Ahead of Kavanaugh hearing, some hear echoes of Anita Hill testimony

By Louis Jacobson, John Kruzel on Wednesday, September 26th, 2018 at 3:52 p.m.

In this Oct. 11, 1991 file photo University of Oklahoma law professor Anita Hill testifies before the Senate Judiciary Committee on the nomination of Clarence Thomas to the Supreme Court on Capitol Hill. (AP Photo, File)

As senators weigh the Supreme Court nomination of Brett Kavanaugh amid allegations of sexual misconduct, many Americans are thinking back to a previous example of accusations against a Supreme Court nominee.

Twenty-seven years before Christine Blasey Ford accused Kavanaugh of trying to sexually assault her when they were teenagers, law professor Anita Hill accused nominee Clarence Thomas of sexual harassment. Thomas was ultimately confirmed as an associate justice in 1991.

Comparisons of the cases have swirled on television and social media as the Senate Judiciary Committee prepared to hear from Ford and Kavanaugh on Sept. 27.

We decided to take a look at some of the similarities and differences between the high-profile hearings.

**The political lineups**

The lay of the land in the Senate in 2018 is significantly different than it was in 1991.

In 1991, most Senate Democrats — then the majority party — opposed the Thomas nomination. However, "11 Democrats, all moderate Democrats from southern or midwestern states, assumed that Thomas’ legal credentials deserved some deference, even in the presence of Hill’s charges," said Steven Smith, a specialist in Senate history at Washington University in St. Louis. "They made the difference."

By contrast, Smith said, in our increasingly polarized political environment, no Democrats have yet said they will support Kavanaugh.

The party leadership has made a difference as well, Smith said.

In 1991, party leaders like Democrat George Mitchell of Maine "articulated a commitment to process," Smith said. "They acted on the assumption that process mattered, that how you win or lose mattered, that there are outcomes worse than losing."

By contrast, Smith said, the current majority leader, Sen. Mitch McConnell, R-Ky., broke with tradition by not granting consideration of Merrick Garland, President Barack Obama’s 2016 Supreme Court nominee, for about a year.

Another change: Due to a series of moves by both parties, there is no longer a filibuster on floor votes for a Supreme Court nominee, said Anthony Madonna, a University of Georgia political scientist. This reduces the need for a nominee who can appeal to a significant number of members from the minority party.

**How many women were on the committee?**

The questioning of Hill by a sweep of older men was one of the most lasting images from the Hill-Thomas hearings. At the time, no female senators sat on the Judiciary Committee, as this hearing transcript shows:
Today, Democrats have four women on the panel: Dianne Feinstein and Kamala Harris of California, Mazie Hirono of Hawaii and Amy Klobuchar of Minnesota.

Republicans, by contrast, currently have no female members on the committee.

It’s worth noting that three Judiciary Committee members who presided over the Hill-Thomas hearings will also hear testimony from Ford and Kavanaugh when they appear before the panel. They are Patrick Leahy, D-Vt., and Republicans Orrin Hatch of Utah and Chuck Grassley of Iowa, who chairs the committee.

Rather than question Kavanaugh and Ford themselves, the all-male Republican majority has enlisted Arizona prosecutor Rachel Mitchell, who has extensive experience handling sex-crimes prosecutions.

Grassley said the move was made to explicitly avoid a repeat of the highly politicized Hill-Thomas hearings.

"We have done it because we want to depoliticize the whole process like the Democrats politicized the Anita Hill thing," he said. "The whole purpose is to create an environment where it is what Dr. Ford has asked for — (that) it be professional and not be a circus. That’s what we’re up to."

For her part, Ford requested that senators conduct the questioning themselves.

**The investigatory process**

There has been no investigation of Ford’s allegations by the FBI — unlike what happened when Hill made her allegations.

As we have noted previously, in any confirmation, the FBI conducts a background check. It is routine, and generally, the report it sends to the White House and the Senate requires no follow-up.


NPR reporter Nina Totenberg – who covered and became part of the story as a recipient of leaked FBI material on Hill and Thomas – told us that Biden requested from President George H.W. Bush "to please have the FBI interview Hill and Thomas."
Totenberg said in less prominent nominations, Senate committee members request FBI follow-ups "all the time," although not usually on such charged topics as sexual misconduct.

Stephen Vladeck, law professor at the University of Texas, said that the FBI "routinely updates those checks as new, potentially relevant information comes to light," Vladeck said.

"The Judiciary Committee could say to the White House, the background check is now incomplete and could they please resume their work," said Stephen Wermiel at the Washington College of Law at American University.

So far, committee Republicans have not asked for such an investigation. Democratic Judiciary Committee members on Sept. 26 called on Trump to either withdraw Kavanaugh or order an FBI investigation.

**Outside witnesses**

While the Ford-Kavanaugh hearings are slated to feature testimony from only the two principals, the Hill-Thomas hearings included 20 additional outside witnesses.

The third and final day of Hill-Thomas hearings — Oct. 13, 1991 — stretched to 14 hours, according to contemporaneous reports, and included dueling testimony on issues of credibility and motive.

Four corroborating witnesses said they had conversations with Hill about Thomas’ harassment around the time it allegedly occurred, according to NPR’s Totenberg.

"Taken together," read the Chicago Tribune’s coverage, "the first four witnesses bolstered Hill’s credibility and strongly rebutted suggestions that she or liberal interest groups concocted the allegations to derail Thomas’ nomination."

The Tribune article also described testimony from "four women who had worked at government jobs with Thomas and Hill" and who did not believe Hill’s accusations, including one who suggested Hill "was miffed because she had had a crush on Thomas and he hadn't reciprocated."

Unlike the Hill-Thomas hearings, the Ford-Kavanaugh hearings are not scheduled to include any outside witnesses. That is contrary to calls by some to hear at least from Kavanuagh’s high school classmate Mark Judge, who Ford named as a witness to the alleged assault she suffered at the hands of Kavanaugh.

Hill herself weighed in on the Kavanaugh proceedings in an interview with the Associated Press.

She said a full investigation would paint a clearer picture of the hard-drinking culture Kavanaugh is alleged to have participated in while a student at the elite Georgetown Prep high school.

"The reason I think it’s not going to be fair is that it doesn’t give you all the information," Hill told the Associated Press. "And I believe it is designed to pit his word against hers, and we know that (he) has all of the power of the presidency behind him. And she doesn’t."

Leigh Gilmore, a professor at Wellesley College, noted that during the Hill-Thomas hearings no experts on traumatic memory or sexual harassment were called.
"An adequate context for weighing her testimony was actively resisted in order to turn the hearing into a he said/she said credibility battle in which all the power was on Thomas's side," she said. "The Senate Judiciary Committee under Sen. Grassley, and supported by Mitch McConnell and the president, are setting up what I see as exactly the same unfair process that will bias the proceedings against Christine Blasey Ford."

**Public opinion**

One of the starkest differences between the Hill-Thomas hearings and the Ford-Kavanaugh hearings has to do with public sentiment.

As the following chart shows, Thomas' support was broad prior to Hill’s testimony, and it didn’t experience much of a decline in the immediate aftermath.

<table>
<thead>
<tr>
<th>Date</th>
<th>Pollster</th>
<th>Favor Thomas confirmation</th>
<th>Oppose Thomas confirmation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 10-13, 1991</td>
<td>Gallup</td>
<td>53</td>
<td>30</td>
<td>+23</td>
</tr>
<tr>
<td>Aug. 8-11, 1991</td>
<td>Gallup</td>
<td>56</td>
<td>23</td>
<td>+33</td>
</tr>
<tr>
<td>July 11-14, 1991</td>
<td>Gallup</td>
<td>52</td>
<td>17</td>
<td>+35</td>
</tr>
</tbody>
</table>

Source: [Gallup](https://www.gallup.com). Date of Anita Hill’s testimony: Oct. 11, 1991

By contrast, since the beginning of September 2018, Kavanaugh’s level of support has been slightly under water in four polls, meaning he has less ability to bleed support than Thomas did.

<table>
<thead>
<tr>
<th>Date</th>
<th>Pollster</th>
<th>Favor Kavanaugh confirmation</th>
<th>Oppose Kavanaugh confirmation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 16-18</td>
<td>NBC/WSJ</td>
<td>34</td>
<td>38</td>
<td>-4</td>
</tr>
<tr>
<td>Sept. 10-16</td>
<td>Gallup</td>
<td>39</td>
<td>42</td>
<td>-3</td>
</tr>
<tr>
<td>Sept. 6-9</td>
<td>CNN/SSRS</td>
<td>38</td>
<td>39</td>
<td>-1</td>
</tr>
<tr>
<td>Sept. 6-9</td>
<td>Quinnipiac</td>
<td>41</td>
<td>42</td>
<td>-1</td>
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</table>

Source: [Pollingreport.com](https://www.pollingreport.com). Scheduled date of Christine Blasey Ford’s testimony: Sept. 27, 2018

**Increasing respect for women accusing powerful men**

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A key reason that Thomas was confirmed may have been that the public generally believed him, not Hill -- a trust factor that continued in the immediate aftermath of Hill’s testimony.

<table>
<thead>
<tr>
<th>Date</th>
<th>Pollster</th>
<th>Thomas telling the truth</th>
<th>Hill telling the truth</th>
<th>Difference favoring Thomas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 9, 1991</td>
<td>ABC News</td>
<td>35</td>
<td>32</td>
<td>+3</td>
</tr>
<tr>
<td>Oct. 9, 1991</td>
<td>CBS/NYT</td>
<td>47</td>
<td>21</td>
<td>+26</td>
</tr>
<tr>
<td>Oct. 10-13, 1991</td>
<td>Gallup</td>
<td>48</td>
<td>29</td>
<td>+19</td>
</tr>
<tr>
<td>Oct. 10, 1991</td>
<td>Time/CNN</td>
<td>34</td>
<td>26</td>
<td>+8</td>
</tr>
<tr>
<td>Oct. 12, 1991</td>
<td>ABC News</td>
<td>39</td>
<td>33</td>
<td>+6</td>
</tr>
<tr>
<td>Oct. 13, 1991</td>
<td>ABC News</td>
<td>42</td>
<td>33</td>
<td>+9</td>
</tr>
<tr>
<td>Oct. 13, 1991</td>
<td>CBS/NYT</td>
<td>58</td>
<td>24</td>
<td>+34</td>
</tr>
<tr>
<td>Oct. 14, 1991</td>
<td>CBS News</td>
<td>60</td>
<td>20</td>
<td>+40</td>
</tr>
</tbody>
</table>

However, there is evidence that in the longer term, trust in Thomas’ honesty has eroded.

In an October 1992 Gallup/CNN/USA Today poll, 43 percent said they believed Hill, compared with more than 39 percent who said they believed Thomas. And in a November 1994 Harris poll, 49 percent said they thought Thomas had lied, compared with 39 percent who said they thought he told the truth.

**The bigger cultural issues**

Hill’s testimony became a signal moment for many women. She became a symbol "of a new and potent wave of feminism," Marion Kaplan, president of the New York Women’s Foundation, told the New York Times in 1992. Her testimony is credited with electing a wave of women to Congress in the 1992 election.

In a recent interview with the Associated Press, Hill herself said the contrasts are noticeable -- all the more so because of the #MeToo movement, in which a number of celebrities and top executives have lost their jobs or seen their careers plummet due to past allegations of sexual misconduct.

"A lot is different now," Hill told the AP. "A number of powerful men have been held accountable." She added, "#MeToo is about raising awareness. Just because the Senate’s awareness hasn’t been raised doesn’t mean that the rest of us haven’t evolved and learned."
Laurie B. Green, a University of Texas-Austin historian, agreed. "We live in a changed historical climate," Green said. "Apart from the obvious differences with Donald Trump’s presidency, the #MeToo movement has spurred an outpouring by women who are survivors of sexual assault, may likewise continue to live with post-traumatic stress syndrome, and are for the first time making their accounts public. Not so in 1991."

The 1991 hearing "exposed critical fault lines in the lived-experience of those at the crossroads of race and gender," said Deborah Douglas, a journalist and visiting professor at DePauw University. "Thomas, a black man, could evoke the image of a 'high-tech lynching' to plead both innocence and male privilege, trumping the lived experience of a woman who represents a class of woman, the black woman, arguably, the last thought in the American public imagination."

Though Ford is white, gender has played out similarly in both cases, said Douglas, who is African-American.

"We now have a language, an inclusive movement and the political will to understand how Christine Blasey Ford, because of or in spite of being a white woman, is worth fighting for."

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