamental conflict between this exhibitionist tendency of early film and the creation of a fictional diegesis. A woman undresses for bed while her new husband peers at her from behind a screen" (65). In contrast to the subject position and technological setup that the cartoon features, the subjects in early cinema looked back at the camera and broke the fourth wall. Gunning continues, "However, it is to the camera and the audience that the bride addresses her erotic striptease, winking at us as she faces us, smiling in erotic display" (65). In breaking the fourth wall, thereby telling spectators that the actress is looking back at them, the actress asserts bodily control and autonomy that the imagined use of the telephonescope lacks. Early pornographic stag films also featured women who controlled their own pleasure within the narrative, thereby subverting common assumptions galvanized by the feminist anti-porn movement and the religious right, whose main contention was that these films feature "nothing but the

[19] In Hill's example, these women were Hollywood workers whose labor was long overlooked and, in some cases, lost. These stories of recovery are present in many fields and subfields—not only media studies—and feminist legal historiography is another example of a field built on telling women's often passed-over legal history. Hill, *Never Done*, 5–6; for some examples of feminist legal historiography, see Jill Norgren, *Stories from Trailblazing Women Lawyers* (New York: NYU Press, 2018) and Tracey Jean Boisseau and Tracy Thomas, ed. *Feminist Legal History: Essays on Women and the Law* (New York: New York University Press, 2011).

degradation of women and the prurient documentation of the most horrific forms of violence waged against women."[20]

In a real-world corollary that moves beyond narrative representation to focus on women's porn performances, Mireille Miller-Young observes that Black women take control of their own pleasure through porn performances: "Actively confronting the taboo nature and fraught history of black female sexuality, [B]lack sex workers choose to pursue a prohibited terrain of labor and performance. Illicit eroticism provides a framework to understand the ways in which [B]lack women put hypersexuality to use."[21] While these examples call attention to female agency narratively and performatively, it does not obviate the gendered narrative workings of Hollywood cinema and television that followed—both things are true simultaneously.

When broadcast television as we know it today arrived, surveillance was still on the minds of consumers, and it was linked to gender. Lynn Spigel describes how various late-1940s and early-1950s magazines used advertising to ease fears about televisual surveillance[22]: "[The] magazines treated the television set as if it were a problem window

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[20] Constance Penley, "Crackers and Whackers: The White Trashing of Porn," in *Pornography: Film and Culture*, ed. Peter Lehman (New Brunswick, NJ: Rutger's University Press, 2006), 104–105; 103.

[21] Mireille Miller-Young, *A Taste of Brown Sugar: Black Women in Pornography* (Durham, NC: Duke University Press), 10.

[22] Fears about televisual surveillance may seem a little far-fetched for most television viewers today, but I want to note that during the 1907 Bell Telephone Company Toronto worker's strike, it became public knowledge that the company had "a listening board which could be used secretly to intercept a subscriber's conversation. Despite Bell's assurances that the listening board was only used to investigate technical problems, the press and public were not satisfied. . . . the hearings [that took place on behalf of the workers] did not reveal that the opportunity had been taken. The newspapers' concentration on the listening board issue revealed how easily the operators could be forgotten." Joan Sangster, "The 1907 Bell Telephone Strike: Organizing Women Workers," in *Labour / Le Travailleur* 3 (1978): 119.

through which residents in the home could be seen. In 1951, *American Home* juxtaposed suggestions for covering 'problem' windows with a tip on 'how to hide a TV screen.' Even the design of the early television consoles, with their cabinet doors which covered the TV screen, suggested the fear of being seen by television."[23] Beyond a basic fear of surveillance emanating from the television came a bound-up fear of sexual surveillance. "[The] *Saturday Evening Post* told its readers, 'Be Good! Television's Watching.' The article continued, 'Comes now another invasion of your privacy. . . . TV's prying eye may well record such personal frailties as the errant husband dining with his secretary. . . .' The fear here was that the television camera might record men and women unawares—and have devastating effects upon their romantic lives" (34). As *the Saturday Evening Post*'s advertisement underscores, the public's fear of televisual surveillance extended to men's power in the domestic sphere, one of its most gendered iterations in popular culture circulation during the 1950s.

Because the idea of surveillance and the spectator's gaze is fundamentally about control over the spectator or subject's world, discourses about masculinity television were prevalent. "In 1953, *TV Guide* asks, 'What ever happened to men? Once upon a time (Before TV), a girl thought of her boyfriend or husband as prince charming. Now having watched the antics of Ozzie Nelson and Chester A. Riley, she thinks of her man as a prime idiot.' Several paragraphs later, the article relates this figure of the ineffectual male to an inability to control vision, or rather television, in the home. The article suggests, 'Men have only a tiny voice in what programs the set is tuned to'" (36). The *TV Guide* article demonstrates that the television's entry into the home played on fears about the loss of masculine power and about

[23] Lynn Spigel, "Installing the Television Set: Popular Discourses on Television and Domestic Space, 1948–1955," *Camera Obscura* 6, no. 1 (1980): 34.

increasing women's power in the home over what might seem like quotidian or inconsequential matters. This situation played out at the level of control over the television—which was clearly a media form that men thought impacted how their spouse thought about them—and in relation to women's pleasure/displeasure, agency, and technological facility (36–40).

On the one hand, Spigel asserts that the television "became the 'other woman,'" wresting attention away from the spouse and onto the screen's constructions of femininity (38). On the other hand, while this might not seem like it would make purchasing a television appealing to women, Spigel argues for its appeal to women through control of the outside lures of infidelity, which continued to hold traction from the time of the telephonoscope. "Even while the husband neglects his wife and household chores to gaze at the screen woman, the housewife is in control of his sexuality insofar as his visual pleasure is circumscribed by domestic space" (40). But for as much purchase as this idea about control over masculine sexuality might have had for women interested in purchasing a television, discourses about femininity and women's perceived inability to use media technology came alongside it despite historical indications to the contrary.

Televisual technology is commonly traced through telegraph and telephone history because they are examples of electric media. Beyond Spigel's argument for the implication of women's bodies in the idea that operating a television set or the act of spectatorship could comprise a less attractive female body (38), there is an older history of electric media that also connects technological facility and femininity: that of the telephone operator. Linking these histories points to how technologies like Zoom and online conferencing bring gendered histories of technological facility and the politics of appearing onscreen as a statement in

itself. “In 1955, Sparton Television proclaimed that ‘the sight of a woman tuning a TV set with dials near the floor’ was ‘most unattractive.’ The Sparton TV, with its tuning knob located at the top of the set, promised to maintain the visual appeal of the woman” (38). In addition to the act of operating the television, society expected women to watch television and maintain their posture so they would appear as attractive viewers, a CBS-Columbia Television ad suggests (38). These advertisements imagine women watching television as an acceptable use of technology so long as their proximity to it does not interfere with the body’s visual aesthetics or the spouse’s daily production of domestic labor.

In contrast to how men imagined women’s ineptness with emerging media forms (or, perhaps worse for a married woman in the 1950s—the way men imagined women operating the television as unattractive), the actual labor of telephone operation was a gendered, complex job that required deft skill with the switchboard. From the 1880s on, manual telephone switching, or the job of the telephone operator, was primarily the domain of single, middle class, white, native-born women.[24] This set of demographics stands in sharp contrast with the operators of the telegraph who mainly were men (1084). If men were as concerned about women operating technology as the Sparton television ad suggests, to the extent that some men may not like the look of their spouse controlling the television set seventy years after women worked as telephone operators (and thirteen years after hundreds of women worked as computers during World War Two),[25] then what ideas were at work when the male

[24] Kenneth Lipartito, “When Women Were Switches: Technology, Work, and Gender in the Telephone Industry, 1890–1920,” *The American Historical Review* 99, no. 4 (1994): 1082, 1085.

[25] The history of the women known as “computers” who were the first computer programmers and worked on the Electronic Numerical Integrator and Computer (ENIAC) were overlooked for decades via the mechanisms Erin Hill describes in *Never Done*. Their work was systematically positioned as clerical labor. In the case of the women working as

telephone managers hired so many women as manual switches? Switching was a highly intensive job that demanded knowledge and skill with electric media technology. It also came with significant health risks, including physical and mental exhaustion, sores from the headgear, and potentially severe electrical shocks resulting from operating long-distance lines.[26] Kenneth Lipartito argues that for male managers, "women possessed the inherent qualities needed in a manual system; and they were available in large numbers" (1082). The skills telephone operators needed versus the skills telegraph operators needed (the latter was a non-switched technology and operators did not speak with customers)

> stressed the interactive quality of their [the telephone company's] service, which allowed users to speak directly with each other. Fast, accurate switching was vital to this more complex method of communications. . . .
>
> Women's contributions were crucial to the success of the complex technology of manual switching. While scanning ten thousand tiny jacks, keeping an eye open for lights indicating new calls, and sweeping the board of old connections, operators had

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programmers, "the omission of women from the history of computer science perpetuates misconceptions of women as uninterested or incapable in the field. This article retells the history of ENIAC's 'invention' with special focus on the female technicians whom existing computer histories have rendered invisible. In particular, it examines how the job of programmer, perceived in recent years as masculine work, originated as feminized clerical labor. The story presents an apparent paradox. It suggests that women were somehow hidden during this stage of computer history while the wartime popular press trumpeted just the opposite—that women were breaking into traditionally male occupations within science, technology, and engineering. . . . While celebrating women's presence, wartime writing minimized the complexities of their actual work. While describing the difficulty of their tasks, it classified their occupations as subprofessional. While showcasing them in formerly male occupations, it celebrated their work for its femininity. Despite the complexities—and often pathbreaking aspects—of the work women performed, they rarely received credit for innovation or invention."
Jennifer S. Light, "When Computers Were Women," *Technology and Culture* 40, no. 3 (1999): 455–56.

[26] Sangster, "The 1907 Bell Telephone Strike," 111.

> to complete several hundred calls per hour during peak times. Months of practice were required before they mastered the 'overlaps,' or the knack of performing multiple tasks simultaneously (1084, 1087).

When male telephone managers wanted women to operate the switchboard partly because they thought they were savvy communicators with customers and had the vocal qualities associated with a positive customer experience,[27] this points to a view that women at the switchboard were performing clerical, customer service work as a mainstay of their position—regardless of how the managers conceived of the concomitant operational process of switching wires.

Outside of the manager's view of the telephone operator, the electrical literature cast women as technologically unskilled, mirroring the Sparton advertisement in its distaste for women and technology. Marvin concludes that

> women in the stories related by professional journals rarely learned from their mistakes in using technology, or corrected their misconceptions. They were sheltered from all such practical demands by an old and sturdy code of chivalry that required the protection of their ignorance by men. Beneath this habit of indulgence was the more important and even insistent point that women's use of men's technology would come to no good end. In keeping with the general portrait of women as impotent, even their most exasperating errors usually had little more consequence than

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[27] There is a good deal of literature on the female voice and its historical relationship to customer service and other forms of technologically-based assistance and service. See Nina Power, "Soft-Coercion, the City, and the Recorded Female Voice, Nina Power, 7 December 2017, ninapower.net/2017/12/07/soft-coercion-the-city-and-the-recorded-female-voice; A. O. Roberts, "Echo and the Chorus of Female Machines," *Sounding Out!*, 2 March 2015, soundstudiesblog.com/2015/03/02/echo-and-the-chorus-of-female-machines/.

inconvenience to themselves, of which they were varyingly aware, and some slightly larger measure of frustration and inconvenience for their male protectors.[28]

Despite these contingents, companies like Bell Telephone only hired female operators by 1900. After the company experimented with women's labor in 1888, "Boys were found to lack tact and patience; unlike women, they were seldom polite and submissive to irate or rude subscribers but 'matched insult for insult.' Furthermore, Bell said, boys were 'hard to discipline' and were not as conscientious and patient as women."[29] So, despite the notion in the electrical literature that women were unable to use the telephone properly (never mind the switchboard), women not only excelled at the job, but in keeping with their creative uses of media technologies, they also transformed and adapted it.

Michèle Martin argues that when women used the telephone, they brought about widespread changes for telephone companies because they did so in ways that differed from men. "Women were resisting the proposed order; this resistance, though defensive in the sense that someone was attacking the rationality of their social practices, was nonetheless active and efficient: women's activities opposed telephone companies' prescribed uses of the telephone."[30] Martin acknowledges that women's uses of the telephone were "active and efficient" and "forced some important changes upon the planned pattern of distribution and uses of telephone systems." However, she is wary of giving the women's actions "a romantic connotation to 'resistance' and 'opposition,'" because their actions were "not generally translated into spectacular actions purposely directed against telephone companies. It was

[28] Marvin, *When Old Technologies Were New*, 23.
[29] Sangster, "The 1907 Bell Telephone Strike," 110.
[30] Michèle Martin, *"Hello, Central?": Gender, Technology, and Culture in the Formation of Telephone Systems* (McGill-Queen's University Press, 1991, 5).

mainly unconscious, and came from more or less small, independent groups."[31] While I agree that it is important not to romanticize "resistance and opposition," it is also crucial to acknowledge that small acts of resistance and new ways of using media technologies are essential to changing larger historical patterns over time. This point is evident in Martin's example of altered telephonic distribution networks (5). Moreover, after women entered the labor force as telephone operators, the women of Bell Toronto organized a wage strike against the company in 1907 that, although was unsuccessful in providing the wage increase the workers demanded, nevertheless impacted the way Bell Telephone conducted business.[32]

I now turn to video conferencing platforms like Zoom that bear the media history of women's technological labor. Consequently, in using online platforms in new ways for the majority of the workforce, they harbor the idea that women are not capable users of media or technology. The computer screen interface combined with a new technological platform ensures this. Such culturally-embedded ideas about women's perceived lack of skill persist with various media formats, but when women appear and communicate on-screen, another layer of screen history emerges. When women are onscreen, the ideals of cultural appearances and their associated, entrenched discourses are hard at work. Laura Mulvey famously describes this as women's "to-be-looked-at-ness," but the nature of the video conference alters the stakes, for participants and viewers now look and talk back in defiance.[33] The illusion of appearance and liveness that the video conference renders

[31] Martin, *"Hello, Central?"* 5.
[32] Sangster, "The 1907 Bell Telephone Strike," 109–110.
[33] Laura Mulvey, "Visual Pleasure and Narrative Cinema, " *Screen*, vol. 16, no. 3 (1975): 6–18.

dramatically differ from the one early cinema proffered (critiques of Mulvey's theory of Classical Hollywood Cinema aside).

Feminist film and media theorists then engaged in rigorous scholarly conversation and took on the project of defining women's relationship to the cinematic screen. They emphasized spectatorship, filmmaking practices, and later, participatory cultures as actions that hold the power of resistance. Each of the categories mentioned above figures into the Zoom screen as a space of possibility for resistance and containment since any given media technology is never one thing for all users or viewers. This historical background brings me to the primary pandemic episode of *All Rise*—the first network television show to air a newly filmed episode after Hollywood's COVID-19 restrictions were in effect. While the series later featured pandemic episodes filmed on set with social distancing and masking requirements in place, the first episode is unique in its approach. It used the video conferencing screen as the screen format and the production method for the televised episode. I argue that the pandemic episode brought to the fore issues of labor in media creation at the same time as it magnified gendered labor in the legal profession. When these elements converge, the episode lends itself to a more powerfully activist position than other episodes in the series achieve. Further, the episode emphasizes how labor of many kinds often goes unnoticed, as the effects of the pandemic illustrate for both Hollywood workers behind-the-scenes and legal professionals who work in the US courts.

All Rise, Pandemic Pandemonium, and Judges Still on the Bench

In the more recent history of network television series focused on women judges, there have been two polarized, prevailing notions about gender: namely, that when a woman serves on the bench, she is either an upstanding model of professional perfection who struggles with her personal life (as did Judge Amy Gray of the popular CBS legal drama *Judging Amy* [1999–2005]) or she is entirely unfit to serve in a courtroom, but has a stable personal life.[34] So stark are the contrasts between the representation of the judge in one such example, *Bad Judge* (NBC, 2014–15) starring Kate Walsh as Judge Rebecca Wright, and *All Rise*'s Lola Carmichael, that it brings to mind early Hollywood representations that depicted women through similarly cast binaries.[35] While there has been a significant amount of work on representation as a contested area with regard to its impact on spectatorship, as the previous chapter emphasizes, it is still important to consider the potentials—especially when a series depicts someone who is underrepresented in society or in a professional arena.

Bad Judge's Rebecca Wright exemplifies an opposing personality type from judge Carmichael's careful, studied approach to her position on the LA Van Nuys Criminal Court. Wright routinely arrives at the fictional Los Angeles County Van Nuys Municipal Criminal Court late and hungover, talks to her colleagues unprofessionally, sleeps with staff in her office, listens to loud music through headphones in her workplace, and breaks every

[34] Laura Krugman Ray, "From the Bench to the Screen: The Woman Judge in Film," *Cleveland State Law Review* (2012): 681, 682. See also Taylor Simpson-Wood, "The Rise and Fall of *Bad Judge*: Lady Justice is No Tramp," *Texas Review of Entertainment and Law* 17, no. 1 (2017): 17.

[35] For example, see Molly Haskell, *From Reverence to Rape: The Treatment of Women in the Movies,* second edition (Chicago: University of Chicago Press, 1987), which is one of the first books in film and media studies to consider the stakes of representations for women on-screen.

professional rule in the book.[36] The sexist representation of Wright quickly received the attention of women lawyers who, upon seeing their representation on a television comedy (of which there are few and far between that focus solely on a female judge) wrote to NBC to protest the series. The President of the Florida Association for Women Lawyers (Miami-Dade FAWL) wrote a scathing letter to the Chief Executive Officer of NBC on 14 October 2014:

> Over the past 35 years, the mission of Miami-Dade FAWL has been to promote the advancement of women in the legal profession; unfortunately, *Bad Judge* is a step in the wrong direction. . . .
>
> Our organization understands that *Bad Judge* may be intended to be hyperbole, but we nonetheless find it damaging to women in the legal profession. The show is not only offensive to the many women judges who serve with the highest levels of integrity but also dangerous to the extent that those who hold preconceived notions about women judges will find their sexist beliefs reaffirmed. . . .
>
> In this country, (i) only four of the 112 Justices ever to serve on the Supreme Court have been women; (ii) less than 35% of the active judges sitting on the thirteen federal courts of appeal are women; (iii) only 32% of the active U.S. district court judges are women; (iv) there are still nine federal district courts around the country where there has never been a female judge. As a result, these types of 'comedy' shows depicting women in such a negative light, even in the name of 'humor,' have no proper place. We urge you to pull the show from prime-time television.[37]

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[36] For a detailed description and analysis of all of the professional rules Wright breaks, see Simpson-Wood, "The Rise and Fall of *Bad Judge*," 15–25.

[37] Deborah B. Baker, "Re: Bad Judge on NBC," Florida Association for Women Lawyers, Miami-Dade Chapter, 16 October 2014, letter to Steve Burke, Chief Executive Officer, ncwba.org/wp-content/uploads/2014/10/Miami-Dade_FAWL_letter_to_NBC.pdf.

The network ultimately canceled the show after one season, citing both Baker's letter and low ratings.[38] The letter is essential in the context of *All Rise* because it brought the issue to the attention of the airing network in a way that had an impact that extended beyond the series and the network. In moving the needle in the opposite direction for *All Rise*, which aired five years later, Carmichael typically only makes mistakes that are not her fault. Mistakes result from community misunderstandings, colleagues' professional shortsightedness, and structural inequalities. Further, this scenario demonstrates how the activist campaigns of women in the legal profession are still integrated with popular culture in ways that have lasting reverberations for network television.



Figure 3. Judge Rebecca Wright (Kate Walsh) listens to music on her headphones as she walks the halls of the Los Angeles County Van Nuys Criminal Circuit Court in *Bad Judge* (CBS, 2014)

[38] Debra Cassens Weiss, "'Bad Judge' TV Show is Canceled After Lawyer Group Protests," *ABA Journal*, 4 November 2014, www.abajournal.com/news/article/bad_judge_tv_show_is_canceled_after_lawyer_group_protests.

For viewers familiar with Walsh portraying a working professional on television, her representation of a judge who was ostensibly good at her job is jarring. Only by the network's descriptive metric was Wright good at her job—audience members surely did not think she was at the top of the judicial profession. Viewers know Walsh best in her role as Dr. Addison Montgomery, Ob/Gyn, on the Shonda Rhimes-produced series *Grey's Anatomy* (ABC, 2005–) and in the spinoff *Private Practice* (ABC, 2007–13). That Walsh's performance of Montgomery, a beloved character whose skill with surgery and patient care place her at the top of her specialty, is utterly convincing and was an ongoing role when she starred as Wright. This conflict of role personas, which many viewers of *Bad Judge* were aware of, further undermines Wright as a judge.[39]



Figure 4. Kate Walsh as Dr. Addison Montgomery on *Private Practice* (ABC, 2007–13)

[39] Viewers of *Bad Judge* were aware of Walsh's concomitant role on the cast of *Grey's Anatomy* because of her regular casting in seasons 1–8 and her transition to the starring role of *Private Practice*. A main draw for these character-driven shows is the star—Walsh carries *Private Practice* and *Bad Judge* in the leading role. She received several television ensemble awards for *Grey's Anatomy* and a People's Choice Award for "Favorite TV Drama Actor" in 2011.

Perhaps this was part of the point in casting Walsh from the network's perspective: Walsh is wrong for the role for audiences familiar with her as Montgomery, so her appearance as Wright provokes tension inherent in Wright's character. Wright knows that she is wrong most of the time; however, she chooses to go against conventions. The viewers' knowledge that behind Wright's persona is the competency of Montgomery shining through Walsh's star power paints Wright doubly as a rebel more than someone simply oblivious to professional standards of legal practice.

This brings me to *All Rise*'s judge Lola Carmichael and the pandemic episode. By May 2020, twenty episodes out of twenty-one in the first season had already aired in the show's original format. Carmichael was everything Wright was not: She dressed professionally for work, her mind was sharp as a tack, and she reached sound legal conclusions by thinking creatively, even while she was sometimes castigated by colleagues and her community for practicing "judicial activism." For the first eleven episodes, she did not make any unresolvable errors in the timeframe of a single episode. However, during the eleventh episode, she faces her first significant professional challenge. In many ways, this episode defines the basis of Carmichael's thinking about being a female African-American judge and how that impacts her work on the court. It also sets up audiences to better understand the contours of the pandemic episode, which directly takes on questions of labor and difference. In the episode, Carmichael is accused of "judicial activism"—something real-life conservative commentators believe is wrong because it suggests that a judge is pursuing an ideological agenda while on the bench.

For Carmichael, the consequences of this accusation are that she must appear before the Bar Association's Commission on Judicial Performance. At issue are claims from her colleagues that she is partial to Defendants in her courtroom.[40] If the Commission rules that she is guilty after hearing her testimony, she could be publicly censured or removed from the bench. Carmichael's testimony is a strong statement about gender and racial difference. Standing before the Commission, she provides her testimony:

> CARMICHAEL: Can you cite one instance that would lead you to believe that justice is not my ultimate goal? Or do you simply object to the fact that I go about the pursuit of that justice in a different way? Members of the Commission, you have heard a lot about how I am as a judge. I do things differently, which is to say I do things differently than *you*. And you can ask me questions all day—but that is the core truth of it. *Difference*. I look at the world differently because of who *I* am. Because of how I look and how the world looks at me. I am the daughter of a paralegal father who taught me to love the law and an activist mother who taught me to fight for what is right. In my ten years as a prosecutor, I fiercely opposed crime, but I also saw, firsthand why people commit crimes. I see people. And yes, the law, through a different lens. It is not a choice. It is not activism. It is who I am . . . The question is: Are you going to respect me enough to accept our differences?

[40] See Chapter 3 for how this accusation is often baseless and plays out in judicial confirmation hearings in ways that are tied to race.



Figure 5. Judge Lola Carmichael addresses the Bar Association's Commission on Judicial Performance in *All Rise* (CBS, season 1, episode 11, "The Joy from Oz")

While earlier episodes address race, gender, and sexuality in robust terms, they do not lay out Carmichael's understanding of her own identity in relation to her judicial status. Even for the United States Supreme Court women, this has long been an area of contestation in public statements. Justice O'Connor famously said, "A wise old woman and a wise old man will reach the same conclusion." However, this fundamentally erases the role of gender or identity differences in legal opinion. By contrast, Justice Sonia Sotomayor aligns more with Carmichael's concept of gender difference: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life."[41] Conservative commentators called Sotomayor, like Carmichael, a "judicial activist" when her ideas about identity and judicial decision-making

[41] Nina Totenberg, "How Women Changed the High Court . . . And Didn't," *NPR*, 24 June 2010, www.npr.org/templates/story/story.php?storyId=128079684; Charlie Savage, "A Judge's View of Judging Is on the Record," *New York Times*, 14 May 2009, www.nytimes.com/2009/05/15/us/15judge.html.

circulated widely before her confirmation hearings.[42] Because of the accusations against Sotomayor's ideas about identity and the work of being a judge, she had to moderate her response to a similar question during her confirmation hearings to move towards the center of political thinking.[43] Irin Carmon points out that "her critics homed in on the world *better* and not the very next sentence explaining her point: 'Let us not forget that wise men like Oliver Wendell Holmes and Justice Cardozo voted on cases which upheld both sex and race discrimination in our society.'"[44]

In the context of the pandemic episode and the series, asking what difference racial and gender difference make for a female judge is paramount. It opens the door to investigate some of the political issues the episode raises and the pandemic's impact on Hollywood labor conditions and women sitting on the bench. The episode opens with a monologue by fictional radio DJ Tailwind (Dorian Missick), whose voice punctuates documentary photographic images of Los Angeles during the early days of the pandemic—empty streets and essential workers fill the screen.[45] DJ Tailwind's voiceover reminds viewers of the real-life DJ D-Nice

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[42] Savage, "A Judge's View of Judging Is on the Record." See also Joshua Takano Chambers-Letson's excellent analysis of Sotomayor's confirmation hearings from a performance studies lens in "Embodying Justice: The Making of Justice Sonia Sotomayor," *Women and Performance: A Journal of Feminist Theory* 20, no. 2 (2010): 149–72. This issue was also a concern for Justice Ruth Bader Ginsburg before her confirmation hearings because of her work with the ACLU Women's Rights Project.

[43] Chambers-Letson, "Embodying Justice," 149–72.

[44] Irin Carmon, "What can the Most Liberal Justice Accomplish on the Most Conservative Court in Decades?" *Intelligencer*, 3 February 2021, nymag.com/intelligencer/article/reintroducing-sonia-sotomayor.html?fbclid=IwAR0IiGzWjxIOZdZZdpcG4HIQVseBbFdngZsnEa2vEXZ7BdKtI6SrRUGaWsQ.

[45] A cinematographer who drove solo around the city with a camera documented the photographic images of Los Angeles presented at the beginning of the episode. Denise Petski, "'All Rise': Dorian Missick Joins Virtually Produced Social Distancing Episode of CBS Drama," *Deadline*, 21 April 2020, deadline.com/2020/04/all-rise-dorian-missick-virtually-produced-social-distancing-episode-cbs-drama-1202914266/.

(Derrick Jones) whose Instagram Live music events of 2020 blossomed into large online music gatherings that included Oprah Winfrey, Michelle Obama, Stevie Wonder, Missy Elliott, and the then-Presidential-candidate Joe Biden.[46]

> DJ TAILWIND: Good morning, good morning, good morning, Los Angeles! DJ Tailwind turning with the burners, and it is a brand-new day. Not like any of us know what day it is, anyway. So, what are fine people on the frontlines—hospital workers, first responders, couriers, and truck drivers, the men and women stacking food on our shelves, to the sick and the recovering, to our brothers and sisters behind the prison walls—good morning my friends. You are not forgotten. You are *not* forgotten.



Figure 6. Paramedics in Los Angeles care for incoming COVID-19 patients in photographic series that appears at the beginning of the *All Rise* Season 1 finale, "Dancing at Los Angeles" (CBS).

The DJ's opening monologue immediately conjures the formal opening sequence of Spike Lee's *Do the Right Thing* (US, 1989). The film centers building racial tensions in the

[46] Gary Gerard Hamilton, "DJ D-Nice Unites During the Pandemic, One Beat at a Time," *Los Angeles Sentinel*, 26 March 2020, lasentinel.net/dj-d-nice-unites-during-the-pandemic-one-beat-at-a-time.html.

Bedford-Stuyvesant neighborhood on a hot summer day. The tensions are ultimately explosive for Mookie (Spike Lee) (figuratively and literally since the film ends in a fire), an African-American who works at Sal's Pizzeria, and Sal (Danny Aiello), the Italian owner of the restaurant. Like the opening voiceover in *All Rise*, radio DJ Mister Señor Love Daddy (Samuel L. Jackson) opens the film with a poetic monologue, ultimately setting the stage for what is to come onscreen:

> MISTER SEÑOR LOVE DADDY: Wake up. Wake up, wake up, wake up! Up you wake, up you wake, up you wake. This is Mister Senor Love Daddy, your voice of choice. The world's only twelve-hour strongman on the air, here on We Love Radio, 108 FM. The last on your dial, but first in your hearts, and that's the truth, Ruth. Here I am. Am I here? You know it. It you know. This is Mister Señor Love Daddy, doing the nasty to your ears, your ears to the nasty. . . .

While the monologues bear resemblance through what they aim to do (situate viewers in the mise-èn-scene), and in their thrice repeated clarion call to meet the new day, they also function as commentary. Both *Do the Right Thing* and "Dancing at Los Angeles" position identity differences at the center of plots that focus on real world issues concurrent with the production, enabling viewers to think analyze race and gender within their historical contexts. At the time of release, *Do the Right Thing* was so controversial among commentators and critics that some "warn[ed] that it would provoke riots" because of the way it portrays racial tensions.[47] Despite its attention to race in ways that have made it a film

[47] A. O. Scott and Manohla Dargis, "How Does 'Do the Right Thing' Hold Up?" *New York Times*, 8 May 2020, C7.

that is part of a critical canon in media studies, it historically received less positive attention with regard to the gender relations established in the film.[48]

By the time "Dancing at Los Angeles" aired, the series was no stranger to taking on racial tension. For example, in an earlier episode, Carmichael joins a public protest for racial justice and places herself between a white police officer with a raised gun and a young African-American woman who was looking for her cell phone in her backpack. The tensions of "Dancing at Los Angeles" are riddled with the anxieties of the early days of the pandemic and its intersections with race and gender on and off-screen. Executive Producer Len Goldstein explains, "We were thinking they [the characters on the series] would probably be figuring out how to handle the justice system, and they would probably be checking in with each other like we're doing. From those initial conversations we started to think, 'What if there was a way to be able to achieve a season finale and tell a satisfying story using the technology of the times?"[49] The episode's plot follows from that premise as Carmichael presides over a hearing without a jury hosted on a video platform. Her boss, Judge Benner (Marg Helgenberger), instructs Carmichael remotely, and the rest of the ensemble cast tries to grapple with isolation and working from home, just as the actors are. A key plot point focuses on the prison system's inability to handle COVID-19 infections, the inherent risks incarceration poses to inmates, and the barriers to receiving legal counsel. Legal counsels are either at heightened risk of exposure through prison visits or are at a disadvantage in their

[48] Lee attempted to remedy this critique in his later works, including in the Netflix series *She's Gotta Have It* (US, 2017), based on his 1986 film by the same title.
[49] Joe Otterson, "'All Rise' Team Talks 'Juggling Chainsaws' with Quarantine Episode," *Variety*, 4 May 2020, variety.com/2020/tv/news/all-rise-quarantine-episode-coronavirus-cbs-1234595579/.

ability to communicate with clients because they are not allowed to see them before trial (if the trial managed to retain a docket date).[50]

The episode then sets out to take on the pandemic, the justice system, and its own newly found production issues as it transitioned from on-set filming with an ensemble cast to using WebEx, Zoom, and FaceTime as the only modes of creation (Otterson, "'All Rise' Team Talks 'Juggling Chainsaws'"). The production crew dropped off sanitized costumes, props, lighting, and other equipment for actors to use at home in order to maintain the level of production quality audiences were used to seeing on the show (Otterson, "'All Rise' Team Talks 'Juggling Chainsaws'"). The production crew and actors achieved this by using the technology they used every day, namely, MacBook Pros or MacBook Airs and iPhones.[51] In order to support the actors' online connectivity, the production department

> assisted with Wi-Fi hot spots, ethernet cables, and Google Nest units for those with weak internet signals or a need to be in several parts of their homes. All actors received two small battery-powered ring lights to attach to their computers to shape

[50] In addition to the rapid viral spread associated with pandemic incarceration and the exacerbated overcrowding in prisons, COVID-19 placed a heavy burden on the US justice system, and court dockets were mired by delays. For example, Alia Nahra reports, "In March (2021), Georgia's Fulton County estimated that it would take 36 months and $60 million to clear its backlog of approximately 10,000 cases. A state court in Massachusetts that reopened in April reported a backlog of over 3,700 cases. . . . Unfortunately, these attempts to protect speedy trial rights and prevent unnecessary court delays have not been widely embraced. Just last month, a federal appeals court ruled that criminal defendants have neither been robbed of their right to speedy trials nor unconstitutionally forced to remain behind bars because of the trial delays instigated by the pandemic."
Alia Nahra, "How Covid-19 Is Still Battering the Criminal Legal System," Brennan Center for Justice, 16 June 2021, www.brennancenter.org/our-work/analysis-opinion/how-covid-19-still-battering-criminal-legal-system.

[51] Maria Elena Fernandez, "Behind the Scenes: How *All Rise* Made a Brand-New Episode in the Middle of a Pandemic," *Vulture*, 4 May 2020, www.vulture.com/2020/05/all-rise-cbs-coronavirus-episode.html.

> how the light hit their faces. Straight Up Technologies, a California-based IT company, designed the architecture for connectivity, feeding all the different cameras in all the various households to a video village where producers could watch, Michael Robin could direct, and the first assistant director could manage virtually.[52]

With cast and crew set up at home with filming equipment, actors had to reconcile that their place of residence was now a film set, which required adjustments and creative media practices.

This brings me back to women's media, technological discourses, and labor issues. When work comes home, it merges with the domestic space. In doing so, it disproportionately affects women who are expected to orient themselves to both capitalist labor and domestic labor with equally powerful productivity. That the space of mediation produces a kind of television similar to what early commentators believed it might be (teleconferencing, as Galili describes earlier) is also important. It invokes, or perhaps provokes, those long held ideas and discourses about women and technology that position women in an inferior place in relation to their media expertise. The spatial orientation or place of media production changed, and with it, an altered set of cultural underpinnings are at work for cast and crew as well as for viewers. Part of her work on the episode included Missick restaging the interiors of her house to align with Carmichael's:

> As Missick led producers and Robin through a virtual location scout of her home, she found herself questioning her decorating choices—*Why did I paint that wall?*—and sometimes disagreeing about the best areas to shoot. 'Lola's house is a mid-century modern estate. They wanted to duplicate the wood, but my house is an Arts and

[52] Fernandez, "Behind the Scenes."

> Crafts style house,' she said. 'So we just found a space that had a lot of wood. But then came staging it! So I'm dragging furniture from different parts of the house to make my dining room look like an office.'[53]

Similarly, when the costumes arrived from the designer, there was further blending of labor forms: "'When it came to wardrobe, Simone does not dress like Lola—so our costume designer had to quickly find some things to get over to me,' said Missick. 'There was a moment of [initial anxiety]: How long was it in transit? Which fabrics are okay? Should I stick it in the dryer? Do I need to spray it with Lysol?'"[54] While these are public health questions premised on the transmissibility of COVID-19 through mail systems and the possibility of fabric contamination, it combines the labor of homemaking with the labor of media creation, just as feminist media-makers did before her and continue to do today.



[53] Fernandez, "Behind the Scenes."
[54] Fernandez, "Behind the Scenes."



Figure 7. Martha Rosler's *Semiotics of the Kitchen* (1975) (top), Barbara Hammer's *Jane Brakhage* (1974) (middle), and Anne Charlotte Robertson's *Five-Year Diary* (Reel 22, "A Short Affair and Going Crazy," 1982) (bottom).

So prevalent is the type of combined domestic and creative labor that Robertson's quotation "I'm washing my dishes and making a movie" signals for feminist media production that it is a hallmark. When Martha Rosler stands in her kitchen in an apron and wields a rolling pin in *Semiotics of the Kitchen* (1975), the association of women and domestic spaces in film has already reached satirical reflexivity. For filmmakers and artists

including Chantal Akerman, Marjorie Keller, Peggy Ahwesh, Carolee Schneemann, Agnès Varda, and Barbara Hammer, among others, the domestic realm fused their film and video work with the domestic sphere, signaling its centrality to women's media production. In some cases, that work resulted in film and video that critiqued a culture that does not value women's labor, as many of these films further demonstrate through inability to procure a production budget despite producing successful work. However, in other cases, it was intended to document lives and labors that would otherwise be lost to history. Their work emphasizes women's facility and creative ways of working with media technologies to make a lasting impact on how viewers understand gendered experiences.

In the examples featured in the figures above, the kitchen is a signifying space of women's labor and a site of filmmaking labor. It is the place where culturally expected labor (like cooking and washing dishes) and unexpected labor (the labor of filmmaking) converge. For example, in Chantal Akerman's *Jeanne Dielman, 23 Quai du Commerce, 1080 Bruxelles* (1975), a film that focuses on the repetition of Jeanne's (Delphine Seyrig) daily labor and its inherently restrictive qualities, Jeanne's extended cooking routines seem to take place in real-time. The duration of such repetitive, ongoing tasks leads to Jeanne's slow unraveling. Viewers familiar with Akerman's filmmaking know that some of her work is about processing trauma as it passes from one generation to the next. She used *Jeanne Dielman* as a way to tell a story of survival that her mother, Natalia Akerman, would not share with her after World War II.[55] Nearly forty years later, in Akerman's last film, *No Home Movie*

[55] Akerman says, "Many things I created are, I think, related to what happened to her. She never spoke about it. I thought for a while that I was speaking on her behalf, and then sometimes, I'd think I was speaking against her. I don't know if to throw a film like *Jeanne Dielman* in her face was very generous of me, because it's true, she saw herself in it. As well

(2015), audiences finally meet Akerman's mother. Perhaps one of the most revealing things about Akerman's *No Home Movie* is what the audience sees in the kitchen: Despite Akerman's protests that she wants to stop talking about *Jeanne Dielman* because she made so much excellent work after it, she herself must return to it—in her mother's kitchen—where labor and creative practice meet. The images below illustrate Akerman's exceptional attention to detail, for viewers who have spent at least 3 hours and 22 minutes of runtime with Jeanne Dielman will never forget the square-tiled kitchen and the many minutes we see Jeanne sitting at the table in the kitchen.



as all my aunts and many people from that generation, many people from that background—women.

Chantal Akerman quoted in an excerpt from *I Don't Belong Anywhere* (dir. Marianne Lambert, US, 2015), *YouTube*, 25 November 2019, www.youtube.com/watch?v=M6wokASicg8.



Figure 8. Jeanne Dielman (Delphine Seyrig) peels potatoes in Chantal Akerman's *Jeanne Dielman, 23 Quai du Commerce, 1080 Bruxells* (1975) (top), and Akerman's mother sits in the kitchen in *No Home Movie* (US, 2015) (bottom).

What this means for a show like *All Rise* as it confronts the pandemic is a bifurcation between the realities of women's domestic and capitalist labor, facing entrenched ideas about women's technological skills, and at the same time, demonstrating creativity and resistance in the face of those pressures and discourses. While filming from home on her computer was new for Missick, she used creative strategies to adapt to her new setup. For example, one of the strategies she used to make keeping eye contact with her castmates easier was taping their photos to the top of her laptop screen when they were in a scene together.[56] The production crew also had to adapt creatively:

> Robin [the executive producer who directed the episode] says that he would get all the actors in a particular scene onto a platform like Zoom, talk through things, then turn off his camera and allow them to perform. Executive producers Spottiswood, Goldstein, and Dee Harris-Lawrence also popped in—using audio only.

[56] Otterson, "'All Rise' Team Talks 'Juggling Chainsaws' with Quarantine Episode."

There would be these omniscient voices that would appear and give thoughts on the scenes. We've already talked about how to [continue to] do that moving forward," Robin says, with a laugh.[57]

For the below-the-line production crew, including technicians, designers, cinematographers, and others, labor issues concerning extended working hours, living wages, meal breaks, rest periods, and better compensation from streaming platforms were also front and center during the pandemic.[58] Unfortunately, the conditions they faced were not yet recognized by Hollywood actors or the public during the earlier days of COVID-19. As the pandemic progressed, below-the-line workers gathered in preparation for an IATSE (International Union of Stage Employees) union strike arising from unfair labor conditions if a new contract settlement could not be reached with the Hollywood studios. Ultimately, the strike was averted after the Hollywood studios reached an agreement with IATSE to improve working conditions on the fronts they lobbied for.

In August 2019, *All Rise* show creator, co-showrunner, and executive producer Greg Spottiswood came under fire from seven of the nine screenwriters who ultimately quit working on the show because of his unprofessional conduct and how he wanted to portray issues of race and gender. "The writers who left the show told the *Times* that Spottiswood ignored or rejected attempts to have Black characters speak in an authentic way or have

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[57] Otterson, "'All Rise' Team Talks 'Juggling Chainsaws' with Quarantine Episode."
[58] Alison Durkee, "An IATSE Strike Would Be One of the Biggest in Hollywood History—Here's How Past Ones Measure Up," Forbes, 6 October 2021, www.forbes.com/sites/alisondurkee/2021/10/06/an-iatse-strike-would-be-one-of-the-biggest-in-hollywood-history---heres-how-past-ones-measure-up/?sh=10eb2e131b44; Katie Kilkenny, "IATSE and Studios Reach Tentative Area Standards Agreement Deal" *Hollywood Reporter*, 26 October 2021, www.hollywoodreporter.com/business/business-news/iatse-area-standards-agreement-tentative-deal-reached-1235037332/.

storylines that weren't racially offensive or veered toward stereotypes. 'We had to do so much behind the scenes to keep these scripts from being racist and offensive,' [Shernold] Edwards told the *Times*."[59] Nearly two years later, after a failed attempt at sensitivity training and an investigation into his conduct, he was fired from the show, and his talent agency, APA, no longer represents him.[60] As *Deadline* reports, "the climate in the (now virtual) writers room did not improve in season 2, and some writers were reportedly offended by remarks Spottiswood allegedly made that were perceived as insensitive, especially for the writers of color. Complaints about Spottiswood's behavior led to a new investigation by Warner Bros. TV, which resulted in his dismissal."[61] The show was briefly left in limbo after CBS canceled the show in May 2021 before OWN officially picked it up for production in September 2021 starting with season 3. Simone Missick will now serve as an executive producer in addition to her role as Judge Carmichael.[62] This will be her first television executive producing credit.

While the series touches on the difficulties of figuring out how the justice system will function during a pandemic and its impact on people awaiting trial, and those who represent them, the show's development in a timeframe closer to real-time than network television production typically operates prevents it from taking a larger view of how professionals

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[59] Abid Rahman, "'All Rise' Creator, Co-Showrunner Greg Spottiswood Fired After Misconduct Investigation," 25 March 2021, www.hollywoodreporter.com/tv/tv-news/all-rise-creator-co-showrunner-greg-spottiswood-fired-after-misconduct-investigation-4155834/.
[60] Rahman, "'All Rise' Creator, Co-Showrunner Greg Spottiswood Fired."
[61] Nellie Andreeva, "'All Rise' Creator/EP Greg Spottiswood Fired by Warner Bros. Over Misconduct Allegations, Dropped by APA," *Deadline*, 24 March 2021, deadline.com/2021/03/all-rise-creator-executive-producer-greg-spottiswood-fired-misconduct-allegations-offensive-comments-writers-room-1234721403/.
[62] Joe Otterson, "All Rise' Revived at OWN for Season 3," *Variety*, 29 September 2021, variety.com/2021/tv/news/all-rise-own-season-3-1235077338/.

working in the system struggled.[63] At the end of Season 1, viewers see Carmichael grappling with the idea of what constitutes a fair trial, and her difficulty with work conducted via online platforms. In Season 2, the show begins to address the specific hardships of the legal system for women when, in a plot twist, the show provides viewers with the surprising revelation that Carmichael is pregnant. She must now balance being a first-time mother with an ongoing pandemic and her job. So too must the women judges and legal professionals working in the court system balance these priorities, all while washing their dishes and creating Court TV. Or, some are still on the bench conducting business in person.



Figure 9. In Season 2, Lola Carmichael convenes a jury trial with Sharri Kansky, her legal assistant. Both are wearing masks, and there is a plexiglass barrier between Carmichael and Kansky on one side, and others in the courtroom appear on the opposite side with plexiglass between them.

[63] Simone Missick reported that the show originally had a different production schedule with plotlines that did not come to fruition because of the pandemic. "[The] pandemic shifted schedules for everyone, really. Shows that we're [sic] supposed to shoot over the summer and come out in the fall, they're now shooting and releasing simultaneously, in the later fall and winter. . . I know that at the end of Season 1, there were supposed to be a lot of relationship changes that did not happen because of COVID." Christina Radish, "Simone Missick on How 'All Rise' Season 2 Handles COVID and Black Lives Matter," *Collider*, 20 November 2020, collider.com/simone-missick-all-rise-season-2-interview/.

Season 2 demonstrates some of the difficulties working mothers faced during the pandemic through Carmichael's late working hours and slight relationship strain; however, it falls short of emphasizing the hardship that the situation placed on working women in the legal system. Carmichael gives birth to her daughter Bailey and then goes on extended maternity leave because her daughter was born earlier than expected. While she mostly avoids work, she checks in with Sharri and others at work regularly. When her leave is over, she transitions back to working in person with relative ease. Her husband Robin stays at home and cares for their daughter because his job granted him family leave from the FBI for most of the season.

While falling short of displaying the full extent of Carmichael's new tasks, the show only mentions other labor issues related to the pandemic in passing. In season 2, episode 7, Emily Lopez, the strong-willed Public Defender who is a recurring character, has the following exchange with her office assistant after summarizing the following article sitting on a table:

> EMILY: Teleworking Public Defender who refuses to *step foot* in the physical court for his trial!
>
> CAROL: Unfortunately, yes.
>
> EMILY: Huh. Carol, I have an important prelim today, all right? This handoff trial is for a fourth DUI—my client is up for robbery.
>
> CAROL: Well, trials come first.
>
> EMILY: Right. So, this PD gets to do half the work for the full amount of pay, and I have to do double the work without double the pay. In what universe is that fair?
>
> CAROL: The COVID universe.

Emily's point that she is paid less for what she perceives as more labor is well-taken, but it obscures the labor that is present while working from home even as it points to inequities in the way the court system deals with disparities in working accommodations and labor conditions. In a series that aims to draw attention to issues of race and gender, the series' lack of detailed attention to the labor issues the courts faced is a feminist issue. Much as Shonda Rhimes series often cater to networks by glossing over race as a complex part of storylines, season 2 of *All Rise* evacuates the series of the gendered labor of working as a judge in the legal system as a new mother. In this sense, it comes to the network with diverse female representation but lacks attention to the nuances of women's labor and what is at stake for women working in the court system.

Creative Media Production and Women's Labor at Home and on the Bench

In the legal system, women were impacted particularly hard by the pandemic, as they were on a more global scale. For women presiding over trials, this not only meant that they could either be working online at home, as Carmichael demonstrates in the first pandemic episode or in person, as Carmichael demonstrates throughout Season 2. Both cases have their own complications that create burdensome situations, especially for those who have family members living in the same household, and for mothers, who usually take on more than 50 percent of caregiving labor. At the beginning of the pandemic, school-aged children were learning from home, and that also required extra hours of dedicated attention.

Further, the courts have traditionally been averse to certain kinds of technological advancement, so attempts to integrate new technology into the system quickly would surely be met with issues remediating in-person trials into virtual trials on short notice. Consider the

US Supreme Court's refusal to allow cameras in the courtroom or the widely-circulated, endearing clip of the lawyer who could not turn off the kitten filter his granddaughter had turned on in his Zoom preferences, resulting in an image of a cat that covered his entire face and looked like it was talking as he tried to participate in a hearing.[64] Allowing judges to telecommute for trials is also more complex than it is for other professions because of privacy matters for clients during trials, and it is usually not allowed at the federal level. In March 2020, the Judicial Conference of the United States put out a statement on its new position on telecommuting for courtroom procedures, declaring that they

> temporarily approved the use of video and teleconferencing for certain criminal proceedings and access via teleconferencing for civil proceedings during the COVID-19 national emergency. . . .
>
> With regard to criminal proceedings, the Judicial Conference, the administrative policy-making body for the federal courts, found on March 29, pursuant to the Coronavirus Aid Relief and Economic Security Act (CARES Act), that 'emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally . . .' Under the CARES Act, this finding allows chief district judges, under certain circumstances and with the consent of the defendant, to temporarily authorize

[64] When the lawyer addresses the judge, he says, "I'm prepared to go forward with it. I'm here live, I'm not a cat." See David K. Li, "I'm Not a Cat" Video Shows Lawyer Can't Turn Off Kitten Filter During Zoom Court Appearance," *NBC*, 9 February 2021, www.nbcnews.com/news/us-news/i-m-not-cat-video-shows-lawyer-can-t-turn-n1257168?cid=sm_npd_ms_fb_ma&fbclid=IwAR1Xvw9NxtE9Arz5sqKkUE0EZhjicF9VLM3ZLwpKW4oDY5nR24z-h5OjMPo.

> the use of video or telephone conferencing for certain criminal proceedings during the COVID-19 emergency.[65]

Despite what seems to be a blanket statement covering the federal courts and their use of video platforms for trials, it was and is not as simple as the statement makes it seem.

In a four-part series of their podcast, women from the NAWJ (National Association of Women Judges) took to the airwaves to address the ongoing issues women in the legal profession face with the courts during the pandemic. The judges and legal professionals who are featured in the series emphasize the disparities present across COVID-19 protocols for various courtrooms and the heavy labor inequity women deal with. While many courts have had the ability to telework for months, allowing them to have internal meetings, hold briefings, and conduct court business, it was only in May of 2020, nearly five months after the pandemic caused court closures, that the first virtual jury trial commenced in Texas with Judge Emily Miskel's direction. Drawing lines between how the women in this series dealt with pandemic conditions and its parallels and disjunctures with *All Rise* and women's media creation illustrates women's creativity even when faced with a world disaster coupled with overwork. If we've learned anything about women's media production and women on the bench, it is that despite all of the systemic odds working against them, they find ways to make things work—even when it means using their home as a film set and a work set, attending to their children while filming and working, and sitting on the bench while in their kitchens and living rooms.

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[65] "Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic," United States Courts, 31 March 2020, www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic.

Describing how women on the bench face pandemic inequity, Judge and Executive President of NAIJ (National Association of Immigration Judges) Amina Khan (New York) says,

> Women, primarily immigration judges, have been disparately impacted. . . . The impact of the current pandemic on women judges in our immigration courts is that they need to continue to work while schools look closed, daycare and home child care has been suspended. 'I have three sons. Two of my children are at home with me, and I take care of my ninety-year-old mother. My youngest son is fourteen years old, and during this time period, I've had to oversee remote learning opportunities, as well as work on an educational curriculum for him.[66]

For judges working on immigration courts, in particular, there are times when they are required to sit on the bench in a courtroom or in their chambers. This situation poses additional challenges related to caretaking and greatly increases the risk of contracting COVID-19. Judge Dana Marks (San Francisco), President Emeritus of NAIJ, provides a detailed account of how the situation negatively affects judges:

> Judges who have handled the dockets of detained individuals have routinely been required to go to a courthouse and preside over hearings, sometimes in the same courtroom with respondents, sometimes appearing remotely from their office, but nevertheless having to risk exposure on a commute and elevator ride to a building. Family care concerns persist and are an extremely big issue for those judges and staff

[66] Judge Amina Khan interviewed in "Covid-19's Impact on Women in the Immigration Courts," NAWJ Podcast, 2 November 2020, nawj.podbean.com/.

who have child care responsibilities and for the many of us who care for aging parents.

When individuals become sick, there is a provision to utilize a crude leave from someone's sick leave but in our corps of immigration judges, there are many new judges who haven't been working long enough to build up any kind of excess leave that they can turn to for that. There are also provisions where someone can access annual leave as opposed to their personal sick leave, or access their own sick leave through a program called the Family and Medical Leave Act. But again, those options are limited in their number, and there are conditions that apply to those. There have been times where some of the judges have not been issued laptops and cannot telework. If the conditions at their normal worksite are not appropriate for in-person work, those judges are authorized a form of leave called Weather and Safety Leave. Department of Justice has also authorized up to ten hours of administrative leave for individuals who need to care for children or ill family members, but that program ends at the end of September unless Congress reauthorizes that.

In addition, the Congressionally passed Family First Coronavirus Response Act, which is called the FFCRA sometimes, requires the federal government to provide paid sick leave. They are allowed expanded family and medical leave, but only for specific reasons that are related to COVID. Those provisions, while helpful, will also sunset December 31st, 2020. These temporary payments only provide two-thirds of one salary rate during that time, which of course, is extremely problematic for families to be facing a reduction in pay while at the same time facing additional costs of perhaps having to secure private childcare in order for them to work at home,

> or private tutoring, or other support for in-home learning for the children that they have and are unable to send to school. There are certain circumstances where, if qualified, certain individuals can be afforded a reasonable accommodation. . . .
>
> And with the uncertainty of whether or not schools are going to go back in session on-site, many of our judges are really struggling.[67]

The challenges Marks describes are exacerbated by the short notice judges are often provided with about the status of their workweek or day, placing an undue burden on them to have arrangements in place for their family in case they need to go to work in person one day while their child or relative may be home alone. The lack of organization in the court system causes an extra layer of unneeded stress. Marks continues,

> Overall, there is a serious lack of available information with sufficient notice to the parties to be prepared and to be aware of whether or not proceedings are going forward. Unfortunately, the agency has not been creative or welcoming of suggestions that it has received in order to try to improve communications. Rather, last-minute Twitter announcements or stakeholder list-serves that many people were completely unaware even existed prior to the pandemic have been used—and it often simply says a court is closed with no indication—is that just for a brief two-day cleaning, or is that for a fourteen-day decontamination that's needed because of a serious and documented COVID outbreak? People are really left in the dark.[68]

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[67] Judge Dana Marks interviewed in "COVID-19's Impact on Women in the Immigration Courts," NAWJ Podcast, 2 November 2020, nawj.podbean.com/.

[68] Judge Dana Marks interviewed in "COVID-19's Impact on Women in the Immigration Courts," NAWJ Podcast, 2 November 2020, nawj.podbean.com/.

Despite such a difficult path to get to work at all, there is then the open question of how well the court is prepared to deal with pandemic conditions. While the characters and sets on *All Rise* are fully equipped with PPE (personal protective equipment), showing characters wearing masks and, at times donning additional PPE, the same is not true for real courtrooms in the US. This disparity is partly due to differences in the way industries and states handled labor practices during the height of the pandemic. While Hollywood at first was closed for production following Governor Gavin Newsom's (D-CA) shelter-in-place order, production resumed with a rigorous set of regulations that the show adhered to.[69] I further speculate that the series even left it up to actors to increase their own protection with additional PPE as they saw fit, even during filming.[70] The in-person conditions for judges were not nearly as reliable. Judge Ashley Tabbador (Los Angeles), President of the NAIJ, describes the tenuous nature of protection offered in courtrooms in response to Judge Mimi Tsankov's exclamation that, "A July 17th [2020] article from the government executive states that across federal agencies and the US military, nearly 1% of all federal personnel have tested positive for the virus. Nearly 19,000 civilian employees have contracted COVID-19 in addition to the more than 20,000 military members who contracted it. So, those numbers are

[69] To read the complete set of current guidelines based on various Hollywood labor union contracts currently in place that fall under the umbrella of the "TV/Theatrical Return to Work Agreement," see "SAG-AFTRA COVID-19 Safety Protocols," SAG-AFTRA, www.sagaftra.org/news-events/news/covid-19/covid-19-safety-protocols (accessed 1 November 2021).

[70] I note this because actors were allowed to wear PPE (Personal Protective Equipment) while delivering their lines. Some characters wore masks and additional face shields even as others removed their mask at times when they delivered lines. One possibility for the uneven way characters utilized PPE could be due to risk factors like the filming location (outdoor or indoor scenes) and personal risk.

staggering. How are employees protecting themselves at work? Are they provided with adequate PPE?"[71] Judge Tabbador replied,

> Well, the short answer is it all depends. We have had a very mixed result with the agency with regards to providing personal protective equipment. In certain courts, we've had adequate masks that have been circulated but inadequate amount of hand sanitizers or other hygiene materials. We certainly have had very extensive issues with trying to convince the agency to provide PPE such as Plexiglass—that issue is still outstanding with the agency. But I think what's more important to recognize is that when we are talking about PPE, we are not islands unto ourselves. We have to look at the totality—the whole situation. And in that regard, the agency has been quite problematic in its response. This means that the health and safety environment of all is not being equally protected across the board. It is not enough just to talk about masks, it is not enough to just talk about social distancing. It's much more complicated than that. We have had to recreate or reconstitute our health and safety committee in response to this pandemic and to urge the agency to come to the table to engage with us. And so far, they have been, frankly, stonewalling. We've had to raise issues regarding the number of people that they are triggering to come to court based on resumption of non-detain dockets, or, the continued operation of the detain dockets throughout this pandemic. We've had to raise issues regarding access to the building,

[71] Judge Mimi Tsankov in "COVID-19's Impact on Women in the Immigration Courts," NAWJ Podcast, 2 November 2020, nawj.podbean.com/.

where there is still not a uniform protocol as to taking temperatures or screening people.[72]

The vast difference between *All Rise*'s pandemic safety protocols and those in place for US courts even surprised some lawyers. In an article printed by the *American Bar Association Journal*, lawyer Adam Banner notes,

> From the opening scene of the first episode [of Season 2], I was immediately surprised by the number of masks, PPE and consistent protocols in the courtrooms. . . . I was surprised because (1) I haven't seen a show portray that level of protection and responsibility; and (2) I haven't seen a court I've practiced in provide it, either. Here in Oklahoma, there is no consistency with regard to courthouse pandemic-protection protocols. . . . Even in the most responsible courthouses I've practiced in over the last year, the most I've seen with regard to COVID-19 protections is the acrylic glass protecting the judges and their staffs. Inexplicably, however, there is no such protection for the attorneys and their clients. . . . I have been ordered to remove my mask while sitting next to a client for identification purposes during a hearing. I have been ordered to remove my mask because a judge has had a difficult time hearing my argument (from a podium with a live microphone, mind you).[73]

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[72] Judge Ashley Tabaddor interviewed in "COVID-19's Impact on Women in the Immigration Courts," NAWJ Podcast, 2 November 2020, nawj.podbean.com/.

[73] Adam Banner, "Does CBS Series 'All Rise' Realistically Portray the Pandemic-Plagued Legal System?" *ABA Journal*, 10 December 2020, www.abajournal.com/columns/article/does-cbs-series-all-rise-realistically-portray-pandemic-plagued-legal-system.



Figure 10. The first criminal trial with a jury takes place in August 2020 with Texas Justice of the Peace Nicholas Chu in Travis County.

People working in the legal profession have been doing the best they can with the resources at their disposal, which, as these interviews indicate, are not enough to place the legal system or its professionals in the best position. However, just as *All Rise* was the first drama series to come back with a virtual episode during the pandemic, women judges have also created their own film sets and created strategies for continuing court work during the pandemic. Like Lola Carmichael, who is balancing life as a new mother with work on the court, many of these judges are doing the same. Judge Ellen Guesmer (New York, Appellate Division) explains that she uses the glass-enclosed annex in her house for telework, which sometimes results in funny situations that arise between her physical environment and the cases she is dealing with.[74]

[74] Ellen Gesmer, "Technology in the Courts and in ADR: Meeting the Moment," NAWJ Podcast, 3 February 2021, www.nawj.org/join/nawj-stories. For example, there was an influx of aviary life in New York City during the pandemic because fewer people were on the streets, and sometimes, birds would stop by to intently watch her work while she was on court calls.

Judge Emily Miskel (Dallas) is a pioneer for the virtual civil jury trial in the US, and her case and contribution have been tremendously under-reported. While the trial she presided over in May 2020 was a summary jury trial, her expertise in technology lent itself to the way the trial was conducted.[75] For Miskel, a summary jury trial was a good way to begin virtual trials because "it is non-binding—so if the whole thing goes down in flames, no one is hurt, it is something we already require, so it is not adding cost or expense to the litigants—and so it is a relatively risk-free way to test an online jury trial." As an innovator with technology, Miskel knew that she could be the first to make a virtual jury trial work because she has a degree in Mechanical Engineering and specialized in court technology in her legal work. As she describes the necessity of these virtual trials, "State court judges right away realized it is impossible to take a month off [because of the case volume]. We will never catch up. We have to figure out a way to keep going. . . . Number one, we have to keep up with our workload, but number two, every day, we look into the faces of the people this is very important to, and we take that very seriously." After the trial, jurors who served previously in-person pointed out that it was easier to see the facial expressions of the witness on-screen than it was in-person, so they felt better able to judge the witness's credibility. They also could see the exhibits and video better on Zoom. According to the lawyers, it was

[75] A summary jury trial is an "alternative dispute resolution proceeding, and it has actually been in our Texas law for decades. As a lawyer, when I was doing my mediator training, it is in the same chapter in the Civil Practice and Rhodes Code. . . A summary jury trial is basically a one-day version of your case. So, you show up, the district clerk provides you with regular jurors from the county juror pool, you pick them, and then you put on a one-day version of your case, they deliberate, they return a verdict, and then you get to talk to them about what worked, what didn't, did they like your client, did they hate your expert? Based on that, you go to mediation the next day and attempt to settle your case."
Emily Miskel, "Miskel's Insights on COVID-Era Proceedings," State Bar of Texas Podcast, 6 May 2021, legaltalknetwork.com/podcasts/state-bar-texas/2021/05/remote-court-judge-emily-miskels-insights-on-covid-era-proceedings/.

easier to get the jury panel to speak on Zoom than in person and "were more forthcoming with information, and so both lawyers said that was a better experience" (Miskel).

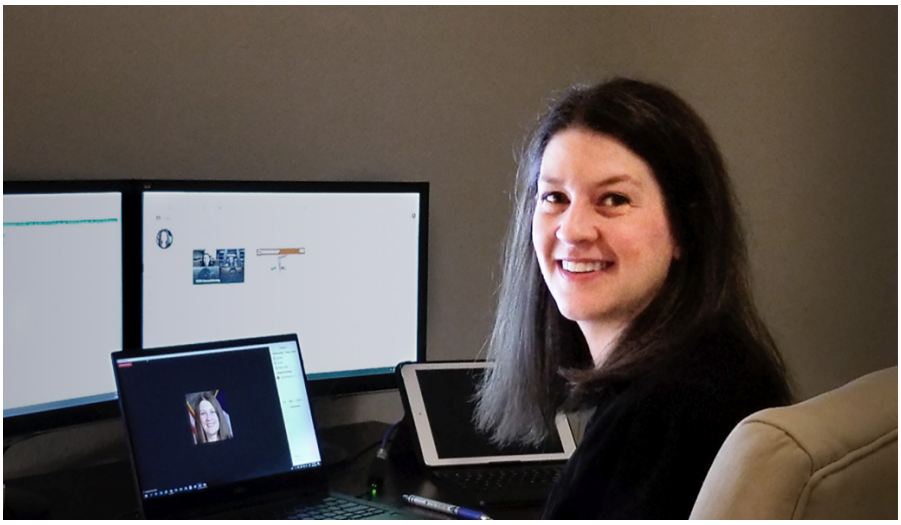


Figure 11. Judge Emily Miskel teleworks from home in Collin County, Texas

So much for early discourses on women's technological ineptness—Judge Miskel's work with court technology helped bring the system to the point where we could host Zoom trials in the United States. She is an exemplar of how women's creativity in the face of a pandemic allows judges all over the US to hold trials virtually. At home, the labor of creativity meets the labor of justice. Justices are still on the bench, trying cases in the face of COVID-19, because of people like Judge Miskel, who "used whatever talent she had to do her work to the very best of her ability. And to help repair tears in her society, to make things a little better through the use of whatever ability she has."[76]

[76] Justice Ruth Bader Ginsburg on what she would most like to be remembered for. "Ruth Bader Ginsburg in Pictures and Her Own Words," *BBC*, 19 September 2020, www.bbc.com/news/world-us-canada-54218139.

Chapter 3

Mediating Afterlives of Justice:
Nominating Ketanji Brown Jackson to the Supreme Court

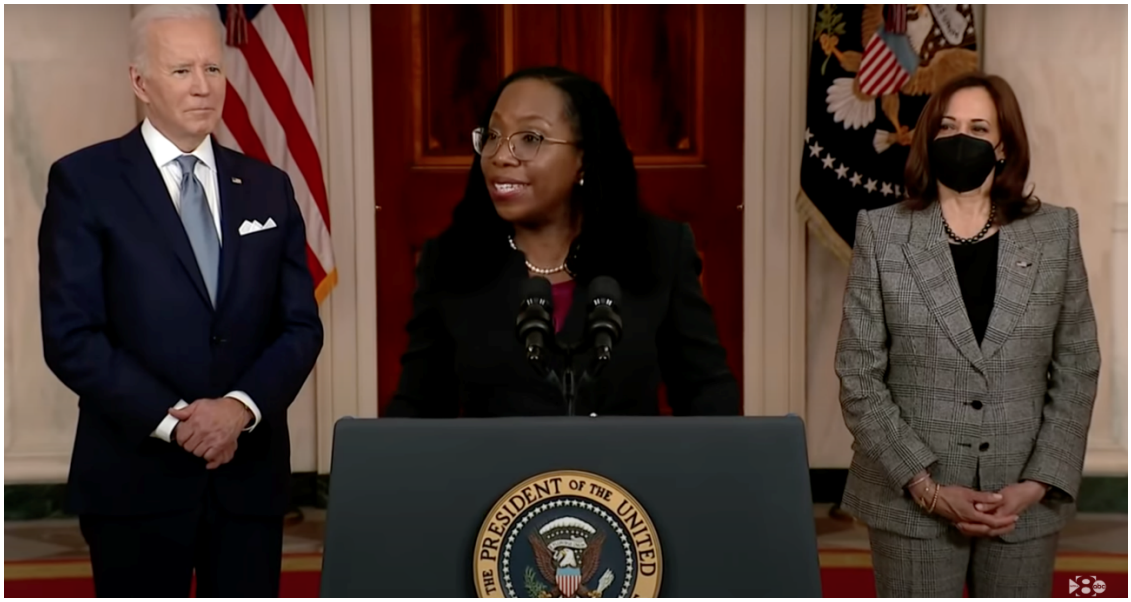


Figure 1. Ketanji Brown Jackson gives her first speech as President Joseph Biden's Supreme Court nominee

When I first titled this chapter and used the terms "afterlives of justice" (following a previous discussion in Chapter 1), I did not have in mind the primary meaning the title now carries—that of judicial afterlives as postmortem legacies. When I first used the term, I optimistically hoped it would describe the post-retirement feminist future at the moment Justice Ruth Bader Ginsburg retired and was able to give her seat to another justice who stood for similar legal ideals. History is not as predictable or as kind as we might like. After Ginsburg passed away, I watched the nomination gathering at the White House Rose Garden for the soon-to-be Supreme Court Justice Amy Coney Barrett. I wondered what would happen to Ginsburg's judicial legacy in the United States as the Court became increasingly more conservative. Almost two years after Ginsburg's death, I now understand the idea of "afterlives of justice"

as one that points in several directions. First, it points to the historic nomination of the first Black woman nominated to the Supreme Court, Ketanji Brown Jackson, as one result of Ginsburg's judicial afterlife. Second, it points to the "constellated" history of Judge Constance Baker Motley's confirmation hearing to become a federal judge.[1] She is one of the women who ultimately made Jackson's nomination possible as one of the many "first" female judges who worked for equal justice under law. As another constellated history, it places the historical present in conversation with the past. Last, in addition to looking backward, judicial afterlives point to a feminist future that is possible because of the work of legal professionals and scholars who decided that US law must work equitably for everyone. In this respect, the final chapter of my dissertation illustrates how the "double movement of resistance and containment" in popular culture and the law mediates gender and race through judicial afterlives during the 2022 Supreme Court nomination of Judge Ketanji Brown Jackson.[2]

Connected to the afterlives of Justice Ginsburg are the media afterlives that shape her life and legacy. In some ways, these afterlives allowed Ginsburg to have the last say and the last laugh, as the popular *Saturday Night Live* sketches featuring Kate McKinnon ensured. As law clerk Beth Netizel from the 2016–17 term recounts,

> One night when I was working late, perhaps on an opinion or something with her [Ginsburg], I was in a different part of chambers, but I could hear her laughing down

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[1] Jane Gaines and Monica Dall'Asta, "Prologue: Constellations: Past Meets Present in Feminist Film History," in *Doing Women's Film History: Reframing Cinemas Past and Present*, ed. Christine Gledhill and Julia Knight (Urbana: University of Illinois Press, 2015), 13–28.

[2] Stuart Hall, "Notes on Deconstructing 'the Popular,'" in *Cultural Theory and Popular Culture: A Reader, Third Edition*, ed. John Storey, 443.

the hall in her office, and the door was open. So, I quietly walked down the hall to see what she was up to and peeked in her office to see her giggling while watching an *SNL* skit of herself. Of them [*SNL*] doing RBG. It was great. It's like one o'clock in the morning, and she was enjoying, you know, a bit of comedic relief herself, undoubtedly after a long day of work, although, let's face it, one o'clock in the morning, it's pretty early for her.[3]



Figure 2. Kate McKinnon performs the role of Ruth Bader Ginsburg on *Saturday Night Live*'s "Weekend Update: Ruth Bader Ginsburg on Marriage Equality"[4]

Media afterlives take many forms. From the archival materials she donated to the Library of Congress to the film, television, and internet media that attest to her popularity, each media afterlife bears the historical traces of its moment of production, its audience, and its own unique material history. The media artifacts she left behind are her ghosts, and

[3] SCOTUStalk, "'We'll Just Have to Keep Doing the Work': Ginsburg's Clerks Remember Her Example in a Tumultuous Term," SCOTUS Blog, 26 September 2020, www.scotusblog.com/2020/09/scotustalk-keep-doing-the-work/.
[4] "Weekend Update: Ruth Bader Ginsburg on Marriage Equality," *Saturday Night Live*, YouTube, 3 May 2015, www.youtube.com/watch?v=R1ZD2XaScCs.

because so much content (including archival documents) is now digital, she also has online ghosts—something she probably would think is ironic given her staunch personal resistance to technology.[5] David Sisto explains,

> The South Korean philosopher Byung-Chul Han, one of the foremost critics of digital culture, argues that while the internet resembles Jeremy Bentham's panopticon in many ways, *unlike* Bentham's panopticon—which was devoid of an effective registration system—the internet makes it possible to systematically record our entire lives and make them accessible through its multiform digital networks. In other words, we are all fated to become digital ghosts, trapped in posterity, without our consent, forever digitally undead.[6]

The digital afterlife, then, continues online without our physical presence, generating an ongoing life for recorded self-images, photos, documents, videos, and other artifacts left behind.

After Ginsburg's death, I imagined her media afterlife personified by the operatic character the Duchess of Krakenthorp. Ginsburg performed this speaking role in Gaetano Donizetti's comic opera *The Daughter of the Regiment* (*La Fille du Régiment*, 1839) at the Washington National Opera's opening night in 2016. As a lifelong lover of music and opera,

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[5] This is a reasonably well-documented fact about Ginsburg. Justice Sonia Sotomayor referenced this on *The Daily Show with Trevor Noah* in the following exchange:
Noah: "How removed are Supreme Court justices from the everyday fray? Are you just Instagram only—no Twitter? Is that what you do?" Sotomayor: "I don't do either. Some of my colleagues might. I won't give them up, okay?" Noah: "I'm going to say, Ruth Bader Ginsburg. . . . I'm saying Ruth Bader Ginsburg—Twitter. That's what I'm going with." Sotomayor: [Laughs]. I think that would be far-fetched!"
"Sonia Sotomayor: A Day in the Life of a Supreme Court Justice," *The Daily Show with Trevor Noah*, YouTube, 14 November 2021, www.youtube.com/watch?v=HcMhgKywE1c.
[6] David Sisto, *Online Afterlives: Immortality, Memory, and Grief in Digital Culture* (Cambridge: MIT Press, 2020), 3.

the role was a dream for Ginsburg to perform. The lyrics for the part were updated for Ginsburg—which she helped write—and she said, "The best [members] of the House of Krakenthorp have open but not empty minds. The best are willing to listen and learn. No surprise, then, that the most valorous Krakenthorpians have been women!"[7] On YouTube, in particular, Ginsburg's *Saturday Night Live* skit afterlives are a feminist archive of her spirited dissents and is one way she will continue to visit new generations of internet users and shape popular media.[8] In her online media afterlife, she was waiting in the wings for the events that would lead to the nomination of Ketanji Brown Jackson.



Figure 3. Justice Ruth Bader Ginsburg performing in the Washington National Opera's 2016 production of *The Daughter of the Regiment* (*La Fille du Régiment*, 1839) as the Duchess of Krakenthorp.

[7] Jay Gabler, "Ruth Bader Ginsburg Makes Politically Pointed Operatic Debut," Your Classical, 14 November 2016, www.yourclassical.org/story/2016/11/14/ruth-bader-ginsburg-opera. For a video of Ginsburg's performance, see "Washington National Opera: The Daughter of the Regiment—Ruth Bader Ginsburg's First Appearance," YouTube, 14 November 2016, www.youtube.com/watch?v=-6G1bTyDFZY.

[8] Sisto describes YouTube's unique place in digital afterlives as "an extensive archive of complete or fragmented videos in which we can watch the dead reciting, speaking, joking, and singing forever." Sisto, *Online Afterlives*, 27.

Crucially, Ginsburg's absence on the Court resulted in this historic nomination as a ripple effect of political context and consequences. Each vacancy on the Court is not localized to one particular seat—each Justice has a cumulative impact over time. Any given selection has several possible outcomes, including the potential to alter the Court's balance, its overall representation of diversity, or its public perception. Democrats largely hoped Ginsburg would retire while President Barack Obama was in office (so he could select a judge to fill her seat), and political groups urged Justice Stephen Breyer to retire while President Biden was in office. As *NPR* described the situation in 2021, before Justice Breyer announced his retirement on 26 January 2022, "Progressives fear a replay of the situation following the death in September 2020 of 87-year old Justice Ruth Bader Ginsburg, which allowed President Donald Trump to nominate—and for the Republican-controlled Senate to quickly confirm—Amy Coney Barrett, giving the conservatives a 6–3 supermajority on the Supreme Court."[9] The progressive group Demand Justice attempted to directly appeal to Justice Breyer by "sen[ding] a billboard truck driving around the Supreme Court building in April [2021] with the message: 'Breyer, retire. It's time for a Black woman Supreme Court justice'" (Calamur and Totenberg).

[9] Krishnadev Calamur and Nina Totenberg, "Progressives Want Justice Stephen Breyer to Retire. His Response? Not Yet," *NPR*, 9 September 2021, www.npr.org/2021/09/09/1035092720/progressives-want-justice-stephen-breyer-to-retire-his-response-not-yet.



Figure 4. Demand Justice campaign that asked Justice Stephen Breyer to retire from the Supreme Court

While Justice Breyer's retirement likely has little to do with public campaigns like these (although they may have urged him to retire sooner), they drew enough public attention to warrant news media interview questions about his plan. "I'm only going to say that I'm not going to go beyond what I previously said on the subject, and that is that I do not believe I should stay on the Supreme Court, or want to stay on the Supreme Court, until I die . . . . And when exactly I should retire, or will retire, has many complex parts to it. I think I'm aware of most of them, and I am, and will consider them" (Calamur and Totenberg). After Breyer announced his plan to depart at the end of the term in June, President Biden moved quickly to select a nominee. He made clear that he would keep his campaign promise to nominate the first Black woman to the Supreme Court.

Ketanji Brown Jackson, Afterlives of Justice, and Constellated Histories

This section brings together judicial afterlives with constellated histories, using the context of Ketanji Brown Jackson's nomination to the Supreme Court to explore the push and pull of the popular in relation to the past. In many respects, this chapter is the culmination of the previous two. In their totality, they take a longer view of a complex trajectory that finally allowed the first Black woman to go through the Senate confirmation process and sit on the Court. While this chapter focuses on a historical high point, her confirmation hearings reveal how they constellate with Judge Constance Baker Motley's hearings before she was confirmed to the federal bench in 1966. Of course, there are many ways to constellate this history—there is never only *one* right way to approach weaving threads of the past into conversation with the present. Through this frame, popular media emerge in a parallel struggle with the continuous push and pull of justice after feminism.

During Jackson's hearings, like Motley's, some Republican senators engaged in racist and misogynist lines of questioning that were also present in Justice Thurgood Marshall's hearings (1967) and Anita Hill's testimony against Clarence Thomas (1991).[10] Chris Hayes argues that Marshall, the first African American Supreme Court Justice, "faced the same [racist] line of questioning" during his confirmation hearings based on the idea that "a Black judge is soft on crime."[11] Fast forward to Anita Hill's testimony and questions Jackson faced

[10] For more on Anita Hill's testimony against Justice Clarence Thomas, see Chapter 1.
[11] Chris Hayes, "Chris Hayes Rips 'Facially Racist' GOP Questioning of Ketanji Brown Jackson," YouTube, 23 March 2022, www.youtube.com/watch?v=AHfIvBeBHAY. The rhetoric of "soft on crime" is also leveled at Judge Lola Carmichael (see Chapter 2) in the series *All Rise* (CBS 2019–21, OWN 2022–). It is rooted in the racist idea that African American judges cannot be fair arbiters of law because of their identity. Tomiko Brown-Nagin addresses this, noting "the idea that for African-American judges, in particular, identity drives outcome, is not held up under scrutiny. The primary factor that should drive

from Republican senators were reminiscent of themes some senators on the Judiciary Committee advocated for to discredit Hill.[12] With time, I venture to guess that the clamoring from the Republican side of the aisle will be notable because it illustrates how much harder minority candidates have to work to be taken seriously, and the level of qualifications that they must attain to reach positions of power. That is nothing new, but the situation captures its essence. On 21 March 2022, the *Washington Post* tweeted the chart below, "How Ketanji Brown Jackson's Path to the Supreme Court Differs from the Current Justices." She would be the only sitting Justice on the Court to have every qualification marker. The *Post* wrote, "Judge Ketanji Brown Jackson faces four days of Senate hearings that are sure to include questions about her career. Here's which justices, if any, had similar educational and career experience before they made it to the Supreme Court."[13]

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decisions is precedent." Ari Schapiro and Elsa Chang, "Consider This from NPR," *NPR*, podcast, 25 February 2022, www.npr.org/transcripts/1083119677.

[12] In a striking example, several senators attacked Jackson's rulings on defendants who possessed images of child sexual abuse and exploitation, calling her "soft on crime" and evoking the rhetoric of sexuality present during the Hill hearings by repeatedly questioning her about those decisions—another emphasis that relies on racism. See Madison Alder, "Jackson Not Soft on Crime, Bar Association Tells Senate Hearing," Bloomberg, 24 March 2022, www.bloomberg.com/news/articles/2022-03-24/jackson-not-soft-on-crime-aba-ratings-panel-tells-senate.

[13] *Washington Post*, Twitter, 21 March 2022, twitter.com/washingtonpost/status/1505963645028782086.

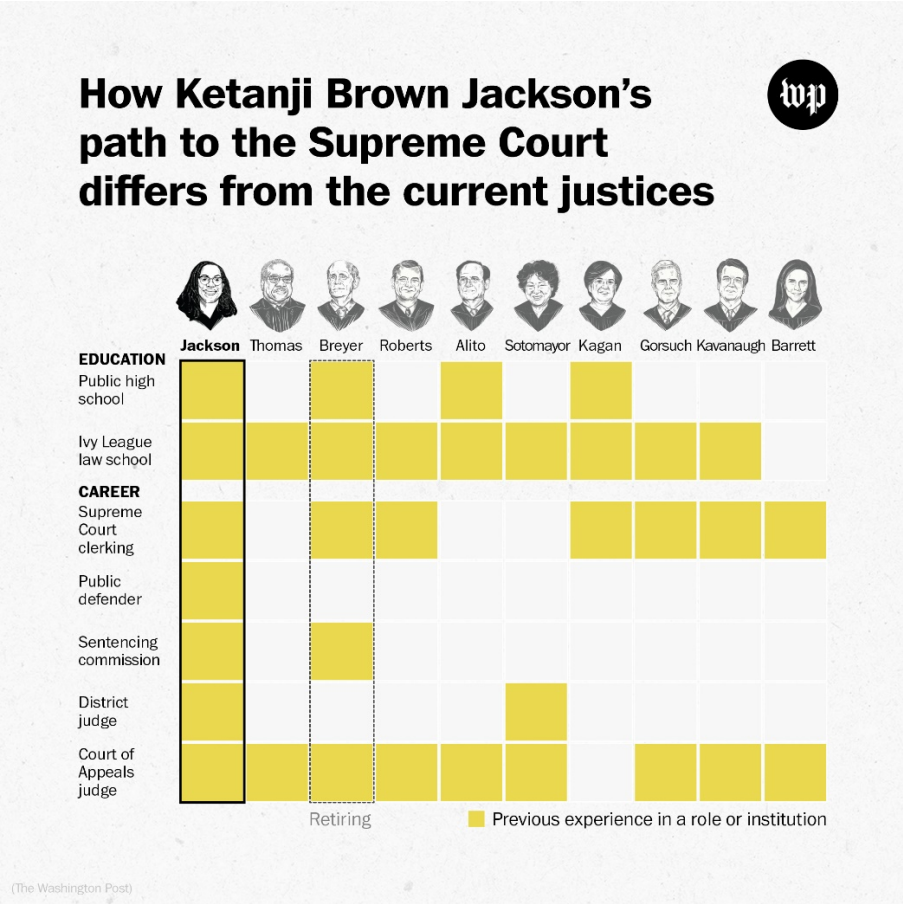


Figure 5. *Washington Post* chart displaying nominee Ketanji Brown Jackson's qualifications for her Supreme Court nomination

Constellating Confirmation Hearings

After President Biden selected Judge Jackson as his nominee for the Supreme Court, Jackson made her first speech on 25 February, publicly accepting the nomination. A remarkable moment occurred when she revealed that she was born on the same day as Judge Constance Baker Motley. In her first public speech, Jackson says,

> As it happens, I share a birthday with the first Black woman ever to be appointed as a federal judge: The Honorable Constance Baker Motley. We were born exactly 49 years to the day apart. Today, I proudly stand on Judge Motley's shoulders, sharing

not only her birthday but also her steadfast and courageous commitment to equal justice under law.[14]

Judge Motley was not only the first African American woman to sit on the federal bench, but she was also the first African American woman to be elected to the New York State Senate, and the first woman to serve as chief judge of the US District Court, among several notable "firsts."[15] After serving as a federal judge, she was rumored to have been shortlisted for the Supreme Court by both President Nixon and Ford at the urging of groups including the National Women's Political Caucus (345). "'Black Woman Proposed for Supreme Court,' excitedly proclaimed a front-page story in the *Pittsburgh Courier* in 1971. A more realistic chance for promotion was afforded by the election of a Democrat, President Jimmy Carter. But Motley was never tapped" (345). The US Attorney General Ramsey Clark described his disappointment at Motley's lack of promotion to the Supreme Court or the federal appeals court by invoking history: "History sometimes misses its chances," he said (346). But while history may have missed the chance for Motley, her judicial afterlife lives on through Jackson. In invoking her shared history with Motley, she "made history rhyme by bringing

[14] Joseph Biden and Ketanji Brown Jackson, "Remarks by President Biden on his Nomination of Judge Ketanji Brown Jackson to Serve as Associate Justice of the US Supreme Court," The White House, 25 February 2022, www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/25/remarks-by-president-biden-on-his-nomination-of-judge-ketanji-brown-jackson-to-serve-as-associate-justice-of-the-u-s-supreme-court/.

[15] Tomiko Brown-Nagin, *Civil Rights Queen: Constance Baker Motley and the Struggle for Equality* (New York: Pantheon Books, 2022), 199–245, 346. She was also foundational to civil rights cases in the United States and "helped litigate Brown v. Board of Education, one of the most important cases in American constitutional law; desegregated schools and universities in the South; she represented Dr. Martin Luther King, Jr. in Birmingham; and she won nine of the 10 cases she argued before the Supreme Court."
Tomiko Brown-Nagin, "The Right to Counsel Shouldn't Be Controversial," *Slate*, 21 March 2022, slate.com/news-and-politics/2022/03/ketanji-brown-jackson-public-defender-constance-baker-motley.html.

up another trailblazer on whose shoulders she does stand. And I [Mark Joseph Stern] would like to believe that . . . since she's clearly familiar with Constance Baker Motley, she knows that Constance Baker Motley faced a lot of the same accusations that Judge Jackson is facing now—that she's not qualified, that she would be biased because of her identity, that she hadn't really earned her spot on the court."[16]



Figure 6. Judge Constance Baker Motley at her New York State Senate ceremony with Mayor Robert Wagner (7 February 1964).

When Motley was nominated to the federal bench by President Linden Johnson, she, much like Jackson, had a stellar record and an excellent history of fighting for civil rights. Despite what should have been a smooth confirmation process, the vote was delayed for seven months by Senator James Eastland (R-MS). He was a racist man who was "a wealthy

[16] Mark Joseph Stern featured on Dahlia Lithwick, "And the Nominee Is . . . Ketanji Brown Jackson," *Amicus with Dahlia Lithwick*, *Slate*, podcast, 6 March 2022, slate.com/transcripts/UHRiZGttL2thTW4xS3pha1ArdmpmVWNWcVNWOEVObkhZVGZzb1pEZzNyUT0=.

plantation owner known by the 'trademark' cigar that dangled from his lips,'" cast Motley as a Communist in a Senate floor speech (252). Previously, he had unsuccessfully tried to sabotage Justice Thurgood Marshall's confirmation (252). His tactics for attempting to take down Motley's and Marshall's confirmation hearings are strikingly similar to those used during Jackson's hearing: "Rather than directly attacking Motley's race or specifically raising the Ole Miss controversy [Motley was the judge on the case that allowed his alma mater to racially integrate], Senator Eastland tried to kill Motley's nomination by smearing her name" (252). Following four months of interviews with Motley's inner circle, employers, and friends, "No real evidence established that she had gone so far as to join the party. And she adamantly denied membership in her 1966 statements to the FBI" (256). Ultimately, the Senate confirmed her on 30 August 1966, following intense scrutiny (262).

Years later, politicians turned Motley's record against her again. Brown-Nagin argues, "[She] was passed over for a seat on a federal appeals court because opponents of her nomination turned her greatest asset into a liability, recasting her work to fulfill the promise of the Equal Protection Clause of the Constitution's Fourteenth Amendment as 'bias.'"[17] Nagin connects this to the way Jackson was treated during her confirmation hearings for being a public defender:

> This line of criticism reveals either disdain for the American constitutional system—or a basic misunderstanding of it. And it is a dangerous echo of the reasoning that kept Motley from a seat on a higher court on the federal bench.
>
> Public defenders, those lawyers who by court appointment serve on behalf of indigent people accused of crimes, are vital to the integrity of the American judicial

[17] Brown-Nagin, "The Right to Counsel Shouldn't Be Controversial."

> system. They uphold the Sixth Amendment to the Constitution, which guarantees the right to a fair trial and the assistance of counsel, and that is a critical part of our Bill of Rights.[18]

In constellating Jackson's hearings with Motley's, a stark historical relief arises from understanding why Jackson's hearings may have played out as harshly as they did. In addition to the historical parallels, the midterm Senate elections are around the corner in November 2022. US Senators up for re-election are eager for their rather rare primetime monologs on network television during the hearings. Senators are giving her a "trial by ordeal," as Chair of the Judiciary Committee, Senator Dick Durbin (D-Il.), put it in his opening remarks on the second day. Beyond a "trial by ordeal," Republican questioning during Jackson's hearings often relied on racism and misogyny. The live televisual nature of the hearings lends them to what political pundits often call *political theater*—especially in a situation where there is a foregone conclusion, barring any extreme politics (like refusing to hold hearings at all, which happened with Supreme Court nominee Merrick Garland in 2016). In this case, their televised setting likely leads to harsher questioning by senators eager to please specific segments of their base. Justice Sotomayor described the phenomenon whereby politicians play to the camera when explaining why cameras in the courtroom would be detrimental, relaying a story from a Senator who reported that

> the partisanship in the Senate started to grow when cameras went into the Senate room. . . . I think the public has no idea that those Senate rooms now are completely empty. It's the Chair of the Senate, it is the senator speaking, and some members of his staff. There is no one else in the room but the camera, and they're speaking to the

[18] Brown-Nagin, "The Right to Counsel Shouldn't Be Controversial."

> camera, not to each other. And I know because I was interviewed by senators. They're not back in their offices listening to what is happening on TV. They are back in their office conducting business. Maybe a staffer is watching. But many senators told me that they felt that much of the collegiality died when they stopped getting together in that room and were forced to listen to each other, and were forced to sit next to each other, and talk to each other. Now they barely see each other except for running through the hallways.[19]

The context of the hearings for the senators, then, is also somewhat unique for them since the members of the committee convene in person—and this was the first time the committee invited an audience into the room since COVID-19.[20]

Beyond that, the second day of the hearings was especially "triggering" for many women in America—particularly Black women—who have had to endure similar experiences to those they watched Jackson face during the hearings for their whole life.[21] For example, Senator Ted Cruz's line of questioning about "critical race theory" was a televisual ploy to appeal to his base on a hot-button issue for some Republicans.

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[19] "Sonia Sotomayor: A Day in the Life of a Supreme Court Justice."
[20] Zerlina Maxwell, "Structural Racism at Play in Judge Jackson Hearings, Zerlina," YouTube, 24 March 2022, www.youtube.com/watch?v=KA5FlJGraUQ.
[21] For a robust discussion about this as a "triggering" event for Black women viewers, see MSNBC's *Zerlina* segment featuring Professor Melissa Murray and Judith Brown Dianis, the Executive Director at the Advancement Project, in "Structural Racism at Play."



Figure 7. During Jackson's confirmation hearing, Senator Ted Cruz (R-TX) questions her about critical race theory using Ibram X. Kendi's *Anti-racist Baby* (2020).

Cruz used printed images of Ibram X. Kendi's children's book, *Anti-racist Baby* (2020), to prompt Jackson to assert whether or not she endorses what he calls "critical race theory." In another striking moment, Jackson endured Senator Lindsey Graham (R-SC) yelling at her in what the *New York Times* "mischaracterized" as a "heated exchange" [22] when only Senator Graham engaged angrily and later stormed out of the room.[23] The stakes for Jackson, should she appear angry at Graham for losing his temper, would be that senators would call her unfit to be a Supreme Court Justice—failing the judicial temperament test.[24] This stands in

[22] The Instagram comment section on the *New York Times* article was flooded with readers pointing out that it is a "mischaracterization" of the term "heated exchange" when only one person is yelling. See *New York Times*, Instagram, 23 March 2022, www.instagram.com/p/CbdgMgXOC1y/.

[23] Jonathan Weisman, "Lindsey Graham Takes Caustic Tone in Questioning Jackson," *New York Times*, 23 March 2022, www.nytimes.com/2022/03/23/us/politics/lindsey-graham-questioning-jackson.html.

[24] Kyle J. Howard put it this way: "Dear White people, it's totally fine to admire our patience, self-control, and poise; but it's important to understand these things aren't JUST character traits, they are tools for survival. To be anything but [the] things above, in a White

contrast to the Kavanaugh hearings, during which he became enraged during questioning, and Republican leaders still considered him fit to serve.

MSNBC host Zerlina Maxwell explains, "The reason I was getting emotional when Judith [Brown Dianis] was talking is because, physically, on our bodies, there are consequences [to structural sexism and racism]. We have higher rates of [elevated] blood pressure, stroke, and there are real consequences—it is not just theoretical here."[25] When placed in the context of the last two Supreme Court nomination hearings, which on several counts were also triggering events for many women and survivors of abuse, certain sections of the hearings were also "unwatchable" events as I describe in Chapter 1.[26] Melanie L. Campbell, president and CEO of the National Coalition on Black Civic Participation, described it as "traumatizing to watch" because "my spirit feels it was to bring this Black woman down because she's about to break the glass ceiling that, once broken, opens the door to more."[27] The difference here is that instead of having a poor outcome, the likely outcome of the nomination hearing is that Jackson will become Supreme Court Justice Ketanji Brown Jackson. And as Professor Melissa Murray remarks,

> She has the Democratic votes, and even if she is unable to peel off a single Republican, she will be the next Associate Justice of the Supreme Court. That's what's actually so galling about all of this. . . . This entire political theater is about

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America, is to risk our dreams and flourishing." Tweet featured on "Structural Racism at Play in Judge Jackson Hearings, Zerlina."

[25] "Structural Racism at Play in Judge Jackson Hearings, Zerlina."

[26] *Unwatchable*, ed. Nicholas Baer, Maggie Hennefeld, Laura Horak, and Gunnar Iversen (New Brunswick: NJ, Rutgers University Press, 2019).

[27] Lisa Mascaro and Aaron Morrison, "Black Women Feel Sting of 'Traumatizing' Jackson Hearings," *PBS*, 26 March 2022, www.pbs.org/newshour/politics/black-women-feel-sting-of-traumatizing-jackson-hearings.

> signaling and dog-whistling to the Republican base and debasing a Black woman in a public setting before the entire country. . . . I do think there is, perhaps, something striking about the prospect of a 50-50 Senate with everyone voting on party lines, and Kamala Harris, the first Black woman to serve as Vice President, to be the deciding vote. And I will note, this confirmation hearing was quite unusual because there were no other Black women in positions to ask questions because there are no Black women in the Senate. And in fact, the only African American in the room was Corey Booker, and he was the one who stood in that space with her.[28]

In fact, Senator Booker's speeches (pep talks) throughout the hearings stood out for their ability to appeal to human emotion. They provided space for Jackson and viewers supporting her to feel like they had "space" to exist after hours of unrelenting political attacks. Jackson held back tears as Booker said, "They are going to accuse you of this and that, and heck, in honor of the person who shares your birthday [Judge Constance Baker Motley], you might be called a Communist! But don't worry—my sister. [Jackson looks worried]. Don't worry. God has got you. [Jackson holds back tears]. And how do I know that? Because you're here. And I know what it has taken for you to sit in that seat."[29]

Following the hearings, *Saturday Night Live* aired the Weekend Update sketch "Senator Marsha Blackburn on Judge Jackson's Confirmation Hearings." The sketch emphasizes how conservative rhetoric played out during the hearings, pushing back against its logical fallacies and absurdities. Senator Marsha Blackburn (Cecily Strong) (R-TN) says,

[28] "Structural Racism at Play in Judge Jackson Hearings, Zerlina."
[29] Hayes, "Chris Hayes Rips 'Facially Racist' GOP."

"Oh, we crushed it! So many great, smart questions: Are babies racist? Is murder bad? And those are real questions that my fellow Republicans asked an adult judge."[30] As the sketch continues, Blackburn attempts to explain how excellent she thought her own question to Jackson was—asking her to define the word "woman." Blackburn stumbles through an attempt at answering her own question using the same style presentation board that Cruz used when he asked Jackson about *Antiracist Baby*. Her answer meanders among stereotypes of women to the point that she no longer knows what she is saying because the answers don't make sense, even to her. Colin inquires, "Why is defining 'woman' even relevant to a confirmation hearing?" to which she replies, "Are you kidding? It is the most important thing for a Supreme Court Justice—because if you don't know what a woman is, how the hell are you going to take her rights away? Can I get an 'Amen'!"[31]

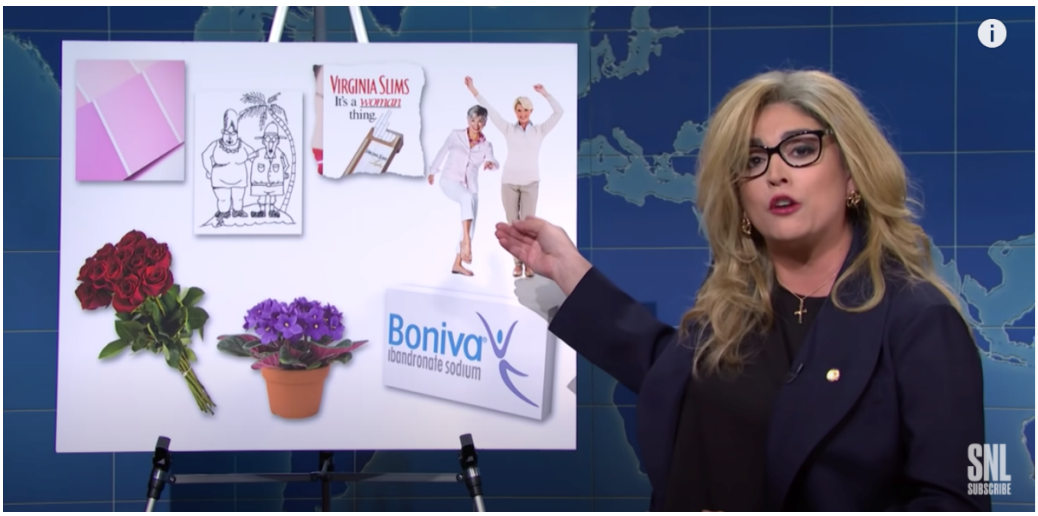


Figure 8. *Saturday Night Live* sketch featuring Cecily Strong as Senator Marsha Blackburn as she attempts to explain how to define the word "woman."

[30] "Weekend Update: Senator Marsha Blackburn on Judge Jackson's Confirmation Hearings," *Saturday Night Live*, YouTube, 2 April 2022, www.youtube.com/watch?v=4epfROjkNWw.
[31] "Weekend Update: Senator Marsha Blackburn."

Strong's scathing response is on the nose. In the fall 2022 term on the Court, the justices are slated to hear cases on affirmative action, abortion, and gun rights, among other cases.[32] The public now anticipates that *Roe v. Wade* (US, 1973), the case that set precedent for the right to an abortion, will almost definitely be repealed.[33] Further, Blackburn's question also revealed her intent at getting Jackson's take on legal cases related to trans people—another way in which having Jackson define the word "woman" would be revealing of her position in relation to the law for future cases.

While it may seem like a small political win for Democrats who will face such dark legal circumstances in the near future, to focus only on that is a reductive view of how significant Jackson's nomination is in the longer historical trajectory. Jackson's and Motley's constellated history demonstrates how powerful the moment Jackson has reached is for the future of the Supreme Court. Law professor Margaret Russell, who is Black and Japanese-American, told *NPR*, "When you see someone, after an entire life of never seeing anyone who looks like you, it transforms your idea of what the possibilities of that institution could be and of what you, as a person, can be."[34] Here, representation works as a powerful vantage point for imagining a feminist future. Former California Judge L'Doris Cordell describes how when she was appointed in 1980, "I was asked when I was appointed, 'Well, maybe you

[32] Nina Totenberg and Eric Singerman, "The Supreme Court Adds Affirmative Action to its Potential Hit List," *NPR*, 24 January 2022, www.npr.org/2022/01/24/1003049852/supreme-court-adds-affirmative-action-to-its-potential-hit-list.
[33] For more on the high risk to *Roe*, see Adam Liptak, "Supreme Court to Hear Abortion Case Challenging Roe v. Wade," *New York Times*, 17 May 2021, www.nytimes.com/2021/05/17/us/politics/supreme-court-roe-wade.html; Julie Rovner, "Americans Are Divided on Abortion. The Supreme Court May Not Wait for Minds to Change," NPR, 21 January 2022, www.npr.org/sections/health-shots/2022/01/21/1074605184/abortion-roe-v-wade-supreme-court.
[34] Ari Schapiro and Elsa Chang, "Consider This from NPR."

just got appointed because you are Black. . . . Any my response is, 'I would rather be appointed because I'm Black than not be appointed because I'm Black.' . . . . [The founding principles of the United States] were promulgated by white, propertied men. They did not intend those principles to apply to women, to apply to poor people, or to apply to people of color.'"[35] When Jackson sits on the Supreme Court, she will pave the way for other Black women to do the same, and in so doing, she will, as Justice Ginsburg said, "stand on the shoulders of women who came before."[36]



Figure 9. Ruth Bader Ginsburg on the first day of her confirmation hearings (1993) (top), wearing nearly the same color suit as Ketanji Brown Jackson on the first day of her confirmation hearings (2022).

[35] Schapiro and Chang, "Consider This from NPR."
[36] Lithwick, "And the Nominee Is . . . Ketanji Brown Jackson."

Conclusion: Judicial Afterlives and Feminist Futures

On 5 April 2022, the Senate Judiciary Committee, which is comprised of eleven Republican senators and eleven Democratic senators, held a vote to decide if they should advance Jackson's nomination to the full Senate for a final confirmation vote. The committee deadlocked—eleven to eleven along party lines.[37] The result of a deadlock is a Senate floor vote in which the Judiciary Committee is released from the decision. Reporter Tierney Sneed describes the situation that unfolded this afternoon:

> Senate Majority Leader Chuck Schumer called for a vote to break the deadlock . . . Every Democrat and three Republican senators—Susan Collins of Maine, Mitt Romney of Utah, and Lisa Murkowski of Alaska—voted in support of Jackson. . . . [F]or the first time in the modern history of Supreme Court confirmations, she [Jackson] needed an additional procedural step—known as a discharge petition—to get on the Senate floor. . . . The committee had to take a multi-hour break before voting on Jackson because a Democratic member's [Senator Alex Padilla's] arrival to DC was delayed (Sneed).

Despite the initial Judiciary Committee stalemate, which is unsurprising given the contentious nature of Supreme Court nominations today, Jackson comfortably gained the votes she needed for the appointment. All three Republican senators who voted to advance her nomination to the Senate floor indicated that they would vote "Aye" on her confirmation, and they ultimately did (Sneed).

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[37] Tierney Sneed, "The Senate Advanced Jackson's Supreme Court Nomination with a Procedural Vote. Here's What You Need to Know," *CNN*, 5 April 2022, www.cnn.com/politics/live-news/ketanji-brown-jackson-confirmation-vote-senate-committee/index.html.

In imagining a feminist future for the Supreme Court and for justice after feminism, looking back at the constellated histories of the "women who came before" illuminates their struggles and achievements as they worked for equal justice. Their digital and screen afterlives both archive and presage feminist futures—documenting and forecasting how justice after feminism might play out. In the current polarized political climate, I anticipate that there will also be an equal amount of pushback in popular culture apart from the tremendous gains. Unfortunately, what constitutes the archives of the popular for Ketanji Brown Jackson and other elected Democrats will have robust afterlives on the dark web and conspiratorial online spaces. These are places where far-right groups like QAnon digitally convene and hate rhetoric thrives. I speculate that the Republican rhetoric about Jackson's rulings on child sexual abuse cases will run rampant alongside accusations that she is a Communist and a Socialist.[38] While it is outside the scope of the dissertation to dig into the dark web as a site of the popular, it has an increasingly robust digital afterlife that shapes US politics and stands in opposition to feminist futures. As time passes since the hearings, these archives on the dark web will expand, but I hope that they will be cast further into the corners of the internet after gaining a lot of public exposure (and power) during the COVID-19 pandemic and during Donald Trump's presidency.[39]

The dark corners of the internet are not the only spaces where archives of Jackson's work will accumulate—her network of supporters will form their own social media groups,

[38] Thanks to Constance Penley for pointing out that this rhetoric will constitute archives of the dark web.

[39] For more on QAnon and how it trapped women, see Mia Bloom and Sophia Moskalenko, *Pastels and Pedophiles: Inside the Mind of QAnon* (Palo Alto: Stanford University Press), 2021. See also Nancy L. Rosenblum and Russell Muirhead, *A Lot of People Are Saying: The New Conspiracism and the Assault on Democracy* (Princeton, NJ: Princeton University Press), 2019.

Twitter conversations, podcasts, and websites. Jackson herself will likely author many scathing dissents because of the conservative majority on the Supreme Court. Dissents are powerful in their own right for future legal action, learning about how judges arrive at conclusions, and for news media as they parse important issues in a case. Both Ginsburg and Sotomayor have demonstrated the power of dissents, and Jackson will follow their lead. As I detail in this dissertation, women are agents of their own mediation. I anticipate that they will create and shape new archives of feminist activism, drawing on Jackson's arguments and ushering them into realms of the popular imaginary, from memes to podcasts. Ginsburg's fans illustrate the power of the popular imagination through the figure of the Notorious RBG. Its purchase propelled Ginsburg into mainstream popular culture during the later years of her life.



Figure 10. Justice Ketanji Brown Jackson and Justice Ruth Bader Ginsburg dance together in the *Saturday Night Live* Cold Open sketch the weekend following Jackson's Senate confirmation vote.

After the Senate counted the votes to confirm Jackson, *Saturday Night Live* brought Ginsburg (Kate McKinnon) back to the stage for the first time since the Justice's death.[40] She appeared alongside soon-to-be Justice Ketanji Brown Jackson (Ego Nwodim) in the Oval Office as several ghosts visit Jackson to congratulate her. When Ginsburg arrives, she says, "Okay. Here's my advice. Always label your lunches. Second, if you are anything like me, white ladies will start wearing your face with an 'I voted' sticker." And so begins one way that Jackson's media afterlife intertwines with Ginsburg's. When Justice Ketanji Brown Jackson arrives at the Supreme Court for the fall 2022 term on the first Monday in October, she will be the first Black woman Supreme Court Justice, but she will not be the last.

[40] "Justice Ketanji Brown Jackson Confirmation Cold Open," *Saturday Night Live*, YouTube, 9 April 2022, www.youtube.com/watch?v=A_qQwXRjqQ8.