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THREE PERSPECTIVES ON WORKPLACE HARASSMENT OF WOMEN OF COLOR

Maria L. Ontiveros¹

For women of color, sexual harassment is rarely, if ever, about sex or sexism alone; it is also about race. For us, racial epithets are spoken in sexist terms and sexual or sexist comments involve our race and or our culture.²

Marcia Gillespie, speaking for African American women, but with words applicable for many other women of color, wrote

We say, I am a Black Woman, I cannot separate my race from my sex, cannot separate racism from sexism. They are rarely separate, never indivisible. So don't ask me to choose, I cannot; I am myself, I am not you. Nor will I let you choose for me. And I will not let you pretend that racism and sexism are not inseparable issues in *all* of our

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2. Pioneers in the field of applying analysis concerning the intersection of race and sex in legal analysis include Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policy*, 1989 U. CHI. LEGAL F. 139; Judy Trent Ellis, *Sexual Harassment and Race: A Legal Analysis of Discrimination*, 8 J. OF LEGIS. 30 (1981); and Angela Harris, *Essentialism In Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

lives.³

This indivisibility was noted by early victims of workplace harassment who, when they were asked if they were filing racial or sexual harassment claims, responded that they could not tell.⁴ While everyone agrees that "sexual harassment" is about sexism and power, for us it is also about race and culture.⁵

In this address, I suggest a framework for understanding the ways in which issues of race and culture play a pivotal role in what we have thought of as "sexual harassment."⁶ This framework views an incident of workplace harassment from the perspectives of the three key players: the harasser, the victim and the judicial system. From the viewpoint of the harasser, women of color appear to be less powerful, less likely to complain, and the embodiment of particular notions of sexuality. From the perspective of the women, attitudes in their community and lessons learned in their culture may make it more difficult for them to respond forcefully to the discrimination. Finally, the judicial system's perspective on both women of color and relationships between men and women of color often influences the outcome of such cases.

I. PERSPECTIVE I: THE HARASSER

Since workplace harassment is a power dynamic, women of color serve as likely targets because they are the least powerful participants in the workplace. Unlike white women, they are not privileged by their race. Unlike men of color, they are not privileged by their gender. Although a white man might harass any woman, a man of color is not likely to feel that he has the prerogative to harass a white woman. He may feel that he is not able to harass her because of his lack of racial status or because he knows he could be subject to a disproportionate reaction stemming from society's deep-seeded, historical fears of attacks

3. Marcia A. Gillespie, *We Speak in Tongues*, Ms., Jan.-Feb., 1992, at 41-42.

4. Judy Trent Ellis, *Sexual Harassment and Race: A Legal Analysis of Discrimination*, 8 J. OF LEGIS. 30, 41-42 (1981).

5. I, therefore, prefer to use the term "workplace harassment of women of color." The use of "sexual harassment" or "racial harassment" fails to capture the complexity of the experience.

6. As the annotated text of an address, this article does not attempt to fully canvas the area of workplace harassment or critical race theory.

on white women by non-white men.⁷ If the harasser is a man of color, then, the victim is likely to be a woman of color. Harassers may also prefer those women of color, such as Latinas and Asian American women, whom they view as more passive and less likely to complain.

Additionally, racism and sexism can blend together in the mind of the harasser and be displayed as an inseparable whole. The types of statements used and actions taken incorporate the unique characteristics of women of color, subjecting each race and ethnicity to its own cruel stereotype of sexuality. Harassment of African American women incorporates images of slavery, degradation, sexual availability and natural lasciviousness.⁸ In *Brooms v. Regal Tube Co.*,⁹ the defendant showed the victim several photocopies of racist pornography involving bestiality, gave her pornographic pictures depicting an interracial act of sodomy and told her that she was hired for the purposes indicated in the photograph because it showed the "talent" of a black woman.¹⁰ In *Continental Can Co. v. Minnesota*,¹¹ the harasser told his African American victim that, "he wished slavery days would return so that he could sexually train her and she would be his bitch."¹²

A parallel stereotype portrays Asian American women as exotic, submissive, and naturally erotic.¹³ This attitude most likely grows out of the 1870's racist portrayal of all Asian women as prostitutes, seeking to enter the United States to engage in "criminal and demoralizing purposes."¹⁴ Unfortunately, several examples illustrate that these historical stereotypes still exist

7. Estelle B. Freedman, *The Manipulation of History at the Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1361, 1362 (1992) (discussing the current impact of the historical use of lynching to punish black men for assaulting white women).

8. *Id.* at 1363.

9. 881 F.2d 412 (7th Cir. 1989).

10. *Id.* at 417.

11. 297 N.W.2d 241 (1980).

12. *Id.* at 246.

13. See *infra* notes 14-18 and accompanying text.

14. Sucheta Mazumdar, *General Introduction: A Woman-Centered Perspective on Asian American History*, in MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN, [hereinafter MAKING WAVES] 1, 2-3 (1989). One poem entitled, *And all the Girls Cried*, written about the exploitation of Asian women as prostitutes includes the passage:

and affect women today.¹⁵ Hearings on sexual harassment sponsored by the California Women's Caucus included the testimony of an "Asian construction worker whose co-workers shoved a hammer between her legs, who was taunted with racial slurs, who was repeatedly grabbed on her breasts while installing overhead fixtures, and who was asked whether it was true that Asian women's vaginas were sideways."¹⁶

In another case, a young Japanese American receptionist's harasser told her he had a foot fetish, stroked and kissed her feet, and kissed the nape of her neck. He told her, "I thought Oriental women get aroused by kissing the back of the neck."¹⁷ Finally, a Taiwanese-American banking executive won a settlement from a Los Angeles bank because, among other things, a co-worker said that she was best suited to a job as a "high-class call girl" and the bank's president once introduced her as "vice president in the real estate and sex department."¹⁸

Like African American women and Asian American women, society considers Latinas naturally sexual; in this instance evoking the image of the "hot-blooded" Latin.¹⁹ In addition, Latinas are often perceived as readily available and accessible for sexual use, with few recriminations to be faced for abusing them.²⁰ So-

And white boys came
to the dens
to stare
and compare the exotic
to the norm-

Kathy Wong, *And All the Girls Cried*, *supra* at 130, 131.

15. Joan Walsh, *Asian Women, Caucasian Men*, S.F. EXAMINER, December 2, 1990, Image (magazine), at 11, details many of the current stereotypes including the notion that white men are attracted to the exotic Asian look, are looking for submissive women and that "Filipinas [are] best because they really know how to treat their men."

16. Kimberle Crenshaw, *Race, Gender and Sexual Harassment*, 65 S. CAL. L. REV. 1467, 1474 (1992). "The woman testified that when she was told 'you don't belong here,' she could not figure out whether it was because she was Asian, female or both."

17. California Dept. of Fair Employment and Hous. v. Guill, et. al., (1989) FEHC Oct. No. 89-15 (CEB 11). Modified on remand, (1991) FEHC Feb. 91-16 (CEB 10).

18. Kim Murphy, *Bank Will Pay \$400,000 in Sexual Harassment Suit*, L.A. TIMES, Oct. 7, 1986, Part 2, at 1.

19. To defend himself from accusations that he had repeatedly sexually harassed and abused the Mexican woman in his employ, one man argued that she had been the sexual aggressor, saying "she is a lady with quite a high sexual drive." Carla Marinucci, *Despair Drove her to Come Forward*, S.F. EXAMINER, Jan. 10, 1993, at A11.

20. The treatment of this victim, whose story is referred to throughout this article, is typical of many immigrants according to the results of a four month investigation

noma County District Attorney Gene Tunney has seen this perception become reality. In commenting on one case which typifies this situation he stated "we've become aware of people who have imported Mexican women, usually from rural villages in the middle of nowhere, and brought them here for sexual reasons. My suspicion is there is a lot of it going on."²¹

Thus, race plays a critical role in workplace harassment of women of color because of the perspective of the harasser. In addition, the perspectives of at least two other key players affect the outcome of a harassment episode.

II. PERSPECTIVE II: WOMEN OF COLOR AS MEMBERS OF THE MINORITY COMMUNITY

The community in which a woman lives and the culture in which she was raised influences her reaction to workplace harassment. For example, some women of color have been raised to be more passive, defer to men and not bring attention to themselves.²² This may be particularly true in the traditional Asian value system that includes obedience, familial interest, fatalism, and self-control, and which tends to foster submissiveness, passivity, pessimism, timidity, inhibition and adaptiveness.²³ Similar barriers may face Latinas growing up in a "macho" culture.²⁴ For these women to resist an act aggressively or to pursue a legal remedy, these cultural issues must first be confronted.

Additionally, many women wrestle with feelings that they will be blamed for the harassment. For Asian American women,

conducted by a Northern California newspaper. The investigation included interviews with immigrants, community leaders and government officials, as well as examination of documents from courts, labor agencies and the Immigration and Naturalization Service. *Id.* at A10 (insert entitled: *The Series*, explaining methodology for the article). She left her family in Mexico to become a housekeeper in the United States. Upon arrival, her employer immediately began to sexually abuse and harass her. She did not immediately report the harassment because she was afraid of the man, feared deportation and felt she would not be believed. *Id.* See also, Suzanne Espinosa, *Female Immigrants Tell of Abuse*, S.F. CHRON., Mar. 9, 1993, at A11.

21. *Id.*

22. See *infra* notes 23-24 and accompanying text.

23. Esther Ngan-Ling Chow, *The Feminist Movement: Where Are All the Asian American Women?*, in MAKING WAVES, *supra* note 14 at 362, 368.

24. Earl Shorris, *LATINOS*, 433-38 (1991).

philosophies like “Shikata ga nai”²⁵ and “If something happens to you, it is your fault for putting yourself in that position” exacerbate the guilt and self-doubt felt by any victim of workplace harassment. One Mexican immigrant victim of harassment, when asked why she did not report the harassment earlier, told a rape counsellor that “a woman who is raped in Mexico is the one at fault, maybe because her parents didn’t watch her.”²⁶ Upon learning of the harassment, her husband denounced her as a permanent shame to her family.²⁷

Immigrant or illegal status and a lack of understanding of their legal rights further handicap women of color. In the case of the young Japanese American receptionist,²⁸ the California Department of Fair Employment and Housing commented:

We find it plausible, however, given Midori Okamoto’s [the plaintiff’s mother who worked with the victim and observed the harassment] cultural background, her incomplete understanding of what constitutes sexual harassment under the law, and her belief that her daughter would not get as well paid a job elsewhere with her limited skills and education, that she encouraged her daughter to stay and put up with [the harassment]. We also believe complainant’s hesitation to leave a well paying job and her confusion, which was certainly compounded by her mother’s advice and her own lack of knowledge of her legal rights, over whether she even had a right to be free of such harassment on [sic] the work place.²⁹

Marie DeSantis, a community advocate for Sonoma County Women Against Rape, notes that immigrant women are often victims of what she terms “rape by duress.”³⁰ They do not report such crimes because they are too intimidated by their fear of deportation, ignorance of their legal rights and presumed power of their employers.³¹ In the situation of the Mexican

25. Japanese for “it can’t be helped”.

26. Marinucci, *supra* note 19.

27. *Id.*

28. *See supra* note 17.

29. California Dept. of Fair Employment and Hous. v. Guill, *supra* note 17, at 13.

30. Marinucci, *supra* note 19.

31. *Id.*

housekeeper,³² she stated that because she was here illegally and was paid by her employer, she had no place else to go. She worried that "He could have cut me up in a million pieces, and no one would have known."³³

The inability to understand the situation is further compounded by the differing ideas of sexuality which permeate different cultures. Sex is discussed less frequently and openly by Asian American women;³⁴ sexual harassment is therefore not something to be discussed either. In fact, no words for "sexual harassment" exist in Japanese, Mandarin or Cantonese.³⁵ In cultures that do not even have words to encompass the concept of sexual harassment, it is predictable that many women in those cultures are less likely to recognize harassing behavior when it presents itself.

Finally, victims recognize that accusations of workplace harassment will negatively implicate their cultures and likely bring adverse community response. For example, one Latina community worker was urged by two female co-workers (who had also been harassed and remained silent) to not report an incident of harassment "for fear that exposing the perpetrators would undermine their movement and embarrass the Latino community."³⁶ This adverse community response may be especially painful for women of color, to whom community is particularly important.

The Clarence Thomas - Anita Hill hearings provide another example of negative community response with which many are familiar. As one author³⁷ explained:

Hill was attacked not only by white right-wing misogynists, but by African Americans who felt that she had stepped out of line by accusing a

32. *Id.*

33. *Id.*

34. Bisola Maringay, *Building Multicultural Alliances: A Practical Guide*, 3 HASTINGS WOMEN'S L.J. 245, 254 (1992).

35. Recently however, the Japanese have begun to use the term "seku hara," a derivative abbreviation of the English "sexual harassment." Vivien Ng, *Sexuality, Gender and Social Scripting in Japan and China*, 4 YALE J.L. & FEM. 65, 68 (1991).

36. Crenshaw, *supra* note 16, at 1474.

37. Barbara Smith, co-founder and publisher of Kitchen Table: Women of Color Press.

black man chosen by white racists for high office. It was demoralizing to see how the confrontation reinforced the perception that any woman who raises the issue of sexual oppression in the black community is somehow a traitor to the race, which translates into being a traitor to black men. It is particularly disheartening knowing that probably a lot of black people took this stance despite believing Anita Hill. They who decided that standing behind a black man—even one with utter contempt for the struggles of African Americans—is more important than supporting a black woman's right not to be abused."³⁸

III. PERSPECTIVE III: THE LEGAL SYSTEM

Once an incident of workplace harassment becomes a lawsuit, the legal system provides the final construct of the event. The legal system's perception of women of color affects cases of workplace harassment brought by these women in at least three ways: judges and juries tend to disbelieve what they say; the dominant culture's construct of their sexuality influences the cases' outcomes; and the entire justice system misperceives relationships between men and women of color thereby excusing discriminatory acts by men of color.

The story of the Mexican immigrant woman evidences the credibility problem.³⁹ She told the Sonoma District Attorney that she believed her employer was "a doctor . . . and that is a title of some esteem and high position in Mexico. . . . If you're a peasant girl, and it's your word against his, you don't have a chance."⁴⁰

African American women also have a hard time convincing the legal system that they are telling the truth.⁴¹ Judges have been known to tell jurors to take a black woman's testimony

38. Barbara Smith, *Ain't Gonna Let Nobody Turn Me Around*, Ms., Jan.-Feb. 1992, at 37, 38.

39. Marinucci *supra* note 19.

40. *Id.*

41. See *infra* notes 42-43 and accompanying text.

“with a grain of salt.”⁴² A recent study of jury members in rape trials indicated the lack of credibility given black women’s testimony.⁴³ One juror said of black rape victims, “you can’t believe everything they say; they’re known to exaggerate the truth.”⁴⁴

Even when women of color are believed, the dominant culture’s construct of their sexuality influences their hearings and their results. As Professor Charles Lawrence wrote of the Hill-Thomas hearings,

When the man on the street says, “I don’t believe Hill’s story,” it is in part because he believes the old, oft-told story of “unchaste” black women. When Senator Orrin Hatch charges that her experience is the fantasy of a spurned woman, he is evoking this myth. When he implies that she tried to seduce Thomas by inviting him into her apartment, and when he reads the most lurid language in her account over and over again, all the while protesting his disgust, he is conjuring up these same racist images of the wanton black woman.⁴⁵

Penalties are affected because women of color are believed to have been “asking for it”, to not be greatly affected by the abuse, or simply to not be worthy of the same legal protection given to the rest of society.⁴⁶ One study concluded that defendants who assault African American women are less likely to receive jail time than those who assaulted white women.⁴⁷ Another study found that assailants of African American women receive an average sentence of two years, compared to an average sentence of ten years for defendants who assault white women.⁴⁸ One juror, sitting in the case of a rape of a black pre-teen, stated “being from that neighborhood she probably wasn’t a virgin anyway.”⁴⁹

42. Crenshaw, *supra* note 16, at 1470.

43. *Id.*

44. *Id.*

45. Charles R. Lawrence III, *Cringing at Myths of Black Sexuality*, 65 S. CAL. L. REV. 1357, 1358 (1992).

46. *See infra* notes 47-49 and accompanying text.

47. Crenshaw, *supra* note 16, at 1470.

48. *Id.*

49. *Id.*

A final problem occurs when the legal system misinterprets relationships between men and women of color. The so-called "cultural defense" has been used by people of color to explain why their action is understandable and even excusable in their culture, even when it offends American values.⁵⁰

In *People v. Chen*,⁵¹ a Chinese man, after learning of his wife's adultery, killed his wife by hitting her on the head eight times with a hammer. The defense argued that, in traditional Chinese culture, a man is often driven to violence upon hearing of his wife's infidelity, but, unlike this defendant, is stopped by someone in the community before he can actually hurt her.⁵² The court took this defense into account and sentenced him to five years probation.⁵³ In another case, two Korean youths were acquitted on the charge of rape after arguing that the victim, a Korean woman, tacitly consented to the rape because her visit to bars with the men would communicate consent in Korea.⁵⁴ Although many protested that these rulings misinterpreted Chinese and Korean social norms and views of justice,⁵⁵ the legal system accepted them, thereby devaluing women of color in the process.

Focusing on the area of workplace harassment, the writings of Orlando Patterson⁵⁶ illustrate the problems of misconstruing intraracial relationships. He suggested that the type of things Anita Hill complained of did not constitute sexual harassment but rather "down-home courting", common between African American men and women. He argued further that African Americans "have robust and almost Chaucerian interactions, women crack lewd jokes, and when men come on to them in a salacious manner, they respond by rebuffing in an equally salacious manner, which often puts a man in his place in ten

50. See, e.g., Melissa Spatz, A "Lesser" Crime: A Comparative Study of Legal Defenses for Men who Kill Their Wives, 24 COLUM. J. L. & SOC. PROBS., 597 (1991). The cases presented here are discussed at 621-25.

51. No. 87-7774 (N.Y. Sup. Ct. Mar. 21, 1989).

52. Spatz, *supra* note 50, at 625 n.200.

53. *Id.*

54. *Id.*

55. *Id.* at 623-24.

56. Orlando Patterson, Professor of Sociology at Harvard University, author of *Race, Gender and Liberal Fallacies*, N.Y. TIMES, Oct. 20, 1991, § 4, at 15.

seconds."⁵⁷

Acceptance of the notion of "down-home courting" perpetuates the "age-old mythology that Black women are amenable, and in fact receptive, to abusive and demeaning sexual conduct."⁵⁸ Further, the argument fails because it assumes "that simply because Black women have responded to such behavior by displacing the sexual aggression onto a plane of humor and wit, they are neither offended nor threatened by it, and that somehow this 'style' is defensible. . . ."⁵⁹

Courts, in attempting to accommodate different cultures, seem to privilege the race of the defendant while simultaneously divesting the victim of her gender. This misunderstanding of the relationships between people of color serves to excuse actions taken against women of color. Thus, like the credibility problems and stereotypes of sexuality, it causes the legal system to discount workplace harassment of women of color.

IV. CONCLUSION

Following the Hill-Thomas hearings, the issue of sexual harassment has, justifiably, been raised in the collective consciousness of our society. Unfortunately, "sexual harassment" only describes part of what happened to Anita Hill and continues to happen to many other women. Race or national origin affects the way she is perceived by the harasser, her ability to respond to the incident, and the judicial system's eventual resolution of the matter.

We need to reconstruct our perception of "sexual harassment" to face the issue of "workplace harassment of women of color." This transformation must take place because the elements of a sexual harassment case are different and more onerous than those in a racial harassment case.⁶⁰ Treating these

57. Roundtable: *Sexuality in America after Thomas/Hill*, TIKKUN, Jan.-Feb. 1992, at 25, 26.

58. *Id.*

59. *Id.*

60. See, e.g., *Davis v. Monsanto Chemical Co.*, 858 F.2d 345, 348 (6th Cir. 1988) (different standard for showing "sufficiently severe conduct" in the two types of cases). Sexual harassment plaintiffs must show that the conduct was "unwelcome." Meritor Sav-

cases as “sexual harassment,” then, not only misstates the dynamic but also further disadvantages these women. Such a solution could be reached either by modifying the rules governing “sexual harassment” or by creating a new cause of action prohibiting discrimination against women of color *as* women of color.⁶¹

This reform would address some of the problems discussed here, but true solutions are not so simple because the problems and interrelationships are so complex. Deeply held notions of race, gender, identity, sexuality and power must be examined and reevaluated. Furthermore, this discovery must take place both within and across cultural and class boundaries. Only in this way will we be able to answer the challenges raised by the Hill-Thomas hearings and, as Marcia Gillespie said, no longer pretend that racism and sexism are not inseparable issues in all of our lives.

ings Bank v. Vinson, 477 U.S. 57, 68 (1986). A racial harassment plaintiff does not have to prove that the harassment was “unwelcome.”

61. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policy*, 1989 U. CHI. LEGAL F. 139. This solution, while addressing the harassment of women of color, would not solve the problems of others who are discriminated against on the basis of more than one characteristic, i.e. older women or young African American men. A more thorough solution rests on restructuring our discrimination laws away from a system based on “protected classes” to one containing a more general assurance of fairness.